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CROWN CASES

I

CONTAINING

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once been rendered liable, and enable him thereby to prejudice the interests of third persons, by giving evidence against them.

On the part of the Crown it was contended, that the King's pardon not only remits the punishment, but restores the convict to his *plenam et liberam legem* (4 Hawk. ch. 33, s. 132).^(b)

[456] The Court were clearly of opinion, That in cases of felony a pardon from the Crown restores the competency of the convict; and that the verdict against Macdaniel was to be considered as a conviction of a felony committed through the medium of perjury, and not as a conviction of perjury itself. The testimony of Macdaniel was accordingly received in evidence, and the Jury acquitted Abraham Davis, and found Thomas Reilly guilty of the offence with which he stood charged in the indictment. But the judgment was respited, and the case submitted to the consideration of the Twelve Judges.

Mr. Justice Wilson in June Session 1788, after stating the particulars of the case as above recited, delivered the opinion of the Judges to the following effect.—The learned Judge who tried this indictment entertained some doubt respecting the competency of Macdaniel's testimony. The case was accordingly reserved for the consideration of the Judges; and they are of opinion, That if Macdaniel had not received his Majesty's pardon, some doubt might have been entertained; but as he was pardoned, and that pardon regularly allowed, they are clear that it not only respites the convict from punishment, but entirely absolves him from the crime, and restores him completely to his former competency and credit. The case of *Cuddington v. Wilkins*, in Ld. Ch. Justice Hobart's Reports (Hob. 67, 82; Raym. 369; 5 Co. 110; 5 Mod. 15; 3 Lev. 426; Salk. 689), is precisely in point, and decisive of the question; for it is there expressly determined, that the King's pardon doth not only clear the offence itself, but all the dependencies, penalties, and disabilities incident to it. The Judges therefore are of opinion, That the testimony of Macdaniel was properly admitted in evidence; and that Thomas Reilly, the prisoner at the bar, has been legally convicted on this indictment.

The prisoner received sentence of death.

[457] CASE CCXII.

THE KING v. HENRIETTA RADBOURNE.

(A person indicted of petty treason and murder, combined in one count, may be found guilty of the murder, and acquitted of the treason. S. C. 1 East, P. C. 339, 356; 1 Hale, 184, 292; Foster, C. L. 104. An information before a Justice, made by the deceased on oath, in the presence of the prisoner, may be given in evidence on the trial, though the informant was not apprehensive of death, and though the information be signed by one magistrate only. S. C. 1 East, 356.)

At the Old Bailey in July Session 1787, Henrietta Radbourne was tried before Mr. Justice Wilson, present James Adair, Esq. Recorder, on an indictment consisting of one count only; which charged, that "Henrietta Radbourne, late of the parish of St. Mary-le-bone, in the county of Middlesex, widow, late servant of Hannah Morgan, widow, her mistress, not having the fear of God before her eyes, but being moved and seduced by the instigation of the devil, and of her malice aforethought, contriving and intending her the said Hannah Morgan, her mistress, to deprive of her life, and feloniously and traitorously to kill and murder on the 31st May, in the 27th year, &c. with force and arms, at the parish aforesaid, in the county aforesaid, in and upon the said Hannah, the mistress of the said Henrietta, feloniously, traitorously, wilfully, and of her malice aforethought, did make an assault; and that the said Henrietta, with a certain stick having a bayonet fixed at the end thereof, of the value of two shillings, which stick she, the said Henrietta, in both her hands then and there had and held, in and upon the top of the head of her the said Hannah, did then and there feloniously, traitorously, wilfully, and of her malice

^(b) It is said by Lord Hale that if the King pardon these offenders they are thereby rendered competent witnesses, though their credit is to be still left with the Jury, for the King's pardon takes away *pœnam et culpam in foro humano*; but yet it makes not the man always an honest man, and therefore he shall not be a Juryman, and cites the case of *Cuddington v. Wilkins*, in Hob. 67, 81.

