object; nay, by tearing up his clothes and smashing his cell furniture he submits himself to present inconvenience, to say nothing of the punishment that has to follow upon the destruction of property. The highest gratification to which such a display could give rise would probably result from a momentary personification of the stool or other article into the form of the offending warder during the process of destruction.

(*To be continued.*)

Sir James Hannen on Testamentary Capacity.

An important case—"Boughton v. Knight"—in which a will was opposed on the ground of the testator's insanity, has recently occupied the Court of Probate for fourteen days. Without entering into the details of so long a case, we print the summing up of Sir James Hannen, so far as it bears upon the general question of testamentary capacity. After a few introductory remarks, he proceeded as follows:—

The sole question in this case which you have to determine is, in the language of record, whether Mr. John Knight, when he made his will, on the 27th January, 1869, was of sound mind, memory, and understanding. In one sense the first phrase "sound mind" covers the whole subject; but emphasis is laid upon two particular functions of the mind which must be sound in order to create a capacity for the making of a will, for there must be memory to recall the several persons who may be supposed to be in such a position as to become the fitting objects of the testator's bounty. Above all, there must be understanding, to comprehend their relations to himself and their claims upon him. But, as I say, for convenience, the phrase "sound mind" may be adopted, and it is the one which I shall make use of throughout the rest of my observations.

Now you will naturally expect from me, if not a definition, at least an explanation of what is the legal meaning of those words, "a sound mind;" and it will be my duty to give you such assistance as I am able, either from my own reflections upon the subject, or by the aid of what has been said by learned Judges whose duty it has been to consider this important question before me. But I am afraid that, even with their aid, I can give you but little help, because, though their opinions may guide you a certain distance on the road you have to travel, yet where the real difficulty begins—if difficulty there be in this case—there you will have to find or make a way for yourselves. But I must commence, I think, by telling you what a "sound mind" does not mean. It does not mean a perfectly balanced mind. If it

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did, which of us would be competent to make a will? Such a mind would be free from the influence of prejudice, passion, and pride. But the law does not say a man is incapacitated from making a will because he proposes to make a disposition of his property which may be the result of capricious, of frivolous, of mean, or even of bad motives. We do not sit here to correct injustice in that respect. Our duty is limited to this—to take care that that, and that only, which is the true expression of a man's real mind shall have effect given to it as his will. In fact, this question of justice and fairness in the making of wills, in a vast majority of cases, depends upon such nice and fine considerations that we cannot form, or even fancy that we can form, a just estimate of them. Accordingly, by the law of England, every man is left free to make choice of the persons upon whom he will bestow his property after death, entirely unfettered as to the selection which he may think fit to make. He may wholly or partially disinherit his children, and leave his property to strangers, to gratify his spite, or to charities to gratify his pride; and we must respect, or rather I should say we must give effect to, his will, however much we may condemn the course which he has pursued. In this respect the law of England differs from the law of other countries. It is thought better to risk the chance of an abuse of the power arising than altogether to deprive men of the power of making such selections as their knowledge of the characters, of the past history and future prospects of their children or other relatives may demand; and we must remember that we are here to administer the English law, and we must not attempt to correct its application in a particular case by knowingly deviating from it.

I have said that we have to take care that effect is given to the expression of the true mind of the testator, and that, of course, involves a consideration of what is the amount and quality of intellect which is requisite to constitute testamentary capacity.

I desire particularly, now and throughout the consideration which you will have to give to this case, to impress upon your minds that, in my opinion, this is eminently a practical question—one in which the good sense of men of the world is called into action, and that it does not depend either upon scientific or legal definitions. It is a question of degree, which is to be solved in each particular case by those gentlemen who fulfil the office which you now have imposed upon you; and I should like, for accuracy's sake, to quote the very words of Lord Cranworth to which I referred in the observations which I had to make on a former occasion, and from which Sir John Karslake in his opening speech quoted a passage. In the case of "Boys v. Rossborough," in the House of Lords, Lord Cranworth made use of these words: "On the first head, the difficulty to be grappled with arises from the circumstance that the question is almost always one of degree. There is no difficulty in the case of a raving madman, or of a drivelling idiot, in saying that he is not a person capable of dispos-

ing of property; but between such an extreme case and that of a man of perfectly sound and vigorous understanding, there is every shade of intellect—every degree of mental capacity. There is no possibility of mistaking midnight for noon, but at what precise moment twilight becomes darkness is hard to determine."

