

CUSSEN, J.
 1921
In re
 TRU-GRAIN Co.
 LIMITED.

"It is plain that the question, what is reasonable for a person to do in mitigation of his damages, cannot be a question of law, but must be one of fact in the circumstances of each particular case."

These authorities seem to me to show that the contention of the liquidators in the matter I have been asked to deal with is right.

The parties can, unless they arrive at some arrangement, bring the summons on again with respect to the further matters involved.

Order accordingly.

Solicitors for the creditor: *Snowball & Kaufmann.*

Solicitor for the liquidators: *P. St. J. Hall.*

W. S. S.

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 August 11, 12,
 October 13.

Criminal law—Taking reward for restoring stolen property—What constitutes offence—Taking on account of helping—Money or reward—"Corruptly" explained—Proper direction to jury indicated—Effect of Presentments Act 1916—Crimes Act 1915 (No. 2637), s. 184.

Taking money under sec. 184 of the *Crimes Act* 1915 means taking a reward in the form of money for the use of the taker or for some person or persons other than the giver, and the mere taking of the physical custody of money as a messenger or mandatory of the person giving such custody is not sufficient to constitute a taking within that section.

The word "corruptly" in sec. 184 refers to an act done by a man knowing that he is doing what is wrong and doing it with an evil object. If the object or one of the objects of the accused is to afford facilities to offenders for the disposal of the stolen property whilst screening them from prosecution, and so enabling them to obtain the profit from the crime in safety, or if his object or one of his objects is to share in such profits, he has acted corruptly within the section.

Although the word "corruptly" is in sec. 184 attached to the word "takes," the allegation of corruption must be supported by evidence *dehors* the mere act of taking. And, therefore, in a prosecution under that section the question whether the accused did "take" money "on account of helping" should be submitted to the jury separately, and it is also for the jury, assuming that they find that the accused did take the money, to say then whether the accused acted "corruptly."

Semble, having regard to the *Presentments Act* 1916, it would not now be necessary in a case under sec. 184 to allege a failure to use all due diligence to cause the offender to be brought to justice for the original offence.

Legislation and authorities reviewed.

CRIMINAL APPEAL AND APPLICATION FOR LEAVE TO APPEAL.

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This was an application for leave to appeal and an appeal against his conviction by John Morgan Worthington, who was charged on presentment under sec. 184 of the *Crimes Act* 1915 for that he on the 19th May 1921 corruptly did take from Frederick William Strack certain money, to wit the sum of 750*l.*, upon account of helping the said Frederick William Strack to certain property, to wit a number of war bonds, which had been stolen.

The case coming on for hearing on the 19th July before Mann, J., and a jury, the accused pleaded not guilty.

It appeared from the evidence that certain war bonds, amounting in value to 2800*l.*, were on the 28th March 1921 stolen from a house in Parkville. On the 22nd April Worthington visited the office of Frederick William Strack, the Deputy Registrar of Commonwealth Inscribed Stock, in Melbourne, and informed him that he knew where certain cheap bonds, which were not on the market, could be purchased. Strack suggested they were stolen bonds, and requested Worthington to procure their numbers.

A second interview between Worthington and Strack took place on the 26th April, at the latter's office, when, Worthington having supplied the numbers, it was definitely ascertained that the bonds were the bonds stolen on the 28th March. Worthington then offered to negotiate the purchase of the bonds from the holders thereof on behalf of Strack or the owner, and it was arranged that he should do so. After this interview, Strack, without Worthington's knowledge, communicated with the Treasury and with the police.

During the ensuing three weeks a number of interviews took place between Strack and Worthington, Strack purporting to act for the owner of the bonds and Worthington acting as intermediary between Strack and the holder or some person who was in communication with the holder. The price at which the bonds should be purchased was discussed, and 750*l.* was finally agreed upon as the amount.

At these interviews Worthington was asked, but refused, to accept a reward for his services. He also at an early stage disclosed his name and identity (he was then Sergeant-at-Arms of the Legislative Assembly) and referred Strack to certain leading citizens; but he always refused to disclose the name of the person

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with whom he was in communication in reference to the bonds, stating that he had promised not to do so, and that such person had informed him that were he to give that information he would deny all knowledge of the matter and that the bonds would be destroyed or sent out of the country.

Strack gave evidence that Worthington during these interviews used the terms " we " and " they " in such a way as to convey the impression to his mind that Worthington was acting for or with the holders; and, further, that he had asked Worthington why he did not drop out of the matter altogether if he had no personal interest in it. Worthington, on the other hand, denied that such terms had been used by him, and asserted that Strack repeatedly pressed him not to drop out of the negotiations as the only channel with the holder would thereby become closed.

Worthington had stipulated for a written authority from Strack to purchase the bonds, but this authority was never in fact actually signed.

On the 19th May the sum of 750*l.*, which had been obtained by Strack from the owner of the bonds, was handed by him to Worthington, the latter signing a receipt therefor. On leaving Strack's office Worthington was arrested with the sum in his possession. He again refused to divulge the name of the person with whom he had been in communication in the matter, and although the name of Kirkland was mentioned as being such person, and Worthington was threatened with the present proceedings if he failed to acknowledge that that was so, he still refused to yield the information.

Worthington in his evidence stated that he had known Kirkland for 18 months, having been brought into contact with him in connection with his official duties; that he knew that the bonds were stolen, but did not consider that Kirkland was the thief, although he might be acting for the thieves; that he had repeatedly endeavoured, without success, to persuade Kirkland to meet Strack; that he had refused to disclose Kirkland's name, for the reasons already set out; and that he had done all in his power to aid in the recovery of the bonds, with much trouble to himself and without intention or desire of receiving a reward.

The jury, on the 21st July, at the conclusion of the hearing, returned a verdict of guilty, but the passing of sentence was postponed pending the hearing of this appeal.

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Leave to appeal against the conviction was sought by notice dated the 27th July, on the following grounds:—

1. That there was not sufficient evidence of the offence charged, and the verdict was against the evidence and the weight of the evidence.

2. That upon the true construction of sec. 184 of the *Crimes Act 1915* there was no case fit to be submitted to the jury.

3. That there was no evidence that the bonds in question were stolen.

4. That, having regard to the evidence, the finding that I did or intended to derive any benefit, advantage, or profit to myself out of the proceeds of the robbery or the sum of 750*l.* received would be unreasonable, and cannot be supported.

5. That, having regard to the evidence, the finding that I received the sum of 750*l.* for the purpose of helping the thieves to secure the profits of their crime in safety would be unreasonable, and cannot be supported.

