UNFITNESS TO PLEAD.*

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"UNFITNESS to plead" is a medico-legal proposition of practical importance to prison medical officers. My attention was drawn to it, shortly after I joined the Service, in a case tried at the Central Criminal Court. Since then I have frequently had to take the responsibility of forming an opinion and reporting as to prisoners' fitness or unfitness to plead, and recently my interest in this problem has been re-aroused by a case tried at the Manchester Assizes, the outcome of which I had discussed with my colleagues and also with members of the Bar.

I think it will be admitted that there is now a better understanding of mental diseases and states of mind by the Bench, and one does not meet to-day with the same opposition in the giving of evidence that was formerly the case. I think it also will be agreed that judges are not so exacting in their interpretation of the law, and it must be obvious to many of us, from experience at Court, that counsel for the prosecution do not pursue their cases with the unrelenting intent that was formerly the practice in our time. I have heard a judge himself ask a medical witness for the defence his opinion as to the prisoner's state of mind and responsibility in the terms of the McNaghton rulings, while he sustained the objection made by counsel for the defence to the same question being asked me by counsel for the prosecution because this was a matter for the jury only.

The finding that a prisoner is insane on arraignment by a verdict of "unfit to plead" usually calls for no forensic finesse or dramatic eloquence from counsel for the defence; it has no sensational news value, and if reported in the Press, the account of the trial is used only as a fill-in item; it is completely overshadowed by that often lively contested one of "guilty but insane", consequently its practical importance and value both to the legal and medical professions is apt to be overlooked.

Although, as I have suggested, judges are not so exacting now in their interpretation of the law, and allow a much greater latitude in the giving of evidence, nevertheless it is still incumbent on prison medical officers to know what the law is with regard to "unfitness to plead", and give opinion and evidence to comply with its requirements.

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Though to-day the fact of a prisoner, duly arraigned at his trial, being found unfit to plead, conveys, almost as a matter of course, that the prisoner is in some way suffering from some mental disorder or defect, this in law is, in some respects at least, a fallacy, and the origin of the law taking cognizance of the prisoner's inability to plead was not in a prisoner's mental disability, but in the inability of the Court to try a prisoner who had not, by entering a plea, either special or general, put himself " upon his country for trial ".

Consequently the development of the law in the case of the prisoner standing mute was not based on mental disability as we now understand it, but on the principle that the prisoner by his conduct was impeding the due administration of justice and ought to be treated as so doing. Happily, however, even the old law recognized that there were persons physically unable to plead, and from such inability to plead we have to-day, by various stages, reached the point where the law recognizes a mental inability to plead ; but until the year 1800, when Parliament passed the Criminal Lunatics Act, it was a condition precedent to the finding by the jury that the accused was insane that he should first plead to the indictment.

In considering the old law we must, therefore, bear in mind that in every case the prisoner must be brought to the bar, the indictment read to him, and the question, " How say you, guilty or not guilty ? " be put to him by the Clerk to the Court.

Sir Matthew Hale, sometime Lord Chief Justice, in his *Summary of Pleas of the Crown*, states that upon arraignment a prisoner may either (1) stand mute, (2) plead, or (3) confess the fact. With the latter two pleas we need not now concern ourselves.

The practice to be followed in the first case is one based on the Common Law procedure. A jury of any twelve men present must be empanelled to try the question of whether or not the prisoner stands " mute of malice " or " mute by the visitation of God " (*ex visitatione Dei*), the special form of oath being used to swear in the jury. Evidence is called, and any evidence as to the utterance or non-utterance of words by the prisoner is, of course, properly relevant ; but any medical officer giving evidence must remember that he may not properly say himself whether the accused is mute of malice or mute by the visitation of God, since these are findings of fact, and the jury alone, and not he, can express either of them.

