Court of Criminal Appeal.

(Before Mr. Justice Darling, Mr. Justice Walton, and Mr. Justice Pickford.)

Rex *v.* Mead.

Drunkenness—Murder.

This was an appeal against a conviction for wilful murder at Leeds Assizes before Mr. Justice Coleridge, the ground of appeal being that the learned Judge had misdirected the jury in summing up the case to them. The appellant was not present at the hearing of the appeal.

Mr. J. W. Jardine appeared for the appellant, and Mr. Bruce Williamson for the Crown.

The appellant, Thomas Mead, after a quarrel with the deceased, Clara Howell, a woman with whom he had been living for seven years, had killed her with a blow of his fist, after brutally beating her with a broom-handle, having previously said he would give her a good hiding. There was evidence that at the time the appellant was drunk; and the defence raised on his behalf was that he was therefore incapable of forming the intent to do grievous bodily harm or to kill which was necessary to constitute the crime of murder, and that consequently he was guilty of manslaughter only. The jury convicted him of murder. He appealed to this Court on the ground that in his summing up the learned Judge had used words which would lead the jury to suppose that they must either find that he was guilty of murder or, if they were to bring in a verdict of manslaughter, that he was incapable of forming the above intent because he was insane or in a state resembling insanity at the time, the proper alternatives to be left to them being, it was contended, murder or incapacity to so intend in fact. The words used by the learned Judge were as follows: "In the first place, every one is presumed to know the consequences of his acts. If he be insane, that knowledge is not presumed. Insanity is not pleaded here, but where it is part of the essence of a crime that a motive, a particular motive, shall exist in the mind of the man who does the act, the law declares this—that if the mind at that time is so obscure by drink, if the reason is dethroned and the man is incapable therefore of forming that intent, it justifies the reduction of the charge from murder to manslaughter."

Mr. Jardine, for the appellant, contended that these words would be understood by the jury as meaning that they must find that the appellant was mad with drink to justify a verdict of manslaughter. It would be sufficient if they found that owing to his being drunk he could not in fact form an intent. "Reg. *v.* Doody" (6 Cox's *Criminal Cases* 463).

Mr. Justice Darling referred to "Rex *v.* Grindley" (not reported), cited in 1 *Russell on Crimes*, p. 144, in which it was held that the fact of intoxication was a matter properly to be considered in determining whether an act was premeditated or not.

Mr. Jardine contended that that was good law, and that the case of

"Rex *v.* Carroll" (7 C. and P., 145), in which the above case was disapproved, had nothing to do with the point, as in the latter case provocation was proved. He also referred to "Rex *v.* Meakin" (7 C. and P., 297).

Mr. Williamson, for the Crown, contended that the jury could not have been misled by the words used, as the learned Judge had told them that there was no question of insanity in the case. He also read the judgment of Mr. Justice Stephen in "Reg. *v.* Doherty" (16 Cox's *Criminal Cases*, at p. 308), and referred to "Reg. *v.* Monkhouse" (6 Cox's *Criminal Cases*, 55).

Mr. Justice Darling, in delivering the judgment of the Court, said that the point argued in the case turned on some words used by Mr. Justice Coleridge in summing up the case to the jury. Complaint was made as to words used in leaving to the jury considerations applicable to the case of a man who, being drunk at the time, had done acts which resulted in the death of another. He would deal with these words presently; but he thought it necessary before doing so to deal with the history of the doctrine of the effect of drunkenness in such a crime as murder where the question of intent was involved. Originally the law was that, although an insane person was not liable to the same consequences and was not judged by the same standard as a sane one, yet if he was suffering from *dementia affectata*—that is, a temporary insanity caused by the accused's own voluntary act in getting drunk, the legal doctrine was that drunkenness was no excuse for crime—1 Hawkins' *Pleas of the Crown*, c. 1, section 6, where it was said: "And he who is guilty of any crime whatever through his voluntary drunkenness shall be punished for it as much as if he had been sober." As far as they knew, the point was first decided in a contrary sense in the case of "Rex *v.* Grindley" (*supra*), decided in the year 1819, and since then there had been many decisions cited to them in which learned judges had expressed the doctrine that where intent was of the essence of a crime that intent might be disproved by showing that at the time of the commission of the act charged the prisoner was in a state of drunkenness, in which state he was incapable of forming the intent. The different judges had expressed themselves differently, but not so much so as to prevent the Court from saying that they were expressing the same doctrine. Two of the cases cited to them on the point were "Reg. *v.* Monkhouse" (*supra*) and "Reg. *v.* Doherty" (*supra*), the first decided by Mr. Justice Coleridge and the second by Mr. Justice Stephen, and no doubt identical expressions were used in each. But they thought it necessary to say that when a Judge summed up a case to a jury he must not be taken to be inditing a treatise on the law. He was addressing himself to the particular facts of the case then before the jury, and no judge could affect, in those circumstances, to give a definition which should apply to every conceivable case. It was really enough if he gave a sufficient definition to rightly direct the attention of the jury to the facts of the case before them. He had stated what the ancient view was, and that it was not the present view. They did not consider it was any part of their duty to enlarge the rule of law or to use language wider than that used by the judges who had considered the question before them, for it was not expedient to do anything which should confer an

