REMARKS ON APHASIA AND WILL-MAKING.

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I.

In cases of aphasia important medico-legal questions, such as the ability of the patient to manage his affairs, to make a will, etc., every now and again arise.

In this lecture I propose to consider more particularly the question whether an aphasic patient is able to make a will or not. This question, which is one of the most difficult problems which the medical jurist is called upon to solve, usually includes the subordinate question whether the patient is able to manage his affairs; for, speaking from a medical point of view, it seems to me that if a patient is able to make a will he is, in most cases at all events, so far as his mental condition alone is concerned, qualified to manage his affairs, though in many cases, owing to his aphasic condition—the difficulty in communicating with the patient which the aphasic condition entails, and the paralytic condition with which the aphasia is so often associated—it will be convenient and advisable, more especially when his affairs are complicated, that they should be managed for him.

It is impossible to make any general statement regarding the will-making power of aphasic patients which will apply to all cases. Some aphasic patients are able to manage their affairs and to make a will; others are not: each case must be decided on its own merits.

In reference to this point Dr. Mills, in a valuable and suggestive paper, states:² "It will be seen from this hasty glance at the scanty literature of the subject, that the medico-legal questions which may arise in connection with the study of aphasias are somewhat numerous, although they are by no means all embraced in this review. They include many of those which the insane also present for solution, but with others especially belonging to the aphasias. At the outset it should be borne in mind that we are not dealing with some clearly defined entity called 'aphasia.' It is not possible to fix upon any general standard of capacity or responsibility for one suffering from an affection simply labelled 'aphasia.' Even correctly labelling an individual as insane does not decide as to his capacity to have certain privileges, or to do or not to do certain acts—for example, to have his personal liberty, or the control of his estate, to get married, or to make a will. In a practical as well as in a philosophical sense questions of sanity and insanity are relative, and so likewise are those presented by aphasias. They will depend not only on the form of the disorder, but also upon its degree and special characteristics in a particular case. 'The affections of speech met with are very different in degree and kind,' says Hughlings Jackson,³ 'for the simple reason that the exact position of disease in the brain and its gravity differ in different cases; different amounts of nervous arrangements in different portions are destroyed with different rapidity in different persons. There is, then, no single well defined "entity"—loss of speech or aphasia, and thus, to state the matter for a particular practical purpose, such a question as "Can an aphasic make a will?" cannot be answered any more than the question, "Will a piece of string reach across this room?" can be answered. The question should be, "Can this or that aphasic person make a will?"'

In connection with the will-making power of aphasic patients the following considerations must be kept in view:

1. That several different forms or varieties of speech defects are included under the common term aphasia—namely, word deafness, word blindness, motor-vocal aphasia, and agraphia; and that in these different forms or varieties the will-making capacity is by no means the same. Hence in each particular case it is necessary to determine the exact form of aphasia which is present.

2. That it is necessary to draw a distinction between the subcortical (pure or isolated) aphasias on the one hand,

and the cortical (true) aphasias on the other; for in the former (subcortical) forms of aphasia internal thought and speech are usually unaffected by the aphasic defect; whereas in the latter (cortical) internal thought and speech are usually in some degree, and often profoundly, affected.

3. That in some cases of aphasia these different varieties of speech defect are met with in an isolated form; whereas, in other forms of aphasia, they are combined.

4. That different cases of aphasia differ not only as regards the nature of the speech defect but also in degree—that is, as regards the severity of the special speech disturbance by which they are characterised.

5. That in some cases of aphasia there is great difficulty in communicating with the patient, in making him understand the questions which we desire to put to him; and that in other cases the patient has great difficulty in communicating with us, in making us understand his wishes and ideas; and that in some cases both of these difficulties are combined.

6. That in some cases of aphasia the intellectual faculties are little if at all impaired, while in others they are profoundly altered.

7. That in many cases the emotional faculties are markedly disturbed; and that in other cases, as a result of the brain disturbance (the brain lesion on which the aphasia depends or with which it is associated) the judgment and affections of the patient are perverted, so that he takes unreasonable likes and dislikes to relatives, friends, persons who are in contact with him, etc.

It will be readily understood that, in consequence of these circumstances, there is in many cases of aphasia very great difficulty in forming a correct estimate of the mental condition of the patient and of his capability of making a will. And here it may perhaps be well to refer in more detail to the mental condition of aphasia patients.

THE MENTAL CONDITION OF PATIENTS AFFECTED WITH APHASIA.

As I have just stated, this varies considerably in different cases. In some cases, the mental and intellectual faculties (memory, reasoning power, judgment, etc.) are comparatively little, if at all, disturbed; in others, they are profoundly altered. Between these two extremes there are all degrees of difference. In short, it is impossible to make any general statement regarding the mental condition and mental power of patients affected with aphasia further than this, that in most cases the mental and intellectual faculties are impaired in some, and in many cases in a profound, degree.

Speaking generally, the impairment of the mental and intellectual faculties is greater in cases of sensory aphasia (word deafness and word blindness) than in cases of motor aphasia; while in cases of total aphasia (combined sensory and motor aphasia) the mental impairment is always very profound.

