

that this capacity is not for a jury, but for a medical commission to determine. He thinks that the test should be: Is the criminal act due to the insanity or brain disease of the defendant? The capacity of distinguishing between right and wrong is not a safe test. He urges that when insanity is the defence the trial should not take place for one year.

But it might be that the introduction of these two rules would lead to more trouble than now exists. If it is impossible to always determine the criminal's capacity of distinguishing right from wrong, it might be equally impossible for a commission of medical men to agree upon the presence of insanity or brain disease at least to such a degree as to free the defendant of responsibility. Then the year's probation might work badly. Witnesses might die or their memories become cloudy as to what did happen. But more important than this would be the fact that one who commits a crime and at the same time was capable of knowing that the act was wrong, might in a year change and become quite frankly insane.

We take the position that the plea of insanity should be admitted with the utmost care. It would seem that the present condition of the law is about as good as can be secured. Bring the culprit to trial as soon as possible, while conditions are little changed, and give him the opportunity of proving his insanity to the extent that he *could not* when the crime was committed *determine the nature and quality of his act*.

In these cases there are two very difficult problems to solve: In the first, it will always be a battleground to determine "the capacity to know the nature and quality of an act." On this aspect of these cases there will be wide differences of opinion. In the second place, if all the insane are allowed freedom for responsibility, then many persons will be brought within the circle that would commit them to an asylum rather than to a prison or the gallows.

The subject is one on which no man dare be too dogmatic. The plea of insanity must not be too readily admitted as excusing the defendant. Experts might on weak evidence make out a case that would compel a jury to give the prisoner the benefit of the doubt were the establishment of insanity a legal release from responsibility. On the other hand, the capacity to know the nature and quality of an act may be misjudged, and an irresponsible person sent to prison or be executed who ought to be treated with commiseration and cared for in some institution.

The distinction that must be drawn in these cases will ever try to the utmost the best judgment of the most competent witnesses, fortified by the fullest determination to be absolutely honest. Weighing the