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CROWN CASES

RESERVED FOR CONSIDERATION;

AND

DECIDED BY

THE TWELVE JUDGES OF ENGLAND,

FROM THE YEAR 1799 TO THE YEAR 1824.

BY

WILLIAM OLDNALL RUSSELL
AND
EDWARD RYAN,
OF LINCOLN'S INN, ESQRS., BARRISTERS AT LAW.

Sicut in facti questionibus id pro vero habetur unde plures maximeque idonei stant testes, its sententiarum eas sequendas, que plurimis præstantissimisque sitantur auctorisibus. Grotius, de Jure Belli ac Pacis.

LONDON:
PRINTED BY A. STRAHAN,
LAW-PRINTER TO THE KING'S MOST EXCELLENT MAJESTY;
FOR JOSEPH BUTTERWORTH AND SON,
LAW-BOOKSELLERS, 48. FLEET-STREET.
1825.
TO
THE RIGHT HONOURABLE
ROBERT PEEL,
HIS MAJESTY'S PRINCIPAL SECRETARY OF STATE
FOR THE HOME DEPARTMENT,
&c. &c. &c.

THIS VOLUME
IS
MOST RESPECTFULLY DEDICATED;
IN
SINCERE ADMIRATION
OF THE ENLIGHTENED PRINCIPLES
WHICH LEAD HIM TO INVESTIGATE AND TO REMEDY
THE DEFECTS
IN OUR LAWS AND LEGAL INSTITUTIONS,
AND
OF THE JUDGMENT AND DISCRETION
BY WHICH
HIS MEASURES OF IMPROVEMENT
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PREFACE.

The decisions upon the Crown Cases reserved for the consideration of the Twelve Judges of England are of the first importance to the due administration of the criminal justice of the country; and in committing to the press those which have occurred during a recent period of more than twenty years the Editors believe that they are making an acceptable communication to the profession and to the public.

The Editors have used their best endeavours to guard against inaccuracies and errors of the press: and they are enabled, by the source from which these cases have been obtained, to vouch for their authenticity. They have also to acknowledge, with gratitude, the great assistance they have received from the use which has been permitted to them of the note-book of Mr. Justice Bayley, from whence they have been supplied with the greater part of the marginal abstracts, and, in many instances, with the reasons upon which the cases were
decided. The value of information derived from such a source will be duly appreciated by the profession at large; who have, for so many years, witnessed the great legal acquirements of this most learned and excellent Judge.

The Editors are also desirous of expressing their sense of the great kindness of all the learned Judges with whom they have had occasion to communicate upon any of the cases contained in this volume.

Wm. Oldnall Russell.
Edward Ryan.

July 1, 1825.
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REx v. Richard Bailey.

The prisoner was tried before Lord Eldon, at the Admiralty Sessions, December, 1799, on an indictment for wilfully and maliciously shooting at Henry Truscott.

It appeared in evidence, that on the 27th of June, 1799, the prisoner was the captain of a vessel called the Langley, a letter of marque; that about 130 leagues from Falmouth, on that day, he discovered in the morning, and fell in with another vessel called the Admiral Nelson, sailing at that time without colours hoisted, on board of which vessel Henry Truscott, the person charged in the indictment to have been shot at, was a mariner.

This vessel was certainly so conducting herself, at that time, as to give the prisoner, the captain of the letter of marque, reasonable ground to think that she was an enemy; but before he boarded her, and during the time he was on board of her, circumstances passed, which could hardly fail to satisfy him that she was an English vessel.

A prisoner was indicted for maliciously shooting; the offence was within a few weeks after the 39 G. 3. c. 37. (a) passed, and before notice of it could have reached the place where the offence was committed. On case, the judges thought he could not have been tried if the 39 G. 3. c. 37. had not passed, and as he could not have known of that act, they thought it right he should have a pardon.

(a) The preamble of which act recites, Whereas, by an act passed in the twenty-eighth year of King Henry the Eighth, it is enacted, That treasons, felonies, robberies, murthers, and confederacies committed on the high seas, shall be enquired of, tried, and determined in such shires and places in the realm as shall be limited by the King’s commission to be directed for the same, in like form and condition as if any such offence or offences had been com-
1800.

CROWN CASES RESERVED.

He staid on board some time, furnished the vessel with provisions, took into his custody a letter to be delivered in England, written by a gentleman on board of her, and conducted himself during a conversation of considerable continuance in the cabin as satisfied that the vessel was English.

In the course of that conversation, he and the captain of the Admiral Nelson were left alone, and a quarrel took place between them. As the latter was not produced upon the trial, as a witness, the origin and cause of the quarrel could not be ascertained; but it appeared that the captain of the Admiral Nelson had found fault with the prisoner for very gross language which he had, in fact, used when he hauled the ship in the chase.

The captain of the letter of marque, and the captain of the Admiral Nelson, came up from the cabin where they had been quarrelling; the former, in a very violent passion, insisting that the latter should produce the ship's papers; he said he was willing to do so if the prisoner would produce his commission; the prisoner, according to one witness, promised so to do, but did not produce it.

The prisoner left the Admiral Nelson, abusing the captain, and offering to fight him; using very threatening language, stating that he would make him pay for it; and when he got on board his own vessel three guns were fired at the Admiral Nelson, one of which, loaded with grape-shot, wounded Henry Truscott severely in the arm.

mitted or done in or upon the land; and whereas it is expedient to declare that other offences committed on the seas may be enquired of, tried, and determined in like manner, be it enacted, That all and every offence and offences which, after the passing of this act, shall be committed upon the high seas out of the body of any county of this realm, shall be offences of the same nature respectively, and be liable to the same punishments respectively as if they had been committed upon the shore, and shall be enquired of, heard, tried, and determined and adjudged in the same manner as treasons, felonies, murthers, and confederacies are directed to be by the same act.

By the second section it is further enacted, That when any person or persons shall be tried for the crime of murther or manslaughter committed upon the sea by virtue of any commission directed under the said act, and shall be found guilty of manslaughter only, such person or persons shall be entitled to receive the benefit of clergy in like manner, and shall be subject to the same punishment, as if he or they had committed such manslaughter in or upon the land.
The captain of the Admiral Nelson, upon the firing, sent his papers on board the prisoner's vessel.

It was insisted by the prisoner's counsel that he had a right to fire upon the Admiral Nelson, because the captain did not produce her papers.

On the other hand, it was insisted, that the prisoner ought first to have produced his commission, to show his right to demand the production of papers; and it appeared on the evidence of one witness that he said he would, but did not produce his commission.

Lord Eldon intended to have saved this point; but it appeared to him that it would not arise in the case, unless the jury should be of opinion that the prisoner really fired upon the Admiral Nelson because the papers were not produced, and not for any other reason, founded either in malice or any other motive; he, therefore, distinctly put it as a question to the jury for their consideration, whether the prisoner did fire upon the Admiral Nelson, because the captain of that vessel did not produce his papers? intending to reserve the question of law, if their finding upon the fact made it fit so to do. The jury said they were satisfied that he did not fire upon the vessel for that reason; and they seemed to be of opinion that the prisoner had otherwise perfectly satisfied himself, without the papers, that the Admiral Nelson was an English vessel, and that he fired in consequence of the quarrel which had taken place between him and the Admiral Nelson's captain.

It was then insisted that he did not shoot at Henry Truscott, the person named in the indictment, but at the ship.

Lord Eldon told the jury that he was of opinion, if they thought the guns were fired at the vessel, and those on board her generally, that the guns might be considered as shot at each individual on board her, and, therefore, at Henry Truscott, the person named in the indictment.

It was then insisted that the prisoner could not be found guilty of the offence with which he was charged, because the act of the 39 G. 3. c. 37., upon which (together with the statute relating to maliciously shooting (a)) the prisoner was indicted at this Ad-

(a) 9 G. 1. c. 22. (Black Act.)
miralty Sessions, and which act of the 39 G. 3. is entitled, "An act for amending certain defects in the law respecting offences committed on the high seas," only received the royal assent on the 10th of May, 1799, and the fact charged in the indictment happened on the 27th of June, in the same year, when the prisoner could not know that any such act existed (his ship, the Langley, being at that time upon the coast of Africa).

Lord Eldon told the jury that he was of opinion that he was, in strict law, guilty within the statutes, taken together, if the facts laid were proved, though he could not then know that the act of the 39 G. 3. c. 37. had passed, and that his ignorance of that fact could in no otherwise affect the case, than that it might be the means of recommending him to a merciful consideration elsewhere should he be found guilty.

It was further insisted that he did not fire the guns, but, at most, commanded them to be fired, which latter the jury expressly found was the fact.

It was then insisted, that attending to the statute against wilfully and maliciously shooting, and the language of the act of the 39 G. 3. c. 37., he was entitled to his clergy, and the rather as he did not himself fire the guns. (a)

Lord Eldon, wishing to have the opinion of the judges upon this last point, as well as upon the other points upon which he had given directions, he, with the concurrence of Mr. Baron Chamber, recommended to the judge of the Admiralty not to pass any sentence till the opinion of the twelve judges could be had.

On the first day of Hilary term, 1800, all the judges (except Mr. Justice Buller) met at Lord Kenyon's chambers, and were of opinion that it would be proper to apply for a pardon, on the ground, that the fact having been committed so short a time after the act 39 G. 3. c. 37. was passed, that the prisoner could not have known of it; and the judges came to

(a) Vide Rex v. Granger, or The Coal-Heavers' Case, 1 Leach, C. C. 64. 4th ed.; Rex v. Wells, Pusch. 1786, 1 East, P. C. 414.; Rex v. Royce, 4 Burr. 2075.; Rex v. Franklyn, 1 Leach, C. C. 255., where Lord Mansfield and the Court of King's Bench thought that defendant, though not armed, being present, aiding and assisting persons armed to resist revenue officers, was guilty as a principal. Vide also Sims and Midwinter's case, Post. 415. Rex v. Amaro, post. Mich. 1814. and 1 G. 4. c. 90.
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this resolution without particularly deciding on the other points. But it seemed to be the general opinion of the judges present that the conviction was proper on the other points. (a)

At the ensuing Admiralty sessions, June 1800, the prisoner was brought to the bar, and a pardon produced under the sign manual, on which the prisoner was discharged; entering into a recognizance of 100l., with two sureties of 50l. each, to appear and plead the first general pardon.

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REX v. JAMES SMITH.

The prisoner was tried before Mr. Justice Buller, at Maidstone summer assizes, in the year 1799, upon an indictment framed upon the 15 G. 2. c. 28. s. 3. (b), which charged that James Smith, late of

ed a counterfeit half-crown to J. F., and that at the time he so uttered it, he had about him another counterfeit half-crown; but it did not conclude with averring that he was a common utterer of false money: the judges held that such averment was unnecessary, and that the indictment was sufficient to warrant the greater punishment of the 3d section of the statute. S.C., 2 Leach, C.C. 853. 4th edit.; 1 East. P.C. 183.

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(a) An indictment was found at the Admiralty sessions against prisoners for maliciously burning a ship, with intent to defraud the underwriters; this was made felony by the 23 & 25 Car. 2. c. 11. s. 12., and the indictment was on that statute. On conference, Holt C.J., and Tracy, J., thought this might be tried under the commission, and that the 38 Hen. 8. c. 15. extended to the trial of an offence made felony by a subsequent statute; but the other judges being of a different opinion, it was agreed that it was not proper to try the prisoner. — Rex v. Snape, 1709, Tracy's MS. 78.; 2 East, P.C. 807. — But see 1 Ann. st. 9.
c. 9. s. 4.

(b) By which it is enacted, That if any person whatsoever shall, after the said 29th day of September, utter or tender in payment any false or counterfeit money knowing the same to be false or counterfeit, to any person or persons, and shall either the same day or within the space of ten days then next, utter or tender in payment any more or other false or counterfeit money, knowing the same to be false or counterfeit to the same person or persons, or to any other person or persons, or shall at the time of such uttering or tendering have about him or her, in his or her custody, one or more piece or pieces of counterfeit money, besides what was so uttered or tendered, then such person so uttering or tendering the same shall be deemed and taken to be a common utterer of false money, and being thereof con-
Calvert, knowing the same to be false and counterfeit, and having also, at the time of such uttering, about him in his custody, besides said piece of money uttered as last aforesaid, one more piece of counterfeit money, viz. half-a-crown. And that thereupon it was ordered by the court, that the said Richard Booth should be committed to His Majesty's gaol, the castle of York, there to be imprisoned for the space of one year, and that he should find sureties for his good behaviour for two years more, to be computed from the end of the said one year, himself in 100l. and two sureties in 50l. each, as by the record appears.

And that the said Richard Booth, being a common utterer of false money, afterwards, that is to say, on the 12th of November, 39 G. 3., at the parish of Grinton, in the county of York, one piece of false and counterfeit money made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm called a half-crown, then and there unlawfully and feloniously did utter to one Sarah Scanter, widow, well knowing the same to be false and counterfeit, against the statute and against the peace.

On the record of the prisoner's former conviction being read, it was objected by his counsel, that the indictment on which he had been convicted, and which was framed on the 15 G. 2. c. 28., contained no averment that the prisoner was a common utterer of false money, which the third section of the act has declared an offender under such circumstances as are stated in the second and third counts of that indictment, "shall be deemed and taken to be," and, therefore, that the prisoner had not been "thereof convicted," according to the words of that section; which also enacts, that if any person, "having been once so convicted as a common utterer of false money," shall afterwards utter or tender in payment any false or counterfeit money to any person or persons knowing the same to be false or counterfeit, then such person being thereof convicted shall for such second offence be adjudged guilty of felony without benefit of clergy. It was, therefore, contended the present indictment could not be supported.

The prisoner was found guilty; but judgment was respited, that the opinion of all the judges might be taken on the question.

This case stood over Easter and Trinity terms, to be argued by counsel. And at a meeting of all the judges (except Mr. Justice Buller) in Hilary term, on the 8th day of February, in
the year 1800, it was held that this case was determined by the case of *Rex v. Smith.* (a)

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**REX v. THOMAS WARDLE.**

The prisoner was tried before Mr. Justice Chambre, at Derby Lent assizes, in the year 1800, upon an indictment charging him with robbing one George Hill in an open field near the highway. The prisoner was found guilty of the robbery, but not near the highway.

Chambre J. at the trial had no doubt of the prisoner's being liable to a capital sentence under the 3 & 4 W. & M. c. 9., which takes away clergy from "every person that shall rob any other person," but it having been decided at the Old Bailey, in the case of *Rex v. Oatley,* Leach, C. C. 53., that upon an indictment for a highway robbery, evidence of a robbery in a house would not support the capital part of the charge, he thought it safest to respite the sentence. For although the learned judge was of opinion that the decision in the case, if truly reported, had arisen from not adhering to the statute of William and Mary, still, as it might be founded on reasons of which he was not aware, he thought it right to reserve the point.

On the first day of *Easter* term, 1800, present all the judges (except Buller J.), it was held that the conviction was right; that it was felony without benefit of clergy, being a robbery under the 3 & 4 W. & M. c. 9., and that the circumstance of being in a field near the highway was immaterial. (b)

(a) Supra, 5.

(b) *Rex v. Pyke,* MS. C. C. R. The prisoner was convicted before Mr. Baron Thomson at the Warwick Lent assizes, in the year 1790, upon an indictment which charged him with robbing Robert Fernyough, in the dwelling-house of Aaron Wilday.

The fact was committed in a house, but it did not appear who was the occupier of it.

Thomson B. respited the sentence that the opinion of the judges might be taken upon the propriety of the conviction.

At a meeting of all the judges, in the following *Easter* term, 1790, they all held the conviction proper.

The circumstance of the fact being committed in a house (it not appearing who was the occupier of it) was held to be immaterial.
THE prisoner was tried before Mr. Baron Chambre, at the Lent assizes for the county of Leicester, in the year 1800, upon an indictment on the statute 9 G. 1. c. 22., for unlawfully, maliciously, and feloniously breaking down the head and mound of two fishponds in a place called Bosworth Park, belonging to Sir Wolston Dixie, Baronet, whereby the fish therein were lost and destroyed.

It was proved, that a part of the head or mound of one of the ponds had been cut down to a considerable depth, by two persons, of whom the prisoner was one, so as to leave but little water in the pond.

The fish were gone; but it appeared to have been the object of the offenders to steal the fish, and not to let them escape through the breach in the mound.

The weeds were much trodden down in the pond, manifestly in searching for the fish, and the prisoner and another person had been seen with sacks, which there was every reason to believe were filled with the fish. There was no evidence showing that any of the fish had escaped through the cut, or that it was the occasion of their loss or destruction, any otherwise than by rendering it more easy to take them, when the greatest part of the water was let off.

The words of the statute are, "That if any persons shall unlawfully and maliciously break down the head or mound of any

Also in Rex v. Susannah Johnstone (wife of Jos. Johnstone), MS. C. C.R. The prisoner was tried before Mr. Justice Ashurst, at Warwick Lent assizes, in the year 1795, and found guilty of robbing Richard Dicken of six guineas and a half, in the dwelling-house of Jos. Johnstone, at Birmingham.

Ashurst J. respited the prisoner to take the opinion of the judges, whether (as the indictment was laid for a robbery in the dwelling-house of Jos. Johnstone, and as there was no evidence what the Christian name was of the person who kept the house), the prisoner was well convicted.

At a meeting of all the judges in the following Easter term, they were of opinion that the gist of the indictment was robbery, that it being laid in a dwelling-house was an immaterial circumstance, and that the prisoner was properly convicted.

Lord Hale says, it may be laid in or near the highway, because it is not the substance of the indictment. 1 Hale, 555.
fish-pond whereby the fish shall be lost or destroyed, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony," &c.

Chambre B. was inclined to think, that though the prisoner might have been indicted for a misdemeanour under the statute of 5 G.3. c.14., the case proved did not support the indictment for a felony; conceiving that the statute 9 G.1. c.22. was meant to apply only to cases of malicious mischief, and where the breaking of the mound was the immediate cause of the loss and destruction of the fish, and not merely auxiliary to the destruction of them by other means; but not recollecting any case upon the construction of the clause, he left the evidence of the facts to the jury, who found the prisoner guilty; the learned judge respited the judgment in order to take the opinion of the judges upon the question of law.

This case was adjourned over from the first day of Easter to the first day of Trinity term, 1800, when the judges (all present except Mr. Justice Buller, who died on the 4th of June, and whose place had not been filled up,) were of opinion that this was not an offence within the 9 G.1. c.22.; and if it were, that the statute 5 G.3. c.14. had virtually repealed it, as to this offence, and therefore that the conviction was wrong.

The judges also thought the act 9 G.1. c.22. (a) applied only to cases of wanton or malicious mischief in cutting the mound or head, and not to cases where it was used as the means of stealing the fish.

(a) By 4 G.4. c.54. the capital punishment under 9 G.1. c.22. is repealed, and the offenders, their procurers, counsellors, aiders, and abettors, subjected to seven years' transportation, or imprisonment only, or imprisonment and hard labour in gaol or house of correction for not exceeding three years.
If a person employed in the post-office secretes a letter containing a draft, it is not an offence within the 7 G.3. c.50. s.1., if the draft (from not being duly stamped) was not available. S. C. 2 Leach, C. C. 887. 4th edit. 5 B. & P. 511.

(a) By which it is enacted, That if any deputy, clerk, agent, letter-carrier, post-boy, or rider, or any other officer or person whatsoever, employed, or to be hereafter employed, in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or any other business relating to the post-office, shall, from and after the first day of November, one thousand seven hundred and sixty-seven, secrete, embezzle, or destroy any letter or letters, packet or packets, bag or mail of letters, which he, she, or they shall and may be respectively intrusted with, or which shall come to his, her, or their hands or possession containing any bank note, bank-post bill, bill of exchange, Exchequer bill, South Sea or East India bond, dividend warrant of the Bank, South Sea, East India, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman’s ticket, state-lottery ticket or certificate, bank receipt for payment on any loan, note of assignment of stock in the funds, letter of attorney for receiving annuities or dividends, or for selling stock in the funds or belonging to any company, society, or corporation, American provincial bill of credit, goldsmiths’ or bankers’ letter of credit, or note for or relating to the payment of money, or other bond or warrant, draft, bill, or promissory note whatsoever for the payment of money; or shall steal or take out of any letter or packet that shall come to his, her, or their hands or possession any such bank note, bank-post bill, bill of exchange, Exchequer bill, South Sea or East India bond, dividend warrant of the Bank, South Sea, East India, or any other company, society, or corporation, navy or victualling or transport bill, ordnance debenture, seaman’s ticket, state-lottery ticket or certificate, Bank receipt for the payment of any loan, note or assignment of stock in the funds, letter of attorney for receiving annuities on dividends, or for selling stock in the funds, or belonging to any company, society, or corporation, American provincial bill of credit, goldsmiths’ or bankers’ letter of credit or note for or relating to the payment of money, or other bond or warrant, draft, bill, or promissory note whatsoever, for the payment of money; every such offender or offenders, being thereof convicted in due form of law, shall be deemed guilty of felony, and shall suffer death as a felon, without benefit of clergy.
ment of a sorter of letters brought by the post to the general post office in London.

Another count charged him with stealing the draft out of a letter which came to his hands in like manner.

Both the counts alleged the draft to be in force at the time of the felony, and the money secured thereby to be unsatisfied.

There were other counts, but not materially different in respect of the question reserved.

The draft described in the indictment was made by David Thomson, directed to his bankers in London, requiring them to pay Archibald Thomson, or bearer, 200l. It was dated at London, but drawn at Tetton, near Maidstone, where the drawer resided, upwards of twenty miles from London, and when produced in evidence appeared to be upon unstamped paper.

The jury found the prisoner guilty, but the sentence was respited in order to take the opinion of the judges, whether the draft, under the circumstances, could be received in evidence, and was sufficient to support the indictment.

In the following Michaelmas term, 1800, this case was argued before all the judges in the Exchequer Chamber, by Abbott for the Crown, and Knowlys for the prisoner, when the judges were all of opinion that the conviction was wrong; that the draft not being stamped was of no value, nor in any way available, and, therefore, it was not a bill or a draft within the act.

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**REX v. JOHN SCOTT.**

The prisoner was tried before Mr. Justice Chamber, at the summer assizes for the county of Northumberland, in the year 1800, upon an indictment, charging him with stealing forty-nine sheep, the property of Simon Dodd the elder, Simon Dodd the younger, John Dodd, Gilbert Dodd, Nicholas Dodd, Isabella Dodd, Jane Dodd, Mary Dodd, and Hannah Dodd. A father and son carried on business as farmers: the son died intestate, after which the father continued the business for the joint benefit of himself and the sons next of kin: some of the sheep were stolen, and were laid to be the property of the father and the sons next of kin, and all the judges held it right. S.C. 2 East. P.C. 655.
CROWN CASES RESERVED.

1801.

It appeared that Simon Dodd the elder, and his son, many years previous to the trial, took a farm on their joint account, and kept a stock of sheep upon it, which was their joint property.

About five years previous to the trial the son died intestate, leaving a widow and eight children, viz. Simon Dodd the younger, John, Gilbert, Nicholas, Isabella, Jane, Mary, and Hannah Dodd, named in the indictment.

The widow died about half a year after her husband: no division was ever made of the stock, and all the sheep that were upon the farm at the time of the felony were bred from the joint stock; some before, some after, the son's death.

Simon Dodd the elder continued to occupy the farm and use the stock in like manner as he did in his son's lifetime, considering himself as acting for his said grandchildren (who were infants) in respect to one moiety, and accordingly kept a regular account with them in his books.

The prisoner received sentence of death; but execution was respited upon a doubt, whether these circumstances were sufficient to prove a joint property in Simon Dodd the elder and the eight grandchildren, so as to support the indictment.

On the first day of the following Michaelmas term, 1801, all the judges present at Lord Kenyon's chambers held that the conviction was right, and that it was not necessary that the property of the thing taken should be the strict legal property. (a)

1801.

REX v. RICHARD CRAVEN.

The prisoner was tried before Lord Alvanley at the Lancaster summer assizes, in the year 1801, and found guilty on the first count in the indictment, which was as follows:

Where an indictment described a bank note as signed by A. H. for the Governor and Company of the Bank of England, conviction held bad, there being no evidence of A. H.'s signature. Describing a bank note "as a certain note commonly called a bank note" is not such a description as will warrant a conviction on 2 G. 2. c. 25. for stealing it. S. C., 2 East. P. C. 601.

(a) See Rex v. Goby, Pasch, 1810. post.
CROWN CASES RESERVED.

That he feloniously did steal, take, and carry away a certain note (a), commonly called a bank note, of the value of one pound of lawful money of Great Britain, marked No. 18162, dated London, ninth day of December, one thousand eight hundred, and signed by A. Hooper, for the Governor and Company of the Bank of England; by which said note the said A. Hooper, for the said Governor and Company of the Bank of England, did promise to pay to Mr. Abraham Newland or bearer, on demand, the sum of one pound; a certain other note, commonly called a bank note, of the value of one pound of like lawful money of Great Britain, marked No. 17649; dated London, the twenty-fourth day of October, one thousand eight hundred, and signed by J. Booth, for the Governor and Company of the Bank of England; by which said last-mentioned note, the said J. Booth, for the said Governor and Company of the Bank of England, did promise to pay to Mr. Abraham Newland or bearer, on demand, the sum of one pound; a certain other note, commonly called a bank note, of the value of one pound of like lawful money of Great Britain; and a certain other note, commonly called a bank note, of the value of one pound of like lawful money; the said several notes then being the property of Thomas Yates, and the

(a) By 2 G. 2. c. 25. s.3. it is enacted, That if any person or persons, after the twenty-ninth day of June, 1799, shall steal or take by robbery any Exchequer orders or tallies, or other orders, entitling any other person or persons to any annuity or share in any parliamentary fund, or any exchequer bills, bank notes, South Sea bonds, East India bonds, dividend warrants of the bank, South Sea Company, East India Company, or any other company, society, or corporation, bills of exchange, navy bills or debentures, goldsmiths' notes for payment of money, or other bonds or warrants, bills or promissory notes for the payment of any money, being the property of any other person or persons, or of any corporation, notwithstanding any of the said particulars are termed in law a chose in action, it shall be deemed and construed to be a felony of the same nature and in the same degree, and with or without the benefit of clergy, in the same manner as it would have been if the offender had stolen or taken by robbery any other goods of like value with the money due on such orders, tallies, bills, bonds, warrants, debentures or notes, or secured thereby, and remaining unsatisfied; and such offender shall suffer such punishment as he or she should or might have done, if he or she had stolen other goods of like value with the monies due on such orders, tallies, bonds, bills, warrants, debentures, or notes respectively, or secured thereby, and remaining unsatisfied, any law to the contrary thereof in anywise used notwithstanding.
said several sums of money in the said several notes respectively mentioned, and payable and secured by and upon the said respective notes, then, to wit, on the said twenty-sixth day of March, in the forty-first year aforesaid, being due and unsatisfied to the said Thomas Yates, the said proprietor thereof, against the form of the statute in such case made and provided, and against the peace of our said lord the king, his crown and dignity.

It was objected, that the first-mentioned note was alleged to be signed by A. Hooper, whereas there was no evidence of its being signed by A. Hooper; and that the second note was alleged to be signed by J. Booth, whereas there was no evidence of its being signed by J. Booth; and that the description of the other notes mentioned in the indictment, viz. as notes commonly called bank notes, was too general.

The prisoner was found guilty, but judgment was respited, in order that the opinion of the judges might be taken upon the objections raised on the trial.

On the first day of the following Michaelmas term, 1801, all the judges, at a meeting at Lord Kenyon's chambers, held the conviction bad.

All the judges thought that the statement in the indictment, "signed by A. Hooper," required some evidence of the signature being by A. Hooper. They also thought, that in the first special description of the property stolen, as well as in the latter general description, it being stated only to be a note, was not sufficient, the words of the act being bank note, or promissory note, for payment of money. And that the addition, "commonly called a bank note," did not aid such original wrong description.

1801.

**REX v. JOHN HAYWOOD.**

Wounding a horse out of malice to the owner is an offence within the Black Act, 9 G. 1. c. 22. The indictment contained two counts.

John Haywood was tried before Mr. Justice Rooke at the summer assizes for Coventry, in the year 1801, for an offence against the Black Act, 9 G. 1. c. 22. The indictment contained though the wound is not permanent, and the horse is likely to recover. S.C. 2 East: P.C. 1076.
CROWN CASES RESERVED.

1st. For maliciously maiming a gelding against the statute.
2d. For maliciously wounding a gelding against the statute.

It was proved that on the 10th of June, 1801, the prisoner had maliciously, and with an intent to injure the prosecutor, driven a nail into the frog of the horse's foot. The horse was thereby rendered useless to the owner, and continued so at the time of the trial, (1st of August in the same year,) but the prosecutor said, he was likely to do well, and to be perfectly sound again in a short time.

The jury found the prisoner guilty; but the learned judge doubted whether, as the horse was likely to recover, and as the wound was not a permanent injury, the offence was within the statute, and resented the sentence till the opinion of the judges should be known.

At a meeting of all the judges, in Michaelmas term, 1801, they held this conviction right: the words of the statute 9 G.1. c.22. s.1. are, "shall unlawfully and maliciously kill, maim, or wound any cattle," &c. It was laid in this case as maliciously "wounding," which word does not import a permanent injury.

REx v. WILLIAM JAMES.

The prisoner was tried before Mr. Justice Le Blanc, at the summer assizes at Bridgewater, in the year 1801, on an indictment for bigamy, in having married Margaretta Reynolds, his former wife, Elizabeth Godwin, otherwise James, being then living.

In support of the prosecution, an examined copy of the register of marriages of the parish of St. Augustine, in Bristol, was proved, by which it appeared, that William James was married in that parish church to Elizabeth Godwin, on the 30th of September, 1790, by licence.

The identity of the prisoner was proved by a person present at the marriage; and it also appeared that Elizabeth Godwin, to have been in England. The judges held this prima facie evidence that the first marriage was without consent of parents or guardians, and that the jury might have acquitted the prisoner if such evidence was unanswered. See Butler's case, Mich. 1805, pass.
otherwise James, the person to whom he was then married, was living within the last two or three months before the trial.

An examined copy of the register of marriages of the parish of St. Michael, in Bath, was then proved, by which it appeared, that William James, widower, was married to Margaretta Reynolds, by banns, on the 7th of August, 1798.

The identity of the prisoner and the said Margaretta Reynolds was proved by persons who remembered his bringing her home as his wife, and living with her as such ever since.

On the part of the prisoner, a witness proved that she was present at his birth, and that he was born at Santa Cruz, on the 27th of September, in the year 1770; that she brought him from Santa Cruz to England, leaving his parents there, twenty years ago, and that she never saw them in England; that the prisoner lived with her and her husband till he went as clerk to a Mr. Stokes, an attorney.

On this evidence it was contended, on behalf of the prisoner, that he being under age at the time of his first marriage, and the marriage-act, 26 G.2. c.33. s.11, having declared "that all marriages by licence, when either of the parties, not being a widower or widow, shall be under the age of twenty-one years, which shall be had without the consent of the father or guardian, or mother, if there be no father or guardian, shall be absolutely null and void, to all intents and purposes," this first marriage must be taken to be void, unless the prosecutor could show that it was had with the consent of the parent or guardian; and therefore the prisoner was at liberty to marry the second wife, Margaretta Reynolds.

In support of the prosecution it was answered, that it was incumbent on the prisoner, who seeks to invalidate his own act, to show that the first marriage was without consent of parents or guardians, that the court will, as against the party himself, presume that every thing was rightly done till the contrary be shown; that inasmuch as a marriage of an infant under twenty-one by licence may be legal, it is not sufficient for the party to show that he was under twenty-one, without going farther; in order to invalidate a marriage appearing to have been solemnized by licence, he should come prepared to support his objection in toto; that the case of the prosecutor and the prisoner are consistent, and may both stand together. And it was urged, that as he
must have obtained the licence by fraud and perjury, he should not be permitted to make such an objection.

The jury, under the learned judge's direction, found the prisoner guilty; but judgment was respited, and, by the consent of the prosecutor, bail was taken for the prisoner's appearance at the next assizes to abide the judgment of the Court, in order that the opinion of the judges might, in the mean time, be taken on the above objection.

On the first day of Michaelmas term, 1801, at a meeting of all the judges at Lord Kenyon's chambers, this case was ordered to stand over for further consideration to the first day of the then next Hilary term; and on that day it was further adjourned. On the 25th of February, 1802, all the judges (except Lord Kenyon and Rooke J.) again met, and they were of opinion, that the form of the register of the first marriage, expressing it to be by licence generally, without saying by consent of parents or guardians, together with the fact of the parents never having been known to have been in England, were prima facie evidence that the first marriage was had without the consent of parents or guardians; on which the jury might have found the prisoner not guilty. And they were of opinion, that the prisoner should, at the next assizes, be discharged on his own recognizance, to appear when called upon to receive judgment.

Lord Kenyon, at the first meeting, seemed to be of opinion, that it was sufficient for the prisoner to prove himself under age at the time of the first marriage; and that it then rested with the prosecutor to show that the marriage was with the consent of parents or guardians; but that the prisoner ought not to be called on to prove a negative. (a)

(a) REX v. THOMAS MORTON, MS. JUD. The defendant was tried before Mr. Justice Wilson, at the summer assizes for the town and county of Newcastle-upon-Tyne, in the year 1789, on an indictment for bigamy upon the statute of 1 Jac. 1. c.11.

The marriage register was produced to prove the first marriage, which appeared to have been had by licence.

PAPE, for the prisoner, proved, that at the time of the celebration he was under age, and contended, that it was incumbent on the prosecutor to show that the licence was duly obtained, with consent of parents or guardians, agreeably to the statute of 26 G. 2. c. 35. s. 11.; that it was absolutely necessary to show not only a marriage, in fact, but a legal marriage, and that the onus lay upon the prosecutor.
The prisoners were tried before Mr. Justice Le Blanc, at the Exeter summer assizes, in the year 1801, on an indictment for a misdemeanor, which charged, that they did take and receive one Sarah Quill into the dwelling-house of the prisoner John Friend, as an apprentice of the said John Friend, to be by him treated, maintained, and supported as an apprentice of him the said John Friend, and did, for a long time, have and keep her in the said house as such apprentice as aforesaid; and that during the said time they so had and kept her in the said house as such apprentice as aforesaid, and that during the said time they so had and kept her in the said house as such apprentice as aforesaid; and that during the said time they so had and kept her in the said house as such apprentice as aforesaid, and that during the said time they so had and kept her in the said house as such apprentice as aforesaid, sufficient meat, drink, victuals, wearing apparel, bedding, and other necessaries proper and requisite for the sustenance, support, maintenance, clothing, covering, and resting the body of the said Sarah Quill, and against her will, neglect and refuse to find and provide for and to give and administer to her, being so had and kept as such apprentice as aforesaid, sufficient meat, drink, victuals, wearing apparel, bedding, and other necessaries proper and requisite for the sustenance, support, maintenance, clothing, covering, and resting the body of the said Sarah Quill; by means whereof she became emaciated, and almost starved to death, and the constitution and frame of her body greatly hurt and impaired, &c.

If the charge is that the prisoner received the child as an apprentice, an indictment importing that a former master, with the child’s consent, bound the child, will be sufficient evidence of the receiving as an apprentice, though such indenture is executed by a stranger as trustee for the former master, and not in the former master’s name.

Wilson J. (after consulting with Mr. Baron Thomson,) said, that both his learned brother and himself doubted upon the question, but that they were rather inclined to think that it lay upon the prisoner to show the irregularity. But afterwards, it appearing that the 15th section of the marriage-act directed, that if either party married by licence shall be under age, the register shall state that it was with consent of the parents or guardians; and as it appeared that the prisoner, at the time of the marriage, was under age, and the register did not contain the fact of consent, Mr. Justice Wilson thought this omission in the register, together with the prisoner being under age, amounted to proof of the irregularity of the marriage, and threw the burden of proof upon the prosecutor: no further evidence being given on behalf of the prosecution, the learned judge directed the jury to acquit the prisoner.

And see Rex v. Butler, Mich. 1803, post, where it was held, that the prosecutor must prove there was the necessary consent.
CROWN CASES RESERVED.

It was proved that Sarah Quill, a girl of thirteen or fourteen years of age, went to live with Friend as an apprentice, and continued with him about a year.

An indenture was then given in evidence, dated the 9th of April, 1799, between one James Hore and the said John Friend, and appearing to be executed by Nicholas Hore in trust, and by the said John Friend; whereby it was witnessed, that the said James Hore did put and place Sarah Quill, as well of her own free will and inclination, as also by and with the consent and approbation of her said master, James Hore, an apprentice to the said John Friend, after the manner of an apprentice, to serve and continue from the 9th of April, 1799, for and during the full time and term of twenty-one years of age, the said John Friend shall and will, during the term, find, provide, and allow unto the said apprentice meet, competent, and sufficient meat, drink, apparel, lodging, washing, and other things necessary and fit for an apprentice, that she be not any way a charge to the said James Hore, and shall instruct her in the art of housewifery.

Executed by Nicholas Hore, a trust. (L. S.)

John Friend. (L. S.)

Sealed and delivered by Arthur Ball.

in the presence of Rebecca Ball.

It was objected, on behalf of the prisoners, that the above evidence was not sufficient to prove the relation of master and apprentice, so as to create the legal obligation on the master to provide for the apprentice sufficient meat, clothing, &c., a breach of which would subject him to a criminal prosecution. That the above evidence, at most, proved only an assignment of the girl from her first master to the prisoner, John Friend, supposing that there ever was an original binding of the girl as an apprentice, which did not appear, and that such assignment would not make her an apprentice of Friend the assignee.

The learned Judge permitted the prosecution to proceed, as the indictment was in other respects fully supported by the evidence. The jury found John Friend guilty, but acquitted Anne, his wife. The learned Judge thought it best to pass sentence of imprisonment on the prisoner; that in case the judges should be of opinion that the above evidence did not support the indictment, a pardon might be obtained.
The same prisoners were afterwards tried before the same 
LEARNED JUDGE on another indictment, charging them, in the 
same form as in the first indictment, with starving one Elizabeth 
Good, whom they had received into the house of the prisoner 
John Friend as an apprentice. 

The only difference between this and the former case was, 
that in this last case the original indentures of apprenticeship 
were given in evidence, as well as the assignment by indenture 
made by the original master to the prisoner John Friend. 

The girl, Elizabeth Good, was a poor child of about twelve 
years of age, belonging to the parish of Stoke Damerel, and was 
bound by the churchwardens and overseers of that parish, with 
the approbation of two justices of the peace, to William Chapple 
and John Holman, and they afterwards, by indenture, assigned 
er to the prisoner, John Friend. 

The facts of ill-treatment were the same as in the former 
case of Sarah Quill, and the jury found John Friend guilty, and 
acquitted his wife, and sentence of imprisonment was passed 
upon him. 

At a meeting of all the judges at Lord Kenyon’s chambers 
on the first day of Michaelmas term, 1801, this case was ordered to 
stand over, for further consideration, to the first day of the next 
Hilary term: on that day it was further adjourned; and after 
Hilary term, viz. on the 25th of February, 1802, was considered 
at a meeting of all the judges (except Lord Kenyon and 
Mr. Justice Rooke). The general opinion was, that it was an indi-
tcable offence, as a misdemeanour, to refuse or neglect to provide 
sufficient food, bedding, &c., to any infant of tender years, unable 
to provide for and take care of itself, (whether such infant were 
child, apprentice, or servant,) whom a man was obliged by duty 
or contract to provide for, so as thereby to injure its health; but 
that, in the present case, the indictment was defective in not 
stating the child to be of tender years, and unable to provide for 
itself. However, as in the present case, the objection was taken 
to the evidence not supporting the indictment, rather than to the 
indictment itself; and there being some difference of opinion, all 
the judges thought it right that the final decision should be 
adjourned, and that the prisoner should suffer the whole of his 
imprisonment. 

Mr. Justice Chamber thought that it was not in any manner 
an indictable offence, being founded wholly on contract.
REX v. JOHN MCGREGOR.

The prisoner was tried before John Silvester, Esq., Common Serjeant, at the Old Bailey September sessions, in the year 1801, on the statute 39 G. 3. c. 85. (a)

The indictment charged, "That John McGregor, after 12th July, 1799, to wit, on, &c., at, &c., (he the said John McGregor then and there being a clerk to George Shum, William Curtis, Coton Rhodes, &c., and employed by them in the capacity of such clerk,) did, by virtue of such his employment, receive and take into his possession the sum of three hundred pounds, for and on account of the said George Shum, &c., the said masters and employers of the said John McGregor, and that he the said John McGregor afterwards, to wit, on, &c., at, &c., with force and arms, fraudulently and feloniously did embezzle and secrete the said three hundred pounds, against the form of the statute in such case made and provided; and so the said John McGregor then and there, to wit, on, &c., at, &c., with force and arms, feloniously did steal, take, and carry away the said three hundred pounds from the said masters and employers of him the said John McGregor, on whose account the said three hundred pounds was so taken into the possession of the said John McGregor, being such clerk so employed as aforesaid, against the form of the statute," &c.

(a) By which it is enacted, That if any servant or clerk, or any person employed for the purpose, in the capacity of a servant or clerk to any person or persons whomsoever, &c. shall by virtue of such employment receive or take into his possession any money, &c. for or in the name or on the account of his master or masters, or employer or employers, and shall fraudulently embezzle, secrete, or make away with the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master, &c., or employer, &c., for whose use, or in whose name, or on whose account, the same was or were delivered to or taken into the possession of such servant, clerk, &c., so employed, although such money, &c., was or were no otherwise received into the possession of his or their servant, clerk, &c. so employed; and every such offender, being thereof lawfully convicted, shall be liable to be transported for any term not exceeding fourteen years.
The jury having found the prisoner guilty; Knowlys, for the prisoner, took the following objection in arrest of judgment, which the Common Serjeant reserved for the opinion of the judges, viz.

That the charge against the prisoner is not sufficiently set forth on the record, inasmuch as the said sum of money thereby alleged to have been feloniously stolen, taken, and carried away by the prisoner, is not in either of the counts of the said indictment specifically and expressly averred to be the money of any person or persons whatsoever.

This case was argued (a) in the Exchequer Chamber in Hilary term, 1802, by Knowlys for the prisoner, and Best Serjt. for the Crown. All the judges (except Lord Kenyon and Mr. Justice Rooke) met on the 25th of February, 1802, when the majority of them were of opinion that the indictment was insufficient, and that judgment ought to be arrested. It seemed to be the general opinion that the statute had not made it a new statutable felony, but had only made it a larceny, as if the goods or money had been in the possession of the master, and that it was therefore necessary to state the money or goods to be the property of some person, viz. the master, as in common cases of larceny. But most of the judges seemed to think that it could not be made a capital felony and ousted of clergy, by laying it to have been committed in a dwelling-house, shop, vessel, or navigable river, &c., however great the amount might be; first, because the money or goods could not be said to be under the protection of the dwelling-house, &c.; and next, that the statute having enabled the court to pass a heavier sentence than in common cases of larceny, it may be considered as having limited all cases of embezzlement within that line of punishment.

(a) See the arguments in this case in 3 B. & P. p. 107.
CROWN CASES RESERVED.

1802.

RÉX v. SAMUEL SOARES, WILLIAM ATKINSON, AND JOHN BRIGHTON.

The prisoners were tried before Mr. Justice Le Blanc, at the Winchester Lent assizes, in the year 1802, on an indictment charging them with feloniously uttering and publishing, as true, a certain false, forged, and counterfeit bank note for 5l., knowing it to be forged, &c., with intent to defraud the Governor and Company of the Bank of England.

There were the other usual counts for forgery, and for dispos- ing of, and putting away the note with the like intent, and similar counts stating the intent to be to defraud the person to whom it was offered in payment.

It was proved that the prisoner, Brighton, offered the note in question in payment to one Henry Newland, at Gosport; the other two prisoners, Soares and Atkinson, were not with Brighton at the time he so offered the note in payment, nor were they at the time in Gosport, but both of them were waiting at Portsmouth till Brighton should return to them; it having been previously concerted between the three prisoners that Brighton should go over the water, from Portsmouth to Gosport, for the purpose of passing the note, and when he had passed it, should return to join the other two prisoners at Portsmouth. All the prisoners knew this was a forged note, and had been concerned together in putting off another note of the same sort, and in sharing among them the produce.

The counsel for Soares and Atkinson, objected, on their behalf, that on the above evidence they were not guilty as charged by this indictment, not being present at the time that Brighton uttered the note, nor so near as to be able to aid or assist him; and that they could be charged only as accessories before the fact.

The jury found that the forged note was uttered by the prisoner Brighton, by concert with the other two prisoners, and found them all three guilty.

The prisoner Brighton was left for execution, but judgment was respited as to the other two; the counsel for the Bank
CROWN CASES RESERVED.

1802.  

Soares' Case.

desiring to have an opportunity of arguing it, if, on consideration, they should think the indictment maintainable against the two prisoners who were not present.

This case was taken into consideration by ALL THE JUDGES, on the first day of Easter term, 1802, and again, in the same term, on the 29th of May, 1802, when they were all of opinion that the conviction was wrong; that the two prisoners were not principals in the felony, not being present at the time of uttering, or so near as to be able to afford any aid or assistance to the accomplice who actually uttered the note, and they thought it too clear to order an argument on it; an application was accordingly made to the Crown for a pardon. (a)

1802.

REX v. ELIZABETH SALMON.

The prisoner was tried before Mr. Justice Grose, at the Lent assizes for Thetford, in the year 1802, on an indictment upon the 9 G. 1. c. 22. (b), for voluntarily, wilfully, and maliciously setting fire to the hay-stack of one John Catling.

It was proved by the prosecutor, John Catling, that one Frosideke had for several years, till within a week before the 7th of August, 1801, lived with the prisoner in a house belonging to her; and that in the summer of that year Frosideke erected a small stack of clover, hay, and fodder in the yard of the prisoner's, near her house. The stack was made of some fodder that he took from the common without leave of the owners, and some clover, said to have been bought by him; but Frosideke, not being bound over, was not present, and therefore the property was not precisely ascertained.

(a) Vide Davis and Hall's case, Pasch. 1806, post. Else's case, Pasch. 1806, post.

(b) By 9 G. 1. c. 22. s. 1. it is enacted, That if any person shall unlawfully and maliciously maim any cattle, &c., or shall set fire to any house, barn, or outhouse, or to any hovel, cock, mow, or stack of corn, straw, hay, or wood, shall be guilty of felony without benefit of clergy.
It appeared, that on the 7th of August, at two o'clock in the afternoon, the prosecutor, in the presence of the prisoner, bought of Frosdike the stack and a pony, for which he paid him fourteen guineas, the pony being worth twelve. At the time the money was paid, the prisoner, who was present, said she would burn the stack to the ground; and she immediately, in the presence of ten or twelve of her neighbours, (some of whom were called as witnesses,) took some coals from the fire in her house, and carried them upon a hod, and put them upon the hay-stack, which not immediately taking fire, she went again into the house and took a pair of bellows, with which she blew the coals, and then the stack and an adjoining hovel belonging to her were consumed, in the sight of her neighbours, who did not interfere to prevent it.

The prosecutor, Cutlins, had known the prisoner nine or ten years, but had no communication with her for the last three or four years, and said that she had no spite or malice whatever against him.

The prisoner being called upon for her defence, said that she had been ill treated by Frosdike, who, after having lived with her several years, had latterly absented himself from her, and, at last, totally left her.

The prisoner's counsel objected, that setting fire to the stack whilst it was upon the ground in the possession of the prisoner, (though such burning might be a trespass,) was not a felony; and that the indictment was not proved, inasmuch as the prosecutor, by his evidence, had negatived all malice against himself.

The jury found the prisoner guilty; and her counsel moved in arrest of judgment, on the ground that it was not averred in the indictment that, by reason of setting on fire, the stack of hay was burnt and consumed. Sentence was passed upon her, but execution was respited, in order to take the opinion of the judges upon the above objections.

On the first day of Easter term, 1802, all the judges being assembled at Lord Ellenborough's chambers, were of opinion that the conviction was right; that it was not necessary the stack should be burned; the words of the act are, "set fire to;" that the hay being on her ground made no difference, if it was not her property; and that it was not necessary that there should be malice against the real owner of the hay.
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CROWN CASES RESERVED.

1802.

REX v. JOSEPH RICHARDS and ANOTHER.

The prisoners were tried before Mr. Serjeant Best, at the Lent assizes for the county of Hertford, in the year 1802, on an indictment on the 4 G. 2. c. 32. (a), charging them, in the first count, with stealing, on the 25th of February, 1802, at Abbott's Langley, five hundred pounds weight of lead of the value of 5l., belonging to Thomas Villiers Hyde, Earl of Clarendon fixed in a certain outlet belonging to his dwelling-house, against the statute, &c.

The second count stated, that the lead was fixed in an outlet belonging to a certain building, called the Temple of Pan.

The third count, that it was fixed in an outlet belonging to a certain building.

The fourth, fifth, and sixth counts were the same as the above; only stating, that the lead was fixed in a garden, instead of an outlet.

It appeared on the trial, that the lead stolen consisted of three images, which, at the time they were taken by the prisoners, were standing on three pedestals, to which they were fastened with irons, and the pedestals were fixed in the ground.

The images were standing near a brick building, called the Temple of Pan, which was erected in an enclosed field belonging to the Earl of Clarendon, about half a mile from his dwelling-house, and without his Lordship's park pales, from which it was separated by a public road.

The Temple of Pan was occasionally used by Lord Clarendon as a tea-drinking place. The building had doors and windows, which were kept shut when the family of Lord Clarendon were not using it: the doors opened into the place where the images stood.

(a) By which it is enacted, That every person who shall steal, rip, cut, or break, with intent to steal, any lead, iron bar, iron gate, iron palisado, or iron rail whatsoever, being fixed to any dwelling-house, outhouse, coach-house, stable, or other building used or occupied with such dwelling-house, or thereunto belonging, or to any other building whatsoever, or fixed in any garden, orchard, court-yard, fence, or outlet belonging to any dwelling-house or other building, shall be deemed to be guilty of felony.
CROWN CASES RESERVED.

The only other building within the inclosure was an open building, which was once a barn, but it was then only used as a coach-house when the family came to the Temple of Pan.

The jury, on very clear evidence, found both prisoners guilty; but judgment was respited, in order to take the opinion of the judges on the question, Whether the stealing of lead, situate as these images were, was felony.

In Easter term, on the 5th of May, 1802, all the judges met at Lord Ellenborough's chambers, when the conviction was held wrong; this being no outlet or garden belonging to any house or building. (a)

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REX v. MICHAEL MICHAEL.

The prisoner was tried before John Silvester, Esq., Common Serjeant, at the London Old Bailey sessions, February, 1802, upon the following indictment; which charged,

That heretofore, viz. at the general quarter sessions of the peace, &c., holden at Guildford, &c., on 15th July, 40 G. 3., before, &c., justices of our Lord the King, assigned to keep the peace, &c., the defendant, by the name and description of Michael Michael, of, &c., was in due form of law tried and convicted by a certain jury of the country, duly taken and sworn between our said Lord the King and the said Michael Michael in that behalf, on a certain indictment then depending against him, the said Michael Michael, for that he the said Michael Michael, on the 10th July, 40 G. 3., with force and arms, at, &c., one piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and gold coin of this realm, called a half-guinea, as and for a piece of good, lawful, and current money and gold coin of this realm, called a half-guinea, unlawfully, unjustly, and deceitfully did utter to one James Senior, he, the said Michael Michael, at the time when he so uttered the said

(a) All buildings are within the 4 G. 2. c. 32. Stealing lead from a summer house within the same inclosure as the house, though at the distance of half a mile, is therefore within the statute. REX v. Norris, Mich. 1803, post.
piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit; and that he, the said Michael Michael, at the time when he so uttered the said piece of false and counterfeit money as aforesaid, viz. on the said 10th of July, 40 G. 3., at &c., had about him, the said Michael Michael, in the custody and possession of him, the said Michael Michael, one other piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and silver coin of this realm, called a half-crown, he, the said Michael Michael, then and there well knowing the said last-mentioned piece of false and counterfeit money to be false and counterfeit, in contempt, &c., against the form of the statute, &c., and against the peace, &c. And thereupon it was considered and adjudged by the said Court, that the said Michael Michael, for the misdemeanor and offence aforesaid, in the indictment above specified, should be imprisoned in the common gaol of the county aforesaid, for the space of one year, and until he found sureties for his good behaviour for two years, to commence from the expiration of the first year, himself to be bound in 40l., and two sureties in 20l. each, as by the record thereof doth more fully appear. And the jurors further present, &c., that the said Michael Michael, late of, &c., labourer, having been so convicted as a common utterer of false money, afterwards, to wit, on the 14th January, 42 G. 3., at the parish, &c., with force and arms, at, &c., one piece of false and counterfeit money, made and counterfeited to the likeness and similitude of a piece of good, lawful, and current money and gold coin of this realm, called a seven-shilling piece, as and for a piece of good, lawful, and current money and gold coin of this realm, called a seven-shilling piece, unlawfully, unjustly, deceitfully, and feloniously did utter to one John Lucas, he, the said Michael Michael, at the time when he so uttered the said last-mentioned piece of false and counterfeit money, then and there well knowing the same to be false and counterfeit, in contempt, &c., against the form of the statute, &c., and against the peace, &c.

There was a second count, differing from the first, in charging the prisoner with “having been so convicted as aforesaid,” instead of the words “having been convicted as a common utterer of false money.”

The prisoner was found guilty; Knapp, for the prisoner, took
the following objection to the indictment, in arrest of judgment, which was reserved for the opinion of the judges; viz.

That on stating the original record and judgment of the Court of quarter sessions, it is not stated that the Court did adjudge the defendant to be a common utterer, but only that they considered and adjudged the prisoner to be imprisoned twelve months, and to find surety for his good behaviour for two years more.

On the first day of Easter term, 1802, all the judges present at Lord Ellenborough's chambers, in Serjeants' Inn, held the conviction right; that this case had been decided in Rex v. Smith (a), and Rex v. Booth. (b)

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REX v. BENJAMIN POOLEY.

The prisoner was tried before Mr. Justice Lawrence, at the Old Bailey January sessions, in the year 1801, and found guilty on an indictment framed on the 7 G. 3. c. 50. s. 2. (c), charging him with stealing out of the post-office a letter sent to be delivered by the post.

It appeared that the prisoner was employed in the penny-post department as a charge-taker, and as a letter-carrier, and that, as a charge-taker, all letters arriving by the general post, which were to be delivered by the carriers of the penny-post of the eastern division, were delivered to him to be divided according to the different indictment on this statute, a check on unstamped paper, drawn by a person living 30 miles distant from London, was admissible in evidence for the purpose of proving the fact of stealing the letter. S. C. 2 Leach, 900.904. 3 B. & P. 315. 1 East, P. C. Adden. xvii.

(a) Supra, 5. S. C. 2 B. & P. 197. (b) Supra, 7.

(c) By which it is enacted, That if any person or persons shall rob any mail or mails, in which letters are sent and conveyed by the post, of any letter or letters, packet or packets, bag or mail of letters, or shall steal or take from or out of any such mail or mails, or from or out of any bag or bags of letters sent or conveyed by the post, or from or out of any post-office, or house or place for the receipt or delivery of letters or packets, sent or to be sent by the post, any letter or letters, packet or packets, being thereof convicted, shall be guilty of felony without benefit of clergy.
walks of the letter-carriers. It was proved that he did not deliver the letter, the subject of this indictment, to the letter-carrier within whose district the person lived to whom the letter was directed; but that he opened it, and took out of it a check, or draft, for 200l. on the Stratford Place bank, drawn on unstamped paper, by a person living above thirty miles from Stratford Place.

It was objected for the prisoner, that this draft being on unstamped paper could not be received in evidence as a medium to show that the prisoner had stolen the letter:

But the Court over-ruled the objection, being of opinion the draft, though unstamped, might be received in evidence for collateral purposes, although not for the purpose of recovering the money contained in it.

The Court entertaining doubts whether the second section of that act applied to servants of the post-office, against whose misconduct the first section of that act was intended to guard, and from which it may be inferred, that the legislature did not conceive that the embezzling a letter by those servants was a larceny, reserved the question for the opinion of the judges.

This case was argued before all the judges, on Saturday, the 2d May, 1801, by Knapp for the prisoner, and Abbott for the Crown. On the first day of Trinity term, 1802, the majority of the judges held that the prisoner, appearing on the evidence to be a person employed in the post-office at the time of taking or secreting the letter, was not within the second section of the statute 7 G. 3. c. 50., and therefore that the conviction was wrong. And he was accordingly recommended to the Crown for a pardon. (a)

(a) But all the judges held, in the case of Rex v. Brown, Pasch. 1817, M.S.C.C.R. that a person may be indicted and convicted under the third section of the 52 G. 3. c. 143. for stealing a letter though he has an employment in the post office. The third section of 52 G. 3. c. 143. enacts, That if any person shall steal and take from any carriage, or from the possession of any person employed to convey letters sent by the post of Great Britain, or from or out of any post office, or house or place for the receipt or delivery of letters or packets, or bags or mails of letters sent or to be sent by such post, any letter or packet, or bag or mail of letters sent or to be sent by such post, or shall steal and take any letter or packet out of any such bag or mail, every person so offending, and being thereof convicted, shall be adjudged guilty of felony, and shall suffer death as a felon, without benefit of clergy.
CROWN CASES RESERVED.

REX v. JOHN TEAGUE.

The prisoner was tried before Mr. Justice Le Blanc, at the Hereford Summer Assizes, in the year 1802, on an indictment charging him with feloniously, &c. making, forging, and counterfeiting a certain bill of exchange, as follows, viz.

"No. Q. 621. 50l. Brecon, 24th June, 1799.
On demand, pay to the bearer fifty-pounds, value received.
Bankers, Bristol.

WALTER JEFFREYS"

with intent to defraud Walter Wilkins, Walter Jeffreys, Jeffreys Wilkins, and William Williams, against the statute, &c.

A second count was for uttering the same knowing it to be forged. There were two other similar counts, stating the intent to be to defraud Thomas Powell.

It appeared that the bill was drawn and signed by Walter Jeffreys, one of the partners of the house, for ten pounds only, on a sixteen penny stamp (then the proper stamp for promissory notes of ten pounds intended to be re-issued after payment). This bill of exchange had been re-issued three times by Wilkins & Co. as a ten pound bill. It appeared that the bill had been altered, by changing ten pounds into fifty pounds, in the part of the bill where the sum is expressed in figures, as also in the part where it is expressed in letters, and so altered had been passed by the prisoner to Thomas Powell.

The jury found the prisoner guilty of uttering it knowing it to be forged; but the learned Judge respited the judgment on the objections made by the prisoner's counsel, viz.

1st. That this was a forgery by altering the sum in a genuine bill, and should have been so stated in the indictment; the statute

sanced postage, every such person being thereof convicted, shall be deemed guilty of felony.

All the Judges held in the case of Rex v. Brown, East. T. 1817, that a person may be indicted and convicted under the 3d section of 52 Geo. 3. c. 145. for stealing a letter, though he has an employment in the post-office.
CROWN CASES RESERVED.

1802.

Teague’s Case.

7 G.2. c.22. making it a distinct offence to alter, viz. If any person shall falsely make, alter (a), forge or counterfeit, or alter or publish as true any false, altered, forged, or counterfeited acceptance of any bill of exchange, or accountable receipt for any note, bill, or other security for payment of money, or warrant or order for the payment of money or delivery of goods, with intent, &c. knowing, &c.

2dly. That the act permitting the re-issuing of notes after the same shall have been paid, related only to promissory notes; but this was a bill of exchange, and could not be legally re-issued without a fresh stamp; and having been re-issued three times before it was altered, it was not a valid bill for 10l. at the time it was altered to 50l., and therefore it was not that species of forgery which consisted in the altering a true and valid bill.

On the first day of Michaelmas term, 1802, ALL THE JUDGES met at LORD ELENNBOROUGH’s chambers, and were of opinion that the indictment was good, in stating that the prisoner forged and uttered knowing it to be forged, although the forgery was in altering a 10l. bill into a 50l. bill, and that it was not necessary to state that he altered (b) the bill. On the second objection ALL THE JUDGES were of opinion, that although the bill was not a good and valid bill for 10l., having been re-issued after having been paid, and being only stamped with the proper stamp for a re-issuable promissory note, yet that it was the same thing as forging or uttering a forged bill with a wrong stamp, which has been determined to be a capital felony (c); they therefore held the conviction right.

(a) But see 2 Geo.2. c.25. which does not use the term alter, but makes it felony without benefit of clergy, to falsely make, forge, or counterfeit, or utter any forged or counterfeited bill of exchange, &c.; and see also the preamble to 7 Geo.2. c.22.

(b) See Rex v. Dawson, 1 Stra. 19. before ALL THE JUDGES who held, that changing the figure 2 into the figure 5 in a bank note (200l. to 250l.) was forging and counterfeiting a bank note.

(c) See Hawkeswood’s Case, 1 Leach C.C. 257. and Rex v. Morton, 2 East, P.C. 955. In these cases it was held that forgery might be committed of a bill of exchange or promissory note on unstamped paper.
CROWN CASES RESERVED.

REX v. ROBERT BAKEWELL.

The prisoner was tried before The Recorder, at the Old Bailey April sessions, in the year 1802.

The indictment charged, that Robert Bakewall was, as an officer and servant of the Governor and Company of the Bank of England, entrusted with a certain note, the tenor whereof is as follows:

"No. 6528.

Bank,
16th Jan. 1801.

I promise to pay to Mr. Abraham Newland, or bearer, on demand, the sum of fifty pounds.

London, the 16th day of Jan. 1801.

For the Governor and Company

£ Fifty.

Of the Bank of England,

Entered C. Clarke.

S. Underhill."

belonging to the said Governor and Company, and that he did feloniously secrete, embezzle, and run away with the same note, against the statute, &c.

The second count charged the prisoner, that, as an officer and servant of the Governor and Company of the Bank of England, he was entrusted with certain effects belonging to the said Governor and Company, that is to say, a certain paid note, and that he did feloniously secrete and embezzle, and run away with the said paid note, against the statute, &c.

It appeared, that the prisoner was employed by the bank on the 26th of March, 1801, to post into the ledger, and to read

A bank clerk employed to post into the ledger and read from the cash-book, Bank-notes from 100l. in value up to a 1000l. and who in the course of that occupation had, with other clerks, access to a file, upon which paid notes of every description were filed; took from that file a paid bank note for 50l. Held that the prisoner could not be considered as entrusted with the possession of this note, so as to bring him within the 15 G. 2. c. 15. s. 12. (a) Qu. Whether a note once cancelled by the Bank is within the 15 G. 2. c. 15.?
from the cash-book, bank notes of certain denominations, viz. from 100l. up to 1000l., paid on the 24th of March preceding; and that in the course of that employment he, together with many other clerks, had access to the file on which all paid notes of every denomination were placed on that day; among which was the note in question, which had come into the bank and had been paid on the 24th of March, and which note, it appeared, he had himself put upon the file. It appeared that the files, after the balance of the evening was made up, were locked up in Mr. Newland's strong room, and delivered out the next day. It appeared to be the custom of the bank, after payment of a note, to tear off the cashier's name, and upon entering it in the cash-book to punch a hole through it, upon which the note was considered as cancelled. The note in question had not been cancelled in the usual manner, the cashier's name not having been torn off, though the entry had been made in the cash-book, but it had been punched, though the hole had not been made in the proper part of the note.

The prisoner took this note from the file, and passed it for a valuable consideration.

There was evidence that his motive was to get a reward from the bank, by showing how easily such frauds might be committed and the bank defrauded.

The prisoner's counsel contended, that the note having been paid and cancelled by the bank, was not, at the time of the embezzlement, any of the securities mentioned in the statute; and that even if it were to be considered as a note, or as effects belonging to the bank, the prisoner had not been entrusted with the possession of it so as to bring him within the statute, the only notes with which he could be said to have been entrusted being notes from 100l. up to a 1000l.

The prisoner was found guilty, but The Recorder saved the objections for the opinion of the Twelve Judges.

On Tuesday, 30th November, 1802, this case was argued before all the Judges (except Heath J.) at Serjeant's Inn Hall, and the conviction was held to be wrong, on the ground that it did not appear, by the facts stated in the case, that the prisoner was a person entrusted with the cancelled note, although he had access to it: and the Judges advised that the prisoner should be recommended to the Crown for a pardon.
At the Admiralty sessions at the Old Bailey, holden on the 26th of October, 1802, before Sir William Scott, Judge of the High Court of Admiralty, Lord Ellenborough C. J., and Thompson B., four persons, namely, William Codling and John Reid, mariners, and William Macfarlane and George Easterby, merchants, were indicted upon the statute 11 G. 1. c. 29. ss. 6, 7. The indictment stated, that the said William Codling and John Reid, on the 8th day of August, in the forty-second year of his majesty's reign, upon the high seas within the jurisdiction of the Admiralty of England, were on board a vessel called the Adventure, whereof the said William Codling was the master of and belonging to the same, and the said John Reid an officer belonging to the same, which vessel was insured for divers sums of money, amounting, in the whole, to the sum of 700l., by Robert Shedden, Joseph Marryat, and several other underwriters (by name), who had before that time severally underwritten a policy of insurance on such vessel; and that the said William Codling and John Reid, with force and arms on the high seas within the jurisdiction aforesaid, &c., wilfully and feloniously made divers holes in and through a certain part of the said vessel called the larboard run, and divers other holes in and through a certain other part of the said vessel called the larboard quarter, by means whereof the water of the said sea entered, filled, and sunk the said vessel; and that the said William Codling and John Reid, so respectively being such master and officer belonging to the said vessel, thereby wilfully and feloniously destroyed the said vessel, to which the said William Codling and John Reid so respectively belonged, with a wicked and dishonest intent and design to prejudice the said Robert Shedden, Joseph Marryat, and the several other underwriters (by name), and who had so underwritten the said policy of insurance on the said vessel, and were severally and respectively insurers on the said vessel, against the form of the statute, &c.; and that William Macfarlane and George Easterby, on the said 8th day of August, on the high sea within the jurisdiction aforesaid, were owners of, and each of them was an Admiral
owner of, the said vessel called the Adventure, and so being such owners, and each of them being such owner, with force and arms, wilfully and feloniously procured the said William Codling and the said John Reid, the felony aforesaid, in manner and form aforesaid, to do, commit, and perpetrate, they the said William Macfarlane and George Easterby, at the time of the said felony so done, committed, and perpetrated by the said William Codling and John Reid as aforesaid, being owners, and each of them being an owner of the said vessel, with a wicked and dishonest intent and design to prejudice the said Robert Shedden, Joseph Marryat, and the several other underwriters (by name) who had underwritten the said policy of insurance on the said vessel, and were severally insurers on the said vessel, against the form of the statute, &c. The second count of the indictment was the same as the first, except that Joseph Marryat alone was therein stated as the underwriter, instead of the whole six whose names were upon the policy. The third count was the same as the first, except that the vessel was therein stated to have been cast away, instead of being destroyed by boring holes, &c. The fourth count was the same as the second, with the variation of the ship being alleged to have been cast away, instead of being destroyed by boring holes, &c. The fifth, sixth, seventh, and eighth counts corresponded with the first, second, third, and fourth, except that the vessel was, in such fifth, sixth, seventh, and eighth counts, called “Adventure” instead of “The Adventure,” and except that Reid was therein stated to have been a mariner instead of an officer.

It appeared by the evidence, that the vessel called the Adventure, having taken in part of her cargo in the port of London, sailed therewith to Yarmouth, where she took in other part thereof, and from thence to Deal; that a few days after sailing from Deal, and when she was on the high seas, within the jurisdiction of the Admiralty, at the distance of a few miles from Brighton, on the coast of Sussex, she was sunk by means of the boring of several holes in the several parts of her bottom described in the indictment, by augers, and more particularly by means of a large hole being made in her bottom by a crow bar, which holes were all of them so bored and made by one Thomas Cooper, the mate of the vessel, by the orders, and some of them, and particularly the hole with the crow-bar (which immediately occasioned the
sinking and destruction of the vessel), in the presence, and with
the assistance of the prisoner Codling, the master, for the pur-
pose of thereby occasioning the sinking and destruction of the
ship and her cargo.

The evidence affecting Reid, who was supercargo on board,
and present when some of the holes above mentioned were bored
(and respecting whom a question might have arisen whether he
was an officer or mariner belonging to the said ship(a)), is
omitted, inasmuch as the jury found him not guilty.

In respect to Easterby and Macfarlane, it appeared in evidence
that they were joint proprietors of the whole of the cargo which
was shipped on board the Adventure; that they all along acted
as, declared, and represented themselves to be joint proprietors
of the ship as well as the cargo; that they particularly acted as
such in the hiring of persons to serve on board the ship, in
giving orders to and treating with the captain as joint owners,
both before and after the vessel was destroyed, in the giving of
orders for the effecting of an insurance upon the ship, on their
joint account, for 700l., and which was, in fact, underwritten by
Sedden and Marryat, and the several other underwriters named
in the indictment; and that they also described themselves in an
instrument in writing, signed by each of them (and whereby the
above mentioned Reid was appointed the supercargo), "as sole
proprietors and owners of the brig Adventure." It appeared,
however, by the production of the ship's register from the custom
house in London, that one Alexander Geddes, of Mark Lane, was,
on the 12th of June, 1802, the registered owner of the ship
Adventure, described as of the port of London; and that the
same ship was afterwards, on the 16th of June, 1802, (by in-
dorsement on the ship's register) assigned by Alexander Geddes
to the prisoner William Macfarlane, from whom no subsequent
assignment appeared to have been made.

The cargo was, on Tuesday the 10th of August, 1802, being
two days after the loss, abandoned to the underwriters thereupon,
by a joint notice of abandonment signed by both the prisoners,
Easterby and Macfarlane; and the ship was, on the same day, by
a like notice signed by the prisoner Macfarlane alone, abandoned

(a) Pow's case, 1 Leach, 45.
to the underwriters thereupon. It was, under these circumstances, contended on the part of the prisoner Easterby, that he was not, for want of a compliance with the requisites specified in the statutes 26 G. 3. c. 60. and 34 G. 3. c. 68., an owner of the ship Adventure, so as to be liable in that character to the penalties of the statute 11 G. 1. c. 29. s. 6. (a)

It appeared further, by the evidence of one Storrow, who was originally retained by Easterby and Macfarlane to proceed as supercargo on board the ship, and who entered and continued on board till the ship arrived at Deal, that in a conversation between the witness and Easterby and Macfarlane, at Easterby’s house at Rotherhithe, about three weeks before the ship’s sailing, and after the witness Storrow had been applied to by Easterby to go in the ship, Easterby threw out that many ships had been sunk, and might be so to take in the underwriters. That afterwards, a few days before the ship sailed, the witness was again in company with Easterby, Macfarlane, and Codling the master of the Adventure, at Easterby’s house at Rotherhithe, when Easterby said, that: “they wished the ship to proceed from London to Yarmouth, and from Yarmouth to Gibraltar, there to sell the whole of the cargo by contract at public vendue; that after it was sold, they thought an opportunity might be taken to sink the ship, and that the people on board might take the boat and get on shore; and that one half of the bills for the amount of the cargo might be remitted in private letters, and the other half in public letters, and which one half remitted in the public letters might be shown as the whole of the proceeds, and that the underwriters might be called on for the rest, as if left on board.” This conversation passed in the presence and hearing of Macfarlane and Codling, the principal speaker being Easterby; but Macfarlane occasionally joined and said such a thing might be done, and Codling occasionally joined also, and supposed that such a thing might be done with the Adventure. The same witness afterwards saw Easterby at Deal, but never saw him on board; nor did it appear by any evidence that either he or

Macfarlane was ever personally present on board the ship, the Adventure, on the high seas. The intention of Easterby and Macfarlane that the ship should be destroyed with such cargo as should be on board her at the time of her being sunk, was further proved by the circumstances of their having caused to be effected insurances upon the cargo to the amount of 10,250l., whereas the goods found on board after the ship with her cargo was weighed up and brought to land at Brighton, were proved to have been of the original value, as between seller and buyer, of 3,231l. 1s., and no more; and by their having respectively withdrawn from the cargo, after the same had been originally shipped as part thereof, several articles, some being stores for the ship's use, a part of which were carried away by Easterby alone, and other parts put on board a ship called the William, belonging to Easterby and Macfarlane, for the use of that ship; others, being articles of considerable value packed up for exportation as merchandise, of which no less than fifteen considerable packages were found in the house of Easterby, and other like goods, which had been at Macfarlane's house, were found at the house of a female friend of Macfarlane, to which they had been removed for the purpose of concealment upon Macfarlane's being taken into custody. It was also proved, that Easterby, two days after the loss of the vessel, came down to Brighton, near which place the ship had been cast away, and that Easterby, in a room in the Ship Inn there, in the presence of Macfarlane and Codling, and after having first talked apart with Codling, asked the witness, Cooper, where he had bored the hole, and what size it was; and upon Cooper saying that he could not tell the size, Easterby asked him if it was about the size of the handle of a chisel which was then in the room, and Cooper answering "thereabouts," Easterby bid him get the handle out of the chisel and sharpen one end of it, in order therewith to plug up the hole in case the vessel should drive on shore. Easterby afterwards told Codling, that he, Codling, was a damned fool, and made a stupid job of it; that he might have taken her on the coast of France, and there they might have taken a boat, as it was fine weather, and have taken either shore. Macfarlane and Easterby then ordered Codling, and the witness Cooper, to go to London together, and to take a private lodging, and Easterby told Cooper that if he did not keep close he would be
hold of Porter, and desired him to be quiet, and Sullivan laid hold of Byrnes and desired him to be quiet. Porter, upon this, sat down, and Sullivan got Byrnes to some distance, when words passed between them, and they spoke loudly to each other, one saying he could take the stick, and the other saying he could not; and there was a good deal of confusion, during which the prisoner Rankin, another dragoon, whose horse was billeted at the New Inn, came in and asked what was the matter, and collared Porter, who was sitting on the settle; and immediately a scuffle ensued, in which Porter, Rankin, Byrnes, and Raybolt, who endeavoured to part them, were all down near the fireplace, and against the fender. Upon this, Richard Playdon, pulled the two soldiers, Rankin and Byrnes, off from the others, upon which the soldiers closed with him and tried to pull him down, and one of them struck him, and then he struck Byrnes, and threw Rankin down; and upon Rankin's coming to him, and offering to strike him, Playdon knocked Rankin down. Upon this, Byrnes and Rankin went to Raybolt and Porter, who were then up, and got them down again near the back door of the kitchen, and while they were down, kicked and beat them, so that Porter cried murder; and on Sullivan attempting to part them, and desiring Rankin, who was lying upon Porter, and beating him, not to murder the man, Rankin said, "Damn him, I will murder him;" upon which William Turvey came out of a little parlour adjoining and gave Rankin a blow on the throat, which (according to the expression of the witness) "sent him with his heels upwards." Upon this Rankin went out into the back kitchen, which led into a yard, as also did Byrnes. Porter, being helped up by Turvey, ran to the fire-place, got hold of the fire-pan, and went to the front door of the kitchen, where Sullivan was standing, having hold of the door, and, on being desired by Turvey not to strike Sullivan as he did not think he had done any harm, damned him, saying he was one of them, and he would have a smack at him; and immediately struck Sullivan a dreadful blow, which cut his head, and made him stagger to a chair, in which he sat down, his head bleeding a good deal. As soon as Porter had struck Sullivan he turned from him, and went with the shovel raised in his hands towards the little parlour adjoining to the kitchen, when Rankin came into the kitchen, at the back-door, in a violent heat and passion, with a pitchfork in
his hands, carrying it with the points forwards, and pushed it at
Porter's back or loins; and, when Porter's foot was on the step
of the door of the little parlour, and while he was going into it,
Rankin shoved the fork at Porter's head; and, without drawing
it back to himself, jobbed it two or three times against him.
Upon this, Turvey pulled Porter into the parlour and shut the
door against Rankin. Porter, by Rankin's thrusting the fork at
him, received two wounds from the fork, one in the temple, and
another in the throat; that in the temple extended into the
cavity of the brain, and produced matter, which occasioned his
death in about a month after. It appeared, that the points of
the fork were very blunt, and that between Rankin's going out
and returning with the pitch-fork, no greater time had elapsed
than was sufficient for Porter to get up, take the fire-shovel, walk
across the kitchen, strike Sullivan, and go from him a few yards
towards the parlour, which was about a minute.

A witness called by the prisoner Rankin proved, that the next
morning he appeared to have received a bad blow on the head,
which was blistered as if struck with or against something hot.

Upon this evidence, the learned Judge directed the jury to
acquit Sullivan and Byrnes, which they did; but having doubts
whether the facts did not fix the crime of murder on Rankin, the
learned Judge told the jury, that if they believed the witnesses,
he thought they should find him guilty; but in order that his
case might be more fully considered by all the Judges, he told
them that if they found him guilty, he wished them to say
whether they thought that Rankin, at the time he thrust the
fork at the deceased, knew that Porter had struck Sullivan, and
whether he saw Sullivan bleeding, and whether Rankin had any
reason to apprehend that Porter intended to strike him with the
fire-shovel, and whether, when Porter was on the ground by the
door, Rankin made use of the expression, "Damn him, I will
murder him."

The jury, after some deliberation, found Rankin guilty, and
said they thought he did not know that Sullivan had been struck;
that he did not see Sullivan bleeding; that he had no reason to
apprehend Porter intended to strike him with the fire-shovel, and
that he did make use of the expression, "Damn him, I will
murder him."

This case being reserved for the opinion of the Judges, was
considered by them upon the 6th November, 1802, and adjourned to the first day of Hilary term, 1803, when doubts being entertained by some of the judges, whether the offence was more than manslaughter, it was determined that the prisoner should be recommended for a pardon upon the terms of serving as a soldier abroad for his life.

1803.

RANKIN'S Case.

1803.

REX. v. ROBERT MEREDITH AND RICHARD TURNER.

This was an indictment for a misdemeanor, tried before Mr. Justice Le Blanc, at the summer assizes at Gloucester, in the year 1802.

The indictment charged, that on the 17th November, 42 G. 3., one William Marjaret was a poor, weak, impotent, and infirm person, wholly unable to maintain himself, and legally settled in the parish of Deerhurst, in the county of Gloucester, and justly intitled by the laws to have reasonable and necessary support and relief found and provided for him by the overseers of the said parish, and that the said defendants then being overseers of the poor of the said parish, and having the said William Marjaret under their care as a poor person of and belonging to the said parish, on the day and year aforesaid, and from thence continually, until the death of the said William Marjaret, not regarding their duty, wilfully, maliciously, and unjustly neglected and refused to find and provide for the said William Marjaret reasonable and necessary meat, drink, fire, clothing, bed and bedding, whereby the said Marjaret was reduced to a state of extreme weakness and infirmity; and afterwards, viz. on the 21st December, in the year aforesaid, died through the want of reasonable and necessary meat, drink, fire, clothing, bed and bedding, to the damage and oppression of the said William Marjaret, to the shortening of his life, and to the evil example, &c.

On the trial, the jury found the defendant Meredith guilty, and acquitted the other defendant, Turner. The jury also said; that they were of opinion that the death of the pauper, William
Margaret, was not occasioned or hastened by the neglect or misconduct of the defendant Meredith.

The counsel for the defendant insisted, that he could not be convicted upon the above indictment, the jury having negatived the averment that he died by reason of the neglect; and they also urged, in arrest of judgment, that it was not an offence indictable, without stating an order of a magistrate to provide relief for a pauper; except in a case of sudden emergency, where immediate relief was necessary before the order of a magistrate could be obtained; which was not the present case. The learned judge thought, that the purposes of justice in this case would be best answered by suspending the judgment, and therefore took bail for the appearance of the defendant at the next assizes to abide the sentence of the court.

The case came under the consideration of the judges in Michaelmas term 1802, and was adjourned until the following Hilary term, when it was further adjourned, as there was a difference of opinion amongst the judges. Lord Ellenborough C. J., Lord Alvanley C. J., Heath J., Rooke J., and Graham B., seemed to be of opinion that the indictment was good and the conviction proper, the overseer having taken the pauper under his care; but McDonald C. B., Grose J., Thompson B., Lawrence J., Le Blanc J., and Chambre J., thought otherwise; and were of opinion, that, except in a case of immediate and urgent necessity, the overseer was only bound to act under an order of justices in a case where such an order could have been had. It was agreed, that the defendant should enter into his own recognizance to appear when called upon to receive the judgment of the court. (a)

(a) But there may be cases in which the neglect to provide a pauper with necessaries will render an overseer liable to be indicted. Thus, where an indictment stated that the defendant (an overseer) had under his care a poor person belonging to his township, but neglected or refused to provide for her necessary meat, &c., whereby she was reduced to a state of extreme weakness, and afterwards, through want of such reasonable and necessary meat, &c., died, the defendant was convicted and sentenced to a year's imprisonment. Rex v. Booth, Hil. T. 36 G. 5. This indictment was removed by certiorari into B. R. in the vacation after Hil. T., 35 G. 3., and the defendant having been found guilty at York, was, in Hil. T., 36 G. 5., sentenced to be imprisoned for
REX v. JAMES GORDON, OTHERWISE JAMES WEAVER.

The prisoner was tried before Mr. Justice Lawrence, at the summer assizes for the county of Worcester, in the year 1802, upon an indictment charging him with felony, in marrying on for another offence is detained in the same county for bigamy, the detainer is such an apprehension as will warrant the indicting him in that county under 1 Jac. 1 c. 11. The age of consent, within the provision of s.5. 1 Jac. 1 c. 11. is fourteen years in a man, and twelve in a woman.

twelve calendar months in Newgate. This indictment was to the following effect:—

West Riding of Yorkshire, to wit. — The jurors, &c. That on the 16th of November, 34 G. S., one Mercy Stedman, single woman, was a poor, weak, impotent, and infirm person, wholly unable to maintain herself and legally settled within the township of Bowling, in the West Riding of the county of York, and justly entitled by the laws and statutes of this realm to have reasonable and necessary support and relief found and provided for her by the overseers of the poor of the said township: and that Jonas Booth, late of Bowling aforesaid, in the said Riding, yeoman, then overseer of the poor of the township of Bowling aforesaid, well knowing the premises, and having the said M. S. under his care as a poor person of and belonging to the said township, but wilfully and maliciously intending to injure and oppress the said M. S. on the day and year aforesaid, and continually afterwards, until the day of the death of the said M. S., which happened on the 25th of the same month of November, in the year aforesaid, at Bowling, in the said Riding, his duty in this behalf in nowise regarding, wilfully, maliciously, and unjustly neglected and refused to find and provide for the said M. S. reasonable and necessary meat, drink, clothing, bed and bedding, whereby the said M. S. was reduced to a state of extreme weakness and infirmity; and afterwards on, &c., at &c., through the want of such reasonable and necessary meat, drink, clothing, bed and bedding, died, to the great damage, injury, and oppression of the said M. S., and to the shortening of her life, to the evil example of all others in the like case offending, and against the peace, &c.

In a case where an overseer was indicted for neglecting to supply medical assistance when required to a pauper labouring under dangerous illness, the learned judge before whom the indictment was tried held that an offence was sufficiently charged and proved, though such pauper was not in the parish workhouse, nor had, previously to his illness, received or stood in need of parish relief. Rex v. William Warren, cor. Holbood J. Worcester Lent assizes, 1830. And in a case where the parents of a bastard child had neglected to provide necessaries for its sustenance, it was decided that the officers of the parish in which the child was born were obliged to provide such necessities without an order of Justices. Hayes and another v. Bryant, 1 H. Blac. 955.
the 7th of June, 1802, one Elizabeth Lane, in the parish of St. Clement's, in the county of the city of Worcester, Mary Taylor, his former wife, being then living; and that he was apprehended for the felony aforesaid at the parish of Astley, in the county of Worcester.

The facts of both marriages were proved, and that the prisoner was apprehended in the county of Worcester on a charge of stealing two hammers of one William Collins; and that being in the house of correction on that charge, a bill of indictment was found against him for this bigamy at the quarter-sessions, and on the bill being found, he was detained by an order of that court. It appeared further in evidence that he was a bastard, and married Mary Taylor before he was of the age of twenty-one years, and when he was about twenty years old.

The counsel for the prisoner made two objections to his conviction. First, that an indictment could be preferred against him for this offence only in the county where the second marriage was, or in some other county where he was apprehended for that offence; whereas, the defendant was apprehended in the county of the city of Worcester, not for this bigamy, but for a larceny;

A late statute 59 G.3. c.12. contains some provisions as to the relief of poor persons. The first section enacts, That where any select vestry shall be established under that act the overseers shall, in the execution of their office, conform to the directions of such select vestry, and shall not (except in cases of sudden emergency or urgent necessity, and to the extent only of such temporary relief as such case shall require, and except by order of justices in the cases thereafter provided for) give any further or other relief or allowance to the poor than such as shall be ordered by the select vestry. The second section relates to orders of justices for relief in parishes where there is a select vestry, or where the relief of the poor is under the management of guardians, &c., by special or local acts, in which cases two justices may order relief; but there is a proviso that any justice may make an order for relief in any case of urgent necessity to be specified, &c. The fifth section enacts, That every order after the 1st May, 1819, for relief of a poor person by the officers of any parish not having a select vestry under this act, shall be made by two or more justices: provided that, in every such order, the special cause of granting relief shall be stated expressly, and no order shall extend to a longer time than a month from the date; provided also, that in cases of emergency and urgent distress one justice may order relief, stating the circumstances in the order; but no such last-mentioned order is to entitle any person to relief for more than 14 days from the date, and the same is not to have any effect after the next petty sessions.
and if that were otherwise, the prisoner could not be convicted on this indictment, as it charged that he was apprehended in the county for this felony, which was not proved, as his apprehension was for a larceny. Secondly, that this was not a case within the 1st Jac. 1. c. 11., there being a provision in the third section of that statute, that it shall not extend to any person for or by reason of any former marriage had within age of consent; which age was insisted, since the 26th G. 2. c. 33., to be twenty-one, and not as at the time of passing the statute, fourteen in males, and twelve in females.

The jury found the prisoner guilty, but the learned judge reserved these points for the consideration of the judges. The case was adjourned from Michaelmas term, 1802, until Hilary term, 1803, when the judges held the conviction right, being of opinion, upon the first point, that as the prisoner was in custody on a criminal charge, he was liable to be tried where he was imprisoned.(a)

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**REX v. JOHN WILCOX.**

The indictment against the prisoner was tried before Mr. Baron Graham, at the Salisbury summer assizes, in the year 1802, and was in the following form.

The jurors, &c. present, that heretofore, to wit, on the 27th day of July, in the 42d year of the reign of our sovereign lord George the third, by the grace of God, &c. John Wilcox, late of the city of New Sarum, in the county of Wilts, labourer, with force and arms, at the city of New Sarum aforesaid, in the county aforesaid, did falsely make, forge, and counterfeit, a certain paper instrument, partly printed and partly written, in the words and figures following; that is to say,

(a) See Lord Digby's case, Hutt. 151., upon another statute, 5 Jac. c. 4.
with intention to defraud George Webb, against the peace, &c.
In the second count the jurors aforesaid did further present, that the said John Wilcox, on the same 27th day of July aforesaid, in the year aforesaid, at the city aforesaid, in the county aforesaid, had in his custody and possession a certain other false, forged, and counterfeited paper instrument, partly printed and partly written; which said last-mentioned false, forged, and counterfeited paper instrument is in the words and figures following; that is to say, (here the instrument was set out exactly as before) and the jurors, &c. did further present, that the said John Wilcox having the said last-mentioned false, forged, and counterfeited paper instrument in his custody and possession, afterwards, (to wit) on the 27th day of July aforesaid, in the 42d year aforesaid, with force and arms, in the city aforesaid, in the county aforesaid, the said last-mentioned false, forged, and counterfeited paper instrument did utter and publish as a true instrument, he the said John Wilcox, at the time of uttering and publishing the same, then and there well knowing the same to be false, forged, and counterfeited, with intention to defraud the said George Webb, against the peace, &c. In the third count the jurors aforesaid, &c. did further present, that heretofore (to wit) on the 27th day of July aforesaid, in the year aforesaid, at the city aforesaid, in the county aforesaid, the said George Webb contracted and agreed with the said John Wilcox to buy of him the said John Wilcox, a certain quantity of coal, at and after the rate of eighteen-pence for every hundred weight thereof, and so in proportion for a less quantity than a hundred weight of such coal, which said coal was then and there in a certain carriage, to wit, a cart; and the jurors aforesaid, &c. did further present, that the said John Wilcox, on the same day and year aforesaid, at the city aforesaid, in the county aforesaid, had in his custody and possession a certain other false, forged, and counterfeited
paper instrument, partly printed and partly written; which said last-mentioned false, forged, and counterfeited paper instrument is as follows that is to say, (here the instrument was set out exactly as before) and the jurors aforesaid, &c. did further present that the said John Wilcox, so having the said last-mentioned false, forged, and counterfeited paper instrument in his possession, afterwards (to wit) on the 27th day of July aforesaid, in the year aforesaid, with force and arms, at the city aforesaid, in the county aforesaid, the said last mentioned false, forged, and counterfeited paper instrument did utter and publish as a true instrument, with intent to deceive the said George Webb, and cause him to believe that the weight of the said coal for which the said George Webb so contracted and agreed with the said John Wilcox, and the weight of the said carriage were truly stated on the said last-mentioned false, forged, and counterfeited paper instrument, and were as follows (that is to say) gross, one ton, eleven hundred weight, and three quarters of a hundred weight, and tare six hundred weight, neat weight, one ton, five hundred weight, and three quarters of a hundred weight; whereas in truth and in fact, the said tare last-mentioned at the time of uttering and publishing the said last-mentioned false, forged, and counterfeited paper instrument, was eight hundred weight, and the neat weight one ton, three hundred, and three quarters of a hundred weight; and the jurors aforesaid, &c. did further present, that at the time of uttering and publishing the said last-mentioned false, forged, and counterfeited paper instrument, the said John Wilcox well knew the same to be false, forged, and counterfeited, and that the said last-mentioned tare was eight hundred weight, and that the said last mentioned neat weight was one ton, three hundred weight, and three quarters of a hundred weight, and not one ton, five hundred weight, and three quarters of a hundred weight; and that the said John Wilcox so uttered and published the said last-mentioned false, forged, and counterfeited paper instrument, with intention to defraud the said George Webb, against the peace, &c.

It was clearly proved by the servant who attended the weighing engine, that the ticket was made out and delivered to Wilcox with the figure of 8 instead of that of 6, to express the weight of the tare; and that the 8 had been altered to a 6 after the ticket had been delivered to Wilcox; and this was visible on a near inspec-
tion of the ticket. When presented to the servant of the pro-
secutor, the net weight stood one ton, five hundred weight, and
three quarters of a hundred weight, instead of one ton, three
hundred weight, and three quarters of a hundred weight; accord-
ing to which statement the coals were paid for, and consequently
the prosecutor was made to pay for two hundred weight of coals
more than he really received.

The learned Judge doubted whether this fraud came under
the denomination of forgery at common law, but he allowed the
indictment to proceed; and the defendant being found guilty ge-
erally, he bound him over to appear at the next assizes to receive
his sentence, if the Judges should be of opinion that the in-
dictment could be sustained.

The case having been mentioned in Michaelmas term, 1802,
and adjourned to Hilary term, 1803, the Judges were of
opinion, that the indictment was bad, as it did not state what the
instrument was in respect of which the forgery was alleged to
have been committed, nor how the party signing it had authority
to sign it. And the judgment was consequently arrested. (a)

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**REX v. JAMES DIXON, SAMUEL HODGE, ALIAS
TURNER, SAMPSON MORLEY, ALIAS SAMUEL
JOHNSON, AND THOMAS WILSON.**

This was an indictment tried before Mr. Baron Graham, at
the spring assizes for the county of Nottingham, in the year 1803, and
found upon the 18 G. 2. c. 27. s. 1., which enacted, "That all and
every person and persons who shall by day or night feloniously
steal any linen, fustian, calico, cotton, cloth, or cloth worked,
woven, or made of any cotton or linen yarn mixed, or any thread,
linen or cotton yarn, linen or cotton tape, incle, filleting, laces,
or any other linen, fustian, or cotton goods or wares whatsoever,
laid, placed, or exposed to be printed, whitened, bowked,
that the building from which the calico was stolen was made use of either for
printing or drying calico.

(a) See Rex v. Ward, 2 Lord Raym. 1461; 2 Str. 747.
bleached, or dried, in any whitening or bleaching-croft, lands, fields, or grounds, bowking-house, drying-house, printing-house, or other building, ground, or place, made use of by any calico-printer, whitster, crofter, bowker, or bleacher, for printing, whitening, bowking, bleaching, or drying of the same, to the value of ten shillings, or who shall aid or assist, or shall wilfully or maliciously hire or procure any other person or persons to commit any such offence, or who shall buy or receive any such goods or wares so stolen, knowing the same to be stolen as aforesaid, shall be guilty of felony without benefit of clergy." (a)

The first count of the indictment charged, that the prisoners, on the 2d January, 1803, fifty pieces of calico, the goods of John Freeth, Samuel and John Walsh, calico-printers, being laid and placed to be printed in a certain building at Butwell, made use of by the said partners for printing the same calico in the same building feloniously did steal against the statute, &c.

A second count charged that the prisoners, on the same day, fifty pieces of calico of the said partners, laid and placed to be dried in a certain building situate at Butwell, made use of by the said partners for drying of the same calico, in the same last-mentioned building did steal, against the statute, &c.

The third count charged, that the prisoners on the same day, fifty pieces of calico of the said partners, laid and placed to be printed in a certain place or ground situate at Butwell, made use of by the said partners for printing the same calico, did steal, against the statute, &c.

The fourth count charged, that the prisoners, on the same day, fifty pieces of calico of the goods of the said partners did steal, &c.

The case depended on a great variety of circumstances, which clearly proved that the prisoners, together with another person not apprehended, on the night of the 2d January, 1803, had stolen from a building on the bleaching-grounds of the prosecutors, fifty pieces of calico, of the value of 140l. And it

(a) This enactment is repealed by 51 G.3. c.41., which makes similar offences punishable by transportation for life, or for any term not less than seven years, or by imprisonment and hard labour for any term not exceeding seven years.
appeared to be a case attended with circumstances of great 
aggravation.

The trial proceeded without any objection being taken as to 
the nature of this building by the counsel for the prisoners, and 
no point was made as to the necessity of there being direct and 
positive proof that the building was made use of either for print-
ing the calico, or for drying it: the impression appearing to 
have been, that it was enough to bring the case within the 
statute, if the calico was laid in the building in order to receive 
in the course of the manufacture a further printing, whether the 
printing took place there or elsewhere; and no question was there-
fore put as to the particular nature or use of the building. The 
jury found all the prisoners guilty; and sentence of death was 
pronounced upon them.

But after the trial, a doubt was suggested by the counsel for 
the prosecution, whether it ought not to have been proved that 
the building was made use of for the purpose of printing or 
drying calico, and that the calico in question was placed there 
for that purpose. This doubt being communicated to the counsel 
for the prisoners, he wished it might be considered; and though 
the objection, if taken at the trial, would probably have led to 
evidence that the building was frequently used for the purpose 
of giving the finishing print to calicoes of the description of those 
stolen, the learned Judge, being of opinion that the case on the 
part of the prosecutors had been left defective as to the three 
first counts of the indictment, wished to have it maturely con-
sidered, how far that defect could be supplied by any intention 
or inference; and the case was therefore submitted by him to 
the consideration of the Judges.

The facts respecting the building were proved by a witness, 
Samuel Walsh, one of the partners, who said that it was a building 
detached from the dwelling house, but within the limits of the 
bleaching grounds; and was a building in which they deposited 
their unfinished goods: that the calico in question was not 
finished for sale, though saleable at an under price: and that the 
pieces had been once or twice printed, but had not received the 
finishing print, and were not made up for sale. The unfinished 
were compared with the finished pieces, and there was a great 
difference in the brightness of the colours. It was also proved, 
that the building was locked and secured by a three-inch bar
CROWN CASES RESERVED.

1803.

DIXON and
OTHERS' Case.

across the door; and that the door was found broken to pieces on the next morning after the goods were stolen.

Upon the first day of Easter term, 27th of April, 1803, ALL
THE JUDGES (assembled at the chambers of LORD ELLENBOROUGH
C. J.) were of opinion, that the conviction on the three first
counts of the indictment, which contained a capital charge, was
wrong, inasmuch as the building from which the calicoes were
stolen, was neither a building made use of for printing or for
drying: but as the evidence supported the fourth count, which
charged only a simple larceny, THE JUDGES were of opinion,
that the prisoners should be recommended to a pardon, on con-
dition of transportation for seven years.

1803.

REX v. JOHN HOBSON.

Embezzle-
ment. 39 G. 3.
c. 85. County
in which the
offence is com-
mited. A de-
nial by a ser-
vant when in
the county of
Stafford, of his
having receiv-
ed money in
the county of
Salop, holden
to be evidence
to show that
the receipt, in
the county of
Salop was with

tent to em-
bezzle within
the statute,
and therefore
that the trial
was properly
had in the
county of
Salop.
S. C. 1 East,
P. C. Addend.
xiv.

THE prisoner was tried before MR. JUSTICE CHAMBRE at the
spring assises at Shrewsbury, in the year 1803, upon an indict-
ment framed on the 39th G. 3. c. 85. for receiving money by
virtue of his employment, as servant to one Thomas Heighway,
on account of the said Thomas Heighway, his master, and
fraudulently secreting and embezlling and so stealing it, the in-
dictment stating the money to be the property of the master.

After the learned JUDGE had summed up the evidence to the
jury, the prisoner's counsel suggested an objection, that there
was no proof of any fact arising in the county of Salop sufficient
to give jurisdiction for the trial of the offence in that county.

The proof (so far as related to the objection) was, that the
residence of the master was in Staffordshire, at Lichfield, where
the prisoner served him in his trade: that on the morning of
Saturday the 22d of January, they were both at Shrewsbury, and
the master, having authorised one William Beaumont to collect
some debts for him at that place, returned home the same
morning, leaving the prisoner at Shrewsbury to receive the money
from Beaumont, and bring it to his master at Lichfield on that
night. The prisoner engaged to do so, and about noon received
the money from Beaumont, and also a letter from his master,
which had been left at Beaumont’s, and did not relate to the money transaction. The prisoner left Shrewsbury soon afterwards, but did not go on to Lichfield that night, having slept at a public-house upon the road; and he did not go to his master till about 8 o’clock the following evening. He then delivered the letter, and being asked about the money, he said he had not received any. A few days afterwards, the master, in consequence of information he had received by letter, charged the prisoner with having received the money; and another servant, who had been at Shrewsbury on the Saturday, being present, told the prisoner that he had seen him receive money; but the prisoner persisted in denying that he had received any. Some time afterwards the master having received further intelligence, ordered the prisoner to go to Shrewsbury to clear himself. On the Saturday following the prisoner went to Beaumont, at his house in Shrewsbury, and desired him to make a search on the left-hand side of the room in which they had been. No search was made, Beaumont telling him it was of no use to search as the prisoner had received the money from him.

The learned Judge thought the objection proper for the consideration of the Judges, and made no observations upon it to the jury, who found the prisoner guilty, and he received sentence.

The prisoner’s receipt of the money at Shrewsbury; his going thither afterwards to clear himself; and on that occasion, desiring a search to be made for the money, as if he had left it there; being the only acts appearing to be done in Shropshire, the following questions arose: first, whether under this statute an indictment may not be found and tried in the county where the money or goods are received, although there be no evidence of any other fact locally arising within the same county; and secondly, whether, if further local proof be necessary, the subsequent conduct of the prisoner at Shrewsbury, was not sufficient to obviate the objection, as being an act done in furtherance of the purpose of secreting or embezzling.

Upon Wednesday the 27th of April, 1808, being the first day of Easter term, all the Judges (assembled at Lord Ellenborough’s chambers) considered of this case, and the majority of them held that the conviction was right. Lawrence, J. was of opinion, that, embezzling being the offence, there was no evidence
1803.  

Hosson's Case.

of any offence in Shropshire, and that the prisoner was improperly indicted in that county. But the other Judges were of opinion that the indictment might be in Shropshire, where the prisoner received the money, as well as in Staffordshire, where he embezzled it by not accounting for it to his master: that the statute having made the receiving property and embezzling it amount to a larceny, made the offence a felony where the property was first taken; and that the offender might therefore be indicted in that or in any other county into which he carried the property. Le Blanc J. inclined to this latter opinion.

1803.

Rex v. Jane Fletcher.

The prisoner was tried and convicted before Mr. Justice Chambre, at the spring assizes at Hereford, in the year 1803, upon an indictment for the murder of her bastard child. Sentence of death was immediately passed upon her, but, in pronouncing the sentence, that part of it which relates to the dissection and anatomization of the body happened to be omitted. The other convicts being in court to receive their sentences, the attention of the learned Judge was drawn off to them, and when that business, being the last remaining to be done in court, was over, the court was adjourned to the lodgings, and the learned Judge did not; till some time after he had arrived at the lodgings, recollect the omission. The calendar was taken to the learned Judge the same evening, in which calendar the dissection and anatomizing of the body were stated as part of the sentence, and he signed the calendar at the lodgings; but being doubtful how far that could remedy the defect of the sentence pronounced in open court, and what would be the legal consequence of not having conformed literally to the directions of the statute 25 G. 2. c. 37., he resptied the execution until the 2d day of May, and directed the particular restraints imposed by the act on such convicts, to be omitted until Friday the 29th of April, in order to have the opportunity in the mean time of consulting the
CROWN CASES RESERVED.

The statute 25 G. 2. c. 37., reciting that the horrid crime of murder had been of late more frequently perpetrated than formerly, was passed in order to add some further terror and peculiar marks of infamy to the punishment of death. It therefore provides for the more speedy execution of such offenders, and for the disposal of their bodies by delivery to surgeons to be dissected and anatomized. And the third section enacts, "that sentence shall be pronounced in open court, immediately after the conviction of such murderer, and before the court shall proceed to any other business, unless the court shall see reasonable cause for postponing the same; in which sentence shall be expressed not only the usual judgment of death, but also the time appointed hereby for the execution thereof, and the marks of infamy hereby directed for such offenders, in order to impress a just horror in the mind of the offender, and on the minds of such as shall be present, of the heinous crime of murder."

This case was taken into consideration by all the Judges, (assembled at Lord Ellenborough's chambers,) on the 27th of April, 1803, being the first day of Easter term, when there appeared to be a considerable difference of opinion, and it was adjourned to the first day of Trinity term.

On Friday the 10th of June, 1803, being the first day of Trinity term, at a meeting of all the Judges at Lord Ellenborough's chambers in Sergeant's Inn, this case was again debated, when the Judges were equally divided in opinion: Lord Ellenborough, Lord Alvanley, Macdonald C.B., Heath J., Rook J., and Chambre J., being of opinion, that the omission of dissection and anatomising in the sentence pronounced did not prevent the attainder taking place; and that it would not be error if the judgment were formally drawn up omitting that part of the sentence; and Hotham B., Grose J., Thomson B., Lawrence J., Le Blanc J., and Graham B., being of a contrary opinion, namely, that the marks of infamy directed by the statute were a material part of the sentence, and that a judgment omitting such part would be erroneous.

Those Judges who thought that the omission was not an essential part of the judgment argued from the several clauses of the statute 25 G. 2., that the statute was only directory; that the
common law judgment of hanging worked the attainder; and that as, before the statute, the body of the criminal was at the king's disposal, the statute only directed how it should be disposed of in all cases of murder, and that to inspire greater horror, the mode of disposing of the body after death should be stated by the judge at the time he passed sentence.

The judges who thought otherwise relied on the terms of the third section of the statute, making it necessary to express the marks of infamy in the sentence; and conceived that such terms were added as a further punishment for the offence: and they relied much upon the opinion of the majority of the judges stated in Foster's Crown Law at the end of the case of Swan v. Jefferys, (a) and upon the form in which judgments in cases of murder have ever since the statute been drawn up, making the dissection and anatomising a part of the judgment. (b)

All the judges agreed that the omission in the passing of the sentence might have been remedied by the judge going again into court, after adjournment, from the lodgings, and ordering the prisoner to be again brought up, and then passing the proper judgment; as the sentence may be corrected or altered at any time during the assizes.

Upon this difference of opinion it was resolved, that the prisoner should be reprieved generally, and that application should be made to the Crown for a pardon on condition of transportation. (c)

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(a) Fost. 107. And see Rex v. Walcot, Carth. 348.; Rex v. Tucker, Carth. 317.
(b) 4 Blac. Com. Append. iv.
(c) It is not an essential part of the sentence that the day of execution should be awarded therein, the statute in that respect being directory only. Rex v. Wyatt, East. T. 1812. post.
CROWN CASES RESERVED.

REX v. CHARLES BUTLER.

The prisoner was tried before Mr. Justice Lawrence, at the July sessions at the Old Bailey, in the year 1803, for bigamy, in marrying Elizabeth Field, his first wife Lydia Blackwell being still living; he being for the said felony apprehended at the parish of St. George, in the county of Middlesex.

It was proved that the prisoner was married on the 13th of February, 1791, to Lydia Blackwell, at the parish-church of Sunning, in Berkshire, by licence; and that the woman was living on the 8th of June, 1803; and that on the 14th of December, 1800, the prisoner married Elizabeth Field, at St. Botolph, Bishopsgate, and was apprehended for this bigamy at the parish of St. George, Middlesex.

The prisoner in his defence proved that he was born on the 2d of January, 1771, and that his father was then alive; and insisted that the first marriage was void, as it was not proved to have been by the consent of his father.

The learned Judge told the jury that he thought the marriage was to be presumed valid, unless the prisoner proved he had not that; consent but saved the point for the consideration of the Judges: and under such direction the prisoner was found Guilty.

The case was submitted to the consideration of the Judges in Michaelmas term, 25th of November, 1803. It seems that the certificate of the marriage mentioned that the prisoner was married by licence, and did not express that the marriage was by consent of parents or guardians. And all the Judges (except Heath J. who was indisposed) were of opinion, that as it was clearly proved that the prisoner was under age at the time of the marriage, and as there were no circumstances from which consent could be presumed, the conviction was wrong. (a)

(a) It seems that any subsequent countenance from parents or guardians, or other circumstances of a similar kind, might afford ground for presuming the necessary consent.
Embezzlement by a clerk, or servant under 39 G. 3. c. 85. Form of the indictment. Held, that it was sufficient to state in the conclusion of the indictment that the prisoner feloniously did steal, take, &c., though the word feloniously was not inserted in the former part of the indictment before the word embezzle.

The prisoner was convicted before Mr. Baron Thomson, at the summer assizes for the county of Lancaster, in the year 1803, upon the following first count of an indictment, framed upon the statute 39 G. 3. c. 85.

Lancashire to wit. — The jurors for our lord the king, upon their oath present that John Crighton, late of Liverpool, in the county of Lancaster, labourer, on the 11th day of February, 43d, &c. at Liverpool aforesaid, in the said county of Lancaster, he, the said John Crighton being then and there a servant and clerk, and a person employed for the purpose in the capacity of servant and clerk to Robert Carr and Thomas Askew Hanly, did by virtue of such his employment, as such servant and clerk, and person employed as aforesaid, receive and take into his possession a sum of money, to wit, the sum of 9l. 18s. 9d. of lawful money of Great Britain, for, and on the account of the said Robert Carr and T. A. Hanly, his said masters and employers, by the delivery of the same by one Dorah Frodsham, as agent to Edward Frodsham, to the said John Crighton in that behalf; and that the said John Crighton afterwards, to wit, on the said 11th day of February, in the 43d year aforesaid, with force and arms, at Liverpool aforesaid, in the county aforesaid, did fraudulently embezzle and secrete and make away with part, to wit, 3l. 6s. 1d., part of the said sum of 9l. 18s. 9d.; and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Crighton, on the said 11th day of February, in the 43d year aforesaid, with force and arms, at Liverpool aforesaid, in the county aforesaid, in manner and form aforesaid, the said sum of 3l. 6s. 1d. of the said Robert Carr and T. A. Hanly, from the said Robert Carr and T. A. Hanly, his said masters and employers, for whose use and on whose account the said sum of money was so as aforesaid delivered to him the said John Crighton, being such servant and clerk as aforesaid, by virtue of such his employment as aforesaid, feloniously did steal, take, and carry away, against the statute, &c., and against the peace, &c. There were other counts in the indictment, upon which the prisoner was acquitted.

An objection was taken by the prisoner's counsel to the first count, that it did not charge that the prisoner "feloniously" em-
bezzled, &c. It was answered that this was unnecessary; that the indictment in charging the embezzlement pursued the words of the statute; and that it was sufficient in having drawn the conclusion that so the prisoner feloniously stole the money of his masters and employers from them for whose use he had received it.

The learned Judge thought it proper to reserve the objection for the consideration of the Judges, all of whom (except Heath J., who was indisposed) considered the point in Michaelmas term, 25th of November, 1803, and held the conviction right. (a)

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**REX v. WILLIAM TAYLOR.**

The prisoner was tried before Mr. Baron Thomson, at the Old Bailey October sessions, in the year 1803, upon an indictment found in Middlesex, which set forth, that the prisoner, on the 27th of August, at the parish of St. Giles in the Fields, was servant to James Barker, of the same parish and county, fishmonger; and being such servant, then and there did receive and take into his possession certain monies, to wit, ten shillings, for and on account of his said master the said James Barker, and having so received and taken into his possession the said sum of money for and on account of his said master, he the said William Taylor then and there with force and arms fraudulently and feloniously did embezzle and secrete the same; and so the jurors as aforesaid, &c. say that he the said William Taylor then and there, in manner and form aforesaid, did steal, take, and carry away, from Embezzlem ent in the latter county. S.C. 3. Bos. & Pul. 596. 2 Leach, 974.

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(a) It is not usual at the present time to state by whose delivery the money is received by the party accused, as in the count set forth in this case. And it has been held, that the indictment ought to set out specifically some articles of the property embezzled. Rex v. Furmace, Trin. T. 1817, post. The property should be described with reference to the rules in larceny, the offence under this statute being a statutable larceny.
the said James Barker, his said master and employer, the said sum of ten shillings of the monies of the said James Barker, for whose use and on whose account the same was delivered to and taken into the possession of the said William Taylor, being such servant as aforesaid, against the form of the statute, &c. A second count was the same as the first, only charging that the prisoner received the money from one Mary Stevens. (a)

It appeared in evidence, that the prosecutor was a fishmonger in Drury-lane, and that the prisoner was a servant employed in his business; and that on the 27th of August, 1808, the prisoner was sent with some herrings to one Mary Stevens, in Cross-street, Blackfriars-road, in the county of Surrey, who had, on the same morning, agreed to buy them of the prosecutor for ten shillings, and to send the money back by the servant on the herrings being delivered. The prosecutor told the prisoner he was to receive ten shillings for the herrings: and the prisoner being sent with them about six in the evening, delivered them to Mary Stevens, at her shop in Surrey, upon which she paid him the ten shillings. The prisoner returned to his master's in Drury-lane about eight o'clock, when his master asked him whether he had brought the money for the herrings, to which he answered that he had not; and that Mrs. Stevens had not paid him: and he never accounted with the prosecutor for the money. The prosecutor paid him his weekly wages that night (being Saturday), and the prisoner did not return to his service. In about a fortnight afterwards the prosecutor discovered that the prisoner had received the ten shillings from Mrs. Stevens.

It was contended by the counsel for the prisoner, that under these circumstances he could be indicted only in the county of Surrey, where he had received the money. The prisoner was found guilty, but judgment was respited, in order that the opinion of the judges might be taken upon the objection.

The case was taken into consideration in Michaelmas term, 25th November, 1808, when Hobson's case (b) was referred to, and all the judges (except Heath J., who was absent from

(a) The form of these counts would probably be deemed insufficient at this time in not stating that the prisoner was employed and entrusted to receive money. Russ. 1237. (b) Ante, 56.
CROWN CASES RESERVED.

indisposition), held the conviction right, and that the prisoner was properly indicted in the county of Middlesex. From the opinion of the Judges, as delivered by LORD ALVANLEY C.J., (a) it appears to have been held that even if there had been evidence of the prisoner having spent the money on the other side of Blackfriars-bridge, it would not necessarily have confined the trial of the offence to the county of Surrey. And it was observed, that there was no evidence of any act to bring the prisoner within the statute until he was called upon by his master to account: that when called upon by his master to account, the prisoner denied that he had ever received the money; and that this was the first act from which the jury could with certainty say that the prisoner intended to embezzle. So that there was no evidence of the prisoner having done any act to embezzle in the county of Surrey, nor could the offence be considered as complete nor the prisoner as guilty within the statute, until he had refused to account to his master.

REX v. CATAPODI.

The prisoner was tried before Mr. Justice Heath, at the Croydon Summer assizes, in the year 1803, on an indictment for a misdemeanor, for that he knowing, and without an authority in writing for that purpose from a certain body corporate, called the British Linen Company, or any person or persons duly authorised to give such authority, had in his custody a certain plate, upon which said plate was engraved part of a promissory note, purporting to be the promissory note of the said body corporate called the British Linen Company, the tenor of which said plate is as follows:

"Edinburgh (1st August, 1780.) £5.

"The British Linen Company promise to pay on demand, to or bearer, five pounds sterling, value received.

"By order of the Court of Directors."

that independent of this objection, the indictment was bad, having omitted to aver that the company "carried on the business of bankers."

(a) 3 Bos. & Pul. 598.; 2 Leach, C.C. 974.
CROWN CASES RESERVED.

The indictment, which contained five counts, with variances irrelevant to the points that were raised, concluded against the form of the statute, viz. 41 G. 3. c. 57. (a)

It was proved that the prisoner had in his possession the plate described in the indictment, for the avowed purpose of forging the promissory notes of the said company.

A charter granted in 20 G. 2. was then proved, wherein it appeared that this company was incorporated for the sole purpose of carrying on the linen manufactory in Scotland.

It appeared in evidence, that they had carried on a very considerable banking business, and issued promissory notes to a very great amount, from impressions drawn from plates similar to the plate produced, the blanks of which were filled up as occasion required.

It did not appear that the company used the promissory notes drawn from these plates in the business of the linen trade, or that they carried on the linen trade at all.

An objection was made by the counsel for the prisoner, that the company not having been incorporated for the purpose of carrying on the banking business, they did not exist as a corporation, but were mere non entities as to that purpose; that they could not issue any promissory notes, nor authorise any person to have plates from whence impressions might be taken, and therefore were not within the statute.

It was also objected that the indictment was bad, from having omitted to aver that the company "carried on the business of bankers," which the act requires.

The learned judge who tried the case, considering these questions of great importance, reserved them for the consideration and opinion of the judges.

(a) By the 9th sect. of which statute it is enacted, That if any person or persons, in any part of the United Kingdom of Great Britain and Ireland, after the tenth of July, 1801, without an authority in writing for that purpose, shall knowingly have in his, her, or their custody any plate or device for making or printing any bill of exchange, promissory note, &c. of any person or persons, body corporate, banking company, or partnership, carrying on the business of bankers, for the first offence, shall be imprisoned for not more than two years nor less than six months; and for the second offence, to be transported for seven years.
CROWN CASES RESERVED.

This case was adjourned from the first day of Michaelmas term, 1803, to the 21st day of January, 1804; and on the 21st day of January, 1804, at a meeting of all the judges at Lord Ellenborough's house, they were all of opinion that the indictment was bad, and that judgment ought to be arrested; because it was not averred that the company "carried on the business of bankers," which the act requires. It seemed to be the general opinion that the other objection was also fatal.

REX v. ROBERT ASLETT.

The prisoner was tried and convicted before Mr. Justice Le Blanc, at the Old Bailey September sessions, in the year 1808, for embezzling effects belonging to the Governor and Company of the Bank of England, he being an officer and servant of the bank, and as such intrusted with the effects.

The first count of the indictment stated, that Robert Aslett was an officer and servant of the Governor and Company of the Bank of England, and as such officer and servant was intrusted by the said governor and company with certain effects belonging to the said governor and company, that is to say, a certain paper, partly printed and partly written, purporting to be a bill commonly called an Escheuer bill, the tenor of which said paper, partly printed and partly written, is as follows, that is to say:— (setting forth a bill for 500L. No. 835.), which said paper was then and there belonging to the said Governor and Company, and

Securities issued by Government as Exchequer bills, are "effects" within the meaning of the 15 G. 3. c. 13. s. 12. (a) although from not having been signed by a person legally authorised, they are not valid and legal Exchequer bills.

2 Leach, C.C. 959.

(a) By which section it is enacted, That if any officer or servant of the Governor and Company of the Bank of England, being intrusted with any note, bill, dividend warrant, bond, deed, or any security, money, or other effects belonging to the said company, or having any bill, dividend warrant, &c. or effects of any other person or persons lodged or deposited with the said company, or with him as an officer or servant of the said company, shall secrete, embezzle, or run away with any such note, bill, &c. money or effects, or any part of them; every officer or servant so offending, and being thereof convicted in due form of law, shall be deemed guilty of felony without benefit of clergy.
of the value of 500L., and which said sum of 500L., in the said paper mentioned, was then and there unpaid and unsatisfied to the said Governor and Company, the holders thereof. (The indictment then set forth two other bills in like manner, No. 2694. and No. 1061. each for 1000L.) And that the said Robert Aslett so then and there being such officer and servant of the said Governor and Company, and so intrusted as aforesaid with the said effects, so as aforesaid belonging to the said Governor and Company, did then and there, with force and arms, feloniously secrete, embezzle, and run away with the said effects so as aforesaid belonging to the said Governor and Company, and of the value of 2500L., against the statute and against the peace, &c.

There were other counts in the indictment, some like the first count above set forth, only not stating the paper to be of any value; and others not stating any value, but stating that the Governor and Company, had, on the credit and security of the paper, partly printed and partly written, advanced a large sum of money, which money was unpaid and unsatisfied to the Governor and Company, the holders thereof.

There were also a like set of counts calling the bills securities instead of effects.

It was admitted on the part of the prosecution, that these bills were not valid and legal Exchequer bills (a), having been signed with the name of Lord Grenville, the auditor of the Exchequer, by a person not legally authorised to sign them for him; but that they had been issued as good and valid bills, and the Governor and Company of the Bank had bought them and paid for them as such.

Judgment was respited that the opinion of the Judges might be taken, whether these bills or papers were effects or securities within the act of parliament 15 G. 2. c. 13. s. 12.

On the 16th of February, 1804, this case was argued by Erskine for the prisoner, and Giles for the crown. Two points

(a) By 43 G. 3. c. 60. these defective papers had been rendered good and valid exchequer bills for civil purposes, with a proviso that nothing in that act contained should prejudice or affect in any manner whatever any prosecution then depending, or which might be thereafter commenced relating to the said exchequer bills so rendered valid for civil purposes.
CROWN CASES RESERVED.

were made: First, that the 39 G. 3. c. 85. (a) had virtually re-
pealed the 15 G. 2. c. 13. s. 12. as to the punishment of death
inflicted on the offence described in the latter act: Secondly, that
as these were admitted not to be valid exchequer bills, they were
not "effects" within the meaning of the 15 G. 2. c. 13. s. 12.

The Judges were unanimous that the 39 G. 3. c. 85. had not
repealed the 15 G. 2. c. 13. s. 12.; and a majority of the Judges
held that these bills and papers were "effects" within the 15 G. 2.,
for they were issued under the authority of government as valid
bills, and the holder had a claim on the justice of government for
payment.

REX v. JOSEPH NORRIS.

The prisoner was tried before Mr. Justice Heath, at the Hert-
ford Lent assizes, in the year 1804, on an indictment founded on
the statute 4 G. 2. c. 32. (b)

within the same inclosure as the house, though at the distance of about half a mile, is a build-
ing within the 4 G. 2. c. 32. All buildings appear to be within 4 G. 2. c. 32.

(a) By 39 G. 3. c. 85. it is enacted, That if any servant or clerk, or any
person employed for the purpose in the capacity of a servant or clerk for any
person or persons whomsoever, or to any body corporate or politic, shall by
virtue of such employment receive or take into his possession any money,
goods, bond, bill, note, banker's draft, or other valuable security or effects, for
or in the name or on the account of his master or masters, or employer or em-
ployers, and shall fraudulently embezzle, secrete, or make away with the same
or any part thereof, shall be deemed to have feloniously stolen the same from
his master, &c., employer, &c., for whose use, &c., the same was or were de-
ivered to or taken into the possession of such servant, clerk, or other person
so employed, although such money, &c. was or were no otherwise received into
the possession of his or their servant, &c.; and every such offender, his adviser,
procourer, aider, or abettor, being thereof lawfully convicted or attainted, shall
be liable to be transported for any term not exceeding fourteen years.

(b) By which it is enacted, That all and every person or persons who shall
steal, rip, cut or break, with intent to steal, any lead, iron bar, iron gate, iron
palisade, or iron rail whatsoever, being fixed to any dwelling-house, outhouse,
coach-house, stable or other building, used or occupied with such dwelling-
house, or thereunto belonging, or to any other building whatsoever, or fixed
The indictment contained two counts: the first charged the prisoner with stealing 80 lb. of lead belonging to Drummond Smith, Esq., and fixed to a certain building called a Temple, used and occupied with the dwelling house of John Robinson, Clerk.

The second count varied from the first in charging the lead as being fixed to a certain building called a Temple; without any further description.

It appeared in evidence at the trial, that the dwelling-house in the first count mentioned was situate in Tring Park, as was the Temple, at the distance of half a mile from the dwelling-house, without any fence intervening, and the Temple was used as a summer-house, occasionally for drinking tea, and retirement.

Heath J. doubted, whether, in the first count, the building must not be taken to be ejusdem generis with those buildings which are before enumerated in the statute, such as out-houses, coach-houses, stables, and such as are used in the economy of a family, and may be extended to dairies, poultry-houses, and other buildings of the same kind.

On the second count, the learned judge, doubted whether the generality of the words "or any other building whatsoever," are not to be restrained to the species of buildings before enumerated. The titles of the preamble of the statute, and the context raised the doubt.

At a meeting on the second Saturday in Easter term, 1804, all the judges (except Chambre J.) held the conviction right. (a)

in any garden, orchard, court-yard, fence or outlet belonging to any dwelling-house or other building, shall be guilty of felony, and shall be subject to the like pains and penalties as in cases of felony, and shall be liable to be transported for seven years.

(a) Vide Rex v. Richards and another, supra, 28.; Rex v. Parker and Easy, Leach, Cr. Ca. 320, notis. 4th edit.
The prisoner was tried before Mr. Justice Heath, at the September Old Bailey Sessions, in the year 1803, on an indictment which, among other counts, had one for uttering a certain promissory note for the payment of £5, and on this count the prisoner was convicted.

The note was as follows:—

"Edinburgh, 1st August, 1780. £5.

Seal. No. 356.

25,763.

"The British Linen Company promise to pay on demand to William Beallie, or bearer, five pounds sterling, value received.

By order of the Five Pounds, Wm. Henderson, P. Manager.
CourtofDirectors. Five Pounds, D. Hogorth, P. Accompant."

with intent to defraud John Newall.

The case was clearly and satisfactorily proved: and it appeared by the production of the royal charter, that the British Linen Company were incorporated.

By the statute 2 G. 2. c. 25., which creates the capital offence of forging promissory notes, it is provided by the fourth section, that nothing in the act shall extend to Scotland.

An objection in law was taken, That the instrument set out in the indictment, purporting to be an undertaking for the payment of money by a chartered Scotch Company, only entitled the party to demand payment in Scotland, and could not be put in suit in this country, and therefore was not within the statute. The case of Rex v. Dick, 1 Leach, C. C. 68. 4 edit., and the opinion of the court concerning the locality of contracts in Robinson v. Bland, 2 Burr. 1078, were referred to.

On Saturday, the 4th of February, 1804, this case was argued in the Exchequer Chamber, by Gurney for the prisoner, and
CROWN CASES RESERVED.

1804.

Knapp for the prosecution; and after time taken to consider on the case, all the judges in Trinity term 1804, held the conviction wrong. (a)

1804.

Rex v. John Palmer and Sarah Hudson.

If a person knowingly deliver a forged bank note to another, who knowingly utters it accordingly, the prisoner who delivered such note to be put off may be convicted of having disposed and put away (c) a forged the same, on the statute 15 G. 2. c. 15. s. 11. S. C. 1 New Rep. 96. 2 Leach, C. C. 978.

(a) The judges in this case desired to see a copy of the charter. Query, therefore, whether one ground of their decision might not be, that the company had no authority to issue bills? MS. Jen.

This question, whether uttering Scotch notes in England is made felony? appears to be set at rest by the 45 G. s. c. 89. s. 8. which enacts that all and every the clauses and provisions in this act contained shall extend to every part "of Great Britain."

(b) Vide statute 2 G. 2. c. 35. s. 1.

