AN ADDRESS ON THE LAW OF MURDER IN ITS MEDICAL ASPECTS.

*Read to an Audience of Medical Men assembled at the West
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GENTLEMEN,—When my friend Dr. Crichton Browne did me the great honour to ask me to read the Annual Address on this occasion, he assured me that I should have a highly appreciative, that is to say, a highly critical, audience; and that it would be well to bear in mind that this audience would not be composed of specialists. As my own studies have run much in the groove of the absorbing and important specialty, of which this noble institution is not only a great instrument, but, under the energetic direction of Dr. Browne has become beyond all such institutions a school of observation and a college of instruction, it was somewhat difficult to choose a subject which should be appropriate to this place and yet not be too special. My thoughts not unnaturally reverted to a question on which I had written twenty years ago, and the difficulties of which have certainly not been removed by the great attention which it has since attracted, namely, the responsibility of the insane for criminal actions.

This question, however, if not entirely, does mainly, and in by far the greater number of instances, present itself with reference to *one* criminal act—the greatest and most fearful, and yet, perhaps, the simplest by which society can be wounded—namely, the illegal taking of human life, under whatever name it may be expressed, murder, manslaughter, infanticide, and homicide by negligence. In looking for the grounds of responsibility for this great crime, and the reasons which ought to be valid for excusing it, one cannot fail to be impressed by the vast interest and importance which the whole subject of homicide, its varieties, conditions, and consequences, possesses for all the members of our profession.

The question of the irresponsibility of the insane is but a portion of this subject; its most difficult and unsettled portion, it is true. But all the causes and conditions of violent death essentially appertain to our department of knowledge, and the law can seldom be put in force in such matters, unless judge and jury be instructed and guided by medical evidence. We are the custodians of the golden bowl of life, and, when it is broken by violent hands, we are invariably called upon to describe and explain the catastrophe.

But, if the medical aspects of this great question may not be neglected by the lawyer, surely its legal aspects cannot safely be disregarded by the medical man; and it is to these aspects I now venture to call your attention. Were I to tell you of the legal text-books I have searched for information on this matter, you might have better cause to condescend with me for misguided labour than to be surprised that the results in definite knowledge obtained have been small and unsatisfactory.

We have, however, been assured on the highest and most recent authority that the law of homicide is “not to be found in books or statutes, but in a kind of oral tradition and understanding among lawyers which is only to be acquired by practice; and that to any but practising lawyers it is impossible to declare what the law of homicide is”. These weighty words are quoted from the report of a Select Committee of the House of Commons, whose labours have gone far to render this condition of the law an anachronism and a scandal. Their labours also appear to justify me in the belief that one who is not a lawyer may consider and debate this great question of the law of homicide, seeing that in the last session of Parliament it was referred for that purpose to a mixed committee of lawyers and laymen. Every member of Parliament, and every voter for a member, is a law-maker *pro tanto*; for laws are changeable, and are sometimes changed, and the whole body of law exists but by the consent, tacit or avowed, of the living men to whom it relates; and the custom of the legislature of referring new laws to the examination of laymen justifies me and you in taking this part of law, which cannot be administered without our aid, into our earnest consideration.

In the last session of Parliament, the draft of a Bill for the Amendment of the Law of Homicide was entrusted to Mr. Fitzjames Stephen,

Q.C., and, after being read a second time, the Bill was committed to a Select Committee of eighteen members, comprising some of the strongest men, lay and legal, in the House of Commons. Mr. Lowe was chairman.

The committee examined Mr. Stephen, Baron Bramwell, and Justice Blackburn, and considered an elaborate written criticism of Chief Justice Cockburn. The committee finally agreed to report that it was not desirable to proceed with the Bill; but, as this report is dated July 21st last, it is possible that the lateness of their labours may have had something to do with their conclusion.

The objections entertained by the committee to Mr. Stephen's Bill appear to have been rather against its form than its substance. The Chairman thought it too abstract, and the committee considered that the law of homicide was too complex a subject on which to commence the task of codification. They say:—“It has been urged with great force that the law of homicide requires codification more than any other, because it is not to be found in books or statutes, but in a kind of oral tradition and understanding among lawyers, which is only acquired by practice. But, if this be so, it furnishes a conclusive reason against commencing to codify with the law of homicide, and, above all, against delegating such a duty to a Select Committee of the House of Commons. To make a code is a work of compression, simplification, and arrangement. It assumes the knowledge of the law by the codifier; but, in order to codify the law of homicide, it is necessary first to declare what it is, and that it is impossible, as it seems, to any but practising lawyers, for the reason stated above. It is better surely to begin with that which is easily ascertained, than to select a subject where we must take upon ourselves to declare the law first before we co-ordinate and condense it.”

Perhaps, Mr. Stephen's Bill did err in being too ambitious an attempt to codify an intricate and obscure domain of law; but his method of classification appears to me to have been scientific, and most of the changes which he proposed to introduce seem humane and wise. The responsibility of postponing the amendment of laws so deeply condemned, and the responsibility of omitting to introduce another Amendment Bill at the earliest date, must weigh heavily on some one's shoulders.

I must not, however, longer delay to call your attention to some of those points of the existing law which will most interest you as medical men.