In considering the question, therefore, of degree, large allowance must be made for the difference of individual character. Eccentricities, as they are commonly called, of manner, of habits of life, of amusements, of dress, and so on, must be disregarded. If a man has not contracted the ties of domestic life, or, if unhappily, they have been severed, a wide deviation from the ordinary type may be expected, and if a man's tastes induce him to withdraw himself from intercourse with friends and neighbours, a still wider departure from the ordinary type must be expected; we must not easily assume that because a man indulges his humours in unaccustomed ways, that he is therefore of unsound mind. We must apply some other test than this, of whether or not the man is very different from other men. Now the test which is usually applied, and which in almost every case is found sufficient, is this—was the man labouring under delusions? If he laboured under delusions, then to some extent his mind must be unsound.

But though we have thus narrowed the ground, we have not got free altogether from difficulty, because the question still arises, what is a delusion? On this subject an eminent judge, who formerly sat in the Court, the jurisdiction of which is now exercised here, has quoted with approbation a definition of delusion which I will read to you.—Sir John Nicoll, in the famous case of "Dew v. Clark," as to which I shall have to say a word to you by-and-bye, says: "One of the Counsel"—that Counsel was Dr. Lushington, who afterwards had to consider similar questions—"accurately expressed it, it is only the belief of facts which no rational person would have believed that is insane delusion." Gentlemen, in one sense, that is arguing in a circle; for, in fact, it is only to say that that man is not rational who believes what no rational man would believe; but for practical purposes it is a sufficient definition of a delusion, for this reason, that you must remember that the tribunal that is to determine this question, whether judge or juryman, must, of necessity, take his own mind as the standard whereby to measure the degree of intellect possessed by another man. You must not arbitrarily take your own mind as the measure, in this sense, that you should say, I do not believe such and such a thing; therefore, the man who believes it is insane. Nay, more; you must not say, I should not have believed such and such a thing; therefore, the man who did believe it is insane. But you must of necessity put to yourself this question, and answer it. Can I understand how any man in possession of his senses could have believed such and such a thing? And if the answer you would have to give is, "I cannot understand it;" then it is of the necessity of fthe case that you should say that that man is not sane. Sir John Nicoll in a previous

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passage has given what appears to me to be a more logical and precise definition of what a delusion is. He says, "The true criterion is, where there is a delusion of mind there is insanity; that is, when persons believe things to exist which exist only, or at least in a degree exist only, in their own imagination, and of the non-existence of which neither argument nor proof can convince them, they are of unsound mind." I believe you will find that that test applied will solve most, if not all, the difficulties which arise in investigations of this kind.

Now, gentlemen, of course there is no difficulty in dealing with cases of delusion of the grosser kind of which we have experiences in this court. Take the case, which has been referred to, of Mrs. Thwaites. If a woman believes that she is one person of the Trinity, and that the gentleman to whom she leaves the bulk of her property is another person of the Trinity, what more need be said? But a very different question, no doubt, arises where the nature of the delusion which is said to exist is this, when it is alleged that a totally false, unfounded, unreasonable—because unreasoning—estimate of another person's character is formed. That is necessarily a more difficult question. It is unfortunately not a thing unknown, that parents—and, I should say in justice to women, it is particularly the case rather with fathers than with mothers—that they may take unduly harsh views of the characters of their children, sons especially. That is not unknown. But there is a limit beyond which you can feel that it ceases to be a question of harsh, unreasonable judgment of character, and that the repulsion which a father exhibits towards one or more of his children must proceed from some mental defect in himself. It is so contrary to the whole current of human nature that a man should not only form a harsh judgment of his children, but that he should put that into practice so as to do them mischief or to deprive them of advantages which most men desire, above all things, to confer upon their children. I say there is a point at which, taken by itself, such repulsion and aversion becomes evidence of unsoundness of mind. Fortunately it is rare. It is almost unexampled that such a delusion consisting solely of aversion to children is manifested without other signs which may be relied on to assist you in forming an opinion on that particular point. There are usually other aberrations of the mind which afford an index as to the character of the treatment of the children. Perhaps the nearest approach to a case in which there was nothing but the dislike on the part of a parent to his child on which to proceed was the case of "Dew v. Clark." There were indeed some minor things which were adverted to by the Judge in giving his judgment, but he passes over these, as it was natural he should do, lightly; as, for instance, there was in that case the fact that the gentleman who had practised medical electricity attached extraordinary importance to that means of cure in medical practice. He conceived that it might be applied to every purpose, among the rest even to the

