CRIMINAL LAW.

CHAPTER XVI.

LIMITS OF CRIMINAL JURISDICTION IN REGARD TO TIME, PERSON, AND PLACE—ACTS OF STATE—EXTRADITION.

HAVING in the first volume fully considered the history and present state of the law relating to criminal procedure, I come to the substantive criminal law; and the first question which arises in connection with it is as to its extent? For what time, upon what persons, and within what local limits, is it in force? These questions involve several curious inquiries. I do not know that they have ever been fully considered, but they possess considerable interest, especially on account of their connection with international law, and the light which they throw on its nature. The law as to Acts of State and Extradition is closely connected with this subject, as in each instance the question arises, How far the criminal law of England concerns itself with offences committed out of England either upon or by foreigners?

[1] I.—TIME.

With regard to limitations as to time, it is one of the peculiarities of English law that no general law of prescription in criminal cases exists amongst us. The maxim of our law has always been "Nullum tempus occurrit regi," and as a criminal trial is regarded as an action by the king, it follows that it may be brought at any time. This principle has been

[1] See *Digest of Criminal Procedure*, art. 15.

carried to great lengths in many well-known cases. In the middle of the last century Aram was convicted and executed for the murder of Clarke, fourteen years after his crime. Horne was executed for the murder of his bastard child (by his own sister) thirty-five years after his crime. In 1802 Governor Wall was executed for a murder committed in 1782. Not long ago a man named Sheward was executed at Norwich for the murder of his wife more than twenty years before; and I may add as a curiosity that, at the Derby Winter Assizes in 1863, I held a brief for the Crown in a case in which a man was charged with having stolen a leaf from a parish register in the year 1803. In this instance the grand jury threw out the bill.

There are a very few statutory exceptions to this general rule. Prosecutions for high treason, other than treason by assassinating the sovereign, and for misprision of treason, must be prosecuted within three years (7 & 8 Will. 3, c. 3, ss. 5, 6).

Certain prosecutions for blasphemous writings and words must be within three months and four days respectively (9 Will. 3, c. 35) of the offence.

Offences against the Riot Act (1 Geo. 1, st. 2, c. 5) must be prosecuted within twelve months.

Illegal drilling (60 Geo. 3, 1 Geo. 4, c. 1) must be prosecuted within six months.

Certain offences against the Game Laws (9 Geo. 4, c. 69) must be prosecuted within six months.

Offences punishable on summary conviction must be prosecuted within six months (11 & 12 Vic. c. 43, s. 11).

Offences committed in India by official persons must, if prosecuted in England, be prosecuted within six years after the offence (33 Geo. 3, c. 52, s. 140); or, if prosecuted before the Special Parliamentary Court constituted by 24 Geo. 3, sess. 2, c. 25, within three years after the offender leaves India (see sec. 82).

[1] II.—PERSONS.

As a general rule the criminal law applies to all persons whatever who are within certain local limits, the extent of

[1] *Dig. Crim. Proc.* art. 14.

which is discussed below, whatever may be their native country. There are, however, a few exceptions, none of which can be regarded as of much practical importance.

The first exception is the sovereign for the time being. This is merely an honorary distinction of no practical importance. It is implied in the maxim, "The king can do no wrong." It may be observed that the penalties which would be attached to the commission of a crime by a reigning sovereign would, in the present state of society, be so much more serious than the risk of legal punishment, that a reigning sovereign of this country is under stronger motives to abstain from crime, as he has fewer temptations to commit crime than any other person in it.

How far this personal immunity from the criminal law would extend to a foreign sovereign resident in this country is a question not worth discussing.

The question of an ambassador's privilege is a little less remote from practice. The following is [1] Blackstone's account of the matter: "The rights, the powers, the duties, and the "privileges of ambassadors are determined by the law of "nature and nations, and not by any municipal constitutions. "For as they represent the persons of their respective masters, "who owe no subjection to any laws but those of their own "country, their actions are not subject to the control of the "private law of that state wherein they are appointed to "reside. He that is subject to the coercion of laws is neces- "sarily dependent on that power by whom those laws were "made; but an ambassador ought to be independent of every "power except that by which he is sent, and of consequence "ought not to be subject to the mere municipal laws of that "nation wherein he is to exercise his functions. If he grossly "offends, or makes an ill-use of his character, he may be sent "home and accused before his master, who is bound either to "do justice upon him, or avow himself the accomplice of his "crimes. But there is great dispute among the writers on "the laws of nations, whether this exemption of ambassadors "extends to all crimes, as well natural as positive, or whether "it only extends to such as are *mala prohibita*, as coining, and

[1] 1 *Com.* 253.

