

to be punished? Ought they to be punished in all respects like sane people? To this I should certainly answer, yes, as far as severity goes; no, as far as the manner of punishment goes. The man who, though mad, was found guilty without any qualification of murder would hang, but if the jury qualified their verdict in the manner suggested in respect of any offender I think he should be sentenced, if the case were murder, to penal servitude for life, or not less than, say 14 years, and in cases not capital to any punishment which might be inflicted on sane man.

"The question what are the mental elements of responsibility is, and must be, a legal question.

"I believe that by the existing law of England, those elements, so far as madness is concerned, are knowledge that an act is wrong and power to abstain from doing it, and I think it is the province of judges to declare and explain this to the jury.

"I think it is the province of medical men to state, for the information of the court, such facts as experience has taught them, bearing upon the question whether any given form of madness affects, and in what manner, and to what extent it affects either of these elements of responsibility; and I see no reason why, under the law as it stands, this division of labor should not be fully carried out."

In the case of the commission to which I have already referred, Baron Bramwell sends a letter to the commissioners stating the results of his murder trials, from which I extract this:

"Six persons in six cases were acquitted on the ground of insanity, and rightly. I do not mean that the prisoners were as insane as the law requires, but the cases were those of real madness."

Now, Sir, having thus attempted to state, not in my own words, but in words which I think will be taken as those of the greatest authority, what are the doctrines of the law upon this subject, I propose to address myself for a brief space to what was the evidence in this particular case adduced at the trial as distinguished from other circumstances which might have been adduced. And first of all, the most important point in the case is this: The man had been insane. Unquestionably he had been insane. I say that is a most important point, and therefore it is first to be taken up. Dr. Roy, the medical superintendent of the Beauport Lunatic Asylum, was examined, and the substance of his testimony was:

"The prisoner was put in the asylum by the Quebec Government in June, 1876, and discharged January, 1878.

"Dr. Roy, in discharge of his duty, studied his case and attended him. He was unquestionably insane at that time. The type was megalomania. The symptoms or prominent features connected with religion, or power, pride and egotism. The patient cannot bear contradiction, and becomes irritated. These are delusions.

"On ordinary subjects, and where not affected by the delusions, the patient seems to reason well, and may be clever. Riel had these symptoms, and was at that time of unsound mind, and incapable of controlling his acts.

"The disease may disappear, or intermit and recur.

"Riel was of sound mind when released.

"The witness heard the evidence given by the witnesses as to Riel's words and conduct during his visit to the North-West.

"The symptoms were the same as he had witnessed himself in the asylum at Beauport; and he believed Riel was insane at the time in question."

Now, according to this statement, if we were to assume that that was to conclude the case according to the opinion of Dr. Roy as to what his condition was during the rebellion, it would infer the right to acquit him on the ground of insanity. But what is undisputed and indisputable, is that the man was insane from 1876 to 1878, and that the symptoms had recurred in the year 1885—the same symptoms which occurred when he was unquestionably insane, from 1876 to 1878. Now, there was more evidence on this subject which I want to refer to at another period; but I may say that what has been made very plain, though it was not proved on the trial, is that he had been in two other asylums, and I now refer to the probabilities of a recurrence of insanity. Brown, in the "Medical Jurisprudence of Insanity," says:

"One circumstance must not be overlooked in connection with the durability of insanity, and that is that there is a tendency to recurrence even after complete restoration to health. Perhaps of 100 persons who have an attack of mania and recover from it, fifty will, after such recovery, again become insane. After insanity has passed away there seems to exist a hyper-sensitive condition of mind which is ill-suited to carry on the rough intercourse of the world and its society. The man who has recovered is not so well as he was before he was taken ill. Disease always chooses the weak for its victims. Disease, like water,

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will take the easiest way, and as the individual who has recovered from insanity is weak, in that he labors under this hyper-sensitive condition of mind, he a second time falls under the wheels of some Juggernaut catastrophe. Any great events in the world's history cause insanity; but the events are seeds which have fallen by the way-side, they require to fall on ground well suited before they can spring up and blossom in insanity—and the good ground is weakness.

