(7) Lundvall.—*Blutveränderungen bei dementia præcox*, Kristiania, 1912.
(8) Donath.—Quoted by Goodall, " Croonian Lectures," 1914.
(9) Schmidt.—*Zeitschr. f. d. ges. Neurol. u. Psychiat.*, 1912, Bd. vi.
(10) Lepine.—*La Presse Medicale*, 1910, No. 9.

Medico-Legal Notes.

ABSTRACT OF THE REPORT OF THE LORD CHANCELLOR'S COMMITTEE ON INSANITY AND CRIME.

[Dated November 1, 1923.][1]

THIS Committee was constituted in July, 1922, by the Lord Chancellor, The Earl of Birkenhead, " to consider and report upon what changes, if any, are desirable in the existing law, practice and procedure relating to criminal trials in which the plea of insanity as a defence is raised, and whether any and, if so, what changes should be made in the existing law and practice in respect of cases falling within the provisions of Section 2, sub-section (4) of the Criminal Lunatics Act, 1884."

The Committee consisted of the Right Honourable Lord Justice Atkin (Chairman), The Right Honourable Sir Ernest Pollock, *K.B.E.*, *K.C.*, *M.P.*, Sir Leslie Scott, *K.C.*, *M.P.*, Sir Herbert Stephen, Bart., Sir Richard Muir, Sir Archibald Bodkin, Sir Edward Troup, *K.C.B.*, *K.C.V.O.*, Sir Ernley Blackwell, *K.C.B.*, and Sir Edward Marshall Hall, *K.C.*

The reference in these terms naturally attracted the attention of the medical profession. Representative committees were established by The Council of the British Medical Association and by the Medico-Psychological Association, who submitted reports to this Committee and supported the reports by evidence. The report of the Council of the British Medical Association has also the authority of the Central Association for Mental Welfare, members of which body were associated with the Sub-Committee of the British Medical Association who dealt with this matter (*vide* April No., 1923, pp. 209–19).

Both Associations tendered evidence before us; we heard evidence of eminent professional men in support of the views of the respective Associations, including two members of the Board of Control, Dr. Bond and Mr. Trevor, who supported the report of the Medico-Psychological Association. We have thus had unequalled opportunities of becoming acquainted with the considered opinions of the

[1] His Majesty's Stationery Office, price 6*d*.

most eminent representatives of the medical profession on this much debated subject. We desire to express our sense of deep obligation to the Associations generally and to their individual members for their valuable assistance in this respect.

Unfortunately for us the difficulties presented by criticism of the existing law from the medical side were not removed; for, as will be seen, the two reports are, on the main question, in direct opposition to one another.

The British Medical Association would retain the existing law with a modification as to lack of control: the Medico-Psychological Association would sweep away the present rules and substitute other questions for the jury which they formulate. **AFTER CAREFUL CONSIDERATION WE COME TO THE CONCLUSION THAT WE CANNOT ACCEPT THE RECOMMENDATION OF THE MEDICO-PSYCHOLOGICAL ASSOCIATION.** In substance we concur with the report of the British Medical Association. It seems right, however, that we should not pass away from a report presented to us with such great professional authority without stating some of the reasons for our conclusion.

The conclusions arrived at by the Medico-Psychological Association are:

I. The legal criteria of responsibility expressed in the rules in McNaghten's case should be abrogated, and the responsibility of a person should be left as a question of fact to be determined by the jury on the merits of the particular case.

II. In every trial in which the prisoner's mental condition is in issue the judge should direct the jury to answer the following questions:

(*a*) Did the prisoner commit the act alleged?
(*b*) If he did was he at the time insane?
(*c*) If he was insane, has it nevertheless been proved to the satisfaction of the jury that his crime was unrelated to his mental disorder?

One of the difficulties that presented itself to us in the report of the Medico-Psychological Association is that the Association give no clue to what they regard as the test of criminal responsibility.

