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CONTENTS

	PAGE
A LECTURE ON CRIME AND INSANITY (LECTURE II) 201	201
By W. NORWOOD EAST, M.D., M.R.C.P.	
EDITORIAL 212	212
POST-GRADUATE NEWS 212	212
REVIEWS 213	213
FELLOWSHIP OF MEDICINE AND POST-GRADUATE MEDICAL ASSOCIATION.—	
SPECIAL COURSES 215	215
INDEX TO VOLUME 216	216

CRIME AND INSANITY.
LECTURE II.

GIVEN AT THE MAUDSLEY HOSPITAL, MAY 7, 1929.

By W. NORWOOD EAST,

M.D., M.R.C.P.

Medical Inspector, H.M. Prisons, England and Wales.

CERTAIN exemptions from criminal responsibility are recognized by British law. Of these infancy demands a brief, and insanity a more extended, notice.

A child under 7 years of age cannot be guilty of any criminal offence, for until he reaches that age he is presumed to be *doli incapax*. Between the ages of 7 and 14 also, a child is presumed not to have reached the age of discretion and to be *doli incapax*, but this presumption may be rebutted by

clear evidence of a guilty knowledge that he was doing wrong. The incapacity of infants to commit crime ceases at the age of 14. They are then presumed by law to be *doli capaces* and capable of distinguishing good and evil. They come under full criminal responsibility, and as a rule may be convicted of any crime. But for purposes of punishment a distinction is drawn between adults and young persons of 14 and 16, and juvenile adults of 16 and under 21 years of age. Further, by the Children Act, 1908 (8 Edw. VII, C. 67, S.103), an infant under 16 who is convicted of a crime punishable with death is not to suffer death but merely to undergo detention during the King's pleasure.

Every person at the age of discretion is presumed by the criminal law to be sane, and to be accountable for his actions unless

the contrary is proved by the defence. And even in the case of an acknowledged lunatic the offence is presumed to have been committed during a lucid interval unless the contrary is proved.¹ Consequently a grand jury should not ignore a bill of indictment² in such cases.

The exemptions resulting from unsoundness of mind were classified by Coke and Hale under three headings :—

- (1) *Dementia naturalis*—idiocy.
- (2) *Dementia accidentalis*—insanity.
- (3) *Dementia affectata*—drunkenness.

Lord Hale (*circa* A.D. 1670) considered that most persons who were felons were under a degree of partial insanity when they committed their offences. He recognized that it was very difficult to define the invisible line that divided perfect from partial insanity, and declared that it must rest upon circumstances duly to be considered and weighed both by the judge and the jury, lest on the one side there be a kind of inhumanity towards the defects of human nature, or on the other side too great an indulgence given to great crimes. He suggested as the best measure that “such a person as labouring under melancholy distempers hath as yet as great understanding as ordinarily a child of 14 hath, is such a person as can be guilty of treason or felony.” But uncertainty was shown by judges with regard to Hale’s

rules. In *Rex v. Arnold*, A.D. 1723, it was ruled that a man cannot 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 a wild beast.”

In *Rex v. Hadfield* the accused was tried in the year 1800 for high treason in shooting at King George III in Drury Lane Theatre. It was given in evidence at the trial that Hadfield had been discharged from the Army on the grounds of insanity, and that he had suffered from attacks of maniacal frenzy and had laboured under various delusions. He had placed himself in the theatre before the King’s arrival and fired two shots in his direction as he entered the royal box. It appears that he did not desire to injure the King, but knew that his life would be forfeited by the attempt. He said that his plan had been to get rid of his own life by other means than suicide, and that he regretted nothing but the fate of his wife, whom he supposed would be his wife a few days longer. The presiding judge, in summing up, is reported to have said in effect, “With regard to the law, as it is laid down, there can be no doubt on earth. To be sure, if a man is in a deranged state of mind at the time, he is not criminally answerable for his acts; but the material part of the case is whether, at the very time when the act was committed the man’s mind was sane. . . . His sanity must be made out to the satisfaction of a moral man meeting the case with a fortitude of mind, knowing he has an arduous duty to discharge; yet if the scales hang anything like even throwing in a certain amount of mercy to the party.” It is clear from the evidence that Hadfield at the time of the crime knew what he was doing and that it was wrong, but the jury returned a verdict that he was insane.

