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INSANITY AS A DEFENCE IN CRIMINAL CASES.

THAT insanity in some of its forms annuls all criminal responsibility, is a well-established doctrine of the common law. The courts for many years have differed only as to the degree of insanity necessary to afford a valid defence; no general rule having as yet been promulgated, though lately there has been less variance in their decisions.

A consideration of the history of the law of insanity, in its reference to criminal responsibility, is a material aid in determining its present *status*.

Originally only two kinds of insanity seem to have been recognised by English law—idiocy and lunacy. The law as laid down by Lord COKE and Lord HALE, and adopted by the courts until the beginning of the present century, declared that to absolve a man from responsibility for his criminal acts, his insanity must be such as "totally to deprive him of all memory and understanding:" Hale's Pleas of the Crown 30. This doctrine has been called the "wild-beast" theory, as it inflicted upon an insane person, convicted of a capital crime, the same punishment it accorded to wild beasts, unless it could be shown that he was possessed of more memory and understanding than they have been allotted by nature.

This doctrine received a blow from Mr. Erskine, in his defence, on the ground of insanity, of one Hadfield, who was indicted in

1800 for shooting at King George III., in Drury Lane theatre. The attorney-general who prosecuted, had appealed to the "wild-beast" theory and addressed the jury in accordance with its terms. Mr. Erskine replied: "Lord COKE and Lord HALE both said 'that to protect a man from criminal responsibility, there must be a total deprivation of memory and understanding.' I admit," said he "that this is the very expression used, but its interpretation deserves the utmost attention and careful consideration of this court. If a total deprivation of memory was intended by these great lawyers to be taken in the literal sense of the words, then no such madness ever existed; it is idiocy alone which places a man in this helpless condition. But of all the cases that have filled Westminster Hall with complicated considerations, the insane persons have not only had the most perfect knowledge and recollection of all the relations in which they stood towards others, and of the acts and circumstances of their lives, but have, in general, been remarkable for subtlety and acuteness; * * * and that delusion of which the criminal act in question was the immediate unqualified offspring, was the kind of insanity which should rightly exempt from punishment:" *Hadfield's case*, 27 English State Trials 1311. Erskine's eloquence and logic gained the day, and doubtless obtained the first advance in favor of the insane. The "wild-beast" theory has never recovered from this blow.

Twelve years later, in the case of Bellingham, tried for the murder of Mr. Spencer Perceval, it was held, for the first time, that in order to convict the prisoner, he must be competent to know the difference between right and wrong in the abstract: *Bellingham's case*, 5 C. & P. 168, note *b*. This, and *Hadfield's case*, continued to be the law of England for more than thirty years, although the decisions of the courts were not always in exact accordance with the principles there laid down.

In 1843, McNaghten, a Scotchman, shot a Mr. Drummond, whom he believed to be one of a band of persons following him everywhere, blasting his character and making his life wretched. He had transacted business a short time before the deed, and had shown no obvious symptoms of insanity in his discourse or conduct. He was, however, acquitted on the ground of insanity. This verdict having caused great public alarm and indignation throughout the kingdom, the House of Lords propounded certain questions to the judges, and their answers constitute the present law of Eng-

land on this subject: *McNaghten's case*, 10 Cl. & Fin. House of Lords' Cases 200. The substance may be thus stated: "To establish a defence on the ground of insanity, it must be clearly proved that at the time of committing the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature or quality of the act he was doing; or, if he did know it, that he was not aware he was doing what was wrong." Here it will be observed, first, that the question of right and wrong in the abstract was renounced, as was the "wild-beast" theory but a few years earlier; and, secondly, that now the knowledge of right and wrong, as regards the act in question, was held to be the true test. As to partial insanity, or delusion, as it was termed, the judges said: "That if a person was acting under an insane delusion, and was in other respects sane, he must be considered in the same situation as to responsibility as if the facts, with respect to which the delusion exists, were real. That is to say, that the acts of the criminal should be judged as if he had really been in the circumstances he imagined himself to be in. For example, if, under the influence of delusion, he supposes another man to be in the act of attempting to take his life, and he kills him, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted an injury upon him in character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

As was observed, these answers have continued to be the law of England to the present time; but the former of them has probably been more frequently adopted than has the latter.