None of their witnesses had formulated in his mind, or at any rate expressed to us, what it was that ought to make a person of unsound mind immune from punishment for any act he might commit in violation of the criminal law. When pressed one or two of the witnesses would admit that under some circumstances a person of unsound mind might yet be criminally responsible. But the substance of their evidence was that insanity and irresponsibility were co-extensive. All the witnesses were, in substance, agreed that the effect of II(*c*), which threw upon the prosecution the onus of satisfying

the jury that the act of the person found to be insane was " unrelated " to his mental disorder, would be to cast a burden which could not be discharged; and that the question was otiose. The vagueness of the term " unrelated " was pointed out: and the phrase eventually was altered to " the mental disorder was not calculated to influence the commission of the act "; but the difficulty of proof is not altered by the turn of the phrase.

The far-reaching effect of granting immunity to every one who can be said to be of unsound mind is perceived when the medical conception of unsoundness of mind is considered. This will be found expressed, on the highest authority, at paragraph 3 (i) of the report. It is accepted by the witnesses for the British Medical Association, and, of course, by us. " Unsoundness of mind is no longer regarded as in essence a disorder of the intellectual or cognitive faculties. The modern view is that it is something much more profoundly related to the whole organism—a morbid change in the emotional and instinctive activities, with or without intellectual derangement. Long before a patient manifests delusions or other signs of obvious insanity he may suffer from purely subjective symptoms, which are now recognised to be no less valid and of no less importance in the clinical picture of what constitutes unsoundness of mind than the more palpable and manifest signs of the fully developed disorder which may take the form of delusions, mania, melancholia or dementia." An illustration of this was presented to us by Dr. Carswell:

" At the present moment I am dealing with the case of a young officer. I daresay it is confidential and at this Committee I daresay I can take the liberty of indicating to you the case of this young man. Long before he became insane he had symptoms which were puzzling and baffling. He never served in any active theatre of war. In 1919 he suffered from what was called ' general debility ' and some weakness of the lungs was supposed, but no actual weakness was found. He was given three months' leave of absence. He was not well and returned, and he was then invalided home in July or August, 1919. Looking back on the history of the case, from the new medical standpoint, it is obvious that that was a beginning of the insanity which has now fully developed. All the symptoms he presented were symptoms of what was called debility, but they were really nervous, mental and emotional apathy so that he could not do the things that he was expected to do. Subsequently he was sent home, and this condition gradually developed into what was called neurasthenia—that is to say, he developed some more active indications. Ultimately he was demobilized, fully a year after his first symptoms. He is now in an asylum. In 1922 he was admitted to an asylum as a certified lunatic. He is now restless, excited, talkative and quite irrational in his ideas, and requiring constant control. We do not separate these conditions. This young man has suffered from one disease—a paranoid form of dementia."

In Dr. Carswell's view this young man was irresponsible for any crime committed at any time during that period.

In such a case as that mentioned there seems no reason to suppose that during the early stages at least the person concerned would not be affected by every motive for committing or abstaining from

committing a criminal act that would be likely to affect a person of sound mind and in substantially the same degree. The difficulty of diagnosis of the state of mind and, when some unsoundness of mind was indicated, of establishing the non-relation of the act to the unsound state of mind, would introduce so much uncertainty into the administration of the criminal law as to create a public danger.

It appears to us from the memorandum of the Association and from the evidence that much of the criticism directed from the medical side at the McNaghten rules is based upon a misapprehension. It appears to assume that the rules contain a definition of insanity, and the legal definition thus obtained is contrasted with the medical conception of insanity. " It implies a conception of unsoundness of mind that is obsolete." It may be that the judges who framed the rules took into consideration the medical view as to the nature of insanity generally accepted in 1843, if there was one. But it is certain that they were not professing to define " disease of the mind " but only to define what degree of disease of the mind negatives criminality: as much a question of law as the question at what age a child becomes criminally responsible, though only to be decided after considering the nature of unsoundness of mind from the physiological side. The report rightly says that " the law is only concerned to know whether the condition of the accused is a condition that negatives the existence of *mens rea*." One would therefore expect the legal test would be directed to the condition of " the intellectual or cognitive faculties " and yet that it is so directed is the main ground of the attack on the rules. When once it is appreciated that the question is a legal question, and that the present law is that a person of unsound mind may be criminally responsible, the criticism based upon a supposed clash between legal and medical conceptions of insanity disappears. It is not that the law has ignorantly invaded the realm of medicine; but that medicine, with perfectly correct motives, enters the realm of law.

