Question of the Company of Surgeons of Edinburgh, to which the following was submitted:

A Thesis
on
some Medical-Legal Questions, connected with Unsoundness of Mind,
by
James Little
sine tellus, scireisse pudet, quia plurima cerno.
Ne quaeque quae fuerant judie digna lini.
A Thesis

on

Some Medicolegal Questions,
Connected with Unsoundness of Mind

Chapter I

In this Thesis I propose to offer a few observations on those cases, in which, though neither Mania, Dementia, nor any form of fully developed Insanity is present, the question of Soundness of Mind is raised. This may be done either with the intention of depriving an individual of the management of his property and of placing him under control, or for the purpose of setting aside a Will or a Marriage or other contract, or to avert punishment for a criminal act, or to invalidate the evidence of a Witness on the ground of mental inferiority, and the first point which seems to require consideration is, Should the Physician, when called on for
his opinion, propose to himself the same question under all these circumstances? That is, should he consider Sanity and Insanity as two distinct entities, and accordingly give his opinion that the person was either sane or insane? Does the present state of our knowledge of mental conditions permit him to do so? or, should he recognize the principle that an individual may possess at the same time certain attributes of a sane and of an insane mind, be in one sense a man of sound mind and in another a man of unsound mind? In the present state of psychological medicine are we justified in dividing the world at large into two groups and asserting that all in one group are sane absolutely and in every sense, and that all in the other are to an equal degree insane? That if the former it must be predicated that they are able to take care of their persons and property, are in a position to weigh all the circumstances coming before them, when engaged in the execution of Wills and Contracts; possess the power of self-government, and that their observation and memory are to be relied on when their testimony is required? and if the latter class that they want all these qualities? or does Science teach...
Medical Testimony of Lunacy, page 10.
as that the mind of an individual may be in such a state, as to unfit him for taking care of himself or disposing of his property, and yet in a state by no means rendering him irresponsible for his acts.

Dr. Mayo, says, "if we permit ourselves to entertain the judicial question 'Is it a responsible agent?' instead of confining ourselves to the medical question 'Is it insane?' we are liable to find ourselves enlarging our description of the disease in favour of some one, who possesses, equally as we think, with the insane, that element of character and external circumstances, in which alone we argue that their insanity is to ought to be based."

I cannot avoid the conclusion that the interests of justice must often suffer if the medical man confines himself to the question "Is it insane?". I hope hereafter to point out, that observation teaches us that capacity and responsibility in human beings do actually depend on the absence or presence of certain elements of character and as I should prefer to call them, certain attributes of mind, while such expressions as "Insane" "Of Unsound Mind" admit especially in the hands of an advocate of the widest application...
op. cit. page 4.
his duty is to induce the medical witness to give an answer which he may make effectually serve his client, but the duty of the physician is to give testimony as closely approximating absolute truth as he can.

Dr. Mayo, himself, when speaking of the terms "Insane," "Idiot," and "of unsound mind" says, "the face which I must attach to these terms is conjectural, grounded on the supposition that they cannot be considered synonymous and consequently must be the heads of a division, whether vague or complete, to which I assume the meaning, which I assign to each term, bear as near an approximation as can be made at present." The writings of the most experienced physicians, among others, Dr. Mayo himself, indicate that it is often difficult, if not impossible, to form more than an approximate conclusion as to the state of an individual's mind—surely then it is not desirable to involve the opinion founded on an approximate conclusion, by expressing it in a word which has only an approximate meaning.

The case of Mr. Jumma, alluded to by Dr. Mayo illustrates, I think, very forcibly the way in which the interests of Justice may suffer from the
Mr. Erskine, in his speech in defence of Hadfield.


Medical Witness, placing before his mind the
general question "Is he insane" instead of the particular
one "Does it possess memory, judgement, free will?".
She was not insane, several physicians were prepared
to swear to that, she was incompetent to manage her
person and property, several others were equally ready
to swear — Dr. McPherson tells of his collision with Dr.
F. Morris on that occasion, the Lawyer wished to
make him swear that M. C. was insane, he refused to admit that she was 'legally insane.'
Dr. May's seems to think the difficulty would have
been avoided by describing the case as one of "Unsound
of Mind," according to the meaning which he
supposes to attach to law to that expression.
If we take up most works on this subject
he finds some certain characteristic of Insanity
laid down — such a characteristic is Delusion.
it is said if there be no delusion there is Sanity,
if there be delusion then is Insanity (Robins & Nicholls),
but Insanity involves civil incapacity under
all circumstances, and criminal irresponsibility.
Is this conclusion just? Is every person whose
mind is without delusion capable and responsible?
Is any person who labors under any delusion
incapable & irresponsible? Such a conclusion,
seems to me incompatible with what we know both respecting those whom the adoption of this 
criterion would place among the insane, and also respecting those whom it would rank among 
the sane.

There are many cases in which doubts an answer to the general question "Is it insane?" using that phrase in its most extended sense, would sufficiently serve the interests of Justice, but in others I feel that the Medical Witness could not afford the Court all the assistance which the present state of our Science enables him to give, if he confined himself to such a general statement — and what is more, that he may have the satisfaction of seeing his Evidence, if so given, made to support conclusions which he never intended should be drawn from it.

