

INSANITY AND CRIME.

BY SIR THOMAS F. MOLONY, BART.

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In July, 1922 Lord Birkenhead, the then Lord Chancellor of Great Britain, appointed a committee of distinguished jurists "To consider and report what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised, and whether any and, if so, what changes should be made in the existing law and practice in respect of cases falling within the provisions of Section 2 (4) of the Criminal Lunatics Act, 1884."

The Committee consisted of—

The Right Hon. Lord Justice Atkin, Chairman.

The Right Hon. Sir Ernest Pollock, K.B.E., K.C., M.P., then Attorney-General, and now Master of the Rolls.

Sir Leslie Scott, K.C., M.P., then Solicitor-General.

Sir Herbert Stephen, Bart., Clerk of Assize for the Northern Circuit.

The late Sir Richard Muir.

Sir Archibald Bodkin, Treasury Counsel at the Central Criminal Court.

Sir Edward Troup, K.C.B., Ex-Permanent Under-Secretary of State for the Home Department.

Sir Ernley Blackwell, Legal Assistant Under-Secretary for the Home Department

—all men who, either as Judges, Law Officers, Advocates, or Home Office officials, had had wide experience in dealing with the subject, and were well qualified to consider and decide between the conflicting theories put forward by the witnesses examined, and also in the reports submitted to them from the British Medical Association and the Medico-Psychological Association of Great Britain and Ireland.

The Committee presented their Report on the 1st November, 1923, but, owing no doubt to the great political crisis through which Great Britain has been passing, it has attracted very little attention. It is, however, a document of very great importance and deserves careful attention from both the legal and medical professions. I propose this afternoon to discuss

some of its principal features, but before doing so I wish, in the first instance, to indicate generally the state of the law as regards the responsibility of the insane.

The first matter which arises in considering the question of responsibility is: Whom should the law punish? Lord Bramwell thus dealt with this question in the year 1872: "Whom should the law punish? It is obvious that it should punish all whom it threatens, who knowingly break it, and are convicted thereof. To threaten punishment and not punish would be idle. To say that stealing should be punished with three months' imprisonment, arson with eight years' penal servitude, and murder with death, but on conviction not to pass or enforce those sentences would be nugatory. The question then, first, is whom should the law threaten? It seems an obvious answer to say: All on whose mind it may operate, all whom it may deter by its threats. It would be useless to threaten those who could not understand the threat. . . . The law, then, should threaten, and consequently punish, those on whose minds it may operate, all whom it may deter."

This leads us to inquire who are those who would not be deterred by a threat of punishment, and on this question there has been a great difference of opinion from time to time both in legal and medical circles.

It was laid down in *Beverley's case* (4 Coke's Reports, 125) that where the deprivation of understanding and memory is total, fixed and permanent, it excuses all acts; so likewise a man labouring under adventitious insanity is, during the frenzy, entitled to the same indulgence in the same degree with one whose disorder is fixed and permanent.

Sir Matthew Hale said (1 Hale, p. 30) that partial insanity is the condition of many, especially of melancholy persons, who generally discover their defects in excessive fear and grief, and yet are not wholly destitute of the use of reason, and this partial insanity seems not to excuse them in the commission of any crime.

In *R. v. Arnold* (16 St. T., 695, 764) and *R. v. Ferrers* (19 St. T., 885) it was ruled that a man could not be acquitted on the ground of insanity unless he was totally deprived of understanding and memory and did not know what he was doing any more than an infant, or a brute, or wild beast.

This rather cruel doctrine was abandoned in *R. v. Hadfield* (27 St. T., 1281), and it was there laid down that if a man was completely deranged so that he knows not what he does,