In the evidence, before the committee, of Mr. Stephen, Baron Bramwell, and Justice Blackburn, the law of homicide is most thoroughly examined, sifted, and divested of technicalities, so as to be made somewhat intelligible to the lay mind; and, although the result has been that the committee has reported that “it is not desirable to proceed with the present Bill”, they have also reported on the existing state of the law of murder in terms so condemnatory, that it would appear to be an imperative duty on the part of Government to make further efforts without delay to reduce the chaos into something like method and system. It would seem to be impossible that the existing law of murder should be permitted to exist one unavoidable day after it has been reported on to the House of Commons in the following terms by such men as Mr. Lowe, the Solicitor-General, Sir Colman O'Loughlin, Sir John Karslake, Mr. Leigh Pemberton, and Mr. Russell Gurney. They say:—“The existing definition of murder, which may be roughly stated as killing with malice aforethought, is far too narrow; and the defect has been supplied, not by redefining the crime, but by subtle intendments of law, by which malice is presumed to exist in some cases where the action is unpremeditated, and even in some cases where death is caused by accident. It is most desirable that a state of the law under which people are condemned and executed by means of a legal fiction should cease. Finally, your committee earnestly recommend that the attention of Government and of Parliament should be directed to the present imperfect state of the definition of the law of murder. They believe that they have collected materials from which a redefinition of murder can be produced, and they are convinced that such a definition is urgently needed, not only to rescue the law from its present discreditable state, but to give clear notions to the public at large of the real nature and extent of this crime, and to prevent the confusion often created in the minds of jurors by an appeal to the doctrine, that murder cannot be without malice aforethought, which it is not always easy for the judge to remove. If there be any case in which the law should speak plainly, without sophism or evasion, it is where life is at stake; and it is on this very occasion that the law is most evasive and most sophistical.”

It will be well to postpone inquiry into the grounds of responsibility for crime until we come to that part of the question wherein mental conditions must be discussed; and now to commence with those more simple cases of homicide in which the criminal is of sound mind.

One state of mind, however, is essential to all crime, namely, the intention to commit it; for, even in offences of omission or of negligence, the intention of negligence must be held to constitute the offence. If a man, by furious driving, kill another, the *intentional* disregard of the safety of others constitutes the reality of the offence; for if a horse took fright by accident, and the death of a man resulted from his furious pace, it would be homicide by misadventure, accidental death, and not criminal.

The word Intention appears now to be almost always used by judges and by lawyers, who are careful to use the right word; and it is a great improvement upon the old legal phraseology, which was apt to raise the question of free will and liberty of action in matters wherein metaphysical subtleties are rightly excluded. For if a criminal be compelled by necessity to commit crime, so also is society compelled, by the necessity of suppressing crime, to have him punished.

The materials collected by the Parliamentary Committee for a statute to amend the law of homicide seem to contain the following matters of especial interest to members of our profession.

1. The definition of murder and of manslaughter.
2. The difficulty of proving infanticide, and the proposed alteration of the law thereupon.
3. The responsibilities of surgeons operating without consent.
4. The plea of insanity.

Distinction between Murder and Manslaughter.—The broad distinction between murder and manslaughter appears to be this: that murder is killing with intent to kill or to do grievous bodily harm; whereas manslaughter is killing with intent to do bodily harm, but not grievous bodily harm. In the plain language of Mr. Stephen: "Broadly, and without waiting to dwell upon words, it is murder to kill a man by any act by which you either intend to kill him or intend to do him grievous bodily harm, or which you know will probably kill him or cause him grievous bodily harm, or which shows that you really do not care whether you do or do not. In short, gross personal violence exerted against a man, either with the intent to kill or to hurt him, or with an indifference whether you hurt him or not, is the worst kind of homicide, and is murder. Then the next worst is when, without meaning to kill him, or to do him any great harm, you do nevertheless mean to hurt him, and do kill him, and that is manslaughter. And the last kind of homicide is when you do not take proper care, or employ proper skill, and cause death in that way. It appears to me that those are the three natural divisions of the subject." This distinction between grievous bodily harm and bodily harm which is not grievous is a question which is invariably left to the jury, and, as such, is one of common sense rather than of law, although it is obvious that it is also one in which common sense must frequently be in need of medical guidance.

Take, for example, the too common form of violence, a blow with the foot or a kick. Now, a kick on the posteriors is always supposed to be rather an insult than an injury; a kick on the shins is fair play at football, and is a constant part of that which the men of Devon call *par excellence*, that is, wrestling; but a kick on the head may cause death, and mean death, and two men were hanged for such a kick not long ago at Durham; and a kick on the abdomen must always intend grievous injury, and such a kick in the abdomen of a pregnant woman, I need not tell you what that imports. Then take the instrument. A blow from a bludgeon must usually be intended to inflict grievous bodily harm, while a blow from a whip or a rod will mean bodily harm, that is smart and pain, but not grievous harm; and yet there is every gradation in the size of sticks, from the club to the schoolmaster's customary cane. Baron Bramwell tried a boy at Chester for killing his brother by a box on the ear. A medical witness testified that he had never seen a skull so thin as that boy's skull was; and on this evidence Baron Bramwell directed the jury that they could only convict the prisoner of manslaughter.

It would appear that the old definition of murder, that it was killing with *malice aforethought*, is quite exploded and obsolete so far as the forethinking or premeditation is concerned. Mr. Stephen and the judges quite concur upon this point. The former says that decisions on cases "have really explained away the words *malice aforethought* till it becomes a matter of very great difficulty to see why the words were ever used, or what good there is in them"—"these unlucky words have been tortured to mean things which they did not mean". In the recorded cases in Russell, on Crimes, "you will find various torturings of the word *malice*, and twisting of it to mean what it never did mean".

Justice Blackburn, on the other hand, arraigns not the word *malice*, but, and I think with better reason, the other member of the compound term, namely, the qualifying adjective *aforethought*. He says,—"No doubt *aforethought* is a word that now has got a particular meaning put upon it by the law, or rather it is reduced to be no meaning at all, and there is no harm in striking it out of the indictments if it be worth

while; but *malice* is, I think, the very essence of it, and I think, therefore, that it should remain as it is. *Malice*, as we define it, is found when a man, wilfully, and without lawful justification or excuse, does an act injurious to another; the law says that is *malice* against the person whom he has injured; and I think that its being *malice* in that way is the very essence of the crime." A man who, in a sudden fit of passion, stabs and so slays another, can, under no fiction of law, be said to have thought of the deed beforehand, but he has evidently a bad intention to kill, that is *malitium*, malice, and so the deed is murder. The old terminology is now simply a handle for advocates, which they well know to be illegal, and a loophole for juries. *Malice*, or some other term implying bad intention, must be preserved; but the condition that it must be *premeditated* or *aforethought*, already extinct in practice, ought also to be abolished, as misleading and mischievous in the phraseology of the law.

