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[From the *American Journal of Insanity*, for July, 1874.]

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[We present this as an important and interesting case in the jurisprudence of insanity, and also an instance of persistent feigning. The history of the case and the trial are so fully stated by Gov. Dix, that further elaboration would seem to be unnecessary. —EDS.]

STATE OF NEW YORK:

EXECUTIVE CHAMBER,
ALBANY, May 4th, 1874.

MEMOIR OF THE CASE OF JOSEPH WALTZ, THE MURDERER, TO BE FILED WITH THE OTHER PAPERS RELATING TO HIS CRIME, TRIAL AND EXECUTION.

Joseph Waltz, of Athens, Greene County, as was subsequently proved by his trial, killed, at his father's house in that town, Herman Holcher of Albany, an itinerant scissors-grinder, on the first day of May, 1873.

After the arrest and imprisonment of Waltz, when certain examinations had led to indubitable evidence of the crime, and when the facts disclosed had been communicated to him, and he was taken to the house in which the murder was committed, he made a full confession, giving a detailed account of the circumstances attending the homicide, and the steps he had taken to elude detection. He was subsequently taken over the farm, and he pointed out the different places where the body of the murdered man and his property had been concealed, and were then found, thus verifying the truth of his statements. He also confessed that he had plundered school-houses at different times, and the books were found where he had secreted them. His conduct

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in the perpetration of these crimes, as described by himself, indicates deliberation, coolness, cunning, and moral depravity. That he was fully aware in killing the scissors-grinder of the atrocity of the act and of his accountability for it, is manifest from his own statement. His conduct until his arrest, sixteen days after the murder, was that of a man in full possession of all his faculties. He made bargains, transacted business, and kept careful accounts of his payments and receipts.

The trial commenced on the 28th of February, 1874, and terminated on the 14th of March, ensuing.

Six or eight weeks after his imprisonment, when he had shown some symptoms of insanity, real or feigned, a paper was prepared for the purpose of testing them, containing false indications of mental derangement, some of them of the most extravagant character, and was left at his cell; and he immediately began to manifest the same indications, persevering in them at intervals to the last. This paper was excluded at the trial, as it could not be proved that he had read it. Numerous circumstances justify the belief that his insanity was feigned. Among them were the facts stated by the presiding judge as follows in his account of the case now on file: "Waltz acted according to the symptoms indicated in that paper. On the first day of the trial he was furious in the court room. That night Dr. Mackey told him, (as Mackey reported to me,) that he was hurting his case, and from that time to Thursday noon of the second week, Waltz was quiet and peaceable. He assumed through the trial an air of quiet indifference. As he sat directly in front of me, so that whenever I raised my head I could see him square in the face and detecting frequently, as I thought, a most anxious look toward a witness or the jury, at noon of Thursday I requested Dr. Mackey to tell him that his behavior was almost

too good, and that it would be better for him to show some symptoms of insanity. This was done, and when Waltz came into the court that afternoon and the next day his acts of fury were repeated." On the trial four physicians who had the prisoner under observation for several months, at the instance of the District Attorney, were examined on the part of the prosecution. Three were unanimous in the opinion that his insanity was feigned. The fourth said in regard to his paroxysms of fury: "Taking everything into consideration I have made up my mind that these spells were feigned." He also said, "I have not seen enough of him to make me conclude that he is insane; I don't call him insane." Two were examined for the defence, and they were of opinion that he was not perfectly sane, though their testimony was less positive than that of the physicians who were examined for the prosecution.

The jury, after an able, impartial and elaborate charge by the presiding judge, found the prisoner guilty of murder in the first degree, and he was sentenced to be hanged on the first day of May, 1874, the anniversary of the day on which the crime was committed. In his charge to the jury, Judge Westbrook said that the burden of proving the prisoner sane devolved upon the prosecution, that the people must satisfy the jury beyond all reasonable doubt that the prisoner understood his act, and that he had reason, perception and understanding sufficient to know that the laws of God and the land said he should not do it. He was defended with signal ability. The jury were out less than an hour, and it is stated in the report of the trial that their verdict was agreed on in fifteen minutes after they had retired.