In *Rex v. Bowler* the prisoner, an epileptic, was tried at the Old Bailey in 1812, and executed for shooting at a man whom he had previously threatened to kill. The

¹ “Lord Brougham tells a striking story of the patients confined in the York Asylum having discussed amongst themselves the case of the incendiary Martin, when he was about to be tried for setting York Cathedral on fire. The conclusion which they reached was: ‘He will be all right; for he is one of us, so the law will take no notice of him.’ They were quite capable of taking into account the chances of being or not being punished.”—“Outlines of Criminal Law.” Professor C. S. Kenny.

² An “indictment” is a written or printed accusation of crime made at the suit of the King against one or more persons, and preferred and presented on oath by a grand jury. A “bill of indictment” is such a written or printed accusation before it is so presented.

judge instructed the jury to determine whether the prisoner, when he committed the offence, was, or was not, incapable of distinguishing right from wrong, or whether he was under the influence of any delusion with respect to the prosecutor which rendered his mind at the moment insensible of the nature of the act he was about to commit, since in that case he would not be legally responsible for his conduct.

In the same year John Bellingham was tried for the murder of the First Lord of the Treasury, whom he shot in the lobby of the House of Commons. Immediately after the crime he said that he knew what he had done, that "it was a private injury, a denial of justice on the part of the Government." He later affirmed that the crime "was perfectly inevitable, there was no wrong at all in doing it; he could not help that." The judge in summing up said, "There is a species of insanity where people take particular fancies into their heads who are perfectly sane and sound of mind upon all other subjects; but that is not a species of insanity which can excuse any person who has committed a crime, unless it so affects his mind at a particular period when he commits the crime, as to disable him from distinguishing between good and evil, or to judge of the consequence of his actions. . . . The question is whether you—the jury—are satisfied that he—the prisoner—had a sufficient degree of capacity to distinguish between good and evil, and to know that he was committing a crime when he committed this act; in that case you will find him guilty."

Again, in 1840 Oxford was tried at the Old Bailey for shooting at Queen Victoria. Medical evidence was given to the effect that he was an imbecile. The Lord Chief Justice informed the jury that, "If a man were the agent of a controlling disease which he could not at all resist, he was not then held to be a guilty party, and he would be entitled to have an acquittal upon that ground. . . . Every case must stand to

some extent on its own base. That man charged as a criminal is not responsible for the act who is, in the language of our law, *non compos mentis*—that is, unable to distinguish between right and wrong. Every sort of insanity, and every mode of proving it, must have reference to the particular object with which it was laid before the Court. Here the object was to show that at the time of committing the act the prisoner was not able to distinguish right from wrong."

In 1843 Daniel McNaghten was tried at the Central Criminal Court for the wilful murder of Mr. Drummond, the private secretary to Sir Robert Peel. His case is frequently referred to in the Criminal Courts, and the present legal criteria of criminal responsibility, in cases of alleged insanity, are founded upon the rules which the judges gave as answers to certain questions put to them by the House of Lords, as the result of discussions which arose in both Houses of Parliament consequent upon the trial. And it is important for the medical witness to be acquainted with the facts of the case, as well as the questions and answers.