When an action is brought against a Railway Company for injuries sustained through the carelessness of its Servants, the Surgeon who attended the injured individual is placed in the Witness Box — he gives his Evidence as to two points — first the nature of the injury — seeing its results — he is not intended to tell the Court that his patient sustained a Fracture of
his leg, but he also informs them, that that injury has left him incurably lame for life — or that he sustained a contusion of his elbow-joint, resulting in a condition which will prevent him earning his bread by the handicraft to which he belongs. Now, I think, the Physician who simply tells a Judge and Jury that an Individual is "insane," gives them no better information than the Surgeon who would consider he had discharged his duty when he testified that his patient had sustained a "Fracture of the Tibia & Fibula" without explaining to what extent that injury interfered with his power of motion. If the accident had resulted in death, he has simply to state that the fatal termination resulted from certain injuries received — analogous to the position of the Medical Witness in a case of complete Dementia, here he may safely say the individual is "insane" for there is no condition, which the law attaches to Insanity, that is not fairly applicable to one entirely and incurably Demented — he requires to be placed under surveillance; he is civilly insane — patent, he is criminally irresponsible. On the other hand, there are persons of whom, in one sense, it may fairly be asserted that they are of unsound mind, to whom one or more of these conditions would not attach and regarding whom, therefore a
Medical Witness would not be justified in sanctioning, by his Evidence, either the unmodified statement, that they were of sound Mind or that they were of unsound Mind. Nor need we be surprised that such cases should present themselves, when we consider, that Insanity is generally a gradual change from Sanity, and that even after it has ceased to be a progressive disease and is stationary, it may yet exercise its influence in a certain direction; the other segment of the mental circle, if I may use such an expression, remaining unaffected.

I venture therefore to suggest that the Physician, instead of propounding to himself the question "Is it insane?" should propound to himself the question, "Has disease weakened, prevented, or destroyed any, and if so what, attribute of its Mind?" and that when called on in Court in case of disputed Sanity, no matter how the question is put to him, he should claim from the Court permission to qualify his answer accordingly.

In short I believe that the alterations, effect in the mind by disease vary almost indefinitely — the departure from health being in one case complete, in another partial — that the amount of legal disability should vary accordingly.
and therefore that the medical witness, who, as recommended by Dr. Mayo, confines himself to deciding whether the individual about whom his opinion is asked, belongs to the great class ' sane' or to the other great class "insane", does not sufficiently assist the Court to a just conclusion about the case and indeed may rather prevent than otherwise the administration of Justice—

I cannot venture to point out the various modifications of decided mind, which may thus require to be recognized and explained by the physician, but I will attempt to illustrate a few of them.

Since the above was written, I noticed that Dr. Mayo in his article on Eccentricity and Insanity in the April Number of the Psychological Journal, seems to admit the very conclusion at which I have arrived, for he there argues that we require a different practical criterion of Insanity in a case where the question is responsibility for a Crime and where it is Necessity for Surveillance—
Chapter II.

The object in placing a Physician in the Witness Box is very frequently to assist the jury in arriving at a just verdict as to the responsibility of a prisoner—that may be the only point on which they require a professional opinion to guide them. Will the decision of the question “Is A. insane?” also decide the question of his responsibility? To tell the jury that he is insane, and leave them to conclude responsibility or irresponsibility from that, is useless, unless irresponsibility be admitted as a condition uniformly attaching to Insanity. Now that irresponsibility does not uniformly attach to Insanity is certainly the prevailing opinion of men conversant with the disease—I have just seen a lecture delivered by Dr. Skene and published in the April number of the Edinburgh Medical and Surgical Journal, in which he adverts almost very briefly to this subject—speaking of the necessity for confinement in the early stage of Insanity he says “Confinement in an Asylum, in my view of the case, neither disqualifies a man legally, nor renders him legally irresponsible for crime”—I have not the pleasure of knowing Dr. Skene but from the position he occupies, I presume his...
acquaintance with Insanity, must be very extensive. I have not been able to obtain a copy of Dr. Bucknill's Prize Essay on this subject, but I gather from quotation, which I have been from that work, that he holds similar views.

I have before me a little work published in 1849 under the auspices of the Royal Institution of London and the Editorship of Mr. Barlow—it is entitled, "Man, Power over Himself to Control Insanity"—the idea announced in the title is supported by a collection of cases, principally from the works of Pinel and Esquirol, in which among the insane violent impulses were effectively restrained by their own efforts, or were anticipated, and the assistance of mechanical restraint called for to aid their feeble wills. These, however, are generally cases, "where the mind had been only cultivated," and though calculated to impress on us the necessity of invigorating self-control by its constant exercise, especially in early life, and thencefrom these cases, certain indications of treatment may be derived; they would, by no means justify us (nor is it maintained in the work that they would) in refusing to the unhappy victims of insanity the palliative benefit of their disease, where it can.
to show how the malady has weakened or destroyed self-control.

With the view of illustrating another point, I shall have occasion presently to narrate a case in which a gentleman labored for many years under an insane delusion that his wife was engaged in continual attempts to poison him, and he expressed the great desire he had to take her life, but knowing that this would involve very unpleasant consequences, he never gratified his wish. He took care, however, to exclude her from participation in his property after his death. Here the power of self-control coincided with settled delusion, and though this individual could not be considered in the same degree responsible as a man who had labored under no delusion, he certainly could not be considered as an entirely irresponsible agent.

I hope to be able presently to point out that the power of self-control may be the only attribute of the mind, which disease has weakened or destroyed, and that in these cases, it would be unjust to invalidate civil acts, which were by no means influenced by this single departure from healthy mental action, because they were acts which the individual...
judgement approved — not act which he com-
mitted in opposition to his healthy judgement,
owing to disease having weakened Self-Control.
Here I will only say, that Experience prove,
that those who are otherwise insane may
possess the power of Self-Control and we must
admit that a degree of responsibility attaches to
such cases — to determine what that degree is,
requires no ordinary acquaintance with the
phenomena of the disease; if indeed it be
possible for the most expert to do so, but
certainly as far as a judgement can be
formed on the matter, the Physician should
do so rather than leave a Jury to vague
expression "Insane" for them to attach their
own meaning to — indeed no one can pay a few
visits to an Asylum without noticing, that the hope of reward
the fear of punishment has a very considerable effect in restraining
outbursts of violence among the Insane — the Judge & every member of the
Jury, have probably seen this & they are very likely to form their estimate
of the responsibility of an Insane prisoner, by attributing to him the
same power of Self-Control, which they notice to exist in some
other cases, unless the Physician prevents them doing so
by giving an opinion on the Subject.
Chapter III

