NYE ON THE HORSE.

The Philosophic William Meets a Fellow Editor Who Dilates on That Animal.

Nye's Hunter Who Feared Many Things—When the Cow Will Come Home.

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EN ROUTE.

Last week we met an educator of the horse and the author of a work on "Preparatory Education of the Horse." He gave me one for review. He claims that very few horses, especially in America, have proper educational facilities, and many that they do have remain unimproved. "It is a common experience to find," says he, "horses of great intellectual capacity, yet middle aged and disappointed. Too many have left the country and gradually drifted toward the great cities, especially New York, which has given more work for horses in street car and Fifth avenue stage line circles than anywhere else, because she has been the last to adopt mechanical methods for pulling street rolling stock. All the country villages have had electric cars for years and years, and so the country horses, with swelling bosoms and swollen heads, have gone to New York, where they have suffered on in silence, but too proud to return.

"Sometimes an American horse is able to go abroad to finish his education; but very rarely. To travel and see America is the privilege also of but few. There are horses that have seen all of life in Australia and Europe, crossing the continent of America afterward."

The doctor regrets that the education of the horse has been so sadly neglected, and that the self made or self educated horse is the rule rather than the exception.

For some years the doctor, who is a veterinary surgeon, has occupied a chair in the Horse College for Diseases of the Eye and Ear. He is a Welshman by birth and has imported many Shetland ponies to this country. He has also brought over many beautiful, sleek, contralto jacks to this country from Spain. They are held in high esteem by the people of Spain and are called ministers. This is no joke, but a living fact and not intended to reflect upon the clergy. (To the Editor—Probably this is too true for publication.)

The doctor says that he attended a royal bull fight at the capital, and, though accustomed to sights of great suffering, and having been through all the slaughter houses of Chicago and the abattoirs of Paris, he was still unprepared for the sad and sickening sight. He had come prepared to see the matadors, or whatever they are, knocked about by the bull to the lively music of the band and had hoped that one or two might be fatally injured, but they were not. Eighteen horses torn and mortally gored showed, however, that the fight had been a success. How different people are in respect to their pleasures and their methods of relaxation!

I think we all have something of the brute in us, but not in the same way. Some of us are sly and secretive like the fox—for instance, like the detective. I met one the other day whom I had seen a year ago for a moment. We met on the corner of the main street, in front of the postoffice, and he told me why he was there. He was on the trail of a man who had wrongfully taken $20,000 in government bonds. "I've found him," he said, "and now I am looking for the bonds."

"Why don't you ask some of these people who are coming for their mail?" I said, with a sneer. Then I asked him if the man was yet at large.

"Oh, yes," he said; "we are watching him to see where the bonds are. Oh, yes; you have to shadow a man sometimes for years. I went around the world shadowing a man last year. Saw everything and kept him in sight also. The bank paid the expenses without a murmur, except where I had charged the expenses of an engagement ring worth 500 kreutzers to the concern because I had to make love to the girl in order to pump the victim through his valet, who was the girl's brother. They said 400 kreutzers was all they could allow on that. Hist!" he said, "here comes my bird now down the street, with no more idea that he's my huckleberry than a man in the moon. Glance at him as he goes by, and I will look the other way."

I did so. He was a fair haired young man, and as he went by he gave me a loud and merry wink of the other eye.

Reports say that he has once more eluded the vigilance of the detectives, and as the bonds are not registered it is feared that they may not be recovered till next year, and possibly not at that time.

The doctor says many good things about the horse and how to break him of bad tricks. Take, for instance, the one of kicking and running away when the tail gets over the line. This is quite common, and many horses must have their tails epitomized on this account. The mate has to go through the same operation in order to match.

All this trouble may be saved by putting a surcingle on the horse, and after placing a broom handle or other round stick under the tail tie it by both ends forward to the surcingle, placing the stick horizontally. In one night he is cured.

I had once a very fine horse, but he had this fatal gift of kicking when some one dropped the line under his tail. He would hug that line with his massive tail and kick everything into chaos and run like a frightened comet with its tail over the dashboard.

I got hold of this recipe and had faith in it. I have yet, but it is too much expense to take care of the man's family after he has put the broom handle under the horse's tail.

The doctor has another good cure for shying. It is a general rule, too, among good horsemen. It is in substance to lead the horse or drive him to the object, let him smell of it and put his nose against it, and he will never fear it again.