Further, in cases of "pure," isolated, or subcortical aphasia (pure word deafness, pure word blindness, and pure motor aphasia), the mental condition and intellectual faculties are (other things being equal) much less profoundly affected than in cases of "true" or cortical aphasia (true word deafness, true word blindness, and true motor vocal aphasia), since in the former case (the "pure" aphasias) internal language (which is essential for the carrying on of thought) is not, while in the latter case (the "true" aphasias) it is usually more or less profoundly affected.

Again, other things being equal, the greater the degree of the aphasic defect the greater the mental impairment and the less the will-making capacity of the patient. This is, however, a very general statement; for the degree of the aphasic defect is of much less importance than the form or variety of the aphasic defect. To give an example, a moderate degree of word deafness is in most cases more likely to interfere with the will-making power than a much greater degree of word blindness or of motor aphasia.

Further, the age of the patient, the condition of the cerebral arteries, and the condition of the brain tissues prior to the onset of the cerebral lesion and of the aphasic symptoms, must all be taken into account. In young subjects, and in cases in which the aphasia is due to embolic infarction, the cerebral arteries and brain tissues are, prior to the onset of the brain lesion, sound, and the conditions for compensation

and restoration of the speech defects are consequently favourable; whereas, in old and debilitated subjects, in cases in which the brain lesion and the aphasic symptoms are the results of cerebral hæmorrhage or thrombosis, the cerebral arteries and brain tissues are usually more or less extensively diseased, and the conditions for compensation and the restoration of the speech defects are unsatisfactory. It is obvious that in the former class of cases the mental deterioration which results from the aphasic condition and from the brain lesion on which the aphasic condition depends, and with which it is associated, will usually be less marked than in the latter group of cases.

From this statement it will be gathered that the mental condition and intellectual faculties of aphasic patients may be deranged, deteriorated, or annulled either as the result of:

(1) The aphasic condition itself—that is, the interference with internal speech and thought which the aphasic condition produces; or

(2) The general disturbance of the mental and cerebral functions which the brain lesion, on which the aphasic symptoms depend or with which the aphasic symptoms are associated, produces.

The more extensive the brain lesion, other things being equal, the more profound the mental disturbance and deterioration due to this latter cause. For example, in cases of motor aphasia due to embolic plugging of the artery which supplies Broca's convolution, the general mental enfeeblement will necessarily be less marked than in cases of motor aphasia with complete right-sided hemiplegia, in which there is extensive softening of the whole of the motor area of the cortex. And again, in cases of total aphasia with right-sided hemiplegia, in which the softening involves not only Broca's convolution and the motor area, but also the auditory and the visual speech centres (angular gyrus and superior temporo-sphenoidal convolution), the general mental enfeeblement—apart from the mental impairment due to the aphasic condition, which, in cases of "total" aphasia of this kind, is sufficient *per se* to produce profound mental deterioration—will necessarily be much greater than in cases of motor aphasia, in which the lesion is limited to Broca's convolution.

The extent of the mental impairment which may be developed in different cases of aphasia depends, therefore, upon the form of the aphasia (whether (a) sensory, motor, or total, or (b) cortical or subcortical); the degree of the aphasic defect; the extent and severity of the brain lesion or lesions on which the aphasic and other associated brain symptoms depend (whether single and localised or multiple and diffused); the condition of the cerebral arteries and of the brain tissues (other than the arteries and brain tissues which are directly implicated by the lesion which is the cause of the aphasia); the age and general vitality of the patient (more especially the condition of the heart and arteries).

From this general statement it will be obvious that in trying to determine the mental condition of aphasic patients each case has to be judged of individually and on its own merits.

We have seen that in some cases of aphasia the patient is unable to understand spoken language, and that in others he is unable to understand written language, and that in others again these two forms of sensory aphasia (word deafness and word blindness) are combined. In cases of combined sensory aphasia the patient is cut off from the external world so far as the ordinary channels of communication by speech are concerned. The only means of communicating with him is by pantomime (by signs), and it is difficult to make him understand any except simple and elementary questions communicated in this way. Further, in many cases of sensory aphasia in which the lesion does not directly involve the motor speech centres the emissive speech functions—the patient's power of speaking and writing—are more or less, and in some cases profoundly deranged, usually in the form of paraphasia, of agraphia or paragrammia, the result being that the physician has difficulty in understanding what the patient wishes to say. On the other hand, in cases of motor aphasia in which the patient is unable to speak and to write, or only able to speak and to write very imperfectly,

the only means by which he can spontaneously communicate his ideas to (that is, make himself understood by) another person is by means of pantomime (signs), a very elementary and unsatisfactory means of communication if the patient should wish to express any elaborate or complicated mental idea. Again, in some cases of motor aphasia due to destruction of Broca's convolution the action of the sensory speech centres is impaired, though usually only in a slight degree. It consequently follows that some patients affected with motor aphasia who are quite able to understand simple questions, spoken or written, are unable to understand complicated questions or complicated written passages.