6. That, having regard to the evidence, the finding—

(a) That I knew the thieves, or

(b) Had means of finding who they were, or

(c) That I determined to do nothing to bring them to justice, or

(d) That I was consciously closing up or concealing some avenue of inquiry for the detection of the thieves or throwing obstacles in the way thereof, or

(e) That there was some fact or understanding which I did not disclose—would be unreasonable, and cannot be supported.

7. That, inasmuch as each of the conclusions referred to in the 4th, 5th, and 6th grounds hereof was left to the jury, the verdict should be set aside.

8. That the finding that I corruptly took money to help Strack to recover a number of war bonds which had been stolen within sec. 184 is upon the evidence unreasonable, and cannot be supported.

9. That, having regard to the evidence and the learned Judge's directions, the verdict of the jury is a miscarriage of justice.

The notice of appeal against the conviction contained, in addition to the grounds set out above in the application for leave to appeal, the following grounds:—

1. That the charge of the learned Judge to the jury was erroneous in point of law and was a misdirection—

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(1.) In the definition of the elements of corruption.

(2.) In describing what would amount to corruptly taking.

(3.) In describing what would enable or lead them to infer a corrupt taking, and what inferences were open to them.

(4.) In directing the jury that I took the money on account of helping a person to a security within sec. 184, or that they would have no difficulty in so finding.

The parts of the charge more particularly relied on in support of the above grounds are as follows:—

1. “ I apprehend you will have no difficulty on the question as to the bonds having been stolen or on the question as to his having received money from Strack for the purpose of recovering those bonds.”

2. “ Now, if Worthington received this money for the purpose of helping the thieves to secure the profits of their crime in safety, that would be taking it corruptly; if he knew the thieves—knew who they were, or had means of finding out who they were—and determined to do nothing to bring the guilty persons to justice and yet received this money in the way he did, that would be taking it corruptly; and if he intended in any way to derive any benefit or advantage or profit for himself out of the proceeds of that robbery, that would be taking it corruptly. These positions might be summed up by saying if he intended to share in the profit of the theft, or intended in any way to screen the guilty in what he did, then that would be a corrupt taking of money on his part.

“ If, on the other hand, he had no knowledge of who the guilty persons were, had no means of finding out who the guilty persons were, and honestly thought that there was nothing he could do or abstain from doing that would assist in the discovery of the thieves, and he took no benefit of any kind himself from the robbery, then that would not be a corrupt taking of money.

“ Now, you will notice in regard to that last statement that I have laid emphasis on this position—that he not only did not know who the thieves were but had not at his hand any means of finding them out. In those circumstances, if he took the money for the purpose of securing the bonds and without any share or lot in it himself, it would not, as I have said, be a corrupt taking.”

3. “ He would be doing that which is an offence under the Act if, in taking that money and handing it over to Kirkland, he

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was consciously concealing or closing up some avenue of inquiry for the detection of the thieves."

4. "You will probably take a broad view of the whole position and ask yourselves—Was this man in substance acting with and for the guilty persons—was he (to use a colloquialism) 'in with them,' more or less in their counsels, and, throughout all he did, was he really working for them? If you come to that conclusion broadly, you would probably have no difficulty in inferring that, in so acting, he was acting corruptly—that he was in some way helping to screen them, or in some way himself profiting by what took place."

5. "It is only in a much broader aspect—as to who were his intimates, his associates, his confidants in the matter. Was he in with the thieves? It is that which will help you to draw inferences as to whether he had any guilty knowledge or not."

6. "On the other hand, of course, that is all consistent with the fact that he is concealing some simple fact which he could conceal, such, for instance, as Kirkland going to give him 50*l.* if he brings this off, or some other understanding between himself and Kirkland, of which you know nothing. There is no evidence of anything of the kind, and the matter is one of inference for you to draw from your findings on the facts of the case."

7. "Well, now, gentlemen, that, as I think, and as I said at the beginning, is the crux of this case. If you believe that was his state of mind, and those were the facts, you should acquit the accused; if you do not believe that, if you think that he was either sharing in the booty or was in some way screening the thieves—that is to say, helping them to safety or throwing obstacles in the way of their arrest—if you are satisfied beyond all reasonable doubt on either of those matters, then you should convict him."

Dixon, for the appellant, referred to *Hawkins's Pleas of the Crown*, vol. i., at pp. 247, 248; *Blackstone*, vol. iv., ch. 10, sec. 8, at p. 132; *Encyclopædia Britannica* (11th ed.), vol. xxviii., at p. 632; 4 Geo. I., c. 11, sec. 4; 6 Geo. I., c. 23, sec. 9; 7 & 8 Geo. IV., c. 29, sec. 58; 9 Geo. IV., c. 55, sec. 57; *Reg. v. Hart (a)*; *Reg. v. King (b)*; *Reg. v. Hicks (c)*; *Reg. v. Pascoe (d)*; *Reg. v. O'Donnell (e)*; *Adams v. The Great North of Scotland Railway Co. (f)*; *Starkie on Evidence* (4th ed.), at pp. 859, 862.

(a) [1843] 2 L.T. (O.S.) 248.

(b) [1844] 1 Cox Cr. Cas. 36.

(c) [1845] 1 Cox Cr. Cas. 145.

(d) [1849] 3 Cox Cr. Cas. 462.

(e) [1857] 7 Cox Cr. Cas. 337.

(f) [1891] A.C. 31, at pp. 46, 47.

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Leon, K.C., for the Crown, referred in addition to *R. v. Scott (g)*.

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Cur. adv. vult.

CUSSEN, J., read the judgment of the Court (CUSSEN, MANN, and McARTHUR, JJ.) as follows:—Appeal against conviction and application for leave to appeal against conviction. We think that the appeal should be allowed and a new trial ordered.

The accused was charged on presentment under sec. 184 of the *Crimes Act* 1915, for that he, on the 19th May 1921, “corruptly did take from Frederick William Strack certain money, to wit the sum of 750*l.*, upon account of helping the said Frederick William Strack to certain property, to wit a number of war bonds which had been stolen.” The jury returned a verdict of “guilty.” As specially difficult questions of construction arose, the passing of sentence was postponed pending the hearing of the appeal, and the accused was released on recognizance to appear at the final determination of the appeal. Sec. 184 enacts:—“Whosoever corruptly takes any money or reward directly or indirectly under pretence or upon account of helping any person to any chattel money valuable property or other security which is by any felony or misdemeanour stolen taken obtained extorted embezzled converted or disposed of as in this Act before mentioned shall (unless he has used all due diligence to cause the offender to be brought to justice for the same) be guilty of felony and shall be liable to imprisonment for a term of not more than fifteen years.” It is therefore a highly penal provision, and must be construed accordingly: *Cf. R. v. Tolson (a)* (1889).