assisting of women in child-birth. But those were passed over, not indeed cast aside altogether, but passed over by the Judge as not being the basis of his judgment. What he did rely on was a long, persistent course of dislike of his only child, an only daughter, who, upon the testimony of everybody else who knew her, was worthy of all love and admiration, for whom indeed the father no doubt entertained, so far as his nature would allow him, the warmest affection; but it broke out into these extraordinary forms, namely, that he desired that that child's mind should be subject entirely to his own; that she should make her nature known to him, and confess her faults, as, of course, a human being can only do to his Maker; and because the child did not fulfil his desires and hopes in that respect, he treated her as a reprobate, as an outcast. In her youth he treated her with great cruelty. He beat her; he used unaccustomed forms of punishment, and he continued through her life to treat her as though she were the worst, instead of, apparently, one of the best of women. In the end he left her indeed a sum of money sufficient to save her from actual want, if she had needed it, for she did not need it. She was well married to a person perfectly able to support her; and therefore the argument might have been used in that case, that he was content to leave her to the fortune which she had secured by a happy marriage. He was not content to leave her so. He did leave her, as I say, a sum of money which would have been sufficient, in case of her husband falling into poverty, to save her from actual want; and, moreover, he left his property not to strangers—not to charities—but he left his property to two of his nephews. He was a man who throughout his life had presented to those who met him only in the ordinary way of business, or in the ordinary intercourse of life, the appearance of a rational man. He had worked his way up from a low beginning. He had educated himself as a medical man, going to the hospitals, and learning all that could be learnt there, and he amassed a very large fortune—at least, a large fortune, considering what his commencement was—a fortune of some £25,000 or £30,000, by the practice of his profession. Yet upon the ground which I have mentioned, that the dislike which he had conceived for this child reached such a point, that it could only be ascribed to mental unsoundness; that will so made in favour of the nephews was set aside, and the law was left to distribute his property without reference to his will.

Now I say usually you have the assistance of other things, besides the bare fact of a father conceiving a dislike for his child, by which to estimate whether that dislike was rational or irrational; and in this case, of course it has been contended that you have other criteria by which to judge of Mr. Knight's treatment of his children in his lifetime, and his treatment of them by his will after his death. You are entitled, indeed you are bound not to consider this case with reference to any particular act, or rather you are not to confine your attention to a particular act, namely, that of making the will. You are not to

confine your attention to the particular time of making the will, but you are to consider Mr. Knight's life as a whole with the view of determining whether, in January, 1869, when he made that will, he was of sound mind.

I shall take this opportunity of correcting an error, which you indeed would not be misled by, because you heard my words; but I observe that in the shorthand report of what I said in answer to an observation made by one of you gentlemen in the course of the cause, a mistake has been made, which it is right I should correct; because, of course, everything that falls from me has its weight, and I am responsible for my words to another court which can control me if I am wrong in the direction I give you. Therefore, I beg to correct the words that have been put into my mouth, when I say that if a man be mad admittedly in 1870, and his conduct is the same in 1868 as it was in 1870, when he was, as we will assume, admitted mad, you have the materials from which you may infer the condition of his mind in the interval. I have been reported to say "from which you *must* infer the condition of his mind." That is of course what I did not say.

