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Reprint
FROM
The American Journal of Insanity,
Utica, October, 1888.

presented by the author.



THE CODMAN WILL CASE.*

BY WALTER CHANNING, M. D.,
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In December, 1886, John A. Codman, of Boston, died of cirrhosis of the liver. He had suffered from œdema for perhaps two years before his death, had been tapped several times, and had every warning that a man in his condition could have that death was impending.

He was a member of an old, well-known family, which was both aristocratic and respectable, and comparatively rich, and had not his conduct during life been both extraordinary and disgraceful, and his will a climax of such a life, it is probable that no litigation would have taken place, and hence no publicity attached to the name.

The provisions of the will were of such a nature, however, that it seemed wrong to Mr. Codman's widow and surviving child, to have the will admitted to probate. Undue influence was urged before the Judge of Probate, but he decided to admit the will. Exceptions were taken and the case appealed to the Supreme Judicial Court, and tried before a jury. The contest was here made on the grounds of undue influence and insanity.

The will was a voluminous and artfully worded document, and impossible for any but a skilled lawyer to thoroughly understand.

The whole property, which was upwards of \$400,000, was left in trust for the widow and surviving child, a daughter, with the exception of two legacies, one of \$20,000 to a former mistress, and one of \$40,000 to a mistress still maintaining relations with him.

The greatest ingenuity was displayed in the further provisions of the will, which were firstly drawn in favor of mistress number two, Mrs. Kimball, and secondly in favor of the lawyer. Under clause ten this woman was to have, in the event of Mrs. Codman's death, the income of \$87,000, and under clause eleven, in the event of Miss Codman's death, the income of \$108,000. In case of the death of mistress number one, she would get the income of \$20,000 more. Altogether she would eventually receive, if she outlived the others, the income of about \$300,000. As Mrs. Codman was

*Read at the annual meeting of the Association of Medical Superintendents of American Institutions for the Insane, held at Old Point Comfort, Va., May 15-18, 1888.



already toward 65 years of age, and the daughter a sufferer from a serious form of chronic disease, there was a fair chance of such a contingency. This money was further to be handed down to her children, illegitimate or otherwise, should she have any.

The lawyer might receive, on the death of Miss Codman without issue, and Mrs. Kimball without issue, and a Codman brother, \$84,000.

Mr. Codman's mother died of softening of the brain at 55, and his father of dropsy. One brother was weak-minded from birth, and had a guardian appointed for himself, as he felt unable to otherwise resist the importunities of the people in whose house he lived.

He was suspended in college and did not return; then he studied law one year. He had a little aptitude for painting, and sold, during his life, one picture. Otherwise than this he did no work, and had no occupation, and led an idle, aimless life.

He married at the age of 26, and lived with his father immediately after marriage. He had a very small income, which Mrs. Codman managed to pay most of the bills with, when not, the father was called on. Even in the early years he seems to have been too lazy and indifferent to keep accounts, or pay bills himself. Mrs. Codman says in her testimony that he did not wish to look after money when his father died, so he left much of the work to her; she paid the bills, made leases and examined them to see that they were correctly drawn. She also made out bills for rent.

He had two children, a boy (Amory) and girl (Martha C.), both born between 1850 and 1860, and these were all the children he ever had. Of both these, especially the daughter, he was extremely fond.

He was a good-looking man, of pleasant, genial manners, courteous to every one, and especially polite to the members of his own family.

With these pleasant manners was combined considerable selfishness, and there has been no evidence that he ever attempted to do anything beyond gratifying his own desires. From the beginning he had little idea of social, domestic or moral obligations. He was either born with deficient moral sense, (paranoia), or a lack of will-power, which rendered it impossible for him in the beginning to carry through any duty that required force of character. With his affluent surroundings and nothing demanded of him, he was most favorably situated to develop any latent weaknesses, and what made it the more easy, was the lack of interest he manifested in work or employment of any sort or kind.

But the influence which more than any other contributed to the ultimate result of mental and moral degeneracy, was the pernicious character of his habits. These were bad from a very early period. As long ago as 1858, there is evidence that he held criminal relationship with women. At this early period, however, and for many years after, in fact until brought into association with the notorious "Violette" Kimball, he had not so far lost moral will-power as to outrage his domestic and social ties by an open exhibition of the adulterous relation. He was careful to do anything immoral or licentious, as far as his mistress was concerned, *sub rosa*, and the world at large was totally ignorant of his libertinism.