This is common sense, but it must not be followed too closely. I had a very spirited hunter once with which I used to chase the fox whenever I could get one that would last me two or three years and come home to his meals.

This hunter was a clay bank filly named Lady Pinkham. She was afraid of nothing, it seemed to me. She would jump a rainbow if somebody would steady it for her, and I've known her to jump an exorbitant livery bill and come home without a flutter of the nostril.

But I soon discovered that she was afraid of the bear, of which there were a great many on my estate. We rode a how are you going to take a bear? all, now, and lead him up to a bear spirited horse his nose over the bear and then rub

You can't do it, you know.

Then she was always afraid of a dead colored man hanging to a tree so I had to sell her.

She was also afraid of the limited train which goes past our place, but does not stop there.

Well, you can't lead a scared horse up to a limited train that is going at 60 miles an hour. It is undignified in the first place, and then again the passengers resent it. People don't want unknown horses to rub their noses against their private cars that way.

One of the most valuable things in the work is a recipe for making a cow come up at night. Much sorrow is felt in otherwise happy homes by that sad, sad question in the heart:

"Where is my wandering cow to-night?"

Some cows are wild and gay. They become the heads of families before their girlhood is fully passed. They like still to spend the evening with other young people. Thus they do not come home where they often supply a family with milk and then get kicked in the stomach by the friendly hired man.

This staying out of nights with gay companions, on the part of the cow, leads down to the dark and cheerless beef barrel. It is sad, and it has to be stopped. You can stop it if you really admire and respect her. First teach her to love you and come to you whenever she wants a lump of sugar or a new pair of undressed kid gloves to eat. Win her heart; then you can be sure she will come home when there is no other place open.

Now get her to come and breathe her sweet tornado in your ear while you feed and pet her. Have prepared two straps three inches wide and just long enough to buckle around the knee—the cow's knee. Drive these straps full of tacks, with the points just penetrating the leather a fraction of an inch. Buckle them below each knee on the fore legs, and when she gets over her giddy evening with young friends of her own frivolous style she will kneel down by the side of her bed for a moment, as she should, but she will feel pained by the sharp tacks and will shake her head and snort, but after awhile she will examine another bed and try it. This also will hurt, and she will try and get the other heifers up with her to put in the night. She will lift them a little with one horn and then try them with the other, but they are slumbering and will only shake their heads in a dreamy way or swallow their quid and shut their eyes again.

Then the irritated cow goes to a nearby tree and tries to knock it over as she utters a low moan. Sadly, by and by, she says to herself: "Well, by dam, I know of one place where I can lay down—or lie down, rather—and it is home. There is where I ought to be. There is where my little old wabbly calf is," and it is home. You be there on hand to take off the straps, and she will more than likely come home earlier than usual the following night.

I could tell many other interesting things regarding animal life, but space forbids.

The above, however, will show that we should not only make home more attractive than any other place, but we should also make all other places less attractive than home. I knew one man who tried this receipt and overdid it. Now his cow won't go away from home, but timidly remains in her rooms and has her meals brought to her.

Let us not overdo a good thing. The home should not be too alluring even to the loved child or husband. Some of our greatest men have won their richest laurels by being thrust forth from the home life and compelled to seek a lower social level, perhaps, and associate with people who knew more.

BILL NYE.

Bill Nye and A. P. Burbank will appear at the Victoria Theatre on 31st March.

SUPREME COURT.

IN CHAMBERS.

(Before Mr. Justice Crease.)

March 3, 1893.

Adams vs. Dock—Application for examination of plaintiff and discovery of documents. Granted.

Lorimer vs. Jensen—Application to dismiss for want of prosecution. Plaintiff granted one week to deliver statement of claim. Costs to be defendant's costs in the cause.

Phœnix vs. Brewster—Application to garnishee money in hands of Mr. Holland. Summons dismissed.

A Popular Competition.

The Publishers of the Ladies' Home Magazine present its great Winter Competition to the Public of America. This competition closes on April 30th, 1893.

QUESTIONS.—1. Which is the longest book in the New Testament? 2. Which is the shortest? 3. Write longest verse? 4. The shortest?

