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ORIGINAL ARTICLES.

RECENT JUDICIAL EVOLUTION AS TO CRIMINAL RESPONSIBILITY OF INEBRIATES.

Read in the Section of Neurology and Medical Jurisprudence, at the Forty-third Annual Meeting of the American Medical Association, held at Detroit, Mich., June, 1892.

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By the common law of England it was conceded the words "*non compos*" meant a total deprivation of reason. Lord Coke divided it into four parts or as he called them "manners."

1. The idiot or fool. 2. He who of good and sound memory at birth lost it by visitation of God. 3. Lunatics who have lucid intervals and sometimes of good sound memory and sometimes *non compos mentis*. 4. By his own act as a drunkard. So that drunkenness at and by common law, under certain circumstances, was a form or species of insanity. By the same common law it was held: 1. That the drunkard was responsible for all his acts criminally, even if the state of drunkenness was such as to make him insensible to his surroundings and unconscious of his acts. 2. That drunkenness instead of being any defense to a charge of crime committed while in a state of intoxication, was not only no defense but that it aggravated the act.

These doctrines were upheld by the English courts in *Damaree* case 15, St. Tr. 592; *Frost* case, 22 St. Tr. 472; *Rex v. Carroll* 7 c and p. 115; and these doctrines have been held likewise in nearly all the American States.

In Alabama, *State v. Bullock*, 13 Alabama 413; in California, *People v. King*, 27 California 507; in Connecticut, *State v. Johnson*, 40 Connecticut 106; in Delaware, *State v. McGonigal*, 5 Hartford 510; in Georgia *State v. Jones*, 20 Georgia 534; and in nearly every American State, similar decisions have been made.

The common law which would not uphold a deed, will, or contract, made by a drunken man in an unconscious state of intoxication, would hold the same man criminally liable for every act constituting a violation of the criminal law. To-day we are regarding those views as legal curios and relics of the past. The law should have its museums for the preservation of its antique anomalies. A silent unconscious change has been wrought in the law, not by legislation, but by the growth of ideas and the diffusion of knowledge. Insanity is now demonstrated to be a disease of the brain, of which it is itself an outward manifestation. Inebriety is also shown to be a disease of the man manifesting itself through brain indications, which demonstrate it to be a form of insanity wholly dominating the volition and beyond the power of the victim to control and it is now so

treated. The essential element of crime *intention* hardly fits into the acts of the unconscious inebriate, who while *blind* or *dead* drunk, kills an innocent victim, and the absence of motive like the absence of *intention*, are missing links in that chain, which the law exacts, in regard to all criminal action. It would be next to impossible now, to find a judge willing to charge a jury, that a crime committed by a man in a state of intoxication, in which the accused was unconscious of his act, or incapable of either reflection or memory should be placed on a par, with one fully comprehended and understood by the perpetrator.

Buswell says in speaking of the old doctrine of drunkenness being an aggravation of the offense "it is apprehended that this is the expression of an ethical rather than a legal truth." (Buswell on Insanity). Such considerations compel us to inquire: What is law? There are two schools of thought regarding it.

Webster, the great expounder of the American constitution is credited with saying, "Law is any principle successfully maintained in a court of Justice." This represents one school.

Richard Hooker in his ecclesiastical polity represents the other, he says of law: "There can be no less acknowledged, than that her seat is the bosom of God, her voice the harmony of the world, all things in heaven and earth do her homage, the very least as feeling her care, the greatest as not exempted from her power." The gulf intervening between these two extremes is as wide and deep as that which divided Abraham and Lazarus in the parable of our Lord.

The framers of the New York Penal Code, without the courage to hew down the error of the old doctrine, engrafted thereon a provision, that enables a jury now in that State, to pass on the *motive* and the *intention* of the unconscious and wholly insensible inebriate; so that by law now in New York since the Penal Code of that State, a conviction would in such a case be well nigh impossible.

How have the English judges met the question? In 1886, Mr. Justice Day in *Regina V. Baines* at the Lancaster assizes, charged a Lancaster jury: "That if a man was in such a state of intoxication that he did not know the nature of his act or that it was wrongful, he was insane in the eye of the law; and that it was perfectly immaterial whether the mental derangement resulting from such intoxication was permanent or temporary." In 1887, Chief Baron Palles, held that "if a person from any cause, say long watching, want of sleep, or deprivation of blood, was reduced to such a condition that a smaller quantity of stimulants would make him drunk, and that would produce such a state if he were in health; then neither law nor common sense could hold him responsible for his acts, inasmuch as they were not voluntary but produced by disease."