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Blackstone's language about the law of nature and nations and his reasoning appear to me weak, but I apprehend that if the question should ever arise how far an ambassador's privilege against the criminal law extends, the great question for the court to decide would be as to English usage and authority, and as to actual usages, as illustrated by historical facts, between other nations. Why an English court should be bound to attach special importance to the theories upon international law of foreign writers whose language is obviously rhetorical and inaccurate, and whose views do not agree, I am unable to understand.

The application of the criminal law to alien enemies, or aliens on board English ships against their will, is subject to some modifications, though the question has so seldom arisen that there is little authority upon it. I will notice in their order the few authorities and cases which I have found. The first is [2] a passage in Foster's *Discourse on High Treason*. After referring to the case of ambassadors, he seems to put "spies taken in time of war, actual hostilities being on foot "in the kingdom at the time," and "prisoners of war," on a footing analogous to that of ambassadors. They may, he considers, be punished "for murder and other offences of

[1] The principal authority referred to by Blackstone for this is *4th Institute*, chap. xxvi. p. 152—157. Coke goes much further in restraining the privileges of ambassadors than Blackstone. "If a foreign ambassador being "*pro rex* committeth here any crime which is *contra jus gentium*, as treason, "felony, adultery, or any other crime which is against the law of nations, he "loseth his privilege . . . and may be punished here as any other private "alien." In the last edition of Stephen's *Commentaries* (ii. 485—486, edition of 1880) this passage of Blackstone is not modified. [2] P. 188.

"great enormity which are against the light of nature and "the fundamental laws of all society," but "they may "be thought not to owe allegiance to the sovereign, and so "to be incapable of committing high treason," or, as it appears from a note, any offence which might be regarded as peculiar to the country where they are. He illustrates this view by a note in these words: [1] "At the gaol delivery for "the city of Bristol" (where Foster was Recorder), "in "August, 1758, Peter Moliere, a French prisoner of war, was "indicted for privately stealing in the shop of a goldsmith "and jeweller a diamond ring valued at £20. I thought it "highly improper to proceed capitally upon a local statute "against a prisoner of war, and therefore advised the jury to "acquit him of the circumstance of stealing in the shop, and "to find him guilty of simple larceny to the value laid in the "indictment. Accordingly he was burnt in the hand and "sent to the prison appointed for French prisoners." There would be a degree of difficulty amounting to practical impossibility in drawing the line between offences "against the "light of nature" and local offences; indeed Foster's distinction in this particular case relates not to the crime but to the punishment. It seems wholly irrational to say that if a French prisoner of war and an Englishman jointly steal a ring in a shop the law of nature and nations is that both shall be convicted of the felony, and sentenced to death, but that in order that the Frenchman may have his clergy the jury shall in his case find that the crime was not committed "in a shop," though the Englishman's was.

The next case to be referred to is that of [2] R. *v.* Depardo, which occurred in 1807. It seems to imply that an alien enemy committing a crime on an English merchant ship was not within the provisions of statutes to be noticed immediately which enabled the king to issue commissions for the trial of murders and manslaughters committed abroad.

Depardo was a Spaniard who, being a prisoner of war, volunteered at Pulo-Penang to serve on board a British

[1] This was disapproved in the case of R. *v.* Johnson, 29 *St. Tr.* 398. Lord Ellenborough said, "it certainly is not law," and Grose, J., agreed with him.
[2] 1 Taunton, 26.