The section appears in Division 2, Part I., of the Act, which has a heading “Larceny and Similar Offences,” and is under a special sub-heading, “Obtaining Money, etc., by False Pretences.” It is plain, however, that the section goes beyond the sub-heading. The sub-heading contains the word “obtaining,” and the section the words “stolen taken obtained extorted embezzled converted or disposed of as in this Act before mentioned.” A reference to the prior sections will show that, speaking generally, these words refer to cases where one person has dealt with (we advisedly use a neu-

(g) [1907] V.L.R. 471.

(a) [1889] 23 Q.B.D. 168.

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tral word) property with the intention of converting it to his own use or of depriving the owner thereof of his property. This is a commonplace as to stealing, and has been so decided in connection with obtaining property by false pretences: *R. v. Kilham* (b) (1870). Sec. 184 itself may, in most cases at all events, be said to refer to a species of extortion. The section also uses the words "money or reward," and the history of the legislation strongly suggests that this means "money or other reward," or, in other words, that "whosoever . . . takes . . . money" means "whosoever takes money as a reward." We do not, however, say that there can be no offence under the section unless the accused personally is to benefit ultimately from or by the money or other reward.

The first enactment directly connected with the present subject, which is said to have been passed to meet the case of the notorious Jonathan Wild, is 4 Geo. I., c. 11, sec. 4. It is preceded by a preamble in which it is recited that—"Whereas there are several persons who have secret acquaintance with felons and who make it their business to help persons to their stolen goods and by that means gain money from them which is divided between them and the felons whereby they greatly encourage such offenders;" and it is therefore enacted—"That wherever any person taketh money or reward directly or indirectly under pretence or upon account of helping any person or persons to any stolen goods or chattels every such person so taking money or reward as aforesaid (unless such person doth apprehend or cause to be apprehended such felon who stole the same and cause such felon to be brought to trial for the same and give evidence against him) shall be guilty of felony and suffer the pains and penalties of felony according to the nature of the felony committed in stealing such goods and in such and the same manner as if such offender had himself stolen such goods and chattels in the manner and with such circumstances as the same were stolen." The provisions and position of the clause relating to the arrest, etc., of the thief and the assimilation of the punishment to that of the thief, as well as the preamble, suggest that the clause was aimed at a person who, if not the actual thief, was in very close association with the thief, and who was using his knowledge and opportunities of restoring the goods for the purpose practically of extorting money or other re-

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ward from the owner of the goods. The section seems to assume a knowledge or belief as to the thief which would justify a private person not a constable in arresting him. It must be remembered that at that time the law did not justify an arrest by a person not being a constable unless a felony had been in fact committed and such person had a reasonable suspicion that the person arrested was the felon.

In some cases—as is pointed out in *Rex v. Drinkwater* (c) (1740)—the offence under the section was a capital one. It is important to notice that the words “taketh (takes) money or reward directly or directly under pretence or upon account of helping any person,” have been continuously used throughout the legislation on the subject, and now appear in our *Crimes Act* 1915, the word “any” being added before “money.” It seems probable that the Legislature has throughout used the words quoted with the same meaning. It is possible that these words were suggested by the enactment contained in 18 Eliz., c. 8, sec. 5, which was directed against the compounding of what may be called penal actions. That section provides that—“If any person shall by colour or pretence of process or without process upon colour or pretence of any matter of offence against any penal law make any composition or take any money reward or promise of reward for himself or to the use of any other without the order or consent of a Superior Court he shall be disabled to pursue or be plaintiff or informer in any suit or information upon any Statute popular or penal and shall forfeit and lose ten pounds the one half to the Crown and the other part to the party grieved thereby to be recovered by action of debt.” This enactment is still in force. It will be noticed that it expressly includes a “promise of reward,” and uses the words “to himself or to the use of any other,” which are very suggestive words as indicating that under this section “taking a reward” meant taking it finally and irrevocably as regards the giver. 4 Geo. I., c. 11, sec. 4, was followed by 6 Geo. I., c. 23, sec. 9, which is preceded by a preamble—“That the practice of taking money to help persons to their stolen goods and sharing it with the felons is still continued in defiance of the laws and to the encouragement of felons,” and it is therefore enacted—“That whosoever shall discover apprehend and prosecute to conviction of felony without benefit of clergy any person or persons

for the said offence of taking money or other reward directly or indirectly, &c. . . . shall be entitled to a reward of fifty pounds. . . .”

This later section is noticeable by reason of the fact that purporting to recite 4 Geo. I., c. 11, sec. 4, it uses the words “ money or other reward,” instead of the words actually used in the earlier section, “ money or reward.”

On this state of the law two cases (in addition to the earlier case of Jonathan Wild) were decided, but, unfortunately, in the first of these two cases the actual decision is not available, and in the second the reasons for the decision are not stated. In *Rex v. Drinkwater* (d) (1740) the indictment states that one C. K. stole a watch from the person of one L., and that afterwards the accused Drinkwater did feloniously receive and have eight guineas as a reward for helping D. (L.’s master) to the watch, he not having apprehended or caused to be apprehended C. K., etc., against the form of the Statute. It will be noticed that the words “ have and receive ” are used instead of the statutory word “ take,” and that the money (eight guineas) is stated to have been had and received “ as a reward.” It is possible that this indictment may have been copied in these respects from that in *Wild’s Case* (1725), and if so it may be looked upon as something like contemporaneous exposition. The words in the indictment strongly suggest that the draftsman was of opinion that the money must be given and taken as a reward for the benefit of the accused himself, or at all events for the benefit or use of some person or persons other than the giver—i.e., that the giver has finally parted with the dominion and control of and the property in it. A very interesting argument based on the fact that C. K., the person alleged to have been the thief, was dead, and had never been convicted, is fully reported in *Drinkwater’s Case*; but having regard to some changes since made in the position and the wording of the clause commencing with “ unless,” it is probably now not of importance, but it may be noticed that counsel for the prosecution, who apparently admitted that the words “ for helping ” in the indictment were equivalent to “ upon account of helping,” suggested that the words “ under pretence of helping ” indicated that the section had a wider meaning than was contended for by counsel for the accused. From this time onwards “ under pretence of ” was generally adopted in in-

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dictments, though in one case both phrases are found. The fact that the clause commencing with " unless " affected the construction of the whole section is indicated by the opinion of East, which has been generally acquiesced in, that the Judges thought the accused should not have been convicted, because, owing to the death of the alleged thief, he was unable to comply with the stipulated conditions as to arrest.