(c) 15 G. 2. c. 15. s. 11. enacts, That if any person or persons shall forge, counterfeit or alter any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the common seal of the Governor and Company of the Bank of England, or any indorsement thereon, or shall offer or dispose of or put away any such forged, counterfeit, or altered note, &c., or the indorsement thereon, or demand the money therein contained or pretended to be due thereon, or any part thereof, of the said company, or any their officers or servants, knowing such note, &c., or the indorsement thereon, to be forged, counterfeited, or altered, with intent to defraud the said company, or their successors, or any other person or persons whatsoever, being thereof duly convicted, shall be deemed guilty of felony without benefit of clergy. The provisions of this statute are contained in the more recent statute 45 G. s. c. 89. s. 2.
and counterfeit bank note for 2l., knowing, &c., with intent to defraud, &c.

It was satisfactorily proved, that the prisoner, John Palmer, was in the habit of putting off forged bank notes, and employed the other prisoner, Sarah Hudson, to assist him in putting them off. That on Saturday, the 21st of January, 1804, he had so employed her, he being in or about the Old Bailey, and having sent her to purchase some goods at a shop.

On that day (Saturday, 21st January,) she came alone to the shop of one John Shaw, in Newgate-street, and bought two muslin handkerchiefs, for which she offered in payment the 2l. bank note mentioned in the indictment: the shopman told her, he suspected it to be bad, and should send it to the Bank for inspection, and accordingly stopped the note, and sent it to the Bank, and it was proved to be forged.

On the same evening, the female prisoner returned to the shop in company with the prisoner, Palmer; Palmer said, "this woman has been here to-day, and offered a 2l. note which you have stopped: why have you stopped it? it is my note, and I must have either the note or the change;" he was told the note had been sent to the Bank for inspection, and had been found a bad one: he repeatedly said it was his, and insisted on having the note or the change. They were then both taken into custody.

The jury found the prisoner Palmer guilty, and acquitted Sarah Hudson.

Le Blanc J. respited the judgment, in order that the opinion of the Judges might be taken, whether the evidence supported the conviction of Palmer either on the count for uttering and publishing as true, or on the count for disposing and putting away.

At a meeting of all the Judges in Trinity term, 1804; the majority, viz. Lord Ellenborough, Mansfield C. J. Macdonald C. B., Hotham B., Heath J., Grose J., Rooke J., and Graham B., were of opinion that the conviction was right on the count for disposing and putting away. Thomson B., Lawrence J., Le Blanc J., and Chambre J., that it was wrong. (a):

(a) Vide the case of Rex v. Soares and others, supra. 25.
A sailor in a sick hospital, where he had been for 30 days, and therefore not entitled to pay, nor liable for what he then did to a court-martial; Held to be a person serving in his majesty's forces by sea within 37 G. 3. c. 70., so as to make the seducing him an offence within that act.

The prisoner was tried before Lord Ellenborough at the Exeter Lent Assizes in the year 1804, and convicted upon an indictment for feloniously, maliciously, and advisedly endeavouring to seduce one James Brown a person serving in His Majesty's forces by sea, from his duty and allegiance to His Majesty, against the statute (37 G. 3. c. 70. (a) ) on the 8th day of May, 1803, at the parish of Paynton; and for endeavouring to seduce the said James Brown to take a traitorous oath to be true to certain false and wicked traitors, contrary to his duty and allegiance to His Majesty.

The crime was fully and satisfactorily made out in evidence against the prisoner, provided James Brown, the witness, and the person endeavoured to be seduced from his duty and allegiance, could properly be considered as being at the time of such attempted seduction a person serving in His Majesty's forces by sea.

Brown had been last a sailor belonging to the forecastle on board the San Josef, and had come from that ship with a regular sick ticket to Paynton hospital, on the 1st day of January, 1804, and the prisoner came from the Dreadnought to the same hospital about a month afterwards; the endeavour to seduce was made in April or May following.

The surgeon of the hospital stated, that he attended Brown as a sailor of the San Josef. That sailors sent to the hospital, are, when cured, returned to their respective ships. That if they run away, their wages go to the chest of Chatham; that if the ships they belonged to before be, at the time when they are

(a) By section 1. it is enacted, That any person who shall maliciously and advisedly endeavour to seduce any person or persons serving in his Majesty's forces by sea or land from his or their duty and allegiance to His Majesty, or to incite or stir up any such person or persons to commit any act of mutiny, or to make or to endeavour to make any mutinous assembly or to commit any traitorous or mutinous practice whatsoever, are declared felons without benefit of clergy.
cured, at sea, the surgeon in that case writes to the post-admiral at Plymouth, who disposes of them as he thinks fit.

By the 32 G. 3.  c. 33.  s. 12., a seaman sent sick into any of His Majesty's hospitals or sick quarters is not to be allowed pay for more than thirty days of the time he remains in the hospital or sick quarters.

Brown had been more than thirty days in the hospital, when the seduction was attempted by the prisoner, and of course was not then entitled to be allowed pay.

The statute of the 22 G. 2.  c. 33.  s. 4., provides that courts martial are not to proceed to punishment, or trial of any of the offences specified in the several articles contained in that act, or of any offence whatsoever (other than is contained in the 5th, 34th, and 35th, of those articles and orders), which shall not be committed by persons who, at the time of the offence committed, shall be in actual service, and full pay, in the fleet or ships of war of His Majesty.

The question reserved for the opinion of the Judges, was, whether Brown (who was at the time of the attempted seduction circumstanced as above, and only liable to be tried by a court martial, in the limited extent stated in the last mentioned act), could properly be considered as a person serving in His Majesty's forces by sea, within the 37 G. 3.  c. 70.

In Michaelmas term, 10th November, 1804, at a meeting of all the Judges (except Heath and Chambre Js.) the conviction was held right. Mansfield C. J., at first thought otherwise, but afterwards expressed himself satisfied that Brown, at the time of the attempted seduction, was in His Majesty's service.

REX v. THOMAS MARSHALL.

The prisoner was tried before Mr. Baron Graham, at the York summer assizes, in the year 1804.

The indictment charged, that the prisoner Thomas Marshall, on the 19th of March, 1804, at the parish of Kirkby Overblow, endorsed by the prisoner in his own name, if the fictitious name was used in order to defraud.
CROWN CASES RESERVED.

1804.

MARSHALL'S CASE.

on a bill of exchange, on which was then contained an indorsement as follows, "Joseph Ward," and which bill of exchange was as follows:

"Two months after date, pay Mr. Joseph Ward, or order, twenty-eight pounds, value received, as advised by
"Edward Pratt.
"Messrs. Fuller and Co.
"Bankers, London."

did falsely make, forge, and counterfeit, an indorsement of the said bill of exchange, as follows, "Luke Marsden," with intention to defraud one Peter Harland.

The prisoner came to the house of the prosecutor, Peter Harland, at Kirkby Overblow, in the afternoon of the 12th of March, 1804, to buy a horse. Harland sold him one for 38l. When the bargain was made, the prisoner produced the bill for 28l., with other good guinea notes. Harland said, he asked no question about the indorsement, but seeing that it was drawn on a good bank in London, desired the prisoner to give him his name on the back. The prisoner took up pen and ink, and wrote in Harland's presence, "Luke Marsden," on the back. Harland asked him, after he had made the bargain, where he lived? he said, in York; and Harland made no further enquiry, living twenty miles from York. Harland indorsed the bill; it was sent to London, and returned to him unpaid. The other names on the bill, before "Luke Marsden," and particularly that of Joseph Ward, were there before the prosecutor took the bill.

The prosecutor said, he knew nothing of the prisoner, or any Luke Marsden; that he supposed he wrote his own name, but that had he written John Roberts, he should not have refused the bill.

It was proved that the prisoner had lived at York for a few years, under the name of Thomas Marshall, but had left it about a year and a half, or two years. That his real name was Thomas Marshall, and that he had never, to the knowledge of the witnesses, gone by the name of Luke Marsden.

The jury, under the learned Judge's direction, found the prisoner guilty, and sentence was passed on him, but respited under a
doubt, whether forgery of the name of the maker, or indorser of a bill or note, did not import the assumption of the character and credit of another person, and upon a difficulty of reconciling the cases of *Rex v. Shepherd* (a), *Rex v. Aickles* (b), *Rex v. Lockitt*, and *Rex v. Abrahams* (c), *Rex v. Tuft* (d), and *Rex v. Taylor* (e).

In *Michaelmas* term, 10th of *November*, 1804, **ALL THE JUDGES** (except *Heath* and *Chambre Js.*) being present, it was decided that the conviction was right, it appearing that there was no doubt as to the intent to defraud.

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**REX v. SARAH CHAPPLE.**

The prisoner was tried before Mr. Baron Tromson, at the summer assizes for the county of Devon, in the year 1804, on an indictment which set forth, that the prisoner being an ill-designing and disorderly person, and of a wicked and disorderly mind, after 1st *June*, 1793, viz. 6 *March*, 43 G. III., with force and arms at the parish of *Islington*, three pigs being swine and cattle, of the value of 6l. of the goods and chattels of *William Osmond*, jun. then and there being, feloniously, unlawfully, wilfully, and maliciously, with and by means of poison, then and there did kill and destroy, to the great damage of the said *William Osmond*, against the form of the statute, &c.

The prisoner was found guilty, but judgment was respited, that the opinion of the Judges might be taken on the question, whether pigs were cattle within the meaning of the black act, 9 G. I. c. 22?--

In *Michaelmas* term, *November*, 10th 1804, **ALL THE JUDGES** (except *Chambre* and *Heath Js.*) being present, it was determined that a pig was cattle within the meaning of the act, and that therefore the conviction was right.

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(a) 3 East, P. C. 967.  (b) Ibid. 968. (c) Ibid. 940, 941.
(d) Ibid. 959. (e) Ibid. 960.
(f) The words of the first section were, If any person shall unlawfully and maliciously kill, maim, or wound any cattle, &c. every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony without benefit of clergy. Though the enactment is now repealed by 4 G. 4. c. 54. s. 2, the meaning of the word cattle is important under the provisions of the recent statute.
Case upon 43 G. 5. c. 58. Where a cutting is inflicted by an instrument capable of cutting the case is within this statute, though the instrument be not intended for cutting, nor ordinarily used to cut, but generally used to force open drawers, doors, &c. and though the intention was not to cut but to inflict some other mischief.

The prisoner was tried before Macdonald, C. B. at the Old Bailey January sessions, in the year 1805, upon an indictment on the statute 43 G. 3. c. 58. s. 1., which enacts, that if any person shall wilfully, &c., shoot at any of His Majesty's subjects, or shall wilfully, &c., present, &c., any kind of loaded fire-arms at any of His Majesty's subjects, and attempt, by drawing a trigger, or in any other manner, to discharge the same at or against his or their person or persons, or shall wilfully, &c., stab or cut any of His Majesty's subjects, with intent in so doing, or by means thereof, to murder or rob, or to maim, disfigure, or disable such His Majesty's subject or subjects, or with intent to do some other grievous bodily harm to such His Majesty's subject or subjects, or with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person or persons so stabbing or cutting, or the lawful apprehension and detainer of any of his, her or their accomplices, for any offences for which he, she, or they may respectively be liable by law to be apprehended, imprisoned or detained, the person or persons so offending, their counsellors &c. shall be and are declared to be felons without benefit of clergy.

The indictment charged a larceny to have been committed by the prisoner, by stealing certain goods of Richard Crabtree of the value of five shillings; and that the prisoner having committed the said felony, made an assault upon Benjamin Chantry, and, with a certain sharp instrument, then and there feloniously, &c., did strike, stab, and cut the said Benjamin Chantry, in and upon the head, with intent in so doing, and by means thereof, to obstruct, resist, and prevent the lawful apprehension and detainer of him the said prisoner; and all the counts, which were four in number, charged the striking, stabbing, and cutting, only with intent to prevent the lawful apprehension and detainer, &c. (a)

(a) The first count of the indictment was to the following effect:—The jurors, &c. that R. H. late of, &c. on the 30th of October, 44 G. 3. with force and arms at, &c. two bolsteres of the value of five shillings, and two pillows of
It was proved in evidence that a larceny had been committed in the house of Crabtree, into which the prisoner and another person had entered. They were seen coming out of the house by persons who had watched them; and the prisoner was pursued and seized by one gentleman, from whom he disengaged himself, but was still pursued, and afterwards seized by Benjamin Chantry. After suffering himself to be led along quietly by Chantry for the distance of forty or fifty yards, the prisoner suddenly struck him with an iron upon the head. The surgeon stated that his skull was fractured, and that part of the skull was cut out, and that nothing was so likely as that it should have been done with an instrument such as that which was produced, and had been proved to be the instrument made use of by the prisoner.

Upon this evidence the prisoner was convicted, and the learned Chief Baron was inclined to think, that as the instrument was proved by the surgeon to be capable of cutting, and actually to have cut, and as the statute mentioned cutting generally, without reference to any description of instrument, the conviction was proper. But some doubts having arisen upon the case, on the ground that the instrument used was not of a sort originally intended for cutting, nor ordinarily used for that purpose, being adapted to the purpose of forcing open doors, drawers, chests, &c., and that the intent of the prisoner was not to cut with such an

the value of five shillings of the goods and chattels of Richard Crabtree, then and there being found, feloniously did steal, take, and carry away against the peace, &c. and the jurors, &c. that the said R. H. having so done and committed the felony aforesaid, in manner and form aforesaid, afterwards, to wit, on the said 20th day of October, in the year aforesaid, with force and arms, in the parish aforesaid, in the county aforesaid, in and upon Benjamin Chantry, a subject of our said lord the king, in the peace of God and our said lord the king, then and there being, feloniously, wilfully, maliciously, and unlawfully did make an assault, and with a certain sharp instrument then and there feloniously, wilfully, maliciously, and unlawfully, did strike, stab, and cut the said Benjamin Chantry in and upon the head of him the said Benjamin Chantry, with intent (in so doing and by means thereof) to obstruct, resist, and prevent the lawful apprehension and detention of him the said R. H. for the aforesaid felony and larceny, for which he the said R. H., the person so stabbing and cutting as aforesaid, was then and there liable by law to be apprehended, imprisoned, and detained. To the great damage, &c. against the form of the statute, &c. and against the peace, &c.
CROWN CASES RESERVED.

1805.

Hayward's Case.

1805.

The prisoner was tried before the Recorder at the Old Bailey February sessions, in the year 1805, upon an indictment, the first count of which charged, that he, on the 12th January, 1805, at &c., was servant to one Samuel Newman, a butcher, and being such servant, did receive and take into his possession the sum of seventeen shillings and ten-pence for and on account of his master the said Samuel Newman; and that having so received the said sum of money for and on account of his said master, he fraudulently and feloniously did embezzle and secrete the same; and so the jurors did say, that he in manner aforesaid feloniously did steal, &c. from the said Samuel Newman, his said master and employer, the said sum of seventeen shillings and ten-pence, for whose use and on whose account the same was delivered to and taken into the possession of him the said William Mellish, being so employed as aforesaid, against the statute, &c. The second count was the same as the first, only charging him to have received the money of one Thomas Hutchinson.

It appeared that the prisoner, who was under eighteen years of age, was an apprentice to Samuel Newman, a butcher at Brentford, and that it was the prisoner’s duty to go daily for orders to a Mr. Hutchinson's, who dealt with Newman for meat. But it

(a) Vide Rex v. Atkinson East. T. 1806. post, 104.
was not proved that the prisoner had ever been employed by his master to receive money. Upon the 12th of January, the prisoner brought Hutchinson a bill for meat, amounting to eleven shillings and tenpence, which bill was in the handwriting of Newman's niece, who kept his accounts and made out his bills. Hutchinson desired the prisoner to take back the bill to get a receipt to it, and to include in the bill some meat which he then ordered. The prisoner came back with the meat and a receipt to the bill, and received the amount, seventeen shillings and tenpence; the last item of meat, six shillings, was not in the handwriting of Newman's niece, nor were the words "paid Newman." The prisoner embezzled the money.

The jury having found the prisoner guilty, the Recorder reserved the following point for the opinion of the judges, namely, whether the prisoner, being an apprentice to the prosecutor, came within the meaning of the 39 G. 3. c. 85. (a)

At a meeting of all the judges in Easter term, 11th May, 1805, they were all of opinion that the conviction was wrong; on the ground that it did not appear by the evidence that the prisoner was ever employed to receive money for his master, or received the money in question by virtue of his employment. Upon the other objection, it seemed to be the opinion of the judges that an apprentice was within the meaning of the act.

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REX v. JOHN STORY.

The prisoner was tried and convicted before Mr. Justice Chambre, at the Lent assizes for the town of Nottingham, in the year 1805, upon an indictment on the statute 30 G. 2. c. 24. for obtaining money by false pretences.

Money from the keeper of a post-office, by assuming to be the person mentioned in a money order, which he presented for payment, though he did not make any false declaration or assertion in order to obtain the money.

(a) 21 H. 8. c. 7. makes it a felony in servants embezzling their master's goods, except apprentices and servants under eighteen years of age. But the 39 G. 3. c. 85. contains no such exception.
The indictment charged, that the prisoner fraudulently and
deleitfully produced and delivered to Elizabeth, the wife of John
Rayner, which John Rayner was employed in the business of the
post-office as deputy post-master of the town of Nottingham, an
order for the payment of money, commonly called a money
order, to wit, for the payment of the sum of one pound to one
John Storer, and that he unlawfully, knowingly, and designedly,
falsely pretended to the said Elizabeth Rayner that he was the
person named in the said order; by means of which false pre-
tence he unlawfully, &c. obtained from the said Elizabeth Rayner
the sum of one pound, of the monies of the said John Rayner,
with intent to cheat and defraud the said John Rayner, and averred
that the prisoner was not the person named in the order, nor the
person entitled to receive the money therein mentioned. There
was a second count, differing from the first only in alleging the
money to be John Storer's, and the intent to be to cheat him.

It appeared in evidence, that on Sunday the 5th of August the
prisoner went to the post office at Nottingham, and enquired of
Mrs. Rayner for letters directed to John Story, post-office, Not-
ingham, to be left till called for. Mrs. Rayner looked amongst the
letters, and finding one directed for John Storer, "to be left till
called for, Nottingham," not adverting to the different spelling of
the names, and supposing the letter to be that which the prisoner
enquired for, she delivered it to him. The direction then upon
the letter was a re-direction of it from Northampton, to which
place it had been originally sent from Nottingham, to be left at
the Swan and Bit, Northampton; that part of the direction having
been struck out with a pen, and the direction to Nottingham sub-
stituted. The prisoner, on receiving it, looked at the direction,
and objected to the payment of two shillings for the postage,
saying it was too much from Manchester; but afterwards he paid
the money, and went with the letter into the office passage,
where he remained two or three minutes (a sufficient time to have
read the letter), and then returned into the office with the money
order that had been inclosed in it, and gave it to Mrs. Rayner,
who told him that he must write his name upon the back of the
order before she could pay him the money, upon which he wrote
his real name, John Story, and she paid him with a one pound
note. The prisoner then desired her to look again, and she
CROWN CASES RESERVED.

would find another letter for him from Manchester, which she
did, and he paid for it.

The order, which was signed by Mrs. Rayner, in the name of
her husband (she always transacting that business for him), was
in the following form:

"No. 52.—Order given by one deputy on another.
£1. Post-office, Nottingham, August 2, 1804.
"At sight pay John Storer according to my letter of advice of
the number and date, the sum of one pound, and place the
same to the account of the money-order office.
"To the postmaster of Northampton.—John Rayner.
"This order must be signed by the person to whom it is made
payable, or marked before a witness, and sent up with the quar-
terly account as a voucher for the payment."

The letter and order were duly proved, as well as all other
necessary circumstances respecting their being sent and returned;
having never been received by, or the money mentioned in the
order having ever been paid to, John Storer. The terms of the
letter clearly explained that the order could not have been in-
tended for the prisoner; and when he was first apprehended he
denied having received the money, or having ever seen Mrs.
Rayner; but he afterwards assigned his want of cash as the reason
for his conduct. In the conversation betwixt him and Mrs. Rayner,
she never asked him if he was the person for whom the letter
and order were intended, nor did he say that he was so.

The prisoner's counsel contended, that as the order was given
to him by Mrs. Rayner herself, and the prisoner had merely pre-
sented it to her for payment, without making any untrue declar-
ation or assertion, the case was not within the statute.

Chambre, J. left it to the jury to find against the prisoner, if
they were satisfied that the prisoner, by his conduct, had fraud-
dulently assumed a character which did not belong to him,
although he made no false assertions; and they found him guilty:
but the learned Judge respited the sentence in order to take the
opinion of the Judges, as well as upon the objection made, as
upon the further doubt, whether the signature of the prisoner's
name, under the circumstances, did not amount to a forgery of a
receipt for money, in which the lesser offence was merged.
CROWN CASES RESERVED.

In Easter term, 11th May, 1805, the case was taken into consideration at a meeting of all the judges, when they were of opinion that it did not appear to be a forgery, the prisoner having signed his own name, which was not the same name as that of the person to whom the note was payable. And on the other objection, they held that he was properly convicted of obtaining the money by a false pretence, because, by presenting the order for payment, and signing at the post-office, he represented himself to Mrs. Rayner as the person named in the note.

REX v. RICHARD GOTLEY.

18 Eliz. c. 5. Held that a party is liable to the punishment prescribed by this act, for taking the penalty imposed by a penal statute though there is no action or proceeding for the penalty.

The prisoner was tried and convicted before Mr. Justice Le Blanc at the Shrewsbury Lent assizes, in the year 1805, upon an indictment on the statute 18 Elizabeth, c. 5, s. 4, for compounding an offence against the highway act, 13 G. 3. c. 84. s. 13. and taking a sum of money without process, to prevent an action being brought, without the order or consent of any of His Majesty's courts at Westminster, and without lawful authority.

The indictment contained several counts: some of them stated the party of whom the money was taken to have committed the offence, whereby the penalty was incurred; others of them stated only that the prisoner compounded and took the money, by and upon colour and pretence of a certain matter of offence pretended to have been committed. (a)

(a) The first count of the indictment was to the following effect: — Shropshire, (to wit). The jurors, &c. that Richard Gotley, late of, &c. being an evil disposed person, and not regarding the statute in such case made and provided, nor fearing the penalties therein contained heretofore, to wit, on the 19th day of November, in the year of our Lord, 1804, with force and arms, at Hales Owen, in the county of Salop, by and upon colour and pretence of a certain matter of offence then and there pretended to have been committed by one Edward Round against a certain penal law, (that is to say) by and upon colour and pretence that heretofore, to wit, on the 50th day of October, in the year aforesaid, a certain waggon, of which the said Edward Round was then the owner, having the sole or bottom of the fellies of the wheels of less breadth or guage than six inches, did pass and was drawn upon a certain turnpike road
It was satisfactorily proved that Edward Round, the person named in the indictment, from whom the prisoner was charged to have taken money by way of composition, had incurred a penalty of 5l. under the statute 13 G. 3. c. 84. s. 13. by suffering his waggon to be drawn on a turnpike road by more than four horses, he being the owner; and that the prisoner had received from him 5l. 2s. (the two shillings over being to have been returned) by way of composition, to prevent any legal proceedings; the prisoner having applied to Round for the purpose, and demanded the 5l. as a penalty which Round had so incurred. And it further appeared, that no process had been sued out, and that no information had been laid before any magistrate.

Le Blanc, J. respited the judgment, upon a doubt whether the offence was within the statute 18 Eliz. c. 5. so as to subject the prisoner to the specific punishment prescribed by that act, of being set in the pillory for two hours; inasmuch as no action or proceeding was depending in which the order or consent of any court in Westminster-hall for a composition could be obtained.

leading to Birmingham, in the county of Warwick, with more than four horses, to wit, with six horses, contrary to the form and effect of a certain statute made and passed in the thirteenth year of the reign of his present majesty, entitled, "An act to explain, amend, and reduce it into one act of parliament, the general laws now in being for regulating the turnpike roads in that part of Great Britain called England, and for other purposes," unlawfully, wilfully, and corruptly, did compound and agree with the said Edward Round, who was supposed to have offended against the same statute in manner aforesaid, for the said pretended offence; and did thereupon then and there, to wit, on the said 19th day of November, in the year of our Lord 1804, aforesaid, at Hales Owen aforesaid, without process, take of and from the said Edward Round a certain sum of money, to wit, the sum of two guineas, that is to say, the sum of two pounds and two shillings, of lawful money of Great Britain; and divers, to wit, three bank of England notes for the payment of the sum of one pound each, the said notes being then and there of a large value, to wit, of the value of three pounds of like lawful money, as and by way of composition for the said pretended offence, and in order to prevent an action being brought against him, the said Edward Round, for and in respect of the same, without the order or consent of any or either of his majesty's courts at Westminster, and without any lawful authority for so doing, to the great hindrance and obstruction of public justice, in contempt of our said lord the king and his laws, to the evil and pernicious example, &c. against the form of the statute, &c. against the peace, &c.
CROWN CASES RESERVED.

In Easter term, 11th of May, 1805, the case was taken into consideration at a meeting of all the Judges, when they were all of opinion that the conviction was right; and that the statute 18 Eliz. c. 5. applies to all cases of taking a penalty incurred or pretended to be incurred without leave of a court at Westminster, or without judgment or conviction. (a)

1805.

Forfeying a bill payable to the prisoner’s own order, and uttering it without indorsement as security for a debt, is a complete offence.

1805.

REX v. JOHN BIRKETT.

The prisoner was tried before Mr. Baron Graham, at the spring assizes at Lancaster, in the year 1805, upon a charge of forgery. The first count of the indictment charged that the prisoner on, &c. at, &c. forged a bill of exchange, as follows:

"No 28
2310. £35. 3s. 5d.
Preston Bank, 16th August, 1804.
"Two months after date, pay to the order of Mr. John Birkett, thirty-five pounds, three shillings, and fivepence, value received.
"Atherton, Greaves, & Denison.
"To Joseph Denison, Esq. & Co. London.
"Entd. R. N."

with intent to defraud the bank of Atherton & Co. The second count was for uttering and publishing the same with the like intent. And the third and fourth counts differed in laying an intent to defraud one Matthew Yates. The fifth count (which was particularly adapted to the facts of the case,) charged that the prisoner having in his possession a paper whereon was written or printed to the following tenor:

"No 28
L.
Preston Bank, 1804.
pay to the order of value received.
"Atherton, Greaves, & Denison.
"To Joseph Denison, Esq. & Co. London.
"Entd."

(a) As to the punishment of the pillory, see now 56 G. 3. c. 138.
did forge, &c. in and upon the said paper as follows: "2310." "85. 3. 5." "16 August." "Two months after date." "Mr. John Birkett, thirty-five pounds, 3/5." "R. N." and by that means did forge, &c. a bill of exchange, as follows, (setting forth the bill as filled up) with intent to defraud the bank of Atherton & Co. The sixth count was for uttering and publishing the same with the like intent. And the seventh and eighth counts differed from the fifth and sixth, in laying an intent to defraud Matthew Yates. There were other counts laying an intent to defraud the drawers.

By the evidence of the wife of Matthew Yates, the person mentioned in the indictment, it appeared that her husband resided at Liverpool, and kept an inn there, to which the prisoner came on the 14th of the preceding August with a horse, and continued boarding and lodging there until the 27th of the same month. Four or five days before the 27th a person came to the inn and took away the horse, and the witness then directed the waiter to carry the prisoner his bill; after which the prisoner came to her and gave her the bill of exchange, filled up as stated in the indictment, saying he hoped that would satisfy her for what he had had; to which she answered, "I dare say it will;" and took it from him and kept it until the 27th of August, when the prisoner was apprehended.

Upon cross-examination, the witness said that the prisoner did not give the bill of exchange to her as payment; and that she knew she could make no use of the bill until the prisoner indorsed it: that he told her he did not wish to discount it, and would pay her in a few days without it. She further stated, that she considered herself as keeping the bill for the prisoner, and not for herself.

It was further proved, that the prisoner had been a clerk in the house of Atherton & Co from July, 1803, to July 1804: and that it had been usual in that house to have cheques signed "Atherton, Greaves, & Dennison," kept in a drawer within the proper custody of two superior clerks, but accessible to the prisoner, who was sometimes permitted to sign them. It was also proved, that the whole of the written part of the bill of exchange stated in the indictment, except the signature "Atherton, Greaves, & Dennison," was in the handwriting of the prisoner.

The learned Judge left the case to the jury, telling them that the use made of the instrument when filled up by the prisoner;
though not indorsed, was conclusive evidence of the fraudulent intention, and proved as well the counts charging the actual forgery as those which charged the uttering, &c. knowing it to have been forged: and the jury returned a verdict of guilty. But the learned Judge afterwards respited the sentence, doubting whether he ought not have left the question of fraudulent intention more open to the jury; in which case they might have found that the prisoner did not mean to defraud any person, but, by paying his reckoning and taking back the bill, to make no further use of it.

The case was taken into consideration at a meeting of all the Judges in Easter term, 11th May, 1805, when they were of opinion, that the facts stated amounted to forgery, and with a fraudulent intent; the bill having been given to the landlady to obtain credit, though as a pledge only.

1805.

**REX v. BENJAMIN OLDROYD.**

When a witness upon a trial gives evidence contradictory to facts contained in a deposition made by such witness in a former proceeding in the same case, the Judge may order such deposition to be read, in order to impeach the credit of the witness.

The prisoner was tried before Mr. Baron Graham, at the Lent assizes for the county of York, in the year 1805, for the murder of his father at Sandal Magna, on the 12th of July, 1804, by strangling him. He was convicted upon circumstantial evidence, but the learned Judge respited his execution upon an objection pressed upon him by the counsel for the prisoner, as to the admissibility in evidence of a deposition read upon the trial under the following circumstances.

The counsel for the prosecution at the close of their case observed to the learned Judge, that they did not mean to call the mother of the prisoner, Elizabeth Oldroyd, strong suspicions having fallen upon her as having been an accomplice; but the Judge thought it right, in compliance with the usual practice (her name being on the back of the indictment, as having been examined before the grand jury,) to have her examined, which was accordingly done. The learned Judge observing upon this examination, that the evidence given by the woman was in favour of the prisoner, and materially different from her deposition taken before
the coroner, thought it proper to have the deposition read, for the purpose of affecting the credit of her testimony so given on the trial: and in summing up the case to the jury he stated, that her testimony was not to be relied upon, and left the matter of the prisoner's guilt entirely upon the other evidence.

The question reserved for the opinion of the Judges was,—whether it was competent to the Judge, under the circumstances stated, to order this deposition to be read, in order to impeach the credit of the witness.

The case was taken into consideration at a meeting of all the Judges in Easter term, 11th of May, and again on the 18th of May, 1805, when they were all of opinion, that it was competent under the circumstances for the Judge to order the deposition to be read, to impeach the credit of the witness. It was then considered whether, laying the evidence of the prisoner's mother entirely out of the case, there was sufficient evidence to go to the jury. Graham B. read to the Judges from his notes the evidence given on the trial; and, upon consideration, the Judges were of opinion, that there was evidence sufficient to go to the jury; and that the jury having found the prisoner guilty, there were not circumstances sufficient to raise a doubt so as to induce any interposition to prevent the law taking its course.

The case of Margaret Tinkler (a) was mentioned; where the Judges determined, that although evidence had been received which was not strictly admissible, yet the case appearing clear against the prisoner without that evidence, it was not a reason to stay the execution. And the Judges, upon the present occasion, seemed all to agree to that doctrine, where the case was otherwise clear; but seemed to think, that this case could hardly have fallen within the rule if the evidence of the mother's deposition, to impeach her credit, had been held inadmissible.

Upon the question, whether a party producing a witness could be permitted to call evidence to impeach the credit of such witness, were cited Rex v. Colledge, Adams v. Arnold. (b) 12 Vin. Abr. 48. tit. Evidence, M. a. pl. 6.

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(a) East, P.C. 354.—This case was before the Judges on the 6th November, 1781.

(b) 12 Mod. 375.
In this case, the determination of the Judges was confined to the right of a Judge to call for a witness's deposition, in order to impeach the credit of a witness who on the trial should contradict what she had before deposed; but Lord Ellenborough and Mansfield C. J. thought the prosecutor had the same right. (a)

REX v. SAMUEL WHILEY.

Forgery. Where the name made use of by the prisoner in the forged instrument was assumed by him with the intention of defrauding the prosecutor, a conviction for forgery was held to be right though the prisoner's real name would have carried with it as much credit as the assumed name.

The prisoner was tried before Mr. Baron Thomson, at the Lent assizes for the county of Somerset, in the year 1805, upon an indictment which charged him with forging a bill of exchange for 60l., dated Bath, January 5th, 1805, drawn in the name of Samuel Milward, payable to his own order on Messrs. Stephenson & Co., bankers in London, with intention to defraud Horatio Thurston. The second count was for uttering the bill knowing it to be forged.

The prosecutor, an upholsterer at Bath, proved, that on the 27th of December, 1804, the prisoner, who was then a stranger to him, came to his house to take a coach-house and stable, which the prosecutor agreed to let him for three months. The prisoner then bespoke of the prosecutor goods in the way of his business to the amount of 16l. 2s., directing them to be sent to him, and writing his direction in the prosecutor's book "Samuel Milward, No. 12, Kensington Place, Bath;" and the goods were sent in the course of three days. The prisoner afterwards ordered more goods, and, before they were all delivered, told the prosecutor to get his bill ready by four o'clock on Old Christmas Eve, and that he would then call for it, which he did, and the prosecutor gave him his bill, amounting to 49l. 10s. The prisoner said it was his rule to discharge all bills on Old Christmas Eve: he looked at the prosecutor's bill and said it was very right; that he would return

(a) See as to the right of the prisoner to have depositions read to contradict a witness, 1 Phil. Ev. 373.
in about ten minutes, which he did, bringing with him the draft in question, and saying he would give the prosecutor a draft on his banker in London for 60l. The prosecutor looked at it, and the prisoner said it was a very good one, upon which the prosecutor gave him the balance of ten guineas. The bill was indorsed with the name of "Samuel Mitward." The prisoner told the prosecutor he should want more goods, and should be a very good customer to him.

The prosecutor paid this draft to his bankers in Bath, and received it back from them on the 25th of January, when it had been returned from London. He then went to the prisoner's house and found it shut up; and he saw nothing more of the prisoner till about three weeks after, when he was in custody before the mayor of Bath. A clerk of Stephenson & Co. proved that they knew no such person as Samuel Mitward, and that the bill was therefore dishonoured.

It was satisfactorily proved that the prisoner's real name was Samuel Whiley; that his baptism was registered by the name of Samuel, son of Samuel and Mary Whiley, at Hales Owen, in Shropshire, and that he was married by the name of Samuel Whiley at Tamworth; that he had gone by this name at Bath, where he had lodged in the July preceding this transaction for about a week; that at Bristol, in the October following, he also went by the name of Samuel Whiley, and did so on the 6th of December at Bath; and that on the 20th of December (about a week before he first came to the prosecutor) he had taken a house in Worcestershire under the same name; but that, on the 28th of December (the day after his first application to the prosecutor) he ordered a brass plate to be engraved with the name of "Mitward," which was fixed on the door of his house on the day following. In his defence, the prisoner stated that he had understood from his father that he was christened by the names of Samuel Mitward; and that, being under difficulties, and afraid of arrests, he had omitted the name of Whiley.

In answer to a question put by the learned Judge, the prosecutor stated that he took the draft on the credit of the prisoner, whom he did not know, and who was drawer payee and indorser; that he presumed the prisoner's name was that which he had written, and had no reason to suspect the contrary; and that, if the prisoner had come to him under the name of Samuel Whiley, he
1805. Wexler's Case.

would have given him equal credit for the goods, and have taken from him the draft in that name, and have paid him the balance in cash.

Thomson B. left it to the jury to say whether the prisoner had assumed the name of Milward, in the purchase of the goods, and giving the draft, with intention to defraud the prosecutor; and the jury, saying they were satisfied of that fact, found the prisoner guilty. But judgment was respited, in order that the opinion of the Judges might be taken upon the case.

In Trinity term, 22d June, 1805, at a meeting of all the Judges, the conviction was held right. And at the summer assizes, 1805, at Bridgewater, the prisoner was brought to the bar, and after the opinion of the Judges had been delivered by Le Blanc J. received sentence of death; but he was afterwards reprieved at the instance of the learned Judge by whom he was tried. (a)

1805. REX v. EDWARD MADDOX.

If the master and owner of a ship steals some of the goods delivered to him to carry, it is not larceny in him unless he took the goods out of their package; nor, if larceny, would it be an offence within 24 G. 2. c. 45.

This was an indictment for a capital offence on the 24 G. 2. c. 45, tried before Mr. Baron Graham at the summer assizes at Winchester, in the year 1805.

The first count was for stealing at West Cowes six wooden casks and 1000lbs. weight of butter, value 20l., the goods of Richard Bradley and Thomas Clayton, being in a certain vessel called a sloop in the port of Cowes, the said port being a port of entry and discharge, against the statute. The second count was for grand larceny. The third count was like the first except as to the property in the goods, which was laid in one Richard Lashmore; and the fourth count was for grand larceny of the goods of the said Richard Lashmore.

The butter stolen was part of a cargo of 280 firkins or casks, shipped at Waterford, in Ireland, on board a sloop, the Benjamin,

(a) Rex v. Marshall, ante, p. 75. S.P.
of which the prisoner was master and owner, bound to Shoreham and Newhaven, in Sussex; two hundred and thirty of the casks being consigned to Bradley and Clayton at Shoreham, and fifty of them to Lashmore at Brightehamstone.

It appeared, that the ordinary length of this voyage, with fair winds, was a week or nine days, but in winter sometimes a month or five weeks. In the present instance the voyage had been of much longer duration.

The vessel first touched at Sheephead, in Ireland, in distress. The prisoner went on shore at Beehaven, where he signed a protest, bearing date on the 20th December, 1804. From thence they proceeded to Lundy Island, and toTenby in Wales, where they arrived in February, 1805, and at which place the prisoner went on shore and staid four or five weeks, the winds being foul. From thence they proceeded to Scilly, and then to Cowes, where they arrived on the last day of March, or the 1st of April, 1805. Cowes was in their course, but they had previously met with very foul weather, and had been driven to the westward of Madeira, during which time the vessel had been often in great distress; but no part of the butter had at any time been thrown overboard. Upon the arrival at Cowes the prisoner went on shore, and shortly afterwards applied to one Lallow, a sail-maker, for a suit of sails. Lallow went aboard the vessel and took measure for the sails, and, after his return to Cowes, the prisoner called upon him again and bespoke a hammock; and then stated, that he had thirteen casks of butter on board the vessel belonging to himself, and requested Lallow to send for them, and deposit them in his sail loft until the prisoner returned from Newhaven. At the same time he gave Lallow a note, or order, for the mate of the vessel, by which the mate was required to deliver thirteen casks of butter to the bearer. Lallow dispatched some of his men with the order and a boat to the vessel, where they arrived in the night, and after having delivered the order to the mate, received from him seven casks of butter in the first instance, being as much as the boat would carry; and upon their return to the vessel, during the night, received from the mate the other six casks. The order did not require the mate to deliver any particular casks; and it appeared by the evidence of the mate, that he took them as they came to hand. The casks had been originally stowed in the hold and upon the half decks
as they came on board, and those delivered to Lallow's men were taken from the half decks, the others being battened down. The seven casks first delivered by the mate were taken to Lallow's premises and deposited there; the other six casks were seized by the custom-house officers. The prisoner was at Cowes, and was informed by Lallow of the seizure, at which he expressed anger, speaking of the seizure as a robbery, and of the casks so seized as his own property and venture. He also spoke of going to claim his property, and afterwards told Lallow that he would give him an order to claim it, as he must himself go away. The prisoner afterwards went to the vessel, and passed the rest of the night on board. The remainder of the cargo was delivered at Shoreham and Newhaven.

The protest made by the prisoner, and bearing date at Beerhaven, the 20th of December, 1804, purported, amongst other things, that the prisoner had been obliged to throw overboard several casks of butter. And it appeared that he had held the same language to the consignees as his excuse for delivering short of their respective consignments.

Upon this case the counsel for the prisoner raised two objections; first, that no larceny had been committed by the prisoner; and secondly, that the offence was not capital; the larceny, if any, being of goods in his own vessel.

Upon the first objection it seemed to be admitted, that if the mate, by the order of the prisoner, had broken bulk by taking the casks from those which were battened down, it might have been larceny in the prisoner; and the learned Judge thought, that as the casks were taken from the half-deck, where they were originally stowed, there was no material difference. It was then contended, that the prisoner went into Cowes without any necessity, and out of the course of his voyage; and the case was compared to those wherein it had been held, that if goods are delivered to a carrier to carry to a certain place, and he carries them elsewhere, and embezzles them, it is no felony. (a) But the learned Judge thought, that the severance of a part from the rest, and the formed design of doing so, took the case out of those authorities, if they could be considered as applying to the present case.

(a) 1 Hale, 504, 505.  2 East, P. C. 695, 695, 696.
CROWN CASES RESERVED.

Upon the second objection, those cases where cited wherein it had been held that the 12th Ann. st. 1. c. 7. against larceny in a dwelling-house, to the value of forty shillings, does not extend to a stealing by a man in his own house; (a) but the learned Judge thought, that though this might be the law as to a person stealing the goods of another under the protection of his own house, yet the case of a man stealing the goods of another laden on board his own vessel was different; as in such case the vessel, for the voyage, might be considered as the vessel of the freighting; and that if the owner should take the command of the vessel, the stealing the goods committed to his care would be an aggravation of his offence. And he further observed, that the words and occasion of the two statutes would admit of a distinction.

The whole case was therefore left to the jury, who found the prisoner guilty; but the sentence was respited, in order that the opinion of the Judges might be taken.

In Michaelmas term, 1805, the case was considered by the Judges, who were of opinion that it was not larceny; and that if it were larceny, it would not have amounted to a capital offence within the statute 24 G. 2. c. 45.

...  

REX v. WILLIAM KITCHEN.

The prisoner was tried and convicted before Mr. Justice Le Blanc, at the summer assizes in the year 1805, at Bridge-water, upon an indictment for maliciously shooting at Elizabeth Monslow with a loaded pistol, with intent to kill and murder her against the statute. There were other counts in the indictment, some stating the intent to be to do her some grievous bodily harm, and others to disfigure her; and some stating the pistol to be loaded with gunpowder only, and others stating it to be loaded with gunpowder and other destructive materials.

the case will be within the act, though it be loaded with powder and paper only.

(a) 2 East, P. C. 644.
There was not any direct and positive evidence of the pistol, which was fired close to the prosecutrix's ear, being loaded with anything besides gunpowder and wadding or paper, but there were circumstances from whence to infer that it was loaded with some other destructive materials; and the evidence of the surgeon (forming his opinion from the nature of the wound) was positive that it must have been so loaded. Possibly, however, it might not have been loaded with any thing except powder and paper.

The learned Judge directed the jury, that whether the pistol was loaded with gunpowder and ball or other destructive materials, or whether it was loaded with gunpowder and paper only, if the prisoner fired it so near to the person of the prosecutrix, and in such a direction, as that it would probably kill her, or do her some grievous bodily harm, and with intent that it should do so, the case was within the statute: but he desired them, in case they found the prisoner guilty, to say whether they were satisfied that the pistol was loaded with any destructive material, besides gunpowder and paper, or not. The jury found the prisoner guilty, and said they were satisfied that the pistol was loaded with some destructive material besides powder and wadding.

Application was made to the crown for mercy, on the ground that the pistol was not loaded with any thing but powder and paper; upon which a question was submitted to the Judges, whether, supposing the fact to be so, the direction to the jury was right. And all the learned Judges (except Heath J.) having met in Michaelmas term, 16th of November, 1805, they were of opinion that the prisoner was properly convicted, and that the direction was right.

The prisoner was afterwards pardoned, on condition of two years' imprisonment in Itcheste gaol.
CROWN CASES RESERVED.

1805.

REX v. BENJAMIN CROCKER, ALIAS COLLINS.

The prisoner was tried before Mr. Justice Le Blanc, at the summer assizes for Salisbury, in the year 1805, for forgery. The indictment charged that he, on the 1st of April, 1805, at St. Edmund, in New Sarum, feloniously did falsely make, forge, and counterfeit, and cause and procure, &c. a certain promissory note as follows:

"On demand, I promise to pay Mr. Benjamin Crocker, or order the sum of seventy pounds, with lawful interest for the same, value received, this 7th day of March, 1808.

"Wm. Tucker."

with intent to defraud one William Tucker, against the statute, &c. And there was a second count for uttering.

It appeared, in evidence, that the prisoner, whose name was Benjamin Crocker, had lived in Winsham, in Somersetshire, many years, and was a farmer there, and had quitted Winsham about June, 1804, (so that the date of the note charged to be forged, was during the time of his residence in Somersetshire). Tucker, whose name appeared to be forged, was also a farmer living at Winsham, in Somersetshire, and still continued to live there. In November, 1804, the prisoner, by the name of Collins, went with his wife to Salisbury and took lodgings there, where he continued to reside until about the middle of May, 1805, when he went to London, leaving his wife in his lodgings at Salisbury. In consequence of suspicions which had arisen from his conduct respecting another matter while in London, his lodgings at Salisbury were searched, his wife being there but he being in London; and in a bureau belonging to the prisoner in these lodgings was found a pocket-book, in the inside of which was the prisoner’s name "B. Crocker,” written in his own hand writing, and in one of the pockets of which pocket-book was the note stated in the indictment. The body as well as the signature of the note “Wm. Tucker,” was in the prisoner’s hand-writing; though the signature, at first sight, appeared to be in a different hand. Upon the back of the note was written in the prisoner’s hand-writing,
"Mr. Wm. Tucker, 70l.," and underneath, also in the prisoner's hand-writing, "1 year's interest, paid 3l. 10s., B. Crocker."
The note was on the proper stamp for a promissory note of that value.

In the same pocket-book was found at the same time, another promissory note for 100l. payable to the prisoner or order, and appearing to be signed by one William Gapper, which William Gapper proved not to be his hand-writing, and that he never owed the prisoner 100l. On the back of that note was also written in the prisoner's hand-writing "Mr. Wm. Gapper, Senr. 100l."

This evidence of Gapper's note was objected to by the prisoner's counsel, but was received by the learned Judge.

William Tucker was called to prove that he never paid the prisoner 3l. 10s. for interest, on this or any other note; and this evidence was also objected to on behalf of the prisoner, but the learned Judge admitted it.

On behalf of the prisoner it was objected; first, that there was not any evidence to go to the jury of the note having been forged in the county of Wiltz, the prisoner not being in Wiltshire, but in Somersetshire, at the time when the note appeared to bear date; but upon this point the learned Judge was of opinion, that the fact of the note being found in the prisoner's lodgings in Wiltshire, where he had resided for some months, was evidence to go to the jury of its having been fabricated there.

In the second place it was objected, that, as the note had been kept in the prisoner's possession and never uttered or attempted to be made any use of, there was no intent to defraud. Upon this point the learned Judge held, that whether the note was made innocently or with an intent to defraud William Tucker was for the consideration of the jury, and to be collected from the facts proved.

The jury found the prisoner guilty. But the case, being reserved by the learned Judge for the opinion of the Judges, upon the objections made on behalf of the prisoner, and also as to the admissibility of the evidence which had been objected to, was argued before all the Judges (except Mansfield, C. J.) at Serjeants' Inn Hall, on the 30th of November, 1805, when the
CROWN CASES RESERVED.

majority (namely, seven to five) were of opinion, that the evidence of William Tucker was improperly admitted; and, therefore, that the conviction was wrong. (a)

1805.
Cockerton’s Case.

REX v. JOHN LEONARD WHITE AND JOHN RICHARDSON.

1806.

The prisoners were tried before Mr. Baron Graham, at the Old Bailey January sessions, in the year 1806, upon a charge of maliciously and unlawfully cutting one W. Randall, with intent in so doing, to obstruct, &c. their lawful apprehension, within the statute 43 G. S. c. 58.

The first count of the indictment charged, that the prisoners on, &c., at the hour of two in the night, with force, &c., at the parish, &c., unlawfully, wilfully, and injuriously, did force open and break from the hinges a certain window shutter, fixed to the dwelling-house of one J. W. there situate, with intent feloniously and burglariously to break and enter the said dwelling-house, and feloniously and burglariously to steal the goods and chattels therein; and that the said prisoners having so committed the offence as aforesaid on, &c., at, &c., and at the said hour of two in the night, in and upon William Randall, feloniously, wilfully, maliciously, and unlawfully, did make an

If several are out for the purpose of committing a felony, and, upon an alarm, run different ways, and one of them main a pursuer to avoid being taken, the others are not to be considered principals in such act.

(a) In Phil. Ev. 190, in the note, it is said, that Lord Ellenborough, C. J., the Chief Baron M'Donald, Mr. Justice Lawrence, and Mr. Justice Le Blanc, thought the witness admissible, because it had been sufficiently proved before that the note was not signed by him; and they thought him admissible to all points except that of forgery; and that some of the other Judges seemed to think, that at points perfectly collateral, the witness would have been admissible, but considered the point to which he was called as contributing to prove the forgery.

In the report of this case, 2 New Rep. 96., and 2 Leach, 996., it is supposed that a majority of the Judges considered, that if the point had been otherwise as to the admissibility of the evidence of the witness Tucker, there was not sufficient evidence of the offence having been committed in the county of Wiltz. It does not, however, appear, that any such opinion as to the latter point was expressed by the judges.
assault; and with a certain sharp instrument, feloniously, wilfully, maliciously, and unlawfully, did strike and cut the said William Randall, in and upon the head, with intent in so doing to obstruct, resist, and prevent the lawful apprehension and detainer of the said prisoners for the aforesaid offence, for which they were liable, by law, to be apprehended, imprisoned, and detained, to the great damage of the said William Randall, against the form of the statute, &c. Another count charged, that the prisoners on, &c., at, &c., were in an area belonging to the said dwelling-house, having upon them an iron crow, the same being an implement for house-breaking, with intent the said dwelling-house to break and enter, and then proceeded as in the first count.

It appeared in evidence, that the two prisoners were found in the area of the house mentioned in the indictment, which was No. 36, Lamb's Conduit Street, between two and three o'clock of the morning of the 22d of September, it being then dark. One of the shutters had been forced off by an iron instrument or crow, the sash of the window had been thrown up, but the window shutters in the inside had not been forced. The prisoners were interrupted by a watchman, who hearing a noise in the area, and having called out several times without receiving any answer, sprung his rattle; upon which the prisoner Richardson came up from the area, got over the iron rails, and made off towards New Ormond Street, and down that street, running as fast as he could. As Richardson was getting over the iron rails, a man in the area called out "shoot," but no fire-arms were used; and the watchman made a blow at Richardson with his staff, but it slipped out of his hands. Richardson was pursued by the watchman and others, and after running some time in different directions was taken and secured, nothing being found upon him but a common clasp knife.

In the mean time William Randall, the person mentioned in the indictment, and who was also a watchman, having heard the rattle, went towards the house No. 36, Lamb's Conduit Street, and, as he arrived there, saw the other prisoner White, getting over the iron rails of the area and spoke to him, upon which he jumped off from the iron rails in a direction towards the Foundling Hospital, the contrary way to that which the other prisoner
had taken. Randall immediately laid hold of him, when he gave Randall a blow on the head, and, after a little scuffle, gave him a very severe cut upon the head with an iron crow, the lower end of which was shaped like a blunt chisel.

No question was made as to the guilt of the prisoner White, but it was objected, that the evidence did not prove that the offence charged in the indictment was the joint act of Richardson as well as of White.

The learned Judge directed the jury, that if the prisoners came with the same illegal purpose, and both determined to resist, the act of one would fix guilt upon both, and that it might have been part of the plan to take different ways, in order to divide the force against them.

The jury found both the prisoners guilty; but sentence was respited in order to take the opinion of the Judges upon the question, whether there was evidence in this case, sufficient to convict Richardson as a principal.

The point was accordingly submitted to the consideration of the Judges in Hilary term, on the 23d of January, 1806, when they were all of opinion that there was no evidence to justify the verdict against Richardson, and that he ought to be recommended for a pardon.

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REX v. DYSON POST.

The prisoner was tried before Mr. Justice Grose at the Bury lent assizes, in the year 1806, for altering a banker’s promissory note for one pound into a promissory note for ten pound.

The indictment contained six counts. The first count charged that Dyson Post, late of, &c. on the 22d of August, 45 G. 3. had in his custody and possession a certain promissory note for the payment of one pound, bearing date 3d of December, 1803, and signed by one Eagle Willett, for himself and Field Willett and Robert Willett, by the names of Field Willett and Sons, which said promissory note he altered by substituting the word ten for the word one, held to be forgers.
sory note was then as follows (setting out the note); and that the said Dyson Post afterwards, to wit, on said 23d of August, in the year aforesaid, with force and arms, at, &c. feloniously did make erasures, alterations, and additions of, in, and to, the said promissory note, that is to say, at the word "one," which before then had been and then was contained in the said promissory note, between the word "of," and the word "pound" in the body of the same promissory note; and also, of, in, and to the said promissory note at the word "one" which before then had been and then was contained in the said promissory note after the letter "L" at the bottom of the said promissory note; and by making the said alterations, erasures, and additions, did then and there feloniously change and alter the same word "one" in the body of the said promissory note, and the said word "one" at the bottom of the said promissory note into the word "Ten" and did there feloniously and falsely, make, forge, and counterfeit the word "Ten" in and upon the said promissory note, betwixt the said word "of" and the said word "pound" in the body of the said note, and the said word "Ten" after the said letter "L" at the bottom of the said note instead of the word "one," so as before respectively contained therein and thereon, as aforesaid; by reason and means of which said erasures, alterations, additions, and forgery, the said promissory note, which before the said erasures, &c. was and imported to be a promissory note for the payment of one pound, did become and import to be a promissory note for the payment of ten pound, with intent to defraud the said Field Willett, Eagle Willett, and Robert Willett of the sum of ten pounds of lawful money, &c., against the form of the statute, &c., and against the peace, &c. The second count was similar to the first, only stating the forgery to have been committed with an intent to defraud one Edward Hensly. The third count charged, that on, &c., at, &c., aforesaid, the said Dyson Post having in his custody a certain other promissory note for the payment of one pound, bearing the date aforesaid, signed by one Eagle Willett, for himself and the said Field Willett and Robert Willett, by the name of Field Willett and Sons, (and setting out the note in its original state,) he the said Dyson Post with force and arms on, &c., at, &c., feloniously did alter the said last-mentioned promissory note by then and there removing and taking out from the said note the word "one" before the word "pound" in the said
promissory note, and falsely substituting and inserting in the said note the word "Ten" instead of the word "one" before the said word "pound," and by removing and taking out from the said note the word "one" after the letter "£," and falsely substituting and inserting the word "Ten" instead of the said word "one" after the said letter "£," whereby the said last-mentioned note so altered then and there became and was as follows, (setting out the note as altered) with intent to defraud the said Field Willett, Eagle Willett, and Robert Willett, against the statute, &c. and against the peace, &c. The fourth count was similar to the third, charging it to be with intent to defraud Edward Hensly. The fifth count charged that the said Dyson Post on, &c., at, &c., feloniously did falsely make, forge, and counterfeit, and cause and procure to be falsely made, &c. and willingly act and assist in the false making, &c. a certain other promissory note for payment of money with intent to defraud one Field Willett, Eagle Willett, and Robert Willett, against the statute, &c. and against the peace, &c. And the sixth count was similar to the fifth, only charging the forgery to be with intent to defraud the said Edward Hensly.

It was proved most clearly by two witnesses, who from an adjoining room saw the fact, by looking through a hole in the wall that separated two tenements (which had been one house), one of which was occupied by the prisoner and his wife, and the other by the two witnesses, that the note stated in the indictment was a promissory note of the Thetford bank, dated the 5th of December, 1803, for one pound; and that the prisoner, being in possession of it, got some thin paper like paper on which banker’s notes are written, of the size of the note, and pasted it on the back of the note with yeast, then cut out the word one in the body of the note, and the word one at the corner, and by removing the paper pasted, introduced into the place of the word “One” the word “Ten” at each part of the paper; by which means the note which was a note for one pound became a note purporting to be a promissory note for ten pound, having in the body the word “Ten” pound, and at the corner: “£.Ten.” It was then proved, that, on the same day, the prisoner, who was a butcher, paid the note to a farmer named Edward Hensly for some sheep which he had bought of him.

Upon this proof it was objected by the prisoner’s counsel, that
the prisoner could not be convicted on this indictment, as that
which he had done was not altering, or adding to, or forging a
promissory note for money, it being when altered not a pro-
missory note to pay ten pounds but ten pound in the sin-
gular number, which was ungrammatical, uncertain, and non-
sense. (a)

GROSE, J. left it to the jury to consider whether they believed
the evidence given, and that the note was altered by the prisoner
and negotiated by him as a note for ten pounds, for the purpose
of defrauding of that sum either the bankers Field, Willett and Sons
or Edward Hensly to whom it was paid for sheep. The jury
found the prisoner guilty; but judgment was respited, in order to
take the opinion of the Judges on the question, whether upon
this indictment and the evidence given he was properly con-
victed.

In Easter term, 28th of April, 1806, all the Judges (except
Lord Ellenborough) being present, this conviction was held
right.

1806.

REX v. PETER ATKINSON.

THE prisoner was tried before Mr. Justice Chambre, at the
York Lent assizes, in the year 1806, upon an indictment on the
statute 43 G.S. c. 58., charging him with feloniously, wilfully, &c.
striking, stabbing, and cutting Elizabeth Stockden, with intent, as
laid in some of the counts, to kill and murder her, and in others,
to do her grievous bodily harm; some of the counts charged the
acts to have been done with a hammer; the others generally,
without mention of the instrument.

The effect of Elizabeth Stockden’s evidence was, that on the
morning of the 23rd of September, 1805, she found the prisoner
near her chamber door; that he had a small claw hammer in

(a) Vide Lane’s Case, Cro. Eliz. 754.; contra Elliott’s Case, East, P. C. 855.
858—951. Teague’s Case, East, P. C. 979., ante, p. 35. Dawson’s Case, East,
P. C. 978. And see Rex v. Treble, 2 Taunt, 328. 2 Leach, 1040. post.
his right-hand with which he struck her over the nose; that before he struck, she saw the claw distinctly, and that the blow was with the claw end of the hammer which was sharp, and cut her nose to near an inch in length, and down to the bone; that the blow knocked her down, where she lay upon her face, and then the prisoner beat her on the right side of her head with the hammer; that she cried out for mercy, but he kept her down with his hands without speaking to her at all, and struck her seven times on the right side of her head, and six times on her left; but whether with the claw or the other end of the hammer she knew no otherwise than from what the surgeon told her; as she continued lying on her face.

The surgeon who examined Elizabeth Stockden's head, found that she had received many wounds, one near an inch long on the right side of her nose quite to the bone; others upon the head which were not quite so long, but the greatest part of them went quite down to the bone. He spoke with certainty to twelve in number on her head, and described them as being on both sides, but rather inclined to the back part of her head; some of them being simple incisions, others contused and lacerated. He described the wound on the nose as a simple incision, appearing as if made by a sharp instrument, and was not certain that all the wounds were inflicted by the same instrument: the greatest part of the wounds on the head seemed contused, but they might have been given by the same instrument by which the nose was cut; and the difference might have arisen from the different situation of the wounds; as, according to the situation of the parts, the claw of a hammer might give a wound accompanied by some contusion. He thought that a blow with the bony part of the fist might cut in such a way as not easily to be distinguished from a simple incised wound. He said that he had observed the wounds on the head with a view to form a judgment, whether they were given with a hammer, and some of them seemed as if given by the two sides of the claw of the hammer, there being a wound or cut on each side, and a space between unhurt; that there were several in this state, and on comparing the extent of the parts unhurt lying between the wounds, they seemed to correspond in size; so that the wounds had the appearance of having been given by the same instrument.

No hammer was found, which could be ascertained to be that
which the prisoner had used, so that there was no opportunity of judging by inspection in what degree the hammer in question was calculated to be used as a cutting instrument.

It was left to the consideration of the jury, whether the wounds were given with the claw part of the hammer; and the jury found the prisoner guilty. And the learned Judge passed sentence upon him; but respite the execution to take the opinion of the Judges, whether the evidence of the nature of the wounds and of the instrument used was sufficient to bring the case within the statute.

In Easter term 28th of April, 1806, all the Judges (except Lord Ellenborough) being present, it was held that the conviction was right. (a)

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1806.

REX v. JOSEPH CARTWRIGHT.

The prisoner was tried before Mr. Baron Sutton, at the Lent assizes for the county and city of Worcester, in the year 1806, and found guilty upon an indictment which charged him with having in his possession a paper writing purporting to be an order for 100l., on which there was an indorsement; and, that designing to obtain money by false pretences of and from Thomas Hughes, with intent to defraud Messrs. Lechmere & Co. bankers at Worcester, he did on the 14th of August, 1805, cause and procure such paper to be delivered to the said Thomas Hughes, who had the custody of the money of the said bankers, with a view to get 100l. in exchange for such paper, and represented to the said Thomas Hughes, that the said paper was actually signed by Joseph Ellis the drawer, and that he the said Joseph Cartwright was the servant of Philip Gresly, Esq. with a view to cheat the said bankers.

There was a second count to the same effect, but charging the intent to be to cheat the said Thomas Hughes.

(a) See Hayward's Case, ante, 78.
CROWN CASES RESERVED.

The paper writing was as follows: —


"Three months after date pay to Mr. Thomas Darrell, Esq.
or order, the sum of one hundred pounds, value received of
Mrs. Mary May, and your obedient servant

"Joseph Ellis,


Indorsed — "Thomas Darrell.

"Mr. Phillip Gresly, Esq. Salworh."

This was enclosed in a cover and sent by a messenger to the
Worcester bank.

The case was very clearly proved, and it appeared that the de-
coeit was discovered before any money was paid. The instrument
being imperfect either as a draft or bill of exchange, the prisoner
could not be indicted for forgery: and the statute of the 30th G. 2.
c. 24. which makes it an offence against the law to obtain money
by false pretences, &c. not extending to the attempt to obtain
money by such pretences, the learned Baron submitted to the
consideration of the Judges a question whether the circum-
stances of this case amounted to an indictable offence.

The question intended to be brought before the Judges
was, whether an attempt to commit a misdemeanor created by
statute was itself a misdemeanor as it is if the misdemeanour
attempted to be committed be a misdemeanor at common
law according to Rex v. Scholfield. (a) But upon taking the
case into consideration in Easter term, 28th April, 1806, it ap-
peared that the paper above stated was not on the face of it ad-
dressed to or drawn on any person, and was apparently written
by a very ignorant, illiterate person: and the Judges, who
(except Lord Ellenborough) were all present, were of opinion,
that the conviction was wrong, on the ground that the paper did
not purport to be an order for money, as stated in the indictment.
They did not therefore go into the point intended to be made. (b)

(a) Cald. 397.

(b) In a note upon this case by Le Blanc, J., a qu. is made whether, if this
paper, though not directed or addressed to any person as a drawer, had been
presented to a banker with whom the person whose name appeared as the
drawer, kept cash, with intent to obtain payment of it as a draft of such person,
it would not have fallen within the description of a bill of exchange, or order
Burglary. Inhabitancy of the house. Where the owner has never by himself, or by any of his family, slept in the house, it is not his dwelling-house so as to make the breaking thereof burglary, though he has used it for his meals and all the purposes of his business.

The prisoners were tried before Mr. Baron Graham, at the Lent assizes for the county of Northampton, in the year 1806, on an indictment for a burglary committed on the 19th of December, 1805, in the dwelling-house of one Samuel Clayson.

It appeared from the evidence, that the prisoners and others connected with them, had broken open the house in the night and stolen drapery and hosiery goods to the amount of considerably more than 200l. But an objection was taken that the shop from whence the goods were taken was not the dwelling-house of the prosecutor; and though the objection appeared to the learned Judge to have weight, he thought it proper in a case attended with circumstances of considerable aggravation to over-rule it. The case being left to the jury, they found the prisoners guilty; and sentence of death was passed upon them; but the point was saved for the consideration of the Judges.

The house was to all intents and purposes a complete dwelling-house, if it could under the circumstances be considered as inhabited, upon which question the point arose.

The house stood in a street in Wellingborough, in the range of houses, the entry from the street being by a common door-way. The inside of the house consisted of a shop and parlour, from whence the goods were taken, and a stair-case leading to a room over the shop in which there was bedding, but it was not fitted up. The prosecutor took it about two years before the offence was committed, and made several alterations in it, intending to have married and lived in it: but continuing unmarried, and his mother living in a house next door but one, he slept every night at her house. Every morning he went to his house, transacted his business in the shop and parlour, and dined and entertained his friends and passed the whole day there, considering it as his only

for payment of money, and subjected the utterer of it to a capital conviction. And upon the point intended to have been raised, the learned Judge intimates a strong opinion, that an attempt to commit a statutable misdemeanor is as much a misdemeanor as an attempt to commit a common law misdemeanor.
home. When he first bought the house he had a tenant, who quitted it soon afterwards, and since that time no person had slept in it.

The question reserved for the opinion of the Judges was, whether this sort of inhabiting was sufficient to make the house the prosecutor’s dwelling-house.

In Easter term 28th of April, 1806, at a meeting of all the Judges (except Lord Ellenborough) the conviction was held wrong, the house not being a dwelling-house.

REX v. WILLIAM ALLISON ALIAS WILKINSON.

The prisoner was tried before Mr. Justice Chambre, at the York Lent assizes, in the year 1806, upon an indictment for bigamy, in marrying Ann Epton, on the 23rd of May, 1804, Jane his former wife being then living.

It was proved by a person of the name of Page, with whom the prisoner formerly lived as a servant, that he was present at the celebration of the marriage between the prisoner and Jane Chaplin, at the parish church of Ulroome, on the 27th of February, 1798. They were married by the curate of the parish. The prisoner quitted the service of the witness at the following May-day, and he had not known much of the parties since that time; but Jane was living on the 8th of October, 1805, on which day he saw her.

Another witness proved that he was present at the prisoner’s second marriage with Ann Epton. They were married at the parish church of Ottringham, by the curate of the parish, on Whit-Wednesday, 1804, the prisoner then going by the name of Wilkinson. The witness was there merely from curiosity. They lived together afterwards as man and wife.

Jane, the first wife died on the 1st of December, 1805.

The jury convicted the prisoner; but Chambre, J. respited the judgment, from a doubt whether this evidence, without any
proof of the registration of either marriage, or of any licence or publication of banns, was sufficient to support a conviction.

At a meeting of all the Judges, (except Lord Ellenborough) in Easter term, 28th of April, 1806, the conviction was held right. (a)

REX v. JOSEPH ROWLEY.

The prisoner was tried before Mr. Baron Graham, at the Warwick Lent assizes, in the year 1806, on an indictment on the 45 G. 3. c. 89. s. 6. The indictment followed the words of that section so far as relates to the offence charged, viz. "That the prisoner, on the 29th of September, 1804, knowingly and wittingly had in his possession, and custody, six forged, and counterfeited one pound bank of England notes, knowing the same to be forged."

The words of this clause, as far as they relate to the offence charged, are, "or shall knowingly, or wittingly have in his, her, or their possession, or custody, or in his, her, or their dwelling-house, out-house, lodgings, or apartments, any forged, or counterfeited bank note, bank bill of exchange, or bank post bill, or blank bank note, blank bank bill of exchange, or blank bank post bill, knowing the same to be forged or counterfeited, without lawful excuse, the proof whereof, shall be upon the person accused; every person, or persons, so offending, and being thereof convicted, according to law, shall be adjudged a felon, and be transported for the term of fourteen years."

The case rested principally on the evidence of one Samuel Waring, a man employed by the solicitor for the bank to detect the prisoner as a notorious character; but his account was confirmed in so many particulars as to leave no doubt of the truth of it.

The bank notes in question, were not found upon any search, in, or about the prisoner's person, or in, or about his house, or

(a) See Mary Norwood's case, East, P. C. 470. Morris v. Miller, 4 Burr. 9047
lodgings, and could therefore only be inferred to have been in his possession from the circumstances under which the witness received them.

Samuel Waring, gave this account as follows:

Having undertaken to detect the prisoner, he applied to him in August, 1804, at his shop, in Birmingham, and first bought and received of him, two one pound forged bank of England notes, paying for them five shillings a-piece. At the constable's request, he went again to the prisoner's shop, on the 6th of August, and not finding him, he went to him at a public-house, between four and five o'clock in the evening, and asked for more bank notes, upon which the prisoner said he could not have them just then. The prisoner then went out, and came back again, and on his return, asked the witness to follow him. They went together, and going up a place called The Gullet, the prisoner gave him three one pound forged bank notes, for which he gave him fifteen shillings. On the 20th of September following, he applied to the prisoner for more notes, at his work shop, upon which the prisoner said he could let him know about one o'clock, whether he could have them or not, and he was to call again. He went again to the prisoner's shop, about three o'clock in the afternoon, and asked if he could have the notes: the prisoner said he could; and they agreed to go to the Coach and Horses, about twenty yards from the shop, and he went in first, the prisoner following, as it was agreed. The prisoner joined the witness in about ten minutes, when the witness told him he should like to have half a dozen notes: the prisoner said he had got a dozen one pound notes ready for him, when the witness told him he could have but half a dozen, as he had not money to pay for more; and he then paid the prisoner a one pound Birmingham note, a five shilling workhouse ticket, and two half crown tickets. The prisoner then went out, as he said to fetch the bank notes, and he was gone about half an hour. Upon his return, he said he had put the notes in an old shoe in a bush, in Joiner's Lane, near an old garden door which he described. The prisoner and the witness then went together; the witness went up the lane to seek for the notes; and the prisoner followed two or three minutes after. The witness did not observe the prisoner following him; but while the witness was looking for the notes, the prisoner came up to him, and picking up a stone, threw it into a bush, and said
there they are. The witness examined the place where the stone fell, and found six one pound forged bank notes in an old shoe.

This was the whole evidence to prove that the prisoner had these six forged bank notes in his possession.

It appeared upon the cross-examination and other evidence, that it had been suspected that the prisoner had been supplied with these forged notes by a person of the name of Jennings, and, as it was not improbable that the prisoner might have obtained the notes in question from some third person, the learned Judge left it to the jury to draw their own conclusion from the evidence, whether the notes were put in the shoe by some third person without the prisoner's having handled them, or whether, in getting to the place where they were found, they had not passed through his hands: telling the jury that, as then advised, he thought that if they were of opinion that the prisoner had the notes at any time in their passage thither in his own hands, he must be said to have had them in his possession within the meaning of the statute. The jury under that direction found the prisoner guilty; but objection having been made that the statute applied only to the case of forged bank notes, found upon search in the actual possession, or custody of the party, or in his dwelling-house, &c.; the learned Judge thought it a fit case to be further considered; and it was accordingly submitted to the opinion of the Judges, upon the point, whether the possession which the prisoner, upon the finding of the jury, had of these notes in passing them to the place where they were found, was such a possession of them as is meant by this statute.

In Easter term, 28th of April, 1806, all the Judges (except Lord Ellenborough) being present, it was held that the conviction was right; the witness having said that the prisoner had told him that, "he had put the notes in an old shoe, &c." And the Judges seemed to think that every uttering included having in custody and possession within this statute; and some thought, that without actual possession, if the notes had been put in any place under the prisoner's control, and by his direction, the result would have been the same.
REX v. WILLIAM DAVIS AND JOHN HALL.

This case was tried before Mr. Baron Graham, at the spring assizes for the town of Nottingham, in the year 1806. The indictment charged the two prisoners with uttering a forged promissory note, of the Stourbridge and Bromsgrove Bank, for ten pounds, purporting to be signed by Thomas Biggs, for Francis Rufford and Thomas Biggs, knowing it to be forged, with intent to defraud the said Francis Rufford and Thomas Biggs, and also one Martin Roe, to whom the note was uttered.

The case was clear as to the prisoner Davis, and the only doubt was as to the part taken by the prisoner Hall. It appeared that Davis, Hall, and another man, who escaped, came together on horseback, to the Sun Inn, at Nottingham, on the 30th of November, 1805, about two o'clock in the afternoon, and put up their horses in a three stalled-stable. The man who was unknown went first out of the yard of the inn, and Davis and Hall went out together a short time afterwards.

At about half-past four o'clock on the same day, Davis came alone to the shop of one Martin Roe, and bought some silk handkerchiefs, for the sum of two pounds eighteen shillings, and paid for them by the note in question, receiving in change seven pounds two shillings, part of such change being a five pound note, and the rest silver and small gold: and Davis then left the shop. Shortly afterwards Roe, having suspicion as to the note received of Davis, sent his shopman in search of him; and went himself to a Mr. Mills, another shopkeeper, in a place called Long Row, adjoining the market-place, where Davis was found, having been detained by Mr. Mills, to whom he had uttered another note of the same kind as that paid to Roe, and who suspected the note to be forged.

Davis, on being expostulated with, affected indifference, and said, that if Roe would go with him he would return the goods and the change. Both the notes were then returned to Davis; and he walked out of Mills’s shop, accompanied by Roe, and proceeded down the Long Row, straight towards the Sun Inn. Mills, and Kilburn a constable, followed close behind. In

Held not to be sufficient to make a person a principal in uttering a forged note, that he came with the utterer to the town where it was uttered, went out with him from the inn at which they had put up a little before he uttered it, joined him again in the street a short time after the uttering, and at some little distance from the place of uttering, and ran away when the utterer was apprehended.
1806.  

Davis and Hall’s Case.

passing a place called Thurland’s passage, which was about two hundred yards from Mills’s shop, about one hundred and fifty from the shop of Roe; and about twelve yards from the Sun Inn, Davis stepped from the carriage road to the causeway, and there spoke to a man who was standing upon the causeway, and to whom he came quite close, putting his face close to him. This man, who afterwards turned out to be the prisoner Hall, then joined Davis, and passed on, together with Davis and Roe, to the Sun Inn, and entered the yard, when Kilburn the constable seized Davis, and instantly handed him over to the custody of Mills, in order to pursue Hall, who ran up the yard towards the three-stalled stable, and was apprehended by Kilburn, just as he got to the stable door. Kilburn lost sight of him for a moment when he turned a corner almost close to the stable door which was then open. Under the horse which was furthest from the stable door was found a handkerchief wrapped up as a bundle, and it was proved that a person from the door-way might have thrown it over the sides of the stalls to the place in which it was found.

The bundle was secured and produced in court. It contained Stourbridge and Bromsgrove notes of five guineas and ten pounds, to the amount of two hundred and eighty-six pounds, all of the same plate, being printed checks filled up with the dates, sums, and signatures of the firm and entering clerks, in the same manner as the note in question. The whole were proved to be forged; as well as the two notes uttered at Nottingham, and several others uttered by Davis at different places in his way from Birmingham to Nottingham.

It appeared that the prisoners had affected ignorance of each other, but their intercourse at Birmingham and at the inn at Nottingham was clearly proved. The time which elapsed between Davis’s uttering the forged note at Roe’s shop, and his being joined by Hall at Thurland’s passage, was about fifteen or twenty minutes.

It further appeared, that on the 17th of November the office of a Birmingham stage coach had been broken open, and a parcel of blank checks, which had been sent from London directed to the Bromsgrove and Stourbridge Bank, had been unpacked, and many blank checks of the same kind with those produced had been stolen.
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Upon this evidence, the only doubt being as to Hall's concurrence in the act of uttering the forged note in question, the learned Judge left it to the jury to consider, whether from the circumstances stated they were satisfied, not only that the prisoners came with the concerted purpose of putting off these notes, but that Hall was, at the time of the uttering of the note in question, so disposed, and so near at hand, as to be willing and ready to assist in the putting it off, or to favor Davis's escape in case of detection.

The jury found both the prisoners guilty: upon which a question was reserved for the opinion of the Judges; namely, whether this evidence was sufficient to affect Hall as a principal in the uttering of the forged note in question.

In Easter term, 28th of April, 1806, all the Judges (except Lord Ellenborough) being present, the conviction was held wrong as to Hall, he not being to be considered as present aiding and abetting. (a)

REX v. WILLIAM WILSON.

The prisoner was tried before Mr. Baron Graham, at the Warwick Lent assizes, in the year 1806, on an indictment for a burglary, in the dwelling-house of George Hinchliffe, at Birmingham.

The prisoner was convicted: but the case was reserved for the opinion of the Twelve Judges, upon the question whether the place broken into could be considered as the dwelling-house of George Hinchliffe.

part of the servant's dwelling-house; and it will be the same if any other person has part of the house and the rest is reserved.

George Hinchliffe was the governor of the workhouse at Birmingham, appointed by the guardians and overseers of the poor of one of the parishes, in whom certain funds are vested by act of parliament for the benefit of the poor. The workhouse consists of a large building in a court yard, surrounded with a wall; the entrance to the court is by a porter's gate; the building is divided into two wings or departments, the one being occupied by the poor people, the other by the governor and his family; and the part which the governor occupies is entirely detached from that which is occupied by the poor, except that their victuals are dressed in the same kitchen which he uses for his family; and he has a separate door to that part of the building which he occupies. The whole of the building, which is called the governor's house, consists of two parlours and a sitting room below, three bed-chambers and three large store rooms above, and four attics. One of the parlours below, which is betwixt the two other rooms on the same floor, is appropriated to the business of the trust, and is called the office, or clerk's room, of which, the clerk keeps one key, the governor keeping another, to secure the effects in case of fire, and his servant cleans and takes care of this room; and those on each side are entirely in his occupation.

The prisoner, probably with others, had gotten over the outward wall, thrown up the sash of this parlour or office window, and with a centre bit had cut two round holes in the window shutter, through which, by putting in his hand and arm, he had unhasped and let down the cross-bar on the inside; then entering the room, he had broken open the chest in which the trust property was kept, and stolen notes and money to the amount of between two and three hundred pounds.

The governor held his appointment under a contract with the guardians and overseers of the poor, for seven years, and was paid by a salary, and by the occupation of the house by himself and family during that term: the guardians and overseers reserving to themselves the use of this room as an office, and the use of the three store-rooms as a deposit for the clothes and other effects of the poor of the workhouse. The governor is assessed for this house, with the exception of the office, store-rooms, and kitchen.

At a meeting of all the judges, on the first day of Trinity term, 1806, the majority of them (Mansfield C. J. and Heath
and Grose Js. seeming to dissent) were of opinion that this was not the dwelling-house of the governor; and therefore that the prisoner was improperly convicted of the burglary, but was subject to be convicted of the larceny. The prisoner was therefore to be recommended to the crown for a pardon, on condition of being transported for seven years.

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CASE OF THE IRISH PEER.

LORD Headley, a peer of Ireland not in parliament, attended the assizes for the county of York, to serve on the grand jury. Chambre J. recollecting that Lord Teignmouth had attended for the like purpose under the special commission in Surrey, for the trial of Despard and others, when it was thought most adviseable that he should not serve (but without expressly deciding whether he could or not), mentioned the instance to Lord Headley, and with his approbation his lordship’s name was omitted to be called. And as instances of a similar kind may again occur, the learned Judge stated the circumstance, in order that the general sense of the Judges upon the point might be taken. (a)

On the first day of Trinity term, 1806, all the Judges (except Heath J.) being present at Lord Ellenborough’s chambers, this matter was mentioned, when it seemed to be agreed by all of them, that a British or Irish peer ought not to be on a grand or petit jury, except an Irish peer who is a member of the House of Commons, and who is, to all intents and purposes, a commoner. (b)

(a) See the act of Union 39 & 40 G. 3. c. 67., the fourth and last paragraphs of the fourth article.

(b) Ibid. Dyer, 314. b. Fitz. N. B. 584. Writ de non ponendis in assizes et juroatis.
REX v. CORNELIUS VAN MUYEN.

Larceny. The master of a Prussian vessel captured by a British ship and carried into the port of Weymouth held not to be guilty of larceny in taking goods from the vessel under the particular circumstances, there being no evidence that he took them for the purpose of converting them to his own private use.

The prisoner was tried before Mr. Justice Chambre, at the summer assizes for Dorsetshire, in the year 1806, upon an indictment for stealing linen, geneva, and other articles, in a vessel called the Paulina Maria, in the port of Weymouth, a port of entry and discharge, contrary to the statute.

The goods specified in the indictment composed part of the cargo of the Paulina Maria, a Prussian ship, of which the prisoner, a native of the United Provinces, but a subject of Prussia, was master, and which had been captured by a British ship called the Diana.

The first count of the indictment alleged the property of the goods to be in the owners of the Diana; the second count, in the master of the Diana; the third count, in the agents of the Diana; the fourth count, in one Saxon, who had been appointed the shipkeeper for the prize; and the fifth count, in the King.

The Paulina Maria was taken under Prussian colours, on the 6th of October, 1805, betwixt which day and the 9th of October she was brought into Weymouth. She was taken on suspicion of being Dutch property. The Diana had letters of marque and reprizal granted to her on the 8th of October, but they were not against Prussian vessels. On the 8th of November, 1805, there was a decree in the Court of Admiralty for restitution; on the 6th of April, 1806, an embargo was laid on Prussian vessels; on the 14th of May following, His Majesty's proclamation issued for reprizals against Prussia; and on the 16th of July the court of Admiralty rescinded the decree of restitution of the 8th of November, pronounced the vessel and cargo at the time of the capture to have belonged to Prussian owners, and condemned them as prize to the king taken before the commencement of hostilities against Prussia.

It appeared that the prisoner, who had lodgings in Weymouth, went sometimes on board the prize, and was seen there on the 10th or 11th of July. About nine of the crew and two Custom House officers were kept on board; the cargo was kept below the main hatches, which were locked up, and Saxton, who on the 10th
of October, 1805 was appointed the ship-keeper, kept the keys of the hatches. Betwixt the 10th or 11th and the 16th of July, the property in the indictment was conveyed away from the ship, some violence having been used in breaking a bulk-head to get at part of it; and the loss was discovered on the 15th, on which day the prisoner had purchased two trunks, and on the same day had sent the trunks to a carrier to be forwarded to London, the direction being of the prisoner's hand-writing. On the 14th, some sea chests directed in the same manner had also been sent by the prisoner to the same carrier. The chests and trunks were forwarded to Dorchester, to the warehouse of the London carrier there on the 15th and the 16th, on which latter day a search was made at the carrier's warehouse at Dorchester, and great part of the stolen property was found in the trunks and chests; and some Prussian-colours, which the prisoner on his apprehension said he had taken from the ship, were also found on searching his lodgings at Dorchester.

The prisoner was found guilty; but upon a doubt whether his regaining the possession, in the manner above described, of the goods which had belonged to his owners, and had been entrusted to his care as master of the vessel, could be considered as a larceny, Chambre J. forborne to pass sentence, and reserved the point for the opinion of the Judges.

At a meeting of all the Judges (except Mansfield C. J. and Heath J.) in Michaelmas term, 15th of November, 1806, the majority of them seemed to think that if the prisoner had taken the goods for the purpose of converting them to his own private use, it would have been larceny, but not otherwise. And there was no evidence to show whether he took them for his own benefit, or for his owners.

The Judges did not come to any formal decision on the point, and no judgment was given; but it was agreed to be proper that the prisoner should be recommended for a free pardon.
Evidence of uttering a bill of exchange knowing it to be forged. And other forged bills upon the same house, which were found upon the prisoner at the time of his apprehension, held to be admissible as evidence of guilty knowledge.

The prisoner was tried and convicted before Mr. Baron Sutton, at the summer assizes for the county of York, in the year 1806, upon an indictment for forgery. The first count of the indictment charged the prisoner with falsely making and counterfeiting, &c. a certain bill of exchange as follows:

“No. 15. 98l. Liverpool, Feb. 1806.
Three months after date, pay to the order of Mr. Peter Higgins, ninety-eight pounds, value received.

James Heastings.
Sir James Esdaile, Esdaile, and Hammet.
Bankers, London.”

with intention to defraud John Green. The second count was for uttering the forged instrument knowing it to be forged: and the third and fourth counts were the same as the first and second, except that, in setting out the bill, the figures “92,178. May 7, 161,” were inserted, and which figures had been written on the bill by the witnesses examined in order to identify the same. There was no count in the indictment for forging the indorsement of the payee, Peter Higgins, or uttering the bill knowing such indorsement to be a forgery.

The prosecutor, John Green, a copperas manufacturer, stated, that on the 14th of February, 1806, the prisoner came to his works to purchase eight tons of copperas, representing himself to be a dyer and printer, and to want the copperas for his own use. Green sold him six casks at eleven pounds ten shillings per ton, amounting in the whole to fifty pounds, and the prisoner tendered in payment the above-mentioned bill for ninety-eight pounds, (this being at a public-house, at Halifax, where several persons were present), Green told the prisoner he did not like the bill, as he did not know either the drawer or indorser; and showed the bill to several persons in the room; and requested the prisoner to give him a smaller bill nearer the amount of his demand, to which the prisoner answered, that he had not a smaller bill by him. Green then asked him if he knew the
drawer of the bill, James Heastings, of Liverpool; and the prisoner said that James Heastings was a merchant at Liverpool, and he did not know much about him; upon which Green asked the prisoner if he (the prisoner) had indorsed the bill, and the prisoner said he had, and that his name was upon it. Green then asked the prisoner if he knew Peter Higgins, the first indorser, to which, the prisoner replied that he knew him very well, that Peter Higgins kept a large cotton warehouse in Manchester, and was also a large manufacturer of cotton goods, and that he (the prisoner) had taken the bill of Higgins for printing calicoes, and that being a printer and dyer, he wanted the copperas for his own use. Green then took the bill upon the prisoner’s representation of Peter Higgins, and gave the prisoner forty-two pounds nine shillings, the difference between the amount of his demand and the bill. The bill was sent to town for acceptance and returned to Green unaccepted; upon which he went immediately to Manchester to discover the prisoner and Peter Higgins, the first indorser; he made use of the Directory, and went to the Manchester Bank, and to most of the principal houses, but could hear of no person of the name of Peter Higgins answering the description the prisoner had given. There were persons of the name of Higgins, cotton manufacturers, but none in that line of the name of Peter Higgins, nor did the persons of whom he enquired know any person of the name of Peter Higgins in that line. He made enquiries also after the prisoner, and found his house and family, but could not find him, and never saw him afterwards until he was apprehended in the month of June.

A witness, Joseph Nadin, (a constable in Manchester), proved that he had a warrant to apprehend the prisoner on this charge, and had known him two or three years before; that the prisoner was a dyer, and had a small dye-house at Manchester; and the witness had gone repeatedly, from the month of February to the month of June, to the prisoner’s house, to apprehend him, but could hear nothing of him. When the prisoner was apprehended, there was found upon him a pocket-book, containing, amongst other things, three other bills drawn upon Sir James Esdaile & Co.; one by a William Newman; the other two by a Thomas Walters; and a clerk in Sir James Esdaile’s house was called and proved that there was no customer of that House either of the name of James Heastings, William Newman, or Thomas Walters.
CROWN CASES RESERVED.

The production of the two latter bills was objected to on the part of the prisoner on the ground that they were the subject of a distinct charge; but the learned Judge overruled the objection on the ground of its being proof of the "sciente" under the count for uttering.

Nadin further proved, that there was no person at Manchester, of the name of Peter Higgins, answering the description the prisoner had given: but that there was a man of the name of Peter Higgins, of Manchester, a weaver, then in Lancaster gaol, under a charge of forgery. He also proved that he had made diligent enquiry at the post office, public inns, and different parts of the town of Liverpool, for James Heastings, but could not hear of any such person.

Another witness, of the name of Thompson, an attorney at Halifax, also proved his having made search and enquiry at Liverpool, without having been able to hear of any person of the name of James Heastings.

The jury upon this evidence found the prisoner guilty: but the learned Judge, having a doubt whether the proof was sufficient, the prosecutor Green having taken this bill upon the credit he gave to the name and description of Peter Higgins, and there being no count in the indictment for forging the indorsement of the name of Peter Higgins, or for uttering the bill knowing the indorsement to be forged, respited the execution, in order that the opinion of all the Judges might be taken on the sufficiency of the proof; and also upon the admission of the evidence to which objection was taken.

In Michaelmas term, 15th of November, 1806, all the Judges (except Mansfield C. J. and Heath J.) being present, it was holden that the conviction was right. They were of opinion (except Sutton B. who seemed still to doubt upon this point) that the evidence was quite sufficient to support the conviction for uttering the bill knowing it to be forged; and all of them were of opinion that the other forged bills on the same House, found upon the prisoner on his apprehension, were properly admitted as evidence of his knowledge.
The prisoners were tried at the Admiralty sessions at the Old Bailey, in July, 1807, before Sir William Scott, and Mr. Justice Le Blanc, on an indictment consisting of three counts.

The first count charged that the prisoners on the 23d of January, 1807, upon the high seas feloniously and piratically did plunder, steal, take, and carry away sixty-five fathoms of cable of the value of 58L, and two hundred weight of iron of the value of 10L, the goods of Joseph Wales and Gamble Yeates Bonner; and being part of the furniture and tackle of a vessel called the Traveller, belonging to the said J. W. and G. Y. B.; the said vessel at the time of committing the said felony and piracy being in distress upon the high seas, against the statute, &c.

The second count was the same as the first, only charging the prisoners with destroying the said cable and iron, instead of plundering and stealing.

The third count charged the prisoners with feloniously and piratically stealing sixty-five fathoms of cable, value 58L, and two hundred pounds weight of iron, value 10L, the goods of the said Joseph Wales and Gamble Yeates Bonner, upon the high seas, within the jurisdiction of the admiralty.

The jury acquitted the prisoners of the charges in the two first counts of the indictment, and found them guilty on the third count.

A doubt occurred as to the judgment which should be given on this conviction, whether capital, or as for a grand larceny where the prisoner is entitled to the benefit of clergy.

This doubt arose on the construction of the statute 39 G. 3. c.37. which recites the statute 28 Hen. 8. c.15., and enacts and declares that all and every offence and offences which shall be committed upon the high seas, out of the body of any county, shall be and are declared to be offences of the same nature respectively, and to be liable to the same punishments respectively as if they had been committed upon the shore, and shall be enquired of, heard, tried, and determined and adjudged, in the
same manner as treasons, felonies, and murders, and confederacies are directed to be by the same act. (28 Hen. 8. c. 15.)

An objection was also taken at the trial by the prisoners' counsel (which Le Blanc J. over-ruled), viz. that the offence of the prisoners was not larceny, the same having been committed by them jointly with the master of the ship, not for the purpose of defrauding the owners, but of defrauding the underwriters for the benefit of the owners. The facts appeared in evidence to be that the prisoners, who were Deal boatmen or pilots, and had been applied to by the master to take the ship into Ramsgate, had, in collusion with the master, cut away the cable and part of an anchor which had before been broken, for the purpose of causing an average loss on the underwriters; having previously fastened a line to the cable which was so cut in order that some of their confederates, who were in a small boat alongside, might tow the cable and broken anchor ashore and convert them to their own use, which they did. (a)

In Hilary term, January 20, 1807, all the judges (except Mansfield C.J.) assembled at Lord Ellenborough's chambers, where the majority, viz. the Chief Baron, Heath J., Thomson B., Rooke J., Laurence J., Le Blanc J., and Chamber J., were clearly of opinion that judgment of death should pass, the statute 39 G. 3. c. 37. not extending to this case, which was capital by the marine laws, and triable under the 28 Hen. 8. But Lord Ellenborough, Graham B., Sutton B., and Grose J., were of a different opinion. (b)

(a) See Rex v. Mason, East, P. C. 796. S. C. 8 Mod. 74.
(b) By 28 H. 8. c. 15. s. 1. it is enacted, that all treasons, felonies, robberies, murder, and confederacies, hereafter to be committed in or upon the sea where the admiral has, or pretends to have, jurisdiction, shall be enquired, heard, tried, and determined in such places as shall be limited by the king's commission, in like form and condition as if any such offence had been committed on land.

§ 5. enacts, that for treasons, robberies, felonies, murders, and confederacies done upon the sea, the offender shall not be admitted to have the benefit of his clergy, but be utterly excluded thereof and from the same.

1 Ed. 6. c. 19. s. 10. enacts, that no person attainted or convicted of murder of malice prepensed, or of poisoning of malice prepensed, or of breaking any house by day or night, any person being therein and put in fear, or of robbing in or near the highway, or stealing horses, geldings, or mares, or taking goods
REX v. JAMES HARDING, THOMAS HAYES, ROBERT COOKE, AND RICHARD MEARS.

The prisoners were tried before Mr. Justice Lawrence at the Old Bailey January sessions, in the year 1807, for a larceny in stealing a cart and 13 cart of barilla, which in the first count were charged to be the property of James Bryant, and in the second count to be the property of Samuel Cleaver and Charles Cleaver.

Upon the evidence it appeared that Samuel and Charles Cleaver, manufacturers of soap in Shoe Lane, on the 7th of January, 1807, employed James Bryant a master carman to cart for them, from the London Dock, a quantity of barilla which they had bought, but which had not been delivered to them, but was then lying in a vessel there; that Bryant sent his cart and two his benefit jointly with that of the other persons, held that the carter's servant, as well as the other persons, was guilty of larceny at common law.

out of a parish church, shall be admitted to have clergy; and that in all other cases of felony, other than such as are before mentioned, all persons shall have the benefit of clergy in like manner as he might have done before the 1 H. 8.

Moore, 756. Case 1044. Feb. 14. 3 Jac. All the Justices were assembled at the house of the Lord Chancellor, at York House, to give their resolutions on two questions concerning pirates. The first, if clergy is allowable for piracy on an arraignment on statute 28 H. 8., and resolved that it was not, unless the piracy was done in a creek, or other river in which the common law, before the statute, had jurisdiction, not if it were done on the high seas out of the body of a county, because such felony is not felony by our law, but by the civil law, in which no clergy was used to be allowed; and the statute 28 H. 8. does not make this felony, but only ordains the manner of trial; whereas the statute 1 Ed. 6., which takes away clergy and gives clergy, yet does not extend to the act 28 H. 8., nor to this felony of piracy on the high seas. Secondly, if, by the king's pardon of all felonies by the common law, or any statute, this felony was pardoned; and resolved it was not, because it is not felony by the statute, nor by the common law, if done super altum mare, otherwise if committed in a creek or port.

See, however, 3 Hale. P. C. 17. 369. 11 Co. 31 (b) contra.

See 2 Hawk. P. C. 33. 1. 41., who attempts to reconcile the passage in 11 Co. 31. (b) with the resolution of the Judges in Moore. 756.

See Molloy, lib. i. c. 4. p. 48.
horses under the care of the prisoner Harding, his servant, to bring the barilla to the house of the Cleavers, in Shoe Lane; that Harding went to the Dock with the cart and horses, where 38cwt. of the barilla was taken from the vessel, weighed, and put into the cart, in the presence of the Cleavers' clerk, who was sent to see it weighed, upon which the prisoner Harding (it being then about two o'clock) drove the cart out of the Dock. The barilla never came to the house of the Cleavers, but about four o'clock of the afternoon of the same day, the cart was seen with the barilla, driven at a great rate by the prisoner Robert Cook, in company with the prisoner Mears, through several streets in the parish of Spitalfields, and afterwards about eight o'clock it was met in the Minorities empty, in the care of two persons who delivered it to a servant of the owner James Bryant.

It further appeared in evidence, by the confession of Harding after he was in custody, that in the morning of the 7th of January, Mears and Hayes, knowing that Harding was to cart barilla, applied to him to let them have some barilla, and that he saw them drive the cart away; he having, before he was apprehended, said, that having left the cart and horses in the street while he went to get some victuals, they were during his absence driven away, and where they were gone he could not tell.

The learned Judge left it to the jury to consider whether Harding permitted the prisoner Mears to drive the cart away, in order to dispose of the barilla for the benefit of himself and others who might be concerned with him, and whether Harding was to receive any benefit from such disposition; and told them, if they thought so, they ought to find all the prisoners guilty except Hayes, against whom there was not sufficient evidence: and the jury found them all, except Hayes, guilty.

But some doubts having arisen, whether, as Harding had the barilla delivered to him to cart to Messrs Cleavers, the facts given in evidence amounted to a larceny, this case was submitted to all the judges. (a)

In Hilary term, January 30, 1807, all the judges (except Mansfield C. J., who was absent from indisposition) met at Lord Ellenborough's chambers in Sergeant's Inn, and con-

(a) East. P. C. 568. to 574. and 695. to 698.
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sidered this case. CHAMBRE J. at first doubted whether this was more than a breach of trust in the servant, but afterwards concurred in opinion with all the other JUDGES (and to which opinion MANSFIELD C. J. signified his assent) that this was larceny in the servant; and that the conviction was right, whether the goods were considered as the property of the Cleavers or of Bryant.

REX v. HENRY FREETH.

THE prisoner was tried before Mr. BARON GRAHAM, at the Stafford summer assizes, in the year 1807, upon an indictment for publishing as true a promissory note for ten shillings and sixpence.

By the 15th G.3. c.51. s.1. promissory notes, &c. negotiable for any sum less than twenty shillings are declared absolutely void and of no effect, and by s.2. if any person shall publish or utter any such notes, &c. for a less sum than twenty shillings, or shall negotiate the same, he shall forfeit any sum not exceeding 20l. nor less than 5l.; sections 3., &c. give directions as to the form of conviction.

The indictment contained three counts. The first was on the 33 H. 8. c.1. for obtaining money, &c. by colour or means of a false privy token; but this the learned JUDGE ruled could not be sustained. The second count was on the 30 G. 2. c.24. s.1. and charged that the said Henry Freeth intending to cheat and defraud John Beebee of his monies, goods, and merchandizes, on the 9th of May, &c. did falsely, knowingly, &c. utter, publish, offer, and tender to the said John Beebee a false, forged, and counterfeit paper, as and for a true paper; and the said H. Freeth did then and there falsely, knowingly and designedly, fraudulently and wickedly pretend to the said John Beebee that the said false, &c. paper, was a true paper and signed by one William Sparrow, which paper is as follows:—
with intention the monies, goods, wares, and merchandises of the
said John Beebee to obtain, well knowing the last-mentioned
paper to be forged and counterfeited, by means of which last men-
tioned false pretences, the said H. Freeth did obtain from the
said John Beebee a sum of money, to wit, nine shillings and ten
pence, against the form of the statute, &c. The third count
charged, that the said H. Freeth, contriving and intending to
cheat and defraud the said John Beebee of his monies, goods, and
chattels, on the same day, &c. did falsely, fraudulently, and wick-
edly utter, publish, offer, and tender to the said John Beebee a
false, forged, and counterfeit paper, as and for a true paper,
and which the said H. Freeth then and there did represent and
pretend to the said John Beebee to be a true paper, subscribed,
&c. which is as follows (setting it forth), with intention then and
there to cheat and defraud the said John Beebee, and the monies,
goods, and chattels of him the said John Beebee fraudulently to ob-
tain; he the said H. Freeth, well knowing the said paper to be
forged and counterfeited, by means of which last mentioned false
pretences, the said H. Freeth, did then and there fraudulently
obtain from the said John Beebee a sum of money, to wit, nine
shillings and tenpence of the money of the said John Beebee.

It appeared by the evidence of John Beebee, confirmed by
several witnesses, that the prisoner came to his shop at Bilston,
on Saturday night, the 9th of May, 1807, and asked for a loaf,
which he served to him for five pence; that the prisoner then
asked for some tobacco, and the witness served him with an
ounce for threepence. The prisoner then threw down a note
for ten shillings and sixpence, upon which the witness said he
had no change but in copper, but the prisoner said copper would
do; and the witness then gave him nine shillings and tenpence
in copper, and the prisoner took the money, with the loaf and
tobacco, and went away.

The note was that set forth in the indictment, and was a forged
note. And it was proved that the prisoner on the same evening,
and the next morning, put off several other notes of Sparrow's, of the same amount, and all forged.

Sparrow was a person of good credit, and his notes under twenty shillings were generally circulated in that neighbourhood, as it was found impracticable to pay in cash or larger notes the wages of the numerous day labourers engaged in the iron works.

The counsel for the prisoner objected, that this was not a case within the 30 G. 2. c. 24.; that the general expression of that statute "knowingly or designedly, by false pretence or pretences, obtaining from any person or persons, money, goods, wares, or merchandizes," were confined to cases of false suggestions of fact, as in Rex v. Young, and others (a); to cases where the party falsely represents himself to be in a situation which he is not, as a servant to another, or as having his order or authority; or produces a false account of disbursements, on the face of which the party would be entitled to be reimbursed, as in Rex v. Whitchell (b); and to those cases where credit is acquired, and the monies, &c. are obtained by the false pretence. And it was urged, that in this case the credit was given to the note, and to the representation or pretence of the prisoner himself; that the fraud consisted in the fabrication of the instrument and not in any representation made by the prisoner. But it appeared to the learned Judge, that the uttering the note as a genuine note, was tantamount to a representation that it was so.

The ground of the objection that this was not a cheat at common law was, that a note of this sort being void, and prohibited by law, it was no offence to forge such a note, or to obtain money upon it when forged, as the party taking it ought to be upon his guard.

The learned Judge, however, left the case to the jury, directing them, that the evidence if true sustained both or one of these counts: and the jury found the prisoner guilty on the two latter counts; when the learned Judge respited the sentence, reserving the points for the opinion of all the Judges.

In Michaelmas term, 16th November, 1807, all the Judges (except Rookes J.) being present, the majority of them thought that the conviction was right, and that it was a false pretence,

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(a) 2 East, P. C. 828.    (b) Ibid. 530.
notwithstanding the note, upon the face of it, would have been good for nothing *in point of law*, if it had not been false. **Lawrence J.** was of a different opinion, and thought that the shopkeeper was not cheated if he parted with his goods for a piece of paper which he must be presumed in law to know was worth nothing if *true*.

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**REX v. JOHN NICHOL.**

This case was tried before Mr. **Baron Graham**, at the summer assizes for the county of **Gloucester**, in the year 1807.

The first count of the indictment charged the prisoner with committing an assault upon **Ann Elliott**, with intent her the said **Ann**, against her will, feloniously to ravish and carnally know. The second count was for a common assault upon the said **Ann Elliott**.

It appeared by the evidence of **Ann Elliott** that she was of the age of thirteen years, and a scholar in a school kept by the prisoner's wife; that the prisoner's wife was absent from home for some days, and that the prisoner heard the girls say their lessons during his wife's absence. That upon one occasion while he was sitting in a chair and the girls, to the number of seven, standing round him in a circle employed in reading, he put his hand up the petticoats of **Ann Elliott**, unbuttoned his breeches, took her hand, and, pulling her towards him, put it into his breeches, so as to touch his private parts; and she continued in that situation for the space of half an hour while she was reading. That upon another occasion, two or three days afterwards, when **Ann Elliott** was alone in the school-room, the prisoner sitting in a chair, took her between his legs, put his hand up her petticoats, unbuttoned his breeches, pulled up her petticoats, put his private parts to her's, and continued in that situation for a considerable space of time. He desired her not to tell any person what he had done. It further appeared from the evidence of **Ann Elliott**, that he had taken the same sort of indecent liberties with her upon some other occasions. She further stated that she knew it was not right in him to act as he did, and that
she knew it was not right in herself in permitting him; that she knew it was wrong in both, and that it was against her will at all the times.

It was objected by the counsel for the prisoner, that these acts were not done under such circumstances as would have amounted to a rape in case the prisoner had obtained carnal knowledge of the girl's person; that there was no evidence of force or violence, or of the acts, or either of them having been against her will; and that with regard to any intention of committing a rape the contrary was to be inferred from the position of the prisoner, and from his not having effected such a purpose, which nothing could have prevented, when he was alone with the girl, if he had so intended.

The learned Judge left the case to the jury, remarking upon the tender years of the girl; her situation under the care and authority of the prisoner and his wife; and the authority and influence which the prisoner had over her in the absence of his wife. He observed that his authority and influence were likely to have put her still more off her guard than she would naturally have been from her age and inexperience; that a fear and awe of the prisoner might check her resistance and lessen her natural sense of modesty and decency; and that under such circumstances less resistance was to be expected than in ordinary cases. And he further observed, that she had sworn that the acts of the prisoner were against her will, and that there was some evidence to show that this was the fact. And he therefore directed the jury that if they believed the girl, and thought that the acts of the prisoner were against her will, though she had not resisted to the utmost, they might find the prisoner guilty; but if they thought that those acts were not against her will, they might acquit him. With regard to the prisoner's intention, the learned Judge told them that it was to be presumed from the indecencies and acts of lewdness.

The jury found the prisoner guilty on both counts of the indictment; upon which the sentence was respited in order that the opinion of the Judges might be taken upon the question whether the prisoner was rightly convicted of the assault with intent to commit a rape.

In Michaelmas term, 14th of November, 1807, the Judges
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1807. Nichol's Case.

(except Rooke J.) having met, they were all of opinion that the evidence was fully sufficient to support the count for a common assault; and that judgment should be passed upon the prisoner.

1807.

REX v. EDWARD BALL.

Upon an indictment for uttering a forged note. The Judges were of opinion that evidence was admissible of the prisoner having at a prior time uttered another forged note of the same manufacture, and also that other notes of the same fabrication had been found on the files of the Bank with the prisoner's hand-writing on the back of them, in order to show the prisoner's knowledge of the note mentioned in the indictment being a forgery.

S. C. 1 Camp. 324.

Although it appears, upon a case reserved, that evidence has been admitted at the trial which ought not to have been received. Yet, if the Judges are of opinion that there is ample evidence to support the indictment, after rejecting such improper evidence, they will not set aside the conviction.

The prisoner was tried before Mr. Justice Heath, at the Lewes summer assizes, in the year 1807, on an indictment charging him in the first count with forging a Bank of England promissory note for the payment of 5l., with an intent to defraud the Governor and Company of the Bank of England. And on another count for uttering the same, &c.

The prisoner uttered the note in question on the 11th of June, 1807. The note was forged with a camel-hair pencil.

The counsel for the prosecution offered to prove that the prisoner had uttered another forged note, in the same manner, by the same hand, and with the same materials, on the 20th of March preceding; and that two ten pound notes and thirteen one pound notes of the same fabrication had been found on the files of the Company, on the back of which, there was the prisoner's hand-writing, which was evidence of their having been in his possession; but it did not appear when the Company received them.

The learned Judge told the counsel for the prosecution who insisted that such evidence had been admitted in a similar case, that he would receive it subject to the opinion of the Judges, if they chose to risk it; but if the Judges should be of opinion that the evidence was inadmissible, it would probably operate as an acquittal. After some consultation, the counsel for the prosecution tendered the evidence, which was received and the prisoner found guilty.
In Michaelmas term, 14th of November, 1807, all the judges (except Rooke J.) met, and the majority were of opinion, that the evidence was admissible, (a) subject however to observations as to the weight of it, which would be more or less considerable, according to the number of the other notes; the distance of time at which they were put off, and the situation of life of the prisoner, so as to make it more or less probable that so many notes should pass through his hands in the course of business.

Chambre J. thought the evidence wholly inadmissible as being evidence of facts wholly distinct from the transaction which formed the subject of the indictment, and which the prisoner could not be prepared to answer or explain.

Whether the judges on a case reserved would hold a conviction wrong, on the ground that some evidence had been improperly received, when other evidence had been properly admitted that was sufficient of itself to support the conviction, the judges seemed to think, must depend on the nature of the case and the weight of the evidence. If the case were clearly made out by proper evidence in such a way as to leave no doubt of the guilt of the prisoner in the mind of any reasonable man, they thought, that as there could not be a new trial in felony, such a conviction ought not to be set aside (b), because some other evidence had been given which ought not to have been received; but if the case without such improper evidence were not so clearly made out, and the improper evidence might be supposed to have had an effect on the minds of the jury, it would be otherwise. The conviction in this case was held right.


(b) In Margaret Tinkler's Case, MSS. C.C.R. 1781, all the judges thought the evidence of a witness of the name of Parsons ought not, in strictness, to have been received; but as the evidence was ample without it, the judges did not think themselves bound to stop the course of justice. See the facts of this case, 1 East, P.C. 554. See Rex v. Treble, East. T. 1810, post.
If a prisoner of war abroad enters on board an English merchant ship, and whilst in that capacity commits an offence upon an Englishman in a foreign country, he cannot be tried for it here under the 33 Hen. 8. c. 23. (a), and the 43 G. 3. c. 113. s. 6. (b) upon an indictment which

(a) Which enacts, That if any person or persons being examined before the king's council, or three of them, upon any manner of treasons, misprisions of treasons, or murders, do confess any such offences, or that the said council, or three of them, upon such examination, shall think every person so examined to be vehemently suspected of any treason, &c. that then in every such case, by the king's commandment, His Majesty's commission of Oyer and Terminer, under his Highness's great seal, shall be made by the Chancellor of England to such persons, and into such shires or places as shall be deemed and appointed by the King's Highness for the speedy trial, conviction or delivery of such offenders, which commissioners shall have power and authority to enquire, hear and determine all such treasons, &c. within the shires and places limited by their commission, by such good and lawful persons as shall be returned before them by the sheriff or his minister, or any other having power to return writs and process for that purpose, in whatsoever other shire or place within the king's dominions, or without, such offences of treasons, &c. so examined were done or committed.

(b) The sixth section, after reciting the above act of 33 Hen. 8. c. 23., and that no provision is therein made for the trial of accessories before the fact in murder, or for the trial of the offence of manslaughter, either upon indictment for that offence or for the crime of murder, under any commission to be made or issued in pursuance of the same act, whereby persons guilty of these offences, and more particularly when such murders or manslaughters happen to be committed out of the realm, and not upon the high seas, may frequently escape punishment, enacts, That from and henceforth all and singular the powers in the said recited act contained respecting murder, &c. shall be extended to the offence of procuring, directing, counselling, commending, or otherwise becoming an accessory or accessories before the fact to any murder, and also to the offence of manslaughter, in like manner as if these offences had been expressly mentioned in the said recited act; and if, on the trial of any offender for murder, he shall appear to be guilty of manslaughter only, the jury may find accordingly a special verdict, upon which there shall be the like proceedings, judgment, and punishment or execution, as if the offence had been committed.
charged that he the said Antonio Depardo on the 30th of November, 47 G. 3., &c. with force and arms at Canton in China, in parts beyond the sea without England, in and upon one William Burne in the peace &c. feloniously did make an assault, &c., and with a certain knife, of the value, &c., then and there feloniously did strike, stab, and thrust, giving to the said William Burne then and there, &c. one mortal wound, &c., of which said mortal wound he the said William Burne on the said 30th of November, 47 G. 3. aforesaid, in Canton in China aforesaid, in part beyond the sea without England did die; and so the jurors, &c. did say that the said Antonio Depardo him the said William Burne in manner and form aforesaid did kill and slay, against the peace, &c.

It appeared in evidence that Antonio Depardo was a Spaniard, and had been a prisoner of war on board the Bleinhaim, and that whilst abroad he volunteered on board a ship called the Alnwick Castle, an Indiaman then lying at the Prince of Wales’s Island (which is under the dominion of His Majesty), and received the usual bounty. The prisoner who had served about three months on board the Indiaman received on the day before he committed the offence charged in the indictment a part of his pay. The deceased was an Englishman, and a mariner serving on board the same ship as the prisoner. At the time of committing the offence the Alnwick Castle was lying near Canton, in a part of the Canton river, about one third of a mile in width within the tideway at the distance of about eighty miles from the sea. The prisoner went on shore with others of the crew, and there mortally wounded the deceased, who was afterwards carried on board the ship, where he died on the following day.

The prisoner was found guilty, but the learned Judge entertaining some doubts whether the prisoner was liable to be tried here under the statutes 33 Hen. 8. c. 23. and 43 G. 3. c. 113. s. 6., reserved the case for the opinion of the Judges.

In Michaelmas term, 1807, this case was argued before the Judges by Burrough for the prisoner, and Abbott for the Crown. No judgment was given, but the prisoner was discharged.

within the body of any county within this realm, and such trial had been had, and such general or special verdict had been found upon an indictment for murder found and tried according to the course of the common law by a jury of the same county within which the offence was committed.
REX v. JAMES REMNANT.

The prisoner was tried before Mr. Baron Graham, at the Abingdon summer assizes, in the year 1807, on an indictment for a larceny.

The first count charged the prisoner with stealing forty-five 2l. Bank of England notes, the property of John Nash.

The second count laid the property to be in John Willan and, others (naming them), proprietors of the Worcester stage. The second count could not be supported from a failure in proof of the names of the persons who were partners with John Willan.

The doubt arose as to the evidence of property, as applied to the first count. As to which the case was this.

It was proved that a person of the name of Turner lived in the Isle of Wight, and was agent to John Nash who lived in London, that James Morgan who lived in London was also agent for Nash.

That on the 30th of March, 1807, Turner sent to Morgan by the directions of Nash 290l. One hundred pounds in 2l. Bank of England notes, and 190l. in notes of a Bank at the Isle of Wight.

Morgan proved that he received on the 1st of April, 1807, in London, a parcel from Turner containing 100l. in 2l. Bank of England notes, and 190l. in Isle of Wight notes, for the use of Nash. That on the 2d of April, he sent forty-five 2l. Bank notes, part of the 100l. bank notes, in a parcel directed to Mr. Walker, at Lord Foley’s, Whitley-court, near Worcester, to be employed by Walker in the payment of some workmen there. That he took the parcel sealed to the Gloucester Coffee-house, Piccadilly, from whence the Worcester stage set off, and delivered it to the book-keeper, who booked it.

The rest of the case was then proved.

When the counsel for the prosecution had closed his evidence the counsel for the prisoner objected, that though these notes were sent from the Isle of Wight on the account of John Nash, there was no evidence that they were ever in the actual posses-

(a) See now 1 G. 4. c. 102. by which the property may be described as the goods of any one or more of the partners.
sion of *Nash*, and that they could not be constructively so at the time of the larceny committed, as he had no otherwise the receipt of them than by the hands of his agents.

When the objection was made, the learned *Judge* wished to enquire more particularly out of what funds the notes were received by *Turner*, and why *John Nash* had to pay these workmen at *Whitly*; but it being objected that the prosecutor’s counsel had closed his case, he forbore to enquire further.

The learned *Judge* in summing up stated to the jury that he thought that these notes being sent by the order of *Nash* to *Morgan* his agent in *London*, when received by him in that character, were in his hands the property of *Nash* and at his disposal; and that enough appeared to show that they were forwarded by his order to *Walker*. That being at his disposal in the hands of *Morgan*, they were constructively if not actually in the possession of *Nash*, and so continued until their delivery to *Walker*, and consequently were so at the time of the larceny committed. He directed the jury accordingly, and they found the prisoner guilty.

The learned *Judge* passed sentence of transportation on the prisoner; but at the request of his counsel and fearing that he might have mistaken the case, he respited the sentence and reserved the following point for the opinion of the *Judges*, Whether this evidence was sufficient proof of the property in *John Nash* to maintain the charge of larceny?

The learned *Judge* stated that the argument of the counsel for the prisoner at the trial appeared to him to have proceeded on a misapplication of the cases; as between the master and servant or agent, where the master has no otherwise the possession than by the receipt of the servant or agent, the servant or agent cannot be charged with a tortious or felonious taking; but as against a third person where there could be no question of a trust, the receipt of effects by an agent by the master’s directions might be considered as a receipt by the master himself; and in the common course of business there is often no other receipt or possession by the master.

In *Michaelmas* term, 14th of *November*, 1807, *all the Judges* met (except *Rooke J.*), and were of opinion that the property was well laid and proved in *John Nash*, and that the prisoner was properly convicted.

None of the *Judges* seemed to have any doubt but that it
would have been competent and proper for the judge, if he had thought fit, to have made any further enquiry respecting the property after the counsel stated they had closed their case.

**REX v. EDWARD GILSON.**

The prisoner was tried before Mr. Justice Heath, at the Old Bailey September sessions, in the year 1807, on an indictment charging him with feloniously, maliciously, and unlawfully setting fire to a House in his possession, situate in the parish of St. Clement's Danes, with intent to injure and defraud the Corporation of the London Assurance, of houses and goods from Fire. (a)

It was proved to the satisfaction of the jury, that the prisoner did set fire to his house purposely.

In order to prove the intent as charged in the indictment, the prosecutors, after giving the charters of the Company in evidence, produced a policy of insurance under the common seal of the Corporation, whereby they insured the household furniture, and stock in trade of the prisoner, to the amount of six hundred pounds. There was a proviso in the policy, for avoiding it in certain events therein mentioned, unless the same should be specified and allowed by indorsement on the policy signed by two or more of the Directors of the said Corporation; but that proviso did not embrace this case. There was an indorsement on the policy

*(a) By 43 G. 3. c. 38. s. 1. it is enacted, That if any person or persons shall, either in England or Ireland, wilfully, maliciously, and unlawfully set fire to any house, barn, granary, hopoast, malthouse, stable, coachhouse, outhouse, mill, warehouse, or shop, whether such house, barn, &c. shall then be in the possession of the person or persons so setting fire to the same, or in the possession of any other person or persons, or of any body corporate, with intent thereby to injure or defraud His Majesty, or any of His Majesty’s subjects, or any body corporate, that then, in any such case, the person or persons so offending, their counsellors, aiders, and abettors, knowing of and privy to such offence, shall be and are hereby declared to be felons, and shall suffer death, as in cases of felony, without benefit of clergy.*
CROWN CASES RESERVED.

Importing that the goods mentioned therein, were removed from No. 85, Wood Street, to No. 13, Boswell Court, which removal was thereby allowed; it was signed by two Directors of the Corporation of the London Assurance Company.

It was proved that such indorsements were usually made by the directors, and losses thereon constantly paid.

It was objected by the counsel for the prisoner, that the indorsement was void; first, as not being under the common seal of the Corporation; secondly, for want of a new stamp, there being none on the indorsement. And it was further contended that if it were void for one or both of these reasons, it could not be given in evidence, though the object of the prosecutors in producing it was, not to substantiate or give validity to the instrument, but merely to prove the intent as charged in the indictment.

Heath J. admitted the evidence in order to take the opinion of the Judges thereon, and the jury found the prisoner guilty, subject to the point of law.

This case was argued before all the Judges (except Rooke J.) at Serjeants’ Inn Hall, on the 1st of December, 1807, by Pooley for the Crown and Knapp for the prisoner; and the conviction was held wrong by six Judges against five, viz. Lord Ellenborough, Mansfield C.J., Wood B., Grose J. and Heath J., were of opinion that the conviction was right; and the Lord Chief Baron, Thomson B., Lawrence J., Le Blanc J., Chambre J., and Graham B. contra.

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REX v. JOHN HARTLEY.

The prisoner was tried and convicted at the York summer assizes, in the year 1807, before Mr. Baron Wood, on an indictment which charged, that the prisoner received, at the parish of Gainsthorpe of his barges to carry out and sell coal, and paid him for his labour by allowing him two-thirds of the price for which he sold the coals, after deducting the price charged at the colliery. Held that the prisoner was a servant within the meaning of 39 G.3. c.85.; and having embezzled the price he was guilty of larceny within the words of that act.
CROWN CASES RESERVED.

1807. 

Hartley's Case.

borough, at the county of Lincoln, then and there being a servant, and employed in the capacity of a servant to Thomas Fenton, 16l. of lawful money, &c. and afterwards, on the 27th of February, at the parish of Wakefield, in the county of York, fraudulently and feloniously did embezzle, secrete and make away with said sum of 16l., and did feloniously steal, take and carry away the same from the said Thomas Fenton, his said master and employer, then being the property of the said Thomas Fenton, his said master and employer, for whose use and on whose account the said sum of 16l. was so received and taken into the possession of the said John Hartley, and that the said John Hartley did, on the 27th of February, at the said parish of Wakefield, in the county of York aforesaid, feloniously steal the said sum of 16l., being the property of the said Thomas Fenton, against the statute, &c.

The facts of the case were, that the prisoner was in the employ and service of Mr. Fenton as captain of one of his vessels, and employed as such to take coals from Mr. Fenton's colliery and sell the same, and bring back the money to his employer. The mode of paying him for his labour was by allowing him two third parts of the price for which he sold the coals above the price charged at the colliery.

It further appeared in evidence, that in January 1807, the prisoner loaded the boat of Mr. Fenton with twenty waggon loads of coals at Mr. Fenton's colliery at Greasbrook, and proceeded down the river with them to sell at the best market; when he had sold them he was to bring back the money, and take in a cargo of iron for Leeds; the price or value of the coals at the colliery was fourteen shillings a chaldron. He proceeded with them to Gainsborough, where he sold them for between eighteen and nineteen shillings per chaldron, and received the money, which he converted to his own use, and quitted the vessel without ever returning to Greasbrook.

Two objections were made on behalf of the prisoner: —

First, That he was not a servant within the meaning of the act. Secondly, That the money was the joint property of him and his employer, as he was to have two-thirds for working the vessel, and, having a joint interest, he could not be guilty of felony.

On further enquiry, it appeared that the crew of this boat con-
sisted only of the prisoner and his wife; but if men were wanted
they were hired by the captain, and their pay first deducted out
of the price at which the coals sold for, before the same was di-
vided in the way that has been stated.

At the York spring assizes, in the year 1808, Mr. Justice
Le Blanc delivered the opinion of the Judges.

"This case having been submitted to the consideration of all
the Judges, they maturely weighed and considered the objec-
tions, and the majority are of opinion that the prisoner's case
is within the act of parliament, and that he was properly con-
victed.

"He had no interest in the boat or the coals; he was merely
the servant of the owner employed to take the coals to a market to
sell them and bring back the money to his employer; and the mode
of paying him for his labour was by allowing him a fixed propor-
tion of the profit made on the sale beyond the price charged at
the colliery; this did not vary the nature of his employment, nor
make him less a servant than if he had been paid a certain price
per chaldron or per day; and as to the price at which the coals
were charged at the colliery in this instance, viz. fourteen shill-
ings per-chaldron, that sum he received solely on his master's
account as his servant, and by embezzling it became guilty of
larceny within the words of the act of parliament."

The sentence was, that he should be further imprisoned one
calendar month, fined sixpence, and discharged. (a)

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(a) Vide Rex v. Hoggins, Pasch. 1809. post. A servant who received money
for his master for articles made of his master's materials, which he embezzled,
held to be within the act, though he made the articles, and was to have a given
proportion of the price for making of them. Vide also Rex v. Spencer, Pasch.
The prisoners were tried before Mr. Justice Grose, at the Lent assizes for Aylesbury, in the year 1808, on an indictment charging them with uttering to Mary, the wife of Richard Bowry, a counterfeit shilling, knowing it to be counterfeit, and having about them, in their custody at the same time, another counterfeit shilling, knowing the same to be counterfeit.

Upon the trial of these prisoners it appeared, that on Friday the 29th of January, 1808, they went to a public house called the Barge Pole, in Great Marlow, the man carrying a pack containing goods for sale, and slept there. They went out on the Saturday severally and repeatedly; the woman returned and slept there on the Saturday night, the man did not return till the Sunday, when they again went to bed. It also appeared, that on the Saturday, the 30th of January, in the middle of the day, the woman went to the Swan, another public house at Marlow, and bought some liquor, for which she paid a counterfeit shilling to the Mary Bowry named in the indictment, and she left this house about five o'clock in the afternoon. The man went to the Roebuck, another public house at Marlow, and there produced as many counterfeit shillings as (if good) would have been worth ten pounds, which he offered to sell for five pounds; and at the same time offered a number of sixpences, about one thousand, some at threepence halfpenny, and others at twopence half-penny a-piece; they were proved to be counterfeit. On the Sunday evening the constables found the prisoners in bed at the Barge Pole; in the room, near the bed, was found a quantity of bad halfpence, some silver (four shillings and sixpence) in the man's pocket, which was good, and one shilling and sixpence bad; and concealed under his arm was found a paper parcel of bad shillings, which, if good, would have been worth fourteen pounds. In the woman's pocket were found a good halfcrown, seven good shillings, and six counterfeit shillings, like the counterfeits found in the paper under the man's arm.

Upon this evidence it was insisted by the prisoner's counsel, that there was no ground to convict the man, he not having
uttered the shilling in question, nor being present at the time
the woman uttered it. And that with respect to the woman she
could only be convicted of uttering the shilling (the offence in
the former part of the count) knowing it to be counterfeit, it not
appearing that at the time of uttering it on the Saturday she (not
having been searched on that day) had any other counterfeit
money about her.

To this it was answered, that upon the evidence it appeared
that they were both engaged in one unlawful concern of uttering
bad money; that therefore the act of one was the act of both,
that it was for the jury to say whether under all the circum-
stances of the case the woman had not other bad money about
her at the time of uttering the counterfeit shilling.

The agent to the solicitor of the Mint asserted that there had
been several convictions at the Old Bailey on the like evidence.

The learned Judge left the case to the jury, telling them that
the evidence was sufficient, if they believed it, to convict the
woman of uttering a counterfeit shilling, knowing it to be coun-
terfeit, and that they should consider, whether she had at the
same time other counterfeit money about her in her custody,
and whether the husband and wife were jointly concerned in the
transaction. They found the prisoners guilty. But it being
in some respects a new case, the learned Judge submitted, for
the opinion of the Judges, whether both or either of the pri-
soners could on this evidence be legally convicted on the whole
or any, and which of the offences stated in the indictment?

In Easter term, 14th May, 1808, all the Judges met, and
held the conviction of the woman for the single offence good;
but not good for uttering and having about her at the time other
money; and as to the conviction of the man, they held it could
not be supported. And that the woman being improperly con-
icted ought to be recommended to a pardon on condition of
imprisonment for three months. (a)

(a) Vide Rex v. Soares and others, supra, 25. Rex v. Davis and another,
 supra 113.
REX v. AUGUSTUS MELLOR AND ANOTHER.

