Insanity in Its Legal Aspects

BY

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L.H.D., etc.

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REPRINTED FROM JANUARY NUMBER OF THE BULLETIN
OF THE ONTARIO HOSPITALS FOR THE INSANE.

(Printed by order of the Legislative Assembly.)

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A Word with Alienists.

Early one morning a doctor and a policeman going along the street found a man lying opposite a store. Enquiry soon disclosed that he had a broken leg. To the medical man, the sufferer at once became the patient, but to the policeman, he remained only a possible burglar. To the doctor, it made no difference whether the man was the most hardened criminal in the world; his art and science are wholly at the disposal of a Bill Sykes as of a Seth Pecksniff or a Ned Cheeryble. To the policeman, it made no difference whether the stranger had one broken bone or fifty, whether there could be a cure without shortening or whether he could ever expect to walk with ease again. What the policeman was concerned with was, "had the man been breaking the law? and, if so, what was the available evidence?"

They both took part in conveying him to the hospital, the doctor that there might be a better chance of perfect recovery, the policeman that he might the better know where to put his hand upon the suspected. Had a clergyman happened along, he would probably have been anxious about the poor man's spiritual condition and the salvation of his soul; these to the physician were only of importance as they bore upon the treatment and prognosis (and that would be almost if not quite infinitesimal), while the policeman, as policeman, would care nothing about it at all, and would not be inquisitive even as to whether the

man had a soul at all, and, if so, whether it was worth saving or trying to save. Now, none of these viewpoints is higher than either of the others, but all are radically different.

It is from not bearing in mind the different aspects from which the same facts are to be and are considered, that there is so much disputing about the insane; so much time wasted in the courts over expert testimony, and so much contempt expressed by the lawyer for the medical expert on insanity, only equalled by the contempt of many a medical expert for the rules of law in that respect.

If it should happen that a judge were called in by a medical man to assist in the treatment of an insane man, he would necessarily follow out the methods of medical treatment. And so, where a medical man is called upon to assist in the administration of the law, he must adapt himself for that occasion to the principles of the law. Neither judge nor lawyer need, while assisting in the province of the other, abandon the views he holds in his own province—nor does he. To the medical man, the insane person is a sick man to be treated for his disease, and it is a matter of indifference whether he is a criminal or not; to the judge, it is a matter of indifference whether a prisoner or a litigant be insane or not, the question is, is he capable of making a contract? is he responsible for his acts?

One more thing before attacking our main theme—the judge does not make the law; that is either a matter of tradition or of legislation, in either case of binding authority. He cannot change or avoid the law—for which he is no more responsible than the doctor is for the insanity of a patient or for the laws of nature governing insanity. And this law is binding upon all citizens, and all good citizens should obey the law in this as in all else. If the law does not suit the doctor or any other person, he may do his best to have it changed by Parliament; but it is the bounden duty of every one to obey the law so long as it is law.

As most of the instances in which medical men come in contact with the law are cases of insanity, real or alleged, I have thought it not without advantage to deal with the law in respect of insanity so far as medical men are likely to be affected.

Sometimes a doctor is called upon to examine one alleged to be insane, in order that he may be committed or declared by the courts to be insane. The opinion of a medical man is considered by a Court practically worthless if given simply as an opinion. The Court determines the question of insanity, and requires the medical witness to set out in his evidence, affidavit or otherwise, in full, his reasons for his conclusions. Care should be taken to preserve and transmit all conversation (if any) and all other indicia from which the practitioner has formed his judgment.

Again—and this is the most frequent case—a medical man is called as a witness in court upon the question of insanity. He may be an ordinary, though skilled, witness to set out the facts of the condition of the person whose mental state is under investigation, or he may be an expert witness called simply to give an opinion, or he may act in each capacity.

A witness should always bear in mind that he is not the person who is to decide any question of fact; that is for the Court or the jury, as the case may be: nor is he to decide any question of law; that is for the judge alone.

The most commonly occurring occasions for such evidence are (1) when the capacity of a testator to make a will is under investigation, and (2) when the question is whether one who has committed a violent act is responsible to the criminal law.

In neither of these inquiries is the insanity of the party *in itself* of the slightest moment—hundreds of insane persons have made valid wills, and hundreds of insane persons have been executed. If people do not like that law, let them get it changed; but for the present that is the law.

That medical men may know how to conduct their examinations, and in what direction to make and to press their enquiries (for a superficial enquiry is often worse than none at all), I set out the rules of law in each case.

In the case of wills it was for a long time thought to be the law that if the mind of the testator was affected by insanity at all, since the mind was supposed to be one single and indivisible entity, then, being affected, it must be unsound, and, as a consequence, testamentary capacity was wanting. As it was put, "Any degree of mental unsoundness, however slight, and however unconnected with the testamentary disposition in question, must be held fatal to the capacity of a testator." But that is not the law.