Neither of these findings is in any way connected directly with the mental fitness or unfitness of the accused to plead. Mute by the visitation of God may lead to the fitness of the accused to plead being put in doubt, and properly so, but if the accused be found mute of malice, of necessity he must be fit to plead, unless, while capable of forming an intention to be wilfully obstructive to the Court's process, he nevertheless does not appreciate what the trial is about. Formerly, such a finding was more frequent in order to avoid the forfeiture laws then in force, and various severe and heavy tortures were, by

the Common Law, applied to such a prisoner to make him plead. In some cases he was pressed under large weights (*peine forte et dure*), but the practice varied from prison to prison, and at Newgate it is recorded that, at first, the prisoner had his thumbs tied together with whipcord. No reference is made as to the attendance of a prison medical officer at these ordeals.

In some cases it was an equivalent of a finding of guilty of the charge " by confession ". Thus, if the accused were on trial for treason, piracy or felonies within the ambit of a law passed in the reign of Henry VIII (33 Henry VIII, c. 12, s. 19), and was found mute of malice, he was found guilty. It is of interest to note that by the same Act—" If any commit high treason while they are in good, whole, and perfect memory, and after examination become *non compos mentis*, and it be certified by four of the Council that at the time of the treason they were in good, sound and perfect memory and then not mad nor lunatic, and afterwards became mad, then they shall proceed to trial ". Happily this state of affairs was remedied by an Act passed shortly afterwards in the reign of Mary (1 & 2 Philip & Mary, c. 10).

As a point of interest, the challenging of 36 jurors was held to constitute a finding of mute of malice (Hale, *Pleas of the Crown*).

An Act of George IV (7 & 8 Geo. IV, c. 28, ss. 1 & 2) enacts that if a person be found on arraignment to be mute of malice, being charged with either treason, felony, or misdemeanour, then the Court shall have a discretionary power to enter a plea of not guilty ; and if it shall so order, then such entering of the plea shall have the same efficacy and effect as if it has been entered by the accused himself. The power is only discretionary, and any prisoner standing mute of malice may of course find himself standing guilty as upon confession, but the Court in most cases avails itself of the provisions of this Act. Such cases rarely occur to-day, as forfeiture on felony has long since ceased to be enforced, though only finally removed as recently as 1870, and if they do occur they usually are the results of clumsy attempts to feign insanity. Such a case occurred at the Liverpool Assizes, January, 1933, and on the evidence of Dr. W. F. Roper, Medical Officer, H.M. Prison, Liverpool, the prisoner was found mute of malice, and a plea of not guilty directed to be entered.

Now we must turn to the other possible finding of a jury so empanelled, that is, the finding that the prisoner stands mute by the visitation of God. At Common Law there was strictly one form, and one form only, of pleading to an indictment on arraignment, and that was *ore tenus*, or aloud, but if a person be mute by the visitation of God, then the Court must ascertain whether the prisoner be able to plead in some other way, either by writing or by signs.

It is not without interest to note, in passing, the attitude of the Common Law toward the mental condition of persons with various physical defects. The case of the deaf-mute is the most illustrative. Thus, Coke in his *Commentaries* says, "A person who has been from his nativity blind, deaf, and dumb is

intellectually incapable of making a will, as he wants those senses through which ideas are received in the mind ", and that is probably an accurate statement of the law as it stands to-day, though there are no decisions reported on this point. Persons deaf and dumb only were *prima facie* intellectually incapable of making a will, and we read in Swinburne's *Probate Practice* " that the old Ecclesiastical Court of former days needed the most exacting proof that a deaf-mute had mental understanding, before granting probate of any will he made ".

The position has, of course, of necessity developed with the times. In the early part of the last century the deaf-mute did possess, in most cases, very little intellect, inasmuch as he was not taught, though he himself learned signs for his various requirements, and there are reports that judges have been convinced by the nature and number of the signs known that the deceased had intellect sufficient to make a will.

No concerted efforts towards the training of the deaf-mute came till the end of the last century, and to-day some of those persons so afflicted are as mentally intellectual as the foremost scholars.

The jury in considering the case of a man standing mute have therefore three possible findings to consider: Firstly, the man who stands obstinately mute—with him we have already dealt ; secondly, the man who, standing mute, is mute by the visitation of God, for instance, deaf and dumb, but who can perfectly well understand what is going on around him, and can, if he so desires, cause a plea to be entered on his behalf, either by signs in finger language or by writing ; and thirdly, the case of the man who stands mute because he cannot comprehend what is taking place, and therefore does not, through some mental disease or disability from which he is suffering, understand where he is or what to do. The last class is among those persons properly unfit to plead.