Now, gentlemen, I think I can give you assistance by referring to what has been said on this subject in another department of the law. Some years ago, the question of what amount of mental soundness was necessary in order to give rise to responsibility for crime was considered in the case of "Macnaghten," who shot Mr. Drummond under the impression that he was Sir Robert Peel, and the opinion of all the Judges was taken upon the subject; and though the question is admittedly a somewhat different one in a criminal case to what it is here, yet I shall explain to you, presently, in what that difference consists; and there is, as you may easily see, an analogy which may be of use to us in considering the point now before us. There, Chief Justice Tindal, in expressing the opinion of all the Judges (one of them a very eminent Judge, who delivered an opinion of his own, but it did not in any way differ from the other Judges), says: "It must be proved that at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong." Now that, in my opinion, affords as nearly as it is possible, a general *formula* that is applicable to all cases in which this question arises, not exactly in those terms, but in the manner in which I am about to explain to you. It is essential, to constitute responsibility for crime, that a man shall understand the nature and quality of the thing he is doing, or that he shall not be able to distinguish in the act he is doing right from wrong. Now a very little degree of intelligence is sufficient to enable a man to judge of the quality and nature of the act he is doing when he kills another; a very little degree of intelligence is sufficient to enable a man to know whether he is doing right

or wrong when he puts an end to the life of another; and accordingly he is responsible for crime committed if he possesses that amount of intelligence. Take the other cases that have been suggested. Serjeant Parry, with the skill which characterises all that he does as an advocate, endeavoured to alarm your mind, as it were, against taking a view hostile to him, by representing that if you come to the conclusion that Mr. Knight was of unsound mind in January, 1869, you undo all the important transactions of his life. In the first place, it is obvious that the same question which is now put to you on behalf of the plaintiff in this case would be put to any jury who had to determine the question with reference to any other act of his life, namely, whether at the time the act was done he was of sufficient capacity to understand the nature of the act he was doing. But in addition to that, take, for instance, the question of marriage. The question of marriage is always left in precisely the same terms as I have said to you it seems to me it should be left in almost every case. When the validity of the marriage is disputed on the ground that one or other of the parties was of unsound mind, the question is, was he or she capable of understanding the nature of the contract which he or she was entering into? So it would be with regard to contracts of buying or selling; and, to make use of an illustration—a very interesting one given us by the learned Serjeant—take the case of the unhappy man who, being confined in a lunatic asylum, and with delusions in his mind, was called to give evidence. First of all the Judge had to consider, was he capable of understanding the nature and character of the act he was called upon to do when he swore to tell the truth? Was he capable of understanding the nature of the obligation imposed upon him by that oath? If he was, then he was of sufficient capacity to give evidence as a witness. But, gentlemen, whatever degree of mental soundness is required for any one of these things, responsibility for crime, capacity to marry, capacity to contract, capacity to give evidence as a witness, I tell you, without fear of contradiction, that the highest degree of all, if degrees there be, is required in order to constitute capacity to make a testamentary disposition. Because you will easily see it involves a larger and a wider survey of facts and things than any one of these matters to which I have called your attention. Every man, I suppose, must be conscious that in an inmost chamber of his mind there resides a power which makes use of the senses as its instruments, which makes use of all the other faculties. The senses minister to it in this manner: they bring, by their separate entrances, a knowledge of things and persons in the external world. The faculty of memory calls up pictures of things that are past; the imagination composes pictures and the fancy creates them, and all pass in review before this power, I care not what you call it, that criticises them and judges them, and it has moreover this quality which distinguishes it from every other faculty of the mind, the possession of which indeed distinguishes man from every

other living thing, and makes it true in a certain sense that he is made in the image of God. It is this faculty, the faculty of judging himself; and, when that faculty is disordered, it may safely be said that his mind is unsound.