immunity on persons who had made themselves drunk larger than that which they already enjoyed. The rule laid down by the Court was as follows (this was written by the learned Judge): "A man is taken to intend the natural consequences of his acts. This presumption may be rebutted—(1) in the case of a sober man, in many ways; (2) it may also be rebutted in the case of a man who is drunk, by showing his mind to have been so affected by the drink he had taken that he was incapable of knowing that what he was doing was dangerous, *i.e.*, likely to inflict serious injury. If this be proved, the presumption that he intended to do grievous bodily harm is rebutted." He would now refer to the words of Mr. Justice Coleridge (*supra*), which it was contended should induce them to hold that he had not properly directed the jury. (His Lordship read them.) It was said that these words would induce the jury to suppose that unless they found the appellant insane they would not be justified in finding him guilty of manslaughter. But the learned Judge had expressly told the jury that there was no plea of insanity. The facts were that the appellant had brutally ill-treated the deceased during a great part of the night on which she died, and had been heard to say that he would give her a good hiding; and he had broken a broom-stick over her. He had struck her a blow on the top of the nose, and as she fell towards him had given her a violent blow with his fist on the lower part of the stomach, which ruptured an intestine and killed her. If he did do this, it must be assumed that he intended to inflict serious bodily injury on her. It was contended at the trial that this intent could not be presumed because the appellant was incapable by reason of drunkenness of having such intent. It then became Mr. Justice Coleridge's duty to tell the jury what kind of evidence would show this. They had carefully considered the words used by the learned Judge. It was said that some of the language was picturesque and figurative. No doubt; but it was quite easy in picturesque and figurative language to express what was true; and they could not say that that language differed from the rule which they had just laid down. It was unnecessary to criticise the very words used, unless they thought them misleading and calculated to lead the jury to think that something which would amount to absolute insanity must be proved to entitle them to bring in a verdict of manslaughter. They thought that the doctrine was not expressed by Mr. Justice Coleridge in such a way as to mislead the jury into thinking that insanity must be proved, and by their verdict they must have meant to find that he was capable of having the intent to injure or kill, and in fact did have such intent. The appeal must be dismissed.

Crime and Drunkenness.

In the recent report of the Departmental Committee on the Inebriates Acts occurs the following passage: "Since the drunkenness of the occasional drunkard is produced by his own voluntary act, it would seem just that he should be held responsible for his drunkenness and for all its consequences.

That this is the view usually taken is shown by the familiar maxim that 'drunkenness is no excuse for crime.' In actual practice, however, drunkenness is often regarded as a mitigation of those crimes in which intent 'is an essential factor, since a man may be proved to have been so drunk as to have been incapable of forming an intention. There does not seem to be any sufficient reason for interfering with this practice."

The accuracy of this statement of the law is shown in a convincing and gratifying manner by the judgment of the Court of Criminal Appeal in the case of Rex *v.* Mead, which is so important that it is here reproduced *in extenso.* While it has long been understood that the law is as has been stated above, the decisions hitherto given have not always been in harmony with that statement, and it is important, therefore, to have a judgment of the Court of Appeal which places the matter out of doubt.

The function of the medico-legal pages of this Journal has never been restricted to the mere record of trials and decisions. We have always examined such records with a view to ascertaining how far they were in harmony with what appear to us, as citizens in the first place and alienists in the next, to be substantial justice. From this point of view the judgment of Mr. Justice Darling appears unexceptionable, both as the statement of a principle of law, and in the application of that principle to the particular case in question. Incidentally it shows that the state of the law enunciated by the Departmental Committee is correct.

KING'S BENCH DIVISION.

(Before the Lord Chief Justice of England, Mr. Justice Bigham, and Mr. Justice Walton).

EATON *v.* BEST.

When is a Man an Habitual Drunkard?

THIS was a case stated by the stipendiary magistrate for the city and county of Hull. At a Court of Summary Jurisdiction complaint was made by the appellant, William Eaton, that the respondent, Arthur Best, "having within the twelve months preceding the date next hereinafter mentioned been convicted summarily at least three times of an offence mentioned in the first schedule to the Inebriates Act, 1898,