Before referring to the second case under 4 Geo. I., c. 11, sec. 4, it may be well to state that in 25 Geo. II., c. 36, there is a provision imposing a penalty of 50*l.* for publicly advertising a reward with no questions asked for the return of things stolen or lost, or making use of any words in such advertisement purporting that such reward shall be given or paid without seizing or making inquiry after the person producing such things so stolen or lost, etc. We need not further refer to this section, as it is substantially the same as the present sec. 185 of the *Crimes Act* 1915. There is little doubt, with regard to the reward mentioned in this section, that it refers to a case in which it is intended that the advertiser is to part finally with his control of and property in the " reward." In *Rex v. Leadbitter (e)* (1825) the indictment was that certain goods having been feloniously stolen from C. & C. (partners) by a person unknown, the accused " feloniously received and took from C. the sum of 30*l.*, the moneys of the said C. & C., under pretence of helping them to the said stolen goods, feloniously, etc., not having apprehended, etc." The accused in that case is said to have received the money, stating that there was no doubt if the goods were in the hands of regular thieves he should be able to get them restored, and being asked what the money was for, said it was for the purpose of recovering the goods, and that he was to see the (regular) thieves and one Iky Solomon, a notorious receiver, that day. The prisoner had, so far as appeared, no acquaintance with the thief, and did not represent that he had, and, so far as appeared, had no power to apprehend the thief or to cause him to be apprehended or brought to trial, or any evidence to give against him. He did not help the owner to the goods, nor were they recovered, and, so far as appeared, the accused had no power to restore them. The Common Sergeant asked the jury to consider whether the 30*l.* was received by the accused under pretence of helping C. & C. to the stolen goods, directing them to find the

(e) [1825] 1 Moo. C.C. 76.

prisoner guilty if they found the affirmative of that proposition. The report does not state whether he gave any explanation of the meaning of the words—*e.g.*, the words “received,” “pretence,” and “helping”—used in the proposition. It was objected that acquittal ought to have been directed—(1) because accused had no acquaintance with the thief; (2) because the goods never were recovered and accused had no power over them. Judgment was respited in order that the opinion of the Judges might be taken, and the Judges met and considered the case (apparently without argument), and were of opinion that the conviction was right. The first objection seems to have had a good deal to support it. It has already been pointed out that 4 Geo. I., c. 11, sec. 4, seemed to have been directed against the actual thief or a person closely associated with him. It seems highly probable that the change in the position and wording of the “unless” clause, which took place two or three years later, when the Act 7 & 8 Geo. IV., c. 29 (which will presently be referred to) was passed, was due to the feeling that the decision overruling this objection was at least doubtful. By reason of the change referred to, and of still further changes in the wording of the “unless” clause, this matter is now probably of little importance.

As to the second objection, the Judges were apparently of opinion that there might be a “pretence of helping” to goods though the goods never were recovered, and so far as appeared, the accused never had any power of recovering them and never represented anything but that he had no doubt he could recover them if they were in the hands of the regular thieves. The decision of the Judges apparently suggests that a wide meaning should be given to the word “helping.” Compare the phrases “aiding to recover” in sec. 87 of the *Crimes Act* 1915, and sec. 5 of the English *Larceny Act* 1916, and “helping to recover” in sec. 34 of the latter Act. It looks as if the Judges interpreted “helping” as including not only “restoring” or “recovering,” but also “aiding or undertaking to aid in restoring or recovering.” Where the full phrase, “under pretence of helping to property,” is used there is good ground for suggesting that the wider meaning should be given, and it may be said that this fixes the meaning of the word “helping,” and that the same wider meaning must be given where the phrase “on account of helping to property” is used, as in the present case. But even if the wider meaning is given

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there seems to be some force in the second objection on the facts in *Leadbitter's Case*. Under the present law the accused in that case might, perhaps, have been more properly convicted for larceny as a bailee or as a person entrusted with property, but these offences were not provided for in England until 1857, by the Act 20 & 21 Vict., c. 54. By 7 & 8 Geo. IV., c. 27, 4 Geo. I., c. 11, sec. 4, was repealed, and on the same day as the repeal 7 & 8 Geo. IV., c. 29, a consolidating and amending *Crimes Act*, came into force. By sec. 58 it was enacted—"Every person who shall corruptly take any money or reward directly or indirectly under pretence or upon account of helping any person to any chattel money valuable security or other property whatsoever which shall by any felony or misdemeanour have been stolen taken obtained or converted as aforesaid shall unless he cause the offender to be apprehended and brought to trial for the same be guilty of felony and being convicted thereof shall be liable to transportation or imprisonment and in certain cases to whipping."

It may be noticed in passing that this section is one of a group consisting of secs. 57-62. Sec. 57, which is preceded by the words "to encourage the prosecution of offenders," deals with the restoration and restitution of stolen, etc., property by the Court in certain circumstances. This has been extended by later Acts. This restoration after trial is evidently considered the normal mode. Sec. 58 deals with corruptly taking a reward, etc. Sec. 59 relates to publicly advertising rewards, and sec. 60 to certain cases of receiving. Secs. 61 and 62 deal with principals in the second degree, accessories, and with abettors in certain cases. Sec. 62 (*inter alia*) provides for the arrest of persons offering for sale, etc., property where there is reasonable cause to suspect that such property has been stolen, etc. Sec. 58, already set out, may be compared with the earlier section, 4 Geo. I., c. 11, sec. 4; and the later sections now embodied in Victoria in sec. 184 of the *Crimes Act* 1915. 7 & 8 Geo. IV., c. 29, sec. 58, is much nearer the later sections than the earlier section. It differs from the earlier section in several respects. The word "corruptly" is introduced before the word "take," and the "unless" clause is altered in terms and placed between the words "shall" and "be guilty;" the punishment is made independent of that for the original offence; the law is extended to cover other property criminally taken from the owner as well as stolen property, and to cover certain mis-

demeanours as well as felonies. Of these alterations the most important for our present purpose are the first two. By the first the close association with the original offender indicated by the argument in *R. v. Leadbitter* can no longer be regarded as essential, but directly this alteration is made it becomes at once obvious that there may be many cases in which a person may take a reward even for himself for aiding to recover stolen, etc., property, in which no one would dream of imputing any criminality in the ordinary sense of the word, and this no doubt led to the introduction of the word "corruptly." There have been cases, chiefly under laws relating to elections, in which the word "corruptly" has been used merely to indicate that the act forbidden by the Statute has been done intentionally, but in this case something more is clearly intended: *Cf. R. v. Scott* (f) (1907). The meaning of the word has, however, been discussed in several cases under 7 & 8 Geo. IV., c. 29, sec. 58, and can be better considered after those cases have been referred to. The cases under this section and a corresponding enactment applying to Ireland are—*Reg. v. Hart* (g) (1843); *Reg. v. King* (h) (1844); *Reg. v. Hicks* (i) (1845); *Reg. v. Pascoe* (k) (1849); and *Reg. v. O'Donnell* (l) (1857). See *Russell on Crimes* (7th ed.), p. 1489.