On the first day of April, Judge Westbrook, who presided at the trial, called on me at the Executive Chamber, and gave me a full history of the case. He did not

question the sanity of the prisoner, but he had previously suggested, by a letter written in behalf of himself and the judges who were on the bench with him at the trial, that a commission of experts should be appointed, as authorized by the statute, to examine the prisoner and decide the question of his sanity. I acceded to his suggestion, which had been previously made in other quarters; and after a careful examination of the judge's notes of the testimony, I requested Dr. John Ordronaux, the State Commissioner in Lunacy, and Dr. John P. Gray, Superintendent of the Utica Insane Asylum, to make a personal examination of the prisoner and a thorough investigation of his case as presented by the testimony, and to communicate the result to me. Their report is as follows:

To the Hon. John A. Dix, Governor of the State of New York:

SIR:—The undersigned, a commission appointed by you to inquire into the sanity of Joseph Waltz, now under sentence of death in the county jail at Catskill, in Greene county, respectfully report:

That they examined the said Waltz jointly, and separately, on the 15th day of April, inst., in a careful manner, and took statements from Drs. Phillips, Jewell, Mackey and Wetmore touching the substantive matters to which they had testified upon his trial; also from Deputy Sheriff Olmstead and the father of the prisoner. They have further read the testimony in the case, as furnished them by your Excellency from stenographer's notes, together with the notes of Judge Westbrook, the presiding judge, at the trial, and acting upon the information thus received they have arrived at the conclusion that the said Joseph Waltz is not now insane, and was not at the date of the homicide committed by him.

They further submit a record herewith of their personal examination of the prisoner, together with the

facts bearing upon his case as obtained from him, and their conclusions thereupon.

The prisoner, Joseph Waltz, is a young man twenty-four years of age, of medium size and physically well developed, who has always lived with his father upon a farm, having an interest in it. His father states that his health has always been good, and that nothing unusual has ever been noticed in his conduct; that he was a good worker, spending his time at home; a great reader and attentive to all business matters, being particularly well informed in the culture of grapes and similar small fruits, to which purpose the farm was mostly devoted. He is now in good health, even after a year's confinement.

We found him in a spacious cell, chained by his ankles, the floor mostly covered with pictoral papers—a few books, including a Catholic mission book and an English dictionary lying upon his bed; also a blank book in which he was writing when we entered. Upon the wall were drawings of geometrical symbols such as the square, the circle and triangle; as, also, a balloon, and passages of scripture and snatches of rhymes, partly original, partly quoted. The ceiling in one corner was dotted with lamp-black.

On accosting him, he stared at us, made grimaces, looked about the room, but gave no answers to questions, simply uttering a guttural sound; getting up from his bed, then getting on his knees, then laying down with his face to the wall. We were silent for some minutes. He then turned, and in a confused manner asked if we lived in Catskill? Upon interrogating him, we received the following as some of his answers, and which are illustrative of his replies for about an hour and a half, during which he frequently renewed the grimaces, and at one time reached under his bed,

brought out a piece of iron about eighteen inches long, suddenly rose to his feet, held it in his right hand, and stood in a menacing attitude: "*Don't know how old I am; don't know mother's name; don't know father's, only that it's Waltz; don't know what church father goes to, think it's Lunarian; feel queer some times; belong to the spirits of the moon; I am married to the queen of Lunarians; she came in one night last week and said I should be king of the Lunarians.*" Being asked what he meant by Lunarians, he replied it was about the moon, took up the dictionary and pointed out the word Lunary and said the word "Lunarian comes from that." "*I was tried in summer; wore an overcoat; tried in an immense crowd; thousands of people; not in the court-house; never knew of a court-house; never saw one; went through the door with supernatural strength; counsel? counsel? I had no counsel; no judge was there, but a man was on the throne, who talked too much.*" He then said to one of the commissioners, "*You are the governor,*" and to the other, "*You are a judge.*" He denied ever coming to Catskill, or doing any business. Said his mother bought his clothes for him. In reply to a question, he said, "*I killed a man once, oh, yes, he was a good man, he never swore, never got drunk; I never made a confession.*"

Being finally told that there was no necessity in his feigning before us, and so stupidly, he instantly replied, "*Feigning? Feigning what?*" Being further told that this assumption of entire ignorance of the simplest things and complete loss of memory, were inconsistent with his state of health, intelligent appearance, and the books and papers he had about him; as also with his being engaged in writing in them when we entered and the prompt use of the dictionary, he said, "*Are you strangers? I don't know whether I ought to talk to*

you?" And, on being asked whether he was acting under the advice of counsel, he said, "*Judge Osborn is my counsel; but I can tell you.*"