In the case of Reg. *v.* Pritchard (7 C. & P. 303) (1), where the prisoner, arraigned on an indictment for bestiality, appeared to be deaf, dumb and also of non-sane mind, Baron Alderson put three distinct issues to the jury, directing the jury to be sworn separately on each : First, whether the prisoner was mute of malice or by the visitation of God ; second, whether he was able to plead ; third, whether he was sane or not ; and on the last issue they were directed to inquire whether the prisoner was of sufficient intellect to comprehend the course of the proceedings of the trial so as to make a proper defence—" to know that he might challenge any one of you to whom he may object—and to comprehend the details of the evidence, which in the case of this nature must constitute a minute investigation ", and he directed the jury that if there was no certain mode of communicating to the prisoner the details of the evidence so that he could clearly understand them, and was able properly to make his defence to the charge against him, the jury ought to find that he was not of sane mind.

In Rex *v.* Dyson (York Spring Assize, 1831), Mr. Justice Parke, after

referring to Hale's *Pleas of the Crown*, directed the jury that " if they were satisfied that the prisoner had not then, from the defect of her faculties, intelligence enough to understand the nature of the proceedings against her, they ought to find her not sane ".

A distinction must be drawn between those incapable of pleading because of purely physical reasons. No direct authority can be found dealing with a case in which, through purely physical reasons, a prisoner was unable to plead, but the case of Rex *v.* Harris (61 J.P. 792) (2), though not directly to the point, shows the probable effect of such a state of affairs. In that case a prisoner attempted to commit suicide by cutting his throat; he was unable to read or write, but his faculty of hearing was in no way impaired. His self-inflicted injuries had rendered him unable to speak. A jury, duly empanelled, found that he was sane and able to plead, but that he was at that time unable to give proper instructions for the preparation of his defence. A plea of not guilty was entered following distinguishable signs made by him, and the case was put back to enable him to recover during the adjournment so that he might make adequate preparations for his defence.

Thus if the purely physical defect is permanent, it is probably proper to give evidence to the effect that the prisoner is unfit to plead.

There is authority that a prisoner found mute by the visitation of God, and quite incapable of defending himself properly, should be tried on a plea of not guilty, but the case is probably precedent decided on its own particular facts, and not one which should be followed. The case was Rex *v.* Steel, and tried before the Criminal Lunatics Act of 1800 was passed.

Having thus reviewed the Common Law and purely judge-made law relative to unfitness to plead, we can now turn to the various statutes which affect the subject.

On many occasions Parliament has been forced to legislate on some particular subject when legislation has been long overdue, not by the archaic state of the law, but by some fortuitous event which has given public opinion the necessary impetus to compel Parliament to act. This was the case in 1800. An ex-soldier named Hadfield attempted to assassinate the king, George III, as he stood acknowledging the ovations of the audience from his box in Drury Lane Theatre. The would-be assassin was immediately arrested, and subsequently brought up for trial for treason. Hadfield had formerly been a private in a dragoon regiment, and at the battle of Lincelles, in May, 1794, he received several sabre wounds in the head. He had been discharged from the army on account of insanity, being subject to delusions and attacks of maniacal frenzy. On evidence to this effect being adduced the prisoner was acquitted as insane (in those days the statutory finding of guilty but insane had not been reached), and the question arose what was to be done with the man.

Public opinion demanded that a settled practice should be adopted for such cases, and the Act " for the safe custody of insane persons charged with

offences", the Criminal Lunatics Act, 1800, was passed—probably one of the most incomplete pieces of legislation ever to survive for any length of time.

