

plea of insanity is raised, and is established, in which the one formula is as inappropriate, and as difficult to satisfy by the facts of the case, as the other. The judge said that though it was usually a dangerous theory (he meant hypothesis), yet, in this case, he thought great weight might be attached to the plea of "uncontrollable impulse." At the time he said this, he had evidently made up his mind that the lad ought to be found insane, and was wavering whether to ground the insanity on want of knowledge, or on uncontrollable impulse. Subsequently, he abandoned the latter, and elected to abide by the former test. But it is noteworthy that no third alternative occurred to him, nor, as far as I know, has any third alternative ever been submitted to a court of law.

It is noteworthy that in this, as in so many other cases reported in this Journal, the evidence of the expert, who had examined the prisoner at the instance of the prosecution, was placed at the disposal of the defence; and that the medical witnesses were allowed to give evidence as to the probable state of mind of the prisoner at the time the crime was committed,—evidence which has often been excluded.

*Rex v. Samways.*

Lucy Elizabeth Samways, 25, domestic servant, was indicted for the murder of her illegitimate child, Walter, æt. 3. The child had been placed in the care, successively, of various persons, and at last with a Mrs. Booth. The prisoner was behindhand in her payments to Mrs. Booth, who had told her that, in consequence, she must take the child away; and she was, moreover, under notice to leave her place, her mistress thinking that the girl was not strong enough for her work. On the day that she left service, the prisoner took the child, which was then stout and well, from Mrs. Booth. She was seen with the child in her arms at 5.30, and at 6.30 she was without it, and told her step-brother and step-sister that it was dead. It was afterwards found floating in a watercourse, having only a shirt on, and the rest of its clothes were found at the top of the prisoner's box.

The facts being proved, and several witnesses having spoken to the fact that the prisoner had suffered greatly from pains in her head,—so greatly that she had threatened suicide on account of them, and had left service and gone home, also on account of them;

Dr. W. E. Good, medical officer of the prison at Dorchester, testified that, during the prisoner's detention in goal, she had shown no symptom of mental disease, and had not complained of pains in the head.

Dr. E. J. Day, medical officer of health, had found a scar on prisoner's head, apparently the result of a very severe blow of old date, and that she was deaf in both ears. She was a moral degenerate. Her standard of morals was totally different from other people's. She would think no more of putting her child into the water than of eating her dinner. Cross-examined:—She showed these symptoms of mental degeneration (in examination in chief the term is *moral degenerate*) by the sad stories which she had told. She seemed to have no control over her speech or her actions. The judge, interposing, asked the witness what he was referring to. Witness answered,—The many different stories she had told one and another. Supposing the crime had not been committed, would you have said that this woman was mad? No, I don't suppose I should. Do you think that, at the time this crime was committed, she thought she was doing wrong,—committing a punishable offence? I think she realised at the time that she had committed the crime, but that she did not know what she was doing. I don't think she understood it at that moment. You say that she would not know that she was doing wrong in putting her child into the water? I don't think so, because of her moral standard.

Dr. Kerr, Mayor of Dorchester, testified that he had examined the prisoner at the prison, and was the magistrate who committed her for trial. He concluded

that the prisoner did not apprehend in any way what she was doing; in fact, she was in an epileptic state. It was subconscious altogether. He did not believe she knew what she was doing at the time. His reason for that opinion was that the whole history of the trial pointed to it,—her attitude, her manner, her demeanour, the way in which the crime was committed. The Judge: I can't take this. It is mere opinion. Either give evidence as a medical man, or not at all. The Witness: Will your lordship allow me to explain? The Judge: No explanation is needed, and I hope you won't make any explanation. You had better leave the box.

Dr. Du Boulay had attended the prisoner in June and July, 1903, and had examined her in gaol. Her memory for former events was clear, but about the time of the crime it appeared to be a blank. He did not find anything else. Nothing pointed to any mark of mental disease; but, taken with the history of her life, the sudden pains in her head, and her moral character, he thought it showed that she had a very weak ill-balanced mind, and one which would be very easily upset by any severe strain or worry. The Judge:—I don't know what you mean by moral character? That she is the mother of an illegitimate child. That is one point which I rely upon, and which I think is to be relied upon. When she got into a dazed condition she would not know properly what she was doing. When he saw her in June and July 1903, he had not the least supposition that she was mad. She was thoroughly dazed, not knowing in the least what she was doing. She is just the sort of person who, through stress of severe circumstances, might lose her head, so to say. The Judge: You have not said anything which shows that she was not responsible for her actions. Witness: I tried to explain that she was so dazed at the time that she had not the least idea of what she was doing. She did everything automatically. From an ill-balanced mind you would expect that sort of automatic feeling to arise.

Dr. W. Burrough Cosens had examined the prisoner, and found that she had inflammation of the middle ear, with perforation of the drum and disease of the bone. A patient suffering from such disease was frequently subject to attacks of violence or imbecility which were temporary. After further evidence the Judge interposed: Do you think this evidence is of any use? How many more of such witnesses have you got to call? I don't think the multiplication of this kind of evidence will assist very much.