An indictment for forgery stated the offence to have been committed in the county of Nottingham; it was proved to have been committed in the county of the town. Held that, although under the 38 G.3. c. 52, it was triable in the county at large, the offence should have been laid in the county of the town.

The prisoners were tried before Mr. Baron Wood, at the Lent assizes for Nottinghamshire, in the year 1808, on an indictment which charged them with disposing of, and putting away a forged and counterfeit Bank of England note for one pound, knowing it to be forged and counterfeited against the form of the statute, &c.

The offence was alleged to have been committed at the parish of Arnold, in the County of Nottingham. But it was proved by the evidence to have been in fact committed in the Town of Nottingham, which is a town corporate, separated from the county at large, having an exclusive jurisdiction, and separate commissioners of Oyer and Terminer, and gaol delivery.

The learned Judge was of opinion, that although the prosecutors might by virtue of the 38 G.3. c. 52. s. 2. (a) have preferred this indictment in the county of Nottingham, for the offence committed in the town of Nottingham; yet in that case the fact ought to have been alleged according to the truth of the case, viz. to have been committed in the town of Nottingham.

The trial proceeded upon this indictment as preferred, and the prisoners were convicted; but the learned Judge did not pass sentence upon them, reserving the point for the consideration of the Judges.

In Easter term, 1808, the Judges met, and held that although by the 38 G.3. c. 52, this offence might be tried in the county at large, yet the offence should have been laid in the county of the town. (b)

(a) Which enacts, That it shall and may be lawful for any prosecutor to prefer his bill of indictment for any offence committed or charged to be committed within the county of any city or town corporate, to the jury of the county next adjoining to the county of such city or town corporate sworn and charged to enquire for the king for the body of such adjoining county, at any sessions of Oyer and Terminer or general gaol delivery; and that every such bill of indictment, found to be a true bill by such jury, shall be valid and effectual in law as if the same had been found to be a true bill by any jury sworn and charged to enquire for the king for the body of the county of such city or town corporate.

(b) Vide Rex v. Jeff. Pasch. 1810. post.
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REX v. JOHN HOGGINS.

The prisoner was tried before Mr. Justice Bayley, at the
Lent assizes, for the Borough of Leicester, in the year 1809, on
an indictment on the 39 G. 3. c. 85. for embezzlement.

The prisoner worked for Burbidge & Co. who were turners;
and was paid according to what he did. It was part of his duty
to receive orders for jobs, to take the necessary materials from
his masters' stock, to work them up, to deliver out the articles;
and to receive the money for them; and then his business was
to deliver the whole of the money to his masters, and to receive
back at the week's end a proportion of it for working up the
articles. The jobs were commonly paid for as soon as they were
executed, it being a ready money part of the business.

On the 27th January, 1809, the prisoner received an order from
one Jonathan Mallett for six dozen of coffee-pot handles. The order
was given to him in his character of servant to Burbidge & Co.
He took the wood for the handles from their stock, and turned
them on their premises, and with their machinery. He then de-
ivered them to Mr. Mallett, and received the price, which was
three shillings, but he concealed the whole transaction from
Burbidge & Co. and kept the whole money.

His own share of the price would have been a third, viz. one
shilling.

The learned Judge doubted whether this was within the act,
or whether it was not rather a case of fraudulently concealing
the order, and embezzling the masters' materials and using their
machinery to execute it; but as the point was considered of ex-
tensive importance, he did not state his doubts to the jury, and
they found the prisoner guilty; but the prisoner was let out on
bail, and judgment was respited till the following assizes.

In Easter term, 29th April, 1809, at a meeting of the
Judges, they all agreed that the conviction was right. (a)

(a) Vide Rex v. Hartley, supra, 139. and the cases there cited.
Obtaining money by threatening to charge a man with an unnatural crime and carry him before a magistrate is robbery if there is any constraint upon his person. If the prisoners call a coach to carry the party before the magistrate, and the prosecutor gets into it. This is a constraint upon his person. See Rex v. Egerton, Hil. T. 1813, post.

The prisoners were tried before Mr. Baron Graham and Mr. Justice Grose at the Old Bailey November sessions, in the year 1808, on an indictment for a highway robbery in the parish of St. George, Hanover Square, on the 9th of August, 1808, on one Joseph Butler.

It appeared in evidence, that the prosecutor Joseph Butler had the management of Mr. Wigram's business, a silversmith in St. James's Street. On the 9th of August, 1808, the prisoner Coddington came to Mr. Wigram's soon after ten o'clock in the morning, and enquired for Mr. Butler, and said that Sayers the officer was waiting for him in St. James's Place, that he wanted to see him on the business that occurred on the preceding evening. The prosecutor went to St. James's Place, and found the prisoner Cannon there. Both the prisoners went with the prosecutor to his lodgings in Cleveland Court. Cannon, when they arrived there, stated (having the preceding night represented himself to the prosecutor as an assistant officer of the police) that he had been discovered to have been absent from his duty in the park the night before, and that he had been obliged to account to the other officers on duty who claimed a share of the 10l. he had received from the prosecutor the night before; that he had also been obliged to state his absence to Coddington (whom he then called by the name of Wilkinson, and represented as an assistant clerk at Bow Street), and therefore required 10l. more of the prosecutor, or they would prefer the charge which he had the night before threatened him with. Cannon did not repeat what the charge was. (The charge on the preceding night was, of an attempt to commit an unnatural crime.) Under the apprehension of the threat, the prosecutor told them he would procure the 10l. by the next morning, and made an appointment with them to meet him the following morning at St. James's Square, at nine o'clock. They then went away. A few minutes after nine o'clock that night the prisoners came to the prosecutor.
at Wigram's; and on his opening the door, the prisoners came into the passage and said they were come for the money he had promised them, that they could not wait till the morning. Upon the prosecutor's informing them he had not got the money, they said that they were come from Bow Street, and would take him into custody. The prosecutor agreed to accompany them; and one of the prisoners called a coach and ordered the coachman to drive them to Bow Street; after driving a short distance one of the prisoners desired the coachman to stop, and told the prosecutor if he would behave like a gentleman and procure the money they would not prefer the charge against him. The prosecutor promised to try a friend in Bruton Street: the coach was then directed to stop at the corner of Bruton Street: they all got out there, and one of the prisoners paid the fare. The prisoners accompanied the prosecutor to the door of his friend, and said they would wait until he came out. He procured a 10l. bank note, and after remaining in the house about five minutes, he returned into the street, and found the prisoners waiting for him on the opposite side of the way, and he gave the money to them. The prosecutor said that he parted with the money in the fear and dread of being placed in the situation of a criminal of that nature, had they persisted in preferring the charge against him; that he did not conceive they were Bow Street officers, though they held out the threat, but that he was extremely agitated, and thought they would have taken him to the watch-house by force; under that idea and the impulse of the moment he parted with the money. The prosecutor stated that he could not say that he gave his money under the impression of any danger to his person. On the 13th of the same month, the prisoner Cannon again applied to the prosecutor at his lodgings in Cleveland Court, and asked for two guineas; but the prosecutor refused to give him any money; and on the 31st of October, on his applying to the prosecutor at Mr. Wigram's, he was taken into custody, as was the prisoner Coddington, on the 3d of November following.

Graham B. in leaving the case to the jury, stated that with respect to Cannon, if they thought the prosecutor delivered his money under the terror of this charge, depriving him for the time of his presence of mind and freedom of action, the cases decided would justify his conviction. And as to Coddington, that they were to consider, whether, from the circumstances of the
case and his conduct, they thought that he well knew what the charge threatened was; for if so, there was no doubt he concurred in the means used to obtain the money.

The jury found them both guilty; but as this case contained more distinctly than others of the like kind the fact of delivery under no apprehension of personal injury or danger, the learned judge reserved the case for the consideration of the judges.

In Hilary term, 1809, all the judges met (except Mansfield C. J.) ten of the learned judges were of opinion, that the calling a coach and getting in with the prosecutor was a forcible constraint upon him, and sufficient to constitute a robbery, though the prosecutor had no apprehension of further injury to his person. Lord Ellenborough, Macdonald C. B., Lawrence J., Chambre J., and Graham B., thought some degree of force or violence essential; and that the mere apprehension of danger to his character would not be sufficient to constitute the offence. Heath J., Grose J., Thomson B., Le Blanc J., and Wood B., seemed to think it would. The conviction was held right. (a)

(a) In Hickman's Case, 1 Leach, C.C. 278. It was held to be robbery to obtain money by threatening to take another before a justice on a charge of an unnatural offence, although the prosecutor stated that he parted with his money under an idea of preserving his character, not from fear of personal violence. The doctrine in Hickman's Case appears to have been doubted by several of the judges in Cannon's Case; but has been subsequently recognised in Rex v. Egerton, Hilary T. 1819. post, where the judges held on a case reserved, that fear of loss of character and services upon a charge of sodomitical liberties, was sufficient to constitute robbery, though the party accused had no fear of being taken into custody or of punishment.
REX v. JAMES WICKS.

The prisoner was tried before Mr. Baron Wood, at the Lent assizes for the city of Gloucester, in the year 1809, on an indictment for forging a bill of exchange, according to the tenor following:

"£50. Bartoend October 1st 1808.

"Two months after date pay to ower order the sum of fifty pounds value rect. as advis’d by Rimmington & Co.
"Messrs. Clementson
"Boradel & Jackson
"Basinghall St. London."

with intention to defraud Merrett Stephens, and John Merrett Stephens.

The second count was for uttering and publishing the said bill with intent to defraud the same persons.

The prisoner (Wicks) carried the bill above stated to the house of Merrett Stephens and John Merrett Stephens, who were bankers at Gloucester, and desired them to discount it for him, which they did, and paid him the full amount for it, deducting the discount, and he indorsed it, but not in his own name. After he was gone, the clerk discovered that there was no indorsement of the drawer’s name or firm upon it, and went in search of the prisoner, but could not find him. There was an indorsement of another name upon it besides the name which the prisoner indorsed.

Abbott and Ludlow for the prisoner objected, that inasmuch as there was no indorsement of the drawers (who were the payees), nor any thing purporting to be their indorsement, it could not pass as a bill of exchange, and therefore was not capable of effecting a fraud. They contended, that in order to constitute the crime, the indorsement must be capable of defrauding the persons whose names were forged, and cited Lyon’s Case, 2 Leať, C. C. 597. of a scrip receipt without a name, Wall’s Case, 2 East, P. C. 953. of forging a will of land attested by two witnesses only, and Moffat’s Case, 2 East, P. C. 954. of forging
a bill for more than twenty shillings and under five pounds without subscribing witnesses, &c.

The learned Judge overruled the objection, on the ground that the bill in this case, if genuine, would have been a good and valid bill of exchange; and if the jury believed the prisoner forged it, or uttered it knowing it to be forged, with intention to defraud the bankers, he thought the crime was complete.

The jury, upon full and clear evidence, found the prisoner guilty; but, at the request of the counsel, the learned Judge reserved the point for the consideration of all the Judges.

In Easter term, 29th of April, 1809, at a meeting of the Judges, viz. Lord Ellenborough, Mansfield C. J. of C. B., Macdonald C. B., Heath J., Grose J., Lawrence J. Le Blanc J., Chambre J., and Wood B., this case was considered, and all agreed that the conviction was right. (a)

§ All the Judges agreed that the instrument was a bill of exchange, though it was not accepted or indorsed; and that there was no doubt of the uttering by the prisoner with an intent to defraud; but Lawrence J. for some time doubted, whether, as without an indorsement by the payee it could not be available in the hands of the person to whom it was uttered, even if it were a genuine bill, it could be denominated such an instrument as that the uttering of it would be within the statute, or, rather, whether it could be said to be with intent to defraud the person to whom uttered, when, by attentively looking at the instrument itself, he must have seen that it was not valid as a negotiable bill of exchange; but his doubts appeared to be removed by the argument, that had it been the true and genuine bill it purported to be, the holder of it for valuable consideration from the payee might compel the payee to indorse it.

Mr. Justice Bayley was not present at this meeting, but he thought the conviction wrong, that, for want of an indorsement, the bill was not negotiable, and therefore, if genuine, not of value to the taker of it.

REX v. RICHARD GRIFFIN.

The prisoner was tried and convicted before Mr. Justice Chambre, at the Winchester Lent assizes, in the year 1809, for stealing a guinea and two promissory notes in a dwelling-house.

It appeared in evidence, that one of the notes was a bank of England note for 5l., and the other a Reading bank-note for the like sum.

Amongst other evidence the following proofs were given: —

The prosecutor proved, that the morning after the offence was discovered he charged the prisoner with having committed it, which charge the prisoner positively denied. His house was then searched, but nothing found. Soon afterwards, the prosecutor having learnt that the prisoner had got change for a 5l. bank of England note, at a public house at Gomby, told the prisoner what he had heard, and renewed the charge against him. The prisoner, at first, would not admit that he had received any money there, but afterwards said, if he had changed a note there it was his own.

The prosecutor was then proceeding to state, that the conversation ended in a confession; but, as he admitted, that he had told the prisoner that it would be better for him to confess, the learned Judge prevented him from giving testimony of a mere verbal confession, but permitted him, however, to prove that the prisoner brought to him a guinea and a 5l. Reading bank note, which he gave up to the prosecutor as the guinea and one of the notes that had been stolen from him.

The learned Judge told the jury, that notwithstanding the previous inducement to confess, they might receive the prisoner’s description of the note, accompanying the act of delivering it up, as evidence that it was the stolen note, and they found the prisoner guilty.

In Easter term, 29th April, 1809, a majority of the Judges, viz. Lord Ellenborough, Mansfield C.J. of C.B., Mac-
CROWN CASES RESERVED.

1809. donald c. b., heath j., grose j., chambre j., and wood b., held the conviction right, and the evidence admissible.

lawrence and le blanc js. were of a contrary opinion.

le blanc j. being of opinion that the production of money by the prisoner was alone admissible, and not his saying, at the time he produced one of the notes, "that it was one of the notes stolen from the prosecutor."

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1809. rex v. francis jones.

larceny.
the prosecutor asked the prisoner, on finding him, for the money he had taken out of the prosecutor's pack, but before the money was produced said, "he only wanted his money, and if the prisoner gave him that, he might go to the devil if he pleased." upon which the prisoner took 11s. 6d. out of his pocket and said it was all he had left of it. held that the confession ought not to have been received.

the prisoner was tried before mr. justice chambre, at the winchester lent assizes, in the year 1809, upon an indictment for stealing money to the amount of 1l. 8s., the property of john webb, a private in the somerset militia.

a part of the evidence was as follows: —

the prosecutor, who as well as others, had been in pursuit of the prisoner, found him, at last, in a room of a public house, in custody of a constable, to whom he had been delivered by a serjeant of marines, who had apprehended him. on finding him there, the prosecutor asked him for the money that he, the prisoner, had taken out of the prosecutor's pack, upon which the prisoner took 11s. 6½d. out of his pocket, and said it was all he had left of it. the serjeant (who was in the same room with the constable and the prisoner) gave the same account of the conversation and of the production of the money by the prisoner; but he added, that webb the prosecutor, before the money was produced, said "he only wanted his money, and if the prisoner gave him that, he might go to the devil if he pleased."

the money (11s. 6½d.) was taken charge of by the serjeant.

the learned judge left the whole of this evidence for the consideration of the jury, and they found the prisoner guilty.

in easter term, 29th of april, 1809, the majority of the judges present, viz. macdonald c. b., chambre j., lawrence j., le blanc j. and heath j., held that the evidence was not admissible, and the conviction wrong. wood b., grose j., mansfield c. j. of c. b. contra. lord ellenborough dubitante.
CROWN CASES RESERVED.

1809.

REX v. WILLIAM ROW.

The prisoner was tried before Mr. Justice Chambre, at the Exeter Lent assizes, in the year 1809, upon an indictment for stealing a quantity of muslins, and other goods, from a barge in Sutton Pool, Plymouth, described as a port of entry and discharge.

In consequence of a misdescription of the port he was acquitted of the capital part of the charge, but convicted of the larceny.

The prisoner was apprehended by a constable at his own lodgings, where many goods of the description of those that were stolen were found; and while the constable had the goods and the prisoner in his custody to take to the Guildhall before the magistrates, some of the neighbours, who had nothing to do with the apprehension, prosecution or examination of the prisoner, officiously interfered, and admonished the prisoner to tell the truth, and consider his family, which was a large one. No answer or observation thereon was made by the constable, nor did the prisoner answer them, but he desired the constable to call upon him in an hour at the prison, which he did, and there the prisoner made a full confession; stating in what manner he had been persuaded to join in committing the act, and all the circumstances attending it.

The learned Judge received this confession in evidence.

In Easter term, 29th April, 1809, the Judges present, viz. Lord Ellenborough, Mansfield C. J. of C. B., Macdonald C. B., Heath J., Grose J., Lawrence J., Le Blanc J., Chambre J., and Wood B., agreed that the evidence was admissible and the conviction right, because the advice to confess was not given or sanctioned by any person who had any concern in the business.

This case, and the two former (viz. Rex v. Griffin and Rex v. Jones) being so much in pari materia, Chambre J. stated them together, and reserved the questions on the admissibility of the persons having nothing to do with the apprehension, prosecution, or examination of the prisoner, advised him to tell the truth and consider his family. Held that such admonition was no ground for excluding a confession made an hour afterwards to the constable in prison.
evidence for the opinion of the Judges, in consequence, as he stated, of the obscurity and discordance of the cases upon the subject that are in print. (a)

The prisoners were severally indicted, tried, and convicted before Mr. Justice Chambre, at the Lancaster summer assizes, in the year 1809, for knowingly disposing of forged bank notes. (b)

The offence of disposing and putting away forged bank notes is complete though the person to whom they were disposed of was an agent for the Bank to detect utterers, and applied to the prisoner to purchase forged notes, and had them delivered to him as forged notes for the purpose of disposing of them. An indictment inde, need not state to whom the note was disposed of, it is sufficient to state the prisoner disposed of the note with intent to defraud the Bank, he knowing it at the time to be forged. S. C. 2 Taunt. 334. 2 Leach. C. C. 1019.

(a) See Warrickshall’s Case, 1 Leach, C. C. 265. See the cases collected, Phillpotts on Evidence, 119. 4th edit. Starkie on Evidence, Part IV. p. 49.

(b) The first section of 45 G. 3. c. 89. enacts, That if any person shall falsely make, forge, counterfeit or alter, or cause or procure to be falsely made, forged, &c. or willingly act or assist in the false making, forging, &c. any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange or promissory note for payment of money, acceptance of any bill of exchange, or any acquittance or receipt either for money or goods, or any accountable receipt for any note, bill, or other security for payment of money, or any warrant or order for payment of money or delivery of goods, with intention to defraud any person or body politic or corporate whatsoever, or shall offer, dispose of, or put away any false, forged, counterfeited or altered deed, will, &c. with intention to defraud any person, body politic or corporate, knowing, &c. shall be deemed guilty of felony without benefit of clergy.

By s. 2. it is enacted, That if any person shall forge, counterfeit or alter any bank note, bank bill of exchange, dividend warrant, or any bond or obligation under the common seal of the Governor and Company of the bank of England, or any indorsement thereon; or shall offer or dispose of or put away any such forged, counterfeit or altered note, bill, &c. or demand the money therein contained or pretended to be due thereon, or any part thereof, of the said company, or any of their officers or servants, knowing such note, bill, &c. to be forged, counterfeited or altered, with intent to defraud the said Governor and Company, or their successors, or any other person, body politic or corporate whatsoever, every person so offending shall be deemed guilty of felony without benefit of clergy.
The form of the indictment was the same in each case.

The first and third counts in each (upon which no evidence was given) charged actual forgery. The second count in each charged, that the prisoner on the 15th day, &c. with force and arms at R. in the county of Lancaster, "feloniously did dispose of and put away a certain false forged and counterfeit bank note, the tenor of which said last-mentioned forged and counterfeit bank note is as followeth; (setting it forth) with intent to defraud the Governor and Company of the Bank of England; he (the said prisoner) at the time of his so disposing of and putting away the said last-mentioned forged and counterfeit bank note, then and there, to wit, on the said 15th day, &c. in the 49th year aforesaid, at R. aforesaid, in the said county of Lancaster, well knowing such last-mentioned note to be forged and counterfeit" against the form of the statute, &c.

The fourth count, differed from the second, only in describing the forged instrument to be "a promissory note for the payment of money" instead of calling it a bank note.

In the course of the evidence, it appeared, that the notes in question were disposed of, to James Shaw, and James Whitehead, the principal witnesses against the prisoners, who in consequence of a great number of forged bank notes having been circulated in the neighbourhood, were employed by the magistrates with the approbation of the agents for the bank, to detect those who were suspected to be utterers.

The prisoners did not pay the notes to Shaw and Whitehead, as genuine, but these persons for the purpose of detection, applied to the prisoners, as supposed dealers in forged bank notes to purchase them, and the prisoners accordingly procured them, and sold them as forged notes.

Shaw and Whitehead were not deceived or defrauded in any of the instances, nor were any of the prisoners the first movers in the transactions they had with the witnesses; neither did it appear by any direct evidence that any one of the prisoners, when first applied to, had any of the notes in his actual possession; but they respectively produced them at meetings which took place subsequent to the first applications made by the witnesses.

The rest of the evidence was full and satisfactory, and four of the prisoners were convicted without any objection being taken
to the form of the indictment, or to the insufficiency of the act of disposal to constitute the offence created by the statute; but upon the trial of one of the prisoners of the name of Draper, it was objected in his behalf,

First. That the indictment was insufficient, as being too general, neither stating in what manner, or to whom, the notes were disposed of and put away.

Secondly. That the disposition of the notes established by the evidence was insufficient, inasmuch as the prisoners were solicited to commit the act proved against them by the bank themselves, by means of their agents. On this point the prisoners' counsel referred to the case of McDaniel and others, 10 St. Tr. 417.

The learned Judge overruled the objections, and all the prisoners received sentence; but he thought it proper to respite execution, in order to take the opinion of the Judges upon these objections.

In Michaelmas term 11th November, 1809, at a meeting of all the Judges, in the Exchequer Chamber, this case was argued by Yates for the prisoners, and Lambe for the Crown, when the Judges were unanimous in their opinion that the conviction was right.

That as to the first objection, the statute makes it felony without benefit of clergy to put away or dispose of generally without saying "to any person," or "to any of the King's subjects," and this form has been used as well in indictments for putting off, as in indictments for uttering, for a long course of years.

As to the second objection the offence was the same, although the party for the purpose of detection caused the application to be made to the prisoners to sell the notes; if the prisoner puts them off with the intent to defraud, the intent is the essence of the crime which exists in the mind, although from circumstances which he is not apprised of, the prosecutor cannot be defrauded by the act of the prisoner.
CROWN CASES RESERVED.

1809.

REX v. JAMES CALLAN.

The prisoner was tried before Lord Ellenborough, at the Old Bailey sessions, November, 1809, on an indictment charging him with having stolen three glass bottles and five pints of wine the property of one Dennis Mahony, in his dwelling-house, and with having after committing such felony, burglarsiously broken out of the said dwelling-house.

The only question in the case (for the larceny, time of night, and all the other circumstances necessary to be proved in such a case were clearly made out) was whether there was a sufficient breaking to constitute the crime of burglary.

The wine was stolen from a bin in the cellar belonging to the dwelling-house of Mahony, the prosecutor, who kept a public-house, and had been removed by the prisoner from thence to the flap by which the cellar was closed on its outside next to the street.

The flap had bolts belonging to it by which it might have been bolted within, but whether it was so bolted on the night of the burglary did not appear; but it was clearly proved that the flap was down. It did not appear whether the prisoner had entered by the flap of the cellar or not, as a door which communicated with the cellar in another direction and which the prosecutor had left locked was found broken open. The probability therefore was that the prisoner had entered that way; but if he had entered by raising up the flap it would (unless prevented) have closed after him by its own weight, and in order to get out after it had so closed, it would have required the degree of force necessary to lift up such a flap to be applied to it. The flap was a large one, being made to cover the opening of a cellar through which the liquors consumed in the public-house were usually let down into the cellar. The prisoner when first discovered had his head and shoulders out of the flap of the cellar, and upon being seized made a spring and got out and ran away; he was immediately pursued, caught and brought back, and the flap through which he had got was found fallen down and closed.
CROWN CASES RESERVED.

Upon this evidence the jury found the prisoner guilty; but Lord Ellenborough reserved the question as to the sufficiency of the breaking out in this case to constitute burglary for the consideration of the Judges.

In Michaelmas term, 1809, all the Judges met, when Lord Ellenborough, Mansfield C. J., Heath J., Grose J., Chambre J., and Wood B. thought this was a sufficient breaking because the weight was intended as a security, this not being a common entrance; but the other Judges, viz. Macdonald C.B., Bayley J., Graham B., Le Blanc J., Lawrence J., and Thomson B. thought the conviction wrong. (a)

1809.

REX v. JAMES HEWITT.

An indictment for seducing an artificer was found at the general sessions of Oyer and Terminator and general session of the peace for Middlesex, and was tried at the Old Bailey. The Judges held, that the statutes 5 G. 1. c. 27. and 25 G. 2. c. 13. gave no authority to prefer such an indictment at such a sessions, and judgment arrested accordingly. See now the 5 G. 4. c. 97.

(a) Vide William Brown's Case, 2 East, P.C. 487. before Buller J. The only difference between the two cases seems to be, that in Brown's Case there were no interior fastenings, in this there were; but in neither case were any in fact used, but the compression, or fastening such as it was, was produced by the mere operation of natural weight in both cases.
CROWN CASES RESERVED.

The allegations in the indictment were clearly substantiated in evidence, and the jury found the prisoner guilty.

No objection to the indictment was taken by the prisoner's counsel, but a doubt occurred to the mind of the learned Common Serjeant, whether as neither of the statutes respecting this offence, viz. 5 G. 1. c. 27. (a) and 23 G. 2. c. 18. (b) gave any authority to prefer such an indictment at a general session of the peace or at a general session of oyer and terminer, unless at the assizes, there had not been a mis-trial, he respited the judgment, and reserved the point for the consideration of the Judges.

In Michaelmas term, 1809, the Judges met, when they were of opinion that the statutes 5 G. 1. c. 27. and 23 G. 2. c. 18. gave no authority to prefer an indictment at such a session. Judgment was arrested. (c)

(a) By the first section it is enacted, that if any person shall entice, &c. any manufacturer or artificer of Great Britain to go out of this kingdom into any foreign country out of His Majesty's dominions, and shall be convicted thereof upon any indictment or information which shall be preferred or brought against him or them in any of His Majesty's courts at Westminster, or at the assizes, a general gaol delivery, or quarter sessions of the peace for the county, riding, or division where such offence shall be committed, the person so convicted shall be fined, &c.

(b) The first section enacts, that if any person shall contract with, &c. or seduce any manufacturer, workman or artificer, of or in any manufactures of Great Britain or Ireland, to go out of this kingdom, or out of the kingdom of Ireland, into any foreign country not within the dominions of or belonging to the crown of Great Britain, and shall be convicted thereof upon any indictment or information to be preferred or brought against him in His Majesty's court of King's Bench at Westminster, or by indictment at the assizes or general gaol delivery for the county, riding, or division wherein such offence shall be committed, the person convicted shall forfeit, &c.

(c) Vide 5 G. 4. c. 97. By which the above statutes of 5 G. 1. c. 27. and 25 G. 2. c. 15. are repealed.
Embezzlement.
Although property has been in the possession of the prisoner's masters, and they only entrust the custody of such property to a third person to try the honesty of their servant. If the servant receives it from such third person and embezzeles it, it is an offence under the statute. Senble, that the 39 G. 5. c. 85. does not apply to cases which were larceny at common law. S. C. 2 Leach. C. C. 1088.

1809.

REX v. WILLIAM HEADGE.

The prisoner was tried and convicted before Mr. Justice Bayley, at the Old Bailey sessions, September, 1809, on the statute 39 G. 3. c. 85. (a) for embezzling three shillings which he received for and on account of his masters, James Clarke and John Giles.

It appeared from the evidence, that the prosecutors desired a neighbour, one Francis Moxon, to go to their shop and purchase some articles, in order that they might discover whether the prisoner put the money which he received for the goods sold into the till; the prosecutors supplied Moxon with three shillings of their own money for this purpose, which money they marked Moxon went to the shop, bought the articles, and paid the prisoner the three shillings. The prisoner embezzled this money.

It was urged on behalf of the prisoner, that the prosecutors had constructively the possession of this money up to the time of the embezzlement, and that they had parted with nothing but the mere custody. The prisoner, it was contended, might have been indicted for larceny at common law, but that the statute did not apply to cases where the money before its delivery to the servant had been in the master's possession, and might legally be considered the masters' at the time of such delivery, as Moxon, in this case, was the masters' agent, and his possession theirs.

The learned Judge, before whom this case was tried, thought it deserved consideration, and reserved the point for the opinion of the Judges.

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(a) Which enacts, that if any servant or clerk, or any person employed for the purpose in the capacity of a servant or clerk to any person whomsoever, shall, by virtue of such employment, receive or take into his possession any money, goods, &c. or effects, for or in the name or on the account of his master or employer, and shall fraudulently embezzle, secrete, or make away with the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master or employer, for whose use or in whose name, or on whose account the same was or were delivered or taken into the possession of such servant or clerk, or other person so employed, although such money, goods, &c. was or were so taken or received into the possession of his or their servant, clerk, or other person so employed.
CROWN CASES RESERVED.

In Michaelmas term, 1809, the Judges met, and held the conviction right, upon the authority of Bull's case, in which the Judges, upon similar facts, held a common law indictment could not be supported. It seemed to be the opinion of the Judges that the statute did not apply to cases which are larceny at common law.

REX v. CHARLES HENRY RAVENSCROFT. 1809.

The prisoner was tried before Mr. Justice Le Blanc, at the Old Bailey sessions, June, 1809, on an indictment charging him in one count with forging, and in another count with uttering, knowing it to be forged, a certain order for payment of money, as follows, viz.

"Gent"

"Please to pay the bearer on demand fifteen pounds and accomplish it to"

"Your humble servant,"

"CHARLES H. RAVENSCROFT." Payable at Messrs. Masterman & Co.

"White Hart Court,

"WM. Mc' INERNEY."

with intent to defraud Richard Wilson.

There were other counts stating the intent to be to defraud Francis Wilson and William Mc'Inerney; and other counts stating the intent to be to defraud the partners in Masterman’s banking house.

There was another set of counts calling it a bill of exchange instead of an order for payment of money.

The evidence was very clear and satisfactory of the prisoner having uttered this instrument knowing it to be forged.

The jury found the prisoner guilty on the count charging him with uttering it knowing it to be forged.

for an order, or that Masterman & Co. were bankers.

(a) Cited in Baseley’s case, 2 Leach, C. C. 841. S. C. 2 East, P. C. nobis.

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A doubt occurred whether this instrument or so much of it as was a forgery fell within the description of an order for payment of money or of a bill of exchange; and supposing it to be properly described as one or the other, whether, inasmuch as there was no stamp, the want of addition of place to that part where it is made payable at Masterman's and Co. rendered the instrument invalid, and was an objection which the prisoner might take advantage of on this indictment.

Upon these objections the case was submitted to the consideration of the Judges.

The evidence so far as is material to render the objections intelligible was as follows:—

The prisoner sometime before the uttering the instrument in question, had applied to Francis Wilson and William M'Inerhenny, who were navy agents in the Adelphi, representing himself under an assumed name, as an assistant surgeon in the navy, and as such entitled to some pay. He requested Wilson and M'Inerhenny to be his agents, and to advance him 20l. They agreed to comply with his request, and the prisoner by their direction drew a check on them addressed to Wilson and M'Inerhenny for 20l; M'Inerhenny wrote on the check in red ink, "Payable at Messrs. Masterman's and Co., William M'Inerhenny," and delivered it to the prisoner, who under that order received the money of Masterman and Co., who were the bankers of Wilson and M'Inerhenny. It was proved that this was the usual mode of Wilson and M'Inerhenny drawing on their bankers for the purpose of paying persons to whom they were agents.

The prisoner having by means of this transaction got acquainted with the agents' mode of drawing on their bankers, as well as of their mode of making checks drawn on them payable at their bankers', afterwards uttered the order for 15l. stated in the indictment to one Richard Wilson, which on its being presented at Masterman's and Co. was paid, the forgery of the name William M'Inerhenny not being at first discovered.

The instrument in question differed from the usual form of the drafts which Wilson and M'Inerhenny made payable at their bankers in this particular, that the draft did not appear to be drawn on Wilson and M'Inerhenny, but that would have been no objection to its being paid by Masterman and Co. if they were satisfied that the name of William M'Inerhenny subscribed to the
words "payable at Messrs. Masterman's and Co." was in his hand-writing.

In Michaelmas term, 1809, the Judges met, and the majority, vis. Bayley J., Chambré J., Le Blanc J., Lawrence J., Thomson B., Gros J., Heath J., Macdonald C. B., and Lord Ellenborough were of opinion this instrument was not "an order for the payment of money." Wood B., Graham B., and Mansfield C. J. held that it was.

REX V. ROBERT HENCH.

The prisoner was tried at the Old Bailey October sessions before John Silvester, Esq., Recorder, for stealing on the 5th of October, 1809, at Saint Catherine Coleman, one chest value one shilling, and fifty-nine pounds weight of tea value twenty pounds, the property of James Layton and William James Thompson.

There was another count in the indictment laying the property in the united company of merchants of England trading to the East Indies.

It appeared that Layton & Co., who were tea brokers, purchased the chest of tea in question, No. 7100, at the East India House, but did not take it away.

It was proved by a witness, a labourer in the service of the East India company, that on the 5th of October, 1809, he had the care of the request notes, and that on that day he saw the prisoner go to the Excise box, the place where they were kept, and take out a handful and select one of them. The prisoner then went with the paper in his hand to look for the chest No. 7100. The witness went up to him and asked him what he wanted; he then took the paper out of the prisoner's hand, and seeing the number 7100 he pointed to a chest with a corresponding number, and said that was the chest he wanted; he then returned the request paper to the prisoner in order that he might go to the permit office and get a permit. The prisoner went to the permit office and returned with the permit. The witness then took the permit out of his hand, and asked him whose porter he was, and the
prisoner said Noton's. The witness returned him the permit and entered the name of Noton in the book, and the prisoner took away the chest of tea.

It was proved that the prisoner was not employed by Layton & Co., and that he had no authority from them to demand the chest.

The jury found the prisoner guilty.

An objection was taken by prisoner's counsel, that as the possession of the property was obtained by a regular request note and permit, it could only be considered as a misdemeanor.

The Recorder was of a different opinion, but reserved the judgment in order to take the opinion of the Judges. Whether the facts above stated did or did not amount to a felonious taking. (a)

In Hilary term, 27th of January, 1810, all the Judges met (except Heath J.) and held this conviction to be right.

There was not any discussion on the subject, none of the Judges appearing to have any doubt.

1810. REX v. WILLIAM TREBLE.

The prisoner was tried before Macdonald C. B. at the Lent assizes for the county of Sussex, in the year 1810, on an indictment for forging a ten-pound promissory note, with intent to defraud Samuel Hawkins and Henry Phillips. Secondly, for uttering the same, &c. There were seven other counts.

The prisoner was convicted upon the second count.

The promissory note was in these terms:—

"No. 111. Fordingbridge and Hampshire Bank.

"I promise to pay the bearer on demand ten pounds, here or at [Messrs. Ramsbottoms & Co., Bankers, London.]

"Fordingbridge, the 1st day of July, 1808.

No. 111.

"For Francis, John, and James Killaway, 


John Killaway."

(a) Vide Wilkin's Case, 2 East, P. C. 673.
CROWN CASES RESERVED.

It appeared in evidence, that the note itself had been issued by Francis, John, and James Killarney, bankers at Fordingbridge, payable either at that place, or at the house of Wilkinson, Bloxham, & Company in London. The note had been paid at Wilkinson, Bloxham, and Company's, and was one of a large parcel which had been put into the mail coach to be carried to Fordingbridge, and was upon the road discovered to have been stolen.

Wilkinson & Bloxham's house stopped payment in the early part of the month of September, 1809, and on the 27th of that month it was found that the prisoner (having disguised himself) exchanged the note in question at the banking-house of Hawkins and Phillips of Worthing, for ten twenty-shilling notes of theirs, the names of Wilkinson, Bloxham, & Co. having been covered by a very small slip of paper, on which was engraved the firm of Ramsbottom & Co., thereby giving to the promissory note the appearance of being payable at a solvent instead of an insolvent house.

The Common Serjeant objected that inasmuch as the note was a genuine note, and was only alleged to be forged by a substitution of the house of Ramsbottom as the place in London at which the note was to be paid (if paid in London) instead of the house of Bloxham & Co. where the note was originally payable before the failure of that house, the alteration in the note was an alteration in no binding obligatory part of the note, and therefore did not amount in point of law to the crime of forgery.

Macdonald C. B. forbore to pass sentence on the prisoner, and reserved the point for the consideration of the judges.

In Easter term, the 19th of May, 1810, this case was argued in the Eschequer Chamber, before all the Judges (except Bayley J.) by Knowlys C. S. for the prisoner and Gurney for the Crown.

The Common Serjeant contended first, that improper evidence had been received, John Killarney having been admitted to prove that the parcel sent by the coach had never been received by him, by way of showing that the alteration was not made by the Fordingbridge bank; and secondly, that this was not a forgery, the alteration of the bill not being in a material part, inasmuch as the bill might still be recovered upon.
As to the first point, a majority of the Judges, viz. Lord Ellenborough, Mansfield C. J., Macdonald C. B., Thomson B., Le Blanc J., and Wood B., were of opinion that Kilgarran was properly admitted as a witness. Grose J., Lawrence J., Chambre J., and Graham B., contra. Heath J. thought the evidence inadmissible, but was of opinion that it would not vitiate the conviction, as there was sufficient evidence without him. (a)

On the second point a large majority of the Judges thought that it was an alteration in a material part of the bill, and that it was a forgery, the place where it was made payable being inserted in the body of the note they thought it materially affected the engagement of the drawer, and was necessary to be stated in declaring on the note; some of the Judges thought it a material alteration, (though it might not be necessary to state it in declaring on the note), as it materially affected the negotiability. Lawrence J. thought that notwithstanding the alteration the drawer was still liable, and therefore it was not an alteration in a material part, and no forgery.

Macdonald C. B. and Thomson B. seemed to found their opinion on the necessity of stating the place where payable in declaring on the note.

Mansfield C. J. thought it did not depend on that circumstance, and that it was a forgery as being material to the credit of the note whether made payable at a solvent house or not.

The conviction was held right. (b)

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**REX v. PIERRE AYES.**

After mutual blows between the prisoner and the deceased, the prisoner knocked the deceased down, and, after he was upon the ground, stamped upon his stomach and belly with great force. Held manslaughter only.

(a) See Rex v. Ball, supra. 139.

(b) See Rex v. Dawson, 1 Stra. 19. Rex v. Teague, supra. 53.
him the said Pierre Ayes (who was a French prisoner) with the murder of Jean Berjeant, (a fellow prisoner,) in the Mill Prison, at Plymouth, on the 12th of March, 1810, by throwing him on the ground, and stamping on his breast, belly, and loins, thereby, &c.

It appeared that some French prisoners were gambling in an upper-room of the prison, and one of them whilst at play, feeling a man take a tin tobacco box out of his pocket, turned quickly round, and seeing the box in the hand of Jean Berjeant, the deceased, took it from him, gave him two slaps of the face, and bid him get away. The deceased went down stairs, but a clamour had been raised against him, and on coming down he was followed by several others; one of them took the cap off his head, asking him how he came to take the tobacco box; on his promising to do so no more, the deceased got back his cap and went towards his bed. As he passed by the side of the beer table, the prisoner arose from the table, went up to the deceased, and with both his hands pushed against his breast with great force, and the deceased fell on his back on the ground. The deceased arose and struck the prisoner two or three times with his double fist in the face, and one blow on the eye. Then the prisoner being, as the witness expressed it, very drunk, pushed the deceased in the same manner a second time on the ground, and gave him as he lay on his back two or three stamps with great force with his right foot on the stomach and belly; the deceased cried out, "Helas! Helas! let me alone." The witness then told the prisoner to have pity of him, that if he was a thief, he might seek him out the next morning, and whip him, to which the prisoner replied, it was none of his business, and he ought not to take the deceased's part. The deceased then arose on his seat, and whilst sitting, the prisoner gave him a kick on his face, a strong kick; the blood came out of his mouth and nose, and he fell backward. The prisoner then went away.

The deceased lay some time, it might be two or three minutes, before he arose; he made no complaints; a great quantity of blood came from his mouth and nose; he then got up and went away, stooping very much; as the witnesses described it, doubled in two. None of the prisoners gave him succour; he was treated as a thief.

The deceased was a small man, the prisoner stout, but, as all the witnesses agreed, much in liquor. The deceased after this
went to his bed, and was not seen until the next morning, when he was taken to the hospital in a dying condition. He said, "I am dying; they have killed me." The witness asked him if he knew the man; he said there were two or three that came on account of his stealing the tobacco box and jumped upon; he said he did not know any of them.

A witness employed to make enquiries sent for the prisoner to a private room, and said to him "How is it that you have done this? The prisoner said, "I was very drunk, very much in liquor, and did not know what I was about." The witness told him that it was a shame, that the man was dead. He said he was very sorry for it, that he was drunk.

The deceased died early on the 16th of March. The hospital surgeon opened the body. He described the whole of the intestines as in a state of excessive inflammation, the effects of the bruises, and he had no doubt that the stamps such as he had heard described, and of which he saw the effects on the body before the deceased died, were the cause of his death.

The learned Judge observed to the jury, that there was little doubt but that the evidence proved that the prisoner had caused the death of the deceased. If what he did was the effect of a sudden transport of passion beyond the control of reason, he was guilty of manslaughter; if done with malice, he was guilty of murder. That this was not done of malice in its ordinary sense, or from a premeditated design of killing the deceased, or endangering his life; but malice or great enmity far beyond the provocation might still be implied from the circumstances of the case. The prisoner was the aggressor, and though he was assaulted and beaten by the deceased, he had provoked the assault; but although he was the aggressor, if his resentment had been confined to the second blow, by which the deceased was thrown to the ground and the death of the deceased had been the consequence, there would have been fair room to say it was done in heat of blood. But when the deceased was thrown upon the ground, incapable of further resistance, it was difficult to ascribe to the mere effect of sudden resentment the stamping upon his body in the manner described. With regard to the prisoner's defence, he told the jury that the law did not allow of the plea of drunk-ness as an extenuation of the offence charged.

The jury, composed one half of foreigners, found the prisoner
guilty of murder, and the learned Judge pronounced sentence upon him; but thinking that the case required further consideration, particularly as there appeared to be no interval of time between the second blow which threw the deceased to the ground and the stamping on his body, he respited the sentence to take the opinion of the Judges whether upon the evidence this case was a case of murder, or manslaughter only.

In Easter term, 29th of May, 1810, all the Judges assembled, and were of opinion that the conviction was wrong, being only manslaughter.

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**REX v. WILLIAM SHEPPARD.**

_The prisoner was tried before Mr. Justice Heath, at the Old Bailey September sessions, in the year 1809, on an indictment consisting of four counts._

The first count, charged the prisoner with forging a receipt for £16. 16s. 6d., purposing to be signed by W. S. West, for certain stock therein mentioned, with intent to defraud the Governors and Company of the Bank of England. The second count was for uttering the same knowing it to be forged, with the like intent. The third and fourth counts varied from the first and second, in charging the intent to have been to defraud Richard Mordey.

It appeared in evidence at the trial, that Richard Mordey gave 20l. to his brother Thomas Mordey in the month of January, 1809., to buy stock in the five per cent. Navy.

In February following, Thomas Mordey gave the 20l. to the prisoner, for the purchase of the said stock, on the prisoner's delivering to him the receipt stated in the indictment.

The prisoner being examined at the bank, confessed that the receipt was a forgery, that there was no such person as W. S. West, whose signature appeared subscribed to the receipt, and that he being pressed for money forged that name, but had no intention of defrauding Richard Mordey.
CROWN CASES RESERVED.

1810.

Richard Mordey and Thomas Mordey swore they believed that the prisoner had no such intent.

On examining the bank books, no transaction corresponding with this could be found.

The learned Judge told the jury, that the prisoner was entitled to an acquittal on the first and second counts, because the receipt in question could not operate in fraud of the governor and company of the Bank.

That as to the third and fourth counts, although the Mordeys swore that they did not believe the forgery to have been committed with an intent to defraud Richard Mordey; yet as it was the necessary effect and consequence of the forgery, if the prisoner could not repay the money, it was sufficient evidence of the intent for them to convict the prisoner.

The jury acquitted the prisoner on the first and second counts, and found him guilty on the third and fourth counts; and the learned Judge reserved this case for the opinion of the Judges, to determine whether this direction to the jury was right and proper.

In Easter term, 31st of May, 1810, all the Judges were present, and they were all of opinion that the conviction was right, that the immediate effect of the act was the defrauding of Richard Mordey of his money.

1810.

REX v. WILLIAM HANCOCK AND OTHERS.

The prisoners were tried before Mr. Justice Chambre at the Lent assizes for Wiltshire in the year 1810, upon an indictment consisting of five counts.

The first count charged them with burglariously breaking and entering the dwelling-house of John Crosby in the parish of Westbury, and stealing therein a large quantity of woollen cloth, it has no internal communication with the house, but through an open passage, is parcel of the dwelling-house; and it is equally parcel of the dwelling-house, though used partly for the separate business of the occupier of the dwelling-house and partly for a business in which he has a partner.
part of it his property, and other part of it the property of him and his partner Thomas White.

The second count laid the offence as a larceny of goods, to the amount of more than forty shillings in value in the dwelling-house of Crosby.

The third count laid the offence to be committed in an outhouse of Crosby and White, belonging to the dwelling-house of Crosby.

The fourth count laid the offence to be committed in an outhouse of Crosby, belonging to his dwelling-house, and

The fifth count alleged the larceny to be of the partnership goods only in an outhouse, belonging to the dwelling-house of Crosby.

The case against the prisoners was fully established in proof, subject to the objections after stated, with respect to the locality of the offence, as an answer to the capital part of the charge.

The following sketch of the premises (a) accompanied the case delivered to the Judges, in order to make the objections understood.

(a)

1. The door into the garden from the street.
2. Front door of the house.
CROWN CASES RESERVED.

Over the Press Shop (k), the Passage (m), and the Lumber Room (l), were two rooms, one of them called the "Yarn Room," and the other the "Ware Room," or "Counting Room," which were the rooms from which the clothes were stolen.

The garden wall ran from the North East corner of the stable yard (n) and was continued as the outer fence of the premises, till it joined the North West corner of the factory, and with the North front of the factory and the wall and gate of the stable yard, inclosed the whole of the premises.

The wall which divided the press shop and room over it from the kitchen and the room over that, was the factory wall, in which there was a stack of chimneys which served both the kitchen and the counting room, but there was no door or passage through that wall, or any other internal communication, between the house and the factory; the only way from the house to the factory (within the common enclosure), being through the open passage (r.), into the factory passage (m), which communicated with the lumber room, and from which there was a staircase that led up into the yarn room, and through that into the adjoining ware room or counting-house, the two rooms where the felony was committed.

The whole premises, including the garden, contained near an acre and a half of ground, and were Crosby's premises. Thomas White living in another part of the town.

Part of the business carried on in the factory, was, at that time, a partnership business carried on by Crosby and White. The

c. The lower kitchen, which has an internal communication with the rest of the house, and a laundry over it.
d. The back door of the house.
e. Door from the lower kitchen into the open passage.
f. An open paved passage leading to the factory.
g. The door into the factory from the open passage.
h. A passage within the factory.
i. The outer door of the factory.
j. A room called the "Press Shop" communicating with the passage in the factory.
k. A room in the factory called the "Lumber Room" opening into the same passage.
l. The stable, over which is a room called the "Passing Room."
m. Stable-yard, with a small building in it for a gig.
rest of the business done there was Crosby's own separate business, White having no separate business transacted there.

The principal part of the goods stolen were Crosby's, and not partnership property. The press shop, and all the upper rooms of the factory were used for the business of the factory, the lumber room also was originally used for the business of the factory; but for several years the people employed in the factory had not done any of their work in the lumber room.

Crosby kept his coals there at times for the use of his kitchen; he also kept his brewing vessels, coolers, &c. in that room, and used it to make and keep cider in.

The prisoners' counsel contended that the factory was not proved to be part of Crosby's dwelling-house, or of any dwelling-house; neither was it such an out-house as described in the indictment or meant by the statute, and therefore the prisoners were not liable to be capitaly convicted. They cited Eggington's case (a), and for the prosecution were cited Gibson's case (b), and Brown's case. (c)

The prisoners were convicted and sentence passed, but at the desire of the counsel the learned Judge repited the execution and reserved the question for the consideration of the Judges.

In Easter term, 1810, all the Judges met, and held this conviction right, the factory being part of the dwelling-house. (d)

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CASE.

At the Lent assizes, and general gaol delivery held before Mr. Baron Wood, for the county of Stafford, in the year 1810, there were several prisoners in the county gaol (whose names were not continue on their commitments in gaol, prisoners committed for trial, but against whom the witnesses do not appear, being bound over to a subsequent sessions.

(a) 2 East, P.C. 494.  (b) Ibid. 508.  (c) Ibid. 501.
in the calendar) who had been committed by a justice of the peace for different larcenies, some of whose commitments were until they should be discharged by due course of law; others expressly until the next quarter sessions before which the assizes had intervened.

These prisoners at the close of the assizes applied to be discharged, there being no bills preferred against them, and they were discharged by proclamation, the learned Judge conceiving he was bound under the commission of general gaol delivery to order them to be so discharged.

Whether witnesses had been bound over to prosecute at the quarter sessions did not appear.

The learned Judge submitted the following question for the opinion of the Judges, in order that one rule might be uniformly observed on similar occasions:

Whether a Judge might at his discretion have legally left the prisoners in custody to be tried at the quarter sessions, some of the commitments being for petit larceny, and others for grand larceny, yet small offences, and all proper to be tried at the quarter sessions?

In Easter term, 1810, the Judges met. The majority of them were of opinion that it was not imperative on a commissioner of gaol delivery to discharge all the prisoners in the gaol who were not indicted; but that it was discretionary in him to continue on their commitments such prisoners as appeared to him committed for trial, but the witnesses against whom did not appear, having been bound over to the sessions.

1810.

REX v. JOSEPH PEARCE.

An indictment on the 48 G. S. c. 129, need not negative the force or fear necessary to constitute robbery; and if it does not, though it may appear that there was such force or fear, the punishment imposed by the 48 G. S. may be inflicted. S. C. 3 Leach, C. C. 1046.

(a) By § 2, it is enacted, That every person who shall at any time or in any place whatever feloniously steal, take, and carry away any money, goods, or
pocket book, &c. belonging to one Charles Thompson, from his
person.

Upon the evidence, it appeared that the things were taken
from the person of Thompson by the prisoner and three accom-
plices, under such circumstances of force, as were sufficient to
constitute the crime of robbery in them all. And the question
was, whether the offence thus charged and proved could be
punished otherwise than a common larceny.

The statute 48 G. 3. c. 129., after repealing so much of the
statute 8 Eliz. as made the stealing from the person privily, &c. a
capital offence, and reciting that it might tend more effectually
to prevent the crime of larceny, from the person, if every such
offence "not being a robbery" was rendered punishable more
severely, than a simple larceny, enacts that every person who
shall feloniously steal, &c. goods, &c., from the person of any
other, whether privily without his knowledge or not, but without
such force and putting in fear as is sufficient to constitute the
crime of robbery, shall be liable to be transported beyond the
seas for life, or for a term not less than seven years.

LORD ELLENBOROUGH was of opinion that as the felonious
taking in this case was with such force as was sufficient to con-
stitute the crime of robbery, that the offence was expressly ex-
cepted out of the provision of this act, and that it therefore was
only liable to be punished for a common larceny, the description
in the indictment not applying to the case of a robbery.

But as both the other learned Judges present (a) were of
a different opinion, he thought it proper to reserve the question
for the consideration of the twelve Judges.

In Easter term, 31st May, 1810, ALL THE JUDGES met.

(a) The names of the Judges present are not stated in the case reserved, nor
are they mentioned in Leach.
CROWN CASES RESERVED.

1810. France's Case.

The general opinion was, that the meaning of the act was only to leave the case of robbery from the person with force or by threats as it stood before; and that the words "with force," &c. were to be understood "were not charged to be done with force," &c.; and that the prisoner in this case was liable to be punished under the 48 G. 3. c. 129.

The Judges also thought that indictments on this statute ought not to state the act to be done without violence, &c. (a).

1810. Rex v. Thomas Cook.

An indictment for a common law felony must contain, a "contra pacem." So must an indictment for stealing articles, the stealing of which is made felony by statutes; and in this case the laying the offence to have been against the form of the statute will not supply the defect.

The prisoner was tried and convicted before Mr. Baron Thomson at the Lancaster Lent assizes in the year 1810, upon an indictment for stealing bank notes, against the form of the statute in such case made and provided.

It was moved in arrest of judgment that the indictment was insufficient for want of charging the offence to have been committed against the peace, Hawkins P. C. b. 2. c. 25. s. 92. was relied upon, and also Lookup's case. 3 Burr. 1901. (b)

On behalf of the prosecution, that part of the same section in Hawkins' Pleas of the Crown was referred to where it is stated that Rastall's Precedents both of indictments of felony and of inferior offences, do as often omit the words "contra pacem" as make use of them. And it was further contended that the charging the offence to have been committed against the form of the statute, imputed that it was also against the peace.

The learned Judge respited the judgment in order that the opinion of the Judges might be taken upon the question.

(a) See Rex v. Robinson, Hilary, T. 1817. post. B.P.

(b) In which case an indictment for perjury stated the oath to have been taken and the perjury to have been committed tempore Geo. 2. and concluded against the peace of G. S. On error the Judges were unanimous that this was a fatal objection, and judgment reversed. See also Rex v. Scott, Pasch. 1820. post.
CROWN CASES RESERVED.

In Easter term, 31st of May, 1810, present all the judges, Lord Ellenborough, Mansfield C. J., and Wood B. seemed to doubt whether "contra pacem" was necessary in a felony, though in a misdemeanor adjudged to be so by the cases of Rex v. Lookup and Regina v Lane. (a)

But the rest all thought that it was necessary, and that judgment ought to be arrested, the indictment being bad for want of the words "contra pacem."

Judgment arrested.

CASE.

Mr. Justice Lawrence having found in the course of the Oxford spring circuit in the year 1810, that several persons were returned upon grand juries who were not freeholders, and having learnt upon enquiry that such was frequently the case, he submitted the following statement for the consideration of the judges.

Whether persons not being freeholders are qualified to serve upon such juries.

Lord Hale in his History of the Pleas of the Crown, v. 2, p. 155, lays it down that grand jurors ought to be freeholders, and this doctrine is adopted by Mr. Justice Blackstone in his Commentaries, vol. 4, page 302.

On the contrary, Hawkins in his Pleas of the Crown, v. 2, c. 25, s. 19. and 21. considers it as being a doubtful point.

In London the grand jury is usually composed of substantial householders, and it has not been the practice under the com-

(a) 6 Mod. 128. Indictment for exercising a trade without a service of seven years: exception was, that it was not laid contra pacem; and though Holt C. J. thought it well enough, because laid contra formam status, yet, by the three other judges, it was quashed, because every breach of the law is against the peace, and ought to be so laid.
missions for that city for the enquiries into offences committed there to return only freeholders.

In Easter term, 31st of May, 1810, at a meeting of all the judges, they were of opinion that it was not required positively by law that the grand jury should be freeholders, and held that it was right to let it go on as it has been hitherto. (a)

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1810.  

REX V. ELEANOR GABY.

D. & C. were partners, C. died intestate leaving a widow and children, from the time of his death the widow acted as partner with D. and attended the business of the shop; three weeks after C.'s death part of the goods were stolen; they were described in the indictment as the goods of D. and the widow; on case reserved the description was held right.

The prisoner was tried and convicted before Mr. Justice Chambre, at the Taunton Lent assizes in the year 1810, for grand larceny, in stealing some gingham and other drapery goods the property of Benjamin Dodge and Sarah Chilcott, widow.

On the part of the prisoner it was objected that the indictment had misdescribed the property, by alleging it to be in Benjamin Dodge and Sarah Chilcott. It appeared in evidence that the goods had been part of the joint stock in trade of the said Benjamin Dodge and — Chilcott, the late husband of the said Sarah Chilcott, and were so at the time of Chilcott's death, which happened three or four days before Christmas in the year 1809.

Chilcott the husband died, as the witness Dodge understood, without a will, leaving his said widow and some young children, and no administration had been granted of his effects. But the widow from the death of her husband acted as partner, and regularly attended the business of the shop.

The goods mentioned in the indictment were stolen on the 6th of January, 1810, and on the 20th of the same month a division was made of the remaining stock, the widow taking one half and Dodge the other half of it.

It was contended on the part of the prisoner, that the children in respect of their interest under the statute of distributions

(a) See Lambard's Archaionomis, 396.
should have been named with the other two as joint proprietors, or that the property should have been alleged to be in the Ordinary and the surviving partner.

Chambre J. held that the actual possession as owner was sufficient, and the prisoner was convicted and sentenced to imprisonment; but the learned Judge saved the point for the opinion of the Judges, that the prisoner might receive a pardon in case they should be of opinion that the objection was well founded.

In Easter term, 31st of May, 1810, at a meeting of all the Judges the conviction was held to be right, the property being well laid. (a)

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**REX v. SUSANNAH GOFF.**

The prisoner was tried before Mr. Baron Graham at the Winchester Lent assizes in the year 1810 for murder, and was convicted, but execution was respited on an objection taken to the form of the indictment.

The fact was committed in the parish of Holy Rood, in the town and county of Southampton.

The indictment was preferred and found by the grand jury for the county of Hants, under the second section of 38th G. 3. c. 52. (b)

It had the common introduction and form of indictments, found that may be stated in the caption; but the indictment must state the offence committed in the inferior county.

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(a) Vide Rex v. Scott, supra, 13.

(b) By which it is enacted, That it shall and may be lawful for any prosecutor or prosecutors to prefer his, her, or their bill or bills of indictment for any offence or offences committed, or charged to be committed, within the county of any city or town corporate, to the jury of the county next adjoining to the county of such city or town corporate, sworn and charged to enquire for the king, for the body of such adjoining county, at any sessions of Oyer and Terminer or general gaol delivery, and that every such bill of indictment found to be a true bill by such jury, shall be valid and effectual in law, as if the same had been found to be a true bill by any jury sworn and charged to enquire for the king for the body of the county of such city or town corporate.
by the grand jury of the county, and was as follows:—“County of Hants, to wit. — The jurors,” &c. “present,” &c., “that Susannah Goff, wife of Thomas Goff, late of the parish of Holy Rood, in the town of Southampton, and county of the same town, on the 6th of December, in the 50th year of Geo. 3., at the parish of Holy Rood aforesaid, in the town and county aforesaid, in and upon William Sweetman,” &c.

But the indictment contained no allegation that the county of Hants was the next adjoining county to the town and county of the town of Southampton.

The question for the opinion of the Judges was, Whether, as the indictment purports to have been found by the grand jury of the county of Hants, the notoriety of the fact that the county of Hants is the county next adjoining to the town and county of the town of Southampton, could supply the want of an allegation to that effect?

That indictments for offences committed in any lordship marcher of Wales, and found and tried in the next adjoining shires in England where the king's writ runs under the 26 H. 8. c.6. s.6. have this allegation. And in cases of civil actions arising in Wales and sent down to be tried in the next adjoining English county where the king's writ runs, it seems that a suggestion to that effect is entered on the roll. (a)

In Easter term, 31st of May, 1810, present all the Judges, the conviction was held right, it not being necessary that it should be averred or appear on the face of the indictment that Hants is the next adjoining county to Southampton; when the record is regularly drawn up it may appear in the memorandum or caption as in Rex v. Athos. (b)

(a) Plowd. Co. 200.
(b) 1 Str. 555. S.C. 8 Mod. 135. The Judges referred to the record in this case in the Crown Office, where it appeared to be entered by way of memorandum. Vide also Rex v. Mellor, supra. 144.
The prisoner was tried before John Silvester, Esq. Recorder, at the Old Bailey sessions, February, 1810, on an indictment charging him with stealing on the 2nd of January, 1810, at the parish of St. Giles in the Fields, in the county of Middlesex, one hundred and thirty-five promissory notes for the payment of 1l. each, value 1l. each; one hundred and eighty-four promissory notes for the payment of 5l. each, value 5l. each; and seventy-seven promissory notes for the payment of 10l. each, value 10l. each, the property of Joseph Large, James Large, and Abbott Large, and the sums of money payable and secured by and upon the same, being then due and unsatisfied to them the proprietors thereof, against the statute, &c.

The second count was the same as the first, only laying the notes to be the property of Timothy Brown, Thomas Cobb, and George Cobb.

The third count was similar to the first, only laying the notes to be the property of William Waterhouse, Thomas Botham, George Botham, John Halcomb, William Halcomb, and Richard Banks.

The fourth count charged the prisoner with stealing one hundred and thirty-five pieces of paper, each piece of the said paper being respectively stamped with a stamp of four-pence, and being of the value of four-pence; one hundred and eighty-four pieces of paper, each piece of the said paper being respectively stamped with a stamp of one shilling, and being of the value of one shilling; and seventy-seven pieces of paper, each piece of the said paper being stamped respectively with a stamp of one shilling and sixpence, and being of the value of one shilling and sixpence: all the said pieces of paper, each and every of them being so stamped as aforesaid, at the time of committing the felony aforesaid, being the property of Joseph Large, James Large, and Abbott Large, and each and every of the said stamps being then available, and of full force and effect, against the peace, &c.
The fifth count was the same as the fourth, only stating the said paper to be the property of Timothy Brown, Thomas Cobb, and George Cobb.

The sixth count was also the same as the fourth, only stating the said paper to be the property of William Waterhouse, Thomas Botham, George Botham, John Halcomb, William Halcomb, and Richard Banks.

It appeared that the house of Brown, Cobb, & Co., Bankers in Lombard Street, London, corresponded with the house of Large & Co., at Wotton Bassett, and that the notes of the latter firm were made payable at the house of Brown, Cobb, & Co. in London.

In the week preceding the 2d of January, 1810, all the notes mentioned in the indictment were paid at the house of Brown, Cobb, & Co., in London, and afterwards, as was their usual practice, made up in a parcel and directed to Messrs. Large & Son, Bath, and forwarded by the Bath mail coach on the second of January.

The parcel was regularly delivered and booked at the Bath mail coach office on the 2d of January, and forwarded on the same evening; but when the mail arrived at Bath the following day, the parcel was not forthcoming, although it was regularly entered in the way bill, delivered to the clerk at the coach office at Bath.

It appeared from one of the partners in the firm of Large & Co., who resided at Bath, that their house drew notes upon Brown & Cobb in London, which were paid by them. When notes were paid by Messrs. Brown, Cobb, & Co. in London, they were returned to the witness at Bath, and he conveyed them to Wotton Bassett, to be reissued by their bank. He did not receive any parcel from Brown, Cobb, & Co., on the 3d of January.

By the act of parliament (a), they were permitted to reissue their notes for three years, and in consequence of the loss of the notes in question, they would be compelled to issue other notes with other stamps. They certainly would have reissued the notes in question if they had received them.

Notes once paid by Brown, Cobb, & Co. in London, must get back to the house at Wotton Bassett before they could be reissued.

Several of the notes contained in the parcel missing, were clearly

(a) See 44 G. 3. c. 98. and 48 G. 3. c. 149. s. 15.
CROWN CASES RESERVED.

1810.

__CLARK'S CASE__

traced to the possession of the prisoner, by persons to whom he had uttered them; _viz._ a linen-draper in Holborn, a lottery office keeper in the Haymarket, and a private in the West London Militia, and upon which evidence the jury found the prisoner guilty.

The counsel for the prisoner took the following objections.

That the first, second, and third counts in the indictment could not be supported; because the sums of money mentioned in the notes were not due or payable to any of the parties, whose property they were laid to be at the time they were taken away. The sums of money for which the notes had been issued, had been paid and satisfied; and the notes had not been reissued, and until they were reissued, they could not be considered as securities for money, but only as vouchers or waste paper.

Nor could the fourth, fifth, and sixth counts be maintained, because the paper and stamps had been used. In the state they were when taken away they were not saleable, nor where they convertible to any purpose whatever.

It was true that the bankers who originally issued these notes, might reissue them, but that was a mere right, a privilege given to them by the act of parliament which imposed the duties on promissory notes; of that right and privilege they might be deprived by the paper and stamps being taken away. But the paper and stamps in the state they were, were worth nothing, they would not sell for so much as a farthing, and the right or privilege to reissue them, which the bankers would have when the paper and stamps got back to them, could not be the subject of larceny, nor could any thing, which was not worth the smallest coin current in the kingdom.

The Recorder respited the judgment, in order that the opinion of the Judges might be taken upon the above objections, which he submitted for their consideration.

In Easter term, May, 1810, at a meeting of all the Judges, they held the conviction of larceny on the three last counts good, the paper and stamps, particularly the latter, were valuable to the owners, and the possession of the carrier was their possession.
Having counterfeit silver in possession with intent to utter it as good, is no offence: for there is no criminal act done.

This case stood for trial before Mr. Justice Bayley, at the Lent assizes for the county of Warwick, in the year 1810; but as the learned Judge thought it questionable whether the facts constituted any offence, and as the defendant was out upon bail, he postponed the trial by consent, that the opinion of the Judges might in the mean time be taken upon the case.

The indictment contained three counts; one for uttering counterfeit money, a second for having it in his possession, knowing it to be counterfeit, with intent to circulate and put off the same among the liege subjects of our Lord the King, and to defraud them, and a third for having it in his possession knowingly, designedly, and illegally, knowing it to be counterfeit.

The only act of uttering was delivering a box packed up, containing 2800 bad shillings, and 1000 bad sixpences at a coach office at an inn at Birmingham addressed to a man at Glasgow, and the uttering was stated to be to the book-keeper at the inn.

The box was stopped at the inn.

The following authorities were referred to in support of the second and third counts, Rex v. Sutton, Ca. temp. Hardw. 370. Rex v. Scofield, Cald. 397. and Rex v. Higgins, 2 East. 5.

In Easter term, 31st May, 1810, this case was taken into consideration, all the Judges being present. They relied much upon the authority of Rex v. Sutton, and the cases there cited, in forming their opinion, and were then inclined to think this a misdemeanor as stated in the second count. But on considering this case again on the first day of Trinity term ensuing, the majority of the Judges seemed to be of opinion that "having in his possession" with the terms knowingly, &c. annexed to it, could not be considered an act, and that an intent without an act was not a misdemeanor, and they considered the case of Rex v. Sutton as untenable. (a).

(a) The result seems to be, that the second and third counts of the indictment as here framed are not good, and any judgment upon them might be arrested.

But the facts seemed to afford grounds for a good indictment, by stating that the defendant acquired or procured the bad money with intent to circu-
CROWN CASES RESERVED.

REX v. JOHN STOCK AND ANOTHER.

The prisoners were tried before Mr. Justice Chambre, at the summer assizes for Carlisle, in the year 1809, upon an indictment for burglary.

The burglary was charged to have been committed in the dwelling-house of William Moore, Thomas Harrison, and John Hamilton, at Whitehaven. There was full proof of the breaking and entering in the night, and stealing money, bills, and notes to the amount of between nine and ten thousand pounds.

The prisoners were found guilty, and sentence of death was passed upon them; but the learned Judge not being satisfied that the house could, under the circumstances of the case, be considered the dwelling-house of Moore, Harrison, and Hamilton, the prosecutors, he respited the execution.

The evidence as to this, was that the prosecutors were partners in their business of bankers, which business was transacted in the lower rooms only of the house in question, of the whole of which house they were the owners. They were also partners in a brewery concern which they carried on in some adjoining premises. The lower rooms of the house were three in number, to which there was but one entrance from without, which was by a door opening to the street, being the door broken open to commit the felony in question. This door opened into one of the three rooms, and in that room the clerk’s business relating to the brewery was transacted. That room communicated by a door-way with an inner room, where the banking business was done, and where the cash, notes, and other valuables were deposited, and locked up at night in an iron safe. The last-mentioned room communicated in the same manner with a further room, which was the private room of the partners. There were two locks to the outer door, one of them a large one, the other a

Burglary. Though a servant stipulates upon hire for the use of certain rooms, in the premises of his master, for himself and family, the premises may be described as the master’s dwelling-house, although the servant is the only person who inhabits them, for he shall be considered as living there as servant, not as holding as tenant.

S. C. 2 Taunt. 339. 2 Leach C. C. 1015.

late it, or packing it up or delivering to the book-keeper with intent to circulate it. MS. JUD.

See the same point decided as in the above case in Rex v. Stewart, Mich. T. 1814. post. See also Rex v. Collicott, Hilary T. 1812. post.
smaller. One of the clerks had the custody of the key of the larger one, and two other clerks, had each a key of the smaller one. No person slept in any of these rooms; but when the outer doors were locked up at nights, on leaving the offices, the clerk, who kept the large key, left it in the care of the person who inhabited the upper rooms of the house, from whom it was received on returning to the offices in the morning. The upper rooms were inhabited by one John Stevenson, who was servant to the prosecutors in their brewery business, as their cooper, at weekly wages, with firing and lodging for himself and family. The contract as to the lodging, was not in general terms that he should be provided with lodging but that he should have the particular rooms which he did inhabit for the lodging of him and his family, and to that part of the house there was a separate entrance from without. The prosecutors kept some papers there of no consequence. There was no communication between the upper rooms and the lower ones, where the offices were, except that there was a trap door in the floor of one of the upper rooms, and a ladder to go down by into the lower part. Since the robbery it had been constantly used in order to bolt the street door of the offices on the inside for better security; but none of the witnesses knew of its having ever been used for any purpose previous to the robbery, although it might have been so used at any time, the trap door having never been kept locked or fastened. There were nine windows in the lower rooms, and only six in the upper ones. The six were assessed in the name of Stevenson, but his employers paid the duty. The rooms below were not charged with any window-tax, the assessors not considering them as inhabited.

The questions reserved for the consideration of the Judges were, First, Whether this inhabitancy could be considered as the inhabitancy of the prosecutors by their servant Stevenson, or whether Stevenson by the contract became tenant, and the upper part of the house was his dwelling-house, and not that of the prosecutors.

Secondly. If the upper part of these premises was to be considered as the dwelling-house of the prosecutors, the further question arose whether there was such a severance of the lower part as to prevent its being included as part of their dwelling-house.

This case was argued before the Judges, on the 11th of
CROWN CASES RESERVED.

November, 1809, by Raine for the prisoners, when it was adjourned for further consideration.

In Michaelmas term, 1810, this case was again taken into consideration by the Judges. Eight of the Judges, viz. Bayley J., Wood R., Le Blanc J., Gros J., Heath J., Macdonald C. B., Mansfield C. J., and Lord Ellenborough thought the conviction right; they were of opinion that this was the dwelling-house of the prosecutors, and that Stevenson could not be considered as tenant of these premises, his occupation being only as a servant. Graham B., Chambre J., Lawrence J., and Thomson B., thought the conviction wrong.

REX v. LAWRENCE FLANNAGAN.

The prisoner was tried before Mr. Justice Lawrence, at the Old Bailey October Sessions, in the year 1810, on an indictment charging him with stealing goods to more than the amount of forty shillings, the property of Edward Treslove Cox, in his dwelling-house, in the parish of Saint Martin in the Fields.

The jury found the prisoner guilty.

It appeared in evidence, that the prosecutor was an upholsterer, and formerly lived with his family in a house in St. Martin's Lane; but having, about three months before this trial, taken a house in the Haymarket, he and his family went to reside there, keeping the house in Saint Martin's Lane, as a warehouse and workshop, without any intent of returning to live in it.

For three or four days, or a week after his going to the Haymarket, no servant or other person slept in the house in St. Martin's Lane; but, in consequence of his thinking it not prudent to leave that house without some person to take care of it, two women employed by him as workwomen in his business, and not as domestic servants, slept there, to take care of the house, but did not have their meals there, or use the house for any other purpose than sleeping in it as a security to the house.

Subsequent to the prosecutor's going to reside in the Haymarket, and after the women slept there for the purpose before-
CROWN CASES RESERVED.

1810.

Flannagan's Case.

mentioned, the goods, the subject of the indictment, were stolen by the prisoner from the house in St. Martin's Lane.

It was objected for the prisoner, that the house in St. Martin's Lane, was not at the time the goods were stolen the dwelling-house of the prosecutor, and that therefore the prisoner was guilty of a simple larceny only.

The question reserved for the opinion of the Judges, was, whether this house in St. Martin's Lane could be considered as the dwelling-house of the prosecutor. (a)

In Michaelmas Term, 10th November, 1810, all the Judges met, and held the conviction wrong, that this house could not be considered to be the dwelling-house of the prosecutor.

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1810.

REX v. HENRY ELLINS.

An indictment on the 7 G. S. c. 50. s. 1. (b) stating the prisoner to have been employed in two branches of the post-office, proof of his having been employed in either held sufficient. If the letter embezzled is described as having contained several notes, proof of its having contained any one of them is sufficient. If the proved.

The prisoner was tried before Mr. Justice Lawrence, at the Summer assizes for the county of Worcester, in the year 1810, on an indictment founded on the 7 G. S. c. 50., which charged, "That a certain letter then lately before brought to the post office at Kidderminster to be from thence sent by the post to London, to be delivered to certain persons there using in trade and commerce the name and firm of Messrs. Spooner, Attwood, & Co., and then containing one bank post bill made for the payment of the sum of 10l. of lawful money of Great Britain to one Louisa Bassett or order; one bill of exchange for the payment of 100l. of, &c.; one other bill of exchange for the payment of 40l. of, &c.; one other bill of exchange for the payment of 20l. of, &c.; and one promissory note for the payment of 20l. of, &c., came to the hands and possession of the said Henry Ellins, he then instrument is, on the face of it, a note, the maker's signature need not be

(a) Vide Rex v. Smith, cited from Lord King's MSS. in 2 East. P. C. 497.

Rex v. Fuller, 2 East, P. C. 498

(b) Vide this section, supra, 12.
being a postboy and rider employed in the business of the post-office, that is to say, in carrying letters and packets from Kidderminster to Stourbridge, in the business of his said employment. And that the said Henry Ellis afterwards on, &c., at, &c., being then and there such person so employed as aforesaid, and then and there having the said letter, containing the said bank post bill, bills of exchange, and promissory note in the hands and possession of him the said Henry Ellis as such person so employed as aforesaid, feloniously did steal and take from and out of the said letter the said bank post bill, bills of exchange, promissory note,” &c.

No evidence was given that the letter contained the bill of exchange for the 100l. The other securities were produced, but no evidence given of their execution. The contractor for conveying the letters from Worcester to Birmingham through Kidderminster proved that he had employed the prisoner as a post-boy to carry the mail from Kidderminster to Stourbridge, but not as a rider. But it appeared in evidence that he carried the mail on horseback.

It was objected for the prisoner that the prosecutor had failed in the proof of the indictment.

First, Because the letter was described as a letter containing (inter alia) a bill of exchange for 100l. which it was not proved to contain.

Secondly, Because the prisoner was described as a post-boy and rider, and proved to be only a post-boy.

These objections being overruled, the prisoner was found guilty.

This case was reserved for the opinion of the Judges to determine whether the conviction was proper after the above objections taken by the prisoner; and it was also submitted on behalf of the prisoner, whether there should not have been due proof of the execution of the securities contained in the letter. Lawrence J. referred to Shaw’s Case, 1 Leach, C. C. 79. S. C. 2 Bla. 789. 2 East P. C. 580, where the prisoner, being described in two counts as a person employed in sorting and charging letters, was acquitted on those counts, it being proved he was employed in sorting only.

In Michaelmas term, 10th of November, 1810, at a meeting of all the Judges they were of opinion, that as to the first objection, the statement in the indictment was not descriptive of
CROWN CASES RESERVED.

1810.

Ellins' Case.

the letter, but of the offence, which was stealing a bill out of a letter containing any bill, note, &c.

Secondly, That a post-boy riding on horseback was a rider as well as a post-boy.

Thirdly, That it was not necessary to prove the execution of the securities against a spoliator or wrong-doer.

The Judges were unanimously of opinion that the conviction was right.

1811.

REX v. WILLIAM HUMPHRY HILL.

The prisoner was tried before Mr. Justice Chambre, at the Taunton Lent assizes, in the year 1811, upon an indictment under the 30th G. 2. c. 24. (a) for obtaining promissory notes and money by false pretences.

There were six counts in the indictment, of which the first was abandoned.

The second count after stating a discourse between Benjamin Browning and Richard Parker, described to have been severally seamen in the king's navy, and discharged from the service, and the prisoner about pensions, to which Browning and Parker as such seamen were supposed to be respectively entitled, and about an application by letter supposed to have been made for such goods, wares, &c. within the 30 G. 2. c. 24. But see note (b) post, 193.

(a) By the first section, it is enacted, That all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person or persons, money, goods, wares, or merchandize, with intent to cheat or defraud any person or persons of the same, shall be deemed offenders against law and the public peace; and the court before whom any such offender or offenders shall be tried, shall, in case they shall be convicted of the said offence, order such offender or offenders to be fined and imprisoned, or to be put in the pillory, or publicly whipped, or to be transported for the term of seven years, as the court in which any such offender or offenders shall be convicted shall think fit and proper.
pensions by the prisoner, set out the false pretences alleged to have been made by the prisoner to Browning and Parker which were, that he, the prisoner, had received an answer to his said letter of application, and produced a paper as such answer, and pretended to them that two guineas must be sent up to the under clerks as fees, which they always expected, and that nothing could be done without it. The indictment went on to state, that by these pretences the prisoner obtained from Browning on behalf of himself and Parker two promissory notes for 1l. each, and two shillings in money, Browning's property, with intent, &c.

The third count contained no material variation from the second, except that it stated the discourse to have been between the prisoner and Browning only, but relating to the respective pensions of Browning and Parker, and stating the sum required to be sent up for fees to be one guinea from each.

The fourth count stated a discourse between the prisoner and John Bennett (another discharged seaman) respecting the pension he was supposed to be entitled to, an offer by the prisoner to apply on his behalf for it, and write a letter for the purpose; and that he falsely pretended that a pound note must be sent up by Bennett as a fee to the head clerk, and that nothing could be done without it. By which false pretence he obtained of Bennett a note for one pound, his property, with intent to defraud him.

The fifth count stated a discourse between the prisoner and Browning concerning the pensions of which the said Browning, Parker, and Bennett (the three discharged seamen) were supposed to be entitled to, and concerning a supposed letter written by the prisoner and the supposed answer to it; and then stated the false pretences made by the prisoner to Browning to be, that the prisoner had heard from his friend (the head clerk) and that they (the three seamen) must send him (the supposed head clerk) a guinea for writing letters; and that the head clerk had informed him that they were to have six years' back pay. By which the prisoner obtained from Browning another promissory note for one pound, and another shilling in money, his property.

The sixth count alleged the prisoner's discourse to be with all the three persons, and that the prisoner produced another letter which he falsely pretended to have received from his friend, informing him that the pensions were allowed and every thing settled, but that the pensioners must either go to London to be passed
or his (the prisoner's) going, would be quite as well and have the same effect, if they would pay his expences. Whereby he fraudulently obtained from Browning another promissory note for one pound, and twelve shillings in money, being his note, chattels, and monies, and from Bennett ten shillings of his money, with intent to defraud them respectively.

At the close of the evidence several objections were taken by the prisoner's counsel.

One of these objections, applying to all the counts but the fourth, was that Parker (who died before the trial) was not proved to have been a discharged seaman as alleged.

In fact, there was no direct evidence of a discharge, but Browning in his evidence described Parker as having been his shipmate, and proved that the prisoner acted or pretended to act under Parker's employment as such discharged seaman; that at the time of the transaction Parker was resident at Bath, and that the prisoner at one time expressed doubts whether he should succeed in getting Parker's pension, because he had not obtained a certificate of his discharge.

Another objection applying to the second, third, and fourth counts was, that as the pretences were necessary to be specifically stated in the indictment, they should be proved precisely as stated, and that the representation in the second and third counts, "that the clerks always expected fees," and the further statement in those counts, as also in the fourth, "that nothing could be done without it," were not proved, as in fact they were not.

Another objection was also made to the indictment, that it did not bring the case within the statute, inasmuch as promissory notes being merely choses in action, they could not be considered as money, goods, wares, or merchandises, which are the words of description in the statute.

But if this were a good objection, which the learned Judge thought it was not, it could only go to the fourth count, all the others charging the obtaining money as well as notes.

Another objection to the evidence on the fourth count was, that Bennett proved that the prisoner's pretence was that a guinea and not a pound note, as was alleged in that count, must be sent up to the head clerk.

Bennett's evidence was, that although the prisoner at first pre-
tended that a guinea was necessary to be sent, yet he took a note for one pound for the purpose.

The case in all other particulars was satisfactorily proved, and the objections being overruled, the jury found the prisoner guilty, and he received sentence; but the learned Judge reserved the consideration of the objections for the Judges, that the prisoner might have the benefit of a recommendation for a pardon if they should be of opinion that the objections affected all the counts in the indictment so as to have entitled the prisoner to an acquittal.

In Easter term, 1811, at a meeting of all the Judges (except Lord Ellenborough, Thomson B., and Le Blanc J.) the conviction was held right (a) on all the counts but the fourth; the fourth count was held bad, because the Judges thought bank notes were not money, goods, &c. within the act. (b)

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**REX v. RICHARDS.**

The prisoner was tried before Mr. Justice Heath, at the Maidstone Lent assizes, in the year 1811, on an indictment containing with other counts, a count for forging and another count for uttering knowing to be forged an order for the payment of money in the words, cyphers, and figures following:

"Entered 10th Feb. 1810.

" Rate gun brig.

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<table>
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<tr>
<td>Full pay from 3rd July 1810 to 20th Dec. 1810</td>
<td>14 14 0</td>
</tr>
<tr>
<td>Amount of deductions</td>
<td>0 4 6</td>
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</table>

"£14. 9. 6. 14 9 6

(a) Vide Rex v. Story, supra, 81. and Rex v. Major, 2 East, P.C. 1118.

(b) The 52 G. 3. c. 64. extends the 50 G. 2. c. 24. to persons obtaining, by false pretences, any bond, bill, note, security, warrant, &c. or other valuable thing.
CROWN CASES RESERVED.

“H. M. B. Manly,
Yarmouth Roads, 28 Oct. 1810.

“Sir,“

“Please to pay to or order, the sum of fourteen pounds nine shillings and sixpence, being the net personal pay due to me as assistant-surgeon of H. M. B. Manly, between the third day of July, 1810 and 20th Oct. 1810.

“Value received,

“ROBT. BELL, assistant-surgeon.

“Approved,

“E. N. Greenward, Lt. & Comm.

“To the Treasurers of His Majesty’s navy,

“Navy Office.

“London.”

with intent to defraud several persons named in the indictment.

Two points were made for the prisoner. First, that no payee was appointed. Secondly, that the instrument was addressed to the Treasurers of the Navy, instead of the Commissioners of the Navy, the latter and not the former being the persons appointed by statute to be the paymasters of orders such as the present when they are genuine.

The prisoner was found guilty on full evidence in other respects, but the learned Judge reserved the case on the above points for the opinion of the Judges.

In Trinity term 15th of June, 1811, all the Judges met (except Lawrence J.) when they agreed that this instrument being directed to the Treasurers instead of the Commissioners of the Navy, would not prevent its being considered as an order for the payment of money: but the majority of the Judges (Mansfield C. J. dissentient) held it was not an order for payment of money, because of the want of a payee, (a) and that therefore the conviction was wrong.

(a) Vide Lyon’s Case, 2 Leach, C.C. 597. S.C. 2 East, P.C. 933.
REX v. DANIEL GILBERT RANDALL.

The prisoner was tried before Mr. Justice Bayley, on an indictment for forging and uttering a navy pay bill importing to be drawn by George Sidley, as master of the Royal Sovereign, and payable to or order, and also for forging and uttering an indorsement upon it in the name of John James.

The prisoner was found guilty, but the following objections were taken to the bill.

First, That it was payable to no one, because there was no payee's name.

Secondly, That it was not numbered as the 35 G. 3. c. 94. s. 3. requires, and

Thirdly, That the bill misrepresented the rate of the Royal Sovereign, she being really a first rate but described in the bill as a second.

The learned Judge overruled the second and third objections, on the ground that even supposing the requisites of the 35 G. 3. were not complied with, the instrument was still a bill of exchange independently of the statute; and there were counts in the indictment which described it as a bill of exchange. He also overruled the first objection, on the ground that a bill payable to blank or order was in legal operation payable to the order of the drawer, but the learned Judge reprieved the prisoner, thinking that the instrument was incomplete for want of an indorsement by the drawer, and that therefore no person of ordinary caution could be imposed upon by it. These points were reserved for the consideration of the Judges.

In Trinity term, 15th of June, 1811, all the Judges were present (except Lawrence J.) and the conviction was held wrong. The Judges were of opinion it was not a bill of exchange because there was no payee.
The defendant was tried before Mr. Baron Wood, at the Lent assizes, for Northamptonshire, in the year 1811, upon an indictment for a misdemeanor in unlawfully aiding and assisting Antoine Mallet, a prisoner at war detained within certain limits at Northampton, to escape and go at large out of the said limits, and conducting him and bringing him to Preston Turnpike Gate, at Northampton, with intent to enable and assist him to escape and go at large out of this kingdom to parts beyond the seas.

The case appeared to be this.

The defendant lived at Wantage, in Berkshire, she came to Newport Pagnell, and there hired a post chaise to take her to Northampton, and back. The post-boy drove her to Northampton, where she got out, and the post-boy went to his usual Inn, with orders to return to the place where he set her down, after he had baited and rested his horses. The post-boy in about an hour returned, took the defendant up again in Northampton, and proceeded towards Newport, and when they had just got without the town, (and within the limits allowed to the prisoners of war, being one mile from the extremity of the town) she called to the post-boy to stop and take up a friend of her's that was walking along the road. The post-boy stopped, and Mallet got in, and they proceeded together to Preston Turnpike Gate (which is without the aforesaid limits), in the road to Newport, when they were both stopped and apprehended by the commissary, or agent for French prisoners and his assistant who had watched them.

It appeared in evidence that there was no real escape on the part of Mallet, but that he was employed by the agent for French prisoners, under the direction of the Transport Board, to detect the defendant, who was supposed to have been instrumental in the escape of many French prisoners from Northampton, and that all the acts done by Mallet, the contract for the money to be paid to the defendant, and the place to which they were to go, before they would be stopped, were previously concerted
between the agent for the prisoners and Mallet, and Mallet had no intention to go away or escape.

It was objected to by the counsel for the defendant that the commissary having given licence to Mallet to go to the place he did go to, had enlarged the limits of his parole to that place, and therefore Mallet could not be said to have escaped, nor could the defendant be said to have assisted him in escaping out of the limits of his parole.

The learned Judge proceeded in the trial, and the defendant was convicted, but he respited the judgment and reserved the point for the consideration of the Judges.

In Trinity term, 15th June, 1811, all the Judges met, (except Lawrence J.) when they held the conviction wrong, inasmuch, as the prisoner never escaped, or intended to escape.

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**REX v. GEORGE WYNDHAM.**

The prisoner was tried before Mr. Baron Graham, at the Lent assizes for Hereford, in the year 1811, on an indictment on the 49 G. 3. c. 81. s. 1. for forging and counterfeiting at Brecknock in Wales, a stamp on reams of paper, for uttering the paper with such forged stamp, and having such forged stamp in his possession knowing it to be forged.

It was objected that this was not within the 26 H. 8. c. 6. s. 6., (a) as being a felony subsequently created.

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(a) By § 6. of 26 Hen. 8. c. 6. for the punishment and speedy trials, as well of the counterfeiters of any coin current within this realm, washing, clipping, or diminishing of the same, as of all and singular felonies, murders, wilful burning of houses, manslaughter, robberies, burglaries, rapes, and accessories of the same, and other offences feloniously done, perpetrated, and committed, or hereafter to be done, perpetrated, and committed, within any lordship marcher of Wales, it is enacted, That the justices of the gaol delivery and of the peace, and any of them for the time being, in the shire or shires of England where the king's writ runneth, next adjoining to the same lordship, marcher, or other places in Wales, where such counterfeiting, &c or murder had been or here-
The 26 G. 2. c. 19. s. 8., making the plunder of wrecks a felony, provides expressly for trying that offence, if committed in Wales, in the next adjoining English county.

The trial proceeded, and the prisoner was convicted.

At the desire of the prisoner's counsel, the learned Judge reserved the point and respited the sentence, to take the opinion of the Judges, whether the trial was proper at Hereford.

The learned Judge stated that under the words of the sixth section of the 26 H. 8. c. 6. "other offences feloniously done, or hereafter to be done," it appeared to him that after-created offences were included.

In Trinity term 15th June, 1811, all the Judges were present (except Lawrence J.), and held this conviction right. That the statute 26 H. 8. c. 6. included after-created felonies, as well as those offences which existed as felonies at the time of passing that act.

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1811.

A person employed upon commission to travel for orders and to collect debts, is a clerk within the 59 G. 3. c. 85. though he is employed by many different houses on each journey, and pays his own expenses out of his commission on each journey, and does not live with any of his employers, nor act in any of their counting houses.

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REX v. WILLIAM CARR.

The prisoner was tried before Mr. Baron Wood, at the summer assizes for Yorkshire, in the year 1811, upon an indictment which stated that he being a person employed by John Stanley, Thomas Cadman, and John Darnton, in the capacity of a clerk, did, by virtue of his said employment, receive and take into his possession on account of his said employers from one Samuel Latham, after shall be committed or done, or where any other felonies or accessories shall be hereafter committed, perpetrated, or done, shall have from henceforth, full power and authority at their sessions and gaol delivery, to enquire by verdict of twelve men of the same shire or shires next adjoining, within England where the king's writ runneth, there to cause all such counterfeiters, &c. and accessories to the same, to be indicted according to the laws of this land, in like manner and form as if the same petit treasons, murders, felonies, and accessories to the same had been done, committed, or perpetrated within any of the said shires within the said realm, and also to hear, determine, and judge the same according to the laws of this realm.
divers bills of exchange, valuable securities, and monies (specify-
ing them); and that he feloniously and fraudulently embezzled,
secreted, and made away with them, and so feloniously stole
them, contra formam statuti (39 G. 3. c. 85.) (a), and contra pacem.

The second count was similar to the first, only stating the
prisoner to be in the capacity of a servant.

The prisoner was convicted upon clear evidence; but a doubt
arose, whether from the nature of his employment he was a per-
son within the meaning of the statute.

The prosecutors, Stanley & Co., were tobacco manufacturers
at Leeds, and the prisoner was employed by them as a traveller,
to take orders for goods, and collect money for them, from their
customers. When he was going on his journeys, they gave him
a journey-book, containing the sums he had to receive, and the
names of the persons of whom to be received. Upon his return
from his journeys, he settled his account with his employers,
charging himself with what he alleged he had received, and
paying the alleged balance to his employers, and then received
a commission for his trouble.

The prisoner did not live in the house with his employers,
but was a married man, and kept a house in Leeds. He used to
travel for many other people in the same way as for Stanley & Co.
and upon the same kind of commission. Stanley & Co. paid him
a commission of five shillings per centum, for all the goods he
sold for them, whether he received the price for them or not, at
the stipulated time, provided they proved good debts. The pri-

(a) By which it is enacted, That if any servant or clerk, or any person em-
ployed for the purpose in the capacity of a servant or clerk, to any person or
persons whomsoever, or to any body corporate or politic, shall, by virtue of
such employment, receive or take into his possession any money, goods, bond,
bill, note, banker's draft, or other valuable security or effects, for or in the
name, or on the account of his master or employer, and shall fraudulently
embezzle, secrete, or make away with the same, or any part thereof, every
such offender shall be deemed to have feloniously stolen the same from his
master or employer for whose use or in whose name, or on whose account the
same was or were delivered to, or taken into the possession of such servant,
clerk, or other person so employed, although such money, goods, &c. was or
were no otherwise received into the possession of his or their servant, clerk,
&c. and every such offender, his adviser, procurer, aider or abettor, shall be
liable to be transported for any term not exceeding fourteen years.
soner had not only a commission on the orders he received, but also upon all orders that came by letter, whether from him or not, if the debts proved good.

The employers allowed the commission on the whole of the goods contained in the account they gave the prisoner in the first instance; but if any of the debts proved bad, they took it off afterwards.

The profit to the person collecting, ultimately depended on the actual payment of the debt. The commission of the house of Stanley & Co. would not have been sufficient to support the prisoner, but he was employed by other persons in the same way. The prisoner was not employed as a clerk in the counting-house of Stanley & Co., nor in any other way than to take orders and collect debts for them, nor was he employed as a servant in any other way. Stanley & Co. did not pay his expences on his journeys, nor find him a horse, nor allow him any thing but in the way of commission as before mentioned. Travelling by commission for Stanley & Co. and others, was the only employment the prisoner had.

The learned Judge reserved the point for the opinion of the Judges.

In Michaelmas term, 16th November, 1811, all the Judges were present (except Lord Ellenborough, Lawrence, and Bayley Js.) and the conviction was held right. (a).

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1811.

REX v. JOHN BATES SHUKARD.

The defendant was tried before Lord Ellenborough, at the summer assizes for Lewes, in the year 1811, for a misdemeanor, upon an indictment which charged him with having uttering which would be criminal, though with an intent of raising a false idea in him of the party's substance, is not an uttering or publishing within 13 G.3. c.79. Nor will the leaving it afterwards, sealed up, with the person to whom it was shown, under cover, that he may take charge of it, as being too valuable to be carried about, be an uttering or publishing.

(a) See Rex v. Spencer. Pusch. 1815. post.
CROWN CASES RESERVED.

unlawfully, knowingly, and wilfully, uttered and published a certain promissory note containing the words "five hundred," expressing the sum of the said promissory note in white letters on a black ground, without being authorized or appointed for that purpose by the Governor and Company of the Bank of England: the note was set out as follows:

"Bank in England, 1811.  
"No. 43106.  
"I promise to pay to Mr. James Jones, or bearer, on demand, the sum of five hundred pens. 1811.  
"June 11, London. 11 June, 1811.  
"For the Governor and Company of the Bank in England,  
"Rd. Denton."

against the form of the statute (13 G. 3. c. 79.). (a)

The defendant was convicted.

The point reserved for the opinion of the judges was,

Whether there was a sufficient uttering and publishing, in this case, of the note, answering in other respects the description of the act, as having white letters on a black ground?

The defendant had introduced himself to the acquaintance and family of a person of the same name, an innkeeper at Brighton, upon a fabricated story. And in order to persuade the innkeeper that he was a man of substance, one day after dinner, he pulled out a pocket book and showed the innkeeper a 500 and a 50 note, of the above description, of which at the time he only saw the sums and general form. The defendant said that he did not

(a) The 2. s. of 13 G. 3. c. 79., after reciting that unwary and other persons have taken in payment, and otherwise received, notes, inland bills, and bills of exchange, with certain words and characters so nearly resembling the notes and bills of the Governor and Company of the Bank of England, as to appear to such persons to be the notes or bills of the Bank of England, enacts, that if any person or persons, without being authorized and appointed by the Governor and Company of the Bank of England, shall knowingly and wilfully utter or publish any promissory note, inland bill, or bill of exchange, blank promissory note, inland bill, or bill of exchange containing the words Bank of England, or bank post bill, or any word or words expressing the sum or amount of such promissory note, inland bill, or bill of exchange, in white letters or figures on a black ground, every person so offending, and being thereof convicted, shall be committed to the common gaol of the county or place where the offence shall be committed, for any space not exceeding six months.
like to carry so much property about him, and desired the innkeeper to take care of them for him. The innkeeper took charge of them accordingly, and thought the defendant acted very prudently.

They were put into a cover and sealed up by the defendant himself; the witness, the innkeeper received them from him, in an envelope, which, after having kept for some time upon some suspicions afterwards created by the conduct of the defendant, he broke open and found them to contain the notes above mentioned.

In Michaelmas term, 16th November, 1811, the Judges, viz. Mansfield C. J., Macdonald C. B., Heath J., Grose J., Thomson B., Le Blanc J., Chambre J., Graham B., and Wood B., met (Lord Ellenborough, Lawrence J., and Bayley J., being absent) and held this conviction wrong, being of opinion this did not amount to an uttering. That in order to make it an uttering, they seemed to be of opinion that it should be parted with or tendered, or offered, or used in some way to get money or credit upon it.

J. W. let part of his house, viz. a shop, passage, cellar, &c. to his son. The son did not sleep there, there was a distinct entrance into the son’s part, but his passage led to his father’s cellars, and they were open to his father’s part of the house. The prisoner was tried before Mr. Justice Chambre, at the Summer assizes for the county of Lancaster, in the year 1811, for a burglary in the dwelling-house of John Walthen, at Liverpool, and for stealing therein goods to a very considerable amount, the property of James Walthen.

The case was proved to the satisfaction of the jury, who found the prisoner guilty; but it being contended on the part of the prisoner, that the place where the offence was committed, was not part of the dwelling-house of John Walthen, as described in the indictment, the learned Judge forbore to pass sentence on the prisoner (who was convicted at the same assizes of another house. The shop was broken into. The Judges thought (on case reserved) that, by reason of the internal communication, the son’s part continued part of the father’s house; and conviction for the burglary held right.
felony, but a clergysable one), and reserved the question upon the charge of burglary for the opinion of the judges.

John Walthen, the father of James, was owner of the whole building, which was all under the same roof, and at the time of the offence was occupied as after mentioned.

The principal front of the building was in a street in Liverpool called Water Street, another side of the building fronted a street there called Rumford Street, that part of the building which was used as a dwelling-house was used and occupied as such by the father exclusively, the entrance into which, was by a front door in Water Street, where the occupiers of the other parts of the building had no right of entrance.

James Walthen, the son, occupied a shop, part of these premises, in which he carried on his trade as a linen draper, which shop was the place broken into by the prisoner, and from whence the goods were taken.

He also occupied a cellar below, but did not reside or sleep in the premises which he occupied, or in any other part of the building.

These premises the son rented of his father under a parol agreement, as tenant from year to year; his entrance into his shop was by another front door from Water Street, which entrance belonged to him exclusively.

There was no communication between the shop and any other part of the building, except by the back door of the shop opening into the passage next mentioned.

There was another entrance into the building by a door from Rumford Street, which opened into a passage within and parcel of the building; nearly at the end of the passage on the left hand was the back door of the shop; of this back door the son had the sole use, and kept it locked at nights, and whenever he chose.

In the same passage were also two small stair cases, one of them leading up to two rooms above, which had no further communication with the house, and were let to a third person, to keep goods in, but were not used for any purpose of habitation.

The other staircase led down to the cellars, having a door at the foot of it and opened into another passage there, extending from the front of the building in Rumford Street, to a door which communicated with the father's cellars under his dwelling-house. This door the father kept locked, and nobody had the use of it
but himself. On the side of the cellar passage, opposite to the staircase, there were two cellars, one of which was that which the son rented of his father and the other was let to a Mr. Nevitt; both were used to deposit goods in.

There was no entrance into the cellar passage at the end of it which was next to Rumford Street, except that there was a covered opening from the street, down which, by taking up the cover, things were occasionally let down into the cellar passage, as well by the father for carrying articles into his own cellars through the door of communication at the other end of the passage, as also by the son, when he had occasion to put linens, &c. into his cellar.

The door from Rumford Street into the upper passage, and also the door at the front of the staircase going into the cellar passage, were generally open in the day-time, that the father might have access to his own cellars that way, and the other tenants to those parts which they occupied; but the son had the key of the door into Rumford Street, which he locked up at night, and also locked up the door at the foot of the cellar staircase (as the witness expressed himself) as belonging to his shop.

The father had his coals, potatoes, and some other articles shot down at the hole or opening from Rumford Street, and his small-beer was carried in at the door in Rumford Street, along the upper passage and down the staircase into the cellar passage, and so into his own cellars. He used this right about three times in half a year, but the passage was never used as a common entrance for his family.

In Michaelmas term, 16th November, 1811, at a meeting of all the Judges (except Lord Ellenborough, Lawrence J., and Bayley J.) the conviction was held right (Graham B. dubitante). At first Thomson B. and Chambre J. doubted, but they afterward acceded to the opinion of those Judges who thought it properly laid as the dwelling-house of the father, it being under the same roof, part of the same house, and communicating internally. But all the Judges thought it a case of much nicety. (a)

(a) See Rex v. Hancock, supra, 170. and the cases there referred to.
REX v. SOLOMON CARRADICE, AND ANOTHER.

The prisoners were tried before Mr. Baron Wood, at the Westmoreland summer assizes, in the year 1811, on an indictment charging that they, the said prisoners, after the 1st of June, 1765, and within six calendar months, at the parish of Heversham, unlawfully did enter into a certain park, then and there fenced in and enclosed, called Levon's Park, of and belonging to Richard Howard, in and through which park there ran a river, called the River Kent, and feloniously did steal, take, kill, and carry away certain fish, to wit (specifying them), value 50l. then and there bred, kept, and preserved in the said river, without the consent of the said Richard Howard, the owner of the said park, and of the said river and fish within the said park, against the statute, &c. (5 G. 3. c. 14. s. 1.) (a) and against the peace, &c.

The prisoners were convicted; but it was objected, that fish were not kept, bred, and preserved in this river, so as to be within this branch of the act.

It appeared by the evidence, that Levon's Park was enclosed with a large stone wall all around, except where the river ran into it and out of it, and at which place there was a railing to prevent the deer from getting out of the park. There was a common footpath through the middle of the park on the south side of the river, and the persons were never suffered to angle in the park without leave. Held, that this was not a place where fish were to be considered as "bred, kept, or preserved" within the meaning of this act, and therefore conviction wrong.

(a) By which it is enacted, that in case any person or persons shall enter into any park or paddock fenced in and inclosed, or into any garden, orchard, or yard, adjoining or belonging to any dwelling-house, in or through which park or paddock, garden, orchard, or yard any river or stream of water shall run or be, or wherein shall be any river, stream, pond, pool, moat, stew or other water, and by any ways, means, or device whatsoever, shall steal, take, kill, or destroy any fish bred, kept, or preserved, in any such river or stream, pond, &c. or other water as aforesaid, without the consent of the owner thereof, or shall be aiding or assisting in the stealing, &c. any such fish as aforesaid, or shall receive or buy any such fish, knowing, &c. and being thereof indicted within six calendar months next after such offence shall have been committed, before any judge or justices of gaol delivery for the county wherein such park, &c. shall be, and being thereof convicted, shall be transported for seven years.
north side also, and they both came out near the river; that the river went freely in its natural course through the park, and the fish could pass in and out of the park at both ends, the same as in any other part of the river. The river running uninterrupted in its natural course, there was nothing to keep or preserve the fish within the park.

It did not appear that fish were bred in that part of the river which was within the park, or that the river there was ever stocked with fish.

It further appeared, that deer had always been kept in the park, so long as one of the witnesses remembered (which was more than thirty years): and the river always ran in the same course as long as he could remember; Mr. Howard did not suffer any one to angle in the park without leave, and sometimes the servants watched it by night to prevent persons fishing there.

The learned Judge overruled the objection, and the prisoners were found guilty; but he reserved the point for the consideration of the Judges.

The prisoners' counsel then moved in arrest of judgment on two grounds; first, That the ways, means, or device by which the fish were taken, ought to have been stated in the indictment, and were not; secondly, That the fact is alleged to be done feloniously, and the offence is not a felony, nor so declared by the act.

The learned Judge overruled both these objections, but reserved them for the consideration of the Judges.

In Michaelmas term, 16th of November, 1811, this case was first taken into consideration at a meeting of all the Judges (except Lord Ellenborough and Lawrence J.), when Mansfield C. J., Heath and Le Blanc JEs., seemed to think that the fish were preserved, within the meaning of the act, in that part of river, which was within an inclosed park, where the owner of the park had the exclusive fishery.

This case was again taken into consideration on the 2d of December, 1811, at a meeting of all the Judges (except Mansfield C. J., Macdonald C. B., Grose J., and Lawrence J.), when the majority held the conviction wrong, on the ground that the fish were not bred, kept, or preserved in the park; Heath J. and Le Blanc J. still appearing to retain their former opinion.

All the Judges present seemed to agree that there was nothing in the two objections taken in arrest of judgment.
REX v. WILLIAM FARRINGTON.

The prisoner was tried before Mr. Justice Le Blanc, at the summer assizes for the county of Stafford, in the year 1811, on an indictment charging that he, on the 10th of October, 1808, feloniously, wilfully, maliciously, and unlawfully, did set fire to a certain mill at Abrewas, in the county of Stafford, the same mill then being in the possession of Thomas Dickon, Joseph Dickon, Benjamin Wilson, Richard Meek, and William Monby, with intent to injure and defraud the said several persons (naming them), then being liege subjects of the king, against the form of the statute, &c.

It appeared in evidence, that a cotton mill of the persons named in the indictment (Dickon & Co.), was consumed by fire in the month of October 1808. The prisoner at that time was working as a servant with the proprietors at another mill belonging to them, at a very little distance, thirty or forty yards off. The prisoner was indicted for setting fire to a mill with intent to injure the occupiers thereof. Held, that an injury to the mill being the necessary consequence of setting fire to it, the intent to injure might be inferred; for a man must be supposed to intend the necessary consequence of his own act. The 43 G. 5. c. 58. (a) extends to cases which were before punishable under 9 G. 3. c. 29. (b), and is not restricted to cases which before were not felonies without clergy.

(a) By § 1. it is enacted, That if any person or persons shall, either in England or Ireland, wilfully, maliciously, and unlawfully set fire to any house, barn, granary, hopoast, malthouse, stable, coach-house, outhouse, mill, warehouse or shop, whether such house, &c. shall then be in the possession of the person or persons so setting fire to the same, or in the possession of any other person or persons, or of any body corporate, with intent thereby to injure or defraud His Majesty, or any of His Majesty’s subjects, or any body corporate, that the person or persons so offending, their counsellors, aids and abettors, knowing of and privy to such offence, shall be and are hereby declared to be felons, and shall suffer death as in cases of felony without benefit of clergy.

(b) By § 2. of 9 G. 3. c. 29. it is enacted, That if any person or persons shall wilfully or maliciously burn or set fire to any wind saw-mill, or other windmill, or any watermill, or other mill, such person so offending, being lawfully convicted thereof, shall be adjudged guilty of felony without benefit of clergy, and shall suffer death as in case of felony without benefit of clergy.

By § 4. it is enacted, That all prosecutions for the above offence are to be commenced within eighteen months after the offence committed.
and continued to work with them, with the exception of two or three months, from that time till he was apprehended at the end of July, 1811.

No suspicion was entertained of the mill being burnt otherwise than by accident.

On the 24th of July, 1811, a clerk of Messrs. Dicken & Co., having been informed that the prisoner had told some boys that he had set fire to the mill in question, sent for the prisoner, and said to him, "Tell me how you set this mill on fire?" The prisoner answered, "that he got an old can, and went to the stove in the old mill, and raked some fire into the can and carried it across the road, got through one of the windows, and went to one of the cotton bins and poured the coals in."

It was also proved by another clerk of Messrs. Dicken & Co., the prosecutors, that on the same 24th of July he went up to the prisoner, and asked him where he was going; prisoner said he did not know; the clerk then said you must turn and go with me; the prisoner said "he was willing to go, he knew he deserved punishment." The clerk said, "How did you come to do it?" The prisoner replied "He did not know, except that the devil had put it into his head."

It was also proved, that at the time of the fire in October, 1808, there was a stove in the old mill; and there was a window in the mill that was burned, through which a person might get, and there was cotton in the bins.

But it was stated by the witnesses for the prosecutors (the clerks of Messrs. Dicken & Co.), that the prisoner was a harmless, inoffensive man; that there never had been any quarrel or disagreement between him and his masters, or between him and any of the clerks, and that they were not aware of any motive which could induce him to do the act.

The jury found the prisoner guilty, but

Le Blanc J. respited the sentence, a doubt occurring whether, under the particular words of the 43 G. 3. c. 58., an intent to injure or deprive some person or body corporate was not necessary to be proved, or, at least, some fact from which such intent could be inferred, beyond the mere act of setting the mill on fire.

The statute 9 G. 3. c. 29., which makes it felony without benefit of clergy, wilfully or maliciously to burn or set fire to any mill,
limits the prosecution for such offence to eighteen months after
the offence committed; and the offence, which was the subject of
the present indictment, having been committed near three years
before any prosecution commenced, the indictment could only be
supported, if at all, on the above statute of the 43 G. 3. c. 58.

On the 2d of December, 1811, the Judges met; Lord Ellen-
borough, Heath J., Thomson B., Le Blanc J., Chambre J.,
Graham B., Wood B., and Bayley J., being present, held the
conviction right; that a party who does an act wilfully, neces-
sarily intends that which must be the consequence of the act, viz.
injury to the owner of the mill burned. The Judges were also
of opinion, that notwithstanding the statute 43 G. 3. c. 58., a
person might still be indicted within the eighteen months for
setting fire to a mill, without alleging it to be to injure or
defraud any person; and the same as to setting fire to the house,
or barn, or rick of another.

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REX v. JOHN FRANCIS.

The prisoner was tried before Mr. Justice Chambre, at
the Old Bailey sessions, in July, 1811, for forgery.

The first count of the indictment charged him with forging
an order for the payment of money as follows: —

"London, Sept. 9th, 1808.

"Messrs. Praed and Company, pay Mrs. Ware, or bearer,
the sum of Fifteen Pounds, for

"Jas. Cooke, Jun."

"£15 0 0."

with intent to defraud Jemima Ware, widow.

The second count was for the uttering the order; and the
third and fourth counts varied from the two first, only in allled-
ging the intent to be to defraud William Praed, William Tyring-
ham Praed, Kenelm Digby, Philip Box, Scrope Bernard, and
William Newcombe, the bankers upon whom the order was
made.
It appeared in evidence, that the prisoner on the 15th of August, 1808, took lodgings of the prosecutrix (Jemima Ware), under the name of Cooke.

On the 9th of September following, the prisoner wrote a draft on Praed & Co., for fifteen pounds, and the prosecutrix at the prisoner's request, gave him a bank note in change for it to that amount; she paid the note away to a Mr. Haynes, who soon afterwards brought it back; Praed & Co. having refused payment, on the ground that no person of that name kept cash there. The prisoner took the draft into his hands, and after reading it over said, it was a mistake, he had forgotten to put the word "Junior;" he then wrote the word "Junior" to the name of Cooke, and said it would be found right. The draft was again taken to Praed's, and they again refused payment; but before it was brought back the prisoner absconded.

The cashier in the house of Praed & Co. proved the two presentations of the draft, and that no person of the name of Cooke, either senior or junior, kept cash there. One Robert Cooke kept cash there, and had done so for some years, but the signature bore no resemblance to his hand.

It was proved by the officer who took the prisoner into custody, that the prisoner said his real name was John Francis, and that Francis was the name of his parents.

It was also proved by an apothecary, whom the prisoner had served as an assistant in his business, that he came to serve him under the name of Frederick Mordaunt, and that he passed by that name during the time he remained in witness's service, which was about a week.

The prisoner was convicted and sentenced; but a doubt having arisen upon the Recorder's report, the execution was respited, and the learned Judge stated this case for the opinion of the Judges; the doubt was,

Whether the facts in evidence established a forgery, or only a fraud.

The objections to the conviction were, that the prisoner came to lodge with Mrs. Ware by the name of Cooke, which name he might take if he pleased; that he was never known to her by any other name, that he made the draft on a banker with whom he had no cash in that name, but not in the name of any person who had cash there, and that his having
borne other names was unknown to the prosecutrix, who knew him only by the name of Cooke.

On the 2d of December, 1811, all the Judges present, viz. Lord Ellenborough, Heath J., Thomson B., Le Blanc J., Chambré J., Graham B., Wood B., and Bayley J., held the conviction right. (a)

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**REX v. HODGSON.**  

The prisoner was tried and convicted before Mr. Baron Wood, at the Yorkshire summer assizes, in the year 1811, on an indictment for committing a rape upon Harriet Halliday, spinster.

After the girl had given her evidence in support of the prosecution she was cross-examined by the prisoner’s counsel, who put these questions to her:

*Whether she had not before had connections with other persons?*  
*and whether she had not before had connection with a particular person?* (named).

The counsel for the prosecution objected that she was not obliged to answer these questions; but it was contended by the prisoner’s counsel that in a case of rape she was.

The learned Judge allowed the objection, on the ground that the witness was not bound to answer these questions, as they tended to criminate and disgrace herself, and said that he thought there was not any exception to the rule in the case of rape.

The prisoner’s counsel called witnesses, and among others, offered a witness to prove that the girl had been caught in bed about a year before this charge with a young man, and offered the young man to prove he had connection with her.

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stamped label wherein it materially differed from the true and genuine stamp by sealing-wax, so that when the stamped label was seen on the bottle or box, the material difference between the true and the counterfeit stamp was not perceptible.

When the label was fixed on the bottle, the centre part of the counterfeit stamp was cut out so as to admit the mouth or neck of the bottle to come through; and the two sides of the label were pasted down on each side of the neck of the bottle, and then the top of the bottle and cork covered with sealing-wax, and sealed so as to conceal the vacancy occasioned in the stamped label by the centre part being cut out. Where the stamp was put on a box of pills or lozenges, the same care was taken to affix a seal over the centre, and where the centre was not cut out, the same care was taken to affix a seal over it so as to leave nothing but the two sides of the stamped label visible.

The evidence was clear of these stamps being so used by the prisoner with full knowledge of their being counterfeit.

Three objections were taken by the prisoner’s counsel.

First, That the indictment was wrong in form, for not averring that the commissioners had provided a certain stamp, and describing what that was.

Secondly, That no uttering was proved in the county of Middlesex, the prisoner not having parted with the possession of it in the county of Middlesex, because it remained in the care and custody of his servant, all the time that the box was in Middlesex, and under his control, so that he might countermand the sending or delivering of it.

The same objection was applied to the counts for vending and selling, in addition to which it was contended that the clause of the act imposing the punishment on selling must be taken, to mean, selling the stamps distinct from the medicines.

Thirdly, That this was not a felony under the act, because it was not counterfeiting the stamp or mark provided and used by the commissioners, the stamp or mark provided by them is the centre part, the crown and amount of duty circumscribed, and that has never been counterfeited or imitated; the two sides or labels of the stamp are not properly the stamp or any material part of it.

Le Blanc J. overruled the several objections, but reserved them with the concurrence of the Lord Chief Baron and
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Chambre J. for the consideration of the Judges; and he left the question to the jury on the evidence and on an inspection of the stamps as they appeared on the bottles and boxes, and before they were so used, whether the paper so uttered by the prisoner did resemble the mark or stamp provided by the commissioners of stamps. The jury found the prisoner guilty, but judgment was respited until the opinion of the Judges could be taken.

In Hilary term, 30th of January, 1812, at a meeting of all the Judges, the majority, viz. Lord Ellenborough, Mansfield C. J., Grose J., Thomson B., Le Blanc J., and Bayley J., thought it an uttering and vending in Middlesex; Heath J., Lawrence J., Chambre J., Graham B., and Wood B., thought not; but they all agreed it was within the act as to the resemblance to the stamp provided by the commissioners, and that the indictment was sufficient. (a)

REX v. Benjamin Walsh.

The prisoner was tried before Macdonald C. B., at the Old Bailey January sessions, in the year 1812, on an indictment, the first count of which charged the prisoner with stealing on the 5th of December, 1811, twenty-two bank notes, each being made for the payment of 1000L, and one other bank note for the payment of 200L, being the property of Sir Thomas Plomer, knight, the money payable thereon being due and unsatisfied to Sir Thomas Plomer, the proprietor thereof.

A second count charged him with stealing a certain bill of exchange for the payment of 22,200L, being the property of Sir Thomas Plomer, and the said sum of money for the payment of the check, it was not larceny, although the prisoner intended to misapply the property when he took it, and misapplied it accordingly. Held, that as Sir T. P. never had possession of the money received at the bankers, but by the hands of the prisoner, the indictment could not be supported. S. C. 4 Taunt. 258. 2 Leach, C.C. 1054.

(a) See case reserved on trial of the same prisoner for another offence of the same description, Easter term, 1812, post, 229.
whereof the said bill of exchange was made, being due thereon to
the said Sir Thomas Plomer, being the proprietor thereof.

The third count was the same as the second, omitting the
concluding words, "to the said Sir Thomas Plomer, being the
proprietor thereof."

The fourth count was also the same as the second, only calling
it a warrant made for the payment of money.

The fifth count was the same as the fourth, omitting the con-
cluding words, "to the said Sir Thomas Plomer, being the pro-
prietary thereof."

The sixth count charged the prisoner with stealing another war-
rant for the payment of 22,200l., the said warrant at the time of
committing the felony being the property of Sir Thomas Plomer,
and the said sum of money, secured by the said warrant, being
unsatisfied to the said Sir Thomas Plomer, the proprietor
thereof.

The seventh count was the same as the sixth, only omitting
the concluding words, "to the said Sir Thomas Plomer, the
proprietor thereof." All the counts charged it to be against the
statute.

It appeared that the prosecutor, Sir Thomas Plomer, had, for
many years, employed Walsh as a stock-broker.

In the summer of 1811, the prosecutor having contracted for
the purchase of an estate, apprised Walsh in August of that year,
that he had made such a contract, which he expected would be
completed at Michaelmas following; and that he should be at
that time called upon for payment, for which it would be neces-
sary to provide by the sale of stock to a large amount. He
consulted Walsh as to the propriety of selling stock then, or at
the time of payment. Walsh advised him to postpone the sale,
saying the prospect was, that stock would recover from the de-
pression it had suffered. The title to the estate was not com-
plete at the time of this conversation.

In the middle of the November following, Walsh urged the pro-
secutor strongly to sell the stock; the prosecutor then told Walsh
the contract was not complete, and that he had no present occasion
for the money, and it was quite uncertain when he should.
Walsh told him, that in his judgment stock would fall much
lower. Walsh frequently urged the necessity of selling; and at
one of these times he stated it was the opinion of intelligent per-
sons in the Stock Exchange, that the 3 per cents. would be as low as 50. The prosecutor also consulted commercial gentlemen as to the propriety of selling, who had given precisely the same advice as Walsh, as to the probability that the price of stock would fall.

On the 28th of November, the prosecutor wrote a note to Walsh, authorising him to sell 13,000l. 4 per cents., and 18,600l. 3 per cents. reduced. On the 29th he went to Walsh's office, in the city, and saw him there. Walsh told him that he had made a contract for the sale of the stock, and asked the prosecutor whether he could come to make the transfer on Wednesday or Thursday following, saying it would be necessary to give notice of the day, in order that the purchaser might be prepared with the money. The prosecutor then consulted Walsh as to what was the best way of disposing of the money arising from the sale of the stock; Walsh advised the prosecutor to purchase exchequer bills.

On Monday or Tuesday, the second or third of December, the prosecutor wrote a note to Walsh, appointing Wednesday, the fourth, to transfer the stock, and attended accordingly on that day to transfer the stock, and to purchase the exchequer bills. But Walsh said it was too late to purchase exchequer bills on that day. The prosecutor then left Walsh to receive the money, which Walsh said he should pay into Gosling's, and that he should call on Sir Thomas Plomer on the next morning at eleven, for the purpose of receiving a check for the money, in order that it might be laid out in exchequer bills on the following day. On the following morning Walsh came soon after eleven, and the prosecutor gave him a check for 22,200l. on Gosling & Co.

Walsh represented that the produce of the stock was 21,774l., the check which the prosecutor gave Walsh upon Gosling's for 22,200l. was for the purpose of being laid out in exchequer bills. Walsh promised to lay out the money in that manner, and to bring the bills to the prosecutor or his banker, at four o'clock on that day (Thursday) the 5th.

Walsh came to the prosecutor at Lincoln's Inn, at a half past four, or a quarter before five, and produced a paper being an account of the sale of the stock, with this memorandum: "15,500 bought at 5. premium 3½ a day, which cannot be de-
1812.

Walsh said he had contracted with Coutts's broker for the 15,500l. of exchequer bills, which could not be delivered till Saturday, as they were locked up in a drawer of the banker's; but that they were to be delivered at half-past three on Saturday the 7th, and that he should call on that day at three o'clock, to receive a check for the money to pay for them, he having, as he stated, paid the money into Gosling's. He produced a receipt for 6,500l. of exchequer bills which he had lodged at Gosling's. When Walsh left, the prosecutor perceived that there was no receipt of Gosling's for the 15,500l., and went to Gosling's to enquire about it, and found no money or bills had been left, but exchequer bills for 6,500l. The next morning the prosecutor went to Walsh's office and found he was gone, and he never saw him again till in custody.

The prosecutor stated that he could not be positive whether Walsh suggested the purchase of exchequer bills, or he proposed it himself: but he told him the money was not then wanted, and asked Walsh whether it was not worth while to invest the money in exchequer bills in the interim. Walsh said it certainly was. The produce of the stock sold was put into Gosling's by a draft on his (Walsh's) banker, and another check, which were paid.

Walsh acted throughout as the stock-broker of the prosecutor. No specific directions were given to Walsh but to lay out the produce of the check in exchequer bills; Walsh stated that he had paid the money into Gosling's, and the prosecutor gave him a check to take it out.

The prosecutor stated that in former transactions Walsh had often advanced his own money to buy stock, and then called for checks to reimburse himself.

It was proved that eleven of the notes for 1000l. each, which had been paid by Gosling's to Walsh were paid by him to De Berkt & Co. for American stock, and placed by De Berkt in the hands of his bankers, Masterman & Co.; others of the notes were traced from the prisoner, and had come into the bank, and were produced from thence cancelled.

It also appeared, that on the 29th of November, the very day on which Walsh received an authority from Sir Thomas Pomer to sell the stock, he had bespoke American stock to the amount
of about 11,000l. sterling, of that sort which is most desirable for a person residing in America, and that he paid for it on the 5th of December, by the very notes which he had received the day on which he received the check.

It was also proved, that on the 2d of December he had purchased some hundred pounds worth of Portugal coin, and his letters proved that his intention was first to go to Lisbon, and from thence to America. That it was his intention to abscond was also apparent from preparations for that purpose at his own house at Hackney, when he left it on the morning of the 5th of December (the day on which he paid for the stock), and also whilst he was in town on that morning.

The facts given in evidence by the prosecutor were not controverted, and the question left to the jury was, whether the prisoner, before he received the check, had formed the design of converting the money, which should be received by means of it, to his own use, or, whether that design arose in his mind after he was in possession of it. The jury were directed that if they were of opinion that the former was the fact, to find the prisoner guilty: The jury were of that opinion, and the prisoner was found guilty.

Macdonald C. B. respited the judgment, in order that the opinion of the Judges might be taken on certain objections stated by the prisoner's counsel, viz.

As to the counts which charged the stealing of the bill of exchange or warrant (i. e. the check), it was objected, that the check was one entire thing, and could not be said to be stolen, as part of the produce, viz. 6,500l., was applied to the prosecutor's use, therefore there could not be a taking of the check with a felonious intent.

As to the same counts it was also objected, that under the 2 G. 2. c. 25. it was necessary that the instrument stolen should be of value in the hands of the party from whom it was stolen; that the check was of no value to the prosecutor in his own hands; but that if it had been lost by the prosecutor, and got into the hands of a third person, and had been stolen from that third person, it would be within the act, as being then an instrument of value in that third person's hands, otherwise not.

It was also objected that the prosecutor had parted, in this case, with both the property and possession of the bill of exchange or warrant, and without fraud or misrepresentation; and this case
was said to be the same as that of a voluntary deposit of money with a banker, who had previously determined to apply it to his own use.

That the identical notes paid to the prisoner were notes on which the prosecutor had no specific claim, and never were vested in him.

That bank notes were not expected in return for the check, but another; and a different thing, viz. exchequer bills.

And, that if the prosecutor had delivered the twenty-three notes themselves to the prisoner, he undertaking to buy exchequer bills with them, it would have been only a breach of contract, which he was to fulfil by returning exchequer bills, and that he was to be considered as debtor to the prosecutor for the deficiency.

