A SUPPLEMENT TO THE DIGEST OF THE LAW RELATING TO OFFENCES PUNISHABLE

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ADVERTISEMENT.

MANY cases having been decided, and some very important Criminal Statutes passed, since the first appearance of my "Digest of the Criminal Law," I have thought that to those who possess that volume a supplement would be acceptable; and others I believe will find, that the original work and the supplement together, bring down the Law upon this subject to a later period than any other previous publication.

R. M.

4, *Brick Court, Temple,*
September, 1836.

A SUPPLEMENT, &c.

ABORTION.]—On an indictment for administering with intent to procure abortion. Held, that the innoxious nature of the drug is immaterial to constitute the offence within 9 Geo. 4, c. 31, s. 13. (Per Vaughan, B.) *Rex* v. *Coe*, 6 *C. & P.* 403.

ACCESSORIES.]—*Abortion—Self Murder.* A pregnant female, at the instigation of the prisoner, but in his absence, took poison to procure abortion, which proved fatal; Held, that she was guilty of self murder; and that as he could not be tried at common law as an accessory before the fact to the crime of self murder, because the principal, being dead, could not be tried, so neither could he be tried under 7 Geo. 4, c. 64, s. 9, which only extends to accessories which might have been tried before that enactment. The prisoner was transported for 14 years, at his own request, instead of being tried upon another indictment. *Rex* v. *Russell*, 1 *Moody, C. C.* 356.

Harbouring Felons. Where the felon went, immediately after committing the felony, to the room of the party charged with harbouring, &c., with whom he had been previously intimate, and whose friends were residing in America, and both left the place together, with the intention of proceeding to America; Held to be evidence to go to a jury, and that he might be convicted of harbouring, &c. *Rex* v. *Lee*, 6 *C. & P.* 537.

ACCOMPLICE.]—*Evidence.* The corroboration of an accomplice ought to be as to some fact or facts, the truth or falsehood of which goes to prove or disprove the offence charged against the prisoner. *Rex* v. *Addis*, 6 *C. & P.* 389.

Evidence of. It is no confirmation of an accomplice in material facts, as against the others, that the robbery be proved to have been effected in the mode stated by him. *Rex* v. *Webb*, 6 *C. & P.* 595.

Per Denman, C. J. The jury may if they please act upon the evidence of an accomplice without any confirmation of his statement. *Rex* v. *Hastings and another*, 7 *C. & P.* 152.

Evidence. The rule of not convicting on the testimony of an accomplice alone, equally applies where there is more than one accomplice. *Rex* v. *Noakes*, 5 *C. & P.* 326.

ACCOMPLICE—(*continued.*)

The evidence of the wife of an accomplice is no confirmation of the testimony of her husband. For this purpose they must be taken as one person. *Rex* v. *Neal and another*, 7 *C. & P.* 168.

APPEARANCE.]—Where an indictment for felony was removed by *certiorari*, the Court of King's Bench, under special circumstances, ordered that the defendant should be at liberty to plead by a clerk in court, and that error should not be brought by either the prosecutor or defendant, on account of the plea being so taken. *Rex* v. *Penprase and others*, 4 *B. & Ad.* 573; *Rex* v. *Blackburn and others*, *Id. n. (a)*, 575.

ARREST.]—Where the prosecutor was a watchman, and being known by the prisoner to be so, was desired to arrest persons alleged to have attempted to commit robbery within his beat, though there was no evidence in fact of any attempt, and he followed them beyond his district and attempted to apprehend them, when a scuffle ensued, in which he was wounded; Held by nine judges out of thirteen that the watchman might legally arrest, without saying that he had a charge of robbery against the prisoners, and though they had in fact done nothing to warrant the apprehension. *Rex* v. *Woolmer and others*, 1 *Moody, C. C.* 334.

On an indictment for assaulting and wounding, with intent to resist and prevent lawful apprehension, the warrant to apprehend leaving the Christian name of the prisoner in blank; Held bad, and that the prisoner could not be convicted. The warrant should have assigned some reason for the omission, and have given some distinguishing particulars of the person to be apprehended. *Rex* v. *Hood*, 1 *Moody, C. C.* 281.

ASSAULT.]—*Attempts.* An attempt to commit a statutory misdemeanor, as an indecent assault, is indictable as a misdemeanor. *Rex* v. *Butler*, 6 *C. & P.* 368.