In cases of sensory aphasia, then, the physician has great difficulty in making the patient understand the questions which he wishes to put to him, and in cases of motor aphasia the physician has great difficulty in understanding any elaborate ideas which the patient wishes to express, since he can only express them by means of signs (pantomime).

In consequence of these difficulties of communication, as they may be termed, it is necessarily very much more difficult in the case of aphasic patients than in ordinary cases of brain disease in which the speech functions are intact to form a correct opinion of the mental condition and state of the intellectual faculties.

Further, it must be remembered, as I have more than once pointed out, that in many cases of aphasia the cerebral lesion not only disturbs the speech functions or destroys the speech centres, but produces more or less marked and widespread deterioration of the mental and intellectual faculties.

In many cases of aphasia and hemiplegia, the emotional faculties are distinctly altered; there is often impairment of cerebral and emotional control; many aphasic patients laugh and cry too easily; they are irritable, they get angry or excited about trifles, they take likes and dislikes to those who are in contact with them without obvious or sufficient cause.

In other cases, as I have already pointed out, the memory, reasoning power, judgment, and in fact all the intellectual faculties are more or less, and in some cases profoundly, disturbed. In some cases a condition of mental dulness, which can only be characterised as dementia, is developed. In many cases the powers of attention and mental concentration are markedly impaired. In many cases the brain power is easily exhausted, and the patient who at the commencement of a conversation or examination is mentally clear and alert may, in the course of a short time, become so mentally confused or dull that he is unable to understand what is said to him or to express himself so that he can make himself intelligently understood. In other cases the will is enfeebled; some aphasic patients assent to propositions or proposed lines of action to which they would not have assented before the onset of the aphasia; or they fail to dissent, or only feebly dissent, from other propositions or proposed lines of action from which they would have vigorously dissented before the onset of the aphasia.⁴ In some cases, the patient is facile and childish, and easily imposed upon. In other cases, the patient is unreasonably obstinate, insisting upon doing things contrary to the advice of his medical attendant, etc. In some cases there are hallucinations and delusions. In short, a condition which it may be impossible to distinguish from insanity may be developed. The condition which has been termed mind blindness is an excellent illustration in point. In a case of this kind which I have recorded, the patient's friends were firmly convinced that she was insane, and so no doubt she was for a time, so far at least as some of her mental operations were concerned.⁵

For these reasons, then (because of (a) the great difficulty that there is in communicating with some aphasic patients; (b) the great difficulty that some aphasic patients have in communicating with us; and (c) because of the mental impairment which is in many cases of aphasia associated with the speech defects), it is often most difficult to form a correct estimate of the mental condition of the patient, and to determine in those cases in which the mental power is impaired, as it necessarily is in many cases, whether the degree of the impairment is sufficient to interfere with his will-making capacity.

I may further add that great patience, repeated examina

tions (for, as has just been stated, the brain power of aphasic patients is speedily exhausted), and the most scrupulous fairness and exactness in eliciting the facts, and in drawing a conclusion as to the significance of the facts, are absolutely essential in order to form a true and correct estimate of the patient's mental condition, and of his will-making capacity.

There are too many sources of fallacy. For example, the recurring, emotional, or automatic utterances of patients affected with motor aphasia may easily be taken for intellectual expressions (propositions); whereas, as we have seen, they may have no intellectual value whatever. And, again, if the patient is able to understand simple questions, and to respond intelligently to simple questions by means of signs (pantomime), the physician may not unnaturally perhaps, but far too hastily, conclude that the reasoning power and intellectual faculties are altogether unaffected.

The literature of aphasia and will-making is very scanty and unsatisfactory. Although our knowledge of aphasia has enormously increased during the past few years, very little has been published on the medical jurisprudence of the subject; and this is not to be wondered at, for, on the one hand, very few medical jurists have an intimate acquaintance with aphasia—one of the most difficult and complicated questions in the whole range of medicine; and, on the other hand, the neurologists who have made a special study of aphasia have, with rare exceptions, almost entirely ignored the medico-legal side of the question.

The lectures of M. Legrand du Saulle are by far the most important treatise on the subject with which I am acquainted. But these lectures were published fifteen years ago, before much of our modern knowledge of aphasia was acquired. M. Legrand du Saulle sums up his views with regard to the ability of aphasic patients to make a will in the following general conclusions:

1. The aphasic may be supposed to have preserved his intelligence, or a great part of his intelligence, when he remains faithful to his old habits of life, and when, in spite of the difficulty of making known his thoughts and his wishes by word or by writing, he has had the care of his affairs, has been able to watch over his interests, to form sensible plans, to appreciate adequately persons, events, or things, only to give his confidence and his friendship willingly, and to continue more or less the usual occupations of his life, when, in a word, he differs little, if at all, from his former self.

