CROWN COURT PRACTICE: TRIAL

Supplement

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and
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BUTTERWORTHS

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TRIAL

SUPPLEMENT

by

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Table of Statutes

References in this Table to "Statutes" are the Halsbury's Statutes of England (Third Edition) showing the volume and page at which the annotated text of the Act will be found.

Table of Cases

In the following Table references are given to the English and Empire Digest where a digest of the case may be found.

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NOTER-UP

Note The numbers in the left-hand margin refer to the page numbers in the main volume.

Page lvi **Table of cases**

Add: *Kaplan* [1978] RTR 119 . . . 482.

Page lxi **Table of cases**

Add page reference to *Moghal* of p. 39.

Page lxix **Table of cases**

Delete page reference to *Searle v. Randolph* of p. 555 and substitute p. 535.

Page 9 **B. Grounds for Quashing**

After first paragraph add: "If a defect is not cured by amendment the Court of Appeal has no power to amend the indictment on appeal: *Nelson* (1977) 65 Cr App Rep 119. However a failure to comply with the Indictment Rules renders an indictment defective, rather than null and void, and an indictment which is defective may be considered by the Court of Appeal: *Nelson* (op. cit.) applying *McVitie* [1960] 2 Q.B. 483, [1960] 2 All E.R. 498 44 Cr. App. Rep. 201, approving *Urbanowski* [1976] All E.R. 679, 62 Cr. App. Rep. 229 and *Sheerin* (1976) 64 Cr. App. Rep. 68, and disapproving of *Crook* (1977) 65 Cr. App. Rep. 66."

Page 11 **A. The Statutory Provisions**

Ludlow v. Metropolitan Police Comr. is also reported at [1971] A.C. 29 at 38.

Page 30 **footnote 12**

At the end of the footnote add: "See also *Similar Fact Evidence and Corroboration* [1978] Crim. L.R. 185".

Page 39 **footnote 8**

For *Mogham* read *Moghal.*

Page 52 **footnote 1**

Add: "See also *Bayliss and Oliver* [1978] Crim. L.R. 361 and commentary".

Page 61 **(vii) Evidence where duplicity**

In quotation from *Greenfield* delete "court" in line 7 and substitute "count".

After quotation from *Greenfield* add: "It also seems that a judge may look at the depositions for this purpose in order to see what further and better particulars of a count would have been given if applied for: *Hills* [1978] 2 All E.R. 1105 at 1108, [1978] 3 W.L.R. 423 at 427 per Viscount Dilhorne."

Page 62 **footnote 4**

At the end of the footnote add: "See also *Power* (1977) 66 Cr. App. Rep. 159; *Cromack* [1978] Crim. L.R. 217; *Muir v. Smith* [1978] Crim. L.R. 293 and commentary. In any event it seems that a judge may look at the depositions to see what particulars would have been given if applied for: *Hills* [1978] 2 All E.R. 1105 at 1108, [1978] 3 W.L.R. 423 at 427."

Page 70 **footnote 9**

At the end of the footnote add: "In *McLean* [1978] Crim. L.R. 430 it was held that it was not an imputation within the meaning of section 1(f) merely to say that a man was intoxicated or swearing on a particular occasion."

Page 74 **footnote 20**

At the end of the footnote add: "See also *Tanner* (1977) 66 Cr. App. Rep. 56."

Page 83 **(ii) Same Offence**

Delete text from end of first sentence including quotation from *Russell* and footnote 19 and substitute: "[T]he offences . . . must be the same in all material respects including the time at which the offence is alleged to have been committed, and a distinct and separate offence similar in all material respects to an offence committed later, no matter how short the interval between the two, cannot properly be regarded as "the same offence" . . . [W]here persons are jointly charged with one offence and the charge is not bad for duplicity, they are charged with the same offence within the meaning of the Act. If charged separately with offences, a test of whether they are charged with the same offence is whether they could have been charged jointly . . . "[S]ame offence" in the proviso means an offence which is the same in all respects", per Viscount Dilhorne in *Hills* [1978] 2 All E.R. 1105 at 1109, [1978] 3 W.L.R. 423 at 428-429.

Thus two defendants who severally drove motorcars which killed a pedestrian in a collision cannot be charged with "the same offence". At pp. 1109 and 428, Viscount Dilhorne observed that it was wrong to conclude as in *Russell* [1971] 1 Q.B. 151, [1970] 3 All E.R. 924, 55 Cr. App. Rep. 23, that Lord Donovan, in *Murdoch v. Taylor* [1965] A.C. 574, [1965] 1 All E.R. 406, had taken the view that there should be a wide interpretation of the words 'the same offence'."