In the preceding chapter I have said that I believe these are cases in which disease has weakened or destroyed the power of self-control, without otherwise producing a departure from healthy mental action; the public, however, is naturally very unwilling to admit and the law very slow to recognize a condition in which a man is in full possession of his intellect; understanding the nature and consequence of his acts, is yet powerless to regulate and control them. If such a state exist, it is to be expected that crimes will result, since the natural promptings of our nature are so often towards evil, and it becomes us seriously to inquire, Is mental disease ever presented to us under this aspect?

J. R. was born of European parents in India—was educated as a Military Apprentice—became Dispensary to a regiment and subsequently to an hospital. When the mutiny broke out he was obliged to take refuge with his wife and child in a small station, where for many months they were exposed to constant danger andprivation; his wife, to whom he appears to have
been deeply attached, but at last under their hardships and he himself was obliged to leave his child and enter a troop of Yeomanry cavalry, raised at the time, here, wounded in spirit by his bereavement and the change in his circumstances, he would appear to have been easily drawn into the irregular habits, almost insupportable from the position in which his corps was placed; at the same time he was frequently exposed to a tropical sun and after a little became subject to epileptiform attacks, which however were neither severe nor frequent — on the disembarkation of his troop he continued to lead a rather dissipated life, but ultimately became Dispensed of medicines on board a Vessel, where it was rendered impossible for him to obtain more than a limited allowance of Ale daily — in the discharge of his duties he gave the utmost satisfaction, the mildness of his disposition and his anxiety to attend by day and night to the numerous little wants of the Sick, made him generally esteemed — a few days after the termination of the voyage he was found in a state of drunkenness but the offence condoned on account of his otherwise excellent conduct — he went again to sea, at the conclusion of this voyage he said
that for years he had never been so happy, or, when at sea, for there it was impossible for him to get Brandy, which once within his reach he could not resist — that he might not be exposed to temptation he remained in the ship, even when in dock — unfortunately a relative, whom he had not seen for years, visited him and induced him to accompany him to a tavern, he returned home drunk — when remonstrated with he said he had no excuse to make, that neither remonstrance nor punishment could make him desert drunkenness more than he already did. He regretted the shame and disgust with which he regarded himself — he then burst into tears, exclaiming that it was no use trying — he never could resist Brandy — that there was no hope for him — as long as he lived he would be subject to constant disgrace — shortly afterwads he was found comatose and it was evident he had taken a large quantity of Laudanum, the odor of which was most distinct; he was only rescued by the most prompt measures — as he gradually emerged from the state of coma, he begged to be allowed to die, as he knew he was perfectly unable to save himself from constant
disgrace — after this, the epileptic form attacked, though not more severe, became more frequent — his great attention to his duties, and his consider —

ation that he would certainly destroy himself, if left to himself, caused him to be taken to sea again — at the end of the voyage, the Surgeon of the Ship left — as he was leaving J.R. came to him, most affected, he said he would make an effort to please the gentleman who was succeeding to the Medical charge of the Ship, but that he knew the very safest opportunity that was given him he would certainly disgrace himself — the old Surgeon left — he had hardly done so, when J.R. apparently satisfied of the impossibility of sacrificing self-control, before the new Surgeon saw him, destroyed himself.

The gait and aspect of this unfortunate man always appeared to me to indicate cerebral disease, especially for some days after one of the Epileptic form seizures — but his intellect was perfectly clear.

Now had he, instead of taking his own life, been led to the commission of some criminal act? I do not say that he could be properly defended on the plea of unsoundness of mind, but I do say, that strict justice could not
act of his life his responsibility was double that of other men—the "mens sana in corpora" was subject to no impulses. In such men the power of self-control exists in the highest degree, for their actions the individual attracts a responsibility Beyond that of ordinary beings, in whose judgment an impulse contends, and so may the physician fairly claim for the brain, whose brain is shattered by disease, a degree of devotion corresponding with the degree of self-control which disease has left.

"A volition," says Professor J. A. B. Bee, "contains a donation, but knowledge implies memory, and recollection, and all the operations of the vital process connected therewith. Hence freedom of the will is necessarily coincident with healthy vital action. We are thus led to a knowledge of the nature of one of the most terrible disorders of human nature, namely, mental derangement, which is nothing more than a loss of freedom of the Will, consequent upon morbid states of the organ of thought and will; and we can also understand how in arrested development of that organ as in idiocy or in imperfect development as amongst ignorant and savage men, the freedom of the Will cannot
exist, but the individual must necessarily and
inevitably be the slave of any dominant evil
propensities."

Dr. Mayo also appears to me to admit a
form, or at least a stage, of mental disease in
which loss of self-control is the principal, if not the
only feature of the malady. Speaking of self-control
as an essential element of soundness of mind he says,
"if from the subject of soundness of mind, we turn
to that of Unsoundness, we often find its progress
marked by a gradual escape of the reins from the
hand on which the moral powerlessness is
stealing; often we may trace this paralyzing
influence to the early stage, in which uncontrolled
egotistical and soliloquy are the only evidence
that mental disease is in progress."

...
In the last chapter I endeavoured to point out, that there are cases of Insanity in which loss of self-control is the only feature of the disease. I would now very briefly allude to another class of Insanity, which is liable to be confounded with the preceding, namely, those whose acts have the appearance of springing from mere insensible impulses, when in reality they are dictated by delusions, which however are not apparent to us.