aforethought, her the said Hannah Morgan strike, cut, stab, and penetrate, giving to the said Hannah, by such striking, cutting, stabbing, and penetrating of the said Hannah, with the bayonet so fixed at the end of the stick aforesaid, in and upon the top of the head of her the said Hannah, one mortal wound, of the length of one inch and of the depth of half an inch, of which mortal wound the said Hannah, from the said 31st May in the year aforesaid, until the 11th day of July in the year aforesaid, in and at the parish aforesaid, in the county aforesaid, did languish, and languishing did live, on which said 11th day of July in the year aforesaid, at the parish aforesaid, in the county aforesaid, of the mortal wound aforesaid, she the said Hannah Morgan died : And so the Jurors aforesaid, upon their oath aforesaid, do [458] say, that the said Henrietta Radbourne, otherwise Henrietta Gibbons, her the said Hannah Morgan, her said mistress, in manner and by the means aforesaid, feloniously, traitorously, wilfully, and of her malice aforethought, did kill and murder, against the peace of our said Lord the King, his crown and dignity."

The Coroner's Inquisition was for murder generally.

Mrs. Morgan, the unfortunate victim of the prisoner's avarice and rapacity, was an elderly lady who lived in George-street near Manchester-square, and who was supposed to be possessed of a large sum of money and other valuable property. Being in want of a servant, she applied in the month of May 1787 to an office for hiring servants, and soon afterwards, the prisoner was sent to her with a written character so highly in her favour, that Mrs. Morgan was induced to admit her immediately into her service, but her conduct was so different from the character she was described to possess, and indeed it had been written by her father in the character of her master, that her mistress was soon obliged to give her warning, and to seek out for another servant to supply her place. On the evening of the 31st May, between the hours of twelve and one, Mrs. Morgan desired the prisoner to go to bed, but instead of obeying her commands, she loitered about the house ; and about half past one, while her mistress was undressing, went into the bed-room, and during some desultory conversation asked her if she had said her prayers, but Mrs. Morgan conceiving it to be only matter of impertinence, although it was the first time she had ever made such an enquiry, desired her to mind and say her own prayers and go to bed. She accordingly retired ; and her mistress having, as she supposed, fastened the night-bolt of her bed-room door, which appeared to her to go very hard into the socket, and which had been prevented by some person from receiving the bolt, retired to rest without the least suspicion of there being any design in the mind of the prisoner to destroy her life. Scarcely, however, had she been in bed one hour, before she was awakened from her sleep by repeated blows and stabs about her head and neck ; and jumping up she ran, with vio-[459]-lent outcries of fire and murder, into a back-room on the same floor. Her continued cries alarmed the watch and neighbourhood, and on entering the house she was found, amidst a profusion of blood, to have received five large wounds on her head, two on the top, one on the left side, and two on the right side, in three of which the skull was laid quite bare ; a large wound on the back part of her right hand ; and several very bad bruises on her elbows and her left hip. On the right hand side of the fire-place in the bed-room was found a long stick with an iron head, that had a tuck coming out of the stick, with a bayonet at the other end, upon the point of which there were several grey hairs, resembling those on Mrs. Morgan's head ; but there was no other person found in the house except Mrs. Morgan and her maid, nor were there any means discovered by which another person (had any been there) could have escaped, excepting through the front parlour window, the sash of which was up about eight inches, and through which a neighbour got, for the purpose of opening the door for the watchmen, when the alarm was given. About three o'clock in the morning of the 31st May, the wounds and bruises were examined by Mr. John Heaviside, a surgeon of great skill and eminence in his profession ; and, though on removing the scalp and the covering of the skull there was no appearance of fracture, he declared that from the wounds and bruises her life was in great, though not immediate danger. While she languished in this state, she was visited by James Crofts, Esq. and Sir Robert Taylor, two magistrates for the county of Middlesex, and on the 9th June 1787, she was carried to the Public Office, where Mr. Crofts, in the presence of the prisoner, took down her deposition and the depositions of Henry Holmes and Rebecca Holmes, in writing, stating in substance the circumstances above described. The whole of this examination, Mr. Crofts declared on his

