SOME MEDICO-LEGAL ASPECTS OF APHASIA.

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IT seems strange that in view of the voluminous literature which has sprung up on the subject of aphasia, there should be so little said about the medico-legal problems which arise in connection with it. I present these fragmentary ideas on the subject in the hope that they may be of some little help to those who may have these problems presented to them and that they may lead others to speak on this important but very difficult subject.¹

In considering the medico-legal problems which may arise in any given case of aphasia it is necessary to determine:

1. Whether the person is sane.
2. Whether ideas can be conveyed to him.
3. Whether he can convey his ideas to others.

In such a study neither the site of the lesion nor the particular division or sub-division of aphasia present need be considered. If it can be shown that an aphasic is sane and that ideas can always be conveyed to him, and that he can, in some manner, unmistakably and invariably convey his ideas to others, it must be concluded that he is competent to make any civil contract.

Ordinarily, in the absence of distinct evidence to the contrary, it may be assumed that the aphasic is sane. In

¹ The most exhaustive monograph on the subject is, so far as I know, that of Mills (*Review of Insanity and Nervous Disease*, December, 1891). Others who have contributed to the subject are Clark (*Proc. Amer. Medico-Psychol. As.*, 1892), Jackson (*Med. Rec.*, August 31, 1889), Hughes (*Alieni. and Neurol.*, July, 1880), Bastian (*Brit. Med. Jour.*, Vol. II., 1887, p. 934), Lichtheim (*Brain*, January, 1885), Ross (*Aphasia: Wood's Med. and Surg. Monthly*, April, 1890, New York).

motor aphasia accompanying hemiplegia, which is the clinical type most frequently seen, the sanity is usually so patent as to be apparent even to relatives and friends of the affected person.

In sensory aphasia (word-blindness, word-deafness, apraxia) there is a far greater simulation of insanity. Indeed, it is not unlikely that some such cases have, even by medical men, been accounted insane when there was no real insanity. Yet in all cases which have to be considered by the medical jurist the presence of sanity should be established by direct evidence rather than be assumed by negative evidence, although the burden of proof will generally lie with those who maintain that an aphasic is insane. Mills,² Ferries, Hughes, Bastian and Clark,³ concur in the view that motor aphasia does not, of necessity, incapacitate the individual. This view will, I think, be generally accepted. Yet, the lesion which causes aphasia must, I believe, be considered as a more or less strong predisposing cause of insanity or mental enfeeblement, just as is the brain condition which produces epilepsy. I have myself seen aphasics pass by slow, imperceptible degrees into dementia.

Not long since, I was called upon to give an opinion in court in a will case. A retired physician, aged sixty, was, one day, seized with a sudden attack of unconsciousness, recovering from which he was found to be hemiplegic and aphasic. Yet, for a few years after the onset of his trouble, he conducted a large business, kept his books correctly; indeed, increased his fortune considerably.

The plaintiffs endeavored to break the will on the ground that whatever his mental condition was immediately after his attack, he had deteriorated mentally and was, at the time of his death, and for some few months preceding it (during which time the will was made), technically insane and incompetent. Witnesses testified

² Aphasia.—*Review of Insanity and Nervous Disease*, December, 1891, p. 164.

³ Proceedings of American Medico-Psychological Association, 1892.

that at the time the will was made his conduct was altered and in many ways peculiar. Shortly before, or after the will was made, a neighbor who called on him to collect a bill amounting to a couple of dollars was tendered by him, in payment, a roll of bills "as thick as the arm." The case was settled before it went to the jury. My own opinion was, that there had probably been some progression toward dementia, but not enough to render him irresponsible at the time he made his will. In fact, a will made by him some years before his attack of aphasia, and which almost tallied with the contested will, was sprung in court by the defendants, and caused a speedy termination of proceedings.

It is well known that some degree of mental impairment usually follows cerebral apoplexy and that this, in many cases, advances into actual dementia; and inasmuch as apoplexy is by far the most frequent cause of aphasia, we may look for mental failure after an attack of aphasia with about the same frequency with which it is to be noted after apoplexy unaccompanied by aphasia. The minor degrees of mental failure, such as slight loss of memory, impairment of judgment or perception which may accompany aphasia, cannot be held to render the individual technically insane. There must be, to constitute insanity, a degree of mental or emotional failure or perversion sufficient to cause a line of conduct in the individual clearly at variance with that prior to the onset of the affection. A slight dementia or mental failure is not enough.

It would unduly prolong this paper to enter into the various tests by which sanity or insanity may be established in aphasia. Suffice it to say, that the ability of all the cortical sense areas to correctly register percepts and of the psychical areas to correlative them and form concepts should be tested. Likewise, the ability of the individual to communicate ideas by means of speech, writing or signs.