Constructive Malice.—There is, however, the further question of constructive malice, which is most important. If A, intending to kill B, does not do so but kills C instead, A is guilty of murder. This point of law was thus illustrated by Justice Blackburn. "You will all remember the case of the Fenians who, intending to rescue Dasent and Kelly, fired shots at the van in which they were being conveyed, and killed a policeman. The man Dasent was in one of the compartments of the van, and afterwards it was found that the shot had gone through that compartment and penetrated the wood and gone out at the other side, and if Dasent had been standing upright it would have gone into his head and killed him. There is no doubt that that would have been murder as the law stands; but it would have been difficult to persuade any one that, in the popular sense of the word, the men had any *malice* towards the person killed, when they were risking their lives to rescue him. That is an instance of *constructive malice* which every one would wish to preserve." On this Mr. Lowe observed that, when Hamlet killed Polonius, taking him for his betters, he committed murder. But the law, as constructed by our judges and laid down in the text books, goes far beyond this; to an extent, indeed, which, if you are not already instructed on the point, will cause you no little astonishment.

Killing in committing Felony is Murder.—The rule of law is, that a man who, in the attempt to commit any felony whatever, in so doing, takes the life of another man, that is murder. The rule was laid down by Coke that, if a man meaning to steal a deer, shoots an arrow which, glancing from a tree kills a boy who was hidden in a bush, that is murder; and this rule was subsequently carried out in the case of a man who, shooting at a fowl with the intention to steal it, killed a man, for which the accused was found guilty of murder and executed. No doubt a man would not be executed in these days when the felony intended was so small an one as that of stealing a fowl; yet the difference of opinion on the point of the fowl case between Baron Bramwell and Justice Blackburn seems to have elicited the strong observation of Mr. Stephen, that these learned judges flatly contradict each other.

Mr. Stephen with righteous indignation observes, that if this rule is law, "it is a perfectly barbarous and monstrous rule, and that rule by itself would be an amply sufficient reason for calling upon Parliament to alter this law". But Mr. Stephen's remark seems only to be applied by him to what he calls "the notorious case about the fowl". But the rule has a wide application, and includes cases about which there may well be differences of opinion. Take the case from the Western Circuit, mentioned by Justice Blackburn, which illustrates a curious medical fact I had not before heard of, namely, that a short and slight stoppage of the breath, when a person is out of breath or in a state of excitement, will be rapidly fatal. Justice Blackburn says, "I have had evidence that throwing a shawl over the face under such circumstances would, in a few seconds, cause death". The case was that of "a poor girl who was returning home from church, and had to pass over a stile between two hedges, and a ruffian who had lain in wait threw a shawl over her head and dragged her along some distance, intending to carry her to a wood and ravish her. She died before she got there. No one can doubt that the man did not intend her to die; of course, he meant her to live, as otherwise he would not effect his object; and, probably, he was in ignorance that throwing a shawl over the face of a person in a state of excitement was so very dangerous; but nobody seemed to doubt at the time that, even though he did not mean to kill her, yet, as she died in consequence, it was murder, and he was hanged; and I should be very sorry to alter the law so as to say that he should not be hanged".

There were other cases mentioned by Mr. Stephen, not antique cases like that of the man who was hanged for killing a man when he shot at a hen, which happened in Charles the Second's reign, but cases which were matters of common conversation when Mr. Stephen went the Midland Circuit, and which, I think, will somewhat shock your feelings.

"There was" (he says) "a case at Warwick which I have heard quoted by those who did hear it. Three boys were walking through the streets of Birmingham to pick pockets; an old gentleman, who was fat and weak, comes walking along with a gold watch in his pocket. One of the boys gives him a slap to make him bend forward, and the poor old man did bend forward, and died by reason of that slap; I suppose some vessel was fractured. As he bent forward, the boy pulls out the watch from his pocket and hands it to the second and the second to the third. They were all tried and condemned to be hanged. There is another case, which arose at Lincoln, which I have heard of. A man has committed a burglary; an old woman, very much frightened, is in bed. The burglar, hearing her screaming, tells her to be quiet, and by way of frightening her, but not with any intention of hurting her, throws a pillow towards her, and in some way or other the shock kills her, and for that he was hanged."

The case tried before Baron Bramwell at Maidstone is still more to the point. An incendiary set fire to a rick-yard, and when the fire was at its height and extending round the yard, a man was seen rushing about in all directions to see if he could get out. He was not able to do so, and was burnt to death. In accordance with the rules under discussion, Baron Bramwell was obliged to tell the jury that, if they thought the man was sleeping in the barn when the prisoner set fire to the stack, he was by law guilty of murder. "But," he says, "it fortunately occurred to me to suggest that he might have been attracted to the fire and have gone to the spot to put it out, or for some other cause; and I said, if that was the case, it was the voluntary act of an intelligent agent getting into the mischief". Upon that the jury were glad enough to be able to acquit him. But Mr. Greaves says that Baron Bramwell was wrong even in that view of the case.

The difficulty appears to have arisen from including such offences as stealing a hen in the class of felony with such greater offences as burglary, arson, and rape. Such an absurd classification must, in the high ordeal of practice, lead to misunderstanding and mischief. This cause of difficulty is plainly seen and stated by Baron Bramwell, who says, "I have heard the late Lord Chief Baron say that the law was not so silly as people supposed it was, because the law says this, 'When a man is engaged in the commission of a great crime, which felony is, he must take all the consequences, though he did not foresee them'. That is all very well", says Baron Bramwell, "but stealing a fowl is not a very great crime; and the notion that a man should be found guilty of murder because he shot at a fowl to steal it, is *outrageous*". For my own part, I think the rule altogether unjust, and that a man ought never to be punished for a crime which it is clear he never intended to commit.

