whether she had carried out her intentions with success. We say we saw *one*, but cannot recall an instance of a second specimen of this rare genus. A patient of the reviewer once sewed up an incised wound in the leg of a wood-chopper, because there was no doctor within many miles. She made a great effort to do what she knew was required, but the strain against nature sent her to bed, sick, for a day afterward. And thus it must be in the practice of medicine, if refined women are to engage in it. If they do not come from this class, where is the advantage of their attendance on the refined of their own sex, other than the mere difference of the sex itself?

Dr. Aveling, whilst gladly welcoming to the profession talent of either sex, says (page 159): "Their number will probably never be very great, for, as in the field of battle there are many impediments to women becoming distinguished, so also in the fight against deadly ailments have they many disadvantages. Still, as there have been heroines in the field who have fought valiantly, so have there been, and may there be, women in the profession capable of working successfully in the cause of suffering humanity." Yes! but the Joans of Arc, and Mary Pitchers, have been few and far between, as we take it will be the female surgeons of the future, or even the instrumental obstetricians.

R. P. II.

ART. XVIII.—*On the Scientific Value of the Legal Tests of Insanity.*
By J. RUSSELL REYNOLDS, M.D., F.R.S. London: 1872. 8vo. pp. 52.

IN this little brochure, which was read last summer before The Metropolitan Counties Branch of the British Medical Association, the writer exposes by the usual facts and arguments the insufficiency of the legal tests of insanity to make the plea of this disease available to all who are justly entitled to offer it. Though neither the facts nor his manner of presenting them are new by any means, yet the object in view would justify even a humbler attempt to enlighten his professional brethren. Lawyers, he says, make use of tests of insanity that do not represent the conclusions of science, and which thereby lead to the sacrifice of really innocent men. The proper reform he proposes to effect by means of "a conference between the medical and legal professions" for "the purpose of taking such steps as may be thought most conducive to the end in view." In this conference, he suggests that the following points should be considered:—

"1. The arrival at a better definition of insanity generally.

"2. A revision of the tests of insanity; (a) that based on the existence of delusion; (b) that turning upon the knowledge of right and wrong, and of the consequences of actions.

"3. An examination, in all its bearings, of the doctrines of partial insanity and its responsibilities.

"4. A revision of the distinction between responsibility for criminal acts and capacity for civil acts.

"5. An inquiry into the mode of dealing with those whose mental condition is impaired, but who are not, in the popular sense of the word 'insane.'

"6. An examination of the possibility of dealing with those bordering upon insanity, as at present recognized.

"7. A determination of the mode to be adopted in dealing with cases, both civil and criminal, when insanity is alleged as a plea of innocence, or as a bar to disposing power.

"8. The possibility and desirability of doing away with the present mode of investigation in a court of law; viz., by calling skilled witnesses on different sides.

"9. The possibility or desirability of a court or of a commission to report on all cases of impending legislative inquiry, in regard to those who are alleged to be insane."

A more frequent extrajudicial interchange of thought between members of the two professions on this subject, would, very likely, lead them to correcter views of the nature of insanity, but we can scarcely believe that a formal conference would help to improve the practice of the law respecting it. In some of the most important questions connected with the forensic relations of insanity, physicians are far from being agreed among themselves. While some believe, for instance, that mental disease may be confined exclusively to the moral or emotional sentiments, the pure intellect remaining sound, others are no less confident that insanity necessarily implies intellectual derangement, latent, if not active and overt. Some who have had the largest opportunities of observation believe that mania may suddenly come on, and as suddenly go off; while by others, *mania transitoria* is regarded as no better than a myth. Some believe that in every case of insanity all legal responsibility for criminal acts is annulled; while others contend that in the inferior grades of severity the patient may be justly held accountable for his acts. With such diversity of opinion, how can they present any common ground on which both professions may stand? Nor does it appear that lawyers are at all nearer complete agreement in regard to the significance and sweep of certain rules of law. One judge lays down a test of irresponsibility, and accordingly the prisoner is convicted and hanged, while at the same term of the court, perhaps, another offers a different test, though sanctioned by equal authority, and the prisoner, no more insane than the other, is acquitted. The habits of mind, the intellectual training, the character of their studies, which characterize the two professions, are so widely different as to render them incapable of appreciating the full force of each other's conclusions. The physician relies upon facts and refuses to move a step without their aid. The lawyer rests upon precedent, and if he invokes the support of physical science, as he sometimes may, he is not particular as to his facts, whether new, or old and obsolete.

