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REGICIDE IN DRURY LANE

WILLIAM S. MURRAY*

In 1800 before the Court of King's Bench an obscure British soldier named Richard Hadfield stood in the prisoner's dock. It was charged that the on the preceding fifteenth of May Hadfield had committed high treason by firing a pistol at George III in the Drury Lane Theatre, London.

An attempt on the king's life was punishable under the law precisely as if it had been successful. Perhaps there were those on both sides of the Atlantic who would not have mourned had Hadfield's aim been better.

Rex v. Hadfield[1] is a little known classic of the common law. The defense was insanity. Defense counsel was the Honorable Thomas Erskine, a giant of the bar who later became Lord Chancellor.[2] His arguments and authorities throw much light upon the question of sources used 43 years later after the acquittal of M'Naghten, when the judges of England were asked to answer a series of involved questions on the subject of criminal responsibility where the sanity of an accused person was in question.[3]

Hadfield was 29 when tried. He had enrolled in the British army in 1793. In combat in Flanders[4] he received a sword blow that all but beheaded him. A second stroke caused a depressed-type fracture of the skull.

Erskine's approach was especially clever in that his argument paid profuse lip service to the monarch and then tied it in with the extreme and valorous patriotism with which the soldier Hadfield had once served his king in battle.

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* William S. Murray is a member of the North Dakota Bar and author of articles in various legal periodicals.

1. 27 How.St.Tr. 1282 (1800).

2. The life of Erskine has been the subject of an excellent biographical study by Lloyd Paul Stryker, a noted trial attorney in his own right who is most widely known for his defense of Alger Hiss. See Stryker, For the Defense (1947).

3. Rex v. M'Naghten, 10 Cl. & F. 200, 8 Eng. Rep. 718 (1843). The extract from the answers of the judges to the House of Lords most frequently given is that found, for instance, in 16 C.J. 100: "The jury ought to be told in all cases that every man is to be presumed to be sane, and to possess a sufficient degree to reason to be responsible for his crimes, until the contrary be proved to their satisfaction and that to establish a defense 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 or quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong." For the limited and harsh incorporation of the M'Naghten rule into our own Code and decisions, see N.D. Rev. Code § 12-0201 (4) (1943); State v. Throndson, 49 N.D. 348, 191 N.W. 28 (1922).

4. At the time of the Napoleonic wars, involved here, Flanders was already one of Europe's traditional battlefields, as it later became again in World War I.

If modern lawyers exaggerate at times, they have good precedent, for so did Erskine.[5] He told the Court that the first sword slash had:

> "cut across all the nerves which give sensibility and animation to the body, and his head hung down almost dissevered, until, by the act of surgery, it was placed in the position you now see it. But thus, almost destroyed, he (Hadfield) still recollected his duty and continued to maintain the glory of his country, when a sword divided the membrane of his neck where it terminates in the head. Yet he still kept his place, though his helmet had been thrown off by the blow which I secondly described, when by another sword he was cut into the very brain."

At this time the reader will sense that particular defense that crops up after every war—here was a "shell-shocked veteran" (World War I) or a "psycho war veteran" (World War II).

So much for the factual background as it appears regarding Hadfield. No doubt he was indeed a good soldier. He had been personal orderly to the Duke of York in Flanders, as that personage testified in court. What is of deeper professional interest is the means with which Erskine outlined the law of insanity as a defense and applied it to this case.

As if he were foreseeing the future words of the New Hampshire Supreme Court in 1876[6] or the United States District Court for the District of Columbia in more recent times,[7] Eskine said:

> "I must convince you, not only that the unhappy prisoner was a lunatic within my own definition of lunacy, but that the act in question was the immediate, unqualified offspring of the disease."

Rejecting the oversimplified rule of knowledge of right and wrong which we usually associate with the later *M'Naghten* case,[8] he continued thus:

> "But it is said that, whatever delusions may overshadow the mind, every person ought to be responsible for crimes who has the knowledge of good and evil. I think I can presently convince you that there is something too general in this mode

5. The quotations from Erskine's argument found in succeeding portions of the text are taken from 1 Veeder, Legal Masterpieces (1903). The argument may also be found set forth *in extenso* in the original report of the case, *supra* note 1. Cockburn's arguments in the *M'Naghten* case are also extracted from Veeder. The medical authority most cited by Cockburn, curiously enough, was an American doctor: A Treatise on the Medical Jurisprudence of Insanity, by I. Ray, M.D. (1st ed. 1838).