if he is lost to all sense so that he cannot distinguish good from evil, and cannot judge of the consequences of his actions, then he cannot be guilty of crime, because the will, which to a certain extent is the essence of every crime, is wanting. In *R. v. Bellingham* (Collinson on Lunacy, 636) the test applied was, whether when the act was done the prisoner was capable of distinguishing right from wrong, or was under the influence of any delusion which rendered his mind insensible of the nature of the act. The ruling in Bellingham's case was substantially followed in subsequent cases, until the whole question came to be considered by all the judges in *McNaughton's case* (4 St. T., N.S., 847). Daniel McNaughton was a Scotchman who thought he had a grievance against Sir Robert Peel, and on the 20th January, 1843, he fired at and wounded Mr. Edward Drummond, the private secretary of Sir Robert Peel, under the impression that the secretary was Sir Robert Peel himself. Mr. Drummond died, and McNaughton was indicted for his murder. At the trial a large volume of testimony was put forward on behalf of the accused for the purpose of proving his insanity, including that of some eminent members of the medical profession. The Crown stated that they were not prepared with any evidence to combat the testimony of the medical witnesses examined for the prisoner, and thereupon Tindal, C.J., practically directed the jury to acquit on the ground of insanity. This led to considerable discussion both in and out of Parliament, and ultimately the House of Lords took the very unusual but not unprecedented course of submitting certain questions on criminal responsibility to all the judges for their opinion. The questions which gave rise to most controversy were the second and third, and are as follows:—

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

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

All the Judges (except Mr. Justice Maule, who replied somewhat differently) dealt with those two questions as follows:—

“As these two 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 be 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 the committing of 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. 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 right and wrong; which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered upon the principle that everyone must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong, and this course, we think, is correct, accompanied with such observations and explanations as the circumstances of each particular case may require."

Ever since 1843 there has been from time to time criticism of these rules by the medical profession, and the difference of opinion which has arisen between physicians and jurists in reference to the plea of insanity is thus stated by Taylor in "Taylor's Medical Jurisprudence," Vol. 1, at page 870:—

"Most jurors aver that no degree of insanity should exempt from punishment for crime, unless it has reached that point *that the individual is utterly unconscious of the difference between right and wrong at the time of committing* the alleged crime. Physicians, on the other hand, affirm that this is not a proper test of the existence of that degree of insanity which should exempt a man from punishment; that those who are labouring under confirmed insanity are fully conscious of the

difference between right and wrong, and are quite able to appreciate the illegality as well as the consequences of their act."

Physicians seem to have considered that jurists never gave any weight to the doctrine of irresistible impulse, and, on the other hand, jurists seem to have considered that doctors did not give due weight to the great difference between impulses which were really irresistible and impulses which were in fact unresisted. Taylor himself admits this, and says (Vol. 1, page 880):—

"The doctrine of 'irresistible impulse' and the theory of impulsive insanity have been strained to such a degree as to create in the public mind a distrust of medical evidence on these occasions. It is easy to convert this into a plea for the extenuation of all kinds of crimes for which motives are not apparent, and thus medical witnesses expose themselves to rebuke. They are certainly not justified in setting up such a defence unless they are prepared to draw a clear distinction between impulses which are 'unresisted' and those which are 'irresistible.'"

Sir James Stephen in "Criminal Law of England" (page 95) expresses the legal view of the matter in strong and unmistakable language. He says:—

"It is said that on particular occasions men are seized with irrational or irresistible impulses to kill, to steal, or to burn, and under the influence of such impulses they sometimes commit acts which would otherwise be most atrocious crimes. It would be absurd to deny the possibility that such impulses may occur, or the fact that they have occurred, and have been acted on. Instances are given in which the impulse was felt and resisted. The only question which the existence of such impulses can raise in the administration of criminal justice is whether the particular impulse was really *irresistible* as well as *unresisted*. If it was irresistible the person accused is entitled to be acquitted, because the act would not then be voluntary and not properly his act. If the impulse was resistible, the fact that it proceeded from disease would be no excuse at all. If a man's nerves were so irritated by a baby's crying that he instantly killed it, his act would be murder; it would not be less murder if the same irritation and corresponding desire were produced by some internal disease. The great object of the criminal law is to induce people to control their impulses; and there is no reason why, if they can, they should not control insane as well as sane impulses. The proof that an impulse was irresistible depends on the circumstances of the particular case. The

commonest and strongest cases are those of women who, without motive or concealment, kill their children after recovering from child-bearing (puerperal mania)."

In 1894 a Committee was appointed by the Medico-Psychological Association to report on the medical aspect of the responsibility of the insane. The Committee made their report in 1896, and it was adopted by the Association. They were, however, unable to come to any definite decision on the question of responsibility, and they concluded their report with a statement that—

"Under the circumstances disclosed by their investigations, your Committee, while not approving of the doctrines and definition contained in the Judges' answer to the House of Lords in 1843, are at present unable to make any recommendations for the amendment of the law."

This report did not afford much assistance or satisfaction either to jurists or physicians, but it has become evident in recent years that the views of both jurists and physicians are coming nearer to each other.

