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BOUGHTON AND MARSTON V. KNIGHT AND OTHERS.

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tory 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 *Boyse v. Rossborough* (6 H. of L. Cas. 4), 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 a drivelling idiot, in saying that he is not a person capable of disposing 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 laboring 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* (1 Hagg. 11), as to which I shall have to say a word to you by-and-by, 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 the question, whether judge or jurymen, 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 the case that you should say that that man is not sane. Sir John Nicoll, in a previous 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