We have seen that the Common Law was fairly well defined on the question of arraignment, but the practice of subsequent disposal of a prisoner found unfit to be arraigned varied. Although he was remitted to gaol, "there to remain in expectation of the King's grant to pardon him", many criminal lunatics had been from time to time released as persons found not guilty. In spite of this, no provision was made at all in the Act for the proper care or treatment of King's pleasure lunatics, and they were simply distributed among the county gaols and asylums. The results of this system were very inconvenient, and the conditions of detention were such that many escaped. However, as the report of the Select Committee on the State of Lunatics stated, "It was not intended that the direction of the Legislature should rest here. The remanding to strict custody was a temporary expedient of an incomplete law necessarily passed in the hurry of a momentous occasion which produced it, to be completed on a more deliberate consideration".

Section (2) of the Act provided that "If any person indicted for any offence shall be insane, and shall upon arraignment be found so to be by a jury lawfully empanelled for that purpose, so that such a person cannot be tried upon such indictment, or if upon the trial of any person so indicted, such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until His Majesty's pleasure be known". Like power is also given where the prisoner, being brought before the Court, is discharged for want of prosecution—a manifest injustice, as the person is detained as a criminal lunatic without any proof of crime being given.

The insanity is at the date of arraignment irrespective of what the state of the mind is at the commission of the offence, and this bears out Blackstone's *Commentaries*, iv, p. 25: "If a man in his sound memory commits a capital offence [and in his day there were very few offences that were not capital offences] and, before arraignment for it, becomes mad, he ought not to be arraigned for it." Thus Section 2 of the Act of 1800 deals with (1) those found insane on arraignment, (2) a person appearing to the jury during the trial to be insane, (3) a person brought up to be discharged for want of prosecution who appears to be insane.

If a person is found to be insane while awaiting trial, he need not be brought up to plead, for by Section 2 (1) of the Criminal Lunatics Act, 1884, "Where a prisoner is certified, in a manner provided in this Section, to be insane, a Secretary of State may, if he thinks fit, by warrant direct such prisoner to be removed to the asylum named in the warrant"; but the official view in cases of serious crime is that the prisoner's insanity shall, if possible, be publicly decided by the verdict of a jury, and that the prisoner shall for this purpose

be left to stand his trial unless there be strong reasons to the contrary. This is in accordance with the dicta of Mr. Justice Patteson, who in 1847, in the case of Reg. *v.* Dwerryhouse (3), remarked, " The proper tribunal to determine if he is in a state to take his trial is a jury of his country ".

By Section 3 of the Criminal Lunatics Act, 1884, a power is given to the Secretary of State to remit anyone found insane who has since become sane, to prison for justice to be pursued, unless the jury have found him guilty but insane. Thus, if he is found unfit to plead, and on such finding ordered to be detained as a criminal lunatic, and subsequently becomes fit to be tried or has been malingering, as in a recent case, he may be brought up again and tried. This is obviously just, as he can still plead his insanity at the time of the commission of the crime as excusing it ; and no doubt his subsequent mental recovery would influence the appropriate quarters in their decision as to how long he was to be confined as a criminal lunatic.

I am informed that there is a patient in Broadmoor who was so remitted for trial, relapsed into a state of insanity, and was again found insane on arraignment.

If the jury have heard the evidence and found the prisoner guilty but insane, they have tried both the sanity and the guilt.

Such are, shortly, the statutory provisions relating to a prisoner's unfitness to plead.

What, then, are the conditions, at the present time, which guide us in the matter of unfitness to plead ?

As recently as 1909 Lord Alverstone, then Lord Chief Justice, in the case of Rex *v.* Emery (4), approved of the directions of Baron Alderson and Mr. Justice Parke, to which I have already referred, but also added " that the findings amounted to the accused being insane within the meaning of Section 2 of the Criminal Lunatics Act, 1800 ". These rulings are now accepted as the Law, and therefore it will be appreciated that for the purpose of the Act of 1800, the word " insane " is used in an extended sense ; it must be construed with reference to the question whether the prisoner can or cannot be tried upon indictment, and cases of mental deficiency, feeble-mindedness and senility come within its definitions.

What is the proper procedure to be adopted where there is any doubt as to the fitness of a prisoner in custody to plead ? Here there rests no light burden on the prosecution and prison medical officer, and the greatest possible care must be taken in the proceedings.