In *Reg. v. Hart* the indictment is—"For that he on the 11th September last corruptly and feloniously did take and receive from T. M. certain money and reward, to wit 14s. of the moneys of T. M., under pretence then and there of helping the said T. M. to a certain watch before then feloniously stolen taken and carried away, the said H. not having caused the said person by whom the said watch was so stolen taken and carried away to be apprehended and brought to trial for the same." It will be noticed that the words "take and receive" are used as in *Leadbitter's Case*, that "money and reward" are both mentioned, and that, notwithstanding the position of the clause commencing with "unless," an allegation of failure to comply with it is included in the indictment. This last-mentioned statement applies also to all but one of the subsequent cases to be mentioned. The facts as stated in the evidence were:—M. had his watch stolen at the races. H. was brought to him for identification as one of the men

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(f) [1907] V.L.R. 471.

(g) [1843] 2 L.T. (O.S.) 248.

(h) [1844] 1 Cox 36.

(i) [1845] 1 Cox 145.

(k) [1849] 3 Cox 462.

(l) [1857] 7 Cox 337.

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possibly concerned in the theft, but M. failed to identify H., who was discharged out of custody. H. then paid a visit to M., and told M. he (H.) had learned where M.'s watch was, and if M. would give him 11s. he would go and get it for M., and M. did so. Accused came back and said he found he must have 5s. more, but M. only had 3s., which he gave to H. M. never saw or heard any more of H. until he was in custody on this charge some considerable time afterwards. Accused made an oral unsworn statement that he had accidentally heard some persons speaking about a stolen watch, and thought he would be able to recover it without expectation of gain to himself, and that he was a mere conduit pipe of money from the spoliated to the spoliators, of whom he himself had been the dupe. It was contended that if this statement was accepted he did not know how the parties whom he overheard acquired the watch, and so in truth could not safely cause them to be apprehended.

According to the report, Parke, B., appeared to think that if the prisoner's statement was correct he had not acted "corruptly," but the statement may also be of importance in connection with the question whether the accused really "took a reward." Eventually, however, in the case, if the reporter is right in his conclusion above stated, the jury must be taken as having disregarded the prisoner's unsworn statement, as they found him guilty. In charging the jury, Parke, B., referred to 4 Geo. I., c. 11, sec. 4, and to the introduction of the word "corruptly" by 7 & 8 Geo. IV., c. 29. He directed the jury that if they thought accused was "art and part" with the thieves and in concert with them or meant corruptly to obtain the money wholly or in part for himself, in order to screen the real offenders, or meaning to share knowingly with the guilty parties, they should find him guilty. But if they thought he innocently gave the information in order that the property might be returned to the owner, they should find him "not guilty." He added that it had been decided by all the Judges in *R. v. Leadbitter* that the party who received the money might be found guilty, although ignorant as to who the thieves were. Whether this last statement was correct when *R. v. Leadbitter* was decided there seems little doubt as to its correctness in 1843 and now. As to the earlier portion of the charge, "art and part" is a well-known expression in Scotch law. By "art" is understood the mandate, instigation, or advice that may have been

given towards committing the crime (*i.e.*, in this case theft); “part” expresses the share that one takes to himself in it by the aid or assistance which he gives the criminal in the execution of it—*Erskine*. It seems to cover phrases which in English law are referred to as instigation, incitement, aiding and abetting, but it may be noticed that it refers to the original offence—*e.g.*, theft. With regard to the learned Baron’s charge as a whole, it is not, as reported, a statement made with his usual clearness and precision; the word “corruptly,” which is to be defined, is used in the defining clauses, and there is some doubt whether “and” and “or” are in the right places. In addition, the phrase “innocently gave the information” seems but indirectly to negative a charge of “corruptly taking a reward.” The statement even as reported does, however, show that the meaning of the word “corruptly” is not to be confined within narrow limits, and that the prosecution may rely on one or more of many matters for proving corruption. The jury probably came to the conclusion that the accused was a swindler, and disregarded his statement, and found that the result of the evidence for the prosecution was the same as if the accused had obtained the money by making a statement to this effect:—“If you give me 11s. (14s.) to do what I like with I will get your watch, which I know is stolen. I can get it because I know who has it.” Under the direction of Parke, B., the jury found this to be a corrupt taking of a reward under the pretence of helping, and found the prisoner “guilty.”

In *Reg. v. King (m)* (1844) the indictment was “for feloniously and corruptly taking and receiving, on 29th October 1843, from S., three half-crown pieces under pretence of helping S. to a certain watch, etc., which had been feloniously stolen from the said S.” So far as appears by the report there is no allegation of failure to cause apprehension, etc. The facts were that S. had his watch, etc., stolen while asleep in a public-house. He mentioned this in the presence of accused and others, and offered 5s. to anyone who would recover it for him. The accused said he thought he could do so, and on that account obtained about 10s. from S., but did not restore the stolen property, return the money, or do anything towards the apprehension, etc., of the thief. It was objected that there was no evidence to connect the accused with the parties who stole the watch, etc., and that some such evidence was

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necessary under the existing Statute, which contained the word "corruptly," and *R. v. Hart* was referred to. Tindal, C.J., in charging the jury, said:—"The word 'pretence' in itself implies that something has been done with a false and sinister design." This may be doubted, but he proceeds:—"You must therefore be satisfied that when the person took the money he took it dishonestly, with some corrupt motive, for which many grounds may be suggested." Omitting the word "therefore," and giving the word "dishonestly" a wide meaning, this seems to be correct.

