

Eng. Rep.]

REG. V. REEVE AND HANCOCK.—RICHARDS V. GALLATLY.

[Eng. Rep.]

otherwise be thought to extend to criminal proceedings. If Curtis had been allowed to be called as a witness, every word that he said must have been in his own favour as well as in favour of Payne. If a co-prisoner is admissible at all, his fellow-prisoner or the prosecutor may compel him to be a witness. [LUSH, J.—If he was allowed to be called, he must be cross-examined, and if he declines to answer on the ground that his answers would tend to criminate him, that might have the effect of leading to his conviction. COCKBURN, C. J.—Or he might be cross-examined as to his past life, and the result might seriously injure his case. BRETT, J.—Is it not a fundamental rule of the law of England that when a prisoner is on his trial, he shall not be examined or cross-examined for or against himself?]

Pritchard in reply, cited *Reg. v. Stewart*, 1 Cox, C. C. 174.

COCKBURN, C. J.—We are all of opinion that the witness was properly rejected at the trial; and we all agree that the proviso in the 14 & 15 Vict., c. 99, on which the prisoners' counsel relied, was only intended to prevent the statute being supposed to contradict or alter the rule of law as it has existed from the earliest times, according to which rule a party on his trial could not be examined or cross-examined as a witness for or against himself. It is impossible that the Legislature could have intended by such a proviso to do so. And the old law of England in that respect still remains unaltered.

*Conviction affirmed.*

## EXCHEQUER CHAMBER.

### THE QUEEN V. REEVE AND HANCOCK.

*Evidence—Admissibility of confession.*

The prisoners, two children of about eight years of age, having been apprehended on a charge of misdemeanour, the mother of one of the prisoners, in presence of a policeman, and of the mother of the other prisoner, said, "You had better, as good boys, tell the truth." Thereupon both prisoners confessed.

Held, that the confession was admissible against the prisoners on their trial.

[20 W. R. 631.]

Case stated by Byles, J.

The prisoners were children. One was eight years of age and the other a little older. They were convicted at the Worcester Assizes of an attempt to commit a misdemeanour by obstructing a railway train.

The evidence was that Hancock's mother, Reeve's mother, and a policeman being present after they had been apprehended on suspicion, Mrs. Hancock said, "You had better, as good boys, tell the truth," whereupon both the prisoners confessed, and on this confession were both convicted.

The question for the Court of Criminal Appeal is whether the confession was admissible against both the prisoners or either.

No counsel appeared for the prisoners.

Streeten, for the prosecution contended that the words used by the mother of the prisoner Hancock were nothing more than an exhortation to the prisoners to be good boys and tell the truth, that they amounted only to moral suasion,

and contained no promise of favour or menace which could operate as an inducement to the prisoners to confess, and so render inadmissible what was subsequently said by them. He cited *Reg. v. Jarvis*, L. R. 1 C. C. R. 96, 16 W. R. 111.

KELLY, C. B.—I am of opinion that this conviction must be affirmed. The cases have already gone quite far enough for the protection of guilt, and the doctrine of the inadmissibility of confessions ought not, I think, to be extended. The last authority upon the subject, *Reg. v. Jarvis*, (*ubi sup.*) May act as a guide to us on the present occasion, and there the inducement to the prisoners to confess was certainly stronger than it was here, where the words used were such as any mother might very properly say to her son in similar circumstances. The confession which was made by the prisoners was, I think, strictly admissible against them.

WILLES, J., CLEASBY, B., GROVE, and QUAIN, JJ., concurred.

## QUEEN'S BENCH.

### RICHARDS V. GELLATLY.

*Practice—Inspection—14 & 15 Vic. 99, s. 6.*

Action by a passenger against the agents of a ship for fraudulently misrepresenting her condition in consequence of which he quitted her and took his passage on in another vessel.

Inspection was refused to the plaintiff of letters written to the defendant by other passengers who left the ship at the same time as he did, and also of letters written by the captain and the owner to the defendants *post litem motam*.

[20 W. R. 630.]

The first count of the declaration was on a contract by the defendants to provide the plaintiff with a passage in a ship called the *Ferdinand de Lesseps* from London to Madras; that the ship was tight, staunch, &c., sufficiently equipped for the voyage, appropriate for the conveyance of passengers, and capable of steaming throughout the entire voyage. Breach, that she was not tight, staunch, &c.

The second count was on a fraudulent representation that the ship was about to undertake her first voyage, that she was good and substantial, fit to perform the voyage in an efficient manner, and capable of steaming throughout the entire voyage; whereby the defendants induced the plaintiff to take his passage.

The date of the writ was the 28th of June, 1871, and issue was joined on the 10th of August following.

Martin, B., made an order for the defendants to answer interrogatories, and the affidavits disclosed the following facts:—

The *Ferdinand de Lesseps* was owned by a Mr. Lambie, of Glasgow, and the defendants, with whom the plaintiff effected the contract for his passage, were shipbrokers and agents for Lambie. The plaintiff embarked at Gravesend on the 16th of December, 1870, and finding much fault with the ship and her accommodation, disembarked with other passengers at Cowes, on the 21st of the same month, and took his passage on in another vessel. In a schedule annexed to the affidavit was set out a list of documents in the defendants' possession, including letters