Now, gentlemen, I wish to call your attention to a case which has been frequently adverted to in the course of this cause. It is the case of "Banks v. Goodfellow," a judgment of the Court of Queen's Bench, at a time when I had the honour of being a member of it. I was, therefore, a party to the judgment; but everybody, or rather, I should say, all the members of the legal profession who hear me, will, of course, recognise the eloquent language of the great Judge who presides over that Court, the present Lord Chief Justice. But I was a party to the judgment, and, of course, while bound by it, I am bound by it only in the sense in which I understand its words. I think there can be no room for misconception as to their meaning, but I must explain to you the scope and bearing of it. That was a case in which a man who had, indeed, been subject to delusions before and after he made his will, was not shown to be either under the influence of those delusions at the time, nor, on the other hand, was he shown to be so free from them that if he had been asked questions upon the subject he would not have manifested that they existed in his mind. But he made a will, by which he left his property to his niece, who had lived with him for years and years, and to whom he had always expressed his intention of leaving his property, and to whom, in the ordinary sense of the word, it was his duty to leave the property, or it was his duty to take care of her after his death. It was left to the jury to say whether he made that will free from the influence of any of the delusions he was shewn to have had before and after, and the jury found that that will which I have described to you was made free from the influence of the delusions under which he suffered, and it was held that, under those circumstances, the jury finding the fact in that way, that finding could not be set aside. I will not, of course, trouble you with reading the whole of the judgment, which, however, I may say, would well reward the trouble of reading it by laymen as well as by professional men, but I shall pick out passages to shew you how carefully guarded against misapprehension this decision is. I shall have occasion by-and-bye to call your attention to instances in it which I think it has been sought to apply incorrectly in the argument which has been addressed to you. Now, at one passage of the judgment, the Lord Chief Justice says this: "No doubt, when the fact that the testator has been subject to any insane delusion is established, a will should be regarded with great distrust, and every presumption should in the first instance be made against it. When insane delusion has once been shewn to have existed, it may be difficult to say whether the mental disorder may not possibly have extended beyond the particular form or instance in which it has manifested itself. It may be equally difficult to say how far the delusion may not have in-

fluenced the testator in the particular disposal of his property. And the presumption against a will made under such circumstances becomes additionally strong when the will is, to use the term of the civilians, an inofficious one—that is to say, one in which natural affection and the claims of near relationship have been disregarded." But, in an earlier passage in the judgment, the Lord Chief Justice lays down with, I think I may say, singular accuracy, as well as beauty of language, what is essential to the constitution of testamentary capacity. Sir John Karslake anticipated me in many of the passages I should have read to you. I shall not read all he read, but I shall select this passage as containing the very kernel and essence of the judgment. "It is essential to the exercise of such a power" (that is the power of making a will) "that a testator should understand the nature of the act and its effects; shall understand the extent of the property of which he is disposing; shall be able to comprehend and appreciate the claims to which he ought to give effect; and, with a view to the latter object, that no disorder of the mind shall poison his affections, pervert his sense of right, or prevent the exercise of the natural faculties; that no insane delusion shall influence his will in disposing of his property, and bring about a disposal of it, which, if the mind had been sound, would not have been made. Here, then, we have the measure of the degrees of mental power which should be insisted on. If the human instincts and affections, or the moral sense, become perverted by mental disease: if insane suspicion or aversion take the place of natural affection; if reason and judgment are lost, and the mind becomes a prey to insane delusions calculated to interfere with and disturb its functions, and to lead to a testamentary disposition due only to their baneful influence in such a case, it is obvious that the condition of the testamentary power fails, and that a will made under such circumstances ought not to stand." Gentlemen, I have no fear, when rightly understood, of that case being misapplied.

The consideration of the amount and quality of intellect which is requisite to constitute testamentary capacity is, according to Sir James Hannen, eminently a practical question—one in which the good sense of men of the world is called into action, and which does not depend either upon scientific or legal definitions. In accordance with this theory, he makes small account of scientific testimony in cases of disputed will, looking down upon it with undisguised contempt from the serene altitude to which he has lately climbed. It makes no difference to him that the impairment of testamentary capacity which he has to investigate, if it exist, is result of *disease*, which runs a certain course, has certain definite mental and bodily symptoms, and affects the mind generally in a definite way. The mischievous consequence of studying the disease in a thousand cases, and so becoming

familiar with its nature and its bearing on the mental faculties, would be to destroy that good sense which is the appanage of men of the world and judges. It is the absurdest thing in the world for the astronomer to pretend that he knows anything more about the stars than any man of common sense who has got eyes to see; and it is nothing more than a foolish astronomical crotchet to hold that the earth moves round the sun, when twelve men of the world can see plainly that the sun goes round the earth. The common sense of the vulgar is the highest authority on all matters of science, mathematics, and philosophy; uncommon ignorance of a scientific question is a primal condition of the exercise of common sense upon it; and if common prejudice be added, then the judgment is infallible. The proof that it is so is that the final appeal of every fool who is worsted in argument is to common sense—*In hoc signo vinces.*