He went on partly in answer to questions, and partly voluntarily, to give an account of the homicide, and other acts. He first said, "*The trial was conducted in the most tedious manner possible,*" and "*my counsel sat there objecting.*" "*I wanted to bring the proceedings to the right place; I don't think I ever spoke to my counsel on the trial.*" Resuming he spoke of sveral witnesses at the trial; said his mother had not been examined there, but had at the coroner's inquest; spoke of Dr. Mackey as having pretended to be his friend, but "*proved a treacherous villain;*" said "Dr. Phillips was his friend." In answer to questions, as to whether he knew that a Commission was coming to examine him, he said, "*My sister told me.*"

In describing the homicide he said he had known Holcher, that he had never thought of the deed till the evening, while reading, and after Holcher had gone to bed; it made him feel queer, sort of warm. "*I went in and looked at the man, and went back and prayed against it and read something in the Testament, but the evil spirit prompted me to it; I then went to the woodshed, got the hatchet and went into my own room, and then went to Holcher's and struck four blows; I think then I felt faint, for I found myself upon the floor; then I got up, rolled him up and carried him out to the barn.*" He then paused and afterward resumed as follows: "*I thought if I put him in the barn, I'll be too much frightened to get him out, and by superhuman strength I carried him to the fence and covered him with cobble stones; I went back and took the machine farther up the fence on the other side; if I could go up there I could show you on the ground better.*"

He went on to detail that in the morning, he told his father that Holcher had left in the night, taking a blanket, and had had nose bleed which made the blood; that his father went to Catskill to have Holcher arrested; that he had burned the machine that day, and that he had buried the body that night. Next day he wrote the letter put on the telegraph pole, and that night took it up with the things towards Coxsackie. He afterward secreted the books that he had taken from the school-house. Being asked why he did so, he replied, "*I was afraid they would make suspicion.*"

When asked how he felt then about it, he said he felt bad. On being asked if he had slept, he said, "*It took me two nights to do these things.*" When asked if he knew it was wrong, he said, "*Oh, yes; but I don't know the way I did it,*" and when asked why, replied, "*The spirit prompted me—the bad spirit—because bad spirits drag us down, good spirits carry us up.*" And, on being asked, do you mean a spirit there which you saw, replied, "*No, spirits have no bodies, they control us, they may appear as a flame.*"

Did you see a spirit of flame, he was asked, "No," was his reply. It was said you prayed two nights, how was that? "*Oh, yes; I prayed more nights than two, and I believe God has forgiven me.*" Being asked why he thought so, he answered, "*Father O'Driscoll said he would, and I believe I was.*"

Being questioned about entering school-houses, he said: "*I first went at night and looked in at the windows, and I saw a clock on the desk of the pedagogue, and it was twelve o'clock.*" What do you mean by a pedagogue? "*A school-master.*" Continuing he said, "*I went into the window, got the books, and left a candle on the floor; went to another school-house and got some books there, and coming back, saw the first one burning.*

Had the books in a bag." When was this? "*A year, or a year and a half ago.*" Did you tell this? "*No, I didn't.*" Did you plough the lot after you buried Holcher? "*The lot was ploughed.*" Did you read the books you took? "*Yes, and used the dictionary.*"

On questioning him about his writings, he said that since he had been in jail, he had written yards of poetry, which people had promised to have published in the paper. That many came to look at him, and some said how well he looks, and others, how horrid he looks, and others said, he looks like a brute, and others, again, stood around the room and looked at him without speaking.

He then admitted that he had made a confession before. We showed him the annexed slip, and asked him if one similar to that had ever been handed him. He did not reply. Asked him if the doctor had not handed him that. He said, "*No, some one else.*" Afterward confessed that he had seen it. It is as follows:

"Signs of Insanity.—A vacant stare at some part of the room as though the person saw something; screaming aloud occasionally as though they saw something like an enemy, an angel, a demon or something terrible, accompanied by apparent fright. Skulking in a corner; furious and breaking every thing to pieces within reach; resisting every effort to quiet them; turning away the face as though not wishing to be seen; frothing at the mouth; tearing the clothes; biting at their clothes and even biting their own fingers. When lying down a disposition to lie on the left side, or throwing the right hand over the head."