The answers of the judges have also been generally adopted by the American courts, although there have been many and frequent variations from the opinions of their English brethren. It may, however, be said in general, and doubtless it is the common opinion, that on both sides of the Atlantic the test question, in cases where insanity is brought forward as a defence in criminal cases, would be: Did the prisoner, at the time of the commission of the act, have sufficient strength of mind to know the difference between right and wrong in regard to that particular act?

Within the past few years there has been an important qualification annexed to this ruling, in courts whose opinions are deserving of the highest respect: they have held, that not only must the prisoner know the difference between right and wrong as regards

the act in question, but also must have sufficient mental power to control the sudden impulses of his own disordered mind. This addition to the rule, as laid down by the English judges, has been of very slow growth, but is now the well-settled law in many of the states.

In Pennsylvania, the first decision advancing this doctrine was in a case tried in Lycoming county, before the late Chief Justice LEWIS, then president judge of that district. In charging the jury he said, as to "irresistible impulse:" "It is not generally admitted, in legal tribunals, as a species of insanity which relieves from responsibility for crime, and it ought never to be admitted as a defence until it is shown to exist in such violence as to subjugate the intellect, control the will and render it impossible for the party to do otherwise than yield. Where its existence is fully established, this species of insanity relieves from accountability to human laws." He afterwards repeated the same views in his work on criminal law: Lewis's U. S. Crim. Law 404.

In November 1846, Chief Justice GIBSON, sitting with Justices COULTER and BELL at an Oyer and Terminer in Philadelphia, when charging the jury in the case of *Commonwealth* v. *Mosler*, reported in 4 Barr 264, said, *inter alia:* "His insanity must be so great as entirely to destroy his perception of right and wrong; and it is not until that perception is thus destroyed, that he ceases to be responsible. It must amount to delusion or hallucination, controlling his will and making the commission of the act, in his apprehension, a duty of overruling necessity. The law is, that whether the insanity be general or partial, the degree of it must be so great as to have controlled the will of its subject and to have taken from him the freedom of moral action."

These decisions have been affirmed in the case of *Commonwealth* v. *Haskell*, 2 Brews. 491, in 1869, and lately in *Ortwein* v. *Commonwealth*, 26 P. F. Smith 414. In the former, Judge BREWSTER said: "The test question is, had the defendant in a criminal case the power to distinguish right from wrong, and the power to adhere to the right and to avoid the wrong?" and in *Ortwein* v. *Commonwealth*, Chief Justice AGNEW repeats the language of *Commonwealth* v. *Mosler*, above quoted, and declares the principle there laid down to be the law of Pennsylvania.

Among the celebrated decisions in courts of other states, perhaps the most prominent are *State* v. *Jones*, 50 N. H. 369, and *State*

v. *Pike*, 49 Id. 399; 11 Am. Law Reg. N. S. 233; in which the opinions of Judge DOE are noted for their learning and research on this subject. In the latter, he says, page 441: "If the alleged act of the defendant was the act of his mental disease, it was not, in law, his act, and he is no more responsible for it than he would be if it had been the act of his involuntary intoxication, or of another person using the defendant's hand against his utmost resistance. When disease is the propelling, uncontrollable power, the man is as innocent as the weapon—the mental and moral elements are as guiltless as the material. If his mental, moral and bodily strength is subjugated and pressed to an involuntary service, it is immaterial whether it is done by his disease, or by another, or a brute, or any physical force or act of nature set in operation without any fault on his part."

The leading cases in the United States holding this doctrine, in addition to those already mentioned, are *State* v. *Bartlett*, 43 N. H. 224; *Boardman* v. *Woodman*, 47 N. H. 120; *Commonwealth* v. *Rogers*, 7 Metc. (Mass.) 500 (containing an excellent and exhaustive opinion by Chief Justice SHAW); *State* v. *Johnson*, 40 Conn. 137; *Stevens* v. *State*, 31 Ind. 486; *Hopps* v. *People*, 31 Ill. 385; *State* v. *Felter*, 25 Iowa 67; *Scott* v. *Commonwealth*, 4 Metc. (Ky.) 227; *Smith* v. *Commonwealth*, 1 Duval (Ky.) 224; *McAllister* v. *State*, 17 Ala. 434; *Roberts* v. *State*, 3 Ga. 310, to which may be added the celebrated *Sickles* and *McFarland* trials, where this point was expressly ruled.