Murder without Intention to Kill.—Another point of nice legal importance is whether a man is guilty of murder who kills some one without any intention of taking life, but by some act which shows that he does not care whether he does so or not; and this point is illustrated by Mr. Stephen by the Clerkenwell explosion case, in which a man named Barrett exploded a barrel of gunpowder against the wall of a prison with the intention of making a breach in the wall through which the Fenian prisoner Burke might be rescued. The explosion killed a number of poor people outside the prison, against whom Barrett doubtless had no malice, and he was hanged for murder. Mr. Stephen supposes that the judge, in directing the jury, would say: "It does not matter at all, gentlemen, whether Barrett's general intention was to rescue Burke or not, because an intention to kill is not essential to murder; it is enough if he had the knowledge that it would probably kill or do grievous bodily harm, and whether he hoped or wished to kill the people or not does not matter, so long as he had the knowledge that he probably would kill them." And he subsequently adds: "If a man explodes a barrel of gunpowder close to Clerkenwell Prison, he does an act with the knowledge that it will, 'in all probability', kill somebody. If he had exploded a smaller quantity of powder, in an out-of-the-way place, and killed some one at a distance in some unlikely way, I should think it hard to call that murder. The Clerkenwell Prison case is the only one I ever knew or heard of in which the law as to homicide, by an exceedingly dangerous act being murder, had to be acted upon." But still, the difference between murder and manslaughter in a great number of cases turns upon the greater or less degree of probability that death will ensue.

Year and Day Limit.—We must, however, proceed to matters which have a more direct medical interest. One of these is Mr. Stephen's proposal to abolish the limit as to time of death which at present is a constituent of the crime of murder. The rule of law, as no doubt you are aware, is that to constitute murder the death must have occurred *within a year and a day* of the act which caused it. Mr. Stephen says that this, in substance, is a rule of evidence, and a very rough kind of rule of evidence, adapted to an age when there was very

little medical knowledge. Coke says: "If he die after that time, it cannot be discerned, as the law presumes, whether he died of the stroke or poison, etc., or of a natural death; and, in case of life, the rule of law ought to be certain. I never happened to hear or read of a case in which the question about the year and a day rule arose; but I should think in the present day it would seem very strange that you should be able to say that a man died of a wound eleven months after it was received, but that at thirteen months it became perfectly impossible to say whether he did or not. It seems to me a rule of evidence, and that the prisoner under all circumstances would get the benefit of the doubt which would arise if death were delayed for any considerable time." I think that without presumption we may fairly assert that we have in many cases sufficient knowledge of our science to assert whether a death occurring long after the year and a day has been caused by violent or by natural means. I call to mind a patient who died under my own care, long after the legal limit, of mortification of the leg, caused by obliteration of the popliteal artery by a bullet received in a duel; and, no doubt, out of your large experience, you will be able to remember many cases even more illustrative.

Possibly this question is only likely to arise at rare intervals, since Justice Blackburn says that, in his experience, which is large, he never yet heard of such a case, or, indeed, of anyone being accused of murder or manslaughter where the deceased had lived anything like a year afterwards.

By a Drunken Man.—The question of murder committed when the criminal was drunk or mad from drink appears to me far more difficult and complicated than Mr. Stephen seems inclined to admit. He is asked, with reference to the insanity clauses of his Bill, whether he would include delirium tremens in the diseases which would prevent a man from knowing the nature of an act, so as to render homicide not criminal, and he replies: "Well, certainly delirium tremens is a disease, but it must affect a man's mind. If a man commits a crime when he is drunk, that is no excuse; but, if he drinks himself into a state of permanent madness, it is 'another thing'."

"Still, says Mr. Floyer, it is so far an excuse that a man is never executed for committing murder if he does it in a drunken row, is he?—I should be sorry to affirm that; I think I have known cases where men have committed murder when drunk and were hanged for it when they were sober."

"Do you think that there have been cases when men were hanged for committing murder at a time when they were so drunk that they were unable to distinguish the consequences of their acts?—It is a difficult question to answer; I do not at this moment remember such a case; I should have said generally that a man who was so drunk as not to know what he was about would hardly be likely to commit murder."

"The possibility of such a case as a man committing murder when drunk might be provided for under other sections?—That is one of the cases in which the question of discretion in the punishment arises. No doubt there is a great difference between a person who gets mad drunk and begins striking with a knife, and a man who uses the same knife with sober consideration; but there is hardly anything that I should guard against more carefully than admitting in express terms that drunkenness was any sort of excuse for crime. In certain cases it might be a reason for the Secretary of State, or the judge, to exercise his discretion; but I think it would be a public calamity to put into an Act of Parliament anything relating to drunkenness that looks in the slightest degree like saying that it is an excuse for crime."

Possibly Mr. Stephen has not had very large opportunities for observing the phenomena of drunkenness, otherwise he would scarcely have committed himself to the opinion that "a man who was so drunk as not to know what he was about would hardly be likely to commit a murder". He appears to see only two phases of the mental effects of drink, namely, recent drunkenness, in which a man knows what he is about and who ought not to be excused from conviction for murder, and delirium tremens, which he owns to be a disease which will release from responsibility. Knowing somewhat more of delirium tremens than lawyers are supposed to do, I think we must allow that it is not a frequent cause of homicidal violence. A man suffering from this disease is usually too much prostrated in body and mind, too fearful and stricken to commit homicidal violence, though he possibly might do so under the influence of delusion, attempting himself to escape from supposed murderers or fiends, in which case he would clearly be of unsound mind sufficiently to exempt him from responsibility.