McNaghten shot Mr. Drummond in the back without any previous altercation or any provocation on Mr. Drummond's part. The prisoner intended to shoot Sir Robert Peel and had watched his house for that purpose. On seeing Mr. Drummond leaving the house he followed and shot him, believing that he was shooting at Sir Robert Peel. At the trial clear evidence was given that the accused was insane. His father testified that two years before his son asked him to put a stop to a persecution which was being made against him, that he repeated the request and said he was followed constantly by spies day and night. He said they did not speak to him but laughed in his face frequently, and when he turned round they shook their heads at him, raised their arms, and shook their fists in his face, and frequently those of them who had sticks would shake their sticks in his face likewise. He said the spies

only followed him when he was alone, and he referred also to a man who shook a few straws in his face, by which he understood he was to be reduced to a state of beggary. He appealed later to his father to apply to the sheriff to stop the persecutions, saying that he could not rest night or day in consequence of the annoyance, that he left Glasgow to avoid the spies, but they followed him to England and France. Other witnesses, including a sheriff, a Member of Parliament, a Church minister, the Provost of Glasgow and the Commissioner of Police of Glasgow gave corroborative evidence. Dr. E. J. Monro gave evidence that he had examined the prisoner, who said that he was persecuted by a system or crew at Glasgow, Edinburgh, Liverpool, London and Boulogne; that this crew followed him wherever he went, that he observed people in the streets pointing at him and speaking of him. They said he was a murderer and the worst of characters. Wherever he went he was watched and followed; everything was done by signs. He had seen a man frowning at him with a bundle of straw in his arms, and the straw implied that he should lie upon straw in an asylum. Dr. Monro informed the defending counsel that he frequently knew a person insane upon one point exhibit great clearness upon others not associated with his delusions . . . "an insane person may commit an act similar to the one with which the prisoner is charged and yet be aware of the consequences of such an act." And when cross-examined the witness affirmed that it was very common for insanity to exist with a moral perception of right and wrong. In re-examination he expressed the opinion that the prisoner's moral perceptions were impaired, and added that he thought a delusion of this nature carried a man quite away, that the mind of the accused was so absorbed by the contemplation of his fancied wrong that he did not distinguish between right and wrong. Dr. Hutchinson also gave evidence, and other

medical men were prepared to testify that the prisoner was insane.

Counsel for the defence said, "He did not bring this forward as a case of complete, but of partial insanity. . . . He trusted he had satisfied the jury by the authorities he had quoted, that there existed such a disease as partial insanity or homicidal monomania, in which the unhappy patient, acting under the influence of instinct, was led on by delusion to commit crime for which morally he could not be held responsible."

The Lord Chief Justice in summing up is reported to have said to the jury,¹ "The point which at last will be submitted to you will be whether or not on the whole of the evidence you have heard you are satisfied that at the time the act was committed, for the commission of which the prisoner stands charged, he had not that competent use of his understanding as not to know what he was doing with respect to the act itself—a wicked and wrong thing—whether he knew it was a wicked and wrong thing he had done, or that he was not sensible at the time he committed this act that it was contrary to the laws of God and man. Undoubtedly if he were not so sensible he is not a person so responsible. . . . If upon balancing the evidence in your minds you should think the prisoner a person capable of distinguishing right from wrong with respect to the act with which he stands charged, he is then a responsible agent, and liable to the penalties imposed upon those who commit the crime of which he is accused." The jury returned a verdict of insanity.

These diverse interpretations of the law caused a good deal of confusion. Lord Campbell is reported to have said that he thought, having looked at the directions of the judges in certain cases, among which were those of Arnold, Bellingham, Oxford and McNaghten, "there was a wide differ-

¹ "Hansard," vol. lxxvii, 724.

ence, both in meaning and in words, in their description of the law."

The questions put to the judges following upon McNaghten's case were as follows¹—

Question 1.—"What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as for instance, where, at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?"

Answer 1.—"Assuming that your Lordships' inquiries are confined to those persons who labour under such partial delusion only, and are not in other respects insane, we are of opinion that notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed if he knew, at the time of committing such a crime, that he was acting contrary to law, by which expression we understand your Lordships to mean the law of the land."

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

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

Answers 2 and 3.—"As these two ques-

tions appear to us to be more conveniently answered together, we have to submit our opinion to be that jurors ought to be told, in all cases, that every man is 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 accused party 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, 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 questions were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might lead 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 the 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 accused had a sufficient degree of reason to know 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."

