RECENT MEDICO-LEGAL CASES.

REPORTED BY DR. MERCIER.

[The Editors request that members will oblige by sending full newspaper reports of all cases of interest as published by the local press at the time of the assizes.]

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

Present: The Lord Chancellor, Lord Macnaghten, Lord Davey, Lord James of Hereford, and Sir Arthur Wilson.

Wehner v. *the King.*

This was a petition for special leave to appeal from a judgment of the Court of Appeal for Eastern Africa of March 7th, 1905, upholding the conviction of the petitioner for murder by a Court purporting to sit as a Court of Session on February 1st, 1905.

Sir Robert Reid, K.C., and Mr. Leslie de Gruyther appeared for the petitioner; Mr. Henry Sutton watched the case on the part of the Treasury.

The petition stated that after trial before Mr. R. W. Hamilton, purporting to act as Judge of the Sessions Court of the East Africa Protectorate, and a jury of five persons at Nairobi, the petitioner, Max Herman Wehner, was convicted of murder and sentenced to death by hanging. Against that conviction and sentence he appealed to the Court of Appeal for East Africa, and his appeal was dismissed, but his sentence was commuted to penal servitude for life. The petitioner is a settler in East Africa, and with two others in September and October last he was encamped near Nakuru. On the night of October 16th he and Mr. Gibson, a friend, were returning to camp, accompanied by three native boys. The night was very dark, and the road lay through high grass. Wild beasts were prowling about, and the question arose whether they had not missed their way. It was alleged by two of the native boys that the petitioner struck their companion Mchuria, and subsequently shot him with a short sporting rifle. The boys afterwards informed the police, and later on the dead body of Mchuria was found partly devoured by wild beasts, with a spent cartridge lying close by. The petitioner was charged with the murder. The jury found that the accused caused the death of Mchuria, but that he was not responsible for his actions owing to the influence of liquor. The Judge ruled that that was equivalent to a verdict of murder, and sentenced the petitioner to be hung. The petitioner appealed to the Court of Appeal for Eastern Africa, but that appeal was dismissed. After the trial the jury memorialised the Commissioner of the Protectorate for a reprieve, stating that they did not intend to find the petitioner guilty of murder, but only of manslaughter or of causing the death by a rash act. The Commissioner commuted the sentence of death to penal servitude for life.

Sir Robert Reid stated the grounds upon which it was desired to appeal against the judgment of the Court of Appeal for Eastern Africa and against Judge Hamilton's order convicting the petitioner of murder. He said the petitioner was tried before five jurors instead of nine, and that the Judge purported to sit as a Sessions Judge under two Orders in Council, which it was contended had both been repealed. The native witnesses called for the prosecution were not sworn, but were only warned to speak the truth. A number of witnesses were called for the defence. The petitioner denied that he killed the boy, and said that he had no rifle. Mr. Gibson, who was one of the witnesses for the defence, stated that the petitioner had no rifle. The petitioner was not under the influence of drink, but was "riled" about missing his way, and threatened the boys with the stick because he thought they had led him out of the way. The party proceeded on their journey in Indian file. The petitioner went first, and fired two or three shots with his revolver in the air for the purpose of attracting the attention of those in camp, and the boys thereupon disappeared. When the boy's body was subsequently found there was no bullet mark upon it. The body was half eaten by wild beasts. The statement of the two boys was that the petitioner knocked their companion down, and when he got up shot him without motive or provocation.

The Lord Chancellor.—Was there any quarrel between them?

Sir Robert Reid.—None. Under the law applicable to East Africa killing was divided into three classes, namely, culpable homicide amounting to murder, culpable homicide not amounting to murder, and a mere rash act. The Judge, it was contended, did not give any explanation of the law to the jury in his summing up. The law as to the swearing of the witnesses was contained in the Indian Oaths Act, 1873. The jury were sworn after two witnesses had been examined.

The Lord Chancellor said the more serious point was that there was no verdict of guilty; that what the jury said did not amount to a verdict of guilty. His Lordship asked Mr. Sutton what he had to say on the subject.

Mr. Sutton said he did not appear for the prosecution, but was only asked to attend on the part of the Treasury. He could produce a good deal of authority in support of what their lordships had said as to there having been no verdict of guilty. He thought that what the jury said must be considered in the nature of a special verdict. On the subject of special verdicts he referred their lordships to passages in Chitty's Archbold and Hawkins's Pleas of the Crown.

The Lord Chancellor, having again pointed out the importance of the point that there was no verdict of guilty, said their lordships would humbly advise his Majesty to grant special leave to appeal. Of course, it would be open to the petitioner to raise the other points on the appeal as well as the point that there was no verdict of guilty. It was not a question of a new trial being ordered, because in their lordships' view there had been no trial.