Professor Courtney Kenny in his "Outlines of the Criminal Law" has remarked on this. He says (page 52):—

"Not only popular opinion but even the opinion of medical experts inclined at one time to the view that the presence of any form whatever of insanity in the man who has committed a criminal act is—or at any rate ought to be—legally sufficient to afford him immunity from punishment. But of late years the accumulated results of a careful observation of insane patients in various countries has thrown clearer light upon the mental processes of the insane, and has brought medical opinion into closer accord with the views of lawyers. The world, it is now recognised, is full of men and women in whom there exists some taint of insanity, but who nevertheless are readily influenced by the ordinary hopes and fears which control the conduct of ordinary people. To place such persons beyond the reach of the fears which criminal law inspires would not only violate the logical consistency of our theory of crime, but would also be an actual cause of danger to the lives and property of all their neighbours. Where insanity takes any such form it comes clearly within the rule of criminal legislation propounded by Bain (*Mental and Moral Science*, page 404), if it is expedient to place restrictions upon the conduct of sentient beings, and if the threatening of pain operates to arrest such conduct, the case for punishment is made out."

Professor Kenny, therefore, says :—

“English law therefore divides, and would seem to be fully justified in dividing, insane persons into two classes—(a) Those lunatics over whom the threats and prohibition of the criminal law would exercise no control, and on whom therefore it would be gratuitous cruelty to inflict its punishment; and (b) Those whose form of insanity is only such that—to use Lord Bramwell’s apt test—they would not have yielded to their insanity if a policeman had been at their elbow.”

It may be taken to be reasonably clear that if a person’s insane impulse could be restrained by the presence of a policeman, it is impossible to say that that impulse is irresistible, and consequently not amenable to threat of punishment or responsibility for the act.

The late Sir James Stephen thus summed up the law of insanity in his Digest of the Criminal Law, first published in 1877 (Article 27, page 15) :—

“No act is a crime if the person who does it is at the time when it is done prevented (either by defective mental power or) by any disease affecting the mind: (a) from knowing the nature and quality of his act, or (b) from knowing that the act is wrong, (or (c) from controlling his own conduct, unless the absence of the power of control has been produced by his own default). But an act may be a crime although the mind of the person who does it is affected by disease, if such disease does not in fact produce upon his mind one or other of the effects above mentioned in reference to that act.”

He states in a note that the parts of the article bracketed are doubtful, and in Note 1 in the appendix (page 331) he states that he has marked as doubtful the proposition that a person deprived by disease affecting his mind of the power of controlling his conduct is irresponsible in deference to the language of Parke, B., in *R. v. Barton* (3 Cox’s Criminal Cases, 275) and Bramwell, B., in *R. v. Haynes* (1 F. & F., 666).

In 1878 the Criminal Code Indictable Offences Bill was prepared for the purpose of being presented to Parliament, and a Royal Commission was appointed consisting of Lord Blackburne, Mr. Justice Barry, Mr. Justice Lush, and Sir James Stephen, to inquire into and consider the provisions of the draft Bill and to report thereon, and to suggest such alterations and amendments in the existing law as to indictable offences and procedure relating thereto as they might consider desirable and expedient. The Commission reported, and submitted to Her

Majesty the draft Code as altered by them on the 12th June, 1878, and they stated the law relating to insanity in the Code to be as follows:—

Section 22—“ If it be proved that a person who has committed an offence was at the time he committed the offence insane so as not to be responsible for that offence, he shall not, therefore, be simply acquitted, but shall be found not guilty on the ground of insanity. To establish a defence on the ground of insanity it must be proved that the offender was at the time when he committed the act labouring under natural imbecility or disease of or affecting the mind, to such an extent as to be incapable of appreciating the nature and quality of the act or that the act was wrong. A person labouring under specific delusions, but in other respects sane, shall not be acquitted on the ground of insanity, unless the delusions caused him to believe in the existence of some state of things which, if it existed, would justify or excuse his act: Provided that insanity before or after the time when he committed the act, and insane delusions though only partial, may be evidence that the offender was at the time when he committed the act in such a condition of mind as to entitle him to be acquitted on the ground of insanity. Everyone committing an offence shall be presumed to be sane until the contrary is proved.”