If the existing legal position were always fully grasped we think that the complaint made in the report and supported by evidence, that a medical expert in giving evidence at a criminal trial is hampered in stating his conclusions as to insanity, would tend to disappear. There seems no reason why he should not fully develop his reasons for holding the prisoner to be of unsound mind. It is one of the conditions precedent to support the issue raised under the McNaghten rules. But having given evidence of such unsoundness of mind it is necessary that he should then be directed to the question of fact which determines the legal issue, *viz.*, the question formulated at present by the McNaghten rules. It may be that some judges, anxious not to lose time, bring the witness very early to the decisive

questions. We think that a wise discretion would allow all necessary expert evidence as to the general mental condition as a preliminary to evidence directly bearing on the ultimate legal issue raised by the plea.

IT WILL BE SEEN FROM WHAT WE HAVE ALREADY SAID, THAT, IN OUR OPINION, THE EXISTING RULE OF LAW IS SOUND; THAT A PERSON MAY BE OF UNSOUND MIND AND YET BE CRIMINALLY RESPONSIBLE. A crime no doubt implies an act of conscious volition; but if a person intends to do a criminal act, has the capacity to know what the act is, and to know the act is one he ought not to do, he commits a crime. Whether he should be punished for it is not necessarily the same question. We do not propose to discuss pœnological theories. We assume that two of the objects of punishment are to deter the offender and to deter others from repeating or committing the same offence. If the mental conditions we have presupposed exist, we think that punishment may be fairly inflicted. It is probable that the offender and others will be deterred. On the other hand, if the offender tends to escape punishment by reason of nicely balanced doubts upon a diagnosis of uncertain mental conditions, the observance of the law is gravely hindered. **WE ARE OF OPINION, THEREFORE, THAT THE PRESENT RULES OF THE LAW FOR DETERMINING CRIMINAL RESPONSIBILITY AS FORMULATED IN THE RULES IN MCNAGHTEN'S CASE ARE, IN SUBSTANCE, SOUND, AND WE DO NOT SUGGEST ANY ALTERATION IN THEM, THOUGH WE SUGGEST AN ADDITION TO WHICH WE WILL PRESENTLY REFER.** It is often forgotten that the rules as to criminal responsibility apply not only to cases of murder but to the vastly greater number of less serious offences. In these cases mental conditions can be, and are in practice, daily taken into account in awarding punishment or in deciding whether any punishment should be awarded. In the case of murder the Judge is not given a discretion as to punishment; but the executive is vested with large powers of mitigating the legal sentence. These powers, as will appear later, we think it is essential to retain. **BUT WE SHOULD VIEW WITH ALARM ANY SUCH EXTENSIVE ALTERATION IN THE LEGAL PRINCIPLES OF CRIMINAL RESPONSIBILITY AS IS SUGGESTED BY THE MEDICO-PSYCHOLOGICAL ASSOCIATION.** The importance of the effect upon the trial of minor offences cannot be overstated. Insanity is admittedly incapable of definition; its diagnosis difficult; its effect upon conduct obscure. The proposed rules throw upon the prosecution the onus of establishing that the insanity said to exist was not calculated to influence the act complained of, and, in default of discharge of such onus, would compel the Court to order the accused to be detained during His Majesty's pleasure. **THE EFFECT MUST BE TO TRANSFER MANY INMATES OF PRISONS TO**

CRIMINAL LUNATIC ASYLUMS, AND TO BRING WITHIN THE PORTALS OF THE LATTER MANY PERSONS WHO ARE NOW, WITHOUT ANY PUBLIC DISADVANTAGE, PLACED IN THE CARE OF THEIR RELATIVES. The interests of both the administration of justice and of the liberty of the subject require that so far-reaching a change should be adopted only on the ground of some imperative public necessity. We are content to say that we have no evidence of such.

