ARTICLE II.

ON A COURT OF MEDICAL EXPERTS IN CASES OF INSANITY. "*The advantage and expediency of establishing by law, in each State or district, a board of commissioners of experts, for the purpose of investigating and testifying in trials, criminal and civil, where the questions of mental soundness are involved.*" By WM. H. STOKES, M. D., Physician to the Mount Hope Institution, Baltimore, Md. *Read before the Annual Meeting of Medical Superintendents of American Institutions for the Insane, held at Baltimore, May 10, 1853.*

It would be scarcely possible unduly to exaggerate the difficulties and embarrassments experienced, in most cases, by juries, where the plea of insanity is advanced in extenuation of crime, and where it becomes, consequently, necessary to examine medical witnesses for the purpose of enlightening them on points, concerning which they cannot be expected, by any previous knowledge, to be acquainted. Hence, the necessity for the inquiry, whether the ends of justice would not be promoted and juries assisted in the performance of their responsible duties by the appointment of a Board of Commissioners of experts, whose duty it should be, after a thorough examination of each case, to testify as to the validity of the grounds on which the plea rests.

It will conduce to a clear understanding of the important relations of this subject, and assist us in arriving at

a satisfactory conclusion on the question at issue, if we first pass briefly in review the course of procedure now generally adopted in our courts whenever the irresponsibility of an individual is sought to be established on account of a supposed mental impairment. By thus considering the operation of the present system, and the results flowing from it, we shall be better enabled to detect the inconsistencies and evils, if any, attaching to it.

In the majority of the States of this Union, as well as throughout most of Europe, when an individual has committed an offence, and insanity is alleged in his defence, one or more medical men are either summoned to attend at the trial, and hear the evidence of witnesses, or they are directed to hold an interview with the accused in the jail previous to the day of the trial, and from such opportunities of information, they are called upon the witness' stand to deliver an opinion as to the existence of insanity at the time of the commission of the act. The medical men are generally selected, either because the counsel happen to be acquainted with them, or because they are supposed to have had some knowledge of the accused. The selection is usually made irrespective of any peculiar fitness on their part. Their capability of forming a just, accurate, and unprejudiced opinion on the question at issue, it is well known, but rarely constitutes the ground of their appointment. The effect of such a course can be readily conceived. It constantly happens that as this matter is entirely under the control of the counsel, and the selection rests with him, motives of expediency alone govern and influence his actions. He is therefore careful to secure such professional men as are most likely to subserve his particular purpose, and they, flattered by the compliment thus paid their superior discernment, and the temporary importance it gives them,

are almost unconsciously led, by a little adroit preparation, and a statement of the facts it is expected to prove, to entertain views in accordance with the side the lawyer advocates. That there exist in our profession not a few, who are ready to compromise their independence under such circumstances, can hardly be denied—men who do not hesitate to testify for or against the insanity of an individual accused of a criminal offence, both without possessing a sufficient acquaintance with mental diseases to enable them to form a correct opinion, and without having enjoyed opportunities for that thorough and repeated examination of the case in question, which in numerous instances, is absolutely necessary, before an accurate and trustworthy judgment can be formed. Can we be surprised then, that men thus selected and summoned, without reference to any special qualifications, and without facilities for an adequate investigation of the case, to give evidence upon a point oftentimes of the most intricate and difficult character, instead of expressing the results of a dispassionate examination of scientific facts, but reflect the views and opinions of the counsel who require their attendance?

Even should the medical man be desirous of forming his opinion free from all prejudice and improper bias of this nature—should he wish to enter upon the examination of the accused uninfluenced by other considerations save the wish to arrive at the truth, and to discharge honestly and conscientiously his duty, he still finds himself embarrassed at the outset, by a want of familiarity with the subject of insanity. The majority of physicians have not given that attention to this department of disease, and have not received the necessary mental training, to qualify them for this duty. *Maladies of the mind*, with their multiplicity of shades and varieties, have con-

stituted no part of their medical education. That class of diseases, which is of all others the most intricate and obscure, and which to comprehend in their countless shades of difference and varieties of form, requires the nicest discrimination, the most accurate judgment, and the closest observation—this class has received no share of their attention and study. They are generally free to confess their want of all practical knowledge and experience in regard to them, and do not hesitate to abandon their treatment to others more conversant with them. The impression very justly prevails in the profession, that mental diseases require for their successful management, separation from home and its influences, and removal to an institution possessed of appropriate arrangements and means for their treatment. Hence few are willing to undertake to conduct the medical treatment of a case of insanity amid the inauspicious circumstances surrounding him at home. It is not therefore surprising, that practitioners in general are destitute of a practical acquaintance with this class of diseases. And yet in a case involving the most important interests—the reputation or the life of a fellow being—when his irresponsibility for an act of criminality is advocated on the ground of mental unsoundness, many flatter themselves into the belief of their being perfectly competent to express an unequivocal and decided opinion. In consequence of his want of familiarity with the intricacies and obscurities which invest the subject of insanity, and carried away by a dangerous presumption, and the dexterous management of ingenious counsel, it frequently happens that the physician is led to the expression of sentiments abounding in inconsistencies and absurdities. The reports of trials, in which the question of insanity is involved, present no scarcity of instances illustrative of the truth of this remark.