In Hilary term, 1st of February, 1812, this case was argued in the Exchequer Chamber before all the judges (except Lawrence J.), by Scarlett for the prisoner, and Gurney for the Crown. And again on the 14th of February, 1812, before all the Judges (except Lawrence J. and Chambré J.), when all the Judges present were of opinion that it was not a felony, and that the conviction was wrong, because there was no fraud or contrivance to induce Sir Thomas Plomer to give the check, because it could not be called his goods and chattels, and was of no value in his hands; because he had never had possession of the money received at the bankers, so that it could not be called his money; and because the bankers were discharged of the money by paying it on the check; so that they were not defrauded, and it could not be said the money was stolen from them. (a)

(a) Vide Philippes's Case, 2 East, P.C. 599. S.C. 2 Leach, C.C. 675. Aickles' Case, 1 Leach, C.C. 294. S.C. 2 East, P.C. 675. Nicholson's Case, 2 East, P.C. 818. notis. Coleman's Case, 1 Leach, C.C. 305. notis, S.C. 2 East, P.C. 672. See now 52 G. 3. c. 63. § 1. by which it is enacted, That if any person with whom (as banker, merchant, broker, attorney, or agent of any description whatsoever) any ordnance debenture, exchequer bill, navy, victualling, or transport bill, or other bill, warrant or order for the payment of money, state lottery ticket or certificate, seaman's ticket, bank-receipt for payment of any loan, India bond, or other bond, or any deed, note, or other security for money, or for any share or interest in any national stock or fund of this or any other country, or in the stock or fund of any corporation, company, or society established by act of parliament or royal
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REX v. GEORGE HAMMON.

The prisoner was tried before Mr. Justice Bayley, (present Mr. Justice Heath and Mr. Baron Wood,) at the Old Bailey sessions, February, 1812, for stealing in the dwelling-house of Thomas Birch and Abraham Henry Chambers, two bank notes of 50L each. The question reserved for the consideration of the judges was, whether what was done by the prisoner constituted a larceny.

The following facts appeared in evidence:—

The prisoner had, for several years, been a clerk in the banking house of Birch and Chambers. On the 19th of December, 1811, he entered in one of the ledgers, to the credit of John Vale, one of their customers, a sum of 200L; and, at the same time, also entered a like credit in the common banking book belonging to Vale. This was a false credit, no such sum having been paid in for Vale.

own credit with the bank or to draw out money of his own, but to draw out money the prisoner falsely pretends to have had in his name. S.C. 4 Taunt. 304. 2 Leach, C.C. 1085.

A banker’s clerk taking money from the till, intending to embezzele it, is guilty of felony, though the check of a customer is left in lieu of it, if that customer has really no cash in the banker’s hands, though both he and the banker may suppose he has, and if the check is drawn by the customer, not to pledge his money the prisoner falsely pretends to have had in his name. S.C. 4 Taunt. 304. 2 Leach, C.C. 1085.

charter, or any power of attorney for the sale or transfer of any such stock or fund, or any share or interest therein, or any plate, jewels, or other personal effects shall have been deposited, or shall be or remain for safe custody, or upon or for any special purpose, without any authority, either general, special, conditional or discretionary, to sell or pledge such debenture, bill, &c. or to sell, transfer, or pledge the stock or fund, or share or interest in the stock or fund, to which such security or power of attorney shall relate, shall sell, negotiate, transfer, assign, pledge, embezzele, secrete, or in any manner apply to his own use or benefit, any such debenture, bill, &c. or the stock or fund, or share or interest in the stock or fund to which such security or power of attorney shall relate, in violation of good faith, and contrary to the special purpose for which the things hereinebefore mentioned, or any or either of them shall have been deposited or shall have been or remained with or in the hands of such person, with intent to defraud the owner of any such instrument or security, or the person depositing the same, or the owner of the stock or fund, share, or interest to which such security or power of attorney shall relate, every person so offending, in any part of the united kingdom of Great Britain and Ireland, shall be deemed guilty of a misdemeanor, and shall be transported for fourteen years, or receive such other punishment as the court shall think fit.
After having made these entries, the prisoner carried the common banking book to Vale, and told him that he (the prisoner) had paid 200l. in the house in Vale’s name; Vale said he should not have done so, but was satisfied with the reasons the prisoner assigned; the prisoner at the same time produced a stamp, and desired Vale to draw upon the house for the 200l. at two months, which Vale did.

On the 10th of January, 1812, the prisoner called again on Vale, and got from him a check upon the house for 100l., and a bill on the house for 100l., in exchange for the 200l. bill of the 19th of December.

On the 11th of January, the prisoner took out of the till, or bank-note drawer of Birch and Chambers, the two 50l. bank-notes mentioned in the indictment, and deposited the before mentioned check of 100l. among the paid checks of that day, and entered in the paid book of that day these two bank-notes against this check.

It was not in the regular business of the prisoner to pay checks, or make entries in the ledgers or customers’ books, but he occasionally did both.

On the morning of the 11th of January, the apparent balance in favour of Vale in the ledger, and in Vale’s banking book, was 295l. 18s. 2d.; but by striking out the false credit of the 19th of December, the apparent balance in his favour would have been 95l. 18s. 2d. only; and, upon further investigation, it appeared, that before that time the prisoner had made false entries to Vale’s credit to the amount of 830l. in the ledger and banker’s book; so that the real balance on the 11th of January was against him to the amount of several hundred pounds.

It was the rule of the house of Birch and Co. not to allow over drawing.

The 830l. consisted of the four following items:

1811. 11th May, 200l.
28th June, 200l.
2d October, 200l.
11th November, 230l.

Each of these sums was entered by the prisoner in the ledger, and in Vale’s book; and at each of the dates he told Vale he had paid in the sum mentioned in the entry, and got from Vale a bill on the house for the amount.
CROWN CASES RESERVED.

It was, insisted for the prisoner, that the taking these notes under the above circumstances was no larceny; because it was, in effect, a payment of the check; that Birch and Co. would not be the losers of the money, but would be entitled to debit Vale with the amount; that this was rather obtaining a check by false pretences from Vale, than stealing the bankers' notes.

It being thought that there was some nicety in the point, it was reserved for the consideration of the Judges.

Bayley J. told the jury, that if they were satisfied that the prisoner was himself the person who took the notes out of the till or bank-note drawer, they ought to find him guilty; but he also told the jury that he wished them to state (if they found the prisoner guilty) whether they were of opinion that he made the false entries fraudulently to enable him if he could, to get the amount from Birch and Chambers.

The jury found the prisoner guilty, and said they were of opinion the prisoner paid himself the notes; and that at the time he made the false entries he did it fraudulently, to enable him, if he could, to get the amount from Birch and Chambers. They also added, that as he had the check, he had a right to pay himself the amount; but the learned Judge told them this was matter of law which would be included in the case submitted to the Judges, but that he would state on the case this opinion of theirs, so that the prisoner might have the benefit of it.

In Easter term, 12th of April, 1812, present all the Judges (except Lawrence J.), this case was argued by Lawes for the prisoner and Gurney for the Crown. For the prisoner it was contended, this was a fraud or obtaining money by a false pretence, and not a felony.

But all the Judges held that it was a felony; and the contrivance or machinery used was to prevent its being found out; and that therefore the conviction was right. (a)

(a) Afterwards Birch, Chambers, & Co. brought an action against Vale of money had and received for other sums obtained by Hammon in the manner above described. The cause was tried before Lord Ellenborough, at the sittings after Easter term, 1815, at Westminster, and a verdict passed for the plaintiff. A motion was made on the following Trinity.term to set it aside, and a rule nisi granted; but the parties settled the action. The court were prepared to make the rule absolute, thinking the action could not be supported. Mass. Jud.
At the Lent assizes and general gaol delivery for the county of Monmouth, held before Mr. Baron Wood, in the year 1812, during the trial of William Edwards for a capital felony, in maliciously shooting at Lewis Roberts, one of the jury was seized with a fit and obliged to be carried out of court, and a surgeon was sent for to attend him.

After a considerable interval, the learned Judge sent for the surgeon into court, and examined him upon oath, as to the ability of the jurymen to return into court and attend the remainder of the trial, and the surgeon said he had been put to bed and was in a state of insensibility, and incapable of returning into court that day.

The prisoner's counsel objected to any other jurymen being sworn, and urged that the prisoner should be discharged.

Wood B. overruled the objection, and ordered another of the jury returned in the panel to be ballotted, telling the prisoner that he might object to any one that was called and appeared. A person being called and appearing, the prisoner was asked if he had any objection to him, and he said "No;" whereupon he was sworn upon the jury in the place of the absent jurymen, and the other eleven were all sworn over again, and they were all twelve charged over again with the prisoner, in the usual manner.

The examination in chief of the first witness being gone through before the jurymen was taken out, that witness was re-sworn to give evidence as he had done at first, and then the learned Judge told the counsel for the prosecution as well as for the prisoner, that the witness must be examined over again; but they said if the learned Judge read his notes over, that would be sufficient, accordingly he read his notes over to the witness, asking him at the end of every sentence if it was right, to which he answered in the affirmative.

The counsel for the prisoner then cross-examined the witness, and the trial was gone through in the usual manner and the prisoner was convicted, and received sentence of death, but was reprieved; and at the request of the prisoner's counsel, the
question was reserved as to the regularity of the proceedings for
the opinion of the Judges.

In Easter term, 25th of April, 1812, this case was argued by
Clifford for the prisoner, and Taunton for the Crown, before
the Judges," (except Lawrence J.) when all the Judges
were clearly of opinion that Mr. Baron Wood had the power
of discharging the jury in the manner above stated, and of
charging a new jury with the prisoner.

There appeared some doubt at first, whether the prisoner had
had an opportunity afforded him of again challenging the eleven
jurymen who had been sworn on the first jury; but, on inquiry,
it came out that he had been asked whether he had any objection
to any of them, and he said "No, he liked them all very well;"
and the conviction was held right. (a)

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REX v. PHINEAS ADAMS.

The prisoner was tried before Mr. Justice Chambre, at the
Lent assizes held at Taunton, in the year 1812, for a grand larceny
in stealing a hat, stated in one count to be the property of Robert
Beer, and in another count to be the property of John Paul.

The substance of the evidence was, that the prisoner bought a
hat of Robert Beer, a hat maker at Ilminster. That on the 18th
of January he called for it, and was told it would be got ready
for him in half an hour, but he could not have it without paying
for it.

While he remained with Beer, Beer showed him a hat which
he had made for one John Paul; the prisoner said he lived next

(a) The correct way, in such case, seems to be to discharge the jury, and
order the clerk of assize to make an entry of their being so discharged, with
the reason of it, and then to call over the jury again and give the prisoner his
Case, ibid. 23., and the authorities there cited, and the argument of Mr.
Justice Foster. See also Rex v. Scalbert, 2 Leach, C.C. 620. cor. Law-
rence J., and 2 Hale, P.C. 295.
door to him, and asked when Paul was to come for his hat, and was told he was to come that afternoon in half an hour or an hour. He then went away, saying he would send his brother's wife for his own hat.

Soon after he went he met a boy to whom he was not known, the prisoner asked the boy if he was going to Ilminster, and being told that he was going thither, he asked him if he knew Robert Beer there, telling him that John Paul had sent him to Beer's for his hat, but added that as he the prisoner owed Beer for a hat which he had not money to pay for, he did not like to go himself, and therefore desired the boy (promising him something for his trouble) to take the message from Paul and bring Paul's hat to him the prisoner; he also told him that Paul himself, whom he described by his person and a peculiarity of dress, might perhaps be at Beer's, and if he was the boy was not to go in.

The prisoner accompanied him part of the way, and then the boy proceeded to Beer's, where he delivered his message, and received the hat, and after carrying it part of the way for the prisoner by his desire, the prisoner received it from him, saying he would take it himself to Paul.

The fraud was discovered on Paul's calling for his hat at Beer's, about half an hour after the boy had left the place; and the prisoner was found with the hat in his possession and apprehended.

From these and other circumstances, the falsity of the prisoner's representation and his fraudulent purpose were sufficiently established; but it was objected on the part of the prisoner, that the offence was not larceny, and that the indictment should have been upon the statute for obtaining goods by false pretences.

The prisoner was convicted, but the learned Judge forbore to pass sentence, reserving the question for the opinion of the Judges.

In Easter term, 25th of April, 1812, all the Judges were present (except Lord Ellenborough, Mansfield C. J., and Lawrence J.,) when they held that the conviction was wrong, that it was not larceny, but obtaining goods under a false pretence. (a)

(a) See Pear's Case, 2 East, P. C. 685. Coleman's Case, ibid. 672. Atkinson's Case, ibid. 673.
CROWN CASES RESERVED.

REX v. JAMES HARVEY.

The prisoner was tried before MACDONALD C. B., at the Lent assizes for the county of Essex, in the year 1812, upon an indictment, stating, that William Chinnery, Esq. was indebted to Thomas Thompson the younger, in seven pounds for goods sold, and that the prisoner at Waltham Holy Cross, on the 23rd of February, 1812, did forge a receipt and acquittance (setting it forth) to defraud Thomas Thompson, against the statute, &c.

The second count was for uttering and publishing the said receipt, and the third count for offering and disposing of the same.

There were three other counts, charging it to be with intent to defraud Mr. Chinnery.

The prisoner was convicted upon clear evidence, but a doubt arose whether the instrument charged to be forged, could be considered as a receipt, that instrument being in the following terms:—

"Wm. Chinnery, Esq. paid to X tomson, the som of 8 pounds, Feb. 18, 1812."

It was not subscribed in the name of Thomas Thompson, but was uttered by the prisoner as a genuine receipt, and taken as such by Mr. Chinnery's housekeeper. It had the proper stamp.

The learned Chief Baron forbore to pass sentence, and reserved the case for the opinion of the Judges.

In Easter term, 25th of April, 1812, at a meeting of all the Judges (except Lord Ellenborough, Mansfield C. J., and Lawrence, J.) this conviction was held wrong, the Judges being of opinion that this could not be considered as a receipt; it was an assertion that Chinnery had paid the money, but did not import an acknowledgement thereof. (b)

(a) 3 G. 2. c. 25. s. 1.
(b) See Hunter's Case, 2 East, P. C. 928. S. C. 2 Leach. C. C. 624.
REX v. THOMAS LONGDEN.

The prisoner was tried and convicted before Mr. Justice Bayley, at the Lent assizes for the county of Northampton, in the year 1812, for stabbing Joseph Richardson, with intent to murder, disable, or do him some grievous bodily harm.

Judgment was respited, in order that the opinion of the judges might be taken on the following case.

The prisoner was a private in the army, and one Chambers was a drummer in the same regiment; they stopped with a deserter they had taken at an inn kept by Richardson's father, and whilst they were there, one James Martin pressed them to enlist him. They at first refused, but Chambers at last gave him a shilling for that purpose. Martin's brother afterwards joined them in the room they were in, and soon afterwards James Martin wanted to go away, but Chambers and the prisoner would not let him, unless he would tell his name, which he refused. Their altercation produced a crowd, and Chambers drew his sword, stood in the door-way of the room they were in, and swore he would stab any one that offered to enter. Richardson, the innkeeper, contrived to get by Chambers, and his son Joseph seized the arm in which Chambers held his sword, and was wresting the sword from him, when the prisoner who had been struggling with James Martin to prevent his getting away, came behind Joseph Richardson, and stabbed him in the back with his bayonet.

It was insisted for the prisoner, that Chambers had authority as a drummer to enlist Martin, that they were warranted in detaining Martin, and that they acted merely to prevent Martin's rescue.

The learned judge did not think Chambers had any such authority, or that they were warranted in detaining Martin, but he respited the judgment till the point should have undergone further consideration.

In Easter term, 25th of April, 1812, at a meeting of all the judges (except Lord Ellenborough, Mansfield C. J., and Lawrence J.) the conviction was held right, that neither the
prisoner or Chambers had any authority to inlist Martin, and that it would have been murder if death had ensued. (a)

Sentence was accordingly passed on the prisoner, but he was afterwards reprieved and recommended to mercy.

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REX v. THOMAS COLLCOTT.

The prisoner was tried before Mr. Justice Bayley, at the Old Bailey sessions, February, 1812, and found guilty of uttering and vending paper with a forged and counterfeited mark and stamp thereon, which was forged and counterfeited to resemble a certain mark and stamp provided and used in pursuance of the 44 G. 3. c. 98.

The forged stamp was upon a box of medicine, and all the parts which were visible resembled a genuine stamp; but what would have been the centre in the genuine stamp, and which would have specified the amount of the duty, was cut out, and the vacancy was concealed by a paper giving an account of the medicine.

The difference between the forged and genuine stamps is pointed out in the former case of Rex v. Collicott, reserved at the January sessions, 1812. (b)

It was insisted that it was essential to a genuine stamp, that it should specify the amount of duty, and that this was not done in these parts of this stamp which were exposed to view.

Mr. Baron Wood and Mr. Justice Bayley thought the point deserved further consideration, and accordingly reserved the case for the opinion of the Judges.

In Easter term, 25th April 1812, this case was argued before the Judges, and they were of opinion that the conviction was right.

(a) Vide sections 73 & 74. of the Mutiny Act, whereby such soldiers only as belong to a recruiting party have authority to enlist persons.

(b) Supra, p. 212.
In murder it is not essential to award the day of execution in the sentence, the statute in that respect being only directory; and if a wrong day is awarded it will not vitiate the sentence if the mistake is discovered and set right during the assizes.

The prisoner was tried and convicted before Mr. Justice Chambre, at the Lent assizes for the county of Cornwall, in the year 1812, upon an indictment against him for murder.

The day of the week on which the trial took place was Thursday, but by mistake it was supposed to be Friday; and in passing the sentence, the execution was directed to be on the following Monday, instead of Saturday.

Immediately after sentence, the court was adjourned till the next morning, without the intervention of any other business. The error was discovered soon after the adjournment, and the prisoner was directed to be brought up at the sitting of the court in the morning, which was accordingly done, and sentence was passed (before any other business was entered upon), directing the execution to take place upon the Saturday.

An order was then made pursuant to the authority given by the 4th and 7th sections of the statute 25 G. 2. c.37., to stay the execution, and relax the restraints imposed by the act, in order to take the opinion of the judges upon the case.

The first section of the statute 25 G. 2. c.37. directs generally that all persons who shall be found guilty of wilful murder, shall be executed according to the law on the day next but one after sentence is passed, unless it shall happen to be Sunday, and in that case on the Monday following.

The second section, after directing how the bodies shall be disposed of in Middlesex and London, enacts, that in case the conviction and execution shall be in any other county or place, the judge shall award the sentence to be put in execution the next day but one after such conviction, except as aforesaid.

The third section enacts, that sentence shall be pronounced in open court immediately after the conviction of such murderer, and before the court shall proceed to any other business, unless the court shall see reasonable cause for postponing the same; in which sentence shall be expressed not only the usual judgment of death, but also the time appointed thereby for the execution thereof, and the marks of infamy thereby directed for such
offenders, in order to impress a just horror in the mind of the offender, and on the minds of such as shall be present, of the heinous crime of murder.

The fourth section enacts, that after such sentence, in case there shall appear reasonable cause, it shall be lawful for the judge, before whom such criminal shall have been so tried, to stay the execution of the sentence at his discretion, having regard to the true intent and purpose of the act.

The first clause of the statute thus only directing the time when the execution shall be: the second, that the judge shall award the time, viz. the day next but one after conviction: the third, having specified the time when the sentence shall be pronounced, and required that in such sentence the time appointed by the statute for executing it, as well as the marks of infamy, shall be expressed; and the fourth clause giving a discretionary power to the judge to stay the execution. The following questions were submitted for the opinion of the Judges.

First. Whether the statute, as far as it requires the time of the execution to be expressed in pronouncing the sentence, is not to be considered as directory only, without invalidating the judgment when omitted, or preventing the entry of the proper judgment on record specifying the time of execution?

Secondly. Whether, supposing the specification of time to be a necessary act in pronouncing sentence, the error was not legally corrected, by what was done in open court the next morning, the court not having proceeded to any other business whatever in the intermediate time?

In Easter term, 25th of April, 1812, this case was taken into consideration at a meeting of all the Judges (except Mansfield C.J. and Lawrence J.), when Lord Ellenborough, Macdonald C.B., Heath J., Grose J., Chambre J., and Bayley J., thought the time did not form a necessary part of the sentence, and that the statute, in that respect, was merely directory; they were also of opinion, that notwithstanding the statute, the Judge might, if he saw fit, order a person convicted of murder to be executed immediately, or at any time within forty eight hours after the conviction, as he might do in any other capital felony. All the Judges agreed that an error in pronouncing the sentence might be set right during the assizes.
1812.

Thomson B., Le Blanc J., and Graham, B., thought that the time of execution formed a necessary part of the sentence, as well as dissection, but that a mistake in that respect might be set right during the assizes. (a)

1812.

Rex v. John Ranson.

The prisoner was tried before Mr. Baron Graham, at the Old Bailey sessions in May, 1812, on an indictment on the 7th G.3. c. 50. (b)

The first count charged, that the prisoner was employed in certain business relating to the post-office, that is to say, in facing letters brought to the post-office, to be sent by the post, and that on the 17th of April, 1812, a certain letter brought to the post-office to be sent by the post to Harding, Oakes, and Willington, at Tamworth, and containing thirty promissory notes for five pounds each came into his hands and possession, being a person so employed; and that he, to wit, on the same day so having the said letter in his hands and possession, feloniously did secrete the said letter containing the said several promissory notes, the same being the property of Dorrians, Magens, and Co. The second count charged, that the prisoner being so employed, and having the said letter containing the said thirty promissory notes in his possession, stole and took out of the said letter two of the said promissory notes of Dorrians & Co. The third and fourth counts stated the property to be of Harding,

(a) See Rex v. Fletcher, supra, 58.

(b) The 7 G.3. c. 50. s.1. enacts, That if any deputy, clerk, agent, letter-carrier, post-boy, or rider, or any other officer or person whatsoever employed in receiving, stamping, sorting, charging, carrying, conveying, or delivering letters or packets, or any other business relating to the post-office, shall secrete, embezzle, or destroy, any letter, packet, bag, or mail of letters which he shall be entrusted with, or which shall have come to his hands or possession, containing (among other things) any bank-note, promissory note, &c. whatsoever for the payment of money, or shall steal and take out of any such letter or packet that shall come to his hands or possession any such bank note, &c. or promissory note whatsoever for the payment of money, being thereof convicted, shall be deemed guilty of felony without clergy.
CROWN CASES RESERVED.

Oakes, & Co. There were counts on the second section of the act for stealing a letter out of the post-office, but which were thought not to apply.

It appeared that the prisoner was employed in the post-office as a facer of letters. It was his business (together with other persons) as the letters were brought into the post-office and laid in a heap, to separate and place them with the directions downwards so as to receive readily the post stamp.

The letter in question, together with three other letters, all directed to Harding, Oakes, and Co. Tamworth, were put into the post-office, on the evening of the 17th of April. The other three letters arrived at Tamworth in the course of the post, on the 18th of April, and bore the post mark of the 17th of April. In the fourth letter (the subject of the indictment) were enclosed thirty notes of five pounds each of the Tamworth bank, in this form:—

"I promise to pay the bearer on demand five pounds at Messrs. Dorrians, Magens, and Co., bankers, London.

"Value received,

"No. 4927. "For Harding, Oakes, & Willington,
28 March, 1812.
"Charles Oakes.
"Five pounds."

This letter did not arrive till the 19th of April, and bore the London post mark of the 18th; and on opening it was found to contain only twenty-eight notes of five pounds each, instead of the thirty notes proved to have been enclosed in the letter before it was sent to the post-office. The numbers of the two notes missing were 4922 and 4952.

On the 21st of April, the prisoner tendered in payment of some goods to a tradesman in London one of the Tamworth bank notes (No. 4922,) missing from the letter, and produced at the same time another five pound note of the same Tamworth bank.

The note No. 4922, as well as all the other notes enclosed in the letter to Harding & Co., were of the same description as above. These notes had been paid at the house of Dorrians and Co., and were on their return to Harding and Co. for the purpose of being reissued.

Harding and Co. were at liberty, under the revenue acts, to reissue their promissory notes from 5l. to 10l. for three years. Their notes when paid at Dorrians and Co. were not crossed as
paid, nor was any mark put upon them, and when returned to Harding and Co. were reissued without any mark to signify they had been before issued and paid.

Before the case went to the jury, the counsel for the prisoner objected, that the notes inclosed in this letter having been paid, were not promissory notes within the statute; that having once been paid they were not the promissory notes of Harding and Co. till by their act of reissuing they had again made themselves responsible.

On the other hand, the difference was pointed out between this act of parliament and 2 G. 2 c. 25. s. 3., the present act not using the words "secured thereby and remaining unsatisfied;" and it was observed, that the notes in question getting into circulation, equally bound Harding and Co. as any other notes issued by them.

Graham B. reserved the point for the consideration of the judges, and the case was left to the jury on the counts for secreting the letter containing the two notes.

The jury found the prisoner guilty.

In Trinity term, 6th of June, 1812, this case was taken into consideration by all the judges (except Gibbs J.) when the majority, viz. Lord Ellenborough, Mansfield C.J., Heath J., Grose J., Graham B., Wood B., and Bayley J., held the conviction right, that these were promissory notes within the meaning of the statute; Macdonald C.B., Thomson B., Le Blanc J., and Chambre J., were of a contrary opinion.

At the Old Bailey July sessions, 1812, Le Blanc J. delivered the following opinion of the judges.

"This was an indictment against the prisoner on the statute 7 G. 3. c. 50. s. 1. charging, that he being a person employed in the business relating to the post-office, viz. in facing letters and packets brought to the general post-office in London, to be from thence sent by the post, did feloniously secrete a certain letter which had been brought to the post-office in London, to be sent by the post from London to Tamworth, containing thirty promissory notes of five pounds each, which letter had come to his hands as such facer of letters.

"It appeared in evidence, that this letter was put into the post-office in London with three other letters, directed to the same persons, bankers at Tamworth, on the 17th of April, 1812;
that the three arrived at Tamworth, in the course of the post, on the 18th, bearing the post mark of the 17th, but that the fourth letter (the subject of the indictment) did not arrive at Tamworth until the 19th of April, and bore the London post mark of the 18th of April, and on opening it, was found to contain only twenty-eight notes of five pounds each, whereas it ought to have contained thirty notes, that number having been proved to have been inclosed in it before it was sent to the post-office in London. One of the notes missed was indentified by its number, viz. 4922, which note was proved to have been tendered in payment by the prisoner on the 21st of April, he having at the same time produced to the tradesman another five pound note of the same Tamworth bank.

"The jury upon the evidence produced upon the trial, were satisfied that the prisoner had taken the opportunity which his employment in the post-office afforded him, of withdrawing this letter from the office on the 17th of April, the day it was put in, and returning it into the post-office again on the 18th, and in the mean time of taking out two of the notes which it contained, or at least one of them, and they accordingly found him guilty.

"There was no doubt whatever of the guilt of the prisoner in point of fact, nor that what he did amounted to a secreting the letter; but at the trial an objection was taken on behalf of the prisoner, that these notes contained in the letter were not in point of law promissory notes within the meaning of the act of parliament, inasmuch as they were promissory notes payable to bearer, drawn by Harding, Oakes, and Willington, bankers at Tamworth, made payable at the banking-house of Dorrians and Co. in London; which had in fact been paid at the banking-house in London, and were, at the time of the felony charged to have been committed, in their passage back to Tamworth, for the purpose of being reissued by the bankers there; which those bankers had right to do under the revenue acts, for a certain time. The objection was, that till they reached the place of their destination, viz. the bank of Harding, Oakes, and Willington at Tamworth, and had been reissued by them, they were to be considered as paid notes only, and of no force or value as promissory notes, and therefore not falling within the meaning of the act of parliament. And on this objection the learned Judge before whom the prisoner was tried at the last session in this place respited
judgment, and reserved the case for the consideration of all the judges.

"This case was taken into the consideration of all the judges, who met and deliberated upon it in the course of the last term.

"The statute 2 G. 2. c. 25. which makes it felony to steal or take by robbery among other enumerated securities 'any promissory note for the payment of money,' uses the expression, 'being the property of any other person notwithstanding any of the said particulars are termed in law a chose in action,' and enacts that 'it shall be deemed to be a felony of the same nature, and in the same degree and with or without benefit of clergy, in the same manner as it would have been if the offender had stolen any other goods of like value with the money due on such notes, &c. or secured thereby and remaining unsatisfied.' The act of 7 G. 3. c. 50. makes it felony to secrete any letter or packet containing any note (among other securities) but without noticing the money secured thereby, or due thereon remaining unsatisfied. It appeared to some of the judges, that these acts being made for the protection of property of the same description, were to be continued as made in pari materia, and that the term 'promissory note' in each act was to be taken to mean promissory notes on which the money thereby secured still remained due and unsatisfied to the holder thereof; that such could not be predicated of these notes, the money due thereon and secured thereby having been paid already to the holders thereof by the bankers in London, who were the agents of the country bankers, and that till they had been again sent forth into the world by the makers thereof, they were not securities for money, nor was any thing due thereon.

"The majority of the judges, however, are of opinion that the notes contained in this letter properly fall within the description of promissory notes mentioned in the act of parliament of the 7 G. 3. c. 50., and therefore that the prisoner was rightly convicted.

"The notes, in point of form, were strictly promissory notes, they remain uncancelled on the face of them, and as against the makers of them, the banking house at Tamworth, they were valid and obligatory, so that into whose ever hands they might come, for valuable consideration, they would be productive and avail-
able against the makers of them. And the Judges who entertained that opinion considered the act of the 7 G. 3. c. 50, as intended to protect all valuable securities of that denomination mentioned in the act which should be sent by the post, from depredation on the part of the persons employed by the post-office, that these, were valuable to the possessor of them and available against the makers of them, and fell within both the word and meaning of the act.

"The consequence is, that the verdict pronounced by the jury on the trial of this indictment at the last session is warranted in point of law, and that judgment must be pronounced accordingly."

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REX v. WILLIAM MARTIN LOLLEY.

The prisoner was tried before Mr. Baron Wood, at the Lancashire summer assizes, in the year 1812. The indictment stated, that he on the 18th of July, 42 G. 3. at Liverpool, was married to Anne Scawia, widow, and afterwards to Helen Hunter, spinster, the said Anne his former wife being then living.

The two marriages were proved to have been duly solemnized at Liverpool, and that the first wife was alive a week before the assizes.

The prisoner’s defence was, that his former wife had divorced him in Scotland before his second marriage, and that his second wife when she married him was fully acquainted with it; as was also the surrogate who granted the licence for the second marriage. These facts were established in proof.

The decree of the commissary or consistorial court of Scotland under the seal of the court was produced, and duly proved and authenticated. It stated all the proceedings previous to the decree, and the decree of divorce. It appeared to be an action instituted by Anne Sugden (the maiden name of the first wife) against the prisoner, stating a fact of adultery committed by him in Scotland, and concludes by praying that he be declared guilty of the crime of adultery, and that he may be divorced from her,

On an indictment for bigamy, where the first marriage is in England, it is not a valid defence to prove a divorce à vinculo matrimonii out of England before the second marriage, founded on grounds on which a marriage cannot be dissolved à vinculo matrimonii in England. The divorces and sentences referred to in s. 5 of the 1 Jac. 1. c. 11. are divorces and sentences of the ecclesiastical courts within the limits to which the 1 Jac. 1. applies.
her society, fellowship, and company, in all times; that he may be declared to have forfeited all the rights and privileges of a lawful husband; and that she may be entitled to marry any free man as if she never had been married, or as if he (the prisoner) was naturally dead. It goes on to pray alimony, and she swears that there is no collusion between her and her husband. The depositions of witnesses to prove the fact of adultery are stated the commissioners then find him guilty of adultery, and decree as prayed, repeating the terms before stated.

The deputy clerk of the commissary court of Scotland, proved that this court held jurisdiction of matters of divorce in Scotland, that it has jurisdiction throughout the whole of Scotland upon marriages and divorces, that there is an appeal from it to the court of session, and that court remits it back to the consistory court, with instructions to affirm or reverse the divorce; that when an action of divorce is instituted, the party instituting takes an oath, called an oath of calumny, by which the pursuer swears that he or she believes the facts stated in the action to be true; and, that there is no concert or collusion between the parties carrying on the action. The defendant does not take any oath. The witness said, that he understood that this court had authority to divorce parties residing in Scotland, that there was a difference of opinion, whether forty days' residence in Scotland by both parties, was necessary to give the court jurisdiction, or whether, if the offence is committed in Scotland and the party cited, resides there it was sufficient, without any previous residence.

A solicitor, who had been in practice in the Scotch ecclesiastical court about twenty years, proved that he was employed by Mrs. Lolley to institute these proceedings, and that he never saw the prisoner till the witnesses were examined on the process of divorce, and had no reason to think there was any collusion in the proceeding. There was a defence by the prisoner denying the libel, and his solicitor attended the examination of witnesses. Mrs. Lolley was in Scotland in the month of November, and remained there till the decree was obtained, viz. on the 20th of March following.

Helen, the second wife, proved that she had agreed to marry the prisoner if a divorce took place.

Raine, for the prosecution, insisted that this Scotch divorce was of no validity so as to authorise a second marriage in England,
and to excuse the prisoner from the crime of bigamy under the third section (a) of 1 Jac. 1, c. 11, which point the learned Judge reserved for the opinion of the Judges.

Raine then insisted, that although there was no collusion as between Lolley the prisoner and his first wife, so as to make the divorce (if good in itself) void on that ground, yet that it had been obtained under such circumstances of fraud and circumvention practised upon his first wife, and of fraud and imposition upon the court that pronounced the decree, that it could not be set up as a bar to the prosecution.

Evidence was then given, showing that the prisoner took his wife into Scotland, that she might be induced to institute a suit against him there for his misconduct; and that he cohabited with a prostitute there, for the very purpose of irritating his wife, and furnishing ground for the divorce.

Holroyd for the prisoner mentioned the Duchess of Kingston's case (b) as being very different from the present, because she obtained her divorce by collusion, and then set it up as her defence; whereas Mrs. Lolley did not collude with her husband. (c)

The learned Judge also reserved this last point for the consideration of the Judges.

The prisoner was found guilty, subject to these points reserved, and judgment was respited to the following assizes.

This case was argued before all the Judges in Serjeants' Inn Hall, on Monday, the 7th of December, 1812, by Brougham for the prisoner, and Littledale for the Crown; when the Judges held the conviction right, being unanimously of opinion, that no sentence or act of any foreign country or state could dissolve an English marriage à vinculo matrimonii, for ground on which it was not liable to be dissolved à vinculo matrimonii in England, and that no divorce of an ecclesiastical court was

(a) Which provides that nothing contained in that act "shall extend to any person or persons that are or shall be at the time of such marriage divorced by any sentence in any ecclesiastical court, or to any person or persons where the former marriage shall be by sentence in the ecclesiastical court declared to be void and of no effect, nor to any person or persons for or by reason of any former marriage had or made within the age of consent."

(b) 11 St. Tr. 262.

(c) Hawk. P. C. c. 42.
CROWN CASES RESERVED.

1812.  

within the exception in s. 3. of 1 Jac. 1. c. 11., unless it was the 
divorce of a court within the limits to which the 1 Jac. 1. ex-
tends. The Judges gave no opinion upon the husband’s con-
duct in drawing on his wife to sue for the divorce, because the 
jury had not found fraud. (a)

1812.  

REX v. SARAH MAYNARD.

Upon a trial 
on the coron-
er’s inquest 
for the mur-
der of a bas-
tard child, a 
woman may be 
found guilty of 
concealment 
under the 
43 G. 3. c. 58. 
s. 4.

The prisoner was indicted at the summer assizes for Kent, in 
the year 1812, for the murder of a child, which if born alive 
would have been a bastard.

The bill was thrown out by the grand jury. The prisoner 
was then arraigned upon the coroner’s inquest, and tried before 
Macdonald, C. B. She was acquitted of the murder, but the 
jury found that she, by secret burying, endeavoured to conceal 
the birth of the child.

It was suggested to the learned Chief Baron by the bar, 
that doubts were entertained, whether where the bill of indict-
ment had been returned “not a true bill,” and the trial proceeded 
upon the coroner’s inquest, the case fell within the provisions 
of the 43 G. 3. c. 58. s. 3 & 4.

In the latter part of the third section it is enacted, “that all 
trials shall be governed by the same rules of evidence, &c. and 
shall proceed as in other cases of murders;” and by the fourth 
section it is enacted, “that it shall and may be lawful for the 
jury, by whose verdict any prisoner charged with such murder 
as aforesaid, shall be acquitted to find the concealment.”

The word charged being used generally, the learned Chief 
Baron conceived that it must apply as well to a charge by in-
quisition as to a charge by indictment, but in deference to the 
doubts which were intimated to him as existing upon the sub-
ject, he respited the judgment and saved the point for the opinion 
of the Judges.

(b) See this case cited in Twey v. Lindsay, 1 Dow. Rep. 124.
CROWN CASES RESERVED.

In Michaels term, 14th of November, 1812, all the judges met (except Le Blanc J.), they were all of opinion that a coroner’s inquisition was a charge, and therefore the prisoner was charged with murder, so as to justify the finding of the concealment and consequent punishment for it, and they held the finding right. (a)

REX v. JOSEPH BALDWIN.

The prisoner was tried and convicted before Mr. Baron Thompson, at the Monmouth summer assizes, in the year 1812, upon an indictment which set forth, that at the great sessions held at Brecon, in and for the county of Brecon, on the 7th of April, 52 G. 3., before George Hardinge and Abel Moysey, Esqs., justices of the great sessions for the county of Brecon, one Isaac Powell, otherwise Ikey, was duly convicted by a jury of the country for feloniously stealing certain goods (specifying them), the property of David Thomas; and that the prisoner, at Bedwellty, in the county of Monmouth, feloniously received part of the said goods (specifying them) knowing them to be stolen.

A copy of the record of conviction of Powell was produced, and proved to have been examined with the original in the custody of the prothonotary of the great sessions. This copy of the record set forth the style of the great sessions as stated in the present indictment, and the indictment found by the grand jury in the common form against Powell for the larceny, and proceeded thus: — "And the said Isaac Powell, otherwise Ikey, having heard the said indictment read, and being asked whether he was guilty of the felony whereof he stood indicted, or not guilty, saith that he is not guilty thereof, and prayed to be tried by God and his country; and William Jones, &c. (stating the jurors’ names), good and lawful men of the country aforesaid, being chosen, charged, and sworn to enquire between our sovereign lord the king and the said Isaac Powell, otherwise Ikey, of the felony aforesaid, do upon their oath say,

(a) See same point in Rex v. Cole, 3 Campb. 371. S.C. 2 Leach, C. C. 1095.
that the said Isaac Powell, otherwise Ikey, is guilty of the felony whereof he stands indicted, and find the value of the several goods and chattels so feloniously stolen, taken, and carried away, to amount to the value of forty shillings; and the said Isaac Powell, otherwise Ikey, in mercy," &c.

The following objections were raised by the prisoner's counsel:

First, That though the copy of the record produced was proved to have been examined with the original in the custody of the prothonotary at Brecon, yet that it should also have been signed by the prothonotary.

Secondly, That no issue appeared to have been joined, and therefore the principal could not be said to have been convicted.

Thirdly, That the judges are described to be justices of the great sessions for the county of Brecon, whereas by the 34 &
35 Hen. 8. c. 26. the justices are to be for the shires of Radnor, Brecon, and Glamorgan, and should have been so described; and that it was not set forth how they derived their authority.

Fourthly, That the record sets forth, that the principal was asked whether he was guilty, not whether he is.

And lastly, That no judgment appears to have been given against the principal, only that he is amerced.

Some of these objections appeared to the learned Judge to have no weight in them, but he thought that others deserved further consideration, and he reserved them all for the opinion of the Judges.

In Michaelmas term, 14th of November, 1812, ALL THE JUDGES met (except Le Blanc J., who was absent), and held the conviction right; and were of opinion that none of the objections were valid. (a)

(a) Vide Hyman's case, 2 East, P. C. 782.
REX v. BRUCE.

The prisoner was tried and convicted before commissioners under the 28 Hen. 8. c. 15. (a) (viz. Lord Ellenborough and Thomson B.), at the Admiralty sessions at the Old Bailey, in the year 1812, upon an indictment for murder.

The murder was committed in Milford Haven, seven or eight miles from the river's mouth, or open sea, and sixteen miles below any bridge across the river; the passage where the murder was committed was about three miles across, and the place itself about twenty three feet deep, and never known to be dry but at very low tides. Sloops and cutters of 100 tons were able to navigate where the body was found; and nearly opposite to that place men of war were able to ride at anchor. It appeared, that the deputy Vice Admiral of Pembroke had of late employed his water bailiff to execute process in that part of the Haven.

All the Judges met (except Grose J.) on the 23d of December, 1812, to consider, whether the place where the offence was committed was to be considered within the jurisdiction of the commissioners; and they were unanimously of opinion that it was, although it was within the body of the county of Pembroke, and although the common law tribunals had a concurrent jurisdiction. (b)

The prisoner was afterwards executed.

(a) The first section enacts, That all murders, &c. hereafter to be committed on or upon the sea, or in any other haven, river, creek, or place where the admiral or admirals have or pretend to have power, authority, or jurisdiction, shall be enquired, tried, heard, determined, and judged, in such shires and places in the realm as shall be limited by the King's commission or commissions, to be directed for the same, in like form and condition as if any such offence had been committed or done in or upon the land.

(b) Lord Coke's opinion on this point in 3 Inst. 115., and that of the judges in 4 Inst. 134, 135, were considered erroneous. MSS. Jud.
The prisoners were tried and convicted before Mr. Justice Gibbs, at the Warwick Lent assizes, in the year 1813, upon an indictment for a burglary, charged to have been committed in the dwelling-house of Josiah Richards, at Birmingham.

Mrs. Richards, it appeared, was the owner of a dwelling-house, and warehouse, under the same roof, and communicating together; there was also an external door to one of the warehouses.

The dwelling-house, Mrs. Richards let to her son Josiah Richards, the person mentioned in the indictment. The warehouse she let to her son Josiah and his younger brother at a separate rent. The two brothers carried on their joint business in the warehouse. The communication between the warehouse and the dwelling-house was constantly used by Josiah the elder brother. The younger brother had no interest in, or concern with, the dwelling-house.

The prisoners broke into the warehouse, and plundered it in the night.

The learned Judge reserved this case in order to have the opinion of the Judges, whether, under these circumstances, the prisoners were properly convicted of breaking into the dwelling-house of Josiah Richards.

In Easter term, 15th of May, 1813, at a meeting of all the Judges (except Lord Ellenborough and Mansfield C. J., who were absent), it was unanimously agreed that the warehouse could not be considered as the dwelling-house of Josiah Richards, as laid in the present indictment, Josiah Richards holding the house in which he lived under a demise to himself alone, and the warehouse under a distinct demise to himself and his brother. The conviction was held wrong.
CROWN CASES RESERVED.

REX v. SAMUEL MILLARD.

The prisoner was tried before Mr. Baron Graham, at the Shrewsbury Lent assizes, in the year 1813, on an indictment for disposing of and putting away, on the 27th of November, 1812, a 5l. Bank of England note, knowing it to be forged, with intent to defraud, &c.

On the 27th of November, 1812, the prisoner came about six or seven o'clock in the evening to the Red Lion public-house at Broseley, kept by one Thomas Tedstell; he called for some negus, and gave in payment for the negus, and a debt which he also owed, a 5l. Bank of England note. This note was regularly produced in court, and proved to be a forgery throughout.

When the note was received from the prisoner it was sent to the Broseley bank, and on its being presented to the cashier of the bank he perceived it was a forgery, and detained it. The prisoner, who sat in the bar, enquired more than once after the note during the absence of the ostler, who was sent with it to the bank. When the ostler returned the prisoner was told that he had given a bad 5l. Bank of England note; he asked where it was, he was told at the bank.

It appeared that the prisoner was in the habit of visiting the public-house kept by Tedstell, and that about six weeks previous to the time in question he had tendered in payment to the waiter at that inn a 1l. Leicester bank-note, which was also sent to the Broseley bank, and, on inspection, was returned, not being considered a good note. The prisoner, on coming to the house about a fortnight afterwards, and on being informed that this note was bad, changed it for a good note.

About twenty minutes after the 5l. Bank of England note in question had been sent to the Broseley bank, and after the prisoner had been informed that the note was bad, he applied there for it, but was informed by the cashier that it could not be returned to him unless he could say how he came by it. The prisoner said he could not tell from whom he had it, that he had had it in his possession for above two months. The cashier informed him it appeared a very suspicious thing, having that note in his posses-
Held, that a person who had been convicted of grand larceny, sentenced to transportation for seven years, confined in the hulks and discharged at the end of seven years, was a competent witness, such confinement operating as a statute pardon; and that having escaped twice during such confinement for a few hours each time, did not destroy the effect of it.

The prisoners were tried for forgery at the Old Bailey July sessions, in the year 1813, before Mr. Justice Bayley, present Mr. Justice Gibbs.

One James Richardson, a witness for the prosecution, was objected to on the following grounds: he had been convicted for grand larceny, sentenced to transportation for seven years, confined in the hulks, and discharged at the expiration of the seven years. But it appeared that during that period, he once made his escape before dinner, and was brought back early the next morning; and at a subsequent time he escaped, and was brought back within an hour. He had some punishment inflicted on him each time for so escaping.

It was insisted on the part of the prisoner, that the competency of the witness was not restored, because he had not suffered the full punishment imposed by his sentence.

Bayley and Gibbs Jrs., thought that his competency was restored, and admitted him accordingly; but as it was a question of general importance, they reserved the point for the opinion of the Judges.

Mr. Justice Gibbs added to the statement of the case for the opinion of the Judges, the following observations.

By 24 G. 3. c. 56. s. 9., the time during which a prisoner shall be confined, under sentence of transportation, is to be reckoned in discharge or part discharge, or satisfaction of the term of his transportation.

If in this case, the time for which the prisoner was absent when he escaped is not to be reckoned as a part of his confinement, he ought not to have been discharged until that deficiency of time had been made up.

By the eleventh section of the 24 G. 3. c. 56., the overseers of the places of confinement are required to make returns upon oath every term, of the names of every person under their custody, their offences, &c. &c., and the names of those who shall have died or shall have escaped (which must mean per-
manently escaped), or have been lawfully discharged from the same.

As Richardson was discharged, and the overseer must have returned his name upon oath as lawfully discharged, must it not be presumed after this, that the deficiency of time was made up before he had his discharge, supposing this to have been necessary.

Gibbs J., stated that he added this latter doubt, because as the witness was never absent for the whole day, perhaps there was no such absence as the law would require to be made up, for he was in confinement some part of every day during the term of seven years.

In Trinity term, 1813, all the Judges (except Heath J. and Dampier J., who were absent,) met, and agreed that Richardson was a competent witness; that suffering seven years on board of the hulks in execution of his sentence of seven years' transportation, operated as a statute pardon; and that the two escapes on which he was so immediately brought back, and served out the remainder of his term, did not destroy the effect of it.

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REX v. WILLIAM BADCOCK, ROBERT BRADY,
AND SILVESTER HILL.

The prisoners were tried before Mr. Baron Graham at the Old Bailey June sessions, in the year 1813, upon an indictment, the first count of which charged them with forging and procuring to be forged, on the 5th of September, 1812, an order for the payment of money of the tenor following:

"London, 4 Sept. 1812.
"Messrs. Robarts & Co., pay 2390 or bearer, five hundred and ninety pounds.
"£590" Magnay and Pickering, Priest Street.

with intent to defraud Magnay and Pickering.
The second count charged, that they did dispose of and put away the forged order with the like intent, knowing it to be forged.

The evidence of the forgery affected all the three prisoners, but proved the forgery to have been committed at Chelsea, out of the city of London.

An accomplice (of the name of Richardson), proved that several meetings had taken place between himself and the three prisoners, and Cook, another accomplice and witness for the Crown, at which meetings a plan was formed of effecting the forgery by getting genuine drafts and copying them. This task was assigned to Hill. It was understood that he was not to be present at the uttering of the forged drafts.

On Friday, the 4th of September, 1812, Richardson (the accomplice), received several forged drafts from Cook at his house in Chelsea. On the same day, Richardson went with Cook and Badcock to the Horns Tavern, Doctors' Commons, where it was agreed between them that various forged drafts should be uttered, and that they should meet the next day, September the 5th, at the Horns Tavern.

The next day Richardson met Brady, Badcock, and Cook, at the Horns. They then agreed that the draft for 590L, mentioned in the indictment, should be presented by Badcock, and they arranged a plan for that purpose, as well as for the uttering of other forged drafts. It had been previously agreed that Badcock and Richardson should be the persons to utter the forged drafts. Brady and Cook then departed for the Margate Coffee House; Richardson went with Badcock to Wood Street, and in the way there he gave the forged notes to Badcock; Badcock delivered the forged draft in question to a porter, whom he had never seen or known before, and desired him to present it at the house of Robarts & Co. for payment. Richardson followed the porter to Robarts & Co., and went into the banking house under the pretence of changing some country bank notes; but in truth to prevent discovery in case the draft should not be paid, by giving timely notice to Badcock. The draft was paid by Robarts & Co., and Badcock received the money from the porter, 590L.

This and other sums, amounting to 3,800L, were divided into five shares. Badcock retained three shares for Brady, Hill, and himself.
CROWN CASES RESERVED.

There was no evidence that Brady received from Badcock his reserved share.

It was proved that Hill, at the time of disposing of the draft, was ill at Brighton, and was not present on the 5th of September at the Horns Tavern. He was acquitted.

The counsel for Brady also argued for his acquittal on the authority of Soares and Atkinson's case. (a)

The doubt was, whether the words of the 45 G. 3. c. 89. following those of the 15 G. 2. c. 13. which apply to bank notes, viz. "offer, dispose of, and put away," admit of a larger or different construction from that of the words "utter and publish," in the former acts.

Under Mr. Justice Gros's direction Badcock and Brady were convicted, reserving for the opinion of the Judges, the doubt which had arisen as to whether Brady upon this evidence could be convicted as an utterer.


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REX v. EDMUND BIRKETT AND ROBERT BRADY.

The prisoners were tried before Mr. Baron Graham, at the Old Bailey sessions, in the year 1813, on an indictment charging that the prisoner Birkett, in Middlesex, had in his possession a certain bill of exchange (b) (setting it out), and that he feloniously made, forged, and counterfeited, &c. upon the said bill of exchange, a certain, false, forged, and counterfeited indorsement; and that the prisoner Brady before the said felony and forgery was done exchange. Discharging an indorsement and inserting another may be described as altering an indorsement. An accomplice does not require confirmation as to the person charged, provided he is confirmed in the particulars of his story.

(a) Supra. 25. S. C. 2 East, P. C. 974.
(b) See 2 G. 2. c. 25. s. 1. and 45 G. 3. c. 89. s. 1. & 2.
and committed, did feloniously incite, counsel, move, cause, and procure the said Birkett to do and commit the said felony and forgery, against the statute, and against the peace, &c., with intent to defraud, &c.

There were other counts for uttering the said bill with a forged indorsement. And other similar counts stating it to be certain bank bill of exchange. The bill as set forth in the indictment was a bank post bill.

The prisoners were both convicted.

At a meeting of the Judges in Trinity term, 1813, Graham B. stated the case to them verbally, not having reserved a case, or sent round to the Judges any written statement. And the Judges were of opinion, that a bank post bill might properly be described as a bank bill of exchange, though as a bill of exchange generally it could not. They were also of opinion that discharging one indorsement and inserting another, or making it thereby a general instead of a special indorsement, was altering an indorsement. They also thought that an accomplice did not require confirmation as to the person he charged, if he was confirmed as to the particulars of his story.

The Judges therefore were of opinion that those counts in the indictment which stated it to be a bill of exchange were not supported, but that the latter counts which stated it to be a bank bill of exchange were supported; and that upon those counts the conviction was right. But Brady being charged in those counts as an accessory before the fact at common law only, and the statute (a) not depriving such accessory of clergy, they thought Brady only liable to a year's imprisonment. (b)

(a) 15 G. 2. c. 15. s. 11. But this act does not mention persons who shall cause or procure the fact to be done, nor does the 46 G. 3. c. 89. s. 1. or s. 2. carry it further.

(b) The form of the bill was as follows:— "At seven days' sight I promise to pay this my sola bill of exchange," which is properly only a promissory note; but the 15 G. 2. c. 13. mentioning "Bank notes, Bank bills of exchange," &c. seems to give these Bank post bills, that denomination of Bank bills of exchange, as there are no other Bank bills answering that description. MS. Jun.
CROWN CASES RESERVED.

REX v. THOMAS HOWELL AND JOHN TAYLOR.

The prisoners were tried and convicted before Mr. Justice Bayley, at the summer assizes for the county of Salop, in the year 1813, of receiving goods stolen by persons unknown.

Sentence of two years' imprisonment and whipping was pronounced upon them by the learned Judge, but as the statute 22 G. 3. c. 58., under which they were sentenced, in specifying the punishment to be inflicted, uses the terms "fine, imprisonment, or whipping," the learned Judge thought it questionable whether a sentence of imprisonment and whipping could be sustained, and ordered the sentence to be altered to imprisonment only.

The learned Judge having stated this point for the opinion of the Judges, in Michaelmas term, 13th of November, 1813, eleven of the Judges met, and they were unanimously of opinion that the word or could not be read and; consequently both imprisonment and whipping could not be inflicted.

REX v. JOHN HIND.

The prisoner was tried before Mr. Justice Chamber, at the summer assizes for the county of Durham, in the year 1813, upon an indictment for bigamy.

The first marriage was in Yorkshire, and took place in April, 1812. The second was at the parish of Houghton-le-Spring, in the county of Durham, in December, 1812, the first wife being then living.

A doubt arose upon the validity of the first marriage, under the following circumstances:—

The parties resided in the parish of Marrick, in the county of York. The parish church of Marrick, at the time of publishing
the banns and celebrating the marriage, was under repair, and wholly, or in a great measure, unroofed, and no service was performed there. The banns were therefore published at the church of Grinton, the parish adjoining to Marrick, and the marriage was also celebrated at Grinton.

The proofs, in all other respects, were sufficient, and the prisoner was convicted and received sentence; but as the statute makes no express provision for the publication of banns and the celebration of marriages under such publication elsewhere than in the parishes where the parties reside (except when such residence is in extra-parochial places), the learned Judge reserved the case for the opinion of the Judges upon the question of the validity of the first marriage, and referred to 26 G. 2. c. 33. s. 1. 5. & 8.

In Michaelmas term, 13th of November, 1813, eleven of the Judges met (one seat being vacant in the Common Pleas), when they all agreed that the tenth section (a) of the act, which had not been adverted to, put an end to the doubt, and that the conviction was right.

(a) The words of which section are, That after the solemnization of any marriage, under a publication of banns, it shall not be necessary in support of such marriage, to give any proof of the actual dwelling of the parties in the respective parishes or chapelry wherein the banns of matrimony were published; or where the marriage is by licence, it shall not be necessary to give any proof that the usual place of abode of one of the parties for the space of four weeks, as aforesaid, was in the parish or chapelry where the marriage was solemnized; nor shall any evidence in either of the said cases be received to prove the contrary in any suit touching the validity of such marriage.
CROWN CASES RESERVED.

REX v. THOMAS RICKETTS LYON.

The prisoner was tried before Lord Ellenborough, present Mr. Baron Thomason, and Mr. Justice Chambre, at the October sessions at the Old Bailey, in the year 1813, and was capitally convicted of forging a power of attorney of one John Ormsby, a midshipman in His Majesty's service.

The indictment which contained ten counts (in several of which the power of attorney was set out at length), charged in some of them the forgery to have been committed "in order to receive" certain prize-money then due to A. B. (which are the words describing the offence in 31 G. 2. c. 10. s. 24., (a) and 9 G. 3. c. 30. s. 5.) (b) In other counts it described the offence to have been committed "in order to receive certain prize-money, &c. with intent to defraud" certain persons by name, which are words which first occur in 9 G. 3. c. 30. s. 6. (c) not having been included in the description of the offence in 31 G. 2. c. 10.

Forged deed is not in that form, or does not comply with those requisites, for the directory provisions do not make the deed (though out of the form prescribed, and without the requisites) wholly void.

(a) The 31 G. 2. c. 10. s. 24. enacts, That whoever shall forge or counterfeit, any letter of attorney, bill, ticket, certificate, assignment, last will, or any other power or authority whatsoever, in order to receive any wages, or other allowances of money or prize-money due, or supposed to be due, to any officer or seaman, or other person who has served or been supposed to have served on in any ship of His Majesty, &c. every such person so offending, being thereoflawfully convicted, shall be adjudged guilty of felony, and suffer death as a felon without benefit of clergy.

(b) Which authorizes the treasurer, comptroller, surveyor, clerk of the acts, or any commissioner of the navy for the time being, from time to time in all places whatsoever, to do, perform, exercise, and execute the office and duty of a justice of the peace to all intents and purposes whatsoever, in causing any person or persons who shall be charged with forging or counterfeiting, or procuring to be forged or counterfeited any letter of attorney, bill, ticket, certificate, assignment, last will, or other power or authority, or with uttering, &c. the same as true, in order to receive any wages, pay, or other allowance due to any officer, seaman or other person who is or has been, or shall hereafter be in the service of His Majesty, his heirs or successors.

(c) Which enacts, That if any person shall utter or publish as true any false, forged, or counterfeited letter of attorney, bill, ticket, certificate, assignment,
The indictment also contained counts for forging a deed, generally within the 2 G. 2. c. 25. (a)

The proof was complete in all necessary circumstances, provided the power, if genuine, would not be wholly void, under the 45 G. 3. c. 72. s. 92. (b), which point was suggested for the opinion of the Judges by Mr. Jernvis, the attention of the Court not having been drawn to this statute by any of the counsel at the trial.

The statute 26 G. 3. s. 63. s. 1. (c) has prescribed certain neces-

last will, or any other power or authority whatsoever, in order to receive any wages, pay, or other allowance of money, or prize-money due, or supposed to be due, to any officer, or seaman, or other person who has really served or was supposed to have served, or who shall hereafter serve or be supposed to have served on board of any ship or vessel of His Majesty, his heirs or successors, with intent to defraud any person, knowing the same to be false, forged, &c., every such person being thereof lawfully convicted, shall be deemed guilty of felony, and shall suffer death as a felon without benefit of clergy.

(a) The 2 G. 2. c. 25. s. 1. (revived and made perpetual by 9 G. 2. c. 18.) enacts, That if any person after the 29th of June, 1739, shall falsely make, forge, or counterfeit, or cause or procure, &c., or willingly act or assist in, &c., any deed, will, testament, bond, writing obligatory, bill of exchange, or promissory note for payment of money, indorsement, or assignment, on any bill of exchange or promissory note, or any acquittance or receipt either for money or goods, with intention to defraud any person whatsoever, or shall alter or publish as true, &c., knowing, &c., then every such person being thereof lawfully convicted, according to due course of law, shall be deemed guilty of felony and suffer death as a felon without benefit of clergy.

(b) The 45 G. 3. c. 72. s. 92. to prevent frauds and impositions, enacts, That all shares of prize and bounty-money due, and to become due to petty officers, seamen, mariners, and soldiers, shall be paid by the agent or treasurer of Greenwich Hospital, and the clerks of the cheque of the said hospital, or his chief clerk, to the persons entitled thereto, or persons authorized by any order to receive the same, which order shall specify the name of the prize or prizes together with the name of the ship or ships by which such prize was taken, and shall contain a full description of the person, signed by the captain and one other signing officer of the ship, and shall be in the following form: “At one day’s sight pay to A. B. or his order;” &c.

S. 121. Recites 31 G. 2. c. 10. s. 24. and 9 G. 3. c. 50. s. 6. and doubts whether the punishment inflicted by these acts extends to acts done with intent to defraud a corporation, re-enacts these clauses, and makes it felony without clergy, to do the act, i. e. among other things to forge a letter of attorney to receive prize-money with intent to defraud a corporation.

(c) By which it is enacted, That no letter of attorney of a petty officer, &c., in order to empower any person to receive any wages, pay, or allowances of
sary forms to be pursued in order to render the powers of attorney of petty-officers and seamen valid. All which forms had been observed in the power in question, except one, viz. the specification in the body thereof "of the number at which the maker of such power stands upon the King's book," but which specification had, prior to the execution of the forged power in question, been rendered unnecessary by the 49 G. 3. c. 108. s. 1. (a)

The 45 G. 3. c. 72. s. 92. for preventing the frauds and impositions practised upon petty-officers, seamen, marines, and soldiers as to their prize and bounty-monies, in consequence of their having improvidently and without sufficient consideration for the same, executed powers of attorney, prescribes the form of a negotiable order, by the petty officer on the agent, or on the treasurer of Greenwich Hospital with a certificate subjoined, required to be signed by the captain and signing officer of his ship.

And the principal question was, whether this prescribed form of order invalidates every power for the purpose of receiving prize-money couched in any other terms or form than what are to be found in the statute 45 G. 3. c. 72. s. 92.

The 121 section of this act (45 G. 3. c. 72.) (which recites the 31 G. 2. c. 10. s. 24., and the 9 G. 3. c. 30. s. 6., as making the forging of a letter of attorney, or uttering the same, &c. to obtain wages or prize money, felony without benefit of clergy,) re-enacts

money of any kind due or to grow due for such service, shall be valid, unless such letter of attorney be made revocable; and no letter of attorney or will made by any petty officer or seaman in the service of His Majesty, his heirs, or successors, whereby any wages, pay, prize money, or allowance of money of any kind is authorized to be received or bequeathed, shall be good and valid, and sufficient for the purpose, unless such power of attorney shall be attested by the captain of the ship, and specify in the body of it the name of the ship, and also the number at which the maker of such will or letter of attorney stands upon the ship's book," &c.

(a) The 49 G. 3. c. 108. s. 1. after reciting a variety of acts on this subject (but not the 45 G. 3. c. 72.), and that they have not been found effectual for the good purposes intended, enacts that so much of the 26 G. 5. c. 63. and of 39 G. 3. c. 54. as requires the number at which the petty officer, &c. stands upon the ship's books to be inserted in the body of the letter of attorney, shall be repealed.

See the schedule B. to this last act, which also gives a power of order different from that in 45 G. 3.
the offence of forging, &c. a letter of attorney, or any other power or authority whatsoever, in order to receive wages, pay, or other allowances of money, or prize money; and the 49 G. 3. c.108. s.1., in repealing one of the requisites in such powers under the provisions of the 26 G. 3. c.63. s.1., recognizes such powers as then legally valid for some, at least, if not for all of the purposes recited.

On the 8th of December, 1813, all the judges met at the house of Gibbs C. B., and,

First, They were all (except Graham B., who doubted,) of opinion that the letter of attorney was a deed within the meaning of the 2 G. 2. c.25. s.1.

Secondly, They were all (except Graham B. and Bayley J.) of opinion that the letter of attorney was not a void instrument, but that it might be the subject of a criminal prosecution; that a payment made under it to the use of the petty officer would be good as against him, and that the attorney under it might bring an action for the prize money, or execute a release.

Graham B. and Bayley J. contr’d, thought that it was a void instrument; that no person, without a breach of duty, could make any payment of prize money under it; and they also thought no person could legally demand payment of prize money under it, and consequently that no person could be guilty of a capital crime in forging it.

The majority of the judges held the conviction right. (a)

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REX v. JOHN CHALKLEY.

This case was tried before Mr. Justice Dampier, at the Old Bailey September sessions, in the year 1813.

The first count of the indictment stated, that John Chalkley, on the 12th of September, 1813, at Hornsey, certain cattle, to wit, the prisoner maimed certain cattle is not sufficient. If the statement is that he maimed certain cattle, viz. a mare, there must be evidence that the animal maimed is of the description specified.

one mare, price 5l., the property of Edward Kimpton, unlawfully, wilfully, maliciously, and feloniously did kill, against the statute, &c.

The second count charged, that he John Chalkley, certain cattle, to wit, one mare, value 5l., the property of Edward Kimpton, unlawfully, wilfully, maliciously, and feloniously did wound, against the statute, &c.

The prisoner was convicted upon this indictment; but upon referring to the evidence, the animal proved to have been killed was a colt, and it did not appear there was any proof of its sex; upon which the learned Judge who tried the case reserved for the opinion of the Judges the following question:—

Whether the allegation that the prisoner killed "certain cattle," without specifying of what description, would have been sufficient?

The learned Judge being of opinion, that if the general description, "certain cattle," was sufficient, the sex of the animal which was stated under a videlicet might be rejected.

On the 14th of December, 1813, all the Judges met at Lord Ellenborough's chambers in Serjeants' Inn, when they all were of opinion, that though cattle only are mentioned in the black act, yet that it is necessary to specify, in an indictment on the statute, the particular species of cattle maimed or killed. They were of opinion, that in this case the words "a certain mare," though under a videlicet, were not surplusage; and that the animal proved by the evidence to have been killed being a colt generally, without specifying its sex, was not sufficient to support the charge of killing, &c. a mare, and therefore the conviction was wrong. (a)

(a) Though the enactment of 9 G. 1. c. 22. is now repealed by 4 G. 4. c. 54. s. 2. the meaning of the word cattle is important under the provisions of the recent statute.
REX v. THOMAS BONTIEN.

The prisoner was tried before Mr. Justice Gibbs, at the Old Bailey sessions, in the year 1813, on an indictment, the first count of which charged, for that he the said Thomas Bontien, on the 12th day of November, 1810, at Tottenham, having in his custody and possession a certain bill of exchange, which said bill of exchange is as follows; that is to say,

"£19 14 0. Tottenham, Nov. 12th, 1810.

Six weeks after date pay to my order, the sum of nineteen pounds fourteen shillings, value received.

"H. Lawrence.

"To

"Mr. Thomas Scott,

"at Messrs. Terres & White,

"No. 4, Staining Lane,

"Wood Street, London."

Felonioualy did falsely make, forge, and counterfeit upon the said bill of exchange, a certain acceptance of the said bill of exchange, which said false, forged, and counterfeited acceptance of the said bill of exchange is as follows; that is to say,

"Accepted,

"Thomas Scott,

"payable, No. 4, Staining Lane,

"London."

With intention to defraud Hannah Lawrence, spinster, against the statute, &c.

The second count charged the said prisoner with feloniously uttering and publishing, as true a like false, forged, and counterfeited acceptance of a like bill of exchange, he well knowing the same to be false, forged, and counterfeited, with the like intent, against the statute, &c.

The third count charged the prisoner with feloniously disposing of and putting away a like false, forged, and counterfeited acceptance of a like bill of exchange, he well knowing the same to be false, forged, and counterfeited with the like intent, against the statute, &c.

There was another indictment against the same prisoner for a
like offence of forging an acceptance on another bill of exchange for twenty pounds, with an intent to defraud the said Hannah Lawrence, with two other counts similar to those in the former indictment.

It appeared from the evidence of Hannah Lawrence, the drawer of the bills in question, that she occupied a house at Tottenham in October, 1810, but being desirous of leaving it, she advertised the house to be let. In the same month of October, she saw the prisoner, who was at that time a perfect stranger to her; he said he came to take the house, and said he would take the fixtures of the shop and what furniture she had to dispose of, if she would take two bills in payment for the furniture; the fixtures of the shop he said he could pay for in ready money, which amounted to twenty-six pounds fourteen shillings, but instead of doing so he made a payment of twenty pounds, and added the six pounds fourteen shillings to the bills. He took possession of the house on the 20th of November, and the bills in question were dated on the 12th of November, 1810, being the day they were given. The prisoner sent for stamps, and wrote the bills; the body of the bill produced (the one for 19l. 14s.) was in the prisoner’s hand-writing, and Hannah Lawrence put her name to it as the drawer: the prisoner wrote across the body of the bill, “Accepted, Thomas Scott, payable No. 4, Staining Lane, London.” He also wrote, “To Mr. Thomas Scott, at Messrs. Terres & White’s, No. 4, Staining Lane, Wood Street, London,” and called Terres & White, his agents. Hannah Lawrence understood from the prisoner that Messrs. Terres & White’s was the place at which both the bills would be payable in six weeks, but the prisoner said, if she could accommodate him by making one of the bills for two months it would suit him better than paying both together, which she agreed to do. The prisoner went at that time by the name of Thomas Scott, and said, if she enquired at Terres & White’s who were his agents, she would find it all satisfactory. On the day the bill for 19l. 14s. became due, it was presented at Messrs. Terres & White’s No. 4, Staining Lane, for payment, but was dishonoured. Terres & White said they had no property whatever in their hands belonging to any person of the name of Scott, and that they had not known any thing of him for some time past. Mrs. Lawrence, on finding the bill was not paid, went down to
Tottenham to see after Mr. Scott; she had an interview with him, and he said he was very sorry he could not take up the bill, but that if she would wait, he would take it up in a few days, to which she consented; the three days being expired, the prisoner requested the time to be extended to another week, which was granted. The witness heard no more of the prisoner until the second bill became due, which at maturity was also presented at the place where it was made payable, and payment refused. She then went to Tottenham again, but did not succeed in finding Mr. Scott. After a period of twelve months had elapsed, the witness went to Union Hall, for the purpose of seeing the prisoner, who was then in custody; he was there addressed by different names, as well as by the name by which he was indicted.

It appeared from the evidence of one of the clerks at Union Hall, that the prisoner was brought there in February, 1813, and upon being asked what his name was, he said Thomas Bontien (the name in which he was indicted). The witness took down the name from the prisoner's own mouth, and that was the only name he gave himself.

It also appeared from the evidence of another witness, who had known the prisoner since the 15th of January, 1813, that about that time, he applied to him to take a house of his in Pratt Street, Lambeth, and that the name he gave was Thomas Bontien.

It further appeared from the evidence of one of the officers of Union Hall, that he apprehended the prisoner in the middle of February, 1813, and that he found in his lodgings in the Lambeth Road, a paper which stated the name of Bontien; it was a certificate of discharge under the insolvent act, which paper was afterwards claimed by the prisoner, and that he also found a number of other writings for rent and a variety of other things, by which he discovered that the prisoner's assumed name was Bontien, but he did not recollect that any of them contained the name of Scott.

The prisoner in his defence called a witness who was a broker, and who proved that he first knew the prisoner in the latter end of August, 1810, and knew him continually by the name of Scott; that the prisoner had a nick name of Bont and Bontien at times. This witness also proved, that he had transacted business with the prisoner in the name of Thomas Scott, in the year 1810, and he never knew him by any other name; and that his only know-
ledge of his having gone by other names was from the public newspapers.

Upon this evidence the jury found the prisoner guilty, but the learned Judge respited the sentence in order to take the opinion of the Judges upon the above case.

On the 14th of December, 1813, all the Judges met at Lord Ellenborough's Chambers, in Serjeants' Inn. The majority of the Judges (Mr. Justice Heath appearing of a contrary opinion), thought that it did not sufficiently appear upon the evidence, that the prisoner had not gone by the name of Scott before the time of accepting the bill in that name, or that he had assumed the name for that purpose, and they therefore thought the conviction wrong. (a)

(a) Vide *Rey v. Inhabitants of Burton-upon-Trent*, 3 M. & S. 537., which was a question whether a marriage by licence in an assumed name, by which name the party (being a deserter) was only known in the place where he lodged and was married, and where he had resided sixteen weeks, was a valid marriage. Lord Ellenborough in giving judgment said, "If this name had been assumed for the purpose of fraud, in order to enable the party to contract marriage, and to conceal himself from the party to whom he was about to be married, that would have been a fraud on the marriage act and the right of marriage, and the act would not have given effect to any such corrupt purpose. But where a name has been previously assumed, so as to become the name which the party has acquired by reputation, that is, within the meaning of the marriage act, the party's true name. The same law has been recognized in the case of negotiable instruments, where, if a party sign an instrument in a name assumed by him for other purposes a considerable time before, such signature will not amount to a forgery; but otherwise, if he assume a name by which he had never been known before for the purpose of fraud. Now here the party assumed the name for the purpose of concealment and not of fraud upon the marriage, and he was known by that name alone for sixteen weeks in the place where he was married. It seems to me therefore that he had acquired the name, and that to have had a licence in any other name would have been a fraud on the marriage act."

The prisoner was tried before Mr. Baron Graham (present Mr. Justice Le Blanc), at the Old Bailey, December, sessions, in the year 1813, on an indictment, the first count of which charged that the said John Plumer was a person employed by and under the post-office, i.e. in sorting letters and packets, and that on the 8th of October, 53 G. S., a certain letter then lately sent by the post from Newcastle-upon-Tyne to the general post-office to be delivered to one Peter King, and containing therein a bill of exchange for the sum of 20l. 10s., came to the hands and possession of the said John Plumer whilst he was so employed, and that the said John Plumer feloniously did secrete the said letter then containing the said bill of exchange, the same being then in force, &c., and the property of one Andrew Bart, against the statute, &c.

The second count was like the first, charging that the prisoner did steal, &c. out of the said letter the said bill of exchange.

The third and fourth counts called it a packet.

The fifth and sixth counts were similar to the two first, stating the bill of exchange to be the property of Peter King.

The seventh and eighth were the same as the fifth and sixth counts, only calling it a packet.

The ninth count charged the said John Plumer with stealing and taking from and out of a certain post-office a letter, then lately sent by the post from Newcastle-upon-Tyne to London, to be delivered to the said Peter King.

The tenth count was the same as the ninth, only calling it a packet.

On the 25th of October, 1813, on searching the prisoner at the general post-office, Lombard Street, there was found in his breeches' pocket a letter addressed to Mr. Peter King, Collett Place, Stepney. The seal of the letter was broken, and appeared to have been in the prisoner's pocket some time; in the same pocket was found a bill for 20l. 10s., which bill was mentioned in the letter.
CROWN CASES RESERVED.

It was proved that Mr. Bart, the person whose name was subscribed to the letter, died on the 8th of November, 1813.

The letter and bill were both in Bart's hand writing, and also the direction of the letter except "paid 2s." which was the writing of one of his clerks, who frequently carried letters to the post. It was proved that King corresponded with Bart, and that he had received no letter or bill on the 8th of October.

The stamper at one of the tables of the post-office proved a stamp on the letter to be the stamp of the post-office at Newcastle. "Pd 2s," in red ink, is the way in which paid letters are marked at the office in the country; that mark is acted upon in London, and the letter delivered free in consequence. There was also on it the E table stamp of the general post-office, which denotes the day of the month and the year when it came to the E table, and that it is to be delivered free. That impression was put on the letter by the witness with a brass stamp. Table E is the first table where the bags are opened.

The postage of a single letter from Newcastle is one shilling, a double letter two shillings.

There was another stamp on the letter, viz. "10 o'clock Oct. 8. 1813 F. N." denoting the 10 o'clock delivery, 8th October, 1813, forenoon. It also denotes a delivery by the second post, and shows that the letter came into the second post department. In a corner of the direction were the two letters "G. P.," denoting that it is within the boundary of the general post delivery. It often happens, that by mistake in sorting, a letter within the general post delivery gets sorted into the twopenny post delivery, and in that case the "G. P." is put on it, and marks that the twopence is not to be charged.

Collett Place, Stepney, to which the letter was directed, was shown to be within the eastern division of the twopenny post. The letters for which division are delivered from the E table in the general post-office Lombard Street, and are sorted there previous to their delivery; ten persons were employed on the 8th of of October 1813, in sorting at that table. The letters are first taken from the sorting offices to the tables in the eastern division. It was the prisoner's duty to take them to that division, and then to assist the other letter carriers of the eastern division in sorting them into their respective walks. Collett Place was not within the prisoner's walk. The prisoner was on duty on the 8th of
October. A person of the name of Stranger, to whom the letter should have come, it being in his walk, proved that he did not receive any such letter on that day.

Alley, for the prisoner, objected to the reading the letter and bill in evidence; and contended, that if allowed to be read, the contents of the letter could not be used as evidence to connect the letter with the bill found in the prisoner's pocket.

The Court admitted the letter and bill to be read in evidence, but Graham B. entertained doubts whether the contents of the letter could be received as evidence to show that the bill in question was enclosed in it from Newcastle; but conceiving there was evidence of the fact, independently of the contents of the letter, he directed the attention of the jury to such evidence, desiring them not to attend to the contents of the letter. The prisoner was convicted.

Graham B. reserved the following questions for the opinion of the Judges: whether, without referring to the contents of the letter, there was sufficient evidence of the facts necessary to the conviction? and whether, as the letter was read, and probably seen by some of the jury, they could safely be understood to have drawn their conclusion only from the facts which were left to them? and if the Judges should doubt as to these points, whether, under all the circumstances, the contents of the letter could be used as evidence against the prisoner?

In Hilary term, 29th January, 1814, present all the Judges (except Mansfield C. J. who was absent), when the conviction was held wrong, on the ground of there not being sufficient evidence that a double letter was put into the post-office at Newcastle the clerk of Mr. Bart, who put it into the post, paid the postage, and wrote "post paid 2s." on it, not being called.
CROWN CASES RESERVED.

REX v. ELIZABETH SMITH.

The prisoner was tried before MACDONALD C. B., at the summer assizes for the county of Norfolk, in the year 1814, on an indictment for embezzling a 5l. note, the property of Charles Pincing.

It was proved that the prisoner was house-keeper to Pincing; and that, on the 20th of July, 1813, Pincing delivered to her two 5l. notes, and other money, part of which was to be paid to the collector of the property tax, and the sum of 5l. 8s. was to be paid to the overseer of the poor, one John Thurkill. It was proved that Thurkill never received the 5l. 8s., or any other sum from the prisoner.

The prisoner was accordingly convicted of embezzlement, but the learned Judge doubted whether the act of the 39 G. S. c. 85. could apply to a female servant, inasmuch as that statute enacts, and declares, "That if any servant or clerk, or any person employed for the purpose in the capacity of a servant or clerk, to any person or persons whomsoever, &c. shall, by virtue of such employment, receive or take into his possession any money, &c. such servant fraudulently embezzling the same shall be deemed to have stolen it feloniously.

From the whole context of this section, and especially from the words into his possession, the learned Judge was inclined to think that a female servant was not within the act, and he forbore to pass sentence, and reserved the point for the consideration of the Judges.

In Hilary term, 29th of January, 1814, all the Judges met (except Mansfield C. J.), and were of opinion that the conviction was wrong, on the ground that there was not sufficient evidence of the prisoner's having embezzled the money; the fact of not having paid the money over to the collector, not being evidence of actual embezzlement, it only negatived the application of the money in the manner directed.

All the Judges agreed that a female was within the act.
CASE.

(MIDDLESEX. Birkett was tried in June sessions, 1813, for forging several indorsements on a bill of exchange, called a bank bill of exchange (being in fact a bank-post bill) for 50l., with intent to defraud Messrs. Grant, Brady, & Co.

Brady was tried as an accessory before the fact.

Birkett was tried as an accessory before the fact. Brady was found guilty, and received judgment of death, and was executed.

Brady was also found guilty, and received judgment of death; but the judges were of opinion that he was only an accessory before the fact at common law, the statute as to bank bills of exchange not extending to procurers, and judgment of death therefore ought not to have been passed upon him.

LONDON. Badcock, Brady, and Hill, were tried before Mr. Justice Grose, in June sessions, 1813, (a) for forging an order for payment of 590l., with intent to defraud Messrs. Robarts & Co.

Badcock was found guilty, and received judgment of death.

Brady was also found guilty, but a question was reserved as to him. (The entry on the record was, he had judgment in Middlesex on indictment No.11.) The judges were of opinion, after considering the point reserved, that this conviction was wrong.

Hill was acquitted.

Badcock was tried before Mr. Justice Gibbs in July sessions, 1813, for disposing of and putting away a forged order for the payment of 560l., knowing the same to be forged, with intent to defraud Messrs. Robarts & Co.

Hill and Brady were tried at the same time as accessories before the fact at common law. And all three were found guilty.

Badcock was executed.

Hill filed a counter plea, and a writ of error was sued out; but he died on the 5th of January, 1814.

Brady remained, at the time this case was considered by the

(a) Supra. 294.
JUDGES, without any judgment on this indictment, being under sentence of death.

The question submitted for the opinion of the JUDGES was,

Whether any and what judgment could then be passed upon Brady, he standing properly convicted of a common law felony, independent of the first indictment?

In Hilary term, 29th January, 1814, all the JUDGES being present (except MANSFIELD C.J.), agreed that the RECORDER should not call the prisoner up for sentence on the last conviction as an accessory on a clergiable felony, but that he should be recommended for a pardon, on condition of being transported for life.

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REX v. THOMAS GLOVER.

The prisoner was tried before Mr. JUSTICE BAYLEY, at the Lent assizes for the county of Somerset, in the year 1814, on an indictment on the 5 G. 3. c. 14. s. 6. (a) for entering a warren in the night-time, and taking in the night-time one coney, against the will of the warrener.

It appeared in evidence, that the prisoner set several wires about six o'clock in the evening of the 18th of December, 1815, and that a rabbit was caught in one of them. The prisoner came between five and six the next morning to the field where

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(a) Which enacts, That if any person or persons shall from and after the first day of June, 1765, willfully and wrongfully in the night time enter any warren or grounds lawfully used or kept for the breeding of conies, although the same be not inclosed, and shall then and there willfully and wrongfully take or kill in the night time any coney or conies, against the will of the owner or occupier thereof, or shall be aiding and assisting therein, and shall be convicted of the same before any of His Majesty's justices of oyer and terminer or general gaol-delivery for the county where such offence or offences shall be committed, every such person and persons so offending and being thereof lawfully convicted, shall and may be transported for the space of seven years, or suffer such other lesser punishment as the court before whom such person or persons shall be tried shall direct.
said Henry Taylor, a petty officer in His Majesty's naval service; she the said Sarah Morris, then and there did, knowing the said last-mentioned false, forged, and counterfeited order and certificate to be false, forged, and counterfeited, which said last-mentioned false, forged, and counterfeited order and certificate is as follows; that is to say, (here the order and certificate was set forth as in the first count with the like intent,) against the statute, &c., and against the peace, &c. And that the said John Morris, before the felony last aforesaid, was done and committed in manner and form last aforesaid, on, &c., at, &c., feloniously did invite, move, counsel, aid, abet, cause, and procure the said Sarah Morris to commit the felony last aforesaid, against the statute, &c., and against the peace, &c.

There were two other counts, with intent to defraud the said Henry Taylor. Four other counts, for forging and uttering an order to receive, &c., and four other counts, for forging and uttering a certificate to receive, &c. The remaining counts were for forging, uttering, and putting away an order for payment of money.

It was proved that Henry Taylor, whose name appeared subscribed to the order, was a petty officer, on board the Frederickstein frigate, in the year 1811, and as such was entitled to prize money on account of the capture of the Teresa by that frigate.

It was proved by a clerk in the cheque office in Greenwich Hospital, that the prisoner, Sarah Morris, a day or two before the 22d of November, 1813, applied at the office for prize money due to Henry Taylor of the Frederickstein, on account of the capture of the Teresa, and produced to, and left with the witness the order mentioned in the indictment. The order purported to be signed by Henry Taylor and the certificate by Charles Hewitt, captain of the Gladiator. Upon examining the order with the prize index it appeared that the money was not come into the office. The prisoner (Sarah Morris), two or three days afterwards applied again at the office; upon which the order was given back to her, and she was directed to apply when the money had been paid into the office.

It was proved by another clerk in the cheque office, that he had received a letter from the other prisoner John Morris, in conse-
quence of which he had sent for the prisoner Sarah Morris, to the office. When she came to the office she again applied for the prize money due to Taylor, and produced the order and certificate. The prize money due to Taylor had then come into the office, and a warrant was prepared for the payment of the money; but it being subsequently discovered that the order was a forgery, the money was not paid, and both the prisoners were apprehended. The signature of Henry Taylor to the order, and of Charles Hewitt to the certificate, were forgeries.

The landlord of the house in which the prisoners lodged stated, that he had two or three times heard John Morris order his wife Sarah Morris to go to Greenwich, respecting the thirty pounds of prize money due to Henry Taylor, her father; that John Morris told his wife that she must go for the money; and as the witness believed, she went to receive it in obedience to her husband's orders. It was in addition to this proved, that the prisoner John Morris, had signed a paper stating that his wife had acted in this business entirely under his orders and directions.

It was also proved that the prisoner, John Morris, applied to a captain's clerk in the navy, in November, 1813, and told him there was about thirty pounds prize money due to his father-in-law, Taylor, whom he described as a caulker in the Frederickstein frigate, and desired witness to fill up the blanks in a blank order and certificate, which he did, except the signatures. That John Morris afterwards said that he had got the paper regularly signed, and was going to send his wife to Greenwich for the money.

Upon this evidence, it was objected by the counsel for the prisoners, that as Sarah Morris, in the part she took in this transaction, acted under the control and direction of her husband, she could not be found guilty; and that the other prisoner could not be guilty as accessory, if she was innocent as a principal. And that in any event the prisoner, John Morris, was not within the statute 49 G. 3. c. 129.

The jury found them both guilty; but judgment was respited that these points might be submitted to the judges.

In Easter term, 7th May, 1814, all the judges met (except Dampier J. who was absent). The conviction was held right. The judges were of opinion, that Sarah Morris was well convicted of uttering the forged order and certificate; and John
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Morris as an accessory before the fact to the felony of uttering, which subjected him to a year’s imprisonment, it being a common law felony. They were also of opinion that under the 43 G. 3. c. 113. John Morris might be tried in the same county where the principal felony was committed.

1814.

REX v. THOMAS FORSYTH.

If an indictment against a bankrupt for concealing property, in stating the property does not sufficiently specify particular parts of it, though it may sufficiently specify others, and those specified may be of the necessary value, the indictment will be bad, because the statement as to the parts not specified tends to embarrass the prisoner.

Where value is essential to constitute an offence, and the value is ascribed to many articles collectively, the offence must be made out as to every one of those articles, for the grand jury has only ascribed that value to all those articles collectively.

The prisoner was tried before Mr. Justice Dallas, at the Lent assizes for the county of Stafford, in the year 1814, on an indictment, the first count of which stated, that the prisoner at Burslem, in the county of Stafford, draper, did use and exercise the trade of merchandize, and thereby sought his living, and that on the 21st November, 52 G. 3., he was indebted to John Burton, Daniel Burton, George Burton, and Emanuel Matthews, co-partners; and to Joseph Thorby, Thomas Paget, Darel Cape, and Orlands Hodgkin, co-partners in 150l. and upwards, and also to divers other persons, and being so indebted, prisoner became bankrupt, and on 28th of same November, upon the petition of the before named persons, a commission of bankruptcy was issued, and that on 30th of same November, at Manchester, prisoner was declared a bankrupt, and notice thereof left at the dwelling-house of prisoner, at Burslem aforesaid, and that notice was likewise given in the London Gazette of 3d December, 52 G. 3. and that prisoner was required to surrender on 23d and 24th December, and 14th January following, at the Talbot Inn, in Market Street Lane, Manchester, and make a disclosure of his estate and effects, and at the last sitting to finish his final examination; that on the said 23d and 24th December, and 14th January, the major part of the commissioners met accordingly, and prisoner duly surrendered himself; and also at several adjourned meetings duly held, prisoner was examined upon oath, touching his estate and effects, and that he devising to cheat his creditors, did not at any of the said times, upon such his examination, truly disclose and discover all his estate and effects, as was his duty so to do, but on the contrary thereof, then and there did conceal and keep secret a bed, six tables, &c. (enumerating many articles) and
"one hundred other articles of household furniture, and a certain debt due from one John Taylor to the said prisoner, to the value of twenty pounds and upwards;" and that the prisoner, then and there, fraudulently and feloniously did remove, conceal, and embezzle the same, with intent to defraud his petitioning creditors, and others his just creditors of the same.

The second count set forth all the proceedings under the commission as in the first count, and that the prisoner fraudulently and feloniously did remove, conceal, and embezzle, the several articles stated in the first count, with intent to defraud the same persons.

The third count was for fraudulently and feloniously removing, concealing, and embezzling the same articles, with intent to defraud his just creditors of the same.

To prove the averment of notice being given in the Gazette, a printed paper purporting to be the Gazette was put in; but no evidence was given that it was bought at the office of the king's printer, nor any further evidence respecting it beyond the mere production. It was therefore objected to until further evidence was given of its being the Gazette; and the counsel for the prisoner stated to the learned Judge, that precisely the same proof had given rise to the same objection, in a similar case tried at Oxford, before Mr. Justice Bayley, in the summer circuit of 1813, and that Mr. Justice Bayley had determined to save the point; but it subsequently became unnecessary, the prisoner having been acquitted on the merits.

The learned Judge saved this point for the consideration of the Judges.

The following objections were then taken to the indictment:

First, That the nature of the act of bankruptcy was not stated.
Secondly, That there was no venue or time, laid to the averment of putting the notice in the London Gazette.

Thirdly, That the household furniture, as well as the debt concealed, &c. were not stated in the indictment with sufficient certainty, the former being, "and one hundred other articles of household furniture," and the latter, "a certain debt due from one A. B. to the said prisoner."

As to the first, the ground of the objection was, that the indictment ought to set forth facts, from which the legal result of bankruptcy may ensue. Here nothing is averred but the legal
result; added to which, it gives the prisoner no notice of the facts, which are essential to the establishment of his guilt. That the indictment ought to state facts, and not the legal result, appears from Hawkins's Pleas of the Crown, where an indictment for refusing to be sworn constable, after having been legitimo modo electus, was held bad, for not showing the manner of election, that it might appear to have been such, as obliged the defendant to take upon himself the office. (a) And in 2 Hawk. P.C. c. 25. s. 66. It is said, "that an indictment for knowingly receiving persons outlawed for, or convicted of felony, or for knowingly suffering such persons to escape may be good, without showing what the felony was, or that it was actually committed, if the record of the outlawry or conviction be set forth with convenient certainty;" and Hawkins observes, "and the most plausible reason of this opinion seems to be this, that it may be sufficiently made out by such record, of what kind the felony was, and also that it was actually committed." So on a contract to pay twenty shillings upon waste done, a declaration alleging that waste was committed is not sufficient, without showing how the waste was done. (b) So in a prohibition upon a discharge of tithes by unity at the time of the dissolution, he ought to show such an unity, by which he may be discharged. (c)

As to the second objection, it was contended, that there must be a venue and time laid, to every material and traversable fact. That the law in this respect was precisely as strict as ever. The statute of Anne, which authorizes the summoning juries de corpore comitatus, and not de vicineto, does not apply to criminal cases. If it is said, that the former part of the sentence in the indictment has a place and time alleged, still it would not be sufficient, as appears by the case cited in 2 Hawkins P.C. c. 25. s. 77. from Dyer 164. b. Thus, on an indictment for rescous, alleging that J.S. committed such a felony on such a day, and year, and place, per quod A.B. prædictum J.S. cepit et arrestavit, et in salvo custodia sua adhibit et ibidem eundem J.S. ha-

(a) 2 Hawk. P.C. c. 25. s. 57. Aelym, 78, 79. Vide also Rex v. Routledge, Dougill. 586.
(b) Com. Dig. Pled. C. 32.
(c) Ibid. R. Hob. 296, &c.
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It is made a quere whether the indictment is sufficient, for no time of the arrest is alleged in the same sentence with it. And Dyer rather thinks, that the mention of the time of the custody in the subsequent sentence does not cure it. Hawkins refers to 3 P. Williams 484. 497., and 4 Bac. Abr. 400. That the case of Denison v. Richardson, (a) was an authority. Also Com. Dig. Pleader, (C. 19 & 20.)

As to the third objection, it was founded on this; namely, that it is of the essence of the offence, that the whole of the goods embezzled should be of the value of 20l. There is no value laid separately to the different articles specified; but the whole are averred to be of the aggregate value of 20l. and upwards. Now, if that part, namely, the household furniture and debt (which are clearly not described with sufficient certainty) are rejected, the court cannot know that the residue is of the requisite value. It cannot be presumed, that the judge confined the evidence to the things properly described, because there is no averment that any part was of the requisite value. See 1 Saund. 286. 2 Saund. 379. 4th Edit.

In Easter term, 7th May, 1814, all the judges met (except Dampier J. who was absent) and held the indictment bad, on the ground of the property concealed not being all specified, and no distinct value having been put upon the articles enumerated.

The judges seemed to think that the production of the Gazette would be sufficient, without proof of its being bought of the Gazette printer, or where it came from.

Le Blanc J. doubted whether averment of notice in the Gazette was not unnecessary here, as the bankrupt had appeared to his commission, and had been examined.

All the judges thought that the judgment ought to be arrested. (b)

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(a) 14 East, 391.
(b) See Rex v. Page, Trin. T. 1818, post, and the statutes 1 G. 4. c. 115. and 6 G. 4. c. 16. s. 112. in notis. By the latter statute it is sufficient if the goods embezzled are of the value of 10l.
Forgery. Forging in a false name, assumed for concealment, with a view to a fraud, of which the forgery is part, is sufficient to constitute the offence. If there is proof of what is the prisoner’s real name, it is for him to prove that he used the assumed name before the time he had the fraud in view, even in the absence of all proof as to what name he had used for several years before the fraud in question. A release from the holder of a bill of exchange to the supposed acceptor will make him a competent witness to prove the forgery in an indictment against the drawer; the drawer having received value for the bill from such holder.

The prisoner was tried before Mr. Justice Dallas at the Gloucester Lent assizes, in the year 1814, for forgery.

The indictment charged the prisoner with having forged the name of Thomas White, as drawer to a bill of exchange dated 8d April, 1812, purporting to be drawn by Thomas White, at two months date, payable to Thomas White for 30l. and directed to Thomas Jennings, Esq., Dublin. The second count charged the prisoner with forging the indorsement, and the third count with forging the acceptance to the said bill of exchange. There were also the usual counts for uttering the said bill of exchange knowing it to be forged.

It appeared that the prisoner came to the parish of Newham in Gloucestershire, on the 21st of March, 1813. Upon his arrival he introduced himself to a Mr. Toovey, an agent of the rector the Rev. Mr. Parsons, who resided at Oxford; he mentioned that his name was White. Mr. Toovey had previously received information from Mr. Parsons, that a person of the name of White was coming as curate. The prisoner after having introduced himself, produced a letter from Mr. Parsons to Mr. Toovey, inclosed in which was a letter which had been sent by the prisoner to Mr. Parsons. In this letter to Mr. Parsons, the prisoner described himself as wishing to accept the curacy of Newham, mentioned that he was unable to leave an inn at which he had been for some time, until he received a remittance which he was expecting. In addition to which, the letter contained the following statements. “My mode is to draw upon my agent in Dublin, for the quarterly portions of my living in Ireland, which he makes payable at his bankers’ in London, and which acceptance I am daily in the expectation of receiving.” In another part, “I should feel a wish for a permanent engagement, and under such circumstances would hold my living in Ireland, which affords a competent support.” The letter was signed “Thomas White.”

The prisoner during his stay at Newham, viz. from the 21st of March to the 22d of May, 1813, passed by the name of White,
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and represented to the persons resident there, that such was his name. He officiated as curate under that name, during the whole of his residence in the parish. On the 17th of April, while he was residing at Newnham, he stated to a person of the name of Thatcher, who was one of the churchwardens of the parish, that he had occasion for some cash. He stated that he had a living in Ireland of 120l. a year, and should want to draw for one quarter's salary, and asked Thatcher if it would be convenient for him to give him cash for his bill; and mentioned at the same time that he had an agent at Dublin of the name of Jennings, who collected his rents, and who would take up the bill when due. Thatcher assented to the prisoner's proposal, and accordingly on the same day the prisoner brought to him the bill which formed the subject of this prosecution. This bill was dated the 8d of April, 1813; and there was written on it in red ink, "Accepted, payable at Hammersley & Co., Bankers, London. W. Jennings." The indorsement of Thomas White was also upon it. Thatcher gave the prisoner the amount of the bill, deducting the discount, viz. three shillings and sixpence. The bill when due was presented for payment, and returned dishonoured.

About the 19th of May, some suspicions having arisen in the mind of Mr. Tovey, as to whether the prisoner was the person he represented himself to be, in consequence of no answers having been received to the references he had given, Mr. Tovey applied to the prisoner, to produce his letters of ordination, and told him that he believed that he was not the person he represented himself to be, upon which the prisoner referred Mr. Tovey to W. Jennings, Esq., Longford Street, Dublin, but before any answer could be received to any letter addressed to Dublin, the prisoner absconded from Newnham.

In the November following, the prisoner was apprehended at Worcester. When addressed by the persons who were sent to take him by the name of White, he replied his name was not White but Williamson, and pretended not to know the persons who addressed him, who were inhabitants of Newnham, and with whom he had been on terms of intimacy when there. The prisoner at this time was dressed in a coloured coat and light waistcoat; and after he was committed, he admitted that he was not a clergyman, and never had been in orders.

It appeared by a witness of the name of Lee, who had known the
prisoner for thirty years, that his name was Robert Peacock, and that he had been an apprentice to Lee at Bath for about a year in the wine trade. This witness also stated that the mother of the prisoner, a Mrs. Peacock, then resided at Bath, and kept a boarding house there.

Several witnesses spoke to the body of the bill, and the drawer's name being in the hand-writing of the prisoner, and to their belief that the acceptance was also in his hand-writing.

Thomas Jennings, whose name as acceptor appeared on the bill, was called as witness to prove the acceptance not to be in his handwriting.

The prisoner's counsel objected to his competency.

In order to remove this objection, a release was tendered to him by the holder, and a release was also tendered to the prisoner as the drawer of the bill.

The prisoner's counsel contended that these releases did not remove the objection, that it was also necessary that the prisoner as the drawer should release the witness; and Rex v. Young, tried before Mr Justice Le Blanc at the Worcester lent assizes, 1805, (a) was cited as an authority.

(a) Rex v. Young; Worcester Lent assizes, Coram Le Blanc J., MS. Jur.
The prisoner was indicted for forging a bill of exchange, drawn by Thomas Stenthous & Co., on Messrs. Walker and Beck, Fish-Street Hill, London. There were also counts on the forging of the acceptance, and of the indorsement by Edward Corn, to whom it was made payable, and counts with similar variations for uttering the bill, &c.

At the commencement of the trial, Abbott, for the prisoner, pressed that the prosecutors might make their election as to which of these offences they would proceed upon, saying, that the forgery of the bill, the acceptance, and indorsement, were treated as, and were, in fact, separate offences; and that the prisoner ought not to be harassed with these several charges, on the same trial. But Le Blanc J. said, that the rule only was that a prosecutor should not be permitted to give in evidence several distinct offences involving different transactions, and referred to Thomas's Case, 2 East. P.C. 954., where several offences connected with each other were given in evidence on the same indictment.

The fact of uttering, as it appeared in evidence (for there was no proof of the forging by the prisoner) was, that the prisoner came to the shop of the prosecutors, Leigh & Co., glovers, in Worcester, for the purpose of buying a quantity of gloves, to send, as he said, to America. He said his name was Young, and gave a card "Yates & Young, ship-agents Liverpool." He stated he
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Peake for the prosecution, after referring the learned Judge to a passage in 2 East. P. C. 1008. (a), said he did not think it right in a capital case to press the learned Judge to receive the evidence.

The learned Judge rejected the evidence.

The case being closed, Taunton for the prisoner submitted that, in point of law, he was entitled to an acquittal, and cited Aickle's case, 2 East, P. C. 968. as clearly in point.

The learned Judge overruled the objection upon the authority of Bontein's case (b) stating that the use the prisoner made of his false name, as it bore upon the question of forgery, was

had the bill in question, and that the drawer and indorser lived at Birmingham. He asked the prosecutors if they knew them. Being answered in the negative, he showed the bill and directed the prosecutors to have the gloves ready as soon as possible the next day, as the ship was about to sail. It was agreed that the prisoner should have the gloves by three o'clock the next day, and he left the bill with the prosecutors, and told them the public-house at which he was, in Worcester. The prosecutors having, the next morning, received intimation that the bill was a forgery, sent it over to Birmingham for the inspection of the supposed drawers and indorser, and their suspicions being confirmed by this inspection, they, in company with a witness, went to the prisoner at the place where he had left his address; the prisoner not suspecting that he was discovered, indorsed this bill in the name of Yates and Young, and delivered it to the prosecutors, upon which he was immediately apprehended.

To prove the forgery of the indorsement, Edward Corn, the supposed indorser, was called, and the prosecutors offered to release him.

Le Blanc J. held that this would not make him a competent witness, for the prosecutors never having parted with the goods which they had agreed to furnish, the consideration for the bill, nor given any other value for it, had not acquired any property in it. They had therefore no right which they could release. The property in the bill, supposing it to be a genuine instrument, was still in the prisoner, and therefore, according to the doctrine which prevailed in cases of forgery, the supposed indorser could not be examined as a witness to impeach its validity until released by the prisoner.

The prosecutors called several other witnesses who clearly proved both the bill and the indorsement to be forgeries, and the prisoner was convicted.


(a) "A release from the holder of a promissory note to the supposed drawer in whose name it was forged, there being no other name on the note to whom the drawer could be liable, made him a competent witness to prove the forgery of his hand-writing upon an indictment against the prisoner, who had passed it off to such holder without any indorsement."

(b) Supra, 260.
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matter of intent upon which the jury were to form their opinion, subject to the direction of the Judge in point of law.

The learned Judge in summing up the case to the jury, stated that if they were satisfied of the false drawing and endorsing, the question would then arise, whether this amounted under all the attendant circumstances to the offence charged: if the jury were of opinion that the prisoner had gone to Newnham in the fictitious character of a clergyman, and with a false name, for the sole purpose of getting possession of the curacy, and of the profits belonging to it; and that it was no part of his original plan and purpose to raise money by drawing and indorsing a bill or bills in a false name, but that being established there, and known and trusted, in the name of Thomas White, the supposed curate of the parish, the scheme of raising money by drawing and indorsing the bill in question, sprung up incidentally and collaterally, and was altogether foreign to his original purpose and design; in such case he thought they should acquit the prisoner. But if on the contrary, looking at the letter written preparatory to his going to Newnham, announcing a fund, and an agent in Ireland who was to accept bills drawn by the prisoner, and to make them payable in London, the reiteration of the assertion after his arrival at Newnham, and in particular to the person whom he was charged by the indictment with having defrauded, his having drawn the bill in question a few days after his arrival there, upon an asserted agent in Ireland, accepted payable in London, which bill, when due, was returned unpaid, the prisoner having absconded before it became due, and having never been heard of after it became due, till at a distant day he was apprehended at Worcester, then passing, not under the name of White but Williamson, and denying himself to be the person who under the name of White had been at Newnham, and drawn the bill in question. If putting these circumstances together, the jury were satisfied that the prisoner went to Newnham, intending fraudulently to raise money by a bill or bills drawn by him in a false name, and indorsed in such name, and that the bill in question was drawn in prosecution of such intent, they ought to find the prisoner guilty.

The jury found the prisoner guilty, but not of forging the acceptance. The learned Judge then asked them whether they meant to find that the prisoner had formed the scheme of raising
money by forged bills before he went to *Newnham*; to which they answered they did, being of opinion he went there, meaning to commit such fraud. The learned Judge respited the sentence, and reserved the case for the consideration of the judges.

In *Easter* term, 7th May, 1814, eleven of the judges met (Dampier J. being absent,) and were unanimously of opinion that where proof is given of the prisoner's real name, and no proof of any change of name until the time of the fraud committed, that it throws it on the prisoner to show that he had before assumed the false name, on other occasions and for other purposes. The judges were also of opinion, that where the prisoner is proved to have assumed a false name for the purpose of pecuniary fraud connected with the forgery, drawing, accepting, or indorsing, in such false or assumed name, is forgery. They also thought that the evidence of *Jennings* the acceptor ought to have been received to prove the acceptance not his handwriting, he being released by the holder of the bill, which the prosecutor was; for in this case the prisoner had received value for the bill of the prosecutor, which distinguished it from the case of *Rex v. Young* relied on at the trial, where the prisoner had only offered the bill, and had not received the value for it; and in which case the prisoner remained the real owner or holder of the bill. The judges were unanimously of opinion, that the conviction was right.

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**REX v. JAMES HUGH EDWARDS ALIAS CHARLES EDWARDS**

The prisoner was tried before *Newman Knowlys, Esq. Common Serjeant*, at the Old Bailey October sessions, in the year 1814, on an indictment, charging that he on the 11th of November, 50 G. 3. at Saint Andrew Holborn, by the name of James Hugh Edwards, took to wife one Jemima Hart, and to her was married, and that he afterwards on the 30th of October, on the 54 G. 3. woman was not known by the name he delivered in, and that she is not rightly described by that name in the indictment.
at St. James's, Westminster, by the name of Charles Edwards, feloniously took to wife one Anna Timson, and to the said Anna Timson was married; the said Jemima, his former wife being alive, against the statute, &c.

The first marriage was proved by the brother, who was present, and witnessed the register of the marriage, and the sister of the first wife proved, that the prisoner left his first wife at Wakworth, the very morning that he was married to the second wife at St. James's Church, and that the first wife was then living.

The second marriage was proved by the prisoner's hand-writing to the note for the publication of banns, and his signature of "Charles Edwards," to the register of the second marriage. The hand-writing of the name "Anna Timson," in the same register of the second marriage at St. James's, Westminster (as the person then married to the said Charles Edwards), was proved by her father. The father likewise proved the prisoner's acknowledgment of his marriage to his daughter.

The father also proved that his daughter's name was Susanna, not Anna, and that he never knew or suspected that she had ever been called or known by the name of Anna, till he heard of her having been married to the prisoner by that name.

The jury found the prisoner guilty; but the Common Serjeant doubted whether the evidence proved the allegation in the indictment, as to the second marriage to Anna Timson, and whether the indictment should not have charged that the prisoner was married to Susanna Timson, by the name of Anna Timson, upon which doubts alone he reserved this case for the opinion of the Judges.

In Michaelmas term, 12th November, 1814, at a meeting of all the Judges, they held that the prisoner, having signed the note for the publication of the banns of himself and Anna Timson, and having signed the register of his marriage with her by that name wherein she went, should not be permitted to defend himself on the ground that he did not marry Anna Timson, although such might not be her name; and that therefore the conviction was right.
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The prisoner was tried before Mr. Serjeant Marshall, at the summer assizes for Lancaster, in the year 1814, for embezzling a sum of 6l. 12s. 11d., the property of Salisbury and others, with whom the prisoner had lived in the capacity of clerk, and who had entrusted the money to his care.

The prisoner pleaded guilty, but was very strongly recommended to mercy by the prosecutors, and under circumstances so favourable to him, that the learned Serjeant stated, that he should have thought it sufficient to have sentenced him to a years' imprisonment, had he not conceived that under the statute 39 G.3. c.85., he was bound to pass sentence of transportation upon him, and that he had only a discretionary power as to the term. The sentence passed was transportation for seven years; but upon doubts which subsequently presented themselves to the mind of the learned Serjeant the sentence was resited, in order that the opinion of the Judges might be taken on the following question, viz. Whether a Judge had the power to pass the milder sentence?

The concluding words of the act are, "and every such offender, his adviser, &c. being thereof lawfully convicted or attainted, shall be liable to be transported for any term not exceeding fourteen years, in the discretion of the court before whom such offender shall be convicted or adjudged."

In Michaelmas term, 20th November, 1814, this case was taken into consideration by all the Judges, when they were all of opinion, that the act having made this offence larceny, subjected it to the general punishment of larceny, and that the Judge might inflict the like punishment on the offender as in cases of common larceny. They thought that the words of the act were not imperative on him to transport, and stated that their opinion coincided with the practice universally adopted since the act passed.
1814.

REX v. MANUEL AMARRO.

The prisoner was tried before Mr. Justice Le Blanc, at the Admiralty sessions at the Old Bailey, July 1814, on an indictment which charged that Manuel Amarro, on 5th of October, 1813, upon the high sea, within the jurisdiction of the Admiralty of England, that is to say, about one mile from Tarragona, on the coast of Spain, in and upon Mark Kirby, a subject of our lord the king, feloniously, wilfully, maliciously, and unlawfully, did make an assault, and with a certain sharp instrument to wit, a knife, feloniously, &c. did stab and cut the said Mark Kirby, in and upon the lower part of his belly, with intent in so doing, feloniously, wilfully, and of his malice aforethought, to murder the said Mark Kirby against the statute, &c. The second count was the same as the first, only stating the prisoner's intent to be, to maim and disable the said Mark Kirby. The third count was like the first count, only stating the prisoner's intent to be, to do the said Mark Kirby some grievous bodily harm.

The prisoner was a Portuguese sailor, serving on board an English transport, lying at Tarragona mole. The person stabbed was the captain of the transport.

The prisoner was convicted and sentence passed upon him.

No objection was taken by the prisoner's counsel, but a doubt occurred to the learned Judge who tried him, whether this was a capital felony cognizable under the Admiralty commission, if committed on the high seas out of England or Ireland.

The statute 43 G. 3. c. 58. (b) extends only to offences committed in England and Ireland.

(a) By this statute it is provided, that the crimes and offences mentioned in 43 G. 3. c. 58. which shall be committed on the high seas out of the body of any county, shall be liable to the same punishment as if committed on land in England or Ireland, and shall be inquired of, &c. as treasons, &c. are by 38 Hen. 8.

(b) If any person either in England or Ireland shall wilfully, maliciously, &c. See also the preamble to this act.
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The question was, whether by 39 G. 3. c. 37. (a) it is to be extended to all parts on the high seas within the Admiralty jurisdiction.

In Michaelmas term, 12th of November, 1814, this case was argued before all the judges in the Exchequer Chamber, by Pooley for the prisoner, and Gurney for the prosecution, when the majority of the judges were of opinion that the conviction was wrong. The judges thought that by the terms of the statute 43 G. 3. c. 58. the offence of maliciously cutting, &c., is made a felony only if the act be done in England or Ireland, that the act is therefore local; and supposing the statute 39 G. 3. c. 37. to have the effect of making every act which would be felony if committed on shore, a felony triable by the Admiralty commissioners if committed on the high seas, (whether such act be felony before the statute 39 G. 3., or made so after that time,) (b) yet the statute 43 G. 3. not making it a felony generally, cannot be extended beyond the limits prescribed by the act to the high seas.

Wood B. thought otherwise, that the statute 43 G. 3. was general, and the act if done at sea was cognizable by the Admiralty jurisdiction.

Graham B., at first entertained the same opinion, but subsequently acquiesced with the other judges.

(a) By which it is enacted, That all and every offence which after the passing of this act shall be committed upon the high seas out of the body of any county of this realm, shall be and are hereby declared to be offences of the same nature respectively, and liable to the same punishment respectively, as if they had been committed on the shore.

(b) See Rex v. Bailey, ante, 1. and Rex v. Curting, and others, ante, 123.
Having counterfeit silver in possession, with intent to utter it as good, is no offence, for there is no criminal act done.

The prisoner was tried before Gibbs C.J., at the summer assizes for the county of Cornwall, in the year 1814, on an indictment, charging the prisoner with having in his possession a quantity of counterfeit silver coin knowing it to be counterfeit, for the purpose of uttering it as good and lawful coin.

There were counts in the indictment charging the offence differently, but the evidence applied only to these which charged it in the manner above stated.

The prisoner was convicted.

Harris for the prisoner moved in arrest of judgment, upon the ground that this was not an offence prohibited by the 15 G. 2. c. 28. or any other statute, nor was it a misdemeanor at common law, nor even an act done with intent to commit the misdemeanor created by the 15 G. 2. of uttering, &c.; for the mere having counterfeit silver in his possession could not be considered as such an act. The counsel for the prosecution cited Rex v. Scofield, 2 East, P.C. 1028.

Gibbs C.J., finding this point had been reserved for the opinion of the Twelve Judges, in the case of Rex v. Parker, 1 Leach C.C. 41. and not decided, he reserved this case.

In Michaelmas term, 12th of November, 1814, all the Judges met, and were unanimously of opinion that this was not an offence, and that judgment should be arrested.

It appeared on enquiry made, by the direction of the Judges, of the solicitors of the Mint, that the law officers of the Crown had not approved of indictments in this form, and that no such indictment had been preferred before the year 1812; since then there had been several convictions on such indictments at the quarter sessions, but none at the assizes. (a)

(a) Vide Rex v. Heath, ante, 184. But getting it into possession with intent to utter it, is an offence. Vide Rex v. Fuller, Easter T. 1816, post, 308.
REX v. WILLIAM BENNETT AND ANOTHER.

The prisoners were tried before John Silvester, Esq. Recorder, at the Old Bailey sessions, December 1814, on an indictment, the first count of which charged them with burglariously breaking and entering the dwelling-house of William Alexander Frampton, about eleven o'clock in the night of the 15th of November, 1814, at St. Catherine Cree, with intent to steal the goods and chattels of the said William Alexander Frampton, in the said dwelling-house.

The second count charged the prisoners with burglariously breaking and entering the dwelling-house of the said William Alexander Frampton, with intent to steal the goods and chattels of Harriet Frampton, William Alexander Frampton, and Thomas Day Frampton.

The third count was for burglariously breaking and entering the house of Harriet Frampton, William Alexander Frampton, and Thomas Day Frampton, with intent to steal their goods.

The fourth count was for burglariously breaking and entering the dwelling-house of William Alexander Frampton and Thomas Day Frampton, with intent to steal their goods.

William Alexander Frampton proved, that he was in partnership with Harriet Frampton and Thomas Day Frampton, as wholesale grocers. The dwelling-house at the place where their business was carried on was occupied by W. A. Frampton only, his partners residing elsewhere. The premises consisted of two fronts, one in Leadenhall Street, and the other in Billiter Lane. The dwelling-house was in Leadenhall Street, in the parish of St. Andrew Undershaft; the warehouses and stables, and a large pair of gates which enclosed the premises, were in Billiter Lane, in the parish of St. Catherine Cree. These large gates were in a gateway, over which were the warehouses of the partners; and when the gates were shut, it was completely enclosed to the ceiling of the gateway. The access to the stables was through this covered gateway, and at the end of the covered gateway there was an open yard, on the left hand side of which were
warehouses. The only communication into the upper warehouses over the stables and gateway, was through these warehouses on the left side of the yard, but there was a door or loop hole, and crane over the large gates in Billiter Lane, to take heavy goods into the warehouses; and there was also the convenience of a trap-door in the roof of the covered way, for the purpose of loading and unloading goods in case of rain.

On the right hand side of the yard was the dwelling-house. There was a door from the dwelling-house to the warehouses connected by a wooden shed, which door was never fastened, so that the moment any one entered the yard from Billiter Lane, they might go into the dwelling-house as well as into the warehouses, without any interruption. The gates, it appeared, were always locked as soon as it was dark, but they were kept open during the day for the convenience of the business carried on there; no person but the partners, their servants, or their customers, had any right to use the gateway.

It was further proved, that about two o'clock in the morning of the 16th of November, 1814, the prisoners broke open the outer gate and entered the premises, and were taken with instruments of house-breaking upon them.

The jury found both the prisoners guilty of burglary.

The counsel for the prisoners moved in arrest of judgment (a) on the following objections, which were reserved for the opinion of the Judges.

First, That the breaking and entering the outer gate of the premises in Billiter Lane, in the parish of Saint Catherine Cree, was not a breaking and entering of the dwelling-house.

Secondly, That the dwelling-house charged to have been broken and entered, is in the parish of Saint Andrew Undershaft, and not in the parish of Saint Catherine Cree, as alleged in the indictment: and,

Thirdly, That if breaking and entering the external gate in the parish of Saint Catherine Cree, is a breaking and entering the dwelling-house within the curtilage; and which dwelling-house, as appears by the evidence, is in the parish of Saint Andrew Undershaft; then the indictment should have specially

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(a) The objections arise out of the evidence and go to the conviction.
CROWN CASES RESERVED.

averred, that the dwelling-house of the prosecutors, situate in the parish of Saint Andrew Undershaft, was broken and entered, for that the dwelling-house and its curtilage cannot be separated.

In Hilary term, 4th of February, 1815, at a meeting of all the Judges, the conviction was held wrong. The Judges were unanimous, that the outward fence of the curtilage not opening into any of the buildings, was no part of the dwelling-house; and the prisoners were discharged. (a)

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REX v. MARY MAZAGORA.

The prisoner was tried before Mr. Justice Bayley, at the Lent assizes for the county of Warwick, in the year 1815, on an indictment for disposing of a forged bank note, with intent to defraud the Governor and Company of the bank of England.

It appeared in evidence, that the prisoner sold this note, and eight others, with a full knowledge that they were all forged. An inspector from the bank proved that the notes were such as would be likely to impose upon any persons who were not inspectors at the bank; but that they were not likely to impose upon any of the inspectors there. He stated also that notes were never paid at the bank until after they had been examined by an inspector. It was not a probable consequence therefore of the prisoner’s act, that the bank would be defrauded by means of these notes.

Bayley J. directed the jury to say what their opinion was as to the prisoner’s intention to defraud the bank.

The jury in returning their verdict stated, that they thought the prisoner had the intention to defraud whoever might take the notes; but that the intention of defrauding the bank in particular did not enter into her contemplation.

The prisoner was found guilty; but as the learned Judge en-

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(a) Vide 1 Hale, P. C. 559. See Rex v. Davis, Hilary T. 1817, post, 522.
entertained some doubt as to the intent of defrauding the bank, he respited the execution in order to take the opinion of the Judges upon the following question, whether an intention to defraud the bank ought to be inferred, where that intention was not likely to exist in fact in the prisoner's mind, and where the caution ordinarily used would naturally protect the bank from being defrauded?

In Easter term, 1815, the Judges met, and were unanimously of opinion that the prisoner, upon the evidence in this case, must be taken to have intended to defraud the bank, and consequently that the conviction was right. (a)

REX v. WILLIAM CABBAGE.

The prisoner was tried before Thomson C. B. at the Lent assizes for the county of Lancaster in the year 1815, on an indictment for feloniously stealing, taking, and leading away a gelding, the property of John Camplin.

The second count charged the prisoner with feloniously, unlawfully, wilfully, and maliciously, killing, and destroying a gelding, the property of the said John Camplin, against the statute, &c.

The counsel for the prosecution elected to proceed upon the first count.

It appeared that the gelding in question was missed by the prosecutor from his stables on Monday, the 28th February, 1815. The stable door, it appeared, had been forced open. The prosecutor went the same day to a coal-pit, about a mile from the stable where he saw the marks of a horse's feet. This pit had been worked out and had a fence round it, to prevent persons from falling in, one of the rails of this fence had been recently knocked off: a man was sent down into the pit, and he brought up a halter, which was proved to be the halter belonging to the gelding. In about three weeks after the finding of the halter,

(a) See Rex v. Sheppard, ante, 169.
the gelding was drawn up from the coal-pit in the presence of the prosecutor, and who knew it to be his. The horse's forehead was very much bruised, and a bone struck out of it. It appeared that at the time this gelding was destroyed, a person of the name of Howarth was in custody, for having stolen it in August 1813, and that the prosecutor Camlin had recovered his gelding again about five weeks after it was taken. Howard was about to take his trial for this offence when the gelding was destroyed in the manner stated. The prisoner Cabbage was taken into custody on the 27th March, 1815; and on his apprehension he said that he went in company with Anne Howarth, (the wife of Howarth who was tried for stealing the said gelding), to Camplin's stable door, and that they together forced open the door, and brought the horse out. They then went along the road, till they came to the coal-pit before mentioned, and there they backed the horse into the pit.

It was objected by the prisoner's counsel, that the evidence in this case did not prove a larceny committed of the horse; that the taking appeared not to have been done with intention to convert it to the use of the taker, "animō furandi et lucrī causa."

Thomson C. B. overruled the objection, and the prisoner was convicted upon the first count of the indictment, for stealing the horse. Judgment was passed on him, but the learned Chief Baron respited the execution to take the opinion of the Judges, as to the propriety of the conviction.

In Easter term, 1815, the Judges met to consider this case, and the majority of the Judges held the conviction right. Six of the learned Judges, viz. Richards B., Bayley J., Chamber J., Thomson C. B., Gibbs C. J., and Lord Ellenborough, held it not essential to constitute the offence of larceny, that the taking should be lucri causa; they thought a taking fraudulently, with an intent wholly to deprive the owner of lucri causa. Dallas J., Wood B., Graham B., Le Blanc J., and Heath J., thought the conviction wrong. (a)

A British subject is indictable under the 33 Hen. 8, c. 23, for the murder of another British subject, though the murder was committed within the dominion of a foreign state. Stating in the indictment that the person murdered was at the time in the king's peace, is sufficient to show that he was a British subject.

The conclusion in the indictment that the offence was against the king's peace, shows sufficiently that the prisoner was a British subject.

For a common law felony, committed abroad, but made triable here under the 33 Hen. 8, c. 23, the indictment need not conclude contra formam statuti.

(a) By the first section it is enacted, That if any person being examined before the King's council upon any cause of murder, &c. do confess any such offences, or that the said council upon such examination shall think any person so examined to be vehemently suspected of any murder, &c., that then by the King's commandment His Majesty's commission of oyer and terminer under his great seal shall be made by the chancellor to such persons, and into such shires or places as shall be named and appointed by the King for the speedy trial,
condly, That the prisoner and the deceased should have been stated to have been subjects of our Lord the King, at the time of the offence committed. Thirdly, That the indictment ought to have concluded, "contra formam statuti."

In Easter term, 1815, this case was argued before the Judges by Curwood for the prisoner, and Abbott for the Crown. The Judges held that this offence was triable here, though committed in a foreign kingdom, the prisoner and the deceased being both subjects of this realm at the time it was committed. The Judges were also of opinion that the stating Harriet Gasket to be in the king’s peace at the time, sufficiently imported that she was the king’s subject when the offence was committed, and that the statement in the indictment that this was against the king’s peace, sufficiently imputed that the prisoner was also at the time a subject of this realm. The Judges were of opinion, that it was not necessary that the indictment should conclude contra formam statuti.

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**REX v. JACOB WINTER.**

The prisoner was tried and convicted before Mr. Baron Richards, at the Lent assizes at Reading, in the year 1815; upon an indictment, the first count of which charged him with feloniously, &c. setting fire to, and burning, and consuming a certain out-house of one Thomas Rogers, in the parish of Chevelly, in the county of Berks, against the king’s peace, &c. The second count charged the same offence to be against the statute, &c. The fifth count charged the prisoner with setting fire to, &c. a certain house of the said Thomas Rogers; and the sixth count charged that the prisoner set fire to the said house, then being in the possession of the said Thomas Rogers, with intent thereby to injure and defraud him, against the statute, &c.

&c. of such offender, which commission shall have power and authority to enquire, hear, and determine all such murders, &c. within the shires and places limited by their commission by such good and lawful persons as shall be returned before them, &c."
It was clearly proved that the prisoner set fire to and burnt the building in question.

It appeared that Thomas Rogers lived in a house, very near to which was a school-room which was burnt. The school-room was separated from the dwelling-house by a narrow passage about a yard wide. The roof of the school-room was thatched with straw. The roof of the house, which was covered with tiles, reached over part of the school-room. The dwelling-house, school-room, a garden, and some other buildings, and the court which enclosed them all, were rented by Thomas Rogers, of the parish, for six pounds per annum. There was one continued fence round all the premises; and no person but Rogers and his family had a right to come within the fence.

Upon this evidence, Shepherd for the prisoner contended, that the building burnt was not a "house" or "out-house" within the statute (a), and that consequently the prisoner could not be convicted upon this indictment.

Richards B. over-ruled the objection, and the prisoner was found guilty; but the learned Judge respited the sentence, and reserved the case for the opinion of the Judges.

In Easter term, 1815, the Judges met, and held this conviction right, being unanimously of opinion that this was a building within the meaning of the statute.

(a) 9 G. 1. c. 22. s. 1., which enacts, That if any person shall unlawfully and maliciously set fire to any house, barn, or outhouse, &c. being thereof convicted, shall be adjudged guilty of felony without clergy.
CROWN CASES RESERVED.

REX v. JOHN JOSIAH CHISHOLM.

The prisoner was tried before Mr. Justice Dampier, at the Exeter Lent assizes, in the year 1815.

The first count of the indictment charged the prisoner with forging a certain bill of exchange, as follows:

"3d. Rate, Robert Gore.

"Entered 13th day of May, 1814. £ s. d.

"Full pay from 13th day of May, 1814, to
4th day of August, 1814 ... 25 4 0
Amount of deductions ... 2 17 3

"Nett pay £ 22 6 9

"Gentlemen,

"8th day of August, 1814.

"Ten days after sight.

"Please to pay to Mrs. Elizabeth Coall, or order the sum of twenty-two pounds six shillings and nine pence, being the nett personal pay due to me, as acting lieutenant of His Majesty's ship Zealous, between thirteenth day of May, 1814, and fourth day of August, 1814, for value received.

"Robert Gore.

"Approved,

"T. Boys, captain of H. M. S. Zealous.

"To the commissioners of His Majesty's navy.

"London."

with intent to defraud Elizabeth Coall, widow, against the statute, &c.

The second count was for uttering, &c. the said bill of exchange with the like intention. The third and fourth counts were similar to the first and second, laying the intention to be to defraud His Majesty. There were four other counts similar to the first four, only describing the instrument to be a bill for payment of money, instead of a bill of exchange.

The case was clearly proved against the prisoner.
It was admitted by the counsel for the Crown, that the indictment could not be maintained on the 35 G. 3. c. 94. s. 3. (a) and 34. (b) and the four last counts were abandoned; but they contended that the instrument was a bill of exchange within the 2 G. 2. c. 25. (c).