The question which we have mentioned as not covered expressly by the McNaghten rules is the difficult question of loss of control caused by unsoundness of mind. The report of the British Medical Association, paragraph II (*c*), recommends that a person should be held to be irresponsible if prevented by mental disease "from controlling his own conduct unless the absence of control is the direct and immediate consequence of his own default."

The witnesses called in support of this recommendation did not propose that a weakening of control by mental disease should be sufficient. They mean control so impaired by disease as in substance to amount to complete loss of control. On the other hand, if such a loss of control exists, caused by mental disease, there seems no good reason for inserting the exception as to the direct consequence of his own default. The only case suggested to us which would come within the exception was intentional taking of drink or drugs as an incentive to the act, which would presumably in any case show that the loss of control was not caused by mental disease.

IT WAS ESTABLISHED TO OUR SATISFACTION THAT THERE ARE CASES OF MENTAL DISORDER WHERE THE IMPULSE TO DO A CRIMINAL ACT RECURS WITH INCREASING FORCE UNTIL IT IS, IN FACT, UNCONTROLLABLE. Thus cases of mothers who have been seized with the impulse to cut the throats of or otherwise destroy their children to whom they are normally devoted are not uncommon. In practice, in such cases the accused is found to be guilty but insane. **IN FACT, THE ACCUSED KNOWS THE NATURE OF THE ACT AND THAT IT IS WRONG; AND THE MCNAGHTEN FORMULA IS NOT LOGICALLY SUFFICIENT.** It may be that the true view is that under such circumstances the act, owing to mental disease, is not a voluntary act. We think that it would be right that such cases should be brought expressly within the law by decision or statute. We appreciate the difficulty of distinguishing some of such cases from cases where there is no mental disease, such as criminal acts of violence or sexual offences where the impulse at the time is actually not merely uncontrolled, but uncontrollable. The suggested rule, however, postulates mental disease; and **WE THINK THAT IT SHOULD BE MADE CLEAR THAT THE LAW DOES NOT RECOGNIZE IRRESPONSIBILITY ON THE GROUND OF INSANITY WHERE THE ACT WAS COMMITTED UNDER AN IMPULSE**

WHICH THE PRISONER WAS, BY MENTAL DISEASE, IN SUBSTANCE DEPRIVED OF ANY POWER TO RESIST.

We think that the question to be determined should be, not whether the accused could control his conduct generally, but could control it in reference to the particular act or acts charged. No doubt general lack of control would be relevant to the question whether the lack of control in the particular case was due to mental disorder or to a mere vicious propensity.

Unfitness to Plead.

This issue can be raised upon arraignment by the prosecution or by the defence. It is essential to retain the procedure. We think that the standing orders of the Prison Commissioners recommending that the prisoner should be left to stand his trial unless there be strong reasons to the contrary represent the present practice and are satisfactory. If the issue of unfitness to plead is raised we think that it is desirable, unless in the very plainest cases, that the accused should not be found unfit to plead except upon the evidence of at least two doctors.

There must always be a discretion in the prosecution to raise the issue. We have evidence of cases of persons of unsound mind who are said to have pleaded guilty either in order to gratify an insane desire for punishment or to avoid an inquiry into their mental condition.

We do not think that a finding of unfitness to plead should be the subject of appeal. In practice we are informed that wherever a person found to be unfit to plead has been considered to have recovered sufficiently to be put on his trial he has, in all cases, been found to be guilty but insane.

Evidence.