Mr. Olmstead, the deputy-jailor, stated that after this slip had been passed into his cell, he exhibited the very symptoms described in the paper, and Dr. Mackey states

that on his telling the prisoner on the trial that he was overdoing his part in the exhibition of violence, he became quiet and self-possessed, and, on afterward remarking to him that he was erring in the opposite direction, he resumed his eccentric and violent demeanor. Mr. Olmstead further states, that the prisoner was quite natural and communicative before we went in to examine him.

We then proceeded to the farm and examined the stone structure alluded to on the trial in company with his father, who stated that his son had built it years before as a place to sit in and read. He also pointed out a wooden barn which he said his son had planned and built with his own hands.

We saw the prisoner again upon our return. He manifested none of the seeming stupidity which he had previously. Asked if we had seen his father and sister, and was moved to tears. Asked "*if we couldn't get him out.*" Said "*it was short to the first of May; wouldn't minded being hung at first, but it was so long, and he had suffered so much.*" He again shed tears. He then said, "*If you help me with the Governor, I will give you all I have. I have between four and five hundred dollars in money, and an interest in the farm, and father will add to it.*" This offer he repeated to us separately in our subsequent examination. Just as we left, he said, "*Now, if you can do any thing with the Governor, I will do what I have said,*" and added, "*Can I not write to the Governor?*"

We were informed by his father that up to the time of Joseph's arrest he noticed no change in him whatever, and that he had not the slightest suspicion of his guilt. He denied having said to Mrs. Holcher that he had not seen her husband this spring, (meaning 1873,) but said he told her he had not seen him this spring, for

fourteen days. Two days after this interview the prisoner was arrested. We were further informed, and it is in evidence, that for some six weeks after his incarceration Waltz was entirely natural in his demeanor, and only began to show peculiarities in conduct after having been informed that insanity was his sole hope of escape.

He appeared very much moved when told that we could hold out no hope of his escaping punishment. We spoke to him of the future and his accountability, and he fully comprehended all that was said upon this subject, and the nature and quality of his crime, which he deeply regretted, saying with apparent contrition and emphasis, weeping, "*Oh, I never, never could do such an act again.*" After spending about four hours in examining him, we left, fully satisfied that he had been feigning insanity, with imperfect knowledge of its symptoms, and led by the idea that it was the only avenue of escape from conviction and punishment. When asked whether he did not think the punishment was just, he replied, "*That to hang him would not bring Holcher back. That Holcher was in heaven because he was a good man.*"

CONCLUSION.

From the foregoing voluntary and repeated confessions of the prisoner; from the evidence adduced upon the trial; from the statements of his father, and from a personal examination of him under the light of past and present habitual demeanor, there is no escape from the conclusion that the prisoner, at the date of the homicide committed by him, possessed all the elements of legal and moral responsibility, for, he fully knew and comprehended the true nature and consequences of the act he was about to commit. He knew it to be both

wrong in itself and a wrong to his victim, since he successfully resisted its commission for a while, by prayer and deliberation upon its enormity, thus evincing, by this power to choose between two courses of conduct, that he was a free moral agent. Therefore we are of the opinion that the homicide was the act of a sane mind, knowing that the act it was about to commit was a crime; intending so to commit it, and, with full power of refraining from, or executing its wicked purpose, deliberately preferring to do the latter.

All of which is respectfully submitted,

JNO. ORDRONAUX,
JOHN P. GRAY.

Albany, April 18th, 1874.

All the requirements of the law having thus been complied with, and the prisoner having been unhesitatingly declared sane, after a personal examination by two experienced experts, whose conclusions seemed to me to be fully sustained by the testimony produced at the trial, I announced to the sheriff that I should not interfere with the execution of the sentence.

I do not doubt that the public judgment was in accord with this decision, and that there would have been a universal acquiescence in its justice, but for the subsequent unwarrantable interference of Dr. A. O. Kellogg, an Assistant Physician of the Hudson River State Hospital, in setting up his opinion against

1st. The verdict of the jury.

2d. The opinion of the expert commissioners, and

3d. The action of the Executive in conformity thereto.

It appears, by papers deposited in the Executive Department, that Dr. Kellogg, by request, visited the prisoner, in jail, on two different occasions before the trial, and came to the conclusion that he was insane, that the

doctor was not produced as a witness and submitted to an examination as to the ground on which his opinion had been formed, but that he gave publicity to it through the newspaper press after the examination by experts, and after the final decision of the Governor was communicated to him, even going so far as to say, "on the best authority," that there would be a new trial.