Some time ago I saw a young man, who had been a steward on board a large passenger steamer — he was in a state of intense despondency — gloom and apprehension being marked in his countenance — after continuing so for several days, he made an attempt to commit suicide and required constant watching to prevent him doing so a second time — he spoke quite rationally, did not deny that he had endeavoured to destroy himself and indeed showed no failure of intellect — in fact appeared the victim of strong but insensible impulses — he generally seemed to distrust all who came near him, but one day
on visiting him after some conversation his suspicions seemed to abate towards me—looking in my face he suddenly exclaimed "I know you won't believe me, and I know I am to be hanged for it—but it is a lie they have told on me. I never did into Miss——'s cabin"—it was evident that he laboured under the delusion, that he had been accused of some improper conduct towards a young lady, who had been a passenger on the ship, in which he was steward, and as is usual with persons whose disposition has the melancholy tinge, he exaggerated the utmost the consequences that were to follow an charge whatever had been made against him, indeed the arrangements of the ship made it impossible for him to believe he would have been guilty of any act, such as he imagined he was accused of—I believe he never mentioned the subject to any one but myself and never but once to me—I saw him but seldom afterward, and when I did, there were always some of his fellow servants with him, in whose presence I did not think it judicious to allude to the subject—after some time he recovered sufficiently from his melancholy to resume his occupation, but retained a certain affectionate and truthfulness of manner, which was habitual to him and it is not impossible
that the delusion may still exist in his mind in some modified form.  

This is great variety among the insane. Some are talkative and readily com-
municate their delusion; others seem to be aware that the idea which they entertain is 
firmly, is considered by those who are about them, as a delusion and, though acting upon it, they do 
not speak of it— we must therefore exercise 
great caution in coming to the conclusion that 
delusion does not exist, because it is not 
apparent to us.
Medical Jurisprudence by Professor Trill. 3rd Ed. p. 49.

Waring v. Waring. 6 More P. C. Cases, 349. also quoted at length by Marston & Stille, page 20.
Chapter V.

I come now to speak of a class of Insane persons, whose cases present features of great interest both to the psychologist and the medical jurist — namely those in which an apparently localized delusion exists — it is to such cases that the term "Monomania" is generally applied — what legal disability should attach to such persons becomes a question of great importance and is one on which considerable diversity of opinion exists among the most competent authorities. "It was well rules by Lord Erskine," says Professor Fraser "that where the act in question did not appear affected by the singularity or partial insanity, it should be allowed to be good in law; but where the act itself partook of the peculiarity which led to the suspicion of insanity, it should be annulled" — this is the view taken by Dr. Taylor and other Writers on the subject; Lord Brougham however in one of his judgments most pointedly contradicts this, maintaining that however rational an act may appear to be or may in reality be "it must be considered invalid if at the time any delusion existed in the mind,"
Medical Jurisprudence of Insanity by D. J. Ray p. 245
"we can never" continues his lordship "rely on the act, however rational in appearance, done by the latter", those partially insane, "because we have no security that the lurking delusion, the real unsoundness, does not mingle itself with or occasion the act".

Paris and Toulon, as quoted by Dö Rye, take the same view as Reichenbach — they say, "when a man suffers under a partial derangement of intellect and on one point only, it would be unjust to invalidate acts, which were totally distinct from and uninfluenced by this so limited insanity"; the proviso of these conclusions hardly admit of dispute, the only question is, how can we make certain that any given act was not influenced by the delusion — we must remember that the association of ideas in the unsound mind may be utterly incomprehensible to us — may indeed be such an association as we could hardly imagine to occur.

I knew a gentleman, a man of naturally violent and suspicious temper, a member of the medical Profession, who had earned for himself very considerable provincial reputation, but who under circumstances which made such an idea perfectly
incredible, became imbued with the notion that his wife was unfaithful to him, and was constantly engaged in attempts to poison him; for years this impression remained fixed in his mind, a constant source of the utmost domestic unhappiness, but in all other respects his mind seemed rational; one would say that this was a delusion the least likely to influence his opinions and conduct beyond the object of it — yet observation convinced me, that, continually present to his mind, it mixed itself up in the most extraordinary manner with all his thoughts. His violence towards his unhappy wife brought on an attack of illness, in which palpitation of the heart was a prominent symptom; on this circumstance he immediately seized, declaring that there could be no stronger proof of her terrible immorality than palpitation of the heart. I saw with him several cases of cardiac disease, accompanied by violent action; and without paying any attention to the special lesion existing, he generally took the opportunity when we had left the patient, to assure me that he felt the "was about something wrong" or they would not have such a symptom; and indeed on several occasions he rather surprised some Hospital cases.
by looking very sternly and knowledgeably at them and saying "Take my advice now and just give up this bad work you are at; you see Providence won't let people give way to vice without its telling upon them" by which he meant producing palpitation.

From his wife he gradually extended his accusations of immoral conduct to other women in general — the matron of the Hospital to which he was Physician being attacked with dyspepsy, of which the patient afterwards died, he at once and most positively pronounced her to be pregnant, the being unmarried and at a time of life which almost forbade the idea, in addition to which she was a woman of the most modest behavior — other physicians, who were called in, could see no room for doubting for a moment the real nature of the case, nor could he probably, had she been a married woman, in whose pregnancy was no proof of sinfulness — but gross lasciviousness in women being always present to his mind, the likelihood that an unmarried female should become pregnant seemed to him so much greater than that she should become pregnant, that he considered the probabilities of the case sufficient to outweigh the evidence supplied by actual examination.
When people were accused of murdering their partners in life, he always read the trials with great attention, and invariably came to the conclusion that every woman who was accused of murdering her husband, was guilty; but when a man was proved to have killed his wife, he always maintained that he had not been guilty of murder, but had been driven to the act by her misconduct.