In view of the frequency of the assertion that drunkenness is no excuse for crime, it seems worth while to place on record the foregoing remarkable case. The jury found that the accused caused the death of the deceased, but that he was not responsible for his actions owing to the influence of liquor. It seems that several different meanings might be attached to this finding. The Judge at first instance did, in fact, construe it to mean "guilty" of murder. The jury intended it to mean "guilty" of manslaughter. It is conceivable that it might have been interpreted "guilty, but (temporarily) insane." The Judicial Committee found that it meant nothing at all. The report, unfortunately, does not state the grounds of the decision of the Judicial Committee, and we are left to conjecture whether the absence of any verdict is due to the verbal form of the finding of the jury, or whether it is due to the general sense expressed therein. Was it due to the omission of the word "guilty"? or of the word "wilfully"?—the accused might, for anything that appears to the contrary in the finding, have caused the death by accident;—or was it due to the nullification of the first part of the finding by the second part, that the accused was not responsible? Supposing the finding had been "guilty, but he was not responsible for his actions owing to the influence of liquor," would the Judicial Committee have taken this to be a verdict of "guilty, but (temporarily) insane," or would it have held the view that drunkenness is no excuse for crime, and, disregarding the qualifying words, have held it to be a verdict of "guilty" *simpliciter?* It is unfortunate that, on these very important points, we are left without guidance.

Rex v. *Devereux.*

Arthur Devereux, 36, chemist, was indicted for the wilful murder of his wife. The case was peculiar in respect that, though the plea of insanity was not explicitly raised, much evidence was given of insanity in the families of both the prisoner and the deceased, and efforts were made by the defence to prove that both were, if not insane, at any rate of abnormal mind, and likely to act in ways unaccountable and different from other people. The bodies of the wife and her two twin children by the prisoner were found doubled up in a trunk, and it was admitted that the

prisoner, who was examined and cross-examined in court upon the subject, had placed them in the trunk and sealed over the surface rather elaborately. He admitted that he had repeatedly taken the bodies out and rearranged them in the box. His account was, however, that his wife had committed suicide after killing the children, and that he, going home and finding them dead, became so alarmed at the possible consequences to himself, that, instead of raising the alarm, he disposed of the bodies in the way stated. For the defence it was contended, first that the deceased was a person likely to commit suicide; and, second, that the prisoner came of such an insane stock as to render it likely that, in face of a terrible and unexpected calamity, he would be likely to act in a way different from that of a normal person. The judge permitted to the defence the utmost license in calling evidence which was inadmissible, and thus counsel for the prisoner was allowed to prove that a brother of the deceased had at one time been attended for meningitis, and had subsequently disappeared, having, as it was supposed, drowned himself; that the prisoner's father twice attempted suicide; that an aunt of the prisoner threw herself out of a window; that an uncle of his had been in an asylum; and that the prisoner himself had been regarded by some of his associates as somewhat weak-minded. On the other hand, his employer said that prisoner was a clever chemist and a good business man; and three medical men called for the defence all admitted that the prisoner was not insane.

The jury, after a consideration of ten minutes, found the prisoner guilty, and he was sentenced and subsequently executed.

Central Criminal Court, July 26th, 27th, 28th, and 29th, Mr. Justice Ridley.—*Times*, following dates.

The defence was ingenious, but it was manifestly a forlorn hope, and had no prospect of success. The case is of value, however, as illustrating the extraordinary latitude allowed by the Court to a defence founded upon insanity. Repeatedly counsel for the defence admitted that the evidence he was tendering was inadmissible, and asked the judge to admit it as a matter of indulgence, a request which, after a little demur, was granted.

THE PREVENTION OF THE INHALATION OF FOOD DURING FORCED FEEDING.

By H. DE M. ALEXANDER, M.D.Edin., Senior Assistant Physician, Royal Asylum, Aberdeen.

In forced feeding regurgitation of the food, with consequent flooding of the pharynx, is a necessary prelude to food-inhalation. The regurgitation may arise from the liquid food running back along the sides of the tube, or on account of the patient forcibly vomiting the food by the contraction of his abdominal muscles, or, lastly, it may arise from purely reflex causes. Simple regurgitation is liable to occur in feeding patients suffering from the various insanities associated with delirium, in cases of stupor, and in all cases where marked physical debility is present. Regurgitation owing to forced vomiting on the part of the patient occurs generally in melancholia, mania, and in hysteria. Vomiting and regurgitation, due to reflex irritation of the vomiting centre in the medulla, are often seen in the toxæmic insanities.

Attention to the following details appears to me to diminish the risk of the occurrence of food-inhalation during the process of feeding debilitated or resistive patients with either the œsophageal or nasal tube:

Feed the patient in bed, with his head elevated on one moderately hard pillow, the edge of which should be fitted into the nape of his neck. It is advantageous in some cases to raise the head of the bed on blocks.

The patient's mouth should not be too widely opened, and the tube should not be passed so far as to enter the stomach (Maurice Craig).

It is easier to pass the tube with the head slightly flexed, as with the mouth