In the great majority of cases the most reliable medical evidence comes from the prison doctor, who alone has had the opportunities of continued observation that are so valuable in the diagnosis of mental disorder. It is of great importance that the medical officers of prisons should have special knowledge of mental disorder, and this is recognized by the Prison Commissioners. We may add that it is also of great importance that medical experts who give evidence in criminal cases should have some experience of the ways of criminals; and we have no doubt that the medical officers of some of our principal prisons speak with unrivalled authority on the question with which we are concerned. On the other hand, there are smaller prisons where the medical officers are part-time medical men, engaged in a general practice, who cannot be expected to have the special knowledge of the experienced whole-time officer.

The medical officer has power to ask the Home Office for permission to call in a consultant—a permission which should, and is in fact, freely given—but in our opinion it is not sufficient to rely upon the prison doctor never making a mistake in the exercise of this discretion. In some cases of doubt an accused person is transferred to a prison where expert observation can be obtained; but this may involve hardship to a prisoner, and, in some cases, indeed deprive him of reasonable opportunities of defence. We recommend that it should be open to either the accused or his legal representative or the prosecution or the committing magistrate to apply or cause application to be made to the Home Office for medical examination of the accused as to his state of mind by an expert medical adviser; and that, upon the request being granted, the examination should take place at the expense of the State unless the accused could reasonably bear it.

WE DO NOT RECOMMEND THE FORMATION OF A PANEL OF EXPERTS AS IS SUGGESTED BY BOTH MEDICAL ASSOCIATIONS. The panel would have to range over the whole of England and Wales; and we think that in some parts of the country there would be a difficulty in finding suitable members. In no case would it be possible to leave medical testimony to members of the panel, and thus prevent an accused person calling evidence of his own doctor or doctors not on the panel. The conflict of medical opinion could not by such means be prevented.

Verdict.

The present form of verdict in cases where the accused is found to be insane is prescribed by the Trial of Lunatics Act, 1883, and is not altogether satisfactory. Before 1800, if an accused person was found to be insane so as to be irresponsible, he was acquitted, and no further order was made as to him.

By the Criminal Lunatics Act, 1800, Section 1, it was provided that if on the trial of any person charged with treason, murder or felony, evidence of insanity was given and the person was acquitted, the jury were to be required to find specially whether such person was insane at the time of the commission of the offence, and whether such person was acquitted by them on the ground of insanity, and if they so found, the person was ordered to be detained during His Majesty's pleasure. It may be noted that there was no express finding whether the accused had committed the act charged except in so far as that finding is implied in the statement that he was acquitted "on the ground of insanity," as no doubt it was meant to be.

This state of the law continued until 1883, when the law was altered by the existing statute, the Trial of Lunatics Act, 1883. Section 2

provides that "where in any indictment or information any act or omission is charged against a person as an offence, and it is given in evidence on the trial of such person that he was insane so as not to be responsible according to law for his actions at the time when the act was done or omission made, then, if it appears to the jury that he did the act or made the omission charged, but was insane as aforesaid at the time, the jury shall return a special verdict that the accused was guilty of the act or omission charged, but was insane as aforesaid at the time when he did the act or made the omission."

The consequence is that juries are frequently, for brevity, instructed to return, if the facts warrant it, a verdict of "guilty of the act but insane at the time," or even "guilty but insane." This seems to us illogical. The verdict is one of acquittal. An accused cannot be "guilty" of a physical act which is not in itself an offence. The word "guilty" in criminal trials should connote only criminality, the commission of a crime—the very thing which on the finding as to the accused's state of mind is negatived. We think that the Section should be altered so as to restore the logical principle that where insanity is such as to produce irresponsibility, the accused is entitled to a verdict of acquittal of crime. This might be secured by providing that the special verdict should be "That the accused did the act (or made the omission) charged, but is not guilty on the ground that he was insane so as not to be responsible according to law at the time."

Appeal.