HOW TO COMPETE—Write the questions down, and follow with the answers. Mail this to us, together with $1 to pay for six months subscription to the Ladies' Home Magazine—one of the best Home Magazines of the day, and if your answers are correct you receive one of the following prizes: $1,000 in gold; $500 in gold; $250 in gold; $100 in gold; 2,500 Elegant Silver Tea Sets; Organs; Pianos, etc. Everything fair and square. Send postal card for list of former prize winners. Over $10,000 distributed during the past two years. Address: THE LADIES HOME MAGAZINE, Peterborough, Canada. ja29 su-wk

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SUPREME COURT.

Before the Chief Justice and Walkem and Drake, JJ.

JUDGMENT OF MR. JUSTICE WALKEM.

Harper v. Cameron.—This action is brought by the next friend of the plaintiff for a declaration (a) that a promissory note for $50,000, dated the 18th November, 1887, and six substituted notes of the like date and like amount in the aggregate, made by Harper in Cameron's favor, were obtained from Harper while he was of unsound mind—and that to the knowledge of Cameron; (b) for an order for the delivery up of all the notes to be cancelled; (c) for an order setting aside a judgment obtained by Cameron against Harper, on the 10th of December, 1888, for the full amount of the six notes, for default of appearance, together with all proceedings taken on that judgment; (d) for an order for repayment of all monies realized on that judgment by Cameron; and (e) for an injunction—the plaintiff's case being also that no consideration was given for the notes.

The defence, in substance, is that Harper was not, before, at, or since, the time alleged, of unsound mind; that valuable consideration was given for the notes; and that the impeached judgment cannot be set aside in this action, and is, moreover, a bar to it.

The trial took place before Mr. Justice Crease and a special jury, who found—(1) that "the transaction of the $50,000 was not fair and bona fide";—(2) that "there was no consideration";—(3) that "the act was without deliberation, or (4) independent advice";—(5) that "Harper was at the time of the contract of unsound mind";—and (6) that "Cameron was aware of it at the time." On these findings the trial judge made an order for judgment on the 18th of August, 1892, in favor of the plaintiff, and in the terms of his prayer for relief.

The defendant now seeks to have that order set aside and judgment entered for him on the ground already stated, of estoppel; and also moves for a new trial on the ground that the verdict was against evidence, and that there was not sufficient evidence for the finding that Cameron knew of Harper's incapacity.

"A verdict, to use Lord Herschell's language, "ought not to be disturbed unless it is one which a jury, viewing the whole of the evidence reasonably, could not properly find." (Metropolitan R. Co. v. Wright, 11. App. Cas. 115; Commissioner of Railways v. Brown, 13 App. Cas. 133; Phillips v. Martin, 15 App. Cas. 192.) "The test of reasonableness," as observed by Lord Halsbury in the first case: "is right, in order to understand whether the jury have really done their duty"; and such a test necessarily implies a review of the evidence.

Upon the issue of insanity, fifteen witnesses, including four medical practitioners, were examined for the plaintiff. It was proved that on the 1st of June, 1884, he had been kicked on the face by one of his horses, and so severely that when examined shortly afterwards, at the St. Joseph's Hospital where he was, by Drs. Helmcken and Davie, it was found that his upper jaw and teeth had been broken away and his brain injured, and that "he was," to use Dr. Davie's words, "absolutely insane, as insane as a person could be," and continued to be so "for several weeks" while under his care; and that when he left the hospital, he did so in charge of a keeper. Dr. Davie also stated that he had seen him, professionally, on three or four later occasions in relation to the injury, and had recently met him several times in a casual way, and that from what he had observed, Harper had improved but slightly, and was still insane. Dr. Helmcken expressed a similar opinion. Besides attending Harper when injured, he had met and spoken to him many times since, and had, about five months before the trial examined him for several days off and on, with a view of ascertaining his competence, and that he had concluded that he was "still insane." He further told the jury that a lucid interval could not have occurred, as recovery could not be sudden, but would be slow and gradual. Dr. Hanington said that Harper had consulted him in 1886 and 1887, "say, about forty or fifty times," and that from January, 1888, he had been a regular patient. Having known Harper well before his injury, he found, as he expressed it, that "he was absolutely a lunatic." He instanced changes in conduct, habit, and appearance that tended to show that Harper was a wreck of his former self. The next witness, Dr. McLean, at one time examiner of lunacy cases for the state of Nevada, had known Harper at Yale, in 1881, as a patient. In 1886, he was again consulted by him. He saw that his patient's mind was defective, that he especially "lacked memory," spoke incoherently, "and," as he put it, "was insane"; and, from having seen him a few months before the trial, that "he was not much better." Drs. Helmcken and Davie, by the way, had known Harper before his accident, and had observed the changes referred to by the last two witnesses.