On one occasion I remember he drew my attention to a case in the papers—a gentleman had gone out for a walk in the suburbs with his wife on a summer evening, and having to call for a few minutes at a house, he left her outside till his return—a young man, seeing her walking back and forth, addressed her under the impression that she was a woman of pleasure; the lady mentioned the occurrence to her husband on his return, he followed and gave the young man in charge. The view, which the gentleman took of this case, was as usual suggested by the delusion under which he labored—nothing would persuade him that the lady had not accosted the man, in fact that she had acted the part of Pharaoh's wife and he that of Joseph, though such an idea was never hinted at by the
accused in his bones, and had he occupied the
magisterial bench and such a case been submitted
to him, his decision would unquestionably have
according to the evidence, but according to his
own notions as to female conduct.

Though the delusion regarding his wife
continued the prominent one, towards the close of
his life other equally absurd ideas were entertained
by him - the symptoms of his last illness gave
good grounds for believing there existed structural
disease of the brain, and the whole case will
soon be submitted to a Court of Justice, in connec-
with his Will.

It also afforded a good illustration of the
power of self-control remaining, notwithstanding
settled delusion. He not only believed that his wife
was continually laying diabolical plots for his life,
but that superhuman visitants came to his bed
at night and whispered the names of his wife's
paramours in his ear, yet the power of self-control
which he procured was extraordinary - he made
his wife a prisoner in his house, his language
to her was most filthy, the great effort of
his life seemed to be to keep her in a state of
continual terror and distress, yet he took care
never to bring himself fairly within the grasp of the law — when he had an object in view, for which he required the cooperation of his relative, who were naturally exasperated, he appeared quite to have given up his delusions and to be reconciled to her — she attended him with excessive devotion during a long and trying illness and when at last he felt that he was going beyond the pale of human jurisdiction, he gave himself a final treat by executing privately a codicil taking from her a small amount which in his will he had directed should be paid to her off a large property which he left — he had control over his delusions, he did not allow them to hurry him to a jail or an Asylum, of which he frequently showed he had some apprehension, but he gave his delusions full swing when he felt he could do so with impunity.

To return however to the point under con

consideration, namely, the difficulty of deciding in a case of delusion what acts are and what acts are not influenced by it — I would merely say that I think this case teaches us that when well marked Insane Delusion is present, he cannot exercise too much caution in excluding any suspicious act from its influence —
Somewhat analogous to it is the case of Lord Castlereagh, who imagined that on at least two occasions, a visitor from the other world had appeared to him, and in whose mind this impression was firmly fixed, though in all other respects he possessed the clearest judgment. Mr. Wharton referring to him says there is every probability that this delusion contributed to his suicide, but he continues, "it would hardly have been maintained that Lord Castlereagh, then whom no man of his day exhibited, when in public life, greater coolness or business cleverness, was incapable, because of this single delusion of making a contract or will"; "certainly not", but "if Lord Castlereagh entered into a contract of some inexplicable nature or executed a will, the provisions of which were highly unreasonable, I think he might fairly conclude that he believed in doing so he was obeying the unearthly visitor."
Chapter VI.

I propose in this and the succeeding chapters to offer a few remarks on what have been termed the "Tests" of Insanity.

If the position I have taken up be admitted, namely, that Insanity is not to be regarded as a well-defined malady, invariable in its nature and results, but as a departure from some condition or conditions of soundness of mind, which departure varies both in its nature and degree; it follows almost as a necessary inference that no one Test can be relied on for the recognition of the disease — indeed I believe that the question of Insanity, like other questions in Medicine, has been rendered difficult by the attempts, which from time to time have been made to treat it as if it belonged to an exact science. Physicians and still more lawyers have been anxious to discover some phenomenon of the disease, which they might elevate to the position of a pathognomonic symptom — the consequence of which is to embarrass the medical witnesses — indeed one can hardly read the reports of trials in cases in which the question of the soundness of mind...
was raised, without seeing that there has been a
continual struggle in the minds of judges and
juries—the principles put forward by eminent
physicians and the dicta laid down by high
legal authorities, pointing to conclusions, at which the
circumstances of individual cases, coming before them
forbade them to arrive.

In connection with the diagnosis of Insanity
it seems to me we must never lose sight of the fact
that the same degree of Unsoundness of mind will
in different cases give rise to different degrees of
manifestation, and I believe we are justified in coming
to the conclusion that one man is of unsound mind
on an amount of evidence, which would not justify
us in doing so in another case— as I endeavoured
to point out before, Sanity and Insanity are often
curiously combined, and in a few cases of persons
known to me before any mental disease had been
established, I was satisfied that the traits of character
natural to the individuals materially modified the
manifestation of the disease. A man who is naturally
communicative will make known a delusion which has
entered his mind, while one who is naturally reserved
will conceal it— in the former we may expect that
whatever ideas exist in the mind will be revealed
to us to their fullest extent—in the latter we must be satisfied if we succeed in eliciting even a slight allusion to the morbid impression—in the same way we may say of most men "in vino veritas" but of some the very opposite is true; most men betray their secrets in their cups, but others have acted so long on Tallyrand's doctrine, that language is given to man to conceal his thoughts, that they safely indulge in copious libations without fear of divulging what they wish to conceal, for to them a lying answer will always suggest itself before a true one—So the man whose natural disposition, education, or profession has made him habitually cautious in expressing his opinions, careful of committing himself, always suspicious when questions are asked him, will give us but a faint indication on which to ground our diagnosis, while one who has always been frank, as careless about the opinion of others, as he is unconscious of their queries, will make every one the confident of his delusions. In the former, deeds will often tell more than words, and it is in such a case that the nature of the act itself, its inconsequentiality and its want of motive, may be claimed as evidence of the mental condition.