Even if these various disagreements were far less than they really are, we can see no more likelihood of the parties coming together in respect to the objects sought to be obtained in the author's first "point." We doubt, indeed, if he fully comprehends the situation himself. Surely, if he does, he would not seriously ask for a "definition of insanity." Although pathology is to be studied in the spirit of the natural sciences, yet, unlike them, its results do not admit of a very precise and orderly arrangement. In a few words the botanist characterizes a group of plants so definitely as to distinguish it from all other groups in the universe. Can we do that with diseases? Is there any disease in the whole nosology, to which we can assign certain characters by all of which it is manifested in every case, and which are not to be found in any other disease? If Dr. Reynolds were put on the witness-stand and asked to give a definition of consumption, would he succeed any better than the luckless expert does who is asked for a definition of insanity? We trow not. We mean, of course, by definition, a form of words applicable to every case of the disease in question, and to no other. When we consider the nature of insanity, it is strange that any pathologist should suppose that it may be defined. We know

generally that mental manifestations are dependent on the brain, and that their derangement necessarily implies derangement of the vital movements of that organ. But the brain is a large and complicated organ, every part of which has its specific purpose, and the aberrations of the mind are as various as the characters of men. The mental derangement, therefore, must vary with the portion of the brain affected, for no one supposes that in every case of insanity it is either the whole brain, or a specific part of it and always the same part, in which the morbid movement is seated. It is impossible, therefore, in the nature of things, that the different forms of mental disease, springing as they do, from different organs or different parts of the same organ, should present any notable property common to all. We might as well expect that the diseases of the heart, seated, as they are, some in the valves, some in the membranes, some in the muscular tissue, could be distinguished from all other diseases, by some symptom or sound common to them all. It is not strange that, in the investigation of a case of doubtful insanity, in which every suspicion of disease is met and silenced, if not completely suppressed by traits witnessed in understandings of admitted soundness, we should long for some convenient formula that would remove all our doubts and save us from mistakes. But nature grants few such favours to the pathologist, whatever the field of inquiry which he may cultivate. The beginnings of disease are often obscure; it may at any stage be marked by peculiar, or exceptional, conditions; it may be deprived of its wonted aspect by the influence of temperament or habits, so that with all the aids and appliances of modern investigation, he is obliged to rest on an uncertain conclusion. The student of mental pathology, in the midst of his embarrassments, has no reason to envy the lot of those who deal with the grosser elements of flesh and blood. In view of his limitations, he need not discomfort himself because of his inability to find a definition of insanity.

Neither in regard to the second "point," could we look for agreement in the proposed conference of medical and legal experts. Although delusion is one of the most common and prominent manifestations of insanity, yet who can speak with certainty of its medico-legal consequences? Were the question put to every physician in the land, to what extent does delusion affect the mental manifestations beyond the sphere of its immediate operation, what would be the replies? Some would say that with the exception here mentioned, its presence would not necessarily impair the moral or intellectual capacity. Here and there one might be found ready to declare that it might vitiate the whole action of the mind, even in cases where its influence is least perceptible. Others—and they would be the much larger part, if they spoke without reserve—would declare themselves quite unable to answer the question at all. Less diversity on a question which must be settled in the wards of a hospital could not be expected from lawyers. On one memorable occasion, the whole bench of English judges put their heads together for the purpose of making an authoritative answer to this momentous question, with no other result but that of stultifying themselves. They said that a person is irresponsible for what he does under the influence of delusion, just so far as he would be were the belief true instead of false. That is, if he believes delusively that his brother had attempted to poison him once when ill, the law would hold him harmless if he called his brother hard names and slapped him in the face, because that would be a reasonable retaliation had the charge of poisoning been true; but, if he killed him or broke his bones, he would be liable

to the usual punishment of murder and assault. In other words, being insane, he is justified in acting insanely within certain limits, but beyond them his conduct must conform to the strictest requirements of sound reason. When doctors shall have more thoroughly studied the operations of the disordered mind, and lawyers become willing to follow the teachings of science rather than old precedents and metaphysical subtleties, then they may be able to learn of one another and agree upon some better conclusions respecting the legal consequences of delusion. Until then we shall have to go on in the old way, acquitting some offenders, and hanging others who though equally innocent are judged by a different rule.

