Dr. H. Ward-Smith had seen the accused in October and November, 1931. He had also examined her with Dr. Fleming. He agreed with the opinion of that witness. She had several times threatened to commit suicide, and she was obsessed with the idea that her appearance was attracting public attention, stating that she was covered with patches (a delusion).

Dr. M. Hamblin Smith, medical officer of Birmingham Prison, had kept the accused under observation from January 28. He fully agreed with the views of the other medical witnesses.

The judge, in his summing-up, said that there was abundant evidence in favour of a verdict of "Guilty, but Insane." The jury, without retiring, returned that verdict, and the usual order for detention was made.

The main medico-legal interest in the case was the way in which certain questions were framed. The first three medical witnesses were called by the defence. They were asked whether they considered that, on January 9, the accused had known "the nature and quality" of her act. They replied in the negative. They were then asked whether, assuming that she had known the nature and quality of the act, she would have known that it was "wrong." The object of this further question probably was to give the defence a second line of argument. But the question seems open to objection; for it invites a witness to assume the existence of a condition which he has just declared to be, in his opinion, non-existent. The first part of the "McNaghten criterion" (absence of knowledge of the nature and quality of the act) would seem to imply the second part (absence of knowledge that the act was wrong). It is, of course, quite another matter if the witness expresses the view that the accused did know the nature and quality of the act. In that case the second part of the criterion may fairly be put to the witness. But "hypothetical questions" are always objectionable.

Post-Epileptic Automatism as a Defence in Murder Cases: A Comparison of Two Recent Cases.

Rex *v.* Rickard.

A case of considerable psychiatric interest was tried in the Supreme Court at Hamilton, New Zealand, on June 8 and 9, 1931, before the Hon. Sir Alexander Herdman, when Reginald Thomas Rickard was arraigned for the murder of Arthur Rossiter, an old man who lived with his daughter at Kaipaki.

The prisoner was born in the Klondyke thirty-seven years ago, and is single and by occupation a painter.

In 1914 he went to the war with the Canadian forces, and remained in the Army until the year 1919, when he was discharged. From his own statement it appeared that he was gassed in 1915, and that he was severely wounded in the head by shrapnel in 1917.

In 1922 Rickard came to New Zealand, where he met Miss Rossiter, to whom he became engaged in November, 1929.

In the following August, however, the engagement was terminated by Miss Rossiter for the reason that Rickard was not sufficiently diligent in providing a home for her.

Notwithstanding the breaking of the engagement, Rickard continued to be on intimate terms with the Rossiters, and practically made his home with them, but in February of this year a disagreement occurred. A sum of money disappeared from the house, and Mr. Rossiter accused Rickard of stealing it, but later on, as Miss Rossiter stated in evidence, Rickard established his innocence. In spite of this, the accusation of dishonesty appeared to have rankled in his mind.

On March 16 Miss Rossiter set off to Tauranga by train. Rickard turned up and accompanied her to that town, where they both put up at the same boarding-house, Miss Rossiter living in the house and Rickard in a tent in the garden.

During this visit to Tauranga two strange incidents occurred. When, on March 20, these two people returned to the boarding-house after visiting the public baths, Rickard struck Miss Rossiter three blows on the head with a spanner wrapped in cloth. He then disappeared, but wrote several letter-cards to Miss Rossiter asking her not to tell the police, and also one to the magistrate explaining that he "must have been mad" when he committed the assault. For this offence Rickard was arrested, lodged in the local police office, and remanded by the magistrate for mental examination.

The second incident was that during his detention, a minute piece of shrapnel, which he declared had been embedded in his head, was discharged through his nose.

On April 2 the accused escaped from custody at Tauranga, and made his way towards Kaipaki by road, a distance of approximately seventy miles.

On April 9, at Ohaupo, a small settlement near Kaipaki, he ordered from the local storekeeper a tin of benzine to be delivered next day at Rossiter's house, and from the same place he despatched

the following telegram to the police at Tauranga: "Locate Miss Olive Rossiter. Left no address; believed to be in Tauranga. Father ill; needs her urgent."

During this period the police had been searching for Rickard on the charges of assault and escaping from custody, and on April 10 they visited Rossiter's house about 10 a.m. and found it locked up and apparently untenanted. They were examining the premises when the back door was unlocked and the accused emerged. A constable informed Rickard that he was under arrest for escaping from custody, to which he replied, "I am under arrest for more than that; I have just shot old Rossiter."

