

## THE GUILTEAU TRIAL—JUDGE COX'S CHARGE.

lence, for of few insane persons who do violence can it be truly said that they have a full knowledge of the nature and quality of their acts at the time they are doing them. But at the same time he observes that it is calculated to mislead a jury, who are very likely to be misled by the existence of a general knowledge of right and wrong in the accused person, to judge wrongly concerning his knowledge of the particular act at the time. He, however, objects strongly to a formidable exception by which the Judges limited its application. In reply to the question, "If a person, under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?"—the Judges declared that "on the assumption that he labours under partial delusion only, and is not in other respects insane, he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real." "Here," says Dr. Maudsley, "is an unhesitating assumption that a man, having an insane delusion, has the power to think and act in regard to it *reasonably*; that at the time of the offence he ought to have and to exercise the knowledge and self-control which a sane man would have and exercise, were the facts, with respect to which the delusion exists, real; that he is, in fact, bound to be reasonable in his unreason, sane in his insanity." These answers of the Judges to the questions put to them by the House of Lords have, he asserts, been unanimously condemned by all physicians who have a practical knowledge of the insane, while the Judges of other countries condemn them with equal earnestness; but since that time the law as relating to insanity in a criminal trial has, in England, been laid down in conformity with their conclusions. The American Courts, however, he asserts, which having inherited the Common Law of England, at first followed docilely in the wake of the English Courts, are now exhibiting a disposition to emancipate themselves from an authority which they perceive to be founded on

defective and erroneous views of insanity, and a desire to bring the law more into accordance with the results of scientific observation; and amongst other extracts from the American reports, he cites, as an example, the following passage from the instructions of Chief Justice Perley to the jury, in the case of *State v. Pike*: He told the jury that they should return a verdict of not guilty, "if the killing was the offspring of mental disease in the defendant; that neither delusion nor knowledge of right and wrong, nor design or cunning in planning and executing the killing, and in escaping or avoiding detection, nor ability to recognize acquaintance, or to labour and transact business or manage affairs, is, as a matter of law, a test of mental disease; but that all symptoms and all tests of mental disease are purely matters of fact to be determined by the jury." Finally Dr. Maudsley expresses his opinion that the question which will probably be submitted to jury, when the matter is correctly understood, will be: "Was the act the offspring or product of mental disease?" And it will be seen that to lay down any so-called test of responsibility founded on a supposed knowledge of right and wrong, is, as Judge Ladd remarked in the American case of *State v. Jones*, "an interference with the province of the jury, and the enunciation of a proposition which, in its essence, is not law, and which could not in any view safely be given to the jury as a rule for their guidance, because, for ought we can know, it may be false in fact."

The reader of Judge Cox's charge in the Guiteau case will see that he seems, as it were, to hover between the more specific form of question for the jury, which accords with the English rule, and the more general form of question which Dr. Maudsley advocates. Thus he said in one part of his instructions:—

"If the accused had sufficient use of his reason to understand the nature of the act with which he was charged, and to understand it was wrong for him to commit it, he was criminally responsible for the act, whatever peculiari-