the Committee, together with the amended definition which is proposed instead. The old definition seems to have been the product of the unaided exertions of the Parliamentary draughtsman, since no definition is proposed by either of the previous Committees on the question. It is to be hoped that, in any future Act, care will be taken to frame such a definition as shall not be open to so many and such manifest objections.

KING'S BENCH DIVISION: DIVISIONAL COURT.

(Before the Lord Chief Justice, Mr. Justice Darling, and Mr. Justice Jelf.)

THE KING *v.* THE GOVERNOR OF H.M. PRISON AT STAFFORD (*ex parte* EMERY).

Habeas Corpus.

In this case a rule *nisi* for Habeas Corpus directed to the Governor of Stafford Gaol had been obtained on behalf of one F. Emery. The circumstances in which the rule was granted were stated in *The Times* for March 10th.

Mr. Rowlatt appeared to show cause, and Mr. Bosanquet appeared to support the rule.

It appeared that the prisoner Emery was stone deaf and was unable to read or write. He was brought up before Mr. Justice Channell for trial at Stafford Assizes on a criminal charge, and before the case was gone into the jury were asked to find whether he was or was not mute by the visitation of God. They found that he was so, and were then sworn a second time to find whether he was able to plead to the indictment and able to understand the proceedings. As to this they found that he was incapable of pleading to or taking his trial upon the indictment, or of understanding and following the proceedings, by reason of his inability to communicate with, or be communicated with by, others. Thereupon Mr. Justice Channell ordered that he should be treated as non-sane and be kept in custody until his Majesty's pleasure be known.

Mr. Rowlatt, on behalf of the respondent, said that first of all it should be made clear that so far as the governor of the gaol was concerned the order which had been made was a perfect justification for whatever he had done. Whether the order was one which the Court could properly make or not the governor was bound to act upon it and no action could be brought against him for having done so.

The Lord Chief Justice said it was unnecessary to argue that.

Mr. Rowlatt, continuing, said the real question was whether the concluding part of the order, that the prisoner should be treated as non-sane, was justified by the two previous findings of the jury. Section 2 of the Act for the safe custody of insane persons (39 and 40 George

III c. 94) provided that if any person indicted for any offence should be insane and found to be so by the jury, so that such person could not be tried upon the indictment, it should be lawful for the Court to order such person to be kept in strict custody until his Majesty's pleasure could be known. Then came the case of "Rex *v.* Pritchard" (7 C. and P. 304), which was decided under that section, and which in effect laid down that inability to plead or to understand the proceedings was to be considered as insanity for the purposes of the section. That view was supported by "The Queen *v.* Berry" (1 Q.B.D. 447, and 13 Cox's *Criminal Cases*, 189). He referred also to the Hale's *Pleas of the Crown*, p. 33, and to "R. *v.* Steel" (1 Leach 452), and submitted that the rule should be discharged.

Mr. Bosanquet submitted that the prisoner was not in legal custody and should be set at liberty. Mr. Rowlatt had dealt with the case on the authorities, but it was better to look at the words of the Statute itself. [The Lord Chief Justice: Even if the Statute had been originally misunderstood we should not upset the decisions after all these years.] Further, the cases relied upon by Mr. Rowlatt did not really apply. In "Rex *v.* Pritchard" (*sup.*) it was proved in evidence that the prisoner was nearly an idiot and had no proper understanding, and the jury had to deal directly with the question of insanity; it was not suggested to them that mere inability to be communicated with was to be considered as insanity. Here the jury had directly negatived the presumption of insanity by finding that the prisoner was only mute because he could not be communicated with. The prison doctor had actually told the jury that, in his view, the prisoner was not insane, and if the jury had disagreed with him they would have expressly said so. The prisoner should be set free; he could be arrested again if necessary. And, in any event, "Reg. *v.* Pritchard" (*sup.*) and Dyson's case referred to therein were only decisions at assizes and were not authorities binding on this Court. There appeared to be no definition of insanity which covered such a case as the present, and the question really was, not whether it was convenient that this particular prisoner should be shut up, but how far it was right for a judge to order a man to be confined as a lunatic who had not been so found by process of law.