Upon entering the house the police found that Rossiter had been shot through the head from behind and was dead.

The following points were also observed:

(1) The body had been dragged from the kitchen into the front bedroom and laid on a mat. It was carefully covered with blankets.

(2) The telephone wires had been cut.

(3) The doors were locked.

(4) A window had been fastened with nails.

(5) A blanket had been hung across the bedroom window.

(6) Rags had been used to wipe the blood off the kitchen floor, and an attempt made to destroy them in the kitchen fire.

Through the co-operation of the police, prisons and mental hospitals departments of New Zealand, all persons charged with a capital offence are brought under psychiatric observation as soon as possible after arrest, and Rickard was transferred for this purpose to the Auckland gaol, where he was examined on several occasions by Dr. H. M. Buchanan, Medical Superintendent of the Auckland Mental Hospital.

The following are extracts from Dr. Buchanan's case-notes:

(1) *Family history* (Rickard's own statement).—A sister, who was ten years his senior, was subject to "crazy turns." During these turns she would go stiff, foam at the mouth and "howl." She died, he thinks, from fits at about the age of 18. He is not sure of her age—he was a school-boy at the time of her death.

His mother had poor control of her temper, which would be roused by the least thing. She would become violent and assault her daughters. She has thrown a table at her husband. These tempers would be followed by her becoming paralysed in her arms and legs, and losing her speech. She died about 1894 or 1896, aged 53 years. Rickard thinks the cause of death was a stroke.

He has, or had, three brothers, who, to his knowledge, were healthy and normal. Another sister was normal.

(2) *Personal history* (Rickard's own statement).—Rickard is 37 years old. He was born in Dawson City, Yukon. He went to school at Edmonton, Alberta, at the age of 7. As a boy he had fainting turns, when he became giddy and fell to the ground. These turns left him when he was 14, but since the war he has

had occasional attacks, the last being in January, 1931. In this attack he felt his head going round and that something was choking him, but does not remember anything until he found himself on the floor shaking and in a cold sweat. Nobody saw him in this attack.

In a statement he wrote out for me on May 3, 1931, he says :

" In August, 1914, I joined the Canadian Expeditionary Force, was gassed at Langemarck, Ypres, 22nd April, 1915, was nine months in hospital in England. This has caused me to suffer with very severe headaches and gas in the stomach, which made me very irritable, especially before and during wet weather; the pains in my head were terrible in 1917. At Vimy Ridge when going over I received a wound in the right wrist severing the artery, wound in back of left hand and in the right foot by the ankle. While I was being carried out a shell killed the two stretcher-bearers and I was dropped in a shell hole up to my chin in mud and water. I then received a piece of shrapnel in the back of my head. I was picked up 36 hours after, so I was told, and sent to Etaples Hospital. The doctors X-rayed my head and told me the piece of shell was too near the brain to operate and in time might work out ; if I had worry or a blow they could not hold out for my actions."

(3) *Examination on April* 13, 1931, *at Mount Eden Gaol.*—Rickard looked unkempt and flabby of face, and as if he had gone through a bout of drinking, or had had no sleep for a long time. His eyes were bloodshot, his eyelids fluttered, and his fingers were tremulous.

He gave me the impression of physical suffering, and as if he did not care what was going to happen to him. He said, "The case does'nt worry me; it's my head; it's as if I'm going to lose my mind." He stated that he had felt more or less all right a month ago, and that the beginning of his trouble was when he struck his head on the bottom of the swimming-bath at Tauranga on March 20, 1931. He said he had felt dazed ever since. He talked a great deal about a bit of shrapnel that came out of his nose on April 1, 1931, whilst in the police station at Tauranga.

He further told me that since a month ago he has felt a different man. He has felt that he wanted to kill someone—" that is my whole idea." He has felt pressure on the right side of his head, and that he wants to " grab and kill."

(4) *Examination on April* 17, 1931, *in gaol.*—His physical appearance was much improved, his face was less flabby and his " bleary " look had disappeared. He was less tremulous.

The conversation followed much the same lines as that on April 13, 1931, in order that I might corroborate and elucidate various points. He claimed complete amnesia for the assault on Miss Rossiter, but he remembered in detail the incidents immediately before, during and after the shooting of Mr. Rossiter.

When asked about the position he now found himself in, he said, " It doesn't worry me in the least; I don't think of it; I don't realize it. The fact that I've killed the old man makes no impression at all. There must have been something —I must have been out of my senses when I did it."