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privateer, and committed manslaughter on board her in "the "Canton river about one-third of a mile in width within "the tideway, at the distance of about eighty miles from "the sea." A commission to try him was issued under 33 Hen. 8, c. 23, and 43 Geo. 3, c. 113, s. 6, and not under 28 Hen. 8, c. 15. The court seem to have thought that though he was on board an English merchant ship yet, as he was an alien enemy (for they considered apparently that his volunteering on board the privateer made no difference in his position), a crime committed by him in a navigable river in China could not be made the subject of prosecution in an English court. The case was reserved for the opinion of the judges under the old system, and no judgment was ever given, so that it is impossible to say that the case establishes any precise proposition. I do not see how to reconcile it with some [1] later cases, except upon the supposition that the statute under which the commission which tried Depardo sat was considered to apply to the case of British subjects committing murder or manslaughter abroad on land, that the Canton river at eighty miles from the sea was regarded as land though within the tideway, and that Depardo, having been a prisoner of war, and continuing in contemplation of law to be an alien enemy although he was on board an English ship, was not regarded as a British subject. The cases of R. *v.* Anderson and R. *v.* Allen show that the place where the crime was committed was within the jurisdiction of the Admiralty. In the argument in R. *v.* Depardo several cases are mentioned in which foreigners were tried under commissions issued under the Admiralty statute (28 Hen. 8, c. 15); in one of which a French prisoner of war was tried for the murder of another French prisoner of war on board an East Indiaman at the mouth of the Channel.

In 1845 [2] a case was tried at Exeter which supplies an illustration of the line at which the jurisdiction of the

[1] Especially with R. *v.* Anderson (*L. R.* 1; *C. C. R.* 161), see below, an R. *v.* Allen (1 Moody, 494), where the offence was committed "in the river "at Wampu, twenty or thirty miles from the sea." The statute 33 Hen. 8, c. 23, does not in terms apply to crimes committed abroad. It is a curious act. See some remarks on it below, p. 15.

[2] R. *v.* Serva and others, 1 Den. *C. C.* 104.

English courts ceases. Her Majesty's ship *Wasp* took a ship called the *Felicidade*, fitted for the slave trade, but having no slaves on board, and Captain Usher, the commander of the *Wasp*, put Lieutenant Stupart in command of the *Felicidade* and directed him to chase in the *Felicidade* another ship called the *Echo*. Lieutenant Stupart chased the *Echo* accordingly, took her, and put Mr. Palmer, a midshipman, and eight men in charge of her. The *Echo* had a cargo of slaves on board. Part of the crew of the *Echo*, including all the prisoners, were transferred to the *Felicidade*, and Palmer and his men were placed in charge of her, Lieutenant Stupart taking charge of the *Echo*. The prisoners rose upon and killed Palmer and his men. They were captured, tried for murder at Exeter, and sentenced to death. The case being reserved for the opinion of the judges, was twice argued, and it was held by [1] eleven judges to two that the conviction was wrong. The ground of this decision was "want of jurisdiction in an "English court to try an offence committed on board the "*Felicidade*, and that if the lawful possession of that vessel "by the British Crown through its officers would be sufficient "to give jurisdiction, there was no evidence brought before "the court at the trial to show that the possession was law-"ful." It seems from the argument that the legality of the seizure of the *Felicidade* was considered by the court to turn upon the construction of certain articles of treaties between England, Brazil, and Portugal, upon one view of which the English officers had, while upon another they had not, a right to take possession of the *Felicidade* for the purpose of bringing her before a mixed commission.

The case, therefore, shows that the criminal law of England does not apply to foreigners on board a ship unlawfully in the custody of an English ship of war.

The liability to the English criminal law of foreigners on board English merchant vessels has been clearly established, even if they are on board without their own consent, and

[1] Tindal, C.-J., Pollock, C.-B., Parke, B., Alderson, B., Patteson, J., Williams, J., Coltman, J., Maule, J., Rolfe, B., Wightman, J., Erle, J., against Lord Denman, C.-J., and Platt, B. This was three years before the Court for Crown Cases Reserved was established, so that no judgments were delivered, though there is a short note of the opinion of the judges.

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even if a foreign court has concurrent jurisdiction over them. This was decided by three cases,—[1] R. *v.* Lopez, and R. *v.* Sattler, decided in 1858, and R. *v.* Anderson (L. R. 1 C. C. R. 161) decided in 1868. Lopez was a foreigner who committed an offence on board an English ship, which he had entered as a sailor voluntarily. Sattler was a foreigner who at Hamburgh was by the Hamburgh police put, against his will, on board an English steamer, to be taken to England and tried for a theft which he was said to have committed there. Anderson was an American sailor who committed a manslaughter on an English ship "in the Garonne, about thirty-"five miles from the sea, and about 300 yards from the "nearest shore, within the flow and ebb of the tide." It was held that all three were subject to the English criminal law. In the course of the argument in R. *v.* Sattler, [2] Lord Campbell intimated a doubt whether a prisoner of war attempting to make his escape would be guilty of murder if he killed a sentinel who tried to stop him.