6. State v. Jones, 50 N.H. 369 (1876). See also State v. Pike, 49 N.H. 399 (1869).

7. Durham v. United States, 214 F.2d 862 (D.C. App. 1954). The *Durham* case, as is generally known, cites and follows State v. Jones, *supra* note 6. For a discussion of this general subject matter as well as the *Durham* case in particular, see Note, 31 N. Dak. L. Rev. 170 (1955).

8. Rex v. M'Naghten, 10 Cl. & F. 200, 8 Eng. Rep. 718 (1843).

of considering the subject, and you do not, therefore, find any such proposition in the language of the celebrated writer alluded to by the attorney general in his speech."

Erskine continued along these lines by saying:

"Let us suppose that the character of an insane delusion consisted in the belief that some given person was any brute animal, or an inanimate being (and such cases have existed), and that, upon the trial of such a lunatic for murder, you firmly, upon your oaths, were convinced, upon the uncontradicted evidence of a hundred persons, that he believed the man he had destroyed to have been a potter's vessel. Suppose it was quite impossible to doubt that fact, although to all other intents and purposes he was sane; conversing, reasoning, and acting as men not in any manner tainted with insanity converse and reason and conduct themselves. Let us suppose, further, that he believed the man whom he destroyed as a potter's vessel, to be the property of another, and that he had malice against such supposed person, and that he meant to injure him, knowing the act he was doing to be malicious and injurious, and that, in short, he had full knowledge of all the principles of good and evil. Yet would it be possible to convict such a person of murder if, from the influence of his disease, he was ignorant of the relation he stood in to the man he had destroyed, and was utterly unconscious that he had struck at the life of a human being? I only put this case, and many others might be brought as examples, to illustrate that the knowledge of good and evil is too general a description."

The prosecutor, it seems, had cited the precedents of the law that were ancient even then. He had quoted Coke and Hale for the proposition that:

"to protect a man from criminal responsibility there must be a total deprivation of memory and understanding."

Perhaps touching upon the concept, seemingly known even then, of "irresistible impulse,"[9] Erskine said.

"Your province today will therefore be to decide whether the prisoner, when he did the act, was under the uncontrollable dominion of insanity, and was impelled to it by a morbid delusion, or whether it was the act of a man who, though occasionally mad, or even at the time not perfectly collected, was yet not actuated by the disease, but by the suggestion of a wicked and malignant disposition."

When, nearly a half-century later, Daniel M'Naghten shot one Drummond, secretary to Sir Robert Peel, he was defended by

9. The argument based on "irrestible impulse" evidently has never been made to our own Supreme Court but unquestionably would be treated with the same rejection given by the Minnesota court in State v. Simenson, 195 Minn. 258, 262 N.W. 638 (1935), and State v. Scott, 41 Minn. 365, 43 N.W. 62 (1889). The *Scott* case is especially good. The Doctrine is dealt with in authoritative form in the novel "Anatomy of a Murder" written in 1957 by Mr. Justice Voelker of the Michigan Supreme Court.

Sir Alexander Cockburn. Cockburn quoted at great length from the 1800 argument of Erskine in *Hadfield's* case and obviously looked upon it as one of his best authorities. His eloquence was equal to that of his predecessor. For instance, he said:

> "The law, then, takes cognizance of that disease which obscures the intellect and poisons the very sources of thought and feeling in the human being; which deprives man of reason, and converts him into the similtude of the lower animal; which bears down all the motives which usually stand as barriers around his conduct, and bring him within the operation of the divine and human law, — leaving the unhappy sufferer to the wild impulses which his frantic imagination engenders, and which urge him on with ungovernable fury to the commission of acts which his better reason, when yet unclouded, would have abhorred. The law, therefore, holds that a human being in such a state is exempt from legal responsibility and legal punishment. To hold otherwise would be to violate every priniciple of justice and humanity. *The principle of the English law, therefore, as a general proposition, admits of no doubt whatsoever.*"

The purpose of reproducing this particular argument is to show that when M'Naghten was tried, as when Hadfield was tried, the law was settled to a degree often overlooked. The judges of England did not follow any crude and barbarous "wild beast" doctrine. But there was a need to state the principles and precedents in a clear and concise manner. These precedents were not new, but they needed to be set forth explicitly.