The evidence of the other eleven witnesses may be thus summarized: all of them had known Harper for some years before his accident; all of them, except one, had been in his employment before and after the accident, and some both before and after; all of them found him greatly impaired, mentally and physically, after the accident. Numerous instances were given as indicating that before the accident he was sarcastic and reticent in business, possessed of a good memory, cleanly, temperate, careful of his personal appearance, and guarded in his language; and that after it, he had lost his memory, become intemperate, reckless in business, garrulous, coarse in his language and uncleanly in his habits; that he occasionally gave silly, impracticable or extravagant orders to his employes who, in some instances, were discharged for disobeying them, as they rightly did, in his interests; that he suffered from a delusion that he would shortly get millions in gold from a mine that he owned on Horsefly stream, and from which he had received no returns for $18,000, he had improvidently spent upon it; that, on one occasion, he had, without consulting the foreman of the mine, sent him fifty-five laborers who had to be discharged on their arrival as they were not wanted, and that he had also ordered a horse and cart, and bales of sacks to be telegraphed for, for the purpose of conveying from the mine a part of the anticipated millions, although it gave at the time no indication of any returns; that his borrowing proclivities were so ruinous and uncontrollable that Mr. Rithet, one of the witnesses, who had, as a friend, undertaken to manage the financial part of his business, had to throw it up; and that, in respect of the Lightning Creek lease, he had a hold in which he and the defendant were interested, and which has been at the bottom of this litigation, but would "not take a million for it," or "sell at any price,"—much less listen to a suggested sale of it for $250,000, although he was then very deeply involved and had not means enough to commence work upon it, and thereby save it from impending forfeiture. This last piece of evidence was, by the way, given by the defendant himself.

For the defence, there were five witnesses, two of whom were medical gentlemen who had been watching the case in court as experts. (On this latter class of evidence, see the strictures of Lord Eldon in McAdam v. Walker, I Dow. 179.) Neither of the medical witnesses had ever attended Harper. In fact, one of them had known him but slightly, the other not at all. Dr. Matthews considered that Harper's condition, as described by his witnesses, might be due to fever or delirium, resulting from his injury; that the changes in habits and physique were not symptoms of insanity; that his business letters read, in court, were evidence of a person that knew what he was about and desired to make money; that his alleged reckless speculations, and his extravagant hopes as to his mines were not uncommon with the sane; and that from all that he had heard he would have treated and dealt with Harper as a sane person. Dr. Hasell considered that the plaintiff's medical witnesses had merely given opinions, without stating symptoms; and that there was nothing, therefore, in their evidence—and he found nothing in the statements of the other witnesses—which would justify him in thinking that Harper was not sane. On cross-examination, he stated that from his knowledge of Drs. Helmcken, Davie and Hanington, he believed that their opinions would be correct. Mr. Vernen, the next witness, had known Harper before his injury; and in a business interview which they had about a year after it, Harper appeared to him to be as competent as ever. Mr. Van Velkenburgh gave an instance of a rash speculation made by Harper over twenty years ago: but since then, as he admitted on cross-examination, he had been his partner for two years, and would not have been such, if he had not believed him to be a careful and shrewd man of business.

Mr. Holland, who followed, represented a financial agency in this city. He only came to the Province in 1886, and hence knew nothing personally of Harper's past. In April, 1885, Harper owed the company $50,000. In 1886 witness became well acquainted with him through transactions which he explained, and from that time onward, save when he was absent for about twelve months, all Harper's business with the company passed through his hands. Harper's indebtedness had increased in three years to $145,000, which (with the exception of $12,000) had been secured by mortgages on all his available real and personal property, save his Horsefly mine and Lightning Creek leasehold. The annual interest on the debt was $19,800,—about $30,000 having been loaned at eighteen per cent., and the balance at twelve. The purchases by Harper of land and cattle, for which $54,250, had been advanced in January, 1887, had prior to the money being paid over, been carefully examined by witness and approved of. Harper, he thought was very sanguine, and expected to pay off his debt from gold to be got from his Horsefly mine, which witness knew nothing of, or from the sale of property in California, or by borrowing from some other quarter (p. 223); but none of these expectations had come to pass; hence his indebtedness eventually reached about $150,000. In all his transactions with Harper, the latter had, in his opinion, exhibited good business capacity, of which he gave instances. Harper had applied for further loans of $1,000 and $5,000, but had been refused, as "he had reached," to use Mr. Holland's words, "the end of our tether."