In reference to this definition, the Commissioners say (p. 17):—

“ Section 22, which relates to insanity, expresses the existing law. The obscurity which hangs over the subject cannot be altogether dispelled until our existing ignorance as to the nature of the will and the mind, the nature of the organs by which they operate, the manner and degree in which those operations are interfered with by disease, and the nature of the diseases which interfere with them is greatly diminished. The framing of the definition has caused us much labour and anxiety, and though we cannot deem the definition to be altogether satisfactory, we consider it as satisfactory as the nature of the subject admits of. Much latitude must in any case be left to the tribunal which has to apply the law to the facts in each particular case. The principal substantial difference between Section 22 of the draft Code and the corresponding section of the Bill is that the latter recognises as an excuse the existence of an impulse to commit a crime so violent that the offender would not be prevented from doing the act by knowing that the greatest punishment permitted by law for the offence would be instantly inflicted, the theory being that

it is useless to threaten a person over whom by the supposition threats can exercise no influence. This provision of the Bill assumes that the accused would not be protected by the preceding part of the section, and therefore that he was, at the time he did the act, capable of appreciating its nature and quality, and knew that what he was doing was wrong. The test proposed for distinguishing between such a state of mind and a criminal motive, the offspring of revenge, hatred, or un-governed passion, appears to us on the whole not to be practicable or safe, and we are unable to suggest one which would satisfy these requisites and obviate the risk of a jury being misled by considerations of so metaphysical a character."

On this passage Sir James Stephen remarks in his *History of the Criminal Law*, Vol. 2, page 171 :—

"In the Bill of 1878 the test which I suggested was whether the impulse to commit a crime was so violent that the offender would not be prevented from doing the act by knowing that the greatest punishment permitted by law for the offence would be instantly inflicted, the theory being that it is useless to threaten a person on whom by the supposition your threats will have no influence. The Commission thought that this was not practicable or safe. I have no very strong opinion on the subject. I should be fully satisfied with the insertion in a code of 'knowledge that an act is wrong' as the best test of responsibility, the words being largely construed on the principle stated here. All that I have said is reducible to this short form: Knowledge and power are the constituent elements of all voluntary action, and if either is seriously impaired the other is disabled. It is as true that a man who cannot control himself does not know the nature of his acts as that a man who does not know the nature of his acts is incapable of self-control."

Sir James Stephen was of opinion that the doctrine of irresistible impulse was a good defence under the rule in *McNaughton's case*, and his arguments will be found fully elaborated in his *History of the Law of England*, Vol. 2, Chap. 19, and his conclusion is summed up at page 167 :—

"I am of opinion that even if the answers given by the Judges in *McNaughton's case* are regarded as a binding declaration of the law of England, that law, as it stands, is that a man who by reason of mental disease is prevented from controlling his own conduct is not responsible for what he does."

Since 1877 the balance of authority is, I think, in favour of Sir James Stephen's view—see the authorities, both medical and legal, collected in *Smith's Medical Jurisprudence from the Judicial Standpoint*, page 182.

I have now briefly and imperfectly sketched the state of the law as it stood at the date of the appointment of the Committee in 1922. At that time the subject had become of great popular interest in consequence of two or three rather sensational murder cases at the Central Criminal Court in which the plea of insanity had been successfully raised at the trial, or subsequently given effect to by the Home Secretary. In order to assist the deliberations of the Committee the Medico-Psychological Association of Great Britain and Ireland prepared a report, which they submitted to the Committee, and at the same time the Council of the British Medical Association presented a Memorandum which embodied their views and suggestions. The two reports are, however, in direct opposition to one another. The conclusions of the Medico-Psychological Association are to be found in paragraph 5 of their report, which is as follows:—

“ 5. In accordance with the views expressed above, we have come to the following conclusions:—(1) The legal criteria of responsibility expressed in the rules in *McNaughton's* case should be abrogated, and the responsibility of a prisoner should be left as a question of fact to be determined by the jury on the merits of the particular case. (2) In every trial in which the prisoner's mental condition is in issue, the judge should direct the jury to answer the following questions:—(a) Did the prisoner commit the act alleged? (b) If he did, was he at the time insane? (c) If he was insane, has it nevertheless been proved to the satisfaction of the jury that his crime was unrelated to his mental disorder?”

