

assumption, he accuses them of quibbling and dishonorable action.

So much for Dr. Howard's criticisms; now let us briefly consider his diagnosis of Hayvern's mental condition and his theory of the murder. Hayvern is pronounced to be "an *imbecile* of a low order and an *epileptic maniac*."

His mental aberration is said to be due to three causes:

1. Heredity.
2. Inebriety from youth up.
3. A fall from the jail roof aggravating his condition.

In explanation of the murder, Dr. Howard advances two separate theories:

1. That the deed was committed during or directly after an attack of *petit mal*, when the prisoner was unconscious of what he did, and, therefore, not responsible for his acts.
2. That the deed was motiveless, unpremeditated, and the result of an *uncontrollable impulse*, which he was conscious of, but could not resist. In Dr. Howard's own words, "It was just such an impulsive act as an insane man with a homicidal tendency would commit."

It will thus be readily seen that Dr. Howard's views of the case are confused and contradictory. Moreover, his diagnosis of insanity and his theories of the murder are not borne out by facts, but are based upon a number of glaring assumptions, which we will now consider in detail.

1. *Heredity*—This has been presumed, not demonstrated. From the evidence it appears that prisoner's father and mother, brother and two sisters are living. They were spoken of as "decent, respectable people." Neither epilepsy, insanity, inebriety or any other neurotic disease was proved to have existed in any of them. Prisoner's married sister, however, has a child suffering from *chorea*. Can Dr. Howard really mean to hang his plea of *heredity* on such a slender thread? Is that fact sufficient to justify his opinion that "the prisoner was born with the epileptic neurosis in him?"

2. *Epilepsy*—The diagnosis of epilepsy was based upon the examinations made on the 26th and 31st of August, without reference to the history of prisoner's early life. Dr. Howard in cross-examination distinctly admitted to Mr. Davidson, that he had not heard of prisoner's "fits" in childhood, until he learned of their existence from Mrs. Hayvern in Court. In the

*Star* report of Dr. Howard's evidence we find:—

"Did not know until evidence was heard in Court that prisoner was an epileptic, but from the examination which witness made he at once came to the conclusion that such was the case."

Dr. Howard, therefore, assumed the existence of epilepsy from his physical examination of the prisoner, although he had never seen him in a fit, nor even heard of his having had one. He did not trouble himself to substantiate such an important matter by a strict enquiry into the early history of the prisoner, but quietly assumed the existence of epilepsy, of which he obtained no proof until he heard Mrs. Hayvern's evidence in Court. The *fits* in childhood he at once assumed to have been *epileptic*, although no medical man had ever been consulted with regard to them, and no adequate proof brought forward as to their epileptic character. We find it difficult to reconcile Dr. Howard's ignorance of the fits in childhood with the fourth paragraph of his article, which reads,

"He also wanted to discover what had been his physical state in childhood, maintaining that if epilepsy was developed by fits in childhood..... there was always in the person an epileptic neurosis."

In the light of Dr. Howard's admission, this reads very like an after-thought.

3. *Inebriety from youth up* is assumed to be another cause of prisoner's mental aberration. Having so easily presumed a hereditary neurotic tendency, and so skilfully assumed the actual existence of epilepsy in young Hayvern, Dr. Howard does not find the slightest difficulty in still further assuming that inebriety aggravated this epileptic tendency. But he goes further: he holds that, even although no hereditary tendency existed, a long continued course of inebriety might have established the epileptic neurosis. If he had proved inebriety in Hayvern's parents, we could have seen the force of his argument; we hardly think that Dr. Howard means us to believe, that a young man of twenty-eight, having no neurotic tendency, would have, by inebriety, set up the epileptic neurosis in himself.

4. *The fall from the jail roof* is assumed to have aggravated the assumed epileptic tendency. It did not matter though the medical officer of the penitentiary never noticed any ill effects from the fall, other than ordinary bruises and lameness; it did not matter though doctor, wardens, guards,