But the delirium from drink which commonly results in homicidal violence is that which we recognise as *delirium à potu*, the delirium which arises from the continued excitement of the stimulant, and not that very different delirium, from the exhaustion which follows excitement, which from the tremors of debility, we call delirium tremens. This *delirium à potu*, the really dangerous delirium from drink, the

lawyers do not appear to have recognised. In drunkenness itself also, as distinguished from delirium, there are varieties which ought to be recognised in relation to crime; that is, if the principle be assumed that the punishment of criminals ought to be guided by some knowledge of the conditions of their guilt. There is the stupid heavy drunkard whose faculties are drowned, and who commits crime as an idiot would, without knowledge or consciousness of the character of the act. Then there is the man whom drink stimulates to fury, and who commits crime knowing what he is about, but under the impulse of reckless passion. Men who have suffered from blows or wounds on the head or from sun-stroke are, we know, peculiarly liable to this frantic kind of drunkenness, and often from small amounts of stimulants. As they know their weakness and the dangers of indulgence, they ought to be held liable to very heavy punishment when they commit crime in their self-made fury, but certainly not to suffer the extreme penalty of the law. There is still another kind of drunkard whom no one would wish to shield from the full penalty of his crimes, and that is the man who drinks to nerve himself for a premeditated offence. The Malay who intoxicates himself with bang in order that he may be wound up to commit promiscuous slaughter, is fortunately a type of which we see no examples in this country; but men who plan and purpose criminal acts when they are sober, sometimes commit them when they have drunk to give themselves Dutch courage. Victor Townley admitted to me that he had taken brandy and opium to nerve himself for the perpetration of that atrocious murder for which he undoubtedly ought to have been hanged.

Murder without Injury to Person.—Mr. Stephen introduced into his Bill a refinement which we may call murder without injury to the person. The draft ran thus: "It is immaterial whether the Act by which death is caused did or did not inflict actual injury on the body of the person killed"; and he gave the following medical illustrations of his meaning. "Suppose a man wants to murder his wife; and suppose that she is ill, and the doctor says to him, 'She is in a very critical state; she has gone to sleep, and, if she is suddenly disturbed, she will die, and you must keep her quiet.' Suppose he is overheard repeating this to another man, 'I want to murder her, and I will go and make all the noise I possibly can for the purpose of killing her.' You may imagine the evidence to be quite conclusive on that point: he goes into the room, makes a noise, and wakes her up with a sudden start, and frightens her; and she does die according to his wish. It seems to me that this act is as much murder as if he had cut her throat. Or suppose a case like this: A man has got aneurism of the heart; and his heir, knowing that, and knowing that any sudden shock is likely to kill him, suddenly goes and shouts in his ear, and does so with the intent to kill him, and does so kill him. It seems to me that, if that man is not punished, it is a very great scandal, for the act is just as bad as if he had killed him in any other manner."

Of course the question arose in the Committee, whether in such cases there was not injury to the body of the person killed. Mr. Lowe thought the injury was a blow inflicted upon the drum of the ear. The judges, however, appear to have been unanimous in the opinion that killing by fright or strong emotion could not be made murder without peril to justice and consequences not contemplated by the framer of the enactment. It seems to me that this was the weakest and most assailable point of Mr. Stephen's very able draft, and that it did more to prejudice the Committee against the Bill than anything else. It was carrying the idea of murder into the abstract, and would have been applicable to the case of a man breaking the heart of a girl or bringing down the grey hairs of his father with sorrow to the grave.

Chloroform.—Another question raised by Baron Bramwell, somewhat abstract in appearance, but liable to be very practical to members of our profession, was the character of the offence which would be committed by a surgeon who administered chloroform, and performed an operation without the consent of his patient, the man dying of that operation. The question arose on the clause: "Homicide by an act consented to by some one who has a legal right to consent to it is not criminal, if the act is done in good faith for the purpose for which it was consented to, and with due knowledge, skill, care, attention, and diligence."

Baron Bramwell, upon this, puts the following query: "Does this exclude the case of a forcible administration of chloroform to a sane adult not consenting? That is, supposing medical men make up their mind that the best thing that can be done to a man is to cut off one of his limbs, and do so under chloroform. Perhaps he does not consent."

Mr. Lowe asks: "A great many teeth have been drawn in that way?—Yes; Mr. Stephen says, 'I suppose this question means the administration of chloroform for some lawful purpose; for example, where a surgeon considers it necessary, in order to render possible an operation necessary to save life. If this is what the question means, I

think such cases would fall under Section 18.' Then he says, 'If the question means the administration of chloroform for the purpose, say, of robbery,' it would not. Then he refers to Sir Donald Macleod, some of whose limbs were amputated at St. George's Hospital when he was not in a conscious state so as to be able to say whether he consented or not; and he says, if done in good faith, it would, by Section 18, be innocent. I suppose this would be so as the law stands, but I know of no direct authority for it.' Neither do I, one way or the other; but I suppose it would be as the law stands. I suppose that a *bonâ fide* operation upon a man when he was insensible, which caused his death, if done for the best, would not be now a criminal act."

Mr. Russell Gurney: "If done against his consent, it would be a more difficult case?—Yes; but Mr. Stephen says Section 18 gets rid of these difficulties, because he says that such acts are done in good faith. My criticism is a small one; but I say, if that is so, it seems to me to show that Section 19 is needless, because Section 18 would include every case that ought to be included in Section 19. However, that is a very small matter."

"But would you have the doing it forcibly to a sane adult allowed to be not criminal?—I do not say that I would."

Mr. Lowe: "That is a case under Section 18, is it not? Suppose you object ever so much to have your leg taken off, if they thought it necessary, they would be protected under Section 18, whether you consented or not?—Yes. It struck me that, if Mr. Stephen's answer to my difficulty upon Section 19 is a well founded one, that is, that Section 18 would protect the people who, I say, ought to be protected, it shows that Section 19 is needless."

"Would not Section 19 embarrass the construction of Section 18?—Yes. I ought to know the law, but I declare I do not know whether this would be manslaughter. If people were to say, 'The best thing that can be for that man is to take his leg off', and he says, 'I do not consent', but nevertheless his leg is taken off and he dies, and the jury is of opinion that it is a beneficial operation, I am sure I could not say offhand whether that would be manslaughter or not. Criminal homicide I do not think it would be, but I do not know."