By the Trial of Lunatics Act, 1883, a verdict of " unfit to plead " is a finding that a prisoner is a criminal lunatic—one guilty but insane—that somewhat incongruous phrase, due, we are told, to the late Queen Victoria, who is reported to have said that one who did a crime, though insane and subsequently acquitted on that ground, could not possibly be said to be innocent. Thus the old verdict of not guilty on the grounds of insanity was

abolished. This is certainly an anomaly when applied to a prisoner who, because he is unfit to plead, is condemned, without evidence of guilt, as a criminal lunatic and confined as such.

In Reg. *v.* Southey, Maidstone Winter Assizes, 1865, a case where the prisoner on indictment for two charges of murder pleaded not guilty to one count, but refused to plead to the second, a plea of not guilty was entered with the assent of his Counsel, to the second charge, and the trial proceeded. After the case had been opened and the first witness examined, it was put forward by the prisoner's Counsel that the accused was insane and not in a fit state to be tried. Mr. Justice Mellor, commenting on the position, said, " It must have been known to all parties that the prisoner was suffering from some form of mental derangement, and the course taken by the prisoner's Counsel has put me in a position of great embarrassment. Regularly the question of the fitness of the prisoner to be tried should be determined before he is called upon to plead ; but in a case which occurred before my brother Blackburn J. when it arose in the course of the trial, he put both questions at the end of the trial, whether the prisoner was in a fit state to be tried, and whether he was guilty or not guilty. There would be a great loss of time, and great inconvenience in having the question tried twice over."

It is recognized as the duty of the prosecution to communicate to the defence any information it may have relating to the mental condition of the prisoner, and following the dicta in the foregoing case it is also its duty to bring any evidence of the prisoner's insanity to the notice of the Court before the charge is inquired into. The finding that a prisoner is insane on arraignment, giving relief from the burden of proof of evidence of the charge, may give rise subsequently to a feeling of resentment on his part, because while not having had a trial as to his guilt, he is confined as a criminal lunatic.

The advantage of allowing an insane prisoner to plead to an indictment, if at all possible, is well illustrated by a case tried at the Liverpool Assizes. The prisoner, a typical case of paraphrenia, and, in my opinion, a dangerous lunatic, was charged with damaging a building with dynamite with intent to murder, and with attempting to blow up a dwelling-house, and I had reported to the Court that the prisoner was fit to plead. After the case was opened by the prosecution, the judge directed that there was no evidence to connect the prisoner with the offence, and a verdict of not guilty was returned. Cases of this category should be tried, and, if the prisoner is acquitted and is yet so insane as to be a menace to the community, the appropriate steps taken for his confinement under the Lunacy Act, 1890, as was done in this case.

A further difficulty may arise should the defence raise the question that the prisoner is unfit to plead. I have in mind a recent case, where on committal for trial, the solicitor for the defence would have been only too pleased to have received a report from me that his client was insane and unfit to plead, yet the prisoner was discharged for want of prosecution. The prison medical

officer cannot be expected to know whether the trial ought to be allowed to proceed because there is insufficient evidence to justify the case going to the jury, and consequently he must not be influenced by either Counsel that because the prisoner is insane the proceedings of the trial might be simplified or the possibility of acquittal overcome by the finding that the prisoner is unfit to plead. Further, it must be borne in mind that it was held in the case of Rex *v.* MacHardy (5) that a verdict of unfit to plead does not amount to a conviction, and consequently there is no right of appeal under Section 3 of the Criminal Appeal Act, 1907.

Let us now consider what evidence is necessary, and the form it should take, to enable a finding of unfitness to plead to be made. It must always be borne in mind that such a finding is a finding of fact, and therefore a question for the jury alone, subject, of course, to the proper direction of the judge; hence the medical officer cannot say in evidence, "In my opinion the prisoner is unfit to plead", because by so doing he is usurping the function of the jury. The medical officer should be clear in his own mind as to why he has formed the opinion that the prisoner is unfit to plead, and, irrespective of the type of insanity, must be guided in his opinion by the rulings given in the cases already quoted, which are to the effect that a prisoner is unfit to plead to an indictment when he suffers from such defect or disease of the mind as prevents him from understanding the nature of the proceedings against him; from distinguishing between a plea of guilty or not guilty; from following the course of the trial himself or instructing Counsel on his behalf to make a proper defence, and from knowing that he has the right to challenge a juror.