It is difficult to extract any definite proposition from these authorities as to the cases in which foreigners are liable to English criminal law, when they are brought, against their will, into places where that law is, as a general rule, administered. None of them, however, is inconsistent with, and each of them more or less distinctly illustrates, the proposition that protection and allegiance are co-extensive, and that obedience to the law is not exacted in cases in which it is avowedly administered, not for the common benefit of the members of a community of which the alleged offender is for the time being a member, but for the benefit of a community of which he is an avowed and open enemy.

Thus, in the cases above referred to, Sattler and Lopez had the protection of the law of England, though Sattler was placed within its protection against his will. In the case suggested by Lord Campbell of the prisoner of war shooting the sentry the prisoner of war would be deprived of his liberty as an act of war, and his attempt to regain it would be an act of war. If, however, a prisoner of war committed a crime unconnected with an attempt to recover his liberty (for

[1] D. and B. 525. [2] *Ib.* 543.

instance, rape or arson), he would be liable to the same punishment as other persons, because as regards all other matters than the deprivation of liberty he would be entitled to the same protection as others.

Serva's case proves merely that a wrongful extension of military power does not carry with it a corresponding extension of the criminal law.

Depardo's case, for the reasons already given, is anomalous. It may show that the rule that foreigners on board British merchant ships in foreign harbours are liable to English criminal law was not fully established in 1807.

III.—PLACE.

I now come to the question of the limits of the criminal law in relation to place, which is closely connected with the question of its limits in relation to persons. The subject is one of considerable intricacy, and involves the following classes of crimes:—

(1) Crimes committed on land in England.

(2) Crimes committed on land out of England.

(3) Crimes committed at sea, whether within the realm of England or without.

(4) Crimes committed on foreign ships of war in British waters.

(5) Crimes committed in places to which the Foreign Jurisdiction Acts extend.

Before the matters connected with these different classes of crimes can be considered it is necessary to consider a question which applies to all of them, namely, in what place is a crime committed if it is made up of acts and occurrences (both or either) happening in different places?

No general rule upon this matter has been, nor do I see how such a rule can be, laid down, as crimes differ greatly in their nature. Most of them can hardly be committed in more places than one. For instance, treason by levying war, riots, piracy, perjury, bigamy, the great majority of offences against the person, malicious injuries to property, and a great majority of the common offences against property, must be

committed in a definite place. There are some on which a difficulty might arise, though I do not know that it ever has arisen. For instance, it is a misdemeanour to disobey the directions of a public statute. Suppose a man is commanded by statute to do something which he omits to do. Where is his offence committed? Suppose no time to be specified at which the act was to have been done, at what place can it be said with propriety that the person in default did not do it?

This, however, is a speculative puzzle not worth discussion. The cases of actual difficulty which have occurred are such as these. A in Devonshire fires a gun at B in Somersetshire and kills him. Is A's crime committed in Devon or Somerset? A on land shoots B in a boat at sea. Is A's crime committed on sea or on land? A wounds B in one place and B dies in another. In which place is the crime committed? A writes a libel in Leicestershire and sends it by post to London, where it is printed in a newspaper. Does A publish in Leicestershire or in London?

As regards crimes committed in England these difficulties have practically been removed by the legislation as to venue, the result of which has been given [1] above, and in particular by the 7 Geo. 4, c. 64, s. 12, which provides, amongst other things, that where an offence is begun in one county and completed in another the offender may be proceeded against in either. Where, however, the jurisdiction of a court or country over a crime depends on the place where the crime was committed, the difficulty still remains. The matter was discussed in the case of [2] R. *v.* Keyn, not so so fully as the other points which arose in that case, but much more fully than on any other occasion of which I am aware. The facts were these. Keyn, in command of the *Franconia*, a German ship, on the high seas, navigated her so negligently as to run into and sink the British ship *Strathclyde*, causing the death by drowning of a woman named Young. One of the questions raised in the case was whether Keyn's act was done on board the English ship. Mr. Justice Denman

[1] Vol. I. p. 276.
[2] L. R. 2 Ex. see p. 103 (judgment of Denman, J.), p. 158 (judgment of Lord Coleridge, C.-J.), pp. 232—235 (judgment of Cockburn, C.-J.).