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DANIEL M'NAGHTEN'S CASE. May 26, June 19, 1843.

[Mews' Dig. i. 349; iv. 1112. S.C. 8 Scott N.R. 595; 1 C. and K. 130; 4 St. Tr. N.S, 847. The rules laid down in this case have been accepted in the main as an authoritative statement of the law (cf. Beg. v. Townley, 1863, 3 F. and F. 839; Beg. v. Southey, 1865, 4 F. and F. 864; Reg. v. Leigh, 1866, 4 F. and F. 919). But they have been adversely criticised both by legal and medical text writerz (see 2 Steph. Hist Crim. Law, 124-186; Mayne Ind. Crinm. Law (ed. 1896), 368), have been rejected by many of the American States (see e.g. Parsons v. State, 1887, 81 Ala. 577), and frequently receive a liberal interpretation in England. On point as to questions to the Judges, see note to London and. Westminster Bank Case, -2 Cl. and F. 191.]

Murder-Evidence-In.sanity.

The House of Lords has a right to require the Judges to answer abstract questions of existing law (see London and Westminster Bank Case, ante [2 Cl. and F.], p. 191 [and note thereto].

Notwithstanding a party accused did an act, which was in itself criminal, under the influence of insane delusion, with a view of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable if he knew at the time that he was acting contrary to law..

That if the accused was conscious that the act was one which he ought not to do; and if the act was at the same time contrary to law, he is punishable. In all cases of this kind the jurors ought to be told that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction: and that to establish a defence on the ground of insanity, it must be clearly proved that at the time of commiting the act the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or as not to know that what he was doing was wrong.

That a party labouring under a partial delusion must be considered in the same situation, as to responsibility, as if the facts, in respect to which the delusion exists, were real.

That where an accused person is supposed to be insane, a medical man, who has been present in Court and heard the evidence, may be asked, as a matter of science, whether the facts stated by the witnesses, supposing them to be true, show a state of mind incapable of distinguishing between right and wrong.

The prisoner had been indicted for that he, on the 20th day of January 1843, at the parish of Saint Martin in the Fields, in the county of Middlesex, and within the jurisdiction of the Central Criminal Court, in and upon one Edward Drummond, feloniously, wilfully, and of his malice aforethought, did make an assault; and that the said Daniel M'Naghten, a certain pistol of the value of 20s., loaded and [201] charged with gunpowder and a leaden bullet (which pistol he in his right hand had and held), to, against and upon the said Edward Drummond, feloniously, wilfully, and of his malice aforethought, did shoot and discharge; and that the said Daniel M'Naghten, with the leaden bullet aforesaid, out of the pistol aforesaid, by force of the gunpowder, etc., the said Edward Drummond, in and upon the back of him the said Edward Drummond, feloniously, etc. did strike, penetrate and wound, giving to the said Edward Drummond, in and upon the back of the said Edward Drummond, one mortal wound, etc., of which mortal wound the said E. Drummond languished until the 25th of April and then died; and that by the means aforesaid, he the prisoner did kill and murder the said Edward Drummond. The prisoner pleaded Not guilty.

Evidence having been given of the fact of the shooting of Mr.Drummond, and of his death in consequence thereof, witnesses were called on the part of the prisoner, to prove that he was not, at the time of committing the act, in a sound state of mind. The medical evidence was in substance this: That persons of otherwise sound mind, might be affected by morbid delusions: that the prisoner was in that condition: that a person so labouring under a morbid delusion, might have a moral perception of right and wrong, but that in the case of the prisoner it was a delusion which carried him away beyond the power of his own control, and left him no such perception; and that he was not capable of exercising any control over acts which had connexion with his delusion: that it was of the nature of the disease with which the prisoner was affected, to go on gradually until it had reached a climax, when it burst forth with irresistible [202] intensity: that a man might go on for years quietly, though at the same time under its influence, but would all at once break out into the most extravagant and violent paroxysms.

Some of the witnesses who gave this evidence, had previously examined the prisoner: others had never seen him till he appeared in Court, and they formed their opinions on hearing the evidence given by the other witnesses.

