

March 21st, 1836.

REX v PRITCHARD.

(A person, deaf and dumb, was to be tried for a capital felony—the Judge ordered a jury to be impaneled, to try whether he was mute by the visitation of God, the jury found that he was so. The jury were then sworn to try whether he was able to plead, which they found in the affirmative, and the prisoner, by a sign, pleaded—Not guilty. The Judge then ordered the jury to be sworn to try whether the prisoner was “now sane or not”; and on this question, his Lordship directed the jury to consider whether the prisoner had sufficient intellect to comprehend the course of the proceedings, so as to make a proper defence, to challenge any juror he might wish to object to, and to comprehend the details of the evidence, and that if they thought he had not, they should find him not of sane mind. The jury did so, and the Judge ordered the prisoner to be detained under the stat 39 & 40 Geo III. c 94, s 2.)

[Followed, *R v Berry*, 1876, 1 Q B D 447. Considered, *R. v Harris*, 1897, 61 J. P. 792; *R v Governor of Stafford Prison, ex parte Emery*, [1909] 2 K B. 81.]

The prisoner was indicted for bestiality.—He was deaf and dumb, and did not plead to the indictment. whereupon a jury was immediately impaneled to determine whether the prisoner was mute of malice, or by the visitation of God

[304] Evidence was offered to shew that he was deaf and dumb, and the jury found that he was mute by the visitation of God

The jury were sworn to inquire whether the prisoner was able to plead to the indictment

It was proved that the prisoner was able to read and write, he having been taught in the Deaf and Dumb Asylum in London. The indictment was given to him, which he read, and he made a sign that he was not guilty

The jury then found that he was able to plead. They were then sworn to determine, whether the prisoner were now sane or not. Evidence was given with a view of shewing, that, on the examination before the magistrates, he had understood the charge, and answered in writing. It was however sworn by several witnesses that the prisoner was nearly an idiot, and had no proper understanding and that though he might be able to be made to comprehend some matters, yet he could not understand the proceedings on the trial

Alderson, B (to the jury)—The question is, whether the prisoner has sufficient understanding to comprehend the nature of this trial, so as to make a proper defence to the charge. A similar case, that of *Rex v Dyson*, occurred before Mr. Justice James Parke, on the Northern Circuit, and he adopted the course which I shall now follow. There are three points to be inquired into—First, whether the prisoner is mute of malice or not; secondly, whether he can plead to the indictment or not; thirdly, whether he is of sufficient intellect to comprehend the course of proceedings on the trial, so as to make a proper defence—to know that he might challenge any of you to whom he may object—and to comprehend the details of the evidence, which in a case of this nature must constitute a minute investigation. Upon this issue, therefore, if you think that there is no certain mode of communicating the details of the trial to the prisoner, so that [305] he can clearly understand them, and be able properly to make his defence to the charge, you ought to find that he is not of sane mind. It is not enough, that he may have a general capacity of communicating on ordinary matters. The case I have mentioned was considered by several of the Judges, and they approved of the course adopted by Mr Justice J Parke (a).

to another person, is very often a nice question, but it will always exclude a statement made to the same person”, and his Lordship acted on that distinction in the case of *Rex v Dunn*, and also in the case of *Rex v. Slaughter*, 4 C & P 544, n. (b)

(a) We have been favoured with a note of the case of *Rex v Dyson*, which we here subjoin.—

York Spring Assizes, 1831, before Mr. Justice J. Parke.

*Rex v. Dyson.*

The prisoner was indicted for the wilful murder of her bastard child by cutting off its head; and was also charged with the same offence upon the coroner’s inquisition.

She stood mute. A jury was impaneled to try whether she did so of malice,

The jury returned a verdict, that the prisoner was not capable of taking his trial.

His Lordship then directed the prisoner to be confined in prison during his Majesty's pleasure

F. V. Lee, for the prosecution.

Watson, for the defence

[Attornies—Loxdale & Co ]

or by the visitation of God, and evidence having been given of her always being deaf and dumb, the jury found that she stood mute by the visitation of God.

The learned Judge then examined a witness on oath who was acquainted with her, who swore that she could be made to understand some things by signs, and could give her answers by signs.

The witness was then sworn as follows :—

“ You swear that you will well and truly interpret and make known to the prisoner at the bar by such signs, ways, and methods as shall be best [306] known to you, the indictment and inquisition wherewith she stands charged, and also all such matters and things as the Court shall require to be made known to her; and also well and truly interpret to the Court the plea of the said prisoner to the said indictment and inquisition respectively, and all answers of the said prisoner to the said matters and things so required to be made known to her, according to the best of your skill and understanding—So help you God ”

The witness then explained to her by signs what she was charged with, and she made signs, which obviously imported a denial, and which he explained to be so.

This was done twice—once for the indictment, and once for the inquisition. The learned Judge then directed a plea of—Not guilty, to be recorded to each

The witness was then called upon to explain to her, that she was to be tried by a jury, and that she might object to such as she pleased, but he and another witness stated that it was impossible to make her understand a matter of that nature; though, upon common subjects of daily occurrence, which she had been in the habit of seeing, she was sufficiently intelligent

One of the witnesses had instructed her in the dumb alphabet, but she was not so far advanced as to put words together, and the witness swore, that, though she was then incapable of understanding the nature of the proceedings against her, and making her defence, he had no doubt that with time and pains she might be taught to do so by the means used by the instructors of the deaf and dumb.

Mr. Justice J. Parke directed the jury to be impaneled and sworn, to try whether she was sane or not.

The same witnesses were then sworn and examined, and proved her incapacity, at that time, to understand the mode of her trial, or to conduct her defence.

Mr. Justice J. Parke, in charging the jury so impaneled, referred to Lord Hale, who, in his Pleas of the Crown (vol. i. p. 34), says, “ If a man in his sound memory commits a capital offence, and before his arraignment he becomes absolutely mad, he ought not by law to be arraigned during such his phrensy, but be remitted to prison until that incapacity be removed. The reason is, because he cannot advisedly plead to the indictment. And if such person after his plea, and before his trial, becomes of non-sane [307] memory, he shall not be tried; or if after his trial he become of non-sane memory, he shall not receive judgment; or if after judgment he become of non-sane memory, his execution shall be spared, for, were he of sound memory, he might allege somewhat in stay of judgment or execution. But because there may be great fraud in this matter, yet, if the crime be notorious, as treason or murder, the Judge before such respite of trial or judgment, may do well to impanel a jury to inquire *ex officio* touching such insanity, and whether it be real or counterfeit.” His Lordship told the jury, that if they were satisfied that the prisoner had not then, from the defect of her faculties, intelligence enough to understand the nature of the proceedings against her, they ought to find her not sane.

They did so, and his Lordship ordered her to be kept in strict custody under 39 & 40 Geo. III. c. 94, s. 2, till his Majesty's pleasure should be known.