BEFORE

MR. JUSTICE COLERIDGE, MR. JUSTICE ROWLATT, AND MR. JUSTICE McCARDIE.

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GEORGE SMELLIE.

For good reason a judge may order the removal of a defendant out of the sight though not out of the hearing of a witness giving evidence.

This was an appeal against sentence and an application for leave to appeal against conviction.

Appellant was convicted before the Chairman at the Middlesex Sessions, on the 24th of November, 1919, of assaulting, illtreating, and neglecting his daughter Frances, aged about eleven, in a manner likely to cause her unnecessary suffering or injury to her health, and was sentenced to twelve months' imprisonment in the second division.

Only one point calls for mention. Before appellant's daughter Frances was called to give her evidence, appellant was compelled by the warder, by order of the Court, to sit upon the stairs leading out of the dock, out of sight of Frances, while she gave her evidence.

Leonard May for the appellant, who was present. The act of the learned Chairman in removing appellant from the dock during the hearing of the evidence of Frances invalidates the whole trial. First, because a prisoner is entitled at common law to be within sight and hearing of all the witnesses throughout his trial; and secondly, because on a charge of this kind the effect on the minds of the jury of the removal of the prisoner from the dock by order of the Chairman at the moment when his daughter is entering the witness box is incalculable; and thirdly, that in this particular case the effect of his removal on the evidence of the little girl would also be incalculable, because it was admitted that he

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had beaten her for stealing, and she might be inclined to say untrue things in his absence which she would not have said under the restraining influence of his presence.

On the first point there is no statutory justification for the course adopted by the learned Chairman. It is quite clear that in cases of felony the prisoner must stand in the dock to be tried (see *St. George*, 9 C. & P. 483: 1840), and there have been cases in ancient times at assizes where the prisoner behaved so badly that he had to be tied to the dock with chains and straps (see Stephen's *Digest of Criminal Procedure*, Art. 302). Even in cases of misdemeanour like the present, there is no reported authority for the removal of the prisoner from the dock except one case, where the prisoner was removed and tried and sentenced in her absence, after two previous attempts to try her had all ended in her creating such an uproar in the dock that it was impossible for the trial to proceed in her presence (see *Mary Browne*, 70 J. P. 472, 1906, at C. C. C., before the Recorder). Here there is no suggestion that the prisoner did not behave with perfect decorum in the dock, but he was removed because the learned Chairman came to the conclusion that his presence would terrify his child. I submit the statement in some books that a charge of misdemeanour may be tried in the absence of the accused if he has previously pleaded is too wide, and that the authority of *Browne*, above, given in support of it, does not support that statement. Moreover, *Lovett*, 9 C. & P. 462, 1839, sometimes cited in support of the proposition that it is not necessary for the prisoner to be in the dock, is simply one where the prisoner for convenience was allowed to sit at the solicitors' table. Park J. and Garrow B. certainly expressed the view that a case could not go on in the absence of the prisoner without his consent, and doubted whether the consent of his counsel, would be sufficient. *Streek*, 2 C. & P. 413, 1826: misdemeanour; prisoner fainted and trial adjourned. There is plenty of authority that where a prisoner alleges that he cannot hear he is permitted to be brought within the bar to enable him to hear the witnesses: *Huggins*, 17 St. Tr. 311, 1729: murder. Here the prisoner was removed by order of the Chairman to sit on the stairs going out of the dock while his little girl stood near counsel for the prosecution to give her evidence.

Valetta for the prosecution.

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LORD COLERIDGE J.: If the judge considers that the presence of the prisoner will intimidate a witness there is nothing to prevent him from securing the ends of justice by removing the former from the presence of the latter.

Appeal, &c., dismissed.

Solicitor for Appellant—*Hall Tompkins.*

L. M.