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EUGENE UNGARO.....APPELLANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Criminal law—Receiving stolen goods—Recent possession—Explanation by accused—"Might reasonably be true"—Proper direction—Report under section 1020 Cr. Code.

Appellant was convicted on a summary trial of receiving stolen goods. It was established that the goods were stolen, that appellant at first had denied possession and later explained this denial and also explained his possession. In his reasons, the trial judge referred to the explanation of denial (saying it was "fantastic") but did not refer to the explanation of possession. The majority in the Court of Appeal affirmed the conviction.

Held (Taschereau and Locke JJ. dissenting): That there should be a new trial as the trial judge misdirected himself with respect to the relevancy of the denial and had given to it an importance in relation to the main issue of guilty knowledge not justified by the authorities.

Held: The omission of the trial judge to refer to the explanation of possession is not remedied by his dealing with it in the report made under section 1020, as that report is relevant only as to how he directed himself at the trial.

Held: The statement in the report that the explanation of possession "was not a reasonable one" wrongly placed the onus on accused to prove the truth of this explanation, when the trial judge should have directed himself not on the reasonableness of the explanation but whether that explanation "might reasonably be true" in the particular circumstances and therefore create in his mind a reasonable doubt.

Per Taschereau and Locke JJ. (dissenting): The remarks made by the trial judge at the conclusion of the evidence do not show that he had proceeded upon any wrong principle of law. There is no obligation upon a County Court judge at the conclusion of such a hearing to make a complete statement of his reasons for deciding the guilt or innocence of an accused.

Per Taschereau and Locke JJ.: Having been found in possession, there was a presumption against appellant rebuttal by an explanation which, if it raised a reasonable doubt, entitled him to be acquitted; in the present case, the report shows that the trial judge did not consider that the explanation was a reasonable one and was satisfied beyond a reasonable doubt that appellant knew the goods were stolen at the time he received them.

Richler v. *The King* [1939] S.C.R. 101; *Reg.* v. *Langmead,* (1864) 9 Cox C.C. 464; *Rex* v. *Schama,* 11 C.A.R. 45; *Rex* v. *Curnock,* 10 C.A.R. 208; *Rex* v. *Bush,* 53 B.C.R. 252; *Rex* v. *Currell,* 25 C.A.R. 116, *Rex* v. *Frank,* 16 C.C.C. 237 and *Rex* v. *Gjeller,* [1944] 3 W.W.R. 186 referred to.

*PRESENT: Rinfret C.J. and Kerwin, Taschereau, Estey and Locke JJ.

APPEAL from the judgment of the Court of Appeal for British Columbia (1) dismissing, O'Halloran J.A. dissenting, appellant's appeal from his conviction on a charge of receiving stolen goods.

J. W. de B. Farris, K.C. for the appellant.

L. A. Kelley, K.C. and *A. C. Butler* for the respondent.

The CHIEF JUSTICE:—I agree with Estey J.

I do not understand Chief Justice Duff's statement in *Richler* v. *The King* (2) as meaning that if the trial judge does not believe the accused it is, nevertheless, his duty to apply his mind to a consideration as to whether the explanation given by the accused might reasonably be true. If the trial judge does not believe the accused the result is that no explanation at all is left, and the case would have to be decided on the well-known principle that possession of recently stolen property is circumstantial evidence of guilt. In the words of Blackburn J. in *Regina* v. *Langmead* (3):

> If he (the accused) fails to account for his possession satisfactorily he is reasonably presumed to have come by it dishonestly.

But, in the present case, on the issue of the accused's credibility, the learned County Court judge, far from stating that he did not believe the accused, refers to the fact that when the latter was "asked by the police regarding these goods he denied knowing anything about it" and adds:

> That, of course, is a factor against him. He has been proved to have made a false statement in one instance, which I am not saying that that detracts from his evidence today but, it is a factor.

Thus the learned trial judge states in his reasons that he did not come to the conclusion that the false statement at first made to the police was, for him, a reason to disbelieve the accused, but that such denial did not detract from the accused's evidence before him at the trial. He says it was only a "factor". Therefore, the explanation given by Ungaro of the circumstances under which he came into possession of the goods was not discarded by the trial judge. The explanation was not unreasonable in the

(1) 94 C.C.C. 184.
(2) [1939] S.C.R. 101 at 103.
(3) (1864) 9 Cox C.C. 464 at 468.