On the behalf of the prisoner it was contended, that it was clear the instrument was intended to be a bill under the 35 G. 3. c. 94. s. 3., and that it was not a bill of exchange, because it was not drawn on any persons bound to accept or pay it. That the commissioners of the navy were removable at pleasure, and might be changed between the drawing and presenting of the bill, and

(a) The third section enacts, That it shall and may be lawful for every commissioned officer, master, and surgeon in the naval service who shall be upon actual service, and be entitled to the full pay of such service, at the end of every three months, or of any longer period, as they may think proper, to draw, or cause to be drawn, a bill, or set of bills of the same tenor and date, in duplicate or triplicate, as the case may require, upon the commissioners of the navy for the net amount of the personal wages or pay that shall appear to be due to him, which bill or set of bills shall state the rate or description and name of the ship or vessel to which such officer shall belong, and his station on board of the same, and also the full amount of the personal wages or pay which shall be due to him, and the period for which such wages or pay shall have accrued or become due, together with the amount of the usual deductions and abatements, and other deductions which shall appear upon the ship's muster books, to which the same shall be liable, and the net residue of the personal wages or pay to be drawn for.

(b) By the thirty-fourth section it is enacted, That if any person shall falsely make, forge, or counterfeit, or cause or procure, &c. or willingly act and assist in the false making, &c. any order, bill, extract, or certificate, or shall utter and publish as true any false, &c. order, bill, &c. knowing, &c. for the purpose of defrauding the public, or any commissioned officer, master, or surgeon of the navy, widow, or other person in the said act mentioned, of any wages or pay, half-pay, pension, or bounty payable to them, or any of them respectively, every such persons being thereof convicted shall be adjudged felons without clergy.

(c) By 2 G. 2. c. 25. s. 1. it is enacted, That if any person shall falsely make, forge, or counterfeit, or cause or procure, &c. or willingly act or assist in the false making, &c. any deed, will, testament, bond, writing obligatory, bill of exchange, promissory note for payment of money, indorsement or assignment of any bill of exchange, promissory note for payment of money, or any acquittance or receipt either for money or goods, with intention to defraud any person whatsoever, or shall utter or publish as true any false, &c. deed, &c. with intention to defraud any person, knowing, &c. then every such person being thereof lawfully convicted shall be deemed guilty of felony without clergy.
if so, to whom was it to be presented,—those who were such commissioners when it was drawn, or when the bill came to the navy office? This objection they contended made the description of it as bill of exchange improper. That the instrument was not drawn to be presented for acceptance or payment by the commissioners as a bill of exchange would be, but to procure an assignment of it by virtue of the 35. G. 3. c. 94, to be paid by the treasurer of the navy, from a certain fund.

To this it was answered, that the intention with which this instrument was made was not material; and that it was not necessary to constitute a bill of exchange for this purpose; that the parties on whom it was drawn should be liable to accept, or even be existing persons; it was enough if the instrument purported to be drawn on a person or persons to whom it might be presented.

The prisoner was found guilty, but the learned Judge repented the sentence till the ensuing assizes, that the question might be submitted to the Judges, whether this instrument was properly described as a bill of exchange.

In Easter term, 1815, the Judges met and considered this case; they were of opinion that the conviction was right, that the instrument set forth in the case was in form a bill of exchange; and that the statute of the 35 G. 3. c. 94., did not prevent its being so considered, because that statute did not extend to a bill drawn by an acting lieutenant.

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**REX v. WILLIAM SPENCER.**

The prisoner was tried and convicted before Mr. Justice Bayley, at the Warwick Lent assizes, in the year 1815, of embezzling two notes for 1l. each.

It appeared in evidence, that the prisoner applied to one Richard Boynton, (a carrier from Walsall to Birmingham,) to give him some employment, and that Boynton agreed to let him carry out parcels, and go of messages, when the prisoner had no

and it is sufficient if he was employed to receive the money he embezzled, though receiving money may not be in his usual employment, and although it was the only instance in which he was so employed.
other employment; for which Boynton was to give him what he should think fit. The fourth day of the prisoner’s being in this employment, Boynton gave him an order upon which he was to receive 2l. from Messrs. Smith and Campbell; he received the money, and embezzled it.

The learned Judge entertained some doubt, whether the prisoner could be considered as a servant within the statute 39 G. 3. c. 85. (a) and reserved the case for the consideration of the Judges.

In Easter term, 1815, all the Judges met, and held this conviction right. (b)

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1815.

REX v. JOSIAH BOX.

The prisoner was tried before Mr. Justice Chamber (present Mr. Baron Graham), at the Old Bailey sessions, April, 1815, on an indictment for forging a promissory note, which was as follows:

"On demand, we promise to pay Mesdames Sarah Waller and Sarah Doubtfire, stewardesses for the time being of the Provident Daughter’s Society, held at Mr. Pope’s, the Hope, Smithfield, or their successors in office, sixty-four pounds with five per cent. interest for the same, value received this 7th day of February, 1815.

"£ 64.

"For Felix Calvert & Co.

"John Forster."

(a) Which enacts, That if any servant or clerk, or any person employed for the purpose in the capacity of a servant or clerk to any person whomsoever, shall, by virtue of such employment, receive or take into his possession any money, goods, &c. for or in the name or on the account of his master or employer, and shall fraudulently embezzle, secrete, or make away with the same, or any part thereof, every such offender shall be deemed to have feloniously stolen the same from his master or employer, for whose use and in whose name or on whose account the same was or were delivered to or taken into the possession of such servant, clerk, or other person so employed, although such money, goods, &c. was or were no otherwise received into the possession of his or their servant, clerk, or other person so employed, and every such offender being thereof convicted, shall be liable to be transported for any term not exceeding fourteen years.

with intent to defraud Thomas Capps and George Walker, against the statute, &c.

The second count was for uttering the same, knowing, &c.

The third and fourth counts were similar to the two first, varying only in alleging the intent to be to defraud John Forster, whose name purports to be subscribed to the note.

The fifth and sixth counts alleged the intention to be to defraud Robert Calvert, Charles Calvert, Thomas Calvert, Thomas Hutchkiss Littler, and John Forster, who were the partners composing the firm of Felix Calvert & Co.

It appeared in evidence that there was a friendly society of females, such as described in the forged instrument, and that they had among themselves different offices held by certain members of the society, of whom one was governess, two others stewardesses, and they had likewise a committee. These persons continued in office half a year, and were then succeeded by others. They had some money in the funds of which 100l. 3 per cent. consols was part, which stood in the names of Capps and Walker, the two persons named in the two first counts of the indictment who were the husbands of two of the members, and were called their stockholders.

The prisoner was the society's clerk, whose business it was to keep their accounts and give them his advice when required. The 100l. 3 per cent. consols, had, about the beginning of February, been sold out by Capps and Walker the stockholders, in consequence of an application for the purpose made to them by the prisoner, who falsely told them that the governess and stewardesses with the consent of the majority required them so to do, and to pay the money to him the prisoner, who was to place it in the hands of Messrs. Calvert & Co. The sale of the stock produced 64l. and the broker by the direction of the stockholders, paid the money to the prisoner, to be placed by him in the hands of Messrs. Calvert & Co. for the good of the society, and in order to make a greater interest from it, than in the funds.

On 7th of March, there was a meeting of the society, that being the day when those in office were to go out, and they were to be succeeded by others. The box which contained their papers was opened as was usual at that meeting, in the presence of the prisoner, when finding no security for the produce of the stock, the
sale of which was then communicated, a conversation took place with the prisoner, and he took out of his pocket the paper in question, and read it, saying, "Here ladies, is a satisfaction where your money is," or "That is a security for your money." He then delivered it to the governess, who put it in the box.

The forgery was clearly proved.

It was objected by the prisoner's counsel that the intent to defraud was not proved, as alleged in any of the counts of the indictment. It was not to defraud Capps and Walker as laid in the two first counts, they being only the stockholders, the security not having been given to them, but to the society, and having been made subsequent to the fraud practised upon Capps and Walker. Nor was it to defraud John Forster, whose supposed signature was to charge the whole partnership, of which he was only one. Nor was it to defraud Calvert & Co. but the society. It was also objected that the firm of the supposed makers of the note being described Peles Calvert & Co., and not Felix Calvert & Co. as it should have been, there were therefore no persons to whom that description could apply.

The learned Judge overruled these objections.

It was then further objected that the instrument set forth in the indictment, did not purport to be a negotiable promissory note, but merely an engagement to be accountable to the society to pay to such of them as should at any time be their stewardesses, the money supposed to be borrowed of the society by Calvert & Co. with interest.

The counsel for the prosecution, in answer to this last objection contended that the statute 33 G.3. c.54. had incorporated societies of this description, and by s.10. vested their effects in their officers, so as to enable them to take security to those officers and their successors, which might be negotiable.

In answer to this, the counsel for the prisoner contended that even if the act might otherwise have that effect, it could not in this case, because by the second section (a) it is declared, that no

(a) Which enacts, That all such rules, orders and regulations of such society shall be exhibited in writing to the justices of the peace in quarter sessions, in and for the county, &c. where such society shall be established, who may annul or confirm them; and after the confirmation thereof by such justices, all
society shall be within the act, till regulations for their government have been confirmed and filed at the quarter sessions which had not been done here.

The jury found the prisoner guilty. But the Court reserved the questions of law on the last objection for the opinion of the Judges.

This case was in Easter term 1815, argued before the Twelve Judges, by Adolphus for the prisoner, and Gurney for the Crown, and was adjourned for further consideration.

In Trinity term, 1815, the Judges met and held the conviction right. They were of opinion that this note as stated in the indictment was a valid promissory note within the statute of 2 G.3. c. 25. (a)

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**REX v. JAMES CARSON.**

The prisoner was tried before Mr. Justice Bayley at the Carlisle summer assizes, in the year 1815, for embezzling money which came to his possession as the servant of William M'Call.

The first count of the indictment charged, that the prisoner received into his possession and embezzled divers, to wit, two bank notes for one pound each, one bank note for two pounds, two notes for one pound each, two notes for one guinea each, and certain monies numbered, to wit, four shillings and eight sixpences.

The second count charged, that the prisoner received and embezzled divers, to wit, four bank notes for one pound each, two bank notes for two pounds each, four promissory notes for one pound each, four promissory notes for one guinea each,

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such rules, &c. so confirmed, shall be signed by the clerk of the peace at such sessions, and a duplicate thereof deposited with him and filed with the rolls of the session there; and no society shall be within the meaning of this act until the rules, &c. shall have been confirmed and filed as aforesaid.

(a) Vide Rex v. Chisholm, supra. 297.
and certain monies numbered, to wit, four shillings and eight sixpences.

The third count was like the second, except that it stated the monies numbered to be ten shillings and ten sixpences.

The fourth count was, that the prisoner received and embezzled divers, to wit, twenty bank notes for one pound each, ten bank notes for two pounds each, twenty promissory notes for one pound each, twenty promissory notes for one guinea each, and twenty shillings and twenty sixpences.

The evidence was, that the prisoner received and embezzled four pounds ten shillings paid by one John Rickerby; the payment was in five one pound notes, out of which the prisoner gave ten shillings change.

The prisoner was found guilty. But as none of the counts pointed specifically to this transaction, either by stating the exact sum received, or by naming Rickerby as the person from whom it was received, or even by alleging the true day of the receipt, the learned Judge doubted whether the evidence of this transaction was properly admissible under this indictment. He accordingly respited the sentence, and reserved the case for the consideration of the Judges.

In Michaelmas term, 1815, all the Judges met. They were of opinion that the evidence supported the indictment. The indictment charged the prisoner, among other things, with embezzling notes for one pound each; and evidence had been given that there were one pound notes in the sum of money embezzled. (a)

(a) Vide Rex v. Furneaux, Trin. T. 1817. post, 355.
CROWN CASES RESERVED.

REX v. WILLIAM STANDLEY, WILLIAM JONES, AND JOHN WEBSTER.

These prisoners were tried before Nathaniel Gooding Clarke, Esq., at the Lent assizes for the county of Warwick, in the year 1816, upon an indictment charging them with stealing certain promissory notes (therein described) of the value in the whole of one hundred and five pounds ten shillings, the property of John M'Laughlin.

It appeared in evidence that the prosecutor was in the market at Birmingham on the 25th August, 1815, and that he accidentally met with the prisoner Standley there, who until then was a perfect stranger to him; after some conversation together respecting the articles which the prosecutor dealt in, the prisoner Standley induced the prosecutor to accompany him to a coffee room at the Royal Hotel. In that room they found the prisoner Jones, who appeared to be a stranger to Standley. After remaining there a short time, the prisoner Webster entered the room; he appeared not to know the other prisoners. After a short interval Webster advanced to the table where the other two prisoners and the prosecutor were sitting, and took out of his pocket a paper which he called a five pound note, and offered to bet it, that none of the three could show a hundred pounds a-piece. Standley and Jones appeared to be in a great passion, and asked the prosecutor if he had any money; the prosecutor replied he had not any money with him, but that he had a hundred pounds in a gentleman's hands in the town, and that he had the gentleman's acknowledgment for it in his pocket, which he took out and placed on the table. Standley and Jones desired him to get this money, and he accordingly left the room for the purpose of getting it. Jones also left the room at the same time, pretending he was going to get some money; and by appointment Jones and the prosecutor met, after the latter had obtained his money, at a place previously agreed on; and they both returned together to the same coffee room, where they found Webster and Standley, no other person being in the room. Standley and Jones

If several act in concert to steal a man's goods, and he is induced by fraud to trust one of them in the presence of the others with the possession of such goods, and another of them entices him away, that the man who has his goods may carry them off, all are guilty of felony. The receipt by one is a felonious taking by all.
appeared to be great friends of the prosecutor's, and he put the money into the prisoner Jones's hands to be counted; and when it was counted, Webster expressed himself convinced that the other two prisoners had a hundred pounds a-piece, and that he had lost his bet. No money was produced but the prosecutor's, except the paper which Webster said was a five pound note. Jones kept the prosecutor's money in his hand, after he had counted it. Standley then proposed to Webster to gamble for more money, in order to give him a chance of winning his money back. Standley put a piece of money under a paper, and the prisoner Webster was to guess right two times out of four to win. Jones then handed the prosecutor's money (which he had not returned to the prosecutor after he received it to count) to Standley, and Standley laid it upon the table. Standley and Webster then began to gamble for the prosecutor's money. Whilst Standley and Webster were gambling, Jones touched the prosecutor, and beckoned him out of the room with him; they went a short distance from the door of the room into the street, when Jones desired the prosecutor to return, and remain with the other two prisoners, until he came back. On the prosecutor's return, he found that the prisoners Standley and Webster were gone, as was also the prosecutor's money.

The prosecutor stated that he thought Standley and Jones were his friends; that he was not angry or surprised to see them gamble with his money; and that he did not object to Standley doing what he did.

It was proved by the police officers who apprehended the prisoners, that on searching them they found the prosecutor's money divided amongst them, a part of it being found upon each of them.

It was objected by the prisoner's counsel that there was nothing to go to the jury; that it was a mere gaming transaction, and not a felony.

The learned Judge, in summing up the evidence, told the jury that he was of opinion that the obtaining and carrying off the money in the manner stated, amounted to felony. If the jury believed the evidence, and were satisfied the prisoners were known to each other, and were acting in concert together, with a fraudulent intention of possessing themselves of the prosecutor's money; and that the money had been obtained and carried off
as stated by the prosecutor; he thought the charge as laid in the indictment was made out against the prisoners.

The jury found all the prisoners guilty. Sentence was not passed upon them, the judgment being respited till the ensuing assizes, for the purpose of submitting to the Judges the propriety of the direction to the jury, and the subsequent conviction.

In Easter term, 1816, this case was considered by the Judges; and they were unanimously of opinion that the conviction was right.

**REX v. RICHARD MORFIT AND ANOTHER.**

The prisoners were tried before Mr. Justice Abbott, at the Maidstone Lent assizes, in the year 1816, upon an indictment for feloniously stealing two bushels of beans, value five shillings, the goods of John Wimble.

On the trial it was proved, that the prisoners were servants in husbandry to Mr. Wimble, and had the care of one of his teams; that Mr. Wimble's bailiff was in the habit of delivering out to the prisoners at stated periods, from a granary belonging to him, and of which his bailiff kept the key, such quantity of beans as Mr. Wimble thought fit to allow for the horses of this team. The beans were to be split, and then given by the prisoners to the horses. It appeared that the granary-door was opened by means of a false key procured for that purpose, which was afterwards found hid in the stable; and that about two bushels of beans were taken away on the day, after an allowance had been delivered out as usual, and nearly that quantity of whole beans was found in a sack, concealed under some chaff in a chaff-bin in the stable.

The learned Judge desired the jury to say whether they thought both the prisoners were concerned in taking the beans from the granary; and also whether they intended to give them to Mr. Wimble's horses. The jury answered both questions in the affirmative.

Mr. Justice Bayley had, at the same assizes, directed a verdict of acquittal under circumstances of the like nature; but
ABBOTT J., was informed that the late Mr. JUSTICE HEATH had many times held this offence to be larceny, and that there had been several convictions before him; and also that to a question put by the grand jury at Maidstone to the late LORD CHIEF BARON MACDONALD, he had answered that in his opinion this offence was a larceny.

On account of this contrariety of opinion, the learned JUDGE, before whom this case was tried, thought it advisable to submit the question to ALL THE JUDGES, the offence being a very common one: a verdict of guilty was taken; but judgment respited until the ensuing assizes.

In Easter term, 1816, eleven of THE JUDGES met, and considered this case. Eight of the JUDGES held that this was felony; that the purpose to which the prisoners intended to apply the beans did not vary the case. It was, however, alleged by some of THE JUDGES, that the additional quantity of beans would diminish the work of the men who had to look after the horses, so that the master not only lost his beans, or had them applied to the injury of the horses, but the men’s labour was lessened, so that the “Luci causa,” to give themselves ease, was an ingredient in the case. GRAHAM B., WOOD B., and DALLAS J., thought this not a felony, and that the conviction was wrong. (a)

1816.  

REX v. PHILLIP FULLER AND THOMAS ROBINSON.

This was an indictment for a misdemeanor tried before Mr. BARON GRAHAM, at the Lancaster spring assizes in the year 1816.

The first count charged, that the defendants on the 18th March, 1816, with force and arms unlawfully did procure twenty-three pieces of counterfeit coin made to the likeness of good

(a) Vide Rex v. Cabbage, supra, 292.
coin of this realm, called shillings, with intent to utter the same in payment to the king's subjects, as good and current coin of the realm; and thereby to defraud them, the defendants then and there well knowing the same to be counterfeit, against the king's peace, &c.

The second count charged, that the defendants on, &c. aforesaid, with force and arms unlawfully had in their custody and possession, twenty-three pieces, &c. (as before) with intent to utter them as lawful coin of the realm, &c.

It appeared that on the 18th of March 1816, the defendants came to The New Inn at Truro. The defendant Robinson came first with a horse, and Fuller shortly after; they joined company. The landlord's suspicion was excited by some information he had received of an attempt by Fuller to put off a bad shilling, in consequence of which, when the defendants left the house he followed them with two constables. The constables overtook the defendants who were together, on the road, about a quarter of a mile from the inn. Fuller was just going to mount the horse, but was prevented by the constables, who told the defendants that they understood that they had been passing bad money, and that they must go back with them. When they were brought back, Robinson led the horse into the stable; and on coming from the stable into the house he saw Fuller stripped and under search, upon which he ran toward the stable; one of the constables followed him, and on searching him they found in his breeches pocket a quantity of bad shillings inclosed in a paper; another packet was also found in his waistcoat pocket, both parcels contained about twenty bad shillings in each, carefully wrapped up in soft paper, and separated from each other by folds of the same sort of paper. Nothing was found on Fuller but good money.

The jury found both the defendants guilty.

Graham B. respited the sentence, taking sureties for the appearance of the defendants, at the ensuing assizes, in order to take the opinion of the judges, whether the facts here stated amounted to the commission of a crime.

In Easter term, 1816, all the judges met, and were of opinion that the procuring counterfeit coin with intent to utter the same in payment, &c., as laid in the first count of this indictment, was an offence; and that the having in possession counterfeit coin
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1816.  

**Fuller's Case.**

unaccounted for and without any circumstance to induce a belief that the defendants were the makers, was evidence of procuring.

The Judges held that the conviction was right as regarded Robinson, but wrong as to Fuller. (a)

1816.  

**Rex v. John Danelly and George Vaughan.**

If several agree to commit a burglary, but one communicates the intent to an officer, that he may take the other two, and the officer is upon the watch accordingly; the person who has made that communication to the officer will not be particeps criminis in the burglary, though he is present when it is committed and pretends to assist the other two, but, in fact, expedites their apprehension. Nor will it make any difference, though his object in detecting is to obtain for himself (by previous agreement with the officer) part of a reward that will be payable on conviction. S.C. 2 Marshall, 571.

In consequence of this understanding, on the morning of the 14th December, 1815, Dannelly told Vaughan that he was going out that evening with two other persons, (Betts and Rawlings, notorious thieves,) upon the sneak; and that if any thing was done he should expect his share of the reward. It was agreed that a man of the name of Barnet, who had been a city officer, should assist Vaughan in taking the other two, and that Dannelly should have his share of the reward. At night, Dannelly, with Betts and Rawlings, set off from the Falcon in Portpool Lane. Vaughan and Barnett, it was agreed with Dannelly, were to watch them out: but through some mistake, the thieves effected their object without being apprehended by the officers in the manner agreed on.

On the morning of the 15th of December, Dannelly met Vaughan and Barnett again at a public-house in Holborn; and a conversation took place about the mistake of the night before, in the course of which Dannelly said that he, with Betts and Rawlings, had gone upon the screw to a draper’s shop (describing it so as to be understood by Vaughan to be the prosecutor’s house), and had sneaked out a piece of broad cloth. Dannelly, at this meeting, told Vaughan and Barnett, that he, together with Betts and Rawlings, and a man of the name of Farthing, were to start that night from the Falcon, and described the house of the prosecutor as the place to which they were to go.

On the same day (15th December), previous to the robbery, Vaughan and Barnett went to the prosecutor’s house. Vaughan, addressing the prosecutor, said, “I am Vaughan, the Bow-street officer; I know that you are marked out to be robbed to-night; I am come with Barnett, my brother officer, to take the men, if you will permit us; I know they are very bad characters and noted house-breakers, and if you do not let us take them they will no doubt come when you are dead asleep, and most likely you or some of the family will get murdered.” The prosecutor consented to do as they should advise him. They told him to mark his cloth. Vaughan afterwards marked the cloth himself, and it was put on the counter. Vaughan directed the prosecutor to put his shop door on the latch, showed him the manner of doing it, and particularly desired that the prosecutor should see that the latch caught and was fast, and assured him he should lose nothing. Vaughan proposed to watch from a neighbour’s house opposite, and accordingly himself and Barnett took their stations there.
The prosecutor prepared every thing according to the instructions he received, relying upon an assurance that he received from Vaughan that he would protect his property, and that he should lose no part of it.

About the time expected three or four men came: two of them went into the prosecutor's house at the front door which opened into a passage, from which there was a door into the shop. Dannelly was leaning over the rails of the house, apparently watching that they were not surprised. The two men who had entered the house came out, one of them with a bundle of cloth. The alarm was given, the officers Vaughan and Barnett ran out of the passage of the opposite house, and, after a pursuit, secured two of the thieves, and Dannelly, who joined the officers and gave them information which way the thieves had run, was suffered to escape. The prosecutor told Vaughan, that he had lost two rolls of cloth, Vaughan said, he knew where to find the thieves; but that Poole had spoiled the job by crying "stop thief," for he knew where to have found them dividing the cloth. Three of the men, Betts, Rawlings, and Farthing, were tried at the sessions ensuing the robbery, and convicted, not of burglary, but of stealing above forty shillings in a dwelling-house. After this trial, Vaughan told Poole, that he leaned too much to the prisoners by saying it was day-light when the offence was committed, by which he had deprived him of three rewards of 40l. each. It appeared that Vaughan and Barnett frequently conversed with Dannelly, encouraging him to give information, and that Vaughan from time to time gave him small sums of money, and promised him more.

The jury found Dannelly not guilty of the burglary, but guilty of stealing in the dwelling-house of the prosecutor, to the value laid in the indictment of 5l; and Vaughan, as accessory before and after the commission of the said felony, and stealing in the dwelling-house.

The counsel for the prisoner pressed for an acquittal of Vaughan, as Dannelly had been found not guilty of the burglary, to which Vaughan was charged as accessory; but the learned Judges directed the verdict to be taken as the jury had pronounced it.

This point was reserved as well as doubts which occurred to Mr. Baron Graham, whether the prosecution could be sustained against either Dannelly or Vaughan. The doubt as to
Dannelly was, whether, under the circumstances of this case, he, though present, could be said to abet that robbery which he had engaged to detect. He could have no design or felonious intent to spoil that property which it was his object to protect or secure to the owner. His object was not to rob Poole or to share in the robbery; and his conduct was the reverse of assisting his companions. In respect to Vaughan, the learned Judge doubted whether he could be said to incite or procure Dannelly to commit a robbery, where he engaged him to take the part of apparently joining in it, for the sole purpose of apprehending the others.

In Michaelmas term, 16th of November, 1816, this case was argued in the Exchequer Chamber, before all the Judges, by Curwood for the prisoners, and Bolland for the Crown; ten of the Judges, viz. Gibbs C. J., Macdonald C. B., Graham B., Wood B., Bayley J., Dallas J., Richards B., Park J., Abbott J., and Burrough J., held the conviction wrong. They were of opinion, that as Dannelly was not present to aid or assist (though the other offenders thought he was) but to detect; and that as he had no intent that the felony should be successful, he had not the felonious intention necessary to make him a principal, although he acted from a bad motive, viz. the reward. But several of the Judges seemed to think he was liable to be indicted as an accessory before the fact. Lord Ellenborough and Holroyd J., thought the conviction right; that although there was a clear intention that the felony should be discovered, yet there was another intention not inconsistent with the former, viz. that the felony should at all events be committed, and the presence of Dannelly did in fact aid and assist, and countenance the commission of a felony.

In consequence of this decision, it became unnecessary to give any opinion on the objection taken on behalf of the prisoner Vaughan. (a)

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1816.

REX v. JAMES TOWLE, BENJAMIN BADDER, AND JOHN SLATER.

The prisoners were tried before Mr. Baron Graham, at the summer assizes for Leicester, in the year 1816, on an indictment, the first count of which stated, that James Towle, on the 28th of June, 56 G. 3. with force and arms, with a certain pistol, then and there loaded with gunpowder and a leaden ball and certain slugs, which pistol the said James Towle then and there had and held, feloniously, wilfully, maliciously, and unlawfully, did shoot at John Usher, with intent in so doing, feloniously, wilfully, and of his malice aforesaid, to kill and murder the said John Usher. And that Benjamin Badder and John Slater were present, aiding and abetting the said James Towle the felony aforesaid, in manner and form aforesaid, to do and commit, and were then and there knowing of and privy to the committing of the said felony against the statute, &c., and against the peace, &c.

The second count was like the first, only charging it to be with an intent to disable the said John Usher.

The third count was like the second; except it charged it to be with an intent to do the said John Usher some grievous bodily harm.

The fourth count stated, that an evil-disposed person, to the jurors unknown, on the said 28th of June, 56 G. 3., with force and arms, with a certain other pistol, then and there loaded with gunpowder and a leaden ball and certain slugs, feloniously, wilfully, maliciously, and unlawfully, did shoot at the said John Usher, with intent in so doing, him the said John Usher, then and there feloniously, wilfully, and of his malice aforesaid, to kill and murder. And that the said James Towle, Benjamin Badder, and John Slater, were then and there present, aiding and abetting the said unknown person the felony aforesaid, in manner against the statute, &c. but omitted to charge them with being feloniously present, &c. Held, that J. S. was properly convicted on this indictment, although the jury negatived his being the person who fired the pistol at A. B. S.C. 2 Marshall, 466.
and form aforesaid to do and commit, and were then and there knowing of and privy to the committing of the said felony against the statute, &c. and against the peace, &c.

The fifth count was like the fourth, only stating the intent to be to disable the said John Usher.

The sixth count was like the fifth, only stating the intent to be to do the said John Usher some grievous bodily harm.

It appeared in evidence that John Usher was a watchman at a factory for the manufacture of bobbin net; that on the 28th of June, 1816, a great number of people were collected together for the purpose of destroying machines; that they proceeded toward the factory where Usher was stationed, and on their entering the shop door a pistol was fired at Usher, which shot him in the head, and he fell insensible on the floor.

It was proved that three men were in the shop at the time the pistol went off. The witnesses swore positively to Towle being one of the three men present; and that he had a pistol in his hand. But there was no evidence to show that Towle was the person who fired the pistol at Usher.

The counsel for the prisoners insisted, that the prosecutor should be put to his election, whether he would proceed against all the prisoners, or either of them, as for actually shooting, or for being present, aiding, and abetting, &c.

The learned Judge overruled the objection, thinking that in substance the charge was the same, though the counts charged the circumstances differently; and that there was evidence to go to the jury upon both the modes in which the offence was charged.

The jury acquitted Badder and Slater, and returned a verdict of guilty against James Towle, and the verdict was so recorded; but immediately after the verdict was given, the counsel for the prosecutor requested the learned Judge to ask the jury, whether they found Towle fired the pistol, or was only present, aiding and abetting, &c. The question was put, and the jury said they did not find that Towle was the man who fired the pistol.

The objection which had been taken to the indictment at the close of the prosecutor’s evidence and overruled, was then renewed in arrest of judgment, viz., That the conviction now rested on the charge, that James Towle with others "were pre-
sent, aiding and abetting the said unknown person, the felony aforesaid, in manner and form aforesaid, to do and commit.” But the indictment omitted to charge them with being feloniously, &c. present, &c., which was a necessary allegation, and the omission of which rendered the indictment, as related to the last three counts, defective. Upon the three first counts no judgment could be entered, as the jury had expressly negatived Towle being the man who fired the pistol.

This point was strenuously argued by the counsel for the prisoners; but the learned Judge having at that time a strong opinion against the objection, overruled it and pronounced sentence.

The learned Judge in delivering his opinion, said that the objection was founded on a supposed difference in the act of shooting, &c., and the being present, &c., at it. Whereas the act of parliament (a) had made no degrees, no difference of offence; and that the plain meaning and necessary construction of the act was, that if the parties were present, &c., knowing &c., they and every one of them shot, and that the charge of feloniously shooting applied to every one of them.

The learned Judge, however, reserved the point for the consideration of the Judges.

In Michaelmas term, 1816, this case was argued in the Exchequer Chamber, by Denman for the prisoner and Reynolds for the Crown. All the Judges were of opinion that the conviction was right.

(a) 43 G. S. c. 58. By the first section it is enacted, That, if any person shall either in England or Ireland, wilfully, maliciously, and unlawfully shoot at any of His Majesty’s subjects, or shall wilfully, maliciously, and unlawfully present, point, or level any kind of loaded fire-arms at any of His Majesty’s subjects, and attempt by drawing a trigger or in any other manner to discharge the same at or against his or their person or persons, or shall wilfully, maliciously, or unlawfully stab or cut any of His Majesty’s subjects, with intent in so doing, or by any means thereof to murder or rob, or to maim, disfigure, or disable such His Majesty’s subjects, or with intent to do some other grievous bodily harm to such His Majesty’s subjects, &c., are felons without clergy.
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1816.

REX v. BENJAMIN RUSHWORTH.

The prisoner was tried and convicted before Mr. Justice Bayley, at the summer assizes for the county of York, in the year 1816, for presenting a forged order to William Lee the treasurer for the West Riding of the county of York, pretending it was genuine, and obtaining from Mr. Lee under it four pounds ten shillings and sixpence.

The first count of the indictment, and on which the prisoner was convicted, was as follows:—The jurors, &c., upon their oath present that Benjamin Rushworth late of Wakefield in the county of York, labourer, being an ill-disposed person, and contriving and intending unlawfully, fraudulently, and deceitfully, to cheat and defraud one William Lee, Esq., the said William Lee then being the treasurer of the West Riding of the county of York aforesaid, of his money, on 6th April, 56 G.3. with force and arms at Pontefract in the county aforesaid, to one James Lee, then being the agent of the said William Lee, falsely and deceitfully did present and deliver, and cause to be presented and delivered, a certain false and counterfeit order in writing, bearing date the 5th April in the year aforesaid, directed to the treasurer of the said Riding, as and for a true order of John Taylor, (Clerk), the said John Taylor then and there being one of his Majesty's justices of the peace for the said Riding, whereby the said treasurer was required to pay to the constable of Horbury in the said Riding, on his order the sum of four pounds ten shillings, for apprehending and conveying to the house of correction at Wakefield, the bodies of F. R., M. B., J. S., H. S., J. S., W. B., R. B., M. B., and R. G., as vagrants committed by the said John Taylor on the 31st January, and sixpence for the said order; and that the said Benjamin Rushworth to the said James Lee, as such agent of the said William Lee aforesaid, then and there to wit, on the said 6th April in the year aforesaid, at &c. aforesaid, knowingly, designedly, falsely, and Forging a magistrate's order to pay money will not be a capital offence, if the act of parliament, under which alone the magistrate has power to make it, requires it to be under hand and seal, and it is under hand only; and if it is addressed to a character on whom the magistrate has no power to make such order by the act. An indictment for presenting a forged order to W. L. treasurer, &c. pretending it was genuine, and obtaining from W. L. under it 4l. 10s. 6d., after charging that the prisoner, with intent to cheat, &c. the treasurer, presented the order, and that he knowingly, &c. pretended it was a genuine order proceeded "and so the jurors, &c. say, that the prisoner, on the day and year, &c. did obtain the said sum of 4l. 10s. 6d." but the intent to cheat and defraud W. L. was not stated in this part of the indictment, nor was the obtaining charged to have been effected knowingly and designedly; indictment held bad. S.C.'t Stark. N.P.C. 596.
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... deceitfully, did pretend and cause to be pretended that the said false and counterfeit order so presented and delivered was a true order of the said John Taylor, subscribed with the true and proper hand-writing of the said John Taylor. And the jurors, &c. do say that the said James Lee, then and there believing the said false and counterfeit order to be a true order of the said John Taylor and subscribed by him, did then and there, as such agent as aforesaid, pay to the said Benjamin Rushworth the said sum of four pounds, ten shillings, and sixpence of lawful money in the said order mentioned; whereas in truth and in fact the said order so presented and delivered, was not a true order of the said John Taylor, and was not subscribed by the said John Taylor or with his proper hand-writing, and so the jurors, &c. do say that the said Benjamin Rushworth, by colour and means of the said false and counterfeit order, and by the said false pretences, unlawfully, falsely, fraudulently, and deceitfully did obtain from the said William Lee the said sum of four pounds ten shillings and sixpence of the monies of the said William Lee as such treasurer as aforesaid and the said Benjamin Rushworth him the said William Lee, as such treasurer aforesaid, of his said monies, then and there fraudulently and deceitfully did defraud, to the great damage &c., to the evil example &c., against the statute &c., and against the peace &c.

The prisoner was known not to be the constable of Horbury, nor did he pretend to have any order from him; but the treasurer paid him merely because he was the bearer of the order.

The counsel for the prisoner moved in arrest of judgment, because in that part of the indictment which charged the prisoner with obtaining the four pounds, ten shillings, and sixpence from Mr. Lee, the intent to cheat and defraud Mr. Lee was not stated, nor was the obtaining charged to have been effected knowingly and designedly.

Mr. Justice Bayley (as well as Mr. Baron Wood, whom he consulted,) thought the indictment defective; but reserved the question for the consideration of the Judges, and the prisoner was in the mean time discharged on bail.

The prisoner was also indicted for forging the order; but as the order was not under seal as required by the 17 G. 2. c. 5. (a),

(a) By 17 G. 2. c. 5. s. 1. it is enacted, That it shall be lawful for the justice before whom a vagrant is carried by warrant under his hand and seal, to
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and as it was addressed to the treasurer, and not to the high constable as that statute also requires; and as it was not an unconditional order, but to be paid on the order of the constable, the learned Judge thought it not such an order for payment of money as was within the statute, and directed an acquittal.

In Michaelmas term, 1816, this case was considered by the Judges. They held that the conviction on the first indictment for presenting the forged order was wrong. They also thought the direction of Mr. Justice Bayley for an acquittal on the second indictment for forging the order was correct.

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REX v. WILLIAM BEECHLEY.

The prisoner was tried before Newman Knowlys, Esq. Common Serjeant, at the September Old Bailey sessions, in the year 1816, on an indictment charging him, that he, on the 19th of July 56 G. 3. at St. Faith, under St. Paul, as clerk to Benjamin Hanson, Elizabeth his wife, and Mary Davis, was employed and entrusted by them to receive money, notes, and other valuable securities for them; and that he being such clerk, so employed and entrusted, did by virtue of such employment receive and take into his possession, one banker’s draft, for payment of eleven pounds eight shillings and seven pence, and of the value of eleven pounds eight shillings and seven pence, for and on account of his said master and mistresses, and having so received the same, did fraudulently and feloniously embezzle and secrete the same, and so the jurors say, that the said William Beechley, otherwise called A clerk intrusted to receive money at home from out-door collectors, receives it abroad from out-door customers. Held, that such a receipt of money may be considered “by virtue of his employment,” within the 39 G. 3. c. 55. though it is beyond the limits to which he is authorized to receive money for his employers.

order any overseer of the poor of the place where the offender shall be apprehended to pay the sum of five shillings to any person apprehending him, for every offender so apprehended.

By s. 5. it is enacted, That if any constable or other officer apprehend any rogue or vagabond, the justice may reward him, by making an order under his hand and seal on the high or chief constable to pay ten shillings to the person so apprehending him or her, within one week after the demand, and producing such order, and upon his giving a receipt for the same, and the same shall be allowed or paid by the treasurer of the county or place to such high or chief constable, on his passing his accounts, and delivering such order and receipt, and also his own receipt for the same to such treasurer.
William James Beechey, feloniously did steal from the said Benjamin Hanson, Elizabeth his wife, and Mary Davis his said master and mistresses, the said banker's draft, the property of the said Benjamin Hanson, and Elizabeth his wife, and Mary Davis, against the statute, &c.

The second count varied from the first only in stating the prisoner to be clerk to Benjamin Hanson and Mary Davis only.

The third and fourth counts were precisely the same as the first and second, only stating the prisoner to have been servant instead of clerk.

On the trial of this case it was satisfactorily proved, that the prisoner, (who was clerk to Hanson and Davis, carrying on the trade of carcase butchers,) had called on one Fisher, a butcher in Newgate Market, on the 19th of July, for payment of eleven pounds eight shillings and seven pence, then due from the said Fisher to the prisoner's employers; and that he received from Fisher a draft on the house of Robarts and Curtis for the above sum, which was duly honoured and paid. It appeared that it was the duty of the prisoner to have paid that sum, or the draft for it, on the evening of that day, to one Munday, the collecting clerk of the prosecutors; but that the prisoner never had brought the draft, or the amount of it, to account. Benjamin Hanson the master of the prisoner proved, that the prisoner was employed as evening collector, in which capacity it was his duty to receive every evening from the porters employed in the business, such monies as they had received from the customers in the course of the day, which it was the prisoner's duty to pay over to Munday, another clerk of the partnership, on the following morning; but that he was not expected in the course of his employment to receive money from the customers themselves.

The prisoner was found guilty; but the learned Common Serjeant doubted whether the draft in question could be said to be embezzled and taken within the meaning of the act of 39 G.3. c.85., inasmuch as the receipt of the draft was not within the prisoner's regular trust and employment, and accordingly reserved this point for the opinion of the Judges.

In Hilary term, 1817, this case was considered by the Judges; they thought that as the prisoner was intrusted to receive from the porters such monies as they had collected from the customers in the course of the day, the receiving immediately from the
customers, instead of receiving through the medium of the por-
ters, was such a receipt of money "by virtue of his employment" as
the act meant to protect, and the Judges therefore held the
conviction right. (a)

REX v. CHARLES ROBINSON AND ANOTHER.

The prisoners were tried before Mr. Baron Wood, at the Lan-
caster spring assizes, in the year 1816, upon an indictment, for
feloniously stealing from the person of James Cashton, one bank
note of 1l., one hat, five shillings, and five sixpences, his pro-
erty, against the statute, &c. and against the peace, &c.

Upon the trial, the case clearly appeared to be that of high-
way robbery, by knocking the man down in the public street,
rifling his pockets, and stealing the property mentioned in the
indictment, from his person.

Upon this appearing in evidence, the learned Judge doubted
whether he should not direct an acquittal, and that the prisoners
should be detained in prison (the grand jury being then di-
charged), to be indicted de novo at the next assizes. But upon
consulting with Mr. Justice Bayley, it was thought better to
proceed in the trial, lest an acquittal on this indictment might be
deemed a bar to any other indictment that might be preferred.

The prisoners were convicted, and sentenced to transportation
for life.

The following doubts occurred to the learned Judge in addi-
tion to the one above-mentioned:

First, Whether the indictment was good, as it did not aver or
allege that the stealing from the person was without such force
or putting in fear, as was sufficient to constitute the crime of
robbery, being an indictment on the statute (b); and the above-

(a) Vide Rex v. Smith, Trin. T. 1893. post.

(b) By 48 G.3. c. 129. s. 2. every person who shall at any time or in any place
feloniously steal, take, and carry away any money, goods or chattels from the
person of any other, whether privily without his knowledge or not, but without
such force or putting in fear, as is sufficient to constitute the crime of robbery;
or who shall be present aiding and abetting therein, shall be liable to be trans-
mentioned exception being in the enacting part of the statute, and not by way of separate proviso.

Secondly, Whether, if the indictment was not good on the statute, it was a good indictment as for simple larceny; and if so, whether the sentence of transportation for life was right, or whether it ought to have been for seven years only, as for simple larceny.

These points were submitted to the consideration of the Judges.

In Hilary term, 1817, eleven of the Judges met, and were unanimously of opinion, that the indictment need not, and ought not to negative force or fear; that the existence of such force and fear was no answer to the charge; and that the statutable punishment was rightly inflicted. (a)

REX v. JOHN DAVIS AND ANOTHER.

An area gate, opening into the area only, is not part of the dwelling-house, so as to make the breaking thereof burglary, if there is any door or fastening to prevent persons in the area from entering the house, although such door or fastening may not be secured at the time.

The prisoners were tried before Mr. Justice Abbott (present Mr. Justice Park,) at the Old Bailey January sessions, in the year 1817, upon an indictment which charged them with breaking and entering the dwelling-house of Thomas Porteous, Esq. in the day-time, certain persons named being therein, and stealing therein a silver candlestick of the value of fifty shillings.

The house was situate in Half-Moon Street, Piccadilly, and the evidence of breaking the house (upon which alone this case was reserved), was the opening of the area gate at the street with a skeleton key, and so descending the area steps, and entering the house by a door in the area, which did not appear to have been shut.

(a) See Rex v. Pearce, ante, 174.
CROWN CASES RESERVED.

ABBOTT J., having some doubt whether this was a breaking of the dwelling-house, told the jury he would reserve that point for the opinion of the Judges, if they should think the prisoners got into the house in the manner stated and stole the candlestick, and should think the candlestick of less value than forty shillings.

The jury said, they thought the candlestick was not worth forty shillings; and in other respects they thought the prisoners guilty.

ABBOTT J. directed a minute to be made, that the verdict might afterwards be recorded according to the opinion of the Judges upon the point reserved; and the learned Judge directed, that if the Judges should be of opinion that this was a breaking, the verdict should be recorded as finding the prisoners guilty of the breaking and entering, &c. and stealing to the value of thirty-nine shillings. But if the Judges should be of opinion that this was not a breaking, then the verdict was to be recorded finding the prisoners not guilty of the breaking, but guilty of stealing to the value of thirty-nine shillings, in order that they might have the benefit of clergy.

In Hilary term, 1817, this case was considered by the Judges, when they were unanimously of opinion, that breaking the area gate was not a breaking of the dwelling-house, as there was no free passage in time of sleep, from the area into the house. (a)

(a) Vide 2 East, P. C. 487. 1 Hale, 552.
The prisoner was tried before Mr. Serjeant Bosanquet at the Lent assizes for the county of Kent, in the year 1816, on an indictment on the 54 G. 3. c. 93. s. 89. (a)

The first count of the indictment charged, that the prisoner feloniously, willingly, and knowingly, did personate and falsely assume the name and character of Joshua Boatwright, a seaman entitled to certain prize money, for service done on board a certain vessel of our lord the king, called the Lord Keith, in order to the money; an indictment for personating, &c. held that the 54 G. 3. c. 93. s. 89. applied although the seaman was dead.

(a) By which it is enacted, That whosoever willingly and knowingly shall personate or falsely assume the name or character of, or procure any other to personate or falsely to assume the name or character of any officer, seaman, or other person entitled or supposed to be entitled to any wages, pay, or other allowances of money, or prize-money for service done on board any ship or vessel of His Majesty, or the executor or administrator, wife, relation, or creditor of any such officer, &c. in order to receive any wages, pay or other allowances of money or prize-money, due or supposed to be due or payable for or on account of the services of any such officer, &c. as aforesaid, or shall forge or counterfeit, or procure, &c. any letter of attorney, bill, ticket, certificate, order, assignment, last will, or any other power or authority whatsoever, in order to receive any such wages, pay, or other allowance of money, or prize-money, which shall be due or supposed to be due to any such officer, &c., or shall willingly and knowingly take a false oath, or procure, &c. to take a false oath to obtain the probate of any will, or to obtain letters of administration in order to receive the payment of any wages, pay, or other allowances of money or prize-money, which shall be due, or be supposed to be due, to any such officer, &c. as aforesaid, who shall have really served or shall be supposed to have served on board of any ship or vessel of His Majesty; or if any person shall utter or publish as true, any false, forged, or counterfeited letter of attorney, bill, &c., or any other power or authority whatsoever, in order to receive any wages, &c. or prize-money due or supposed to be due to any officer, &c. who shall have really served or shall be supposed to have served on board of any ship, &c. of His Majesty, with intent to defraud any corporation whatsoever, knowing the same to be false, &c. shall be deemed guilty of felony without clergy.
receive such prize money due and payable for, and on account of the services of the said Joshua Boatwright, as aforesaid, with intent to defraud the commissioners and governors of the Royal Hospital for seamen at Greenwich, in the county of Kent, against the statute, &c.

The second count differed from the first only, in omitting the words "falsely assume the name and character of." The third count was the same as the first, omitting the word "personate."

The fourth, fifth, and sixth counts described Joshua Boatwright as "a seaman supposed to be entitled to certain prize money," and that the offence was committed, "in order to receive such prize money supposed to be due and payable."

There were six other counts in the same form, only omitting to charge the intent to be, to defraud Greenwich hospital.

It appeared in evidence, that Joshua Boatwright, was borne on the muster books of the Lord Keith, from the 24th May, 1806, to the 30th November, 1807, since which time no muster book had been received. The Lord Keith was captured and carried into Cuxhaven on the 11th January, 1808, and Joshua Boatwright with others of the crew was marched to Givet, and there imprisoned nearly six years. Boatwright died in the hospital on his return homewards.

On the 12th August, 1816, the prisoner came to the prize office at Greenwich hospital, with a ticket of leave of absence from the Industry, then lying at Chatham, and applied to the clerk of the prize office, in the name of Joshua Boatwright, stating that he had belonged to the Lord Keith, and was entitled to prize money under a certificate, which he produced.

By the prize lists of the Lord Keith, brought from the prize office at Greenwich hospital by the clerk of the prize office, it appeared that sixteen pounds eighteen shillings and sixpence was payable for prize money in respect of the service of the said Joshua Boatwright on board the Lord Keith; but the clerk in his evidence stated, that he had reason to believe that Joshua Boatwright was dead, and that some one had applied for his prize money, as next of kin, in the latter part of 1815. The witness stated, that when the prisoner applied at the prize office at Greenwich, he told the prisoner that his mother had supposed him dead, and had been endeavouring to obtain letters of administration; he then informed the prisoner he might return to
Chatham, and that if all was correct, he (the clerk) would remit the money, and give him no further trouble. In a few days after, the clerk went on board the Industry, and found the prisoner serving there by the name of Edward Martin; in consequence of which he was apprehended.

The counsel for the prisoner objected, that as Joshua Boatwright was dead at the time when the offence was committed; to personate him, or to assume his name and character, was not an offence within the meaning of the act, which relates only to existing persons; that after the death of Joshua Boatwright he could not be entitled to prize money, but that the personal representatives or next of kin were the persons entitled, and that in fact he was not supposed to be entitled to prize money, since it was supposed at the prize office that he was dead, and that his next of kin was in the course of obtaining administration, in order to receive it. Brown’s Case, Winchester spring assizes, 1800, 2 East, P. C. 1007. was referred to.

On the part of the prosecution it was stated, that several convictions for personating had taken place, when the seaman personated was dead; but no particular case was named, or the circumstances stated under which those convictions had occurred.

The prisoner was found guilty upon sufficient evidence of a fraudulent intention, but judgment was respited in order that the opinion of the Judges might be taken, whether under the above circumstances Joshua Boatwright, at the time when the offence was committed, was to be considered as a seaman entitled, or supposed to be entitled to prize money, within the meaning of the act of 54 G. 3. c. 98. s. 89.

In Easter term, 1817, the Judges considered this case, and were of opinion that the conviction was right; that the act applied although the seaman personated was dead.
REX v. SAMUEL CRAMP.

The prisoner was tried before Mr. Serjeant Bosanquet, at the Lent assizes for the county of Kent, in the year 1817, on an indictment on the 54 G. 3. c. 93. s. 89. (a)

The first count of the indictment charged, that the prisoner feloniously, willingly, and knowingly did personate and falsely assume the name and character of Stephen Cuff, a person supposed to be entitled to certain prize money for service done on board a certain ship of our lord the king called the Hussar, in order to receive such prize money, supposed to be due and payable for, and on account of the services of the said Stephen Cuff as aforesaid, with intent to defraud the commissioners and governors of the Royal Hospital for Seamen, at Greenwich, in the county of Kent, against the statute, &c.

The second count only differed from the first in omitting the words “falsely assume the name and character of;” and the third count in omitting the word “personate.”

The fourth, fifth and sixth counts were in the same form, only omitting to charge the intent to defraud Greenwich Hospital.

It appeared by the production of the muster-books of the Hussar frigate, that Stephen Cuff was borne thereon from the 1st June, 1810, to the 2d May, 1813; on the latter day there was an entry, stating that he was “drowned at Sangar, 2d May, 1813.”

It further appeared, by the evidence of a person who served on board the Hussar, that Stephen Cuff was actually drowned near Sangar, in the Bengal river, at the time to which the above entry referred.

On or about the 29th of August, 1816, the prisoner applied at the prize office at Greenwich, in the name of Stephen Cuff, for the prize money due to Stephen Cuff; and produced an affidavit made on the 28th of August, 1816, in the name of Stephen Cuff, stating that he was impressed on board the Hussar, and was present at the capture of Java, and an American schooner; that

(a) Vide words of the statute, Rex v. Martin, supra, 324.
he was afterwards sent on board other ships, and finally discharged about July, 1814; and that he made that affidavit for the satisfaction of the treasurer of Greenwich Hospital, in order to obtain the prize money due to him for Java, &c.

By the prize lists of the Hussar, brought from the prize office at Greenwich Hospital, by the clerk of the prize office, it appeared that eleven pounds four shillings and ten-pence, was payable for prize money, in respect of the service of Stephen Cuff on board the Hussar, viz.

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The clerk of the prize office, in his evidence, stated that the accounts had been paid to a person who called herself the mother of Stephen Cuff; and that upon the application of the prisoner in the name of Stephen Cuff, he thought that the hospital had been defrauded by her.

The money was not paid to the prisoner; but he gave a reference to a person in London, which not proving satisfactory, further enquiries were made, and he was apprehended.

The prisoner was found guilty upon sufficient evidence of a fraudulent intention; but judgment was respited in order that the opinion of the Judges might be taken:

Whether, under the above circumstances, Stephen Cuff, at the time when the offence was committed, was to be considered as a seaman supposed to be entitled to prize money within the meaning of 54 G.3. c.93. s.89.

In Easter term, 1817, this case was considered by the Judges, and they were of opinion that the conviction was right, and that the act applied although the person personated was d ad. (a)

(a) Vide Rex v. Martin, ante, 394.
rex v. thomas ford.

the prisoner was tried before lord chief baron richards, at the spring assizes for the county of nottingham, in the year 1817, on an indictment, the first count of which charged, that the prisoner with a loaded pistol, feloniously, wilfully, maliciously, and unlawfully did shoot at one john freeman, with intent to kill and murder him, against the statute, &c.

the second and third counts only varied the intent.

the fourth, fifth, and sixth counts charged, that the prisoner with a certain sharp instrument struck and cut the said john freeman in and upon the head, with intent to kill and murder, &c.

the seventh count charged the prisoner with striking and cutting the said john freeman with a certain sharp instrument in and upon the head, with intent in so doing, and by means thereof, feloniously, wilfully, maliciously, and unlawfully to obstruct, resist, and prevent the lawful apprehension, and detainer of him the said prisoner, for an offence for which he the said prisoner was liable by law to be apprehended, imprisoned, and detained against the statute, &c.

the eighth count charged, that the prisoner shot the said john freeman in his own dwelling-house, against the statute, &c.

the ninth count charged, that the prisoner shot the said john freeman generally, against the statute, &c.

on the 10th of october, 1816, the prisoner and another man, came into the shop of a mr. shipman, a grocer at mansfield; between five and six o'clock in the evening, when it was getting dark, and desired to borrow a pen and ink, which were lent to them. the prisoner took out of his pocket a pound note, purporting to be a bank of england note, and asked the apprentice (shipman, the master, not being at home,) whether it was a good note. the apprentice took it to mr. collinson, the clerk in the bank in that town, to ask his opinion. collinson returned with the apprentice, and asked the prisoner where he had taken the killing an officer will be murder, though he has no warrant, and was not present when the felony was committed, but takes the party upon a charge only; and though that charge does not, in terms, specify all the particulars necessary to constitute the felony.
note, he answered that he had received it for hosiery; Collinson said it was a forged note, and was the fourth that had been offered to him within the last ten or fifteen minutes. As soon as Collinson said the note was forged, the prisoner's companion went off, and the prisoner made a move towards the door, upon which Collinson desired one Mettham, who was present, to take the prisoner into custody; and he was accordingly taken into custody for having a forged note in his possession. The prisoner was taken with the note to the house of John Freeman, a constable, and the prisoner with the note were delivered up to Freeman; and it was at the same time stated to Freeman, in the presence of the prisoner, that he was delivered into his custody, because he, the prisoner, had a forged note in his possession. The note was proved to be a forgery.

Freeman left the prisoner in his house in the care of two men, and went out; about eleven o'clock in the evening he returned, and then set about handcuffing the prisoner to one of the men. He had placed one handcuff on the wrist of the man, and was carrying the other toward the prisoner's left hand, when the prisoner with his right, discharged a pistol at the head of Freeman, and shot through part of his chin. The prisoner, as soon as he had discharged the pistol, sprang up and knocked down the man to whom he was about to be handcuffed. He then attempted to escape; but Freeman who had been stunned recovered, and overtook him in the passage leading out of the house where there was a struggle between them. The prisoner struck Freeman three or four times with the pistol until he dropped upon one knee, and the prisoner again escaped. Freeman had four wounds on the head, one of which appeared to have been made with the cock of the pistol. The prisoner was soon re-taken, and when apprehended, he expressed great disappointment in not having killed Freeman. The prisoner was then searched, and there was found on him a powder flask with some gunpowder in it, and one leaden pistol ball.

It was contended for the prisoner, that the count charging an intent to resist his apprehension for an offence, &c. was bad; as it ought to appear on the indictment what offence he was charged with, in order to enable the court to judge whether that was such an offence as would have warranted his arrest. It was also contended, that the count, if good, was not supported by the
evidence, since the charge on which he was taken into custody, viz. having a forged note in his possession, without more, imported no legal offence, (a) and did not justify the constable in apprehending him.

It was submitted that the other counts, stating in general terms, that the prisoner maliciously shot at Freeman, were not supported by the evidence, for the same reason; for if the arrest was illegal, which it was argued to be for want of a legal charge, the resistance to it was not malicious but justifiable; and the force employed, was a lawful attempt to escape from a false imprisonment. If death had ensued, this would not have been murder in the person illegally detained, and struggling to regain his liberty, which had been invaded, without a legal warrant to detain him; and so the case was expressly within the proviso at the close of the first section of the act 43 G. 3. c. 58.

The jury found the prisoner guilty, but the learned Chief Baron reserved these points for the opinion of the Judges.

In Easter term, 1817, this case was considered by the Judges; they were of opinion, that, although the charge on which the prisoner was taken into custody, viz. the having a forged note in his possession, without more, was defective, still they thought this defect in the charge immaterial. That it was not necessary the charge should contain the same accurate description of the offence as an indictment; and that this charge must have been considered as imputing to the prisoner a guilty possession. They held the conviction right. (b)

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REX v. SAMUEL JACOBS. 1817.

The prisoner was tried and convicted before the Lord Chief Baron Richards, at the Warwick Lent assizes, in the year 1817, private parts, and proceeded to a completion of his lust. Held, that this did not constitute the offence of sodomy.


(b) See Rex v. Thompson, Ryan and Moody's C.C.R. Hil. T. 1825.
CROWN CASES RESERVED.

1817.

(Section: Jacob's Case.

Upon an indictment for sodomy, committed on James Thompson, a boy of about seven years of age, on the 8th of March, 1817.

It was proved very satisfactorily, that the prisoner had prevailed upon the child to go with him from the market-place in Nun-Eaton to a rick yard in a field near the town; that he forced the boy’s mouth open with his fingers, and put his private parts into the boy’s mouth, and emitted in his mouth.

The question was whether this was sodomy.

In Easter term, 1817, the Judges met, and were of opinion that this did not constitute the offence of sodomy, and directed a pardon to be applied for.

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1817.

(REX v. GEORGE KING.

H. and S. broke open a warehouse and stole thereout 15 firkins of butter, &c. which they carried along the street 30 yards; they then fetched the prisoner, who was apprised of the robbery, and he assisted in carrying away the property; he was indicted for the theft as a principal and convicted; conviction held wrong, that he was only an accessory, and not a principal.

The prisoner was tried and convicted before Mr. Justice Bayley at the Lent assizes for the county of York, in the year 1817, of stealing thirteen firkins of butter, and ten cheeses.

The facts were these. Hill and Smith, in the absence of the prisoner, broke open the prosecutor’s warehouse, and took out from thence the butter and cheese in question, and put it into the street, about thirty yards from the warehouse door; they then fetched the prisoner, who was apprised of the robbery, and he assisted in carrying the property to a cart, which was in readiness at a distance, to take it away.

It was objected that as there was a complete felony before the prisoner intervened, there was no felonious taking by him.

The learned Judge thought, that as every continuation of the felony, was a new felony, and constituted a new taking, so as to warrant a prosecution in any county to which the property might be taken; and as the possession in law still remained in the prosecutor, notwithstanding the removal from the warehouse, so that he might have brought trespass against any stranger for taking them without a felonious intent, from the place where Hill and Smith had put them; the prisoner, who was present aiding and abetting in a continuation of the felony, was a principal in that portion of the felony, and was liable to be found guilty; but
the learned Judge saved the point for the consideration of the Judges. (a)

In Easter term, 1817, this case was considered by the Judges. They were of opinion, that as the property was removed from the owner’s premises before the prisoner was present, he could not be considered as a principal; and that the conviction as such was wrong. (b)


(b) Vide also Rex v. Mc Makin and Smith, Lancaster spring assizes, 1808. Coram Lawrence J. Ms. Jud. The prisoners were indicted for stealing a cart and horse, some sacks of flour, apples, &c. in the streets of Bolton.

The evidence was, that one Heaton, having received the articles in question from a shop in Bolton into his cart, left it standing in the street. In the mean time, the prisoner Mc Makin came up and led away the cart. Having taken it a short distance he met another man, to whom he delivered it, with directions to convey it to his (Mc Makin’s) house, a distance, from the place where the cart was left standing by the owner, of about a quarter of a mile. Upon the cart arriving at the house, the prisoner Smith, who was at work in the cellar, having directed a companion to blow out the light, came up and assisted in removing the articles from the cart.

Upon this case it was submitted, for the prisoner Smith, that there was no evidence for the jury against him as a principal. That, as there was no pretence for charging him with the commencement of the transaction, the question must depend on whether the asportavit was complete or not before his share in the business began; and it was contended that the asportavit was complete; that it was preposterous to attribute a felonious intent to the taking of the cart and the horse, but that the removal of the goods by them was clearly substituted for a removal by the prisoner Mc Makin; that therefore any removal was clearly an asportavit; and that a removal to such a distance was as clearly a complete one, and a dispossession of the owner before the interference of the prisoner Smith. And Rex v. Dyer and Distig, 2 East. P.C. 767. was cited, with a view to show a distinction between the cases; and that the reason why the transaction there was considered as continuing and the asportavit incomplete, was altogether in favour of a contrary conclusion here. There, whilst the barilla remained in the boat, it might fairly, and without any violence to the fact, be considered in the possession of Hawker; that whilst the boat was going towards the shore it was in its proper direction and appropriate use, and though any removal of the barilla in the boat might, in odium spoliatoris, be deemed an asportavit, yet, with other views, and with reference to Hawker particularly, his possession might be held to continue till the landing, at which time the commencement of the taking (as to him, Hawker) might be dated, when, in fact, an improper direction was first given the barilla; but that here, the very first movement of the horse and cart (for the reason already given) was im-
1817.

REX v. WILLIAM CHALKING AND ANOTHER.

The prisoners were tried before Mr. Justice Abbott at the Lent assizes for Salisbury, in the year 1817, for burglary, and stealing a large quantity of clothes in the dwelling-house of John Beams.

A doubt having arisen, whether the place broken, and from which the goods were stolen in the night, ought to be considered, in law, as parcel of the dwelling-house, the learned Judge advised the jury to find the prisoners guilty generally, if they thought them the persons by whom the offence had been committed, meaning to reserve the question of law for the opinion of the Judges. The jury found the prisoners guilty.

Mr. Beams, the prosecutor, was a clothier of Chippenham; his dwelling-house was situate at the corner of two streets, a range of workshops adjoined the house at one end, and standing in a line with that end of the house, faced one of the streets: the roof of this range was higher than the roof of the house. At the end of this range and adjoining to it, was another workshop projecting further into the street; and adjoining to that a stable and coach-house used with the dwelling-house. There was no internal communication between the workshops and the dwelling-house; its roof was higher than that of the dwelling-house; the street door of the workshop was broken open in the night; and on indictment for burglary and conviction the Judges held this workshop was parcel of the dwelling-house, and the conviction right.

proper, an adverse act, and a dispossession of the owner, and could be considered as nothing else, therefore it was contended that Smith was chargeable, if at all, only as an accessory after the fact.

Yates for the prosecution contended, that the continuance of the goods in the cart was precisely similar to the continuance of the goods in the boat, and that therefore, as Dyer was held a principal for removing the barilla from the boat, Smith must be so considered for removing the apples, &c. from the cart.

Lawrence J. (having sent a statement of the case to Le Blanc J., who was in the other court,) was of opinion with the prisoner’s counsel, and directed as acquittal of Smith accordingly.

The Judge agreed as to the way of considering the removal of the horse and cart, and that they were not, upon the evidence, taken with a felonious intent.
house, nor were they surrounded by any external fence. A court yard and garden belonging to the dwelling-house, lay behind the house and the workshops. There were two entrances into this range of workshops; one by a door opening into the street, and another by an opposite door opening into the court-yard. The street door of this range was opened by a pick-lock key, and the goods stolen from one of the workshops.

The question for the opinion of the Judges, was whether these workshops could be considered as parcel of the dwelling-house.

In Easter term, 1817, this case was considered by the Judges; and they were unanimously of opinion, that the workshops were parcel of the dwelling-house, and that the conviction was right.

The prisoner was tried before John Silvester, Esq., Recorder, at the Old Bailey sessions, September 1816, on an indictment, stating that he, on the 24th August, 56 G. 3. at the parish of Saint George, was servant to Henry Smither, and employed and entrusted by him to receive money for him; and being such servant so employed and entrusted as aforesaid, did receive the sum of one pound eleven shillings, for and on account of his said master, and having so received the said sum of money, for and on the account of his said master, he the said prisoner fraudulently and feloniously did embezzle and secrete the same in manner and form aforesaid, and feloniously did steal, take, and carry away, from his said master and employer, the said sum of one pound eleven shillings of the monies of his said master, for whose use and on whose account the same was delivered to and taken into the possession of him the said prisoner, being such servant so employed and entrusted aforesaid, against the statute, &c.

There was a second count in the indictment, the same as the first, only stating the sum embezzled, to have been received from William Meneke.

It appeared in evidence, that, on the 24th of August, 1816, William Meneke, a clerk to one Henry W. Winton, paid to the
prisoner one pound eleven shillings, on account of the prisoner's master Henry Smither: but it did not appear whether the same was paid by a one pound note and eleven shillings in silver, or by two notes of one pound each, or by a two pound note, and the change given by the prisoner. It further appeared, that the prisoner was foreman to Smither, and was entrusted to collect money for him; and that he never had paid or accounted for the money so received of William Meneke, or any part of it.

The jury found the prisoner guilty.

The question reserved for the opinion of the Judges was whether the property received was properly set out in the indictment, or whether it ought not to have been specifically set out.

In Trinity term, 1817, this case was considered by all the Judges; and they were of opinion (Burrough J. dissentiente) that the indictment ought to set out specifically, at least some article of the property embezzled; and that the evidence should support that statement. The Judges held the conviction wrong. (a)

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1817.

REX v. ELIZABETH CORNWALL.

A woman may be found guilty of concealment within the 43 G. 5. c. 58. s. 5., though, from appearances, it is probable the child was still born, and although the birth was probably known to an accomplice.

The prisoner and one Diana Thompson, were indicted for the murder of the prisoner's bastard child. The prisoner was tried on this indictment before Mr. Justice Bayley, at the Old Bailey sessions, in the year 1817.

The child was a seven months child; and from the putrid state in which it was found, it was probably still born.

The prisoner was charged with being in labour very shortly after she had been delivered; but she said she was not, and Diana Thompson when questioned, immediately after the child's birth, wholly denied it, although from the evidence it was clear she must have known it.

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The child was thrown down the privy, and the prisoner admitted that she threw it there.

The learned Judge thought the act of throwing the child down the privy evidence of an endeavour to conceal the birth, within the 43 G. 3. c. 58. s. 3. (a), and left it to the jury, who found the prisoner guilty of the endeavour to conceal. But this being a case in which the probability was that the child was still born, and it being possible that Diana Thompson might have been privy to the child's birth, the learned Judge doubted whether this statute applied, and therefore saved the question for consideration of the Judges.

In Trinity term 1817, this case was considered by all the Judges, when they were unanimously of opinion, that the act of throwing the child down the privy, was evidence of an endeavour to conceal the birth of the child, and that the conviction was right.

REX v. JOHN BRAZIER, THE YOUNGER.

The prisoner was tried before Mr. Justice Holroyd, at the Summer assizes for the town of Nottingham in the year 1817, on an indictment for stealing fifteen bushels of wheat, of the goods and chattels of Thomas Neale.

If a bag of wheat is delivered to a warehouseman for safe custody, and he takes all the wheat out of the bag and disposes of it, it is larceny.

(a) Which section, after reciting that doubts had been entertained respecting the true sense and meaning of the 31 Jac. 1. c. 27., intituled, an act to prevent the destroying and murthering of bastard children; and also the Irish act, 6 Ann., intituled, an act to prevent the destroying and murthering of bastard children, and the same have been found in sundry cases difficult and inconvenient to be put in practice; for remedy whereof it enacts, That the two several acts, and every thing therein contained, shall be and the same are hereby repealed; and that the trial in England and Ireland respectively, of women charged with the murder of any issue of their bodies, male or female, which, being born alive, would, by law, be bastards, shall proceed and be governed by such and the like rules of evidence and of presumption as are by law used and allowed to take place in respect to other trials for murder, and as if the said two several acts had never been made.
Thomas Neale, a farmer, sent forty bags containing twenty quarters of his wheat to the prisoner, who was a wharfinger and warehouseman in the town of Nottingham, and who received the same into his warehouse there, for safe custody for the said Thomas Neale. The wheat was to lie there until sold by the prosecutor; the prisoner had no authority to sell it. It was proved that Neale did not give any authority to the prisoner to make any alteration in the wheat, or to open the bags in order to show them, or for any other purpose.

While the wheat thus remained in the prisoner's warehouse for safe custody, and was the property of Neale, the prisoner's servant by the prisoner's order took eight of the bags, containing four quarters of the above wheat from the rest, and shooting the wheat out of the bags upon the warehouse floor, mixed it with four bags of different wheat, of an inferior quality and value. When so mixed, the whole was, by the prisoner's order, put into twelve other bags, and afterwards sent away and disposed of by him for his own benefit. Afterward by the prisoner's orders the above four quarters of Neale's wheat were replaced with an equal quantity of the prisoner's wheat, of very inferior quality and value, by mixing the same with two quarters of the residue of Neale's wheat, and replacing the same when so mixed in the bags from whence the four quarters of Neale's wheat had been removed as before mentioned. Another part of Neale's wheat was in like manner fraudulently removed, mixed, and replaced by the prisoner's orders; and sixteen of the above bags, containing eight quarters of the wheat so mixed as before stated, were afterwards delivered by the prisoner to the vendee of Thomas Neale, as being part of the wheat deposited by Neale in the prisoner's warehouse.

It did not appear that there was any severing of part of the wheat in any one bag, from the residue of the wheat in the same bag, with intent to steal or embezzle that part only that was so severed, and not the residue in the same bag from which it was so severed.

The jury being of opinion that the facts above stated were proved, found the prisoner guilty of larceny; but the learned Judge respited the judgment, and reserved the point for the consideration of the Judges.

In Michaelmas term, 1817, eleven of the Judges met and
considered this case; they were unanimously of opinion, that the conviction was right, that the taking the whole of the wheat out of any one bag was no less a larceny than if the prisoner had severed a part from the residue of the wheat in the same bag, and had taken only that part, leaving the remainder of the wheat in the bag. (a)

REX v. CHARLES SMITH.

The prisoner was tried and convicted before Lord Chief Baron Richards, at the summer assizes for the town of Newcastle-upon-Tyne, in the year 1817, of the murder of Charles Stewart on the night of the 3d of September, 1816.

The only question which the learned Chief Baron thought it necessary to submit for the consideration of the judges was, whether the deposition after-mentioned ought to have been admitted in evidence. If it was properly admitted, it was conclusive as to the guilt of the prisoner.

The prisoner it appeared had been brought before two magistrates on the 4th of September, 1816, upon a charge of an assault upon the deceased, and also upon a charge of robbing a manufactory, which the deceased had been employed to guard.

The clerk of the magistrates produced the deposition of the deceased taken before the magistrates at the time the above-mentioned complaints were preferred, and then reduced into writing by the witness who produced it. It appeared the oath was administered to the deceased before any part of his evidence was reduced into writing.

The prisoner was not present when the examination commenced, but was brought into the room before it was finished, and before the three last lines of the deposition were taken down. The prisoner was informed, that the magistrates were taking the examination of the deceased, and he was desired to attend. The oath was again administered to the deceased in the prisoner's

(a) Vide 2 East, P. C. 695, 6, 7, and 8. Spear's Case, 2 East, P. C. 568.
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presence, and the whole of what had been written down from the mouth of the deceased was, in the presence and hearing of the deceased, read over to the prisoner very distinctly and slowly. After this was done the deceased was asked in the presence and hearing of the prisoner, whether what had been written was true, and what he meant to say; and the deceased answered that it was perfectly correct. The magistrates then proceeded to examine the deceased further, in the presence and hearing of the prisoner, when the deceased stated what was contained in the three last lines of the deposition. During the whole of the examination the deceased appeared perfectly collected.

After this, the prisoner was asked whether he chose to put any questions to the deceased; he did not ask any question, but only said, “God forgive you, Charles.” The deceased then signed the deposition in the presence of the magistrates and the prisoner; and after he had signed it, the magistrates signed it in the presence of the deceased and the prisoner.

ALDERSON, on behalf of the prisoner, objected to the admissibility of this deposition in evidence.

First, Because the prisoner did not hear the questions put, or the answers given, or see the manner in which the answers were given, except as to the last three lines; and therefore he contended, the case was not brought within the statutes 1 & 2 P. & M. c. 13. (a) and 2 & 3 P. & M. c. 10. (b) which made depositions evidence in any case. (c)

(a) The fourth section enacts, That the justices of the peace, when a prisoner is brought before them for any manslaughter or felony, before any bailment or mainprize, shall take the examination of the said prisoner and the information of them that bring him, of the fact and circumstances thereof; and the same, or as much thereof as shall be material to prove the felony, shall be put in writing, before they make the same bailment, which said examination, together with the said bailment, the said Justices shall certify at the next general gaol delivery to be holden within the limits of their commission.

(b) The 2 & 3 P. & M. c. 10. after reciting the above act of 1 & 2 P. & M. c. 15. enacts, that from henceforth such justices before whom any person shall be brought for manslaughter or felony, or for suspicion thereof, before he shall commit or send such prisoner to ward, shall take the examination of such prisoner, and information of those that bring him of the fact and circumstance thereof, and the same, or as much thereof as shall be material to prove the felony, shall be put in writing within two days after the said examination.

(c) It should be observed, “that these statutes seemed to have been passed
Secondly, Because under these statutes, the examination is confined to the offence with which the defendant is charged at the time. Here the defendant was charged with an assault and robbery; the deposition, if properly taken, might have been applied to an indictment for the assault or robbery, but could not apply to murder, the offence here enquired into; for no murder had taken place when the deposition was taken.

The learned Judge overruled these objections, and admitted the deposition to be read in evidence; and the jury found the prisoner guilty, but the learned Judge reserved the case for the consideration of the Judges.

In Michaelmas term, 1817, eleven of the Judges met, and considered this case, (Gibbs C. J., being absent). Ten of the learned Judges thought the conviction right; and that the deposition had been properly received in evidence. Abbott J., thought the evidence ought not to have been received. Dallas J., Graham B., Richards C. B., and Lord Ellenborough, stated that they should have doubted of the admissibility of the evidence, but for the case of Rex v. Radbourne, 1 Leach, C.C. 457.

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REX v. WILLIAM BAILEY AND ANOTHER.

The prisoners were tried and convicted before Mr. Justice Park, in the year 1817, on an indictment for burglary.

It appeared in evidence, that a sash window, belonging to the dwelling-house, was fastened in the usual way by a latch, from the bottom of the upper sash to the top of the lower one; and that there were inside shutters, which were fastened. One of the prisoners broke a pane of glass in the upper sash of this

without any direct intention of the legislature to use the examinations and depositions as evidence upon the trials of felons." See Mr. Starkie's excellent note on Rex v. Smith, 2 Stark. N. P. C. 211. Also Starkie on Evidence, Part IV. p. 486. See also Rex v. Paine, 5 Mod. 165.
window, and introduced his hand within, with the intention to undo the latch by which the window was fastened. While he was cutting a hole in the shutter with a centre-bit, and before he had undone the latch of the window, he was seized.

The point reserved for the consideration of the Judges was, whether the introduction of the hand, between the window and the shutter to undo the window latch, was a sufficient entry.

In Hilary term, 1818, this case was taken into consideration by nine of the Judges, (Gibbs C. J., Bayley and Dallas Jrs., being absent), when they were of opinion, that there was a sufficient entry to constitute a burglary, and that the conviction was right. (a)

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REX v. THOMAS BUTTERY AND TIMOTHY MACNAMARRA.

On indictment for forging a will, probate of that will unrevoked is not conclusive evidence of its validity, so as to be a bar to the prosecution.

The prisoners were tried and convicted before Mr. Baron Garrow, at the Old Bailey sessions, December, 1817, on an indictment for forging the will of Benjamin Man.

In the course of the prosecutor's evidence, the probate of the will, under the seal of the Ecclesiastical Court, was produced.

Garrow B. overruled the objection, but reserved the point for the consideration of the Judges.

In Hilary term, 1818, nine of the Judges met, and considered this case. They were unanimously of opinion, that the

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objection taken by the prisoners’ counsel was properly overruled, and that the conviction was right. (a) 1818.

BUTLER’S Case.

REX v. CHARLES GOGERLY, WILLIAM GOGERLY, AND JOHN WHITFORD. 1818.

The prisoners were tried and convicted before Mr. Justice Bayley (present Mr. Baron Garrow,) at the Old Bailey sessions, December, 1817, of privately stealing in the shop of Thomas Bowell, to the value of five shillings.

William Gogerly and Whitford were alone in the shop, and Charles Gogerly was on the outside to co-operate.

It was urged for the latter prisoner, that as he was not in the shop, he was not liable to be convicted; and Jonathan Wild’s case, 1 Leach, C.C. 17, was cited as an authority.

Both the learned judges thought, as the prisoner Charles Gogerly was within distance to assist, and was out for the purpose of assisting, he was a principal with the other two; he was accordingly found guilty, but the point was saved for the consideration of the judges.

Mr. Justice Bayley stated in the case reserved, that the objection seemed to him to turn upon the question, whether a person not in the shop, though a principal in the second degree, was deprived of his clergy by 10 & 11 W. & S. c. 28; and if not, whether he could be convicted of a clergymen felony, where he was charged with others as a principal, and the others were found guilty of the offence from which clergy is ousted. (b)

The indictment charged the three prisoners as principals in the first degree, with privately stealing in the shop.

(a) In Rex v. Gibson, Lancaster assizes, 1802, coram Lord Ellenborough, MS. jud. on an indictment for forging a will, a probate of the will unrecited was put in and relied on as a bar, and Rex v. Vincent, 1 Str. 481. was cited as an authority; but Lord Ellenborough held that case not law, and the prisoner was convicted and executed.

(b) Vide Post. 356.
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In Hilary term, 1818, nine of the judges met and considered this case, they were unanimously of opinion, that the conviction of the prisoner Charles Gogerly was right. The judges thought him equally guilty as a principal, and equally deprived of clergy with the other prisoners. (a)

1818.

REX v. JOSEPH HEMPSTEAD AND JOSEPH HUDSON.

On an indictment against two, charging them with a joint offence, either may be found guilty; but they cannot be found guilty separately of separate parts of the charge. If they are found guilty separately, upon a pardon or nulla prosequi as to the one who stands second upon the verdict, judgment may be given against the other.

The prisoners were tried before John Silvester, Esq., Recorder, at the Old Bailey sessions, February 1818, on an indictment for stealing on the 18th January, 1818, at Saint Catherine Cree Church, twenty-seven penknives, value six pounds ten shillings, the property of Joseph Newell and Joseph Burch, in the dwelling house of Joseph Burch.

There was a second count in the indictment, charging the dwelling-house to be the dwelling-house of Joseph Newell and Joseph Burch.

It appeared in evidence that Newell and Burch were in partnership as wholesale stationers, in Jewry Street, Saint Catherine Cree Church, in the city of London, and that Burch resided in the house. The two prisoners were in their employ as porters, but did not live in the house. On the 18th of January, 1818, about eight o'clock in the evening, being the time the prisoners usually left, they were stopped before they left the house and searched by two officers; and on the prisoner Hempstead were found twenty-five penknives and on Hudson two, which the prisoners acknowledged were the property of Newell and Burch. The property found upon Hempstead was worth six pounds, and that found upon Hudson was worth ten shillings.

It appeared that the prisoners worked in the same room together, but there was nothing to show that the articles were not taken by the prisoners at different times, and unknown to each

(a) By 4 G. 4. c. 53. so much of the 10 & 11 W. 3. c. 23. as takes away clergy is repealed.
other. They had both been home in the course of the day, but the property was found upon them all at one time.

The jury were of opinion, that although the prisoners were in the same room together, there was not sufficient evidence to prove that they acted together; and they therefore found Hempstead guilty of stealing to the value of six pounds, and Hudson guilty of stealing to the value of ten shillings.

The prisoners being indicted for a capital offence, and the jury having, by their verdict, found them guilty of two different felonies, the one a capital offence, the other only simple larceny, by which the prisoners would be subject to two distinct judgments, the one for a capital offence, the other for simple larceny, the Recorder reserved the following question for the opinion of the Judges.

Whether sentence of death could be passed upon the one capitally convicted,—or whether the verdict of the jury was not virtually an acquittal of both?

Hudson was afterwards tried on another indictment, convicted, and sentenced to be transported.

In Hilary term, 1818, this case was considered by the Judges; they were of opinion, that judgment could not be given against both the prisoners; but that on a pardon being granted or a nolle prosequi entered as to Hudson, judgment might be given against Hempstead. (a)

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REX v. ANN TYE.

The prisoner was tried before Mr. Justice Burrough at the Lent assizes for the county of Gloucester in the year 1818, for the murder of her female bastard child.

The indictment stated that the prisoner on the 15th December, 1817, being big with a female child, on that day did bring forth such swelling proceeds from wounds occasioned by forcing something into the throat; it will be sufficient to state in the indictment that the things were forced into the throat, and the person thereby suffocated; the process immediately causing the suffocation, e.g. the swelling need not be stated.

the said child alive, which child being so born alive, by the laws of this realm, was a bastard; that the prisoner as soon as the child was born, with force and arms, in and upon the said child, feloniously, wilfully, and of her malice aforethought did make an assault, and both her hands about the neck and throat of the said child, feloniously, wilfully, and of her malice aforethought did fix and fasten, and did also feloniously, wilfully, and of her malice aforethought force and thrust divers large quantities of moss and dirt into the mouth, nose, and throat of the said child, with both the hands of her the said Ann; and the child with both the hands of her the said Ann, so fixed and fastened about the neck and throat of the said child, and also by the forcing and thrusting the said moss and dirt into the mouth, nose, and throat of the said child as aforesaid, was then and there choked, suffocated, and strangled; and also that she the said Ann did then and there feloniously, wilfully, and of her malice aforethought, put, place, and leave the said child exposed in the open air, to the cold and inclemency of the weather there, for a long space of time, to wit, for two hours then next, as well of which said choking, suffocating, strangling, as of putting, placing, and leaving the said child so exposed, in the open air as aforesaid, by the said Ann, in manner and form aforesaid, the said child on the day and year, and at the parish aforesaid, in the county aforesaid, for a long space of time, to wit, for five hours then next, did languish, and languishing did live, and afterwards, to wit on the same day and year, and at the parish aforesaid in the county aforesaid, the said child of the said strangling, suffocating, and choking, and leaving so exposed, as aforesaid, did die; and so the jurors aforesaid, upon their oath aforesaid, do say that the said Anne Tye, her the said child then and there in manner and form aforesaid, feloniously, wilfully, and of her malice aforethought, did kill and murther, against the peace of our said lord the King, his crown and dignity.

The second count stated, that the prisoner made an assault on the said child, and with both her hands about the neck and throat fixed and fastened, did choke and strangle the said child.

The third count stated, that the prisoner made an assault on the said child, and did force and thrust divers large quantities of moss and dirt into the mouth, nose, and throat of the said
child, by means whereof the said child was choked and suf-

focated.

The fourth count stated, that the prisoner assaulted the said child, and did put, place, and leave it in the open air to the cold and inclemency of the weather, of which it died.

The fifth count stated the child to be one Phoebe Tye, an infant of tender age, to wit, of the age of one day or thereabouts, and stated the assault and the other matters as in the first count.

It appeared that the prisoner was delivered of the child men-
tioned in the indictment, about ten o'clock on the 18th of Decem-
ber, 1817, in a field. The child was there seen alive, lying on the ground near the prisoner, and was heard to cry. A witness, who saw the prisoner in this condition, sent some women to assist her, but when they came to the field the prisoner was not to be found. After about an hour's search the prisoner was discovered in a wood, and, on being asked where the child was, she persisted in saying she had no child. The prisoner was taken home and put to bed. Search was then made in the wood for the child; the witnesses found a heap covered with moss; on removing some of the moss was discovered a cloth cloak, which proved to be the prisoner's. In the cloak were two aprons, one within the other, and in the inner apron was found a female child; the child did not move, but its stomach was found to be warm. There was moss in its mouth, crammed in exceedingly hard, and a little moss was hanging out of its mouth. When the moss was re-

moved from the child's mouth, which was quite filled with it, the child appeared relieved and moved. On taking out the moss from the child's throat, it was discovered to be bloody.

The child was then taken to the house where the prisoner lived; it was cleaned and examined. The witnesses stated that the child did not appear to breathe through its mouth, but that they perceived some breath to proceed from the nostrils. In about three quarters of an hour afterwards, some oil and rum were administered to the child, but it could not swallow, but made a noise as if about to cry, and blood came out of its mouth and left ear. The oil and rum were administered two or three times. None of the oil and rum passed down the child's throat. The child died about six o'clock in the evening. The child had three scratches on the left side between the ear and the
shoulder, about the middle of the neck, which appeared to have
been done by finger nails.

A surgeon, who examined the child's body on the 17th of
December, said, that from the state of the face, neck, and mouth
of the child, and from the appearance of the moss, and from the
account given by the witnesses of the state, &c. in which the
child was found, he was fully convinced that *partial* suffocation
was produced. At the time he saw the child there was a suffu-
sion of blood in the face; and if that which caused the *partial*
suffocation had been removed, and there had been nothing else
in the case, the child would have lived. The surgeon stated,
that, on a subsequent examination to the one above mentioned,
he explored the internal parts of the throat completely, it was
evidently in a state of mash, as if something had been forcibly
applied to it, and had no doubt that if the child had not been
found so soon by a quarter or half an hour, that the moss alone
would have occasioned its death. Independent of the moss, the
state of the throat was such that the child must have died. The
surgeon said, that, in his opinion, the child did not die immedi-
ately of the moss, but that from the effect of the moss on the
throat the parts were so much injured as to prevent *its swallow-
ing or breathing*. He thought that if the throat had not been
injured the child would have recovered. The bruising and
mashing the throat caused the death of the child by closing
the passages; the left tonsil was completely mashed, and the throat
closed; both passages were closed, and nothing which was done
on the outside of the neck could have produced that effect.

Another surgeon who had also seen the child, considered that
it died of strangulation; that the pressure of the moss on the ves-
sels of the throat occasioned strangulation, and consequently a
rupture of the vessels.

On a question from the jury, the surgeon said, that he did not
consider the injury done to the throat, could have been done in
bringing the child into the world, or by taking the moss out of
its mouth.

The learned Judge in summing up the evidence to the jury,
told them, that it was clear that the exposure of the child to the
air did not contribute to its death, and that the death was not
occasioned by any external violence. He directed the jury if
they thought the prisoner was the occasion of the death of the child, by stuffing the moss into its mouth, and thereby choking, suffocating, and strangling it, or by pressing the moss so hard into its throat as to mash the throat and thereby kill it, to find the prisoner guilty; but as he was not quite satisfied, that the indictment was properly framed to support the death by wounding and mashing the throat, he desired they would, if they found the prisoner guilty, say what, in their opinion, was the cause of the death.

The jury found the prisoner guilty, and said that the death was occasioned by the injury done to the throat, and not by suffocating, choking, or strangling, by the moss being put into its mouth.

Sentence was passed on the prisoner, but the learned Judge respited the execution, in order that the case might be submitted to the opinion of the Judges.

In Easter term 1818. The Judges met to consider this case; they held, that as the primary cause of the suffocation was the forcing the moss into the throat of the child, it was not necessary to state in the indictment the intermediate process, viz. the swelling up of the passage of the throat which occasioned the suffocation, such swelling having arisen by the forcing the moss into the throat.

**REX v. JOHN SQUIRE.**

The prisoner was tried before Mr. Justice Bayley, at the Lent assizes for the county of York, in the year 1818. On an indictment for embezzling fourteen one guinea notes received by the said prisoner, by virtue of his employment as clerk and servant to eight persons, who were overseers of the township of Leeds.

It appeared in evidence that the prisoner had acted for several years for the overseers of the township of Leeds, at a yearly salary, on their account; he received a sum and embezzled it. Held, that he was a clerk and servant within the 59 & 60 c. 85. S.C. 3 Stark. N.P.C. 348.
under the name of their accountant and treasurer; and as such had received and paid all the money receivable or payable on their account, and had rendered to them every week a weekly account purporting to be an account of whatever he had received or paid during that period. On the 23d June, 1817, the prisoner received the fourteen notes in question from John Senior, being money due from him as overseer of another township, for money supplied by the township of Leeds to a pauper in Leeds belonging to Senior's township; the prisoner had not entered the receipt of this money in his weekly accounts. It also appeared in evidence that the prisoner had omitted other receipts at various times, to an amount exceeding 1800l.

The learned Judge told the jury, that if they were satisfied the prisoner intentionally omitted entering this receipt of the fourteen notes for the fraudulent purpose of applying the money to purposes of his own, and that he had so applied it, they ought to find him guilty.

The jury found the prisoner guilty; but it having been urged that the prisoner was not such a clerk or servant as the statute contemplated, the learned Judge saved that point for the consideration of the Judges.

In Easter term, 1818, the Judges met and held this conviction right. The Judges were of opinion that the prisoner was a clerk and servant within the 39 G. S. c. 85. (a)

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1818.

REX v. JOHN SEARING.

The prisoner was tried before Mr. Baron Wood, at the Lent assizes for Hertfordshire, in the year 1818, for larceny, in stealing “five live tame ferrets confined in a certain hutch,” of the price of fifteen shillings, the property of Daniel Flower.

The jury found the prisoner guilty; but on the authority of 2 East, P. C. 614., where it is said that ferrets (among other things) are considered of so base a nature that no larceny can be com-

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mitted of them, the learned Judge respited the judgment until the opinion of the Judges could be taken thereon.

It appeared in evidence that ferrets are valuable animals, and those in question were sold by the prisoner for nine shillings.

In Easter term, 1818, the Judges met and considered this case; they were of opinion that ferrets (though tame and saleable) could not be the subject of larceny, and that judgment ought to be arrested. (a)

REX v. TANNET.

The prisoner was tried before Mr. Baron Wood, at the Spring assizes for the county of Kent, in the year 1818, on an indictment on 57 G. S. c. 127. s. 4.(b) for personating the name of a seaman. To constitute this offence, a person entitled, or really supposed to be entitled, to wages, must be personated; personating a man who never had any connection with the ship is not an offence within the act. When there never was such a person belonging to the ship as the person described by the indictment as the person personated, the prisoner cannot be convicted, though there was a person belonging to the ship of nearly the same name whom the prisoner meant to personate.

(a) See 1 Hale, P.C. 512. 1 Hawk. c. 55. s. 23. 6th edit. 3 Inst. 102.
(b) By which it is enacted, That in order to bring into one act the several provisions made for the prevention and punishment of the crimes of personation and forgery for the purpose of obtaining prize-money, if any person shall willingly or knowingly personate or falsely assume, or cause or procure any other person to personate or falsely assume, the name or character of any commissioned officer, warrant or petty officer, or seaman, or any commissioned or non-commissioned officer of marines, or marine, or any other person entitled or supposed to be entitled to any wages, pay, prize-money, bounty-money, pension money, or other allowances of money for or in respect of services performed, or supposed to have been performed, on board of any ship or vessel of His Majesty, or the wife, widow, executor, or administrator, relation, or creditor of any such officer, seaman, or other person as aforesaid, in order to receive any wages, &c. due or supposed to be due for or in respect of the services of any such officer, seaman, marine, or other person, as aforesaid, performed or supposed to have been performed on board of any ship, &c. or shall falsely make, forge, &c., or cause or procure, &c. or willingly act or assist in the false making, &c. any letter of attorney, &c. in order to receive or enable any other person to receive any wages, &c. due or supposed to be due for or in respect of any such service as aforesaid, performed or supposed to be performed, &c. with intention to defraud any person or persons, body or bodies politic or corporate whatsoever; every person so offending, being thereof convicted, shall be deemed felon, without benefit of clergy.
dictment charging him, with wilfully and knowingly, personating and falsely assuming, the name and character of Peter McCann, a person entitled to prize money for and in respect of his services performed on board of a ship of His Majesty, called the Tremendous, in order to receive such prize money, with intent to defraud the Commissioners and Governors of the Royal Hospital for Seamen at Greenwich, against the form of the statute in that case made and provided.

There was another count in the indictment the same as the above, with this variance only, viz. it stated Peter McCann as a person supposed to be entitled, &c. and for services supposed to be performed, &c.

It appeared by the Tremendous prize list and the muster book of the Tremendous, produced by the proper officers of Greenwich Hospital, that there was a person of the name of Peter McCann, entitled to prize money; but no person of the name of Peter McCann.

The learned Judge doubted, whether on this variance in the name he ought not to have directed an acquittal; and reserved this point for the consideration of the Judges. He desired the jury to say, whether the prisoner meant to personate Peter McCann; and they found he did, and returned a verdict of guilty.

The judgment was respited, to take the opinion of the Judges on the point reserved.

In Easter term, 1818, the Judges met and considered this case. They were of opinion, that the "personating" must apply to some person who had belonged to the ship, and that the indictment must charge the personating of some such person; as that was not the case here, they held the conviction wrong. (a)

(a) Vide Rex v. Martin, supra, 324. Rex v. Cramp, supra, 327.
REX v. MARTHA POTTS, ALIAS DANGREEN.

The prisoner was tried before Mr. Baron Wood, at the Kent spring assizes, 1818, on an indictment, containing (among others) the two following counts, viz.

The first count charged, that Martha Potts, late of, &c., single woman, otherwise called Martha the wife of Gustoff Dangreen, on the 1st of May, 1817, with force and arms, at the parish, &c., feloniously, willfully, and knowingly did procure one John Williams, to personate, and falsely to assume the name and character of Thomas Jacobs, a person entitled to a certain allowance of money, for services done on board certain ships of our said Lord the King, in order to receive such allowance of money, due and payable for and on account of the services of the said Thomas Jacobs as aforesaid; and that the said John Williams by the procurement of the said Martha Potts, otherwise called Martha Dangreen as aforesaid, then and there, with force and arms, feloniously, willfully, and knowingly, did personate, and falsely assume the name and character of the said Thomas Jacobs, a person entitled to a certain allowance of money, for services done on board certain ships of our said Lord the King, in order to receive such allowance of money due and payable for and on account of the services of the said Thomas Jacobs as aforesaid, with intent to defraud the commissioners and governors of the Royal Hospital for seamen at Greenwich, in the county of Kent, against the form of the statute, &c., and against the peace, &c.

The thirteenth count charged, that the said John Williams, late of, &c., afterwards, to wit, on the said 1st of May, in the year aforesaid, with force and arms, at Greenwich aforesaid, in the county aforesaid, feloniously, willfully, and knowingly did personate and falsely assume the name and character of one Thomas Jacobs, a person entitled to a certain allowance of money, for services done on board certain ships of our said Lord the King, in order to receive such allowance of money due and payable for and on account of the services of the said Thomas Jacobs
as aforesaid, with intent to defraud the commissioners and governors of the Royal Hospital for seamen at Greenwich, in the county of Kent; and that the said Martha Potts, otherwise called Martha Dangreen, then and there, to wit, at the time of committing the felony aforesaid, with force and arms, feloniously, willingly, and knowingly was present, aiding, abetting, assisting, comforting, and maintaining the said John Williams to do and commit the felony aforesaid, in form aforesaid, and so the jurors aforesaid, upon their oath aforesaid, do say, that the said John Williams, and the said Martha Potts, otherwise called Martha Dangreen, the felony aforesaid, in manner and form aforesaid, feloniously, willingly, and knowingly did do and commit, against the form of the statute, &c., and against the peace, &c.

There being no evidence of previous procurement, the jury acquitted the prisoner on the first count, and all the other counts in the indictment except the thirteenth, on which they found the prisoner guilty, she being present and asserting, that John Williams was Thomas Jacobs.

The learned Judge respited the judgment to take the opinion of the Judges upon this count, doubting whether it was a good one, as the act makes no provision as to aiders, abettor, assisters, comforters, and maintainers in that part which relates to personating seamen, though in a subsequent part, as to forging letters of attorney, &c. it provides against those who shall willingly act or assist therein, or with respect to uttering and publishing, against those who shall aid and assist. The learned Judge also doubted whether the doctrine of a principal in the second degree (which seemed to be the idea of this count) could apply to this case; because principals in the second degree, and principals in the first degree, may be charged jointly as doing the act; Whereas it appeared to the learned Judge difficult to allege that a man and a woman jointly personated one man.

Williams had been convicted of personating Jacobs, at a former assizes, and the record of his conviction was produced to prove that fact on this indictment.

In Easter term, 1818, the Judges met and considered this case. They were of opinion that a person present, aiding, and abetting another, whilst personating a seaman, was within the act of the 57 G. 3. c. 127. The Judges were unanimously of opinion that the conviction was right.
REX v. SAMUEL HALL.

The prisoner was tried and convicted before Mr. Justice Bayley, at the spring assizes for the county of York in the year 1818, of burglary; but upon a doubt as to the question of breaking into the house, the learned Judge saved the point for the consideration of the Judges.

The prisoner entered the house by lifting up a large iron grating, which was placed over the prosecutor's cellar, and opening a window in a passage leading from that cellar. The cellar opened into a passage which led into the house, and the window was within the wall of the house, the cellar was beyond the walls. The grating weighed eight stone, and was usually fastened inside by a large iron chain, but it was not so fastened at the time the prisoner entered. The grating was for the admission of light only, not of goods. The window opened upon hinges, and was fastened by two nails which acted as wedges; but, notwithstanding, these nails would open by pushing.

It was argued that the lifting up the grating was no breaking, because it was kept down by its own weight only, and that the forcing open the window was no breaking, because it was done by pushing only.

The learned Judge thought the forcing the window was a breaking, but he reserved the point for the consideration of the Judges.

In Easter term, 1818, the Judges met. They held the conviction right, being of opinion that the forcing the window in the manner described was a sufficient breaking into the dwelling-house (a)

Indictment on the 43 G. S. e. 58. for cutting J. S.
The evidence was, that the wounds were inflicted by stabbing, and not by cutting.

The Judges held the conviction wrong.

The prisoner was tried before Mr. Baron Garrow at the Lent assizes for the town of Nottingham, in the year 1818, on an indictment which charged, that the prisoner on 25th November, 1817, at &c., upon John Smith a subject, &c., feloniously, wilfully, maliciously, and unlawfully, did make an assault, and with a certain sharp instrument called a bayonet, feloniously, &c. did strike and cut the said John Smith, upon his forehead, &c., with intent feloniously &c., to kill and murder, against the statute, &c.

It appeared by the testimony of John Smith, the prosecutor, that the wounds inflicted were by stabbing and not by cutting. This was confirmed by the evidence of a surgeon who attended the prosecutor, who said the appearance was of a punctured triangular wound, as if inflicted by the point of a bayonet, and they appeared to him to be the effect of stabbing, and not the effect of cutting.

The question reserved for the opinion of the Judges was, whether the offence so proved was properly described in the indictment.

In Easter term, 1818, the Judges met and considered this case. They held the conviction wrong, being of opinion that as the 48 G. S. c. 58. uses the words in the alternative, "stab or cut" so as to distinguish between them, the distinction must be attended to in the indictment. (a)

(a) Vide Rex v. Atkinson, ante, 104.
CROWN CASES RESERVED.

REX v. RICHARD LITHGO.

The prisoner was tried and convicted before Mr. Baron Garrow at the Lent assizes for Warwick in the year 1818, of burglary. The question reserved for the consideration of the Judges was, whether under the circumstances, there was, in point of law, a breaking of the dwelling-house.

It appeared that the prosecutor, Edward Hobson, had a dwelling-house, the door of which opened into a street called Newhall Street, in Birmingham; and that he had a warehouse, being part of the same range of buildings under the same roof, and which formed the corner of another street called Fleet Street. There was not any internal communication between the dwelling-house and the warehouse; the door of the latter was round the corner in Fleet Street. At the back part of the dwelling-house and of the warehouse, there was a yard which enclosed them both; and from the dwelling-house there was a door, by which a communication might be had to the warehouse, by a door in the yard.

The breaking in this case was by the door which so opened out of the yard into the warehouse, and the prisoner appeared to have forced the other door of the warehouse in the inside, to go out into the street.

Goulbourn for the prisoner contended, that as there was a separate door to the warehouse not within the protection of the yard, though the breaking and entry were not by that door, the warehouse could not be considered as part of the dwelling-house.

The jury found the prisoner guilty, and the learned Judge reserved the point for the opinion of the Judges.

In Easter term, 1818, the Judges met. They were unanimously of opinion that the conviction was right, and that the warehouse was parcel of the dwelling-house of the prosecutor. (a)

(a) Vide Rex v. Chalking, ante, 354.
REX v. FRANCES CLARK.

The prisoner was charged by indictment, and upon the coroner's inquest with murder, and was tried before Mr. Justice Holroyd, at the Lent assizes for the county of Devon, in the year 1818.

The person alleged to have been murdered was named and described in the indictment, as "George Lakeman Clark, a base-born infant male child, aged three weeks." And in the coroner's inquest he was described as "George Lakeman Clark, a male bastard child about three weeks old." The jury were charged with the prisoner, on both the indictment and the inquest.

The age of the deceased child, and that it was a base-born son of the prisoner, and that she murdered it, as charged in the indictment and inquest, were proved; but it appeared by the evidence, that the child was christened George Lakeman, being the names of its reputed father, and that it was called George Lakeman, and not by any other name known to the witnesses, and that the mother called it George Lakeman. There was no evidence that it had obtained, or was called by its mother's name of Clark. The reputed father had not taken it, but had left the mother and child to the care and charge of the parish.

The prisoner was convicted; but judgment was respited, in order that it might be submitted to the consideration of the Judges, whether as the child had not gained the surname of Clark, his mother's name by reputation, the prisoner was rightly convicted on this indictment.

In Easter term, 1818, the Judges met and considered this case. They held that as this child had not obtained his mother's name by reputation, he was improperly called Clark in the indictment; and as there was nothing but the name to identify him in the indictment, the conviction could not be supported. (a)

(a) Co. Lit. 3. a. 6 Co. 65. 3 Salk. 66. pl. 3.
CROWN CASES RESERVED.

1818.

REX v. THOMAS KING WENT.

The prisoner was tried before Mr. Justice Burrough, at the Lent assizes for the county of Hereford, in the year 1818, on an indictment, which charged that the said prisoner, on the 29th of January, 58 G. 3. with force and arms, at the parish of Kington, in the county of Hereford, six pounds weight of pork, of the value of four shillings, and other goods (specifying the goods and value) of the goods, chattels, and property of the overseers of the poor, for the time being, of the parish of Kington aforesaid, then and there being found, feloniously did steal, take, and carry away, against the peace, &c.

By the statute of 55 G. 3. c.187. s.1., the property of, and in all and singular the goods, chattels, furniture, provisions, clothes, &c. had, and to be had, bought, procured, or provided for the use of the poor of any parish or parishes, township or townships, &c., is vested in the overseers of the poor of such parish, &c., for the time being, and their successors in office for the purposes of that act; who are thereby empowered to bring, or cause to be brought, any action or actions, or to prefer, or order the preferring of any bill or bills of indictment, against any person or persons who shall steal, take, or carry away, or buy or receive any such goods, &c. And in every such action and indictment, the said goods, &c. shall be laid or described to be the property of the overseers of the poor for the time being, of such parish or parishes, &c. without stating or specifying the name or names of all or any such overseers.

The prisoner, at the time the felony was committed, was governor of the workhouse of the parish of Kington. And it was proved by witnesses, and by the confession of the prisoner, that he had committed a felony, by stealing goods which were the property of the overseers, at the time the felony was committed. But on attending to the form of the indictment, the learned Judge doubted, whether the indictment was not uncertain, inasmuch as it alleged that the stolen goods were the goods, chattels, and property of the overseers of the poor for the time being.
of the parish of Kington, and not that they were so at the time of the felonious stealing, taking, and carrying away the same.

The learned Judge told the jury, that if they thought the prisoner was guilty of the felony, he would submit the question of the sufficiency of the indictment, to the consideration of the twelve Judges.

The jury found the prisoner guilty.

In Easter term, 1818, the Judges met and considered this case. They held the conviction right, being of opinion that the allegation that the goods were the property of the overseers of the poor for the time being, sufficiently import that at the time of the theft, the goods were the property of the then overseers of the poor.

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REX v. RICHARD CLAYBURN AND WILLIAM DUNNING.

The prisoners were tried and convicted before Mr. Justice Bayley, at the Lent assizes for the county of York, in the year 1818, of burglary.

The place into which the prisoners broke, was a goose-house, in the prosecutor's yard, and opposite his house. The yard had a barn all along the north side; a wall seven feet high on the south; a stable, goose-house, and a weaver's shop, on the east; and the house, with a wall seven feet high on the west.

In the south wall, there was a gate leading into an adjoining lane, and the stable and weaver's shop had doors opening backwards, as well as doors opening into the yard.

The learned Judge was not clear, whether this goose-house could, under these circumstances, be deemed parcel of the dwelling-house; and therefore stated the case for the consideration of the Judges.

Indictment for burglary. Prisoner broke into a goose-house, opening into the prosecutor's yard, into which his house also opened; the yard was surrounded partly by other buildings of the home-stead, and partly by a wall; some of the buildings had doors opening backwards, and there was a gate in one part of the wall opening upon a road; this goose-house was held part of the dwelling-house.
CROWN CASES RESERVED.

In Easter term, 1818, the Judges met, and held that this goose-house was part of the dwelling; and that the conviction was right. (a)

REX v. THOMAS LEE.

William Franklin and Abraham Cooke were tried before Mr. Baron Garrow, at the Lent assizes for Northampton, in the year 1818, and Franklin was convicted of highway robbery.

Thomas Lee, an accomplice, was, upon application by the counsel for the Crown taken before the grand jury, and was examined as a witness on this trial; and conducted himself with propriety, and told the truth.

On a subsequent day at the same assizes, the said Thomas Lee was tried before the learned Judge, and convicted of a burglary. Whether it was proper to prosecute him, after he had been received as a witness for the Crown, was the question submitted to the consideration of the Judges.

In Easter term, 1818, the Judges met and considered this case. They were all of opinion that the conviction was right; that Lee having been examined as a witness for the Crown, was no legal objection to his being tried for any offence with which he was charged; it rested entirely on the discretion of the Judge whether to recommend the prisoner in such a case, to the Crown for mercy. (b)

(a) Vide 1 Hale, P. C. 558.
The prisoner was tried before Mr. Baron Graham, at the Chelmsford Lent assizes in the year 1818, on an indictment on Lord Ellenborough's act.

The only count in the indictment to which the evidence applied was that which charged, "that with a sharp instrument the prisoner feloniously and maliciously, did cut Mary Evans upon her private parts, with intent in so doing, to do her a grievous bodily harm."

It appeared in evidence that Mary Evans, a child, about ten years of age was in Epping Forest, on the 19th September 1817, gathering sticks, two of her sisters were with her, one older and the other younger than herself. The prisoner, whom Mary Evans had often seen, came up and spoke to her elder sister; she asked him what he was looking for; he said for a wife, and he took her in his arms and kissed her and then let her go. He then caught hold of Mary Evans, and threw her down. He took a knife out of his pocket, opened it, and cut her on her private parts; he was on his knees when he cut the child, and held both her hands down, but on hearing some body coming he ran away. The child was not much hurt; but it gave her a good deal of pain, and there was a good deal of blood. It did not appear that the prisoner made any attempt to have connexion with her, or that any part of his person was exposed. He was disturbed while inflicting the wound which has been described.

The surgeon who examined the child on the 23d of September following, stated that he found on the exterior parts of generation a slight laceration, extending from between the labia and below, about an inch in length; the laceration was not deep and he should not have thought it had been done with a knife, but with some pointed instrument; but it was such a wound as a knife might have effected. The external part was then healed, one part of the wound was within the labia, the other external and below the labia; there was then an apparent laceration within; but no danger was apprehended, the internal wound being immediately be-
low the hymen; but if it had penetrated the hymen it would have been dangerous to her life, as it might have occasioned a great discharge of blood.

Graham B. told the jury that they were to consider whether this was not a grievous bodily injury to the child, though eventually not dangerous. As to the intent, though it probably was the prisoner's intention to have committed a rape, yet if to effect a rape, he did that which the law made a distinct crime, viz. intentionally did the child a grievous bodily harm, he was not the less guilty of that crime because his principal object was another. The intention of the prisoner might be inferred from the act.

The jury found the prisoner guilty, but the learned Judge respited the sentence to take the opinion of the Judges on the case.

In Easter term, 1818, the Judges met and held the conviction right.

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REX v. WILLIAM STEWART and ANN DICKENS.

The prisoners were tried before Mr. Baron Garrow, at the Warwick Lent assizes, 1818, for disposing of, and putting away a forged note of the Bank of England.

A witness of the name of James Platt stated, that he had agreed with the prisoners for the purchase of a quantity of forged Bank of England notes, for which he paid; and that he attended on several different days to receive them. At length by appointment he went to the house of the prisoners, when he saw the prisoner Dickens; she informed the witness that Stewart was gone to get ready for him. In about half an hour Stewart came in, and told the witness they were ready for him. Stewart desired Dickens "to go up yonder," and that he and Platt would meet her "at the old spot." Stewart and Platt, the witness, then went to a public house about a mile off; Dickens came to them there and beckoned them out of the house. The prisoners conversed together apart,
and then came to Platt. Stewart said to Platt, "You see Ann there, whom you have seen at our house, she will deliver you the goods, and I wish you good luck." The prisoners Stewart and Dickens were then both together; Platt bid them good bye and went to the woman whom the prisoners called Ann, and Ann and the witness walked together a short distance along the road, as there were strangers passing. After a short time, Ann gave Platt different parcels out of her reticule. Platt then left her and went to an inn, and opened the parcels which were found to contain the forged notes. The witness counted and marked them, and delivered them to the chief constable. It was not more than three minutes after Ann was pointed out by the prisoner Stewart, before she delivered the goods to Platt, and she was at a distance of about one hundred yards from the prisoners when she was so pointed out. The witness Platt did not know whether the prisoners were, or were not in sight when Ann delivered the notes to him, nor which way they went.

Reynolds for the prisoners, contended that upon this evidence the prisoners could not be convicted on an indictment charging them as principals; that the evidence went to charge them only as accessories before the fact to a felony by the woman called Ann.

The learned Judge told the jury that if they were of opinion that the delivery was by Ann on her own account, though the prisoners might have procured it, they ought to find them not guilty on this indictment. But if they were satisfied that Ann was brought to the place by the prisoners, for the purpose of delivering the notes which they had agreed to furnish, and the price of which they had received; and that the delivery by Ann was of goods (so called) on their account, and in completion and satisfaction of their agreement, then he thought the case was in point of law made out against the prisoners.

The jury found the prisoners guilty, and stated that they considered Ann as acting merely in the manner suggested in the latter observations. But judgment was respited in order that the opinion of the Judges might be taken on the point.

In Easter term, 1818, the Judges met and considered this case. They held the conviction wrong. All the Judges were of opinion that it was clear that the woman Ann was a guilty agent, and that the prisoners were only accessories before the fact. They directed that the prisoners should be recommended for a special
pardon extending only to this offence, and that they should be
detained till the next assizes to be tried as accessories before the
fact. (a)

REX v. THOMAS DUFFIN AND WILLIAM MARSHALL.

The prisoners were tried before Mr. Baron Wood, at the
Surrey spring assizes, in the year 1818, on an indictment con-
taining three counts.

The first count charged the prisoner with wilfully, malici-
ously, and unlawfully assaulting John Sharp, and with a sharp
instrument cutting him upon his forehead with intent to murder
him, contrary to the form of the statute. The second count
charged the intent to be, to disable the said John Sharp; and the
third count charged the intent to be, to do the said John Sharp
some grievous bodily harm.

The facts proved were, that the prisoners went by night into
the burial ground of Lambeth church, with intent to dig up
graves and to take dead bodies. They went to the bone-house,
broke open the door, and took out two shovels. The prisoner
Marshall then began digging up a grave, and had dug down to a
coffin, during which time Duffin was standing at the end of the
grave. The sexton, who with his son, and another person of
the name of John Sharp, as his assistant, had been concealed
in the church-yard with arms to watch the prisoners whom they
knew, came forward to the head of the grave, and said, "You
scoundrels, don't you want some assistance there?" The pri-
soner Duffin said, "We are took to." Marshall got out of the
grave and struck at the sexton with the shovel, but missed him.
The sexton then said, "Will, don't you know me?" The prisoner
Marshall said, "I know nobody." The sexton replied, "Surrender

(a) Vide Rex v. Soares and others; ante, 25. Rex v. Badcock and others,
ante, 249.
or I'll shoot you." Marshall then struck a second blow, which the sexton parried off with his fowling-piece. The sexton then struck Marshall with his fowling-piece; and Marshall was again attempting to strike, but the sexton called out for assistance. The sexton's son came up, and fired a pistol over Marshall's head, Marshall then surrendered. Whilst Marshall was struggling with the sexton, Sharp, who was very near him, and who had not spoken, but had gone with the sexton for the purpose of apprehending any body they should find disturbing the graves, received a blow from a sabre, which fell on his forehead. This cut was not very deep, nor in any wise dangerous, but bled very much. The blow from the sabre was given by the prisoner Duffin, who attempted to strike Sharp a second time, but was knocked down by Sharp, and secured.

Curwood for the prisoners contended, that what the prisoners had done was solely with a view to obstruct, resist, or prevent their own apprehension; and as the statute (a) had expressly provided for that case, the indictment ought to have been framed accordingly. He also contended that the statute applied only to cases of lawful apprehension; and here there was no lawful ground to warrant the apprehension of the prisoners, as the taking of dead bodies was not a felony, nor a breach of the peace, but merely a trespass. (b)

(a) 45 G. 5. c. 58. s. 1. This statute enacta, among other things, That if any person or persons shall wilfully, maliciously, and unlawfully stab or cut any of His Majesty's subjects, with intent in so doing, or by means thereof, to murder or rob, or to maim, disfigure, or disable such His Majesty's subjects, or with intent to do some other grievous bodily harm to such His Majesty's subjects, or with intent to obstruct, resist, or prevent the lawful apprehension and detainer of the person so stabbing or cutting, or the lawful apprehension and detainer of any of his accomplices for any offences for which he may respectively be liable by law to be apprehended, imprisoned, or detained, every such persons so offending, their counsellors, aids, and abettors, are declared to be felons without benefit of clergy.

(b) But see the following case of Rex v. Gilles, Northumberland Lent Assizes, 1820, coram Rayley J. The defendant was tried on an indictment; the second count (and upon which the defendant was convicted) was as follows: —

"And the jurors, &c. further present that the said Henry Gilles, on the day and year aforesaid, with force and arms at Tyne-mouth aforesaid, in the county aforesaid, a certain other dead body of a person to the jurors unknown, then lately before deceased, and then and there being found, wilfully, unlawfully, and
HEATH for the Crown contended, that there was an intention, on the part of the prisoners, to do some grievous bodily harm to the prosecutor independent of any resistance to their own apprehension.

The learned Judge left that point to the jury, who found that the acts done by the prisoners, were done with intent to obstruct, resist, and prevent their apprehension, and for no other purpose. The question of law the learned Judge reserved for the opinion of the Judges.

In Easter term, 1818, THE JUDGES met, and considered this case, and held the conviction wrong. The Judges were of opinion that this case could not be within the statute of the 43 G.3. c.58., unless the apprehension of the prisoners would have been lawful; and if the cutting, &c. was to prevent a lawful apprehension, it should have been so stated, that being one of the intents mentioned in the act. The intent laid in the indictment had been expressly negatived by the jury; and therefore the conviction could not be supported.

indecently did take and carry away with an intent to sell and dispose of the same for gain and profit, to the great scandal and disgrace of religion, in contempt of the laws and customs of this realm, and against the peace," &c. It appeared by the evidence that the defendant had taken the body from some burial ground, though it did not appear what. The learned Judge who tried this case afterwards mentioned it privately to each of the Judges of the Court of King's Bench, and they thought it so clear that it was an indictable offence to take a person's dead body and dispose of it for gain and profit, that the learned Judge, by their advice, forbore making a case for the opinion of all the Judges. MS. Jud. See also Rex v. Lyons, 3 T. R. 735.
INDICTMENT ON S7 G. 3. c. 90.
If several persons are out with the intent to kill game, and only one of them is armed, the rest who are unarmed, are liable to be convicted under this act.

The prisoners were tried before Mr. Justice Holroyd at the Oxford summer assizes, in the year 1818. On an indictment upon the statute 57 G. 3. c. 90. (a), for felony, in unlawfully entering into a park at Bletchington, and being found there, armed with guns, between six o’clock in the evening and seven o’clock in the morning, to wit, about one o’clock of the night of the 30th January, 1818, with intent to kill game, against the form of the statute, &c.

The second count stated the offence to be in a certain enclosed ground.

There was evidence to shew, that the three prisoners and another man came together into an enclosed piece of ground at Bletchington, which enclosed piece was surrounded by other land, called a park, which was walled round. The prisoners came to this place in the night-time, between the hours stated in the indictment, for the purpose and with the intent to kill game there. One of the prisoners shot a hen pheasant, which was seen in O’Flannaghan’s hand. They had two guns with them, one the prisoner O’Flannaghan had; but which of the other three men had the other gun did not appear.

(a) By s. 1. it is enacted, That if any person or persons, having entered into any forest, chase, park, wood, plantation, close, or other opened or inclosed ground, with the intent illegally to destroy, take, or kill game or rabbits, or with the intent to aid, abet, and assist any person or persons illegally to destroy, take, or kill game or rabbits, shall be found at night, that is to say, between the hours of six in the evening and seven in the morning from the first day of October to the first day of February, between seven in the evening and five in the morning from the first day of February to the first day of April, and between nine in the evening and four in the morning for the remainder of the year, armed with any gun, cross-bow, fire-arms, bludgeon, or any other offensive weapon, every such person so offending, being thereof lawfully convicted, shall be adjudged guilty of a misdemeanour, and shall be sentenced to be transported for seven years, &c.
The jury found all the three prisoners guilty, but the learned Judge stated that he should take the opinion of the Judges, whether Smith and Preston could be considered to come within the description of the statute, as persons armed with guns.

The question reserved for the opinion of the Judges was, whether Smith and Preston were rightly convicted. (a)

In Michaelmas term, 1818, the Judges met and considered this case. They were unanimously of opinion that the conviction was right; and that any one of the party being armed, was sufficient to bring the others within the statute. (b)

REX v. WILLIAM PHILLIPS THE ELDER AND WILLIAM PHILLIPS THE YOUNGER.

The prisoners were tried before Mr. Justice Holroyd at the Salop summer assizes, 1818, on an indictment for high treason.

The indictment was framed upon the statute, 8 & 9 W. 3, c. 26. s. 1, (c) and charged the prisoners (inter alia) for that prosecution was commenced within three months. Proof by parol that the prisoner was apprehended for treason respecting the coin within the three months, will not be sufficient if the indictment is after the three months, and the warrant to apprehend or to commit are not produced. Upon an indictment for having in possession a die made of iron and steel, proof of a die made of either material will be sufficient.

(a) Vide 1 East, P. C. 413, 4.

(b) It was decided in Rex v. Southern, East. T. 1821, post, that if several are out together with the intent to kill game, and one has arms without the knowledge of the others, the others are not liable to be convicted under this act.

(c) By the first section it is enacted, That no smith, engraver, founder, or other person or persons whatsoever (other than and except the persons employed or to be employed in or for His Majesty's mint or mints, and for the use and service of the said mints only, or persons lawfully authorised by the Lords Commissioners of the Treasury, or Lord High Treasurer of England for the time being) shall, without lawful authority or sufficient excuse for that purpose, knowingly have in his or their houses, custody, or possession, any puncheon, counter-puncheon, matrix, stamp, dye, edger, cutting engine, pattern, or mould of steel, iron, silver, or other metal or metals, or of spaud, or fine founders' earth, or sand, or of any other materials whatsoever, in or upon.
1818.

Phillips's Case.

they not being either of them employed in or for the mint, &c. knowingly and traitorously had in their custody and possession a die made of iron and steel, in and upon which was impressed the resemblance and similitude of the head side of the lawful silver coin current within England called a shilling, without any lawful authority or sufficient excuse for that purpose, against the form of the statute.

The prisoners, who were father and son, were proved to have had in their custody and possession two dies, on one of which was impressed the head, and on the other the tail side of a new mint shilling. By these dies, the prisoners impressed on the two different sides of a piece of white base metal, the head and tail of a shilling; consequently the impressions on the dies were the reverse of the impressions on a shilling.

There was no count for having in their custody or possession a die which would make or impress such resemblance or similitude.

The dies were not produced at the trial, but a witness who spoke to the materials of the dies, said they were made either of iron or steel, but he could not say which. The indictment described the dies as made of iron and steel.

On the 12th of May, 1818, information having been given of the facts above stated, the prisoners were apprehended for high treason. That the prisoners were apprehended on that day appeared by parol evidence only; the warrant was not produced or proved, nor was the warrant of commitment, or the depositions before the magistrate, given in evidence, to show on what transactions, or for what offence, or at what time the prisoners were committed.

which there shall be, or be made or impressed, or which will make or impress the figure, stamp, resemblance, or similitude of both or either of the sides or flats of any gold or silver coin, current within the kingdom; and if any smith, &c. (other than except as aforesaid) shall offend in the matter aforesaid, then every such offender, their counsellors, &c. are adjudged guilty of high treason, and, being thereof convicted, shall suffer death as in case of high treason. By the ninth section it is enacted, That no prosecution shall be made for any offence against this act, unless such prosecution be commenced within three months after such offence committed. This act is made perpetual by 7 Ann. c. 95. § 3., and by s. 2. the makers or menders of tools are to be prosecuted within six months.
CROWN CASES RESERVED.

The jury found both the prisoners guilty; but on looking at the statute 8 & 9 W.3. c.26. it appeared, that for the offences within that statute (of which the offence proved against the prisoners was one), the prosecution must be commenced within three months after the offence committed. The time when the prisoners were apprehended (and proved as above,) was within the three months; but the times of preparing the indictment and of the commission day of the assizes, were beyond that period of time. The learned Judge doubted whether the above proof of the time of the commencement of the prosecution was sufficient; if it rested at all with the prosecutor to show the time of the commencement of this prosecution, where the proviso limiting the time was separate and distinct from the clause creating the offence. The learned Judge also doubted whether the evidence supported the description of the die in the indictment.

The question reserved for the opinion of the Judges was, whether the prisoners were rightly convicted.

In Michaelmas term, 1818, the Judges met and considered this case. They were of opinion that there was not sufficient evidence that the prisoners were apprehended upon transactions for high treason respecting the coin, within three months after the offence committed, and directed application to be made for a pardon. The Judges were of opinion that evidence of the die being made of either iron or steel would be sufficient upon this indictment, and that it was immaterial, as to the offence, of what materials the die was made. (a)

CROWN CASES RESERVED.

REX v. JAMES BUSH.

The prisoner was tried before Mr. Baron Garrow, at the summer assizes for the county of Gloucester, in the year 1818, and was convicted, and received sentence of transportation for fourteen years; but execution was stayed, in order that the opinion of the Judges might be taken on the propriety of the conviction.

The indictment stated, that a certain person or persons to the jurors unknown, the dwelling-house of Harriet Wilmot, burglariously did break and enter; and certain silver plate, commonly called a silver cream jug, her goods, did steal; and that James Bush feloniously did receive and have the same, he then and there well knowing the same to have been feloniously and burglariously stolen, &c.

Upon the trial it appeared, that among the records of indictments returned by the same grand jury, there was one, charging one Henry Moreton, as principal in the burglary, and the prisoner Bush, as accessory after, in receiving the cream jug. It appeared that Mrs. Wilmot's house had been broken but once, that she had lost only one cream jug, and that she had preferred two indictments to the grand jury. The counsel for the prosecution had declined to proceed on the indictment against Moreton.

Ludlow for the prisoner objected, that the allegation in the present indictment, that the person or persons who committed the burglary were unknown to the jurors, was negatived by the other record; and that the prisoner was entitled to be acquitted.

Garrow B. reserved this point for the opinion of the Judges.

In Michaelmas term, 1818, the Judges met and considered this case. They held the conviction right, being of opinion that the finding by the grand jury of the bill, imputing the principal felony to J. S., was no objection to the second indictment, although it stated the principal felony to have been committed by certain persons to the jurors unknown. (a)

(a) Rex v. Walker, 5 Campb. 264. 2 East, P. C. 651. 781.
CROWN CASES RESERVED.

1819:

REX v. ROBERT TAYLOR.

The prisoner was tried before Mr. Baron Wood, at the Old Bailey sessions, December, 1818, upon an indictment, grounded on the 9 G.1. c. 22. s.1.

The first count charged, that the prisoner on the 8th of October, &c. at Acton, unlawfully, maliciously, and feloniously, did cut down one hundred and twenty-one trees, value 20L, belonging to Samuel Knevett, and growing in a garden belonging to him, for profit, against the statute, &c. The second count was the same as the first, only omitting the words "cut down," and substituting the word "destroy." The third and fourth counts were the same as the first and second, only stating that the trees were growing in an orchard belonging to Knevett, instead of a garden. The fifth and sixth were the same, only stating that the trees were growing in a certain plantation belonging to Knevett.