A police officer hearing a noise, and entering a public house, the door being open, is not a trespasser, so as to justify an assault on him. *Rex* v. *Smith*, 6 *C. & P.* 136.

AUTREFOIS ACQUIT, &c.]—The court will not reject the plea of *autrefois acquit* on account of the informal manner in which it is presented, but will assign counsel to put it into a formal shape. *Rex* v. *Chamberlain*, 6 *C. & P.* 93. And as such plea can only be proved by the record, the court will postpone the trial, to enable a prisoner to apply for a *mandamus* to compel the making up of the record. *Rex* v. *Bowman*, 6 *C. & P.* 101.

Extending provisions of Act 7 G. 4. c. 64. to bail in cases of felony.

BAIL.]—As to Bail in cases of FELONY, Stat. 5 & 6 W. 4. c. 33. s. 3. enacts, "That it shall be lawful for any two justices of the peace, if they shall think fit, *of whom one or other shall have signed the warrant of commitment*, to admit any person or persons charged with felony, or against whom any warrant of commitment for felony is signed, to bail, in the manner and according to the provisions directed by Stat. 7 Geo. 4. c. 64. in such sum or sums of money and with such

BAIL—(*continued.*)

surety or sureties as they shall think fit, and notwithstanding such person or persons shall have confessed the matter laid to his or their charge, or notwithstanding such justices shall not think that such charge is groundless, or shall think that the circumstances are such as to raise a presumption of guilt."

Magistrates bailed a party on a charge of felony, but having received further evidence, committed him to gaol. Held justified in so doing, and a *habeas corpus* refused. *Allen, ex parte*, 3 *Nev. & M.* 35.

Upon an application for a *certiorari*, with a view to bail on a charge of manslaughter, before justices in the country, a special affidavit of poverty is not required, if it sufficiently appears that the party is poor. *Rex* v. *Booker*, 2 *Dowl. P. C.* 446.

In case of bills for misdemeanors found at the Central Court under the commission of Oyer and Terminer, forty-eight hours' notice of bail must be given, unless the application be made on Friday; and there is reason to think that the object is to keep the party in custody over Sunday. *Rex* v. *Carlile*, 6 *C. & P.* 651.

BANKRUPT.]—Since 6 Geo. 4, c. 16, it is still necessary, on an indictment for conspiring to conceal goods of the bankrupt, to aver and prove the facts which show the act to be unlawful, stating that a commission issued, under which the party was duly found and declared a bankrupt, without further averring the trading, petitioning creditor's debt, &c. Held insufficient. *Rex* v. *Jones*, 1 *Nev. & M.* 78; and 4 *B. & Ad.* 328.

On an indictment against a bankrupt for not disclosing and not delivering over his effects; Held that the balance sheet signed by him, and on the file, being delivered under compulsion and on oath, was not admissible against him as an admission of the debt therein stated. *Rex* v. *Britton*, 2 *M. & Rob.* 297.

BURGLARY.]—A permanent building of brick and mud, occupied only for a few days of the year at a fair, but with doors and windows, and where the occupiers slept every night of the fair, during which it was broken and entered; Held a sufficient dwelling-house to be the subject of burglary. *Rex* v. *Smith*, 1 *M. & Rob.* 256.

Where the entry was by putting the arm through a pane of glass previously broken, and removing the fastening, but which could not be done without breaking more of the glass; Held a sufficient breaking; not by breaking the residue of the pane, but by unfastening and opening the window. *Rex* v. *Robinson and others*, 1 *Moody, C. C.* 327. And where the prisoner got into a house through a cellar, by lifting up a stout flap outside, kept down by its own weight; Held to be a sufficient breaking to support burglary. *Rex* v. *Russell*, 1 *Moody, C. C.* 377; and see *Rex* v. *Callan*, *ante*, *p.* 41.

An indictment for burglary stated in one count that the prisoner did "break *to get* out," and in another count "did break *and*

BURGLARY—(*continued.*)

get out;" Held not sufficient to convict of burglary under Stat. 7 & 8 G. 4, c. 29, s. 11, the words there being "*break out.*" (See the Section *ante* p. 50.) *Rex* v. *John Crompton*, 7 *C. & P.* 139.

Housebreaking. Where the prisoner stole articles from a bed-room over a stable, not connected with the house, nor under the same roof; Held not within the statute. *Rex* v. *Turner*, 6 *C. & P.* 407.