As a result of these examinations Dr. Buchanan was unable to form a definite opinion as to Rickard's sanity or otherwise, and he therefore asked that the prisoner should be sent to the mental hospital for closer observation. This course was adopted, and Rickard remained in the institution between April 20 and May 4. The following notes show the nature of the examinations made and the conclusions formed :

On admission he was quiet, fully conscious and answered questions readily. He gave a clear account of himself, expressed no delusions and did not appear to be hallucinated. His memory was good and he was correctly orientated. He was found to be of average intelligence. *Physically:* Of small build, 5 ft. 4 in. in height, well-nourished. Facial asymmetry. Scars of shrapnel wounds 1½ in. behind right ear, back of left hand, radial side of right wrist and inner aspect of

left ankle. Scar of bayonet wound left side of forehead. He showed signs of chronic infection of nasal sinuses, but otherwise his general health was satisfactory.

The following investigations have been made:

(1) A specimen of his blood was taken on April 23. The result was reported as negative Wassermann on April 24.

(2) On April 24 his head was X-rayed at the Public Hospital. The report reads: "No radiographic evidence of foreign body detected. Increased opacity of both antra suggests replacement of normal air content by inflammatory material. The lateral view raises suspicions of pathological changes in one or both sphenoids."

Dr. Hardie Neil informed me later that all the sinuses were infected.

(3) Cerebro-spinal fluid was normal.

On April 24 the patient was restless in bed until 10.30 p.m., when he went to sleep. He was restless in his sleep. At 4 a.m. on April 25 the patient awoke and proceeded with an attendant to the lavatory. After sitting at stool for about five minutes he fell forward on to the floor. He gave no cry or other warning of the approach of a fit. He was in a tonic state for about one minute. The clonic state was well marked. There was loss of consciousness and stertorous breathing. The conjunctival reflex was found to be absent. The fit lasted three to four minutes. He spoke half an hour after the fit for the first time and then went to sleep for an hour. In the morning he was in his usual state.

Attendant Walding was in the ward when the fit started. He heard the fall and rushed out to see what was the matter. He observed Rickard from the clonic state onwards. Walding tested his conjunctival reflex—there was no response. The patient was quite unconscious.

On April 28 he became irritated by the persistent talk of another patient, who was in the same ward, but outside his room. He expressed an inclination to get at this patient's throat, and declared that he felt his fingers itching to grasp it.

Summing up his condition since his stay at the Mental Hospital I find as follows:

(1) He is an epileptic.

(2) He has the dullness and irritability associated with epilepsy. These may be also connected with his sinusitis.

(3) His memory has been good.

(4) He has remained correctly orientated.

(5) He has shown no evidence of hallucinations or delusions.

(6) He has shown no symptoms of definite insanity.

Dr. Tothill has been associated with me in the examination of this patient whilst in the Mental Hospital.

At the trial it was admitted that Rickard killed Mr. Rossiter, and the defence was that the accused was insane at the time the murder was committed.

In support of this plea counsel relied upon the evidence of Dr. Hardie Neil, an eminent specialist in oto-rhino-laryngology, and of Dr. R. M. Beattie, a former medical superintendent of Auckland Mental Hospital.

Dr. Hardie Neil, who was called to examine the prisoner at the instance of the Mental Hospitals Department, deposed that upon examination he had found Rickard to be suffering from a severe condition of sinusitis. He stated that sinusitis was accepted by many leading authorities as having a causal relationship to almost every grade of mental disturbance, from neurasthenia to delusional insanity, and also to epilepsy.

Dr. Neil stated that from his own war experience (which has been considerable) he could accept the prisoner's story as to the shrapnel wounds and their effects.

The shrapnel might either have set up the condition of sinusitis or have aggravated it. From the evidence in the case and as the result of his examination he had formed the opinion that the accused was insane. He considered that Rickard knew what he was doing when he killed Rossiter, but that owing to his mental disease, which had been either caused or aggravated by sinusitis, he was unable to exercise the self-control and judgment which a normal man would show when he was tempted under provocation to commit an act of violence. In his view the murder resulted from an uncontrollable impulse.

Dr. R. M. Beattie stated that in his opinion Rickard was suffering from epilepsy, and that the crime was committed during a post-epileptic state.