¹ They are given at length, as medical men are sometimes called upon to discuss them in the witness box,

Question 4.—"If a person under an insane delusion as to existing facts commits an offence in consequence thereof is he thereby excused?"

Answer 4.—"The answer must of course depend on the nature of the delusion; but making the same assumption as we did before—namely, that he labours under such partial delusion only, and is not in other respects insane—we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, he kills that man, as he supposes in self defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune and he killed him in revenge for such supposed injury, he would be liable to punishment."

Question 5.—"Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to his trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusions?"

Answer 5.—"We think the medical man under the circumstances supposed, cannot in strictness be asked his opinion, in the terms stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts are admitted, or not disputed, and the question become substantially one of science only, it may be convenient to allow the question to be put in that general form,

though the same cannot be insisted on as a matter of right."

From the medical point of view the answers to the first and fourth questions are nullified by their reference to a hypothetical class of offenders, for no persons exist who labour under partial delusion only and are not in other respects insane. Moreover, the answers do not reply to the questions, which made no reference to such imaginary persons, but "to persons afflicted with insane delusion in respect of one or more particular subjects or persons." It must be observed also that the practice of the courts to-day is to apply the answer to 2 and 3 to all cases of insanity and not to restrict it to the class defined in Question 2.

Difficulty sometimes arises in appreciating what is intended by the phrases "nature and quality," and "knew he was doing what was wrong." The matter was settled according to law by the decision of the Court of Criminal Appeal in the case of *Coderight* (12 Cr. App. R. 21, 1916). The Lord Chief Justice, in delivering judgment, said, "The Court is of opinion that in using the language 'nature and quality,' the judges were only dealing with the physical character of the act, and were not intending to distinguish between the physical and moral aspects of the act. That is the law as it has been laid down by judges in many directions to juries, and as the Court understands it to be at the present time . . . The judges in *McNaghten's* case, in answering the second and third questions put to them said, 'If the accused was conscious that the 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. . . . Once it is clear that the appellant knew that the act was wrong in law, then he was doing an act which he was conscious he ought not to do, and as it was against the law it was punishable by law,"

The words "nature and quality of the act" apply then to its physical character, and a "wrong" act means one that is contrary to and punishable by law. And it is to be remembered that a crime is not necessarily wrong morally; the medical man who exceeds the speed limit in his car to reach a dying patient commits a crime which is punishable by law, although it is actuated by benevolent motives and is free from moral turpitude.

Accused persons not infrequently allege that their criminal acts are due to irresistible impulses, and their statements are supported by medical evidence sometimes. An uncontrollable impulse may be an expression of declared mental disease, or it may be itself the indication of mental disorder, as in the compulsion neuroses. Usually the expert should have no difficulty in distinguishing either from the impulsive conduct which is the behaviouristic response of mentally unstable persons, who are not the subjects of mental disease or defect. But the doctrine of irresistible impulse is not at present accepted in the English Criminal Courts, although it is in certain other countries. For instance, Section 27 of the Queensland Criminal Code of 1899 states "A person is not responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission."¹

In a judgment of the Court of Criminal Appeal, delivered in 1910 in *Victor Jones*, Lord Alverstone, C.J., said, "There is no need here to enter upon a disquisition on the terms in which the question ought to be left, where a person is prevented by defective mental power or mental disease from know-

ing the nature of his acts or from controlling his conduct." And in the case of *Quarmby* (murder), 15 Cr. App. R. 163, 1920, it was held that uncontrollable impulse was no defence in law. And as recently as 1926 in *Flavell* (murder), the Court of Criminal Appeal confirmed their previous decisions.

