

[225] Durham Sum. Assizes, 1838.

MACKLIN, MURPHY, AND OTHERS' CASE.

(If several persons act together with a common intent, every act done by each of them in furtherance of that intent is done by all. If a deadly weapon be used, an intention to kill is to be inferred—not so from a blow with a fist. From continued violence, after much beating, an intention to kill may be inferred.)
The prisoner was indicted for murder.

It appeared that a body of persons had assembled together, and were committing a riot. The constables interfering for the purpose of dispersing the crowd and apprehending the offenders, resistance was made to them by the mob, and one of the constables was beaten severely by the mob. The different prisoners all took part in the violence used, some by beating him with sticks, some by throwing stones, and others by striking him with their fists. Of this aggregate violence the constable afterwards died.

Alderson, B.—The principles on which this case will turn are these.—If a person attacks another without justifiable cause, and from the violence used death ensues, the question which arises, is, whether it be murder or manslaughter?

If the weapon used were a deadly weapon, it is reasonable to infer that the party intended death; and if he intended death, and death was the consequence of his act, it is murder.

If no weapon was used, then the question usually is, was there excessive violence?

If the evidence as to this be such as that the jury think there was an intention to kill, it is murder—if not, manslaughter. Thus, if there were [226] merely a blow with a fist, and death ensued, it would not be reasonable to infer that there was an intention to kill—in that case, therefore, it is manslaughter.

But if a strong man attacks a weak one, though no weapon be used, or if, after much injury by beating, the violence is still continued, then the question is, whether this excess does not shew a general brutality, and a purpose to kill, and if so, it is murder.

Again, if the weapon used be not deadly, *e.g.* a stick, then the same question as above will arise for the determination of the jury, as to the purpose to kill; and in any case, if the nature of the violence, and the continuance of it be such as that a rational man would conclude that death must follow from the acts done, then it is reasonable for a jury to infer that the party who did them intended to kill, and to find him guilty of murder.

Again, it is a principle of law, that if several persons act together in pursuance of a common intent, every act done in furtherance of such intent by each of them is, in law, done by all. The act, however, must be in pursuance of the common intent. Thus, if several were to intend and agree together to frighten a constable, and one were to shoot him through the head, such an act would affect the individual only by whom it was done.

Here, therefore, in considering this case, you, [227] the jury, must determine, whether all these prisoners had the common intent of attacking the constables—if so, each of them is responsible for all the acts of all the others done for that purpose; and, if all the acts done by each, if done by one man, would, together, shew such violence, and so long continued, that from them you would infer an intention to kill the constable, it will be murder in them all. If you would not infer such a purpose, you ought to find the prisoners guilty only of manslaughter.

Verdict—Manslaughter.

Liverpool Sum. Assizes, 1838.

HODGE'S CASE.

(Where a charge depends upon circumstantial evidence, it ought not only to be consistent with the prisoner's guilt, but inconsistent with any other rational conclusion.)

The prisoner was charged with murder.

The case was one of circumstantial evidence altogether, and contained no one fact, which taken alone amounted to a presumption of guilt. The murdered party (a woman), who was also robbed, was returning from market with money in her pocket; but how much, or of what particular description of coin, could not be ascertained distinctly.

The prisoner was well acquainted with her, and had been seen near the spot (a lane), in or near which the murder was committed, very [228] shortly before. There were also four other persons together in the same lane about the same period of time. The prisoner, also, was seen some hours after, and on the same day, but at a distance of some miles from the spot in question, burying something, which on the following day was taken up, and turned out to be money, and which corresponded generally as to amount with that which the murdered woman was supposed to have had in her possession when she set out on her return home from market, and of which she had been robbed.

Alderson, B., told the jury, that the case was made up of circumstances entirely ; and that, before they could find the prisoner guilty, they must be satisfied, " not only that those circumstances were consistent with his having committed the act, but they must also be satisfied that the facts were such as to be inconsistent with any other rational conclusion than that the prisoner was the guilty person."

He then pointed out to them the proneness of the human mind to look for—and often slightly to distort the facts in order to establish such a proposition—forgetting that a single circumstance which is inconsistent with such a conclusion, is of more importance than all the rest, inasmuch as it destroys the hypothesis of guilt.

[229] The learned Baron then summed up the facts of the case, and the jury returned a verdict of Not guilty.

HUSBAND AND WIFE.

Durham Sp. Assizes, 1829.

SARAH CONNOLLY'S CASE.

(A wife went from house to house uttering base coin. Her husband accompanied her, but remained outside.—Held, that the wife acted under the husband's coercion.)

The prisoner was indicted for uttering base coin.

The evidence was, that she had gone from house to house uttering base coin, and that her husband accompanied her to the door, but did not go in.

Bayley, J., directed the jury to infer, that she was acting under the coercion of her husband, and to find her not guilty.

Note.—The following case, for which the editor is indebted to the kindness of Baron Alderson, affords an illustration of the doctrine of coercion, as applicable to the relationship of husband and wife.

Lancaster Sp. Assizes, 1813.

REX v. MARTHA HUGHES

(The law, out of tenderness to the wife, if a felony be committed in the presence of the husband, raises a presumption *prima facie*, and *prima facie* only, that it was done under his coercion.)

[Referred to *R. v. Cruse*, 1838, 8 C. & P. 541.]

Martha Hughes, the wife of Patrick Hughes, was indicted for forging and uttering three £2 Bank of England notes.

[230] James Platt proved that he went to the shop of the prisoner's husband, in consequence of a conversation which he had had some time before with the husband. The husband was not present. The prisoner beckoned him to go into an inner room, into which she followed him, when he told her what her husband had said to him. They then agreed about the business, and the witness bought of the prisoner three £2 notes, at £1, 4s each.

The witness paid her four £1 notes, and was to receive 8s in change. When he was putting the notes into his pocket-book, and before he received the change, the husband put his head into the room, and looked in, but did not come in or interfere in the business, further than by saying, "Get on with you." When the witness and the prisoner returned into the shop, the husband was there, and the prisoner gave him the change ; and both the prisoner and the husband cautioned him to be careful.

On these circumstances being proved, Cross, for the prisoner, objected that they clearly established that she acted under the coercion of her husband, supposing both husband and wife on their trial, this evidence would be sufficient to convict him ; and he submitted, that, if so, she must in this case be acquitted. He cited