The Lord Chief Justice said that for himself he was glad the case had been argued and that the Court had had the opportunity to re-declare the position of the matter in law. The important point in the case was that the jury had found the prisoner incapable of pleading or of understanding the proceedings by reason of his inability to be communicated with, and upon that Mr. Justice Channell had ordered him to be detained as non-sane. They had to consider whether that order was properly made. Mr. Bosanquet had contended that it was not, because there was no express finding of insanity; but he would be sorry to have to adopt that argument, and he could conceive of nothing more likely to cause injustice than to say that in such a case as this either the jury must find insanity or the prisoner must be released. The great weight of opinion and judicial decisions had established a practice which had prevailed for sixty years, and was in accordance with common sense and should not now be over-ruled. It was true, as Mr. Bosanquet pointed out, that the words of the statute

did not refer to inability to plead, but only to insanity; but that fact had been considered in "Rex *v.* Pritchard" and "Rex *v.* Dyson" (*sup.*), and had been held to be immaterial. It was true that those cases were tried at assizes and were not binding on this Court; but he would be unwilling in any event to upset a convenient practice which had been established for so many years, and those cases were supported by the decision of the Court of Crown Cases Reserved in "The Queen *v.* Berry" (*sup.*). There was no question of general insanity, but only one of inability to understand the proceedings, and it was expressly held that such inability was, in point of law, insanity. Sanity, therefore, must include ability to follow the proceedings and to understand the accusation and the evidence; and the order in this case was made in accordance with common sense and in the proper administration of the law. The rule must therefore be discharged.

Mr. Justice Darling said that he was of the same opinion. Mr. Bosanquet's point was that the prisoner had never really been found insane, but it seemed to him that the prisoner had been so found. The jury found not only that he was mute, but that he could not understand the routine of the Court or follow the proceedings or make his own views known. That was a sufficient finding of insanity to bring the case within those which had been cited.

Mr. Justice Jelf said he was of the same opinion, and he only wished to add a word as to the course taken by Mr. Bosanquet after applying to him for advice. At the assizes, finding that the prisoner was going to be undefended, he had asked Mr. Bosanquet to defend him. The trial then came on before Mr. Justice Channell in another court, and when Mr. Bosanquet afterwards asked his advice as to further proceedings, he thought that, inasmuch as it was the practice for a poor man to be defended at assizes, it was only logical that if further proceedings were required the same counsel who had defended the prisoner at the trial should act for him throughout in all proceedings which might be necessary to obtain for him the best possible result. He, however, concurred in what the Lord Chief Justice had said in the matter.

The rule was accordingly discharged with costs.

To the non-legal mind mind this seems an extraordinary decision. There is no pretence for alleging that the prisoner is insane. There is no evidence that he is insane, and there is the evidence of the prison doctor that he is not insane, and yet he is, in point of law, insane. Nor is this all, as they say in Oxford. He is unconvicted; he is not even tried, yet he is committed to prison as a criminal. This sane and untried person is, in the eye of the law, a lunatic and a criminal, and as such is committed to prison for an indefinite time.

The profession of a jurisconsult has never, I believe, existed in this country, but if such a person did exist, this case would afford him several very interesting problems.

Would it be competent to a medical practitioner to make a

certificate of lunacy under the Lunacy Act, 1890, with respect to any person, on the ground that that person was deaf and could neither read nor write? Would it be competent to a justice or a judicial authority to make a reception order under the Act in such a case? Would the Commissioners in Lunacy allow such a reception order, founded on such a certificate? Would the manager of an institution for lunatics be justified in detaining the subject of it? What would be the result of an action at law brought by a person so certified and so detained against those who had certified and detained him?

What would be the result of an inquisition in lunacy, in which the only evidence of insanity was proof that the defendant was deaf and could neither read nor write? Would this evidence satisfy a jury? Would it satisfy a Master?

Suppose a man to be placed on his trial who understands no language but, say, Fuegian; and suppose no interpreter to be available; is the Fuegian, without trial, to be sent to prison for life as a criminal lunatic because he is unable to understand the proceedings, and "such inability is, in point of law, insanity"?

