Journal of Criminal Law and Criminology

Volume 8 | Issue 5 Article 4

1918

Insanity as a Defense to Crime in Louisiana

W. O. Hart

INSANITY AS A DEFENSE TO CRIME IN LOUISIANA[1]

W. O. HART[2]

I find the first legislative reference to insanity in criminal cases in the Statutes of Louisiana in the year 1844, when by Act No. 32, of that year, approved February 24th, it was provided as follows: "Whenever any person who is or may be arrested, and in custody or in prison, to answer for any crime or crimes, offense or misdemeanor, before any of the courts of this state having criminal jurisdiction, shall be acquitted thereof by the jury of trials, or shall not be indicted by the grand jury by reason of the insanity or mental derangement of such person, and the discharge and going at large of such person, shall be deemed by the same court to be dangerous to the safety of the citizens or to the peace of the commonwealth, the said court be and is hereby authorized and empowered to commit such person to the Insane Hospital of New Orleans, or any similar institution in any parish within the jurisdiction of the court, there to be detained until he or she be restored to his or her right mind, or otherwise delivered by due course of law.

"Whenever the Grand Jury upon any inquiry which they may hereafter make as to the commission of any crime or misdemeanor by any person, shall omit to find a bill for the cause aforesaid, it shall be the duty of such jury to certify the same to the said court.

"Whenever the jury of trials, upon the general issue of not guilty, shall acquit any person for the cause aforesaid, it shall be the duty of such jury, in giving in their verdict of not guilty, to state that it was for such cause."

This law was re-enacted in 1855 (No. 121) and was carried into the last revision of the Statutes, 1870, as Sections 993, 994 and 995, and duplicated in 1778, 1779 and 1780, with the change, however, from the Insane Hospital of New Orleans to the State Insane Hospital, of which there are now two, but the criminal insane are sent to the one at Jackson.

The jurisprudence of Louisiana, is, that when the question of insanity of the defendant in any case is at issue, the jury are to be told that every man is presumed to be sane, and to possess a sufficient

[1]Read before the Congress of Alienists and Neurologists, Chicago, July, 1917.

[2]Member of the Bar of New Orleans, La.

degree of reason to be responsible for his crimes, until the contrary be proved to the satisfaction of the jury; and that to establish a defense on the ground of insanity it must be clearly proved that, at the time of committing the act, the accused was laboring 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 wrong.

This principle was announced in the case of *State* v. *Scott,* 49th Louisiana Annual Reports, 253 (1897), where in the syllabus prepared by Mr. Justice Miller, who rendered the opinion, it was said:

"The law presuming sanity, the burden is on the accused urging his insanity as a defense to prove it.

"That proof must satisfy the jury the accused was not of sane mind at the time of the act charged. They should consider all the testimony before them, whether presented by the accused or the state, and give due weight to the presumption of sanity. If on the whole testimony and giving to the presumption of sanity its full operation, they are satisfied the accused was insane when the act was committed, they should acquit; but, if not thus satisfied, they should deem the accused sane and responsible."

And the court reversed the judgment and set aside the verdict of the jury, remanding the case for a new trial, because the charge of the District Judge was not what it should have been in accordance with the reasoning of the court.

Mr. Justice Breaux, afterwards Chief Justice, and now an honored member of the Louisiana Bar, to which he returned after serving on the court for twenty-four years, dissented and said:

"Under the common law every man is presumed sane until the contrary be proven.

"Insanity, as a plea, should be proved as a substantive fact by the accused, on whom the burden of proof rests. Being of the opinion that the proof of insanity at the time of committing the act ought to be made as clear and satisfactory by the accused to secure his acquittal on the ground of insanity as the proof of committing the act ought to be made evident by the state in order to find a sane man guilty, I respectfully dissent."

As the burden of proof of insanity is on the defendant, it is proper for the trial court to refuse to charge that the state must prove beyond a reasonable doubt that the prisoner was sane when he committed the act and not error on the contrary to charge, that the law presumes the sanity of every man, and that it devolves on the prisoner, under a plea of insanity, to satisfy the jury by a preponderance of proof that he was insane at the time of the commission of

the act, with the qualification, however, given in the quotation from the Scott case above referred to.

And, therefore, the Supreme Court in the case of *State* v. *Coleman*[3] held that it was proper for the District Judge to refuse to charge: "If some controlling disease was in truth the acting power within the prisoner which he could not resist, or if he had not a sufficient use of his reason to control the passion which prompted the act complained of, he is not responsible."

When the presumption of sanity and insanity come in conflict, the latter must give way, and where all the ingredients of a crime, save sanity, are admitted or proved, and there is no other evidence on the subject, the presumption of sanity is sufficient to establish or maintain that condition. and to rebut the presumption of innocence. The mere plea of insanity does not affect the presumption of sanity, but in the face of such plea, unsupported by proof, it is the duty of the judge to instruct the jury that the law presumes the defendant to be sane, and that they ought to be governed by the law.