Lord Chief Justice Tindal (in his charge):-The question to be determined is, whether at the time the act in question was committed, the prisoner had or had not the use of his understanding, so as to know that he was doing a wrong or wicked act. If the jurors should be of opinion that the prisoner was not sensible, at the time he committed it, that he was violating the laws both of God and man, then he would be entitled to a verdict in his favour: but if, on the contrary, they were of opinion that when he committed the act he was in. a sound state of mind, then their verdict must be against him.

Verdict, Not guilty, on the ground of insanity.

This verdict, and the question of the nature and extent of the unsoundness of mind which would excuse the commission of a felony of this sort, having been made the subject of debate in the House of Lords (the 6th and 13th March 1843; see Hansard's Debates, vol. 67, pp. 288, 714), it was determined to take the opinion of the Judges on the law governing such cases. Accordingly, on. the 26th of May, all the Judges attended their Lordships, but.no questions were then put.

On the 19th of June, the Judges again attended the House of Lords; when (no argument having been [203] had) the following questions of law were propounded to them:--

1st. What is the law respecting alleged crimes committed by persons afflicted with insane delusion, in respect of one or more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?

2d. What are the proper questions to be submitted to the jury, when.. a. person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?

3d. In what terms ought the question. to be left to the jury, as to the prisoner's state of mind at the time when the act was committed?

4th. If a person under an insane delusion, as to existing facts, commits an offence in consequence thereof, is he thereby excused?

5th. Can a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act, that he was acting. contrary to law, or whether he was labouring under any and what delusion at the time

[204] Mr. Justice Maule:--I feel great difficulty in answering the questions put by your Lordships on this occasion:-First, because they do not appear to arise out of and are not put with reference to a particular case, or for a particular purpose, which might explain or limit the generality of their terms, so that full answers to them ought to be applicable to every possible state of facts, not inconsistent with those assumed in the questions: this difficulty is the greater, from the practical experience both of the bar and the Court being confined to questions arising out of the facts of particular cases:-Secondly, because I have heard no argument at your Lordships' bar or elsewhere, on the subject of these questions; the want of which I feel the more, the greater are the number and extent of questions which might be raised in. argument:-and Thirdly, from a fear of which I cannot divest myself, that as these questions relate to matters of criminal law of great importance and frequent occurrence, the answers to them by the Judges may embarrass the administration of justice, when they are cited in criminal trials. For these reasons I should have been glad if my learned brethren would have joined me in praying your Lordships to excuse us from answering these questions; but as I do not think they ought to' induce me to ask that indulgence for myself individually, I shall proceed to give such answers as I

can, after the very short time which I have had to consider the questions, and under the difficulties I have mentioned; fearing that my answers may be as little satisfactory to others as they are to myself.

The first question, as I understand it, is, in effect, What is the law respecting the alleged crime, when at the time of the commission of it, the accused knew he was acting contrary to the law, but did the act [205] with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?-If I were to understand this question According to the strict meaning of its terms, it would require, in order to answer it, a solution of all questions of law which could arise on. the circumstances stated in the question, either by explicitly stating and answering such questions, or by stating some principles or rules which would suffice for their solution. I am quite unable to do so, and, indeed, doubt whether it be possible to be done; and therefore request to be permitted to answer the question only so far as it comprehends the question, whether a person, circumstanced as stated in the question, is, for that reason only, to be found not guilty of a crime respecting which the question of his. guilt has been duly raised in a criminal proceeding? and I am of opinion that he is not. There is no law, that I am aware of, that makes persons in the state described in the question not responsible for their criminal acts. To render a person irresponsible for crime on account of unsoundness of mind, the unsoundness should, according to the law as it has long been understood and held, be such as rendered him incapable of knowing right from wrong. The terms used in the question cannot be said (with reference only to the usage of language) to be equivalent to. a description of this kind and degree of unsoundness of mind. If the state described in the question. be one which involves or is necessarily connected with such an unsoundness, this is not a matter of law but of physiology, and not of that obvious and familiar kind as to be inferred without proof.