Our author's third "point" is that on which there is now the greatest diversity of opinion; because while everybody feels entitled to form an opinion on the strength of a little superficial observation, a few only have reached their conclusions by long and thoughtful study of insanity as exemplified in real life. This appears in the vague and imperfect notions attached to the term partial insanity. To the practised observer of the insane it means something very different from what it does to those who see them occasionally, and witness only such manifestations, as by force of habit, they evince in common with everybody else. In the person who discourses so coherently and even sensibly on the topics of the day, the latter see only a very local and limited lesion which has left the constitution of the mind unimpaired and capable, with this little exception, of exercising its usual powers, while the former, by his more abundant means of observation, has learned that the disorder, apparently so narrow and superficial, has touched the inmost springs of thought and feeling. At a period when insanity had been but little studied, it is not strange that its effect on the mental operations should have been greatly mistaken, but even now, in this period of large hospitals and nice pathological research, we hear those old notions echoed back from the high places of both the medical and legal profession. That they form the current belief of ordinary people, we have painful truth almost every day. A year or two ago, a most shocking act of homicide and suicide was committed in this city by a very respectable man of unblemished reputation; but, because he had seemed to most of his neighbors and acquaintances to act much like other men, the idea of his being insane, though he had murdered his wife and children and then drowned himself in the river, received but little countenance from the common speech of people or the judgments of the public press. In civil cases there is less diversity of opinion in regard to the principle that should govern the effect of partial insanity than there is to its practical application. Here the doctrine is, mind sufficient for the purpose in question, and the act itself furnishes the measure of mind required. But in regard to criminal cases, every conceivable doctrine is still professed and finds its believers among the dignitaries of the learned professions. While some would scarcely admit the plea of insanity at all, others would allow it the widest possible scope; and between these extremes, there is every variety of doctrine besides. How any compromise can be effected between such conflicting views, we cannot understand. We, therefore, could expect no benefit from such an "examination" as Dr. Reynolds proposes, without a larger clinical experience of insanity than those who would make it are likely to have. It is from that source alone that we can now look for a solution of those vexed questions that bar the way to any advance in this department of medico-legal knowledge.

In regard to "the distinction between responsibility for criminal acts and

capacity for civil acts," the subject of our author's fourth "point," there certainly is need enough of its being revised. It is curious how persistently the great luminaries of the English law, generation after generation, have insisted on this distinction in its strongest features, not hastily or inadvertently, but clearly discerning if not rightly estimating its monstrous consequences. "Although a man may be incapable of conducting his own affairs," said Sir Vicary Gibbs in the trial of Bellingham, "he may still be answerable for his criminal acts," and this he declared "upon the authority of the first sages in the country and upon the authority of the established law in all times." To a man partially insane, the law says, you shall not make a will, nor alienate a piece of land, nor marry a wife, but if you commit a criminal offence you will be answerable for its consequences like other men. The reason for the distinction is, no doubt, that in civil cases, the mental capacity may be measured and gauged, so that a person competent for one thing may be pronounced incompetent for another; while in criminal cases, the only question is, guilty or not guilty. Dr. Reynolds gives us no clue to his own wishes on this subject, and we are left in doubt whether he would have the law establish a graduated scale of mental capacity with a corresponding scale of penal accountability, or pronounce insanity, in any and every form and degree, a sufficient excuse for crime. This, however, is the only alternative implied in such a revision of the present rules of law as he suggests. Now, even if the law should adopt, in general terms, the principle of a graduated criminal capacity, who will contend that it could be satisfactorily applied in practice? Certainly those most familiar with the workings of the disordered mind would hesitate to point out exactly on every occasion where the clear light of reason became obscured by the shadow of disease. The world is more likely to come to the conclusion that insanity in any degree or shape should annul all legal responsibility, but that is a consummation we need not look for very speedily. For the present we must be content to go on in the fashion of the day, hanging some and acquitting others, sometimes according to the rule which the court may select from the heterogeneous collection that has been forming since the time of Lord Hale, and sometimes without rule and against rule.

Our author's fifth and sixth "points" may, for all practical purposes, be considered together, though possibly they may refer to different forms of disease. In the fifth, he refers, no doubt, to that kind of mental deficiency technically called imbecility, the subjects of which—such of them, certainly as have property—are often brought under purview of the law. The Dr. is evidently seeking for a remedy against the unseen disagreements of opinion exhibited by medical experts in this class of cases. While we admit that such disagreement implies neither ignorance nor dishonesty necessarily, we do not hesitate to say there has been too much of it to be explained on any theory of an intelligent difference of opinion. After making every allowance for diversity of gifts and means of information, there remains a large amount that by no stretch of charity can be attributed to any other cause than a careless, unfounded self-confidence. And here is the source of the trouble experienced in these cases. If, on the strength of some general reputation, men will rush to the witness-stand and talk of what they know little about, the grievance will not be abated by any mode of dealing with the subjects of this or any other form of mental impairment. The only way in which the evil can be reached is that of

raising the standard of professional attainment and quickening the sense of professional responsibility.