Breaking the house, and removing money from a bureau, and on being disturbed, throwing it away under a grate; Held a sufficient breaking and stealing within 7 & 8 Geo. 4, c. 29, s. 12. *Rex* v. *Amier*, 6 *C. & P.* 344.

Entering through a hole left in the roof of the house for light; Held by Bosanquet, J., not a sufficient breaking to constitute burglary. *Rex* v. *Spriggs*, 2 *M. & Rob.* 357.

BURNING.]—An open building, used for sheltering cattle, or putting carts, &c. under cover, in a field, and out of sight of the owner's dwelling-house; Held, by seven judges against six, not an out-house within the statute. *Rex* v. *Ellison and others*, 1 *Moody, C. C.* 336.

Where the husband of the prisoner was in the actual though wrongful occupation of the house which she set on fire; Held to have been properly alleged in the indictment to be in the husband's possession. *Rex* v. *Wallis*, 1 *Moody, C. C.* 344.

On an indictment for setting fire to a stack of beans; Held that the court would take notice that beans were pulse; that the offence had nothing of locality in it, and therefore there was no objection that there was no such parish as that named in the indictment; and that there was no such place within the county, could only be taken advantage of by plea in abatement. *Rex* v. *Woodward*, 1 *Moody, C. C.* 323.

The prisoners were indicted under 7 & 8 G. 4, c. 30, s. 17, for setting fire to "a stack of straw." It appeared that the lower part of the stack consisted of cole-seed straw and the upper part of wheat stubble; Held that this was not a stack of straw within the statute. *Rex* v. *Tottenham and another*, 7 *C. & P.* 237.

Where the prisoner was charged in different indictments with setting fire to three ricks, and the last offence was first tried; Held that the accomplice might state the transaction as to the whole, as constituting part of the same transaction. *Rex* v. *Long*, 6 *C. & P.* 179.

A cart-shed, situate in a field by itself, held not an out-house within the 7 & 8 Geo. 4, c. 30, s. 2. *Rex* v. *Parrot*, 6 *C. & P.* 402.

Setting fire to faggot wood, fuel, and straw, placed in a loft over a covered gateway, of which no part caught fire; Held not to be a setting fire to a stack of straw or wood within 7 & 8 Geo. 4, c. 30, s. 17. *Rex* v. *Aris*, 6 *C. & P.* 348.

CARNAL KNOWLEDGE.]—*Rape.* The prisoner, with three other men, committed, at the same time and place, one after the other, successively, rapes upon the prosecutrix, each in turn aiding and abetting the others. Upon an indictment against two, charging them in different counts as principals in the first degree, and as aiders and abettors to each other; Held, that on a general verdict, as to one, the indictment was good against him as a *principal*, though 9 Geo. 4, c. 31, makes no specific provision against aiders and abettors in rape. *Rex* v. *Folkes*, 1 *Moody, C. C.* 354.

So in case of sodomy, (Taunton, J., and Gurney, B., dissenting.) *Rex* v. *Rockspear*, 1 *Moody, C. C.* 342.

If there has not been penetration sufficient to rupture the hymen, the offence of rape is not complete, (per Gurney, B.) *Rex* v. *Gammon*, 5 *C. & P.* 321, *contrà Russen's case*, 1 *East, P. C.* 438. And *Beck*, in his "Medical Jurisprudence," says, it would be difficult to support an accusation of rape when the hymen is found entire, p. 53.

Child under Ten. On indictment for carnally knowing a child under ten, the jury found that there had been penetration, but no emission; Held by all the judges, except Taunton, J., and Gurney, B., that the prisoner had been rightly convicted. *Rex* v. *Cox*, 1 *Moody, C. C.* 337, *and C. & P.* 297, *overruling Rex* v. *Russell*, 2 *M. & M.* 122.

Where the offence was committed on a child alleged under ten years; Held, that the best evidence of the age of the child ought to be produced, and that mere declarations of the grandmother, who might have been called, (the mother being dead,) were insufficient. *Rex* v. *Wedge*, 5 *C. & P.* 298.

CATTLE.]—*Stealing.* A drover, being hired to drive sheep to a particular place, sold them; Held, that having only the custody, and no right of possession in himself, his possession was the owner's, and the conviction proper. *Rex* v. *M'Names*, 1 *Moody, C. C.* 368.