With these low moral tendencies was associated an addiction to alcohol and tobacco. For a long series of years he was a steady drinker, and he smoked immoderately from morning to night. He also showed eccentricity in some of his personal habits in the early years, which persisted and became exaggerated in later life. He would, for instance, not handle money without putting gloves on, and would hand it to others wrapped in paper, and he would not touch the door-handles without putting gloves on. He also constantly washed his hands when about to do the most trifling thing.

Passing over a period of twenty years, the details of which do not enter into the evidence which is being passed in review, we come to the year 1872, or the year after Mr. Codman met "Mrs." Kimball.

What may have been Mr. Codman's history in these years we do not know, beyond the fact that he continued drinking steadily and had a mistress named Mary Burditt, who (with the Kimball woman) continued for some years to pander to his evil passions, until crowded out of the field by the superior prowess of the latter.

The relationship of Mr. Codman and Mrs. Kimball, with all its revolting details, bears, even on a superficial examination, on its face proof of the moral degeneracy and mental impairment into which Mr. Codman had been slowly drifting.

The Kimball woman was said to be divorced from her husband, but she was a woman of the lowest tastes, lacking in refinement, half educated, coarse and voluptuous in appearance, and in every way a fitting example of the *elite* of the *demi-monde*.

It would have been natural for a man of Mr. Codman's bringing up to have sought even in a criminal connection, a woman with

some semblance of refinement, and it is evidence of mental impairment that he thought this indecent, cunning and treacherous woman a paragon of purity and innocence.

The depth, strength and intensity of his delusional belief in regard to Mrs. Kimball is demonstrated beyond all contradiction in the vast correspondence he carried on with her. In a little over fourteen years he *preserved* nearly nineteen hundred of her letters. These letters were found carefully arranged in series, numbered 1, 2 and 3, in a trunk in the storage warehouse, after his death. In the same trunk were some indecent nude pictures, and pictures of Mrs. Kimball.

These letters are filled with sickly sentimentality, coarse and disgusting allusions and suggestions; the plainest demands for money; brutal criticisms of Mrs. Codman, broad suggestions as to the desirability of getting her out of the way, and marrying Mrs. Kimball; allusions to mistress No. 2, &c.

All of the filth, scandal, passion and general wickedness is after the style of a silly school-girl, and would nauseate a very strong and toughened palate. Nearly every letter shows on the face of it that it is written for the purpose of extracting money out of a soft-headed imbecile, though their glaring intention is supposed to be artfully concealed behind expressions of tender regard and love.

But Mr. Codman's judgment and moral perception were too impaired to discern the self-evident truth, and he accepted all of these letters precisely as if Mrs. Kimball had been a woman in his own social circle, and their relations had been proper, and she had written him refined and lady-like letters.

The many comments made on the letters in Mr. Codman's handwriting are all the proof needed of this assertion: "She is his darling," "she has no faults," "she is just about perfect," "he loves *her* only," "she has owned him for years and he will never disown her." Mrs. Kimball refers to beef-steak, of which he is fond, and he says, "I thank the great spirit that you always think of me my own true darling." At this very time, it may be said in passing, Mrs. Kimball was entertaining other lovers, nearly every evening being passed in this way. Of letter 528 which was very insulting to his family he says, "that God can spare you out of heaven is one of the strongest proofs of his willingness to make mortals happy, and of the riches in store for them here, if they could but know you as I do." "'Tis you, darling, who are a saint;" "darling of my heart, how I pity you;" "the kingdom of Christ is not." One extraordinary letter sent to Mrs. Kimball was

in the form of a long list of minute questions as carefully elaborated as those in a civil service examination. These questions referred to the most trivial details, such as when Mrs. Kimball got up, went to bed, which way her bed was set in the room, at which end her head, &c.

As an instance of the weak-minded and juvenile absorption of Mr. Codman in Mrs. Kimball, the fact may be mentioned at this point (being brought out from the letters) that he one night put on his dress-suit at just the time Mrs. Kimball had a party in Montreal, and remained up in his room, imagining that he was at the party; and Mrs. Kimball encourages his infatuation by saying she reserves dances for him.

These and many other comments, all of the same general tenor, bear constant witness to the dominant idea which ran through Mr. Codman's mind for many years.

Why he saved so criminating and damning a correspondence is past belief if he is viewed as a sane, well-balanced man. Yet he filed all the letters away; arranged them in series; made self-accusing notes which showed him guilty of not only base marital infidelity, but of endorsing criminal acts and schemes in another.