As said in one case: "A plea of insanity, the last resort of imperiled criminals, will surely not be listened to when the defendant's own witnesses disprove it."[4]

The case of Scott, supra, in holding that it was error to charge that sanity must be established beyond a reasonable doubt expressly overruled *State* v. *Clements*,[5] *State* v. *DeRance*,[6] and *State* v. *Coleman*, supra, where the contrary doctrine had been announced, though the court in the DeRance case found that the authorities and text writers were in conflict on this point, but adopted the rule that:

"Insanity must be proved beyond a reasonable doubt," for practically the same reasons as were given in the dissenting opinion of Justice Breaux, which I have before quoted in full.

In the Scott case, the court quoted approvingly from *State* v. *Coleman*, supra, where it was held that the District Judge did not err in refusing to charge: "If the jury entertained any doubt of the prisoner's sanity they must acquit him of guilt," saying that: "The burden of proof is upon the party setting up the defense."

Again referring to the Scott case, I quote the following from the opinion of the court:

"It will suffice if the jury are told, in effect, that the burden of proof is on accused to establish by clear convincing proof the insanity

[3] 27th Louisiana Annual Reports, 691 (1875).
[4] *State* v. *George*, 37th Louisiana Annual Reports, 786 (1885).
[5] 47th Louisiana Annual Reports, 1008 (1895).
[6] 34th Louisiana Annual Reports, 186 (1882).

he urges as a defense; that the presumption of sanity is to be taken into consideration, and exercise its full influence, along with all the testimony before them, whether produced by the accused, or by the state; and if, on the consideration of the whole testimony, giving due weight to the presumption of sanity, they are satisfied the accused was not of sane mind when the act charged was committed, they are to acquit, but, if not thus satisfied, they are to hold the accused sane and responsible."

In disapproving the charge of the judge which caused the reversal of the sentence, the setting aside of the verdict, and the remanding of the case, the court said:

"The charge in this case implies, if it does not express, that though there may be a preponderance of testimony before the jury to show that the accused was insane at the time of the act, yet they may convict. It is not easy to convince that with this preponderating proof they can deem guilt established beyond a reasonable doubt —the prerequisite of any conviction. Can, then, this charge be sustained, which exacts punishment upon preponderating proof producing not only a reasonable doubt of guilt, but preponderating to carry the conclusion that no guilt can exist because of the absence of that moral accountability, the basis of all punishment for crime. Between hanging the maniac or bringing to the scaffold one whose insanity is established by a preponderance of testimony, before the jury that pronounces him guilty, is a difference in degree not of principle. A conviction, when insanity is thus proved, this charge sanctions. If we turn to the authority of text books and decisions, it must seem difficult to maintain the charge, conceding all due weight to the decisions of our predecessors and types of that class in some of the decisions of the courts of other states. In *State* v. *Spencer*, 21, N. J. Law, 196, the court instructed, if in weighing testimony of insanity against that of sanity, the scales are balanced, or so nearly poised as to leave a reasonable doubt of insanity, the accused was to be deemed sane. This decision that sustains punishment when guilt is ascertained by the balanced or nearly poised scale is in marked contrast with the rule that exacts proof of guilt beyond all reasonable doubt. In one of the text books there is the comment that this decision has been departed from in the New Jersey courts."[7]

Intoxication to such a degree as to render the accused incapable of malice in the perpetration of a homicide is a special defense, like a plea of insanity, and puts the burden of proving it upon the party urging it, and its truth must be established by a fair preponderance of evidence; and while the state must prove malicious intent beyond reasonable doubt, it is not its duty to prove a negative by showing that accused was *not* intoxicated to such a degree as to render him incapable of entertaining malice at the time of the homicide beyond a reasonable

[7]Bishop Criminal Procedure, Section 671.

doubt; the judge was, therefore, right in refusing to charge: "If the jury has a reasonable doubt whether defendant was intoxicated to such a degree as to create a state of mental confusion, excluding the possibility of a specific intent to take life, or positive premeditation, then the verdict should be guilty of manslaughter."[8]

The rule in Louisiana is that the question of insanity may be presented even on a motion for a new trial, but the motion must be supported by sufficient evidence tending to substantiate the insanity, or it will not be considered. Where it is evident that the defendant had will power and could control himself and manage his business, he was held not to be insane, although he entertained extraordinary and unreasonable ideas on certain subjects.