If in the giving of his evidence the medical officer shows to the Court that he knows the requirements of the law, the value of his evidence will be greatly enhanced and the proceedings simplified. Personally, with this object in view, after giving in evidence the observed facts as to the prisoner's state of mind, I then express my opinion as to his unfitness to follow the course of the trial himself and inability to instruct counsel for his proper defence. This form of evidence has been accepted by judges without demur.

In the case of Rex *v.* Goode (6), where a prisoner indicted for uttering seditious libel showed obvious signs of insanity by his conduct on arraignment, it was held that the jury might form an opinion as to his sanity, judging from his conduct alone, without the adducing of any evidence, expert or otherwise, as to his sanity.

A prisoner under observation at Brixton, because he had been in an asylum, informed me that he stood on his head in the dock when called upon to plead at his trial at Gloucester Assizes for housebreaking, as he expected a long term of penal servitude. Without any evidence being called, he was found unfit to plead.

As evidence of unfitness to plead is directed to the prisoner's capacity to take an intelligent part in the proceedings against him, it is essential that the

accused should be examined on the day of the trial. The advisability of so doing in all cases of insane prisoners has been stressed at these conferences. My experience has been that an insane prisoner's attendance at Court produced an acute phase of suppressed excitement with aggravation of mental symptoms, so much so that when in the dock one could well describe the prisoner's demeanour as "playing up" to the evidence given. I myself have never experienced a case where the prisoner has challenged the evidence given as to his insanity, although his previous attitude might have led one to expect strong resentment. A prisoner whom one has reported fit to plead, may well become, under such changed circumstances, unfit to plead, as is exemplified in the following case: A woman, charged with murder of her child, was brought from Manchester for trial at the Liverpool Assizes. Although insane there were no indications while on remand that she would be likely to be unfit to plead at her trial, and Dr. A. A. S. MacDonald, Medical Officer, H.M. Prison, Manchester, had reported accordingly, yet on her arrival at the Assize Court she was in a state of extreme emotion and mental distress, and it was obvious that she was not in a condition to take any active part in her trial. When questioned as to her plea, she persisted that she must plead guilty; she had done a wicked thing and must be punished. Dr. MacDonald reported to the learned Clerk of Assize that he had examined the prisoner since her arrival at Court, and was prepared to give evidence that she was unfit to plead.

A prisoner who is insane may, if allowed to do so, persist in pleading guilty either to avoid the question of insanity being raised at the trial, or because of defective or insane reasoning, does not have proper understanding of the consequences of such a plea.

To allow an insane prisoner to plead guilty must put the judge in an embarrassing position when it comes to the matter of sentence. The following cases are of interest on this point. In Rex *v.* Tibbett, tried at the Central Criminal Court, 1912, before Mr. Justice Bucknill, the prisoner was charged with shooting at Mr. Leopold de Rothschild, and with shooting Police-Constable Berg, in each case with intent to murder. The case, as regards the prisoner's mentality, was a straightforward one of paranoia. Dr. Hyslop had been called in to examine the prisoner on behalf of the defence, and at the trial both he and Dr. Dyer gave evidence that the prisoner was unfit to plead. The prisoner protested, and Counsel for the Defence raising no objection, the judge directed the jury to return a verdict that the prisoner was fit to plead. On indictment the prisoner pleaded guilty, in spite of protests from his Counsel, and was sentenced to twenty years' penal servitude. In discussing this case after the trial Dr. Dyer was of opinion that the judge had overlooked the possibility of the prisoner pleading guilty, and that the jury, in accepting his direction, were anxious to hear the case and to see in the witness-box a member of the House of Rothschild.

The case of Rex *v.* Murney, tried at the Manchester Assizes before Mr.