2. There is a legitimate reason for suspecting the mental condition of the aphasic, who, without any interest in the business and friendships of yesterday, without any anxiety for the undertakings or the difficulties of to-morrow, has become indifferent, apathetic, negligent, forgetful of proprieties, suspicious and credulous, irritable and passive, who can no longer look after his interests and render an exact account of his business or his fortune, who shows himself emotional and tearful on the slightest pretext, who has manifested distinct alterations in his sentiments and affections and general conduct in consequence of the cerebral lesion, alterations which are notoriously at variance with the tendencies, the way of living, and all the antecedents of the individual.

3. The former of these aphasics is capable of making a valid will; the second, a will very debatable, or absolutely invalid.⁶

With these preliminary remarks let us pass to the consideration of the individual forms of aphasia. Let us consider the methods of procedure which it is desirable to pursue in order:

- (1) To determine whether an aphasic patient is mentally capable of making a will, and of disposing of his affairs; and
- (2) To correctly ascertain his wishes and desires—how he wishes to dispose of his possessions.

In studying any complicated subject, it is convenient to begin with the simple and to proceed up to the complex. We will first then consider cases of motor aphasia in which the mental faculties are usually far less deranged than in cases of sensory aphasia, and in which there is usually much less difficulty than in cases of complete sensory aphasia in ascertaining and understanding the wishes and desires of the patient.

THE CAPACITY FOR WILL-MAKING IN CASES OF "TRUE" OR CORTICAL MOTOR APHASIA.

We have seen that in different cases of motor aphasia the degree of the speech defect is very variable. In some cases the speech defect is comparatively slight; the patient is able to make use of individual words, and perhaps short sentences, and to write individual words or disjointed sentences. In rare cases in which the motor vocal aphasia is complete, there is no agraphia. In cases of complete motor aphasia with agraphia, the patient may only be able to say a few words, such as his own name, "Yes," or "No," some recurrent utterances or emotional expressions.

In these cases of complete motor aphasia and agraphia, the physician has great difficulty in understanding any elaborate mental idea which the patient wishes to express, since he (the patient) can only express his ideas by means of signs (pantomime), a very unsatisfactory method of communicating elaborate thoughts and ideas.

Further, we have seen that in some (according to Déjerine, in all) cases of motor aphasia due to destruction of Broca's convolution there is some, though it may be only slight, derangement of the action of the sensory speech centres—some derangement of the visual speech centre, and some, though usually still more slight, derangement of the auditory speech centre. Hence it follows that in some cases of (cortical) motor aphasia in which the patient can understand simple questions spoken or written, he is unable to intelligently comprehend complicated spoken questions, and, still less, complicated written questions.

And here it must be noted, as I have already pointed out, that because a patient affected with motor aphasia puts out his tongue, touches a part of the body which he is told to touch, and does similar acts in answer to spoken or written requests, and because he understands simple questions or simple statements, and replies correctly to such questions by means of suitable signs, it does not by any means necessarily follow that his mental faculties are unimpaired—that he is able to understand complicated questions of business, to manage his affairs and to make a will.

It may, I think, be stated with some degree of confidence that in many, perhaps in most, cases of complete motor aphasia due to a lesion of the motor vocal speech centre (in other words, in most cases of "true" or cortical, as distinct from "pure," isolated, or sub-cortical motor vocal aphasia), the patients are, in consequence of the secondary disturbance in the action of the auditory and visual speech centres and of the general mental enfeeblement produced by the brain lesion, unable clearly and fully to understand a long complicated legal document such as a will, either when it is read to them or when they read it to themselves. They may, it is true, and in many cases they will, indicate assent after such a document has been read to them, but such assent does not necessarily imply that they have clearly and fully understood the purport of the document.

The average layman, even when all his faculties are alert and bright, has great difficulty in understanding and clearly appreciating the meaning of a complicated legal document such as a will; and it is impossible, in many cases at all events, to expect aphasic patients, whose brain power is necessarily in some degree weakened by disease, to understand such a document.

On the other hand, it must be remembered that in many cases of motor aphasia in which the patient is unable to follow and clearly understand a long document couched in legal verbiage and technicalities, he may be quite able to appreciate and understand the individual clauses of the document when succinctly and clearly explained in ordinary language.

Further, as has been already pointed out, in old and debilitated patients, and in those cases in which the cerebral arteries are degenerated and diseased, the mental deterioration is usually much more profound than in young and vigorous persons and in those cases in which the hemiplegia and aphasia are the result of embolic infarction; and in consequence of the mental deterioration and the defective will power which are often present in cases of this kind the patient may assent much more readily than he would have done prior to his illness to propositions and suggestions which are put before him. It is important to

remember that aphasic patients may, in consequence of these mental alterations, assent to a legal document such as a will and to each of its individual clauses—even after the individual clauses have been clearly explained to them—far too easily, far more readily than they would have assented prior to the onset of the brain lesion.⁷ Further, as I have already explained, they may assent without having clearly followed and understood the meaning of the will and of its individual clauses.

In judging of the mental condition of patients affected with motor aphasia and the value of their expressions of assent or dissent, the physician must, as I have previously stated, carefully discriminate between intellectual and reflex, automatic or emotional, utterances. It is essential to determine whether the words—such as “Yes” or “No”—which the patient utters are used by him in an intellectual (propositional) sense on the one hand, or merely as reflex, recurrent utterances, or emotional expressions on the other.

