

never, to this day, have decided that insanity, in whatever shape it may appear, is necessarily an excuse for crime. The advanced step which they took was to regard certain forms of what is now called partial insanity, as having this legal effect; but precisely which they were, was a point not so easily settled. The exact question was, what mark, quality, or attribute of insanity should make it an adequate excuse for crime, and this led to definition of insanity and tests of responsibility. At one time, the question seemed to be satisfactorily answered by saying that it was a delusion, without which the patient could not be considered so insane as to be irresponsible for any criminal act. It was not too long, however, before it began to be suspected that this was giving too large a sweep to the excuse, and then its application was restricted by various limitations. From time to time other tests were offered which, though intended to meet a present exigency, were fondly believed to cover every possible requirement. One was that if the patient retained his knowledge of right and wrong, he continued to be accountable for his acts. Another was that if he knew the act to be contrary to the laws of God and man, he could not avail himself of the plea of insanity. Again, it was said that if he showed contrivance and forethought in regard to the criminal act, he was sufficiently sane to be accountable therefor. It would be a waste of time to mention all the rules of law on this subject, which the ingenuity of courts has devised, and which, one after another have been found too narrow for general application. But they will continue to be offered, and new ones no better to be made, so long as false theories of insanity prevail in the community, and the indubitable facts of science are treated as matters of speculation and fancy; and no improvement will be made, so long as it is believed in the high places of justice that the effect of insanity on the thoughts and feelings, the appetites and impulses, may be thoroughly discerned by a hasty examination and the slightest acquaintance with the mental phenomena."

The writer then proceeds to give the following passage from the charge of a learned American judge (Edmonds), to the jury, in the case of *The People v. Kleim*, as illustrative of what he argues is the more enlightened doctrine of the present day:—

"To establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did

know it, that he did not know he was doing what was wrong. If some controlling disease was in truth the acting power within him, which he could not resist, or if he had not sufficient use of his reason to control the passions which prompted the act complained of, he is not responsible. In order then to constitute a crime, a man must have memory and intelligence to know that the act he is about to commit is wrong; to remember and understand that if he commit the act he will be subject to punishment; and reason and will to enable him to compare and choose between the supposed advantage or gratification to be obtained by the criminal act, and the immunity from punishment which he will secure by abstaining from it. If, on the other hand, he has not intelligence and capacity enough to have a criminal intent and purpose, and if his moral or intellectual powers are so deficient that he has not sufficient will, conscience, or controlling mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent and is not a punishable for criminal acts."

We notice in the *Bench & Bar*, an article on the same subject, which will also repay perusal. The subject has an ephemeral interest, over and above that attaching to it from its intrinsic importance, from a divorce case in the English courts lately brought prominently before the public. Whilst, however, admitting that humanity requires that all care should be exercised for the protection of those suffering under the dispensations of Providence, the public must be guarded against the abuse to which the *humans* doctrine is open.

Of the specimen of petty spite in high places, exhibited by Lord Campbell in his *Lives of Lyndhurst and Brougham*, we have almost had enough. But, as a final shot at the author, and as an interesting sketch of the salient points of character of the great men now dead, that Lord Campbell unsuccessfully attempted to malign in his own peculiar style, the article in this review is most interesting, and we hope on a future occasion to find room for it.

We have the usual Digest of English and American Cases, Book Notices, A List of Law Books published in England and America since October, 1869, and a summary of events.

We heartily commend this Review to our readers, and advise them to subscribe to it at once; the price is a mere nothing for the interesting and instructive matter always to be found in it.