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premises and, therefore, brought the case strictly within the application of *Richler* v. *The King supra* as expressed by Chief Justice Duff.

It is manifest, upon the reasons of the trial judge, that he did not apply his mind to the question whether "the explanation may reasonably be true, though he was not convinced that it was true." Indeed he did not refer to that explanation at all, despite the fact that the reasonableness of the explanation was the main point to be considered in the case.

I do not mean that a trial judge is obliged in his judgment to give all the reasons which lead him to the conclusion that an accused is guilty. Undoubtedly if he finds one valid reason why he should reach that conclusion it is not necessary that he should also give other reasons. It is imperative, however, that he should give a decision upon all the points raised by the defence which might be of a nature to bring about the acquittal of the accused. In the present case, discarding, as he did, as "fantastic", the explanation of Ungaro's denial to the police was insufficient to find the accused guilty. It was much more important that the trial judge should have addressed himself to the main point in the accused's defence, and which was the explanation of the circumstances which accompanied the purchase from Seguin, the thief, of the goods stolen. As to that the learned trial judge said absolutely nothing in his reasons, and, reading them, a Court of Appeal is perfectly justified in holding that he completely overlooked this point.

The judgment of Kerwin and Estey JJ. was delivered by

ESTEY J.:—The majority of the learned judges in the Court of Appeal in British Columbia (1) affirmed the conviction of the accused in the County Court Judges' Criminal Court for receiving stolen property knowing it to have been stolen, contrary to sec. 299 of the *Criminal Code*. Mr. Justice O'Halloran dissented on four grounds:

(1) The learned trial Judge did not take into judicial consideration the appellant's explanation of his possession of the stolen articles;

(2) *Rex* v. *Bush* (2), does not apply to a case of this kind;

(1) 94 C.C.C. 184.

(2) (1938) 53 B.C.R. 252.

(3) The learned judge's report cannot cure No. (1) thereof;

(4) There was no finding upon credibility within the principle of *White* v. *The King* (1).

That the goods were stolen, sold to the accused by a stranger below their value and found in the possession of the accused were clearly established by the evidence. The pertinent issue at the trial was, therefore, did the accused when he purchased these goods know they were stolen?

The thief deposed that he sold the goods to the accused but that he was neither asked for nor did he himself volunteer any explanation as to how he obtained or why he was selling the goods.

The policeman deposed that when he first interviewed the accused the latter denied all knowledge of the goods and then later, when he returned with a search warrant, though the accused at first persisted in his denial, did then explain that he purchased the goods from a man who said he had obtained them from bankrupt stocks in Vancouver and was selling them in the Valley.

The accused, giving evidence on his own behalf, admitted that he had purchased these goods at low prices from the man who now admits he had stolen them, but who then stated to the accused that these goods had been obtained from bankrupt stocks in Vancouver and that he was selling them in the Valley. The accused also explained that to the policeman he denied any knowledge of these goods because of his previous dealings with him and that "he was scared."

The accused therefore made two explanations, one as to his denial of possession and the other that the thief told him the goods had been obtained legitimately.

I agree with all of the learned Judges in the Court of Appeal (2) that in the course of his reasons the learned trial judge refers only to the accused's explanation of his denial to the police and makes no mention of his evidence as to what the thief told him as to the source of the goods. The learned trial judge refused to accept what he termed the "fantastic" explanation made by the accused for his denial to the policeman and therefore that denial remained

(1) [1947] S.C.R. 268. (2) 94 C.C.C. 184.

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unexplained as evidence of guilty knowledge and also relevant to the issue of the accused's credibility. It did not otherwise here affect the main issue which, after the "fantastic" explanation was discarded, still remained to be determined. The emphasis upon this denial without even mentioning the other explanation, which was relevant to the main issue, and particularly the sequence of the language, tends to support a conclusion that the unreasonable denial was given a relevancy and an importance beyond which a proper direction would have permitted and may have constituted the essential factor in finding the accused guilty.