In the sixth "point," the Dr. has reference, probably, to such cases as that of Townley, which raised such a whirl of excitement in England a few years ago. They exhibit that abnormal condition which has lately been styled the "insane temperament;" in other words, a strong proclivity to mental disease which, while it does not impair the mental operations, under the ordinary circumstances of life, is ever ready under extraordinary trial and provocation, to be developed into uncontrollable impulses. If we admit that insanity is often hereditary, we must necessarily admit that some noxious element is transmitted from parent to child, which may not for years be developed into the full proportions of overt disease. All analogy shows that such an element of evil may not lie always and entirely innocuous up to the very moment of its full development. In many cases it will, in one way or another, give some token of its existence, if we will but open our eyes to see it. We need not occupy room in describing the manifestations of the insane temperament, but will call attention to that particular one which becomes the subject of legal investigation. It deprives the patient of his self-control under circumstances peculiarly trying, and if they involve the passions, he becomes for the moment the mere creature of animal impulse. The abnormal element is roused into temporary activity, and the person is as far from the dominion of reason as the subject of unquestionable mania. This verity of science, our author intimates, has not its proper weight in determining the measure of legal responsibility. This might be expected when we consider how imperfectly this mental condition is understood. And if we further consider that the world is not yet ready to admit unequivocal insanity in excuse for crime, if it is partial, we cannot expect much favour to be shown to those unhappy mortals who are supposed to be "bordering upon insanity."

From our author's remaining "points" we gather that he is greatly exercised by our present methods of dealing with the plea of insanity in criminal cases, and is easting about for more satisfactory arrangements. A criminal trial in which insanity is pleaded in defence is not calculated, certainly, to impress one very favourably with the enlightenment of our times. It would be hard to find another transaction so thoroughly pervaded, seemingly, by the endeavour how not to do the thing required. The intention to use this plea may be known to only one of the parties, the other, of course, being taken by surprise; the experts are bothered by hypothetical cases whose purpose is to mislead; persons best acquainted with the prisoner's antecedents are not allowed to testify at all; men who never observed a case of insanity in their lives are permitted to give an opinion respecting his mental condition; and it is a matter of chance whether the court instructs the jury to be governed by tests of insanity some two hundred years old, or enlightens them with the results of modern inquiry. And those who feel these anomalies most forebly are the least hopeful of any change for the better. They are so closely connected with the fundamental theory of our criminal law that they cannot be abandoned, apparently, without compromising those principles of personal liberty which distinguish all Anglo-Saxon communities. Let it be remembered by those who call for reform, that our ideas of law and modes of procedure are very different from those of the continental nations of Europe, and consequently that practices so easy with them and so worthy of imitation are utterly impossible with us.

Among the objectionable features presented by these insanity trials, no one is more widely recognized than the disagreements of the experts; and the feeling is, no doubt, that if this grievance were removed there would be little ground for complaint. That people of little culture should think, in spite of the old adage, that doctors should never disagree, is not very strange, but how are we to explain the fact that persons who have some idea of the nature and processes of scientific inquiry, and are accustomed themselves to think, should expect from scientific men unanimity of opinion on any subject, and suppose that, while habitually differing from one another in their books, and journals, and debates, they should always present an unbroken front the moment they appear on the witness-stand? When we consider that, in cases of doubtful sanity, the witnesses may have had unequal, and all of them, perhaps, very inadequate means of ascertaining the mental condition, and that often the range of the morbid influence can be discovered, with any approach to correctness, only after long and diligent observation, entire agreement would look very little like the result of large knowledge and careful deliberation. No contrivance ever yet suggested for obtaining the opinions of scientific men in courts of justice would prevent all discrepancy and conflict. We do not say that, by some change in our modes of procedure, such opinions would not be freed from some of the objections lying against them now, and be made more reliable as ground for a judicial conclusion. Whether any such change is practicable, we are not quite sure, but, practicable or not, it is very certain that the attempt to introduce it would be met with the strongest resistance.

We take the opportunity to say that few of the verdicts which have lately rendered the defence of insanity so scandalous can be fairly laid at the doors of medical experts. It is obvious enough to the practised observer that in these cases the verdict was but a foregone conclusion. Some pretext only was needed, and whether insanity, or justifiable homicide, or some other dodge was chosen, depended upon anything rather than the merits of the case. Who believes that, in the Macfarland case, for instance, any amount of medical testimony in favour of his sanity would have produced his conviction? As the result of considerable observation of this class of cases, we do not hesitate to say that, as a general rule, the medical testimony has the least possible agency in shaping the verdict of the jury. And we have reason to believe that, with juries of exceptional intelligence and fairness, the plea of insanity is harmed rather than helped by the testimony of doctors, and we have sometimes advised counsel, even when they had a good case, to rely solely on unprofessional witnesses, whose convictions of the prisoner's insanity are usually in direct proportion to their ignorance of the general subject.

We fear Dr. Reynolds will take little heart of grace from our remarks; but let him derive what comfort he can from the fact that the evil he would reform is not quite so bad in England as it might be. If there they occasionally hang a man who is clearly insane, they seldom allow the gallows to be cheated of its dues on the plea of insanity. But, however it may be there, we are sure that here the only efficient remedy would be to reform, not the doctors, but the jury system. As long as we put into the jury-box men whose time is worth but two dollars a day, or less, and who have only the feeblest sense of moral obligation, so long we shall have such acquittals as those of Macfarland, and Cole, and Oskins.

I. R.