Even more enlightened was the law of Scotland, which Cockburn then proceeded to quote by allusion to the writings of one Alison:

> "The following observations of an eminent writer on the criminal law of Scotland are applicable to the subject: 'Although a prisoner understands perfectly the distinction between right and wrong, yet if he labors, as is generally the case, under an illusion and deception in his own particular case, and is thereby incapable of applying it correctly to his own conduct, he is in the state of mental aberration which renders him not criminally answerable for his actions. For example, a mad person may be perfectly aware that murder is a crime, and will admit it, if pressed on the subject; still he may conceive that the homicide he has committed was no wise blamable, because the deceased had engaged in a conspiracy with others, against his own life, or was his mortal enemy, who had wounded him in his dearest interests, or was the devil incarnate, whom it was the duty of every good Christian to meet with weapons of carnal warfare.'"

Cockburn then quoted Lord Campbell, who was attorney general in *Oxford's Case*,[10] as saying then that there was no difference in that respect between the law of England and Scotland.

He said in further quotation of Scottish authority that Baron Hume had pointed out:[11]

> "To serve the purpose, therefore, of an excuse in law, the disorder must amount to absolute alienation of reason, *'Ut continua mentis alienatione, omni intellectus careat,'*—such a disease as deprives the patient of the knowledge of the true disposition of things about him, and of the discernment of friend from foe, and gives him up to the impulse of his own distempered fancy, divested of all self-government or control of his passions. Whether it should be added to the description that he must have lost all knowledge of good and evil, right and wrong, is a more delicate question, and fit, perhaps, to be resolved differently according to the sense in which it is understood. . . . Every judgment in the matter of right and wrong supposes a case or a state of facts to which it applies. . . . Proceeding, as it does, on a false case or conjuration of his own fancy, his judgment of right and wrong, as to any responsibility that should attend it, is truly the same as none at all. It is therefore only in this complete and appropriate sense as relative to the particular thing done, and the situation of the panel's feelings and consciousness on that occasion, that this inquiry concerning his intelligence of moral good or evil is material, and not in any other or larger sense."

These quotations from defense argument at M'Naghten's trial are given because in order to understand the significance of Hadfield's case it is necessary both to relate it back in time to the ancient precedents and forward in time to sense its influence on the M'Naghten case and rule. It also incidentally shows the fallacy of referring to the M'Naghten doctrine as being one of unelaborated "right and wrong" as is so often loosely done.

It will be seen that the assassins concerned in these matters were subject to paranoid delusion, and probably most unhired killers of prominent persons fall into this group. Sometimes the victims are not even prominent. In 1914 a small town Colorado lawyer was murdered by an outraged client who "believed deceased while acting as his attorney had betrayed him, financially ruined him, and denounced him to the world as a leper and drunkard."[12]

The record is silent, and we may only guess, as to Hadfield's

10. Regina v. Oxford, 9 Car. & P. 525, 173 Eng. Rep. 941 (1840) (assassination attempt on Queen Victoria; verdict, not guilty of high treason by reason of insanity).

11. 1 Hume, Commentaries on the Law of Scotland 37.

12. Ryan v. People, 60 Colo. 425, 153 Pac. 756 (1916). The Colorado court, after aiming telling blows at the N'Naghten rule, rejected it.

own grievance against the king. He had been consorting, we know, with a full-fledged lunatic who was possessed of fanatical delusions directed against the Deity and the Christian religion. After examining a few witnesses for the defense, Chief Justice Kenyon stopped the trial, being convinced that a clear case of insanity had been established.[13]

Hadfield did not go free. Like Durham[14] he was consigned to an institution which we now would call a mental hospital, being sent to Bedlam.[15] As we know, this was no pleasant fate. There he lingered on for years, never free, it was said, of delusion. At length he died in the obscurity from which he had come.

George III lived on until 1820. He was not one of the English monarchs who contributed greatly to the history, legal or otherwise, of his country. Yet this case, involving his intended demise, is one worthy of attention by those who are interested in the roots of our judicial history.[16]

13. Contrary to what we often suppose, British procedure often allowed, and still allows, more flexibility and directness in disposing of matters procedurally than does Code practice.

14. See note 7, *supra*.

15. "A corruption of Bethlehem. The hospital of St. Mary of Bethlehem in London. Originally a priory, founded about 1247, but used from 1400 as an asylum for the insane." Black's Law Dictionary (4th ed. 1951).

16. Two interesting bypaths on the law of criminal responsibility are crimes committed while asleep (Somnambulism) and under the influence of hypnotism. The rare instance of somnambulism is treated in the Kentucky case of Fain v. Commonwealth, 78 Ky. 183 (1879). A court in Copenhagen, Denmark, about 1946, convicted as a principal a hypnotist, for crimes committed by a hypnotic subject. Unfortunately, the citation is not available.

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