The suggestion is made in the reports of both Medical Associations that there should be a right of appeal in cases where an accused person after trial has been found by the jury to be guilty of the act but insane so as not to be responsible according to law for his actions. We do not agree with this suggestion. So far as the issue of insanity is concerned, this is an exculpatory plea raised by the accused or on his behalf, and, on the hypothesis, has succeeded. We see no reason why the accused person should have the right to appeal from a decision in his favour which he must be taken to have invited. The only case in which there could be any reasonable ground of complaint would be where the issue was raised against the will of the prisoner, who was, in fact, sane, but unable to prevent the issue from being raised. In practice such cases do not occur.

SECTION 2 (4) OF THE CRIMINAL LUNATICS ACT, 1884.

The first statutory provision was made by the Insane Prisoners Act of 1840 (3 & 4 Vict., c. 54). Section 1 provides that when any prisoner, whether under sentence of death or otherwise, has been

certified by two justices and two medical men called in by them to be insane, *it shall be lawful* for the Home Secretary to direct his removal to an asylum; and when it has been certified to the Home Secretary that such prisoner has become of sound mind, the Home Secretary *is authorized* to remove such prisoner back to prison, or, if the period of his imprisonment shall have expired, to direct that he be discharged.

No distinction is made here between prisoners under sentence of imprisonment, etc., and prisoners under sentence of death, but there is no provision that a prisoner certified while under sentence of death may, if he becomes of sound mind, be removed to prison to undergo his death sentence.

The Insane Prisoners (Amendment) Act of 1864 (27 & 28 Vict. c. 29), Section 2, practically re-enacts Section 1 of the Act of 1840 as regards prisoners not under sentence of death. The Secretary of State *may*, on receipt of certificate, *if he thinks fit*, *remove*, etc. As regards prisoners under sentence of death, however, it provides that if it shall be made to appear to the Home Secretary that there is good reason to believe that a prisoner under sentence of death is then insane, either by certificate of two justices " or by any other means whatever," the Home Secretary *shall* appoint two or more medical men to inquire as to the insanity of such prisoner, and if these medical men certify in writing that they find the prisoner to be then insane, the Home Secretary *shall* direct that such prisoner be removed to an asylum.

Two points may be noted. The inquiry is into the present condition of the prisoner, not as to his condition at the time when the crime was committed. Secondly, the Home Secretary, on receipt of such last certificate, has no discretion—he " shall direct " removal to an asylum.

Then as regards both classes of prisoners, it is provided that they shall remain in confinement in an asylum until it shall be duly certified to the Home Secretary by two medical men that such person is sane, and thereupon the Home Secretary *is authorized* to direct, if the period of imprisonment shall have expired, that the person be discharged, or, if such person still remain subject to be continued in custody, that he be removed to any prison to undergo his sentence of death or other sentence as if no warrant for his removal to a lunatic asylum had been issued.

The Act of 1864, which had repealed Section 1 of the Act of 1840, was in turn repealed by the Criminal Lunatics Act, 1884.

The Act of 1884 retains the distinction as to inquiry into insanity in this respect. As regards prisoners under sentence of death it substantially repeats the provisions of the Act of 1864, but as regards both classes of prisoners it confers again on the Home Secretary a

discretion as to remitting to an asylum. As the power conferred on the Home Secretary is given in the one sub-section dealing with prisoners of both classes, it seems inevitable that it should be given in the form of a discretion.

But in substance there is, in practice, little difference between the two statutes so far as the power of the Home Secretary is concerned in cases of prisoners under sentence of death.

There is authority of some weight from the time of Lord Coke for considering that apart from statutory provisions it was contrary to common law to execute an insane criminal. [Quotation.]