A certified list of thirty-four judgments against Harper, including Cameron's impeached judgment, and two on behalf of Mr. Holland's principals, amounting in all, with costs, to about $249,000, was put in by the defendant's counsel as strong evidence that at least thirty-one persons, besides Cameron and Mr. Holland, had given Harper credit, presumably as being of sound mind, and, on the same presumption, had severally sued and recovered judgment against him. All the judgments had been entered for default of an appearance. Not one of the thirty one judgment creditors was put in the witness box. Whether the credits had been given before, or after, Harper's injury, or on his written, or verbal order, or on the order of some of his employes, or whether Harper personally knew of, and if he did, was capable of understanding the effect of, the thirty-one actions brought against him, was not attempted to be proved—although such evidence would have been of importance, not only on the issue of insanity, but upon the issue as to whether knowledge of the insanity (if found) should be imputed to the defendant. (Hassard v. Smith, 6 Ir. Eq. 429.) The list could not of itself be evidence on either issue; but it must have been somewhat useful to the jury in assisting them to form an opinion as to Harper's capacity, or rather incapacity, to manage his affairs—the facts before them, as told by Mr. Holland, being that he had borrowed until he could borrow no more; that the loans were chiefly for speculative purposes, and at a cost of about $20,000 a year for interest, which he could not, and did not pay; that he had mortgaged all he had that was available to secure them; while at the same time, as the list itself suggested, he had neglected to provide for primary obligations to business creditors who had supported him.

Cameron's account of Harper's condition was, that having known him before his accident, he noticed a change in him, observable by anyone, after it. Harper had lost his memory, and failed to recognize his friends—manifestly a mental change. On re-examination he described the change as "physical." Harper had, however, improved very much in a few months, and, judging from their interviews, in 1886 and 1887, respecting the Lightning Creek lease, had recovered his memory, and had acted as reasonably as ever before (pp. 256, 290). This latter statement of opinion is at variance with the evidence of Drs. Hannington and McLean, and was not borne out by the witness' account of the interviews, which, to avoid repetition, I propose to refer to later on, when considering the evidence as to the finding imputing knowledge of the insanity to Cameron; for even assuming the opinion to be correct, from Cameron's point of view, the jury must have dealt with it in arriving at their finding of insanity, which in view of the evidence above set forth was, assuredly, not unreasonable. More than this, when Cameron's dealings with Harper, as told by himself, come to be examined, insanity will appear to have been overwhelmingly proved.

In regard to the next finding that there was "no consideration," the evidence on both sides is barely conflicting. For the plaintiff, six witnesses, who had been gold miners on Lightning Creek before it had been deserted by the miners as a body, were examined. Of these, Bilsland believed the lease to be valueless, although he might, perhaps, give $100 for it. The five others, severally, declared it to be "worthless," "without any commercial value," and not worth acceptance "as a gift." Each gave his reasons for his opinion, the main one being, the great cost of the work, and the improbability of any returns, or at best, of commensurate returns, for the outlay.

For the defence, two witnesses, Tinon and Dow, thought well of the scheme. Tinon could give no idea of its cost; and as to the value of the ground, his evidence was well summed up by himself as follows: "They would have good ground, yet be liable to get into bad ground; and if in bad ground they would be liable to get into good ground" (p. 375). "Winning and losing, such is mining." What idea of value the jury gleaned from this would be difficult to say. Dow liked the scheme as a speculation, as he was "speculative" himself. A bed rock drain, or tunnel from end to end of the tract leased, with air-shafts and working shafts along its course, would have to be constructed. The tunnel would have to be started, as was stated by Cameron, about a mile and a half or two miles below the tract. The plan produced before the jury showed the tract to be three miles long; and it was proved to be 100 feet deep at its upper end, in the old "Point claim." The tunnel, therefore, would have to be at least four and a half miles long, and 100 feet deep at its upper end, in order to tap the "Point claim." According to the witness, it would cost from $5 to $10 a lineal foot, according to the nature of the ground. These figures, as the jury probably calculated, meant an outlay for the tunnel of a sum ranging between $113,800 and $237,600, exclusive of a further requisite outlay for numerous shafts to render it effective, the cost of which was not estimated.