Second, the questions necessarily to be submitted to the jury, are those questions of fact, which are [206] raised on the record. In a criminal trial, the question commonly is, whether the accused be guilty or not guilty: but, in order to assist the jury in coming to a right conclusion on this necessary and ultimate question, it is usual and proper to submit such subordinate or intermediate questions, as the course whioh the trial has taken may have made it convenient to direct their attention to. What those questions are, and the manner of submitting them, is a matter of discretion for the Judge: a discretion to be guided, by a consideration of all the circumstances attending the inquiry. In performing this duty, it is sometimes necessary or convenient to inform the jury as to the law; and if, on a trial such as is suggested in the question, he should have occasion to state what kind and degree of insanity would amount to a defence, it should be stated conformably to what I have mentioned in my answer to the first question, as being, in. my opinion, the law on this. subject.

Third, there are no terms which the Judge is by law required to use. They should not be inconsistent with the law as above stated, but should be such as, in the discretion of the Judge, are proper to assist the jury in coming to a right conclusion as to the guilt of the accused.

Fourth, the answer which I have given to the first question, is applicable to' this.

Fifth, whether a question can, be asked, depends, not merely on the questions of fact raised on. the record, but on the course of the cause at the time it is proposed to ask it;

and the state of an inquiry as to the guilt of a person charged with a crime, and defended on the ground of insanity, may be such, that such a question as either of those suggested, is proper to be asked and answered, though the witness has [207] never seen the person before the trial, and though he has merely been present and heard the witnesses: these circumstances, of his never having seen the person before, and of his having merely been. present at the trial, not being necessarily sufficient, as it seems to me, to exclude the lawfulness of a question which is otherwise lawful; though I will not say that an inquiry might not be in. such a state, as that these circumstances should have such an. effect.

Supposing there is nothing else in the state of the trial to make the questions suggested proper to be asked and answered, except that the witness had been present and heard the evidence; it is to be considered whether that is enough to sustain the question. In principle it is open to this objection, that as the opinion of the witness is founded on those conclusions of fact which he forms from the evidence, and as it does not appear what those conclusions are, it may be that the evidence he gives is on such an assumption of facts, as makes: it irrelevant to the inquiry. But such questions have been very frequently asked, and the evidence to which they are directed has been given, and has never, that I am aware of, been successfully objected to. Evidence, most clearly open to this objection, and on the admission of which the event of a most important trial probably turned, was received in the case of The Queen v. M'Naghten, tried at the Central Criminal Court in March last, before the Lord Chief Justice, Mr. Justice Williams, and Mr. Justice Coleridge, in which counsel of the highest eminence were engaged on both sides; and I think the course and practice of receiving such evidence, confirmed by the very high authority of these Judges, who not only received it, but left it, as I understand, to the jury, without any remark derogating from its [208] weight, ought to be held to warrant its reception, notwithstanding the objection in principle to which it may be open. In cases even where the course of practice in criminal law has been unfavourable to parties accused, and entirely contrary to the most obvious principles of justice and humanity, as well as those of law, it has been held that such practice constituted the law, and could not be altered without the authority of Parliament.

Lord Chief Justice Tindal:-My Lords, Her Majesty's Judges (with the exception of Mr. Justice Maule, who has stated his. opinion to your Lordships), in answering the questions proposed to them by your Lordships' House, think it right, in the first place, to state that they have forborne entering into any particular discussion upon these questions, from the extreme and almost insuperable difficulty of applying those answers to cases in which the facts are not brought judicially before them. The facts of each particular case must of necessity present themselves with endless variety, and with every shade of difference in each case; and as it is their duty to declare the law upon each particular case, on facts proved before them, and after hearing argument of counsel thereon, they deem it at once impracticable, and at the same time dangerous to the administration of justice, if it were practicable, to attempt to make ninute applications of the principles involved in the answers given by them to your Lordships' questions.

They have therefore confined their answers to the statement of that which they hold to be the law upon the abstract questions proposed by your Lordships; and as they deem it unnecessary, in this peculiar case, to deliver their opinions.seriatim, and as all concur in [209] the same opinion, they desire me to express such their unanimous opinion to your Lordships.