It was proved, that Samuel Knevett had a garden at Acton, in which he had many young apple and pear trees growing; these trees had been planted by Knevett, in order to sell the fruit which they might produce. These fruit trees were from four to six feet high in the stem, without the top. It was also proved that the prisoner in the night time, maliciously and unlawfully cut down above one hundred of these trees, apparently with a bill-hook, leaving them lying on the ground in the garden, as they had fallen. It appeared that these trees had been grafted on a wild stock; and about forty of the apple trees were cut below

Cutting down a tree is sufficient to bring the case within the 9 G.1. c. 22. though the tree is not thereby totally destroyed. Dwarf apple and pear trees bearing fruit, are trees within the statute. To bring the case within the 9 G.1. the act must be done from malice against the owner. See now the 4 G.4. c.54. (s)

(a) The s.t. (after reciting so much of the 9 G.1. c.22. as relates to the offence of destroying trees, &c. and expressly repealing so much of that statute, except as to offences committed before the passing of this act) enacts. That from and after the passing of this act, if any person shall unlawfully and maliciously cut down or otherwise destroy any trees planted in any avenue, or growing in any garden, orchard, or plantation, for ornament, shelter, or profit or shall procure, counsel, aid, or abet the commission of the said offence, every person so offending, being thereof lawfully convicted, shall be adjudged guilty of felony, and shall be liable to be transported for life, or for not less than seven years, &c.
the graft, and many of them were cut within a foot of the ground; some above and some below the graft. The choicest apple trees were cut below the graft. The fruit had been gathered from the trees that were cut down. It further appeared, that if the trees which were cut down were to shoot again, they might be grafted on other stocks; but it was doubtful whether all would shoot. And even if these trees could be recovered, it would be five or six years before any profit could be derived from them. It was stated, that in double-grafted trees (and some of these were of that description), the upper graft is effectually destroyed if cut below it, and if cut below the first graft, they are wholly destroyed.

Arabin for the prisoner, objected, that this case was not within the act; for that a mere cutting down of the trees was not sufficient, the words being "or otherwise destroy," which means that they must be actually destroyed. He contended that the trees cut down above the grafts, would strike out again and bear the same fruit; and although the owner would be deprived of the fruit for some time, they were not destroyed. If cut below all the grafts, the stock remained and would grow, and take another graft which would produce apples. That there must be an actual destruction, root and branch, to be within the meaning of the statute. He also started a doubt, whether this act of 9 G.1. was not virtually repealed by 6 G.3 c. 36. and 6 G.3. c. 48. (a)

The learned Judge reserved these points for the consideration of the Judges, and left it to the jury to say, whether the prisoner was guilty of unlawfully and maliciously cutting down the trees; and if they found him guilty, to say whether the trees were so cut down, as to be thereby destroyed.

The jury found the prisoner guilty; but said, they found that the trees cut down were not thereby totally destroyed.

In Hilary term, 1819, the Judges met and considered this case; they held the conviction right. The Judges were of opinion, that these were trees within the meaning of the act, because they were growing for profit; they thought, that cutting them down without the total destruction of them, was sufficient

(a) Vide 2 East, P. C. 1057, 8, 9, &c.
to bring the case within the statute. They also were of opinion, that the 9 G.1. was not repealed by either of the statutes of 6 G.3.; because these statutes applied to cases where there was no malice against the owner.

REX v. JAMES EGERTON.

The prisoner was tried before Mr. Justice Holroyd, at the Old Bailey session, December 1818, for robbing the prosecutor of a coat.

The prosecutor, previous to the transaction which formed the subject of this indictment, had only seen the prisoner twice; and on these occasions he met him by accident, when the prosecutor at the prisoner's request had given him some drink: with the exception of having met, as above stated, they were strangers to each other. The prosecutor was an under butler in a gentleman's family; and on the 17th November 1818, the prisoner applied to him at the door of his master's house for 5l. stating that he was in great distress, and that money he would have, and that of the prosecutor. On being informed by the prosecutor that he had not so much money; the prisoner demanded 1l.; and threatened that if the prosecutor did not instantly give it to him, he would go in to the prosecutor's master and ruin his character; that he would swear to his master that the prosecutor wanted to take diabolical liberties with him. The prisoner finding by his hand that money ginglyed in the prosecutor's breeches pocket, demanded it, and the prosecutor thereupon gave him the money, amounting to one shilling only and a few half-pence. The prisoner then demanded the prosecutor's watch, (which he had not about him, but which was below stairs) and desired that if he did not give him the watch, that the prosecutor should get him some of his master's plate; the prosecutor refused to give the prisoner either his watch, or his master's plate. But on the prisoner's enquiring about the prosecutor's clothes, and swearing that money he would have or the value of it before he left the house, the prosecutor went down stairs and
brought up one of his coats and gave it to the prisoner, which he went away with; declaring that he would pawn it and return the prosecutor the duplicate.

The prosecutor swore that he gave the prisoner his property under the idea of his being charged with a detestable crime, and for fear of losing both his character and his place, if, by not complying with the prisoner's request he should go into the prosecutor's master and charge him with this offence. The prosecutor stated that he was not afraid of being taken into custody, nor had he any dread of punishment. The prosecutor also stated that when he went for his coat, he was absent about five minutes; that the servants were in the kitchen, but he did not consult them on account of his agitation, and because he had not a moment to spare, expecting the company to dinner immediately, and his master being upstairs dressing. (a)

The prisoner made another but an ineffectual attempt to obtain a 1l. note from the prosecutor, on the following evening, by similar threats. The prisoner, on that occasion, brought with him the duplicate pawn ticket for the coat, which ticket was produced by the prisoner and delivered up to the constable upon his being apprehended. In this evidence of the prosecutor as to this second attempt, as well as to the pawn ticket, the prosecutor was confirmed by other witnesses.

This evidence was objected to by the prisoner's counsel, on the ground that evidence of an attempt to commit another similar offence could not in the present case be admitted; but

Mr. Justice Holroyd received it (Wood B. coinciding with him in its admissibility), on the ground of its being offered as confirmatory of the truth of the prosecutor's evidence, as to the transaction of the former day, and as to the nature of those transactions. (b)

The jury found the prisoner guilty, and sentence of death was passed upon him.

(a) The following cases were inserted at this place in the case reserved by the learned Judge: — Donelly's Case, 2 East, P. C. 715. S. C. 1 Leach, 195. Hickman's Case, ibid. 728. S. C. 1 Leach. C. C. 278. Jackson and Shipley's Case, 1 East, P. C. adda. xxi. Elmstead's Case, MS. C. C. R. Rex v. Cannon, ante, 146.

CROWN CASES RESERVED.

- Mr. Justice Holroyd reserved this case for the opinion of the Judges, as well on the ground of the objection, to the evidence which had been admitted, as on account of the discussions which had taken place among the Judges upon the decision in Hickman's case.

In Hilary term 1819, all the Judges met. Eleven of the Judges thought this case was similar to Rex v. Hickman, 2 East, P.C. 728., and that they could not with propriety depart from that decision. Holroyd J., Bayley J., and Richards C. B., stated that in their opinion Hickman's case was rightly decided; because a charge of this description carried with it such a degree of fear as might be expected to overcome a firm and constant mind. Graham B. thought Hickman's case was not rightly decided; but that he should, on this point be influenced in future by what appeared to be the general opinion of the Judges. The conviction was held right. (a)

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REX v. WILLIAM CARR.

The prisoner was tried before Mr. Justice Holroyd at the Old Bailey January sessions, in the year 1819, on an indictment for wilfully, maliciously, and unlawfully, priming and levelling a blunderbuss, loaded with gunpowder and leaden shot, and attempting, by drawing the trigger, to discharge the same against William Billingsley, with intent to murder him. There were two other counts, one charging the intent to be to disable William Billingsley, and the other to do him some grievous bodily harm.

It appeared in evidence that William Billingsley had loaded the blunderbuss with gunpowder and leaden shot, and had primed it a fortnight before the offence was committed, but had not examined it afterwards. At the time when the prisoner levelled the blunderbuss and pulled the trigger, the flint struck fire, but the flash was of the flint only, and not of any priming.

(a) Vide Rex v. Fuller, Hil. T. 1820, post, 408.
CROWN CASES RESERVED.

The blunderbuss as loaded originally by Billingsley, was, after the prisoner’s apprehension, accidentally discharged at the police office, no fresh priming having been put in.

The jury found the prisoner guilty; but they at the same time added, that the blunderbuss was not primed at the time when the prisoner drew the trigger.

A doubt having been suggested whether the piece was then completely loaded, so as to bring the case within the statute 43 G. 3. c. 55., the learned Judge reserved that question for the opinion of the Judges.

In Hilary term 1819, the Judges met and considered this case. A majority of the Judges considered the verdict of the jury as equivalent to a finding by them, that the blunderbuss was not so loaded as to be capable of doing mischief by having the trigger drawn: and if such was the case, they were of opinion in point of law, that it was not loaded within the meaning of the statute, and accordingly recommended a pardon to be applied for.

BANK PROSECUTIONS.

At the Old Bailey sessions in December, 1818, there were several indictments against prisoners, for the capital offence of disposing of, and putting away forged Bank of England notes, with intent, &c. knowing them to be forged.

There were also several indictments against the same prisoners, for the transportable offence, of having the same notes in their possession, knowing them to be forged.

Two indictments for the capital offence were tried, and the offences clearly proved; and yet the jury acquitted the prisoners. After which, the counsel for the bank proceeded to try the remaining prisoners for the transportable offences only, of which they were found guilty, and then they suffered them to be acquitted on the capital indictments.

Offence ought not to be directed, because the whole of the minor offence was proved, and it did not merge on the larger. It is not necessary that the signing clerk at the bank should be produced, if witnesses acquainted with his hand-writing state that the signature to the note is not in his hand-writing. The bank may elect to proceed on indictments for the lesser offence, although indictments have been found for the capital charge.
The counsel for the Bank, first applied to the Court for leave to proceed for the minor offence; and the Court left it to their election, without looking into the evidence.

A doubt was suggested to Mr. Baron Wood and Mr. Justice Holroyd, by the Common Serjeant, whether as there were two indictments, the Judges were not bound to try the capital charge first, and hear the evidence upon that; and if the prosecutor's counsel did not call the witnesses, whether the Judges ought not to direct the witnesses to be called on their recognizances; and if they did not appear to estreat their recognizances; and if they did appear to examine them. The Common Serjeant stated, that Mr. Baron Eyre had given such an opinion on a former occasion; and that the Recorder thought that course ought to be adopted.

It was therefore thought proper, to submit the following points to the consideration of the Judges:

First, Whether there ought to be two indictments preferred and found, one for the capital offence, and the other for the transportable offence, at one and the same time, for one and the same fact, the having in possession not being otherwise proved than by the putting it off, both taking place at the same time and constituting a capital offence, whether it could be split into distinct offences?

Secondly, Whether the Judges ought, where both indictments are found, to leave it to the election of the counsel for the Bank which to proceed upon?

Thirdly, Whether the Judges can, in such case, properly proceed to try the indictments for the minor offence, before that for the capital offence is tried; and what ought to be done if the counsel will not call evidence upon the latter?

Fourthly, If, upon trying the indictment for the minor offence, it turns out in proof to be a capital offence, ought the Judges to direct an acquittal for the minor offence and the prisoner to be tried for the capital offence, either on an indictment already found for that offence, or a new indictment to be preferred?

Fifthly, If the prisoner, by consent of counsel for the Bank or otherwise, has been acquitted for the capital offence, and upon the subsequent trial for the minor offence, it turns out in proof to be a capital offence, ought the prisoner also to be acquitted of the minor offence?
Sixthly, Upon the late trials, the counsel for the Bank thought it proper, over and besides the usual proof, given by the Bank inspector, of the note being forged (viz. of its not being Bank paper, nor a Bank impression, and that he was acquainted with the hand-writing of the clerk whose name appeared to the note, and that he believed it not to be his hand-writing), to go further and produce the clerk himself, to prove that he never signed it. This appeared to have been done, upon some intimation that the jury would not be satisfied without the best proof the nature of the case would admit of; and that was the signing clerk himself, who was a competent witness. Is it necessary the signing clerk, if living, should be produced? And if a jury should require his testimony, and it is not produced, what direction should the Judge give?

In Hilary term, 1819, the Judges met and considered this case. Upon the question whether, if facts sufficient to support the capital charge are made out in proof, an acquittal for the minor offence ought to be directed, the Judges were unanimously of opinion that an acquittal ought not to be directed; for the whole of the minor offence, would in such case, necessarily be proved; and that it was not merged in the larger offence. The Judges were also of opinion that it was unnecessary to produce the signing clerk to show that he never signed the note, if established by the evidence of persons acquainted with his hand-writing, that the signature was not in his hand-writing. The Judges also thought, the Bank might be permitted to proceed on the indictments for the lesser offence; although indictments had been found for the capital charge.
CROWN CASES RESERVED.

REX v. JOHN WETHERELL.

Two indictments had been found against the prisoner at the North Riding of Yorkshire quarter sessions of the peace, by the grand jury for that Riding. One of them was for assisting one Burks to escape from the house of correction, he being sentenced to twelve months' imprisonment for grand larceny; and the other against the prisoner Wetherell, for escaping himself, he being under confinement for the same offence.

It was ordered by the Court of quarter sessions, that Wetherell should be committed to his Majesty's gaol, the castle of York, in and for the said county, to be confined until he should take his trial at the then next assizes; and the keeper of the house of correction at Northallerton was ordered to deliver him, and the keeper of York castle to receive him, till the time of his trial for his offences aforesaid.

These two indictments were transmitted to the Lent assizes for York, in the year 1819, held before Mr. Baron Wood, annexed to a certificate signed by the deputy clerk of the peace for the North Riding, certifying that they were found; and the indictments contained the names of the witnesses on the back, and were signed by the foreman of the grand jury at the sessions as found true bills.

When the prisoner was called to the bar to be arraigned, an objection was made by his counsel, that the learned Judge who presided, had no authority on these proceedings to try him; and, as then advised, the learned Judge thought the objection a good one, and enquired of the deputy clerk of the Assize whether it had been usual to receive such transmissions from the sessions: he said it was not usual, but he remembered an instance a few years previous to that time.

The prisoner was discharged by proclamation, the time of his former sentence having expired, so that he could not be remanded on that sentence.

The reasons which occurred to the learned Judge at the time, for refusing to try this prisoner, were,
First, Having never tried an indictment found at the quarter sessions, unless it had been removed by certiorari into the King’s Bench, and sent from thence to the assizes to be tried.

Secondly, The great inconvenience and labour that would be thrown on the commission of gaol delivery, if the Justices could at their discretion, transmit prisoners with their indictments to the assizes to be tried, when the Justices were competent to try them.

Thirdly, He thought there ought to have been a new indictment preferred before the grand jury of the county, at the assizes, and found by them.

As a rule in similar cases, the learned Judge stated the case for the opinion of the Judges.

In Easter term, 1819, the Judges met. They were of opinion that the prisoner should have been tried at the assizes, upon the indictment found at the sessions. (a)

1819. REX v. MICHAEL OXFORD.

The prisoner was tried before Mr. Justice Burrough, at the Lent assizes for the county of Warwick, in the year 1819, on an indictment on the statute of 8 & 9 W. 3. c.26. s.1. (b), for knowingly, feloniously, and maliciously, having in his custody and possession, without lawful authority or sufficient excuse, a die made of iron and steel, upon which was impressed the figure, stamp, resemblance, and similitude of the head side of a good shilling, against the statute, &c. There were other counts in the indictment, but in each of them the die was alleged to be made of iron and steel.

The prisoner worked for a button-maker at Birmingham, and was discovered at the machine in the act of stamping shillings.

(a) 4 Edw. 3. c.2. 4 Inst. 168. 2 Hale, P. C. 52. 2 Hawk. P. C. c.5. s.38. Ibid. c.6. s.2. Crown Cir. comp. 27. as to transmitting indictments preferred at the quarter sessions in Middlesex to the Old Bailey.

(b) See words of the statute, supra, 569.
The person who discovered him secured one of the shillings, and saw the prisoner take from the machine two pieces of iron, (as the witness called them) one from the top of the machine and the other from the bottom, and put both into his pocket. The dies were not produced at the trial. The witness said, the machine was made of iron, and that the dies appeared to be of the same material; but he could not speak with any accurate knowledge as to the metal of which the dies were composed.

One of the moniers of the mint stated, that dies for stamping coin, were usually made of iron hardened into steel; and that iron dies would not stand, or bear such hard blows as steel dies.

It appearing to the learned Judges that the jury, according to the first witness's evidence, could only find that the dies were made of iron, and according to the last witness's evidence, could only conjecture that they were made of steel; he therefore told the jury, that if they were satisfied with the rest of the evidence, and were of opinion that the prisoner knowingly had these dies in his possession, and should find him guilty, he would reserve the point arising on the indictment for the opinion of the Judges.

In the case of William Phillips the elder, and William Phillips the younger, which was before the Judges, in Michaelmas term, 1819, (a) the indictment was in the same form as the present indictment; it described the die to be made of iron and steel. But in that case, the only witness who spoke to the materials of the dies said they were made of iron or steel, he could not say which. That case was chiefly decided on the ground, that it did not appear that the prosecution was commenced within three months, as was required by the statute.

The question reserved for the opinion of the Judges was, whether the prisoner was well convicted.

In Easter term, 1819, the Judges met and considered this case. They held that the evidence given, was sufficient to support the indictment; that it was immaterial as regarded the offence of what the die was made, and proof of a die either of iron or steel, or of both, would satisfy this charge.

(a) Ante, 369.
REX v. ANN GAZE AND WILLIAM GAZE.

The prisoners were tried before Mr. Justice Richardson, at the Lent assizes for the county of Gloucester, in the year 1819, on an indictment which charged the prisoner, Ann Gaze, with stealing certain promissory notes for the payment of money, and the prisoner William Gaze (her husband), as an accessory after the fact for receiving the said notes, knowing them to have been stolen.

Both prisoners were convicted on clear evidence, and received sentence of imprisonment in the penitentiary house. But a doubt having occurred to the learned Judge, whether the receiver of promissory notes, for the stealing of which, the principal was convicted of larceny, according to the statute of 2 G.2. c.25. s. 3., could be considered as a receiver of "goods or chattels," within the 9 W. & M. c.9. s. 4. (a) he reserved this case for the consideration of the Judges.

The words of the statute of 2 G.2. c.25. s. 3. are, "If any person or persons shall steal, or take by robbery, (among other things) any promissory notes for the payment of any money, being the property of any other person or persons, or of any corporation; notwithstanding any of the said particulars are termed in law a chose in action, it shall be deemed and construed to be felony of the same nature and the same degree, and with or without the benefit of clergy in the same manner as it would have been if the offender had stolen or taken by robbery any other goods of like value, with the money due on such notes, &c., or secured thereby and remaining unsatisfied; and such offender shall suffer such punishment, as he or she should or might have done, if he or she had stolen other goods of the like value with

(a) Which enacts, That if any person shall buy or receive any goods or chattels that shall be feloniously taken or stolen from any other person, knowing the same to be stolen, he shall be deemed an accessory to such felony after the fact, and shall incur the same punishment as an accessory to the felony after the felony committed.
the monies due on such notes, &c. respectively, or secured thereby, and remaining unsatisfied, any law to the contrary thereof in anywise used notwithstanding." See East, P. C. title Larceny and Robbery, c.16. s.148., where the question is considered. See also, Sadi and Morris’s case, ibid. 748. S.C., 1 Leach, C.C. 468. Dean’s case, 2 East, P.C. 749. and 646.

The question reserved for the opinion of the Judges was, whether William Gaze was rightly convicted, as an accessory after the fact.

In Easter term, 1819, eleven of the Judges met and considered this case; they were unanimously of opinion, that William Gaze was not rightly convicted. The Judges stated, that their opinion was founded upon the reason assigned by Mr. Justice Ashurst for the decision, in Rex v. Sadi and Morris, (a) which was, that although a statute which creates a new felony will attach to that felony all the common law incidents to felony, so that accessories thereto will be included, yet it will go no further, and a receiver of stolen goods not being a common law accessory, is not included. (b)

(a) Ashurst’s MS. C.C.R. S.C. 1 Leach, 468. and 2 East P.C. 748.
(b) But now by the 3 G.4. c.24. s.1. it is enacted, That all persons who shall receive or buy (among other things) any promissory note for payment of money, knowing the same to have been stolen, shall be liable to be prosecuted and punished respectively for felony or misdemeanor, as the case may be, in like manner as persons receiving or buying stolen goods and chattels, knowing the same to have been stolen, are, by the laws now in force, liable to be prosecuted and punished.
CROWN CASES RESERVED.

1819.

REX v. WILLIAM NASH AND JAMES WELLER.

The prisoners were tried and convicted before Mr. Justice Bayley, at the Lent assizes for the county of Kent, in the year 1819, under 57 G. 3. c. 90., (a) upon a charge of being found armed in the night in a wood they had entered, with intent to kill game.

The prisoners were shooting in the wood in the night, and the flash of one of their guns was seen by a keeper, who was upon the watch for them; but before they were seen, they had abandoned their guns in the wood, and were creeping away upon their knees.

The learned Judge doubted whether the statute applied where the prisoners had not their guns in their possession, or within their reach, at the time they were discovered; and therefore respted the judgment.

In Easter term, 1819, the Judges met and considered this case. They held that the prisoners were rightly convicted; being of opinion that the prisoners were found armed within the meaning of the statute.

1819.

REX v. CATHERINE ROURKE.

The prisoner was tried and convicted before Mr. Justice Bayley, at the Kingston Lent assizes, 1819, for sacrilege, in stealing an iron pot, value sixpence, and a snatch-block, value four shillings, the property of the churchwardens.

used for divine service, they extend to articles kept in the church to keep it in

(a) See statute, supra, 368.
(b) 1 Edw. 6. c. 12. s. 10. which enacts, That no person that shall be convicted of felonious taking of any goods out of any parish church, or other chapel, shall be admitted to have or enjoy the privilege or benefit of his clergy or sanctuary, but shall be put from the same.
CROWN CASES RESERVED.

The block was to raise weights, in case the bells wanted repairing, and the pot for charcoal to air the vaults. At the time these things were taken, the church was being repaired.

The learned Judge doubted, whether these were such goods as were entitled to the protection of the church, and forbore passing sentence.

In Easter term, 1819, the Judges met and considered this case; they were unanimously of opinion, that these were goods entitled to the protection of the statute; and that a capital sentence ought to be passed on the prisoner. The Judges thought the violation of the sanctity of the place, was the thing the statute meant to prevent. (a)

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REX v. THOMAS CLAY.

The prisoner was tried and convicted before Mr. Justice Bayley, at the Lent assizes for the county of Essex, in the year 1819, of killing a lamb with intent to steal part of the carcase.

It appeared in evidence, that the prisoner cut the leg off from the animal whilst it was living, and carried the leg away before the animal died; so that the lamb was not completely killed at the time of the larceny.

The prisoner hid the leg, at some distance from the place where he cut it from the animal, and meant to have returned to carry it home.

The learned Judge thought as the death-wound was given before the theft, the offence was made out, and he directed the jury accordingly, and, upon their finding the prisoner guilty, passed sentence upon him; but saved the point for the consideration of the Judges.

In Easter term, 1819, eleven of the Judges met and considered this case. They were unanimously of opinion that the conviction was right.

(a) 2 Hale, 365.
REX v. WILLIAM JENNINGS.

The prisoner was tried before Mr. Justice Park, at the Old Bailey sessions, April, 1819, on an indictment for the murder of Mary Anne Condon, and was convicted of manslaughter.

The prisoner had been tried at the preceding February sessions at the Old Bailey, before Mr. Baron Graham, for the murder of Mary Cormack, and was also then convicted of manslaughter, and received the benefit of clergy.

The act which occasioned the death of the two children was one and the same; but Mary Anne Condon was not dead when the prisoner was tried, and received the benefit of clergy for killing Mary Cormack.

The learned Judge respited the judgment upon a doubt entertained by him, whether as this prisoner had previously received the benefit of clergy for the same act, he could, on his trial, receive a punishment for the death which had taken place subsequently to his former trial; and this doubt was submitted to the opinion of the Judges.

In Easter term, 1819, eleven of the Judges met and considered this case. They were unanimously of opinion, that the former allowance of clergy protected the prisoner against any punishment upon the second verdict; and that if the prisoner were to be called up for judgment he ought to rely upon that allowance as a bar. (a)

(a) Vide Cole's Case, Plowd. 401. Fost. 64. Hales v. Petit, Plowd. 233.
REX v. JAMES FROID.

The prisoner was tried and convicted before Mr. Justice Holroyd, at the Lent assizes for the county of Cornwall, in the year 1819, on an indictment for feloniously forging, and also uttering and publishing as true, knowing it to be forged, a warrant for payment of three pounds five shillings, the tenor of which said warrant was set forth in the indictment, with intent to defraud the inhabitants of the county of Cornwall. There were also counts stating the intention to be, to defraud Edward Coode the treasurer of the said county. There were another set of counts in the indictment similar to the former, with the exception of stating the instrument to be an order for payment of money, instead of a warrant.

The warrant or order was as follows:

"To the treasurer of the county rates.

"Cornwall, to wit. Whereas, it appeareth to me, one of His Majesty’s justices of the peace, in and for the said county, that on the first day of March now last past, a dead body was cast on shore in the parish of Zennor, in the said county; and whereas, John Cox of the said parish, hath made oath before me, that he hath laid out the sum of three pounds five shillings, in and about the removal and burying of the said corpse, and which I allow to be the reasonable charges thereof. I do therefore hereby authorize and require you to pay the said sum of three pounds five shillings, out of the monies in your hands, to the said John Cox, or his order.

"Given under my hand and seal, this 21st day of March, 1818.

"John Pernown, (L. S.)"

On the trial of the indictment, the prisoner’s uttering and publishing as true, the forged warrant or order in question, his knowledge that it was forged, and his intent to defraud, as stated in the indictment, were fully proved. The uttering of the order was by producing and delivering it for payment, together with other similar orders, to the son of the county treasurer who acted as such for his father in his absence, and who, upon the prisoner’s representing himself to be John Cox, the person named.
in the order, and to come from the parish of Zenar, and that the
person who signed the order was a magistrate of the county,
paid him fifty-two pounds, being the amount of the sums con-
tained in the several orders. There was no such magistrate as
John Pernown.

The prisoner's counsel objected that the prisoner could not
be convicted on the indictment, which was founded on the statute
7 G. 2. c. 22. (a); and contended that the forged instrument was
not, in its purport, a compulsory or even a valid order, within
the statute 48 G. 3., c. 75. (b), it not appearing on the face of it
that the person who was stated to have laid out the money, and
to whom repayment thereof was ordered, was one of the officers
of the parish, or place to whom by the statute a Justice of the
peace has authority to order a repayment. It was also contended,
that the order must be compulsory, which this was not, because
it did not state all that was sufficient to entitle the person to the
payment of the money. This instrument also purported to be an
order to pay to the person at whose expence the corpse was
buried, and not the officer of the parish or place who had re-
paid him.

(a) Which enacts, That if any person shall falsely make, alter, forge, or
counterfeit, or cause or procure, &c., or willingly act or assist, &c. in the false
making, &c. (among other things) any warrant or order for payment of money,
with intention to defraud any person whatsoever, or shall utter or publish as
true any false, altered, forged, or counterfeited warrant or order for payment
of money with intention to defraud any person, knowing, &c., being thereof
convicted, shall be deemed a felon, without benefit of clergy.

(b) By the fifth section it is enacted, That all necessary and proper payments,
costs, charges, and expences which shall be made or incurred in or about the
execution of this act (i.e. the expences attending the burial of dead human
bodies cast on shore from the sea, &c.) shall be made and paid by the church-
wardens, overseers, constable, or headborough for the time being of such re-
spective parish in which any dead human body shall be found cast on shore
from the sea. The sixth section enacts, That it shall be lawful for any justice
of the peace for the county or place in which any such body shall have been
so removed and buried as aforesaid, by any writing under his hand, to order
and direct the treasurer for such county to pay such sums of money to such
churchwarden, &c. for his costs and expences in or about the execution of this
act (after the same shall have been duly verified on oath) as to the said justice
shall seem reasonable and necessary, and such treasurer shall and is hereby
authorized and required forthwith to pay the sums of money so ordered and
directed to be paid to the person so empowered to receive the same; and such
treasurer shall be allowed the same in his accounts.
CROWN CASES RESERVED.

The learned Judge thought that the order, though it might not be compulsory, was not in itself a nullity nor made void by the statute, but was still an order for the payment of money, and protected by the statute 7 G.2. c.22.

In the case reserved, the learned Judge further observed, that by s. 1. of the statute of 48 G.3. c.75. the expenses attending on the burial, are not to exceed the sum which, at the time, is allowed in the parish, for the burial of any person buried at the expense of such parish, and that it did not appear by the order, that the sum ordered to be paid did not exceed that amount, nor whether, according to the fifth section of the statute, that sum was for the proper and necessary expenses only.

The question for the opinion of the Judges was, whether the prisoner was rightly convicted.

In Trinity term, 1819, the case was argued before eleven of the Judges, (Richards C. B. being absent,) in the Exchequer Chamber, by C. F. Williams for the prisoner and Carter for the Crown. Five of the Judges, viz. Abbott, L. C. J., Dallas, C. J., Graham B., Park J., and Burrough J., thought the conviction wrong, being of opinion that the instrument was not properly a warrant or order for payment of money within the 7 G.2., because the Justices had no authority to make such an order, but in favour of a churchwarden, overseer, &c. Six of the Judges, viz. Wood B., Bayley J., Holroyd J., Garrow, B., Best, J., and Richardson J., thought the conviction right, because it did not appear on the face of the order, that J. S. was not a churchwarden, &c., and that if nothing appeared to the contrary on the face of the order, they thought the treasurer bound to conclude that the Justices had not made an order without satisfying himself that J. S. was churchwarden, &c. (a)

REX v. GEORGE PAGE.

Indictment on 5 G.2. c.30. s.1.

The prisoner was tried before Mr. Justice Best, at the Old Bailey sessions February 1819, on an indictment on the 5 G.2. c.30. s.1. (a) which charged that he the said George Page, if a bankrupt surrenders to his commission, and at the time of such surrender refuses to answer particular questions concerning his property, but takes the oath, and assigns as his reason for not answering, that he intends to dispute the commission. The refusal to answer such question will not be a capital offence within the statute. S. C. 1 Brod. & Bing. 308. See 1 G.4. c.115. (b)

(a) Which enacts, That if any persons who shall become bankrupts, and against whom a commission of bankrupt hath been issued, whereupon they are declared bankrupt, shall not, within forty-two days after notice thereof in writing, to be left at the usual place of abode of such persons, or personal notice in case such persons shall be in prison, and notice given in the Gazette that such commission is issued, and of the time and place of a meeting of the commissioners therein named or the major part of them, surrender themselves to the said commissioners, and sign or subscribe such surrender and (not being Quakers) submit to be examined from time to time upon oath by and before such commissioners, and in all things conform to the statute in force concerning bankrupts, and upon their examination fully and truly disclose and discover all their effects and estate real and personal, and for and in what manner, to whom and upon what consideration, and at what time or times they have disposed of, assigned, or transferred any of their goods, wares, merchandizes, monies, or other estate and effects (and all books, papers, and writings relating thereto) of which they were possessed, or in or to which they were any ways interested or intitled, or which any person had in trust for them or for their use, at any time before or after the issuing the said commission, or whereby such persons or their families have or may have or expect any profit, &c. except only such part of their estate and effects as shall have been really and bonâ fide before sold or disposed of in the way of their trade and dealings, and except such sums of money as shall have been laid out in the ordinary expenses of their families; and also upon such examination deliver up to the said commissioners all such part of theirs the said bankrupts’ goods, &c. as at the time of such examination shall be in their possession, &c. (their necessary wearing apparel of them and their families excepted) then they, in case of any default and wilful omission in not surrendering and submitting to be examined as aforesaid, or in case they shall remove, conceal, &c. any part of their estate, real or personal, to the value of 20l. or any books, &c. with an intent to defraud their creditors, being thereof lawfully convicted, shall be deemed guilty of felony, without clergy.

(b) By 1 G.4. c.115. so much of the 5 G.2. c.30. as inflicts the punishment of death for not surrendering or making a disclosure, &c. is repealed, and the
being brought before certain commissioners of bankrupt under a commission of bankruptcy that had been issued against him, feloniously did not submit from time to time to be examined upon oath (he not being of the people called Quakers), by and before the commissioners in the said commission named, or the major part of them by such commission authorised, and in all things conform to the several statutes made and in force, at the time of the making and passing a certain act of parliament in the fifth year of the reign of his late Majesty King George the Second, intituled 'An Act to prevent the committing of Frauds by Bankrupts,' and freely and truly disclose and discover all his effects and estates, real and personal, and how and in what manner, to whom and upon what consideration, and at what time or times he had disposed of, assigned, or transferred any of his goods, wares, merchandises, monies, or other estates and effects (and all books, papers, and writings, relating thereunto,) of which he was possessed, or in or to which he was any ways interested or entitled, or which any person or persons had or had had in trust for him or for his use, at any time before or after the issuing of the said commission, or

offender is liable to be transported for life, or for any term not less than seven years, or to be kept to hard labour in the common gaol, penitentiary-house, or house of correction, for not exceeding seven years.

And see now the 6 G. 4. c. 16. s. 112., by which it is enacted, That if any person against whom any commission of bankrupt shall be issued wherupon such person shall be declared bankrupt, shall not, before three of the clock upon the forty-second day after notice thereof in writing, to be left at the usual place of abode of such person, or personal notice in case such person be then in prison, and notice given in the London Gazette of the issuing of the commission, and of the meeting of the commissioners, surrender himself to them, and sign or subscribe such surrender, and submit to be examined by them from time to time upon oath, or, being a Quaker, upon solemn affirmation; or if any such bankrupt, upon such examination, shall not discover all his real or personal estate, and how and to whom, upon what consideration, and when he disposed of, assigned, or transferred any of such estate, and all books, papers, and writings relating thereunto (except such part as shall have been really and bond fide before sold or disposed in the way of his trade, or laid out in the ordinary expense of his family); every such bankrupt shall be deemed guilty of felony, and be liable to be transported for life, or for such term, not less than seven years, as the court before which he shall be convicted shall adjudge, or shall be liable to be imprisoned only, or imprisoned and kept to hard labour in any common gaol, penitentiary house, or house of correction, for any term not exceeding seven years.
whereby he the said George Page or his family, had or might have or expect any profit, possibility of profit, benefit, or advantage whatsoever, except only such parts of his estate and effects, as had been really and bond fide before sold and disposed of, in the way of his trade and dealings, and except such sums of money as had been laid out in the ordinary expenses of his family, and deliver up unto the said commissioners by the said commission authorised, or the major part of them, all such part of his the said George Page's goods, wares, merchandises, money, estate, and effects, and all books, papers, and writings relating thereto, as at the time when he the said George Page was so first before Henry Revel Reynolds, Robert Joseph Chambers, and Joseph Hickey, the major part of the said commissioners in the said commission named and authorised, to wit, on the said 3d day of October in the 58th year aforesaid, at Guildhall aforesaid, in the parish and ward last aforesaid, in London aforesaid, were in his possession, custody, or power (the necessary wearing apparel of him the said George Page, and the necessary wearing apparel of the wife and children of the said George Page only excepted), but feloniously did make default, and a wilful omission, in not submitting to be examined as aforesaid, to wit, on the 3d day of October in the 58th year aforesaid, at Guildhall aforesaid, in the parish and ward last aforesaid, in London aforesaid, with intent to defraud the creditors of him the said George Page, against the form of the statute, &c.

The notice required by act of parliament had been served on the prisoner, by which he was directed to attend on the 3d of October, 1818, (being the last day appointed for his surrender and examination), before the commissioners named in the commission of bankruptcy issued against him, and there to make a full discovery and disclosure of his effects and estates, real and personal. On that day the prisoner appeared, and took the oath administered to him by the commissioners, and was examined, as to what property he had in his possession, or under his control. To some of the questions that were put to the prisoner as to his property, and especially as to a sum of 500L, he declined giving any answers, and to other questions the prisoner gave evasive and insufficient answers. The prisoner stated that this was not done with the intention of defrauding his creditors, or to evade justice, but that it was his intention, acting under legal advice, to contest the validity of the commission which
had been issued against him. On the 7th of November following, the prisoner was again brought before the commissioners, when being sworn, the same questions were put to him as at the former examination, to some of which the prisoner declined giving any answers, for the reasons assigned by him at that examination. On the 28th of the same November, the prisoner was again brought before the commissioners, and again examined on his oath, some of the questions tendered to him at his two former examinations were again put to him, to some of which he again refused to give any answer, and he also refused to make any discovery or disclosure of his estate or effects, or enter into any explanation until the validity of the commission was determined.

On the prisoner's thus refusing to give any explanation, or to make any discovery or disclosure of his property, the present indictment was preferred against him; and on the trial it was objected, on the part of the prisoner, that, he having surrendered to his commission and taken the oath, could not be guilty of felony by giving insufficient answers to the questions put, or by declining altogether to answer such questions.

The learned Judge told the jury, that if they thought the conduct of the prisoner in giving insufficient answers to some of the questions, and refusing to answer other questions proceeded from an intention to defraud his creditors, by preventing them from getting at his property, that he was guilty of felony within the statute on which he was indicted; but if they thought that the prisoner believed he was not a bankrupt, and that he was not bound to be examined, and that by submitting to be examined, he should prejudice his right to supersede his commission; in that case his conduct could not be said to proceed from an intent to defraud his creditors; and that his case was not within the statute.

The jury found the prisoner guilty.

The first question for the opinion of the Judges was, whether the jury having found that the insufficiency of his answers and his refusal to answer questions, proceeded from an intent to defraud his creditors, the prisoner was properly convicted.

The act of bankruptcy on which the commission against the prisoner was founded, was his lying in prison, from the 4th June, 1818, to the 15th of August, in the same year.

On the 16th of April, 1818, the prisoner was committed to
Newgate by the warrant of a magistrate, upon the certificate of the commissioners of bankrupts, under a commission that had been issued against him, which commission had afterwards been superseded. On the 16th of the same month, he was brought by habeas corpus into the King's Bench, and surrendered in discharge of his bail in several actions; but it appearing that he was charged with the magistrate's warrant, he was taken out of the custody of the marshal, and re-committed to Newgate charged with the actions and warrant. On the 18th of April, the commissioners acting under the first commission, caused the prisoner to be brought before them, and committed him to Newgate for refusing to be sworn or to give any account of his property. On the 24th of April, the same commissioners again committed the prisoner for refusing to answer certain questions put to him. On the 27th of April, the prisoner was discharged by the Court of King's Bench, from the arrests dated the 18th and 24th of April; and he was re-committed by the Court until he should submit himself to be examined by the commissioners named in the commission, or the major part of them. On the 12th of May, the commissioners certified that they did not further intend to examine the bankrupt; and that they consented to his discharge, if the Court of King's Bench thought proper to discharge him from imprisonment, under their rule. On the 15th of May, he was brought by habeas corpus from Newgate, and committed by Mr. Justice Holroyd, to the King's Bench prison, charged with the different actions in which he was detained, and also with the warrant and rule of the king's bench. On the 4th of June, an order of Mr. Justice Abbott, was obtained by the prisoner's attorney, (which was drawn up on the 5th) which discharged the prisoner from all detainers against him except those in the civil cases. That order was obtained in term time; it was not made a rule of court, and was not acted upon, and the prisoner remained in the King's Bench prison until the 15th of August, 1818, when the commission of bankrupt issued against him, under which he was required to be examined on the 3d of October following.

It was insisted on the part of the prisoner, that although he continued in the King's Bench prison from the 4th of June, to the 15th of August, charged with debt, yet as the magistrate's warrant, for which he was detained until he should be discharged by due course of law, was not got rid of, and the rule of the Court of King's Bench (and which it was insisted was not discharged by
Mr. Justice Abbott's order was still in force, the prisoner was not detained merely for debt; and that such detainer therefore was no act of bankruptcy and exparte Bowers, 4 Ves. 168. was referred to.

The learned Judge thought that, as the prisoner could at any time get rid of this warrant of commitment and the rule of the Court of King's Bench by submitting to be examined, his case was not like that of Bowers' who was detained in prison under a judgment for a crime of which he had been convicted; and he also thought that Mr. Justice Abbott's order did not discharge the rule made by the Court, but liberated the prisoner, upon the occurrence of a new circumstance subsequent to the making the rule, viz. the certificate of the commissions, that they did not intend to proceed any further under that commission of bankrupt. If the prisoner who obtained that order had acted on it, he might have been discharged from every detainer except those on account of debts; therefore his lying in prison was an act of bankruptcy.

The second question therefore for the opinion of the Judges was, whether the prisoner's lying in prison under the circumstances already stated, was an act of bankruptcy.

In Trinity term, 1819, the Judges met and considered this case. A majority of the Judges held, that if the bankrupt surrendered in due time, and at the time of such surrender submitted to the jurisdiction of such commissioners, and took the oath which they required, his subsequent refusal to answer particular questions, was not within that clause of the statute which creates the capital offence. The Judges thought the statute did not contain words to shew a clear intention, to make a subsequent non-submission a capital offence, if there had once been a "submitting and surrendering;" and that both the practice and the form, under the bankrupt law, consider the submitting, &c. as confined to the time of the surrender; and so does the 5th section of the statute. The Judges, on these grounds, held that the conviction was wrong. It does not appear that the Judges expressed any opinion upon the other question, namely whether the prisoner's lying in prison, under the circumstances stated in the case, amounted to an act of bankruptcy. (a)

(a) See however the report of this case in 1 Brod. & Bing, 317. where it is stated that the Judges were unanimously of opinion that it was a clear act of bankruptcy.
REX v. ADAM WAGSTAFF.

The prisoner was tried before Lord Chief Justice Abbott, at the summer assizes for the county of Nottingham, in the year 1819, upon an indictment for sending a threatening letter to Richard Dennis.

The first count of the indictment charged, that Adam Wagstaff on the 14th March 1819, at &c. knowingly, and feloniously did send to one Richard Dennis a certain letter in writing signed with a fictitious name, (that is to say) "J. Genrall Lud" directed to the said Richard Dennis by the name of "Richard Dennis" threatening to kill and murder the said Richard Dennis, a subject of the king (which letter was set forth in the indictment) and subscribed as follows "Richard Dennis, J. Genrall Lud," against the statute, &c. The second count was the same as the first, the party knew him, and intended he should not. Though the contents may lead the party to suspect who wrote the letter, this will be no answer to the charge, unless they show that the prisoner did not mean to conceal himself.

But see the 4 G.4. c.54. s.3.(b)

(a) The 27 G.2. c.15. after reciting so much of 9 G.1. c.22. as relates to sending threatening letters, enacts, That if any person from and after the 1st of May, 1754, shall knowingly send any letter without any name subscribed thereto, or signed with a fictitious name, threatening to kill or murder any of His Majesty's subjects, or to burn their houses, out-houses, barns, stacks of corn or grain, hay or straw, though no money or pension or other valuable thing shall be demanded on or by such letters, being thereof convicted, shall be adjudged guilty of felony without benefit of clergy.

(b) By 4 G.4. c.54. s.3. so much of 9 G.1. c.22., 27 G.2. c.15. and 20 G.2. c.24. as relates to sending and delivering threatening letters, is (except as to previous offences) repealed; and by that section it is enacted, That from and after the passing of this act, if any person shall knowingly and wilfully send or deliver any letter or writing, with or without any name or signature subscribed thereto, or with a fictitious name or signature, demanding money or other valuable thing, or threatening to kill or murder any of His Majesty's subjects, or to burn or destroy his or their houses, outhouses, barns, stacks of corn or grain, hay or straw, any person so offending, being thereof lawfully convicted, shall be liable to be transported for life, or for such term, not less than seven years, as the court shall adjudge, or be imprisoned only, or be imprisoned and kept to hard labour in the common gaol or house of correction for any term not exceeding seven years.
only threatening to burn the house and outhouse of the said
Richard Dennis.

The following is a copy of the letter.

"Richard Dennis,

If you keep that Rouge in you house Ned shall visit
you and we shall be acpt too give you a little could led and you
cattle too if you dont get shoot ove im very soon and Need will
set you all on fire and you framesf Need will send them too Hell
And Hall ove you too and you sheep Ned will ham string And
ef you don thay will send me word in the course ove a day.

"March the 12. J. Genrall Lud.

(Directed)

"Richard Dennis:

"J. Genrall Lud."

At the trial, it appeared that the prosecutor Dennis was a far-
mer and frame-work knitter; that the prisoner was also a frame-
work knitter and lived very near to the prosecutor, and had
formerly worked at a frame belonging to the prosecutor. The
prosecutor could not write or read, and was an infirm and
nervous man, and his complaint was attributed to a violent ou-
rage committed at his house some time previous, by the people
called Luddites.

It also appeared that shortly before the time of the supposed
offence, which was on Sunday the 14th March 1819; one Twist,
who worked for the prosecutor as a journeyman, had been ex-
amined before some justices on a complaint against the prisoner
on the game laws, and that the prisoner had afterwards required
the prosecutor to dismiss Twist, that he might not again appear
against him, and upon the prosecutor’s saying he could not do so
because Twist belonged to the parish, he used some threatening
expressions towards the prosecutor.

The evidence as to the sending of the letter was as follows:
Dennis the prosecutor swore, that on Sunday the 14th of March,
a little after seven in the evening, as he was going through his
bottom gate (the gate nearest to his house), the prisoner was
coming through the other gate (the gate nearest the road); that
when the prosecutor got to his door, the prisoner came up and
dropped a paper into the yard upon the step, from his right
hand, stooping and holding himself by his left hand. The pri-
soner then went off the nearest way for his own house, as hard as he could. The prosecutor went back and saw the prisoner go to his own door. The prosecutor returned home, and told his wife to go out and look after the cows. The wife of the prosecutor, who was called as a witness stated, that her husband came in a good deal flurried, that she went out immediately, and took a lantern with her to go to the cows and picked up the letter on the steps. She first read it herself, and afterwards read it to her husband; she swore that the letter was the prisoner's handwriting.

The prisoner was seen writing a letter on Sunday, the 14th of March: and it was proved by another witness, that the prisoner had told him that he wrote the letter which Dennis picked up. That he took it and dropped it, and would be damned if any body ever saw him; and that he knew Dennis could not do any thing with him, for he could write two or three sorts of writing.

The receipt of the letter by Dennis had been talked of before the prisoner was apprehended; he was not apprehended for some time, by reason, as it was said, of the absence of Mr. R., the only justice who lived in the parish.

The prisoner's counsel took three objections. First, That this was not a sending within the statute. Secondly, That this was not a sending to Dennis, as charged in the indictment. Thirdly, That the case was not within the statute, because Dennis must know from whom the letter came, and referred to Hening's case, 2 East, P. C. 1116.

Abbott Ld. C. J. left it to the jury to say, whether they thought the prisoner carried the letter and dropped it, meaning that it should be conveyed to Dennis, and that he should be made acquainted with its contents; directing them to find the prisoner guilty, if they were of opinion in the affirmative; and, if otherwise, to acquit him.

The jury returned a verdict of guilty.

Abbott Lord C. J. then desired the jury to say, whether in their opinion, the prisoner, at the time he carried and dropped the letter, intended that Dennis should know him, or supposed that Dennis did know him.

The jury answered this in the negative.

Abbott C. J. respited the judgment in order that the opinion of the Judges might be taken upon this case.
In *Michaelmas* term, 1819, the Judges met, and considered this case. They held the conviction right. The Judges thought a letter dropped near the prosecutor with intent that it might reach him, was a sending of it to him. They also thought, that although the prosecutor saw the prisoner, yet as the prisoner did not suppose he knew him, and meant that he should not, it was no answer to the charge; and although the letter when read, contained expressions that might make the prosecutor suspect the prisoner, yet as these expressions were not so explicit as to show the prisoner did not mean to conceal himself, the case did fall within the principle laid down in *Henings* case, 2 East, P. C. 1116. (a)

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**REX v. JOHN DICKINSON.**

The prisoner was tried and convicted before Mr. Justice Bayley, at the summer assizes for the county of York, in the year 1819, of stealing a heifer; but after his conviction, it appeared that the witnesses had attended before the grand jury without having been sworn.

The learned Judge thought the objection came too late after the conviction, and therefore passed sentence upon the prisoner; but reserved the point for the consideration of the Judges.

In *Michaelmas* term, 1819, the Judges met, and considered this case. They considered, under these circumstances, that, as a matter of discretion, it would be better to direct application to be made for a pardon, without deciding upon the validity of the objection.

(a) *Vide Rex v. Paddle*, East. T. 1822, post.
An indictment for embezzling must describe, according to the fact, some of the property embezzled.

The prisoner was tried before Lord Chief Justice Abbott, at the summer assizes for the county of Nottingham, in the year 1819, upon the following indictment.

Nottinghamshire. The jurors for our lord the king, upon their oath present, that Thomas Tyers, late of the parish of St. Mary, in the town of Nottingham, and county of the same town, labourer, on the 8th of February, 59 G. 3. at the parish aforesaid, in the town, and county of the town aforesaid, was clerk to Samuel Deverell, Thomas Lowe, Edward Allatt Swann, John Brough, William Egre, and Hercules Barrett, and was employed and entrusted by them to receive money and notes, for and on their account; and being such clerk so employed as aforesaid, did then and there, by virtue of such employment, receive and take into his possession the sum of one pound two shillings and six pence, in monies numbered, and six promissory notes for the payment and of the value of one pound each, for and on the account of them the said S. D., T. L., E. A. S., J. B., W. E., and H. B., his said masters and employers; and afterwards, to wit, on the same day, and in the year aforesaid, with force and arms, at, &c. aforesaid, fraudulently and feloniously did embezzle and secrete part of the said monies and notes, to wit, the sum of fifteen shillings and seven-pence half-penny in monies numbered, and one promissory note for the payment and of the value of one pound. And so the jurors aforesaid, upon their oath aforesaid, say that the said Thomas Tyers, in manner and form aforesaid, feloniously did steal, take, and carry away, from the said S. D., T. L., E. A. S., J. B., W. E., and H. B., the said sum of fifteen shillings and seven-pence half-penny, in monies numbered, of the monies of the said S. D., T. L., E. A. S., J. B., W. E., and H. B., and the said one promissory note; the said note being the property of the said S. D., T. L., E. A. S., J. B., W. E., and H. B., and the sum of money payable and secured thereby, being then due and
unsatisfied to the said S. D., T. L., E. A. S., J. B., W. E., and H. B., the proprietors thereof, for whose use, and on whose account the said sum of one pound two shillings and sixpence, in monies numbered, and the said six promissory notes were delivered to, and taken into the possession of him the said Thomas Tyers, being such clerk so employed and entrusted as aforesaid, against the statute, &c., and against the peace, &c. The second count was the same as the first, stating that the prisoner was clerk to the said Edward Allatt Swann, John Brough, William Eyre, and Hercules Barrett only. The third count was the same as the first, stating that the prisoner was servant to the said Samuel Deverell, Thomas Lowe, Edward Allatt Swann, John Brough, William Eyre, and Hercules Barrett. The fourth count was the same as the second, stating the prisoner was servant to the said Edward Allatt Swann, John Brough, William Eyre, and Hercules Barrett only.

At the trial the following facts appeared in evidence:—At the time of the alleged embezzlement, and for some time previous thereto, Samuel Deverell and Thomas Lowe, were the churchwardens of the parish of St. Mary, in Nottingham, and Swann, Brough, Eyre, and Barrett, were the overseers of the poor of the same parish. The prisoner had, for some years, acted as clerk to the parish officers at a salary of 90l. a year, voted by vestry; but it was said, that the officers for the time being might appoint whom they chose. The four overseers divided the duties of the year among themselves, each taking one quarter. There were several books kept, and among others, a book called the summoning book, for the entry of payments made by persons summoned before the magistrates as defaulters. One Joseph Rawson had been duly rated for his dwelling-house, in respect whereof he was ten shillings in arrear. The prisoner suggested that Rawson ought to pay for a burgess part of Gosdy field, which he had occupied, but for which he was not actually rated; and the prisoner summoned Rawson before the magistrates. On the 8th of February, 1819, Rawson attended in pursuance of the summons. The prisoner and Swann, one of the overseers, also attended; and in answer to Rawson's enquiry as to the sum that he was to pay, the prisoner told him 7l. 2s. 6d., for twenty books for the burgess part. Rawson was then excused the pay-
1819.

Tyens' Case.

ment of the ten shillings for his house, and paid down 7l. 2s. 6d., viz. six pounds in notes, and 1l. 2s. 6d. in silver. Several other defaulters attended, and made payment on the same day. Swann, the overseer, took the notes and placed them on a heap with others before the prisoner and himself on the table; and the prisoner took the 1l. 2s. 6d. in silver and counted it, and put it to a heap of silver before himself on the table. At the close of the day the whole account was cast up and found correct, and the prisoner took possession of the notes. The prisoner at this meeting entered, in his own hand, the 7l. 2s. 6d. in the summoning book; and afterwards took home with him the book, notes, and cash. From this book, the entry of 7l. 2s. 6d. was erased, and the sum of 5l. 6s. 10½d. substituted for it; and the prisoner had only accounted to the parish officers for 5l. 6s. 10½d., in respect of Rawson's payment.

Abbott Ld. C. J. left the question of fraud to the jury, and they found the prisoner guilty.

The counsel for the prisoner, objected that this case upon the evidence was out of the statute, because all the money had, as he suggested, been in the hands of Swann, one of the employers of the prisoner, and had been delivered by him to the prisoner.

Abbott Ld. C. J. was of opinion, that, upon the evidence, the silver never was in the hands of Swann. Another objection, however, occurred to his Lordship, namely, that the evidence did not show, that the identical notes or money received from Rawson were embezzled. The evidence showed that he had accounted for a less aggregate sum than he had actually received on that day, and that he had endeavoured to conceal this, by ascribing to Rawson a less payment than Rawson had actually made; but he might possibly have paid over every note, and every piece of silver received from Rawson, or might have delivered that silver at the meeting to other persons in change: he therefore respited the judgment, in order to take the opinion of the Judges upon the propriety of this conviction.

In Michaelmas term, 1819, the Judges met and considered this case. They were of opinion, that as the prisoner might have paid over the whole of what he received for the 7l. 2s. 6d., and have taken the 1l. 15s. 7d. from the other monies he received, that he was improperly convicted. The Judges were of opinion,
that there was nothing to show the prisoner had stolen any part of the money he was charged with stealing, and relied on the *Rex v. Furneaux* (a), as a case in point.

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**REX v. JOHN WEBB.**

The prisoner was tried before Mr. Justice Best, at the summer assizes for the county of Wilts, in the year 1819.

The indictment charged the prisoner with feloniously forging and counterfeiting a certain bill of exchange, as follows:

"Wilton, Wilts, Dec. 21, 1818.

"£154. 19s. 0d.

"Two months after date, pay to my order, one hundred and fifty-four pounds, nineteen shillings, for value received, and balance of account.

"John Webb.

"To Mr. Thomas Bowden,

"Baize Manufacturer,

"Romford,

"Essex."

"Accepted, Thomas Bowden,

"payable when due, at No. 40,

"Castle Street, Holborn, London."

with intent to defraud Wadham Locke, William Hughes, and Henry Saunders, against the statute, &c.

The second count charged the prisoner with feloniously uttering and publishing as true, the said bill of exchange, with the like intent. The third count was for forging an acceptance (setting out the acceptance as before), with the like intent: and the fourth count was for uttering and publishing the said acceptance, with the like intent.

It was proved on the part of the prosecutor, that no one of the name of Thomas Bowden (the person appearing on the bill

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to be the acceptor), lived at No. 40, Castle Street, Holborn, and that no such person ever resided, or carried on business, or was ever heard of at Romford in Essex, and that there was no baize manufactory in Romford.

On the part of the prisoner, it was proved by a person who stated himself to have been a partner in business with Thomas Bowden (the acceptor), that the acceptance was the hand-writing of the said Thomas Bowden. On the cross-examination of this witness it appeared that Bowden never carried on the business of a baize manufacturer at Romford; and that the prisoner had known Bowden many years. It further appeared, from the evidence of a person who kept the house, No. 40, Castle Street, Holborn, the place where the bill was made payable, that he was well acquainted with the hand-writing of the said Thomas Bowden, and that the acceptance was in Bowden’s hand-writing; he also stated that he was surprised at Bowden’s accepting the bill payable at No. 40, Castle Street, Holborn, as he did not reside there, and had no authority from this witness to make any bills payable at that house.

The learned Judge desired the jury first to consider whether there was any such person as Thomas Bowden, and if there was, whether the acceptance was his. The learned Judge also told them, if there was no such person, or the acceptance was not his, and that the prisoner, at the time he offered the bill to the prosecutors, knew either that there was no such person, or if there was, that he had not accepted it, they should find him guilty. The learned Judge further directed the jury, if they thought the acceptance was Bowden’s writing, to find whether he ever lived at Romford, or carried on the business of a baize manufacturer there; and that if they thought Bowden never lived at Romford, or carried on any manufactory there, and that the prisoner, who appeared from the evidence to be acquainted with him, knew that, on addressing the bill to Bowden, as baize manufacturer at Romford, he was giving him a false description for the fraudulent purpose of giving credit to the bill, they should find him guilty; and that he would submit the propriety of the conviction, under these circumstances, to the Judges.

The jury found that there was no such person as Thomas Bowden. But the learned Judge being of opinion, from the evidence, that there was such a person, and that the acceptance
was his hand-writing, he reserved the case to take the opinion
of the Judges on the point, whether, assuming that the accept-
ance was the hand-writing of Bowden, the prisoner by the giving
on the face of the bill a false description of Bowden, and uttering
the bill, after it was accepted by Bowden, with this false descrip-
tion with intent to defraud, brought himself within any of the
counts of the indictment against him. (a)

In Michaelmas term, 1819, the Judges met and considered
this case. A majority of the Judges were of opinion, that the
adopting a false description and addition, where a false name
was not assumed, and where there was no person answering
the description or addition was not a forgery, and they directed
a pardon to be applied for. (b)

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REX v. EDWARD PEEL.

The prisoner was tried and convicted before Mr. Justice
Bayley, at the summer assizes for the county of York, in the
year 1819, of stealing a cow, but before the sentence was passed,
it was discovered that the indictment omitted to state the price
or value of the cow.

The statutes 14 G. 2. c. 6. and 15 G. 2. c. 34. make it felony,
without benefit of clergy, to steal any sheep or cattle, without
mentioning the price or value; but the learned Judge doubted,
whether he could properly pass the capital sentence, unless the
price or value were stated in the indictment to amount to twelve-
pence; and he therefore forebore to pass the sentence, and saved
the point for the consideration of the Judges.

(a) Vide Parkes & Brown's Case, 2 East, P. C. 963. S. C. 2 Leach, C. C.
778.

(b) In Rex v. Herey, MS. C.C.R. 1782, the Judges held that uttering a
bill with a genuine indorsement, under pretence of being the indorser, did not
subject the party to be indicted as for uttering a forged instrument. S. C. 2 East,
P. C. 856.
CROWN CASES RESERVED.

1819.

In Michaelmas term, 1819, the Judges met and considered this case. The majority of the Judges, viz., Garrow B., Burrough J., Wood B., Graham B., Richards C. B., Dallas, C. J., Abbott L. C. J., held, that although the 15 G. 2. in terms made the stealing of sheep, cows, &c., felony without clergy, yet it ought in construction, and in analogy to the statutes which took away clergy, to be confined to what exceeded the value of twelve-pence; and therefore they were of opinion that a capital sentence could not be passed. Richardson J., Holroyd J., Park J., and Bayley J., thought the conviction right, and that a capital sentence might be passed. (a)

1820.

REX v. JOHN FULLER.

The prisoner was tried before Mr. Baron Garrow (present Mr. Justice Bayley), at the Old Bailey December sessions in the year 1819, and was convicted of a highway robbery, and taking from John Fry, 1l. 15s. his monies.

It appeared in evidence that the prosecutor, John Fry, was servant to a gentleman residing in Great George Street, Westminster; some weeks before the robbery he had, with another person, drank at an ale-house with the prisoner, in consequence of which the prisoner became acquainted with his place of residence, and shortly afterward came there in the evening, and said he wanted to borrow ten shillings of the prosecutor, which the prisoner said he should have again when his arrears were paid. The prosecutor refused to let him have ten shillings, and being engaged in removing the things from the table after the family had dined, the prosecutor went into the dining-room, leaving the prisoner, who would not go away, within the passage of the house. On the prosecutor's returning from the dining-room, the prisoner said he would not go, and as the prosecutor had kept him waiting he would have ten shillings, and a 1l. note as well. The prosecutor again refused to let the prisoner have

(a) 1 Hale, P. C. 531.
the money; when the prisoner, with a vulgar expression, and
an oath, said, "If you don't give me the money I will go
in to your master and swear you wanted to commit an unna-
tural crime." The prosecutor, anxious not to disturb the
family, and in the expectation that he might secure the pri-
soner at some future time, gave him a 1l. note and ten shil-
ings in silver, with which the prisoner departed. The pro-
secutor stated the circumstances to his master, who deter-
mined if the prisoner should apply again, to take measures for
his apprehension. On the day on which the prisoner was ap-
prehended, he (as before) came to the house soon after the
family had dined, and rang the bell at the street door, and on the
prosecutor's going into the area, the prisoner said, "Come up,
I want to speak to you." The prosecutor went up to the pri-
soner at the street door; the prisoner said, "I want four shil-
lings." The prosecutor said, "Oh! do you?" To which the
prisoner replied, "Yes; and four shillings I must have, and
damn me if I don't pay you. When I get my arrears, I will
pay you all." The prosecutor said, "The last time you was
here you had 1l. 10s., and you stripped me of all my money;
but if you will go with me to Orchard Street, I have a friend
who will lend me the money." The prisoner said he would
go, and that he would not leave the prosecutor till he got it. The
prosecutor took the prisoner to Orchard Street, to a constable's;
the constable not being at home, the prosecutor left directions for
him to come to his master's house. The prisoner waited until
the prosecutor came out; and on his being told by the pro-
secutor that his friend was not at home, the prisoner said he would
go home with him, and would not leave him until he had got
the money; and he followed the prosecutor to the door of his
master's house. The prosecutor told the prisoner, he had better
meet him in St. Margaret's church-yard; and if his friend did
not come he would get some money some where else. The
prisoner said he would not leave him, and went up to the door.
On the prosecutor's ringing the bell, the prisoner said, "Will
you meet me?" The prosecutor replied that he would; the pri-
soner then went away. At about eight o'clock in the evening
the constable came; the prosecutor told him what had passed,
and the appointment he had made, when it was agreed between
them that the prosecutor should not give the money, which
he had marked, to the prisoner in the church-yard, but should
bring him to a public house in *Little George Street*, where there
was more light. The prosecutor went out, and met the prisoner
opposite his master’s house, and said to him, “My friend is not
come, you had better go away.” The prisoner said, “No; I will
be damned if I go without the money.” The prosecutor told him
he possibly might be able to get it at the public house. The
prosecutor then went into the public house, and the prisoner wait-
ed at the door; when the prosecutor came out, he told the pri-
soner he had got four shillings. The prisoner said, Damn his
eyes if he would not have ten shillings; and on the prosecutor’s
saying, he only asked for four, the prisoner said, No, he did not;
but he would have ten. The prosecutor said he had two half-
crowns, and gave them to the prisoner, and told him, if he would
come up in the morning he should have five shillings more, the
prisoner said, “Shall I?” The prosecutor told him he should.
The officer and watchman as had been agreed, then came up and
secured the prisoner, and took the marked money from his hand.
As the prisoner was going to the watch house, he said to the
prosecutor, “Damn you, you are after the whole battalion; I
will bring them to prove what you are.”

Upon some questions put to the prosecutor from the Court, he
answered that he gave the last five shillings on purpose to detect
the prisoner, as he was informed he could not swear to the other
money, and that it would be useless to proceed against him; he
also stated, that he parted with it, in order that he might prosecute
the prisoner for the former money, as he was accused of a thing
he knew he was innocent of, and that he had parted with the
money the first time from the threats of the prisoner.

For the prisoner several soldiers of the guards were called, who
swore that the prosecutor had, upon several occasions, to each of
them, made propositions of the most abominable nature in terms
the most disgusting.

The prosecutor being further examined, protested, in the most
solemn manner, that there was not any foundation for any of these
assertions, or for a declaration of the prisoner that he had been
admitted into the house of the master of the prosecutor, and that
he had then made indecent attempts upon his person.

The jury found the prisoner guilty; but with the concurrence,
and by the advice of Mr. Justice Bayley, the learned judge di-
rected the judgment to be resptied, until he could submit the
case for the consideration of the judges.
In Hilary term, 1820, the Judges met. They were of opinion, that this taking did not amount to robbery, and the prisoner was recommended for a limited pardon. (a)

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**REX v. JOHN BELSTEAD.**

The prisoner was tried and convicted before Mr. Justice Richardson, at the Old Bailey sessions, February 1820, of breaking and entering the dwelling-house of James Anderson in the daytime (the said James Anderson and others being therein), and stealing therein certain bed-curtains, valences, sheets, pillows, pillow-cases, pictures, and looking-glasses, the property of the said James Anderson.

The breaking and stealing were clearly proved, but it appeared that James Anderson occupied part of the dwelling-house himself, and let out the rest in ready-furnished lodgings; and that the property stolen was the furniture, of a room let by Anderson to one Thomas Yomen furnished, at half a crown a week, and that a week was running at the time of the robbery. Yomen usually left the key with Anderson’s wife to make his bed, &c., and had it from her when he wanted it. The door was opened by the prisoner by means of a false key.

The learned Judge doubted whether Anderson had a sufficient possession of this furniture, to warrant the laying of the property in him, and therefore submitted this point for the consideration of the Judges.

In Easter term, 1820, the Judges met, and considered this case. They were of opinion that the goods should have been described as Yomen’s, for Anderson was not entitled to the possession, and could not have maintained trespass. They held the conviction wrong. (b)

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CROWN CASES RESERVED.

1820.

REX v. THOMAS FOSTER.

The prisoner was tried before Mr. Baron Garrow at the Maidstone Lent assizes in the year 1820, for committing an unnatural crime on one John Whynheard. Conviction held right, although it was proved the name was Winyard, and pronounced Winnyard.

The person on whom this crime was convicted, being called as a witness, said that his name was spelt Winyard, but it was pronounced Winnyard.

The prisoner was convicted, and received sentence of death; but execution was respited, in order that the opinion of the Judges might be taken on the objection, that the name of the witness was mis-spelt.

In Easter term, 1820, the Judges took this case into consideration, and held the conviction right.

1820.

REX v. THOMAS HUTCHINSON AND JOSEPH BOFFEY.

Larceny.
The goods in a dissenting chapel vested in trustees, cannot be described as the goods of a servant who has merely the custody of the chapel and things in it, to clean and keep in order, though he has the key of the chapel, and no other person but the minister has another key.

The prisoners were tried, before Mr. Justice Richardson, at the Lent assizes for the county of Stafford, in the year 1820; and were convicted: Hutchinson of stealing, and the prisoner Boffey of receiving, secreting, &c., a quantity of brass, which in the first count was laid to be the property of Thomas Penn and twenty other persons therein named, and in the second count to be the property of Samuel Evans.

The property stolen formed the brass chandelier and sconces (not fixed to the freehold) of a chapel of Protestant dissenters, and the persons named in the first count were the trustees of the chapel; but the prosecutors were not prepared to prove the trust deed whereby they were appointed, nor that all of them had acted in the trust or management, some of them residing at a distance.
CROWN CASES RESERVED.

It appeared by the evidence of Samuel Evans, in whom the property was laid in the second count, that he was servant to the managers, and had a salary of five pounds a year, and that he for many years had had the care of the chapel and of the things in it, to clean and keep in order; that he kept the keys, and that no person except himself had the key of the chapel; but the minister had a key of the vestry, through which he could enter the chapel. The trustees had no key. It appeared that Samuel Evans received his orders, sometimes from the trustees, and sometimes from the minister, and that no one resided in the chapel.

The learned Judge thought this evidence insufficient; but being pressed not to stop the trial, and the case being a flagrant one, he allowed a verdict to be taken, but resorted the judgment, and reserved the case for the consideration of the Judges.

In Easter term, 1820, the Judges met. They held the property of the goods taken, could not be considered as belonging to Evans; and that the conviction was wrong. (a)

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REX v. ROBSON, GILL, FEWSTER, AND NICHOLSON.

The prisoners were tried and convicted before Mr. Justice Bayley, at the Lent assizes for the town and county of Newcastle-upon-Tyne, in the year 1820, of stealing from the person of John Younger twenty notes for one guinea each.

The facts were as follows. Robson, by pretending to find a sixpence in a fair, decoyed Younger to a public-house. They were then joined by the three other prisoners, and after a little time, Gill, who pretended to be flush of money, began to play with Fewster, at guessing at a halfpenny Fewster hid under a

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CROWN CASES RESERVED.

1820.

Robson's Case.

pewter pot. Gill was to guess three times right out of four. After losing twice, Gill offered a wager of a pound, that none of them could produce ten pounds. Fewster took the bet, and advised Younger to do the same; Younger had not money enough about him, but went and borrowed twenty guinea notes of a friend, and then it was conceded he had won. Gill then offered Fewster to bet him one hundred pounds, or fifty pounds, or any other sum, that he guessed the halfpenny right three times out of four, and Fewster betted him forty pounds. Gill guessed wrong once out of the four times, and then went out. In his absence, Fewster advised Younger to go halves in the bet, as he was sure to win, and after some persuasion he consented; and on Gill's return, Younger handed the twenty guinea notes to Gill, who passed them on to Robson, who was to be stakeholder. Gill then pretended to guess the remaining three times, and being right in each, Robson gave him the stakes, and he went away.

The learned Judge told the jury, that if they thought, when Gill took the notes from Younger and passed them to Robson, there was a plan and concert between the prisoners, that Younger should never have his notes back, but that they should keep them for themselves, under the false colour and pretence that Gill won his bet; he was of opinion that in point of law it was a felonious taking by all.

The jury were of that opinion; but as this case came very near to Rex v. Nicholson (a), the learned Judge thought proper to submit it to the consideration of the Judges, although his Lordship was of opinion that it was distinguishable from that case.

The distinction the learned Judge took between the cases was this, that at the time Gill and Robson took Younger's notes, Younger parted with the possession only, not with the property; and that the property was only to pass eventually, if Gill really won the wager. Younger expected to have been paid had Gill guessed wrong.

(a) 2 East, P.C. 669.
CROWN CASES RESERVED.

In Easter term, 1820, ten of the judges met and considered this case. They held the conviction right, because at the time of the taking, the prosecutor parted only with the possession of the money. (a)

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REX v. JOSEPH SCOTT.

The prisoner was tried before Mr. Justice Best, at the Lent assizes for Leicestershire in the year 1820.

The indictment was as follows: — The jurors, &c. upon their oath present, that Joseph Scott, late of the parish of Blaby, in the county of Leicester, labourer, on the ninth day of March, in the first year of the Reign of our Sovereign Lord George the Fourth, by the grace, &c., with force and arms at the parish aforesaid, in the county aforesaid, in and upon one Amey Smith, a woman child under the age of ten years, to wit, of the age of four years and upwards, in the peace of God and our said lord the king, then and there being, feloniously did make an assault, and her the said Amey Smith then and there wickedly, unlawfully, and feloniously did carnally know and abuse, against the form of the statute in such case made and provided, and against the peace of our said late lord the king, his crown and dignity.

The jury found the prisoner guilty; but the learned Judge respited the sentence in order to take the opinion of the judges upon the question, whether this indictment could be supported by rejecting as surplusage the word "late."

In Easter term, 1820, the judges met, and considered this case. They were unanimously of opinion that the word "late" might be rejected as surplusage, and Mr. Justice Holroyd thought that even if suffered to remain, it was not inapplicable to the existing king. (b)

The prisoner was executed.


THE prisoner was tried before Richards C. B., at Horsham Lent assizes, in the year 1820, upon an indictment for stealing two colts, the property of John Callaway.

John Callaway, the prosecutor, proved that he had lost two colts on the 8th of February, 1820. The jury were of opinion upon satisfactory evidence that the prisoner had stolen the animals which Callaway had lost. One of the witnesses proved that he had seen the prisoner ride a little black mare followed by a filly. Another witness said he had pursued the prisoner who had two colts with him. It appeared that the animals were one a mare rising four years old, and the other a yearling mare or filly. The witnesses said, that animals of this description when as young as those in question, were according to the usual language of the country, called colts; and some of the jurors said that mares or fillies are generally called colts until they are three or four years old.

The jury found the prisoner guilty.

Richards C. B. reserved the case, and submitted to the Judges, whether this conviction was proper; and if it was, whether the prisoner was entitled to the benefit of clergy. Vide 2 East, P. C. 614. 615.

In Easter term, 1820, the Judges met, and considered this case. They were unanimously of opinion that the conviction as to simple larceny was right; but as "colts" were not mentioned, ex nomine in the statute (a), the Judges could not take notice that they were of the horse species, and consequently clergy was not taken away. (b)

(a) 1 Edw. 6. c. 12. s. 10. and 2 Edw. 6. c. 55.
(b) Vide Rex v. Chalkley, ante, 258.
CROWN CASES RESERVED.

REX v. JOHN SMITH. 1820.

The prisoner was tried before Mr. Justice Park, at the Old Bailey sessions, April, 1820, for burglariously breaking and entering the dwelling-house of Alfred Taylor, with intent to steal.

No stealing was alleged, nor was there any in fact. But the learned Judge left the question of intent to the jury, who, upon the evidence, found that the burglary was with intent to steal.

It appeared that in the night between Friday the 24th, and Saturday the 25th of March, 1820, the side door of the prosecutor's house, which opened into a passage that was a public thoroughfare had all the glass taken out by the prisoner with intent to enter. The prosecutor did not replace the glass on the Saturday, and in the night between Sunday, the 26th, and Monday, the 27th of March, the prisoner entered at the same hole, but was taken on the premises before any larceny was actually committed.

The jury found both the breaking and the entering to have been noctanter, and that the breaking was not accidental; but that both breaking and entering were felonious.

The learned Judge seemed to doubt, whether one single act of felony, such as a burglary could be made up of what took place on two different days, at a distance from each other, and not separated merely by the natural accidents of the transaction itself.

Lord Hale says, "But if they break a hole in the house one night to the intent to enter another night and commit felony, and accordingly they come at another night and commit a felony through the hole they so made the night before, this seems to be burglary, for the breaking and entering were both noctanter, though not the same night; and it shall be supposed they brake and entered the night when they entered, for the breaking makes not the burglary till the entry." (a)

(a) 1 Hale, P.C. 851. Vide also 2 East, P.C. 491.
CROWN CASES RESERVED.

1820.

The question for the opinion of the Judges was, Whether the prisoner, under these circumstances, was rightly convicted?

In Easter term, 1820, the Judges met, and considered this case. They were of opinion that the prisoner was rightly convicted, and that the offence amounted to burglary, the breaking and entering being both by night. And although a day elapsed between the breaking and the entering, yet the breaking was originally with the intent to enter.

1820.

REX v. JOHN TAYLOR.

The prisoner was tried and convicted before Mr. Justice Park, in the year 1820, of stealing a watch in the dwelling-house of John Wakefield, to the value of forty shillings.

The prisoner lodged in the house of John Wakefield, and the prosecutor, who was an old acquaintance of the prisoner, and who could not get a bed in the public house where they met, accepted an invitation to take part of the prisoner's bed. They went home together, and neither John Wakefield nor any of his family knew of the prosecutor's being there; so that he was the guest of the prisoner. The prisoner stole the prosecutor's watch from the bed head.

It having been held that the statute 12 Ann. st. 1. c. 7. (a) does not extend to a man stealing in his own house, the learned Judge doubted whether the prisoner was not to be considered as the owner of the house with respect to the prosecutor. The statute was made for the protection of property deposited in the house, and not on the person of the party; and the prosecutor was neither the occupier nor a settled inhabitant of the house in which the watch was taken. The learned Judge respited the judgment to take the opinion of the Judges on this conviction.

In Easter term 1820, ten of the Judges met and considered

(a) Making larceny in a dwelling-house to the value of forty shillings a capital offence.
this case. The majority, viz. Burrough J., Holroyd J., Wood B., Bayley J., Graham B., Richards C. B., and Abbott Lord C. J., held the conviction right; Richardson J., Best J., and Garrow B., contrd. (a)

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REX v. GEORGE MASON.

The prisoner was tried and convicted before Mr. Justice Park, at the Old Bailey sessions, October, 1820, on an indictment for a highway robbery of Richard Green.

The prosecutor stated, that he had occasion, after dark, about seven o'clock, to make a momentary stop at the corner of Tavistock Street, having, at the time, his umbrella under his right arm, and twisted round it; the prisoner at that time came up and laid violent hold of the seals and chain of the prosecutor's gold watch, and succeeded in pulling the watch out of his fob. The watch was fastened by a steel chain, which went round his neck, and which prevented the prisoner from immediately taking the watch; but by pulling and two or three jerks he broke the steel chain, and then made off with the watch.

The learned Judge was of opinion, that there was a sufficient degree of previous violence to constitute the crime of robbery; and that although there was no actual injury to the person, as in Lapier's case (b), yet, as force was necessary to separate the thing stolen from the person, it appeared to him unlike the cases of snatching, &c., (which have been held not to be robbery,) and that it did not signify whether the separation was effected by cutting a girdle or breaking a chain.

Upon being pressed by the counsel for the prisoner, the learned Judge respited the judgment, and reserved the following question for the opinion of the Judges, Whether, in this case, there was sufficient violence to constitute robbery? or whether the facts proved, only amounted to a stealing from the person?

(a) Vide 2 East, P. C. 644, 645.
(b) Ibid. 557. 708.
CROWN CASES RESERVED.

1820.

In Michaelmas term, 1820, the Judges met and considered this case. They were unanimously of opinion that the conviction was right, for the prisoner could not obtain the watch at once, but had to overcome the resistance the steel chain made, and actual force was used for the purpose. (a)

1820.

REX v. RICHARD DICKINSON.

The prisoner was tried and convicted before Mr. Justice Bayley at the summer assizes for the county of Lancaster, in the year 1820, for stealing a straw bonnet, some other articles of female apparel, and a box.

It appeared that the prisoner entered the house where the things were in the night, through a window which had been left open, and took the things, which belonged to a very young girl whom he had seduced, and carried them to a hay-mow of his own, where he and the girl had twice before been.

The jury thought the prisoner's object was to induce the girl to go again to the hay-mow that he might again meet her there, but that he did not mean ultimately to deprive her of them.

The learned Judge doubted whether this was a felony, and discharged the prisoner upon bail, and reserved the case for the consideration of the Judges.

In Michaelmas term, 1820, the Judges met. They held that the taking was not felonious, and directed application to be made for a pardon.

(a) Vide 2 East, P. C. 701, 702. 708. Vide also 2 Russ. 949, 997. et seq. 19 St. Tr. 806. per Foster J.
CROWN CASES RESERVED.

REX v. PATRICK KELLY.

The prisoner was tried and convicted before Mr. Justice Bayley at the summer assizes for Carlisle, in the year 1820, of stealing two horses.

It appeared in evidence, that the prisoner and one Whinroe went to steal the horses. Whinroe left the prisoner when they got within half a mile of the place where the horses were; Whinroe stole the horses, and brought them to the place where the prisoner was waiting for him, and then the prisoner and Whinroe rode away with them.

The learned Judge thought the owner's possession was not destroyed by Whinroe's theft, and that the prisoner's joining in riding away with the horses might be considered as a new larceny; but, upon adverting to the case of Rex v. King before the Judges in Easter term, 1817 (a), he thought his first opinion wrong, and reserved the case for the consideration of the Judges.

In Michaelmas term, 1820, the Judges met and considered this case. They held the conviction wrong, being of opinion, that the prisoner was an accessory only, and not a principal, because he was not present at the original taking.

REX v. JAMES LINCOLN.

The prisoner was tried and convicted before Mr. Justice Bayley, at the Durham summer assizes, in the year 1820, of perjury, in giving evidence upon a trial for murder.

If, in the indictment, the oath is stated to have been at the assizes, before Justices assigned to take the said assizes, before A. B., one of the said Justices, the said Justices then and there having power, &c. it will be a fatal variance if the oath was administered when the Judge was sitting under the commission of Oyer and Terminer and Good delivery.

(a) Ante, 332.

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The indictment stated, "that, at the assizes holden at Durham, 13th of August, 1819, before Sir George Wood, Knight, and Sir John Bayley, Knight, two of the Justices of our lord the king, assigned to take the said assizes according to the form of the statute, in such case made and provided, John Eden, James Wolfe, and George Wolfe, were, in due form of law, tried upon a certain indictment then and there depending against them, by a jury of the said county, duly taken and sworn between the late king and them; which indictment charged, that they feloniously, willfully, and of their malice aforethought, on the 28th of August, 55 G. 3., did kill and murder, and that the defendant in open Court, at the said assizes, before the said Sir George Wood, one of the said Justices of our said late lord the king, did appear as a witness for the king; and did then and there in open Court, before the said last-mentioned Justice take his corporal oath, and was in due manner sworn upon the Holy Gospel of God, to speak the truth, the whole truth, and nothing but the truth, touching the matters in question upon the said indictment; the said last-mentioned Justice then and there having sufficient and competent power and authority, to administer the said oath to the said James Lincoln in that behalf."

The caption of the record of the conviction for the murder, produced in evidence was, "that at the Assizes, Session, or Court of Pleas, Pleas of the Crown, Oyer and Terminer and General Gaol Delivery, holden at Durham, on Monday, the 13th day of August, before Sir George Wood Knight, and Sir John Bayley Knight, and others their Fellows, Justices of our said lord the king, assigned to hear and determine all Pleas of the Crown in the county Palatine of Durham and Sedberge, by whomsoever, and howsoever moved, according to the law and custom of England, and the custom of Durham, and also to deliver the Gaol of Durham and Sedberge, from the prisoners therein."

It was thereupon insisted, that this caption did not support the statement in the indictment for perjury, as that statement imputed, that the prisoners on the indictment for murder were tried before the Justices assigned to take the Assizes; whereas the caption imported, that they were tried by Justices assigned to hear and determine all Pleas of the Crown, and to deliver the Gaols; and that it was not because the Justices were assigned to take the assizes, but because they were assigned to hear and
determine Pleas of the Crown, and to deliver the Gaol, that Sir George Wood, as one of these Justices, had power to try the indictment.

The learned Judge thought the objection well-founded; but upon consulting with Mr. Justice Park (who doubted), he proceeded with the case, and the defendant was convicted. (a)

Objection was then taken in arrest of judgment, that the statement of the indictment for the murder did not set out the means by which the murder was committed. Bayley J. thought it need not; and overruled the objection.

Objection was then taken that the innuendoes were bad, as not being explanatory only, but as introducing new matter.

The indictment stated, that certain questions became material, viz. Whether John Eden, on the said 28th day of August, 55 G. 3., was at the house of the said James Lincoln, at Sunderland, in the county aforesaid; and whether he had any, and what conversation with Lincoln; and then it alleged that the prisoner gave in evidence, among other things, that the said John Eden, about five (meaning the hour of five) of the same evening, on the Monday (meaning the evening of Monday, the 28th of August, in the fifty-fifth year aforesaid, when the murder of the said Isabella Young was supposed to have been committed), came to the house of the said James Lincoln (meaning the house of the said James Lincoln, at Sunderland aforesaid). That the said John Eden stood about the middle of the floor (meaning the floor of the room in the said house where the said James Lincoln then was) with his hat on one side of his head, and appeared very groggy (meaning that the said John Eden then and there appeared to be in liquor); that the said John Eden had a blue jacket and trowsers on; that the said John Eden said (meaning that the said John Eden then and there said to the said James Lincoln), "James," (meaning the said James Lincoln), "I" (meaning the said Eden), "am going to Harrington" (meaning a certain place called Harrington, in the said county of Durham, where the said Isabella Young was murdered) "tonight" (meaning the night of the said 28th day of August, in the fifty-fifth year aforesaid). "Will you" (meaning the said James

Lincoln) "go with us?" (meaning the said John Eden, and some other person or persons). "I" (meaning the said John Eden) "am going to Harrington, on a very disagreeable piece of business. This is the third, and the last night, I" (meaning the said John Eden) "shall have been at Harrington; and to-night, I" (meaning the said John Eden) "mean to do something I" (meaning the said John Eden) "am sorry at nought, but we" (meaning the said John Eden and some other person or persons) "shall have to make away with the lass" (meaning the said Isabella Young), "before we" (meaning the said John Eden, and the said other person or persons) "can go through with this piece of business. Miss Smith's maiden" (meaning the said Isabella Young) "is a bit of a sweetheart of mine" (meaning of his, the said John Eden); "and to night, I" (meaning the said John Eden) "expect to make her" (meaning the said Isabella Young) "confess where all Miss Smith's" (meaning one Miss Smith, the mistress of the said Isabella Young) "mouldy money is." Whereas in truth, and in fact, the said John Eden, on the said 28th day of August, in the fifty-fifth year aforesaid, was not at the house of the said James Lincoln, at Sunderland aforesaid, in the county aforesaid. And whereas, in truth and in fact, the said John Eden, on the said 28th day of August, in the fifty-fifth year aforesaid, did not say to the said James Lincoln, the several words aforesaid, or any of them, or any other words; nor had the said John Eden then any conversation with the said James Lincoln, to the purport or effect aforesaid, or to any other purport or effect whatsoever.

The objections to these allegations were, that there was no averment in the indictment for perjury that Isabella Young was murdered, or that she was murdered on the 28th of August, or that she was murdered at Harrington, or where Harrington was; or that Isabella Young was servant to Miss Smith, or that Miss Smith lived at Harrington.

The learned Judge forbore passing sentence upon the prisoner, and reserved these points for the consideration of the Judges, and referred to 1 Saund. 243. n. 4.

There are two commissions for Durham, one to deliver the Gaols, and the other assigning the Justices to be, as well as Justices in Eyre, as Justices to hold all Assizes, Juries, Certificates, and Attainders, before any of the King's Justices a-
CROWN CASES RESERVED.

raigned; and also to hear and determine all Pleas of the Crown, and all other Pleas and complaints.

In Michaelmas term, 1820, the Judges met and considered this case; they held the conviction wrong. The Judges were of opinion, that the variance in proof from the statement in the indictment was fatal; the allegation in the indictment being, that the oath was administered before Justices assigned to take the assizes; the proof being, that oath was administered when the Judge was sitting under the commission of oyer and terminer and gaol delivery.

REX v. WILLIAM HENRY PIM.

The prisoner was tried before Mr. Justice Burrough, at the summer assizes for the county of Devon, in the year 1820, and was found guilty.

The questions reserved for the opinion of the Judges, arose on the fourth and thirteenth counts of the indictment.

The fourth count stated, that the prisoner being a paper-maker, and intending to defraud His Majesty of a certain duty chargeable and payable to and for his use, by virtue of the statute in that case made and provided, for and in respect of paper made in Great Britain, on the 4th of March, 1 G.4., at Topsham, in the said county, feloniously, falsely, deceitfully, and knowingly had in his custody and possession divers large quantities, to wit, thirty reams of paper with counterfeit and forged marks and impressions, on the covers and wrappers thereof respectively, of a certain stamp, which theretofore, in pursuance of the statute made in the 34th year of G.3. had, by the major part of the commissioners of excise, for that part of Great Britain called England for the time being, provided and directed to be used to denote the duty of excise imposed for and in respect of paper in that part of England, being duly charged, he then and there well-knowing the same marks and impressions, and each of them to be counterfeit and forged against the peace, &c. And also against the form of the statute in that case made and provided.
In the thirteenth count, a similar offence was charged to have been committed on the 11th of March, in the 58th year of the late king, with intention to defraud his late Majesty; and it concluded against the form of the statute in that case made and provided.

By the statute of 34 G.3. c. 20. certain duties are imposed on different kinds of paper according to the weight; and all paper is divided into four classes. Vide Sect. 1, 2, 3, and 4.

By s. 5, all makers of paper, before they make paper, are to make an entry of their mills, &c.

By s. 6, all paper is to be made up in reams or bundles.

By s. 7, all paper makers are to give notice to the officers of the excise under whose survey they respectively are, of the hour and time of weighing; and by this section, it is enacted in what manner different kinds of paper are to be tied up in reams or bundles when brought to be weighed, on each of which there is to be a cover or wrapper, on which is to be demonstrated, written, or printed, by the maker, &c. in large characters, and words at length; the class of the paper to be enclosed in each such cover or wrapper, &c.

By s. 8, the major part of the commissioners of excise, are to provide proper stamps, devices, or labels, for stamping or marking of all paper, &c. for or in respect whereof any duty is by this act imposed, and shall cause such stamp, devices, or labels, to be distributed amongst the officers of excise, which are to be altered from time to time, as the commissioners may direct.

By s. 9, it is enacted, That if any person or persons shall counterfeit, or cause to be counterfeited, any such stamp, device, or label, or the mark, or impression thereof, upon any cover or wrapper, &c., or shall have in his possession or custody, any such counterfeited stamp, device, or label, knowing the same to be counterfeited, or shall have in his custody or possession, or shall vend or sell, any paper with a counterfeit or forged mark or impression, of any such stamp or device, on the cover or wrapper thereof, or any label affixed thereto, knowing the same to be counterfeit, &c., he shall, for every such offence, forfeit five hundred pounds.

By the 47 G.3. st. 2. c. 30. s. 13., after reciting the preceding statute of 34 G.3. c. 20. as to the section making the offence subject to a penalty, and reciting that it is expedient to repeal so
much of the statute; and in lieu thereof, to make the offence a felony. It is enacted, that the same be repealed, except as to fines or forfeitures already incurred, and enacts, that if any person or person whatsoever shall counterfeit or forge any stamp, device, or label, provided by the 34 G.3. he shall be adjudged a felon, and shall be transported for seven years.

By the 49 G.3. c. 81. on which, the indictment was framed, after reciting the thirteenth section of the 47 G.3. st. 2. c. 80., and the ninth section of the 34 G.3. c. 20. and that it is expedient, in lieu of the said pecuniary penalty, to extend the provisions of the 47 G.3. to persons guilty of any of the said offences thereintofores recited. It is enacted, that if any person or persons whatsoever shall, upon any cover or wrapper, of or belonging to, or used with or upon any label, fixed to any ream or quantity of paper, or upon any paste-board, &c., counterfeit, forge, or resemble the mark or impression on any stamp or device, provided or directed, to be used in pursuance of the said statute of 34 G.3., or shall have, in his or their custody or possession, any such counterfeit stamp or device, knowing the same to be counterfeit; or shall have in his, her, or their custody or possession, or shall utter, vend, or sell, any paper with a counterfeit forged mark of impression, of any such stamp or device, on the cover or wrapper of any such paper, or on any label affixed thereto, &c. knowing the same to be counterfeit or forged, &c., he shall, instead of the said penalty, he adjudged guilty of felony, and for such offence, be transported as a felon for seven years.

An objection was taken to the indictment very early in the case, by the counsel for the prisoner, who contended that the conclusion of the indictment was wrong; that it ought to have been against the form of the statutes in that case made and provided, and not against the form of the statute.

The learned Judge overruled the objection, because the felony stated on the indictment is created by one statute only, viz. the 49 G.3.; that it was no felony under the 34 G.3., or any other statute except the 49 G.3.; and that at the utmost the former statutes were referable to, only for the purpose of explaining the subject-matter, on which the felony created by the 49 G.3. was founded. The learned Judge mentioned the case of the Earl of Clanricarde v. Stokes (a), in which nearly all the

(a) 7 East, 516.
cases on this subject had been under the consideration of the Court of King’s Bench. The learned Judge however reserved the objection for the opinion of the Judges.

Another question arose on the facts of the case. It appeared in evidence that the prisoner was a paper maker, and that he resided in Exe Lane in the city of Exeter, where his regularly entered mills were. The city of Exeter is not in the county of Devon. On the 11th of March, 1820, thirty reams of paper, having covers and wrappers on them, (on which all the marks and impressions of the stamp stated in the above counts, and proved to be the stamps in use at the time, were forged and counterfeited,) were seized by the officers of excise on board a vessel called the Alert, at Topsham in the county of Devon. It was also proved, that between seven and eight in the morning of that day, the known servant of the prisoner brought the paper from the city of Exeter to the quay at Topsham, in a cart on which was painted the name of the prisoner, “William Henry Pim.” That it was the prisoner’s paper was further proved by the evidence of the supervisor, who was one of the seizing officers; who deposed that some days subsequent to the seizure, on the 14th of March, the prisoner asked him why his paper had been seized at Topsham on the 11th March. It appeared also that the prisoner had a cellar at Topsham, but there was no pretence for saying that the paper seized came from thence, it having been proved that the cart was on the morning of the 11th coming along the road from Exeter, and that the cellar lay in a contrary direction.

On this evidence it was urged, that there was no proof that the prisoner had the paper seized in his custody and possession in the county of Devon.

The learned Judge left the evidence to the jury, telling them he was of opinion, that if they thought the case was in other respects proved, and if they were of opinion that the prisoner knew the marks and impressions were forged and counterfeited, and that the paper came from the prisoner at Exeter, and was brought thence by his servant to Topsham in the county of Devon, that this was in law a custody and possession in the prisoner in the county of Devon, sufficient to maintain the indictment. The jury found the prisoner guilty.

The first question reserved for the opinion of the Judges
CROWN CASES RESERVED.

was, whether the conclusion of the indictment "against the form of the statute," was right?

The second question was, whether the prisoner within the meaning of the statute of 49 G. 3. had this paper in his custody and possession in the county of Devon?

In Michaelmas term, 1820, the Judges met and considered this case, and held the conviction right.

REX v. ELIZABETH MCKENZIE AND ANOTHER.

The prisoners were tried before Newman Knowlys, Esq., Common Serjeant, at the Old Bailey September sessions, in the year 1820, on an indictment charging them with feloniously stealing at the parish of St. Luke, in the county of Middlesex, on the 11th of July, 1820, twenty-three yards of lace, value one pound three shillings, of the goods of James Sawyer, privately in his shop.

The evidence in support of the indictment was extremely clear, but the statute 1 G. 4. c. 117. (a), which received the royal assent on the 25th July in the year 1820, having repealed the 10 & 11 W. 3. c. 23., which deprived persons convicted of stealing goods privately in a shop to the amount of five shillings in value, of the benefit of clergy, the learned Common Serjeant respited the judgment in order to take the opinion of the Judges, whether sentence of death could be passed on the prisoners, by virtue of the statute 10 & 11 W. 3., which statute was in force at the date of the commission of the felony, or whether the prisoners should receive judgment as in cases of

(a) The 1 G. 4. c. 117. s. 1. enacts, That the recited part of the 10 & 11 W. 3. c. 23. shall, from and after the passing of this act, be, and the same is hereby repealed as to privately and feloniously stealing any goods, wares, or merchandise under the value of fifteen pounds. By s. 2. it is enacted, that, from and after the passing of this act, every person who shall privately and feloniously steal any goods, wares, or merchandise of the value of five shillings or more, being under fifteen pounds, in any shop, &c. shall be liable to be transported for life, &c.
CROWN CASES RESERVED.

1820.

The prisoner was tried before Mr. Baron Wood at the Surrey summer assizes, in the year 1820, on an indictment for assaulting Elizabeth Earl, and beating her with a stick, with intent to murder her.

The jury found specially that the prisoner was insane at the time of the commission of the offence, and also at the time of the trial, and declared that they acquitted him on account of such insanity. The learned judge ordered him to be kept in strict custody in gaol till his Majesty's pleasure should be known, conceiving he had authority so to do, under 39 & 40 G. 3. c. 94. s. 2. (a)

The prisoner was tried before Mr. Baron Wood at the

REX v. DAVID LITTLE.

The prisoner was tried before Mr. Baron Wood at the
Surrey summer assizes, in the year 1820, on an indictment for
assaulting Elizabeth Earl, and beating her with a stick, with intent to murder her.

The jury found specially that the prisoner was insane at the time of the commission of the offence, and also at the time of the trial, and declared that they acquitted him on account of such insanity. The learned judge ordered him to be kept in strict custody in gaol till his Majesty's pleasure should be known, conceiving he had authority so to do, under 39 & 40 G. 3. c. 94. s. 2. (a)

(a) By 39 & 40 G. 3. c. 94. s. 1. it is enacted, That in case any person charged with treason, murder, or felony, proving to be insane at the time of the commission of such offence, be acquitted, the jury are to declare whether he was acquitted by them on account of insanity; and if they so find the court shall order him to be kept in custody till His Majesty's pleasure be known, &c. By s. 2. it is enacted, That if, upon the trial of any person indicted for any offence, 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 trial, 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.
The learned Judge afterwards doubted, whether he had authority under this statute to take such a finding and declaration, and make such an order; the offence being a misdemeanor and not a felony, and the second section of the act (which appeared by its generality to apply to this case,) not having directed any such special finding or declaration as the first section, which applies only to felonies.

These points were submitted to the consideration of the Judges.

In Hilary term, 1821, the Judges met and considered this case. They were unanimously of opinion, that the second section of the 39 & 40 G. 3. c. 94. extended to all offences, and that the order made by Mr. Baron Wood was right. (a)

**REX v. THOMAS GILL.**

The prisoner was tried and convicted before Mr. Justice Bayley, at the summer assizes for the county of Lancaster, in the year 1820, for stealing a mare.

The indictment charged the offence to have been committed the 20th July, in the fourth year of the reign of King George the Fourth, against the peace of our lord the now King.

The learned Judge was inclined to think that the words "fourth year of the," might be rejected as surplusage, and then it would stand the 20th of July in the reign of King George the Fourth, which could only be the 20th of July then last past. Park J. thought otherwise; and from deference to his opinion, the prisoner was let out on his own recognizance, and the point saved for the opinion of the Judges.

This point was properly convicted on this indictment.

(a) If it appear, during a trial, that the prisoner, though he has pleaded not guilty, is mad, the Judges may discharge the jury of him, that he may be tried after the recovery of his understanding. 1 Hale, 54., cited by Foster J., 18 St. Tr. 411.
CROWN CASES RESERVED.

In Hilary term, 1821, the Judges met, and considered this case. They were of opinion that the words “fourth year of the” might be rejected as surplusage, and then it would stand, 20th of July in the reign of King George the Fourth, which could only be 20th of July 1820, and the words “against the peace of our lord the now King,” shewed the mistake was in the year, and not in the reign. (a)

REX v. JOSEPH STANLEY AND SEVEN OTHERS.

The prisoners were tried before Mr. Justice Park, (present Mr. Justice Holroyd) at the Old Bailey sessions, January 1821, upon an indictment at common law, for the rescue of certain prisoners.

The indictment stated that S. J. & W. D., had been tried and convicted of burglary in the house of L. W., and had received a transportable offence, but was punishable only as a felony within clergy at common law.

(a) In Codington v. Wilkin, Cro. Jac. 377. Trespass tempore Eliz. contra pacem dominae reginae Eliz. & domini regis nunc. Held, domini regis nunc, might be rejected as surplusage. And see also Hall v. Bonython, ibid. 349. Palmer, 74. Anon. Hardres. 350. But stating the offence to have been committed on a day which, at the time of the caption, had not arrived, is wrong. In Rex v. Goddard, Easter T. 1784, MS. C. C. R. the prisoner was indicted for burglary 16th Oct. 25 G. 3. The indictment was found in August, 23 G. 3. and the offence was really committed 15th Oct. 22 G. 3. After conviction, the Judges were unanimous that the conviction was wrong.

(b) But now by the 1 & 2 G. 4. c. 88. s. 1. it is enacted, That if any person shall rescue, or aid and assist in rescuing, from the lawful custody of any constable, officer, headborough, or other person whomsoever, any person charged with, or suspected of, or committed for any felony, or on suspicion thereof, then, if the person so offending shall be convicted of felony, and be entitled to the benefit of clergy, and be liable to be imprisoned for any term not exceeding one year, it shall be lawful for the court by or before whom any such person shall be convicted, to order and direct, in case it shall think fit, that such prisoner, instead of being so fined and imprisoned, as aforesaid, shall be transported beyond the seas for seven years, or be imprisoned only, or be imprisoned and kept to hard labour in the common gaol, house of correction, or penitentiary house, for any term not less than one and not exceeding three years.
Judgment of death; and that S. J. and W. D. had been after the burglary apprehended for the same, and brought before George Farrant, Esquire, one of the justices of the peace, &c., for examination, who had by warrant, &c., directed to the keeper of Newgate, required him to receive into his custody the bodies of S. J. and W. D., charged upon the oaths of L. W. and others, with feloniously stealing in the dwelling-house of the said L. W., one watch, &c. of the value of forty shillings and upwards, and that the gaoler should safely keep the said S. J. and W. D. till discharged by due course of law; which said felony in the warrant mentioned, is the same felony for which the said S. J. and W. D. were afterwards tried and convicted and had judgment as aforesaid, and that the said S. J. and W. D. with the said warrant of commitment were delivered to one John Marsden, for the purpose of safely conveying them to Newgate, and that Marsden had them lawfully in his custody for the purpose aforesaid. That the prisoners, well knowing the premises, contriving to prevent the due course of law, and to cause the said S. J. and W. D. to escape with impunity, afterwards and whilst the said Marsden had them lawfully in his custody, conveying them to Newgate for the cause aforesaid, feloniously made an assault upon Marsden, and them the said J. S. & W. D. from and out of the custody of him the said Marsden did rescue and put at large, to go wheresoever they would, against the peace, &c.

The prisoners were convicted; and in consequence of the atrocity of the offence the learned Judge was inclined to pass upon them the severest punishment which by law he could; but, after consulting with Mr. Justice Holroyd, they both thought that being a clergyable felony at common law, and not falling within any of the statutes which gave the judges a power of transportation, the extent of the punishment that could be by law inflicted was imprisonment for twelve months, unless whipping were to be added to such imprisonment.

In consequence however, of what is mentioned in the case of Rex v. Burridge, 3 P. Wms. 500., a doubt arose on which, Mr. Justice Park wished to take the opinion of the Judges.

In Rex v. Burridge it is mentioned that the prisoner was indicted anew at the next assizes, held for the county of Somerset, and being convicted on such indictment was transported for seven years. The case then sets out the indictment, on which the pri-
soner was tried the second time, as settled by counsel. This indictment appears to be an indictment at the common law, for breaking gaol, and a rescue of a prisoner who was then under sentence of transportation.

This judgment appeared to Mr. Justice Park to be so erroneous that he conceived that there must be an error in Pere Williams, he therefore sent to the clerk of the assize for the Western Circuit to furnish him with a copy or extract of the record. (a)

The statute 16 G. 2. c. 31. which makes it a transportable offence to aid and assist any prisoner in an attempt to escape only applies to ineffectual attempts, and not to cases where those attempts have been succeeded by an actual escape. (b)

Lord Hale, in his chapter on the rescue of prisoners in custody for felony, says, “The rescuer of a prisoner for felony though not within clergy (which is this case), yet shall have his clergy;” (c) and in his chapter on principals and accessories in felony, he says, “accessories after by receiving the offenders cannot be in law under any penalties as accessories, unless the acts of parliament that induce these penalties, do expressly extend to receivers or comforters as some do.” (d)

But as there was no statute which applied to this case, it appeared to the learned Judge that he could only order a punishment for a case within clergy at the common law, the learned Judge not thinking the case of Rex v. Burridge rightly decided. But he reserved the point for the consideration of the Judges.

In Hilary term, 1821, the Judges met, and considered this case. They were unanimously of opinion, that the prisoner could

(a) The following is a copy of what was returned to the learned Judges:

Somersetshire Lent assizes, 1784-5.

Before Sir Edmund Probyn and Sir John Comyns, Justices, &c.

Po: se: guilty

Transportation 7 Fel. for seven years.

(b) Vide Tilley's Case, 2 Leach, C. C. 662. Young's Case, before the Judges, Trin. T. 1801.

(c) 1 Hale, 607.

(d) Ibid. 615.
not be transported; but that he might be imprisoned for twelve months, and whipped. The Judges thought the case of Rex v. Burridge incorrectly decided.

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**REX v. ROBERT MOTT.**

The prisoner was tried before Mr. Justice Best at the Old Bailey September sessions, in the year 1820, on an indictment charging him with uttering knowing to be forged, the acceptance of Charles Dover, to a bill of exchange, drawn by the prisoner on the said Charles Dover for 50l.

The prisoner had applied to Messrs. Hood & Co., who were in the iron trade, to supply him with a quantity of iron for Charles Dover, and gave them in payment the bill in question. The prisoner received from Messrs. Hood & Co. only 20l. worth of iron; but he was to have so much more iron as would be equal to the amount of the bill. The prisoner never received more than the 20l. worth of iron from Messrs. Hood & Co.

To prove the forgery of the acceptance, the supposed acceptor, Charles Dover, was called, and a release was tendered to him by Messrs. Hood & Co.

It was objected by the counsel for the prisoner, that Hood & Co. only had an interest in the bill to the amount of 20l. and that the acceptor could not be examined without a release from the prisoner.

The learned Judge was of opinion that a release from the holder of the bill completely discharged the acceptor, and allowed him to be examined.

The prisoner was found guilty.

The question reserved for the opinion of the Judges was, whether the acceptor, under the above circumstances, was a competent witness.

At the trial the competency of the acceptor only was objected to. But after the trial it occurred to the learned Judge, that...
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1821. Mott's Case.

Hood & Co. having released the acceptor, if the bill was a genuine bill the prisoner might maintain an action against them on the ground of their having by the release discharged the acceptor, on a bill in which the prisoner would have an interest to the amount of 30l.

The learned Judge also submitted to the Judges, whether Hood could be a competent witness.

In Hilary term, 1821, the Judges met, and considered this case; they were unanimously of opinion that Dozer after being released by Hood & Co. was a competent witness, because the indorsement upon the bill vested the whole legal interest in Hood & Co.; and if the release executed by them destroyed any claim by the prisoner against Dozer, it at the same time gave the prisoner a claim pro tanto against Hood & Co. A great majority of the Judges were also of opinion that Hood was a competent witness. (a)

1821.

REX v. THOMAS WATTS.

Forgery.
A bill was addressed to Messrs. Williams & Co., bankers, Birchin Lane, London; and there might, at that time, have been a 3 on the lower left-hand corner of the bill. The prisoner was asked, at the time, whether the acceptors were Williams, Birch, & Co.; and his answers imported that they were. Williams, Birch, & Co., lived at No. 20, Birchin Lane, and it was not their acceptance. There were no known bankers in London using the style of Williams & Co. but them; but at No. 5, Birchin Lane the name "Williams & Co." was on the door; and some bills addressed to Messrs. Williams & Co., bankers, Swansea, had been accepted, payable at No. 3., and had been paid there. There was no evidence who lived at No. 3., but another bill, of the same tenor as that in question, drawn by the prisoner, had been accepted there. Held, that on these facts, the prisoner was improperly convicted of uttering a forged acceptance knowing it to be forged. S.C. 3 H.B.197.

(a) The prisoner, though acquitted, could not have succeeded against Hood & Co. unless he could have proved the acceptance genuine.
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acceptance by Messrs. Williams & Co. to a certain bill of exchange, as follows: viz.

"No. 117. £200. March, 28th.
"Swansea Bank, 1820.
"Two months after date, pay to Mr. John Tipper, or order, two hundred pounds.
"For value received.
"HY. WILLIAMS & CO.

"To Messrs. Williams & Co.
"Bankers, Birchin Lane,
"3. London."

with intent to defraud Thomas Bayles, John Routledge, and Jonathan Ramsey.

The second count charged the prisoner with uttering and publishing as true the said forged acceptance on the said bill of exchange, knowing the same to be forged, with a like intent.

The prisoner was acquitted on the first, and convicted on the second count.

It appeared from the evidence, that in April, 1820, the prisoner purchased of the prosecutors wheat to the amount of two hundred and forty pounds. At the time he made the purchase, he agreed to pay the amount by the acceptance of a London banker. Before the wheat was delivered to him, he produced to the prosecutors a bill, as follows:

"No. 117. £200. March, 28th.
"Swansea Bank, 1820.
"Two months after date, pay to Mr. John Tipper, or order, two hundred pounds.
"For value received.
"HY. WILLIAMS & CO.

"To Messrs. Williams & Co.
"Bankers, 3, Birchin Lane,
"3. London."

"Accepted, Williams and Co."

The prisoner was asked how he proposed to pay the remainder of the money; he said he should draw on the same bankers for the balance: he then drew the following bill in the prosecutors' compting house.

F & F 3
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        Two months after date, pay to our order, forty pounds,
        value received, as advised by
        "THOMAS WATTS,
        "Swansea Bank.
        "For P. Watts & Co.
        "To Messrs. Williams & Co.
        "Bankers, Birchin Lane,
        "London."
        "Accepted, Williams & Co."

The prisoner said he should send this bill to London to get it
accepted; and it was afterwards sent back to the prosecutors
with "Accepted, Williams & Co." written across it.

Whilst the prisoner was drawing the bill, one of the prosecu-
tors asked him if Williams & Co., the acceptors, were Williams,
Birch, & Co. The prisoner said the acceptors were Williams,
Birch, & Co. The prosecutor said it was improbable there
should be two firms of the same name in the same street; the
prisoner answered it was improbable. The figure 3, which stands
between the words bankers and Birchin Lane, in the two hundred
pound bill, was not then on the bill. The witness did not
observe whether the small figure 3, which stands at the corner
of the bill, was on the bill at that time.

This small figure 3 at the corner, appeared to a witness ac-
quainted with bills not to be part of the address, but was like a
figure that the holders of bills sometimes put on them before
they leave them for acceptance. But the person who presented
this bill had not observed whether it was on the bill when he
presented it for payment or not. The person to whom the bill
was presented at No. 3, Birchin Lane, took the bill behind a
desk, and had an opportunity of writing on it one or both
these figures. But the person who presented it did not ob-
serve when he received the bill back, whether either of these
figures were then on it. At that time there were London bankers
at No. 20, Birchin Lane, of the names of Williams, Birch, & Co.
who usually accepted bills in the firm of Williams & Co.
This bill was not accepted by that firm. No other bankers
of the names of Williams & Co. were known to carry on business
in Birchin Lane, nor were there any other London bankers un-
der that firm. The words "Williams and Co." were on a brass plate on the door of No. 3, Birchin Lane.

There was no evidence to show by whom these bills were accepted.

The prisoner proved, that three bills in the following form had been paid at No. 3, Birchin Lane, viz.

"No. 345. £30. South Twerton, March 5th, 1820.
Two months after date, pay to our order, thirty pounds, for value received.

"Messrs. Williams & Co. "THOMAS WATTS, for
"Bankers, "P. Watts & Co.
"Swansea."

"Accepted, Messrs. Williams & Co.
"Payable at No. 3, Birchin Lane, London."

The learned Judge left it to the jury to say, whether the acceptance of the two hundred pound bill was the acceptance of any London Bankers, and they found that it was not.

The following questions were reserved for the opinion of the Judges, viz. Whether the prisoner was properly convicted, and also whether, considering the manner in which the bill was stated in the indictment, it was necessary for the prosecutors to prove that the figure 3 in the corner, was on the bill when it was tendered in payment.

In Hilary, term, '1821, eleven of the Judges met (Bayley J. being absent), and considered this case. Ten of the Judges held the conviction wrong, being of opinion that the facts proved against the prisoner did not amount to the crime of forgery, and they directed a pardon to be applied for.
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1821.

REX v. JOHN ELDRIDGE.

The prisoner was tried before Mr. Justice Burrough at the Lent assizes for the county of Southampton, in the year 1821, on an indictment for stealing a mare, the property of Hugh Puller.

It appeared that on Saturday, the 9th of October, 1820, between three and five o'clock in the afternoon, the mare in question was seen in the possession of one of the prosecutor's servants, who was taking it towards one of the prosecutor's fields, but it did not appear whether the mare was ever in the field that day. Neither the prosecutor or the servant who was seen taking the mare towards the field were called as witnesses. The mare was not found in the prosecutor's possession on the following Monday morning. On the 23d of the same month of October, the mare was seen in the possession of one John Locke, an innkeeper at Alresford (a very considerable distance from the prosecutor's place of abode). Locke, who was called as a witness, stated that the prisoner came to his house on the 13th of October, and then had the mare with him. He asked the witness for a feed of corn for her, and said he had no money; that he had been robbed at the Ball on Bentley Green of a 5l. note. The prisoner had the corn and other things, for the amount of which Locke detained the mare. The prisoner then offered to sell the mare, and said the price should be 35l.; he afterwards sold her to one Weller for 12l., and five or six shillings the expenses. It appeared that the mare was worth 35l.

At the close of this evidence, Carter for the prosecution proved, and proposed to read in evidence, the prisoner's confession taken before a magistrate. But the learned judge objected, because, independent of the confession, there was not evidence of a felony having been committed to be left to the jury.

Carter then referred to the cases cited in 1 Leach, C.C. 310. in notis to Jacob's case. But as the learned judge could not then discover that either of the cases cited had been under the consideration of the judges, and as he had no opportunity
of seeing what the circumstances of those cases were, he told the jury that he was of opinion, that independent of the confession, there was no evidence of a felony.

The learned Judge then read to the jury the confession, which was a very full confession of the whole offence; and told them that if they were satisfied the prisoner had confessed the stealing the prosecutor's mare and should find him guilty, he would reserve the case for the opinion of the Judges.

The prisoner was convicted.

The questions reserved for the opinion of the Judges were, first, whether, independent of the confession, there was any evidence of a felony having been committed.

Secondly, Whether a prisoner can or ought to be convicted of a felony on his own confession merely, without other proof of a felony having been committed.

In Easter term, 1821, the Judges met and considered this case. They were of opinion that there was sufficient evidence to confirm the confession, and that the conviction was right. (a)

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**REX v. WILLIAM BANKS.**

The prisoner was tried and convicted before Mr. Justice Bayley, at the Lancaster Lent assizes, in the year 1821, for horse-stealing.

It appeared that the prisoner borrowed a horse, under pretence of carrying a child to a neighbouring surgeon. Whether he carried the child thither did not appear; but the day following, after the purpose for which he borrowed the horse was over, he took the horse in a different direction and sold it.

The prisoner did not offer the horse for sale, but was applied to to sell it, so that it was possible he might have had no felonious intention till that application was made.

The jury thought the prisoner had no felonious intention when he took the horse; but as it was borrowed for a special purpose, disposing of them will not constitute a new felonious taking, or make him guilty of felony.

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and that purpose was over when the prisoner took the horse to
the place where he sold it, the learned Judge thought it right
upon the authority of 2 East, P. C. 690. 694., and 2 Russ. 1089,
1090. (a) to submit to the consideration of the Judges, whether
the subsequent disposing of the horse, when the purpose for
which it was borrowed was no longer in view, did not in law
include in it a felonious taking.

In Easter term, 1821, the Judges met and considered this
case. They were of opinion that the doctrine laid down on this
subject in 2 East, P. C. 690 & 694, and 2 Russell, 1089 & 1090,
was not correct. They held that if the prisoner had not a fe-
lonious intention when he originally took the horse, his subse-
quent withholding and disposing of it did not constitute a new
felonious taking, or make him guilty of felony; consequently
the conviction could not be supported.

1821.

REX v. JAMES GIBBONS AND JOHN KEW.

The prisoners were tried and convicted before Mr. Justice
Holroyd, at the Somersetshire Lent assizes, in the year 1821,
of a burglary in the dwelling-house of John Bendall.

It appeared by the evidence, that the place broken into was a
shop, which had been part of the dwelling-house in which the
prosecutor John Bendall and his family had resided, until about
two years and a half previous to the commission of the offence
in question; at which time the prosecutor removed into another
house, about two hundred yards' distance from this shop; in
it for fear the place should be robbed, and lets the rest to lodgers, the habitation by his servant
and family is an habitation by him, and the shop shall still be considered part of his dwelling-
house.

(a) In 2 Russ. 1089, it is said that, "In the case of a delivery of a horse
upon hire or loan, if such delivery were obtained bona fide, no subsequent
wrongful conversion pending the contract will amount to felony; and so of
other goods. But when the purpose of the hiring, or loan, for which the de-
elivery was made, has been ended, felony may be committed by a conversion of
the goods."
this latter dwelling-house, the prosecutor and his family were living at the time the offence was committed. From the time the prosecutor so ceased to reside in the house of which the shop was part, and until he put the servants of his trade therein, as hereinafter mentioned; the rest of the house (excepting the shop, and a small room adjoining, called the counter, communicating inwardly with the shop), was occupied either with lodgers to whom the same had been let, and who resided and slept there, or partly by lodgers, and partly by the prosecutor.

It further appeared, that about two years before the commission of the offence in question, in consequence of alarm arising from several robberies then lately committed in the neighbourhood, and for fear the place should be robbed, the prosecutor put his foreman, the foreman's wife, and an apprentice, into two rooms of this house. The foreman's wife was the prosecutor's servant, employed in keeping the apartments clean. The prosecutor paid them (the apprentice as well as the others) weekly wages, in amount the same as they received previous to their going to these apartments. Before they went there, they lived and slept in other apartments procured by themselves; but when the prosecutor removed them, he made no deduction on that account from their wages, nor were they to pay him any rent. The prosecutor stated, that he placed them in these apartments, solely for the purpose of taking care of the goods which he deposited there. The prosecutor also stated, that robberies, on account of the danger of which he originally put them there, were still of frequent occurrence in his neighbourhood; and that so long as the danger continued it was his intention, if they remained in his service, that they, or if they left, some other person should reside in the house. It appeared that the foreman, his wife, and the apprentice found their own provision, and dined and lived there entirely; the prosecutor put them to sleep there only, for the purpose of taking care of the goods.

The question for the opinion of the Judges was, Whether the shop in question was to be considered as being in law part of the dwelling-house of the said John Bendall.

In Easter term, 1821, the Judges met and considered this case, and were of opinion that the conviction was right. (a)

(a) See Rex v. Flannagan, ante, 187.
JOHN Southern was tried before Mr. Justice Bayley, at the Lent assizes for the county of Lancaster, in the year 1821, under 57 G. 3. c. 90. (a), for being with one John Johnson, found armed with a pistol in the night, in a close, where they were seeking to destroy game.

The first count of the indictment charged, that John Johnson and John Southern, on the 4th of October, 1 G. 4., with force and arms, broke and entered into the close of James Alcock, situate and being at, &c., with the intent illegally to destroy, take, and kill game therein; and that the said John Johnson and John Southern, having so entered into the said close, and being therein with the intent aforesaid, were found therein in the night of the said day; that is to say, between the hours of six in the evening of the said day, and seven in the morning of the day following; to wit, about the hours of twelve in the night of the first-mentioned day, armed with a gun, against the statute, &c., and against the peace, &c.

The second count charged the said John Johnson and John Southern, with breaking and entering into a certain other close of James Alcock, with intent illegally to take and destroy game therein; and that the said John Johnson and John Southern, having so entered into the said close, and being therein with the intent aforesaid, were found therein in the night of the said 4th of October; that is to say, between the hours of six in the evening of the said 4th of October, and seven in the morning of the 5th of October; to wit, about the hour of twelve in the night of the said 4th of October, armed with certain fire-arms, to wit, a loaded pistol, against the statute, &c., and against the peace, &c.

The third count, charged the said John Johnson and John Southern with breaking and entering into a certain other close of James Alcock, with intent illegally to take and destroy game

(a) See statute, supra, 368.
CROWN CASES RESERVED.

therein; and that having so entered, and being therein, with
the intent aforesaid, were found therein on the night, &c. (as
in the second count) armed with a certain offensive weapon;
to wit, a loaded pistol, against the statute, &c., and against the
peace, &c.

It appeared in evidence, that Johnson had a loaded pistol with
him, but Southern did not know he had any pistol with him.

The learned Judge doubted whether Southern’s ignorance in
this respect took his case out of the statute, and thought it right
to advise the jury to convict, and to save the case for the con-
sideration of the Judges.

In Easter term, 1821, THE JUDGES met and considered this
case. They were of opinion that Southern, upon the facts stated,
was not liable to be convicted under the act. (a)

REX v. JOSEPH FURNIVAL.

The prisoner was tried before Mr. Justice Park, at the Lent
assizes for the county of Stafford, in the year 1821.

The indictment charged the prisoner with burglariously break-
ning and entering the dwelling-house of one Thomas Rogers,
(omitting the words “with intent to steal”) and twenty-four
knives, &c., of the goods and chattels of the said Thomas Rogers,
in the said dwelling-house, then and there found, feloniously, and
burglariously stole, took, and carried away, &c. The indictment
contained only this one count.

The facts were all clearly proved, both as to the burglary and
the larceny, and the prisoner was convicted.

After the learned Judge had passed sentence of death upon the
prisoner, a doubt occurred to him, whether the omission of the
words “with intent to steal” (although the indictment afterwards

(a) But if several are out together and one only is armed, but with the
knowledge of the others, all are liable to be convicted under this act. See
Rex v Smith, supra, 368.
charged an actual stealing) would not vitiate this as an indictment for burglary. The learned Judge thought it quite clear, that if the larceny had been negatived by the jury (as, for instance, if the property had been laid in the wrong person), although a complete burglary had been proved, no sentence could have been passed upon an indictment where the burglary was not fully stated. In Starkie's Cr. Law, vol. ii. p. 414., the precedent there given of an indictment for burglary contains the words “with intent to steal.”

The learned Judge, however, was ultimately of opinion, from what was stated in 1 Hale's P. C. 559. s. 5. and the three following paragraphs, that the conviction in this case was right, although it was evident Lord Hale thought indictments for burglary ought to contain the words “with intent to steal.”

The learned Judge respited the execution of the sentence, for the purpose of taking the opinion of the Judges upon this case, that there might be an uniformity of practice in preparing these indictments.

In Easter term, 1821, all the Judges met and considered this case; they were of opinion that on an indictment like this, charging that the prisoner burglariously broke and entered a dwelling-house, and then, and there stole goods therein, the prisoner might be well convicted of the burglary if the larceny was proved, seca if not; but that it was better in all cases of burglary of this sort to charge the intent to steal, as well as the stealing, according to Lord Hale's advice, 1 Hale, P.C. 559. The Judges held the conviction right.

**1821.**

**REX v. JOHN BINGLEY, JOHN DUTTON, AND WILLIAM BATKIN.**

Forgery. The three prisoners were tried and convicted before Mr. Justice Richardson, at the Lent assizes for the county of Warwick, in the year 1821, on an indictment, the first count of which executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals.
charged the prisoners with forging and counterfeiting a 5l. bank
note, with intent to defraud the Governor and Company of the
Bank of England. The third count charged them with falsely
making, forging, and counterfeiting, and causing and procuring
to be falsely made, forged, and counterfeited, and willingly
acting and assisting in the false making, forging, and counter-
feiting, a promissory note, for the payment of money, with the
like intent. There were other counts for disposing of, and
putting away scienter, &c.

The offence mentioned in the first count was made a capital
felony, by the 8 & 9 W. 3. c. 20. s. 36., 15 G. 2. c. 13. s. 11., and 45
G. 3. c. 89. s. 2. The offence mentioned in the third count
is a capital felony under the 2 G. 2. c. 55. s. 1., explained by
31 G. 2. c. 22. s. 78., and under the 45 G. 3. c. 89. s. 1.

It appeared in evidence, that Bingley and Dutton, and one
George Peacock, an accomplice, agreed to take, and did take a
house in Birmingham, for the purpose of carrying on therein the
manufacture of forged bank notes. The first operation was the
purchasing of proper paper, and the cutting of it into pieces of
proper size; after which it was taken to the prisoner Batin, a
copper-plate printer, whose workshop was in a different part of
Birmingham, to be by him printed, and he accordingly struck
off in blank all the printed part of the notes, except the date
line and the number. He also impressed on the paper the wavy
horizontal lines.

The blanks were then brought back to the house of Bingley,
Dutton, & Peacock, and there the water mark was introduced
into the paper; after which Bingley, in the presence of Dutton
and Peacock, impressed the date line and the number, and Dutton
added the signature.

Sometimes the date line and number were inserted before the
signature was inserted, and sometimes the signature before the
date line and number; but in a certain class of notes (of which
the note in the indictment was one), the accomplice said that
the signature was added last.

The notes were then complete, although they underwent an-
other operation, that of pressing them between plain sheets of
tin, in order to make the surface smooth, before they were put
into circulation.
Peacock, the accomplice, did not know that Batkin was employed to print the blank notes, nor did it appear that Batkin ever was present when Bingley and Dutton filled up and completed the notes.

The accomplice stated that Bingley and Dutton were both present, when Bingley impressed the date line and number on that class of notes, of which the note stated in the indictment was one, but he said he was not certain whether Bingley was present, when Dutton afterwards added the signature to the class of notes.

The prosecutors elected to proceed on the counts for forging.

Upon this evidence, the learned Judge left it to the jury, whether the three prisoners did concur and co-operate in the joint design of forging the five pound note mentioned in the indictment (among other notes) with intent to put it into circulation, and whether they all did perform their respective part in the execution of that design within the county of Warwick. If so, the learned Judge advised them to find them all guilty of the forgery.

The learned Judge further directed them to find, whether the two prisoners, Bingley and Dutton, were present when the note mentioned in the indictment was completed, by adding the date line and the signature.