Cameron regarded the scheme as a good investment, otherwise he would not have embarked in it. Before he got Harper to join him, he had tried, but failed, to get others to do so. Some of the ground included in the lease had proved very rich before it was worked out; and the unworked ground left might prove so, too. All the ground had been abandoned by the miners in 1878; but although it might not pay with high wages, it would likely give good dividends with cheap labor. He had had an offer of $250,000 for the lease through a person whom he described as "a man in town of the name of Bradley," who said he represented an English company in California. Bradley was to get $50,000 from Cameron if the sale was effected, (pp. 259, 260, 261, 285). Bradley had letters from England containing the offer, and witness had "seen the letters and told Harper so" (p. 287). "Were those letters offering $250,000 for the property?" A. "250,000." (pp. 260, 284). The persons in England seemed to think well of the property (p. 284). On further cross-examination he said that he had not seen the contents of the letters; that what he meant was that he had a chance of selling for $250,000; that the writers of the letters knew nothing of the property except from what he had told Bradley, and from what Bradley may have learned elsewhere, and communicated to them (p. 283); that Harper, when spoken to about the offer, had refused to call on Bradley, or sell at any price; that witness then asked him what he would give him for his half interest, and Harper said $50,000, which he accepted; and that the note in question was accordingly given to him (pp. 259, 260, 261, 283, 284, 285, 288). Witness knew nothing of Bradley beyond this transaction with him, and he had never heard of his having had any large, or other, transactions; Bradley had left Victoria, and witness had tried to find him afterwards, but had made no effort to do so, during the nine months that this action had been pending, for the purpose of securing his evidence (p. 283). Much might be said about this evidence, and especially as to the alleged existence of unnamed persons who would offer a quarter of a million for the most precarious of all kinds of property, without having seen it, and without other information about it than that given by the person interested in selling it, and by his agent, interested in earning $50,000 for effecting the sale. Bradley was manifestly Cameron's agent, if he was agent for any one, and could not be, although Cameron stated otherwise, at the same time, agent for the intending purchasers. It is unnecessary to say more, as this story about Bradley was one for the jury to believe or disbelieve, and they seem to have done the latter, as in view of it and the other evidence, they decided, and not unreasonably so, that Harper got nothing for his $50,000 note. Besides, no lease existed at the time. The Government had only promised it.

I have referred to particulars in the evidence somewhat at length, as many of them have a bearing on the further finding which imputes knowledge of the insanity to the defendant. Some of those particulars I may have to repeat; but it cannot be avoided as the verdict is not a general one. There is no direct evidence, nor was any admission on Cameron's part proved, that he knew of the insanity. He saw Harper, as he told the jury "shortly" after he got the kick "and noticed a change" in him that "anyone would notice." Harper did not recognize him but "pretended to do so" (pp. 256, 259). He had improved greatly in a few months; and when seen several times, in 1886 and 1887, about the proposed lease "he was," to use Cameron's words, "the same kind of a man that he had been previously—had a good memory—talked reasonably about business and only looked a little older"—pp. 256, 290). This statement the jury, probably, remembered, conflicted in every particular, except as to the part that interviews took place, with the statements of Drs. Hannington and McLean. The former for instance, stated that from his observations of Harper's conduct, during forty or fifty attendances upon him in the course of the two years mentioned, he found that "he was absolutely a lunatic" (pp. 115, 116); and the latter expressed a similar opinion from professional observations made in 1886, with the addition that Harper showed a marked "lack of memory." Mr. Holland's evidence, it is true, was to the contrary; but he had not known Harper prior to 1886; and besides, without imputing any but the best motives to him, he was much interested, as would have been evident to the jury, in supporting the view that Harper was sane. The two medical witnesses must have been disinterested. At any rate, the jury decided that Harper was of unsound mind on the 18th of November, 1887, which is the critical period involved in the present proceedings. Now, Cameron had known Harper for many years, and had become "pretty well acquainted with him," as he said, in 1875, (pp. 250, 256). Hence, the jury may well have felt that it was almost beyond belief that he, as one of sixteen old acquaintances, should have been continuously blind to a mental failure or incompetence, so pronounced as to have betrayed itself to all the others. Seven of them—Saul, Clearihue, Hemans, McEwen, Barton, Devlin and Grant—considered Harper to be insane in consequence of his delusion that he was about to unearth millions of dollars' worth of gold from his mine on the Horsefly stream. Cameron knew of this delusion, and it was for the jury to say whether he should have been similarly impressed by it or not, for the delusion affected the transactions between them, including the one that has been impeached. For instance, Cameron stated that Harper talked to him about millions that he was going to get out of Horsefly," and that when he did so, witness observed to him that Lightning Creek was "a better scheme" and, to use his words, "I told Mr. Harper that wages were high, and that claims that would not pay wages, would pay a good dividend when we get cheap labor on it" (pp. 254, 274, 276). Thus, as this scheme that was to pay a dividend provided it was worked with cheap labor, was, as estimated by Cameron, a better one than that of Horsefly with its expected millions, it is evident that he regarded those millions as purely visionary—as a delusion on Harper's part.