If he had had a sane regard of the most common kind for his wife, his daughter, or his family name even, he would have destroyed the letters. If he had had a sane respect for his *own* name, he would have destroyed the letters. If he had had any rational regard for the feelings or reputation of his mistress, he would have destroyed the letters.

The ordinary sane, well-balanced man, if immoral enough to have a mistress, conceals it from the world while the relation exists, and guards every loophole that may make its existence public either now or in the future. He destroys all letters, covers his tracks, and sees to it that it may never bring disgrace on his family name. He is ashamed that such a relationship should be heard of, and avoids every source of notoriety and scandal. Such a course would be followed at the dictation of common worldly wisdom, and would call for no high moral tone to suggest it to the mind.

Mr. Codman did the exact opposite, and treasured up the largest collection of scandalous letters that I have seen recorded. He was as careful to bring disgrace on himself and his family as if he were bringing undying glory; any little opportunity to show how nasty and dirty and depraved a woman can be, was preserved in these letters, and these letters were by implication a reflection of

himself. Is it possible to imagine that Mr. Codman realized the curse he was bringing on the name of Codman?

The answer to this question must be, no; his moral perception, judgment and conscientiousness were so perverted and weakened, that what would have been criminal and foolish in the ordinary sane individual, seemed to him wise and right. As far as "Mrs." Kimball was concerned, as far as the letters were concerned, and as time went on, as far as most of the acts requiring any moral or will power were concerned, he had lost the mental power of clearly distinguishing between right and wrong.

Returning again to the evidence and examining into the mental and physical condition of Mr. Codman as he appeared in 1872, it will be seen that considerable deterioration had taken place, as already intimated, during the twenty years, which is the period about which comparatively little evidence has been offered in court.

The Kimball acquaintance had been formed in 1871, and the Kimball soil was just the soil to develop the weak, brutish and silly tastes over which Mr. Codman had largely lost control. It is certain that in earlier years he would have shown more strength of mind in dealing with her, and not have figured so largely as the foolish, half-witted, imbecile dupe, but he had already gone a long distance down the hill of cerebral degeneracy, and the time was ripe for him to be caught in the toils of a cunning and designing adventuress.

In 1872 he began to lose interest in his home and family, and became rude, cross and irritable as he had not been before. He was especially irritable toward his wife, and began to use profane language in the house, which he had never done before. It was also about this time that he began to have paroxysms of crying, which lasted down to the time of his death. These attacks were often very violent, the tears streaming down all over him, and they sometimes lasted for half an hour. They occurred at first at varying periods, from once a day to once in ten days, and in the later years sometimes as often as four times a day. Once or twice Mr. Codman was agitated when these attacks came on, but otherwise neither he nor any one else could assign a cause. As far as can be seen they were due to a loss of will power, and a weakened condition of the nervous system, and are corroborative evidence of the deterioration which had taken place in him.

In 1874 the Codman family went to Europe, Mrs. Kimball also being in Europe, and in the same cities, and sometimes only across

the street. Mr. Codman now neglected the family almost entirely. He was away the entire day and evening, only coming back to meals, his time being presumably passed in the society of the Kimball woman.

While in Europe he grew more violent and abusive to his family, and at Nice got into a violent rage with his daughter, of whom he had previously been very fond. She refused, from accidental causes, to take his arm in going out of the drawing-room, whereupon he burst into a flood of tears, and went up to their rooms. The son shortly came in, and he cried out, "one, two, three, all of you may be d—d, and go to hell."

Another instance of his coarseness and brutality was shown in Paris shortly after the death of his son, when seeing Mrs. Codman in tears he said "it served you right, if you had never borne him you could have lived with me as a mistress."

These two occurrences are striking examples of the change which had come over Mr. Codman, as he was naturally pleasant and polite with his family, and had never been known to use coarse or abusive language.

In 1876 he began to drink heavily; rum and water he drank at all times of the day, beside drinking wine at dinner. Sometimes he got drunk. The excessive smoking continued to the end.

For many of the latter years of his life he had a boon companion, who dined with him each day, after which they retired to a smoking-room in the upper part of the house, where they remained carousing until midnight. After 1880 Mrs. Codman and the daughter could not be at the same table with them, and took their tea on a table under the stairs, while Mr. Codman and his boon companion dined in the dining-room.