Sir James Hannen further tells the jury that each of them must, in order to determine what is an insane delusion, put to himself this question, and answer it. Can I understand how any man in possession of his senses could have believed such and such a thing? And if the answer you would have to give is, I cannot understand it; then it is of the necessity of the case that you should say that that man is not sane. He quotes from Sir John Nicoll what he calls a more logical and precise definition of what a delusion is:—"The true criterion is, where there is a delusion of mind there is insanity; that is, when persons believe things to exist which exist only, or at least in a degree exist only, in their imagination, and of the non-existence of which neither argument nor proof can convince them, they are of unsound mind." "You will find," he says, "that that test applied will solve most, if not all, the difficulties which arise in investigations of this kind." The discovery is so simple and satisfactory that one is surprised the world should not have hit upon it sooner. The test whereby to determine what is an insane delusion is not whether it is of a kind which has been observed in thousands of insane persons, has a character of insanity about it, and is associated with other mental and physical symptoms which mark a definite form of disease running through a definite course, but it is whether each of twelve men, who have been gathered together in a box from behind their counters, can understand how any man in possession of his senses could have believed it. When Lord Lindsay affirms that Home can, under spiritual influences, rise in the air, float bodily out

of one window of a room, and float bodily in at another window, and cannot be convinced by argument to the contrary, he is evidently in a parlous state, though he knows it not. Let him avoid the Probate Court, where common sense has undergone its incarnation, lest a worse thing than a belief in Home befall him. "Every one must, I suppose, be conscious," says Sir J. Hannen, "that in an inmost chamber of the mind there resides a power which makes use of the senses as its instruments, which makes use of all the other faculties. . . . It is this faculty, the faculty of judging himself; and when that faculty is disordered, it may safely be said that his mind is unsound."

After endeavouring to assist and guide the jury by setting forth to them the English criterion of responsibility in criminal cases, which other nations are so foolish as to think monstrous and absurd—although Sir James Hannen has plainly not lost his admiration of it with his change of judicial place—he takes the case of the unhappy man who, being confined in a lunatic asylum, and with delusion in his mind, was called to give evidence. The Judge had to consider, "whether he was capable of understanding the nature and character of the act that he was called upon to do when he swore to tell the truth? Was he capable of understanding the nature of the obligation imposed upon him by that oath? If he was, then he was of sufficient capacity to give evidence as a witness." It would be of no consequence, seemingly, that he might entertain the most extraordinary delusions with regard to the person against whom, or the events in regard to which, he was giving evidence, and that, while understanding fully the obligation of his oath, and resolved sincerely to speak the truth, he might yet testify to what he thoroughly but insanely believed to be true; that would be a misfortune to the man against whom his testimony weighed, which he must bear for the sake of a great legal principle. "But whatever degree of mental soundness is required for any one of these things, responsibility for crime, capacity to marry, capacity to contract, capacity to give evidence as a witness, I tell you, without fear of contradiction, that the highest degree of all, if degrees there be, is required in order to constitute capacity to make a testamentary disposition." This is an amendment, it is to be presumed, upon the opinion which has hitherto prevailed, or at any rate which used at one time to prevail, and has frequently been acted upon in courts of justice—namely, that a will, which a man might

take abundance of time to consider, which he might plan and frame at his leisure, and which he might take the opportunity of his most favourable mental state to execute, required a less degree of mental soundness than did responsibility for crime. Sir J. Hannen, however, proclaims, "without fear of contradiction," that it is a harder matter to make a will than to commit a crime, and that it makes more demand upon the mental resources of a mind not so strong and healthy as it should be, to dispose by will of a few acres of land or a few thousands in the funds to children or other persons, than to weigh the reasons for and against yielding to an insane impulse to homicide, and to exercise the volition to do or not to do it. We certainly shall not venture to contradict a learned Judge who, after the manner of the Emperor replying haughtily to a correction of his grammar—*Ego sum Rex Romanus et supra grammaticam*, might answer us—*Ego sum Judex et supra scientiam;* nor shall we make any more comments upon "the summing-up" in this case of "Boughton v. Knight?" Our readers would, perhaps, were they to go through it, be inclined to call it a summing-up of one side of the case only; certainly one cannot help seeing that it reads excellently as an advocate's speech for the defendant; but they would no doubt endorse, as we do, the conclusion arrived at by the Judge, and concurred in by the jury, as to the character of the testator's will.