"Thus we have insanity connected with child-birth, we have it connected with the weakness of childhood, with the weakness of age, with the change of life and various bodily diseases, and finally, we find it in connection with previous attacks of mental disease. The result then of these researches, which have been made into the intricacies of this subject, are these: that of twelve persons attacked with insanity, six recover and six die sooner or later; that of the six who recover three only will remain sane during the rest of their lives, and that the recovery of the other three will not be permanent."

The result of that is, that once it is found that a man is unquestionably insane, the chances are three out of four either that he will continue insane till he dies, or if he recovers, that the recovery will be but temporary and he will once again become insane. Brown says again:

"With regard to the one, when it does take place, it is to be remembered that health no more than Rome, is to be built up in a day. Health returns very gradually. In some cases it is true that a man is sane to-day and insane to-morrow, and that the change from insanity to sanity may be as rapid; but it is certainly exceptional. It is easy to jump over a precipice, but if one wants to get to the top from the bottom he must be content to clamber up the hill. It need scarcely be added that as recovery of health is gradual so must the recovery of responsibility, or civil ability be also a matter of time. But as the law cannot recognise the minute distinctions which exist between to-day and to-morrow, it cannot recognise graduated responsibility, and it is only necessary to remember that this recovery of mental strength is gradual, that due allowance may be made for those persons who have recently suffered from an attack of mental disease, and that it is safe to regard such persons as still irresponsible for criminal acts and incapable of civil privileges, even although the recovery may seem very complete, unless the contrary can be proved. Let the presumption be in favor of their want of capacity and their irresponsibility, and no injustice is likely to arise. At the same time this presumption is liable to be rebutted by proof of its opposite."

In the commission to which I have already referred, Dr. Tuke, being examined, made these answers:

"The fact is certain that insanity constantly exists with long lucid intervals, and that it is more or less patent at different times

"Q. And that the patient fluctuates in a condition between what may be termed sanity and insanity, the line between which is not easily definable?—A. Yes; that is a constant form of what we call insanity with lucid intervals, or insanity with remissions, or recurrent insanity."

Then Clouston gives one example, that of a patient "C.Y." of whom he says:

"His mental condition was at that time exactly that intense exaltation, that morbid mental 'expansion,' that 'ambitious delirium,' or 'mania of grandeur' which we find so commonly in general paralysis, and which some physicians suppose to be characteristic of that disease. \* \* In three months he had become quiet in manner, self composed and rational, but had just a suggestion of his former state of mind in being too pleased with things and too grateful for little kindnesses. His friends thought him well and he was removed home.

In seventeen days he was back again. He would come up and be most pleased to see you, and in a moment, sometimes with some little provocation, such as your not agreeing at once with him that he was an earl and sometimes without he would strike you suddenly, very often going down on his knees immediately after and in a theatrical manner begging your pardon and hoping he had not offended you. \* \* He labored under chronic maniacal exaltation."

Then comes the instance of "D.J.," who was admitted, October, 1866, discharged, January, 1867; admitted April, 1870, discharged May, 1870; admitted, August, 1871, discharged, September, 1871; admitted, December, 1872 discharged, February 1873; admitted, February, 1875, discharged, May, 1875; admitted, August, 1877, discharged, September, 1877; admitted, November, 1880, discharged, January, 1881; admitted, December, 1881, discharged, March, 1882, and he gives several other instances showing the constant recurrence of insanity. I do not think that too much importance can be attached to the circumstances of the unquestioned and unquestionable insanity of Louis Riel, as proved by the facts to which I refer at this precedent time, and to the character of his alleged illusions or delusions, as you please to call them, at the later date, having regard to the knowledge and experience we have with reference to the probability of recurrent insanity. It seems