When Cameron at length prevailed upon Harper to join in the scheme, the arrangement between them was that, if they got the lease, Cameron should be manager at, as he expected, $10 a day to be paid by Harper; and Harper was to supply the means to work the scheme, and be entitled to recoup himself, from the profits, if any—and when recouped, the profits were to be equally shared. Thus, for his success in having persuaded Harper to undertake what sane persons had, according to Cameron, shunned, Cameron was to be paid a comfortable salary, whether gold was got from the mine or not, and be free from all liabilities; while Harper was to be responsible for that income and for the outlay of over one, and nearly two, hundred thousand dollars necessary, as shown by one of Cameron's witnesses, to carry out the work; and, in addition, take the ordinary risk of getting no corresponding return, or return of any moment from their mining operations. There is no evidence to show that Cameron ever informed Harper, as he did the jury, of the probable cost of the scheme, so that Harper went into it blindly. Harper's delusion as to the expected millions from Horsefly continued, for when first spoken to by Cameron about selling the lease, through Bradley, for $200,000, net, he objected, because, as he told him, he would shortly get more than enough from "Horsefly" to pay off all his liabilities (p. 274) and, "in a year or so would get so much money out of cattle and Horsefly, that he would not know what to do with it" (pp. 288, 289); and that he knew of nothing better than Lightning Creek as an investment. All this evidence tends to show that Harper was of unsound mind, to Cameron's knowledge, before the impeached transaction of the 18th of November, 1887, took place, but does not establish, positively, the fact that Cameron knew that he was insane on that day, although the jury found that he was. But in cases of questionable lunacy, the rule is that evidence of conduct before and after the critical period—in this case the 18th of November, 1887—is admissible, and the jury may draw inferences from it to assist them in deciding whether insanity existed at the given period. The rule that would thus be applicable in the case of a jury, would, impliedly be applicable in the case of Cameron; and for this reason the evidence is referred to. We now come to the critical period. When Cameron urged Harper to sell for $250,000, the latter, according to Cameron's evidence, got angry, and "said he wouldn't sell for a million of dollars, wouldn't sell at any price," upon which Cameron said "what will you give me for my half interest?" The reply was "$50,000," which was instantly accepted; and the impeached note for that amount was accordingly given shortly afterwards (pp. 261, 287, 288). Up to this time, no lease had been given; but a promise of one had been made by two Orders-in-Council which might, for good cause, at any time, have been revoked. The lease itself was not executed until the 16th of February, 1888, that is four months after Cameron purported to sell his moiety in it. Cameron must be taken to have known the fact, as his evidence shows that he had frequently called upon the solicitor who had the matter in hand, for information about it. He was not questioned on the point, but was with respect to its date, which, presumably as a matter of memory, he said he did not know. The transaction contains strong internal marks of want of rationality on Harper's part. Harper, as Cameron must, beyond doubt, have seen, suffered from a second delusion as to millions, in believing that he was to get them from their Lightning Creek scheme (for he said "he would not sell for a million or at any price")—that is millions from ground included in that scheme that, according to Cameron, would only give a profit at low wages. Moreover, the $50,000 note was given for a half interest in a non-existing lease. It was also given suddenly, and evidently under the influence of the delusion mentioned; for Harper must have thought, if he thought at all, that it was better to pay $50,000, than part with, what was in his view, worth a prospective million or more. His delusion, moreover, must have been made more acute, and designedly so, by the offer of the $250,000, which Cameron at the time told him of—an offer which, by the finding of "no consideration," was virtually pronounced by the jury to have been fictitious. In any event, it was for the jury to decide whether the $50,000 transaction was affected by, or which is the same thing, resulted from the delusion (Jenkins v Morris 14 C.D. 647). In view of all that has been stated, it cannot be said that the evidence was insufficient to support the finding that Harper's insanity was known to Cameron at the time of the impeached transaction. Cameron's conduct in the witness box was of itself evidence for the jury; and it must have given additional force to every fact unfavorable to him, for it is described by the learned judge, who presided at the trial, as having been "downcast, shuffling and evasive." Moreover, the learned judge was of opinion that the verdict was a proper one; and, as observed by Lord Esher in Webster v. Friedsberg (17 Q.B.D. 737), "it is idle to say that in determining whether a verdict was against the weight of evidence, you must not take into serious consideration the opinion of the judge who tried the case."

