

THE QUEEN vs. JOSEPH CHASSON.

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Then as to discretion and the meaning and effect of a Judge's discretion. A Judge on a trial or in Court, sees and hears all that is passing around him, embracing many things which a functionary out of Court cannot know and cannot judge of, and his discretionary powers *ex necessitate rei* are as much warranted by the law of the land and the practice of procedure as any part of the law governing his Court, and the exercise of his discretionary powers are as fully embraced in his oath of office as any other duties he undertakes to perform. This discretion is not like that founded upon specific facts, ministerially exercised, and which may in some cases be appealed from, but depending upon necessities as they occur in judicial course, upon circumstances which arise before him and which none but the Judges at the trial can properly know. It was said by the late Lord Chief Justice TENTERDEN, a most excellent Judge, that there was no duty more painful, oft times for a Judge, than to decide discretionary matters. Still it must be done and what necessity obliges, it maintains, and a matter so adjudged, especially by a Court of Supreme and exclusive jurisdiction, becomes *rem judicatam*, and no other Court can interfere with it; as in fining or committing for contempt, ordering challenges to be in writing, discharging a jury after disagreement, admission and rejection of evidence, controlling a witness under examination, and a variety of other matters. Mr. Starkie speaking of cross-examination, 1 vol. 188, says, "the mode of examination is in truth rejected by the discretion of the Court, according to the disposition and temper of the witness." And in Chitty's Criminal Law 622, speaking of the latitude allowed a cross-examination, this great author says, "It is perhaps better left, to the discretion of the Courts, in each particular case to prevent the counsel from too great a digression from the matters in issue." This power is as old as the tribunal itself, and has been perpetually exercised in the Court of Assizes, Oyer and Terminer and jail delivery as a part of the ordinary law and practice of the Court, concerning evidence, and the latitude allowed on cross-examination is limited and controlled by the very authority by which it is exercised, namely, by the discretion of the Court. Now, according to the foregoing; which one of the forty-eight questions adjudged by the Chief Justice at the late trial was not a question within the judicial discretion and practice of the trial Court to decide? I have very attentively gone over the questions, and can find none, the only question about which there seemed any doubt, was the admission (if it were improper) of the evidence of the felony, but that appears fully answered by the cases, because, granting for argument that such evidence was improper, no objection as to the sufficiency of the other evidence which was ample without it to sustain