Page 85 **footnote 2**
At the end of the footnote add: "Where the prosecution knows of the existence of witnesses whom they do not intend to call, failure to notify the defendant of their existence may amount to a breach of the rules of natural justice: *R. v. Leyland J.J.*) *ex parte Hawthorn*, (1978) Times, 25th July."

Page 87 **footnote 3**
At the end of the footnote add: "See now *Baldwin* (1978) Times, 3rd May. It is wrong for a judge to insist on the prosecution calling a witness whom Crown counsel is reluctant to call."

Page 89 **C. Application to permit a witness to refresh his memory from a previous statement**
Add new footnote: "10A See *Refreshing Memory* [1978] Crim. L.R. 408."

footnote 12
At the end of the footnote add: "In *Singh* (1977) 15 S.A.S.R. 591, S. Aust. Sup. Ct. [1978] 7 C.L. 54, a second police officer, present at the time when the first constable made notes, but who could not recall the conversation without reference to the first constable's notes, was not permitted to refresh his memory from those notes."

Page 97 **(4) Privilege**
After line 5 add: "Once a document is in the hands of the prosecution it may be given in evidence as privilege relates only to its production and not its admissibility: *Tomkins* [1978] Crim. L.R. 290."

Page 99 **E. Source of information**
After line 8 add: "There is no duty to disclose the source of the information without any request being made: *Madge* [1978] Crim. L.R. 305."

Page 100 **footnote 15**
In line 18 after the words "to isolate the guilty one" add: "(see also *Muir v. Smith* [1978] Crim. L.R. 293)."

Page 101 **footnote 18**
Barker is also reported at (1975) 65 Cr. App. Rep. 287. *Mansfield* is also reported at [1978] 1 All E.R. 134, 65 Cr. App. Rep. 276.

Page 107 **Para (c)**
At the end of paragraph (c) add: "See also *Houghton* (1978), Times June 21 142 J.P. 396."

Page 107 **footnote 14**
At the end of the footnote add: "See *Kwabena Poku* [1978] Crim. L.R. 488 (innocent misrepresentation)."

Page 108 **line 1**
For "All Er" read "All E.R.".

Page 110 **footnote 19**
At the end of the footnote add: "See now Home Office Circular no. 89/1978."

Page 111 **footnote 1**
At the end of the footnote add: "The section came into force on 18th June 1978.

In *Houghton* (1978) 142 J.P. 396, it was said that except under the Prevention of Terrorism (Temporary Provisions) Act 1976 the police had no power to arrest anyone so that they could make enquiries about him. If they thought that there was any difference between detaining and arresting they were mistaken. What had been described as a "standard practice" was contrary to the provisions of section 62 of the Criminal Law Act 1977. Lawton, L. J., said that judges had a discretion to disallow evidence, even if, in law, it was relevant and admissible if its admissibility would operate unfairly against an accused: *Callis v. Gunn* [1964] 1 Q.B. 495 at 501. It would operate unfairly if the evidence had been obtained in an oppressive manner by force or against the wishes of an accused person, or by a trick (*Kuruma v. R.* [1955] A.C .197 at 204) or by conduct of which the Crown ought not to take advantage (*King v. R.* [1969] A.C. 304 at 319). A judge had to ask himself what had led the accused to say what he did. If on the evidence there was reason to think that a defendant had been improperly kept in isolation for the purpose of getting him to crack under the strain of being alone and he had made admissions because he could not bear to be alone any longer there could be good grounds for exercising the discretion. See also *Beet* (1977) 66 Cr. App. Rep. 188.

In *Houghton* there was no evidence that the defendant had been kept in isolation for the purpose of putting pressure upon him or that what he did was brought about by his isolation. Nor was there any basis for inferring that what he did had been brought about by his isolation. Had he been unfamiliar with police methods or of limited intelligence (he had been to public school and university, was an antique dealer, had five previous convictions for dishonesty and had served two substantial prison sentences) or had there been evidence that he had asked for, and had been denied, the advice of his solicitor the Court of Appeal might have drawn such an inference. On the facts of the case the Court of Appeal held that, even if the judge had wrongly failed to exercise his discretion, such irregularities as had happened had no bearing upon Houghton's

decision to talk to the police and to make a written statement. He had acted as he did because he thought that the police had agreed to grant him and some of his co-defendants immunity from prosecution but there was no evidence of any such agreement and the police had neither done nor said anything to arouse in him any expectation of such an immunity."