State v. *Lyons*,[9] is very interesting; the defendant in that case had murdered the District Attorney for the Parish of Orleans, was convicted of murder and sentenced to be hanged, and the opinion by Mr. Justice (now Chief Justice) Monroe, with a syllabus prepared by himself in twenty sections, occupies forty-three pages, affirming the judgment and in due course the defendant was executed. I somewhat condense part of the opinion of the court as follows:

The judge instructed the jury that in order to convict accused, they must find not only that he knew the nature and quality of the act charged, at the time of its commission, and knew it was wrong, but that he was mentally capable whether to commit it or not, and of governing his conduct by such choice, and that he should be acquitted if they found that, though he committed such act, knowing its nature and knowing it to be wrong, they also found that he was impelled thereto by the irresistible impulse of a lunatic, and not the passionate impulse of a sane man; and that insane delusion excuses an act otherwise criminal, when the delusion was such that the person under its influence firmly believed in the existence of some imagined fact or condition which, if existent, would have excused such act, as when the belief was that the party killed had an immediate design on his life, and under that belief the insane man killed his supposed enemy in supposed self-defense, but that if the delusion was that the party killed had acted injuriously toward his slayer, or had committed any act which did not expose the life of the latter to imminent danger or subject his person to great bodily harm, it would not excuse or justify the killing. The requested additional charge that: "If the jury believe from the evidence that defendant insanely believed at the time of the commission of the act either that the imagined evil was so intolerable as to make life-taking necessary or justifiable in order to avert it, or that life-taking was an appropriate and just way of getting rid of it, he is entitled to be acquitted," was properly refused,

[8] *State* v. *Hill*, 46th Louisiana Annual Reports, 27 (1894).

[9] 113th Louisiana Annual Reports, 959 (1904).

being calculated to mislead the jury. The doctrine of moral insanity, which consists of irresistible impulse co-existent with mental sanity, has no support either in psychology or law.

Our courts have held that: "If a person, being in possession of his mental faculties, voluntarily gets into a fit of drunkenness, and during such drunkenness commits a homicide under a diseased mental condition occasioned by the same, he cannot set up such diseased mental condition as an excuse for his act. * * *

"In order that a man should stand excused for a homicide committed during drunkenness and while in a diseased mental condition, the diseased mental condition which excuses the homicide should be able to be successfully urged as an excuse for the act of getting drunk.

"The effect of drunkenness upon the mind and upon men's actions when under the full influence of liquor are facts known to everyone, and it is as much the duty of men to abstain from placing themselves in a condition from which so much danger to others is to be apprehended as it is for men to abstain from firing into a crowd, or doing any other act likely to be attended with dangerous or fatal consequences. It would open the door wide to the commission of crime were we to justify the commission of a homicide committed under a condition of mind designated as 'delirium tremens,' when it was, in all probability nothing more or less than the condition of mind usually resulting from a condition of thorough drunkenness. It would be utterly impossible to distinguish between the two conditions of mind, if in reality there be a difference between the two.

"It is, of course, as possible for an insane man to get drunk as for a sane man. The addition of drunkenness to insanity does not withhold from such person the protection due to insanity, but, when such a person commits a homicide during drunkenness, reliance must be placed upon the original insanity itself, not upon the subsequent drunkenness."[10]

"A homicide committed during a drunken debauch is not rendered excusable by the fact that long-continued indulgence in drinking by the party committing the killing had created in him a desire to drink so strong that it was out of his power to resist, * * * even though this drunkenness may be such at the time of the commission of the homicide as to render his mind incapable of knowing right from wrong. If the debauch be one continuing voluntary drunken debauch, starting with the sanity of the party engaged in it, the mere length of time the debauch may extend over is immaterial. Drunkenness for a week no more excuses a homicide committeed as its immediate and direct result than would drunkenness for an hour."[11]

Any state of mind resulting from a state of drunkenness, unless a permanent and continuous result, does not excuse the commission of the crime.

[10] *State* v. *Kraemer*, 49th Louisiana Annual Reports, 766 (1897).

[11] *State* v. *Haab*, 105th Louisiana Reports, 230 (1901).

"The correct rule is * * * that it must appear, in order to excuse the act, that the prisoner at the time of committing it was in such a state of mental insanity, not produced by the immediate effects of intoxicating drinks, as not to have been conscious of the moral turpitude of the act. Under this rule, it is settled that insanity produced by delirium tremens affects the responsibility in the same way as insanity produced by any other cause * * *. In other words, when drunkenness is *the remote* cause of insanity, where the latter proceeds from causes which are themselves the effect of antecedent excesses, the party is not responsible. The law looks to the proximate cause of the insanity, and if that be drunkenness, it is no excuse for crime."