"It is very hard to suggest a principle upon which it could be taken out of that section, is it not? He causes the man's death against his will.—He causes the man's death against his will; for that the man can maintain an action for trespass against him, I think, is quite clear."

An action of trespass maintained by a dead man seems a curious remedy, but I suppose it could be instituted by his representatives. However that might be, I think the chloroform question was put before the Committee in too narrow a form, as applying only to the removal of limbs. Cutting off a limb without consent, under chloroform or otherwise, no doubt is a trespass; for the loss of a limb is a lost possession. But would the same rules apply to tying an artery or cutting for strangulated hernia, which I have myself done under chloroform, notwithstanding the vehement refusal of the patient, who was, however, not of sound mind? Then there is the case of a man who dies under the hands of the surgeon, who attempts to save him from the commission of suicide against his will. The following case occurred when I was a student. A man intending to commit suicide bought half an ounce of arsenic, as he supposed, and swallowed it, telling his wife what he had done. Medical aid was procured, and the supposed arsenic was forcibly removed by the stomach-pump; but the man died. On the inquest, it was proved that the chemist, suspecting the intentions of his customer, had given him powdered gypsum instead of arsenic; and it was found that death had been caused by injury to the coats of the stomach produced by the tube of the pump. Was the surgeon in this instance guilty of criminal homicide, or could the representatives of the dead man maintain an action of trespass?

It is probable that, in most cases of the forcible administration of chloroform for the purposes of operative surgery, the patient may fairly be considered to be temporarily or permanently not of sound mind. A man struggling to carry out a suicidal intention may well be considered of unsound mind; and so also may a man who is incapacitated from forming a judgment as to the measures needful to preserve his life by delirium from the shock of accident or disease.

Infanticide.—I now come to the last subject which I shall be able to bring under your notice to-day; namely, that extremely unsettled question, the proof and punishment of infanticide. On this subject, a separate Bill was drafted, in favour of which the judges were agreed; and the Committee, having made amendments thereon, reported it.

The question, as discussed before the Committee, divides itself into two parts: 1. The period at which an infant, being born or newly born, becomes a person, and taking its life becomes infanticide; 2. The condition, as to soundness or unsoundness, of the mind of a parturient woman.

The Bill deals only with the first consideration. No doubt you are aware that, to constitute infanticide, the child must have wholly emerged from the body of the mother, and hence have had a separate life from that of the mother, before its own life was taken. It is not sufficient that the child should respire in the progress of its birth. Until it has wholly passed out from the body of the mother, it is *pars viscerum matris*. There must have been an independent circulation in the child, or it cannot be considered alive for the purpose of the charge of child-murder. The fact of its having breathed is not a decisive proof that it was born alive, as it might have breathed, and yet died before birth. The importance of continued connection with the body of the mother by means of the umbilical cord seems to be a moot point. Baron Parke said he should direct the jury to convict the prisoner, and reserve the point. The prisoner, however, was acquitted, and the point was left undecided. It was subsequently, in another case, held that murder may be committed on a child still attached to the mother by the umbilical cord. Taylor says, but I know not on what authority, that "the law humanely presumes that every new-born child has been born dead, until the contrary appears upon medical and other evidence". It is, however, abundantly plain that the conditions of child-murder above stated must make the proof of guilt exceedingly difficult, and conviction almost impossible. Taylor says that, in *Middlesex* in 1863, "in all instances where the evidence of guilt was so clear that coroners' juries have found verdicts of wilful murder, the prisoners have subsequently been acquitted on their trials".

Justice Blackburn states the difficulty, and the remedy provided by the Infanticide Bill, in the following evidence. "The practical difficulty which we always find in that is, that it is almost impossible to get distinct legal evidence to show whether the child had become a person, even taking the definition given in the Act here, that a 'person' includes every living child which has completely proceeded from the body of the mother, whether it has or has not breathed, and whether it is still attached to the body of the mother or not; but does not include a child which has breathed in the act of birth only, and has not lived after completely proceeding from the body of the mother.' Practically, the child is born when there is no one present but the mother; and the medical evidence of those who have seen the body cannot determine whether it had been wholly separated from the body of the mother, and was wholly delivered before it died or not. They can show, and they do show, that it has breathed; but a child may breathe after the head is out of the body of the mother, and very often does for a long while, before it is completely separated; and the doctors tell you the blood has circulated, but that again is not decisive. The result is, that you cannot prove that the child has been actually separated from the body of the mother, and become a person, on satisfactory evidence—evidence, I mean, on which a jury will act; and the consequence is that, except for concealment of birth, the mother does very often escape when she has really been guilty of murder, or of culpable negligence, causing the child to die. What I would do myself would be this: I would make it a substantive felony for the parent of a child, either before, or at, or during, or immediately after the birth, to cause the child to be prevented from being born alive, or to die; when that was done intentionally, I would make it a substantive felony, to be punished severely. That would be met by the Infanticide Bill which I have had shown to me."

The judge does not concur with Mr. Stephen's remedy, which would be simply to alter the designation of a person; and, on the other hand, Mr. Stephen does not like the proposed alteration of the law by the Infanticide Bill, by which "a loophole is got rid of, which one need not go out of one's way to stop up". The result of the Infanticide Bill would, he points out, be nominally to diminish the penalty, that is, by making it felony, but not child-murder, but practically to increase the penalty by giving penal servitude not exceeding ten years, whereas the maximum penalty for concealment of birth is imprisonment for two years.

Justice Blackburn would be willing that concealment of birth as a distinct offence should be erased from the tables of the law which may metaphorically be imagined to exist; seeing, as he says, that it sometimes hits persons who are not at all blameworthy. But, on the other hand, he would retain the crime of child-murder, in order that such accomplices as the notorious Mrs. Winsor should not go without their deserts; and this is provided for in the fifth clause of the Infanticide Bill.