It further appears, First, that he addressed a letter to the Executive, which, through accident, did not reach its destination until after the execution of Waltz, rec ommending the very examination by disinterested ex perts, whose decision he afterwards sought to impeach, by the publication of an adverse opinion. Second, as late as the 24th of April, only seven days before the time appointed for the execution of the sentence, he wrote a letter in which he said, "I have, by urgent solicitation, induced one of the most able, honest and experienced experts in this country to visit Waltz to-morrow, and gave me his opinion;" adding, with notable confidence in himself, "whatever this opinion may be, it can not change my own."

The attempt at this juncture to set up an independent and self-constituted tribunal to create distrust towards the public authorities, and to found a precedent for interfering with the course of legal procedure, upon the basis of a disagreement of opinions, can have no justification. It is especially unjustifiable in one holding office under the State, the action of whose authorities he thus assumes to impeach.

The "able, honest and experienced expert," to whose opinion Dr. Kellogg attached so little value, unless it coincided with his own, was Dr. Brown, Superintendent of the Bloomingdale Asylum, who was followed in the examination of Waltz by Dr. Choate, formerly of the Insane Asylum at Taunton, Mass. After a single ex-

amination in his cell, apart from each other, they concurred in thinking the prisoner insane. A day or two after the examination of Waltz by Dr. Brown, the latter had an interview with Judge Westbrook in the city of New York, and notwithstanding the doctor's opinion, the judge said in a letter to a friend, that the interview confirmed him "in the belief that Waltz understood the act he committed." It is this clear understanding of the nature of the crime at the time it is committed, that constitutes in the eye of the law the test of responsibility. In another letter after the execution, he said: "I am fully convinced of his sanity, and could mention to you many little things which convinced me he was playing a part. The concluding scene in the drama is to me equally explicable. The sullenness and intense malice proved a comprehension of the situation, and the dogged desperation of a man who was conscious of his fate, which every person around him thought was just."

Dr. Choate's opinion is dated the day preceding Waltz's execution, immediately before which the latter made a murderous and fatal attack on his keeper, under circumstances showing deliberation, a perfect knowledge of his condition, a coolness of purpose and an anxiety to escape his impending fate, utterly irreconcilable with a state of mind, in which the sense of moral responsibility is wanting. After disabling the keeper, he took possession of his keys and his pistol, which he was prevented from using by the prompt discovery of his attempt to escape. All hope being at an end, he died with that stolid indifference often manifested by great criminals. It is a painful reflection whether this final act of desperation and brutal violence may not be due in some degree to the persistent attempts which were made to take the case out of the established course of the law, by encouraging in the criminal, hopes which were to be disappointed at the last moment.

The laws of the State are framed with a merciful consideration for persons accused of crime. No man can be convicted except upon the clearest evidence of his guilt, and a unanimous verdict of a jury. If, after conviction, there is any doubt as to his moral accountability, the law authorizes the Executive to appoint commissioners to examine him and determine the question. When all these acts have been performed under the highest official responsibility, there should be an end of controversy, or at least of opposition to the determination of the law. To allow the finality of a decision thus solemnly made to be impeached by unauthorized, exparte or clandestine investigations, is to overthrow the orderly administration of justice, and to involve the adjudications of the law in endless confusion.

The duty of the Executive in cases of capital punishment is of the most painful character. There is no convict, however atrocious his crimes, who has not importunate advocates with the pardoning power to reprieve him, to commute his sentence, or remit his punishment; and the cases are already numerous in which murderers are maintained in State Institutions, warmed, clad and fed at the public expense, furnished with books and medical and spiritual attendance, with everything, in a word, which can contribute to their moral and physical comfort, exempt from all chastisement except the restraint of their personal freedom, while the widowed wives and orphaned children of their victims are fighting out the hard battle of life unaided, the objects as a general rule, of little else than a barren and profitless sympathy.

With these two phases of the administration of retributive justice constantly before him, however trying in some instances may be the position of the Executive, with whom the pardoning power is deposited, he ought

not to be expected, without the most overpowering reasons, to interpose for the purpose of setting aside the well-weighed determinations of juries and courts.