Thus, the requested charge that: "If, * * * accused, at the time of inflicting the mortal stroke, was insane, and not capable of self-control from the use of intoxicating liquors or other poison, administered and sold to him by the deceased, the jury should not find him guilty," was properly refused, the court saying: "It is too broad, and would have led the jury into the belief that the frenzy of drunkenness is an excuse for homicide."[12]

So, a charge: "That drunkenness does excuse crime where, in the absence of criminal intent, the condition of accused was such that he knew not what he was doing, and intended no offense * * * is erroneous as an abstract proposition of law."[13]

While drunkenness is not an excuse for crime, but on the contrary is an aggravation, yet: "Intoxication of the accused may be invoked to negative malice or deliberate intent, in the absence of evidence, *aliunde,* to prove premeditation. The intoxication must be of such a character as to create a state of mental confusion, excluding the possibility of a specific intent to take life, or, positive premeditation."

The court further held that it was entirely too liberal to accused to charge: "That the intoxication of the accused could mitigate the homicide to manslaughter, if such intoxication in the opinion of the jury was of such a character as to incapacitate the accused from forming a deliberate intent to kill the deceased, unless the evidence would satisfy the jury that he had intoxicated himself for the purpose of provoking deceased into a difficulty, and of then killing him."[14]

In *State* v. *Wilson,*[15] the judgment was set aside and the case remanded owing to improper remarks of the District Attorney, and in the course of its opinion the Supreme Court quoted from one of the bills of exception as follows:

"The court charged the jury that drunkenness was no excuse for committing a crime, unless that drunkenness had been of such long standing as to render the party unaccountable for his acts, but refused

[12]*State* v. *Watson,* 31st Louisiana Annual Reports, 379 (1879).

[13]*State* v. *Washington,* 36th Louisiana Annual Reports, 341 (1884).

[14]*State* v. *Trivas,* 32d Louisiana Annual Reports, 1086 (1880).

[15]124th Louisiana Reports, 82 (1909).

to charge 'that it was an excuse unless the party got drunk for the purpose of committing the crime,' as I thought that too broad and not the law," commented on same as follows:

"We think that the requested charge was not explicit enough, in that it did not explain when it is that intoxication is a defense to crime; or, in other words, on account of what particular feature of the case on trial that defense was admissible.

"The judge had therefore the right to refuse it. But as the case is to be tried again, we will take occasion to say that the judge's charge was not quite full enough."

And in the case of *State* v. *Hogan,*[16] in discussing the question of drunkenness as producing insanity, which was pleaded in defense, the court said:

"Where the defense was insanity, and defendant's evidence tended to show that his alleged condition resulted from chronic drunkenness, and evidence on the part of the prosecution tended to show that the defendant had at no time been ill since his arrest, it was competent for the state to prove in rebuttal by a physician that a man suffering from such a mania could not recover within ten days without medical treatment."

The rulings of the Supreme Court of Louisiana, regarding evidence of insanity have generally been uniform and consistent to the effect that: "Insanity, when pleaded in defense of a criminal act, such as homicide, must be clearly shown to have existed at the time of the commission of the act."[17]

In the case of *State* v. *Hays,*[18] Mr. Justice Howe, one of the ablest of the many eminent men who have sat on the bench of the Supreme Court of Louisiana, in holding that:

"In a criminal prosecution for the crime of murder the witnesses for the accused may, under the plea of insanity, be permitted to give to the jury the acts, declarations, conversations and exclamations they saw, had with, and heard the accused make at any time shortly before, at the time of, or after the killing, analyzed the subject in the following strong and pertinent language:

"The defense in this case was insanity. In the solution of the question presented by the bill of exceptions, it becomes necessary, therefore, to inquire what scope is allowed to the prisoner in establishing such a defense by the enlightened spirit of modern jurisprudence.

"Insanity is a disease. It has its pathology and its symptoms, and it would seem that its existence can be determined only by a careful scrutiny of those symptoms. The tree is to be known by its fruits; the condition of the hidden mechanism is to be ascertained by those communicated movements which are external and apparent. To this end the usual expressions of a mental state are original and

[16]117th Louisiana Reports, 863 (1906).

[17]*State* v. *Graviotte,* 22d Louisiana Annual Reports, 587 (1870).

[18]22d Louisiana Annual Reports, 39 (1870).

competent evidence. If they are the natural language of mental alienation, they furnish satisfactory, and sometimes the only proof of its existence. It is true, that such expressions may be feigned and often are; but whether they were real or feigned is for the jury to determine. Hence, the rule prevails that as *indicia* of the mental condition, not only the acts, but the conversations, exclamations and declarations of the person may be shown. Of course, this rule should not be extended beyond the necessity on which it is founded—mere narrative or statement by the accused, as that at a certain time he said or did something, or at a certain time he was insane must be excluded; but testimony of such deportment, action, complaints, exclamations, declarations and expressions, as usually and naturally accompany and furnish proof of an *existing* malady, ought to be freely admitted.