The British Medical Association state their views in paragraph (ii) of their memorandum:—

“ (ii) The Council of the Association is of opinion that the following might be accepted by the medical profession as a fair definition of responsibility for crime: An act may be a crime although the mind of the person who does it is affected by disease or defective power, if such disease or defect does not in fact prevent him (a) from knowing and appreciating the nature and quality of his act or the circumstances in which it is done; or (b) from knowing and appreciating that his act is wrong; or (c) from controlling his own conduct, unless the absence of the power of control is the direct and immediate consequence of his own default; but no act is a crime if the person who does it is at the time it is done prevented, either by defective mental power or by any disease affecting the mind: (a) from either knowing or appreciating the nature and quality of his act or the

circumstances in which it is done; or (b) from either knowing or appreciating that the act is wrong, or (c) from controlling his own conduct unless the absence of the power of control is the direct and immediate consequence of his own default.”

“N.B.—Wrong may mean (a) morally wrong; (b) illegal.”

Having considered the report and memorandum, and having heard the evidence given by eminent professional men in support of the views of the respective Associations, the Committee came to the conclusion that they could not accept the recommendations of the Medico-Psychological Association, while they expressed their concurrence, in substance, with the memorandum of the British Medical Association. The reasons for their conclusions will be found fully stated in the Report, but I may quote some of them. The Committee say (page 4)—

“One of the difficulties that presented itself to us in the report of the Medico-Psychological Association is that the Association give no clue to what they regard as the test of criminal responsibility. None of their witnesses had formulated in his mind, or at any rate expressed to us, what it was that ought to make a person of unsound mind immune from punishment for any act he might commit in violation of the criminal law. When pressed one or two of the witnesses would admit that under some circumstances a person of unsound mind might yet be criminally responsible. But the substance of their evidence was that insanity and irresponsibility were co-extensive. All the witnesses were, in substance, agreed that the effect of ii (c), which threw upon the prosecution the onus of satisfying the jury that the act of the person found to be insane was ‘unrelated’ to his mental disorder, would be to cast a burden which could not be discharged, and that the question was otiose. The vagueness of the term ‘unrelated’ was pointed out, and the phrase eventually was altered to ‘the mental disorder was not calculated to influence the commission of the act’; but the difficulty of proof is not altered by the turn of the phrase.”

“The far-reaching effect of granting immunity to everyone who can be said to be of unsound mind is perceived when the medical conception of unsoundness of mind is considered. This will be found expressed on the highest authority at paragraph 3 (i) of the report. It is accepted by the witnesses for the British Medical Association and of course by us. Unsoundness of mind is no longer regarded as in essence a disorder of the intellectual or cognitive faculties. The modern view is that it is something much more profoundly related to

the whole organism—a morbid change in the emotional and instinctive activities, with or without intellectual derangement. Long before a patient manifests delusions or other signs of obvious insanity he may suffer from purely subjective symptoms which are now recognised to be no less valid and of no less importance in the clinical picture of what constitutes unsoundness of mind than the more palpable and manifest signs of the fully developed disorder which may take the form of delusions, mania, melancholia, or dementia.”

The Committee thus state their general conclusions (page 7):—

“ It will be seen from what we have already said that, in our opinion, the existing rule of the law is sound; that a person may be of unsound mind and yet be criminally responsible. A crime no doubt implies an act of conscious volition, but if a person intends to do a criminal act, has the capacity to know what the act is, and to know the act is one he ought not to do, he commits a crime. Whether he should be punished for it is not necessarily the same question. We do not propose to discuss penological theories. We assume that two of the objects of punishment are to deter the offender and to deter others from repeating or committing the same offence. If the mental conditions we have pre-supposed exist, we think that punishment may be fairly inflicted. It is probable that the offender and others will be deterred. On the other hand, if the offender tends to escape punishment by reason of nicely balanced doubts upon a diagnosis of uncertain mental conditions, the observance of the law is gravely hindered. We are of opinion, therefore, that the present rules of law for determining criminal responsibility as formulated in the rules in *McNaughton's case* are, in substance, sound, and we do not suggest any alteration in them, though we suggest an addition to which we will presently refer. It is often forgotten that the rules as to criminal responsibility apply not only to cases of murder but to the vastly greater number of less serious offences. In these cases mental conditions can be, and are in practice, daily taken into account in awarding punishment or in deciding whether any punishment should be awarded. In the case of murder the judge is not given a discretion as to punishment, but the executive is vested with large powers of mitigating the legal sentence. These powers, as will appear later, we think, it is essential to retain. But we should view with alarm any such extensive alteration in the legal principles of criminal responsibility as is suggested by the *Medico-Psychological Association*. The

