

who counsels or procures any person to commit suicide, actually committed in consequence of such counselling or procurement, or who aids or abets any person in the commission of suicide." S. 238. "Every one who attempts to commit suicide is guilty of an indictable offence and liable to two years' imprisonment."

VI. CAPACITY TO COMMIT CRIME.

1. *Insanity.*

The onus under the Criminal Code is as at common law: "Every one shall be presumed to be sane at the time of doing or omitting to do any act until the contrary is proved": s. 11 (3).

In the first stage of the English law relating to the insane, they were regarded as subjects of demoniacal possession. In "The Insane and the Law" (by Mr. Pitt-Lewis, K.C., and others) we get an interesting account of the development of the law of England as to the criminal responsibility of the insane; to this useful little book I am much indebted for what appears here on the subject.

Originally, the insanity of an accused afforded no defence whatever in point of law—at all events, on charges of murder. From very early times, however, it grew to be the practice that when, in such cases, a special verdict was returned, saying that the accused had committed the crime charged against him, but that he was mad at the time when he did it, he would, on this, be granted a pardon; and in time it grew to be considered that he was entitled to one (see Stephen's History of the Criminal Law II. p. 151).

In those early days, however, the only form of insanity which entitled an accused to lenity such as this appears to have been a permanent insanity: Pitt-Lewis p. 170.

Sir Matthew Hale (1 P.C. 30), tells us that, when he wrote, partial insanity (*i.e.*, intermittent) was no excuse:—"This partial insanity seems not to excuse in the committing of any offence for its matter capital."

The doctrine that, to render man irresponsible, there must exist a total and permanent, and not merely an intermittent, loss of understanding, apparently prevailed for at least half a century after Hale's time: Pitt-Lewis, p. 171.

In 1724 occurred a case of *R. v. Arnold*, which brought in a stage of the law which has been called the "wild beast period."