From a medical point of view it is beyond all question that a deaf person who can neither read nor write may be completely sane, in the ordinary acceptation of the word, and in the sense that he may be competent to manage himself and his affairs. He may be a skilled artisan; he may be able to carry on a trade; he may buy and sell; he may marry; he may be competent in the essential affairs of life. His only inability is that his means of communication with his fellows are restricted. Before education became general, there must have been in the community many people, many hundreds of people, who were stone deaf and could neither read nor write, but with respect to whom the question of sanity never was raised and never ought to have been raised. Practically, this decision makes the sanity of a person depend upon the extent of his education, on his ability to read and write—a new criterion, as far as I know.

The fact is that the law has overlooked the possibility that a sane person may be prevented, by deafness and inability to read, from understanding the proceedings in a court of law. It is a *casus omissus*. There being no machinery for dealing with such persons, the law takes the nearest machinery to hand, and wrenches and distorts it until it can be made to deal with them.

The legislature had not sufficient imagination to conceive of accused persons being unable, for other reasons than mental incapacity, to understand the accusation and the evidence when they are put upon their trial. Judges, therefore, have been obliged to supply the omission as best they could; and have adopted a device, clumsy and inaccurate in the extreme, but no doubt the best that was available. When such a prisoner comes before the Court, he is dealt with as a criminal, which he may or may not be, and as a lunatic, which he is certainly not. The unfortunate subject of this decision has contrived, in spite of his terrible handicap, to hold his place in the world, and to manage himself and his affairs capably up to the time of his arrest. He now finds himself incarcerated for the rest of his life without knowing why or wherefore.

It is no doubt to be understood that, when the Court pronounced the prisoner to be insane, the Court meant that he was to be considered insane for the purpose of the Act (39 and 40 Geo. III., cap. 94); and this highly artificial restriction of the meaning of the term insanity is no doubt convenient for the purpose in view; but it seems a clumsy expedient to provide for a *casus omissus* by saying that, "for the purposes of the Act," white shall be called black; neither does the expedient diminish the essential injustice of holding a sane man to be insane, even if only "for the purposes of the Act." For what is the purpose of the Act in this case? It is to get the man into prison, and keep him in prison for an indefinite time, probably to the end of his life. This is a punishment much in excess of what could have been inflicted if the man had been found guilty of the act with which he was charged. The purpose of the Act is not only to put the man in prison, and keep him in prison, but to treat him as a lunatic, and to keep him among lunatics—surely a very improper mode of treating a person who is insane only "for the purpose of the Act," and who for every other purpose under heaven is sane.

It seems, from the cases cited before the Divisional Court, that this is not an isolated case. Such cases have occurred before, and may occur again. I submit that the proper mode of treating such a case is to put the prisoner back, and have him instructed in some means of communication by which he can be made aquainted with the proceedings in Court. There are several known modes by which this can be done, and has

been done, and though it may be a lengthy process, it will probably be found shorter than imprisonment for life.

Occasional Notes.

The Verdict of Suicide whilst Temporarily Insane.

The coroner for the City of London, Dr. Waldo, has recently drawn attention to the verdict of suicide whilst temporarily insane (or some equivalent expression) returned by juries on cases in which no definite evidence of mental disorder had been produced.

From a legal point of view nothing could be more erroneous. Suicide has been legally defined to mean self-murder, a crime which an insane person cannot commit, whilst temporary insanity is not recognised by the law. From the legal aspect the verdict is most unsatisfactory.

The verdict, however, has been a popular one for a very long period, has been returned in innumerable cases, and undoubtedly has a meaning to the lay, very different from that which it conveys to the legal mind.

Suicide to the layman evidently means self-killing, not self-murder, and equally evidently the fact of self-killing is itself held to be evidence of insanity.

It is desirable to consider what can be said in support of these conflicting views, and whether anything can be added from the medico-psychological aspect in elucidation of the misunderstanding.

To begin with the legal view. Probably the earliest legal opinion of what constitutes self-killing as self-murder is that of Plowden (in Hales *v.* Petit in 1562), from which Shakespeare is said to have derived Hamlet's argument. Plowden says, "that because he who determines to kill himself, determines to do it secretly, *nullo presenti, nullo sciente*, lest he be prevented, therefore the quality of the offence is murder." If secrecy is the proof of criminality, then is nearly every lunatic who kills himself guilty of self-murder, the cunning secrecy of such acts being well known. Secrecy, therefore, would not appear to be