The jury found that all three concurred and co-operated in the design and execution of the forgery, each taking his own part, within the county. They also found that Bingley and Dutton acted together in completing the notes, and therefore found all three guilty on the counts for forging.

The learned Judge passed sentence on the prisoners; but respited their execution, in order to submit to the Judges the following questions:

First, Do the acts of parliament which relate to the forging, &c., and causing to be forged, &c., and acting and assisting in the forging, &c., of promissory notes apply to Bank of England notes, which, although they are undoubtedly promissory notes, are the subject of distinct legislative provisions?

Secondly, Upon the evidence and the finding of the jury, was this a joint offence of forging in the three prisoners, or at least in the two prisoners, Bingley and Dutton?
CROWN CASES RESERVED.

As to the second question, see 2 East, P. C. title Forgery, c. 19. s. 52, and the cases there cited. Mr. East considers the rule laid down in the books, that in forgery all are principals, as applicable only to forgery at common law, where the offence is a misdemeanor, and not to forgery under the statutes by which the offence is made a felony. He cites Rex v. Soares and others (a), where it was held that accessories before the fact to the offence of uttering, must be indicted as such, and could not be convicted as principals, unless they were present at the time of uttering. Rex v. Badcock and others (b) is to the same effect; and in Rex v. Birkett and Brady (c), it was held that an accessory before the fact to the offence of uttering is entitled to clergy.

These, however, are all cases of uttering where the offence consists of one single fact which is carried into execution by the principal alone, and where the accessory takes no other part than that of previously instigating the principal to execute. Quere, Whether the same doctrine is applicable to the offence of forging, which is a complicated offence, consisting of several parts, and executed (as in this case) by several different agents, each executing his own part; and all parts being equally essential to the completion of the offence? Unless in such case all are principals, the law seems to reach only the party who performs the last operation, and thereby makes the forged instrument complete (viz. in this case the party who added the signature, and in the case of a forged deed the party who adds the seal), who may be one of the least active and the least guilty of the parties concerned.

In Easter term 1821, the Judges met and considered this case. They held that the conviction was right as to all the prisoners: the Judges were of opinion, that as each of the prisoners acted in completing some part of the forgery, and in pursuance of the common plan, each was a principal in the forgery; and that although the prisoner Batkin was not present when the note was completed by the signature, he was equally guilty with the others.

(a) S. C. ante, 25. (b) Ante, 249. (c) Ante, 251.
REX v. WILLIAM BRICE.

The prisoner was tried before Mr. Justice Burrough at the Lent assizes for the county of Dorset in the year 1821, for burglariously breaking and entering the dwelling-house of George Smith in the night of the 2d of December 1820, with intent feloniously to steal the goods and chattels of the said George Smith therein being.

It appeared, by the evidence of the wife of the prosecutor, that whilst sitting in a room adjoining the shop (part of the dwelling-house of her husband,) in which were various goods, the stock of her husband's trade, she heard, about twelve at night, a noise in the shop; that she took a candle and went into the shop, and perceiving some soot fall from the chimney, she looked up and saw a man lying across the chimney, just above the mantle piece.

It appeared that the man had not otherwise been in the shop, and the chimney had no communication with any other room in the house.

An alarm was made, and a man who proved to be the prisoner was immediately seen to come out at the top of the chimney. He was pursued and immediately apprehended.

The prisoner was by trade a chimney sweeper, and had shortly before been employed by the prosecutor to sweep the chimney of the shop, and also that of the sitting room, being all the chimneys in the house.

The learned Judges, not being satisfied that the evidence was sufficient to support the charge of breaking and entering into the dwelling-house, he desired the jury to consider, whether they were satisfied that the prisoner's intention was to steal goods in the shop: and if they thought so, he advised them to find him guilty; and he informed them, that he should reserve the other point for the opinion of the Judges.

The jury found the prisoner guilty.

In Easter term, 1821, the Judges met, and considered this case. Ten of the Judges, viz. Best J., Garrow B., Park J.,
REX v. WILLIAM HAINES AND WILLIAM HARRISON.

The prisoners were tried and convicted before Mr. Justice Richardson, at the Old Bailey sessions, February, 1821, for burglary, knowingly breaking and entering the dwelling-house of Richard Plunkett, with intent to steal the goods and chattels in the same dwelling-house than being.

The evidence was satisfactory as to the fact; but a doubt arose whether the breaking was sufficient in point of law to constitute burglary.

The prisoners were found in the front parlour of the prosecutor's house, about a quarter-past five o'clock in the evening of the 16th of January, 1821. It was then quite dark. It appeared that they had entered through the upper part of the window, which the prosecutor had closed a short time before, and which the prisoners had opened by pushing down the upper sash.

There was a fastening to the lower sash, but none to the upper sash, which, during the day-time, was usually kept closed by the pulley-weight only.

There was an outside shutter to this window, which was usually closed and fastened about dark by the sons of the prosecutor, on their return from school; but on the evening in

(a) Vide 1 Hawk. P. C. c. 17. s. 5. 1 Hale, 552. 9 Ecc. 485. 9 Russ. 902. Rex v. Bailey, supra, 341, and the cases there cited in ratio.
question, the closing the outer shutter was delayed, in consequence of the children returning later than usual from school.

The question was, whether the pushing down of the upper sash by the prisoners in the manner stated, amounted to a sufficient breaking.

In Easter term, 1821, the Judges met, and considered this case. They were unanimously of opinion, that the pulling down of the sash was a sufficient breaking, and the prisoner was rightly convicted. (a)

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REX v. GEORGE TACEY.

The prisoner was tried and convicted before Mr. Justice Richardson, at the Leicester spring assizes, in the year 1821.

The indictment, which was founded on the 28 G. 3. c. 55. s. 4., charged, that the defendant feloniously entered by force into a shop belonging to Thomas Pym, and feloniously, wilfully, and maliciously damaged a certain frame, used in and for the working and making of frame-work knitted stockings, the goods of the said Thomas Pym the owner, against the form of the statute, &c.

The words of the fourth section of the 28th G. 3. c. 55. are as follows: "And be it further enacted by the authority aforesaid, that if any person or persons shall, by day or by night, enter by force into any house, shop, or place, with an intent to cut or destroy, any frame-work knitted pieces, stockings, or other articles or goods, being in the frame, or upon any machine or engine thereto annexed, or therewith be used, or prepared for that purpose; or shall wilfully and maliciously cut or destroy any frame-work knitted pieces, stockings, or other articles or goods being in the frame, or upon the machine or engine as aforesaid, or prepared for that purpose; or shall wilfully and maliciously break, destroy, or damage, any frame, machine, engine, tool, instrument, or utensil, used in and for the working and making of any

such frame-work knitted pieces, stockings, or other articles or goods in the hosiery or frame-work knitted manufactory, not having the consent of the owner so to do, or break or destroy any machinery contained in any mill or mills, used, or in any way employed in preparing or spinning of wool or cotton for the use of stocking-frames, every offender being thereof lawfully convicted shall be adjudged guilty of felony, and shall be transported to some of His Majesty's dominions beyond sea, for any space or term of years not exceeding fourteen years, nor less than seven years."

It appeared in evidence that the prisoner, in company with many other persons, entered by force the shop of Thomas Pym, where were two frames used for the making of frame-work knitted stockings, from which they unscrewed, and unfastened, and carried away, against the will of the owner, a part of each frame, called the half-jack.

The half-jack is a piece of iron, one end of which is screwed into the frame, and through a hole at the other end a wire plays. It is an essential part of the frame, and when taken out, the frame is rendered useless.

It may however be taken out, and again replaced, without injury to the frame, and is sometimes so treated, when the frame is taken to pieces to be cleaned. Most of the other parts of the frame may be in like manner taken out and replaced. The frames in this case were no otherwise injured than by taking away the half-jacks; and when the prisoner and his companions entered the shop, they demanded the prosecutor's name, that they might (as they said) ticket his half-jack. He refused to give his name. The half-jack had not been returned.

Balguy, for the defendant objected, that this removal of the half-jack was not a damaging of the frame within the meaning of the act, which, as he contended, applied only to cases of breaking, bending, or straining, some part of the frame, and not to the removal of a part, though that part might be an essential part.

The learned Judge overruled the objection, and passed the sentence of seven years' transportation which the act requires; but reserved the point for the opinion of the Judges.

In Easter term, 1821, the Judges met, and considered this case. They were unanimously of opinion that the taking out and carrying away the piece of iron called the half-jack,
was a damaging the frame within the meaning of the 28 G. 3., as it made the frame imperfect and inoperative. They held the conviction right.

EDWARD BRUNTON stood committed in the calendar for the Thetford Lent assizes, in the year 1821, on a charge of stealing fourteen sheep of John Younge.

Previous to his trial an application was made to Mr. Baron Graham, who presided, to admit him as King's evidence on an indictment for a burglary in the dwelling-house of Thomas Ford, and stealing money and goods to the amount of near a hundred pounds, against William Watlins, Thomas Bays, William Bays, and Daniel Cater as principals, and against John Watlins for receiving stolen property, knowing it to be stolen. Brunton was accordingly admitted king's evidence on this indictment for burglary; but his account, in some parts, being almost incredible, and his statements, as to other parts, being different from what he had stated before the magistrates, the learned Judge thought him unworthy of credit; and as there was no evidence to affect the prisoners with the commission of the burglary, independent of Brunton's testimony, he directed an acquittal.

Brunton was then tried for sheep stealing, and convicted.

The learned Judge passed sentence upon him; but respited it, in order to take the opinion of the Judges upon the propriety of his conviction, and of executing the sentence passed upon him, after he had been admitted as a witness for the Crown upon the prosecution for burglary.

In Easter term, 1821, the Judges met and considered this case. They were unanimously of opinion, that the conviction was right. The carrying the sentence into effect they thought was a question entirely for Mr. Baron Graham's discretion. (a)

(a) See Rex v. Lee, ante, 361.
REX v. RICHARD PATEMAN.

The prisoner was tried and convicted before Mr. Justice Richardson, at the Northampton spring assizes, in the year 1821, of the offence of uttering and publishing, as true, a forged promissory note for payment of 40l., with intent to defraud.

It appeared in evidence, that the note in question had been originally issued by the Bedford bank as a one pound note, and was then as follows:—

"N° 16209.

"BEDFORD BANK, £.

"I promise to pay the Bearer ONE POUND on demand here, or at Sir Charles Price, Bart. & Co. bankers, London.

"Value received.

"BEDFORD, the 17th day of October, 1817.

"For Barnard Barnard & Green,

"N° 16209.

"THOS. BARNARD."

The note was afterwards altered by cutting out or obliterating the word ONE and pasting in or inserting in the place of it the word FORTY, and by cutting off the last line which contained the signature, and by some other smaller obliterations. The note then stood as follows:—

"N° 16209.

"BEDFORD BANK.

"I promise to pay the bearer FORTY POUND on demand here, or at Sir Charles Price, Bart. & Co. bankers, London.

"Value received.

"BED D, the 17th day of October, 1817.

"For Barnard, Barnard & Green."

In this form it was uttered by the prisoner, as a note for forty pounds, and the prosecutor gave him forty pounds in change for it. In this form the note was set out in the counts for uttering.

It was objected by Marriott, for the prisoner, that the note, as uttered by the prisoner, was incomplete, and was not, nor did it purport to be, a promissory note for want of the signature.
1821.

PATERNAN’S

Case.

ture; and that, therefore, it was not the subject of forgery within the statute.

The learned Judge thought the objection of great weight; but considering it better to avoid the public discussion and decision of it at the assizes, he reserved the question.

The jury found the prisoner guilty, and the learned Judge respited the judgment.

The question submitted to the Judges was, whether the note, as uttered by the prisoner, was a promissory note for payment of money within the statute?

In Easter term, 1821, the Judges met, and considered this case. They were unanimously of opinion that the objection was fatal, and the conviction wrong. (a)

1821.

REX v. JOHN WRIGHT.

The prisoner was tried before Mr. Baron Garrow, at the Lent assizes for the county of Stafford, in the year 1821, for the murder of his infant child by throwing him into the canal on the 5th of September, 1820, whereby he was drowned.

The prisoner was acquitted; but a question having occurred, whether the evidence which the learned Judge received, on the part of the prisoner, was properly admitted, he submitted the evidence as received to the consideration of the Judges.

After the evidence in support of the prosecution had been gone through, a Mr. Bakewell offered himself as a witness, and said,

“ I am master of the asylum for the insane at Springield, in this county. In consequence of the account in the papers of the proceedings before the coroner, I went on the 21st or 22d of October, 1820, to the prison and conversed with the prisoner which the prisoner is charged, is in his opinion, an act of insanity, which is the very point to be decided by the jury?

"ten minutes or a quarter of an hour. I was decidedly convinced
"he was in a state of active insanity, both from his looks, man-
"ners, and language. I have attended very strictly to this case,
"as it has been proved, and I wish to deliver my opinion upon
"the evidence as to what I consider the state of the prisoner's
"mind at the time the alleged fact was committed. Of the pri-
"soner I have no personal knowledge but what I derived from my
"visit in October."

The learned Judge consulted with Mr. Justice Park, who
concurring with him in thinking that it was at least very doubt-
ful whether, upon the very point for the decision of the jury, this
evidence could be received, but thought it the safer course to let
it proceed. The witness continued:—

"The drowning the boy, was in my opinion, completely an
"act of insanity, particularly from the evidence of Mrs. Lees. She
"states, the wildness of his looks; that he was without food from
"Monday morning till after the act was committed on Tuesday;
"that on this want of food the prisoner drank a little ale; nothing,
"therefore, could be more likely to bring on a latent physical
"disease. That his first throwing the boy into the water, then
"taking him out again, expressing a desire to have the child dried,
"afterwards carrying him in his bosom, and afterwards drowning
"him, were all very strong proofs of a disordered feeling or mind,
"—insanity being always an intermittent disease. The prisoner
"being able afterwards to give a rational account of what he had
"done, and his being able to reason upon it, could be no proof to
"the contrary.

"I may pass over the evidence of the other witnesses as im-
"material, till I come to the last but one, on which I think there
"was a strong proof of his being under a paroxysm of the disease;
"he did not at first recollect the lock (of the canal) into which he
"had thrown the boy, afterward she did recollect it; and, as I have
"said before, insanity does not destroy the recollective powers,
"but occasionally suspends them. My firm conviction is, that it
"was an act of insanity."

In Michaelmas term, November 17, 1821, the Judges met and
considered this case. The Judges did not come to any formal
resolution; but all the Judges thought, that in such a case a
witness of medical skill might be asked whether, in his judgment,
such and such appearances were symptoms of insanity, and
whether a long fast, followed by a draught of strong liquor, was likely to produce a paroxysm of that disorder in a person subject to it? and that by such questions the effect of his testimony in favour of the prisoner might be got at in an unexceptionable manner. Several of the Judges doubted whether the witness could be asked his opinion on the very point which the jury were to decide, viz. Whether, from the other testimony given in the case, the act as to which the prisoner was charged was, in his opinion, an act of insanity?

1821.

WRIGHT'S Case.

1821.

REX v. JOHN WILLIAM HASWELL.

Prison breach, or rescue, is a common law felony, if the person breaking prison, or rescued, is a convicted felon; and it is punishable as a common law felony by imprisonment, and, under 19 G. 3. c. 74. s. 4., by not more than three times whipping. Throwing down loose bricks at the top of a prison wall placed there to impede escape and give alarm is prison breach, though they are thrown down by accident.

The prisoner was tried before Mr. Baron Wood, at the Lent assizes for the county of Surrey, in the year 1821, and was found guilty upon an indictment which charged, at the gaol delivery for Surrey, held at Guildford on the 3d of August, 1820; the prisoner was tried and convicted of horse stealing, and sentenced to suffer death, and that His Majesty extended his mercy to him on condition of being imprisoned and kept to hard labour in the house of correction at Briston Hill two years; and that he was committed to, and lodged, and confined in the said house of correction, and that he, being so convicted and committed, before the expiration of the said two years, viz. on the 4th of December, 1820, at Lambeth, with force and arms did willfully and feloniously break the said house of correction, and make his escape from and out of it, and go at large, contrary to the statute in that case made and provided, and against the peace, &c.

It appeared that the prisoner, on the 6th of December, 1820, made his escape from the house of correction, by tying two ladders together and placing them against the wall of the yard. In making his escape the prisoner had thrown down some of the bricks of the wall. He was not retaken until the 17th of the same month.

The bricks thrown down were part of a range of bricks placed loose, and without mortar, in the form of pigeon holes, upon the top of the wall, so that if any person laid hold of them, they
would give way, and the person so laying hold of them would fall back into the yard, or the bricks falling would give an alarm to the gaoler. It was supposed those bricks so thrown down, were thrown down accidentally in the prisoner's getting over the wall.

The learned Judge doubted, whether there was such force used as to constitute the crime of prison breaking, or whether it amounted only to an escape; and, in either case, the learned Judge doubted what sentence could be passed, the offence being capital on which the prisoner was imprisoned.

The learned Judge repented the judgment, and reserved the point for the consideration of the Judges.

In Easter term, 1821, the Judges met and considered this case. The Judges were unanimously of opinion, that this was a prison breach, and punishable as a common law felony, by imprisonment, not exceeding a year, to begin from the passing of the sentence, and, if thought right, the prisoner might be whipped three times in addition to the imprisonment. Had this been an escape only, Richardson J. thought it would not have been felony. (a)

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**REX v. THOMAS FOSTER.**

The defendant was tried and convicted before Mr. Justice Bayley, at the Lent assizes, for the county of Durham, in the year 1821, upon an indictment for perjury, in falsely swearing before a surrogate, in order to obtain a marriage licence, that Ann Robinson, his intended wife, had, for the four preceding weeks, been residing in the parish of Sunderland.

**Perjury.**

A false oath before a surrogate to procure a marriage licence, will not support a prosecution for perjury. If the indictment only charges the taking the false oath without stating it was for the purpose of procuring a licence, or that a licence was procured thereby, the party cannot be punished thereon as for a misdemeanor; but, if the purpose is to obtain a licence, and the licence is obtained and the marriage had, the party may be indicted as for a misdemeanor.

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(a) *Vide* 1 Russ. 551. 1 Hale, 612. 2 Hawk. P. C. c. 18.
CROWN CASES RESERVED.

1821.

Foster's Case.

The learned Judge, not being aware of any instance in which a false oath before a surrogate had been made the foundation of such an indictment, thought it right to reserve the case for the consideration of the Judges, and bailed the defendant.

In Easter term, 1821, the Judges met and considered this case. They were unanimously of opinion, that perjury could not be charged upon an oath taken before a surrogate. The Judges were also of opinion, that as the indictment in this case did not charge that the defendant took the oath to procure a licence, or that he did procure one, no punishment could be inflicted. The Judges directed a pardon to be applied for. (a)

1821.

REX v. THOMAS FLINT.

Indictment for delivering, in payment for a horse, certain promissory notes as for good and available promissory notes, which prisoner knew to be not good nor of any value. The notes purported to be the notes of a country bank which was supposed to have failed. Held, that at all events it was necessary to prove the notes were bad and of no value.

The prisoner was tried before Mr. Baron Garrow, at the Stafford summer assizes, 1821, on an indictment, which charged that the prisoner did falsely, fraudulently, and deceitfully, deliver to one Joseph Blood, certain papers, purporting to be promissory notes of Bankers at Oundle, as and for good and available notes (one of which was set out); and that Blood believing them to be good and available, delivered to the prisoner a gelding, of the price of 12L his property; whereas the notes were not good and available, but of no value, as the prisoner then well knew; and so the prisoner, by colour of the said papers, unlawfully, &c., did obtain, and get into his possession from Blood the said gelding, with intent to cheat him of the same, and of his said gelding, did cheat and defraud him.

It appeared in evidence, that the prisoner, on the 4th of June, 1821, bought of the prosecutor, at Rugeley fair, the gelding in question, for the price of 12L, and tendered him in payment, notes to that amount on the Oundle bank. On the prosecutor's objecting to accept these notes, the prisoner assured him they were good notes, and upon this assurance the prosecutor parted

(a) Vide Rex v. Beck, Str. 1160.
with the gelding. It further appeared, that these notes had never been presented by the prosecutor at Oundle, or at Sir James Esdaile's, in London, where they were made payable.

A witness stated, that he recollected Rickett's bank at Oundle, stopping payment upwards of seven years ago; but he added, that he knew nothing but what he saw in the papers, and heard from people who had bills there. The notes appeared to have been exhibited under a commission of bankrupt against the Oundle bank; the words importing the memorandum of exhibit, had been attempted to be obliterated; but the names of the commissioners remained on each of them.

The jury found the prisoner guilty; and said, they were of opinion, that when he bargained for and obtained the horse, he well knew that the notes were of no value, and that it was his intention to cheat the prosecutor of his horse.

The learned Judge respited the judgment, in order to take the opinion of ALL THE JUDGES on this case.

On December 3, 1821, THE JUDGES met (except Best J., who was absent), and considered this case. They held the conviction wrong; being unanimously of opinion, that the evidence was defective, in not sufficiently proving that the note was bad. No opinion was given whether this would have been an indictable fraud, if the evidence had been sufficient.

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REX v. MOSES GOODHALL.

The prisoner was tried before Mr. Baron Garrow, at the Stafford summer assizes, in the year 1821, on an indictment, that the party would do an act he did not mean to do (as a pretence to pay for goods on delivery) is not a false pretence within the act.

(a) By 50 G. 2. c. 24. s. 1. it is enacted, That all persons who knowingly and designedly, by false pretence or pretences, shall obtain from any person, money, goods, wares, or merchandizes, with intent to cheat or defraud any person of the same, shall be deemed offenders against law and the publick peace, and
It appeared in evidence, that on the 10th of November, 1820, the prisoner received from one Mrs. Webster, for and on account of Messrs. Hollingshead & Co., 18l. in one pound notes; the prisoner immediately entered in the books of Messrs. Hollingshead & Co. as the amount received, 12l. only; and he accounted to them only for 12l.

In the course of the same day he received for them other sums amounting to 104l. 2s. 0d.; and in the evening of that day he paid to Messrs. Hollingshead & Co. the 116l. 2s. 0d.

It was urged on the part of the prisoner, that the money he so paid might have included every one of the notes he received from Mrs. Webster; and if so, that he could not be considered as having embezzled any of those notes.

The learned Judge was of opinion, that although every one of those notes certainly might have been included in what he so paid, yet, that as he paid the 116l. 2s. 0d., as and for the 13l. received of Mrs. Webster, and the 104l. 2s. 0d. received of other persons, he ought to be considered as embezzling six of Mrs. Webster's notes; and that it was not less an embezzlement there-of because he paid them over to Messrs. Hollingshead and Co., if he paid them over as and for money received from other persons. The jury, under this direction from the learned Judge, found the prisoner guilty; but Starkie appearing to doubt the propriety of the learned Judge's direction, and some of the Judges thinking the point deserved consideration, the case was stated for the opinion of the Judges.

The learned Judge also added to the case the following question:—

Suppose, instead of paying the six notes over to Messrs. Hollingshead & Co., as and for money received from other customers, he had paid it to them for a debt he owed them, would it not have been an embezzlement?

In Michaelmas term, 1821, eleven of the Judges (Best J. being absent), met and considered this case. Nine of the Judges, viz. Richardson J., Garrow B., Burrough J., Holroyd J., Bayley J., Graham B., Richards C.B., and Dallas C.J., held the conviction right; being of opinion that from the time of making the false entry it was an embezzlement. Wood B. doubted whether it could be considered as an embezzlement; Abbott L. C.J., thought that point should
have been left to the jury, and was of opinion that the conviction was wrong. (a)

The prisoner was tried and convicted before Mr. Justice Holroyd, at the summer assizes for the county of Northumberland, in the year 1821, on an indictment founded upon the statute 52 G. 3. c. 143. s. 11. (b) charging him by different counts of the indictment, with feloniously and maliciously shooting at, and upon a vessel then being in the service of the Customs, called the Swallow, upon the high seas, and within one hundred leagues of the coast of Great Britain; and also within the same limits, feloniously and maliciously, shooting at, maiming, and dangerously wounding Thomas Thompson, an officer of the customs, and describing him as acting in the due execution of his duty as such officer, in such manner as to bring him within the description and protection of the eleventh section of the above statute; with a like charge as to maliciously shooting at, maiming, and dangerously wounding George Easterby, aiding and assisting William Pierce Stanley, an officer of the customs, when acting in the due execution of his duty, under an act for the prevention of smuggling. There were also counts charging the prisoner with aiding, &c. in committing the like offences.

(a) See Rex v. Tyers, suprā, 402.

(b) Which enact (among other things), That if any person shall maliciously shoot at or upon any vessel, &c. belonging to His Majesty’s navy, or in the service of the customs, &c. on the high seas within one hundred leagues of the coast of Great Britain or Ireland, or if any person shall, either on shore or on the water within the limits last aforesaid, maliciously shoot at, maim, or dangerously wound any officer, &c. of the customs, &c. or any other person or persons aiding or assisting any such officer when acting in the due execution of his duty under any of the forms, &c. of any act relating to the revenues of customs, &c. of Great Britain, or of any act for the prevention of smuggling, every person so offending, and every person aiding, abetting, or assisting therein shall, being thereof convicted, be adjudged felons without benefit of clergy.
1821.
Reynolds's Case.

CROWN CASES RESERVED.

It appeared in evidence, that the prisoner who was an Englishman, was one of the English crew of a large English smuggling vessel, armed with cannon, muskets, and other offensive weapons, at the time of her engagement, on the 27th of February 1821, on the high seas, within the limits mentioned in the indictment, with a vessel called the Swallow, then in the service of the customs.

In the course of that engagement it was, that the shooting at, maiming, and dangerously wounding, the above named Thomas Thompson and George Easterby (who were on board the Swallow, and part of her crew, and answered the characters and descriptions given of them in the indictment,) by the guns of the smuggling vessel took place.

The conflict was attended with the following circumstances. The smuggling vessel being a vessel, liable to seizure and examination, as mentioned in the eighth section (a) of the statute 56 G. 3. s. 2. c. 104. did not bring to on being chased by the Swallow, a vessel employed in the prevention of smuggling, under the authority of the Commissioners of Customs, then having a pendant and ensign hoisted of the following description.

The ensign was proved to be a red ensign, with a regal crown in a red field, and the pendant of the same description. No further or more particular evidence was given of their description, but the commander of the vessel proved that they were colours, that under his duty as an officer he had been directed to hoist. In the chase, the pendant and ensign being so hoisted, and the smuggling vessel being liable to seizure and examination as aforesaid,

(a) Which enacts, That in case any ship or vessel liable to seizure or examination by this or any other act of parliament in force, shall not bring to on being required so to do, or being chased by any ship or vessel in His Majesty's navy, having the proper pendant and ensign of His Majesty's ships hoisted, or by any ship or vessel employed in the prevention of smuggling under the authority of the Lords Commissioners of the Customs or Excise, having a pendant or ensign hoisted of such description as His Majesty, by any order in council, or by his royal proclamation under the great seal of the united kingdom of Great Britain and Ireland, shall from time to time on that behalf order and direct, it shall and may be lawful for the captain, &c. having the charge or command of such ship or vessel in His Majesty's navy, or employed as aforesaid (first causing a gun to be fired as a signal), to shoot at or into such ship or vessel so liable as aforesaid, and such captain, &c. and every person acting in his aid and assistance, or by his direction, are indemnified and discharged from any penalties or actions for damages for so doing.
and not bringing to, but altering her course and sailing away, the person having the charge and command of the Swallow, (first causing a gun to be fired as a signal, and the smuggling vessel still not bringing to), fired a shot at her; but it fell short of the smuggling vessel, which then fired a shot in return; and in the result, after a severe conflict, in which the prisoner as well as the above named Thomas Thompson and George Easterby, were dangerously wounded, the smuggling vessel was captured.

The eighth section of the above statute of 56 G. 3. requires the pendant and ensign that are to be hoisted (in order to make it lawful to shoot at a vessel liable to seizure or examination, as aforesaid, for not bringing to, after a gun has been fired as a signal), to be of such description as His Majesty by any order in council, or by his Royal Proclamation, under the great seal of the united kingdom of Great Britain and Ireland, should from time to time, in that behalf order and direct.

No proof was given at the trial of any such order in council, or royal proclamation having issued.

The learned judge stated (in the case submitted to the judges) that on enquiry, since the trial, he could not learn, that any such royal proclamation as the statute requires had been issued; but he found that an order of His Majesty in council was made on the 1st of February 1817, and published in the London Gazette of the 8th of February following, directing and appointing, that the pendant and ensign to be hoisted should be such as not only to answer the description above proved, but should contain also other particulars not proved.

The proof therefore, of the pendant and ensign used in the present case, did not extend to all the particulars of the pendant and ensign required by the above order in council, even supposing that the Court could take judicial notice of this order in council, by the publication thereof in the Gazette, without either the proof or production of the order, or of the Gazette.

The question for the opinion of the judges, arising upon the want of such evidence, was as to the legal effect of the fact of the Swallow, firing first at the smuggling vessel; whether the subsequent shooting, by the smuggling vessel at the Swallow, and her crew was a malicious shooting, so as to constitute it a capital felony, within the above statute of the 52 G. 3.

Judgment was respited until the next assizes.

H H 2
In Michaelmas term, 1821, eleven of the Judges met (Best J., being absent), and considered this case. The Judges were unanimously of opinion, that, as the custom-house vessel had not complied, with what was required by the statute to make the shooting legal, the smugglers' vessel firing in the way stated in the case, could not, in point of law, be considered as malicious. They recommended that a pardon should be applied for.

1821.

REX v. JOHN WATSON.

The prisoner was tried and convicted before Mr. Justice Bayley, at the summer assizes for the county of Durham, in the year 1821, for being at large after sentence of transportation for seven years.

The indictment was as follows: — "The jurors, &c. present, that at the Christmas general quarter sessions of the peace of certificate of the former conviction. The indictment or the certificate under this section of the statute, stating the former conviction to have been for felony only, is insufficient.

(a) Which enacts, That if any offender who shall be transported, either for life or any number of years, shall be afterwards at large within any part of the united kingdom of Great Britain and Ireland, without some lawful cause, before the expiration of the term for which such offender shall have been transported, any such offender being at large, being thereof lawfully convicted, shall suffer death, as in cases of felony, without benefit of clergy; and such offender may be tried either before the Justices of assize, &c. for the county, &c. where he was apprehended, or from whence he was ordered to be transported, and the clerk of assize, clerk of the peace, or other officer or clerk of the court having the custody of the records where such order of transportation shall be made, shall, at the request of the prosecutor, or any other person on His Majesty's behalf, make out and give a certificate in writing signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, and of the order of his transportation, to the Justices of assize, &c. where such offender shall be indicted, which certificate shall be sufficient proof of the conviction and order for the transportation of such offender.
our late lord the King, holden by adjournment at Doncaster; in and for the West Riding of the county of York, on the 17th January, 56 G. S. before W. W., B. C., H. P., &c. and others their fellows, justices of our said lord the King, assigned to keep the peace of our said lord the King, in the said Riding, and also to hear and determine divers felonies, &c. committed within the Riding aforesaid; John Watson of Wakefield, in the West Riding of the county of York, was indicted for a felony by him committed within the said Riding; and that he was found guilty of the said felony by the verdict of his country, and was thereupon sentenced to be transported into foreign parts beyond the seas, for the term of seven years, to such place as His Majesty in his privy council should order and direct; and that it was ordered by the said court, that the said John Watson should be transported accordingly, and that he should be committed to His Majesty's gaol, the castle of York, there to be confined in safe custody until the time of his said transportation; and the jurors, &c. further present, that the said John Watson, otherwise called John Naylor, afterward, to wit, on the 1st of November, 1 G. 4. with force and arms, feloniously was at large without lawful cause, within that part of the united kingdom of Great Britain and Ireland, called Great Britain, to wit, at, &c., before the expiration of said term for which he the said John Watson, otherwise called John Naylor, was so ordered to be transported as aforesaid, against the statute, &c., and against the peace, &c.

The above indictment states, that the prisoner had been convicted of felony, without stating the nature of that felony. The certificate of that conviction which was given in evidence stated only that the prisoner had been convicted of felony.

The learned Judge, upon the authority of Rex v. Sutcliffe (a), thought that the indictment and certificate ought to have stated the nature of the felony; but saved the point for the consideration of the Judges.

(a) East. T. 1788. The indictment in this case charged the prisoner with being at large after sentence of transportation for seven years; and then stated that the prisoner was convicted of grand larceny within the benefit of clergy, without setting out the effect and substance of such former conviction. The certificate was in the same form; and on case reserved the Judges held both insufficient. MS. C.C.R.
1821.

The case of *Rex v. Sutcliffe* was founded on 6 G.1. c.23. s.7, which requires the officer to certify a transcript briefly and in few words, containing the effect and tenor of the indictment and conviction; and also on the 24 G.3. c.56. s.5., which requires a certificate containing the effect and substance only, omitting the formal part of the indictment and conviction. The 56 G.3. c.27. s.8. requires the same certificate as 24 G.3.; *i.e.* the effect and substance only, omitting the formal part.

In *Michaelmas* term 1821, the judges met, and considered this case. They were of opinion that point was decided by *Rex v. Sutcliffe*, and the prisoner was remitted to his former sentence.

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1821.

*REX v. NOWELL WILKINSON, AND JOSEPH MARSDEN.*

Larceny.
If a man steal his own goods, from his own bailee, though he has no intent to charge the bailee, but his intent is to defraud the king, yet, if the bailee had an interest in the possession, and could have withheld it from the owner, the taking is a larceny.

The prisoners were tried before Mr. Justice Park (present Lord Chief Justice Abbott) at the Old Bailey sessions October 1821, on an indictment for stealing six thousand six hundred and ninety-six pounds of weight of nux vomica, value thirty pounds, the property of James Marsh, Henry Coombe, and John Young in a certain boat belonging to them in the port of London, being a port of entry and discharge.

It appeared in evidence, that the prosecutors were lighter men and agents, and were employed by a Mr. Cooper, a merchant, who delivered them warrants properly filled up, to enable them to pass the nux vomica through the custom house, for exportation to Amsterdam. The quantity was thirty bales of nux vomica, consisting of seven hundred and fifty bags.

For exportation this commodity paid no duty, but for home consumption there was a duty of two shillings and sixpence on the pound weight, though the article itself was not worth above one penny per pound.

Messrs. Marsh & Co. entered the bales for a vessel about to sail to Amsterdam, called the York Merchant, then lying in the London dock; and having done what was necessary delivered
back the cockett bill and warrants to Cooper, considering him, as
the owner, and Marsh & Co. gave a bond to government with
Cooper, under a penalty, to export these goods. Marsh & Co.
were to be paid for lighterage and for their services.

After this, Marsh & Co., employed the prisoner Wilkinson as their
servant, who was a lighterman, (and who had originally intro-
duced Cooper to them, to do what was necessary respecting the
nux vomica), to convey the goods from Bon Creek, where they
were, to the York Merchant at the London docks, and lent their
boat with the name “Marsh & Co.” upon it, to enable him so
to do.

The prisoner Wilkinson accordingly went and got the nux
vomica, by an order commanding the person who had the pos-
session of it to deliver it to Mr. John Cooper. The bales were
marked C. 4 to 33.

When Wilkinson received the cargo, instead of taking it to
the York Merchant, he, one William Marsden, and the other
prisoner Joseph Marsden, took the boat to a Mr. Brown’s a
wharfinger, at Lea Cut in the county of Middlesex, and there
unloaded it into a warehouse, which William Marsden had hired
three weeks before, and which they had used once before. The
two prisoners and William Marsden were there employed a long
time in unpacking the bales, taking out the nux vomica, repack-
ing it in smaller sacks, and sending it by a waggon to London,
and refilling the marked bales with cinders and other rubbish,
which they found on the wharf.

The prisoner Wilkinson then put the bales of cinders, &c. on
board the boat, took them to the York Merchant; hailed the
vessel, and said he had thirty bales of nux vomica, which were
put on board, and remained so for two or three days, when the
searcher of the customs discovered the fraud.

Marsh & Co. admitted that they had not been called on for
any duties, nor sued upon the bond though the bond remained
uncancelled.

The defence was, and which Cooper was called to prove, that
the goods were not his (Cooper’s), but that he had, at William
Marsden’s desire, lent his name to pass the entry; and that he
had done so, but did not know why, that he did not know it was
a smuggling transaction, or that the object was to cheat govern-
ment of the importation duties.
CROWN CASES RESERVED.

If these were to be considered as the goods of Cooper, then it should seem a felony was committed upon them by Wilkinson and the two Marsdens, by taking them in the manner described out of the hands of Marsh & Co., without their knowledge or consent, who, as lightermen or carriers, had a special property in them, and who were also liable to government, to see the due exportation of them.

Even if they were the goods of William Marsden, who superintended the shifting of them from the bales to the sacks, the question for the Judges to consider was, whether this can be done by an owner against a special bailee, who has made himself responsible that a given thing shall be done with the goods, and which the owner, without the knowledge or consent of such bailee, had by a previous act entirely prevented.

The learned Judge told the jury that he would reserve this point for the opinion of the Judges; but desired them to say, whether they thought the general property in the goods was in Cooper or William Marsden.

The jury found the prisoners guilty, and that the property was William Marsden's.

In Michaelmas term 1821, eleven of the Judges (Best J. being absent) met, and considered this case. Four of the Judges, viz., Richardson J., Burrough J., Wood B., Graham B., doubted whether this was larceny, because there was no intent to cheat Marsh & Co., or to charge them, but the intent was to cheat the Crown. Seven of the Judges, viz. Garrow B., Holroyd J., Park J., Bayley J., Richards C. B., Dallas C. J., Abbott L. C. J. held it a larceny, because Marsh & Co. had a right to the possession until the goods reached the ship; they had also an interest in that possession, and the intent to deprive them of their possession wrongfully and against their will, was a felonious intent as against them, because it exposed them to a suit upon the bond. In the opinion of part of the seven Judges, this would have been larceny, although there had been no felonious intent against Marsh & Co., but only an intention to defraud the Crown. (a)

(a) Vide Post. 124.
REX v. MANASSEH GOLDSTEIN.

The prisoner was tried before Mr. Justice Richardson, at the Old Bailey September sessions, in the year 1821, upon an indictment framed on the 43 G. 3. c. 189. s. 1. (a) for falsely making, forging, and counterfeiting, and causing, and procuring to be falsely made, forged, and counterfeited, a certain promissory note for the payment of money, purporting to be the promissory note for the payment of money of a certain foreign prince, that is to say, Frederick William, king of a certain foreign country called Prussia, judgment was arrested. S. C. 3 Brod. & Bingham. 301.

(a) This statute enacts, That if any person shall, within any part of the united kingdom of Great Britain and Ireland, falsely make, forge, or counterfeit, or cause or procure to be falsely made, forged, or counterfeited, or knowingly aid or assist in the false making, forging, or counterfeiting any bill of exchange, or any promissory note, undertaking, or order for the payment of money, purporting to be the bill of exchange, promissory note, undertaking, or order for payment of money of any foreign prince, state, or country whatsoever, or of any minister or officer entrusted by or employed in the service of any foreign prince, state, or country, or of any person or company of persons resident in any foreign state or country, or of any body corporate and political and body in the nature of a body corporate and politic, created or constituted by any foreign prince or state, with intent to deceive or defraud His Majesty, his heirs and successors, or any such foreign prince, state, or country, or with intent to deceive or defraud any person or company of persons whatsoever, or any body corporate and political, or body in the nature of a body corporate and politic whatsoever, whether the same be respectively resident, carrying on business, constituted, or being in any part of the united kingdom, or in any foreign state or country, and whether such bill of exchange, promissory note, or order, be in the English language, or in any foreign language or languages, or partly in one and partly in the other; or if any person shall, within any part of the said united kingdom, tender in payment, or in exchange, or otherwise utter or publish as true any such false, forged, or counterfeited bill of exchange, promissory note, undertaking, or order, knowing the same to be false, forged, or counterfeited, with intent to deceive or defraud His Majesty, his heirs and successors, or any foreign prince, state, or country, or any person or company of persons, or any body corporate and politic, or body in the nature of a body politic and corporate, as aforesaid, then every person so offending shall be deemed and taken to be guilty of felony; and being thereof lawfully convicted, shall be transported for any term of years not exceeding fourteen years.
with intent to deceive and defraud the said Frederick William, against the form of the statute, &c.

In other counts the instrument was stated to be a certain promissory note for the payment of money, purporting to be the promissory note for the payment of money of Altenstein, known by the name and description of Baron D'Altenstein, he the said Altenstein being a minister intrusted by, and in the service of the said Frederick William, so being such foreign prince as aforesaid, with intent to deceive and defraud the said Frederick William, &c.

In other counts, the said Altenstein was stated to be "a person resident in a certain foreign country called Prussia." And in other counts the intent charged was to deceive and defraud the said Altenstein.

In another set of counts the instrument was stated to be "an undertaking for the payment of money," and in another set "an order for the payment of money."

The instrument was set out on the record; and, in one set of counts, was stated to be in the German language; in another set, to be partly German and partly French; and in a third set, the particular language was not averred. No count contained any English translation.

It was proved at the trial, that these instruments were notes (or receipts) issued by the Prussian treasury, signed (in fac simile) by Baron D'Altenstein, the Prussian minister of finance; that they were not only received by the Prussian government in payment of all duties and taxes, but that any holder might, and often did, receive payment for them in cash, on presenting them at the treasury offices established at Berlin, Konigsberg, and Breslau, and that they passed as current money for all purposes throughout the Prussian dominions.

This instrument, being translated by a witness, appeared to be, in English, as follows:—
On the front side.

No.

Treasury Note (a) of one Dollar in currency according to the standard of 1784, valid in all payments in full.

ALTENSTEIN.

On the reverse side.

Treasury Note. (b)

F. R.

w.

ONE DOLLAR

Office of Realization (c) at Konigsberg.

The last words, which in the original were "Realisations Comptoir zu Konigsberg," were printed in red ink, and in the French character; but the witness said that the phrase "Realisations Comptoir" was adopted into the German language. (d)

The same witness, on cross-examination, stated, that in German he should call an undertaking to pay money, or promissory note, "schuld-schein," which literally means "receipt for a debt," and that the word "schein" alone does not import a promise to pay.

(a) Or receipt, the German word "schein" signifying either "note" or "receipt."
(b) Or receipt.
(c) Or payment.
(d) The instrument, which was a sort of ticket ornamented with engraved patterns, was attached to the case submitted to the Judges, and was in the German language, with the exception of the words "Realisations comptoir."
It was clearly proved, that the prisoner, who was a German Jew residing at Shadwell, having a correspondence with some persons in Prussia, and having in his possession a genuine note, had caused plates to be engraved, and many thousands of false notes to be struck off, in the city of London.

The evidence being closed, the counsel for the prisoner objected that the instrument stated in the indictment was not, nor did it purport to be a promissory note, or an undertaking to pay money, or an order to pay money; and that it contained no words of promise, undertaking, or order. He cited Mary Michell’s case, Fost. 119. 2 East, P. C. 936. William’s case, 1 Leach. 114. 2 East, P. C. 937. Clinch’s case, 1 Leach, 540. 2 East, P. C. 938, and Jones’s case, 1 Leach, 55., 2 East, P. C. 941., which cases were decided upon the statute 7 G. 2. c. 22, respecting orders for payment of money; and argued from thence that an order for payment of money must contain words importing a command, and must purport to be signed by some person having, or at least claiming to have, authority to command such payment. He also cited Hunter’s case, 2 Leach, 624., 2 East, P. C. 928., and Thompson’s case 2 Leach, 632., (in the notes), which cases were decided upon the statute 2 G. 2. c. 25., respecting receipts for money, to show that the signature of a name alone, or the word settled alone, could not be set out in an indictment for forgery as a receipt for money, although it might operate as such, without other matter connected with it by proper averments so as to show that the whole matter taken together purposed on the face of it to be a receipt for money. (a) He then cited Reading’s case, 2 Leach, 590., 2 East, P. C. 981., to show that John Ring could not purport to be John King: and he observed, that the effect of the instrument when presented for payment at the treasury at Berlin could not vary its purport.

The learned Judge overruled the objection, being of opinion that the act of parliament, made to prevent the forgery in Great Britain of foreign securities, could not be understood to require that these securities should possess the technical properties required by our municipal law of England; but that it was sufficient if they imported on the face of the whole instrument an

(a) Vide Rex v. Harvey, ante, 297.
undertaking or order for the payment of money, which he thought was the case with the instrument in question. The learned Judge was also inclined to think, considering the peculiar wording of the act, that it was sufficient if the instrument was in fact an undertaking or order for the payment of money, and operated as such, (which appeared by the evidence to be the case in this instance), and purported to be issued by any foreign prince or his minister; the word "purporting" in the act appearing to him to refer rather to the person by or on whose behalf the instrument was issued, than to the form of the instrument itself.

The jury found the prisoner guilty.

On the following day the prisoner's counsel moved in arrest of judgment, on the ground that the false instrument was here set out only in a foreign language, and not translated or explained by averments on the record. He urged that the object of setting out the instrument in case of libel and forgery is, that the court which tries, and also a court of error, may judge whether it be what it is alleged to be, and whether it falls within the act or law on which the prosecution is founded: which functions the court could not exercise in the case of a foreign instrument not translated or explained by averments, because the court could no more take judicial notice of the meaning of German or French, than of Arabic or Chinese; and he cited Zenobis v. Axtell, 6 T. R. 162. where it was held that the translation of a foreign libel, without the original, would not suffice; and argued that the converse was equally true. He also cited Lyon's case, 2 Leach, 597., 2 East, P. C. 933. Lloyd's case, 2 Leach, 608. (in the notes), Gilchrist's case, 2 Leach, 657, 2 East, P. C. 982., and Reading's case, 2 Leach, 590., 2 East, P. C. 981., for the purpose of shewing that indictments have been held insufficient, because the instrument set out did not, in the opinion of the court, agree with the purport ascribed to it, of which advantage this prisoner was deprived by setting out the instrument only in an unknown language. He then mentioned the statute 4 G. 2. c. 26. s. 1., which requires all indictments to be in the English language, as fortifying the argument that every thing material must be stated or explained in that language.

The learned Judge expressed no opinion upon this point,
having determined to submit it, and also the objection made at the trial, to the opinion of the Judges.

Both points were accordingly submitted to their opinion; and the judgment was in the mean time respited.

In Hilary term, 1822, this case was argued (a) by Platt for the prisoner and C. Law for the Crown, before ten of the Judges, Wood B. being absent from illness, and Bayley J. being engaged at chambers: when eight of the Judges were of opinion that the objection in arrest of judgment was good; and judgment was accordingly arrested.

1822.

REX v. PHOEBE BRAMLEY.

The prisoner was tried upon a charge of burglary, before Mr. Clarke, the King's counsel, at the Spring assizes for the county of Derby, in the year 1822.

The indictment charged the prisoner with a burglary in the dwelling-house of one Thomas Noon, and with stealing a box, two purses, twenty-two pounds ten shillings in silver, six shillings and three pence in copper, a promissory note for the payment of ten pounds, and eighteen promissory notes for the payment of one pound each, the property of the said Thomas Noon. In another count, the property was stated to belong to Sarah Sisson, Ann Fretwell, and Ann Noon.

The box and the other articles (all of which were in the box when taken by the prisoner) were the property of a Female Friendly Society, established under the statute 33 G. S. c. 54, and the rules, orders, and regulations of which had been exhibited to, and allowed and confirmed by the sessions, as directed by that statute. The society held their meetings at a public-house kept by Thomas Noon, the person mentioned in the indictment; and the funds of the society were kept in the box, which, with the funds it contained, was always deposited in a bed-chamber in the house of Thomas Noon, after the meetings of

(a) See the arguments. 5 Brod. & Bingh. 207. 210
the society had ended. It was directed by the rules of the society, that the box should remain in the custody of the landlord of the house, or any other person whom the society should appoint, he being responsible for whatever effects were lodged therein.

The persons in whom the property was laid in one of the counts of the indictment, namely, Sarah Sisson, Ann Frethewell, and Ann Noon, were stewardesses of the society, appointed according to its rules. The box (as directed also by the rules of the society) had three different locks upon it, and each stewardess had one key. The stewardesses were (by the same rules) to serve for one year, and then to resign their keys, cash, and books, to the new stewardesses.

The society met on the evening of the night in which the offence was committed, and the box with the funds in it was, after the meeting broke up, deposited in the usual place in Thomas Noon's house, from whence it was afterwards taken by the prisoner, who gained admission to the chamber by means of a ladder, and breaking open the window.

The prisoner had been for some time a member of the society. One of the rules of the society was, that each member should pay sixpence to the stock every fourth Monday; and that if a member failed to pay for four successive nights, she should be excluded. The prisoner had failed to pay for four successive nights, the last of which was the night the property was taken; but no order for excluding her had been made by the society.

The prisoner was convicted; but a case was reserved for the opinion of the Judges upon the question, whether, considering the situation in which the prisoner stood with respect to this property, the conviction was proper.

In Easter term, 1822, the Judges (ten of them being present) were clear, that as the landlord was answerable to the society for the property, the conviction was right.
REX v. JAMES BEW.

The prisoner was tried before Newman Knowlys, Esq., Common Serjeant, at the Old Bailey December sessions, in the year 1821, on an indictment, founded on 3 & 4 W. & M. c. 9., charging him with stealing on the 13th of November, 1821, at St. Martin in the Fields, two sheets value five shillings, two pillow-cases value sixpence, one towel value sixpence, and a candlestick value one shilling, the goods and chattels of James Child, in a lodging-room in his dwelling-house, then let by contract by the said James Child to the prisoner, to be used with the lodging aforesaid, against the statute, &c.

The evidence was clear, that the goods mentioned in the indictment were stolen by the prisoner, and were the goods to be used with the lodging which the prisoner occupied; but it appeared, that the lodging-room in question was often let to more tenants than one; and that at the time of its being let to the prisoner, it was occupied by one other lodger, who had been there for some months, and was still to continue to occupy it, of which the prisoner was apprised at the time he took the lodging.

Upon this appearing in evidence, the prisoner's counsel contended that the indictment ought to have stated, that the lodging-room and the goods therein were let by contract to the prisoner, to be used jointly with the other lodger.

The learned Common Serjeant was of opinion, that it was sufficient to state, that the goods were in a lodging-room, let by contract to the prisoner to be used with the lodging, without stating the particular nature of the contract, whether joint or several, or for what term, or on what consideration; and that it was sufficient to state the offence in the words of the statute, to show that it was a larceny under the special provisions of the 3 & 4 W. & M., and not a larceny at common law; inasmuch as a possession of the goods stolen under any contract whatsoever with the owner of the goods, was within the principle as well as within the language of the statute; and that it was no more ne-
cessary to state the particular nature of the contract in an indictment on this statute, than it was to state the particular nature of the endeavour to seduce a soldier from his duty, in an indictment on 37 G. 3. c. 70., as determined in Rex v. Fuller, 1 B. & P. 180.

The jury found the prisoner guilty; but as the point appeared to the learned Common Serjeant to be new, he reserved the objection for the opinion of the Judges.

In Easter term, 1822, all the Judges met (except Richards C. B. and Best J., who were absent) and considered this case. Abbott L. C.J., seemed to think that the prisoner was not a lodger within the meaning of the statute of 9 & 4 W. & M. c. 9. But the majority of the Judges, without giving any express opinion on that point, thought that the indictment imported that the lodging-room and goods were let to the prisoner exclusively; and that this was negatived by the evidence, which proved that another was to have the concurrent use of them. The Judges all agreed that the conviction was wrong. (a)

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**REX v. GEORGE FALKNER AND RICHARD BOND.**

The prisoners were convicted before Mr. Justice Bayley at the Lancashire spring assizes in the year 1822, of robbing Thomas Halliday, of sixty pennies and sixty half-pence. Thomas Halliday was called upon his recognizances but did not appear. There was evidence, that the prisoner Falkner had been desirous to send a message to Halliday, to keep him from appearing. The only other evidence against the prisoners was, that Bond had confessed the offence to the constable who apprehended him; and that both the prisoners, on hearing the depositions if such confession was in consequence of a charge against the prisoner. Especially if there is evidence that he had been desirous to keep out of the way the person upon whom the offence is supposed to have been committed; or if any of his companions under the same charge have attempted to do so.


11
read over to them which contained the charge, had admitted that they were guilty.

The depositions charged the prisoners with robbing Halliday of one paper containing 5s. in copper, and of loose copper to the amount of 2s.

The counsel for the prosecution expressed a doubt, whether the confession of the prisoner alone without proof aliunde that Halliday had been robbed by somebody, was sufficient ground for a conviction, and as the case of Rex v. Eldridge (a), did not quite come up to this case, the learned Judge thought it right to save the question for the consideration of the Judges.

In Easter term, 1822, the Judges held the conviction right. (b)

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1822.

REX v. SAMUEL FRY AND WILLIAM FRY.

The prisoners were tried before Mr. Justice Richardson, at the spring assizes for the county of Gloucester, in the year 1822, on an indictment, for breaking and entering a dwelling-house, in the day-time, and stealing therein ten pounds in monies numbered, and one pair of stockings, value four shillings of the monies, goods, and chattels of Francis Hicks.

The jury acquitted them of the breaking and entering, and of stealing the stockings, and found them guilty of the rest of the charges.

The counsel for the prisoners objected to the description of the money in the indictment, on the ground that pounds, which the prisoners were charged with stealing, have no physical existence, but were a mere expression of value used in computation.

The learned Judge passed judgment upon the prisoners; but afterwards presented the point for the consideration of the Judges; and he mentioned that Lord Hale (c) uses "40s. in

(a) Ante, p. 440.
(c) 1 Hale, P. C. 554.
pecuniis numeratis," as a description of money, in an indictment for larceny, and that this passage is cited in a modern treatise on criminal pleading (a) as an authority, that in an indictment for stealing the current coin of the realm, so many guineas or shillings of the current coin of the realm, in monies numbered, is a good description without averring the value.

In Easter term, 1822, the Judges held the conviction wrong.

REX v. SAMUEL HILL, CHARLES DIX, ROBERT VINCE, ROBERT LUCAS, JAMES MAUNDRELL, JAMES CHAMPION, JOHN BREWER, JOSEPH BAILEY, WILLIAM SMITH, AND JAMES DANIEL.

The prisoners were tried before Mr. Justice Park, at the spring assizes for the county of Wiltshire, in the year 1822, upon an indictment charging them with breaking and entering certain houses, with intent to cut and destroy certain tools, employed in making woollen goods, against the statute.

This indictment was founded upon the statute 22 Geo. 3. c. 40, s. 1, by which it is made a capital felony to break into any house or shop, or enter by force into any house or shop, with intent to cut or destroy "any serge or other woollen goods in the loom, or any tools employed in making thereof; or wilfully and maliciously to cut or destroy any such serges or woollen goods in the loom, or on the rack, or to burn, cut, or destroy, any rack, on which any such serges or other woollen goods are hanged in order to dry, or wilfully and maliciously to break or destroy any tools used in the making any such serges or other woollen goods, not having the consent of the owner so to do." (b)

It was admitted by the counsel for the prosecution that the thing destroyed was not a tool, but a part of the loom itself. The learned Judge was therefore of opinion, that merely destroying part of the loom did not fall within the statute; and

(a) 1 Stark. 187.

(b) This statute is repealed by 4 Geo. 4. c. 46, s. 9. And see 4 Geo. 4. c. 58.
CROWN CASES RESERVED:

that the silence of this section of the statute, as to the loom, frame or any part thereof, was probably an omission; especially as in the second section of the same act, where the silk trade is spoken of, though "frame or loom" is not mentioned; yet the words used might perhaps include the frame, for that section speaks of the destruction of any "tools, tackle, or utensils." And he observed also, that in the third section of the statute, which applied to the cotton trade, the words "tools, tackle, or utensils" are again used.

The prisoners pleaded guilty by the advice of their counsel, the learned Judge assuring them that he would take the opinion of the Judges upon the objection, and recommend the prisoners for a free pardon, in case the Judges should hold his opinion to be correct; and he did not therefore pass the sentence of death.

In Easter term 1822, the Judges held that the objection was well founded. (a)

REX v. RICHARD PADDLE.

The prisoner was tried before Mr. Sergeant Firth, at the spring assizes for the county of Suffolk, on a charge of sending a threatening letter, within the statute 27 G.2. c.15.

The first count of the indictment charged the prisoner with having, knowingly, unlawfully, wickedly, and feloniously, sent a certain letter, without any name subscribed thereto, to one William Kirby, by the name of William Kurbay Clargyman Barham Suffolk, the tenor of which said letter was as follows. "Mr. Kurbay We take the liberty of Riten the few lines to you and we hope that you will Explain them a proper manner to the Jantlemen as we may call them But not so that is conscerning the Poor Labourn meen in this parish been so very much Robd

(a) Vide Rex v. Tusey, ante; 452.
and in Posed upon in their Laborn and if they go on of dropping the wages, they may depend they will meet with som bad misforten for something we must Do for we cannot Bear it no longer there is one two that make it there comon Pratic to go about the Parish teach the others not to give onyl So and So, and they must Do it and as long as we will stand it they will inarily star us to Dead ould Brook is the worst rogue of all Mr. Rodwell is nearley as bad and they do not chouse to mend we intend to make them a present of a fair bran and need not think that this promis will fael for it will not thats for ould Brook may be as shure of having his Stack yard Set on fair as shure as ever he is a rogue and that we are shure of and so shall that ould serpant at Clthydon hall. William Kurbay, Clargsman, Barham, Suffolk.” To the great damage and terror of the said William Kirby against the statute, &c.

The second count charged the prisoner with having knowingly, &c., sent a certain letter without any name subscribed thereto to William Kirby, threatening to burn the house of one John Meadows Rodwell; (and it set forth the same letter) to the great damage and terror of the said John Meadows Rodwell against the statute, &c. The third count charged the prisoner with having sent the same letter to Mr. Kirby, threatening to burn the stacks of hay, corn, and grain of one Robert Brook, to the great damage and terror of the said Robert Brook, against the statute, &c.

It was proved that the letter was written by the prisoner, and that Mr. Kirby received it by the post on the 6th of December, 1821; and that it was communicated very soon afterwards to Mr. Rodwell and Mr. Brook. Mr. Brook proved that he had, in the beginning of December 1821, five or six stacks of wheat, barley, and beans in his stack yard, and that on reading the letter in question he was much alarmed and terrified.

The prisoner’s counsel objected that the statute on which the indictment was framed, recites, in the preamble, the statute 9 G. 1. c. 22. of which it meant to extend the provisions; and insisted from the last-mentioned statute connected with that of the 27th G. 2. that it was indispensably necessary that the indictment should charge the prisoner with sending the threatening letter to the party threatened; whereas it was stated in the indictment and appeared upon the evidence, that the letter was not so sent, but
was sent to a third party, a stranger; and that Mr. Kirby might have destroyed the letter, without the party threatened knowing any thing of it.

The learned Sergeant expressed his opinion, that the charge of sending the letter to one William Kirby, &c., directed to the said William Kirby, was merely an allegation of a collateral fact which was proved by the evidence, but which he thought needed not to have been alleged. And he thought the indictment sufficient, inasmuch as it followed the words of the statute; which makes the bare sending of a threatening letter, the offence meant to be provided against: and as neither the 9th G. 1. nor 27th G. 2. have the words, “to any of his Majesty's subjects,” in the enacting clause respectively; he thought that the letter (according strictly, as he considered it, with the words, spirit, and meaning of the 27th G. 2.), need not be directed to any body at all, nor be sent to the party threatened. It seemed to him that, by a different construction, this wholesome statute might easily be evaded by sending a letter to an inmate in the house of the party threatened, or to a stranger; and that it was sufficient, if, by the act of the prisoners, the letter came into the possession of the party threatened, and the party was thereby put in fear, alarm, and apprehension.

The learned Sergeant therefore overruled the objection; but as he considered this a new case, and as the prisoner's counsel expressed great confidence in the validity of the objection, he thought fit to respite the judgment, and remanded the prisoner until the following assizes.

This case was considered by the Judges in Easter term 1822, and they held that the sending the letter to Kirby, as Kirby was not threatened, was not within the statute; and upon that account the judgment was arrested; but they intimated, that if Kirby had delivered it to Rodwell or Brook, and a jury should think that the prisoner intended he should so deliver it, this would be a sending by the prisoner to Rodwell or Brook, and would support a charge to that effect.
REX v. JOSEPH JACKSON.

The prisoner was convicted before Mr. Justice Bayley, at the spring assizes at Lancaster in the year 1822, for a burglary with an intent to commit a rape upon a married woman.

It appeared in evidence that the prisoner went into the room, and got into the woman's bed as if he had been her husband; that he was in the act of copulation when she made the discovery, and immediately, and before completion, he desisted. The jury found that he entered the house with intent to pass for her husband, and to have connection with her if she did not discover the mistake, but not with the intention of forcing her if she made that discovery. The learned Judge thought it right to reserve the question for the consideration of the Judges, whether the connection with the woman, whilst she was under that mistake, would have amounted to a rape, and he accordingly respited the sentence.

The case was considered by the Judges in Trinity term 1822, when four Judges thought, that the having carnal knowledge of a woman whilst she was under the belief of its being her husband would be a rape, but the other eight Judges thought that it would not; and Dallas C. J. pointed out forcibly the difference between compelling a woman against her will, when the abhorrence which would naturally arise in her mind was called into action, and beguiling her into consent and co-operation; but several of the eight Judges intimated, that if the case should occur again, they would advise the jury to find a special verdict.
In an indictment for larceny, if the thing stolen be described as a bank post-bill, and be not set out, the court cannot take judicial notice that it is a promissory note; or that it is such an instrument as, under the statute 2 G. 2. c. 25., may be the subject of larceny, though it be described as made for the payment of money.

The prisoner was convicted before Mr. Justice Bayley, at the Lancaster spring assizes in the year 1822, of a simple larceny in stealing what was described to be a bank post bill, made for the payment of one hundred pounds. It was not set out in the indictment (a); and an objection was taken in arrest of judgment, that it did not appear to be such an instrument as was within 2 G. 2. c. 25., and that at the time this statute passed it was not known what a bank post bill was. The learned Judge reserved the point for the consideration of the Judges.

The case was considered by the Judges in Trinity term, 1822, when it appeared that bank post bills were not in use until two years after the statute 2 G. 2. c. 25. had passed. And the Judges were of opinion that they could not take notice that, what is now called a bank post bill, fell within any of the descriptions in that statute; and also that they could not say, as the instrument was not set out, what a bank post bill was: and further, that as the instrument was not what, at the time the statute passed, would properly be called a bill, the prisoner should have been acquitted. A pardon was therefore recommended.

(a) The indictment was to the following effect: —

The jurors, &c. that Fanny Chard, late &c. on &c. with force and arms at the parish, &c. feloniously did steal, take, and carry away one bank post bill made for the payment of the sum of one hundred pounds of lawful money of Great Britain, and of the value of one hundred pounds, then and there being found, and then and there being the property of Samuel Scotson, and the money payable upon and secured by the said bank post bill then and there remaining due and unsatisfied, against the form, &c. and against the peace, &c. And the jurors, &c. that the said Fanny Chard, afterwards, to wit, on the same day and year aforesaid, with force and arms at, &c. feloniously did steal, take, and carry away one other bank post bill made for the payment of the sum of one hundred pounds of like lawful money, and of the value of one hundred pounds, then and there being found, and then and there being the property of Adolphus Pere, and the money payable upon and secured by the said last-mentioned bank post bill then and there remaining due and unsatisfied, against the form, &c. and against the peace, &c.
REX v. ———

THE prisoner was indicted at the Old Bailey sessions in January, 1822, by the description of a person, whose name was to the jurors unknown. The offence with which he was charged, was that of publishing a blasphemous and seditious libel.

It appeared that, when apprehended, he refused to declare his name before the magistrate, and the prosecutors, not being able to discover his name, indicted him as a man, whose name was unknown to the jurors. When called to the bar, the indictment was read to him, and he then refused to plead, and was remanded. At the following sessions, in the month of February, the prisoner was again called to the bar, and by the advice of his counsel put in a demurrer in writing to the indictment. The prosecutors had time given them, until the next morning, to reply; but before they could do so, the prisoner by his counsel moved the court to be permitted to withdraw his demurrer, which was granted: and being then called on for his plea, he pleaded not guilty; and being told that he must plead by some name, he refused to give in any name. The learned Recorder was of opinion, that his plea could not be received without a name, and the prisoner was again remanded for want of a plea. At the following sessions he was again called on to plead, and again pleaded not guilty; but refused to put in that plea by any name. He was again told that the court could not receive his plea, unless he would plead by some name; and, as he persevered in his refusal, he was again remanded.

As this case appeared to be without precedent, and might materially affect the administration of justice, the learned Recorder requested the opinion of the Judges upon the following points: first, whether the prisoner could be admitted to put a plea on the record without a name: secondly, whether such a plea should be treated as a mere nullity, and the prisoner be remanded from time to time, as in contempt for not pleading: thirdly, whether the refusal to plead by name would entitle the court to enter up judgment by default: and, fourthly, whether, in case the prisoner
should ultimately plead by name, the court could proceed to try him upon this indictment or should quash the indictment as defective, and direct a fresh indictment to be preferred against him by the name by which he might plead.

In Trinity term, 1822, this case being presented for consideration, some of the learned Judges, before it was discussed, suggested that the prisoner might be indicted as a person whose name was unknown, but who was personally brought before the jurors by the keeper of the prison. An indictment was preferred accordingly, and the prisoner was convicted.

REX v. JOHN AUSTEN.

The prisoner was tried before the Lord Chief Justice Abbott, at the summer assizes at Appleby, in the year 1822, on an indictment, charging him with feloniously, &c., maiming, wounding, and killing, one wether sheep, one ewe sheep, and ten lambs of Mary Close, against the peace, &c.

At the trial it appeared that the prosecutrix, Mary Close, the owner of the sheep in question, was a small farmer, and had a small flock of sheep, which were heaved (grounded) on a fell or common near the spot where the prisoner's master also had a sheep herd. Joseph Close, the son of the prosecutrix resided with her, and managed the farm and attended to the sheep. Six of her sheep were killed one morning, in a very barbarous manner; the throats of some were cut, others were trampled to death, and three more were very nearly destroyed. There were quarrels between Joseph Close and the prisoner about the sheep. The jury found the prisoner guilty, and also that he acted from a malicious motive to Joseph Close. The learned Judge, doubting whether, upon this finding, the case was within the statute, respited the judgment, in order to submit the point to the opinion of the Judges.

In Michaelmas term, 1822, the Judges held that as Joseph Close could not in any respect be deemed the owner of the animals, the conviction was wrong.
CROWN CASES RESERVED.

REX v. RICHARD FRENCH.

The prisoner was tried before Mr. Justice Burrough, at the summer assizes for the county of Somerset, in the year 1822, upon a charge of burglary.

The first count of the indictment was for a burglary in the dwelling-house of Thomas Sedgwick Whalley, with intent to steal, and stealing one box value ten shillings, one pair of ear-rings value twenty shillings, and one tea-chest value five shillings, the goods of the said Thomas Sedgwick Whalley. A second count was for a burglary in the dwelling-house of Fanny Whalley, and stealing the same things, alleging the goods to be hers.

The facts of the burglary, and the stealing the goods in the indictment were fully proved; but the following facts appeared upon the evidence of Mrs. Whalley.

She deposed that she and her husband were separated, and had entirely ceased to live together; that she subsisted on property which was hers before her marriage, and which before the marriage was conveyed to trustees for her own separate use; that she resided in the house mentioned in the indictment, which was no part of the settled property, but was hired by herself, and that she paid the rent for it out of her separate property: and that Mr. Whalley had never been in the house.

The jury found the prisoner guilty; and the learned Judge passed sentence on him. But he thought it proper to reserve a question for the opinion of the Judges, namely, whether either of the counts was adapted to the facts proved?

The case was considered in Michaelmas term, 1822, when the Judges were clear, that this house was to be deemed in law the dwelling-house of the husband. It was the dwelling-house of some one; it was not that of the trustees, for they had nothing to do with it; it was not the wife's, because at law she could have no property; it could then only be the husband's. (a)

(a) And see Rex v. Wilford, Trin. T. 1823, post, 517.
REX v. DAVID JENKINS.

If a confession is improperly obtained, it is a ground for excluding evidence of the confession, and of any act done by the prisoner, in consequence, towards discovering the property, unless the property is actually discovered thereby. The prisoner was convicted before Mr. Justice Bayley (present Mr. Justice Park) at the Michaelmas Old Bailey sessions, in the year 1822, of stealing several gowns and other articles. He was induced by a promise from the prosecutor to confess his guilt, and, after that confession, he carried the officer to a particular house as and for the house where he had disposed of the property, and pointed out the person to whom he had delivered it. That person denied knowing anything about it, and the property was never found. The evidence of the confession was not received; the evidence of his carrying the officer to the house as above-mentioned was: but as Mr. Justice Bayley thought it questionable whether that evidence was rightly received, he stated the point for the consideration of the Judges.

In Michaelmas term, 1822, the case was considered by the Judges, who were of opinion that the evidence was not admissible, and that the conviction was therefore wrong. The confession was excluded, because being made under the influence of a promise it could not be relied upon, and the acts of the prisoner, under the same influence, not being confirmed by the finding of the property, were open to the same objection. The influence which might produce a groundless confession, might also produce groundless conduct.

1822.

REX v. JAMES JOHNSON.

The prisoner was tried before Mr. Justice Holroyd, at the summer assizes for the county of Lincoln, in the year 1822, upon an indictment for felony upon the statute 7 G. 2. c. 21. in assaulting with an offensive weapon with intent to steal. A stick held to be an "offensive weapon" within this statute, though not of extraordinary size, and though it might in general be used as a walking stick. See now 4 G. 4. c. 54. s. 5. which repeals the former statute, and does not require that the assault should have been made with any weapon.
CROWN CASES RESERVED.

The indictment charged that the prisoner, with an offensive weapon, to wit, a stick, unlawfully, maliciously, and feloniously made an assault upon Samuel Wilson, with a felonious intent, the monies of the said Samuel Wilson, from his person, and against his will, violently and feloniously to steal, against the form of the statute.

The robbery was attempted to be committed by the prisoner, and two other men in the following manner. On their pursuing the prosecutor to rob him, and the prisoner coming up and demanding his money, the prisoner struck him with a stick on the head violently, and so as to cut the top of the head and make it bleed, the prosecutor’s hat being knocked off with the blow. The stick appeared to the witness to be a common walking stick, about a yard long, and not very thick. The prisoner struck the prosecutor with the stick first, and then the prosecutor defended himself by wounding the prisoner with an open knife in the face, upon which the two other men came up and began to beat the prosecutor about the head in the same manner, with sticks of the same description; but upon the alarm of some person coming up they all ran away without effecting the robbery.

The learned Judge told the jury, that if the prisoner used his stick by way of attack for the purpose of effecting the robbery, it might, he thought, be considered as an offensive weapon within the meaning of the statute; and that if they were satisfied that this was the case, upon the evidence, they might find him guilty.

The jury found the prisoner guilty, and judgment was passed upon him; but the learned Judge reserved the point for further consideration.

In Michaelmas term, 1822, the case was considered by the Judges, who concurred in the opinion of the learned Judge by whom the prisoner was tried, and held the conviction right. (a)

(a) See Fletcher’s Case, 1 Leach, 95. 2 Str. 1166. And see also 1 Leach, 342. in the note on Hutchinson’s Case; and 1 Russ. 167. 882, and 3 Inst. 161. The statute 7 G. 2. c.21. did not contain the words “armed with,” which are to be found in some of the statutes.
REX v. WILLIAM WELLAND.

The prisoner was tried before Mr. Justice Park, at the summer assizes for the county of Kent, in the year 1822, for stealing a mare.

The fact of stealing was clearly established, and the prisoner was convicted. But a point was made in the course of the trial, upon which the learned Judge respited the judgment in order to take the opinion of the Judges.

All the witnesses proved, and the jury expressly found that the animal was a filly; and it was contended, that as the Judges had held, in the case of Rex v. Beaney (a), that upon an indictment for stealing a colt, not stating whether it was horse or mare, clergy was not taken away, notwithstanding the statutes of Edw. 6.; so, by parity of reasoning, the same rule would apply to an indictment charging the stealing of a filly. It was urged that if a man would not lose his clergy when indicted for stealing a colt or foal, or a filly, it ought not to be in the power of a prosecutor, by calling an animal a mare in the indictment, which term is never commonly applied to a filly (though a female of the horse species), to deprive a prisoner of that benefit, which, if the indictment had correctly denominated the animal, he would have had.

Upon this point the opinion of the Judges was requested.

And in Michaelmas term, 1822, the Judges decided that foals and fillies are within the statutes 2 & 3 Edw. 6., and are included in the words "horse, gelding, or mare," and therefore that the evidence of stealing a mare filly would support this indictment for stealing a mare.

(a) Ante, p. 416.
CROWN CASES RESERVED.

REX v. JAMES WESTWOOD.

The prisoner was indicted before Mr. Justice Park, at the summer assizes for the county of Surrey, in the year 1822, for a burglary in the dwelling-house of John Bailey at Epsom, and stealing various articles.

Of the existence of the usual circumstances to constitute a burglary, and also to constitute the grand larceny, there was no question, and the prisoner was capitally convicted.

But a doubt arose in the mind of the learned Judge (there being no counsel for the prisoner) whether the place in which the felony was committed could be considered as a parcel of the dwelling-house of Mr. Bailey, the prosecutor; and the learned Judge respite the judgment till the following assizes.

The house of the prosecutor was in the High Street, at Epsom. There were two or three houses there, insulated like Middle Row, Holborn. At the back of the house was a common passage or street, through which all the king's subjects, by day or night, passed, being, in fact, the footway, and of the width of nine feet. Across this passage, opposite to the dwelling-house, were several buildings and rooms used by Mr. Bailey for the purposes of his house; namely, one for a kitchen, another for a coach-house, adjoining to which were a larder and brewhouse. Over the brewhouse a servant boy always slept, but no others of Mr. Bailey's family ever slept there; and this was the room, by breaking into which the offence was committed.

There was no communication between the dwelling-house and these buildings, nor anything to connect them, except that there was a kind of canopy or awning reaching over the common passage or footway to prevent the rain from falling on the victuals in their conveyance from the kitchen to the dwelling-house, but not at all obstructing the highway.

The question submitted to the learned Judges was, whether, under these circumstances, the place in question could be considered as part of the dwelling-house of the prosecutor.
In Michaelmas term, 1822, a great majority of the judges were of opinion that the room in question was not parcel of the dwelling-house in which Mr. Bailey dwelt; because it did not adjoin it, was not under the same roof, and had no common fence. Graham B. was of opinion that it was parcel of that house. But all the judges, except Park J. (Richardson J. being absent) were of opinion that it was a distinct dwelling-house of Mr. Bailey's; and the indictment having described it as his, that the conviction was right.

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1822.

REX v. BURKE.

At the Lancashire summer assizes, in the year 1822, Thomas Burke was indicted and found guilty, as for a misdemeanor, upon the second count of an indictment, which second count was to the following effect:—

That the said Thomas Burke on, &c., with force and arms, at, &c., unlawfully and fraudulently did dispose of and put away to one Joseph Hadfield, a certain false, forged, and counterfeited promissory note; which said last-mentioned false, forged, and counterfeited promissory note, was as follows: that is to say,

"N. 6414."

Blackburn Bank. 30 shillings.

"I promise to take this as thirty shillings on demand in part for a two pound note, value received.

"Entd. J.C.

"Blackburn, Sept. 18, 1821. No. 6414.

"For Cunliffe, Brooks, & Co.

"Thirty Shillings.

"R. CUNLIFFE."

with intention to defraud the said Roger Cunliffe the elder, John Cunliffe, William Brooks, Roger Cunliffe the younger, James Cunliffe, and Samuel Brooks; he the said Thomas Burke, at the said time he so disposed of and put away the said last-mentioned false, forged, and counterfeited, promissory note as aforesaid,
CROWN CASES RESERVED.

then and there, to wit, on &c.; at &c.; well knowing the same to be false, forged, and counterfeited, to the great damage of the said Roger Cunliffe the elder, John Cunliffe, William Brooks, Roger Cunliffe the younger, and Samuel Brooks, and against the peace of our said lord the king, his crown and dignity."

The prisoner was acquitted of all the other counts in the indictment; and it was stated by the counsel for the prosecution, not to be a case within any of the statutes against forgery.

It was objected by the counsel for the prisoner, that the instrument, or writing forged and uttered, could not, in any legal sense, be denominated a promissory note as charged in the count.

This point the learned Judge reserved. And it also struck the learned Judge that there was a great doubt whether the genuine instrument or writing, supposed to be forged and uttered, had any legal validity, and whether it was not a mere nullity, for the forgery of which no indictment could be sustained; and the Lord Chief Justice concurred in that doubt.

The case was therefore submitted to the consideration of the Judges, in Michaelmas term, 1822; and they decided that judgment should be arrested. (a)

REX v. JAMES EDWARDS AND WILLIAM WALKER.

At the gaol delivery for the county of Hertford, in the year 1823, the prisoners were convicted before Mr. Justice Bayley, upon an indictment, which charged them with stealing four live tame turkies. It appeared that they stole them alive in the county of Cambridge, and killed them there, and then brought one. An indictment for stealing a dead animal should state that it was dead; for upon a general statement that a party stole the animal, it is to be intended that he stole it alive.

(a) It is to be observed of the instrument stated in the indictment, that it was not payable to the bearer on demand; that it was not payable in money; that the maker only promised to take it in payment; and that the requisitions of the statute 17 G. 5. c. 30. were not complied with.
them into the county of Hertford; so that the character of live turkeys was never applicable in the county of Hertford.

The learned Judge doubted whether he could consider the word "live," which was a description of the quality of the thing stolen, as surplusage, and he saved the case for the consideration of the Judges.

In Hilary term, 1823, the case was considered by the Judges, who held that the word "live," in the description, could not be rejected as surplusage; and that, as the prisoners had not the turkeys in a live state in Hertfordshire, the charge as laid was not proved; and that the conviction was wrong. And Holroyd J. observed, that an indictment for stealing a dead animal should state that it was dead; for upon a general statement that a party stole the animal it is to be intended that he stole it alive.

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REX v. JOHN COLLETT, WILLIAM SAWYER, AND JOHN PERRY.

The prisoners were convicted before Mr. Justice Bayley, at the special gaol delivery at Kingston, in January, 1823, of breaking in the day-time into the dwelling-house of Ann Pemberton; and a point arose whether the house in question could properly be called her dwelling-house.

The house belonged to Lord Spencer, who had let it to Mr. Stephens; and it was occupied by a Mr. Cook, Stephens’s son-in-law, until November, 1821. Cook then failed, and his wife and family left it, and nobody resided in it but Ann Pemberton, who had been servant to Cook. Stephens paid her 15s. a week till he died, which was in February, 1822. From that time Ann Pemberton received no payment, but continued in the house. At Michaelmas the house was given up to Lord Spencer, but Ann Pemberton was still permitted by Lord Spencer’s steward to remain in it, and there was no furniture in it but her’s. The house was a large house.
The learned Judge thought that Ann Pemberton might be considered as tenant at will, and directed the jury accordingly; but as the point might admit of doubt, he thought it right to reserve the case for the opinion of the Judges.

The case was considered in Hilary term, 1823, when the Judges were of opinion that the house was rightly laid in the indictment as the dwelling-house of Ann Pemberton, as she was there not as a servant but as a tenant at will.

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REX v. JOHN DAVIS.

The prisoner was tried at the Old Bailey sessions, in January, 1823, before the Chief Baron Richards, for burglary, in the dwelling-house of Montague Levyson.

The prosecutor Levyson, who dealt in watches and some jewellery, stated, that on the 2d of January, about six o'clock in the evening, as he was standing in Pall Mall opposite his shop, he watched the prisoner, a little boy, standing by the window of the shop which was part of the prosecutor's dwelling-house, and presently observed the prisoner push his finger against a pane of the glass in the corner of the window. The glass fell inside by the force of his finger. The prosecutor added, that, standing as he did in the street, he saw the forepart of the prisoner's finger on the shop side of the glass, and he instantly apprehended him.

The jury convicted the prisoner; but the learned Judge having some doubt whether this was an entry sufficient to make the offence a burglary, submitted the case to the consideration of the Judges.

In Hilary term, 1823, the case was taken into consideration by the Judges; who held, that there was a sufficient entry to constitute burglary. (a)

(a) Vide Rex v. Bailey, ante, p. 341., and the cases in the note, ante, 342.
16 G. 3. c. 30. s. 9. as to seizing the guns, &c. of persons carrying them into grounds where deer are usually kept, with intent to destroy deer; and as to beating or wounding the keepers, &c. in the execution of their offices. Held, that an assistant keeper had no right to seize the person of one so armed in order to get his gun, without having first demanded the gun. Qs. Whether an assistant keeper, appointed by the keeper only, and not confirmed by the owner of the forest, chase, &c. can, in the absence of the keeper, seize guns, &c.

(a) This section enacts, That if any person or persons, carrying any gun or other fire-arms, or any sword, staff, or other offensive weapon, shall come into any forest, chase, purlieu, or ancient walk, or into any inclosed park, paddock, wood, or into any ground where deer are usually kept, be the same inclosed or not inclosed, with an intent unlawfully to shoot at, course, or hunt, or take in any slip, noose, toyle, snare, or other engine, or to kill, wound, destroy, or take away any red or fallow deer, it shall be lawful for every ranger or keeper, or person intrusted with the care of such deer, to seize and take from such person and persons, in and upon such forest, chase, purlieu, ancient walk, park, paddock, wood, or other ground, and for the use of the owner thereof respectively, all such guns, fire-arms, slips, nooses, toyles, snares, or other engines, and all dogs there brought for coursing deer, in the same and like manner as the game-keepers of manors are empowered by law, within their respective manors, to seize and take dogs, nets, or other engines in the custody of persons not qualified by the law to keep the same; and if any such person or persons shall there unlawfully beat or wound any ranger or keeper, or his or their servants or assistants, in the execution of his or their office or offices, or shall attempt to rescue any person in the lawful custody of any such ranger, keeper, servant, or assistant, every person so offending shall be deemed and adjudged to be guilty of felony, and on being lawfully convicted on indictment, shall be transported for the space of seven years.

The fifteenth section of the same statute enacts, That it shall and may be lawful for any keeper or underkeeper of any forest, chase, purlieu, ancient walk, paddock, park, or other ground inclosed, where deer are, have been, or shall be usually kept, and their servants or assistants, to seize and apprehend, upon the spot, any person or persons whom they shall discover in the actual fact of hunting, coursing, killing, wounding, shooting at, taking, destroying, or carrying away any red or fallow deer from any such forest, chase, purlieu, or antient walk, whether inclosed or not, or in any inclosed park, paddock, wood, or in any other inclosed ground, or attempting so to do, or in setting or laying
CROWN CASES RESERVED.

The indictment stated that on the 1st June, 1822, the defendant, then carrying a gun, did unlawfully come with the same into a certain chase called Cranbourne Chase, without the consent of Lord Rivers, the owner of the chase, being a chase where fallow deer were and are usually kept, with intent unlawfully to shoot at and kill certain deer there, and did then and there in the said chase with force &c., make an assault upon, and wilfully and feloniously beat and wound one James Barrett, then and there being an assistant of Moses Brixey, a keeper of and in the said chase, and he the said James Barrett being then and there in the due execution of his office as such assistant as aforesaid to the said keeper of the said chase.

It appeared in evidence that Cranbourne chase was an extensive chase, in which deer were usually kept; that it consisted of five walks; that Lord Rivers, the proprietor, appointed a keeper for each walk, though sometimes the same person held two walks; and that the keeper for each walk had under him, for that walk, to assist him in preserving and killing the deer, certain assistant keepers, who were appointed and discharged by him. It further appeared that the chase, and each walk of it, were of such extent, that assistant keepers were absolutely necessary for the preservation of the deer, and that the keepers and underkeepers respectively wore a distinguishing dress.

Moses Brixey was the head keeper of two of the walks of Cranbourne Chase, called Rushmore and Stapleford walks, and had under him two assistant keepers for the former and three for the latter. James Barrett, the person mentioned in the indictment, was one of the assistant keepers of Rushmore walk.

On the day in question, Barrett was going his rounds in Rushmore walk to look after the deer, when he observed the prisoner, with a gun in his hand, running. He pursued the prisoner, and called out that if he did not stop he would knock him down, and also threw a stick at him; but it did not appear that the stick hit him. When he arrived within twenty yards of the prisoner the latter turned round, and, presenting his gun at any net, wire, slip, noose, toyle, snare, or other engine therein, for the taking, killing, or destroying of deer therein, and to carry such offender or offenders before some neighbouring justice of the peace, having jurisdiction, to be dealt with according to law.

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1823. *Barrett,* threatened to blow his brains out if he came any nearer. On *Barrett's* still advancing, the prisoner ran on, until *Barrett* came within four or five yards of him, when he again put his gun to his shoulder, pointed it towards *Barrett,* and threatened as before. *Barrett,* however, still advanced, and put out his hand to catch hold of the prisoner, his intention being to take both his gun and his person; when the prisoner, seizing the barrel of his gun, struck *Barrett* with the butt a violent blow on the head, which knocked him down and stunned him; and when he attempted to rise the prisoner repeated his blow, by which the stock of the gun was broken. A struggle then took place between them, in which *Barrett* was further injured; but in the result, other persons coming up to his assistance, the prisoner was secured. All this took place in *Rushmore* walk.

The gun was loaded with powder and balls; and the jury found that the prisoner came with it into the chase, with intent to shoot the deer.

The prisoner's counsel took many objections to the indictment and the evidence, of which the greater part were overruled, and the prisoner was convicted; but the learned Judge respited the judgment, and submitted the following points to the consideration of the twelve Judges.

First, Whether an assistant keeper, not being appointed or confirmed by the owner of the chase, is authorised by 16 G.3. c. 30. s.9. to seize the guns of persons entering the chase with intent to kill deer, unless the head keeper be present?

Secondly, Supposing an assistant keeper to be so authorised, then, whether *Barrett* was in the lawful execution of his duty, when he attempted, in the manner mentioned in the case, to stop the prisoner, and to take his gun, and also to apprehend his person; he being authorised to take the gun by s.9., but not authorised to apprehend the person by s.15., which applies only to persons found in the act of hunting?

The case was considered by the Judges in Hilary term, 1823. No opinion was given upon the first point: but upon the second, the Judges (ten of them being present) were unanimous, that as the keeper had no right to seize the person in order to get the gun, unless he had first demanded the gun, he was not duly in the execution of his office, when the prisoner beat him, and that the conviction was therefore wrong.
REX v. WILLIAM PANKHURST AND TIMOTHY WHIFFIN.

The defendants were convicted before Mr. Justice Bayley, at the special gaol delivery for the county of Kent, in January, 1828, of having entered into a wood, with the intent illegally to kill game there, and for being found there at night armed with a gun.

The learned Judge sentenced them to imprisonment in the house of correction; but did not sentence them to hard labour, because the 3 G. 4. c. 114. seemed to him not to extend to this case. But as the question, whether the case was within that act, was of general importance; and as the right to commit to the house of correction, independently of that act, might be questionable, the learned Judge thought it proper to request the Judges to take the case into their consideration.

By 57 G. 4. c. 90., entering into any forest, chase, park, wood, plantation, close, or other open or enclosed ground, with intent to kill game, and being found there at night armed, is made an offence.

By 3 G. 4. c. 114., imprisonment with hard labour may be awarded for (amongst other offences) the offence of having entered any open or inclosed ground, with intent to kill game, and being found there at night armed.

As this latter statute omits the words “forest, chase, park, wood, and plantation,” which are contained in the 57 G. 3. c. 90., the learned Judge doubted whether in a case where the conviction was for entering any of those places the statute 3 G. 4. c. 114. applied.

In Hilary term, 1828, this point was considered by the Judges, who were of opinion that the sentence of hard labour might be passed in such a case, inasmuch as the places specified in the statute 57 G. 3. c. 90., are all of them either “open or enclosed ground.”
False pretences; 30 G. 2. c. 24. A pretence to a parish officer, as an excuse for not working, that the party has not clothes, when he really has, though it induce the officer to give him clothes, is not obtaining goods by false pretences within this statute.

The prisoner was convicted before Mr. Justice Bayley, at the gaol delivery for the county of Essex, in January, 1823, for obtaining a pair of shoes from Thomas Poole, the overseer of the poor of the parish of Great Wheltham, from which parish the prisoner received parochial relief, by falsely pretending that he could not go to work because he had no shoes, when he had really a sufficient pair of shoes.

It appeared in evidence that the prisoner and his family received relief from the parish; that Poole, the overseer, bid the prisoner go to work to help to maintain his family; that the prisoner said he could not because he had no shoes; that Poole, the overseer, thereupon supplied him with a pair of the value of ten shillings, and that the prisoner had, in fact, at the time, two pair of new shoes, which he had previously received from the parish.

The learned Judge doubted whether this was a case within the statute, and thought it right to lay it before the Judges for their consideration.

In Hilary term, 1823, this case was considered by the Judges, who held that it was not within the act, and that the conviction was wrong; the statement made by the prisoner being rather a false excuse for not working than a false pretence to obtain goods.
CROWN CASES RESERVED.

REX v. JOHN WAITE.

The prisoner was tried and convicted before Mr. Justice Bayley (present Mr. Baron Garrow), at the Old Bailey sessions in January, 1823, of uttering a forged power of attorney for selling stock, which was standing in the joint names of the prisoner and John Cox. The power imported to be executed by the prisoner and John Cox, and the attestation imported that it was executed in the presence of the subscribing witnesses by the prisoner and John Cox. The subscribing witnesses proved that it was not executed by Cox in their presence, and that Cox's signature was not upon the power when they attested it, and that they believed the words in the attestation, "and John Cox," were added after they attested. The bank ledger was produced; according to which the stock was still standing in the prisoner's and Cox's names, and the party to whom the power was granted proved, that, when he applied to sell under the power, he was not permitted to sell, Cox's signature being objected to, as differing from one he had before made. Cox was then called as a witness to prove the forgery and other points: he was objected to, but both the learned Judges thought him competent, and he was examined. He produced the probate of a will of a Mr. Fitchew, by which he gave some money to the prisoner and Edmund Naish, in trust, for Mrs. Fitchew, for life, remainder to Stephen and John Cox; and he proved that Naish refused to act; that the trust money was invested in the joint names of the prisoner and himself; that he never gave any power to sell; that the signature in his name was a forgery; and that as soon as he knew of it, viz. in three days after the date, he wrote and sent a letter to the accountant-general of the Bank to state that he had not executed any such power, and was not privy to its execution. This letter was produced, and had upon it the country and London postmarks, and it was produced by the counsel for the Bank. No express evidence was given of its reaching the accountant-general, whether he was a mere trustee. S. C. 1 Bingh. R. 121.

Upon an indictment for forging or uttering a power of attorney to sell and transfer stock in the funds, the person whose name is forged is a competent witness for the crown if the stock has not been transferred, and he has given notice to the bank disavowing the power. Especially if it be previously proved, that though there is an attestation, importing that he executed, in the presence of two witnesses, he did not so execute in their presence, the bank act not authorising any transfer under a power of attorney, unless it is attested by two witnesses. And it will make no difference whether the stock was the property of the person whose name is forged; or
ral, or any officer of the Bank. The prisoner after his conviction petitioned the crown on the grounds that John Cox was improperly received as a witness; and he relied upon the following grounds of objection: — that the party whose name was forged was not competent, in case the instrument, if genuine, could have prejudiced him; that it would have prejudiced him, if genuine, in case the stock had been sold out; that, for any thing that appeared in evidence upon the trial, the stock might have been sold before the trial; for though no sale appeared upon the ledger, and a witness stated that the stock was still in the original names, it might have been sold under the power after he had left the Bank with the ledger; that, if not sold before the trial, it would be saleable afterwards, unless the prisoner was convicted, or unless the power was duly revoked; that the Bank was compellable to submit to it, unless it were duly revoked; that as the power was by deed, it would require a deed to revoke it, and that, as such deed must be attended with expence, Cox had a direct interest to avoid that expence.

As the conviction would have been wrong if any of these objections were well-founded, they were submitted to the consideration of the Twelve Judges.

The power of attorney was in the following form: "Know all men by these presents, that we, John Waite, of St. James's, Gloucestershire, gentleman, and John Cox, of Wrington, Somersetshire, attorney, do jointly, and each of us doth separately for ourselves, and for the survivors of us, make, constitute, and appoint John Underhill, of the Stock Exchange, gentleman, our true and lawful attorney for us, and in our names, and in our behalf, and also for and in the name and on the behalf of the survivor of us, to sell, assign, and transfer all or any part of 2189l. 17s. 1d., being all our interest or share in the capital or joint stock of 3 per cent. annuities, created by an act of parliament of the 25th year of the reign of His Majesty king George the Second [entitled an act for converting the several annuities therein mentioned, into several joint stocks of annuities transferable at the Bank of England, to be charged on the sinking fund, &c.], and by several subsequent acts; also to receive the consideration money, and give a receipt or receipts for the same, and to do all lawful acts requisite for effecting the premises hereby ratifying and confirming all that our said attorney shall do therein by virtue here-
of; and in case of the death of both or either of us, this letter of attorney, as to all matters and things which, after our respective decease, shall be done by our said attorney by virtue of, or under colour, or in pursuance thereof, shall, so far as the governor and company of the Bank of England, are interested or concerned, be as binding upon our respective executors and administrators, as the same would have been upon us, if living, unless notice in writing of our respective deaths shall have been previously given to the said governor and company, by our executors, or administrators, or by some person or persons interested in the property to which this letter of attorney refers; and unless such notice be given, we hereby severally covenant, promise, and engage, and bind ourselves and our respective executors and administrators, to and with the said governor and company of the Bank of England, that our respective executors and administrators shall and do allow, ratify, and confirm, as good, valid, and effectual against them, and against our respective estates, whatsoever shall or may be done by our said attorney after our respective decease, so far as the said governor and company of the bank of England, shall or may be in any way or manner interested therein. In witness whereof, we have hereunto set our hands and seals, the twenty-second day of October, in the year of our Lord one thousand eight hundred and twenty-one.

"Signed, sealed, and delivered, in the presence of us, by the above named John Waite and John Cox:—

"John Waite, (L. S.)
"John Cox. (L. S.)

"William Shepherd, Stationer, Corn Street, Bristol.
"Thomas Davis, Auctioneer, Corn Street, Bristol."

This case was argued in the Exchequer Chamber, on the 29th of January, Hilary term 1823, before all the judges, except Mr. Justice Richardson and Mr. Baron Wood. (a)

The judges present were all of opinion that Cox was competent, and was rightly admitted as a witness. They considered that he had not been prejudiced by the forgery at the time of the trial; and that his disavowal of the power of attorney was a prohibition to the Bank from permitting it to be used, and was

(a) See the arguments and authorities cited upon the occasion in the report of this case in 1 Bingh. 125. et sequ.
tantamount to the revocation of a genuine power: and that if it were not, yet it would have been in Car's power, as soon as the trial was over, by notice to the Bank and to Underhill, to have prevented Underhill from acting under it. And if he had been disposed to have allowed Underhill to have acted under it, yet he might have taken care that the price was secured for the purposes of the trust.

The prisoner was afterwards executed.

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1823.

REX v. THOMAS WHITE AND ZACHARIAS LANGDON.

The prisoners were tried before Mr. Justice Burrough, at the spring assizes for the county of Cornwall in the year 1823, on an indictment for stealing four bushels of oats, the goods of William Pearce.

The prosecutor, who was a stable-keeper at Truro, deposed that he had 300 quarters of oats, sometimes more, sometimes less, in his granary, the door of which was fastened with a padlock; that on the 24th of the preceding month of December, he found the door unlimed and drawn back. He said he could not swear that he lost any of his oats. Another witness stated, that on the 24th December, at half past two in the morning, he saw two men coming from Mr. Pearce's yard, each of them having a sack on his shoulders, but he did not say that these men were the prisoners. It was proved by another witness, that the prisoner White, on the same 24th December, asked him to carry four bags of oats to a Mr. John's, and to shake them into a bin there, saying that they came from a farmer in the country. The witness did so, and brought the bags back to White. Mr. John proved that he bought four bushels of oats of White on Christmas eve at six shillings and sixpence a bushel. It was further proved by a witness who had seen these oats at Mr. John's, that they were black Irish kiln dried oats, which was the kind of oats in the granary of Mr. Pearce.
CROWN CASES RESERVED.

The counsel for the prosecution then offered to give in evidence the several confessions of the two prisoners taken before the magistrates: but the learned Judge doubted whether, as Mr. Pearce could not establish that a felony had been committed, the evidence was sufficient to let in the confessions. He determined however to admit the evidence, and reserve the point for the opinion of the learned Judges.

Each confession contained a most explicit acknowledgment of the felony charged in the indictment.

The jury found the prisoners guilty, and sentence was passed upon them. The question was afterwards submitted to the Judges; namely, whether, the evidence having been received, the conviction was good as to both or either of the prisoners.

In Easter term, 1823, the Judges present held the conviction right. (a)

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REX v. JOHN TIPPET.

This was also an indictment for stealing two bushels of oats, the goods of William Pearce, the same person mentioned in the indictment in the last case, and was tried before Mr. Justice Burrough, at the same assizes for the county of Cornwall.

The prosecutor Pearce gave the same evidence as in the last case, stating, in addition, that the prisoner was an under ostler in his stables.

The confession of the prisoner before a magistrate was proved, in which he explicitly acknowledged that he, in company with White and Langdon (the prisoners convicted in the former case), stole oats from Mr. Pearce’s granary.

The learned Judge received the evidence, and the jury found the prisoner guilty.

The question as to the propriety of the conviction upon this evidence was afterwards submitted to the consideration of the Judges.

(a) See Rex v. Falkner, ante, p. 481., and the next case Rex v. Tippet.
In Easter term, 1823, seven of the learned Judges (all who met upon the occasion), were of opinion that the conviction was right, as there was not only the confession but the evidence of Pearce also, which made it probable that oats had been stolen; as it appeared from such evidence that the door of the granary had been broken open. And most of the learned Judges thought that, without the owner's evidence, the prisoner's confession was evidence upon which the jury might have convicted.\(^{(a)}\)

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**REX v. FREDERICK JOHN WILLIAM NORTON.**

The prisoner was tried before Mr. Baron Hullock, at the Old Bailey sessions, on the 12th of April, 1823, upon an indictment for stealing in the dwelling-house of Mary Johnson, one clock of the value of six pounds, and several other articles, her property.

The felony, and the prisoner's guilt were clearly established. The prosecutrix swore, that the articles mentioned in the indictment were her property. She also stated that her original name was Mary Davis; but that she had been called and known by the name of Mary Johnson for the last five years.

That she took the house in which the felony was committed, two years ago, in the name of Johnson; and had always gone and been known in the neighbourhood by the name of Johnson, and had not for the last five years been known or called by the name of Davis. That she did not take the name of Johnson for any purpose of concealment or of fraud.

The prisoner's counsel objected to the indictment, on the ground that the dwelling-house was improperly laid as the dwelling-house of Mary Johnson. And, the prisoner being convicted, the question, whether the dwelling-house was well described in the indictment, was reserved for the opinion of the Judges.

CROWN CASES RESERVED.

In Easter term, 1823, the point was taken into consideration by seven of the learned Judges, who were clearly of opinion that the time the prosecutrix had been known by the name of Johnson warranted her being so called in the indictment, and that the conviction was right.

REX v. THOMAS CARLESS HUNTER.

The prisoner was convicted before Mr. Justice Holroyd at the summer assizes for the county of Warwick, in the year 1823, of uttering and publishing as true, a forged promissory note, with intent to defraud Benjamin Hобday, knowing it to be forged, against the statute.

The indictment, in stating and describing the forged instrument, stated it only as follows, without any innuendo explanation or allegation respecting it or its contents, further than as above stated, and thus denominating and describing it, viz. "a promissory note for the payment of money, which is as follows:"

"Newport, Nov. 20, 1821.

"£28 15 0.

"Two months after date, pay Mr. Bn. Hobday, or order, the sum of twenty-eight pounds fifteen shillings.

"Value recd.

"JOHN JONES.

"At Messrs. Spoon & Co.

"Bankers, London."

A question was submitted for the opinion of the Judges, namely, whether the prisoner was rightly convicted on the above indictment, an objection having been taken, that the instrument so described was not in law a promissory note: or whether the objection was not properly an objection in arrest of judgment.

In Easter term, 1825, the Judges held that the instrument was a bill of exchange, and not a promissory note.
REX v. WILLIAM FITZPATRICK.

The prisoner was convicted before Mr. Justice Bayley, at the Lancaster spring assizes, in the year 1823, for being at large after an order for his transportation.

The indictment against him stated that he was capitally convicted at the summer assizes of 1818; but that His Majesty was graciously pleased to extend his mercy to him, upon condition of his being transported for life to some parts beyond the seas; and that he was thereupon ordered to be transported to New South Wales, or to some of the islands adjacent. (a)

It appeared in evidence, that the condition upon which he received the royal mercy was not general, as the indictment stated, but specific; that he should be transported to New South Wales, or some of the islands adjacent; and the learned Judge thought this a variance, because the real condition would not have warranted any order except for transportation to the places specified; whereas the condition, as stated in the indictment, would have warranted a general order.

(a) The indictment stated the previous conviction of the prisoner (along with Daniel Fitzpatrick) at Lancaster assizes, 58 G.s., for highway robbery, and the sentence of death passed upon them; and then proceeded thus: —

"And the jurors aforesaid, now here sworn, do further present that His said late Majesty, having been graciously pleased to extend his royal mercy to the said William Fitzpatrick and Daniel Fitzpatrick on condition of their being transported to some parts beyond the seas, for and during the term of their natural lives, and such intention having been notified in writing by one of His said late Majesty's principal secretaries of state to the said Sir George Wood, Knight, the Judge before whom the said William Fitzpatrick and Daniel Fitzpatrick were convicted of the felony aforesaid, the said Judge was pleased to grant his fiat for the transportation of the said William Fitzpatrick and Daniel Fitzpatrick accordingly, and the said William Fitzpatrick and Daniel Fitzpatrick were afterwards, to wit, at the same general session of assize of pyer and terminer and general gaol delivery, held at the castle of Lancaster, on the said fifteenth day of August, in the fifty-eighth year of the reign aforesaid, ordered to be transported with all convenient speed to the coast of New South Wales, or some one or other of the islands adjacent, there to stay and remain for and during the term of their natural lives."
CROWN CASES RESERVED.

The learned Judge therefore forbore to pass sentence; and saved the case for the consideration of the Judges.

In Easter term, 1823, the Judges held that the conviction was wrong.

REX v. WILLIAM ALLEN.

This was an indictment tried before the Lord Chief Baron Richards, at the Chelmsford spring assizes, in the year 1823.

The indictment stated, that the said William Allen was, in pursuance of an act of parliament (42 Geo. 3. c.107. s. 2.), convicted by and before E. R. Mores, Esq., one of His Majesty's Justices of the peace, acting in and for the county of Essex; for that he, the said William Allen did, on the 29th of November, 1820, in a certain uninclosed part of His Majesty's forest of Waltham, in the parish of Barking, in the county of Essex, unlawfully and wilfully carry away a certain fallow deer, of which the King was owner, and without His Majesty's authority; and the said justice did adjudge, that the said William Allen had thereby forfeited 50l. &c.; and the indictment then proceeded to state, that the said William Allen, after having been duly convicted of the said offence did, on the 11th of December, 2 Geo. 4., in the said county of Essex, unlawfully and feloniously offend a second time, by committing a certain offence against the said act of parliament, by wilfully and feloniously, aiding, abetting, and assisting, one John Hudgell, in killing a certain fallow deer, &c. (a)

The conviction was properly proved; and appeared to be a conviction by E. R. Mores, Esq., one of His Majesty's Justices of the peace, acting in and for the county of Essex, and corresponded with the statement in the indictment, except that it was a conviction of four persons; namely, the said William Allen, and also Thomas Harvey, Luke Harvey, and William Warren: whereas it was stated in the indictment as the conviction of William Allen, without advertting to the other persons.

(a) This is made an offence punishable by transportation.
CROWN CASES RESERVED.

The identity of William Allen, and the fact charged in the indictment as a second offence, was also proved. But it appeared that the conviction for the first offence was at Edmonton, in the county of Middlesex, and not in the county of Essex; and the place where that offence was committed was in the county of Essex.

The counsel for the prisoner took several objections: first, that it was not stated in the indictment that William Allen was duly convicted; secondly, that he was not duly convicted, as the conviction was in Middlesex, and not in Essex, the proper county; and, thirdly, that the conviction was of four persons; whereas the indictment stated it as a conviction of William Allen, and not a joint conviction: and, therefore, that there was a fatal variance.

The prisoner having been convicted, the case was reserved for the consideration of the Judges, who in Easter term, 1823, held that the conviction was wrong. (a)

(a) The second objection was probably considered fatal. The 38 G. 3. c. 49. s. 1. enacts, That a justice, acting as such for two adjoining counties, may act as a justice in all matters and things whatsoever concerning or in any wise relating to any or either of the said counties, and that all acts of such justice shall be as valid, to all intents, as if such acts had been done in the county to which such acts more particularly relate: provided that such justice be personally resident in one of the said counties at the time of doing such acts. But in this case of Rex v. Allen, it does not appear that Mr. Mores came within the provisions of the statute.

A case of Rex v. William Warren was tried at the same assizes, the circumstances of which were exactly similar to those of Rex v. Allen, and, being also reserved, was disposed of by the above decision.
REX v. THOMAS RIDLEY.

The defendant was convicted before Mr. Justice Bayley, at the spring assizes for the county of Northumberland, in the year 1823, of being armed with a gun in the night, with intent to kill game, in a certain close, in the parish of Whitfield, in the county of Northumberland. The indictment contained two counts; one for entering a certain close, the other for entering certain inclosed ground; but there was nothing in the indictment to show what particular close, or what particular inclosed ground was meant. They were not described by name, ownership, occupation, or abuttals. (b) The learned Judge doubted whether this

(a) See words of the statute, ante, 368, note (a)
(b) The indictment was in the following form: —

"Northumberland to wit. The jurors of our lord the king, upon their oath, present that Thomas Ridley, late of, &c. labourer, after the passing of a certain act of parliament, made and passed in the fifty-seventh year of the reign of His late Majesty King George the Third, and between the first day of October in the third year of the reign of our lord the now king, and the first day of February, in the fourth year of the reign of our said lord the now king (to wit), on the twenty-third day of January, in the third year of the reign of our said lord the now king, at the parish of Whitfield, in the county of Northumberland, having entered into a certain close there situate and being with the intent there illegally to destroy, take, and kill game, was there found at night (that is to say) between the hours of six in the evening and seven in the morning, to wit, at the hour of one in the night of the said twenty-third day of January, in the third year aforesaid, then and there armed with a certain gun, against the form of the statute in that case made and provided, and against the peace of our said lord the now king, his crown and dignity. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said Thomas Ridley, after the passing of the said act of parliament, and between the said first day of October, in the said third year of the reign of our said lord the now king, and the said first day of February, in the said fourth year of the reign of our said lord the now king, to wit, on the said twenty-third day of January, in the said third year of the reign of our said lord the now king, at the parish of Whitfield, aforesaid, in the county aforesaid, having entered into a certain inclosed ground there situate and being with the intent there illegally to destroy, and take, and

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indictment was not deficient in proper certainty, and discharged
the defendant, upon his own recognizance, to appear and receive
the judgment of the court when required.

The case was considered by the Judges in Trinity term, 1823, when Abbott L. C. J., Holroyd J., and Park J. thought any such description of the place unnecessary; but Burrough J., Garrow B., Best J., Hullock B., and Bayley J. thought otherwise; because there was substantially
a local offence, and the defendant was entitled to know to what
specific place the evidence was to be directed. The judgment
was consequently arrested.

REX v. THOMAS SMITH.

The prisoner was tried and convicted before Mr. Justice
Holroyd, at the spring assizes for the county of York, in the
year 1823, upon the statute 39 G. 3. c. 85., for feloniously and
fraudulently embezzling a £l. promissory note, and 17s. and 6d.
in monies; which he being the servant, and employed for the
purpose in the capacity of a servant to Thomas Hanson and
Thomas Inman, by virtue of such employment received for and
on their account, and so stealing the same.

Hanson and Inman, as lessees of the tolls of a turnpike-road,
engaged and employed the prisoner to collect the tolls at a
turnpike-gate on that road, called Howarth Gate, at small weekly
wages, besides his having the use of the furniture and bed in the
turnpike-house. The collection of the tolls at that turnpike-gate
was all that he was hired to do; but, during that employment,
his master Hanson, on one occasion, ordered him to receive the

kill game, was there found at night, that is to say, between the hours of six in
the evening and seven in the morning, to wit, at the hour of one in the night
of the said twenty-third day of January, in the third year aforesaid, then and
there armed with a certain gun, against the form of the statute in that case
made and provided, and against the peace of our said lord the king, his crown
and dignity.
amount which John Holmes, who was in like manner employed by Hanson and Inman, to receive the tolls for them at another gate, had collected, and was to send to the prisoner. Though the gates were on the same road, neither gate freed the other.

The note and money in question were accordingly sent to the prisoner by Holmes, for and on the account of Hanson and Inman, and were embezzled by him.

A question was reserved for the opinion of the Judges, namely, whether the note and money were received by the prisoner, by virtue of his employment, so as bring this embezzlement within the operation of the above statute.

The case was considered by eight of the learned Judges, in Trinity term, 1823, when Abbott L. C. J., Holroyd J., and Garrow B. were of opinion that the prisoner did not receive the note and monies by virtue of his employment, because it was out of the course of his employment to receive them: but Park J., Burrough J., Best J., Hullock B., and Bayley J. thought otherwise; because, though this was out of the ordinary course of the prisoner's employment, yet, as he was servant to Hanson and Inman, and in his character of servant to them had submitted to be employed by them to receive the note and monies, and had received them by virtue of his being so employed, the case was within the statute, and the conviction right. (a)

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REX v. JOHN WILFORD AND CHARLES NIBBS.

The prisoners were tried and convicted before Mr. Baron Hullock, at the Old Bailey sessions, on the 15th day of May, in the year 1823.

The indictment charged them with burglariously entering the dwelling-house of George Gillings, in the night time, and stealing therefrom, and it might be described as the house of the husband, though the wife lived there in adultery with another man who paid the housekeeping expenses, and though the husband suspected a criminal intercourse between his wife and the other man when he allowed her to live separate.

(a) See Rex v. Beechey, ante, 519.

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The facts of the burglary and stealing were clearly established by evidence; but it was suggested on behalf of the prisoners that the dwelling-house in which the goods were, and from which they were stolen in the night time, ought not, under the circumstances of the case, to be considered, in point of law, as the dwelling-house of George Gillings.

As to this point the following facts appeared in evidence: —

George Gillings, named in the indictment, was the owner of the house in question, which was built by him; and he built it and paid the ground rent and taxes for it, but never lived in it. In the preceding month of September he and his wife agreed to live separate; and upon that occasion he told her she might have this house to live in; and she went to it accordingly, and had resided in it ever since. Before the separation of Gillings and his wife this house had been, for about six months, occupied by a tenant, but Gillings himself never at any time lived in it. When his wife left him he gave to her a feather bed and several other articles of bedding, which were the things enumerated and described in the indictment as the property of George Gillings. Mrs. Gillings and a man of the name of John Websdale, the person also named in the indictment, had for the last six months lived together as man and wife in this house; during which time Websdale paid the expenses of house-keeping, but he never paid any rent to Gillings, nor had he ever any conversation or communication whatever respecting the house with Gillings. Gillings had reason to suspect a criminal intercourse between his wife and Websdale before their separation, but he did not certainly know that she was going to live with Websdale in this house when she quitted Gillings's residence. Gillings, however, very soon after his wife had left him, knew that she and Websdale were living together in this house.

The question was reserved for the opinion of the learned Judges; namely, whether the house in which the burglary was committed, and in which Mrs. Gillings and John Websdale were, at the time of the burglary, living in the manner above stated, was properly described in the indictment as the dwelling-house of George Gillings.
CROWN CASES RESERVED.

In *Trinity* term, 1823, this case was considered by the Judges, who were of opinion that the house was properly described as the house of Gillings, and that the conviction was right. (a)

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**REX v. JOHN BURROWS.**

The prisoner was convicted of a rape before Mr. Justice Holroyd, at the summer assizes for the county of York, in the year 1823.

The evidence of the girl was that the prisoner remained within her, how long she could not tell, she was so much distressed; perhaps two or three minutes; that she did not perceive anything come from him; that she was struggling during this time; that she then saw two men several yards from her coming on the road; and as soon as she saw them she began to struggle violently, and attempted to call out; that on her struggling violently, and on his seeing those men, the prisoner withdrew himself from within her and jumped with his knees upon her breast, and held her by the mouth and throat so that she could neither speak nor stir. She further stated, that the men went two or three yards past her without taking any notice; that the prisoner did not attempt to enter her again; and that when the two men had gone by a yard or two she called out, and they directly came and helped her. The two men, in their testimony, confirmed her as to these circumstances of struggling and violence; but one of them stated that the prisoner’s face was down towards her when they came to the prisoner first, and that he did not believe the prisoner could see them till they got close to him.

Upon this evidence of interruption the learned Judge doubted whether there was sufficient evidence of the offence having been completed; but he thought it right to leave the question to the jury, whether the prisoner had completed the crime before he withdrew, and withdrew on that account.

(a) See Farre’s Case, Kel. 43. 2 East, P. C. 304. Rex v. French, 1822, ante, p. 491.

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The jury found that he had, and convicted the prisoner; upon which the learned Judge reserved the point for the opinion of the Judges, and respited the sentence.

In Michaelmas term, 1823, this case was considered by the Judges, who held that the question, whether the prisoner had so completed the crime, was a question for the jury, and was rightly submitted to their consideration.

The three prisoners were indicted at the summer assizes for the county of York, in the year 1823, for a burglary in breaking into the dwelling-house of William Keighley, in the night-time, and stealing therein to the value of forty shillings and upwards.

Moss pleaded guilty; and the other two prisoners were tried before the learned Judge, on their pleas of not guilty, and acquitted of the burglary, but found guilty of stealing in the dwelling-house to the value of forty shillings.

It appeared in evidence that all the three prisoners were parties to the transaction as principals; and the two who were tried had been detected in the act of committing the theft, very soon after the day-light was gone, in the dwelling-house, which had been left before sunset; but the jury, from a doubt whether the breaking in might not have been before it became dark, acquitted the two who were so tried of the burglary, and found them guilty of stealing as above-mentioned.

The learned Judge doubted against whom the judgment ought to be given upon this confession of burglary and stealing by the one, and this conviction of the stealing only by the others, with an acquittal of burglary as to them; whether the judgment ought to be only against Moss whose plea of guilty was taken and recorded before the trial of the two others was proceeded upon, or whether it might not be against all the three. He therefore respited the judgment, reserving the point for the opinion of the Judges.
In *Michaelmas* term, 1823, the case was taken into consider- 
ation, when seven of the Judges were of opinion that judg- 
ment should be entered against all the three prisoners; against 
*Moss* for the burglary and capital larceny, and against the other 
two for the capital larceny. *Burrough J.* and *Hullock B.* were 
of a different opinion; but *Hullock B.* thought that if a *nolle 
prosequi* were entered as to *Moss* for the burglary, judgment 
might be entered against all the three for the capital larceny. 
The seven Judges thought that there might be cases in which, 
upon a joint larceny by several, the offence of one might be ag- 
gravated by burglary in him alone, because he might have broken 
the house in the night, in the absence and without the knowledge 
of the others, in order to come afterwards and effect the larceny, 
and the others might have joined in the larceny without knowing 
of the previous breaking. (a)

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**REX v. JOSEPH BYFORD AND ABEDNEGO ROBINSON.**

The prisoners were tried before Mr. Baron Graham, at the 
*Essex* summer assizes, in the year 1823. The indictment was 
framed upon the statute 39 *Eliz.* c. 15., and charged that Joseph 
*Byford*, on the 7th of *April*, broke and entered the dwelling-
house of *Mary Maule* in the day-time, no person being therein; 
and stole five sovereigns, the property of *William Maule*, and 
that *Abednego Robinson*, on the 29th of *March*, in the same 
year, incited him to commit the felony aforesaid.

The evidence not being sufficient to affect the accessory he 
was acquitted. And upon the facts which were proved a point 
arose as to the charge against the prisoner *Byford*.

It appeared from the evidence of Charles Drury, a lad of the 
age of eighteen years, that he was prevailed upon by *Byford* to 
with the breaking and entering.

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(a) See *Rex v. Hempstead & Hudson*, ante, 344. *Rex v. Turner* and others, 
1 Sid. 171. 2 East, P. C. 519. And see 1 East, P. C. 571.
take advantage of the known absence of Mrs. Maule and her son to go to the back of her house with the intention of breaking into it; that between nine and ten o'clock in the morning of the 7th of April they went there together; that, after various trials, and under the direction of Byford, who was the next door neighbour of Mrs. Maule, and knew her habits, he found the key of the back door, unlocked it, and went into the house; Byford telling him to go up stairs into the room where William Maule slept, and that he there would find money in a box; that he went up accordingly, and took the five sovereigns, a purse, and some copper; that Byford stood in the field adjoining the house, at a distance of not four yards from the back of it, waiting for him; that the witness told Byford how much money he had taken, and that they went off together.

The learned Judge left the case to the jury, not entertaining any doubt that Byford was properly charged as a principal, with all its consequences: and Byford was convicted.

The prisoner's counsel, however, took an objection, that, by the construction put upon the statute 39 Eliz., Byford not having entered the house himself, was entitled to his clergy (a); and that although the statute of 3 and 4 W. & M. c. 9. had taken away clergy from persons who should aid, abet, or assist in the commission of the offence, and had made the offender guilty of a capital offence, yet it was of a distinct offence, and as an accessory only, not as a principal: and that the offence ought to have been laid, by charging the prisoner with assisting Drury, in the words of that statute.

The learned Judge was of opinion, that the prisoner Byford was properly charged as a principal; and that the case of Rex v. Mounser and others (b), had been acted upon in several instances. He observed that the prisoner certainly was a principal to the extent of the larceny at common law; and that the subsequent statute of W. & M. created no new offence, but only took away clergy.

But as some doubt might be entertained upon the point, the learned Judge thought proper to reserve it for the consideration of the Judges, and therefore respited the judgment.

(a) 2 East, P. C. 659.

1828.
Byford's
Case.
CROWN CASES RESERVED.
CROWN CASES RESERVED.

In Michaelmas term, 1823, the case was taken into consideration; and the Judges were of opinion, that as clergy was taken away from all present at the commission of the offence, whether in the house or not, though by different statutes, it was not necessary, in the indictment, to distinguish between one species of principal and another; and that the prisoner was ousted of his clergy.

REX v. WILLIAM BRITTON DYSON.

The prisoner was tried before Mr. Justice BEST, at the September Old Bailey sessions, in the year 1823, on an indictment which stated that he, &c., at &c., in and upon Eliza Anthony, spinster, feloniously, willfully, and of his malice aforethought, did make an assault, and that he with both his hands the said Eliza Anthony, into the waters of a certain river there called the river Thames, feloniously, &c., did push, force, and throw, and that he by such pushing, forcing, and throwing of the said Eliza Anthony into the waters of the said river as aforesaid, the said Eliza Anthony, in and with the waters of the said river, feloniously, &c., did suffocate and drown, of which said suffocation and drowning the said Eliza Anthony died; and that he the said Eliza Anthony, in manner aforesaid, feloniously, &c., did kill and murder.

The prisoner cohabited with the deceased for several months previous to her death, and she was with child by him. They were in a state of extreme distress. Being unable to pay for their lodgings they quitted them in the evening of the night on which the deceased was drowned, and had no place of shelter.

They passed the evening together at the theatre. After the performance was over, they called at a house in St.eward Street, and from thence went to Westminster Bridge, to drown themselves in the Thames. They got into a boat, and from that into another boat. The water where the first boat which they entered was moored was not of sufficient depth to drown them. They talked together for some time in the boat into which they Murder. If a man encourages another to murder himself and is present, abetting him while he does so, such person is guilty of murder as a principal.

If two encourage each other to murder themselves together, and one does so, but the other fails in the attempt upon himself, he is a principal in the murder of the other. But if it be uncertain whether the deceased really killed himself, or whether he came to his death by accident before the moment when he meant to destroy himself, it will not be murder in either.
1823. Dyson's Case.

had last got, he standing with his foot on the edge of the boat, and she leaning on him. The prisoner then found himself in the water, but whether by actual throwing of himself in or by accident did not appear. He struggled to get back into the boat again, and then found that Eliza Anthony was gone.

He then endeavoured to save her, but he could not get to her, and she was drowned.

In his statement before the magistrates (which was read in evidence) he said, that he intended to drown himself, but dissuaded Eliza Anthony from following his example.

The learned Judge told the jury, that if they believed that the prisoner only intended to drown himself, and not that the woman should die with him, they should acquit the prisoner; but, that if both went to the water for the purpose of drowning themselves together, each encouraged the other in the commission of a felonious act, and the survivor was guilty of murder.

He also told the jury, that although the indictment charged the prisoner with throwing the deceased into the water, yet if he was present at the time she threw herself in, and consented to her doing it, the act of throwing was to be considered as the act of both, and so the case was reached by the indictment.

The jury told the learned Judge, that they were of opinion that both the prisoner and the deceased went to the water together for the purpose of drowning themselves: and the prisoner was convicted. But the learned Judge thought it right to submit a question to the consideration of the Judges, namely, whether his direction was right.

In Michaelmas term, 1823, the case was considered by nine of the Judges, who were clear that if the deceased threw herself into the water by the encouragement of the prisoner, and because she thought he had set her the example, in pursuance of their previous agreement, he was a principal in the second degree, and was guilty of murder; but as it was doubtful whether the deceased did not fall in by accident, it was not murder in either of them; and the prisoner was recommended for a pardon.
REX v. RALPH JOBLING.

The prisoner was convicted before Mr. Justice Holroyd at the Northumberland summer assizes in the year 1823, of a burglary, laid in the indictment to have been committed in the dwelling-house of John Gent.

John Gent was a workman of Mr. Brandling, employed in Mr. Brandling's colliery. He was paid for his work by an allowance of 15s. a week wages, besides a cottage of Mr. Brandling's, which was by agreement allowed him free of rent and taxes, and in which he, and his wife and family, by his permission, lived. Two of his family, being also workmen for Mr. Brandling, at wages only, made their father a compensation for their board and lodging.

The cottage was one of several cottages built together like a square, by or near to the colliery, and occupied in like manner by several of Mr. Brandling's colliery workmen, some of whom by theirhirings were allowed cottages in addition to their wages, and others not.

It was objected that this was not in law the dwelling-house of John Gent, but of his master Mr. Brandling, and that it ought to have been so laid in the indictment: that the occupation of Gent was merely as servant, and therefore not his own possession, but the possession of Mr. Brandling, according to the doctrine and authorities stated in 2 East, P. C., c. xv. s. 14. p. 500. (a)

The learned Judge, however, was of opinion, that though the occupation and enjoyment of the cottage were obtained by reason of Gent being (as workman) the servant of Mr. Brandling, and co-extensive only with the hiring; yet that his inhabiting the cottage was not, as in the cases referred to, correctly speaking, merely as the servant of Mr. Brandling, nor was it, either as to the whole or any part of the cottage, as his (Mr. Brandling's) occupation, or for his use, or business, or that of the colliery, but

(a) See also Rex v. Lakenheath, 1 Barn. & Cresw. 531. Rex v. Stock and another, 2 Taunt. 359. S. C. 2 Leach, 1015. Rex v. Collett, ante, 498. But see Rex v. Margetts and others, 2 Leach, 990.
wholly for the use and benefit of John Gent himself and his family; in like manner as if he had paid rent and taxes for it either out of higher wages or otherwise. And even though the servant's occupation might in law, at the master's election, be considered as the occupation of the master, and not of the servant, yet, as to third persons, it might be considered as the occupation either of the master or servant: the occupation being for the use and benefit of the servant, and not merely, if at all, for the use of his master. He thought therefore that this case was distinguishable from the authorities cited, and directed the jury accordingly, who found the prisoner guilty of the burglary as charged.

But the learned JUDGE thinking, from the doctrine laid down in some of the cases, that it might be doubted whether his direction to the jury was right, and similar cases being likely frequently to occur, considered it proper to request the opinion of the JUDGES upon this point.

In Michaelmas term, 1823, the point was considered by the JUDGES, who were of opinion, that the cottage might be described as the dwelling-house of John Gent, and that the conviction was right.

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1823.
REX v. GEORGE SHAW, AND SARAH HIS WIFE,
AND THOMAS PERCIVAL.

The defendants were tried before Mr. Justice Holroyd at the Westmorland summer assizes in the year 1823, upon an indictment founded on the statute 16 G. 2. c. 31., and charging the defendants with conveying into a prison instruments proper to facilitate the escape of prisoners, and delivering them to a prisoner in the said prison, with intent to aid and assist such prisoner to escape.

