

[Eng. Rep.]

REG. v. JARVIS.

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Held, that the answer of the prisoner in the nature of a confession was admissible in evidence.
[Nov. 23, 1867.—17 L. T., N. S., 178.]

Case reserved for the opinion of this Court by the Recorder of London, at a session of the Central Criminal Court held on the 8th July 1867 and following days.

Frank Jarvis, Richard Bulkley, and Wilford Bulkley were tried upon an indictment for feloniously stealing 138 yards of silk and other property of William Leaf and others, the masters of Jarvis.

There was a second count in the indictment for feloniously receiving the same goods.

William Leaf was examined, and said,

"The prisoner Jarvis was in my employ. On the 13th of May we called him up, when the officers were there, into our private counting-house. I said to him, 'Jarvis, I think it is right that I should tell you that, besides being in the presence of my brother and myself, you are in the presence of two officers of the police, and I should advise you that, to any question that may be put to you, you will answer truthfully, so that if you have committed a fault, you may not add to it by stating what is untrue.' I produced a letter to him which he said he had not written, and I then said, 'Take care Jarvis, we know more than you think we know.' I do not believe I said to him 'You had better tell the truth.'"

Counsel for the prisoner Jarvis objected to any statement of his, made after the above was said, being received in evidence, and referred to *Reg. v. Williams*, 2 Den. 433; *Reg. v. Warringham*, 15 Jur. 381; and *Reg. v. Garner*, 1 Den. 329; *Reg. v. Shepherd*, 7 C. & P. 579; *Reg. v. Muller*, 3 Cox C. C. 507.

Counsel for the prosecution referred to *Reg. v. Baldry*, 2 Den. 430; *Reg. v. Sleeman*, Dears. 259; and *Reg. v. Parker and others*, L. & C. 42.

I decided that the statement was admissible.

The jury found Jarvis guilty, adding that they so found upon his own confession, but they thought that confession prompted by the inquiries put to him.

At the request of counsel for Jarvis, I reserved for the Court for the consideration of Crown Cases Reserved the question whether I ought to have admitted the statements of the prisoner in evidence against him.

If I ought not to have done so, the conviction should be reversed.

RUSSELL GURNEY, Recorder of London.

Coleridge, Q.C. (*Straight* with him), for the prisoner.—It is submitted that the prisoner's confession ought not to have been received in evidence. The rule is that every confession must be free and voluntary on the part of the accused: but if it is induced by any promise or threat on the part of the prosecutor, it is not receivable in evidence; *Reg. v. Baldry*, 19 L. T. 146. It is incumbent on the prosecution to show that the confession was free and voluntary, per Parke, B. (see note to report of *Reg. v. Baldry*, 2 Den. 430). The motive or intention of the prompter is immaterial, the question being what effect the inducement had or was likely to have on the mind of the accused. Different reasons for the

rule have been assigned by Eyre, C. J., in *Warickshall's case*, 1 Leach C. C. 298, and by Pollock, C. B., in *Reg. v. Baldry*. Now, in the present case, the prosecutors were extremely anxious to get some information from Jarvis to criminate the other two persons, the Bulkleys, and it must be remembered that Jarvis was only a youth. The substance of what passed amounted to this: That the prosecutor intimated that if he did not tell the truth it would be worse for him, and if he did it would be better. If what passed had any influence, however slight, on the prisoner's mind, the confession was inadmissible. In *Reg. v. Baldry* the words used left it to the prisoner to speak out or not, as he chose. *Reg. v. Garner* is also a clear case on the opposite side of the line to *Reg. v. Baldry*. The learned counsel then referred to *Reg. v. Williams*, 3 Russ. on Crimes 377; *Reg. v. Sheppard*, 7 C. & P. 579; *Reg. v. Warringham* (*supra*); *Reg. v. Parker*; Leigh and Cave, 42.

Giffard, Q.C. (*Grain* with him), for the prosecutor was not called upon to argue.

KELLY, C.B.—I have always felt that we ought to watch jealously any encroachment on the principle that no man is bound to criminate himself, and that we ought to see that no one is induced, either by a threat or a promise, to say anything of a criminatory character against himself. So, on the other hand, I watch jealously every attempt to break in upon those rules and decisions that have been laid down for public justice. In this case I have listened to the very able argument of Mr. Coleridge, but when I look at the question before us I entertain no doubt upon it. Do the words used by the prosecutor, when substantially, fairly, and reasonably considered, import a threat or promise to the accused, according as he should answer? To my mind, they appear to operate only as a warning to put the accused on his guard as to how he should answer, and not as a threat or promise. In the first place, they are not so much an exhortation to confess as advice given, and the reason of the advice is also given. It amounts to this: "We are going to put certain questions to you, and I advise you that if you have committed a fault you do not add to it by stating what is untrue." So far the words used are not within any rule of law that would prevent the answer from being admissible in evidence. Then we come to the rest of the words. A letter was then produced by the prosecutor, which the accused said he had not written, and the prosecutor then said, "Take care, Jarvis, we know more than you think." That was only an additional caution to the prisoner not to add the guilt of falsehood to the other fault. In many of the reported cases the words used seem to have acquired a technical signification; but the words used in this case have no such meaning; they seem to me to import advice only to the accused, and not a threat or promise. The conviction, therefore, must be affirmed.

The other judges concurred.

Conviction affirmed.