"We think it equally well settled that all such *indicia* occurring after the commission of the offense, may be shown, and that the judge, therefore, erred in confirming the testimony to *acts* done before the homicide. It is true, that mania is often simulated, and it is quite likely that the danger of simulating may increase after the commission of a homicide; but this consideration relates rather to the effect of the testimony than to its admissibility. It may have little weight; but such as it has the jury must estimate. Previous or subsequent insanity in itself is no matter of excuse; the mania must have existed at the time the act was done; yet evidence of the presence of the malady, either before or after the act is proper to be weighed by the jury, for the purpose of forming a conclusion whether insanity existed at the time the alleged crime was committed. And this evidence, we apprehend, may be identical in character with that which is admitted to establish mental unsoundness prior to the act."

The judgment sentencing the defendant and the verdict of the jury were accordingly set aside and the case remanded for a new trial.

Judge Howe, who before coming to Louisiana, had been a member of the Bar of New York, reinforced his conclusions with citations of authorities from the courts of many states other than Louisiana.

In *State* v. *McIntosh*,[19] the Hays case was quoted by the court in support of the following propositions:

"It is as important that a person should not be required to plead to an indictment for crime or be tried for his life or liberty while he is insane as it is that he be not held responsible for the acts he committed while insane.

"The question of sanity or insanity of the accused at the time of the alleged crime must be decided by the jury along with all other questions pertaining to his guilt or innocence, but a plea of *present insanity* challenges the right of the state to proceed with the prosecution, and, if filed before the trial by jury has commenced, it ought

[19]136th Louisiana Reports, 1000 (1915).

to be heard and decided by the judge before allowing the prosecution to go on.

"Defendant's plea being insanity, the court properly refused to charge that the prisoner is entitled to an acquittal if on all the evidence there is a reasonable doubt of his sanity at the time of the commission of the act, and properly charged, instead, that the defendant has to prove his insanity by a fair preponderance of evidence."[20]

While our courts are liberal in admitting testimony in favor of an accused on his plea of insanity, the evidence must be presented with due diligence and technicalities will not avail him in this regard.

For instance, in the case of *State* v. *Manceaux*,[21] the court through Chief Justice Bermudez said:

"It is not enough for an accused who moves for a continuance on the ground of the absence of a material witness duly subpoenaed to swear that he was afflicted before the occurrence with a disease which left as a trace a temporary aberration of mind, rendering him irresponsible.

"Necessarily, he must have had lucid intervals, since the aberration was temporary.

"He should have set forth the fact that at the time of the commission of the act he was insane and irresponsible, exclusively to the knowledge of the absent and wanted witness."

What was said by the Supreme Court in the case of *Eloi* v. *Eloi*,[22] which was a civil suit to have the defendant declared insane, has been often referred to in criminal cases and states the law clearly and concisely:

"The opinions of witnesses, who are not physicians or experts in matters of insanity, touching the condition of the mind of a human being, are entitled to little or no weight as evidence in a trial involving the alleged insanity of a person.

"Such witnesses should state facts and incidents in the life and conduct of the party, from which the court alone is authorized to draw inferences and legal deductions touching the true condition of the mind of the person on trial for interdiction. (Interdiction is the Louisiana term for lunacy proceedings).

"Great weight and legal effect will be given to the opinion and report of physicians and experts appointed to inquire into the condition of the party.

"Where non-expert opinion testimony as to insanity has been received on the stand, evidence tending to show the expression of an inconsistent opinion by the same witness is always admissible in rebuttal."[23]

[20] *State* v. *Johnston*, 118th Louisiana Reports, 276 (1907).

[21] 42d Louisiana Annual Reports, 1164 (1890).

[22] 36th Louisiana Annual Reports, 563 (1884).

[23] *Hogan case, supra.*

"Testimony given by the accused in his own behalf that at the time he had made certain statements 'he was drunk or under the influence of dope' can be disproved by the testimony of 'non-expert' witnesses."[24]

"The trial court has much discretion in the matter of permitting hypothetical questions to be propounded to an expert witness for the purpose of eliciting from him his opinion as to the sanity of the accused at the time when the homicide with which he was charged was committed; this discretion covering both the form and the substance of the question."