To sum up, it is essential to remember in connection with the will-making power of patients affected with motor aphasia:

First, that in some cases it is difficult to determine the exact mental condition of the patient, whether his mental and intellectual powers are unaffected, whether he is mentally and intellectually competent to make a will.

Secondly, after the physician has satisfied himself that the patient is mentally capable of making a will, it is in some cases extremely difficult to ascertain from the patient—since, if the motor aphasia is complete, he is able to communicate his wishes and ideas only by means of signs (pantomime)—the exact way in which he wishes to dispose of his property.

And, thirdly, even if the wishes of the patient have been satisfactorily elicited and understood, even if the physician is satisfied that the will as a whole and its individual clauses have been clearly comprehended and understood by the patient—after, in short, a will in accordance with the wishes and desires of the patient has been correctly executed—the further question may arise—and it is often a most difficult question to determine—whether, in consequence of the brain lesion, with which the aphasia is associated and on which the aphasic symptoms depend, the patient's mental balance, judgment, and affections have been so perverted that he has taken an unreasonable liking or disliking for certain persons whom he has included in, or excluded from, his will. In those cases in which the provisions of the will or some of the provisions of the will, whether positive or negative, are peculiar or altogether unexpected—in other words, are, so far as can be judged of, different from the provisions which the patient would have been likely to make when in a condition of brain health (that is, before the onset of the cerebral lesion and the aphasic condition), the question naturally arises whether such provisions are the result of a disordered mental condition due to disease, that is, are the result of the brain lesion.

The capability of patients affected with motor—and, indeed, any form of—aphasia for making a will, will of course largely depend upon the nature of the will—whether simple or complicated. When the patient wishes to leave all his property to one person—say to his wife or son—it is comparatively easy to ascertain his exact wishes and desires. When the patient's affairs are complicated, when intricate legal provisions have to be made for the arrangement of his affairs, when he wishes to dispose of property in a variety of ways and to divide it amongst several different persons, the question is much more difficult.

It is especially difficult when the patient has not thought out the manner in which he wishes to dispose of his affairs, the details of his will, prior to the development of the cerebral lesion, when, in other words, he has, after the development of the cerebral lesion and the onset of the aphasic symptoms, to think out the details of the will and to communicate his wishes to his lawyer *de novo*.

It is obvious that if, prior to the onset of the aphasic symptoms, the patient has given instructions for a draft will, if he has thought out the details of his will and arranged how he should dispose of his property—what he has to leave, how he means to leave it, to whom it is to be left—the matter is comparatively simple. His wishes when in a state of health

being known, all that is necessary is to be satisfied that the patient clearly and intelligently understands the will as a whole and the individual clauses of which it is composed, and that he continues to approve of them.

In cases of complete motor aphasia and agraphia there is usually no difficulty in coming to a satisfactory conclusion on these points provided that there is no word deafness and that there is no marked derangement of the mental faculties. If the patient has not previously thought out the matter, if no draft has been made prior to the onset of the aphasic condition, if the provisions of the will have not been the subject of discussion between the patient and his lawyer, the difficulties are enormously increased, and this is more particularly when the patient's affairs are complicated and when the provisions of the will are numerous.

Even a skilled physician, accustomed to examine cases of aphasia and to form an opinion as to the mental condition of aphasic patients, often has great difficulty in understanding the simple wishes and ideas of a patient suffering from complete motor aphasia and agraphia. It will readily be understood, therefore, how much more difficult it will necessarily be for an unskilled observer (a lawyer) who knows nothing of aphasia and the methods of eliciting information from aphasic patients to ascertain the wishes and intentions of the patients, that is, to obtain the instructions which are required for drafting the will.

It is hardly necessary to say that it is essential, in the interests of justice and of the patient's representatives and heirs, that the most scrupulous care should be taken not to suggest what he should do—how he should dispose of his property, to whom he should dispose of it.

METHOD OF PROCEDURE WHICH IT IS ADVISABLE TO ADOPT IN TAKING THE INSTRUCTIONS FOR A DRAFT WILL IN CASES OF MOTOR APHASIA AND AGRAPHIA.

In actual practice it is necessary in the first place to ascertain if the patient knows what he has to dispose of. When the lawyer or relatives of the patient are acquainted with his affairs the matter is comparatively easy.

The lawyer should first ask the patient: “Mr. A., do you wish to make a will?” The patient will then express assent, “Yes.” “Do you know what you have to leave?” “Yes.” “Have you made up your mind how you wish to dispose of your property?” “Yes.”