The state of mind of puerperal women in relation to infanticide is dealt with by Mr. Stephen in a spirit of pitiful and indulgent humanity which is not very common among criminal law-makers. Whether he goes too far or not, we mental physicians must leave to the more intimate knowledge of our obstetrical brethren. While as men we cannot fail to feel commiseration for the shame and terror of a parturient woman

who is bringing forth a child without the sanction of the law, the church, or society; and, as physicians, we must recognise the profound nervous disturbance which the act of parturition very commonly occasions; we cannot shut our eyes to the fact that the destruction of a child by its parent is an act of deep moral depravity. The life of a base-born child may not be worth much to the community, but the depravity which leads to the destruction of offspring is so profound that the opinion of society as expressed in law may easily lead to evil consequences if it should lean too much to the side of indulgence.

Mr. Stephen says, "I have heard many trials for child-murder, and I believe that it is the almost universal experience upon that matter, that it is exceedingly hard to get a jury to convict of child-murder". . . . "Besides that, there is the strong sympathy, which it is never safe to neglect, and which always will exist with the miserable condition of the woman."

And again, "It is the honest truth after all, that a woman who has a child born, is in such a state of mind and in such circumstances that it is impossible not to feel that if she kills her child the crime is extenuated; that is the plain truth, and I would provide for it accordingly; I do not like making it a separate crime."

In a different spirit Justice Blackburn says, "As to puerperal insanity, if it exists, I think it ought to be a defence to exactly the same extent as other insanity".

If, however, I understand Mr. Stephen aright, his remarks do not apply to puerperal insanity strictly so called, but to the unhealed condition of mind, which is, with more or less truth, attributed to all puerperal women; and, on this point, I think we are in need of accurate medical data. That a woman who can destroy her own child must be in a "miserable condition" can admit of no dispute; but we meet with such women who, in defence of their own interests, are at the very time able to act with the fullest powers of intelligence and fortitude. We also know that, in many of these cases, the act of parturition could not have been difficult or prolonged, and that an easy process of parturition commonly leaves a woman's mental faculties and her nervous equilibrium undisturbed. The subject is one which richly deserves the most painstaking attention of the profession.

I must now conclude my long, and I fear discursive address, leaving the question of responsibility, as affected by mental disease, to another opportunity for discussion. It is dealt with in this report with great fulness and with the authority of the highest legal opinion, and the law of homicide can scarcely be dealt with without special regard to its solution. It is, however, thoroughly specialist, and I have thought, I hope not unwisely, that the parts of this topic I have dwelt upon would be more generally interesting to my audience. That before long a statute must be passed to render the law of homicide intelligible and precise, can scarcely admit of doubt. A select body of statesmen and great lawyers has formally reported to Parliament, that the present state of the law is *discreditable*, and that it is impossible to any but practising lawyers to declare what it is. These gentlemen have, for the present year, laid upon the shelf an experiment made to codify this law with every advantage which learning and skill can give, upon the ground, inadequate as it would seem, of the difficulty and intricacy of the task. The highly distinguished and experienced lawyer who has made this experiment to reduce method out of chaos, says of the evidence of the learned judges who have been examined by the committee, that "they flatly contradict each other"; and, in another place, "if you compare this Bill with the common law from which it is compiled, it is infinitely more certain, and it really has reduced to a certainty many cases which, by the common law, are so uncertain, that we have these *two learned judges diametrically contradicting each other* upon them, though they are points of the first importance, before this committee".

And again, in answer to the hostile criticism of the Bench, he says, "I must add, with regard to a large part of Mr. Justice Blackburn's evidence on this subject, that it is impossible for any one who has had any experience of the administration of justice to be unaware of the fact that the judges are under an *irresistible temptation*, if I may say so, *to like a system in which they are not tied down by definite rules*. When a man has acquired, by long experience, perfect familiarity with that *unwritten understanding* about the law which *really constitutes the law* for all practical purposes, when he feels himself in a position to say, 'That case is no longer law, although Hale said it was, and this case is no longer law, although it has been always considered to be so', he occupies a position from which he does not like to be ousted. Of course, if the judge, instead of having to hear a variety of arguments drawn from all sorts of sources, upon the effect of which he is to decide, is simply to refer to a few words in an Act of Parliament, the position which he occupies is, in every way, *less agreeable to himself, and it cannot be otherwise*. For my part, however that may be, I think, for the public,

it is very much better that the law should be distinct and certain, and that this quasi-legislative authority should not be left in the hands of the judges."

The law of murder, then, is declared to be such that the judges contradict each other; and yet they make it themselves, and maintain it in its present discreditable state, because it enables them to occupy a position, as its authoritative exponents, which is agreeable to them, and from which they do not like to be ousted. I think you will conclude that Mr. Fitzjames Stephen is not only learned and skilful, as the Committee declare him to be, but very outspoken. With regard to our great judges, I hope you will also think that he has been a little hard-spoken and too severe.

ON THE APPLICATION OF THE GALVANIC CAUTERY TO GYNÆCOLOGY.*

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THE galvanic cautery having been now for some time in use, and the assistance it has afforded to those engaged in gynæcological practice having been fully recognised, I have thought it may be useful to this meeting if I were to state my experience of it, gathered from hospital and private practice; and I am emboldened for a short time to occupy your attention, because, so far as I am aware, no one else has, in England, yet spoken on the subject, and also because I have employed it frequently, especially in Guy's Hospital, having had for some years the advantage of its apparatus.

I have no intention of entering in this paper into a complete discussion as to the advantage of cautery over other modes of operations, though, of course, incidentally remarks will be made on the subject; nor shall I occupy any time in the narration of a series of cases in illustration.

I may state, first of all, that I have principally employed the arrangement known as Dr. Middeldorp's, with some modifications suggested by myself and others. It may be susceptible of further adaptation to the requirements of our department; yet, on the whole, it is a very efficient collection of instruments. I have asked Messrs. Krohne and Sesemann to be present to exhibit the apparatus in action.