Dr. Winslow and indeed nearly all physicians, with whose writings on this subject I am acquainted,
have added numerous examples to show the power which the insane possess of concealing their delusions, it would seem that they are quite aware that the opinions which they hold are considered by other people as delusions; and though the fact that they are singular in holding a peculiar view, does not in the least shake their conviction of its truth or prevent them regulating their conduct by it, it nevertheless makes them conceal any expression of it.

This feature of Insanity was illustrated in the last case to which I referred, but so many striking instances of it are on record and commonly known that I shall not weary by entering into any details.

The circumstances, however, which increase the probability of a delusion being concealed, are, I think, of importance, inasmuch as in a case where we find them, we may be satisfied with a comparatively small amount of evidence of Insanity.

One of these circumstances, I have already mentioned, namely, the influence which the natural disposition, and the habits of the individual have in making him in one case very free and in another exceedingly cautious in communicating his delusions.

There are two others to which I would briefly allude.

I have known individuals, especially those
in whose families insanity was hereditary and who were themselves persons of considerable acuteness of perception, lie under a continued terror that they would, sooner or later, fall victims to the disease. It is recorded of Dean Swift that, walking with a friend, at a time when to all appearance his intellect was unclouded, he stopped and remained gazing earnestly at a tree whose topmost branches were lifeless and decayed, and then turning to his friend exclaimed, "I shall be like that tree, I shall die at the top first." In such cases, the fear is not unlikely to be verified; such men are on the look out for the malady, they view with more or less suspicion the ideas, which from time to time enter their minds. When the terrible enemy has laid hold of them, they are probably aware of it, from noticing that in their ideas there is a certain incongruity and incompatibility—they experience indeed somewhat the sensations which a man does who feels himself gradually succumbing to the influence of wine—they know that there is a want of harmony in their several trains of thought and a degree of uncertainty in their impressions—they notice that notions, in which there is something of novelty and indistinctness,
creep into their minds – like the man whose brain is confused by wine, they are unable to distinguish their thoughts from their healthy mental process; they may know that there must be something wrong, but they cannot say where the point of departure from normal thought is – they are probably also aware that those about them observe the state they are in – the consequence is that in cases, where there is this fear of insanity, not only from the very commencement of the disease but even before it commences, such individuals anxious to avoid the discovery of their condition, perhaps dreading confinement, train themselves to reserve and caution; stealthily as the disease steals on them it finds them prepared to conceal its manifestation – they seek security in silence and a constant reserve is noticed in their conversations. Sometimes, the physician may trace this stage – fear of insanity which the individual himself may have expressed will assist him in doing so, and in such cases, I think he is justified in diagnosing Unrationality of Mind and perhaps, even in attributing to it the fact which has led to the question being raised and this on an account of manifestation of the disease which in other cases would hardly warrant such a conclusion.
Besides, it is beyond doubt that the Insane can be tutored to conceal their delusions, persons whose interest it is to prevent the Insanity being discovered, those for instance who have an object to gain by maintaining the capacity of a visitor, who are frequently in his company and who have gained influence over him, by warning him of the situation with which the Physician's visit is paid and by explaining to him on what subjects he must be reserved, perhaps by giving him some imaginary reason for maintaining silence on these subjects or for refusing certain answers to questions, can effectually baffle the Medical men who make the examination.

I therefore venture to come to this conclusion, that where from the natural disposition, the education, or the profession of an individual caution and reserve in conversation have become habitual to him, where there has been an apprehension of long standing, that Insanity would come on and would, unless he managed to conceal it, expose him to the unpleasantness of surveillance a restraint; and where he is in the hands or under the influence of those whose interest it is to maintain his sanity, we may consider a slight reference to the subject of delusion to indicate
a stronger conviction of its reality, a greater deter-
mination to adhere to it, and a fact more real
uncrowded of mind, than the most reiterated
statements made by an insane man of a naturally open
and candid disposition, who has never had any
suspicion that his brain might become affected, and
to whom no suggestion has ever been given—indeed
in the latter case a delusion will be stated positively
and plainly, whereas in the former, if not altogether
suppressed, it will be approached with apparent
doubt and expressed as if it were an idea which
had merely crossed the mind, when in both cases,
the conviction is equally strong—and is equally
likely to influence conduct.
Medical Jurisprudence 4th Ed. page 825.

Chapter VII.

It will be evident in maintaining the principle that in persons who are naturally cautious and reserved we must be satisfied with a minimum of evidence of the existence of unreasonableness, I assume that some qualities of mind possessed in health remain after the disease has been established — this leads me to consider the subject of change of character as an evidence in doubtful cases of Insanity.

When we come to establish a differential diagnosis between conditions presenting very similar symptoms, we naturally receive with great satisfaction the information that some one symptom will be found pathognomonic and will always enable us to arrive at a correct conclusion as to the case.

The discrimination between Insanity and Eccentricity and analogous mental states is just a matter on which we are very willing to obtain the assistance of some such pathognomonic symptom and we find Dr. Taylor thus expressing himself.

"The great feature of Insanity is change of Character; a man who is really insane is different to what he has previously been; but it may be part of a violent tempered man, that he has always been the same." and again "in monomania
There is obviously a change of character, the individual is different to what he was; in eccentricity such a difference is not remarked; he is and always has been singular in his ideas and actions.

Though physicians may confess their inability in many cases to draw a sharp line of distinction between eccentricity and insanity, in a court of law they are compelled to attempt it, and especially in cases of disputed testamentary capacity, the law is disposed to insist on the strict distinction— and a medical man naturally feels a relief if he can seize upon such a characteristic as change of character and show how it bears out his view of the case; while the advocate on the other hand will soon draw his attention to such a text, if the conclusion at which he has arrived is opposed to it, it therefore becomes a very serious matter to enquire whether it is one deserving of the prominent position, or I should rather say, the cardinal position given to it by Dr. Taylor.