Probably these authorities have influenced the practice of successive Home Secretaries, **BUT SINCE THE ACT OF 1840 WE HAVE INDISPUTABLE AUTHORITY FOR SAYING THAT NO PRISONER UNDER SENTENCE OF DEATH HAS EVER BEEN EXECUTED AS TO WHOM A CERTIFICATE OF INSANITY HAS BEEN GIVEN UNDER THE STATUTE FOR THE TIME BEING IN FORCE.**

The first question that arises is, Should the power of the Home Secretary to remit to asylums prisoners reasonably certified to be insane exist? We have no doubt at all that it should. In the case of prisoners not under sentence of death the necessity of such a power has never been controverted. In the vast majority of cases the sanity of the prisoner has never been in issue. **AFTER CONVICTION INSANITY MAY DEVELOP IN ITS MOST EXTREME FORM; AND WE CANNOT IMAGINE A CIVILISED COMMUNITY IN WHICH IT COULD BE CONSIDERED NECESSARY OR DESIRABLE TO KEEP SUCH A PERSON CONFINED AMONG ORDINARY PRISONERS SUBJECT TO THE COMMON DISCIPLINE PRESCRIBED FOR PRISONERS OF NORMAL MIND, AND DEPRIVED OF ANY TREATMENT FOR THE ALLEVIATION OF HIS MENTAL DISORDER. THERE CAN BE NO REAL DISTINCTION IN CASES OF PRISONERS UNDER SENTENCE OF DEATH.**

The question for the Home Secretary is not simply the legal question, "Was the prisoner responsible for his act?" though it may be his duty to review that finding; under the statute the question is a medical question, "What is the prisoner's present state of mind?" In investigating that question the medical men must necessarily consider the circumstances of the crime for which the prisoner has been convicted.

It is proper that the official instructions given to the medical men appointed under Section 2 (4) should direct them, as it does, to investigate his mental condition both now and as far as possible at the time of the murder. In practice, therefore, the report after a statutory inquiry, wherever it is possible, deals with both periods of time. **BUT WE WISH TO EMPHASISE THAT THE STATUTORY INQUIRY IS INTENDED TO INVESTIGATE THE PRISONER'S SANITY OR INSANITY,** ***i.e.*****,**

HIS CONDITION FROM A MEDICAL POINT OF VIEW; AND IT IS OUR OPINION THAT THIS INQUIRY SHOULD STILL BE HELD UNDER THE SUBSECTION, AND WE HAVE NO CHANGE IN THE PROCEDURE TO RECOMMEND. No doubt in some cases the investigation and the exercise of the discretion involve a review and a reversal of the express finding of the jury. So far from this being objectionable we think it essential that it should form part of the duty of the Home Secretary, just as it is in exercising the prerogative of mercy, to which this power is closely akin.

We have only to add that in our opinion it is right that the power of acting upon the certificate of insanity conferred upon the Home Secretary should be in terms discretionary. Facts may become known after the inquiry or the inquiry itself may for various reasons be found to be unsatisfactory so as to entitle the Home Secretary to allow the law to take its course notwithstanding the certificate.

But if no such circumstances exist, we think that the present practice of exercising the discretion in only one way, *i.e.*, remitting the prisoner to an asylum, is right and should be continued. We should be not less humane than our forefathers. It may be that the degree of insanity contemplated by the exponents of the common law whom we have quoted was greater than that which would be covered in these days by a certificate of insanity under the subsection. But many of the reasons given for the merciful view of the common law continue to have force even under modern conditions. **EVERYONE WOULD REVOLT FROM DRAGGING A GIBBERING MANIAC TO THE GALLOWS.** We are not prepared to draw a line short of the certificate of insanity given after inquiry by reasonable and experienced medical men.

Final Remarks.

Finally, we are glad to be able to report that the present system has been proved to work satisfactorily, vindicating the law with firmness and humanity.

In 1896 a Committee of the Medico-Psychological Association appointed to consider the matter before us stated in their Report that the questions they had considered were "(First) Whether to insane offenders justice is done? (Second) If it be not, whether this failure of justice is due to the state of the law?"

