

### Homicide--Common-Law Rule, That Death of Victim Must Occur in a Year and a Day, Has Been Abrogated (People v. Legeri, 239 App. Div. 47 (2d Dept. 1933))

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of determining whether the felony is going on at the time, it is not controlling, and since the jury from the evidence could find abandonment of the robbery it was error to charge they should find the defendant guilty if they believed the evidence.

C. T. S.

HOMICIDE—COMMON-LAW RULE, THAT DEATH OF VICTIM MUST OCCUR IN A YEAR AND A DAY, HAS BEEN ABROGATED.—An indictment for homicide against defendant was dismissed, the victim having died in a greater period of time than a year and a day. On appeal, *held reversed*, the indictment not being faulty; since the common-law rule that the victim must die in a year and a day has been abrogated. *People v. Legeri*, 239 App. Div. 47, 266 N. Y. Supp. 86 (2d Dept. 1933).

It is the rule of the old English common law that in order to sustain an indictment for homicide, the victim must have died within the period of a year and a day.<sup>1</sup> This is still the rule in many jurisdictions.<sup>2</sup> The principle has been held to be a rule of evidence<sup>3</sup> and unless the victim died in the prescribed period, a prosecution for the homicide could not lie, since evidence would be inadmissible to show the injury was the cause of death.<sup>4</sup> The law in such case presumes that death proceeded from some other cause than the wound.<sup>5</sup>

In the case of *State v. Dailey*,<sup>6</sup> it has been held in support of the year-and-a-day rule, that the common law may be resorted to for definition of a crime not described in the statutes. This rule cannot apply in New York since express statutory provision abolishes common-law crimes and common-law punishments<sup>7</sup> and expressly defines statutory crimes, persons capable of committing such, and punishment therefor.<sup>8</sup> Thus, the common-law rule herein referred to cannot apply<sup>9</sup> and an indictment for homicide need not be predicated on death of the victim in a period of a year and a day.<sup>10</sup>

V. G. R.

<sup>1</sup> 1 WEHARTON, CRIMINAL LAW (11th ed. 1912) 629.

<sup>2</sup> *Roberts v. State*, 17 Ariz. 159, 149 Pac. 380 (1915); *Fisher v. State*, 109 Ark. 456, 160 S. W. 210 (1913); *Epps v. State*, 102 Ind. 539, 1 N. E. 451 (1885); *Rose v. Commonwealth*, 156 Ky. 817, 162 S. W. 107 (1914); *State v. Borders*, — Mo. —, 199 S. W. 180 (1917); *State v. Keerl*, 29 Mont. 508, 75 Pac. 362 (1904); *State v. Williams*, 31 Nev. 360, 102 Pac. 974 (1909); *Percer v. State*, 118 Tenn. 765, 103 S. W. 780 (1907).

<sup>3</sup> *People v. Murphy*, 39 Cal. 52 (1870).

<sup>4</sup> *State v. Huff*, 11 Nev. 17 (1876).

<sup>5</sup> *Ibid.*; *State v. Anderson*, 2 Nev. 729 (1868); *State v. Shepherd*, 30 N. C. 195 (1847); *State v. Orrell*, 12 N. C. 139 (1826).

<sup>6</sup> 191 Ind. 678, 134 N. E. 481 (1922).

<sup>7</sup> N. Y. PENAL LAW (1909) §22.

<sup>8</sup> *Id.* §20.

<sup>9</sup> N. Y. CONST. art. 1, §16.

<sup>10</sup> Instant case.