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UNSOLVED PROBLEMS OF THE LAW, AS EMBRACED
IN MENTAL ALIENATION.

All science has its unsolved problems. They originate in the remote fields of human research and investigation, near the boundary-line which affixes the limit to all human knowledge. They occur where new or hitherto unknown series of phenomena present themselves of so refractory a character as to refuse submission to the most comprehensive laws or sweeping generalizations which the human mind in its present stage of progress can by any possibility deduce or originate. They stand as ever-faithful sentinels on the outposts of human knowledge, defining the limits between the known and the unknown; witnesses to the mind's limited capacity; and admonishing that, until their solution is rendered possible, all beyond should be consigned to doubt and uncertainty, if not entirely handed over to marvel and mystery. One beautiful provision here, however, we cannot fail to notice, and that is, that the unsolved problems of one age are not those of another; that the laws and generalizations of each successive generation and century, becoming more comprehensive and sweeping, reach and successively solve those problems by reducing to

submission their refractory phenomena, thus moving on clearing up doubt and uncertainty, and banishing marvel and mystery, until another barrier is reached, and other unsolved problems telegraph back, that laws and generalizations still more comprehensive and sweeping, are required for their solution. Thus, in successive oscillations between the two, swings the mighty pendulum that marks the mind's progress on the dial plate of centuries.

What are the unsolved problems of the law? We propose only to discuss some that are involved in MENTAL ALIENATION—A Medico-Legal topic second to few others in general importance. As every thing included under this term consists of phenomena, it is difficult, if not impossible, to obtain a definition sufficiently comprehensive to include them all, and yet so distinctive as to create the proper limitation. That, which is perhaps the most unexceptionable, although not quite sufficiently distinctive, is the following, viz.: that it is “an aberration of the manifestations of the mind from their ordinary, normal, healthy state.” This, as well as most other definitions that have been proposed, regards the disease as psychological or mental, rather than as physiological or organic. The first problem that meets the medical profession, and demands of it a solution, regards the nature or seat of the difficulty. Is it a mental or moral disease, having its seat in the mind or soul; or is it a bodily disease to be referred to a suffering organ, the brain? Or is there some middle ground upon which the two can be united? Each one of these has its advocates, and the correct solution of it is of considerable importance to the medical profession, but not so much so to the legal. We shall not, therefore, enter into its discussion.

Mental Alienation, where it is shown to exist, is a disqualifying disease, and the next point of inquiry relates to the grounds upon which legal exemption proceeds, and the divisions in the disease which correspond to those grounds. The law being a rule of civil action, having its appropriate sanctions, requires two conditions to give it any moral efficacy in its applications. The one of these consists in the ability or mental capacity of those subject to it, requiring sufficient to comprehend the rule and the consequencer

of its violation. The other renders it necessary, that those so subject, should be free moral agents, masters of their own actions, and capable of acting upon motives common to the race to which they belong. The absence of either one of these would necessarily free from all responsibility.

The two great divisions of mental alienation correspond precisely to these grounds of exemption. It is resolved primarily into two forms or classes; the first includes all those who are mentally alienated from defective development, or diminished power and activity of the faculties, while the second includes all those who are deranged from excessive action or undue excitement of the faculties. The first include all cases of idiocy, imbecility, and dementia; the second all the more active forms of mania or insanity. What we propose at present briefly to discuss relates to the means of identifying these different forms, and the application of legal principles to them—First, in relation to civil; second, as to criminal responsibility.

Of the three kinds embraced in the first class, or those whose aberration arises from defective development, that of *idiocy* is easily identified. It is not only congenital, but it deviates from the healthy condition in bodily structure and organs, while at the same time there is a marked deficiency in mental manifestation, all of which serve to divest the case of doubt and difficulty. *Imbecility* occurs subsequent to birth, and is of more difficult detection. It is of various grades or degrees, ranging from an intelligence little short of that which is normal and found in sound minds, down to the imbecile, who cut off the head of a man he found sleeping under a hedge, and then hid himself behind it, in order to witness the surprise of the body on its waking.

A German writer, Hoffbauer, has distinguished two forms of this, which he names *silliness* and *stupidity*; the first arising from defect of *reflective* power, the second from that of *perceptive*. He also assigns to each, different gradations or degrees. It is difficult to establish any certain test by which imbecility is to be recognised: those accustomed to witnessing it will generally be able to detect it. So the utter inability to display the ordinary amount

of mental power will reveal to all close observers, the existence of imbecility.

