Medico-Legal Notes.

HARNETT *v.* FISHER.

This case was tried, before Mr. Justice Horridge and a special jury, on April 13 to 20. It was a sequel to the case of Harnett *v.* Bond and Adam, which was fully reported in the volume of this Journal for 1924.

The plaintiff, Mr. William Smart Harnett, was certified insane in November, 1912, by Dr. Penfold (now deceased), of Newington, and Dr. Henry Holdich Fisher, of Sittingbourne, Kent, and was removed to a private mental hospital. The plaintiff claimed damages against Dr. Fisher for alleged negligence in certifying. It appears that the first certificate was given by Dr. Penfold, who then asked Dr. Fisher to see the plaintiff for the purpose of giving the second certificate. The two doctors met and had a consultation. Dr. Fisher saw the plaintiff gesticulating in the street, followed him, and had a short conversation with him. He was unable to recall the details of this conversation; the fact that more than thirteen years have elapsed must be remembered. He had not pressed his questions, in order that the plaintiff might not become more excited than he actually was at the time. The facts which indicated insanity, as set out on the certificate, were that the plaintiff rambled about religious matters, that he said he had a call to rescue persons in the Borstal institutions, and to draw everybody to Christ, and that he was deeply steeped in sexual topics. It was contended, on behalf of the plaintiff, that these statements were untrue, and that, even had they been true, they did not justify the certification of the plaintiff.

The plaintiff gave evidence. He denied that he had said anything about having a mission to save souls, but admitted that he would preach if asked to do so, and that he had the intention of writing a book on sexual ethics. Medical evidence was called on behalf of his case. Dr. Theophilus Hyslop did not consider that the facts set out on the certificate were sufficient to show that the plaintiff was a proper person for care and treatment in an asylum. Dr. Risien Russell took the same view. Various lay witnesses were called to testify to the plaintiff's sanity at the time in question.

The defendant detailed the facts which have been briefly set out above. Medical evidence was then called in support of this side of the case. Dr. Adam, of Malling Place, who received the plaintiff after his certification, was quite satisfied that he was insane at the time, but he did not think that the facts set out on the certificate were very strong. Dr. Ludford Cooper, who saw the plaintiff

shortly before the certification, was of opinion that he was then of unsound mind. Dr. Edwin Stephen Passmore, under whose care the plaintiff was passed in 1913, was of a similar opinion. Dr. Porter Phillips considered that it might be wise, in some cases, not to excite a patient by questioning him, and that observation of his customs, language and conduct, taken in conjunction with the facts communicated by others, might be enough for the purpose of certification. Colonel Richard Locke, the magistrate who made the reception order, stated that he had felt no doubt as to the plaintiff's insanity.

Much stress was laid upon the questions which should be put to the patient in such a case. It is rather curious that the case of a patient who will not speak at all does not seem to have been put to any of the medical witnesses.

The judge left two questions to the jury: (1) Was Mr. Harnett insane on November 10, 1912? (2) Did Dr. Fisher use reasonable care in certifying him? The jury answered both questions in the negative, and assessed the damages at £500.

A legal argument followed as to whether the action was not barred by the Limitation Act, 1623, which limits the period during which such an action can be brought to the term of six years after the alleged injury. It was contended that this statute did not apply in this case, because the plaintiff was *non compos mentis*—a condition which specifically exempted a suitor from the operation of the Act. The judge ruled that the jury having decided that the plaintiff was of sound mind in 1912, he (the plaintiff) did not come within this exemption. Another exemption had originally been the case of imprisonment, and it might have been contended that Mr. Harnett had, for this purpose, been imprisoned. This part of the Act has, however, been repealed by a later statute. The judge held, although with apparent reluctance, that Dr. Fisher was protected by the Limitation Act. The effect of this ruling was a verdict for the defendant. It was also contended that Mr. Harnett's detention was brought about, not by the act of Dr. Fisher, but by the judicial act of the magistrate who signed the reception order. The judge, however, ruled that the making of the order was not the intervention of a fresh, independent cause, and that the defendant was liable for the consequences of his act.

We cannot but regard the result as unsatisfactory. On the one hand, we must all sympathize with Dr. Fisher in having such an action brought against him after the lapse of so long a period of time. On the other hand, there will probably be many who consider that Mr. Harnett has been deprived, by a legal technicality, of damages which the jury had found (whether rightly or wrongly

we are not here concerned) were his due. The obvious lesson of the case is that practitioners who are called upon to certify in such cases should take heed that their examination of the alleged lunatic is sufficiently complete to stand subsequent investigation, and that the facts placed by them on the certificate contain definite and sufficient evidence of such unsoundness of mind as would justify the patient's restraint. The case can only strengthen the already apparent, and natural, reluctance of practitioners to certify, even in the very clearest cases. Ultimately this cannot but operate adversely to the general welfare of society.

Rex *v.* George Sharpes.

This case was tried at Warwick Assizes, on March 9, before Mr. Justice Shearman. The prisoner was a farm labourer, aged 19 years, and he was accused of the murder of Mrs. Mary Crabtree, the wife of his employer, on January 13. Sharpes had been an inmate of a reformatory school. He had been employed by Mr. Crabtree on a farm in Cheshire, and on the latter moving to another farm, at Ladbroke, in Warwickshire, Sharpes came there also.

The actual facts of the case were not disputed, the defence being that of insanity. The prisoner had murdered Mrs. Crabtree by striking her on the head with a hammer, thus fracturing her skull. A few minutes later he was seen by a girl, who, noting that he had blood on his hands, asked him what he had done. He replied, "I wonder what I have done." Soon after this he inflicted a wound on his own neck, and was removed to a local hospital. While there, he wrote a confession, which was read at the trial. In this statement he said, "Something entered my head in the morning to kill Mrs. Crabtree, and the thought kept worrying me all the morning. She passed as I was working at the wall. I struck her on the head. I tried to clear up the mess with my cap. Mrs. Crabtree told people that I had been in a reformatory."

Very little evidence was adduced in support of the plea of insanity. It was stated that the prisoner was born as the result of a long and difficult labour, that he had complained of headaches, that he was of weak physique, and that he had certain physical deformities.

Dr. Hamblin Smith, the Medical Officer of Birmingham Prison, stated that the prisoner was of average intelligence, and had shown no signs of insanity.

Counsel urged that there was just that small degree of motive which would not affect a healthy mind, but which might affect an abnormal mind. The motive was that the accused had an