The battery for our purposes should be composed of not less than the following power.

1. Grove's combination of four elements, each of not less than 8 by 6 inches of platinum sheet;
2. Or Bunsen's, with carbon plates not less than 14 inches by 8; with the zincs in due proportion.
3. A bichromate battery of larger size may also be employed; but, unless the action can be made more constant than at present, I cannot recommend it. It has the advantage of being free from the strong acids required by the other.

The full power of the above named batteries is required only in the removal of the broad-based parts within the vagina, as, for instance, a broad-based fibroid; because, from the amount of fluids surrounding the wire loop, a large amount of current is carried off by the tubes which hold the wire, which, as now made, are not perfectly insulated; also because, the length of the wire being great, the heating power is lessened thereby. For the lesser work, two cells, or even one cell, are sufficient. In no case should the wire be made white-hot; while, on the other hand, the operations within should not be too long in progress, lest the heat affect the adjacent parts too severely, as is the case when the battery is of too low power. Perhaps it is better to employ three cells at first; and, should this not be powerful enough, the fourth can be added. I may further remark that, of course, the size of the wire influences the heating power of the battery; but the large wire is generally the best. An excellent plan is to coil two smaller wires into a rope, it being less liable to break than a single wire of the same weight, and is more flexible.

The galvanic cautery, by the varied character of the form into which the platinum conducting wire is shaped, is a very different thing from either the old red-hot irons or the more recent gas-cautery. We can, however, imitate the red-hot iron by spirally coiling the wire round a porcelain cone, or on the flat base of porcelain cone, returning it through the centre of the cone. The whole can be made of a white heat; the advantage of the cone being, that it retains a body of heat

not so readily extinguished by the coolness of the tissues as is the wire alone. But it has the advantage over the red-hot iron in that its action is continuous. After a time, it becomes clogged with the inspissated and charred fluids, which can be scraped off easily. As is well known, in ordinary surgery, the cones are adapted to the destruction of sessile growths—surface-burning—where the wire cannot be passed beneath, so as to completely remove them. It is also adapted to such growths where the surface is very irregular and the inequalities have to be carefully followed. By the loop, we can imitate the scalpel, with this advantage over it, that no bleeding follows, at least generally; and, if there be a vessel not well closed, we can, by applying the cone to it, effectually control the loss. At the same time, it will also be perceived that there is no chance of plastic union. The surfaces thus treated must be healed by granulations.

I think all will agree that there is a great advantage in some cases in the searing of the surfaces. A shield is thus made against the ready absorption of unhealthy fluids; and in the case of cavernous structures, such as the penis and uterine tissue, this is very important. The *éraseur* to some extent effects the same closure of the vacuities as of the lymph-spaces, vessels, etc.; but, where the surface is not pedunculated, there is a very great tendency in the surface to crumple up under the grip of the chain, wire, or rope, thus rendering the action imperfect; or, as in the case of a sessile malignant disease of the os uteri, where hard and soft are intermingled, the *éraseur* is pretty sure to glide off, scraping off, as it were, only the softer portions.

The wire loop of the cautery is arranged so that it is screwed up like the *éraseur*, and, indeed, it should be used slightly in this manner at first, so as to indent the pedicles a little; and then, as the red-hot wire cuts through, the screw should be used in such manner as that the two actions proceed *pari passu*; and thus there is made a remarkably precise division, as with a knife, without any tendency to crumple up.

However, we can, on the outer part of the body, dispense with the machinery of the loop, and, holding the wire between binding screws at the end of the conducting wire, draw it alternately from one side to the other. This is a more rapid method, and is adapted to batteries of low power. When the part to be removed has a canal passing through it, as the penis or cervix uteri, the galvanic cautery is much better than the *éraseur*, because the latter tends very much to obliterate the canal by the severe compression which the tissues undergo; while the cautery acts very slightly so.

Where narrow pedicles contain large vessels, as in some pendulous tumours—ovarian, for instance—the red-hot wire only is not sufficient. A simple line of searing fails to weld together, by the kind of fusion necessary in the process, the walls of the vessels. It requires a much more protracted action; and this can only be accomplished by employing the largest cones, acting upon half an inch of the pedicle. When this half-inch is fused into one mass, then the patient is safe from hæmorrhage, seldom before. During this action, the peduncle should be held firmly constricted by some plan, as a clamp, ligature, etc., so as to prevent any bleeding from interfering with the efficacy of this process of welding.

The capability of placing either the needle, cone, or rope *in situ*, before heating, is the peculiarity of the galvanic cautery, and the advantage will be at once recognised by all. In small fistulae, we can insert the nævus-needle belonging to the apparatus; and, when carefully placed, it can be heated. This would be practically impossible with a simple red-hot wire. Where, also, we desire to pass it into the cervix uteri, or into the centre of a fibroid, it is clear that it affords us an almost unique opportunity. Again, in division of sphincter in fistula ani, the wire being passed up the fistula into the rectum and brought out at the anus, the section is made very quickly, with little or no bleeding.

I must ask permission to give a short account of the application of the galvanic cautery to the several diseases for which it has been employed.

Epithelioma of Vulva and External Genitals.—The application to this class of disease in this position varies little from that of the rest of the body generally, except that the surfaces are more irregular. Where they can be wholly removed by passing the wire beneath it, it is much the best plan to do so, assisted by the usual needles; otherwise the disease must be attacked from the surface, and followed up by a second or even third application, till the whole is removed. The depth to which cautery-action extends is not so great as we might at first sight expect; so that it is well, in order to avoid frequent repetitions, to be thorough at first. However, in thin and important parts, it would be better to repeat than to destroy too deeply.

Where the clitoris has to be removed, we should be prepared for hæmorrhage, if we sever too quickly in this case. We must be slow in division, and be prepared with the cone; and, if this fail, then employ a

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