JOHN A. DIX.

ALBANY, N. Y., May 2, 1874.

His Excellency John A. Dix:

SIR:—We have this day examined the brain, and its membranes, in the case of Joseph Waltz, executed at Catskill, May 1, and find them sound.

JOHN P. GRAY,
Superintendent N. Y. State Lunatic Asylum.

JOHN SWINBURNE, M. D.

NEW YORK STATE LUNATIC ASYLUM,
UTICA, May 12, 1874.

To the Hon. John A. Dix, Governor:

SIR:—At the request of Dr. John P. Gray, Medical Superintendent of this Asylum, I have made a general and microscopic examination of the brain of Joseph Waltz, and find it entirely free from disease.

THEOD. DEECKE,
Special Pathologist. N. Y. State Lunatic Asylum.

The following is from the very able charge of Judge Westbrook to the jury, in which it will be seen he lays down the law as at present interpreted by our courts, relating to persons alleged to be insane at the time of committing a crime.

But what is insanity? what must be the mental condition of the party who is to be excused on account of that mental condition? How much intellect, understanding, judgment and comprehension must he have to make him amenable to the law. This, gentlemen, is a question for the court, and as the court lays down that law to you, you will be guided and governed by it in your deliberations.

Questions of fact belong to you; questions of law to the court. Trench not upon the prerogative of the court and the court will be careful to leave to you that which the law makes it your duty to decide. What, then, I repeat, must be the mental condition of the person who has done the act, otherwise unlawful, which will excuse him for the commission of such act?

The term "Insanity" is a somewhat vague one. There are different degrees of mental power in a healthy person. There are various degrees of capacity among persons whose intellect may be slightly impaired. In regard to the civil affairs of life, that act is a good and lawful one which is done by a person who understands the act. The law can make no difference between the talented and those who are not, in regard to the execution of a deed or a will, so long as the person of the lesser intellect has enough capacity to understand and comprehend the act which he does. And so in regard to crime. The person who comprehends crime in *all* its monstrosity is liable. The person whose intellect is less than that, so long as he has sufficient comprehension to know that the act is wrong and is forbidden, and will be punished by the law, is equally responsible; no more so and no less so. The law, gentlemen, does not recognize insanity as a defense, so long as the person understands and comprehends the act. That the person pretends he is impelled by an irresistible and overwhelming impulse to commit the act will not make a defense. It will not do for a person to say "I was tempted to crime and was overcome by temptation." If he knows the act is wrong and is forbidden, he must resist the temptation, and if he commits the act he does it at his peril. Neither will it do to excuse the commission of crime because a person believes in spirits. Belief in spirits may be evidence for a jury to found its judgment upon in regard to the understanding and comprehension by the party accused of the act and crime. But belief in spirits of itself—that the party sees or hears spirits—that spirits whisper to him and bid him to do this act—that of itself is no defense provided the judgment and reason which God gave to him and spared to him, declare to his consciousness that the act was wrong, and that the laws of God and man forbid it.

This, gentlemen, is no new doctrine; it is as old as the country from which we have borrowed the most of our learning and our law. I refer now to the law of England. And that you may see what the law of that country is upon that question, let me call your attention to some extracts from that law which I have carefully culled:

"To justify the acquittal of a person indicted for murder on the ground of insanity, the jury must be satisfied that he was incapable of judging between right and wrong; and that, at the time of committing the act, he did not consider that it was an offense against the laws of God and nature."

This opinion was given by Lord Lindhurst in the case of the King against Offord. Another Judge thus says:

"Where, upon a trial for murder the plea of insanity is set up, the question for the jury is, 'did the prisoner do the act under a delusion, believing it to be other than it was?' If he knew what he was doing, and that it was likely to cause death, and was contrary to the laws of God and man, and that the law directed that persons who did such acts should be punished, he is guilty of murder."

This was the opinion of Martin, J., in the case of the Queen against Townley. And again,

"The circumstance of a person having acted under an irresistible influence to the commission of homicide is no defense, if at the time he committed the act, he knew he was doing what was wrong."

That is the opinion of Bramhall in Queen against Haynel. The same doctrine has been enunciated in various States of this Union.

"In a trial for murder a charge 'that the true test of insanity is, whether the accused, at the time of the commission of the crime, was conscious that he was doing what he ought not to do,' is proper."