importance of the effect upon the trial of minor offences cannot be overstated. Insanity is admittedly incapable of definition; its diagnosis difficult; its effect upon conduct obscure. The proposed rules throw upon the prosecution the onus of establishing that the insanity said to exist was not calculated to influence the act complained of, and, in default of discharge of such onus, would compel the Court to order the accused to be detained during His Majesty's pleasure. The effect must be to transfer many inmates of prisons to criminal lunatic asylums and to bring within the portals of the latter many persons who are now, without any public disadvantage, placed in the care of their relatives. The interests of both the administration of justice and of the liberty of the subject require that so far-reaching a change should be adopted only on the ground of some imperative public necessity. We are content to say that we have no evidence of such."

The Committee finally recommend that it should be recognised that a person charged criminally with an offence is irresponsible for his act when the act is committed under an impulse which the prisoner was, by mental disease, in substance deprived of any power to resist, and, as they say, this recommendation gives effect to the view of the law which is accepted by Mr. Justice Stephen, though with doubt, as being the existing law, and is in accordance with the Criminal Code of Queensland, 1899, Section 27, and with the law of South Africa as laid down by the late Lord de Villiers in *R. v. Hay* (16 Cape of Good Hope Reports, Supreme Court, 290). They add, however, that the question to be determined should be, not whether the accused could control his conduct generally, but could control it in reference to the particular act or acts charged, which I venture to say was also the view of Sir James Stephen. The general reasons for this recommendation are summed up at page 8:—

"It was established to our satisfaction that there are cases of mental disorder where the impulse to do a criminal act recurs with increasing force until it is, in fact, uncontrollable. Thus, cases of mothers who have been seized with the impulse to cut the throats of or otherwise destroy their children to whom they are normally devoted are not uncommon. In practice, in such cases the accused is found to be guilty but insane. In fact, the accused knows the nature of the act and that it is wrong; and the McNaughton formula is not logically sufficient. It may be that the true view is that under such circumstances the act, owing to mental disease, is not a voluntary act. We

think that it would be right that such cases should be brought expressly within the law by decision or statute. We appreciate the difficulty of distinguishing some of such cases from cases where there is no mental disease, such as criminal acts of violence or sexual offences where the impulse at the time is actually not merely uncontrolled but uncontrollable. The suggested rule, however, postulates mental disease; and we think that it should be made clear that the law does recognise irresponsibility on the ground of insanity where the act was committed under an impulse which the prisoner was, by mental disease, in substance deprived of any power to resist."

There are two other recommendations made by the Committee which I think it would be well to give effect to, viz. :—

(1) That accused persons should not be found on arraignment unfit to plead except on the evidence of at least two doctors, save in very clear cases, and (2) that provision should be made under departmental regulations for examination of an accused person by an expert medical adviser at the request of the prosecution, the defence, or the committing magistrate.

In Ireland we have, in practice, acted upon the law as laid down by Sir James Stephen, and now adopted by the Committee, and there is no doubt that even without any legislation on the subject the law will be carried out in the same manner in the future as in the past. My experience is that juries, on questions of insanity, take a very sensible and matter of fact view. They care little for the controversies which may separate the legal and medical views, while they scrupulously consider the facts of the particular case and form their own conclusions as to whether the man knew what he was doing in the wide sense of the term, and whether, if he did, that he knew that the act was wrong.

Sir James Stephen sums up his elaborate and powerful chapter on the relation of madness to crime (Vol. 2, Chap. 19, page 124-185) with words with which I find myself in complete agreement :—

"The importance of the whole discussion as to the precise terms in which the legal doctrine on the subject are to be stated may easily be exaggerated so long as the law is administered by juries. I do not believe it possible for a person who has not given long and sustained attention to the subject to enter into the various controversies which relate to it, and the result is that juries do not understand summings up which aim at anything elaborate or novel. The impression made on my mind

by hearing many—some most distinguished—judges sum up to juries in cases of insanity, and by watching the juries to whom I have myself summed up on such occasions is that they care very little for generalities. In my experience they are usually reluctant to convict if they look upon the act itself as, upon the whole, a mad one, and to acquit if they think it was an ordinary crime. But their decision between madness and crime turns much more upon the particular circumstances of the case and the common meaning of words than upon the theories, legal or medical, which are put before them. It is questionable to me whether a more elaborate inquiry would produce more substantial justice.”