And here I may remark that the lawyer must not be content with a mere assent, but must vary the form of his questions, and put test questions with the object of seeing whether the patient clearly understands what he is doing. As a test he should ask the patient some question regarding the disposal of his property from which he thinks that it is likely the patient will dissent, with the express object of making him dissent (seeing whether he will dissent). It is only in this way that one can be absolutely certain that the patient clearly understands everything that is being put to him. As I have already stated, some aphasic patients will assent to almost every question which is placed before them. An aphasic patient who is about to make his will may have a perfectly clear mental idea that he is going to make his will; he of course knows that the lawyer has come with the object of getting instructions for a will or his signature to the will. When the will is read over to him, he may assent to the will as a whole, and when the individual clauses are explained to him *seriatim*, he may assent to each of them individually, without having clearly understood the purport of the will as a whole, or the express provisions of each of its individual clauses.

Exactly the same plan has to be followed here as in testing the sensibility of the skin, namely, to check the patient's answers by blank experiments.

In reading the will, for example, the lawyer should introduce some clause which is not in the will, and from which there is every reason to suppose, if the patient clearly understands what is being read to him, he will dissent. The same with regard to the individual clauses. Every now and again a clause should be introduced which is not in the will, leaving, for example, money to a stranger whom the patient does not know, or a large sum of money to someone who has no special claim upon the patient, but with whose name he is quite familiar—say, a domestic servant. If the patient does not

dissent from these test clauses, and object to them, it is reasonable to conclude that he may not have clearly understood the other provisions of the will, and the other clauses to which he has already assented. In short, that he may be assenting to clause after clause in a routine, reflex, or automatic manner. The clauses which the patient has already approved of must then be repeated individually, and a new clause or clauses from which the patient is likely to dissent must again be introduced.

In cases of complete motor aphasia and agraphia, in which the patient has not previously given instructions for a draft will, it is only by an exhaustive and prolonged investigation carried out in some such way as this, that it is possible to arrive at a correct idea of the patient's mental condition and of his disposing capacity.

In trying to ascertain whether the patient has a clear idea of the amount of property (money, lands, etc.) which he has to dispose of, detailed questions must of course be put. Suppose that we are dealing with the case of a wealthy man who has, say, £40,000 in personal estate. The patient should be asked various sums below and above the amount. "Have you £5,000?" "Yes." "Have you £20,000?" "Yes." "Have you £100,000?" "No." "Have you £50,000?" "No." "Have you £35,000?" "Yes." "Have you £45,000?" "No." "Have you £40,000?" "Yes."

If all these questions are correctly answered, and if it is known that the patient has about £40,000, there can of course be no question as to the correctness of the result. In other words, the patient has a clear and correct knowledge of the amount of personal property which he has to dispose of.

It is perhaps hardly necessary to state that many perfectly healthy people have not an absolutely exact knowledge of what their possessions amount to; they may only be able to give exact and detailed information after referring to written memoranda. If the aphasic patient is able to understand written characters—that is, to read, he should of course have such memoranda before him.

The same method of procedure should be employed with regard to real property. In most cases the nature of such property will of course be known either to the lawyer or to the relatives of the patient. A series of questions of the same nature as those which have already been indicated in connection with the personal estate should then be put to the patient. "Do you know, Mr. A., what property you are possessed of?" "Does it consist of houses and lands?" "Does such-and-such a place belong to you?" Here again care must be taken to introduce the name of some place or property which does not belong to the patient, with the object of testing his knowledge of his affairs, of seeing whether he clearly understands the questions which are put to him.

By this method of procedure, provided of course that the patient's memory and intellectual faculties remain sufficiently clear, there is usually no difficulty, with care and patience, in ascertaining whether the patient has (retains) a sufficiently exact knowledge of the amount of property (money, lands, etc.) which he has to dispose of.

In those cases of complete motor aphasia in which the lawyer, friends, and relatives of the patient have no knowledge of his affairs, the difficulties of obtaining this information are, it is unnecessary to say, greatly increased.

Having ascertained that the patient has a sufficiently exact knowledge of the amount of property (money, lands, etc.) which he has to leave, we must next endeavour to ascertain how he wishes to dispose of it. The lawyer should now state, "Mr. A., you have so much money and so much property, how do you wish to dispose of it?" In those cases in which the motor aphasia is incomplete and the patient is able to mention names, there is of course little or no difficulty, always of course provided that the memory and intellectual faculties are sufficiently clear.

In those cases in which the motor aphasia is complete, in which the patient is unable to speak and to write, it may be very difficult to ascertain exactly what the patient wishes. In cases of this description great discrimination and care must be exercised in conducting the examination, for, as I have already more than once pointed out, it is essential to avoid making suggestions which are likely to bias the patient, or to guide his actions, wishes, and desires. In those cases in which the patient can understand written characters, that

is, can read, the dictionary method which has been so graphically described by A. Dumas in *Monte Cristo* may be employed.⁸

In those cases in which the patient does not clearly understand written speech, that is, in which he is unable to read, the only method is to ask leading questions; this must be done in such a way as to test the patient's powers of discrimination. The lawyer should tell the patient that he is going to mention several names, and that when he, the patient, hears the name of a person to whom he wishes to leave anything, he must indicate assent by nodding his head, holding up his hand, etc., and that when he hears the name of a person to whom he does not wish to leave anything, he must indicate dissent by shaking his head, etc. Of course, if the patient can use the words "yes" and "no" in an intellectual (propositional) sense, with a clear understanding of their meaning and significance and not as mere reflex, automatic, or recurrent utterances, it is not necessary to have recourse to signs (pantomime).