Dementia is characterized by a preternatural enfeeblement of the moral or intellectual power, or of both. It supervenes in a mind fully developed, is sometimes consequent on mania, mental shocks, or injuries of the brain, and sometimes first appears in old age. This is marked by a new feature, which has not hitherto appeared, viz., incoherence. Persons, places, times, and circumstances, are jumbled together. They occur disjointedly, succeeding each other without any regular order. Dissimilar objects are mistaken for each other. This, together with the evidences of general enfeeblement, and the marked change that has taken place in the individual, will render very little doubtful, any case that may present itself. When the dementia arises from a sudden mental shock, the disease frequently takes its hue from that which caused it; as in the case of the Norwegian fisherman, who being about meeting his bride in a boat, a sudden squall upset that containing her and her friends, who were all drowned. From that moment he became insane, and from morning till night, during the rest of his life, he was accustomed to sit upon a small stool, which he fancied a boat, with his arms and body constantly in the attitude of rowing, and admonishing every visitor to beware how he approached as the water was very deep.

The condition involved in idiocy, imbecility, and dementia, arises quite frequently for discussion and settlement in courts of law and equity. The first thing necessary is to establish the fact that such a condition exists. In *Jackson vs. King*, 4 Cowen, 207, and *Odell vs. Buck*, 21 Wend. 142, it is held, that where that condition alone is interposed as a defence, it must be clearly made out; that mere weakness of understanding is not, of itself, any objection in law to the validity of a contract; that the law draws no discriminating line by which to determine how great must be the imbecility of mind to render a contract void, or how much intellect must remain to uphold it; that if a man be legally *compos mentis*, he is the disposer of his own property, and his will stands for a reason for his actions. The condition must, therefore, be shown

to be *abnormal*, the defect *preternatural*, before it can be recognised by the courts.

But where there is an allegation of fraud, the parties may stop short of proving this condition or defect: 1 Story's Equity Jurisprudence, § 227. Thus, in *Blackford vs. Christian*, 1 Knapp's Rep. 73, Lord Wynford, after remarking that to impeach a conveyance on the ground of imbecility, required as strong a case to be made out as in a proceeding under a commission of lunacy to justify the placing of property and person under the protection of the Chancellor, proceeds to say—"but a degree of weakness of intellect far below that which would justify such a proceeding, coupled with other circumstances to show that the weakness, such as it was, had been taken advantage of, will be sufficient to set aside any important deed." And among other evidence, the nature of the act or deed itself is entitled to full consideration: 1 Story's Equity Jurisprudence, § 238. Thus the acts and contracts of persons of weak understandings, and who are thereby liable to imposition, will be held void in courts of equity, if the nature of the act or contract, together with its attendant circumstances, justify the conclusion, that the party has not exercised a deliberate judgment, but that he has been imposed upon, circumvented, or overcome by cunning, artifice, or undue influence: 1 Story's Equity Jurisprudence, § 250; *Gartside vs. Isherwood*, 1 Brown's Chancery Rep. 560-61.

Questions are frequently arising in the courts involving the testamentary capacity where this condition is alleged to exist. These are sometimes presented as purely questions of mental alienation, preternatural defect, or of weakness of mind upon which fraud and imposition have been practised. In reference to the former, various tests have been laid down. Thus, in 8 Mass. Rep. 372, the test proposed in the instruction to the jury, was the possessing of sufficient discretion for that purpose, and the ability at the time to recollect the particulars the testator had dictated. In *Van Alst vs. Hunter*, 5 Johns. Chan. Rep. 148, the Chancellor says: "The law looks only to the competency of the understanding. The failure of the memory is not sufficient to create the incapacity,

unless it be quite total, or extend to his immediate family and property." In *Clarke vs. Fisher*, 1 Paige, 171, Chancellor Walworth lays down the test, that the testator must be of sound disposing mind and memory, so as to be capable of making a testamentary disposition of his property with sense and judgment, in reference to the situation and amount of such property, and to the relative claims of the different persons who are, or might be, the objects of his bounty. The law seems inclined to admit that the testamentary capacity exists where there is a degree of mental imbecility that incapacitates for ordinary business. Thus, in 3 Wash. C. C. Rep. 587, Judge Washington says: "The capacity may be perfect to dispose of property by will, yet very inadequate for the management of other business, as to make contracts for the purchase and sale of property." He lays down the test to be, "if the testator has such a mind and memory as enable him to understand the elements of which a will is composed, the disposition of his property in its simplest form." The case which carries the testamentary capacity the furthest, is that of *Stewart's Executor vs. Lisenard*, 26 Wend. 255, in which the majority of the court say, that in passing upon the validity of a will, courts do not measure the extent of the understanding of the testator, and that if he be not totally deprived of reason, whether he be wise or unwise, he is the lawful disposer of his property, and his will stands as a reason for his actions.

