

[Eng. Rep.]

BOUGHTON AND MARSTON v. KNIGHT AND OTHERS.

[Eng. Rep.]

law was left to distribute his property without reference to his will. Now, I say usually you have the assistance of other things, besides the bare fact of a father conceiving a dislike for his child, by which to estimate whether that dislike was rational or irrational; and in this case, of course it has been contended that you have other criteria by which to judge of Mr. Knight's treatment of his children in his lifetime, and his treatment of them by his will after his death. You are entitled, indeed you are bound not to consider this case with reference to any particular act, or rather you are not to confine your attention to a particular act, namely, that of making the will. You are not to confine your attention to the particular time of making the will, but you are to consider Mr. Knight's life as a whole with the view of determining whether, in Jan. 1869, when he made that will, he was of sound mind. I shall take this opportunity of correcting an error, which you indeed would not be misled by, because you heard my words; but I observe that in the short-hand report of what I said in answer to an observation made by one of you gentlemen in the course of the cause, a mistake has been made, which it is right I should correct; because, of course, everything that falls from me has its weight, and I am responsible for my words to another court which can control me if I am wrong in the directions I give you. Therefore I beg to correct the words that have been put into my mouth, when I said that if a man be mad admittedly in 1870, and his conduct is the same in 1868 as it was in 1870, when he was, as we will assume, admittedly mad, you have the materials from which you may infer the condition of his mind in the interval. I have been reported to say, "from which you *must* infer the condition of his mind." That is of course what I did not say. Now, gentlemen, I think I can give you assistance by referring to what has been said on this subject in another department of the law. Some years ago the question of what amount of mental soundness was necessary in order to give rise to responsibility for crime was considered in the case of *MacNaghten*, who shot Mr. Drummond, under the impression that he was Sir Robert Peel, and the opinion of all the judges was taken upon the subject; and though the question is admittedly a somewhat different one in a criminal case to what it is here, yet I shall explain to you, presently, in what that difference consists; and there is, as you may easily see, an analogy which may be of use to us in considering the point now before us. There, *Tindal, C. J.*, in expressing the opinion of all the judges (one of

them was a very eminent judge, who delivered an opinion of his own, but it did not in any way differ from the other judges), says:—"It must be proved that at the time of committing the act, the party accused was labouring 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." Now that, in my opinion, affords as nearly as it is possible a general *formula* that is applicable to all cases in which this question arises, not exactly in those terms, but in the manner in which I am about to explain to you. It is essential to constitute responsibility for crime, that a man shall understand the nature and quality of the thing he is doing, or that he shall be able to distinguish in the act he is doing right from wrong. Now a very little degree of intelligence is sufficient to enable a man to judge of the quality and nature of the act he is doing when he kills another; a very little degree of intelligence is sufficient to enable a man to know whether he is doing right or wrong when he puts an end to the life of another; and accordingly he is responsible for crime committed if he possesses that amount of intelligence. Take the other cases that have been suggested. *Serjt. Parry*, with the skill which characterises all that he does as an advocate, endeavored to alarm your mind, as it were, against taking a view hostile to him, by representing that if you come to the conclusion that Mr. Knight was of unsound mind in Jan. 1869, you undo all the important transactions of his life. In the first place, it is obvious that the same question which is now put to you on behalf of the plaintiff in this case would be put to any jury who had to determine the question with reference to any other act of his life, namely, whether at the time of the act done he was of sufficient capacity to understand the nature of the act he was doing. But in addition to that, take, for instance, the question of marriage. The question of marriage is always left in precisely the same terms as I have said to you it seems to me it should be left in almost every case. When the validity of the marriage is disputed on the ground that one or other of the parties was of unsound mind, the question is, was he or she capable of understanding the nature of the contract which he or she was entering into? So it would be with regard to contracts of buying or selling; and, to make use of an illustration—a very interesting one given us by the learned serjeant—take the case of the unhappy man who, being confined in a lunatic asylum, and with delusions in his