In money matters he was reckless to an extraordinary extent. On the return from Europe he mortgaged the estate to the extent of \$25,000, part of this sum no doubt being needed for the Kimball woman. His income at this time was large. He gave his wife \$6,000, then spent it without her knowledge. He allowed tax bills to go unpaid, and it was common for mother and daughter to pay these out of their own income.

He lavished money on the Kimball woman, but felt too poor to clothe himself properly, and after 1879 began to look shabby and slovenly, having formerly been very particular in dress. He finally became ragged, and for several years his wife bought clothing for him. During the last five or six years of his life he often would not brush his hair when he got up in the morning, and would leave it unkempt during the day. Much of the time during

the last two years of his life he wore no trousers in the house; his usual costume was an overcoat, drawers, and an old handkerchief, when in-doors. He even went to the table without trousers on, which impressed his wife and daughter as very strange, and can hardly be explained away on the ground that he may have been suffering from œdema of the legs. If he was well enough to go to the table for his meals, he was probably well enough to dress himself properly.

Both Mrs. and Miss Codman testified to the extreme and abnormal fear Mr. Codman possessed in regard to burglars. Every night he went all over the house armed with a loaded pistol searching for them. He kept a loaded pistol under his pillow, and several loaded pistols in other places, and after his death twelve loaded pistols were found. He would get up in the night and search for burglars, and often had nightmares when he thought burglars were in the room. Once he confronted Mrs. Codman with a loaded pistol and lantern.

Before going to Europe Mrs. Codman testified to Mr. Codman's defective memory—he did not remember the day of sailing, for instance. The daughter also testified to weakness of memory.

In addition to swearing when talking to others he developed a habit of muttering and swearing to himself, especially noticed after the return from Europe in 1876. The daughter says he talked to himself aloud continually—often he seemed to be enraged with some one. Once he said, "liars all of them," but usually he could not be understood.

Though death was clearly approaching, he continued his bad habits to the end. According to his nurse, he drank a quart of New England rum in each forty-eight hours up to the end. The nurse tried to prevent his drinking, but failed, as he could not leave it off. She also tried to prevent his smoking, but failed.

He said to the nurse, "don't let her knife me,"—he was afraid of the inside man—thought he would kill him. He cried often and as if his heart would break. In answer to the nurse's questions, he said he could not leave things as he wished—could not provide as he wanted to. He evidently said something about suicide, for the nurse put a razor and knife out of his way.

The history of Mr. Codman which has been given above, though not filled out as fully as would be desirable, in the description of physical changes and symptoms, were the patient still living, furnishes none the less a striking case of the mental degeneration accompanying chronic alcoholism in the intermediate stage, if we care to divide it into stages. Marked mental, and

with this intellectual degeneration, has taken place. And, more than all, great moral changes show themselves. A profound change has already taken place; as Magnan says,* "a profound action has been produced, nutrition is altered throughout all the organs, systems and tissues. Under the influence of alcohol a double morbid process has developed itself; the system as a whole has been struck, as it is said, with premature old age, and has undergone fatty degeneration. * * * Organic changes appear moreover * * * in the muscles and the glands; and as regards the liver in particular, we know that either cirrhosis, or fatty degeneration is the concomitant of chronic alcoholism." * * * "The memory is weakened; the judgment less sure, and incapable of discernment; * * * the moral sense is greatly blunted. Apathetic, indifferent, stupefied, the chronic alcoholic bestows no attention on his person, he takes no care of his family, he is lowered in all his intellectual, moral and social faculties, and finds himself yielded defenseless to the caprices of instinctive appetites." A maudlin, sentimental condition becomes added to the indifference and apathy. The sleep is disturbed by dreams and nightmares, and Mr. Codman's fears of robbers, and his nightmares about them were characteristic of alcoholic degeneration.

The convulsions of weeping were very striking in Mr. Codman's case; as Bucknill and Tuke say,† "the feebleness of mind, the blunted moral sensibilities, and yet the tendency to weep on the most trivial occasions" are all marked characteristics of this condition.

One of the terminations of alcoholic degeneration is premature old age, and the evidence presented above shows that Mr. Codman was drifting into this condition when he first met Mrs. Kimball. He proved himself to be silly, childish, even babyish in his whimsicalities in reference to Mrs. Kimball, and she was quite right in calling him "her baby," as he showed plenty of indications of second childhood.

