

sanction could be given in such a case) offering immunity or clemency to several defendants in several indictments upon the condition that one of them became a witness for the prosecution upon still other indictments. *Wright v. Rindskoff*, 13 Wis.

The court would also undoubtedly interfere by refusing to try a prisoner who had testified as State's evidence against another if it should appear that the prosecuting officer was pursuing him in violation of the express or implied understanding. *Bifhop's Cr. Pro.* § 1076, note.

"There is no practice in this State requiring a previous application or a formal order of the court to permit an accomplice to become a witness for the State." 63 N. Y. 143; 12 Hun, 215. It is not to be understood, however, that in all conceivable situations of an accomplice before the courts that it is in the discretion of the court to allow him to testify for the People. The true rule as to competency seems to be, When the persons indicted are all put on trial together, neither can be a witness for or against the others; but when they are tried separately, though jointly indicted, the People may call those not on trial, though not convicted or acquitted or otherwise discharged, with the permission of the court; but they cannot be called as witnesses for each other though separately tried, while the indictment is pending against them. If acquitted they may be examined, and even if convicted, unless it be for a crime which disqualifies, and then sent nce must have followed the conviction. When all are *tried together* if the People desire to swear an accomplice, he must in some way be first discharged from the record. *Wixon v. The People*, 5 Park. Cr. 126; *Taylor v. People*, 12 Hun, 213-214.

When the accomplice is indicted separately from the rest he is of course a competent witness for the prosecution, though no disposition has been made against him.

In fact, with reference to his competency, an accomplice jointly indicted and separately tried is in the same condition as one separately indicted or one not indicted at all. 1 Bish. on Cr. Pro. §§ 1079, 1080. One of several persons indicted, although he have pleaded and defended separately, is not a competent witness for his co-defendants unless immediately acquitted by

a jury, or a *nolle prosequi* entered, or convicted and sentenced for an offence which would not disqualify. *McIntyre v. People*, 9 N. Y. 39.

If a witness who has become State's evidence testifies corruptly, or makes only partial disclosures, he may then, having failed to perform the condition on which he was admitted, be proceeded against for his own crime; but he is not thus liable simply because of a failure by the jury to convict his associates. "It rests," said Lord Mansfield, "on usage, and on the offender's own good behaviour, whether he shall be prosecuted or not." And where an accomplice, after making a confession on the usual understanding, refuses to testify, this confession may be given in evidence against him on his trial. *Commonwealth v. Knapp*, 10 Pick. 477.

As the accomplice is entitled to no protection in respect to other offences, he is not bound to answer questions relative to such offences on his cross-examination. It is not usual to admit accomplices who are charged with other felonies. In the earlier State trials of England, the protection and countenance afforded by the courts to accomplices, spies and informers, was often carried to great lengths; but in modern times a closer scrutiny of the evidence from such a source is required, and more safeguards for the protection of the innocent established, so that the conviction of a prisoner by the aid of an accomplice at the present time, upon such weak and insufficient evidence as brought Algeron Sidney to the block, is almost an impossibility.—*Albany Law Journal*.

#### DIGEST OF U. S. DECISIONS.

(Continued from p. 264.)

*Illegal Contract*.—Members of a public-school board, in their individual capacity, ordered apparatus for the schools, and agreed to call a meeting of the board and ratify the contract. *Held*, that the contract was against public policy, and would not support an action.—*McCortle v. Bates*, 29 Ohio St. 419.

See *Tax*, 1.

*Indictment*.—1. Indictment for burglary in a house "belonging to the estate of the late J. S." *Held*, bad; overruling former decisions.—*Beall v. The State*, 53 Ala. 460.

2. An indictment describing the prisoner's Christian name by initials only, is abateable by