But on occasion English judges have extended or suggested an extension of the accepted test of insanity so as to include uncontrollable impulses. Mr. Justice Stephen, in his "Digest of Criminal Law," Article 28, accepted, though with doubt, the absence of the power of control as an excuse in law. In *Rex v. Jolly* (murder) the judge in summing up is reported to have said, "That if the prisoner is deprived of all control for the moment over his actions, you will be right in finding that he was insane and not responsible for his actions." In *Rex v. Holt* (murder) Mr. Justice Greer told the jury: "The definition of insanity in criminal cases was the one laid down by judges in *McNaghten's* case, but men's minds were not divided into separate compartments, and if a man's will power was destroyed by mental disease it might well be that the disease would so affect his mental powers as to destroy his power of knowing what he was doing, or of knowing that it was wrong. 'Uncontrollable impulse' in this event would bring the case within the rule laid down in *McNaghten's* case" (16 Cr. App. R. p. 167). Still later, in another murder case, *Rex v. Ronald True*, Mr. Justice McCardie said: "Even if the prisoner knew the physical nature of the act, and that it was morally wrong and punishable by law, yet was he through mental disease deprived of the power of controlling his actions at the time? If 'yes,' then in my view of the law the verdict should be guilty but insane." His Lordship, however, pointed out that it would never do to diminish unduly the doctrine of responsibility for criminal acts, and that it would be very unwise to allow any man to think that he was saved from the need of controlling

¹ Committee on Insanity and Crime, 1923. Cmd. 2005.

his actions because he could be able to say to the jury, "From mental disease I could not control myself."

The last case gave rise to much discussion, and in 1922 the Lord Chancellor appointed a Committee "to consider and report upon 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, Sub-section 4, of the Criminal Lunatics Act, 1884." The Committee consisted of eminent members of the legal profession, with Lord Justice Atkin as Chairman. They heard evidence from distinguished alienists and from representatives of the Medico-Psychological Association of Great Britain and Ireland and the British Medical Association. Their recommendations concurred in substance with the report of the latter body. They recommended that it should be recognized 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 further, that with this exception the rules in *McNaghten's* case should be maintained.

Following upon these recommendations, Lord Darling moved in the House of Lords on May 15, 1924, the second reading of the Criminal Responsibility (Trials) Bill, which proposed to add to the *McNaghten* rules that the accused is entitled to a verdict of not guilty on the ground that he was insane, "If at the time the act was done or omission made he was suffering from such a state of mental disease as therefrom to be wholly incapable of resisting an impulse to do the act or make the omission." In the discussion which followed it was evident that the Lords disapproved of the innovation; and the Lord Chief Justice stated that he had consulted twelve of the fifteen judges of

the King's Bench Division; ten like himself were emphatically opposed to the measure, one was emphatically in favour of it, and one was doubtful. Lord Darling finally stated that as the Bill did not commend itself to the House he would allow it to be negatived.

It is the duty of the judiciary to protect the public from criminals as well as to mete out justice to the latter. It is the custom of many medical men to concern themselves chiefly with the interests of the person on whose behalf they appear. Lord Atkin's Committee agreed that insanity might affect not only the cognitive but the conative and affective functions of the human mind; the beliefs, control, and emotions of affected subjects. But the doctrine of irresistible impulse is viewed with serious misgiving by many, lest medical witnesses and juries fail to discriminate always between an uncontrollable impulse *due to mental disease* and one that is merely uncontrolled and independent of mental disorder or defect. Indeed, Lord Atkin's Committee record that they "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."

It will be seen from what has been said in the present and previous lecture that four standards of insanity are accepted in the Criminal Courts of this country.¹ In courts of summary jurisdiction the standard is that usually recognized as certifiable mental disease. In courts of quarter sessions or assize it may be insanity of such a degree as to render the accused unfit to plead; or it may refer to his mental condition at the time of the crime when the insanity must be such as either to prevent the accused from knowing what he was

¹ The subject is treated more fully in my work on "Forensic Psychiatry." J. and A. Churchill, 1927.

doing, or if he knew what he was doing, prevents him from knowing that what he was doing was wrong.