The first question proposed by your Lordships is this: " What is the law respecting alleged

crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons: as, for instance, where at the time of the commission of the alleged crime the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some supposed public benefit?"

In answer to which question, assuming that your Lordships' inquiries are confined to those persons who, labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party accused did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable according to the nature of the crime committed, if he knew at the time of committing such crime that he was acting contrary to law; by which expression we understand your Lordships to mean the law of the land.

Your Lordships are pleased to. inquire of us, secondly, " What are the proper questions to be submitted to the jury, where' a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence? " And, thirdly, "In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when [210] the act was committed " And as these two questions appear to us to be more conveniently answered together, we have to submit our opinion to be, that the jurors ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes,until the contrary be proved to their satisfaction; and that to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused at the time of doing the act knew the difference between, right and wrong: which mode, though rarely; if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put. generally and in the abstract, as when put with reference to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction; whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course therefore [211] has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong: and this course we think is correct, accompanied with such observations and explanations as the circumstances of each particular case may require.

The fourth question which your Lordships have proposed to us is this:-"If a person under an insane delusion as to existing facts, commits an offence in consequence thereof, is he thereby excused?" To which question the answer must of course depend on the nature of the delusion: but, making the same assumption as we did before, namely, that he labours under such partial delusion only, and is not in other respects insane, we think he must be

considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment.

The question lastly proposed by your Lordships is:-" Can a medical man conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious at the time of doing the act that he was acting contrary to. law, or whether he was labouring under any and [212] what delusion at the time?" In answer thereto, we state to your Lordships, that we think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide, and the questions are not mere questions upon a matter of science, in which case such. evidence is admissible. But where the facts are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right.

Lord Brougham:-My Lords, the opinions of the learned Judges, and the very able manner in which they have been presented to the House, deserve our best thanks. One of the learned Judges has expressed his regret that these questions were not argued by counsel. Generally speaking, it is most important that in questions put for the consideration of the Judges, they should have all that assistance which is afforded to them by an argument by counsel: but at the same time, there can be no doubt of your Lordships' right to put, in this way, abstract questions of law to the Judges,.the answer to which might be necessary to your Lordships in your legislative capacity. There is a precedent for this course, in the memorable instance of Mr. Fox's Bill on the law of libel; where, before passing the Bill, this House called on the Judges to give their opinions on what was the law as it then existed.

Lord Campbell:-My Lords, I cannot avoid express[213]-ing my satisfaction, that the noble and learned Lord on the woolsack carried into effect his desire to put these questions to the Judges. It was most fit that the opinions of the Judges should be asked on these matters, the settling of which is not a mere matter of speculation; for your Lordships may be called on, in your legislative capacity, to change the law; and before doing so, it is proper that you should be satisfied beyond doubt what the law really is. It is desirable to have such questions argued at the bar, but such a course is not always practicable. Your Lordships have been reminded of one precedent for this proceeding, but there is a still more recent instance; the Judges having been summoned in the case of the Canada Reserves, to express their opinions on what was then the law on that subject. The answers given by the Judges are most highly satisfactory, and will be of the greatest use in the administration of justice.

Lord Cottenham:-My Lords, I fully concur with the opinion now expressed, as' to the obligations we owe to the Judges. It is true that they cannot be required to say what would be the construction of a Bill, not in existence as a law at the moment at which the question is put to them; but they may be called on to assist your Lordships, in declaring

their opinions upon abstract questions of existing law.

Lord Wynford:-My Lords, I never doubted that your Lordships possess the power to call on the Judges to give their opinions upon questions of existing law, proposed to them as these questions have been. I myself recollect, that when I had the honour to hold the office of Lord Chief Justice of the Court of [214] Common Pleas, I communicated to the House the opinions of the Judges on questions of this sort, framed with reference to the usury laws. Upon the opinion of the Judges thus delivered to the House by me, a Bill was founded, and afterwards passed into, a law.

The Lord Chancellor:-My Lords, I entirely concur in the opinion given by my noble and learned friends, as to our right to. have the opinions of the Judges on abstract questions of existing law; and I.-agree that we owe our thanks to the Judges, for the attention and learning with which they have answered the questions now put to them.