In the course of their Report the Committee say: "So far from finding, as has been alleged, that difficulties are placed in the way of proving the insanity of an offender; that judges are prejudiced against the plea of insanity, and conduct trials in such a manner as to nullify that plea; that the law is such as to bear hardly upon the insane offender, even when the judge is willing to bring him within

its exonerating provisions; that medical experts are silenced by the rules of evidence and prevented from stating their real opinions of the prisoner; so far from discovering this state of affairs to exist, your Committee have to report that, from the beginning to the end of the proceedings, care is taken that justice should be done, and that the interests of the prisoner should not suffer through the poverty, stupidity, or ignorance of himself or of his relatives." We have no doubt that this passage, true in 1896, is also true to-day.

The Committee reported that under the circumstances disclosed by their investigations they were unable to make any recommendations for the amendment of the law; and this was adopted by the Association with the addition of the words, "while not approving the doctrine and definitions contained in the judges' answer to the House of Lords in 1843." (The McNaghten Rules.)

We have no instance brought before us by any witness personally acquainted with the facts of any case in which a miscarriage of justice took place in the execution of an offender. Two or three cases were suggested tentatively, and on investigation proved, in our opinion, unfounded. All of us have personal experience of the methods of the Home Office advising upon the exercise of the prerogative of mercy and in administering the provisions of the Criminal Lunatics Act. We are not influenced by the presence of our two colleagues from the Home Office in saying that its duties are performed with a scrupulous care and single-minded devotion equally to the maintenance of the law and the legitimate protection of the prisoner. The public may be assured that no considerations have at any time any weight that are not directed to these two topics; and that the Secretary of State has never had more conscientious and careful advisers than those who at present, or for some years past, have had to undertake that thankless and most responsible task. In our opinion, in 1923, as in 1896, "to the insane person justice is done."

Summary.

We recommend that:

1. It should be recognized that a person charged criminally with an offence is irresponsible for his act when the act is committed under an impulse which the prisoner was by mental disease in substance deprived of any power to resist. It may require legislation to bring this rule into effect.

2. Save as above, the rules in McNaghten's case should be maintained.

3. Where a person is found to be irresponsible on the ground of insanity, the verdict should be "That the accused did the act (or made the omission) charged, but is not guilty on the ground that he was

insane, so as not to be responsible, according to law, at the time." The existing statutory provision in this respect should be amended.

4. Until such amendment, the verdict should always be taken and entered as guilty of the act charged, but insane so as not to be responsible, according to law, for his actions at the time.

5. Accused persons should not be found on arraignment unfit to plead except on the evidence of at least two doctors, save in very clear cases.

6. The present law as to appeal should not be altered, *i.e.*, there should be no appeal on the finding of insanity either on arraignment or after trial and, in the latter case, either as to the act or omission charged or as to insanity.

7. Provision should be made, under departmental regulations, for examination of an accused person by an expert medical adviser at the request of the prosecution, the defence, or the committing magistrate.

8. Provision for a panel or panels of mental experts is unnecessary.

As to the Criminal Lunatics Act, 1884—

9. It is essential that the statutory power under Section 2 (4) should be maintained.

10. The procedure under the sub-section is satisfactory and does not require amendment.

11. The discretion of the Secretary of State should be exercised as at present.

We desire gratefully to acknowledge the valuable services of our Honorary Secretary, Mr. R. E. Ross, the Principal Clerk of the Court of Criminal Appeal. He has worked for the Committee gratuitously, and has spared no effort to make our labours easier. His profound knowledge of criminal law and procedure and his administrative experience have been of the greatest assistance.

[Black capitals are ours.—EDS.]

REX *v.* CUTHBERT CHARLES CRACROFT RICE.

This case was tried at the Central Criminal Court on November 20 before Judge Atherley-Jones. The defendant was charged with unlawfully attempting to forge a copy of the *London Gazette*. He had served as a lieutenant during the war, and on leaving the Army went to Cambridge University. He was convicted of theft in 1922. And he appears to have conceived the idea, partly in connection with this conviction, of forging a copy of an official publication, in order to bestow upon himself titles and awards of which he was not possessed, It was suggested that his object was to deceive his father and mother as to his military position.