Enough has been said to indicate that in suitable cases the rules in the McNaghten's case do not embarrass justice or prevent the judge giving such direction to the jury as may enable them to acquit the accused on the grounds of insanity. The report of a committee of the Medico-Psychological Association in 1896 declared that from the beginning to the end of the proceedings in criminal trials care was taken that justice should be done. Dr. Mercier, during the thirty years he examined every case reported in *The Times* newspaper, in which the plea of insanity was raised on behalf of the prisoner, was unable to recall any case that appeared to him to justify the acquittal of the accused on the ground of insanity. Sir T. Clifford Allbutt, in his "System of Medicine," quotes Dr. David Nicholson, late Superintendent of Broadmoor, who declared that "Had the McNaghten dictum been rigidly insisted on, it would have been the means of hanging more than half the women who are now in Broadmoor, as criminal lunatics, for the murder of their children."¹ My own

¹ The latitude permitted by judges in suitable cases is well illustrated by the following case: A melancholiac attacked a lad in the street, who was a stranger to him, with an axe and a razor. Assistance arrived and prevented the lad being killed. The prisoner explained the crime by saying he had been depressed for a long time and wished to die, but was afraid to commit suicide, so made up his mind to commit murder in order to be hanged. It was clear that he knew the physical character of his act and that it was punishable by law. At the trial I was the only witness called by the defence. I said that, in my opinion, the accused knew the nature and quality of the act, but did not know that what he was doing was wrong, because I did not think he was able from mental disease to reason and consider the injury he was doing to the boy and had shown no remorse. This evidence was not criticized by the judge, and the jury found the prisoner guilty but insane. The evidence was similar in principle to the answer of Mr. Justice Stephen to the question, "What, then, is the meaning of a maniac labouring under such a defect of reason that he does not know that he is doing what is wrong?" To which the learned judge

view, the result of thirty years' experience in prison work, during twenty years of which I was constantly giving evidence in the criminal courts, concurs with these opinions. But I am not equally clear that an amendment of the law would adequately protect the public or benefit offenders.

A further protection to prisoners, suffering from mental disease which has failed to acquit them on the grounds of insanity at their trial, is provided by the Criminal Lunatics Act, 1884. Section 2 (1) authorizes the Secretary of State to transfer from prison to an asylum a prisoner, not being under sentence of death, who has been examined and certified as being insane by two members of the Visiting Committee and two medical men. And Section 2 (4) directs the Secretary of State to appoint two or more medical men to examine a prisoner under sentence of death, when there is reason to believe the prisoner is insane, and they may certify in writing that the prisoner is insane. It should be noticed that in either case the standard of insanity adopted is that of mental disease which can be certified as such. And, further, that the Lord Chancellor's Committee in their report say that since the Insane Prisoners Act of 1840—which provided that when any prisoner, whether under sentence of death or otherwise, had been certified by two justices and two medical men called in by them to be insane, it should be lawful for the Home Secretary to direct his removal to any asylum—no prisoner under sentence of death has ever been executed as to whom a certificate of insanity has been given under the Statute for the time being in force.

Mental deficiency does not absolve a guilty person from responsibility for his acts or omissions. It sometimes happens that

wrote ("History of Criminal Law," Stephen, vol ii, p. 163), "I think that anyone would fall within the description in question who was deprived by disease affecting the mind of the power of passing a rational judgment on the moral character of the act which he meant to do."

the defect is of such a degree that the accused is unfit to plead, and is then said to be insane on arraignment, and is sentenced to be detained during His Majesty's pleasure as if he were insane. But there is no verdict "Guilty but mentally defective" corresponding to the verdict "Guilty but insane."