"When the hypothetical question which counsel for the defendant proposes to submit to the expert as a premise on which to express an opinion as to the sanity of the accused includes matters as to which there has been as yet no testimony before the jury, and as to which he simply declares he expects to produce testimony, he should at least make the offer conditioned upon an obligation upon his part to subsequently offer such testimony. When the trial court has refused to allow the question to be asked on the ground that the premises on which the question is based is as to matters not supported by testimony as yet before the jury, the accused complaining of the rulings should be able to show by the record that such testimony was in fact subsequently placed before the jury."[25]

In the case of *State* v. *Smith,*[26] the court said:

"While we are far from holding that imbecility and insanity can be established only by expert testimony, we are of the opinion that it is within the province of the trial judge to determine whether witnesses offered as experts, as he says that the witnesses in question were offered, are to be heard in that capacity. Before a witness can be permitted to testify as an expert, his fitness and character as such should be established by a preliminary examination; and in ascertaining his competency the court may examine the witness himself, or may find the fact from the testimony of others. This fitness of a witness to testify as an expert is a question of fact, and it is addressed in every instance to and lies within the sound discretion of the trial court. A non-expert witness who had adequate means of becoming acquainted with the mental state of a person whose sanity is in issue, may, no doubt, give his opinion, based upon facts to be stated by him, as to whether such person was insane at the time of a specific occurrence. And we think that such an opinion would be admissible, subject to the limitation mentioned, upon the question whether the person inquired about had been insane, or had been an imbecile throughout his life. But without the limitation, it would not be admissible * * *. And as, in the case at bar, it does not appear that anything more was to be elicited from the witnesses than their opinions, which the judge states in his return was the sole purpose for

[24]*State* v. *Ryan,* 122d Louisiana Annual Reports, 1095 (1909).

[25]*State* v. *Ayles,* 120th Louisiana Reports, 661 (1908).

[26]106th Louisiana Reports, 33 (1901).

which their testimony was offered, upon the case as thus presented, we find no sufficient reason for disturbing the judgment appealed from."

To the same effect was *State* v. *Montgomery*:[27]

"The testimony of non-expert witnesses regarding sanity may, under proper safeguards and under certain state of facts, be admitted."

But in *State* v. *Heidelberg*,[28] the court concluded to be not too liberal by saying:

"The hearsay opinion of even an expert on insanity is not admissible in evidence."

In State v. *Charles*,[29] the court laid down certain rules where insanity was a defense in this language:

"Where a plea of present insanity is made on behalf of the accused, the judge may appoint a commission of experts to inquire into the mental condition of the defendant, or may refer the issue to a jury.

"The insanity of a person whose mental condition is at issue cannot be proved by reputation in the family or by general reputation."

"A general objection to a charge on the subject of insanity, accompanied by no request for special instruction, will not avail."

In the case of *State* v. *Richmond*,[30] where the defendant was charged with murdering her new born babe, the court said:

"The accused offered a physician as an expert witness, by whom to prove that puerperal mania, or insanity, was a common disease after childbirth, and often took on the form of homicidal mania, and the trial judge disallowed the testimony, because no proper foundation had been laid for its introduction. In support of his ruling, he states that, while it was in proof that the accused occasionally had spasms, they were not shown to have occurred at the time of the birth of the child, nor to have been referrable in it. That, outside of the statement of the accused, there was no satisfactory proof that she was alone and unassisted at the birth of her child. We cannot perceive any analogy between the evidence introduced and that which was offered and refused. In the absence of all proof tending to show any derangement of the mind of the accused at the time she gave birth to the child, or, indeed, even tending to show what was her condition at the time, or that she was alone and unattended, expert testimony, like the one in question, could serve no valuable purpose and was inapplicable and inadmissible, and properly rejected. It was irrevelant."

In the case of *State* v. *Paine*,[31] it was held:

"The trial judge having selected and appointed competent phys-

[27] 121st Louisiana Reports, 1005 (1908).
[28] 120th Louisiana Reports, 300 (1908).
[29] 124th Louisiana Reports, 744 (1909).
[30] 42d Louisiana Annual Reports, 299 (1890).
[31] 49th Louisiana Annual Reports, 1092 (1897).

icians as experts to make an examination of the mental condition of the defendant, with the object in view that they, as witnesses, should be better prepared to intelligently state his situation to the jury at the trial, it was not a condition precedent to the trial being proceeded with that the physicians should make a written and detailed report of such an examination to the court."

And in *State* v. *Douglas*,[32] the Supreme Court upheld the action of the District Court in refusing the motion of the defendant for the appointment of a board of experts to examine into his sanity for the reason that the very physicians named in the order had at the request of the defendant's counsel, examined him and pronounced him sane, and that their testimony as witnesses could not in the least prejudice the defendant, though they were not formally named as experts.

In Louisiana, the Supreme Court on appeal in criminal cases has no jurisdiction over the facts and cannot inquire into the question as to whether or not the defendant was insane, and it is a question solely for the jury; and therefore, the quotations above made have reference only to issues of law presented to the Supreme Court, by proper bills of exceptions during the progress of the trial.

"A person indicted for crime cannot, validly, plead, or be tried, or convicted, or sentenced, while in a state of insanity, although his mental derangement may have only supervened since the date of the crime charged.