The names of his nearest relatives—wife, children, brothers and sisters, nephews and nieces, dearest friends, etc., should then be mentioned individually. And here again care must be taken to introduce some name or names which are not likely to interest the patient, or the names of some person or persons to whom he is known to have an antipathy, and to whom he will, provided that he clearly understands what is going on, express dissent. If the patient does not dissent when such names are mentioned, grave doubts must necessarily arise as to his will-making power.

Having in this way, with great care and discrimination, ascertained the names of the relatives and friends to whom the patient wishes to bequeath his money, property, etc., the next point is to determine the amount which he wishes to bequeath to each of these persons individually. In the case of personal property, the patient must then be asked "Mr. A., you have so much money" (naming the amount), "and you wish to leave it to such-and-such persons" (naming the individuals). "Will you indicate the amount of money which you wish to leave to each of these persons as they are mentioned to you?" First take the wife, son, or nearest relative. We are supposing that the patient has £40,000 to leave: "Do you wish to leave your wife £100?" "Yes." "£1,000?" "Yes." "£10,000?" "Yes." "£50,000?" "No." If he assents to this last proposition, it is obvious (since he has only £40,000 in all to leave) that his answers cannot be trusted. If he answers correctly, that is, dissents, he should then be asked, "Do you wish to leave your wife £20,000?" and so on until the exact sum which he desires to leave is ascertained.

In this way, by mentioning different sums, the exact sum (say £25,000) which he wishes to leave to his wife will ultimately be arrived at. Having ascertained the exact sum which he wishes to leave to his wife, the lawyer must next endeavour to determine whether he wishes to leave it to her absolutely or merely for her life, so long as she remains unmarried, etc. "Do you wish to leave £25,000 (the sum which has already been specified) to your wife absolutely for her own use? Do you wish to leave the income only of £25,000 to your wife for her life?" If the patient assents to both propositions, it is obvious that he has not clearly understood one or other or both of them, and they must be again put before him in different ways, and his answers must be again checked. The next name on the list must then be taken, and so on, until the individual sums which he wishes to leave to all the relatives and friends (the names of whom he has previously picked out) are exhausted.

The procedure indicated above may usually be facilitated and shortened by ascertaining the exact amount of money, lands, etc., which the patient wishes to leave to each individual as soon as he approves of the name of that individual. After the whole process is completed the total amount which he has disposed of must, of course, be added up. If the total corresponds, or practically corresponds, to the amount which he has to leave, it is obvious that he knows not only what he has to leave but how he wishes to leave it. If the total does not practically correspond to the amount which he has to dispose of this must be explained to him, and the figures must be gone over again.

The same process must be carried out with regard to real

property. "Mr. A., you have such-and-such a property to leave. I will now mention the individual names which you have specified, and when I come to the person to whom you wish to leave this property, you will assent." Here, again, blank names must be substituted and imaginary properties specified, with the object of testing whether the patient clearly understands what he is doing or not. After the patient's wishes have in this way been ascertained, that is, after all of the information which is necessary for the preparation of the will has been obtained, the draft should be carefully read over to the patient, clause by clause, imaginary clauses, as I have already stated, being from time to time introduced with the object of testing the patient's understanding power.

If the patient can clearly understand written speech, that is, can read and understand what he reads, the draft may be left with him in order that he may further consider it before the will is drawn out in full and engrossed. In drawing up the will the lawyer should endeavour to make it as simple as possible, consistent, of course, with the legal technicalities which are essential for the proper carrying out of the patient's wishes.

The process which has been indicated above is necessarily slow, and must occupy much time; it must be carried out with much care, great exactness, and scrupulous impartiality. In many cases it is not possible, when the affairs of the patient are complicated, to complete the examination and get all the details of the draft will at a single sitting; for the brain power of many aphasic patients very soon becomes exhausted. The physician should see that as soon as any symptoms of exhaustion or mental failure arise the examination is for the time stopped. The lawyers are always anxious to draft the will at a sitting, or at all events as soon as possible. Under such circumstances one is necessarily on the horns of a dilemma. But the delay cannot be helped; it is necessary to run the risk of waiting for a day or two, and, if necessary, for several days, in order that the whole process may be satisfactorily completed. And by the term "satisfactorily completed" I mean that each individual clause of the will may be clearly and definitely understood and approved of by the patient; otherwise injustice may be done.

It is hardly necessary to say that no attempt should be made to obtain the patient's instructions for a draft will or to affix his signature to a will immediately after the occurrence of an aphasic attack or just after a relapse. In such conditions the brain action is necessarily disturbed. A will drafted or executed under such circumstances could not be expected to stand.

When the will has been written out in full and is about to be executed, it must, of course, be read over to the patient in full, as a whole, and each of its individual clauses clearly explained to him—disassociated from the legal verbiage—test clauses which are not in the will being, as I have already indicated, interpolated here and there.

