ground of necessity, although there was no evidence to support that part of the indictment which charged force, and also on the ground that the defendant, to whom she had been married after having been illegally taken from her father's custody contrary to the statute then in force as to heiresses, could not by his own criminal act found a claim to exclude such evidence against himself.

It would seem that it is not necessary that there should be force employed in the offence in order to make the husband or wife competent. *R.* v. *Wakefield*, 2 Lewin C.C. 279; R. v. *Perry* (1794), cited in *Rex* v. *Serjeant*, R. & M.N.P.C. 354; 3 Russell on Crimes, 5th ed. 626 (*n*).

A wife is always permitted to swear the peace against her husband Taylor on Evid., 10th ed., vol. 2, p. 973; Roscoe's Crim. Evid., 12th ed. 109, 13th ed. 106. Upon the trial before justices under the Vagrancy Act, 5 Geo. IV (Imp.), ch. 83, for neglect to support wife and children whereby they became chargeable to the parish as paupers, it was held that the wife's evidence was not admissible against her husband, for the neglect was considered merely as an offence against the parish. *Reeve* v. *Wood* (1864), 10 Cox C.C. 58, 5 B. & S. 364, 34 L.J.M.C. 15. In that case the court of King's Bench (Crompton, Blackburn and Mellor, JJ.) all concurred in the view that the punishment provided by the statute was in respect to the chargeability to the union or workhouse funds and *not* for an alleged wrong to the wife and therefore that the evidence of the wife could not be received against her husband. Crompton, J., said it did not fall within the rule of necessity, for there are many other persons by whom the case may be made out without her evidence. Blackburn, J., thought it was not within the principle of *Lord Audley's* case, 1 St. Tr. 393, which made to the general rule an exception admitting the wife's evidence where she may be the only person who is cognizant of the offence concerning her person. Mellor, J., said there had been no personal wrong done to the wife in the sense of any of the decided cases. *Reeve* v. *Wood*, 10 Cox C.C. 58; and see *Sweeney* v. *Spooner*, 3 B. & S. 330.

But the Criminal Evidence Act (Imp.), 1898, made the wife not only a competent but a compellable witness in prosecutions under the Vagrancy Act, 1824, for neglect to maintain, such as was before the court in *Reeve* v. *Wood*, 10 Cox C.C. 58, 34, L.J.M.C. 15, *R.* v. *Acaster* and *R.* v. *Leach* [1912], 1 K.B. 488 at 493.

In *R.* v. *Jagger*, Russell on Crimes, 5th ed., vol. 3, p. 625, the prisoner was indicted for attempting to poison his wife by giving her a cake which contained arsenic, and the wife was admitted to prove the fact that her husband had given her the cake. The ruling by which the evidence was admitted was affirmed by all of the judges *en banc*. The ground for the admission could only be founded upon the exception *ex necessitate* to the general common law rule of incapacity between consorts to give evidence one against the other.

In the Ontario case, *Reg.* v. *Bissell*, 1 Ont. R., 514, decided by the Ontario Queen's Bench Division in 1882 before the passing of the Canada Evidence Act, it was held that the evidence of the wife was inadmissible on the prosecution of her husband by indictment under the Canada statute 32-33