If he consult the works of eminent Alienist Physicians, he finds them constantly referring to alteration in the natural disposition of a man as presumptive of Insanity, or as constituting the earliest phenomena of the disease.
thus Dr. Winslow says "in the early period of Insanity, the most material elements of character undergo strange transformations - the man naturally remarkable for his canton and circumspection, becomes reckless, extravagant and imprudent - if orderly and economical, he is confused and prodigal - if noted for his preciosity he exhibits great carelessness and negligence - if gay and communicative, he is sullen and morose - if previously neat and particular in his dress, he becomes slovenly, dirty and indifferent as to his attire - if timid he is brave, resolute, overbearing and presumption - if kind gentle and affectionate, he is rude, austere, irritable, and insulting in his intercourse and communications with others."

I do not suppose that any one will deny that where such a change in the affective faculties is observed, though we may not be able to discover any intellectual lesion, we have good grounds for suspecting Insanity: but is the reverse of this true? are we to refuse to admit anything more than eccentricity because we can detect no obvious change of disposition and character? the physician who, in consideration of all the facts of a case, comes to the conclusion that a person is of undoubted
Mind, may expect that lawyers, or medical men, who take a different view of the matter, will refer to this text, perhaps quote the very words I have transcribed, and base their assertions of mere eccentricity and consequently, if the case be one of disputed will, of testamentary capacity on them.

I cannot help thinking that this is just one of those instances, to which I have referred, in which an attempt to lay down a general rule leads to mischievous results and embarrasses the physician who desires to form his conclusion as to an individual case on a careful consideration of all the phenomena.

Dr. Richard in his description of moral insanity puts change of character prominently forward, insisting upon it in all true forms of mental alienation of that form — yet the well-known example which he quotes from Pinel as a typical one is absurdly wanting in this very characteristic — the same trait of character which characterised Pinel’s patient, when as a criminal lunatic he entered the Bicêtre for life, were observable when as “the only son of a weak and indulgent mother” he “gave himself up to the gratification of every caprice and passion.”

Dr. Winslow himself in an earlier part
Op. cit. page 159

Buckmiller & Tucker on Insanity page 311
of the work to which I have already referred says, 

"I would however premise that in the majority 
of cases of Insanity, it is difficult to trace back 
to its origin the first invades and dawns of 
mentally and insane perceptions; to demonstrate 
where the boundary line between healthy and 
disorderly idea has been traversed, at what precise 
period certain normal states of eccentricity of 
thought, singularity and oddity of conduct have 
passed into actual Insanity" and at page 169 
he expresses himself still more distinctly "Insanity 
often first shows itself in a morbid exaggeration, a 
diseased excess, in the development of normal healthy 
mental conditions" (the italics are Dr. Winstow's) 

he mentions that it was Étienne's opinion that alterations 
in the mental functions which ultimately end in well 
marked Insanity may commence in infancy, and 
that in Pinel's experience a case of Insanity had 
been gradually developing itself for fifteen years 
before it became sufficiently manifest to attract 
attention.

Dr. Blackwood expresses himself very 
distinctly to the same effect, he says "Some men 
are born with so strong a tendency to Mania, that 
the disease gradually develops itself in very early,
life, in such a manner that it is impossible to
compare the mature mania with any previous
condition of his former self, to which he may be
predicated as of sound mind." Indeed not only do
this experienced physician speak of insanity as being
as frequently an exaggeration as a change of the
natural character, he maintains "that in those cases,
where the greatest alteration of character seems to take
place, the real effect of the disease has not been to
develop that which did not exist before, but merely
to remove the checks and restraints which have
kept it in abeyance."

Dr. Mayo also believes, "that to an ex-
experienced psychologist there may be strong grounds
in a given case, and that in very early life, for
suspecting that a false perception pertainig to what
he would willingly call Eccentricity, and that
the amount of self-control existing in the character
of the individual will mainly regulate the period
when fully developed Insanity will appear.

And here I think we meet with a class
of cases, in which Responsibility in one sense
at least, consists with Insanity—i.e. can
hardly absolve from responsibility the man in
whom long indulgence in excess of passion
have ended in insanity, but we are not therefore called on to lose in his hands the power of injuring others by his violence or doing injustice by his testamentary arrangements, in other words, though in estimating the responsibility of such a man, the moralist would take into consideration the cause which had produced his present condition, it is evident that once Insanity has been established, the consequences to Society are the same, irrespective of its causation and hence, whatever might be said of retrospective responsibility, the propriety of conferring on civil incapacity and the necessity of restraint is undoubtedly and is equally so in a case where traits of character natural to the individual have become exaggerated into Insanity, as in one in which the whole character has become changed and altered.
Chapter VIII.

If change of character be regarded as a symptom without which it is hazardous to pronounce a case one of Insanity— it is easy to come to the conclusion that Insanity does not exist where in the ordered conduct there is no marked alteration— and according the Physician finds it a difficult matter to sustain the allegation of Insanity of Mind, in a case where the Individual continues to perform the ordinary duties of life, without any one noticing that he departs from his previous style of transacting his business— and hence has arisen the doctrine that breeding capacity negative, the Supposition of Insanity it is very naturally said in case of disputes Parliamentary capacity for instance, that it is impossible to credit the assertion that a Man, who at the time of the execution of the document was engaged in discharging the duties of his calling with his ordinary ability, could be insane— here again I think the difficulty can only be met by allowing that Insanity consists in a
departure from health in the performance of one or more of the functions of the mind, irrespective of the condition of the other, and that the legal consequence which attach to it should depend upon the function in which the departure has taken place.