The second class or division of the mentally alienated, includes all those whose derangement arises from excessive action, or undue excitement of the faculties. This embraces the more active forms of MANIA. "Here we have," says Dr. Guy, "a series of delusions, the offspring of some one excited passion or emotion, or one single delusion, the work of fancy, the interpretation of every sensation, the source of every thought, the mainspring of every action, holding every faculty in stern subjection, making the senses its dupes, the reason its advocate, the fancy its sport, and the will its slave; now whispering in the ear things unspoken, now painting on the eye things unseen; changing human beings at will into fiends or angels; converting every sensation into a vision; every

sound into articulate speech; the unreal world within in constant conflict with the real world without; understood of no one, yet believing himself to be comprehended by all; punished for the very actions which he supposes his tyrants to have commanded; controlled in everything which he thinks it his duty to perform. There is no wish, however presumptuous; no fancy, however monstrous; no action, however absurd; no crime, however heinous, that his delusion cannot create, prompt, and justify." Guy's Principles of Forensic Medicine, 328.

Without pausing here to distinguish between general and partial intellectual mania, I may say that the great distinguishing feature of both consists in the surrender of the mind to hallucination or delusion. The first inquiry here is, what is a *hallucination or delusion* which is sufficient to create insanity? Sir John Nicholl has defined it to be "a belief of facts which no rational person would have believed." This has been objected to by Lord Brougham, as giving a consequence for a definition. His Lordship offers as a substitute, "A belief of things as realities which exist only in the imagination of the patient." This is still more objectionable. It covers the hallucinations of the sane as well as those of the insane. Socrates had his demon, Luther had visits from the prince of darkness, and old Ben Jonson saw legions of devils dancing around his great toe. But neither of these were insane. They, and many others of the same character, were conscious that what appeared to them as hallucinations were really such, and not the realities to which their minds were bound to render allegiance. To make an *insane* hallucination it must not only be a reality existing only in the imagination of the patient, but it must also be a belief which to him is ordinary and normal, and to which he surrenders the homage of his actions.

These hallucinations are very diversified. The late Rev. Simon Brown for many years before his death, entertained the belief that he had lost his rational soul; that it had gradually perished, leaving only the animal life remaining. The late Rev. Daniel Haskell, for many years President of the University of Vermont, entertained the hallucination that he was dead, since some definite

epoch gone by; that it was in some other world, not this, he formerly lived; that he was there a rebel, and that hence God had removed him into another state, where he was then remaining, although it was a wonder and a mystery. See 15 American Journal of Insanity, 137. A lunatic at Wartsburgh supposed there was a person concealed within his belly, with whom he held frequent communications. Many have supposed themselves some distinguished person, as Mahomet, Louis XIV., Jesus Christ.

The important legal problem here is, where a single hallucination, rendering the case one of partial, not of general insanity, exists, what effect is it to have upon contracts or wills, made and executed during its continuance? Is it to invalidate all contracts or wills so made, or only those which are brought within the sphere of its influence? The latter was once clearly settled in English jurisprudence: *Dew vs. Clark*, 3 Addams Rep. 79, in which the question is very elaborately considered by Sir John Nicholl. But in a late case occurring in 1848, that of *Waring vs. Waring*, 6 Moore P. C. Cases, 349, Lord Brougham, before the Privy Council, delivered an opinion without dissent, as the judgment of himself, Lord Langdale, Dr. Lushington and Mr. T. Pemberton Leigh, inaugurating a totally different doctrine. See case referred to in Wharton and Stillé's Medical Jurisprudence, § and p. 17, and 6 American Journal of Insanity, 308. Lord Brougham says: "We are wrong in speaking of partial unsoundness; we are less incorrect in speaking of occasional unsoundness: we should say that the unsoundness always exists, but it requires a reference to the peculiar topic, else it lurks and appears not. But the malady is there, and as the mind is one and the same, it is really diseased while apparently sound; and really its acts, whatever appearance they may put on, are only the acts of a morbid or unsound mind." Thus the dogma of the mind's being a single general power, equally capable of acting in every direction, lies at the foundation, and has probably produced, as its fruits, the principle asserted in this case. The effect of it is to annihilate partial insanity; or rather to transfer partial into general. Thus all who may chance to be laboring under an hallucination or delusion in reference to a particular subject, although

perfectly sane on all others, is, in virtue of the establishment of this principle, to be deemed legally incompetent to act at all. This seems at present to be settled law in England, but the doctrine of "insane on one point, insane on all," must certainly disfranchise multitudes who are now considered competent to discharge all the business relations of life.

No court in this country has adopted that principle. With us the establishment of a particular hallucination destroys the legal capacity of acting as to all those matters to which the hallucination relates; leaving still the capacity to act as to all such matters as are unaffected by it. Whenever, therefore, an act, as a will or a contract, is sought to be avoided on the ground of partial insanity, the first thing to be done is to establish the hallucination, which must be entertained as true, and must be false in fact. The next is to trace the act in question directly to the hallucination, either as being actually produced by it, or so intimately connected with it, as to lead to the presumption that it never would have occurred had not the hallucination existed: Dean's Medical Jurisprudence, 571.