Mere proof of a horse, left at a place twelve miles distant, with a person to agist, being afterwards missed; Held, without producing the person or his servant, insufficient to lay a foundation for a conviction on the ground of its having been stolen. *Rex* v. *Yend*, 6 *C. & P.* 176.

An indictment for stealing "one sheep," held supported, whether the animal was proved to be a *rig* or a *wether*. *Rex* v. *Stroud*, 6 *C. & P.* 535.

Where the only evidence, on a charge of stealing heifers, was the prisoner's statement that he had driven away two heifers from his uncle's premises, called the W. D., the witnesses not undertaking to say there was no other farm of that name; Held, that it was not sufficient to convict him of stealing the prosecutor's heifers; though, had it been proved that his farm was the only W. D., it would have been sufficient. *Rex* v. *Tuffs*, 5 *C. & P.* 167.

CENTRAL CRIMINAL COURT.]—By Stat. 4 & 5 W. 4, c. 36, intituled "An Act for establishing a New Court for the Trial of Offences committed in the Metropolis and Parts adjoining," (passed July 25, 1834,) reciting that "Whereas it is expedient, for the more effective and uniform Administration of Justice in Criminal Cases, that Offences committed in the Metropolis and certain Parts adjoining thereto should be tried by Justices and Judges of Oyer and Terminer and Gaol Delivery in the City of *London*:" it is enacted "That the Lord Mayor for the time being of the City of *London*, the Lord Chancellor or Lord Keeper of the Great Seal, and all the Judges for the time being of His Majesty's Courts of King's Bench, Common Pleas, and Exchequer, the Chief Judge and the two other Judges in Bankruptcy, the Judge of the Admiralty, the Dean of the Arches, the Aldermen of the City of *London*, the Recorder, the Common Serjeant, the Judges of the Sheriff's Court of the City of *London* for the time being, and any Person or Persons who hath or shall have been Lord Chancellor, Lord Keeper, or a Judge of any of His Majesty's superior Courts of *Westminster*, together with such others as His Majesty, his Heirs and Successors, shall from time to time name and appoint by any general Commission as hereinafter stated, shall be and be taken to be the Judges of a Court to be called the 'Central Criminal Court,' to which His Majesty, and his Heirs and Successors, may direct his general Commission as herein-after mentioned; and which Court shall have Jurisdiction to hear, try, and determine all Offences committed or alleged to be committed as herein-after specified."

Whom His Majesty may appoint to be Judges of this Court.

Sec. 2 enacts, "That it shall be lawful for His Majesty, his heirs and successors, from time to time to command and cause to be issued Commissions of Oyer and Terminer to inquire of, hear, and determine all treasons, murders, felonies, and misdemeanors committed within the city of *London* and county of *Middlesex*, and those parts of the counties of *Essex*, *Kent*, and *Surrey*, within the parishes of *Barking*, *East Ham*, *West Ham*, *Little Ilford*, *Low Layton*, *Walthamstow*, *Wanstead St. Mary*, *Woodford*, and *Chingford*, in the county of *Essex*; *Charlton*, *Lee*, *Lewisham*, *Greenwich*, *Woolwich*, *Eltham*, *Plumstead*, *St. Nicholas Deptford*, that part of *St. Paul Deptford* which is within the said county of *Kent*, the Liberty of *Kidbrook*, and the Hamlet of *Mottingham*, in the county of *Kent*; and the Borough of *Southwark*, the Parishes of *Battersea*, *Bermondsey*, *Camberwell*, *Christchurch*, *Clapham*, *Lambeth*, *St. Mary Newington*, *Rotherhithe*, *Streatham*, *Barnes*, *Putney*, that part of *St. Paul Deptford* which is within the said county of *Surrey*, *Tooting Graveney*, *Wandsworth*, *Merton*, *Mortlake*, *Kew*, *Richmond*, *Wimbledon*, the *Clink Liberty*, and the district of *Lambeth Palace*, in the county of *Surrey*; and also Commissions of Gaol Delivery to deliver His Majesty's Gaol of *Newgate* of the prisoners therein charged with any of the offences aforesaid, committed within the limits aforesaid; and it shall be lawful for the justices and judges of the Central Criminal Court aforesaid, or any two or more of them, to inquire of, hear, determine, and adjudge all such treasons, murders, felonies, and misdemeanors, and all treasons, murders, felonies, and

His Majesty may issue a Commission of Oyer and Terminer and Gaol Delivery for London and Middlesex, and certain parts of Essex, Kent, and Surrey.