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INSANITY AS A DEFENCE.

In connection with the *Haywern* case, tried recently at Montreal, in which some rather extraordinary views on the subject of insanity as a defence were put prominently forward in a portion of the medical testimony, it may be interesting to refer to a case decided not long ago by the Supreme Court of Alabama, *Braswell* v. *State* (reported in 2 Crim. Law Magazine, 32), in which the observations of the Court, and the authorities cited, serve to elucidate the subject. Judge Stone, who delivered the opinion of the Court, quoted the *dictum* of Chief Justice Gibson in *Cane* v. *Maslu*, 4 Pa. St. 264, that "there may be an unseen ligament pressing upon the mind, drawing it to consequences which it sees, but cannot avoid, and placing it under coercion which, while its results are clearly perceived, it is incapable of resisting," and remarked: "With all respect for the great jurist who uttered this language, we submit if this is not almost or quite the synonym of that highest evidence of murderous intent known to the common law: *a heart totally depraved and fatally bent on mischief.* Well might he add: 'The 'doctrine which acknowledges this mania is 'dangerous in its relations, and can be recog- 'nized only in the clearest cases. It ought to 'be shown to have been habitual, or, at least, 'to have evinced itself in more than a single 'instance.'"

The Court also referred to the case of *McNaghten*, in 1843 (10 Cl. & Fin. 200), which came before the English House of Lords for trial, and their lordships submitted certain questions to the judges, which were answered by Chief Justice Tindal, speaking for all the judges except Mr. Justice Maule. Among the questions were the following:—

1. What is the law respecting alleged crimes committed by persons afflicted with insane delusions on one or more particular subjects or persons? As, for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or of producing some supposed public benefit.

2. What are the proper questions to be submitted to the jury, when a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, fo example), and insanity is set up as a defence?

3. In what terms ought the question to be left to the jury as to the prisoner's state of mind when the act was committed?

4. If a person under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?

The answer of the judges was as follows:—

"In answer to the first question, assuming that your lordships' inquiries are confined to those persons who labor under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or avenging some supposed grievance or injury, or producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew at the time of committing such a crime that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land.

"As the second and third questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes until the contrary is proved to their satisfaction; and that 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. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between