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 abandon-
ment of the robbery it was error to charge they should find the defen-
dant 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
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. *This is still the rule in many juris-
dictions.* The principle has been held to be a rule of evidence *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.* The law in such case presumes
that death proceeded from some other cause than the wound.

In the case of *State v. Dailey,* 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 *and expressly
defines statutory crimes, persons capable of committing such, and
punishment therefor.* Thus, the common-law rule herein referred
to cannot apply *and an indictment for homicide need not be predic-
cated on death of the victim in a period of a year and a day.*

V. G. R.

2 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).
3 People v. Murphy, 39 Cal. 52 (1870).
4 State v. Huff, 11 Nev. 17 (1876).
5 Ibid.; State v. Anderson, 2 Nev. 729 (1868); State v. Shepherd, 30 N. C.
195 (1847); State v. Orrell, 12 N. C. 139 (1825).
6 191 Ind. 678, 134 N. E. 481 (1922).
7 N. Y. Penal Law (1909) §22.
8 Id. §20.
9 N. Y. Const. art. 1, §16.
10 Instant case.