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Burglary

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NOTES

BURGLARY

Defendant was indicted for burglary under Section 901 of the Act of 1939, P. L. 872, 18 P. S. Sec. 4901, which provides:

"Whoever, at any time, wilfully and maliciously, enters any building, with intent to commit any felony therein, is guilty of burglary."

The evidence established the following facts: Mrs. Charland was in her bed room on the first floor of her home when she saw the defendant at her bed room window. The defendant broke the lower pane of the window with his fist. She requested him to leave and when he failed to go, instead of making an outcry, she told him that she would have him arrested. She went to the home of a neighbor for the purpose of calling the police, having first turned on the lights in her home. The defendant, seeing her on the neighbor's porch, walked toward her, then turned, went upon her porch, and entered her house, the front door

having been left open by her. A few minutes later he came out of the house and walked away. There was no evidence of any act "toward the person of Mrs. Charland."

The jury returned a verdict of "an attempt to *break* and enter building with intent to commit rape."

The verdict was affirmed by the Superior Court. *Commonwealth v. Ellis*, 154 Super. 227, 35 Atl. (2d) 533.

The verdict was incorrect for the following reasons:

(1) The defendant was indicted for "entering," etc., and he was convicted of "an attempt to *break and* enter." The Superior Court did not discuss this point, but the Supreme Court said the verdict "is permitted by the Act of 1939, P. L. 872, Sec. 1107, 18 P. S. Sec. 5107." This act provides that when one is indicted for a crime, if the evidence shows that he did not complete the offense charged, he may be convicted of an attempt to commit the crime. It does not provide that he may be convicted of an attempt to do something else.

(2) There was not sufficient evidence that the defendant intended to commit rape upon Mrs. Charland. The Superior Court said "the jury was entirely justified in concluding that the defendant intended to commit rape." Judge Kenworthy, dissenting, said that he could not "find anything from which it could be inferred, beyond a reasonable doubt, that the defendant entered the house with intent to commit rape." The Supreme Court said there was "no evidence of an intention to commit a felonious act against Mrs. Charland."

The statute makes criminal the entering of a building with intent to commit a felony *therein*. As Judge Kenworthy remarks how could the defendant enter a building with the intention of raping Mrs. Charland *therein* when he knew that she was standing on the porch of a neighboring house.

(3) The Supreme Court said "there was no act sufficiently proximate to the alleged intended crime to constitute a criminal attempt." The defendant was not indicted for rape and he was not convicted of an attempt to rape. He was indicted for "entering," etc. He *broke* the window with his fist, and, assuming that he intended to enter, that was sufficiently proximate to entering to constitute an attempt to enter.

Further, he did enter when he walked in the door. The fact that he did enter would, according to some authorities, preclude his conviction of a mere attempt to entry, but an entry is certainly "one of the natural series of acts required for the commission of the crime" of entering, and this was the test adopted by the Supreme Court as to whether an act constituted an attempt. *Commonwealth v. Ellis*, 349 Pa. 402, 37 A. (2d) 504.

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