"The objection of present insanity may be made at any stage of the proceedings. It requires no special or formal plea, but may be adequately presented orally, or the court may itself suggest and act upon its own observations.

"Whenever and however presented, evidence, if offered, must be received, and the issue must, in some way, be determined.

"As to the mode of determining it, some discretion is left to the judge, according to the time and circumstances under which the objection is made.

"When raised during the progress of the trial, the better course seems to be to submit the special issue, with the general issue, to the jury; but whatever be the judge's discretion on this point it is error to refuse to entertain the objection, or to receive evidence, or to determine it in any way."[33]

Subsequent to the conviction of Lyons and the finality of the judgment of the Supreme Court heretofore referred to, his counsel

[32]116th Louisiana Reports, 524 (1906).

[33]*State* v. *Reed*, 41st Louisiana Annual Reports, 581 (1889).

applied to the trial court alleging the defendant was then insane, asking for the appointment of a commission to examine into his sanity; but the District Judge refused the motion and also refused an appeal, which action the Supreme Court sustained saying:

"It is obvious that to permit convicts to arrest the execution of sentence imposed on them by demanding, as a matter of legal right, the appointment of medical experts to examine into their mental condition, would be tantamont to granting them the privilege of thwarting the administration of criminal justice for an indefinite time."[34]

So where, before verdict, insanity was not urged, but after conviction, at the instance of accused, a commission of medical experts is appointed to examine and report upon his mental condition, a majority of whom report him of sound mind, and thereafter he makes application for trial by jury of the issue of insanity vel non, the judge may refuse such application, there being no law which imposes on him the ministerial duty of directing a trial of such an issue by a jury. "In such case the allowance of trial by jury must be governed and controlled by the circumstances surrounding, and the situation of the case."[35]

J. Benjamin Chandler was quite a character in the City of New Orleans, for many years; he was a veteran both of the Mexican war and of the war between the states, serving in the latter throughout the Confederate army. On October 7, 1848, he killed a man by the name of Patrick C. Daley, and was indicted for murder, the trial judge giving this remarkable charge to the jury:

"I have rarely known a case in which the crime of murder was more clearly brought home to the prisoner, and I cannot think you can entertain any reasonable doubt of his guilt."

The jury, however, did not agree with the judge, because they found the defendant guilty only of manslaughter; he pleaded self-defense and the judgment was reversed and the case remanded for want of a proper charge as asked for by the defendant as well as for the improper charge above quoted.[36]

In 1892, Chandler was indicted for libel; he had been executor for an estate where I was his attorney, but I withdrew from the case when he filed in the Supreme Court what he called a brief on application for rehearing, it being an attack upon the court, the witnesses and opposite counsel. The particular libel for which he was indicted was against one

[34]*Lyons* v. *Judge,* 114th Louisiana Reports, 81 (1905).
[35]*Armstrong* v. *Judge,* 48th Louisiana Annual Reports, 503 (1896).
[36]*State* v. *Chandler,* 5th Louisiana Annual Reports, 489 (1850).

of the judges of the District Court whom he alleged had entered into a conspiracy to injure him and deprive some of the heirs to the estate of their rights; he also brought a suit against this judge, and thereupon all the judges, five in number, recused themselves and called upon Mr. E. B. Kruttschnitt, then an eminent member of the New Orleans Bar, to try the case, which resulted in the dismissal thereof. In the libel case the defendant did not set up insanity, but the court on the suggestion of the District Attorney, subsequent to the verdict and prior to the sentence, doubts having arisen in his mind as to the sanity of Chandler, thereupon appointed experts and referred the matter to another jury; the Supreme Court held this proceeding proper against the protest of Chandler, who did not want to be considered insane, but during the trial thereof, the Supreme Court held that the defendant should be released on a nominal bond instead of one for ten thousand dollars, exacted by the court. The final result was a most peculiar verdict: "Not guilty, on the grounds of insanity." My recollection is that the defendant died soon after, but whether in prison, or in an insane asylum, or elsewhere, I do not recall.[37]

In the case of *State* v. *Oteri*,[38] the court was called upon to construe Acts Nos. 105 of the Legislative Session of Louisiana of 1896, and 264 of 1910, respectively, reading as follows:

"Whenever any convict serving a sentence in the penitentiary shall become insane, it shall be the duty of the warden of the penitentiary together with the clerk of the Board of Control to present a petition to the District Court, where the penitentiary is located, setting forth the insanity of such convict and praying for his interdiction and removal to the asylum for the insane.

"Where a person has been committed to the hospital for the insane, who becomes insane after his conviction for a crime punishable by imprisonment in the penitentiary or by death, he shall not upon regaining his sanity be restored to liberty."

