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.]

For this very interesting account I am indebted to Dr. Sheldon.

REX *v.* TUNNICLIFFE.

TRIED at the Chester Assizes on Wednesday, July 18th, 1906, before Mr. Justice Sutton.

The prisoner was employed as a journeyman painter by Mr. S. Whittaker, who had entered into a contract with the Committee of Visitors of the Cheshire County Lunatic Asylum at Parkside, Macclesfield, for the painting of the interior of a new infirmary annexe to the asylum. The prisoner was charged under the Criminal Law Amendment Act, 1885, s. 5 (2) for carnally knowing or attempting to have carnal knowledge, on March 23rd and 26th, 1906, of Mary Ann Allcock, a female patient in the said Asylum. He was also charged with the same offence under the Lunacy Act, 1890, ss. 324 and 325.

Mr. Justice Sutton expressed his opinion that Section 324 of the Lunacy Act, 1890, did not apply to this case, and Counsel for the prosecution did not argue the point. Under the Criminal Law Amendment Act, s. 5, the Judge put two questions to the jury: First, "Did the prisoner carnally know or attempt to have carnal knowledge of the patient?" and the jury found that he had attempted to have carnal knowledge of her. The second question was, "Did he, when he did this, know that she was an imbecile?" and the jury found that he did not know this. The verdict of the jury was, therefore, that the prisoner had committed the offence (that is, the attempt), not knowing at the time that the patient was an "imbecile," and the Judge said that was a verdict of "Not guilty," and directed prisoner to be acquitted. The prisoner gave evidence on his own behalf, and admitted that he knew the woman Allcock was an inmate of the asylum, and that she was at the time of the offence wearing the usual asylum dress; also that he knew "she was a bit wrong."

The case turned to some extent upon the technical point, "What was an imbecile?" Dr. McConaghey, the Senior Assistant Medical Officer of the Parkside Asylum, stated in his evidence that the difference between an imbecile and a lunatic was that an imbecile was a person born with a congenital mental defect, whereas a lunatic was a person with ordinary mental capacity which deteriorated. It is understood that the above is the view generally taken by the medical profession of the difference between an imbecile and a lunatic. It would, however, appear from the case of Reg. *v.* Shaw (L.R. 1, C.C. 145) that the Court of Criminal Appeal in that case held that imbecility might arise from "decay of the faculties through old age or intemperance," and that such imbecility would constitute the patient a person of unsound mind, and consequently a lunatic within the meaning of Section 90, which deals with orders for inquisitions in lunacy.

The effect of this remarkable decision appears to be that under the Criminal Law Amendment Act 1885, s. 5, in order to secure a conviction it has to be proved that the prisoner has knowledge which he could not have unless he is able to discriminate between different sorts of insanity in a patient confined in an asylum. If this is so, then Section 5 is no protection whatever either to inmates of an asylum or to idiots or imbeciles outside. The difficulty, no doubt, arises through the Lunacy Act using the word "lunatic," and the Criminal Law Amendment Act using the words "idiot or imbecile."

Under Section 324 of the Lunacy Act, 1890, the words are "or other person employed in any institution for lunatics." It does not say "employed *by the committee*" and the only argument, it seems, in favour of the Judge's decision is the doctrine that, where there is a previous description of any particular person or persons, then the general words following are limited to persons *ejusdem generis*. The special persons mentioned in Section 324 are "manager, officer, nurse, or attendant." On the other hand, however, there was no doubt that the prisoner was "a person employed in the Parkside Asylum." The above special words do not include "servants" as Section 323 does, or artisans, both of whom must occasionally be employed in the female wards.

It was suggested to Mr. Justice Sutton by the counsel for the prosecution that the case should go to the jury, and that his

lordship should state a case for argument before the Court of Criminal Appeal, where the legal points in question could have been fully discussed, but this suggestion was not adopted by Mr. Justice Sutton.

A great miscarriage of justice appears to have occurred in the above case, and if this is to be prevented in the future and due protection given to lunatics, idiots, and imbeciles, whether inside or outside an asylum, it appears necessary that the law should be made more explicit. With regard to lunatics, idiots, or imbeciles confined in asylums, if Section 324 of the Lunacy Act, 1890, does not cover a casual workman in an asylum not directly employed by the Committee, the section should be so amended as to cover this without having recourse to the Criminal Law Amendment Act, 1885. The words in Section 324 are "manager, officer, nurse, attendant, or other person," etc., and it should be made clear by the insertion of other words that this section applies to artisans, servants, and also to persons employed in or about the asylum by firms or individuals who have undertaken work for the Committee by contract or otherwise. The amendment might be brought about by a section defining what class of persons the words "or other person" in Section 324 include.

It is found necessary at times to get work such as painting, installation of electric light apparatus, etc., done by outside contractors rather than by the regular artisans at an asylum, and on these occasions it is impossible to prevent the workmen employed by such contractors from entering from time to time the asylum female wards.

CRIMINAL LAW AMENDMENT ACT, 1885, S. 5 (2); OFFENCE AGAINST IMBECILE WOMAN; DEFINITION OF "IMBECILITY."

At Bodmin Assizes, before Mr. Justice Kennedy, a man was indicted for an offence under Section 5 (2) of the Criminal Law Amendment Act in respect of an imbecile woman. It appeared that the imbecile when she was fourteen years of age was in the second standard at school, where the average age of the children was only eight years. At the present time she was not fit to be trusted alone, and was not considered capable of going out to service.