But there is another source of error to which I would refer — not only must be, I believe, considered with care, of Insanity as exhibiting certain qualities of the same mind mingling with and modifying the Unsoundness, but we must make great allowance for the force of habit, especially when we come to weigh the degree to which business capacity in presumption of Sanity. We must remember that to the man who has spent many years in the counting house, its duties, no longer require the exercise of reason or judgment. In Speculations may seem to the uninitiated to require a very extraordinary power of appreciating complex circumstances bearing on the special business in which he is engaged, but in reality they often do not do so.
Bucknill & Tuke on insanity. Page 347.
his investments are regulated by principles, which experience has proved trustworthy when a certain article of commerce has reached a certain price he buys or sells, as the case may be, without stopping for a moment to consider the propriety of doing so. He has long since arrived at the conclusion that in certain states of the market a certain course should always be followed, and when these states arise, he never thinks of reconsidering the question, but acts on principle, which his memory and not his judgment supplies.

In these emergencies, do not require, and therefore do not from capacity for, the higher intellectual processes. 

Can we consider such a degree of truth, as it profit a man to enter into important contracts unconnected with the routine of trading, to be assumed because he is able to attend to his shop or to keep his books with his ordinary discretion? Men says De Buckhull, "the constantly converse and act irrationally will write letters on matters of business with good sense and precision." So that we must never admit that the proper
performance of acts, which habit has made instinctive, argues, capacity in matters requiring
the exercise of the higher powers of the mind,
long after the capacity is lost to understand
what course of conduct should be followed
under new and unaccustomed circum-
cstances; long after disease has removed the
ability to draw just conclusions, or matters
requiring thought and reflection, all actions
which habit regulates, may be performed
with perfect propriety — indeed this may be
seen in cases of fully developed mania. I
remember an old soldier who had not
for years uttered a coherent sentence and
whose violence often required restraint,
receiving able who approached him drawn
up in a style which might have charmed
a gentleman and tantalizing them as they faced
in the most approved military fashion
and some time ago an old man who had
long been a valet, but whose mind was
completely shattered offered me his services
in that capacity with a politeness and propriety
which he could not have surpassed in his
most rational days and attended to some
little matter, which I requested him to do for me, with the utmost exactness.

These considerations, I think, go still further to support the conclusion at which I ventured to arrive in the early part of this Thesis, namely, that the Physician who seeks effectually and faithfully to aid the administration of Justice, should carefully study the attributes of sound mind or an Duterte Express, it, the condition of soundness of mind should weigh the circumstances of each case and endeavour to point out in what direction and to what extent departure from sanity has taken place, and the degree to which that departure would be likely to influence certain acts of the individual.
Conclusion

Here I find myself obliged to come to a close. Even if the circumstances, in which I am placed, did not render it necessary to do so, I would feel it my duty to remember, that this thesis is to be read, and that what I have already written will probably prove a sufficient infliction.

In addition to the subjects to which I have alluded, I intended noticing the following:

1. The doctrine that the Physician in examining the insane should consider his own mind as the Standard of Sanity, and the doctrine of Haslam that he should consider the mind of the Deity as the Standard of Sanity, against which to compare the mind of the individual under examination. Had time permitted I proposed to enquire into the grounds on which Physicians have proposed these Standards.

2. Admitting that some cases which come before the Physician are so difficult of diagnosis, that the question of Sanity or Insanity becomes actually a contest of probability, I proposed to enquire what
weight in creating the presumption of insanity should be attached,
(a) to hereditary predisposition
(b) to previous attacks
(c) to the existence of an adequate cause of insanity, either of a kind which was (to all appearance) purely psychical or fear, disappointment &c. or of a kind which operated primarily on the bodily organs, such as injury of the head, epilepsy &c.
(d) to cerebral symptoms, such as headache, Frenzy, aneurism, Musca Volante, &c.
(e) in case of disputed testamentary capacity, and in which case, the degree to which the presumption of insanity would be increased by finding after death lesions of the brain.

3. The probability that insanity will be increased during the next year, owing to the number of persons of all classes and of every variety of intellectual powers, who are entering with great earnestness, and without any previous training of the mind, on the consideration of obscure theological subjects—and the dangerous mistake, which I fear,
A clergyman and others are committing, in bringing forward for discussion before mixed congregations, many of whom have never been accustomed to examine logically. The simplest proposition, such questions as those raised in "Essays and Reviews" which can only serve to bewilder such minds at the same time that they powerfully affect them, and the probability that the insanity so produced will be different to that which has been occasionally observed to follow injudicious appeals to the feelings at Revival meetings. Namely, as in the latter the undue strain was put upon the effective faculties, whereas in the former it is upon the reasoning powers.

Oh none of these subjects can I enter at all; indeed on turning over the page, so far as I have gone, I can truly exclaim, Dum deles, scripsi sed pridet quia plurima censero. De quoque quae fuerant iudice diligentissimi; in excuse for all faults I can only say, that coming to Edinburgh after a few years absence from University and Hospital advantage, I was anxious to make the very most of them.
and could not, therefore, devote that time to reading which I should otherwise have done; in addition to this circumstance, my time is still further limited by my being obliged now to leave for a distant part of the Kingdom where I am required as a witness in a Court of Law. While therefore little time is at my disposal, the subject on which I have ventured to write, is one of the most interesting and one on which I have not yet had the opportunity of receiving systematic instruction, but on the contrary I have been obliged to trust to a great degree to personal observation which, unless guided by the soundest judgment and corrected by unbiassed experience, is almost certain to lead to false views on such a subject. I must endeavour to ascertain whether it has done to in my case, and to learn the true value of my conclusions, by attention to the instructions of others and patient observation in a wider field than I have yet proceeded.

James Little

Edinburgh.
May 7, 1861.