Page 111 **At the end of chapter add new section**

5. APPLICATIONS TO DISPENSE WITH COUNSEL'S SERVICES

When a defendant is represented by counsel it is a matter of discretion for the trial judge whether he should be permitted to dispense with counsel's services.

If, at the beginning of a trial, a defendant wishes on good grounds to defend himself he should be permitted to do so: *Woodward* [1944] K.B. 118, [1944] 1 All E.R. 159 (the defendant had had no opportunity of seeing counsel who was going to defend him). If counsel has examined witnesses, still more if he has addressed the jury for the defence, the defendant cannot say that he wishes to take over his own defence and to put questions to witnesses who have already been examined or to supplement the remarks which counsel has already made by observations of his own: *Woodward* op. cit. at pp. 119 and 160.

In *Lyons* (1974) Times, 12th July, the defendant sought to dispense with his counsel's services at the end of the prosecution's case. The trial judge refused his application and refused to hear the defendant give reasons for making it. The Court of Appeal held that in most cases a defendant's application should be allowed and he should be allowed to give his reasons, but that in the end it was a matter for the judge's discretion.

Page 118 **footnote 16**

Scarrott is also reported at [1978] 1 All E.R. 672 at 676.

Page 122 *Scarrott* is also reported at [1978] 1 All E.R. 672.

footnote 14

At the end of the footnote add: "See also p. 29, footnote 6 and *Similar Fact Evidence and Corroboration* [1978] Crim. L.R. 185".

Page 123 **Para (v)**

Add new footnote: "17A For recent applications of the principle see: *Tricoglus* (1976) 65 Cr. App. Rep. 16 (rape), *Mustafa* (1977) 65 Cr. App. Rep. 26 (identification), *Large* [1978] Crim. L.R. 222 (to explain reason for setting of trap)."

Page 129 **line 7**

At the end of line 7 add: "Provided an adequate warning is given a jury may convict on the uncorroborated evidence of the accomplice: *Thorne* (1977) 66 Cr. App. Rep. 6, *Director of Public Prosecutions v. Hester* (supra)."

Page 130 **line 2**
Peach is now reported at [1974] Crim. L.R. 245.

Page 132 **(ii) The evidence of children**
After last paragraph add: "In *Morgan* [1978] 3 All E.R. 13, [1978] 1 W.L.R. 735 it was held that although the judge had erred in not warning the jury to seek corroboration of the evidence of a thirteen year old witness who at the age of twelve had given evidence concerning an indecent incident involving his younger brother, it was impossible to state as a general proposition what the age was above which it became unnecessary for a judge to give such a warning. It was the type of problem which fell within the general discretion of the judge."

Page 135 **footnote 19**
At the end of the footnote add: "See also *Defences of General Application: (3) Entrapment* [1978] Crim. L.R. 137."

Page 136 **(3) Matters capable of amounting to corroboration**
As to corroboration and similar fact evidence see *Similar Fact Evidence and Corroboration* [1978] Crim. L.R. 185; see also page 29, footnote 6 and page 222.

Page 151 **(vi) Directing a jury on lies**
After: "evidence" in penultimate line on page add footnote reference: "6A".
Add new footnote: "6A As Lawton, L.J., said in *Thorne* (1977) 66 Cr. App. Rep, 6 at 18:
"The prosecution alleged that these alibis had been fabricated to deceive the jury . . . Counsel (for the appellant) did not suggest that alibis fabricated with such intent could not be corroboration. In our judgment they can provided that the jury is satisfied that the falsity has not arisen from mistake and that the fabrication has not come about through panic or stupidity."

Page 152 **footnote 7**
At the end of the footnote add: "; *Keane* (1977) 65 Cr App. Rep. 247".

Page 155 **(1) Evidence of identification generally**
After: "photographs" in line 2 add footnote reference: "9A".
Add new footnote:
"9A As to the use of photographs for identification see *Wainwright* (1925) 19 Cr. App. Rep. 52, *The Use of Photographs for the Purpose of Identification* [1978] Crim. L.R. 343 and *Identification Parades and the Use of Photographs for Identification*, Home Office circular no. 109/1978. See also *Hunjan* (1978) Times, 13th June."