"The test of such insanity in criminal cases, as will excuse the commission of a crime, is whether the accused, at the commission thereof, was conscious that he was doing what he ought not to do."

That was held in the case of the People against Hobson, 17, California.

1 N. J., 196, the State against Spencer.

"It is not every kind or degree of insanity which exempts from punishment. If the accused understood the nature of the act, if he knew it was wrong and it deserved punishment, he is responsible."

This is the case of the U. S against McGue. 1. Curtis, Ct. Ct. Reps.

"If a man has capacity and reason sufficient to enable him to distinguish between right and wrong as to a *particular act*, for the commission of which he is on trial—if he has knowledge and consciousness of *the* act he is doing and that it is wrong and will deserve punishment, he is, in the eye of the law, of sound mind and memory, and therefore criminally responsible for the act."

And, gentlemen, the same doctrine has been enunciated in a recent case in the Court of Appeals of this State, which is our highest court, and whose decisions must be our guide in the determination of this one. The case is reported in 52 N. Y. (Flanagan vs. the People.) The prisoner was convicted in the General Sessions of New York city of the crime of murder in the second degree, he having been indicted for murder in the first degree for killing his wife. The counsel for the prisoner made these points:

"No man can commit a crime, although he has *understanding*, if he has no *will*. The right and wrong test as to the contemplated act is not favored. The power of *choosing* right from wrong is as essential to legal responsibility as the mere capacity of *distinguishing* right from wrong."

That is to say, the prisoner's counsel said he must have the power to *choose;* that is, to determine what he would or would not do; whether he should do the act or whether he should not do it, and this was just as important in determining whether he was insane or not as his power to *distinguish* between the right and the wrong of the act. In other words the counsel for the prisoner claimed that though the prisoner might have reason enough to tell him that the act was wrong—that the laws of the land and God forbid it — that if he had no will to resist the influence which bade him do the act, then he was crazy and insane, and not criminally responsible. It presents to a certain extent one of the very propositions which the counsel for the prisoner has raised here. It presents almost the identical question which is raised by the confession of the prisoner in the case. Now what did the Court say in this case? They refer in the first place to the case of Willis against the People. That was a case in which I was concerned and where the rule in this State was pretty thoroughly settled. The Court of Appeals through Andrews, J., says:

"That the test of responsibility for criminal acts, where unsoundness of mind is interposed as a defense, is the capacity of the defendant to distinguish between right and wrong, at the time of and with respect to the act, which is the subject of the inquiry."

Of course he must be able to intelligently distinguish between the right and the wrong; he must have a comprehension and knowledge that the act is forbidden; it must be present to his mind at the time he resolves to do it. But if that intelligence and comprehension be present—if there is a voice within him saying, "Do not this act," and he understands that if he does it it is wrong, and the law will punish him, then if he does it, he is responsible,

even though he may claim that some mysterious influence or spirit urges him on and destroys his power to resist. I further read:

"We are asked in this case to introduce a new element into the rule of criminal responsibility in cases of alleged insanity, and to hold that the power of choosing right from wrong is as essential to legal responsibility as the capacity of distinguishing between them; and that the absence of the former is consistent with the presence of the latter.

"The argument proceeds upon the theory that there is a form of insanity in which the faculties are so disordered and deranged that a man, though he perceives the moral quality of his acts, is unable to control them, and is urged by some mysterious pressure to the commission of acts, the consequences of which he anticipates but can not avoid.

"Whatever medical or scientific authority there may be for this view, it has not been accepted by courts of law.

"The vagueness and uncertainty of the inquiry which would be opened, and the manifest danger of introducing the limitation claimed into the rule of responsibility, in cases of crime, may well cause courts to pause before assenting to it.

"Indulgence in evil passions weakens the restraining power of the will and conscience; and the rule suggested would be the cover for the commission of crime and its justification. The doctrine that a criminal act may be excused upon the notion of an irresistible impulse to commit it, where the offender has the ability to discover his legal and moral duty in respect to it, has no place in the law. Rolfe, B., in Rogers vs. Allunt, where, on the trial of an indictment for poisoning, the defendant was alleged to have acted under some moral influence which he could not resist, said: 'Every crime was committed under an influence of *such a description;* and the object of the law was to compel people to control these influences.'"