It is a thousand pities, however, that we are as far from any uniformity of principle in the Probate Court as ever. In this case the will was set aside, not because it had been made under the influence of actual delusions, but because there was evidence that there existed a disorder of mind which had apparently poisoned the testator's affections, perverted his moral sense, and engendered suspicion and aversion; and because the testamentary dispositions were presumed to be made under the baneful influence of these morbid feelings. "If a man is," Sir J. Hannen says, "early in life, and at frequently recurring intervals through his life, subject to the delusion of supposing that those about him are actuated by sinister motives towards him, and that they intend to vex and harass him, and accomplish their wishes which are hostile to him, and that is the state of his mind, it is obvious that must have a bearing on the question whether he is capable of judging what person he shall give his property to, and to what extent he shall make them partakers of that which he possesses." The testator was presumed to be in this state,

and so his will was invalidated, notwithstanding that it had been drawn up by a respectable lawyer who was a stranger to him, carefully worded by the testator "so that there might not be a peg to hang a doubt upon," and witnessed by the manager and a clerk of the bank with which he had dealings; and notwithstanding that these gentlemen testified to so complete an absence of any trace of mental disorder in his conversation, manner, appearance, and conduct, that they had never even suspected he was insane. Moreover, there was nothing distinctly irrational, nothing by itself sounding of insanity, in the disposition of the will: it was such a one as a man in his perfect senses might have made. The testator had personal property to the amount of about £62,000, and an estate of about £1,500 a year: to his brother he left £10,000; to one of his three sons, against whom he was not without cause of complaint, the interest of £10,000; to another he left £8,000; and to the third, £7,000; to a sister £1,500; and some small legacies to others; the rest of the personal property and the estate he left to Sir C. R. Boughton, the owner of an adjoining estate and a distant relative, on the ground that he did not wish the estate to be sold. The will might be unjust, but there was no pretence for saying that he did not understand perfectly the nature of the act which he was doing. What then becomes of the value of the possession of such knowledge as a test of sufficient capacity? But he certainly had cruelly flogged his sons while they were young, had behaved harshly to them afterwards, and had manifested great suspicion and distrust of them throughout his life; and there was conclusive evidence given that he had lived and acted in an extraordinary way, and had imagined that people watched him and suspected him of having committed theft. His sons, his other relatives, and all who had to do business with him, had, however, always treated him as a perfectly sane man. There was no evidence that he cherished any insane delusion with regard to his sons, unless his entire judgment of them was delusion: he disliked, if he did not hate them, and thought them scoundrels or fools, who were determined to annoy him, because they did not think as he thought, nor feel as he felt, nor act as he would have had them act. The will was not the offspring of actual insane delusion, but it was presumably the offspring of perverted feelings springing from a disordered mind.

A few weeks before the trial of this case, the trial of a very similar case, "Gregory v. Davis," took place in the Probate

Court. The testator had left £90,000 mainly to two or three charities, and had not left anything whatever to his sister, to whom he had never shown any natural affection, and who opposed the will on the ground of his insanity. He had lived a strange, misanthropical, solitary life in poor lodgings, and evidence was given by the lodging-house keepers and others, of peculiarities which had led them to think him decidedly insane. He fancied that persons who were perfect strangers to him were designing to injure him. He would stand at the window muttering unintelligibly to himself, and gesticulating for hours; would walk up and down the room cursing and using such expressions as "Cut the Devils down;" would not meet anyone on the stairs if he could possibly avoid it, and if he did so, shrank anxiously back against the wall from fear of being touched; and would usually stand while he took his food, which on some occasions he threw on to the fire and down the water-closet, and which he suspected to be poisoned. The medical man, who had attended his brother on his deathbed, testified to the great difficulty which he had experienced in convincing the testator that his brother was dead, although an inquest had been held and a *post-mortem* examination made; and after his brother's death the testator tore up some of his own good clothes, and wore his brother's old shirts, after having torn off the neck and one wristband of each. These were the things testified to by servants and lodging-house keepers, who were the only people who had opportunities of observing his daily life. On the other hand, the lawyer who made his will testified to the testator's full comprehension of the nature of his property and of the dispositions which he wished to make, and persons who had conversed with him casually in the streets or elsewhere gave evidence that they had not observed anything insane either in his manner or conversation. The case was tried without a jury, and Sir James Hannen decided for the will, making light of, or entirely disregarding, the evidence of the lodging-house keepers and servants, who were the only persons able to speak to the testator's habits when he was under no sort of restraint, and laying great stress upon the testimony of the gentleman who drew up the will, and of the casual acquaintances who had not observed any insanity.