Justice Atkinson, was also a case of attempted murder. The prisoner attacked a girl with a rolling-pin, and two days later struck an old man several times on the head with a poker. There would have been nothing to attach the prisoner with these murderous offences had he not given himself up to the police. When received at Liverpool he was dull and apathetic, talked quite glibly of what he had done, and was quite indifferent to the consequences. His memory for both recent and remote events was impaired; he had the idea that people in the street had been talking about him, and he could hear a voice inside him saying, "Go on, hit him". On committal for trial he was transferred to Manchester, and Dr. S. S. H. Shannon, Medical Officer, took over charge of the case. Dr. Shannon reported that the prisoner was insane, and, much to the surprise of the Court, the prisoner, on a last-minute instruction from his Counsel, pleaded guilty. In passing a life sentence, Mr. Justice Atkinson remarked: "The proper procedure in the case would have been for the prisoner to have pleaded not guilty, and a verdict obtained of 'guilty but insane'. He could not undertake the responsibility of deciding the date of discharge; this, if the prisoner recovered his sanity, would be a matter for the Home Secretary to decide."

Both the plea and sentence gave rise to considerable comment among the members of the Bar, and, to my mind, it is almost incredible that any Counsel in a case of this gravity should put on one side the question of the prisoner's state of mind and degree of responsibility by advising a plea of guilty.

The last case is that of a prisoner who was brought up for trial on an indictment for arson, the resulting damage amounting to £50,000. The prisoner had no real appreciation of the gravity of his offence, and on the first remand stated that the whole matter had been greatly exaggerated, and that he thought the charge would be dropped at the next hearing. Two years previously the prisoner had suffered from a nervous breakdown and religious mania, and it was evident, from the reports received, that he had never made a complete recovery. His sister was a patient in a mental hospital.

After committal for trial, when asked what he was going to plead, prisoner stated he intended to plead guilty if his employers persisted in the charge; this plea, he conceived, would involve the company in criminal liability for the fire and the damage. In concluding my report to the Court, I stated, "In my opinion this prisoner is of unsound mind and has no sane and proper realization of the nature and quality of his act, or that what he did was wrong. His intention to plead guilty is the outcome of insane reasoning, and, as such a plea would exclude the question of his sanity being determined by the Court and jury, I am of opinion he is unfit to plead".

Writing on the subject of "unfitness to plead" in Hack Tuke's *Dictionary of Psychological Medicine*, Dr. William Orange, late Medical Superintendent of Broadmoor Criminal Lunatic Asylum, gives the following statistics: The total number of persons admitted to Broadmoor from the time the asylum

was opened (1863) down to the end of 1888 who had been arraigned in court and found insane was 884, and of these, 265, or approximately 30%, had been found insane on arraignment.

Commenting on these comparative figures Dr. Orange continues: "First, the records show that the question as to the fitness of a prisoner to plead is much more closely examined into in grave than in slighter offences; and, secondly, they show that, in cases of all kinds, the proportion of prisoners found insane on arraignment has been greater in recent than in former years," and later adding, "that the proportion of insane prisoners who are found insane on arraignment is not large is not a matter for surprise when it is quite clear that an accused person may be insane, and may be well known to be insane, and yet may be declared to be sane so far as his ability and fitness to plead are concerned".

In view of these figures and comments it is interesting to note that for the period 1918 to 1932, out of a total of 794 prisoners arraigned in court and found insane, 381, or 48%, were found insane on arraignment—a considerable advance—and in the course of time when the cycle of subjects discussed at these conferences has been completed, and it be thought opportune and of sufficient interest for another paper to be read on the question of "unfitness to plead", it may well be that the proportion of prisoners found insane on arraignment will then be greater still.

In conclusion I have to acknowledge my indebtedness and grateful thanks to Mr. Oliver Huntley, LL.B., for his assistance in the preparation and presentation of the legal aspects of this paper.

References.—(1) Carrington and Payne, *Reports of Cases*, p. 303.—(2) *Justice of the Peace Reports*, lxi, p. 792.—(3) Cox, *Criminal Cases*, p. 446.—(4) 1909, 2 King's Bench, p. 81.—(5) 1911, *Criminal Appeal Reports*, vi, p. 272.—(6) Adolphus and Ellis, 7, p. 536.