

1910 for the sale of beer in a regimental canteen from selling beer  
in that canteen to civilians.

DICKESON  
& CO.

v.  
MAYES.

BUCKNILL and BRAY JJ. concurred.

*Appeal allowed.*

Solicitors for appellants: *Eve & Clinton, Aldershot.*

Solicitor for respondent: *E. Ewart White, for Tattersall & Son, Bournemouth.*

F. O. R.

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Dec. 20.

[COURT OF CRIMINAL APPEAL.]

THE KING v. ROWLAND.

*Criminal Law—Receiving Stolen Goods—Goods “found in his possession”  
—Prevention of Crime Act, 1871 (34 & 35 Vict. c. 112), s. 19—Evidence  
—Prisoner called as Witness on behalf of Fellow Prisoner—Cross-  
examination—Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1 (e).*

On the trial of a prisoner for receiving goods knowing them to be stolen it was proved that he pawned the goods with a pawnbroker on the day preceding that of his arrest:—

*Held*, that the goods were “found in his possession” within the meaning of s. 19 of the Prevention of Crime Act, 1871, and that for the purpose of proving guilty knowledge evidence might be given that he had been previously convicted of an offence involving dishonesty.

*Reg. v. Drage*, (1878) 14 Cox, C. C. 85, and *Reg. v. Carter*, (1884) 12 Q. B. D. 522, not followed.

Where two prisoners are tried for an offence and one gives evidence on behalf of the other, the prisoner so giving evidence may, under s. 1 (e) of the Criminal Evidence Act, 1898, be asked questions in cross-examination tending to criminate him as to the offence charged, although he has given no evidence in support of his own defence.

APPEAL to the Court of Criminal Appeal against conviction.

The appellant was indicted at the Middlesex Sessions together with one Bessant for having on October 12, 1909, broken and entered a dwelling-house at Fulham and stolen certain articles therein, and also for receiving the articles knowing them to be stolen. The evidence went to shew that the house was broken into and the goods in question were stolen on October 12, and that on October 14 the appellant pledged the goods with various

pawnbrokers. On October 15 the appellant was taken into custody, and at that time none of the goods were in his possession. At the trial the appellant declined to give evidence on his own behalf, but at Bessant's request he went into the witness-box and gave evidence with the object of establishing Bessant's innocence. He did not when in the witness-box make any statements tending to exculpate himself. Counsel for the prosecution, however, cross-examined him as to the circumstances under which he obtained possession of the goods which he pawned, with the view of shewing that he was guilty of the offence charged. Evidence was also tendered by the prosecution, and admitted by the judge, that the appellant had been convicted on August 4, 1906, of attempting to obtain money by fraud. The evidence was admitted under s. 19 of the Prevention of Crime Act, 1871 (1), as tending to shew a guilty knowledge on the part of the appellant that the goods in question had been stolen. The appellant was found guilty of receiving.

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*C. L. Attenborough*, for the appellant. The judge was wrong in admitting evidence as to the appellant's previous conviction. The section of the Prevention of Crime Act, 1871 (s. 19), under which it was admitted has no application, for the stolen property was not "found in his possession." The meaning of those words

(1) By s. 19 of the Prevention of Crime Act, 1871, "Where proceedings are taken against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that such person knew the property to be stolen which forms the subject of the proceedings taken against him.

against any person for having received goods knowing them to be stolen, or for having in his possession stolen property, and evidence has been given that the stolen property has been found in his possession, then if such person has within five years immediately preceding been convicted of any offence involving fraud or dishonesty, evidence of such previous conviction may be given at any stage of the proceedings, and may be taken into consideration for the purpose of proving that the person accused knew the property which was proved to be in his possession to have been stolen."