This procedure is, of course, specially necessary in those cases in which the instructions for the will are obtained on one day and the will executed on another (subsequent) day; for the mental condition of aphasic patients is liable to undergo rapid alterations and relapses, and the brain lesion on which the aphasic condition depends is liable to extensions and aggravations. Hence, it does not follow that, because an aphasic patient is mentally capable of making a will on one day, he is mentally capable of making a will the next day. In other words, care must be taken to see that not only is the patient mentally capable of making a will on the day on which he gives instructions for the will, but that he is also capable of making a will on the day on which he executes it (signs it).

The medical attendant should always be present, with the object of assisting the lawyer by his skilled knowledge and advice in ascertaining the wishes and desires of the patient, and of satisfying himself, if he is asked to be a witness to the will, in the interests of justice—that is, in the interests of the patient and of his friends and relatives—that the patient is mentally capable of making a will, that the instructions for the will have been correctly elicited, and that the will has been correctly executed.

It is most important, if the will is to stand, that the lawyer

should consult the medical attendant as to the procedure, the length of each examination, etc.

The medical attendant should only witness the will if he is satisfied that the patient is mentally able to make a will, that the information has been properly elicited, that the patient has clearly understood the will, and that it actually represents the patient's wishes. The medical attendant should not consent to witness the will unless he is satisfied, and prepared to appear in court to swear that he is satisfied, on these points.

REFERENCES.

¹ Questions connected with criminal procedure so rarely occur in cases of aphasia that they need not be specially considered. ² Aphasia and other Affections of Speech in some of their Medico-legal Relations, studied largely from the standpoint of Localisation, by Charles K. Mills, M.D., p. 14; reprinted from *The Review of Insanity and Nervous Disease*, September and December, 1891. ³ *Brain*, October, 1878, p. 314. ⁴ M. Legrand du Sault, in one of his important lectures on the will-making capacity of aphasic patients (*Gazette des Hôpitaux*, 1882, p. 538), lays special stress on this point. He states that in all the aphasic patients whom he examined, whether their intellectual faculties were impaired or not, he detected a diminished firmness of will which led them to assent too readily and easily (more readily and easily than they would have done when in a condition of health) to suggestions made from the outside. He states: "A l'hospice de Bicêtre, pendant treize années consécutives, j'ai observé un certain nombre d'aphasiques. Quelques-uns étaient restés aussi intelligents que l'est aujourd'hui M.X.... Mais je finissais cependant par découvrir chez eux un point vulnérable. Ainsi, il m'a paru que ces aphasiques demeurés intelligents résistaient parfois mollement à des suggestions avides et qu'ils prenaient alors des dispositions testamentaires en dehors des liens de la famille, discutables à l'occasion, qui, sans l'aphasie préalable, n'auraient peut-être pas été consenties aussi facilement. Sauf cette fermeté diminuée sur un seul point, sauf cette aptitude un peu défaillante à tester, les opérations diverses et variées de l'entendement se manifestaient dans les conditions qui ne laissaient point de prise à la suspicion pathologique." ⁵ *Lancet*, March 27th, 1897, p. 868. ⁶ *Gazette des Hôpitaux*, 1882, p. 611. ⁷ Legrand du Sault, *Gazette des Hôpitaux*, 1882, p. 538. ⁸ *The Count of Monte Cristo*, chapitre lix.

(To be continued.)

THE REMOVAL OF HIGH-LYING CANCER OF THE RECTUM BY KRASKE'S METHOD,

WITH A SERIES OF FOURTEEN CASES.

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Two or three considerations have induced me to bring this subject forward. In the first place, I cannot find that any like series of cases of sacro-coccygeal excision of the rectum has been recorded by an English surgeon. Further, the relative merits of extirpation *versus* colotomy for the treatment of high-lying rectal carcinoma seem to me to need further discussion, for, contrary to my own feelings in the matter, surgical opinion in this country, if judged by the remarks of Mr. Watson Cheyne on this subject in his recent Lettsomian Lectures, seems somewhat unduly to favour the latter, which at best is only a palliative procedure. I think that all will be agreed that in cases where we feel morally certain that the entire disease can be removed, even at some considerable risk to life, the patient should be submitted to the radical operation which holds out a prospect of getting permanently rid of the disease in some cases, whilst in others recurrence may be delayed for some years. Even if the disease manifests itself again after the lapse of only a few months and further excision is not thought advisable, one can always fall back on a colotomy.

I know of three or four cases in my own practice submitted to excision and now well and engaged in their various occupations without any sign of recurrence after periods varying from one and a-half to six years, who had been advised by hospital surgeons of repute that the disease did not admit of removal, and that colotomy was the only thing left for them. I mention this merely to show that surgical opinion has not yet grasped the fact that these cases of high-lying cancer are as capable of removal as those situated lower down.

Let me here ask: What were the conditions presented by these cases which possibly influenced these various surgeons in advising a colotomy? I think it must have been the height to which the growth reached above the anus, for in all it extended to at least 4 inches above the sphincter; in none were there any enlarged glands to be felt, nor had the disease