That, gentlemen, is the law of this case. It is the law which must govern you in your deliberations. You are not to ask yourselves the vague question whether the prisoner was or was not insane, without having any clear or definite comprehension of what insanity is, but you are to ask yourselves the question, did the prisoner understand this act when he raised that hatchet and smote Holcher those fatal blows; did he understand that the laws of God and man forbade him, and did he know that those laws would hold him responsible for it when discovered and brought before a tribunal of justice? If he *did*, he is guilty. No matter though he

says, and his counsel for him argue, that an irresistible, mysterious power urged him on to the commission. This is no defense. The law says it is the duty of the person to resist these influences, and to successfully resist them. The safety of society, the protection of life, require that we should hold persons accountable for crime who know that the act which they do is a criminal one.

In contemplating this case it impresses us as a forcible illustration of the indicia of simulated insanity as given by Dr. Ray in his sixteenth chapter. The harmony of Waltz' conduct with that of the test-signs there given, forms a most salient feature in this drama of dissimulation. We accordingly present it in a parallel analysis:

RAY.	WALTZ.
The grand fault committed by impostors is, that, in their anxiety to produce an imitation which shall deceive, they overdo the character they assume.	Waltz' conduct in the court room was so violent that Dr. Mackey could only check him by telling him that he was overdoing his part, when he immediately subsided.
A person simulating mania, will frequently deny all knowledge of men or things with whom he has been most familiar. The very names, dates and transactions with which he has been most lately and intimately conversant, he will, for the same reason, refuse to remember.	When first questioned by the Commissioners, Waltz could not tell his father's or mother's name, or the church they attended; said he did not know what a court house was and had never seen one. Did not remember ever coming to Catskill village, &c.
Well-marked, real mania, seldom occurs suddenly, but is preceded, as has been elsewhere noticed, by a course of preliminary symptoms. In simulated insanity, on the contrary, the invasion is as sudden as is most frequently the occasion that leads to it.	Waltz had never been sickly, nor had he altered in any trait of his habitual demeanor until after he was told that his only defense was insanity, when he showed the first outbreak of violence suddenly and without premonition.

Ray.	Waltz.
In real mania there is usually an extreme irritability of temper, which makes the person impatient of the least contradiction, and is constantly breaking out into furious gusts of passion.	The jailor's testimony was that Waltz was habitually quiet and good natured, and as he expressed it, "would hurt nobody." He showed no irritability whatever under examination. On the contrary, he was melted to tears.
In real mania, the patient will be days and even a week without sleep, while the simulator will be observed not to protract his sleeplessness to anything like the period which is commonly attained in the real disease.	Waltz habitually slept well. The only interruption to this habit, was on the two nights succeeding the murder of Holcher, when remorse was distressing his conscience. He admitted this himself.
In simulated madness there is also a certain hesitation and appearance of premeditation in the succession of ideas, however incoherent, very different from the abruptness and rapidity with which in real madness the train of thought is changed. This, of itself is sufficient in the majority of cases, to reveal the deception to the practiced observer of insanity.	Waltz from the first hesitated and deliberated upon his answers, apparently studying his part as he went along, and attempting in a clumsy way to escape being made to draw conclusions from his own premises, knowing as he did that they were false. Hence, he showed none of that natural logic which even an insane mind displays. In other words he was not consistent with himself.
The impostor generally evinces no settled diminution of his attachment to his family or friends.	Waltz to save his father who was first arrested, confessed the murder before there was the least evidence against him yet collected.
Generally, persons feigning mania, lack the bold, unflinching look of real maniacs. They never look the physician steadily in the face, nor allow him to fix their eye.	Waltz on the Commissioners first entering his cell, would not look at them, turning his face to the wall, and constantly when closely gazed at, would close his eyes and make wry faces.

In conclusion, and not to unduly extend this narrative we may say that in the other signs mentioned by Dr. Ray, Waltz presented almost every feature which an untrained simulator would be likely to assume in order to further his object. And so impossible is it to continually veil truth against the persistent efforts of nature to express herself, that, when Waltz was directly accused of feigning, his face for the first time showed a blush of disappointment and shame, as he exclaimed, "*feigning?*" *feigning what?*

It would seem after all, from what Dr. Ray and other authors quoted by him have said upon this subject, that it is really more difficult to feign insanity than it is for an expert to detect it. All nature and experience are on the side of the latter, all difficulty and obstruction in the way of the simulator.

THE

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