The Chief Justice gives some instances—*e.g.*, where a person sees a thief take a watch it would be very corrupt of him to wait and take money for helping the person who had been robbed of his property, instead of immediately apprehending the thief whose guilty act he had seen; or where a person has anything to do with the commission of the theft itself, it would not be otherwise than corrupt to receive money for the restitution of the property. He adds that many other instances might be given. During his charge he said, however:—"A person may believe himself capable of finding out the thief, and if he obtained the money for that purpose he is not guilty of this offence." This is an illustration of the necessity for introducing the word "corruptly" in the section of the later Act. It assumes that all the other elements of the offence are present, but the accused is entitled to acquittal because he did not act corruptly. Finally, in his charge, Tindal, C.J., said:—"The questions for you are—(1) whether the watch was stolen; and (2) whether prisoner did take the prosecutor's money under a corrupt pretence and not honestly meaning to detect the thief if possible. If you think he had any object of a wicked nature at the time then you will say he is guilty, but if, on the other hand, you believe that he honestly meant (or are not satisfied that he did not honestly mean) to use such means as he could to bring the offenders to justice, your verdict should be not guilty." The words in brackets do not appear in the charge. The jury returned a verdict of "not guilty." The learned Chief Justice, both at the beginning and end of this charge, attaches the word "corrupt" to the word "pretence" in a way which neither the natural meaning of the word "pretence," the grammatical construction of the section, nor its history seems to justify. The rest of his charge may, however, stand apart from this, and is again valuable as showing that a person may be held to have "corruptly" taken

money (assuming that he has "taken" it in the sense of the Statute) for many reasons, but that there must be what he calls "dishonesty" and a "corrupt motive," or "an object of a wicked nature." The jury found the prisoner "not guilty," probably on the ground that on the scanty evidence before them, and having regard to the direction, they were not satisfied that the prisoner took the money with what the learned Chief Justice called a corrupt motive; or, to put it another way, they were not satisfied that the prisoner might not have taken the money believing himself capable of finding out the thief and intending to do so.

In *Reg. v. Hicks (n)* (1845) the indictment was that the accused feloniously did receive of A. B. certain money and reward, to wit the sum of two shillings and sixpence, upon account then and there of helping the said A. B. to certain goods lately before feloniously stolen, etc., the said H. not *then* having caused the offenders by whom, etc., to be apprehended, etc. The word "corruptly" does not appear in the report. It was objected that the indictment was insufficient, on the ground that the accused must be allowed a reasonable time for causing the original offender to be apprehended, etc., and that the highly penal Statute could not have intended to make the accused liable if he did not cause the original offender to be arrested at the very moment of taking the money. This objection was overruled by Erle, J., and the accused was found guilty. It is not necessary for the purpose of the present case to discuss this matter further, or to express an opinion as to the correctness of the decision on the Statute then in force.

In *Reg. v. Pascoe (o)* (1849) no counsel appeared to argue the case reserved, which, however, was considered by a strong Court, consisting of Wilde, C.J., Rolfe, B., Cresswell, J., Platt, B., and Williams, J. The indictment was as follows:—"For that he corruptly and feloniously did take and receive of and from H. T. certain money and reward, to wit three sovereigns, under pretence and upon account of then and there helping the said H. T. to certain goods and chattels, to wit 14 cheeses, which said goods had been feloniously stolen, he the said John Pascoe not having caused the persons by whom the said goods had been stolen to be apprehended and brought to trial for the same." It will be noticed that this indictment uses the expressions "take and receive," "money and reward," and "under pretence and upon

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(n) [1845] 1 Cox C.C. 145.

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(o) [1849] 3 Cox C.C. 462.

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account of." The first two had been used in previous indictments, but this seems to be the only case in which both "pretence" and "account" are used. No objection was taken to the indictment on the ground of duplicity. It is not stated whether counsel appeared for the accused at the trial. It does not appear that it was objected that in a certain view which afterwards became the dominant view there was no "taking" or "receiving" within the meaning of the enactment. The only question reserved was whether the receipt of the money under the circumstances was a corrupt receiving. In the statement of facts it appears that the accused asked H. T. if he did not think that certain persons whom he had brought under her immediate notice were implicated in the theft, and she said "Yes," and he said "So do I." She said—"I wish you would try if you could buy a bit of cheese of them," to which he assented, and she gave him 3*l.* for that purpose. This no doubt referred to all the fourteen cheeses stolen. She saw him several times afterwards, when he said the cheese would come. Eventually she said—"You have got the money and you don't mean to send me the cheese." He said she might have the money back when she pleased, but it does not appear that she ever got it or that he ever offered it to her. The following questions were put to and answered by the jury:—1. Did the prisoner mean to screen the guilty persons or share the money with them? Answer—No. 2. Did the prisoner know the thieves and intend to assist them in getting rid of the cheese by procuring the prosecutrix to buy it? Answer—No. 3. Did the prisoner know the thieves and assist the prosecutrix as her agent and at her request in endeavouring to purchase the stolen property from them not meaning to bring the thieves to justice? Answer—Yes.

On the third answer the jury was directed to find the prisoner guilty, the question whether the receipt of the money under the circumstances was a corrupt receiving being reserved for the opinion of the Judges. Wilde, C.J., after stating the facts, says:—"This case has been considered by the Court, and we are of opinion upon the facts found by the jury that the receipt of the money by the prisoner was a corrupt receiving of such money within the meaning of the Statute, the facts found being that the prisoner knew the thieves and assisted the prosecutrix in endeavouring to purchase the stolen property from them, not meaning to bring them to justice. This finding establishes all the facts

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to constitute the offence described in the Statute. We think the conviction, therefore, was legal and proper." It is very noticeable that the Chief Justice omits in his final statement of the finding the words "as her agent and at her request." The case is reported in four places, but this omission occurs in all of them. It may, of course, be a slip, but on the other hand it may be deliberate, the Judges considering that these words should not have been included in the question; or, at all events, that they were immaterial to the question whether the receiving was corrupt. It may be that, in accordance with the well-established practice in cases stated or reserved, the Judges confined themselves strictly to the question asked. Possibly they considered that the evidence justified the jury in finding that the money was "under the pretence of helping" taken by the accused in the sense that it was to be his to do what he liked with, and that the finding did not show that he took money as agent only, though; as the finding states, he was the agent for the prosecutrix in "endeavouring to purchase." Bearing these considerations in mind, the effect of the decision, which undoubtedly causes some difficulty in the present case, is not so wide as at first sight it seems to be.

Reg. v. O'Donnell (p) (1857) is here more important with regard not to O'Donnell but to Sweeney, who was originally charged with O'Donnell. The facts in relation to Sweeney may be picked out from the report. The indictment against O'Donnell and Sweeney was as follows:—"For corruptly and feloniously taking and receiving from F. P. the sum of 6*l.* on account of helping F. P. to a certain mare before then feloniously stolen from the said F. P., without having caused the person who stole the same to be apprehended and brought to trial." As to the case against Sweeney, F. P. gave Sweeney 6*l.* to give to O'Donnell, desiring Sweeney not to part with the money till he (Sweeney) saw the mare coming home. Evidence was given which, in the opinion of Monahan, C.J., was sufficient to justify a finding that the mare was stolen, and possibly implicating O'Donnell, but not Sweeney, in the alleged theft. Sweeney seems to have known the material facts relating to the alleged stealing of the mare. After the prosecutor had called all the witnesses then available to prove the matters above stated, the Chief Justice directed the acquittal of Sweeney, and he was accordingly acquitted. He was then examined as a

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witness for the prosecution against O'Donnell, and proved the payment of the 6*l.* to O'Donnell, who was convicted. In the Court of Appeal, Dowse, arguing for O'Donnell, says the Judge was wrong in directing Sweeney's acquittal, and Perrin, J., says:—"Suppose a man send his son or servant to pay money for getting back his property, do you contend that such a messenger would be liable?" The question suggests a negative answer, but Dowse naturally answers it—"Yes, that is the substance of the decisions on the subject." The Court of Appeal upheld the conviction of O'Donnell, deciding that there was evidence that the mare was stolen, that Sweeney having been acquitted he was competent as a witness, and that as O'Donnell knew before the mare was returned that the 6*l.* was to be paid on its return he might be convicted of taking money "on account of helping," etc., though the money was not actually paid till after the return of the mare. It is clear, of course, that O'Donnell did and Sweeney did not get the money for himself. The Court of Appeal do not, I think, decide the question whether the Chief Justice's direction to acquit Sweeney was right, but there is certainly nothing to suggest that the Court thought it was wrong.