From these decisions it may be safely said, that the proper questions to be submitted to the jury (in cases where insanity is offered as a defence), are, first: *Was the defendant capable of knowing that the thing charged against him was wrong?* and, secondly, *Had he the power to resist the temptation thus to violate the law?*

The question now arises: upon whom rests the burden of proof, to show this insanity? Does it devolve upon the state, or upon the prisoner? The many varied decisions in the courts of England and the United States, render it difficult to present any general rule on this subject. Probably the better established doctrine now is, that, whenever in the course of the trial, evidence is produced showing that the prisoner was of unsound mind, the burden of proof immediately rests upon the prosecution to establish the contrary. The *onus* is first on the prisoner to show that the insanity exists, which being done, it immediately shifts upon the Common-

wealth, and it is for them to show that it does not exist, or if it does, that it is not such as would prevent him from knowing and doing the right. For the prosecution must not only prove affirmatively that the prisoner committed the deed, but must also show that he was such a free agent as is necessary in the law to make his act a crime: *Commonwealth* v. *Heath*, 11 Gray (Mass.) 303; *Commonwealth* v. *Rogers*, 7 Met. (Mass.) 500; *People* v. *McCann*, 16 N. Y. 58; *State* v. *Pike*, 40 N. H. 399, 11 Am. Law Reg. N. S. 233; *State* v. *Bartlett*, 43 N. H. 224; *Hopps* v. *People*, 29 Ill. 386; *Chase* v. *People*, 40 Id. 352; *Polk* v. *State*, 19 Ind. 170; *People* v. *Garbutt*, 7 Am. Law Reg. N. S. 554; 17 Mich. 9; *McAllister* v. *State*, 17 Ala. 434. The following cases also hold that the jury are to be governed by the preponderance of the evidence, and do not require that the insanity should be proven beyond a reasonable doubt: *State* v. *Lawrence*, 57 Me. 574; *State* v. *Jones*, 50 N. H. 370; *Commonwealth* v. *Eddy*, 7 Gray 183; *Walter* v. *People*, 32 N. Y. 147; *Ferris* v. *People*, 35 Id. 125; *Loeffner* v. *State*, 10 Ohio 599; *Bradley* v. *State*, 31 Ind. 492; *Stevens* v. *State*, 31 Id. 485; *Fisher* v. *People*, 23 Ill. 283; *State* v. *Felter*, 32 Iowa 50; *People* v. *Coffman*, 24 Cal. 230; *State* v. *Handley*, 46 Mo. 414; *McKenzie* v. *State*, 26 Ark. 334; *Smith* v. *Commonwealth*, 1 Duval (Ky.) 224; *Kriel* v. *Commonwealth*, 5 Bush (Ky.) 362.

The English rule, on the contrary, holds that the prisoner must prove his insanity beyond a reasonable doubt; that it is a defence of confession and avoidance and must be fully proved by the defendant: *Regina* v. *Stokes*, 3 C. & K. 188; *Regina* v. *Taylor*, 4 Cox C. C. 155. The English rule is also the law in New Jersey, Pennsylvania and North Carolina: *State* v. *Spencer*, 1 Zabriskie 202; *Ortwein* v. *Commonwealth*, 26 P. F. Smith 414; *State* v. *Brandon*, 8 Jones (N. C.) 463.

The question as to the existence of the insanity, and if it does exist, if to a sufficient degree to relieve the prisoner from punishment, is purely a matter of fact for the jury, and not of law for the court. Says Judge DOE, in *Boardman* v. *Woodman*, 47 N. H. 120, "The tests and symptoms of insanity are scientific questions, and are not questions of law, but questions of fact for the jury. It is no more a matter of law than is the existence of any other disease. Experts may testify to the indications of mental disease; as they could not, if such indications were matters of law. That