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the Straffen Case and the M'Naghten Rules

H. Malcolm Macdonald

THE *STRAFFEN* CASE AND THE M'NAGHTEN RULES

THE recent *Straffen* case,[1] which occasioned a flurry of comment in the English press this summer over the problem of the criminal responsibility of insane and mentally defective persons and a renewed criticism of the famous M'Naghten Rules,[2] is of more than passing interest to the American lawyer confronted with similar problems here at home. It must not be forgotten that the substance of the M'Naghten Rules has been engrafted into American practice, and, accordingly, a re-examination of their content, limitations, and development in English practice may prove of interest.

John Thomas Straffen, 21, was arrested in October, 1951, and charged at the Assize of Taunton with the brutal strangulation of two small girls. In the course of the investigation it was determined that his mental age was not above that of a nine-year-old child, due to retarded development occasioned by an attack of encephalitis suffered by him as a youth in India. On the basis of the medical evidence he was found by a jury to be mentally defective, unfit to plead, and was committed to Broadmoor for safekeeping at the pleasure of the Crown.[3] It will be noted that at no time was he certified as suffering from mental illness, but was held to be mentally retarded to such a degree as to make it impossible for him to plead to the charge.

On April 29, 1952, Straffen escaped from Broadmoor and, before his recapture some four hours later, succeeded in strangling another small girl. Indicted and tried for this second offense at the Winchester Assizes, he was found guilty of murder and sen-

[1] Publication of the case in NOTABLE BRITISH TRIAL SERIES is announced for Summer, 1953.

[2] M'Naghten's Case, 10 Cl. & F. 200, 8 Eng. Rep. 718, 4 St. Tr. (N. S.) 847 (1843).

[3] In compliance with the provisions of the Criminal Lunatics Act of 1800, 39 & 40 GEO. 3, c. 94.

tenced to death. In the course of this second trial the jury was of the opinion that Straffen's stay of some six months in Broadmoor had wrought such an improvement in his mental condition as to make him conscious of the nature of the act which he had committed and hence to attach criminal guilt to his action. Since at the first trial Straffen had, on the basis of medical evidence, been certified as a mental defective, *i.e.*, one whose mental development had been permanently arrested as a result of disease, the efficacy of the rehabilitation program at Broadmoor was somewhat startling. Indeed, the whole Broadmoor program of rehabilitation came under fire in the press, and the Labor Government was accused of having, by its relaxation of supervision over the inmates, and transfer of supervision of the Institution from the Home Office to the Board of Control, contributed to the escape of Straffen and the commission of his second murder. The verdict was, however, finally set aside by the Home Secretary, who ordered Straffen committed again to Broadmoor under strict custody.

The bizarre nature of the case, and the obvious incompatibility of the two findings, aroused a storm of protest in the leading newspapers and journals. Persons and associations opposed to capital punishment, criminal law reformers, psychiatrists, members of the legal and medical profession as well as laymen entered into the fray in the course of which the M'Naghten Rules inevitably came in for criticism. Actually the M'Naghten Rules did not apply to the *Straffen* case, as will be subsequently shown.

In order to understand the distinction between the M'Naghten Rules and the *Straffen* case it is necessary to examine briefly the origin, purpose and limitations of the famous Rules themselves. They arose as a result of the indictment of one David M'Naghten on March 6, 1843, for the murder of Edward Drummond, private secretary to the then Prime Minister, Sir Robert Peele. In the course of the trial it appeared that M'Naghten had no intention of shooting Drummond, whom he had mistaken for the Prime

Minister. The defendant was further shown to be suffering from an insane delusion that the Prime Minister had in some way done him an injury for which he was entitled to exact retribution. Medical evidence was introduced tending to show that the defendant was actually suffering from a morbid delusion of the mind of such a character as to raise serious doubts as to whether he had any perception of the moral rightness or wrongness of his act at the time of its commission. It was further submitted that the defendant, although suffering from such a delusion, could for long periods of time appear to be otherwise normal, but when excited on this particular point break out into violent acts over which he was incapable of exercising rational control. At the conclusion of the trial Lord Chief Justice Tindal instructed the jury that the question was,

> . . . 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 . . . [and whether] the prisoner was . . . sensible, at the time he committed it, that he was violating the laws of both God and man. . . .[4]

Evidently the jury was convinced by the medical testimony, for they returned a verdict of not guilty by reason of insanity. M'Naghten was subsequently committed to Bedlam by order of the Home Secretary.

Neither the public nor the profession was entirely happy with the outcome of the trial. Following a debate in Parliament the House of Lords, on the basis of an ancient and half-forgotten precedent, summoned the Justices before it and requested their answer to a series of submitted questions. Fifteen of the Justices, with some reluctance, took part in the formulation of the answers which came to be known as the M'Naghten Rules. Of the fifteen Justices, fourteen joined in one opinion while the fifteenth, Justice Maule, filed an answer of his own. The substance of the questions and the Justices', answers were as follows.[5]

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[4] 10 Cl. & F. at 202, 8 Eng. Rep. at 719, 720.

[5] *Id.* at 200, 210, 211, 8 Eng. Rep. 718, 722, 723. Following quotations are taken from this citation.

To the first question as to the state of the law when the defendant had committed an act which he knew to be contrary to the law under the insane delusion that by committing it he was redressing some supposed grievance or producing some public benefit, the learned Justices replied that such a person was punishable according to the nature of the crime committed, provided that he knew at the time of commission that he was acting contrary to law.