Indictment on 16 G. 2. c. 51., for delivering instruments to a prisoner to facilitate his escape from gaol.

Held that if the record of the conviction of the prisoner, whose escape was to have been effected, is produced by the proper officer, no evidence is admissible to dispute what it states: Or to shew that it has never been filed amongst the other records of the county: Though the indictment refers to it with a princeps as remaining amongst those records. Held also, that the delivering is within the act, though the prisoner has been pardoned of the offence of which he was convicted, on condition of transportation. And a party may be convicted though there is no evidence that he knew of what specific offence the person he assisted had been convicted.
The first count was framed upon the second section of the statute, and after stating the trial of one John Hewitson, for a capital felony, and his conviction at the assizes, general gaol delivery, and general session of oyer and terminer, holden at Appleby, in and for the county of Westmorland, on Wednesday, the 5th day of the preceding month of March, proceeded thus: "And that it was then and there adjudged by the court there, that the said John Hewitson should be taken from thence to the said gaol (a) from whence he came, and from thence to the place of execution, and there be hanged by the neck until he should be dead; and the jurors aforesaid now sworn here upon their oath aforesaid, do further present, that at the same assizes, and general gaol delivery, and general session of oyer and terminer, of the said Lord the King holden at Appleby aforesaid, in and for the said county of Westmorland, on the aforesaid Wednesday, to wit, the 5th day of March, in the 4th year aforesaid, before the said justices of our said Lord the king above named, and others their fellows justices aforesaid, execution of the judgment aforesaid, for certain reasons thereunto moving the said justices, was respited, until His said Majesty's pleasure with respect thereto should be known; and that afterwards the said lord the king was graciously pleased to extend his royal mercy to and pardon him, the said John Hewitson, on condition of his being transported beyond the seas for and during the term of his natural life: and the said intention of royal mercy to the said John Hewitson was afterwards signified to the justices aforesaid, by a letter from the Right Honourable Robert Peel, one of His Majesty principal secretaries of state, and the said justices did afterwards order that the said John Hewitson should be transported beyond the seas accordingly, for and during the term of his natural life, as by the record thereof; and proceedings remaining amongst the records of the same court, in the county aforesaid, more fully appears."—It then charged that the defendants, well knowing the premises, feloniously conveyed, and caused to be conveyed into His Majesty's gaol at Appleby aforesaid, in the said county of Westmorland, two steel files, five iron prods, and one hammer, being instruments proper to facilitate the escape of prisoners, and delivered, and caused to be delivered the same, to the said John Hewitson, "then and

(a) The King's gaol at Appleby aforesaid, thereinbefore mentioned.
there being a prisoner in the said gaol, and committed to the said gaol upon and in execution of the said order for the felony aforesaid, without the consent or privity of James Bewsher, then being keeper of the said gaol under Sackville, Earl of Thanet, then sheriff of the said county of Westmorland, or any underkeeper of the said gaol, which said files, iron prods, and hammer were then and there so conveyed into the said gaol, and delivered to the said John Hewitson as aforesaid, with a felonious intent to aid and assist the said John Hewitson, so being such prisoner as aforesaid, and committed in execution as aforesaid to escape, and attempt to escape from and out of the said gaol, against the form of the statute," &c.

The second count was upon the first section of the same statute, and after the like statement of the proceedings and record against John Hewitson, it charged that the defendants, well knowing the premises, feloniously aided and assisted the said John Hewitson, a prisoner in the said gaol, and in the custody of the said James Bewsher, in execution of the said order, to attempt to make his escape, from and out of the said gaol, against the form of the statute, &c.

To prove the record of the proceedings against John Hewitson, Mr. Newstead the deputy clerk of assize was called, who produced a written parchment, as the record of that conviction. He then stated on his examination that he was the proper officer to make up the record, that, upon an application to do so, he had made it up during the time he had been on that present circuit; but that it had never yet been filed of record any where. He further stated that he had drawn up the record from the indictment, from the minutes in the minute-book, (which he then produced), and from the order for the transportation of John Hewitson, which was in the possession of the gaoler: and that the indictment had been sent to him by his son, by his direction and authority, from a closet at York where it was kept.

Upon this evidence it was objected by the counsel for the defendants, that this document had not yet become a record, as it had not been filed, or deposited amongst the records, and that it could not be read in evidence as such. But the learned Judge thought otherwise, and it was read in evidence. (a)

(a) The objection was rather supported by the allegation in each count of the indictment, in these words, "As by the record thereof, and proceedings
Upon that and the other evidence given at the trial, the defendants George Shaw and Thomas Percival were convicted, and received judgment of transportation for seven years, and the defendant Sarah was acquitted.

This conviction proceeded upon evidence, applicable only to the first count; there being no evidence of an actual aiding or assisting Hewitson to escape, or to attempt to escape (the charge made in the second count), unless the conveying and delivering of the instruments, in manner and with the intent stated in the first count, could be deemed an aiding or assisting him to attempt to escape within the intent and meaning of the first section of the statute: an attempt which it was proved he afterwards had ineffectually made, by means of some of those instruments.

Several objections were made, partly in the course of the trial, and partly afterwards in arrest of judgment. Those objections were, that this was not a case within the statute; the indictment showing that Hewitson had been pardoned of the capital felony of which he had been convicted; that the conveying and delivering of the instruments might have been within the consent or privity of the underkeeper of the gaol; and that there was no evidence that the defendants knew of what particular offence Hewitson had been convicted. And a further objection was taken as to the defendant Percival; namely, that the offence with which he was charged being made a felony, the acts which he was proved to have done made him only an accessory before the fact, and not a principal; and that if such accessories were within the statute, he ought to have been indicted as an accessory and not as a principal.

Notwithstanding these objections, judgment was given upon the conviction, with a direction to prevent its being carried into execution, until the opinion of the Judges should be obtained.

remaining amongst the records of the same court, in the county aforesaid, more fully appears." As to the principle upon which the objection proceeded, see Bull. N. P. 326, 328. 1 Phil. Evid. 597, 388; and Adamthwaite v. Syng, 4 Campb. 372. S.C. 1 Stark. N.P. 185. And a question might be made in the case of a writing being fraudulently altered or stolen before filing it, or depositing it amongst the records, etc. Whether an indictment would lie for forgery or stealing a record against the statute 8 Hen. 6. c. 19. s. 3. See 2 East, P.C. 596, 865.
It was proved upon the trial, that Hewitson was closely confined on the felon’s side of the gaol, and that the defendant Shaw was a prisoner on the debtor’s side; that the defendant Percival, by the desire of Shaw, procured the instruments and conveyed them into the gaol, with the criminal intent alleged, by the means of Shaw’s wife, who was privy to the design; but that Percival was not present, or in the gaol, when they were delivered either to Shaw or to Hewitson. The keeper of the gaol stated, in his evidence, that there was no underkeeper, but that he had a boy of the age of seventeen years to assist him in keeping the gaol, which boy, however, had no authority to do anything but what the keeper specially directed him to do. At the time of the trial the boy was absent at some distant place, and was not called as a witness on either side.

It further appeared, that neither the extension of the royal mercy, nor the signification thereof, nor the order of transportation thereon, were made during the continuance of the assizes at which the conviction took place, but afterwards: and therefore an order of that court for transportation ought not to have been made according to the statute 56 G.3. c.27.(a) The order produced and proved was made and issued after those assizes by the clerk of assize, which was, as he informed the learned Judge, agreeable to the usual practice: but it seemed to the learned Judge that it ought to have been the order of the Judge before whom the felon had been convicted, or of a Judge of one of the courts of Westminster, pursuant to the directions of that statute.

No proof of the extension of mercy, or of the signification thereof was given, except by the record above mentioned, and by the recitals in the order of court; and it further seemed to the learned Judge, that unless it could be considered that Hewitson (notwithstanding the allegations of the extension of mercy, and the signification thereof, and the order of transportation) was still remaining in custody, in execution of or under the judgment for the capital offence, and that those allegations were surplusage, objections might arise, either as to the want of legal proof of those allegations, or as to the manner and form

(a) Continued by 1 & 2 G. 4. c. 6.
in which those allegations were made, with respect to the requisite certainty of time, place, &c.

It also seemed to the learned Judge, that it might be proper for the Judges to consider whether any and what alteration should be made in the present practice of issuing the orders in question, after the termination of the assizes.

The case was considered by the Judges in Michaelmas term, 1823, when they were unanimous that the record, coming from the proper custody, must have full credit and could not be impeached; and that Shaw and Percival were properly convicted of having caused the instruments to be delivered. As to the objection of there not being any evidence that the prisoners knew of what offence Hewiston had been convicted, the Judges were of opinion that this was immaterial.

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**REX v. SAMUEL VOKE.**

The prisoner, Samuel Voke, was tried before Mr. Justice Burrough, at the Somerset summer assizes in the year 1823.

The first count of the indictment charged, that the said Samuel Voke on, &c., at, &c., one Thomas Pearce feloniously, wilfully, maliciously, unlawfully, and of his malice aforesaid, did assault, and with a certain gun loaded with gunpowder and divers leaden shot, then and there feloniously, &c. did shoot at the said Thomas Pearce, and that the said Samuel Voke with the said gun again loaded with other gunpowder and other shot, feloniously, &c., then and there again did shoot at the said Thomas Pearce, with intent in so doing (that is to say) in so as aforesaid shooting at the said Thomas Pearce, and by means thereof, feloniously, wilfully, and of his malice aforesaid, to kill and murder him the said Thomas Pearce, against the statute, &c.

The second count varied from the former only in stating the intent to be to maim and disable, omitting malice aforesaid.

The third count was, with intent to do him some grievous bodily harm.

**M M 2**
The fourth count charged, that the prisoner at, &c., afterwards (to wit) on the day and year aforesaid, in and upon the said Thomas Pearce, with force and arms feloniously, wilfully, maliciously, and unlawfully did make an assault, and with a certain other gun then and there loaded with gunpowder and divers leaden shot at the said Thomas Pearce feloniously, wilfully, maliciously, unlawfully, and of his malice aforethought, then and there did shoot, with intent in so doing (that is to say) in so shooting at the said Thomas Pearce as aforesaid, and by means thereof, wilfully and feloniously, and of his malice aforethought, to kill and murder him the said Thomas Pearce, against the statute, &c.

The fifth and sixth counts varied from the fourth as the second and third from the first, omitting malice aforethought.

Thomas Pearce proved, that on the 3d July last, he was gamekeeper to Lord Glastonbury, for the manor of Compton Dundon, in the county of Somerset. On that day he went to the said manor; he was on horseback, but left his horse in some furze, because he saw a man with a gun; he went to the man who was the prisoner, and asked him what he was about, and told him he was doing a wrong thing, and giving him a great deal of trouble; and asked him why he did so. Pearce had known the prisoner for several years. He then asked him if he had taken out a certificate, and being answered that he had not, he asked him why he went about so; upon which the prisoner said, “You can pardon me, can’t you?” Pearce told him he could not; upon which the prisoner said he would go any where with him. Pearce then proposed that the prisoner should go down to Mr. Ryal, Lord Glastonbury’s steward, and said that if Mr. Ryal would pardon him, he should have no objection; and the prisoner assented to go with him. Pearce observed that the ramrod of the prisoner’s gun was broken short off in the middle. They walked along together, until they came near to the horse which was about sixty yards off, when Pearce went on before him towards the horse, and when he was at a short distance from the prisoner, the prisoner fired at his back, but said nothing. Pearce attempted to turn round and saw the prisoner running, and attempted to run after him, but his back seemed to be broken, and he could not get on at all. Pearce then turned back to the horse, and after getting upon it, was making his way home to a place called Butley, about two miles off, and
had got about half a mile on his road, at a place where there was a hedge on each side, when he saw the prisoner again in the lowest part of one of the hedges, and, the moment he looked round at him, the prisoner again fired his gun, the discharge from which beat out one of Pearce's eyes and several of his teeth, but did not cause him to fall from his horse. Between the first and second firing was about a quarter of an hour: and when the prisoner fired the last time, he was not at a greater distance from Pearce than three or four yards.

In the course of the trial it was suggested that the prosecutor ought not to give evidence of two distinct felonies. But the learned Judge thought it unavoidable in this case; as it seemed to him to be one continued transaction in the prosecution of the general malicious intent of the prisoner. Upon another ground also the learned Judge thought such evidence proper. The counsel for the prisoner, by his cross examination of Pearce, had endeavoured to shew that the gun might have gone off the first time by accident: and although the learned Judge was satisfied that this was not the case, he thought the second firing was evidence to show that the first, which had preceded it only one quarter of an hour, was wilful, and to remove the doubt, if any existed, in the minds of the jury.

At the close of the evidence, the prisoner's counsel objected that the first three counts were bad, because each contained charges of two distinct and separate felonies: and that each of the first three counts was bad also, on the ground of uncertainty, there being two shootings in the first count, and the reference by the words, "with intent in so doing, (that is to say) in so as aforesaid shooting," not sufficiently extending to both shootings.

The prisoner's counsel also objected that the second and third counts were bad for not referring distinctly to the shootings in those respective counts, but to the shooting "as aforesaid," which extended to all the shootings before mentioned, and not to the shooting "last aforesaid," in the usual form: and he urged that the latter objection extended also to the last three counts.

The learned Judge thought it unnecessary to give any opinion as to the first objection to the first three counts, because each of the last three counts contained a charge of one felony only.

As to the other objections the learned Judge thought that they were unfounded, because it seemed to him that the words "with
intent in so doing (that is to say) in so shooting at the said Thomas Pearce as aforesaid," in each count were grammatically and legally referable to the last antecedent matter.

The jury found the prisoner guilty.

The learned Judge passed sentence upon him, but respited the execution in order that he might request the opinion of the learned Judges, as to the propriety of the conviction.

In Michaelmas term, 1823, the Judges considered this case, and were of opinion that the evidence was properly received, and the prisoner rightly convicted.
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2. An indictment for arson, with intent to defraud an insurance company, cannot be supported if the policy cannot be received in evidence for want of a proper stamp. If there is an alteration upon the policy to make it applicable to another house to which the goods have been removed, and that alteration is not stamped, the indictment cannot be supported. *Rex v. Gilson.* 138

3. The prisoner was indicted for setting fire to a mill, with intent to injure the occupier thereof. Held, that an injury to the mill being the necessary consequence of setting fire to it, the intent to injure might be inferred, for a man must be supposed to intend the necessary consequence of his own act. The 43 G. 3. c. 58. extends to cases which were before punishable under 9 G. 3. c. 29., and is not restricted to cases which before were not felonies without clergy. *Rex v. Farrington.* 207

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2. Secreting a letter containing country bank notes paid in London and not re-issued, holden to be within the statute 7 G. 3. c. 50. Rex v. Ranson.
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1. If an indictment against a bankrupt for concealing property, in stating the property does not sufficiently specify particular parts of it, though it may sufficiently specify others, and those specified may be of the necessary value, the indictment will be bad, because the statement as to the parts not specified tends to embarrass the prisoner. Where value is essential to constitute an offence, and the value is ascribed to many articles collectively, the offence must be made out as to every one of those articles, for the grand jury has ascribed that value to all those articles collectively. \textit{Rex v. Forsyth.} Page 274

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2. A woman may be found guilty of concealment within the \textit{43 G. 3. c. 58. s. 3.}, though, from appearances, it was probable the child was still-born, and although the birth was probably known to an accomplice. \textit{Rex v. Cornwall. 336}

BIGAMY.

1. On a trial for bigamy the registry of the first marriage stated to be by licence generally without saying by consent of parents or guardians. The prisoner proved that he was an infant at the time, and that his parents were never known to have been in \textit{England}. The Judge held this \textit{prima facie} evidence that the first marriage was without consent of parents or guardians, and that the jury might have acquitted the prisoner if such evidence was unanswered. \textit{Rex v. James. 17}

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3. When the prisoner having been apprehended for another offence is detained in the same county for bigamy, the detainer is such an apprehension as will warrant the indicting him in that county under the Jac. 1. c. 11. Rex v. Gordon. 48

4. If the marriages are proved by a person present at them, it is not necessary to prove the registration, or licence, or banns. And it seems that the assuming a fictitious name upon the second marriage will not prevent the offence from being complete. Rex v. Allison. 109

5. On an indictment for bigamy, where the first marriage is in England, it is not a valid defence to prove a divorce à vinculo matrimonii out of England before the second marriage, founded on grounds on which a marriage cannot be dissolved à vinculo matrimonii in England. Rex v. Lolley. 237

6. On an indictment for bigamy, if the first marriage was by banns, it is no objection that the parties did not reside in the parish where the banns were published and the marriage celebrated. Rex v. Hind. 253

7. If the prisoner write down the names for the publication of the banns, he will be precluded thereby from saying that the woman was not known by the name he delivered in, and that she is not rightly described by that name in the indictment. Rex v. Edwards. 283

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2. Wounding a horse out of malice to the owner is an offence within the Black Act, 9 G. 1. c. 22., though the wound is not permanent and the horse is likely to recover. Rex v. Haywood. Page 16

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4. A building within the curtilage (as a school-room) is an "outhouse" within the 9 G. 1. c. 22., though not of the ordinary description of outhouses. Rex v. Winter. 295

5. Cutting down a tree is sufficient to bring the case within the 9 G. 1. c. 22., though the tree is not thereby totally destroyed. Dwarf apple and pear trees bearing fruit are trees within the statute. To bring the case within the 9 G. 1. the act must be done from malice against the owner. See now the 4 G. 4. c. 54. Rex v. Taylor. 373

6. Maliciously killing, &c. cattle within 9 G. 1. c. 22. s. 1., held, that the malice must be against the owner of the cattle, and not against a servant or relative of the owner. See now 4 G. 4. c. 54. s. 2. Rex v. Austen. 490

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BURGLARY.

1. Where the owner has never by himself, or by any of his family, slept in the house, it is not his dwelling-house so as to make the breaking thereof burglary, though he has used it for his meals and all the purposes of his business. Rex v. Martin and another. 108

2. When a servant has part of a house for his own occupation, and the rest is reserved by the proprietor for other purposes, the part reserved cannot be deemed part of the servant’s dwelling-house, and it will be the same if any other person has part of the house and the rest is reserved. Rex v. Wilson. 115

3. The prisoner broke out of a cellar by lifting up a heavy flap, by which the cellar was closed on the outside next the street. The flap was not bolted, but it had bolts. Six of the learned Judges were of opinion that there was a sufficient breaking to constitute burglary; the remaining six were of a contrary opinion. Rex v. Callan. 157

4. A building within the same fence as the dwelling-house, and used with it as parcel of the dwelling-house, though it
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has no internal communication with the house but through an open passage, is parcel of the dwelling-house, and it is equally parcel of the dwelling-house, though used partly for the separate business of the occupier of the dwelling-house, and partly for a business in which he has a partner. *Rex v. Hancock* and others. Page 170

5. Though a servant stipulates upon hire for the use of certain rooms in the premises of his master, for himself and family, the premises may be described as the master's dwelling-house, although the servant is the only person who inhabits them, for he shall be considered as living there as servant, not as holding as tenant. *Rex v. Stock* and another. 185

6. *J. W.* let part of his house, *viz.* a shop, passage, cellar, &c. to his son. The son did not sleep there; there was a distinct entrance into the son's part, but his passage led to his father's cellars, and they were open to his father's part of the house. The shop was broken into. The Judges thought (on case reserved) that by reason of the internal communication the son's part contained part of the father's house; and conviction for the burglary held right. *Rex v. Sefton.* 202

7. If a house is let to *A.* and a warehouse under the same roof, and with an internal communication to the house, to *A.* and *B.%;* the warehouse, in an indictment for burglary, cannot be described as the dwelling-house of *A.* *Rex v. Jenkins* and another. 244

8. A door, which only forms part of the outward fence of the curtilage, and opens into no building, but into the yard only, is not such a part of the dwelling-house as that the breaking thereof will constitute burglary. *Rex v. Bennett* and another. 289

9. An area gate, opening into the area only, is not part of the dwelling-house, so as to make the breaking thereof burglary, if there is any door or fastening to prevent persons in the area from entering the house, although such door or fastening may not be secured at the time. *Rex v. Davis* and another. 322

10. Prosecutor's house was at the corner of a street, and adjoining thereto was a workshop, beyond which a stable and coach-house adjoined; all were used with the house, and had doors opening into a yard belonging to the house, which yard was surrounded by adjoining buildings, &c. so as to be
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altogether an inclosed yard; the workshop had no internal communication with the house, and it had a door opening into the street; its roof was higher than that of the dwelling-house; the street door of the workshop was broken open in the night; and on indictment for burglary and conviction, the Judges held this workshop was parcel of the dwelling-house, and the conviction was right. *Rex v. Chalking* and another.

11. Introducing the hand between the glass of an outer window and inner shutter, is sufficient entry to constitute burglary. *Rex v. Bailey* and another.

12. Where a window opens upon hinges, and is fastened by a wedge, so that pushing against it will open it; forcing it open by pushing against it, is sufficient to constitute a breaking. *Rex v. Hall.*

13. A building used with a dwelling-house, and opening into an enclosed yard belonging thereto, may be parcel of the dwelling-house, though it also opens into an adjoining street, and although it has no internal communication with the dwelling-house. *Rex v. Lithgo.*

14. Prisoner broke into a goose-house, opening into the prosecutor’s yard, into which his house also opened; the yard was surrounded partly by other buildings of the homestead and partly by a wall; some of the buildings had doors opening backward, and there was a gate in one part of the wall opening upon a road; this goose-house was held part of the dwelling-house. *Rex v. Clayburn* and another.

15. The prisoner broke the glass of prosecutor’s side door on the Friday night, with intent to enter at a future time, and actually entered on the Sunday night. The Judges held this burglary, the breaking and entering, being both by night, and the breaking being with intent afterwards to enter. *Rex v. Smith.*

16. Getting into the chimney of a house is a sufficient breaking and entering to constitute burglary, though the party does not enter any of the rooms of the house. *Rex v. Brice.*

17. Pulling down the sash of a window is a breaking, though it has no fastening, and is only kept in its place by the pulley weight; it is equally a breaking, although there is an outer shutter which is not put to. *Rex v. Haines* and another.
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18. Where a married woman lived apart from her husband, upon an income arising from property vested in trustees for her separate use; held, that a house which she had hired to live in, was properly described as her husband's dwelling-house, though she paid the rent out of her separate property, and the husband had never been in it. *Rex v. French.* Page 491
19. A building separated from the dwelling-house by a public road, however narrow, will not be a parcel of the dwelling-house, if there is no common fence or roof to connect them, though it be held by the same tenure, and though some of the offices necessary to the dwelling-house adjoin it, and though there be an awning extending from it to the dwelling-house. But if it is made a sleeping place for any of the servants of the dwelling-house, it may be deemed a distinct dwelling-house. *Rex v. Westwood.* 495
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3. Indictment for uttering after conviction for a double of-
ence, need not aver that the offender was adjudged to be a
common utterer; it is sufficient if it states that he was tried
and convicted of uttering to A., and of uttering to B., and
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4. The prisoners, Job Else and Sarah Else, were indicted for
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man was not liable to be convicted with the actual utterer,
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although proved to be the associate of the woman on the day of the uttering, and to have had other bad money for the purpose of uttering. Held, that the woman could not be convicted of the second offence of having other bad money in her possession at the time, on the evidence of her associating with a man not present at the uttering, but having large quantities of bad money about him for the purpose of uttering. *Rex v. Else.*

5. Having counterfeit silver in possession with intent to utter it as good, is no offence: for there is no criminal act done. *Rex v. Heath.* 184

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6. Procuring base coin with intent to utter it as good, is a misdemeanor. Having a large quantity of such coin is evidence of having procured it with such intent, unless there are other circumstances to induce a suspicion that the defendant was the maker. *Rex v. Fuller and another.* 308

7. On an indictment on the 8 & 9 W.3. c.26., it is incumbent on prosecutor to show that the prosecution was commenced within three months. Proof by parol that the prisoner was apprehended for treason respecting the coin within the three months, will not be sufficient if the indictment is after the three months, and the warrant to apprehend or to commit are produced. Upon an indictment for having in possession a die made of iron or steel, proof of a die made of either material will be sufficient. *Rex v. Phillips and another.* 369

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2. A woman may be found guilty of concealment within the 43 G. 3. c. 58. s. 3., though from appearances it was probable the child was still-born, and although the birth was probably known to an accomplice. Rex v. Cornwall. 396

CONFESSION.

1. A prisoner was charged with stealing a guinea and two promissory notes. The prosecutor told him that it would be better for him to confess. Held, that after this admonition, the prosecutor might prove that the prisoner brought him a guinea and a 5l. note, which he gave up to the prosecutor as the guinea and one of the notes that had been stolen from him. Rex v. Griffin. 151

2. The prosecutor asked the prisoner, on finding him, for the money he the prisoner had taken out of the prosecutor's pocket, but before the money was produced said, "he only wanted his money, and if the prisoner gave him that, he might go to the devil, if he pleased;" after which the prisoner took 11s. 6d. out of his pocket, and said it was all he had left of it. Held, that the confession ought not to have been received. Rex v. Jones. 152

3. Persons having nothing to do with the apprehension, prosecution, or examination of the prisoner, advised him to tell the truth and consider his family. Held, that such admonition was no ground for excluding a confession made an hour afterwards to the constable in prison. Rex v. Row. 153

4. A prisoner's confession is sufficient ground for a conviction, though there is no other proof of his having committed the offence, or of the offence having been committed, if that confession was in consequence of a charge against the prisoner. Rex v. Eldridge. 440

5. A prisoner's confession is sufficient ground for a conviction, though there is no other proof of his having committed the offence or of the offence having been at all committed, if such confession was in consequence of a charge against the prisoner; especially if there is evidence that he had been desirous to keep out of the way of the person upon whom the offence is supposed to have been committed, or if any of his companions under the same charge have attempted to do so. Rex v. Falkner and another. 481
TO THE PRINCIPAL MATTERS.

CONFESSION—continued. 549

6. If a confession is improperly obtained, it is ground for excluding evidence of the confession and of any act done by the prisoner in consequence towards discovering the property, unless the property is actually discovered thereby. Rex v. Jenkins. 492

7. The confession of a prisoner before a magistrate is sufficient ground to warrant a conviction, though there is no positive proof aliunde that the offence had been committed, at least if there is probable evidence that it had been committed. Rex v. White and another. 508

8. Confession of a prisoner, evidence against him without positive proof aliunde of the offence having been committed, Rex v. Tippet. 509

CONIES.

Taking a rabbit in a wire is sufficient to constitute an offence within the 5 G. 3. c. 14. s. 6., though the rabbit is not killed, and though the party never takes it away. Rex v. Glover. 269

CORPORATIONS.

1. Where a company carries on the business of bankers, although incorporated for a totally different purpose. Held that it is no offence under 41 G. 3. c. 57. s. 2. to have a plate for making bills of exchange in the name of such corporate company. The Judges were also of opinion that, independent of this objection, the indictment was bad having omitted to aver that the company “carried on the business of bankers.” Rex v. Catapodi. 65

2. The prisoner was convicted for uttering a forged note of a Scotch corporation, called the British Linen Company; held that the uttering a forged note of a Scotch corporation was not an offence within the meaning of the 2 G. 2. c. 25. Qn. Whether such a company has any authority to issue bills? Rex v. McKay. 74

CORPSE.

See Dead Bodies.

CORONER'S INQUEST.

See Bastards, 1.
COUNTY.

See Indictment, 18.

1. When the prisoner, having been apprehended for another offence is detained in the same county for bigamy, the detainer is such an apprehension as will warrant the indicting him in that county under 1 Jac. 1. c. 11. *Rex v. Gordon.* Page 48

2. A denial by a servant when in the county of Stafford, of his having received money in the county of Salop, holden to show that the receipt in the county of Salop was with intent to embezzle within the 39 G. 3. c. 85., and therefore that the trial was properly had in the county of Salop. *Rex v. Hobson.* 56

3. Held, that if a servant receive money for his master in the county of A., and being called upon to account for it in the county of B., there deny the receipt of it, he may be indicted for the embezzlement in the latter county. *Rex v. Taylor.* 63

4. An indictment for forgery stated the offence to have been committed in the county of Nottingham; it was proved to have been committed in the county of the town. Held, that, although under the 38 G. 3. c. 52. it was triable in the county at large, the offence should have been laid in the county of the town. *Rex v. Mellor and another.* 144

5. If a delivery to the party's own servant of a box containing forged stamps is in one county, and the inn to which the servant is to carry them to be forwarded by a carrier be in another county, the party may be indicted in the former county. *Rex v. Collicott.* 212

CUTTING.

See Indictment, 25.

1. Where a cutting is inflicted by an instrument capable of cutting, the case is within the 48 G. 3. c. 58., though the instrument be not intended for cutting, nor ordinarily used to cut, but generally used to force open drawers, doors, &c. and though the intention was not to cut but to inflict some other mischief. *Rex v. Hayward.* 78

2. A striking over the face with the sharp or claw part of a hammer held to be a sufficient cutting within the 48 G. 3. c. 58. *Rex v. Atkinson.* 104

3. Cutting a child's private parts, so as to enlarge them for the
TO THE PRINCIPAL MATTERS.

CUTTING — continued.

time, may be considered as doing her grievous bodily harm, and done with that intent, though the hymen is not injured, the incision is not deep, and the wound, eventually, is not dangerous. *Rex v. Cox.*

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DEAD BODIES.

Taking a person’s dead body from a burial ground to dispose of for gain and profit, is an indictable offence. *Rex v. Gilles.*

366 notis.

DECENCY, OFFENCES AGAINST.

See Dead Bodies.

DEED.

See Forgery, 19.

A power of attorney is a deed within the meaning of the

2 G. 2. c. 25. s. 1. *Rex v. Lyon.*

255

DEER.

See Variance, 6.

16 G. 3. c. 30. s. 9., as to seizing the guns, and of persons carrying them into ground where deer are usually kept with intent to destroy deer, and as to beating or wounding the keepers, &c. in the execution of their office. Held, that an assistant keeper had no right to seize the person of one so armed in order to get his gun, without having first demanded the gun. *Qu. Whether an assistant-keeper, appointed by the keeper only, and not confirmed by the owner of the forest, chase, &c. can, in the absence of the keeper, seize guns, &c.? Rex v. Amey.*

500

DEPOSITIONS.

1. When a witness upon a trial gives evidence contradictory to facts contained in a deposition made by such witness in a former proceeding in the same case, the Judge may order such deposition to be read, in order to impeach the credit of the witness. *Rex v. Oldroyd.*

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2. A deposition of the deceased held admissible in a case of murder, although taken when the prisoner was charged with another offence, and although the greater part of it had been reduced into writing during his absence, it appearing that the deceased was afterwards re-sworn in the prisoner’s presence, the deposition then read over and stated by the de-
DEPOSITIONS — continued.

ceased to be correct, and the prisoner asked whether he had any questions to put. *Rex v. Smith.* Page 339

DIE.

See *Coin,* 7, 8.

DISSECTION.

See *Murder,* 2.

DIVORCE.

See *Bigamy,* 4.

The divorces and sentences referred to in s. 3. of the 1 Jac. 1. c. 11. are divorces and sentences of the ecclesiastical courts within the limits to which the 1 Jac. 1. applies. *Rex v. Lolley.* 237

DWELLING-HOUSE.

See *Burglary,* 2. 4, 5. 7, 8, 9, 10. 13, 14. 18, 19. 21. 23.

DYING DECLARATIONS.

See *Evidence,* 16.

EMBEZZLEMENT.

See *County,* 2. 3. *Indictment,* 6. 8. 20. 23. 29.

1. A Bank clerk employed to post into the ledger and read from the cash-book, Bank-notes from 100l. in value up to a 1000l., and who in the course of that occupation had, with other clerks, access to a file, upon which paid notes of every description were filed; took from that file a paid bank note for 50l. Held, that the prisoner could not be considered as entrusted with the possession of this note, so as to bring him within the 15 G. 2. c. 13. s. 12. *Qu.* Whether a note once cancelled by the Bank is within the 15 G. 2. c. 13.? *Rex v. Bakewell.* 35

2. The statute 39 G. 3. c. 85. extends only to such servants as are employed to receive money, and to instances in which they receive money by virtue of their employment. It seems that an apprentice, though under the age of eighteen, is within the statute. *Rex v. Mellish.* 80

3. Where the owner of a colliery employed the prisoner as captain of one of his barges to carry out and sell coal, and paid him for his labour by allowing him two-thirds of the price for which he sold the coals, after deducting the price charged at the colliery. Held, that the prisoner was a servant within the meaning of 39 G. 3. c. 85.; and having embez-
EMBEZZLEMENT—continued.

zled the price he was guilty of larceny within the words of that act. *Rex v. Hartley.* Page 139

4. If a servant receive money for his master for an article made of his master's material, it will be within the 39 G. 3. c. 85. if he embezzle it, though he made the articles, and was to have a given proportion of the price for making them. *Rex v. Hoggins.*

5. Although property has been in the possession of the prisoner's masters, and they only entrust the custody of such property to a third person to try the honesty of their servant. If the servant receives it from such third person and embezzles it, it is an offence under the 39 G.3. c.85. *Semble,* that the 39 G.3. c. 85. does not apply to cases which were larceny at common law. *Rex v. Headge.*

6. A person employed upon commission to travel for orders and to collect debts, is a *clerk* within the 39 G.3. c. 85., though he is employed by many different houses on each journey, and pays his own expences out of his commission on each journey, and does not live with any of his employers, nor act in any of their counting-houses. *Rex v. Carr.*

7. A female servant is within the 39 G. 3. c. 85. If a servant receives money from his master to pay to J. C., and does not pay it, *Qu,* if he can be indicted for embezzlement? *Rex v. Smith.*

8. A man is sufficiently a servant within the 39 G. 3. c. 85., although he is only occasionally employed, when he has nothing else to do; and it is sufficient if he was employed to receive the money he embezzled, though receiving money may not be in his usual employment, and although it was the only instance in which he was so employed. *Rex v. Spencer.*

9. A clerk intrusted to receive money *at home* from out-door collectors, receives it *abroad* from out-door customers. Held, that such a receipt of money may be considered "by virtue of his employment," within the 39 G.3. c. 85., though it is beyond the limits to which he is authorized to receive money for his employers. *Rex v. Beechey.*

10. The overseers of a township employed the prisoner as their accountant and treasurer, and he received and paid all the money receivable or payable on their account; he received
EMBEZZLEMENT—continued.
a sum and embezzled it. Held, that he was a clerk and
servant within the 39 G. 3. c. 85. Rex v. Squire. Page 349
11. If a servant immediately on receiving a sum for his master
enters a smaller sum in his master’s books, and ultimately
accounts to his master for the smaller sum, he may be con-
victed as embezzling the difference at the time he makes the
entry. It will make no difference though he received other
sums for his master the same day, and in paying those and
the smaller sum to his master together, he might give his
master every piece of money or note he received at the time
he wrote the false entry. Rex v. Hall. 463
12. If a servant generally employed by his master to receive
sums of one description and at one place only, is employed
by him in a particular instance to receive a sum of a differ-
ent description, and at a different place this latter sum is to be
considered as received by him by virtue of his employment.
He fills the character of servant, and it is by being
employed as servant that he receives the money. Rex v.
Smith. 516

ENTERING.
See Burglary, 11. 16. 20.

ESCAPE.
See Prison breach, 2. Rescue, 1.
1. The offence of aiding a prisoner at war to escape is not
complete if such prisoner is acting in concert with those
under whose charge he is, merely to detect the defendant,
and has no intention to escape. Rex v. Martin. 196
2. Indictment on the 16 G. 2. c. 31. for delivering instruments
to a prisoner to facilitate his escape from gaol. Held that
the delivering is within the act, though the prisoner has
been pardoned of the offence of which he was convicted, on
condition of transportation. And a party may be convicted
though there is no evidence that he knew of what specific
offence the person he assisted had been convicted. Rex v.
Shaw and others. 526

EVIDENCE.
Post Office, 1.
1. Where an indictment described a bank note as signed by
EVIDENCE — continued.


2. On a trial for bigamy, the registry of the first marriage stated it to be by licence generally, without saying by consent of parents or guardians. The prisoner proved that he was an infant at the time, and that his parents were never known to have been in England. The Judges held this *prima facie,* evidence that the first marriage was without consent of parents or guardians, and that the jury might have acquitted the prisoner if such evidence was unanswered. *Rex v. James.* 17

*Rex v. Morton.* 19 notis.

3. If the charge is that the prisoner received a child as an apprentice, an indenture importing that a former master, with the child’s consent, bound the child, will be sufficient evidence of the receiving as an apprentice, though such indenture is executed by a stranger as trustee for the former master, and not in the former master’s name. *Rex v. Friend et ux.* 20

4. Held that in an indictment on 7 G. 3. c. 50. a check on unstamped paper, drawn by a person living thirty miles distant from London, was admissible in evidence for the purpose of proving the fact of stealing a letter out of the post-office. *Rex v. Pooley.* 31

5. Evidence of uttering a bill of exchange knowing it to be forged; and other forged bills upon the same house, which were found upon the prisoner at the time of his apprehension, held to be admissible as evidence of guilty knowledge. *Rex v. Hough.* 120

6. Upon an indictment for uttering a forged note. The Judges were of opinion that evidence was admissible of the prisoner having at a prior time uttered another forged note of the same manufacture, and also that other notes of the same fabrication had been found on the files of the Bank with the prisoner’s handwriting on the back of them, in order to show the prisoner’s knowledge of the note mentioned in the indictment being a forgery. *Rex v. Ball.* 132

7. Although it appears, upon a case reserved, that evidence has been admitted at the trial which ought not to have been received. Yet if the Judges are of opinion that there is ample evidence to support the indictment, after rejecting
EVIDENCE — continued.

such improper evidence, they will not set aside the conviction, Ibid.

Page 132

8. An indictment for arson, with intent to defraud an Insurance Company, cannot be supported if the policy cannot be received in evidence for want of a proper stamp. If there is an alteration upon the policy to make it applicable to another house to which the goods have been removed, and that alteration is not stamped, the indictment cannot be supported. Rex v. Gilson. 138

9. Uttering a forged stock receipt to a person who employed the prisoner to buy stock to that amount and advanced the money, is sufficient evidence of an intent to defraud that person; and the oath of the person to whom the receipt was uttered, that he believes the prisoner had no such intent, will not repel the presumption of an intention to defraud. Rex v. Sheppard. 169

10. An indictment on the 7 G. 3. c. 50. s. 1., stating the prisoner to have been employed in two branches of the post-office, proof of his having been employed in either held sufficient. If the letter embezzled is described as having contained several notes, proof of its having contained any one of them is sufficient. If the instrument is on the face of it a note, the maker’s signature need not be proved. Rex v. Ellis. 188

11. Upon an indictment for obtaining money under false pretences, it is not necessary to prove the whole of the pretence charged, proof of part of the pretence and that the money was obtained by such part is sufficient. Rex v. Hill. 190

12. Upon an indictment for a rape, the woman is not compellable to answer, whether she has not had connexion with other men, or with a particular person named; nor is evidence of her having had such connexion admissible. Rex v. Hodgson. 211

13. If the possession of other forged instruments is offered in evidence to prove a guilty knowledge, there must be regular evidence that such instruments were forged; proof that the prisoner returned the money on such an instrument, and received the instrument back, is not sufficient without producing the instrument or duly accounting for its non-production. Rex v. Millard. 245

14. The post-office marks, in town or country, proved to be such, are evidence that the letters on which they are were in the office to which those marks belong at the dates those
marks specify. But a mark of double postage paid on such letter, is not of itself evidence that the letter contained an closure. Though a letter found upon a prisoner may be read, it is no evidence of the facts it states, they must be proved by other evidence. *Rex v. Plumer.* Page 264

15. If there is proof of what is the prisoner's real name, it is for him to prove that he used an assumed name before the time he had the fraud in view, even in the absence of all proof as to what name he had used for several years before the fraud in question. *Rex v. Peacock.*

16. A release from the holder of a bill of exchange to the sup- posed acceptor will make him a competent witness to prove the forgery in an indictment against the drawer; the drawer having received value for the bill from such holder. *Ibid.*

17. Having a large quantity of base coin in possession is evidence of having procured it with intent to utter, unless there are other circumstances to induce a suspicion that the defendant was the maker. *Rex v. Fuller* and another.

18. A deposition of the deceased held admissible in a case of murder, although taken when the prisoner was charged with another offence, and although the greater part of it had been reduced into writing during his absence, it appearing that the deceased was afterwards re-sworn in the prisoner's presence, the deposition then read over and stated by the deceased to be correct, and the prisoner asked whether he had any questions to put. *Rex v. Smith.*

19. On indictment for forging a will, probate of that will unre- pealed is not conclusive evidence of its validity, so as to be a bar to the prosecution. *Rex v. Buttery* and another.

20. Indictment on the 43 G. 3. c. 58. for cutting J. S. The evidence was, that the wounds were inflicted by stabbing, and not by cutting. The Judges held the conviction wrong. *Rex v. M'Dermot.*

21. On an indictment on the 8 & 9 W. 3. c. 26., it is incumbent on the prosecutor to show that the prosecution was commenced within three months. Proof by parol that the prisoner was apprehended for treason respecting the coin within the three months, will not be sufficient if the indict- ment is after the three months, and the warrant to apprehend or to commit are not produced. *Rex v. Phillips* and another.
EVIDENCE — continued.

22. Upon an indictment for having in possession a die made of iron and steel, proof of a die made of either material will be sufficient. *Ibid.* See *Rex v. Oxford.* Page 382

23. On Bank prosecutions, it is not necessary that the signing clerk at the Bank should be produced, if witnesses acquainted with his hand-writing state that the signature to the forged note is not his hand-writing. 378

24. On an indictment against the payee of a bill for uttering a forged acceptance, the first indorsee is a competent witness, though he has only advanced part of the amount of the bill, and though he releases, during the trial, the person in whose name the acceptance is forged. Held also, that his release makes the supposed acceptor a competent witness. *Rex v. Mott.* 435

25. Indictment for delivering in payment for a horse, certain promissory notes, which prisoner knew to be not good nor of any value. The notes purported to be the notes of a country bank which was supposed to have failed. Held, that at all events, it was necessary to prove the notes were bad and of no value. *Rex v. Flint.* 460

26. If a confession is improperly obtained, it is a ground for excluding evidence of the confession; and of any act done by the prisoner in consequence towards discovering the property, unless the property is actually discovered thereby. *Rex v. Jenkins.* 492

27. Upon an indictment for stealing a live animal, evidence cannot be given of stealing a dead one. *Rex v. Edwards* and another 497

28. Upon an indictment for forging or uttering a power of attorney to sell and transfer stock in the funds, the person whose name is forged is a competent witness for the Crown, if the stock has not been transferred, and he has given notice to the Bank disavowing the power. Especially if it be previously proved that though there is an attestation importing that he executed, in the presence of two witnesses, if he did not so execute. *Rex v. Waite.* 505

29. Indictment on the 16 G.2. c. 31. for delivering instruments to a prisoner to facilitate his escape from gaol. Held that if the record of the conviction of the prisoner whose escape was to have been effected is produced by the proper officer, no evidence is admissible to dispute what it states, or to show that it has never been filed amongst the other records of the county. Though the indictment refers to it with a
EVIDENCE—continued.

prout patet, as remaining amongst those records. Rex v. Shaw and others. Page 526

30. Upon an indictment for maliciously shooting, if it be questionable whether the shooting was by accident or design, proof may be given that the prisoner at another time intentionally shot at the same person. Rex v. Voke. 531

EXCHEQUER BILLS.

Securities issued by Government as Exchequer bills, are “effects” within the meaning of the 15 G. 2. c. 13. s. 12., although, from not having been signed by a person legally authorized, they are not valid and legal Exchequer bills. Rex v. Aslett. 67

EXECUTION.

In murder it is not essential to award the day of execution in the sentence, the statute in that respect being only directory; and if a wrong day is awarded it will not vitiate the sentence if the mistake is discovered and set right during the assizes. Rex v. Wyatt. 230

FALSE PRETENCES.

1. Held, to be a false pretence within the 30 G. 2. c. 24. s. 1. where the prisoner obtained money from the keeper of a post-office, by assuming to be the person mentioned in a money order, which he presented for payment, though he did not make any false declaration or assertion in order to obtain the money. Rex v. Story. 81

2. There may be a sufficient false pretence within 30 G. 2. c. 24. by the acts and conduct of the party without any verbal representations of a false and fraudulent nature. The fact of uttering a counterfeit note as a genuine note, held to be tantamount to a representation that it was so. Rex v. Freeth. 127

3. Upon an indictment for obtaining money under false pretences, it is not necessary to prove the whole of the pretence charged, proof of part of the pretence and that the money was obtained by such part is sufficient. Rex v. Hill. 190

4. Indictment on 30 G. 2. c. 24. s. 1. A pretence that the party would do an act he did not mean to do (as a pretence to pay for goods on delivery) is not a false pretence within the act. Rex v. Goodhall. 461

5. A pretence to a parish officer as an excuse for not working, that the party has not clothes when he really has, though it induce the officer to give him clothes, is not obtaining
FALSE PRETENCES — continued.
  goods by false pretences within the 30 G.2. c.24. Rex. v. Wakeling.
  Page 504

FELO DE SE.
  See MURDER, 9.

FERRETS.
  Ferrets, though tame and saleable, cannot be the subject of larceny. Rex v. Searing.
  350

FISH.
  1. Breaking down the head or mound of a fish pond, is not a felony within the 9 G.1. c.22., if the only object in so doing is to steal the fish. Rex v. Ross.
  2. Indictment on 5 G.3. c.14. s.1. for entering an enclosed park, and taking fish bred, kept, and preserved there, in the river Kent running through the park. It appeared that the park was walled round, except where the river entered and passed out, and that there were fences to keep in the deer; that there was nothing to keep in the fish, that they were not known to breed there, that nothing was done to stock the river, but that persons were never suffered to angle in the park without leave. Held, that this was not a place where fish were considered as "bred, kept, or preserved," within the meaning of this act, and therefore conviction wrong. Rex v. Carradice and another.
  205

FORGERY.
  See Uttering.
  1. Altering a bill from a lower to a higher sum is forging it; and a person may be indicted on the 7 G.2. c.22. for forging such an instrument, though the statute has the word alter as well as forge; it was held no ground of defence that before the alteration it had been paid by the drawer and re-issued. Rex v. Teague.
  33
  2. Forgery at Common Law. Indictment held to be bad in form, as it did not state what the instrument was in respect of which the forgery was committed, nor how the party signing it had authority to sign it. Rex v. Wilcox.
  50
  3. The prisoner was convicted for uttering a forged note of a Scotch corporation, called the British Linen Company; held that the uttering a forged note of a Scotch corporation was not an offence within the meaning of the 2 G.2. c.25. Q. Whether such a company has any authority to issue bills? Rex v. M'Kay.
  71
FORGERY — continued.

4. Indorsing a bill, if a fictitious one, is a forgery, though the bill would have been then equally received if endorsed by the prisoner in his own name, if the fictitious name was used in order to defraud. *Rex v. Marshall.* Page 75

5. Forging a bill payable to the prisoner's own order, and uttering it without indorsement as a security for a debt, is a complete offence. *Rex v. Birkett.* 86

6. Where the name made use of by the prisoner in the forged instrument was assumed by him with the intention of defrauding the prosecutor, a conviction for forgery was held to be right, though the prisoner's real name would have carried with it as much credit as the assumed name. *Rex v. Whiteley.* 90

7. The party by whom the forged instrument purports to have been made, while he has an interest in invalidating such instrument, is incompetent to prove any fact which contributes to the proof of the forgery. *Rex v. Crocker.* 97

8. Altering a banker's one pound note by substituting the word ten for the word one, held to be forgery. *Rex v. Post.* 101

9. Uttering a forged bill, importing to be payable to the drawer's order with intent to defraud, is a complete offence, though there is no indorsement upon it importing to be the drawer's. *Rex v. Wicks.* 149

10. The offence of disposing and putting away forged bank notes is complete, though the person to whom they were disposed of was an agent for the Bank to detect utterers, and applied to the prisoner to purchase forged notes, and had them delivered to him as forged notes for the purpose of disposing of them. *Rex v. Holden and others.* 154

11. The prisoner drew a bill, "Please to pay the bearer on demand 15l.," and signed it with his own name, but it was not addressed to any one: there were forged upon this instrument when uttered the words and signature, "Payable at Messrs. Masterman & Co., White Hart Court, William McNerhney." McNerhney kept cash at Masterman & Co.'s, who were bankers. The Judges held that this was not an order for payment of money, there being no special averments in the indictment that this was intended for an order, or that Masterman & Co. were bankers. *Rex v. Ravenscroft.* 161

12. If a note be made payable at a country banker's, or at their bankers' in London, substituting another place for
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FORGERY — continued.

a bill of exchange, although it is not such an instrument as the 35 G. 3. c. 94. warrants. Rex v. Chisholm. Page 297

25. It is not necessary that a promissory note should be negotiable, in order to be a promissory note within 2 G. 2. c. 25. so as to be the subject of an indictment for forging or uttering it. Rex v. Box. 300

26. Forging a magistrate's order to pay money will not be a capital offence, if the act of parliament, under which alone the magistrate has power to make it, requires it to be under hand and seal, and it is under hand only; and if it is addressed to a character on whom the magistrate has no power to make such order by the act. Rex v. Rushworth. 317

27. The bank having preferred bills for uttering, and having in possession in respect of the same note, and having elected to proceed on the bill for having in possession; held, that although facts, sufficient to support the capital charge, were made out in proof, an acquittal for the minor offence ought not to be directed, because the whole of the minor offence was proved, and it did not merge in the larger. It is not necessary that the signing clerk at the Bank should be produced, if witnesses acquainted with his hand-writing state that the signature to the note is not in his hand-writing. The Bank may elect to proceed on indictments for the lesser offence, although indictments have been found for the capital charge. 378

28. By the 48 G. 3. c. 75., a justice of the peace may order the treasurer of the county to pay every church-warden, Overseer, head-borough, or constable, the expenses he has incurred in burying any dead body that has been cast on shore. A justice's order was forged, stating that a dead body had been cast on shore in the parish of A., that I. S. had made oath before the justice that he had laid out 3l. 5s. in the burying him, and requiring the treasurer to pay him the sum. Held, that this was a warrant or order for the payment of money within the 7 G. 2., though the order did not state that I. S. was a church-warden, &c. Rex v. Proud. 389

29. A bill was addressed to T. B., baize manufacturer, Rumford, Essex. The prisoner uttered this bill with an acceptance thereon made by T. B., who did not live at Rumford, and was not a baize manufacturer. Held, that the adopting a false description and addition where a false name was not assumed, and where there was no person answer-
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FORGERY—continued.

ing the description or addition, was not a forgery. *Rex v. Webb.* Page 405

30. A bill was addressed to Messrs. *Williams & Co.*, bankers, *Birchin Lane, London*; and there might, at that time, have been a 3 on the lower left-hand corner of the bill. The prisoner was asked, at the time, whether the acceptors were *Williams, Birch, & Co.*; and his answers imported that they were. *Williams, Birch, & Co.*, lived at No. 20, *Birchin Lane*, and it was not their acceptance. There were no known bankers in *London* using the style of *Williams & Co.* but them; but at No. 3, *Birchin Lane*, the name "*Williams & Co.*" was on the door; and some bills addressed to Messrs. *Williams & Co.*, bankers, *Swansea*, had been accepted, payable at No. 3, and had been paid there. There was no evidence who lived at No. 3, but another bill, of the same tenor as that in question, drawn by the prisoner had been accepted there. Held, that on these facts the prisoner was improperly convicted of uttering a forged acceptance knowing it to be forged, *Rex v. Watts.* 436

31. If several combine to forge an instrument and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals, *Rex v. Bingley* and others 446

32. Forging or uttering a note which, for want of a signature, is incomplete, is not within the statute which makes forging notes capital. *Rex v. Pateman.* 455

33. Forgery of a *Prussian* treasury note. The note in question being in a foreign language and the indictment not containing any English translation of it, judgment was arrested. *Rex v. Goldstein.* 473

34. Instrument in the form of a promissory note, held not to be the subject of an indictment for forgery at common law. *Rex v. Burke.* 496

35. What a possession of forged notes within the 45 G.3. c.89. s.6. See *Rex v. Rowley.* 110

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HORSE STEALING.
1. An indictment for horse-stealing, must give the animal one of the descriptions mentioned in the statute. Therefore an indictment for stealing a colt, not saying whether it was horse or mare, will not be sufficient to take away clergy; but the prisoner may be convicted for simple larceny. Rex v. Beaneys. 416
2. If the owner parts with the possession of goods for a special purpose, and the bailee, when that purpose is executed, neglects to return them, and afterwards disposes of them; if he had not a felonious intention when he originally took them, his subsequent withholding and disposing of them will not constitute a new felonious taking or make him guilty of felony. Rex v. Banks. 441
3. Foals and fillys are within the statute 2 & 3 Edw. 6., and are included in the words horse, gelding, or mare. Held,
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INDENTURE.
See Evidence, 3.

INDICTMENT.
1. Indictment on the 15 G. 2. c. 28. s. 3. charged, that defendant uttered a counterfeit half-crown to J. E., and that at the time he so uttered it, he had about him another counterfeit half-crown; but it did not conclude with averring that he was a common utterer of false money: the Judges held that such averment was unnecessary, and that the indictment was sufficient to warrant the greater punishment of the 3d section of the statute. Rex v. Smith,

2. An indictment on the 15 G. 2. c. 28. for uttering after a conviction for a double offence, need not aver that defendant was adjudged to be a common utterer: it is sufficient if it states that he was tried and convicted of uttering to A., and of uttering on the same day to B., and adjudged to be imprisoned a year. Rex v. Booth.

3. An indictment for robbery stated, that it was in a field near the King's highway: the robbery was proved, but not near any highway: The Judges held that the allegation of its being in a field near the highway was immaterial, for the 3 & 4. W. & M. c. 9., took away clergy, let the robbery be where it might. Rex v. Wardle.

INDICTMENT—continued.

4. Where an indictment described a bank note as signed by A. H. for the Governor and Company of the Bank of England, conviction held bad, there being no evidence of A. H.'s signature. Describing a bank note "as a certain note commonly called a bank note" is not such a description as will warrant a conviction on 2 G.2. c.25. for stealing it. *Rex v. Craven.* Page 14

5. An indictment against a master for not providing necessaries for his apprentice, ought to state that the apprentice was of tender years, and unable to provide for itself. *Rex v. Friend, et ux.* 20

6. An indictment on 39 G.3. c.85., must state whose the property embezzled was, as in other cases of larceny; stating that the prisoner took it into his possession by virtue of his employment, or on account of his master, is insufficient. *Rex v. M'Gregor.* 23

7. Forger at Common law. Indictment held to be bad in form, as it did not state what the instrument was in respect of which the forger was committed, nor how the party signing it had authority to sign it. *Rex v. Wilcox.* 50

8. Indictment on 39 G.3. c.85. Held, that it was sufficient to state in the conclusion of the indictment that the prisoner feloniously did steal, take, &c. though the word feloniously was not inserted in the former part of the indictment before the word embezzle. *Rex v. Crighton.* 62

9. Indictment on 30 G.2. c.24. held to be bad, on the ground that the instrument given in evidence was not as stated, an order for money. *Rex v. Cartwright.* 106

10. An indictment for disposing and putting away forged bank notes, need not state to whom the note was disposed of; it is sufficient to state the prisoner disposed of the note with intent to defraud the Bank; he knowing it at the time to be forged. *Rex v. Holden and others.* 154

11. An indictment on the 48 G.3. c.129., need not negative the force or fear necessary to constitute robbery; and if it does not, though it may appear that there was such force or fear, the punishment enjoined by the 48 G.3. may be inflicted. *Rex v. Pearce.* 174

*Rex v. Robinson and another.* 321

12. An indictment for a common law felony must contain a "contra pacem." So must an indictment for stealing articles, the stealing of which is made felony by statutes;
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and in this case the laying the offence to have been against the form of the statute will not supply the defect. *Rex v. Cook.*

13. An indictment in the next adjoining county, for an offence within an inferior county, need not aver that the former is the next adjoining county. When the record is regularly drawn up, that may be stated in the caption; but the indictment must state the offence to have been committed in the inferior county. *Rex v. Goff.*

14. Property cannot be laid in a person who has never had either actual or constructive possession. *Rex v. Adams.* 225

15. If a house is let to A. and a warehouse under the same roof, and with an internal communication to A. and B., the warehouse, in an indictment for burglary, cannot be described as the dwelling-house of A. *Rex v. Jenkins* and another.

16. A bank post bill cannot, in an indictment for forgery or uttering, be described as a bill of exchange; but it may be described as a bank bill of exchange. Discharging an indorsement and inserting another may be described as altering an indorsement. *Rex v. Birkett and Brady.* 251

17. An indictment on the 9 G.1. c.22. must state the species of cattle wounded or injured; to state that the prisoner maimed *certain cattle* is not sufficient. If the statement is that he maimed certain cattle, *viz.* a mare, there must be evidence that the animal named is of the description specified. *Rex v. Chalkley.* 258

18. If an indictment against a bankrupt. for concealing property, in stating the property does not sufficiently specify particular parts of it, though it may sufficiently specify others, and those specified may be of the necessary value, the indictment will be bad, because the statement as to the parts not specified tends to embarrass the prisoner. Where value is essential to constitute an offence, and the value is ascribed to many articles collectively, the offence must be made out as to every one of those articles, for the grand jury has only ascribed that value to all those articles collectively. *Rex v. Forsyth.* 274

19. Stating in the indictment that the person murdered was at the time in the *king's peace*, is sufficient to show that he was a *British subject*. The conclusion in the indictment that the offence was against the *king's peace*, shows sufficiently
INDICTMENT—continued.

that the prisoner was a British subject. For a common law felony, committed abroad, but made triable here under the 33 H. 8. c. 25., the indictment need not conclude contra forum statui. Rex v. Sawyer. Page 294

20. An indictment for embezzling need not specify the exact sum embezzled. Rex v. Carson. 303

21. Indictment on the 43 G. 3. c. 58. The first three counts alleged, in the usual form, that J. S. did shoot at A. B.; and went on to state that M. and N. were present, aiding and abetting; the second and third counts varying from the first only in the intent; the three last counts varying in like manner as to the intent, stated, that an unknown person, &c. did shoot at A. B., &c. and that J. S. and M. and N. were present aiding and abetting the said unknown person, the felony aforesaid, in manner and form aforesaid, to do and commit, and were then and there knowing of and privy to the committing of the said felony, against the statute, &c. but omitted to charge them with being feloniously present, &c. Held, that J. S. was properly convicted on this indictment, although the jury negatived his being the person who fired the pistol at A. B. Rex v. Towle and others. 314

22. An indictment for presenting a forged order to W. L. treasurer, &c. pretending it was genuine, and obtaining from W. L. under it 4l. 10s. 6d., after charging that the prisoner, with intent to cheat, &c. the treasurer, presented the order, and that he knowingly, &c. pretended it was a genuine order proceeded, "and so the jurors, &c. say that the prisoner, on the day and year, &c. did obtain the said sum of 4l. 10s. 6d.;" but the intent to cheat and defraud W. L. was not stated in this part of the indictment, nor was the obtaining charged to have been effected knowingly and designedly; indictment held bad. Rex v. Rushworth. 317

23. An indictment for embezzling ought to set out specifically some article of the property embezzled, and the evidence should support that statement. Rex v. Furneaux. 335

24. Indictment for murder. If the death proceeds from suffocation from the swelling up of the passage of the throat, and such swelling proceeds from wounds occasioned by forcing something into the throat, it will be sufficient to state in the indictment that the things were forced into the throat, and the person thereby suffocated, the process immediately
INDICTMENT — continued.

causing the suffocation, viz. the swelling, need not be stated. Rex v. Tye. Page 345

25. Indictment on the 43 G. 3. c. 58. for cutting J. S., the evidence was that the wounds were inflicted by stabbing and not by cutting. The Judges held the conviction wrong. Rex v. M'Dermot. 356

26. Indictment for the murder of a bastard child. Held, that a bastard was improperly described by his mother’s name, he not having gained that name by reputation. Rex v. Clark. 358

27. An indictment for stealing goods may, under the 55 G. 3. c. 137., state them to be the goods of the overseers of the poor for the time being of the parish of A., for this will import that they belonged, at the time of the theft, to the persons who were the then overseers. Rex v. Went. 359

28. Indictment on the 43 G. 3. c. 58. The intent laid in several counts of the indictment was to murder, to disable, or do some grievous bodily harm. The intent found by the jury was to prevent being apprehended. Held, that the conviction was bad; that if the intent is to prevent the prisoner’s apprehension, it must be so laid. Rex v. Duffin and another. 365

29. An indictment for embezzling must describe, according to the fact, some of the property embezzled. Rex v. Tyers. 402

30. An indictment for stealing a sheep, or any other cattle, must mention or ascribe to it some value, for unless the value exceeds twelve pence, it will not be a capital offence. Rex v. Peel. 407

31. In larceny the goods of a ready furnished lodging must be described as the lodger’s goods, not as the goods of the original owners. Rex v. Belstead. 411

32. The goods in a dissenting chapel vested in trustees cannot be described as the goods of a servant who has merely the custody of the chapel and things in it, to clean and keep in order, though he has the key of the chapel, and no other person but the minister has another key. Rex v. Hutchinson and another. 412

33. An indictment for a rape stated to have been committed on the 9th of March, 1 G. 4., concluded “against the peace of our said late lord the king.” Held, that the word “late” might be rejected as surplusage. Rex v. Scott. 415
INDICTMENT—continued.

34. An indictment for horse stealing must give the animal one of the descriptions mentioned in the statute. Therefore an indictment for stealing a colt not saying whether it was horse or mare will not be sufficient to take away clergy, but the prisoner may be convicted of simple larceny. *Rex v. Beaney.* Page 416

35. If one statute subjects an act to a pecuniary penalty, and a subsequent statute makes it felony, an indictment for the felony concluding against the form of the statute (in the singular number only) is right. *Rex v. Pim.* 425

36. Indictment, tried summer assizes 1 G. 4., stated, that the prisoner, on the 20th of July, in the fourth year of the reign of King George the Fourth, stole a mare, against the peace of our lord the now king. The Judges held the words “fourth year of the” might be rejected as surplusage, and that the prisoner was properly convicted on this indictment. *Rex v. Gill.* 431

37. On an indictment for burglariously breaking and entering a dwelling-house and then and there stealing goods therein, the prisoner may be well convicted of burglary if the larceny be proved, *secus* if not. *Rex v. Furnival.* 445

38. Indictment on 56 G. 3. c. 27. s. 8. should set forth the effect and substance of the former conviction, so likewise should the certificate of the former conviction. The indictment or the certificate under this section of the statute, stating the former conviction to have been felony only is insufficient. *Rex v. Watson.* 468


40. An indictment for stealing 10l. in monies numbered is not sufficient; some of the pieces of which the money consisted should be specified. *Rex v. Fry.* 482

41. In an indictment for larceny, if the thing stolen be described as a bank post bill and be not set out, the Court cannot take judicial notice that it is a promissory note or that it is such an instrument as under the statute 2 G. 2. c. 25. may be the subject of larceny, though it be described as made for the payment of money. *Rex v. Chard.* 488

42. If the name of a prisoner is unknown, and he refuse to disclose it, an indictment against him as a person whose
INDICTMENT — continued.

name is to the jurors unknown, but who is present brought before the jurors by the keeper of the prison will be sufficient. But an indictment against him as a person to the jurors unknown, without something to ascertain whom the grand jury meant to designate, is insufficient. Anonymous. Page 489

43. Where a married woman lived apart from her husband upon an income arising from property vested in trustees for her separate use; held, that a house which she had hired to live in was properly described as her husband’s dwelling-house, though she paid the rent out of her separate property, and the husband had never been in it. Rex v. French. 491

44. An indictment for stealing a dead animal should state that it was dead; for upon a general statement that the party stole the animal it is to be inferred that he stole it alive. Rex v. Edwards and another. 497

45. A prosecutor may be described by a name he has assumed, though it is not his right name. Rex v. Norton. 510

46. The indictment under 57 G. 3. c. 90., charging a party with having entered into a park, chase, &c. with intent to destroy game, and being found armed in the night, must in some way or other particularize the place. Rex v. Ridley. 515

47. Held, that the house of a husband, in which he allowed his wife to live separate from him, might be described as the house of the husband, though the wife lived there in adultery with another man, who paid the housekeeping expences, and though the husband suspected a criminal intercourse between his wife and the other man when he allowed her to live separate. Rex v. Wilford and another. 517

INDICTABLE OFFENCES.

1. It is an indictable offence to refuse or neglect to supply necessaries to a child, servant, or apprentice, whom a person is bound by duty or contract to provide for, if such child, &c. be of tender years and unable to provide for itself. Rex v. Friend et ux. 20

2. Taking a person’s dead body from a burial ground with intent to dispose of the same for gain and profit. Held, an indictable offence. Rex v. Gilles. 366. notis.

INHABITANCY.

1. Where the owner has never by himself, or by any of his family, slept in the house, it is not his dwelling-house so as
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INHABITANCY — continued.

1. To make the breaking thereof burglary, though he has used it for his meals and all the purposes of his business. *Rex v. Martin* and another. Page 108

2. Where the prosecutor left his house without any intention of living in it again, and intending to use it as a warehouse only; though he had persons (not of his family) to sleep in it to guard the property; held that this could not be considered as "the dwelling-house" of the prosecutor, so as to support a conviction for stealing there to more than the amount of forty shillings. *Rex v. Flannagan*. 187

3. Though a man leaves his house and never means to reside in it again, yet, if he uses part of it as a shop, and lets a servant and his family board and sleep in another part of it for fear the place should be robbed, and lets the rest to lodgers, the habitation by his servant and family is an habitation by him, and the shop shall still be considered part of his dwelling-house. *Rex v. Gibbons* and another. 442

INSANITY.

1. The first section of the 39 & 40 G. 3. c. 94. is confined to cases of treason, murder, and felony; the second section extends to all offences. Therefore if, on a trial for a misdemeanor, the defendant appears to be insane, and the jury find him so, the Court may order him to be confined until His Majesty's pleasure be known. *Rex v. Little*. 430

2. On a trial where the defence is insanity, a witness of medical skill may be asked whether such and such appearances, proved by other witnesses, are, in his judgment, symptoms of insanity. But *Quere*, Whether he can be asked, whether from the other testimony given, the act with which the prisoner is charged is, in his opinion, an act of insanity, which is the very point to be decided by the jury? *Rex v. Wright*. 456

INTENTION.

The prisoner was indicted for setting fire to a mill with intent to injure the occupiers thereof. Held, that an injury to the mill being the necessary consequence of setting fire to it, the *intent to injure* might be inferred; for a man must be supposed to intend the necessary consequence of his own act. *Rex v. Farrington*. 207
TO THE PRINCIPAL MATTERS.

JOINT PROPERTY.
1. A father and son carried on business as farmers: the son died intestate, after which the father continued the business for the joint benefit of himself and the sons next of kin. Some of the sheep were stolen, and were laid to be the property of the father and the sons next of kin, and all the Judges held it right. *Rex v. Scott.*

2. D. and C. were partners; C. died intestate leaving a widow and children; from the time of his death the widow acted as partner with D., and attended the business of the shop; three weeks after C.'s death part of the goods were stolen; they were described in the indictment as the goods of D. and the widow; on case reserved the description was held right. *Rex v. Gaby.*

JUDGMENT.
1. A man upon whom sentence of death has passed ought not, while under that sentence, to be brought up to receive judgment for another felony; although he was under that sentence when he was tried for the other felony, and did not plead his prior attainer.

2. On an indictment against two, charging them with a joint offence, either may be found guilty; but they cannot be found guilty separately of separate parts of the charge. If they are found guilty separately, upon a pardon or *nolle prosequi* as to the one who stands second upon the verdict, judgment may be given against the other. *Rex v. Hempstead* and another.

JURISDICTION.
See ADMIRALTY.

1. An indictment for seducing an artificer was found at the general sessions of oyer and terminer and general session of the peace for Middlesex, and was tried at the Old Bailey. The Judges held, that the statutes 5 G.1 c.27. and 23 G.2. c.18. gave no authority to prefer such an indictment at such a sessions, and judgment awarded accordingly. See now the 5 G.4. c.97. *Rex v. Hewitt.*

2. Indictments were found against a prisoner at the quarter sessions for the North Riding of Yorkshire, and transmitted to the assizes by the justices at session. Held, that although the indictments were not removed by *certiorari*, the Judge of assize should have tried the prisoner on these indict-
JURISDICTION — continued.
ments, and that he was improperly discharged by procla-
mation without such trial. Rex v. Wetherell. Page 381

JURY.

See Grand Jury.

If a juryman is taken ill, so as to be incapable of attending
through the trial, the jury may be discharged, and the pri-
soner tried de novo, or another juryman may be added to
the eleven; but in that case the prisoner should be offered
his challenges over again as to the eleven, and the eleven
should be sworn de novo. Rex v. Edwards. 224

KING'S EVIDENCE:

A king's evidence is not entitled, as matter of right, to be ex-
empt from being prosecuted for other offences at the same
assizes at which he has been a witness for the Crown. Rex
v. Lee. 361
Rex v. Brunton. 454

LARCENY.

1. Where an indictment described a bank note as signed by
A. H. for the Governor and Company of the Bank of Eng-
land, conviction held bad, there being no evidence of A. H.'s
signature. Describing a bank note "as a certain note com-
monly called a bank note," is not such a description as will
warrant a conviction on 2 G. 2. c. 25. for stealing it. Rex v.
Craven. 14

2. Leaden images on pedestals fixed in the ground, near a
summer-house, and the summer-house being in an enclosed
field (but not within the same enclosure as the house) are
not within 4 G. 2. c. 32. Rex v. Richards and another. 28

3. A person employed in the post-office, at the time of taking
or secreting a letter, is not within the second section of 7 G. 3.
c. 50.; which makes it larceny to steal a letter out of the
post-office. Rex v. Pooley. 31

4. Stealing calico placed to be printed, &c. in a building made
use of by a calico printer for printing, drying, &c. Held
that in order to support the capital charge, it was necessary
to prove that the building from which the calico was stolen
was made use of either for printing or drying calico. Rex
v. Dixon and others. 53

5. A summer-house used occasionally for tea and refreshment
within the same inclosure as the house, though at the dis-
tance of about half a mile, is a building within the 4 G. 2.
LARCENY—continued.

6. If the master and owner of a ship steals some of the goods delivered to him to carry, it is not larceny in him unless he took the goods out of their package; nor, if larceny, would it be an offence within 24 G.2. c.45. Rex v. Madox. 92

7. The master of a Prussian vessel captured by a British ship and carried into the port of Weymouth, held not to be guilty of larceny in taking goods from the vessel under the particular circumstances, there being no evidence that he took them for the purpose of converting them to his own private use. Rex v. Van Muyen. 118

8. Where property, which the prosecutors had bought, was weighed out in the presence of their clerk and delivered to their carter’s servant to cart, who let other persons take away the cart and dispose of the property for his benefit jointly with that of the other persons; held that the carter’s servant, as well as the other persons, was guilty of larceny at common law. Rex v. Harding and others. 125

9. The prisoner pretending to be the servant of a person who had bought a chest of tea deposited at the Company’s warehouse, got a request paper and permit for the chest, and took it away with the assent of a person in the India Company’s service, who had the charge of it. The Judges on a case reserved held this felony. Rex v. Hench. 163

10. Stealing reissuable notes after they have been paid, and before they have been reissued, does not subject the party to an indictment on the 2 G.2. c.25. for stealing notes; but he may be indicted for stealing the paper with valuable stamps upon it. Rex v. Clark. 181

11. Indictment on 5 G.3. c.14. s.1. for entering an enclosed park and taking fish bred, kept, and preserved there in the river Kent running through the park. It appeared that the park was walled round, except where the river entered and passed out, and that there were fences to keep in the deer; that there was nothing to keep in the fish; that they were not known to breed there; that nothing was done to stock the river; but that persons were never suffered to angle in the park without leave. Held, that this was not a place where fish were to be considered as "kept, bred, or preserved," within the meaning of this act; and therefore conviction wrong. Rex v. Carradice and another. 905
LARCENY—continued.

12. The prisoner received a check from Sir T. P. to buy exchequer bills; he carried it to the bankers, got the cash, and embezzled part. He was indicted for stealing: held, that as there was no fraud to induce Sir T. P. to deliver the check, it was not larceny, although the prisoner intended to misapply the property when he took it, and misapplied it accordingly. Held, that as Sir T. P. never had possession of the money received at the bankers, but by the hands of the prisoner, the indictment could not be supported. *Rex v. Walsh.* Page 215

13. If the ownership of goods is parted with, it is no felony, though the owner has been induced to part with them by a fraudulent representation. *Rex v. Adams.* 225

14. A servant clandestinely taking his master's corn, though to give to his master's horses, is guilty of larceny. *Rex v. Morfit* and another. 307

15. If a bag of wheat is delivered to a warehouseman for safe custody, and he takes all the wheat out of the bag and disposes of it, it is larceny. *Rex v. Brazier.* 337


17. An indictment for stealing goods may, under the 55 G.3. c. 197., state them to be the goods of the overseers of the poor for the time being of the parish of A.; for this will import that they belonged, at the time of the theft, to the persons who were the then overseers. *Rex v. Went.* 359

18. Cutting off part of a sheep while it is alive with intent to steal it, will support an indictment for killing with an intent to steal, if the cutting off must occasion the sheep's death. *Rex v. Clay.* 387

19. An indictment for stealing a sheep or any other cattle, must mention or ascribe to it some value; for unless the value exceeds twelve pence, it will not be a capital offence. *Rex v. Peel.* 407

20. In larceny the goods of a ready furnished lodging must be described as the lodger's goods, not as the goods of the original owners. *Rex v. Belstead.* 411

21. If there is a plan to cheat a man of his property under colour of a bet, and he parts with the possession only to deposit as a stake with one of the confederates; the taking by such confederates is felonious. *Rex v. Robson* and others. 413

22. An indictment for horse-stealing, must give the animal
LARCENY — continued.

one of the descriptions mentioned in the statute. Therefore, an indictment for stealing a colt, not saying whether it was a horse or mare, will not be sufficient to take away clergy; but the prisoner may be convicted for simple larceny. *Rex v. Beaney.* Page 416

23. A lodger who invites a man to his room, and then steals his goods to the value of forty shillings, when not about his person, is liable to be found guilty of stealing in a dwelling-house. *Rex v. Taylor.* 418

24. Clandestinely taking away articles to induce the owner (a girl) to fetch them, and thereby to give the prisoner an opportunity to solicit her to commit fornication with him, is not felonious. *Rex v. Dickinson.* 420

25. Going towards a place where a felony is to be committed, in order to assist in carrying off the property, and assisting accordingly, will not make a man a principal, if he was such a distance at the time of the felonious taking as not to be able to assist in it. *Rex v. Kelly.* 421

26. If the owner part with the possession of goods for a special purpose, and the bailee, when that purpose is executed, neglects to return them, and afterwards disposes of them, if he had not a felonious intention when he originally took them, his subsequent withholding and disposing of them, will not constitute a new felonious taking, or make him guilty of felony. *Rex v. Banks.* 441

27. If a man steal his own goods, from his own bailee, though he has no intent to charge the bailee, but his intent is to defraud the king; yet, if the bailee had an interest in the possession, and could have withheld it from the owner, the taking is a larceny. *Rex v. Wilkinson* and another. 470

28. If a part owner of property steals it from the person in whose custody it is, and who is responsible for its safety, he is guilty of larceny. *Rex v. Bramley.* 478

29. An indictment for stealing 10l. in monies numbered is not sufficient. Some of the pieces of which that money consisted should be specified. *Rex v. Fry and another.* 482

30. Indictment for larceny, if the thing stolen be described as a bank post bill, and be not set out, the Court cannot take judicial notice that it is a promissory note, or that it is such an instrument as, under the statute 2 G. 2. c. 25., may be the subject of larceny though it be described as made for the payment of money. *Rex v. Chard.* 488
LARCENY—continued.

31. An indictment for stealing a dead animal should state that it was dead; for upon a general statement that a party stole the animal, it is to be intended that he stole it alive. Rex v. Edwards. Page 497

LETTERS.
See Post Office. Threatening Letters.

LODGINGS.

1. In larceny the goods of a ready furnished lodging must be described as the lodger’s goods, not as the goods of the original owners. Rex v. Belstead. 411

2. A lodger who invites a man to his room, and there steals his goods to the value of 40s. when not about his person, is liable to be found guilty of stealing in a dwelling-house. The goods of a lodger’s guest are under the protection of the dwelling-house. Rex v. Taylor. 418

3. Indictment for stealing goods in a lodging room let by contract to the prisoner to be used with the lodging aforesaid, imparts an entire letting to the prisoner alone, and is not supported if it appear that others have a concurrent use of the room and goods. Qu. If such a lodger be within the statute of 3 & 4 W. & M. c. 9. Rex v. Bew. 480

LORD ELLENBOROUGH’S ACT.

1. Where a cutting is inflicted by an instrument capable of cutting, the case is within the 43 G. 3. c. 58., though the instrument be not intended for cutting, nor ordinarily used to cut, but generally used to force open drawers, doors, &c.; and though the intention was not to cut, but to inflict some other mischief. Rex v. Hayward. 78

2. If the instrument be fired so near, and in such a direction, as to be likely to kill or do other grievous bodily harm, and with intent that it should do so, the case will be within the 43 G. 3. c. 58., though it is loaded with powder and paper only. Rex v. Kitchen. 95

3. If several are out for the purpose of committing a felony, and, upon an alarm, run different ways, and one of them main a pursuer to avoid being taken, the others are not to be considered principals in such act. Rex v. White and another. 99

4. A striking over the face with the sharp or claw part of a hammer held to be a sufficient cutting within the 43 G. 3. c. 58. Rex v. Atkinson. 104

5. Upon a trial on the coroner’s inquest for the murder of a
LORD ELLENBOROUGH'S ACT—continued.

6. Prisoner was convicted capitally at the Admiralty sessions for maliciously stabbing, upon the 43 G. 3. c. 58. Held, that as the statute only made the offence capital if committed in England or Ireland, it was not so if committed at sea. But see now the 1 G. 4. c. 90. s. 1. Rex v. Amarro. 286

7. Indictment on the 43 G. 3. c. 58. The first three counts alleged, in the usual form, that J. S. did shoot at A. B.; and went on to state that M. and N. were present, aiding and abetting; the second and third counts varying from the first only in the intent; the three last counts varying in like manner as to the intent, stated, that an unknown person, &c., did shoot at A. B., &c., and that J. S. and M. and N. were present aiding and abetting the said unknown person, the felony aforesaid, in manner and form aforesaid, to do and commit, and were then and there knowing of and privy to the committing of the said felony, against the form, &c., but omitted to charge them with being feloniously present, &c. Held, that J. S. was properly convicted on this indictment, although the jury negatived his being the person who fired the pistol at A. B. Rex v. Towe and others. 314

8. A woman may be found guilty of concealment within the 43 G. 3. c. 58. s. 3., though, from appearances, it is probable the child was still born, and although the birth was probably known to an accomplice. Rex v. Cornwall. 336

9. Indictment on the 43 G. 3. c. 58. for cutting J. S. The evidence was, that the wound was inflicted by stabbing and not cutting; the Judges held the conviction wrong. Rex v. M'Dermot. 356

10. Cutting a child's private parts so as to enlarge them for the time, may be considered as doing her grievous bodily harm, and done with that intent, though the hymen is not injured, the incision is not deep, and the wound eventually is not dangerous. Rex v. Cox. 362

11. Indictment on the 43 G. 3. c. 58. The intent laid in several counts of the indictment was to murder, to disable, or do some grievous bodily harm. The intent found by the jury was to prevent being apprehended. Held, that the conviction was bad; that if the intent is to prevent the prisoner's apprehension, it must be so laid. Rex v. Duffin and another. 365
LORD ELLENBOROUGH'S ACT—continued.

12. Indictment on the 43 G. 3. c. 58., for attempting to discharge a loaded blunderbuss at J. S. Held, that in order to constitute the offence of attempting to discharge loaded fire-arms, they must be so loaded as to be capable of doing the mischief intended. *Rex v. Carr.* Page 377

LUNATICS.
See *Insanity.*

MAIMING CATTLE.

1. Wounding a horse out of malice to the owner is an offence within the Black Act, 9 G. 1. c. 22., though the wound is not permanent, and the horse is likely to recover. *Rex v. Haywood.* 16

2. An indictment on the 9 G. 1. c. 22. must state the species of cattle wounded or injured; to state that the prisoner maimed *certain cattle* is not sufficient. If the statement is that he maimed certain cattle, viz. a mare, there must be evidence that the animal maimed is of the description specified. *Rex v. Chalkley.* 258

3. Maliciously killing, &c. cattle within 9 G. 1. c. 22. s. 1. Held, that the malice must be against the owner of the cattle, and not against a servant or relation of the owner. *Rex v. Austen.* 490

MALICE.

1. In an indictment on the 9 G. 1. c. 22., for setting fire to a hay-stack, it is no answer to the charge that the prisoner had no malice or spight to the owner of the stack. It is not necessary to aver in the indictment that the stack "was thereby burnt." *Rex v. Salmon.* 26

2. *Cutting down* a tree is sufficient to bring the case within the 9 G. 1. c. 22., though the tree is not thereby totally destroyed. To bring the case within the 9 G. 1. the act must be done from malice against the owner. *Rex v. Taylor.* 373

3. To constitute an offence under the 52 G. 3. c. 143., for shooting at a vessel of the customs, and also at an officer of the same on the high seas, the shooting must be malicious. *Rex v. Reynolds* and another. 465

4. Maliciously killing, &c. cattle, within 9 G. 1. c. 22. s. 1. Held, that the malice must be against the owner of the cattle, and not against a servant or relation of the owner. *Rex v. Austen.* 490
MANSLAUGHTER.
2. After mutual blows between the prisoner and the deceased, the prisoner knocked the deceased down, and, after he was upon the ground, stamped upon his stomach and belly with great force. Held manslaughter only. *Rex v. Ayes.* 166
3. The prisoner was convicted of manslaughter, in *February*, 1819, and had his clergy. In *April* following he was indicted for the murder of another person, but again found guilty of manslaughter; the stroke in both cases was in the same day and at the same time. Held, that the former allowance of clergy protected him against any punishment on the second verdict. *Rex v. Jennings.* 388

MANUFACTURES.
1. Stealing calico placed to be printed, &c. in a building made use of by a calico printer for printing, drying, &c. Held, that in order to support the capital charge, it was necessary to prove that the building from which the calico was stolen was made use of either for printing or drying calico. *Rex v. Dixon* and others. 59
2. Taking out and carrying away a part of a frame without which the frame will not work, *is damaging* the frame within the 28 *G.3. c.55. s.4.*, although the part taken out was not injured, and the replacing it would again make the frame perfect. *Rex v. Tacey.* 452
3. Cutting or destroying part of a *loom held* not to be within the statute 22 *G.3. c.40. s.1.* The charge was of an intent to cut and destroy certain *tools employed* in the woollen trade. *Rex v. Hill* and others. 483

MARRIAGE.
See BIGAMY.
The age of consent within the provision of 1 *Jac.1. c.11. s.3.* is fourteen years in a man, and twelve in a woman. *Rex v. Gordon.* 48

MISDEMEANOR.
See UTTERING, 20.
1. Upon an indictment for the misdemeanor under the 22 *G.3.c.58.* the punishment should be fine, imprisonment, or whipping, imprisonment and fine, or imprisonment and whipping cannot be inflicted. *Rex v. Howell* and another. 253
2. If an indictment for perjury in taking a false oath before a
MISDEMEANOR—continued.
surrogate to procure a marriage licence, only charges the
taking the false oath without stating it was for the purpose
of procuring a licence, or that a licence was procured there-
by, the party cannot be punished thereon as for a misde-
meanor; but if the purpose is to obtain a licence, and the
licence is obtained and the marriage had, the party may be
indicted as for a misdemeanor. *Rex v. Foster.* Page 459

MURDER.

1. Killing in an affray. *Qu. Whether, under the circumstances,
it amounted to murder. *Rex v. Rankin* and others. 43

2. *Qu.* Whether the award of dissection and anatomising in
pursuance of 25 G. 2. c. 37. is an essential part of the sen-
tence to be pronounced by the Judge upon a convicted
murderer? *Rex v. Fletcher.* 58

3. If *A.* stands with an offensive weapon in the doorway of a
room wrongfully to prevent *J. S.* from leaving it and others
from entering, and *C.*, who has a right in the room, strug-
gles with him to get his weapon from him, upon which *D.*, a
comrade of *A.*’s stabs *C.*, it will be murder in *D.* if *C.* dies.
*Rex v. Longden.* 228

4. In murder it is not essential to award the day of execution
in the sentence the statute in that respect being only di-
rectory; and if a wrong day is awarded it will not vitiate
the sentence if the mistake is discovered and set right dur-
ing the assizes. *Rex v. Wyatt.* 230

5. A British subject is indictable under the 33 Hen. 8. c. 23.,
for the murder of another British subject, though the murder
was committed within the dominion of a foreign state. *Rex
v. Sawyer.* 294

6. Killing an officer will be murder, though he has no war-
rant, and was not present when the felony was committed,
but takes the party upon a charge only; and though that
charge does not, *in terms,* specify all the particulars neces-
sary to constitute the felony. *Rex v. Ford.* 329

7. Indictment for murder. If the death proceeds from suffo-
cation, from the swelling up of the passage of the throat,
and such swelling proceeds from wounds occasioned by
forcing something into the throat; it will be sufficient to
state in the indictment that the things were forced into the
throat, and the person thereby suffocated; the process im-
mediately causing the suffocation, *viz.* the swelling, need not
be stated. *Rex v. Tye.* 345

8. Indictment for the murder of a bastard child, held that a
TO THE PRINCIPAL MATTERS.

MURDER — continued.

bastard was improperly described by his mother's name, he not having gained that name by reputation. *Rex v. Cark.*

9. If a man encourage another to murder himself, and is present abetting him while he does so, such person is guilty of murder as a principal. If two encourage each other to murder themselves together, and one does so, but the other fails in the attempt upon himself, he is a principal in the murder of the other. But if it be uncertain whether the deceased really killed himself, or whether he came to his death by accident before the moment when he meant to destroy himself, it will not be murder in either. *Rex v. Dyson.*

523

NAVY BILL.

See Order, 3.

OATH.

A false oath before a surrogate to procure a marriage licence will not support a prosecution for perjury. *Rex v. Foster.*

459

OFFENCES ABROAD.

See Admiralty.

OFFENSIVE WEAPON.

A *stick* held to be an "offensive weapon" within the statute 7 G. 2. c. 21., though not of extraordinary size, and though it might in general be used as a walking stick. See now 4 G. 4. c. 54. s. 5. which repeals the former statute, and does not require that the assault should have been made with any weapon. *Rex v. Johnson.*

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OFFICERS.

Killing an officer will be murder, though he has no warrant, and was not present when the felony was committed, but takes the party upon a charge only; and though that charge does not, in terms, specify all the particulars necessary to constitute the felony. *Rex v. Ford.*

329

ORDER.

1. Indictment held to be bad on the ground that the instrument given in evidence was not, as stated, an order for money. *Rex v. Cartwright.*

106

2. The prisoner drew a bill, "Please to pay the bearer on demand 15l.,” and signed it with his own name, but it was not addressed to any one: there were forged upon this instru-
ORDER—continued.

ment, when uttered, the words and signature, "Payable at Mssrs. Masterman & Co., White Hart Court, Wm. M'Inerheny." M'Inerheny kept cash at Masterman & Co.'s, who were bankers. The Judges held this was not an order for payment of money, there being no special averments in the indictment that this was intended for an order, or that Masterman & Co. were bankers. Rex v. Ravenscroft. Page 161

3. The prisoner drew a bill upon the Treasurer of the Navy, payable to blank or order, and signed it in the name of a navy surgeon. Held that to constitute an order for payment of money there must be some payee; a direction to pay to blank or order is not sufficient. Rex v. Richards. 193 Rex v. Randall. 195

4. A justice's order was forged, stating that a dead body had been cast on shore in the parish of A., that I. S. had made oath before the justice that he had laid out 3l. 5s. in the burying him, and requiring the treasurer to pay him the sum. Held, that this was a warrant or order for the payment of money within the 7 G. 2., though the order did not state that I. S. was a churchwarden &c. Rex v. Froud. 389

OVERSEER.

1. An overseer is not indictable for not relieving a pauper, unless there is an order for his relief, except in case of immediate emergency where there is not time to get an order. Rex v. Meredith and another. 46 See also Rex v. Booth. 47 notis.

Rex v. Warren. 48 notis.

2. An indictment for stealing goods may, under the 55 G. 3. c. 137., state them to be the goods of the overseers of the poor for the time being of the parish of A., for this will import that they belonged, at the time of the theft, to the persons who were the then overseers. Rex v. Went. 359

OWNERSHIP.

See Indictment, 14. 31, 32. 43. 47. Joint Property.

PAID NOTE.

1. A bank clerk employed to post into the ledger and read from the cash-book, Bank-notes from 100l. in value up to a 1000l. and who in the course of that occupation had, with other clerks, access to a file, upon which paid notes of every description were filed; took from that file a paid bank note for 50l. Held, that the prisoner could be considered as en-
PAID NOTE — continued.

trusted with the possession of this note, so as to bring him within the 15 G. 2. c. 13. s. 12. Rex v. Bakewell. Page 35

2. Stealing re-issuable notes after they have been paid, and before they have been re-issued, does not subject the party to an indictment on the 2 G. 2. c. 25. for stealing notes; but he may be indicted for stealing the paper with valuable stamps upon it. Rex v. Clark. 181

3. Secreting a letter containing country bank-notes paid in London and not reissued, holden to be within the statute 7 G. 3. c. 50. Rex v. Ranson. 282

PARDON.

1. Held that a person who had been convicted of grand larceny, sentenced to transportation for seven years, confined in the hulks and discharged at the end of seven years, was a competent witness, such confinement operating as a statute pardon; and that having escaped twice during such confinement for a few hours each time, did not destroy the effect of it. Rex v. Badcock and others. 248

2. Indictment on the 15 G. 2. c. 31. for delivering instruments to a prisoner to facilitate his escape from gaol. Held that the delivering is within the act, though the prisoner has been pardoned of the offence of which he was convicted on condition of transportation. Rex v. Shaw and others. 526

PAUPER.

See Overseer, 1.

PEER.

An Irish peer ought not to serve upon a grand jury unless he is a member of the House of Commons. 117

PERJURY.

1. If, in the indictment, the oath is stated to have been at the assizes, before Justices assigned to take the said assizes, before A. B., one of the said Justices, the said Justices then and there having power, &c., it will be a fatal variance if the oath was administered when the Judge was sitting under the commission of Oyer and Terminer and Gaol delivery. Rex v. Lincoln. 421

2. A false oath before a surrogate to procure a marriage licence, will not support a prosecution for perjury. Rex v. Foster. 459

PERSON.

See Stealing from the Person.
PERSON, DESCRIPTION OF.

See Indictment, 19. 26. 42. 45.

If the charge against an accessory is, that the principal felony was committed by persons unknown, it is no objection that the same grand jury have found a bill imputing the principal felony to J. S. Rex v. Bush. Page 372

PERSONATING.

1. The prisoner applied at Greenwich Hospital for prize-money in the name of J. B. J. B. was dead, and was supposed to be so at the hospital, and the prisoner did not obtain the money; on indictment for personating, &c. held, that the 54 G. 3. c. 93. s. 89. applied, although the seaman was dead. Rex v. Martin. 324

2. The prisoner personated one Cuff who was dead, and whose prize-money had been paid to his mother. The Judges held, that that did not vary the prisoner’s guilt; and that he was rightly convicted on the 54 G. 3. c. 93. s. 89. Rex v. Cramp. 327

3. Indictment on 57 G. 3. c. 127. s. 4., for personating the name of a seaman. To constitute this offence, a person entitled, or really supposed to be entitled, to wages, must be personated; personating a man who never had any connection with the ship is not an offence within the act. When there never was such a person belonging to the ship as the person described by the indictment as the person personated, the prisoner cannot be convicted, though there was a person belonging to the ship of nearly the same name whom the prisoner meant to personate. Rex v. Tannet. 351

4. All persons aiding and abetting the personating a seaman are principals; the offence is not confined to the person only who personates the seaman. Rex v. Potts. 353

PIGS.

Pigs held to be cattle within the meaning of the 9 G. 1. c. 22. Rex v. Chapple. 77

PIRACY.

Piratically stealing a ship’s anchor and cable is a capital offence by the marine laws and triable under the 28 H. 8., the 39 G. 2. c. 37. not extending to this case. The stealing is equally an offence, though the master of the vessel concur in it, and though the object is to defraud the underwriters and not the owner. Rex v. Curling—and others. 128

PLACE, DESCRIPTION OF.

See Indictment, 46.
POACHING.
See Game.

POST OFFICE.
See Evidence, 15.
1. If a person employed in the post-office secretes a letter containing a draft, it is not an offence within the 7 G. 3. c. 50. s.1., if the draft (from not being duly stamped) was not available. Rex v. Pooley. Page 12
2. A person employed in the post-office at the time of taking or secreting a letter, is not within the 2nd s. of 7 G. 3. c. 50., which makes it larceny to steal a letter out of the post-office. Rex v. Pooley. 31
But see Rex v. Brown. 32 notis.
3. An indictment on the 7 G. 3. c. 50. s.1., stating the prisoner to have been employed in two branches of the post-office, proof of his having been employed in either held sufficient. If the letter embezzled is described as having contained several notes, proof of its having contained any one of them is sufficient. Rex v. Ellins. 188
4. Secreting a letter containing country bank notes paid in London and not reissued, holden to be within the 7 G. 3. c. 50. Rex v. Ranson. 292

POOR, NEGLECTING.
See Overseer, 1.

POWER OF ATTORNEY.
A power of attorney is a deed within the meaning of the 2 G. 2. c. 25. s.1. Rex v. Lyon. 255

PRACTICE.
1. Though the counsel for the prosecution has closed his case, and the prisoner's counsel points out a defect, the Judge is at liberty to put what question he thinks fit to answer the objection. Rex v. Remnant. 136
2. A commissioner of gaol delivery may, at his discretion, discharge or continue on their commitments in gaol, prisoners committed for trial, but against whom the witnesses do not appear, being bound over to a subsequent sessions. 173
3. On an indictment against a receiver after conviction of the principal, it is no objection to the record of conviction of the principal, that it appears therein that the principal was asked if he was (not is) guilty; that it does not state issue was joined, or how the jurors were returned; and that the
PRACTICE — continued.

only award against the principal is that he is in mercy, &c. Rex v. Baldwin. Page 241

4. Indictments were found against a prisoner at the quarter sessions for the North Riding of Yorkshire, and transmitted to the assizes by the justices at sessions. Held, that although the indictments were not removed by certiorari, the Judge of assize should have tried the prisoner on these indictments, and that he was improperly discharged by proclamation without such trial. Rex v. Wetherell. 381

PRINCIPAL AND ACCESSORY.

1. Persons privy to the uttering of a forged note, by previous concert with the utterer, but who were not present at the time of uttering, or so near as to be able to afford any aid or assistance, held not principals, but accessories before the fact. Rex v. Soares and others. 25

2. If a person knowingly delivers a forged bank note to another, who knowingly utters it accordingly, the prisoner who delivered such note to be put off, may be convicted of having disposed and put away the same, on the statute 15 G.2. c.13. s.11. Rex v. Palmer and another. 72

3. If several are out for the purpose of committing a felony, and, upon an alarm, run different ways, and one of them maims a pursuer to avoid being taken, the others are not to be considered principals in such act. Rex v. White and another. 99

4. Held not to be sufficient to make a person a principal in uttering a forged note, that he came with the utterer to the town where it was uttered, went out with him from the inn at which they had put up a little before he uttered it, joined him again in the street a short time after the uttering, and at some little distance from the place of uttering, and ran away when the utterer was apprehended. Rex v. Davis and another. 113

5. The prisoners, Job Else and Sarah Else, were indicted for uttering a bad shilling to M. B., and having another bad shilling in their possession at the time. The uttering was by the woman alone in the absence of the man. Held, that the man was not liable to be convicted with the actual utterance, although proved to be the associate of the woman on the day of the uttering, and to have had other bad money for the purpose of uttering. Held, that the woman could not be convicted of the second offence of having other
TO THE PRINCIPAL MATTERS.

PRINCIPAL AND ACCESSARY — continued.

bad money in her possession at the time, on the evidence of
her associating with a man not present at the uttering, but
having large quantities of bad money about him for the pur-
pose of uttering. *Rex v. Else* and another. Page 142

6. If several plan the uttering of a forged order for payment of
money, and it is uttered accordingly by one in the absence
of the others, the actual utterer is alone the principal. *Rex
v. Badcock* and others. 249

7. A wife, by her husband’s order and procuration, but in his
absence, knowingly uttered a forged order and certificate
for the payment of prize money; held that the presumption
of coercion at the time of uttering did not arise, as the hus-
band was absent; and that the wife was properly convicted
of the uttering and the husband of procuring. *Rex v. Morris
and another.* 270

8. If several act in concert to steal a man’s goods, and he is
induced by fraud to trust one of them in the presence of the
others with the possession of such goods, and another of them
entices him away, that the man who has his goods may carry
them off, all are guilty of felony. The receipt by one is a
felonious taking by all. *Rex v. Standley* and others. 305

9. If several agree to commit a burglary, but one communi-
cates the intent to an officer, that he may take the other two,
and the officer is upon the watch accordingly, the person
who has made that communication to the officer will not be
*particeps criminis* in the burglary, though he is present when
it is committed, and pretends to assist the other two; but, in
fact, expedites their apprehension. Nor will it make any
difference, though his object in detecting is to obtain for
himself (by previous agreement with the officer) part of a
reward that will be payable on conviction. *Rex v. Dannelly
and another.* 310

10. *H.* and *S.* broke open a warehouse and stole thereout 13
firkins of butter, &c. which they carried along the street 30
yards; they then fetched the prisoner who was apprised of
the robbery, and he assisted in carrying away the property;
he was indicted for the theft as a principal, and convicted;
conviction held wrong, that he was only an accessory, and
not a principal. *Rex v. King.* 332

See also *Rex v. M'Makin* and another. 333, *notis.*

11. Privately stealing in a shop, &c. If several are acting to-
gether, some in the shop &c., and some out, and the property,
PRINCIPAL AND ACCESSORY — continued.

is stolen by the hands of one of those who are in the shop, those who are on the outside are equally guilty as principals, and equally deprived of clergy. But as to clergy, see now 4 G.4. c.58. Rex v. Gogerly and others. Page 343

12. All persons aiding and abetting the personating a seaman are principals; the offence is not confined to the person only who personates the seaman. Rex v. Potts. 353

13. Persons not present, nor sufficiently near to give assistance, are not principals. Rex v. Stewart and another. 363

14. Going towards a place where a felony is to be committed, in order to assist in carrying off the property, and assisting accordingly, will not make a man a principal, if he was such a distance at the time of the felonious taking as not to be able to assist in it. Rex v. Kelly. 421

15. If several combine to forge an instrument, and each executes by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals. Rex v. Bingley and others. 446

16. If a man encourages another to murder himself, and is present abetting him while he does so; such person is guilty of murder as a principal. If two encourage each other to murder themselves together, and one does so, but the other fails in the attempt upon himself, he is a principal in the murder of the other. But if it be uncertain, whether the deceased really killed himself, or whether he came to his death by accident before the moment when he meant to destroy himself, it will not be murder in either. Rex v. Dyson. 523

PRISON BREACH.

1. Prison-breach, or rescue, is a common law felony, if the person breaking prison, or rescued, is a convicted felon; and it is punishable as a common law felony by imprisonment, and, under 19 G.3. c.74. s.4., by not more than three times whipping. Rex v. Haswell. 458

2. Throwing down loose bricks at the top of a prison wall, placed there to impede escape and give alarm, is prison breach, though they are thrown down by accident. Ibid.

3. Indictments on the 16 G.2. c.31. for delivering instruments to a prisoner to facilitate his escape from gaol: held that the delivering is within the act, though the prisoner has been pardoned of the offence of which he was convicted; on
TO THE PRINCIPAL MATTERS.

PRISON BREACH — continued.
condition of transportation; and a party may be convicted, though there is no evidence that he knew of what specific offence the person he assisted had been convicted. *Rex v. Shaw* and others. Page 526

PRISONER AT WAR.
The offence of aiding a prisoner at war to escape is not complete, if such prisoner is acting in concert with those under whose charge he is, merely to detect the defendant, and has no intention to escape. *Rex v. Martin.* 196

PRISONERS.
A commissioner of gaol delivery may at his discretion, discharge or continue on their commitments in gaol, prisoners committed for trial, but against whom the witnesses do not appear, being bound over to a subsequent session. 173

PRIVATELY STEALING FROM THE SHOP.
Privately stealing in a shop, &c. If several are acting together, some in the shop, &c. and some out, and the property is stolen by the hands of one of those who are in the shop, those who are on the outside are equally guilty as principals and equally deprived of clergy. But as to clergy, see now the 4 G. 4. c. 55. *Rex v. Gogerly* and others. 343
See *Rex v. McKenzie.* 429

PROBATE.
On indictment for forging a will, probate of that will un¬repealed is not conclusive evidence of its validity, so as to be a bar to the prosecution. *Rex v. Buttery* and another. 342
*Rex v. Gibson.* 343 notis.

PROMISSORY NOTE.
See Forbery, 25. 34.

PUNISHMENT.
1. Upon an indictment for the misdemeanor under the 22 G. 3. c. 58. the punishment should be fine, imprisonment, or whipping, imprisonment and fine, or imprisonment and whipping cannot be inflicted. *Rex v. Howell* and another. 253

2. Under the 39 G. 3. c. 85. it is not necessary to pass sentence of transportation; any less punishment to which felony is liable may be inflicted. *Rex v. Hudson.* 285

3. An act, from its passing, repeals a former act which ousted clergy from a certain offence, and imposes a new punish-
PUNISHMENT — continued.

ment on the same offence from and after its passing. An
offence committed before the passing of the new act, but not
tried till after, is not liable to be punished under either of
these statutes. Rex v. McKenzie and another. Page 429

4. A person convicted under 57 G. 3. c. 90. of being found
armed in the night in a forest, chase, park, wood, or plant-
tation, may be sentenced to hard labour by 3 G. 4. c. 114., for
all these places are either open or enclosed grounds. Rex
v. Pankhurst.

RAPE.

1. Upon an indictment for a rape, the woman is not compel-
able to answer, whether she has not had connexion with
other men or with a particular person named; nor is evi-
dence of her having had such connexion admissible. Rex
v. Hodgson.

2. Having carnal knowledge of a married woman under cir-
cumstances which induce her to suppose it is her husband.
Held, by a majority of the Judges, not to amount to a rape.
Rex v. Jackson.

3. If something occurs to create an alarm to the party while
he is perpetrating the offence, it may be for the jury to say
whether he left the body re infectá because of the alarm, or
whether he left it because his purpose was accomplished.
Rex v. Burrows.

RECEIPT.

A memorandum importing that A. B. had paid a sum to C. D.,
but not importing any acknowledgment from C. D. of his
having received it, is not such a receipt as the 2 G. 2. c. 25. c. 1.
makes it capital to forge or utter. Rex v. Harvey.

RECEIVERS.

See Punishment, 1.

1. On an indictment against a receiver after conviction of the
principal, it is no objection to the record of conviction of
the principal, that it appears therein that the principal was
asked if he was (not is) guilty; that it does not state issue
was joined, or how the jurors were returned; and that the
only award against the principal is that he be in mercy.

2. A. G. was convicted of stealing promissory notes, and her
husband of receiving them. On case, the Judges thought
the receiving not indictable, and that the conviction was
wrong. Rex v. Gase and another.
TO THE PRINCIPAL MATTERS.

RECORD.

See Receivers, 1.

RELATION.

1. Cutting off part of a sheep whilst it is alive with intent to steal it, will support an indictment for killing with intent to steal, if the cutting off must occasion the sheep's death. Rex v. Clay. Page 387

2. The prisoner was convicted of manslaughter, in February, 1819, and had his clergy. In April following he was indicted for the murder of another person, but again found guilty of manslaughter; the stroke in both cases was in the same day and at the same time. Held, that the former allowance of clergy protected him against any punishment on the second verdict. Rex v. Jennings. 388

RELEASE.

1. A release from the holder of a bill of exchange to the supposed acceptor, will make him a competent witness to prove the forgery in an indictment against the drawer, the drawer having received value of the bill from such holder. Rex v. Peacock. 278

Rex v. Young. 280, notis.

2. On an indictment against the payee of a bill for uttering a forged acceptance, the first indorsee is a competent witness, though he has only advanced part of the amount of the bill, and though he releases, during the trial, the person in whose name the acceptance is forged. Held, also, that his release makes the supposed acceptor a competent witness. Rex v. Mott. 433

RESCUE.

1. Rescuing a person under a commitment for burglary, was not a transportable offence before the 1 & 2 G. 4. c. 88., but was punishable only as a felony within clergy at common law. Rex v. Stanley and others. 432

2. Prison breach, or rescue, is a common law felony, if the person breaking prison, or rescued, is a convicted felon; and it is punishable as a common law felony by imprisonment, and, under 19 G. 3. c. 74. s. 4., by not more than three times whipping. Rex v. Haswell. 458

ROBBERY.

1. An indictment for robbery stated, that it was in a field near the King's highway; the robbery was proved, but not near any highway. The Judge held, that the allegation of its
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ROBBERY — continued.

being in a field near the highway was immaterial, for the 3 & 4 W. & M. c. 9. took away clergy, let the robbery be where it might. Rex v. Wardle. Page 9

2. An indictment charged that the prisoner robbed A. B. in the dwelling-house of J. S., the robbery was proved, and that it was in the house, but whose that house was did not appear. On case the Judges held it immaterial, and conviction of the prisoner held right. Rex v. Pye. 9, notis. Rex v. Johnstone. 10, notis.

3. Obtaining money by threatening to charge a man with an unnatural crime and carry him before a magistrate is robbery, if there is any constraint upon his person. Rex v. Cannon and another. 146

4. If the prisoner call a coach to carry the party before a magistrate and the prosecutor gets into it, this is a constraint upon his person. Ibid.

5. Fear of loss of character and service upon a charge of sodomitical practices is sufficient to constitute robbery, though the party has no fear of being taken into custody, or of punishment. Rex v. Egerton. 375

6. Parting with property upon the charge of an unnatural crime will not make the taking a robbery, if it is parted with, not from fear of loss of character, but for the purpose of prosecuting. Rex v. Puller. 408

7. Snatching an article from a man will constitute robbery, if it is so attached to his person or clothes as to afford resi-

SACRILEGE.

The provisions of 1 Ed. 6. c. 12. s. 10., are not confined to goods used for divine service; they extend to articles kept in the church to keep it in repair. Rex v. Rourke. 386

SAILORS.

A sailor in a sick hospital, where he had been for thirty days, and therefore not entitled to pay, nor liable for what he then does to a court-martial; held to be a person serving in His Majesty’s forces by sea within 37 G. 3. c. 70., so as to make the seducing him an offence within that act. Rex v. Tierney. 76

SEAMEN.

See Personating.
SEDUCING ARTIFICERS.
See Artificers.

SEDUCING SAILORS.
See Sailors.

SENTENCE.
1. *Qu.* Whether the award of dissection and anatomising in pursuance of 25 G. 2. c. 37., is an essential part of the sentence to be pronounced by the Judge upon a convicted murderer. *Rex v. Fletcher.* Page 58

2. In murder, it is not essential to award the day of execution in the sentence, the statute in that respect being only directory; and if a wrong day is awarded, it will not vitiate the sentence, if the mistake is discovered and set right during the assizes. *Rex v. Wyatt.* 230

SERVANT.
See Indictable Offences, 1. Embezzlement, 2, 3, 7, 8, 10.

SHEEP STEALING.
Cutting off part of a sheep whilst it is alive with intent to steal it, will support an indictment for killing with intent to steal, if the cutting off must occasion the sheep’s death. *Rex v. Clay.* 387

SHIPS.
See Larceny, 6, 7. Piracy.

SHOOTING AT.
1. Shooting at a person within 43 G. 3. c. 58. If the instrument be fixed so near and in such a direction as to be likely to kill or do other grievous bodily harm, and with intent that it should do so, the case will be within the act though it be loaded with powder and paper only. *Rex v. Kitchen.* 95

2. Indictment on the 43 G. 3. c. 58. The first three counts alleged, in the usual form, that I. S. did shoot at A. B., and went on to state M. and N. were present aiding and abetting. The second and third counts varying from the first only in the intent; the three last counts varying in like manner as to the intent, stated, that an unknown person, &c. did shoot at A. B., &c. and that I. S. and M. and N. were present aiding and abetting the said unknown person, the felony aforesaid, in manner and form aforesaid, to do and commit, and were then and there knowing of and 2 3
SHOOTING AT—continued.

privy to the committing of the *said felony*, against the statute, &c. but omitted to charge them with being *feloniously* present, &c. Held, that I. S. was properly convicted on this indictment, although the jury negatived his being the person who fired the pistol at A. B. *Rex v. Toyne* and others. \[Page 314\]

3. Indictment on 52 G. 3. c. 143., for shooting at a vessel of the customs, and also at an officer of the same, on the high seas. Held, that to constitute the offence under this statute the shooting must be malicious. If a custom-house vessel chase a smuggler and fire into her without hoisting such a pendant and ensign as the 56 G. 3. st. 2. c. 104. s. 8. requires, returning the fire will not be malicious. *Rex v. Reynolds.* 465

4. Upon an indictment for maliciously shooting, if it be questionable whether the shooting was by accident or design, proof may be given that the prisoner at another time intentionally shot at the same person. *Rex v. Voke.* 531

SMUGGLERS.

Indictment on 52 G. 3. c. 143., for shooting at a vessel of the Customs, and also at an officer of the same, on the high seas. If a custom-house officer chase a smuggler and fire into her without hoisting such a pendant and ensign as the 56 G. 3. st. 2. c. 104. s. 8. requires, returning the fire will not be malicious. *Rex v. Reynolds.* 465

SODOMY.

The prisoner forced open a child's mouth and put in his private parts, and proceeded to a completion of his lust. Held, that this does not constitute the offence of sodomy. *Rex v. Jacobs.* 391

STABBING.

1. Prisoner was convicted capitally at the *Admiralty* sessions for maliciously stabbing upon the 43 G. 3. c. 58. Held, that as the statute only made the offence capital if committed in *England* or *Ireland*, it was not so if committed at sea. But see now the 1 G. 4. c. 90. s. 1. *Rex v. Amaro.* 286

2. Indictment on the 43 G. 3. c. 58., for cutting J. S. The evidence was, that the wounds were inflicted by stabbing and not by cutting. The Judges held the conviction wrong. *Rex v. M'Dermot.* 356
TO THE PRINCIPAL MATTERS.

STAMPS, Forgery of.
The offence of uttering a forged stamp will be complete although at the time of uttering, certain parts of the stamp are concealed, but all the parts that are visible are like a genuine stamp, though the part concealed is unlike a genuine stamp. *Rex v. Collicott.* Page 212, 229.

STEALING FROM THE PERSON.
See Larceny, 20.
An indictment on the 48 G. 3. c.129. need not negative the force or fear necessary to constitute robbery; and if it does not, though it may appear that there was such force or fear, the punishment imposed by 48 G.3. may be inflicted. *Rex v. Pearce.* 174
*Rex v. Robinson and another.* 321

SURPLUSAGE.
1. An indictment for a rape stated to have been committed on the 9th of March, 1 G. 4., concluded "against the peace of our said late lord the king." Held, that the word "late" might be rejected as surplusage. *Rex v. Scott.* 415

2. Indictment, tried summer assizes 1 G. 4., stated, that the prisoner, 20th of July, in the fourth year of the reign of King George the Fourth, stole a mare, against the peace of our lord the now king. The Judges held, the words "fourth year of the" might be rejected as surplusage, and that the prisoner was properly convicted on this indictment. *Rex v. Gill.* 431
*Rex v. Goddard.* 432, notis.

SURROGATE.
A false oath before a surrogate to procure a marriage licence, will not support a prosecution for perjury. *Rex v. Foster.* 459

THINGS, Description of.
See Indictment, 16, 17, 23, 29, 30, 34, 40, 41, 44.

THREATENING LETTERS.
1. Dropping a letter in a man's way in order that he may pick it up is a sending it him. *Rex v. Wagstaff.* 398

2. The sending will be within the 27 G. 2. c.15., though the party saw the prisoner drop the letter, if the prisoner did not think the party knew him, and intended he should not. *Ibid.*

3. Though the contents may lead the party to suspect who wrote the letter, this will be no answer to the charge, unless
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THREATENING LETTERS — continued.

they show that the prisoner did not mean to conceal himself. Page 398

4. To bring the offence within the 27 G. 2. c. 15. the letter must be sent to the person threatened, and it must be so stated in the indictment. But it seems that sending the letter to A. in order that he may deliver it to B., is a sending to B. if the letter be delivered by A. to B. Rex v. Paddle. 484

TRANSPORTATION, RETURNING FROM.

1. An indictment on 56 G. 3. c. 27. s. 8. should set forth the effect and substance of the former conviction; so likewise should the certificate of the former conviction. The indictment or the certificate, under this section of the statute, stating the former conviction to have been for felony only, is insufficient. Rex v. Watson. 468

2. An indictment for being at large after sentence of transportation for seven years, stated that the prisoner was convicted of grand larceny within the benefit of clergy: the certificate was in the same form; and on case, the Judges held both insufficient. Rex v. Sutcliffe. 469, notis.

3. Indictment for being at large after an order for transportation. Variance in the statement of the condition upon which the royal mercy had been extended; the condition not being general, as stated, but specific; that the prisoner should be transported to places specified. Rex v. Fitzpatrick. 512

TREASON.

See Coin, 7, 8.

TREES.

1. Cutting down a tree is sufficient to bring the case within the 9 G. 1. c. 22., though the tree is not thereby totally destroyed. Rex v. Taylor. 373

2. Dwarf apple and pear trees bearing fruit are trees within the 9 G. 1. c. 22. Ibid.

TRIAL.

See County.

The 26th Hen. 8. c. 6. s. 6., which makes felonies in Wales triable in the next adjoining English county, extends to felonies created since the 26 Hen. 8. Rex v. Wyndham. 197

VALUE.

1. Stealing re-issuable notes after they have been paid, and
VALUE—continued.
before they have been re-issued, does not subject the party
to an indictment on the 2 G. 2. c. 25. for stealing notes; but
he may be indicted for stealing the paper with valuable
stamps upon it. Rex v. Clark. Page 181
2. Where value is essential to constitute an offence, and the
value is ascribed to many articles collectively, the offence
must be made out as to every one of those articles, for the
grand jury has only ascribed that value to all those articles
collectively. Rex v. Forsyth. 274
3. An indictment for stealing a sheep or any other cattle must
mention or ascribe to it some value; for unless the value
exceed twelvemper, it will not be a capital offence. Rex v.
Peel. 407

VARIANCE.
See SURPLUSAGE.
1. Indictment for committing an unnatural offence on one
John Whyneard. Conviction held right, although it was
proved the name was Winyard, and pronounced Winnyard
Rex v. Foster. 412
2. If, in the indictment, the oath is stated to have been at the
assizes, before Justices assigned to take the said assizes, be-
fore A. B., one of the said Justices, the said Justice then
and there having power, &c. it will be a fatal variance if the
oath was administered when the Judge was sitting under the
commission of Oyer and Terminer and Gaol delivery. Rex
v. Lincoln. 421
3. Indictment for being at large after an order for transport-
ation. Variance in the statement of the condition upon
which the royal mercy had been extended; the condition not
being general, as stated, but specific; that the prisoner
should be transported to places specified. Rex v. Fitz-
patrick. 512
4. Upon an indictment for a second offence against 42 G. 3.
c. 107., by killing deer, objections were taken to the convic-
tion for the first offence, viz. that it was not in the proper
county, and that it was not correctly stated in the indict-
ment for the second offence; and the conviction for the
second offence held wrong. Rex v. Allen. 513

VENUE.
1. A denial by a servant when in the county of Stafford, of his
VENUE—continued.

having received money in the county of Salop, bolden to be evidence to show that the receipt in the county of Salop was with intent to embezzle within the 39 G. 3. c. 85.; and therefore that the trial was properly had in the county of Salop. Rex v. Hobson. Page 56

2. Held, that if a servant receive money for his master in the county of A., and being called upon to account for it in the county of B., there deny the receipt of it, he may be indicted for the embezzlement in the latter county. Rex v. Taylor. 63

3. An indictment for forgery stated the offence to have been committed in the county of Nottingham; it was proved to have been committed in the county of the town. Held, that, although under the 38 G. 3. c. 52. it was triable in the county at large the offence should have been laid in the county of the town. Rex v. Mellor and another. 144

4. An indictment in the next adjoining county, for an offence within an inferior county, need not aver that the former is the next adjoining county. When the record is regularly drawn up that may be stated in the caption; but the indictment must state the offence to have been committed in the inferior county. Rex v. Goff. 179

UTTERING.

1. Indictment on the 15 G. 2. c. 28. s. 3., charged that the defendant uttered a counterfeited half crown to J. F., and that at the time he so uttered it, he had about him another counterfeit half crown, but it did not conclude with averring that he was a common utterer of false money. The Judges held, that such averment was unnecessary, and that the indictment was sufficient to warrant the greater punishment of the 3d section of the statute. Rex v. Smith. 5

2. An indictment on the 15 G. 2. c. 28., for uttering after a conviction for a double offence, need not aver that defendant was adjudged to be a common utterer: it is sufficient if it states that he was tried and convicted of uttering to A., and of uttering on the same day to B., and adjudged to be imprisoned a year. Rex v. Booth. 7

Rex v. Michael. 29

3. Persons privy to the uttering of a forged note by previous concert with the utterer, but who were not present at the time of uttering, or so near as to be able to afford any aid
UTTERING — continued.

or assistance, held not principals, but accessories before the fact. *Rex v. Soares* and others. Page 25

4. If a person knowingly deliver a forged bank-note to another who knowingly utters it accordingly, the prisoner who delivered such note to be put off, may be convicted of having disposed and put away the same on the statute 15 G. 2. c. 13. s. 11. *Rex v. Palmer* and another. 72

5. Forging a bill payable to the prisoner's own order, and uttering it without indorsement as a security for a debt, is a complete offence. *Rex v. Birkett.* 86

6. Held, not to be sufficient to make a person a principal in uttering a forged note, that he came with the utterer to the town where it was uttered, went out with him from the inn at which they had put up a little before he uttered it, joined him again in the street a short time after the uttering, and at some little distance from the place of uttering, and ran away when the utterer was apprehended. *Rex v. Davis* and another. 113

7. Evidence of uttering a bill of exchange knowing it to be forged, and other forged bills upon the same house which were found upon the prisoner at the time of his apprehension, held, to be admissible as evidence of guilty knowledge. *Rex v. Hough.* 120

8. The fact of uttering a counterfeit note as a genuine note, held, to be tantamount to a representation that it was so *Rex v. Freeth.* 127

9. Upon an indictment for uttering a forged note. The Judges were of opinion that evidence was admissible of the prisoner having, at a prior time, uttered another forged note of the same manufacture, and also that other notes of the same fabrication had been found on the files of the Bank with the prisoner's hand-writing on the back of them, in order to show the prisoner's knowledge of the note mentioned in the indictment being a forgery. *Rex v. Ball.* 132

10. The prisoners, *Job Else* and *Sarah Else,* were indicted for uttering a bad shilling to *M. B.,* and having another bad shilling in their possession at the time. The uttering was by the woman alone, in the absence of the man. Held that the man was not liable to be convicted with the actual uttering, although proved to be the associate of the woman on the day of the uttering, and to have had other bad money
UTTERING — continued.

for the purpose of uttering. Held, that the woman could not be convicted of the second offence of having other bad money in her possession at the time, on the evidence of her associating with a man not present at the uttering, but having large quantities of bad money about him for the purpose of uttering. *Rex v. Else and another.* Page 142

11. Uttering a forged bill importing to be payable to the drawer's order with intent to defraud, is a complete offence, though there be no indorsement upon it importing to be the drawer's. *Rex v. Wicks.* 149

12. The offence of disposing and putting away forged banknotes is complete, though the person to whom they were disposed of was an agent for the Bank to detect utterers, and applied to the prisoners to purchase forged notes, and had them delivered to him as forged notes for the purpose of disposing of them. *Rex v. Holden and others.* 154

13. Uttering a forged stock receipt to a person who employed the prisoner to buy stock to that amount and advanced the money, is sufficient evidence of an intent to defraud that person; and the oath of the person to whom the receipt was uttered, that he believes the prisoner had no such intent, will not repel the presumption of an intent to defraud. *Rex v. Sheppard.* 169

14. Having counterfeit silver in possession, with intent to utter it as good, is no offence; for there is no *criminal act done.* *Rex v. Heath.* 184

*Rex v. Stewart.* 288

15. Showing a man an instrument the uttering of which would be criminal, though with an intent of raising a false idea in him of the party's substance, is not an uttering or publishing within 13 G.S. c.79. Nor will the leaving it afterwards sealed up, with the person to whom it was shewn, under cover, that he may take charge of it, as being too valuable to be carried about, be an uttering or publishing. *Rex v. Shukard.* 200

16. Delivering a box, containing among other things, forged stamps to the party's own servant, to be forwarded by a carrier to a customer in the country, is an uttering. *Rex v. Collicott.* 212

17. The offence of uttering a forged stamp will be complete, although at the time of uttering, certain parts of the stamp
UTTERING—continued.

are concealed, but all the parts that are visible are like a genuine stamp, though the part concealed is unlike a genuine stamp. *Ibid.* and *Rex v. Collicott.* 229

18. If several plan the uttering of a forged order for payment of money, and it is uttered accordingly by one in the absence of the others, the actual utterer is alone the principal. *Rex v. Badcock* and others. 249

19. A wife, by her husband’s order and procuration, but in his absence, knowingly uttered a forged order and certificate for the payment of prize money; held that the presumption of coercion at the time of uttering did not arise as the husband was absent, and that the wife was properly convicted of the uttering, and the husband of procuring. *Rex v. Morris* and another. 270

20. Procuring base coin with intent to utter it as good, is a misdemeanor. *Rex v. Fuller* and another. 308

21. Forging or uttering a note which, for want of a signature, is incomplete, is not within the statute which makes forging notes capital. *Rex v. Patman.* 455

WALES.

The 26 *Hen. 8.* c. 6. s. 6. which makes felonies in *Wales* triable in the next adjoining *English* county, extends to felonies created since the 26 *Hen. 8.* *Rex v. Wyndham.* 197

WARRANT.

Killing an officer will be murder, though he has no warrant, and was not present when the felony was committed, but takes the party upon a charge only; and though that charge does not in terms specify all the particulars necessary to constitute the felony. *Rex v. Ford.* 329

WEAPON.

See *Offensive Weapon.*

WIFE.

See *Husband and Wife.*

WILLS.

On indictment for forging a will, probate of that will unrepealed, is not conclusive evidence of its validity, so as to be a bar to the prosecution. *Rex v. Buttery* and another. 342 *Rex v. Gibson.* 349, *notis.*
WITNESS.

1. When a witness upon a trial gives evidence contradicted to facts contained in a deposition made by such witness in former proceeding in the same case, the Judge may ord such deposition to be read, in order to impeach the cred of the witness. *Rex v. Oldroyd.* Page 9

2. Forgery. The party by whom the forged instrument purports to have been made, while he has an interest in inval dating such instrument, is incompetent to prove any fact which contributes to the proof of the forgery. *Rex v Crocker.*

3. Held that a person who had been convicted of grand lar ceny, sentenced to transportation for seven years, confined in the hulks, and discharged at the end of seven years, was a competent witness, such confinement operating as a statute pardon; and that having escaped twice during such con finement for a few hours each time, did not destroy the effect of it. *Rex v. Badcock* and others. 248

4. A release from the holder of a bill of exchange to the sup posed acceptor, will make him a competent witness to prove the forgery in an indictment against the drawer, the drawer having received value for the bill from such holder. *Rex v. Peacock.* 278

See *Rex v. Young.* 280, notis.

5. Upon an indictment against the payee for uttering a forged acceptance, the first indorsee is a competent witness, though he has only advanced part of the amount of the bill, and though he releases, during the trial, the person in whose name the acceptance is forged. Held also, that his release makes the supposed acceptor a competent witness. *Rex v. Mott.* 435

6. Upon an indictment for forging or uttering a power of attorney to sell and transfer stock in the funds, the person whose name is forged is a competent witness for the Crown, if the stock has not been transferred, and he has given notice to the Bank disavowing the power. Especially if it be previously proved that though there is an attestation import ing that he executed, in the presence of two witnesses, he did not so execute in their presence; the bank act not authorising any transfer under a power of attorney, unless it is attested by two witnesses. And it will make no difference whether the stock was the property of the person whose
WITNESS — continued.

name is forged; or whether he was a mere trustee. Rex v. Waite.

WOOD.
See Trees.

THE END.