

MAHER v. THE PEOPLE

William Maher v. The People.

MANNING J. (Dissent)

I differ from my brethren in this case. I think the evidence was properly excluded. To make that manslaughter \*which would otherwise be murder, the provocation - I am not speaking of its sufficiency, but of the provocation itself - must be given in the presence of the person committing the homicide. The cause of the provocation must occur in his presence. PARK J., in *Regina v. Fisher*, 8 C. & P., 182, in speaking of the cause of provocation, says, "In all cases the party must see the act done." Any other rule in an offense so grave as taking the life of a fellow-being, in the heat of passion, I fear would be more humane to the perpetrator than wise in its effects on society. More especially since the abolition of the death penalty for murder, and the division of the crime into murder in the first and second degree. There is not now the same reason, namely, the severity of the punishment, for relaxing the rules of law in favor of a party committing homicide as before. It would, it seems to me, be extremely mischievous to let passion engendered by suspicion, or by something one has heard, enter into and determine the nature of a crime committed while under its influence. The innocent as well as the guilty, or those who had not as well as those who had given provocation, might be the sufferers. If it be said that in such cases the giving of the provocation must be proved or it would go for nothing; the answer is, that the law will not, and should not permit the lives of the innocent to be exposed with the guilty in this way, as it would do did it not require the cause of the provocation, to occur in the presence of the person committing the homicide. See *Regina v. Fisher*, 8 C. & P., 182; *Regina v. Kelly*, 2 C. & K., 814; and *State v. John*, 8 Ired., 330.

I think the judgement should be affirmed.