oath, was heard by the prisoner; that the depositions were distinctly read over to her in the presence of Mrs. Morgan; that they were signed by Mrs. Morgan and the other deponents in his presence; that they contained correct accounts of what each deponent had said; and that he signed them, as having been taken before him as a magistrate for the county. The situa-[460]-tion of Mrs. Morgan continued nearly the same for about three weeks after these depositions were made, when symptoms appeared of matter being formed in her brain, and upon trepanning that part of the skull which the wounds had left bare, great quantities of matter were found immediately under the wounds; and after languishing for two days, during which she became paralytic, she died on Wednesday morning the 11th July. On opening the head it was discovered that the brain was putrefied, and there was no doubt, but that the wounds and bruises she received had brought the brain into this diseased state, and occasioned her death. The two deponents, Henry Holmes, who was a chairman in Duke-street, near Manchester-square, and Rebecca his wife, were acquaintances of the prisoner both before and after she went to live as a servant with Mrs. Morgan; and on the morning of the trial, Mr. Heaviside, the surgeon, visited the prisoner in Newgate, with a view of learning from her whether any other person had been concerned in this horrid transaction, when she told him, that she had let Holmes and his wife into the house through the window of the front parlour, and that it was they who had given her mistress the mortal wounds, and immediately escaped; but it appeared, that there had been a violent quarrel between the Holmes and the prisoner, on account of their having refused to carry messages for her to the man whose name she had assumed, and with whom she had been connected, but who had abandoned her on account of her bad character, and disposition to tell lies: and, indeed, both Holmes and his wife, who were examined as witnesses on the trial, not only denied the fact, but appeared free from all imputation.

Garrow, for the Crown, in opening this case to the Jury, contended that Mrs. Morgan's deposition was admissible in evidence upon the one of two grounds; First, as the declaration of a person who had received a mortal wound from the hand of a murderer, and who was, at the time the declaration was made, lingering under a well-founded apprehension that her life was in imminent danger; for that a declaration made under such circumstances, by a person who was sensible she was about soon to give an account at the high tribunal of the Almighty, of the truth or falsehood with which it was [461] made, was considered by the law to be made under a sanction more awful and impressive than that of an oath itself. Secondly, that if the circumstances of her health at the time were such as would not render the deposition admissible on this ground, it was admissible as an information taken by a regular magistrate, under the statutes of Philip & Mary; for it had been given in the presence and hearing of the prisoner, upon an oath lawfully administered to Mrs. Morgan, who had thereby called God to witness that what she said was true, and who had in the presence of the prisoner, made an additional attestation of its truth, by putting her signature thereto; for that any thing that was said, either by a prosecutor, a prisoner, or a witness, in the presence and hearing of each other, although said in common conversation and under no solemnity, was admissible evidence in all Courts both criminal and civil; and the circumstance of Mrs. Morgan's testimony before the magistrate, in the presence of the prisoner, having been reduced into writing, instead of destroying its admissibility rendered it more eligible, inasmuch as what was said was thereby rendered more certain, and less liable to be mistaken.

The Court received the deposition in evidence (see the case of *W. Woodcock*, *post*, Dec. Sess. 1788); but the fact having been committed at the dead of night, there was no positive evidence, either by the contents of this information, or by the several witnesses who were examined *viva voce*, that the prisoner was guilty.