"Where proceedings are taken

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has been the subject of more than one decision. In *Reg. v. Drage* (1) the prisoner was indicted for receiving goods knowing them to be stolen. Certain of the goods in question were found in his possession by the police. It was proposed for the purpose of proving guilty knowledge to give in evidence proof that within the preceding twelve months certain other goods had been stolen and had been sold by the prisoner for half their value. Bramwell L.J. ruled that the evidence was inadmissible and that it must be proved that the subject of the earlier larceny was "found in the possession" of the prisoner at the time of finding the stolen property which was the subject of the indictment. The same question came before the Court for Crown Cases Reserved in *Reg. v. Carter*. (2) The prisoner was indicted for stealing a mare on May 20, 1883, and also for receiving it. Evidence was admitted that the prisoner on May 9, 1883, had sold another mare which had been stolen a few months before. The Court held, following *Reg. v. Drage* (1), that the latter mare was not found in his possession, and that the evidence was wrongly admitted. They accordingly quashed the conviction. Those cases shew that to bring a case within the section it is not enough to prove that the subject of the earlier larceny has been traced to the prisoner's possession if that possession has been parted with however recently. It is true that those cases arose under the first paragraph of s. 19, whereas the present case arises under the second. But the object of the enactments in the two paragraphs being the same, namely, to facilitate proof of guilty knowledge that the goods were stolen, no possible reason can be suggested why a different meaning should be given to the same words "found in his possession" in the two paragraphs, and therefore those decisions must be treated as binding authorities upon the meaning of the words in the second paragraph. Here it is not disputed that the prisoner, having pawned the goods on the preceding day, had no possession of them, physical or legal, at the time of his apprehension. Secondly, the judge was wrong in allowing the prosecuting counsel to cross-examine the appellant for the purpose of shewing that he was guilty. It is admitted that he was a

(1) 14 Cox, C. C. 85.

(2) 12 Q. B. D. 522.

competent witness, but the power to cross-examine a prisoner with the object of proving his own guilt, which is given by s. 1, sub-s. (e), of the Criminal Evidence Act, 1898, was intended to be exercised only in cases in which he has given evidence on his own behalf, and not to apply to cases where he has confined his evidence to supporting the defence of a co-defendant.

*J. P. Grain*, for the Crown, was not called on.

The judgment of the Court (Lord Alverstone C.J., Darling and Phillimore JJ.) was delivered by

LORD ALVERSTONE C.J. In this case two objections have been taken to the conviction. It is said that evidence of the previous conviction in August, 1906, was improperly received under s. 19 of the Prevention of Crime Act, 1871, because the condition of the goods having been "found in his possession" was not satisfied. Here the goods were not in fact found by the police in the prisoner's possession when they arrested him on the charge of receiving them, because he had already pawned them on the preceding day; and it is said that on these facts the section does not apply. I cannot think that those words "found in his possession" mean that the stolen goods must be actually found in the prisoner's possession at the time of his arrest. It seems to me that it is enough if there is evidence that the stolen goods had been in the receiver's possession shortly after they were stolen. Secondly, it is contended that the prisoner was wrongly cross-examined as to his own share in the transaction. It was said that, as he only gave evidence in chief in support of Bessant's case and did not give any evidence in support of his own, he could only be cross-examined for the purpose of establishing Bessant's guilt. That turns upon the language of s. 1, sub-s. (e), of the Criminal Evidence Act, 1898, which provides that "A person charged and being a witness in pursuance of this Act may be asked any question in cross-examination notwithstanding that it would tend to criminate him as to the offence charged." Here the appellant was "a person charged," and he was also "a witness in pursuance of this Act," for before the Act he could not have given evidence in Bessant's favour. Therefore he comes directly within the words

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1909 of the sub-section. Mr. Attenborough asks us to read the words  
 REX as if they were "being a witness on his own behalf in pursuance of  
 v. this Act," and that we cannot do. The appeal must be dismissed.  
 ROWLAND.

*Appeal dismissed.*

Solicitor for appellant: *Registrar of the Court of Criminal Appeal.*

Solicitor for the Crown: *Director of Public Prosecutions.*

J. F. C.

1909  
 Dec. 16.

### GOLDING v. SMITH.

*County Court—Costs—Power of County Court Judge to award fixed Sum for Costs before Taxation—County Courts Act, 1888 (51 & 52 Vict. c. 43), ss. 113, 118.*

A county court judge has no power under s. 113 of the County Courts Act, 1888, to award a party a fixed sum for costs which have not been taxed under s. 118.

APPEAL from a decision of the judge of the Clerkenwell County Court.

The action was brought in the county court to recover 96*l.* 11*s.* 6*d.* for damages for breach of an agreement to repair and keep and leave in repair a house.

The defendant paid into Court the sum of 19*l.* in respect of the claim and 1*l.* 16*s.* 2*d.* in respect of costs, with a denial of liability.

The county court judge gave judgment for the plaintiff for 8*l.* beyond the amount paid into Court and awarded him 10*l.* 10*s.* costs for solicitor and witnesses in addition to the Court fees.

The plaintiff appealed from so much of the judgment as limited the costs of the plaintiff for solicitor and witnesses to 10*l.* 10*s.* and Court fees on the grounds (inter alia) that the judgment was erroneous in point of law and that the county court judge was acting without jurisdiction in limiting the amount of costs payable to the plaintiff in manner appearing from the judgment.

By s. 113 of the County Courts Act, 1888, "All the costs of any action or matter in the Court, not herein otherwise provided