The second and third questions inquired as to the proper instructions to be given the jury in a case in which the defense of insanity had been advanced. To this the Justices made the following reply:

> . . . we . . . submit our opinion to be, that the jurors ought to be told in all cases 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 the committing of the act, the 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. . . . 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 has been to leave the question to the jury, whether the accused had sufficient degree of reason to know he was doing an act that was wrong: and this course we think is correct, accompanied by such observations and explanations as the circumstances of each particular case may require.

The fourth question asked whether, if a person under an insane delusion as to existing facts commits an offense in reliance thereon, he is thereby excused from responsibility. The judges replied that under such circumstances he would be excused only if the supposed facts were real, and were, in addition, of such a nature as to justify the act, but not otherwise.

Modern practice based on the M'Naghten Rules and modified by statutes has developed in England along the following lines.

By the Trial of Lunatics Act of 1883[6] the verdict of not guilty by reason of insanity was abolished and the verdict of guilty, but insane, was substituted. Upon the return of such a verdict the accused is ordered to be kept in safe and certain custody pending the pleasure of the Crown. By the Criminal Lunatics Act of 1884[7] any person confined in prison under sentence of death who upon examination of a medical board appointed by the Home Secretary is found to be insane is to be removed from prison and confined in an asylum for an indefinite period. The practical results of the rules and these statutes are as follows:

1. The burden of proving insanity rests with the defense. The law in accordance with the M'Naghten Rules assumes the accused to be sane unless the contrary is proven, and the accused is not automatically given the benefit of the doubt. Nor under English procedure can the prosecution raise the issue before the jury unless it has been previously raised by the defense. It is likewise evident that the defense of insanity will be advanced only when the alternative to imprisonment in an asylum would be death by hanging. Even then it is conceivable that the defense might allow the trial to proceed through the actual condemnation of the accused, relying as a last resort upon the provisions of the statute permitting the question of sanity to be raised after the defendant has been returned to prison to await execution.

2. It is further evident that insanity is no absolute defense even when proven. In view of the interpretation given the M'Naghten Rules, if the defendant, although certified insane, still knew that what he was doing was wrong, he remains subject to the capital penalty. Moreover, the Rules take cognizance only of deficiency in understanding arising from mental illness and debars the pleading of "disorders of the will," emotional state, "uncontrollable impulse" and retarded mental growth as excuses for

[6] 46 & 47 VICT., c. 38.

[7] 47 & 48 VICT., c. 64.

criminal acts.[8] In this connection the more liberal provisions of the Scotch law for the determination of responsibility are perhaps more realistic. Dicta of the High Court of Australia recommend that the question of "uncontrollable impulse" be explained to the jury,[9] and a number of American state courts allow it to be plead as a defense.

3. In actual practice the rigidity of the M'Naghten Rules is more apparent than real since current English procedure allows the question of emotional instability to be raised before the judge after the jury verdict, and the court may then take account of it in passing sentence. When there is added the possibility noted above of raising the question of sanity after conviction, the rights of the insane defendant are seen to be generally safeguarded.[10]

Nevertheless the M'Naghten Rules have never been free from criticism. Sir John Stephen in his classic work, *History of Criminal Law in England,* expressed his displeasure with them as early as 1883,[11] and Viscount Hailsham in a contemporary article in the *Daily Telegraph*[12] comments upon their unsatisfactory nature, although admitting that no one has been able to think up better ones. Criticism has also come from medical authorities and psychiatrists who contend that the rules are meaningless in view of modern developments in the scientific study of insanity and the criminal mentality.

The linking of the M'Naghten Rules and the *Straffen* case in the public press raises, however, the question as to what extent the much-abused rules were actually involved in the case at issue. Technically they did not apply at all. The M'Naghten Rules refer only to cases in which the accused has advanced the defense of

[8] For rejection of the doctrine of "uncontrollable impulse" see Regina v. Haynes, 1 F. & F. 666, 175 Eng. Rep. 898 (1859); Rex v. Kopsch, 19 Cr. App. 50 (1925); Rex v. Flavell, 19 Cr. App. 141 (1926).

[9] Sodeman v. Rex, [1936] 2 All Eng. Rep. 1138 (P. C.). In this case Viscount Hailsham, L. C., refused to expand the M'Naghten Rules.

[10] For the period 1948-1950, 51 persons were found to be insane upon arraignment, 41 guilty but insane, and 6 were found to be insane after conviction.

[11] 2 HIST. CRIM. L. OF ENG. (1883) 157.

[12] Sept. 10, 1952.

insanity. In the *Straffen* case no such claim was made. Straffen was found by a jury in the first case to be mentally defective, and in the second, although defective, to have regained sufficient mental comprehension to understand the nature of his act. In neither instance was the question of "insanity" raised, and hence the attack upon the Rules in this situation seems to be unwarranted. It is, however, evident that a revision of the Rules in the light of modern medical knowledge and the inclusion within their scope of the category of "mental defective" would be desirable. At the present time, as Dr. Grunhut has noted, the rules "recognize a lack of criminal responsibility for a much more restricted sphere than any other European legal system."[13]

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[13] Grunhut, Max, *Murder and the Death Penalty in England*, 284 Annals 164 (1952).

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