If one making a will understands what a will is, what its effects are and that he is making a will—if he understands the extent of the property he is disposing of—if he is able to comprehend, remember and appreciate the claims to which he should give effect, for example, claims of relatives, then he is far on the way to be considered competent to make a will, although he may be and may for years have been insane. Then, in the consideration of the claims to which he should give effect, there must be no disorder of the mind which poisons his affections, or which perverts his sense of right, or prevents the exercise of his natural faculties. Such would destroy or, at least, imperil his testamentary capacity.

The mere fact of the existence of delusions may not be of importance—it is not of importance if the delusion neither exercises nor is calculated to exercise any influence on the particular disposition of property, and a rational and proper will is the result. But if the insane delusion influence his will in disposing of his property and bring about a disposition of it which, if the mind had been sound, would not have made, that disposition is bad.

A medical man called upon to examine a person as to his testamentary capacity should, therefore, carefully inquire into

(1) His appreciation of the nature of a will and its effects,

(2) His appreciation of the property he has to dispose of,

(3) His appreciation of the property he was disposing of by will,

(4) His recollection of persons having claims by kin or otherwise upon his bounty, and his comprehension and appreciation of such claims,

(5) His mental condition, whether so disordered by insanity of any form as to affect his disposition toward such persons, or to change his normal view of right, or to prevent the exercise of his faculties.

(6) Are there any delusions?

(7) If so, are they of such a nature as to influence him in disposing of his property otherwise than he would, were the delusions absent?

In criminal cases, the question of the existence of insanity is also wholly unimportant. It is not the law that an insane man is not responsible before the law. To the physician, as physician, the insane man is sick and requires treatment just like the supposed burglar with his broken leg, but in a court the existence of the disease of insanity is just as unimportant as the existence of the broken leg.

If the proved insanity is not of such a kind as is recognized by the law as an excuse, it is as though he were not insane at all.

The Parliament has authoritatively laid down what kind and degree of insanity do excuse. If a man suffer from disease of the mind to such an extent as to render him incapable of appreciating the nature and quality of the act and of knowing that such an act was wrong, then the law says he is not to be convicted. No word of the law is to be disregarded. The accused to be acquitted must suffer from a disease of the mind not simply, but to the extent named—that is that he is rendered *incapable* of appreciating the nature of what he

does—not that he does not appreciate but that he *cannot* appreciate. And the word *wrong* is not to be interpreted subjectively as it appears to the mind of the accused, for many a man does what he thinks to be right and still is a criminal.

If an insane man is not affected by his insanity to such an extent but that he is able to know what he is doing—"capable of appreciating the nature and quality of the act," and is able to know that this act is wrong, that is, contrary to the law, even if it accord with his own sense of right, he is responsible in law. Charlotte Corday, when she killed Marat, thought she was doing right—that belief would not excuse her under our law if she knew that she was doing what the law forbade.

Then there are those who suffer from a moral insanity, they do not understand any difference between right and wrong which they are bound to respect. They are as responsible in law as Captain Kidd or any other pirate.

It is said, too, that there are those who, being insane, thoroughly know what they are doing and know that their act is against the law, but are forced on by an irresistible impulse to shoot or wound another. I once charged a jury in a murder case that the law of Canada says to those who assert that they are moved by an impulse which they cannot resist, "I shall hang up a rope before your nose and see if that will not help you to resist the impulse." No such defence avails in Canada. An English Court since that time, and, indeed, but the other day said, "Impulsive insanity is the last refuge of a hopeless defence."

I am not defending the law—I had no part in making it—I am bound to obey it, and I am simply stating it.

Again, if there be present specific delusions, the law is clear. Place the accused in the position of the delusions being true, then if the act which he does would be justified or excused, he is not guilty of a criminal act; but if not, he is. Let me illustrate. If A. suffers from the delusion that B. is seeking to kill him, and meeting

B. thinks B. is about to kill him and the only way to save his own life is to shoot B., he is not criminally liable if he does shoot B. But take a case which recently occurred in Toronto. A. thought that B. was spreading the most infamous slanders about him, and, meeting him one day, he shot him. He is liable criminally. The law allows one to kill another if that be the only way to save his own life, but it does not allow the killing of a slanderer, however base.

It may look anomalous to gift in theory one who suffers from delusions with the reasoning powers of one who is wholly sane, but that is the law laid down for us all by the Parliament.

Now, medical witnesses are often fond of laying down what they think should be the law, of saying in the witness box what should be done with an insane accused. That is no part of their duty. If they are not satisfied with the law—and doctors have been girding at it for seventy years and dozens of volumes have been written about it—let them go about it in the right way to have the law changed—use influence with the Parliament, the only body which can make the change. The Court is powerless, and must lay down and apply the law as it actually exists.

The above are the chief occasions on which a medical man meets the law in insanity matters. I add just a word as to capacity to make a contract, rather for the sake of completeness than for its practical importance.

Although insane, one may make a contract binding on himself if he possesses sufficient mind to understand in a reasonable manner the nature and quality of the act in which he is engaged, provided no imposition or fraud is practised upon him and the contract is not grossly inequitable; indeed, a very recent authority goes so far as to lay it down in broad and general terms that a contract made by a lunatic is binding upon him unless he can show that at the time of making it he was to the knowledge of the other party so insane as not to know what he was about.