But the court went no further than to say that the law of 1910: "Evidently contemplates that there is some mode by which in the interval between sentence and execution the sanity of a convict may be pronounced; and, in the nature of things, the only court having jurisdiction is that having jurisdiction of the place prescribed by law for the detention of the convict.

"The jurisdiction of the court that tried and sentenced the convict necessarily ceases when the convict by operation of law passes out of its control and under that of the officers of the penitentiary."

With this very imperfect discussion of so important a question

[37]Chandler applying for writs of *habeas corpus*, etc., 45th Louisiana Annual Reports, 696 (1893).

[38]129th Louisiana Reports, 921 (1912).

as I have endeavored feebly to present, I will close with reference to a rather curious case.

In 1855, there was before the Supreme Court the case of *State* v. *Patten*,[39] in which appeared the following remarkable proceedings in the District Court:

"On the 20th day of March, 1854, after the evidence on the part of the state was closed, and when the counsel of the prisoner were proceeding to prove, by the evidence of the witness, the insanity of the said prisoner at the time of the killing, set forth in the indictment, and a long time before, and even since the said killing, the said prisoner arose and objected to, and repudiated the said defense, and insisted upon discharging his counsel and submitting his case to the jury without any further evidence or action of his counsel in his defense; his counsel opposed and remonstrated against the prisoner being permitted to do so, alleging that they were prepared to prove the defense by clear and irresistible testimony, but the court overruled the objection of the said counsel and permitted the prisoner to discharge his counsel, and refused to hear them further in his defense, and gave the case to the jury without any further evidence or pleading on his behalf * * *. There was a verdict of 'guilty, without capital punishment,' and after his former counsel had, in the quality of *amici curiae*, attempted to obtain a new trial and an arrest of judgment without success, the prisoner was sentenced to hard labor for life in the penitentiary."

And considering the foregoing which was before the court by bill of exceptions and appeared on the face of the record, the Supreme Court said:

"The sanity or insanity of the prisoner is a matter of fact; the admissibility of evidence to establish his insanity, under the circumstances detailed in the bill of exceptions, is a matter of law, and the only matter which the constitution authorizes this tribunal to decide.

"The case is so extraordinary in its circumstances, that we are left without the aid of precedents.

"In support of the ruling of the district judge, it has been urged that as every man is presumed to be sane until the contrary appears, and that a person on trial for an alleged offense has a constitutional right to discharge his counsel at any moment, to repudiate their action on the spot, and to be heard by himself; hence, the inference is deduced that the judge could not have admitted the evidence against the protest of the prisoner without reversing the ordinary presumption, and presuming insanity.

"In criminal trials, it is important to keep ever in mind the distinction between law and fact, between the functions of a judge and those of a jury.

"It was for the jury and the jury alone to determine whether

[39] 10th Louisiana Annual Reports, 299.

there was insanity or not, after hearing the evidence and the instructions of the court as to the principles of law applicable to the case.

"By receiving the proffered evidence for what it might be worth, the judge should decide no question or fact; he would merely have told the jury: 'The law permits you to hear and weigh this evidence; whether it proves anything, it is for you to say.'

"By rejecting it, he deprived the jury of some of the means of arriving at an enlightened conclusion upon a vital point peculiarily within their province, and in effect, decided himself, and without the aid of all the evidence within his reach, that the prisoner was sane * * * If the prisoner was insane at the time of the trial, as counsel offered to prove, he was incompetent to conduct his own defense unaided, to discharge his counsel, or to waive a right * * *. Considering, therefore, that it would be more in accordance with the sound legal principles and with the humane spirit which pervades the criminal law, to allow the rejected testimony to go before the jury, the cause must be remanded for that purpose."

The case went back to the trial court where the verdict again was: "Guilty, without capital punishment."

And on appeal to the Supreme Court, where the defendant was represented by one of the counsel who appeared in the first trial, this judgment was affirmed.[40]

The court said: "There are but two bills of exceptions, and neither of them appear to have been well taken.

"The prisoner pleaded not guilty to an indictment for murder. Upon the issue thus joined, the jury had power to find the prisoner guilty of manslaughter. It was, therefore, pertinent and right for the judge to instruct the jury in the law, both of murder and manslaughter, notwithstanding the defendant's counsel chose to assert that the only issue for the jury to try was the insanity of the accused.

"Nor was there error in refusing to allow the tardy motion for an inquisition of lunacy, it appearing that there was no pretense that the prisoner had become insane since the trial, and the question of his sanity at the time having been fully considered and passed upon by the jury as a question of fact. The verdict of the jury is conclusive upon us as to all matters of fact embraced by it."

The defendant was sentenced to hard labor in the penitentiary for life.

[40] 12th Louisiana Annual Reports, 288 (1857).