Dr. Buchanan's report and the personal history of the accused established the fact that Rickard was an epileptic, and in witness's opinion the circumstances of the crime indicated that it was carried out during a post-epileptic state.

In Dr. Beattie's opinion Rickard knew what he was doing when he shot Rossiter, but he only knew it imperfectly. He was not capable of full appreciation of his act, and was certainly unable to take into account its rightness or wrongfulness.

Dr. Beattie considered that the injury in the swimming-bath had relationship to the attack on Miss Rossiter and the subsequent amnesia, and he thought it probable that the prisoner had had a fit shortly before arriving at the Rossiter home.

The witness did not consider that the cutting of the telephone wires, the disposal of the body, or the long journey taken by Rickard between Tauranga and Kaipaki were inconsistent with his opinion that the murder was committed when the prisoner was in a post-epileptic state.

In rebuttal of the defence of insanity the Crown called Dr. H. M. Buchanan and Dr. StL. H. Gribben, a former medical superintendent, now in practice as a specialist in mental diseases.

Both witnesses stated that the accused was an epileptic, and agreed that this disorder generally connotes a lessened power of self-control.

On the other hand, they were of opinion that Rickard knew what he was doing when he killed Rossiter, and that he knew he was committing a crime. They cited his statements to the police at

the time of his arrest; his actions in the house; the purchase of benzine and the despatch of the telegram to Tauranga. He fired the shot. He removed the body from the kitchen and covered it with blankets. He endeavoured to obliterate traces of his guilt by wiping blood from the floor, and afterwards attempted to burn the rags which he had used. Finally he described the manner in which he had killed Rossiter. Then there was the cutting of the telephone wires, the nailing of the window and the blanket used as a blind in the bedroom.

The jury brought in a verdict of guilty, with a strong recommendation to mercy, and Rickard was sentenced to death. The sentence was later commuted to one of imprisonment for life.

Comment.

This case is of interest in that it raises the question whether the occurrence of epilepsy in an individual should, *per se*, be held to excuse him from the full consequences of a criminal act.

That Rickard is subject to epileptic fits was proved, and his own statement as to his abnormal sensations and impulses may fairly be accepted as being consistent with the known accompaniments of epilepsy, but there is room for considerable difference of opinion as to whether or not this crime could really be held to be due to epilepsy, or whether it was merely a criminal act committed by one who happened to be an epileptic.

In several cases reported in the *Journal of Mental Science* during recent years, notably that of Rex *v.* Bagguley (lxxv, p. 707), it would appear that verdicts of guilty but insane were returned merely because the prisoner was subject to epilepsy, and not because it had been proved that the crime itself was definitely related to the epilepsy or had occurred as a sequela to an epileptic fit.

In the case quoted all the evidence pointed indisputably to a knowledge on the part of the accused of the nature and quality of his act and also that it was wrong. Bagguley was on bad terms with his wife; he travelled eighteen miles to where he thought she lived; he inquired as to her whereabouts; he carried a revolver obviously for the purpose of shooting her.

After the murder he exclaimed, "That's done it; it's all over; you can fetch the police." Also, "There is nothing to be afraid of; I have done it and am ready to take my punishment; the only thing I am sorry about is my little girl."

The previous life-history of Bagguley certainly indicated that he was an epileptic, but could certainly not be regarded as establishing that his crime was the result of epilepsy; indeed, all the circumstances of the case lead to the opposite conclusion, and it would seem that the proper verdict was one of guilty.

It is generally recognized by judges, as well as by mental specialists, that the McNaghten rules are out of harmony with modern psychiatric knowledge. Considerable latitude is therefore allowed at trials on the capital charge to counsel and psychiatric witnesses to bring out evidence which, while not exculpatory to the degree required by a strict interpretation of the law, might yet fairly be taken into consideration by the Home Secretary in England, or the Governor-General in Council in New Zealand, in determining whether the extreme penalty should be exacted.

This is what occurred in Rickard's case, and no doubt the strong recommendation to mercy put forward by the jury and, rightly in my opinion, given effect to, was prompted by the evidence of war injury, sinusitis and epilepsy adduced at the trial.

The evaluation of expert medical evidence, particularly when there are divergencies of opinion, is a matter of great difficulty for juries, and it is therefore essential in the interests of society and the unfettered administration of justice that medical evidence should be restricted to logical deductions from established facts. Only in this way will psychiatric evidence in our courts earn and retain the weight to which it is entitled.

T. G. GRAY.