The evidence, however, though entirely circumstantial, was extremely strong; but as there was not any set of circumstances proved by two witnesses, the learned Judge thought the prisoner could not be legally convicted of the charge of *petit* treason (*a*), the statute 1 Edw. 6, c. 12, s. 22, providing, that no person indicted for treason, petty treason, or misprision of treason, shall suffer any pain of death unless the offender be accused by two sufficient and lawful witnesses; and this being con-

(a) It is said that many of the Judges, on consulting on this case, observed that the statutes of Philip and Mary do not extend to treason.

firmed by the statutes 5 & 6 Edw. 6, c. 11, [462] s. 12, which not only requires, that no person shall be condemned of petty treason, unless he be thereof accused by two lawful accusers ; but that the said accusers shall, if then living, be brought in person before the party so accused, and avow what they have to say against him ; and these statutes not being repealed by the 1 & 2 Phil. and Mary, c. 10, which orders that all trials of treason shall be according to the course of the common law.(a)

The Jury found the prisoner guilty, both on the indictment and inquisition, of the murder only ; and the verdict was entered upon the record, " Jury say Guilty of the wilful murder, but Not Guilty of the treason."

The judgment was respited upon this conviction, and three questions were submitted to the consideration of the Twelve Judges (see Cro. Car. 532 ; 1 Com. Dig. 366, 368).

First, Whether a prisoner can be convicted of murder upon an indictment or inquisition for petty treason ? That is, whether the acquittal for the petty treason does not involve in it an acquittal of the murder also ?

Secondly, Whether the information of Hannah Morgan, the deceased, authenticated by one witness only, was legally received in evidence on an indictment for petty treason ?

Thirdly, Whether the information of Hannah Morgan was admissible in evidence, she not appearing, at the time she gave it, to be apprehensive of her approaching dissolution ?

Mr. Recorder, on the first day of the December Session following, reported, that it was the unanimous opinion of eleven Judges, Lord Mansfield being absent, that the learned Judge did right in admitting the information of Hannah Morgan to be received in evidence, and that the prisoner was legally convicted of murder on the indictment and inquisition for petit treason.(b)

[463] The prisoner accordingly received sentence of death, and was executed.

CASE CCXIII.

THE KING v. FORSGATE.

(An indictment for stealing the wearing apparel of a son, who is an apprentice to his father, and furnished with his clothes in pursuance of his indentures, must lay them to be the property of the son, and not of the father. See 2 East's Pleas Crown, p. 654 acc.)

At the Old Bailey in October Session 1787, Robert Forsgate was tried before Mr. Justice Heath for stealing a cloth coat, a linen shirt, a waistcoat, and other articles of wearing apparel, the property of John Wilson.

It appeared in evidence, that the wearing apparel had been furnished by John Wilson to his son George Wilson ; that his son George, who was nineteen years of age, was bound an apprentice to him ; and that by the indentures he was bound to find his said son and apprentice in board, lodging, clothing, &c.

The Court. The goods being laid to be the property of John Wilson renders the

(a) The statute of 7 & 8 Will. 3, c. 3, s. 2, requires two witnesses in high treason, or the misprision of such treason only ; but see Hawk. P. C. Bk. 2, ch. 46, s. 6.

(b) Mr. Justice Foster, in considering the question, whether it may be advisable to proceed upon an indictment of murder against a person plainly appearing to be guilty of petty treason, says, " Put the case, that a person is brought to his trial upon an indictment for petit treason, and that one witness only can be produced, or that the prosecutor is not furnished with any evidence except the depositions taken before the coroner, or information taken on oath before Justices of Peace, pursuant to the statutes : and let it be supposed that these witnesses are living, but unable to travel, or kept out of the way by the procurement of the defendant. What is to be done in this case ? Is the defendant to be acquitted of the whole charge ? I think not. I think this evidence, though not sufficient to convict of petty treason, is still admissible evidence, and proper to be left to the Jury as upon a charge of murder ; and the Jury, if they are satisfied, may find the defendant Guilty of the murder, and acquit him of the treason." Foster's C. L. 328.—See also the opinion of Sir M. Hale, 2 H. H. P. C. 292, and of Mr. Justice Wright and Mr. Justice Foster in the case of *Rex v. Swan and Jefferies*. Foster's Cro. Law, 106, 10 State Trials, 36 accordant.