In the case of "Boughton v. Knight" exactly the opposite course was taken. The testimonies of the lawyer who drew up the will, and of those who had merely a business acquaintance with the testator, were rejected as of no account,

while respect was paid to the evidence of servants who could speak of the testator's real life when free from the restraint imposed upon him by the presence of strangers. "Without going through them," said the Judge, "the evidence on behalf of the defendants was of that class of people from whom the plaintiff did not—I presume because he could not—select even one, namely, the servants, who were, from this gentleman's unhappy condition, the only persons who were able to give an account of his inner life." Serjeant Parry dismissed them with contempt, and called them "these wretched servants. Was there anything with the exception of the one woman, Mrs. Fairbank, to justify that statement?" Of the evidence of those who never saw anything odd or strange in Mr. Knight's behaviour or conduct, namely, the solicitor and agent of the testator, the manager of the bank, the clerk of the bank, Sir C. Boughton, the medical man who attended him, Dr. Fuller, of London, whom he had consulted, and others, Sir J. Hannen said—"That may be so, but that does not exactly prove that he was not at other times and with other persons guilty of conduct which cannot be considered as sane?" Assuredly not; but why was an exactly opposite principle applied to the evidence in "Gregory v. Davis?"

Having made ourselves acquainted with the evidence in both these cases, we entertain no manner of doubt that both testators were of unsound mind, and, furthermore, that they both laboured under exactly the same kind of insanity—a mania of persecution. In fact, this was an opinion which we gave and supported in a report upon each case before the trial. If the one was insane, unquestionably the other was so also, and in the same way; and we cannot help thinking that if one will was to be upset the other ought to have been upset too. A great deal, however, might be said in support of the opinion that neither of them ought to have been invalidated; the question really being whether both testators, though not of sound mind, were not competent to make their wills. Looking to the different issues in the two cases, and to the different ways in which exactly the same sort of testimony was treated by the judge according as he was arguing for the will or arguing against it, we find ourselves entirely without guidance: on what principle judicial decisions in the Probate Court are founded is a question which we ask ourselves in vain. Two cases running as nearly parallel as it is possible for two cases to do, so far as mental

symptoms were concerned, have occurred within a few weeks of each other; opposite decisions have been come to, and we are unable to gather from them by what legal principle or by what principle of any kind they have been inspired. After all, there may be some danger in becoming too independent of "scientific and legal definitions," and in estimating too highly "the good sense of men of the world:" scientific and legal experience counts for something in the progress of the world; the good sense of one age, moreover, has sometimes been the laughing-stock of the next; and when all has been said, there is certainly some advantage, if not in the recognition of general principles, at any rate in an approach to uniformity of practice in courts of justice.

"*Eugene Aram*," *a Psychological Study*. By J. H. Balfour Browne, Esq.

The spiritual history of a man is never without interest to his fellows. How a great man lived and moved and had his being; how he met and faced this cunning, cheating world; how he bore himself to his fellows, and how he accomplished the work that lay to his hand; these are matters which are full of deep interest, of true pathos to men who are amongst their fellows; to men who are striving to live justly and honestly in this present world. Each other life that we come to know and feel with, has not lived for itself, but for us. Other men have suffered that we may be free from pain. The victory of another may be ours through the magic of sympathy. There is a deep perennial truth in this matter of vicarious suffering. We find it illustrated in the sacrifices of all religions, and in the central doctrine of Christianity itself. It is in this aspect that hero-worship is excellent. "We may make our lives divine," and the way to succeed in that endeavour is by means of a thorough knowledge of, a deep and noble sympathy with, that which is divine in our fellow men. The examples such men leave are indeed noble benefactions to the race. A Peabody bequest is a small thing in comparison with the living records of a life well spent. That being so, the value of biography can be understood, and if the infinite significance of a true life of a real man is appreciated, the sorrow which must be felt on account of the rarity of such works cannot but be great. True there is no lack of so-called "Biographies," but these fall far short of the re-