Before leaving these cases it may be pointed out that the word "receive" is constantly used in the indictments, generally coupled with the word "take," and also that "money and reward" are more than once coupled together. In one instance, as has been stated, you have the composite expression "under pretence and upon account of." It may also be noticed that, except on one occasion (where possibly the omission may be from the report and not from the indictment) the failure to cause apprehension, etc., is alleged. It may be doubted whether since 7 & 8 Geo. IV., c. 29, sec. 58, it was necessary to allege this—*i.e.*, whether it was not merely a defence. Having regard to the *Presentments Act* 1916, Second Schedule, rule 5 (2), it seems that it would not now be necessary in a case under sec. 184 of the *Crimes Act* 1915 to allege a failure to use all due diligence to cause the offender to be brought to justice for the original offence.

Having dealt with the Act 7 & 8 Geo. IV., c. 29, sec. 58, and the cases under it, some of the subsequent legislation may be noticed. By 8 & 9 Vic., c. 47, sec. 6, an enactment relating to dogs stolen or in the possession of some person not being the owner, came into force in England: See sec. 87 of the *Crimes Act*

1915. It omits, for reasons which are not far to seek, the clause commencing with "unless" in 7 & 8 Geo. IV., c. 29, sec. 58, and uses the words "aiding to recover" instead of "helping to," and provides for the offence being a misdemeanour, and for a much lighter punishment. But the important opening words are the same as in 7 & 8 Geo. IV., c. 29, sec. 58, and in the present sec. 184 of the *Crimes Act* 1915. The possibility of omitting the clause commencing "unless," while retaining the opening words, suggests that this clause does not restrict the description of the offence, but that in some cases it is available as an excuse or defence for an accused person. To complete the history of the legislation, 7 & 8 Geo. IV., c. 29, and 8 & 9 Vict., c. 47, sec. 6, were repealed in England by 24 & 25 Vict., c. 96; and in Victoria by the *Criminal Law and Practice Statute* 1864, which by the section now represented by sec. 184 of the *Crimes Act* 1915 copied sec. 101 of the later English Act.

Having now considered the history of the legislation and the decided cases, we come back to the material words of the presentment, which charges that the accused "corruptly did take . . . money . . . upon account of helping Frederick William Strack to . . . property . . . which had been stolen." Some of these words do not in the present case cause any difficulty.

We will first consider the meaning of the word "take" in the context in which it is found in sec. 184 of the *Crimes Act* 1915, which, of course, would also be its meaning in the presentment. In the first place, the word "take" has a wide and fluctuating meaning according to the context. We have already given reasons for concluding that "taking money" under the section means practically the same thing as "taking a reward in the form of money for the use of the taker or for some person or persons other than the giver." This view is strongly supported by the association of the words as to taking with the words "on account of helping," which suggest "by reason of or in consideration of helping." It follows that the mere taking of the physical custody of money as the messenger or mandatory of the person giving such custody is not sufficient. In such a case a person could not properly be said to take money on account of helping, etc. The section, in our opinion, refers to a case where from the circumstances it can be gathered that the accused takes the money so that as between himself and the giver he may do what he likes with it. In such a case on the precise point now being discussed the ultimate destina-

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tion or the ultimate intended destination of the money is immaterial. The accused may keep or intend to keep it all himself or give or intend to give the whole or any part of it to others. The point is that the giver can no longer claim it as his money or claim any dominion or control over it. The view that the section does not apply to the case where the accused is, to use the language in one of the authorities, "a mere conduit pipe of the money from the spoliated to the spoliators," receives strong support from the fact that the giver of the money is not in such a case under any criminal liability. It would certainly be a remarkable result if the principal in such a case is entirely free from punishment while his mandatory or messenger is liable to punishment for a most serious crime.

The view we have arrived at of the meaning of the word "take" in the expression "takes money on account of helping, etc.," is also borne out by the fact that under 4 Geo. I., c. 11, sec. 4, when there is no word "corruptly" it would seem that this must have been the meaning. So in Statutes relating to elections—see *Rogers on Elections*—the words "take" and "reward," or similar words, are used with the meaning we have given to them. It is hardly necessary to add that the substance of the matter must be looked at. An accused person would not necessarily escape where there was shown to the satisfaction of the jury that there was an endeavour to disguise a real taking under the cloak of such a mandate as we have mentioned. We wish also to add that if the agent, after getting the custody of the money, had dealings with any person producing property which he has reasonable cause to suspect has been stolen, etc., he might find, unless he arrested such person as provided by secs. 488 and 489 of the *Crimes Act* 1915, that he could be charged with and convicted of an indictable offence. It is not, however, necessary to pursue this matter further.

We pass on to consider the meaning of the word "corruptly" in the section and in the presentment. We will do so very shortly because of the consideration already given to it in connection with the decided cases. These cases show that it is not desirable to attempt any precise or exhaustive definition. In *In re Bradford* (q) (1869), cited in *Rogers on Elections* (19th ed.), p. 468, Martin, B., says:—"What is the exact meaning of the word 'corruptly'? I am satisfied that it means a thing done with an evil mind

and intention, and unless there be an evil mind and an evil intention accompanying the act, it is not corruptly done. 'Corruptly' means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object. . . . There must be some evil motive in it." This may be compared with what was said by Blackburn, J., in *Re Bewdley Election Petition* (r) (1869):—"As to this word 'corruptly,' the true construction of the Act is that given by Mr. Justice Willes . . . that 'corruptly' there does not mean wickedly or criminally or dishonestly, or anything of that sort, but (it refers to an act done) with the object and intention of doing that which the Legislature plainly means to forbid." In *In re Harwick* (s) (1880) Lush, J., draws a distinction between the use of the word "corruptly" in connection with the doing of an act which is corrupt in itself and its use in connection with an act which is *primâ facie* or which may be innocent. It is the latter case which is of importance here. For our purpose it matters little that in connection with the Statute he was there construing Martin, B.'s statement is wrong. Generally speaking, it is applicable to the present case. "Object," "motive," and "intention" are used indiscriminately. It is the first two and not the last if by it is meant that immediate consequences only are adverted to which may be said to be important here: *Cf. Cox v. Smail* (t) (1912).

