

the language used, but may yet be affected by such delusions or other symptoms of insanity as may satisfy the tribunal that there was not a real appreciation of the engagement entered into." (2) *Hunter v. Edney*, 10 P. D., per Sir James Hannen, at p. 95: "The question which I have to determine is not whether the wife was aware that she was going through the ceremony of marriage, but whether she was capable of understanding the nature of the contract she was entering into, free from the influence of morbid delusions upon the subject." See, too, the language of the same learned judge in *Cannon v. Smalley*, *ibid*, at p. 96. (3) *Scott v. Sebright*, 12 P. D., per Mr. Justice Butt, at p. 24: "Whenever from natural weakness of intellect, or fear—*whether reasonably entertained or not*—either party is actually in a state of mental incompetence to resist pressure improperly brought to bear, there is no more consent than in the case of a person of stronger intellect and more robust courage yielding to a more serious danger."

*Earlier obiter dicta implicitly overruled.* (1) *Portsmouth v. Portsmouth*, 1 Hagg. E. R., at p. 359, per Sir John Nicholl: "Without soundness of mind there can be no consent—none binding in law. Insanity vitiates all acts." (2) *Hancock v. Peaty*, 1 P. & D. 335, 1867, per Lord Penzance: "The question here is one of health or disease of mind, and if the proof shows that the mind was diseased, the court has no means of gauging the extent of the derangement consequent upon that disease, or affirming the limits within which the disease might operate to obscure or divert the mental power."

*Illustrations:* (1) *Durham v. Durham*, 10 P. D. 80: This was an action brought by A to have his marriage with B declared null, on the ground of insanity. A and B were married on 28th of October, 1882, and at the date of the trial B was unquestionably insane. B was a shy girl of low intellectual powers, but had received an ordinary education, had acquired some accomplishments, had taken part in private theatricals, and had never been treated by her relatives as insane. She displayed a decided aversion to A, her future husband; but this was explained on the ground of a pre-attachment to another gentleman, and she made the arrangements for her marriage rationally and methodically. Declaration of nullity refused. (2) *Hunter v. Edney*, 10 P. D. 93: Action for declaration of nullity of marriage between A and B on the ground of B's insanity. The parties became acquainted in 1879, and on 16th of June, 1880, B accepted A as her husband. The marriage was fixed for 17th of March, 1881. On the 12th B wrote to put it off, and A found her troubled and excited. The marriage was, however, carried out as arranged. B refused to dress for church for some time, lay all night on her marriage bed in her clothes, and on the following morning asked her husband to cut her throat. A medical man was immediately called in, and pronounced B insane. Declaration granted. (3) *Cannon v. Smalley*, 10 P. D. 96: Here the parties were married 1st of January, 1884. B, whose capacity was in question, performed her usual duties till the day before marriage, and on 28th of December, 1883, had written a perfectly readable letter to A, the petitioner. The only evidence of her insanity before marriage was her dulness and reticence. On 11th of January, 1884, B was examined by Dr. Savage, and pronounced insane. Declaration refused. (4) *Scott v. Sebright*, 12