The responsibility of defectives was carefully considered by the Royal Commissioners appointed to inquire into the Care and Control of the Feeble-minded in 1904. Defectives were not regarded to be wholly responsible either by the administrative authorities or the Royal Commissioners. Mr. (now Sir) E. Troup, then Permanent Under Secretary of State, informed the Royal Commissioners of cases where weak-minded prisoners commit crimes who are not certifiably insane, and cannot be found insane under the law as laid down in *McNaghten's* case, or under the law as ordinarily administered, but were yet not wholly responsible. He suggested that in such cases the proper verdict "would be something to the effect that the prisoner was guilty of the act, but owing to mental weakness, was not fully responsible, and that he requires control and restraint." Mr. Troup added, however, that this was a question which could not very well be put to or adequately dealt with by a jury. Sir Edward Fry emphasized that a person must be responsible or irresponsible; that in the matter of criminal procedure these two terms cover the whole ground, and that where the question is guilty or not guilty it would be impossible for the law to admit the existence of any doubtful territory between the two terms.¹

The authoritative advice of the judges in regard to judicial procedure in the case of feeble-minded offenders is stated in the following abstract from a letter from the Lord Chief Justice to the Secretary of State for the Home Department: "The judges

are unanimously of opinion that it is not desirable that any question should be raised before juries respecting the class of people described as 'feeble-minded,' analogous to that which is raised under the Trial of Lunatics Act, 1883, or under the Inebriates Act, 1898. They think that any question of mental condition other than that of lunacy, or habitual drunkenness, should be considered either by the judge in determining the sentence which should be awarded, or by the Home Secretary under his general power for the control and disposal of prisoners."

The Royal Commissioners stated that their experience appeared to justify this view entirely. They were of the opinion that the data upon which a judgment of feeble-mindedness should be framed could not be submitted to a jury without great uncertainty and difficulty.¹

Sections 8 and 9 of the Mental Deficiency Act, 1913, followed upon the recommendations of the Royal Commissioners on the matter. I have already referred to them in my first lecture. It is to be observed, however, that they afford alternatives to imprisonment for those mental defectives who have committed crime, and thereby a modified responsibility is recognized by law in these cases. Moreover the same principle has been applied to the incriminating statement made by a defective. In the case of a youth who was charged with rape on a girl of his own age and similar physique, the only corroboration of the girl's accusation was a statement made by the accused. Lord Coleridge, having called medical evidence to show the prisoner was defective, asked the jury whether in view of that evidence they considered they should attach as much importance to the statement made by the accused, as they would to that of a prisoner who was not defective.

The Mental Deficiency Act, 1927, has amended the definitions of mentally defective

¹ Report of the Royal Commission on the Care and Control of the Feeble-minded. Vol. viii.

¹ *Loc cit.*

persons. Their position as regards responsibility remains unchanged. No body of opinion suggests that it is faulty or requires amendment, now the restrictions associated with the definitions of defect in the original Act are removed.

Drunkenness, dementia affectata, or acquired madness was formerly held not to excuse the commission of any crime, and an offender under the influence of intoxication could derive no benefit from a madness voluntarily contracted. But later legal opinion altered, and it has been ruled that upon an indictment for murder the intoxication of the accused may be taken into consideration as a circumstance to show that the act was not premeditated. Further, when the crime alleged is such that the intention of the accused is one of its constituent elements, the jury may look at the fact that he was intoxicated in considering whether he formed the intent essential to the crime. Evidence of drunkenness which renders the accused incapable of forming the specific intent essential to constitute the crime charged, must be taken into consideration with the other facts proved, in order to determine whether or not he had such intent.

But evidence of drunkenness falling short of this and merely establishing that the mind of the accused was affected by drink so that he more readily gave way to some violent passion does not rebut the presumption that a man intends the natural consequences of his act. (*D.P.P. v. Beard*.)

In charges of murder directly arising from acts of violence done with intent to do grievous bodily harm, where it is established that the accused was drunk at the time of committing the acts, the presumption that he intended the natural consequences of his act may be rebutted by showing his mind to have been incapable of knowing that what he was doing was dangerous, and the crime thereby reduced to manslaughter. But this is not a rule of general application, and does not apply to charges of murder

where the violent act is done in furtherance of what is in itself a felony of violence, e.g., rape.