In a case like the present the encouragement of offenders and the affording of facilities to them for the disposal of the stolen, etc., property, whilst screening them from prosecution and so enabling them to obtain in safety a profit from the crime, or the sharing with them in the booty, are general tests frequently applicable, and which on certain views of the evidence seem to be applicable to the present case. In the above statement we use the word "offenders" as including not only the person who committed the original theft, etc., but also those who to the knowledge or belief of the accused were in some way criminally connected with the property either as thieves, receivers, accessories, or intermediaries, etc., in connection with the disposal of it or otherwise. The word "corruptly" is in the section attached to the word "take," but it is plain that the allegation of corruption must be supported by evidence *dehors* the mere act of taking. It refers to the accused

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(r) [1869] 1 O'M. & H. 16, at p. 19, Rogers, at p. 467. (s) [1880] 3 O'M. & H. 70, Rogers, at p. 410.

(t) [1912] 12 V.L.R. 274, at p. 280.

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acting in a matter in which the act of taking is only one of the elements. It is sufficient for the prosecution to show that his purpose or one of his purposes is to act corruptly in one of the ways already indicated. If, however, his real and only purpose or purposes is or are wholly innocent—*e.g.*, to restore the property to the owner—he should be acquitted. Where the accused, after knowledge that the property was stolen, etc., and after communication direct or indirect with those who hold it, takes a reward not meaning to bring anyone to justice, or to assist in doing so, it must be a very rare case when he does not also act “corruptly.” It is, of course, obvious that a person may take a reward on account of helping to property which has been stolen, etc., where it is clear that he does not act corruptly. For example, a man’s horse is stolen, and he offers to a person to whom information as to the facts is given a reward for helping to recover it. That person may properly take the reward, and may earn it by finding the horse planted in some remote place, knowing nothing as to who were the thieves. The fact that he keeps and intends to keep the reward only for himself is then of no importance. As to the words “helping to property,” the authorities seem to show that the section may apply though the property is not in fact recovered. In other words, the section may apply where the accused, asserting that he has special information or offering to give services based on special information, or asserted special information, takes money in the sense indicated for that alleged information or for those offered services.

Before proceeding to apply what we have said to the facts of the present case, it may be well to contrast what has been just said as to the meaning of the section with the views expressed in the authorities which have been cited. It is true that, speaking generally, the authorities, so far as express words go, say little as to the words “taking money on account of helping to,” and concentrate attention on the word “corruptly,” while we have devoted considerable time to both matters. The difference, however, is not so marked as at first sight appears to be the case. The section is, broadly speaking, directed at a species of extortion, extortion brought about not by violence or threats, but by the pressure brought to bear on the owner by his desire to get back his property. It may be that often he may really be thankful to the person who helps him to recover the property, even though he knows that such person is in with the criminals, but the law will

give no countenance to such a state of affairs. It follows from this that the same facts which would enable the jury to find that the accused did "take the money under pretence or on account of helping," would also in very many cases lead the jury to the finding that the accused took money corruptly. In this view we are enabled to utilize much that has been said in the cases on both the matters above mentioned.

It remains to apply what we have said to the facts of the present case. We think that the question whether the accused did "take the money on account of helping" in the sense which we have given to the word "take" in that context was for the jury, and that as, following what was believed to be the effect of *Pascoe's Case*, it was not submitted to the jury, there must be a new trial, in which it can be submitted, and a full direction given. As there is to be a new trial, it is not desirable that we should discuss the matter further. The Judge at the new trial can point out from the evidence then given the various matters which tend in one direction or the other. We also think it was for the jury, assuming that they find that the accused did take the money in the sense we have indicated, to say whether the accused acted corruptly, and we have mentioned the tests which in the present case may be applied. If the object or one of the objects of the accused was to afford facilities to offenders for the disposal of the stolen property whilst screening them from prosecution and so enabling them to obtain the profit from the crime in safety, or if his object or one of his objects was to share in such profits, then we think there should be a finding that he acted corruptly. If, on the other hand, the jury think that, however foolish it may seem, the accused's real and only object was to restore the property to the owner, then they should find that he did not act corruptly.

We have said that where the circumstances generally resemble those of the present case it must be very rare that if the jury find there was a "taking" such as we have indicated that they should negative corruption. But in one particular the circumstances of the present case are very exceptional, and may justify such a finding. We do not wish to express any opinion that would be taken as likely to affect the jury's conclusion, and therefore content ourselves with pointing out that this case differs from all others reported by reason of the fact that one of the parties to the discussion resulting in money being handed over was acting in conjunction with the police, who were apparently desirous of bringing about a

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position which would show that the accused was taking a reward in the full sense of that expression. It may be—we express no opinion about it—that the jury would find that they succeeded in bringing about that position, and yet conclude that the accused's sole object was the return of the property to the owner. The jury, on the other hand, may arrive at a contrary conclusion, and find that this was not his object, or if it was that he also had objects of a corrupt nature such as we have indicated. We do not discuss the alleged misdirections, since as there is to be a new trial the past directions become of little importance. Speaking generally, we may say that we think that the directions as to the word "corruptly" were substantially correct, or at all events not unfavourable to the accused.

Finally, we think that there was evidence that the bonds were stolen, and that none of the other grounds mentioned in the notice of appeal or notice of application for leave to appeal justify a quashing of the conviction, without a new trial being ordered.

It may be well to add, for the discouragement of offenders, that, besides sec. 184, our law embodies many provisions under which persons who mix themselves up with offenders or property criminally come by, may be successfully prosecuted, such as the provisions relating to receiving, accessories, misprision of felony, aiding and abetting, compounding felonies, conspiracy to obstruct the course of justice, etc. We are, of course, not suggesting that these provisions apply to the accused.

We think that (as questions of fact may be involved) the application for leave to appeal should be granted, that the appeal should be allowed, that the verdict should be set aside, and that there should be a new trial at the sittings of the Supreme Court in Melbourne commencing 17th October 1921. Bail as before.

*Application for leave to appeal granted;
appeal allowed; verdict set aside; new
trial ordered.*

Solicitors for appellant: *Snowball & Kaufmann.*

Solicitor for Crown: *Guinness*, Crown Solicitor.

C. E. D.