I have frequently questioned myself as to why Mr. Codman was not put under guardianship, or into an asylum, as he showed such marked mental incapacity. This has been explained privately to me by Mrs. Codman, who said she would have been afraid of losing her life had she made any such attempt. There was an actual reign of terror in the Codman house, which explains much of Mrs. Codman's apparent indecision.

To sum up, then: Mr. Codman was, for many years before his death, the subject of a progressive mental and physical impair-

* Page 155.

† Page 392.

ment caused by alcoholic and other excesses. This change, at first functional, became organic and permanent.

As a consequence of the mental degeneration, which of course includes the moral, various and frequently repeated acts were committed, all going to prove a clearly recognizable degree of mental unsoundness, and no evidence to my knowledge has been produced which contravenes the correctness of this opinion.

At any time during the last fifteen years of Mr. Codman's life it is my opinion that he was incapable of assuming the responsibilities and duties of life in the full sense of the word. He was all the time managed like a weak-minded child, his lawyer and his wife attending to his business affairs, and his mistress and boon companion providing diversion and amusement. He never apparently knew it, but he was constantly in the hands of others.

Had Mr. Codman been situated like other men, and had actual work and duties to perform, it is my own opinion, that with the mental instability and unsoundness he exhibited, he would have broken down totally, and either have been placed under guardianship, or in a lunatic asylum. As it was, we see that he was under the restraint of the strong wills of his mistress and lawyer, and had money not been the object of Mrs. Kimball, and his lawyer a man of worldly wisdom, he might have been led to commit some overt and criminal act. Had he committed such an act, it is almost certain that he would have been held irresponsible on the ground of mental unsoundness.

The verdict brought in by the jury rejected the will on the two grounds of unsound mind and undue influence. Their verdict was rendered in the form of questions and answers.

A few days afterward the Court heard a motion for a new trial, and set aside four findings of the jury. Two of these referred to the testator's mental condition, which the Court held was sound, and two to undue influence on the part of the lawyer, and a beneficiary for a small amount in a codicil.

The other findings of the jury as to undue influence on the part of Mrs. Kimball were however sustained, and the decision of the probate court, that the will be admitted to probate, was reversed.

The Court showed the same unwarranted and unreasonable prejudice against expert testimony, as at the earlier stage of the trial. The judge said in substance, "he could not see how the jury could come to the conclusion which they did that Mr. Codman was not of sound mind at the time of signing the will itself."

He expressed a distrust on his own part of the effect which the testimony of medical experts in a case like this might have on the

minds of the jury, and intimated that had it been within his province he should have been willing to exclude from this trial evidence of this kind.

One would suppose that the Court would have welcomed expert testimony, which would tend to clear up doubts which might exist in the minds of the jury, instead of throwing discredit on such testimony.

The prejudices and freaks of courts in medico-legal cases are however, often inexplicable, and lead to the most gross injustice, as for instance, witness the rulings of Justices Day and Field, mentioned in the April number (1888) of the *Journal of Mental Science*. Justice Day said in the first case that he would not allow the medical men to give their opinion as to the prisoner's sanity, as they would by so doing usurp the functions of the jury. They could only state facts. Justice Field was studiously rude to the medical witnesses, would allow them to give no opinion of the prisoner's mental condition, and said, a medical gentleman "*could no more dive into a man's state of mind than I can.*"

The evidence upon which the experts were to base their opinions in the Codman case, was put into the usual form of a hypothetical question, and the limitations of such a question and the intolerance of courts toward expert evidence was exemplified by the following remarks:

Counsel.—You may state your reasons.

Expert Witness.—My reasons would cover the ground in the hypothetical question, and also take in other evidence in addition.

Counsel.—You must not take any other evidence.

Court.—That is just exactly the difficulty with such a question, and the utter inutility of it to my mind. You will have to limit your answer to the question put. Take it exactly as it is stated, not adding anything and not subtracting, and not varying anything a hair's breadth. Take it exactly as it is put, that is the question, assuming those facts, and no others."

Again the Court said :

"It is impossible for me to carry a question of that sort, and to understand what the doctor's opinion will be based on exactly, and for that reason I was prepared to exclude the question."

Of hypothetical questions in general, it is not my purpose to speak here, beyond emphasizing, as has been so often done before, their entire inadequacy for the purpose for which they were intended. Sometimes of value, sometimes not, they create suspicion and distrust, as in the present case, and detract from the standing and dignity of the medical expert in court.