As long ago as 1865, in the case of *Watson* tried at Liverpool for the murder of his wife before Baron

Bramwell, the evidence showed that he was laboring under delirium tremens. After the act he grew calm and said that he knew perfectly well what he had done and that his wife was in league with men who were hidden in the walls. "Baron Bramwell, who favored hanging insane men who committed homicides when acting under an insane delusion, if of sufficient intelligence to understand the nature and quality of the act and its consequences, tried the case and charged the jury, "That there were two kinds of insanity by reason of which a prisoner was entitled to be acquitted; probably the jury would not be of opinion that the prisoner did not know the quality of his act, that it would kill and was wrong, but it was still open to them to acquit him, if they were of opinion that he was suffering from a delusion leading him to suppose that, which if true, would have justified him in the act; one more remark he would make, viz.: That drunkenness was no excuse and that a prisoner cannot by drinking qualify himself for the perpetration of crime, but if through drink his mind had become substantially impaired, a ground of acquittal would then fairly arise.

The prisoner was acquitted. Under the English law, there is no right of appeal to the convicted homicide as in the American States, and so it is difficult to find the decision of English higher courts on the questions involved in the discussion.

In the American States no person is executed except on the decision of the highest court of the State if the accused desires it and appeals; in England the appeal does not lie as a matter of right and so the opinion and dicta of the English trial judges form the real body of the law of England upon these questions.

Baron Bramwell undoubtedly regarded Watson as entitled to an acquittal, and the case shows a remarkable result in this respect; had he been insane and committed the homicide under delusions which dominated his will and controlled his action, he would have been convicted if he had sufficient intelligence to understand the nature, and the quality of the act, but the drunkenness which had caused the attack which resulted in delirium tremens with a diseased condition of the brain also resulted in a delusion, which controlled his mental powers, so as to render him irresponsible at law.

In 1888, Baron Pollock held, that the law was the same where insane predisposition and not physical weakness was the proximate cause of the intoxication." The English Home Secretary, Mr. Mathews is one of the ablest men connected with the English Government.

Under the English system he has the power to commute or modify the sentence of the courts in criminal cases, and he exercises it with as much effect and more in many cases than would the reversal of the Appellate court, if the right of appeal existed.

No eye in Great Britain sees more clearly or more intelligently the action of the criminal courts than his. It is his province to correct errors and redress grievances and abuses, if such exist or occur in the criminal jurisprudence of Great Britain. He has recently named a commission composed of Mr. J. S. Wharton, Chairman, Sir Guyer Hunter, H. P. Mr. E. Leigh Pemberton, Assistant under Secretary of the Home Department: Mr. Daniel Nickolson, Super-

intendent of the Broad Moor Criminal Lunatic Asylum, and Mr. C. S. Murdock head of the Criminal department, to inquire into the best mode of treatment and punishment for habitual drunkards.

Mr. Matthews says regarding the appointment of this committee, "Great difference of opinion has arisen as to what kind and degree of punishment for offenses committed by habitual drunkards would be the most effectual, both as a deterrent and with a view to the reformation of such offenders; it appears to me that advantage would result from an inquiry being made into the subject." It may be fairly claimed so far as the British Islands are concerned that the old common law rule no longer is enforced there, and that inebriety as a disease is now not only recognized as an existing fact, but that the jurisprudence of that country is receiving such modifications as are necessary to fit it, for the advance made by scientific research.

We are doubtless near similar results in the American States.

ON CHOREA, VIEWED FROM THE STAND-POINT OF COMPARATIVE PATHOLOGY,

WITH AN ENTIRELY NOVEL THEORY AS TO THE CAUSE OF THE MUSCULAR TREMOR AND INCOORDINATION, AND A NEW THERAPEUTICS.

Part of a Clinical Lecture delivered February 3, 1893.

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[Stenographically reported for THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION.]

Gentlemen:—I am going to occupy your attention this morning with the discussion of a subject which is of great scientific interest, and which may prove to be a discovery of considerable practical importance. Some years ago, as you know, I gave much attention to the subject of the physiology of the choreic movements. At that time, I made a number of experiments upon the lower animals, especially upon dogs, and succeeded in demonstrating, in the dog, that these movements had their origin in the spinal cord. I found that in the choreic dog, after dividing the spinal cord in the dorsal region, the movements continued in the posterior extremities just the same as before, save that, after the division of the cord, the muscular movements in the fore-limbs and hind-limbs were no longer synchronous; that is to say, rhythm did not agree as before.

On coming to apply these observations to man, I must tell you that we have in the human subject two varieties of choreic movements: in one form, they correspond with those in the lower animals. This is the variety known as "St. Vitus' dance," which is rare in adults but common in children, and undoubtedly affects the spinal cord, as I shall presently explain. The second form is common among adults but rare in children. In it the movements are more violent and even convulsive. These have their origin in the cortex of the brain, from minor lesions in the motor areas; but there may be widespread and destructive lesions in the motor regions of the cortex. I may illustrate this by a case that I saw several weeks ago. It was that of a boy, who was found in an out-house, unconscious, pulseless, appar-