

ground of absent witnesses by whom he expected to prove that he was insane.

I shall not contend that all of these tests are infallible, for doubtless some of them do occasionally fail, but as a guide in an inquiry of this kind they are invaluable; and when it can be shown as in the case here, that the prisoner's conduct does not square with either of them, it is certainly very safe to conclude that he is not a fit subject for this defense.

The subject of insanity in its various forms and stages is exceedingly difficult to comprehend, and hence the courts both in England and in this country, acting upon the suggestion of medical jurists have laid down a rule for the guidance of jurors in such cases, which has become of great practical utility and relieves them of much embarrassment. The rule brings down the inquiry to the single question of capacity to distinguish between right and wrong, at the time when the act was done. In the case of the State v. Baldwin (12 Mo. 223) the Court charged the jury: That if they found from the evidence that the defendant committed the act charged, the question then for them to determine was whether, at the time, he was capable of knowing that the act which he was committing was an offense against the laws of God and man, and had at that time the power of choosing between good and evil in reference to that act." In reviewing this charge the Supreme Court say that they can perceive no legal objection to it.

In the case of *Rex v. Oxford*, which has already been quoted, Lord Denman said in his charge to the jury:

"The question is, whether the prisoner was laboring under that species of insanity which will satisfy you that he was quite unaware of the nature, character and consequences of the act he was committing; or, in other words, whether he was under the influence of a diseased mind, and was really unconscious, at the time he was committing the act, that it was a crime; the insanity must be such as to deprive the party charged with crime of the use of reason in regard to the act done. He may be deranged on other subjects, but if capable of distinguishing between right and wrong in the particular act done by him, he is justly liable to be punished as a criminal."