An illustration of this is found in the case of *Johnson vs. Moore's Heirs*, 1 Littell's Rep. 371. There one George Moore, in the delirium of a fever, was led to entertain the delusive idea that his brothers were seeking to destroy him. The idea was without the shadow of a foundation. He recovered from the disease but the hallucination still remained, and under its influence he made his will, giving all his property to others. The court set aside the will.

Another point of considerable difficulty that often presents itself is the establishment of a LUCID INTERVAL. This question can never arise except in those cases where the fact of mania has been once established. The continuance of it is then to be presumed until proof of a state of sanity is offered. The medical profession are not entirely agreed as to alternations of insanity and reason. The possibility of their occurrence, however, cannot well be doubted, and the main question is what amount of proof shall be required to establish the fact of a Lucid Interval such as

the law requires to restore legal competency. The Chancellor D'Aguesseau in the case of the Abbe d'Orleans (see Evans' Pothier on Obligations, Appendix, 579), after considerable discussion, says: "it must be, not a mere diminution, a remission of the complaint, but a kind of temporary cure, an intermission so clearly marked, as in every respect to resemble the restoration of health."

The English Court of Chancery have substantially adopted the same views. In the *Attorney-General vs. Parnthier*, 3 Brown's Chan. Rep. 234, Lord Thurlow says: "By a perfect interval, I do not mean a cooler moment, an abatement of pain or violence, or of a higher state of torture—a mind relieved from excessive pressure; but an interval in which the mind, having thrown off the disease, had recovered its general habit." He insists that the evidence in support of a lucid interval should be as strong and demonstrative of such fact as where the object of the proof is to establish derangement. That such evidence should go to the state and habit of the person, and not to what might be disclosed in an accidental interview, or to the circumstances attending a particular act. See also *White vs. Driver*, 1 Phil. 84, and *Groom vs. Thomas*, 2 Hagg's Eccl. Rep. 433, in the latter of which the doctrine laid down was that where there is not actual recovery, and a return to the management of himself and his concerns, by the unfortunate individual, the proof of a lucid interval is extremely difficult.

There are other legal investigations as to the mental condition besides those relating to the legality of a particular act. Both in England, and in most of the United States, a commission in the nature of a writ *de lunatico inquirendo* can at any time issue out of a court having competent jurisdiction, the object of which is to ascertain whether the individual mentioned in it is, or is not, capable of the management of his estate. The alleged cause of incapacity may arise either from mental unsoundness, or from habitual drunkenness. It is a proceeding instituted on the part of the friends of the alleged lunatic, and if successful, results in the appointment of a committee of the person and estate, who is, or are, legally authorized to act for him in all matters relating to his estate. The writ issues to certain named commissioners, who

are directed by means of a jury to inquire into and find the fact as to capacity, and to return their inquisition to the court out of which it issued.

A point of much importance has arisen here as to whether the finding must be limited to the fact of lunacy, and the incapacity consequent thereupon, or whether it may relate to incapacity generally, such, for instance, as may arise from old age and mere mental weakness. In *Ex parte Barnsley*, 3 Atk. 168, a commission issued to inquire whether Barnsley was a lunatic, and the inquisition found that from weakness of mind he was incapable of governing himself and his estate. Lord Hardwicke held that the inquisition must be quashed for insufficiency, in that it had not found the fact of lunacy. The same doctrine was subsequently declared in *Lord Donegal's Case*, 2 Vesey 407. A deviation from this strict rule is made by Lord Eldon in 6 Vesey 273, in which he says it is sufficient that the party is incapable of managing his own affairs. The subject also underwent further investigation in *Ridgeway vs. Darwin*, 8 Vesey 65, and in *Ex parte Cranmer*, 12 Vesey 445. Lord Erskine held that the jurisdiction of the Chancellor embraced cases of imbecility resulting from old age, sickness, or other causes. The question he said was whether the party had become mentally incapable of managing his affairs.

In the courts of New York the point has several times been presented, as *In the matter of Barker*, 2 Johns. Chan. Rep. 232, *In the matter of Wendell*, 1 Johns. Chan. Rep. 600, and *In the matter of Mason*, 1 Barbour's Supreme Court Rep. 436, in which is very fully sustained the sufficiency of an inquisition finding the person of unsound mind and mentally incapable of managing his affairs.

Under these rulings of the Courts it is obvious that every species of mental alienation, with the exception perhaps of the moral or impulsive kind, may come up for consideration in these proceedings. In cases of preternatural defect in the power of mental manifestation, it may in most cases be easy to determine. The difficult cases are those of hallucination or delusion, where it is of