Then again, admitting the medical witness to possess a practical knowledge of insanity, it is almost impossible for him, as the matter is now managed, to arrive at a conclusion that should be considered satisfactory and deserving of confidence, in so important a case. As if to surround the accused with all the circumstances best calculated to embarrass the examiner, there exists the most unaccountable deficiency of every proper facility and opportunity for investigating the case. He is, perhaps, directed by the counsel to visit the arraigned party at the jail, and there, in the presence of one or more deputies, and surrounded by numerous other culprits, he is expected to determine at a single interview, and after a brief examination, the mental state, as to soundness or unsoundness, of the individual in question. If actually insane, the medical man may be again and again baffled in the most ingenious attempts to elicit it. In these formal interviews it may often happen, that the real condition of the mind, and well-marked and characteristic delusions, may be concealed from the most shrewd observer, and may successfully elude the best directed efforts to draw them forth. We all know with what dexterity the insane man, if he has a sufficient motive, can resist the manifestations and display of his disease,—how rationally he will discourse,—with what propriety he will conduct his movements and actions, and how very different he may appear when left to himself and unconscious of being observed.

Again, the time when the inquiry is conducted may be inopportune. Many only display their mental impairment under peculiar circumstances, at particular periods, and when a certain cord of feeling or train of thought is touched. In the absence of these, it may be impossible at a casual glance and on a hasty examination, to detect

the real malady. How inadequate are such means of inquiry, as those above alluded to, for the detection of moral insanity—those numerous instances in which the insane manifestation is merely found in the conduct, habits and acts, the reasoning powers being unaffected! No hurried examination will here suffice for determining the true nature of such cases. Here the most profound acquaintance with insanity in all its varying characters, and the nicest discernment, with all the advantages of a searching and repeated scrutiny, will be required to distinguish a mere eccentricity and irregularity of conduct, from that change of character and perversion of feeling which are the effects of disease. How lamentably deficient are the provisions of the law for the elucidation of all such cases, must be apparent to every one. However competent may be the medical witness for the task, the ends of justice are at present sure to be often defeated, in consequence of the want of suitable arrangements and proper opportunities, provided by law, for a satisfactory investigation and appreciation of the case. To test and determine a question so replete with interest and importance as that relating to the true mental condition of an individual accused of a criminal offence, and, for whose release from the penalty attaching to it, the plea of insanity is presented, we would naturally suppose that the law would afford every facility for ensuring a free, full and dispassionate examination. For this purpose numerous visits, made at different and unexpected periods, when the accused could be seen alone and often, and at times when he is not aware of being observed, are imperatively necessary; and a wise and enlightened administration of the law should not be satisfied with anything short of this. But the present system and course of procedure are wholly at variance with

what is here shown to be required by the very nature of the case, and the essential characteristics of insanity.

Having, in the preceeding remarks, enumerated some of the evil consequences and disadvantages attending the practice at present authorized and countenanced by law, let us now proceed to examine into the expediency and propriety of the court establishing a board of commissioners of experts, constituted of persons wholly disinterested and practically acquainted with mental disorders, for the purpose of investigating and testifying in trials, criminal and civil, when the questions of mental soundness are involved. Having already, in the course of the foregoing remarks, presented some of the objections to the practice of taking opinions on this subject from witnesses specially selected by those who are to be benefited by their evidence, and who are professedly incompetent, by reason of a want of familiarity with diseases of the mind, and of sufficient opportunities for examining the case in question, it would be an unpardonable trespass upon the time and patience of this association, to enter upon a labored argument to demonstrate how much better the ends of justice would be subserved by leaving such questions to be decided by a board of experts of competent knowledge, and appointed under proper restrictions as to independence, &c. Here we have the only security for the proper performance of this duty, and it must be apparent, that, only under such an arrangement, can it be possible to ascertain satisfactorily the mental condition of a prisoner suspected of being insane.

By the appointment of such a board, consisting of two or more individuals entirely independent in their action, wholly disinterested and free from personal bias, the most essential aid and service would be rendered the

jury. It would be relieved of a weight of responsibility and difficulty that must be felt by every enlightened and conscientious jury, to be sorely oppressive, when required to decide on a case, amidst the conflicting opinions and contradictory statements of the medical witnesses.