In such a case drunkenness can be no defence, unless it is of such a degree as to cause incapability of forming the intent to commit the particular felony. Thus in the case of *Beard*, who ravished a girl, aged 13, and in furtherance of the rape placed his hand upon her mouth and his thumb upon her throat, thereby causing death by suffocation, and the only defence was drunkenness, it was held to be murder, there being no evidence of a state of drunkenness sufficient to negative the intent to commit the rape.¹

When, however, the indulgence in alcohol causes insanity the same rules apply as in other forms of insanity. Thus, in a case of murder I gave evidence that the prisoner was, in my opinion, suffering from delirium tremens at the time of the crime, and I detailed the evidence upon which I based this opinion. The learned judge in summing up said, "In ordinary cases drunkenness was no excuse for crime, and it became necessary to be careful in the present instance that they did not accept a defence of insanity merely on the ground that the man was in a state of drunkenness—his own voluntary condition produced by his own misconduct. There was, however, a stage recognized by medical men at which prolonged drunkenness developed into delirium tremens. The question—for the jury—was whether the evidence established to their satisfaction that prisoner had arrived at that condition of delirium tremens in which, on the day of the murder, he was incapable either of appreciating the nature and quality of the act he was doing, or whether he was doing right and wrong." The jury found the accused guilty of the act charged, but was insane at the time so as not to be responsible according to law. He was

¹ Archbold's "Pleading, Evidence and Practice in Criminal Cases."

sentenced to be detained during His Majesty's pleasure.

The principles involved in the determination of responsibility for criminal acts or omissions have now been set out. It is the duty of the medical witness, and his privilege as a citizen, to assist in the administration of justice by his unbiassed evidence. Having given his opinion, and the reasons upon which it is based, his duty ends. The criminal responsibility of the accused is a matter for the jury to decide upon his evidence and that of other witnesses, guided by their own experiences of the world and men, and directed as to law by the judge.

EDITORIAL NEWS.

READERS of this Journal will no doubt be interested to learn of the new building belonging to the London School of Hygiene and Tropical Medicine, which was opened in July last by H.R.H. the Prince of Wales.

The London School of Hygiene and Tropical Medicine is an outcome of the recommendations made in 1921 by a committee who felt that at that time the post-graduate teaching on public health in London was inadequate. The scheme would have been difficult to organize and carry out had it not been for the generosity of the Trustees of the Rockefeller Foundation who have contributed a large sum towards the building and its equipment.

The School is in connection with the Hospital of Tropical Diseases in Endsleigh Gardens, which, for many years, has been well known as the centre for tropical clinical work in this country. The new School is arranged in the following divisions: (1) Public Health; (2) Epidemiology and Vital Statistics; (3) Bacteriology and Immunology; (4) Biochemistry; (5) Medical Zoology; (6) Tropical Medicine and Tropical Hygiene.

The Library, which is now in the course

of completion, will eventually be the largest and most representative library on hygiene.

There is also a museum, which is arranged in three parts: (a) Sanitary engineering; (b) hygiene in the general sense; and (c) tropical medicine. In the formation of this Museum numerous large commercial interests were sought and were most generously granted. Many leading firms whose business is connected with public health activities have co-operated in presenting the Museum with many exhibits of educational value, and they have generously offered to keep these exhibits up to date. The Museum is open to the public.

Those who have seen the new building cannot fail to be impressed by its architectural characteristics, and it serves as a historical reminder to all those who see it from the outside of the great pioneers, many of whom have sacrificed their lives in the interests of tropical and medical science. The names of these pioneers are carved in deep relief at the top of the building in such a manner that they can be read by anybody; a very notable example for London, on which we heartily congratulate those who thought of the idea. Generally speaking, when names are carved on a public building they are so small that they serve no useful purpose, either historical or decorative.

Parts of the School are open to the public, and it will form a centre of post-graduate teaching in these special subjects.

POST-GRADUATE NEWS.

FROM September 9 to September 14 an all-day course of instruction will be provided at the Hospital for Consumption and Diseases of the Chest, Brompton. This course will deal with the various aspects of pulmonary disease and opportunities will be afforded to those enrolling to visit the various departments of the hospital. Fee £3 3s.