Dr. P. W. Macdonald, Superintendent of the Dorset Asylum, had examined the prisoner. He found that she was able to answer questions collectedly, but her memory of facts or recent dates was defective. She had not, in his opinion, any clear conception of the difference between an honourable act and a dissolute act. As to the crime, he was of opinion that she did not morally appreciate in its true sense the nature and quality of the act. In cross-examination, witness was asked to give specific instances of failure of memory, and did so.

The Judge summed up in a most merciful sense. After telling the jury that the definition of insanity was, that the person did not know that his or her actions were wrong, he went on to ask them. Did they think that she was responsible for her actions at the time or not? Did she do it deliberately, or did she, for some reason, not know the quality of the act. He pointed out that the crime was committed in such a way that it could not escape speedy detection. Coming to the medical evidence, was there any evidence throughout the case to show that the prisoner was anything like the creature painted by Dr. Day, who said she would have thought no more of throwing her child into the water than of eating her dinner? It was impossible gravely to put that evidence before the jury, and they would not attach any importance to it whatever. It seemed utterly and hopelessly off the line which they ought to follow. But there was one medical witness whose evidence was worthy of attention,—Dr. Macdonald. He got nearest the point, for he elicited that the prisoner had no clear conception of the difference between an honourable and a dissolute action; though why he used those words, instead of the simple words right and wrong, the judge did not know, for they amounted to the same thing. Then, the witness continued, she appeared to look upon acts with a different appreciation from what a normal person would, which was another phase for the same thing. All these indicated such a state of mind as lawyers understood by the word mad; and the jury would of course form their opinions whether it was

Dr. Macdonald's judgment that the prisoner was, in the legal sense of the word, insane, and therefore not responsible for her actions.

The jury, in five minutes, brought in a verdict of guilty but insane.—Dorset Summer Assizes, Mr. Justice Ridley.—*Dorset County Chronicle*, June 16th.

The prisoner was found insane in spite of the medical evidence to that effect, which rendered such a verdict extremely difficult. The prisoner might well have prayed to be saved from those of her medical friends, whose injudicious zeal on her behalf would have cost her her life, but for the acuteness of Mr. Justice Ridley in finding, in Dr. Macdonald's evidence, a crevice through which her escape could be contrived. It seems as if the sentiment of pity for the prisoner, and eagerness to save her from the consequences of her crime, had completely upset the judgment of some of the medical witnesses, so that they tumbled over one another, and lost sight of accuracy and common sense, in their anxiety to shriek to the jury, "For God's sake, don't hang the woman!" Their evidence really amounted to little more than this. Dr. Day's evidence was, that the woman was a degenerate, whether moral or mental does not much matter, and it appears that he is of opinion that a degenerate is irresponsible. When asked the symptoms of degeneracy, his answer was tantamount to the statement that the prisoner was a degenerate because she told lies! If every liar is to be held irresponsible, our gaols will have to be abolished and our lunatic asylums enlarged. Then he is reported to have said "She seemed to have no control over her speech or actions." This is not true of any insane person that I have ever seen, and would be too strong a statement to make of a person suffering from St. Vitus' dance. Such persons can usually move a limb, however jerkily and irregularly, with some approximation to the direction in which they desire to move it; and a person who has *no* control over her speech, would be dumb! How a person could realise that she had committed a crime, and yet not know what she was doing, it is very difficult to understand. To me the two statements appear contradictory and irreconcilable.

Dr. Kerr concluded that the patient was in an epileptic state. Whether he meant in a state of *epilepsie larvée*, or of post-epileptic automatism, does not appear; nor is he reported to have given any ground whatever for supposing that the prisoner ever had a fit. No other medical witness suggested that the prisoner was epileptic. Dr. Kerr did not believe that she knew what she was doing at the time of the crime; but when asked the reason for the faith that was in him, all he had to say was that the whole history of the trial pointed to it—her attitude, her manner, her demeanour, the way in which the crime was committed. The way in which the crime was committed was not described in the evidence, and appears to be unknown. How her attitude at the trial, whether sitting, standing, or kneeling, could have indicated that she did not know what she was doing at the time of the crime, is very difficult to appreciate; as is the difference between her manner and her demeanour. Under the circumstances, it is not surprising that the witness was stopped by the judge; but when the latter objected that the witness was giving evidence of opinion only, it is equally difficult to understand his objection. Presumably, the witness was called

to give evidence of opinion. What the judge probably meant was surmise.

Dr. Du Boulay's opinion, that a person of bad moral character is more easily made insane, by any severe strain or worry, than a person of good moral character, is scarcely in accordance with the experience of alienists. I know of no statistics which bear out the opinion. That the prisoner, when she got into a dazed condition, would not know properly what she was doing, is probably true; but there was not the slightest evidence that, at the time of the crime, the prisoner was in a dazed condition. On the contrary, one of the witnesses who saw her just before, said that she was "pitying" the child very much; and the prisoner had told her sister that she had found the child very ill, and only arrived at Mrs. Booth's in time to see the last of it;—a deliberate falsehood, quite inconsistent with the supposition that she was dazed when she committed the murder. Dr. Du Boulay further testified that, when he saw her in 1903, she was so dazed that she did not know in the least what she was doing, and yet she was not mad. This is another example of looseness of expression that ought to be impossible—most of all in the witness-box and by a witness on oath. A person so dazed, as not to know in the least what she is doing, must be unconscious; and it does not appear that Dr. Du Boulay considered her unconscious. But supposing that she had been, in 1903, in a state of unconscious automatism, to say that, therefore, she was, when she committed the crime, so dazed as not to know in the least what she was doing, and that she did everything automatically, was a gratuitous assumption, quite inconsistent with the facts of the crime itself, as far as they are known. In the face of such evidence, it is not to be wondered at that the judge interposed.

