supposing—as on the evidence before us we must—that it was the outcome of temporary mental unsoundness, and that this unsoundness is recurrent.

For the following case I am indebted to the kindness of Dr. Alexander, of Dunedin, N.Z.

Rex v. Swan.

Daniel Swan, labourer, was indicted for the murder of his wife, at Invercargill, New Zealand, on June 28th.

Two years before the murder, the wife had obtained a separation order against the prisoner, and for some time they lived apart; but after eighteen months' separation he returned to his wife's house as a boarder, the separation order remaining in force. They had a large family, some of the children being grown up and married. Lodging in the same house was a man named Clark, a married man, separated from his wife, and the prisoner had been jealous of Clark, had threatened him, and remonstrated with him for domineering over the deceased. On June 28th the whole family had tea together. The deceased, after tea, took a seat at the end of the table, near the fire, her back towards the prisoner, who sat by the fire. A daughter, æt. 13, was ironing at the other end of the table, while prisoner was reading and smoking and chatting in a friendly manner with his wife. The little girl put her iron on the fire to heat, and was folding up some clothes, when her father suddenly took the iron from the fire and struck her mother on the head with it. The child rushed to interfere, and the prisoner struck his wife a second time, knocking her down. When she was on the floor he repeated the blows, crying, "Would you! Would you!" The child struggled with her father, others came into the room, the father ran out into the street, and then the child stooped down and kissed her mother. She found blood on her lips. The woman's face was covered with blood, and she had a gaping wound in her neck. On a bracket under which the prisoner had been sitting was kept a razor; the razor was afterwards found on the bracket covered with blood. Prisoner ran out of the house, followed by one of his sons, who raised the alarm. Neighbours interfered and secured the prisoner, who

https://doi.org/10.1192/bjp.52.217.359 Published online by Cambridge University Press

resisted, saying, "You don't know what trouble I have had. A man has been tampering with my wife for months or years, and he's brought it to a finish." When arrested by the police he was quite cool, and said, "God knows I did not intend to kill my wife. It was Clark I wanted. The dirty sneak let me kill her and then cleared. Constable, you don't know my troubles. That dirty dog, Clark, pretended to court my daughter, and all the time he is meddling with my wife. She was a good woman, and I loved her. It was all that Jim Clark's fault." When charged, he repeated his accusation against Clark, and his protestations of affection for his wife.

For the defence the plea of insanity was raised, and the following evidence was given in support of the plea: The children proved that their father was very violent when drunk; that he was an extremely fervent Baptist, and used to read the Bible a great deal and argue about it; that he had several times threatened to kill deceased; and that he had been struck on the head years before by a stone, and at times would say the stone was still there; that he was very fond of his wife, except when the bad fits were on him; and that he had sudden fits of temper, which came without provocation. The medical witnesses were urged by the defence to admit that the prisoner was insane at the time of the act, but they were very cautious, and would not commit themselves to this opinion.

In the course of the case Mr. Barclay, counsel for the defence, quoted the answers of the judges, and various English cases, but the Judge reminded him that these authorities were not binding in New Zealand, where they have their own criminal code. "The propositions as to lunacy in our code," said his Honour, "are extremely simple."—Mr. Barclay: "Yes, and extremely dangerous."—His Honour: "I grant you that." It would seem, therefore, that even a criminal code is not a complete and perfect remedy for defects in the Common Law, and that the treatment of the plea of insanity may still be unsatisfactory, in spite of statutory definitions. His Honour told the jury that to sustain a plea of insanity the accused person must establish that he did not know what he was about, and that his mind was in such a condition that he was incapable of knowing that what he was doing was wrong. If a person suffering under an insane delusion believed that another person was going to kill him, and therefore, to protect his own life,

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killed that other person, that was not murder; but if a person had an insane delusion that another person had been slandering him, or had done some other act which would cause a feeling of revenge, even in the mind of a sane person, and if, acting on the feeling of revenge induced by that insane delusion, the man killed that person, he was liable to be convicted of murder, because that delusion, if a fact, would not in law justify the act committed. Such a man would not be entitled to acquittal on the plea of insanity. The jury found the prisoner guilty, and he was sentenced to death. Mr. Justice Cooper. (*Otago Daily Times*, August 31st, and following days.)

The only justification for the plea of insanity was the impulsive character of the crime. The prisoner was sitting quietly chatting with his wife, when he suddenly seized the iron off the fire, battered her head, and cut her throat. After completing the murder he gave a "frightful yell," "as if he was satisfied." This was practically all the evidence of insanity, and it is manifest that it was insufficient. When a man broods over a rankling sense of injury, as the prisoner was shown to have done; when he allows himself to become dominated by the feeling that he is suffering under an unprovoked and unrequited grievance; experience shows that he is very apt to break out in impulsive acts of revenge; and there is no doubt that this murder was an act of that character. The innocent act of the child, in putting the iron within his reach, no doubt suggested to him an opportunity and afforded a temptation. Prone to violence, and of ungoverned temper, he yielded at once, with the result recorded. The act was the act of a man who had all his life yielded to his impulses to fury. He had thrashed one of his children for a trifling offence till the lad could not dress himself, and had to be fed with a spoon. The only excuse for a plea of insanity was the prisoner's unfounded jealousy of his wife; but if every man who cherishes an unfounded jealousy is to be regarded as insane, our concept of insanity will need to be altered. The morbid condition that prompts to acts most resembling that of the prisoner is epileptic furor, or *epilepsie larvée*; but his repeated confession of the deed, and of his reasons for it, are quite sufficient to negative such an hypothesis. There is no doubt he was rightly convicted.

The summing up of the judge was the strictest interpretation

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of the judges' answers of 1843, and was such as is rarely heard in an English court, unless the judge has made up his mind that the case he is trying is one in which the plea of insanity ought not to be admitted, and he therefore wishes to strengthen the hands of the jury, and render it easy for them to refuse to give effect to the plea. Whether the criminal code of New Zealand would allow, as our law does, greater latitude to the judge, in cases which it seems to him right to assume it, I do not know; but it seems that, with a free hand to draw up such a code as it pleased, and with all the experience of many countries to guide them, the Legislature of New Zealand has been content to adopt, without modification, the strict letter of the judges' answers as the rule in cases of alleged insanity. The fact is worth the consideration of would-be reformers and codifiers of our own law.

Rex v. *Macgregor.*

For the account of this case also I am indebted to Dr. Alexander, of Dunedin, N.Z.

The accused had for some years been manager of Sargood's factory. On July 27th Mr. Sargood found the accused in an office in the factory, in which he had been locked by the clerks. Mr. Sargood thought accused had been drinking, told him to leave the office and report himself next morning. There was a conversation, in the course of which accused spoke sensibly on matters of business, and also expressed the intention of taking his own life. He spoke of troubles he had had with his wife. Accused did not appear to resent Mr. Sargood's action in virtually dismissing him from the service. Between five and six o'clock the same evening, accused bought a revolver and fifty cartridges, and then engaged a cab to Mr. Sargood's private house. Mr. Sargood was at dinner, but accused had him called out, and without any words, fired at him at very short distance, hitting him in the face, but not killing him. The other diners ran out on hearing the shot, threw the accused down, and asked if he had killed Mr. Sargood. He said, "I hope so." When first seized, he said, "Yes, I have done it," and hoped he had not hurt anyone else. To all the

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