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,

and being an habitual drunkard within the meaning of the Inebriates Acts, 1879 to 1898, unlawfully was on August 8th, 1898, found drunk and incapable in Spring Street, at 4.40 p.m." The complaint was heard on August 17th and 25th, when the following facts were proved or admitted:

That on August 8th the respondent was found drunk in a highway in the said city and county, and that within the twelve months preceding the date of the commission of the said offence the respondent had been convicted summarily three times of other offences which are mentioned in the schedule to the Inebriates Act, 1898; that the respondent (whose age was about thirty-five) was given to drink and had been so for twelve or fourteen years; that through drink he lost his situation when working for his brother, a dry-salter, some years ago, since when the only employment he had been able to get had been on docks; that he would sometimes be drunk three or four times in one week and at other terms he would keep sober for four or five weeks; there had been no improvement latterly. When drunk he was more like a lunatic than a human being and did not appear to know what he was doing. He was separated from his wife six or seven years ago because of his drinking habits; when he was sober he was, in the words of his father, "as right as anyone," and knew what he was doing; he had been seen apparently dazed the day after drinking heavily, but not more dazed than any other person would be who had consumed as much alcohol, and his condition was no more peculiar than that of any other person who had been equally drunk. Nothing was noticed in the respondent attributable to a course of drinking, and his father stated that he would give his son money and send him out to do business if he were sober. By Sec. 2 (1) of the Inebriates Act, 1898, it is enacted that "any person who commits any of the following offences (mentioned in the schedule to the Act) and who within the twelve months preceding the date of the commission of the offence has been convicted summarily, at least, three times of any offence so mentioned, and who is an habitual drunkard, shall be liable upon conviction on indictment, or if he consents to be dealt with summarily, on summary conviction, to be detained for a term not exceeding three years in any certified inebriate reformatory, the managers of which are willing to receive him." Sec. 3 of the Habitual Drunkards Act, 1879, provides that "'an habitual drunkard' means a person who, not being amenable to any jurisdiction in lunacy, is, notwithstanding, by reason of habitual intemperate drinking of intoxicating liquor at times dangerous to himself or herself or to others or incapable of managing himself or herself and his or her affairs." On the part of the appellant it was contended that the respondent was an habitual drunkard within the meaning of the definition in the 1879 Act inasmuch as he was "by reason of habitual intemperate drinking of intoxicating liquor . . . incapable of managing himself and his affairs." In support of this view it was argued that the words "at times dangerous, etc.," or "incapable, etc.," were inserted as a guide to the Court by way of definition of what drunkenness was and not what the effect of drunkenness might be—that if the latter they were insufficient and unnecessary. "Robson *v.* Robson" (68 J.P. 416) was also cited. It was further

contended on the authority of "R. *v.* Shaw" (L.R. 1 C.C.R. 145); "R. *v.* Dewhirst's Trust" (33 Ch.D. 416); "R. *v.* Martin's Trust" (34 Ch.D. 618); and "*In re* Barker" (39 Ch.D. 187) that persons "at times dangerous, etc.," or "incapable, etc.," if not habitual drunkards were amenable to jurisdiction in lunacy. It was also urged that if it was proved that a man had been convicted three previous times and was habitually intemperate, then his incapacity to manage himself and his affairs was proved at the same time because he was habitually intemperate. It was also contended that if the strict interpretation of the definition was the right one it would not be giving the statute a reasonable meaning, as the only persons who would come within its purview would be those whose brains were already affected, and that it would be of no use sending to inebriate reformatories. As no arguments were adduced on behalf of the respondent the stipendiary magistrate stated those which occurred to him in answer to the contentions put forward on behalf of the appellant. He was not satisfied that the case of "Robson *v.* Robson" bound him, for then the point was not taken as to whether the man's condition was the result of the habitual character of his drinking or only due to a particular preceding bout; the question was of fact as to whether the man's drunkenness, which the justices had found to be habitual, was or was not habitual. Regarding the four cases as to whether trustees suffering from paralysis, softening of the brain, or the like, were of unsound mind, which were cited on behalf of the appellant, these seemed to him not to touch the point intended to be made. The argument founded on convictions coupled with habitual intemperance seemed also to have no application. The question here was a different one. It was, "Is this man an habitual drunkard?" Had the prosecution succeeded in proving that the respondent's incapacity on sundry occasions was caused by the habitual character of his drinking habits or was it only because he was then drunk? (*Solicitor's Journal*, vol. xlvi, p. 644). There was no evidence of any symptoms of accretion of alcohol; on the contrary, when he was not drunk he was said to be "as right as anyone." He was of opinion that the appellant had failed to prove his case, and he dismissed the complaint. The question upon which the opinion of the Court was desired was whether the stipendiary magistrate upon the above statement of facts came to a correct determination and decision in point of law.

Mr. McCardie appeared for the appellant, and Mr. G. F. L. Mortimer for the respondent.

Mr. McCardie contended that the object of the Act would be defeated if the ruling of the stipendiary magistrate was correct. The facts in "Robson *v.* Robson" were almost identically the same as in the present case, and the Court held that the man was an habitual drunkard within the Act. In Stone's *Justices' Manual*, 1908, p. 273 (9), it was stated that the "law officers of the Crown have advised that the definition applies to a person who habitually drinks to excess, and who is in consequence at times, either when sober or drunk, dangerous or incapable."

Mr. Mortimer contended for the respondent that the Act aimed at a man whose capacity for managing his affairs was injured by reason of his habitual drinking, and did not apply to a man whose incapacity

arose from a particular bout of drinking, and that therefore it did not apply to the respondent.

The Lord Chief Justice, in delivering judgment, said that there was no reasonable doubt but that the respondent was what every man in the street would say was an habitual drunkard; but Mr. Mortimer said that he did not come within the definition given in the Habitual Drunkards Act, because the definition from the words "not amenable to any jurisdiction in lunacy" implied that an habitual drunkard was one who at all times was incapable of managing his affairs. But his Lordship thought that they ought not to cut down the meaning of the words in that manner, and say that the definition did not apply to a man who was in intervals between the bouts of drinking a sober man. The case must therefore be sent back to the magistrate with directions to convict.

By this appeal a question is decided, the doubt on which has completely nullified the Inebriates Act, 1898, in Hull and other places. Mr. Halkett, the stipendiary for Hull, following Mr. Tindall Atkinson, Recorder of Leeds, has held that the wording of the definition of "habitual drunkard," in the Habitual Drunkards Act, 1878, was such that, adapting the words of the late Sir FitzJames Stephen, with respect to another formula, scarcely anyone was ever drunk enough to come within it. The incapacity of the defendant was proved, and was proved to be owing to drunkenness, and it was proved that he was, and had been for twelve or fourteen years, frequently drunk; but it was held that he was not an habitual drunkard within the definition, because the definition required that his incapability should be "by reason of the *habitual* drinking of intoxicating liquor," and there was nothing to show that his incapability on the occasion in question was due to habitual drinking, and was not due merely to the fact that he was then drunk—was incapable because of a single bout of drinking, and not because of his habitual drunkenness.

This flaw in the definition, with many others, was brought to the notice of the Departmental Committee on the Inebriates Acts, whose report has been recently issued, and a new definition was formed to obviate this and the other imperfections. It is now settled by the Court of Appeal that the difficulty is, as it seems to the lay mind, an imaginary one; but it is of sufficient importance to have nullified the Act in many places for a period of ten years. A statement of all the flaws, nine in number, that have been discovered in the enacted definition of forty-seven words, will be found in the Report of

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