Dr. Macdonald's evidence was, no doubt, as strong as his examination of the prisoner warranted him in giving; but it was weak and colourless; and would have been utterly insufficient to rescue the prisoner from a verdict of guilty, if the judge had not already made up his mind that she must be found insane. There seems to be no doubt that she is not a completely normal person; that her memory is defective; that the defect of memory is an indication of other mental insufficiency; and that it would be scarcely just to apply to her the strictest standard of responsibility; but, all things considered, the court took a most merciful view of her case. Had she been the victim instead of the criminal, and had her murderer been a man, as to whose insanity no stronger evidence could have been adduced than was given of hers, he would certainly not have been found insane. And in returning, as they would in such a case have done, a verdict of guilty, *simpliciter*, the jury would have carried with them the consent of the community.

It is, I think, to be regretted that medical practitioners, in giving evidence in a court of justice, should pay so little regard to exactitude of expression, as they did in this case. No doubt they were actuated by a sentiment, of pity for the wretched prisoner, which does them honour; but a witness in a court of law should bear in mind Talleyrand's maxim—*surtout, point de zèle!* The preposterous exaggeration of expression, which some of the witnesses allowed themselves to use, was not serviceable, but was extremely detrimental to the cause they had at heart.

It is manifest that everyone in court—judge, jury, witnesses, and counsel, both for the defence and for the prosecution,—desired to find the prisoner insane; but her own medical witnesses very nearly compelled the judge to pronounce sentence of death! It was impossible to attach serious importance to opinions so wild, so unsupported by observation, so widely at variance with fact; and the usual effect of such evidence is to raise a prejudice in the minds of the hearers against the cause in which it is adduced.

#### THE BALLINASLOE APPOINTMENT.

Though the majority of our readers will have already become familiar with the outlines of this remarkable transaction, we feel that it may not be without interest to supply some details.

Soon after the demise of the late Dr. Fletcher it became evident that there was going to be trouble about the appointment of his successor. As early as December, 1903, a local newspaper, advocating the appointment of the senior A.M.O., expressed in somewhat grandiloquent language the hope that "the asylum committee are not likely to do anything that would give a handle to 'the enemy,' at home and abroad, for retarding—or putting forth greater and more open energy in that direction—the process of equalising and levelling up the classes whose opportunities have been hitherto unwarrantably and unjustly restricted." Another nationalist newspaper followed in the same strain: "It is true that the religion of the candidate is not that of the controlling authority," but "the very suggestion of religious rancour should not enter into such an appointment" (*Westmeath Independent*, January 2nd, 1904). But, in yet another local paper (*Connaught Leader*, January 9th, 1904), it is sneeringly suggested that the gentleman in question should be "elected by a Catholic board to govern a Catholic asylum," "because he happens to be a Protestant." And so the issue was knit.

Certain newspapers, including some of a strong nationalist complexion, adjured the committee to promote the senior officer on principles of fair play, and pointed out that to make the question one of religion would be injurious to the character of the popular body which would base such an appointment on such grounds, and would thereby hinder the ulterior prospects of democratic government. Elsewhere, however, the securing of an immediate triumph for the religion of the majority was plainly indicated as the duty of the asylum committee.

The subject continued to occupy the local press for some months. From one paper, which persistently denounced the introduction of the religious test, and which spoke of the coming election as "a trying ordeal for Ireland," we learn that "the appointment will be made practically by an archbishop, two bishops, a vicar-general, a canon, and two parish priests of the Catholic Church." So it would appear that the spiritual estate is well represented on the Ballinasloe Asylum Committee!

Finally the day of election came, and the proceedings of the committee on the occasion are very fully reported in the local papers. We find from the *Westmeath Independent*, of April 16th, 1904, that the chairman of the committee, one of the bishops above referred to, proposed the appointment of the Junior Assistant Medical Officer to be Medical Superintendent, speaking very highly of that gentleman's worth. Another committeeman, Mr. Thomas Byrne, seconded the Bishop's motion, and spoke thus:

"My lords, it affords me great pleasure to arise and second the motion proposed by Dr. MacCormack. In doing so I desire to say at once that I do so through no motives or feelings of prejudice, or indeed feelings akin to sectarian feeling of any kind. I do so simply on the ground that ——— (the junior A.M.O.) is equal in distinctions, honours, and degrees to the other candidate (the senior A.M.O.). Another thing, this is an institution that is a boon to the poor afflicted patients of the counties of Galway and Roscommon, and each and everyone here knows 97