Again, Harper's insanity on the 18th of November, 1887, having been established, its continuance is presumed, unless proved to have ceased. (Pope on Lunacy, 408, and cases cited.) No such proof was given, nor was a lucid interval pleaded or attempted to be proved. The presumption, therefore, covers the subsequent period during which the six notes were given by Harper in substitution of the $50,000 note, and the further period when the impeached judgment was recovered—it having been shown in connection with the judgment that Harper had been sued as *sui juris*, and that the judgment had been entered for default of appearance. At any rate, counsel for the defendant expressed himself satisfied with the questions formally submitted to the jury when the case was closed (p. 287); hence, whatever objection he might have had on the ground that a further question as to a lucid interval had not been put, was waived. I mention this because it was suggested in the argument here by counsel that the giving of the six notes by Harper was an instance of mental recovery; but such was not pleaded. Besides, the circumstance was manifestly open to the opposite remark that it was the repetition of an irrational act on Harper's part, and no doubt the jury thought so.

Objection was taken at the trial, and renewed here, that the present action was not maintainable, and that the impeached judgment should have been set aside in the action which it determined. There are several obvious answers to the objection; but it is sufficient to say that it is disposed of by Carew v. Johnston 2 Sch. & Lef. 280; Gore v. Stackpole, 1 Dow. 18; Earl of Bandon v. Beecher, 3 Cl. & F. 479; and Flower v. Loyd, 6 Ch. D. 297; and S. C. 10, C. D. 327.

Another objection was that as a Receiver had been appointed under the impeached judgment, and the plaintiff's real and personal estate sold by him, the Court would not interfere, as the parties could not be reinstated in their original position. But they can *inter se*, be reinstated, for Cameron can get back his half-interest in the lease, and Harper any monies that may have been realized under the judgment. Those who bought from the Receiver can, as innocent purchasers, be also protected. (Gore v. Stackpole and Earl of Bandon v. Beecher, *supra*.

Granting, for the sake of argument, that the jury were wrong in finding that Harper's incompetence was known to Cameron, still the defendant must fail. Molton v. Camroux (2 Exc. 487,), upon which his counsel relied would not assist him; for it was there held, amongst other things, that to uphold a contract with a lunatic, it must have been fair and bona fide. Here the jury have found that the contract was not so; that it was made "without deliberation," or "independent advice;" and that there was no consideration. In such a case the plaintiff is entitled to relief. (St. Eq. Jur. 234-248; Clarkson v. Hanway, 2 P. Wms. 203; Blackford v. Christian, I Knapp, 73.)

The appeal must therefore be dismissed and the order nisi for a new trial discharged—with costs.

The order for judgment of the 18th of August, 1892, requires to be varied by inserting a correct statement of the findings of the jury, and provisions for the protection, as mentioned, of innocent purchasers, and for the re-assignment, on proper terms, to the defendant of the moiety of the lease.

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