To possess for their guidance, in a case of doubtful insanity, the matured results of a full and patient examination, made by a body of men who are known to have enjoyed unusual opportunities for studying the character and conduct of the insane, and who possess the qualities of mind necessary to enable them to profit by their observations and experience, the arduous task devolving upon them would be shorn of the fullest measure of its embarrassment. In the opinions of such, perfect confidence could be reposed, as it stands to reason that they who have made the ever-varying forms of mental disturbance their immediate care and study, must be better qualified to weigh the evidence for and against the reality of the alleged insanity, than those who have never had such opportunities, and who are consequently devoid of all practical knowledge of the subject. Does any one entertain the fear that the views emanating from such a source might exercise an undue ascendancy, and encroach upon the legitimate functions of the jury? It is difficult to imagine any just ground for such an apprehension. It is impossible to perceive what danger or inconvenience could result from the proposed arrangement on this score. The evidence of the board of experts would not decide the case; their opinion would go to the jury with the rest of the testimony, after having been analysed and sifted by the judge, and the jury would estimate its value in accordance with their oath. Far from its interfering, in the slightest measure, with the prerogatives and peculiar functions of the jury

box, it would still devolve upon the jury to consider and decide upon the true value and correctness of the conclusions thus arrived at. It has been well remarked that "the proper duty of the medical witness is to assist the court with his experience and advice to arrive at a just decision in the particular case ; it is not to say what symptoms are most frequently observed in insane persons, or to deliver abstract opinions on the nature of insanity generally, but to deal with the individual case ; to give the court reasons why he adopts the conclusions at which he has arrived ; to state, in fact, what are the particular circumstances which have led him to form his opinion of the case ; in other words, to say why he thinks the accused sane or insane, as the case may be, and then leave the jury to determine whether the reasons are sufficiently satisfactory to induce them to adopt his opinion."* In the adoption of this course of procedure, there could be no good ground for a fear of their usurping the province of the jury. They would merely afford such assistance in guiding the jury to a right decision, which their more enlarged experience and practical acquaintance with a class of diseases the most difficult to understand, peculiarly qualifies them to yield ; and, indeed, without such assistance, there is the strongest probability "that they will be left to form their conclusions with the great danger to the cause of humanity and justice, of thinking more of the nature of the offence, than of the probable irresponsibility of the accused." That the danger here alluded to is not chimerical, abundant testimony is not wanting. The annals of criminal jurisprudence, unfortunately, teem with instances portraying the sad effects of forming a verdict without due reference to the state of mind in which the act was committed.

* "Remarks on the Plea of Insanity, and on the Management of Criminal Lunatics," by Wm. Wood.

The clear, positive and practical views, emanating from a board so constituted, would thus tend to the protection from the extreme penalty of the law, of those whose acts have rather had their source in the afflictive dispensations of Divine Providence, than their own criminality. Their tendency would be to relieve such cases of much of the difficulty and perplexity incident to them, and, at the same time, to lighten the oppressive duties resting upon the jury. There would seem, therefore, to be no well-founded objection to such a change being engrafted upon our modes of criminal procedure, that when the plea of insanity is presented in extenuation of an offence against the laws, and the court entertain reasonable doubts of the person's sanity at the time, that he should be placed under the daily observation and surveillance of one or more experts, whose report should be received in evidence at the trial. The very fact of the existence of such a board, would have the salutary effect of deterring individuals from attempts to simulate insanity, for the purpose of escaping the just penalty of the law. Offenders, knowing they would be subjected to the keen scrutiny and searching analysis of those too long familiar with the genuine disease to be imposed upon or deceived by efforts to counterfeit it, and that every act, word and movement would be systematically watched, few would have the effrontery to subject themselves to so severe an ordeal. With such a legal provision for satisfactorily establishing or disproving the existence of insanity, members of the bar too would be less ready to plead this defence. No lawyer would be found so regardless of his own reputation and interests, as to hazard the attempt to shelter his client from the punishment attaching to his crime, without well-founded grounds for believing it could be successfully urged and sustained.

It would also tend to allay the morbid sensibility existing in community in reference to the dangerous consequences of the too ready admission of this plea. By such a salutary enactment, the public would possess a guarantee that the shield of protection, thrown by enlightened humanity around the unfortunate subject of a disordered intellect, would not be abused. The suspicions of the public upon this point would be removed, and that deep-rooted and growing prejudice with which every jury is now disposed to view this ground of defence, would be obviated or corrected. Thus in every view of the case, the cause of justice would be advanced and promoted, and by its general adoption, the plea of insanity would at once be rendered powerless of evil. In France, and in most of the German States, this course of procedure has been successfully engrafted upon their judicial proceedings, and its advantages and expediency are there recognized and established. In the State of Maine, this change has also been enacted in the ordinary methods of criminal procedure in cases where the accused is alleged to be insane. The act provides that, "When any person shall be charged with a criminal offence in this State, any judge of the court before which he or she is to be tried, on notice that a plea of insanity will be made, or when such plea is made in court, may, if he deem proper, order such person into the custody of the Superintendent of the Insane Hospital, to be by him detained and observed, until the further order of the court, in order that the truth or falsehood of the plea may be ascertained." A similar provision established by legal enactment, in all the different States, would doubtless tend greatly to further the cause of justice, and to relieve this department of criminal jurisprudence of one fertile source of mischief and perplexity.