Assuming an aphasic to be sane, then the queries arise: Can ideas be conveyed to him? Can he convey

his ideas to others? If neither of these can be done, it would seem, on the face of it, that the individual were insane. Yet I can conceive how such a person might be in such a condition and still, from one standpoint at least, be considered sane. For example, he might be able to take care of his life and health and be harmless to himself and others so that it would be wrong to deprive him of his liberty by placing him in an asylum. But when we come to the question of competency with regard to signing contracts, wills, checks, etc. (the civil aspect of the matter), the aphasic must be considered incompetent and technically insane unless he can both receive ideas from without and convey his own ideas to others. This may be accomplished when but a single line of communication is open both ways. For instance, a sufferer from both sensory and motor aphasia having only one path by which he can comprehend ideas (*e. g.*, the ear), and only one method (*e. g.*, gestures) by which he can communicate ideas may be competent to execute a will or other legal document.

Gowers⁴ says testamentary capacity "must depend, in any given case, on the ability to understand perfectly what is put before the testator, and to express, at least, assent and dissent *with certainty*."⁵

This proposition is substantially the same as that I have just made. But I must agree with Mills⁶ in dissenting from the opinion Gowers⁷ expresses in this sentence: "Word-deafness is incompatible with will-making, because it is impossible to know whether the testator really understands what is said to him." Uncomplicated word-deafness ought to present few difficulties. For the individual could comprehend written or printed language and communicate his own ideas either by speech or in writing. For similar reasons pure word-blindness would not render the aphasic incompetent.

⁴ Diseases of the Nervous System, Vol. ii., p. 125.

⁵ Italics mine.

⁶ *Loc. cit.*

⁷ *Loc. cit.*

But given a case in which both word-deafness and word-blindness existed, ideas might still be conveyed to the individual through pantomime, and the senses of touch, taste and smell, but he could not be made to comprehend the nature of a legal document through these channels and would certainly be incompetent to execute a will.

In testing an aphasic very varied tests should be employed. For he might comprehend certain written or spoken words and figures and fail on others. The only certain way of knowing that he comprehends ideas propounded to him is to receive from him written, spoken or gesture repetition of the idea, or else an intelligent or expected action in response.

In conclusion, I will relate a particularly puzzling case I examined some few months ago.

A lady (about sixty-five), possessed of a considerable estate, the management of which she personally attended to, was one day stricken down by a cerebral hemorrhage and she suffered, in consequence, from right hemiplegia and almost complete motor aphasia. Apparently, her reasoning faculties were but little, if at all affected. She could comprehend some, but not all ideas presented to her by speech or writing. In turn, she communicated many ideas to others by means of the gesture language and the few words which still remained at her command. As is so often the case, the paralysis of the right arm precluded attempts to ascertain the existence of agraphia. There seemed to be no sensory aphasia. In the course of a few weeks she made some slight improvement—regained the use of a few more words. At the same time, the members of her family came, through study, to appreciate better and more readily her sign language. In the meantime her business interests began to suffer, owing to her inability to sign certain papers and her doubtful understanding of contracts, etc. I was asked for an opinion as to whether she was competent to continue the management of her business affairs. I made several examinations in which I applied many and various tests to determine her sanity and her ability to

comprehend and express ideas with certainty. As the result, I became convinced that she was sane and that while she comprehended and expressed clearly enough certain ideas, she just as clearly failed to comprehend or express others. In some instances, her failure to express ideas disappeared as I began better to understand her gestures and the meaning she placed on the few words she employed. One test which I made, I will relate as I considered it a very important one as bearing on her case. A two, five, ten and twenty dollar bill was placed before her. She was told to pick up the five, twenty or two dollar bill and hand it to one or another of the persons about her. In any case in which she failed to pick up the bill named or hand it to the person designated, the request was presented to her in writing. Generally she did correctly what was asked of her, but not always. These tests were again and again repeated, but never without eliciting several failures. I finally arrived at the conclusion that she was incompetent to enter into civil contracts, and in a technical sense, insane. The family naturally disliked the idea of having a commission declare her insane. Her lawyer suggested that she might be able to delegate to some one the power of attorney. So the matter was explained and laid before her. She was asked to appoint some one. She designated two of her children. She was asked several times, on different occasions, to delegate to some one the power of attorney. She always by unmistakable signs designated the same two children she had indicated the first time she was asked. I concluded that she certainly made this designation understandingly. The two children referred to were subsequently duly authorized to use the power of attorney.

It is likely that she would have been able to have given intelligent assent to many single business propositions presented to her; but in view of the tests I had made, I felt confident that she was incompetent to receive and pay out money constantly as had been her custom before the apoplexy and as her business required.

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