Upon the main issue of guilty knowledge, in view of the explanation made by the accused and denied by the thief that the latter stated he had obtained goods from bankrupt stocks in Vancouver and that he was selling them in the Valley, the learned trial judge should have instructed himself as in *Richler* v. *The King* (1), wherein Chief Justice Duff on behalf of the court stated the law to be as follows (p. 103):

> The question, therefore, to which it was the duty of the learned trial judge to apply his mind was not whether he was convinced that the explanation given was the true explanation, but whether the explanation might reasonably be true; or, to put it in other words, whether the Crown had discharged the onus of satisfying the learned trial judge beyond a reasonable doubt that the explanation of the accused could not be accepted as a reasonable one and that he was guilty.

It was suggested that the extract quoted from the *Richler* Case has been misunderstood and our attention was directed to *Rex* v. *Lockhart* (2), where a passage is quoted from *Rex* v. *Searle* (3):

> It is the reasonableness of the explanation rather than the tribunal's belief in its truth that should guide . . .

This language was used in the *Searle* Case prior to, but its incorporation in the *Lockhart* Case was subsequent to the *Richler* Case. With great respect, it is not the reasonableness of the explanation but whether that explanation "might reasonably be true" in the particular circumstances and therefore create in the mind of the trial judge a reasonable doubt. It may well be that the reasonableness

(1) [1939] S.C.R. 101.
(2) (1948) 93 C.C.C. 157 at 158.
(3) (1929) 51 C.C.C. 128.

of the explanation may assist the learned judge in determining that issue. The Appellate Court in *Rex* v. *Lockhart, supra,* stated:

> . . . weighed in the light of all the surrounding circumstances, the explanation given by the accused is not so improbable that it might not reasonably be true.

If the Appellate Court, with power to review and make findings of fact, concludes that the statement of the accused "might reasonably be true" because of its probability, then in the circumstances no fault can be found with the statement and I think that is the meaning that the learned judges intended to convey.

The record in *Richler* v. *The King, supra,* discloses that the accused was convicted by a judge presiding under Part 18 of the *Criminal Code* (Speedy Trials of Indictable Offences) of receiving stolen goods knowing them to have been stolen. The accused gave an explanation as to which there was a conflict between his evidence and that of the thief. One of the contentions on the part of the accused before this Court was that the learned trial judge had rejected his explanation because he did not believe it to be the true explanation. It was in relation to this issue that the statement was made in the *Richler* Case quoted above.

The reference in the *Richler* Case to the decision in *Rex* v. *Searle* was merely to indicate that the latter had followed *Schama* and not as expressing approval of every phrase used therein by Chief Justice Harvey.

The approach to the problem confronting the judge sitting alone or instructing the jury is all important. The instruction in either case should be that the onus rests upon the Crown throughout and that the judge sitting alone or the jury, after considering the explanation made by the accused in relation to all the other circumstances, must determine whether the proof establishes beyond a reasonable doubt the guilt of the accused. A strict adherence to the determination of this question will avoid many of the errors found in the cases. The language used when other questions are considered, as to whether the explanation is the true explanation or a reasonable or probable explanation, places an onus upon the accused to establish one or the other of these as an affirmative fact. Such would be contrary to the fundamental principle of law in which

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the onus rests upon the prosecution throughout to prove that the accused received the property knowing it to have been stolen. It is true that the possibility of truth or its reasonableness or probability may assist the judge in arriving at his answer to the question of reasonable doubt. As Chief Justice Duff points out, if the judge or jury conclude the explanation "might reasonably be true," which is quite different from whether it is true, reasonable or probable, then a reasonable doubt exists to which the accused is entitled to the benefit.

The judgment in the *Schama* Case, quoted in part in the *Richler* Case was written by Lord Chief Justice Reading. A few months prior thereto he had written the judgment in the *Curnock* Case and had included a quotation from *Regina* v. *Langmead* (1), in which Blackburn, J. stated:

> If a party is in possession of stolen property recently after the stealing, it lies on him to account for his possession, and if he fails to account for it satisfactorily, he is reasonably presumed to have come by it dishonestly; but it depends on the surrounding circumstances whether he is guilty of receiving or stealing.

In the *Curnock* Case (2) Lord Chief Justice Reading refers to the *Langmead* Case and states:

> In that case it was decided that the burden of giving a reasonable explanation was on the appellant.

These authorities, particularly as read in relation to the *Schama* Case, leave no doubt but that when Lord Chief Justice Reading refers to the burden in the *Curnock* Case, and Blackburn, J. in the *Langmead* Case refers to the failure of the accused to explain recent possession, they mean no more than that the evidence of recent possession unexplained raises a *prima facie* case upon which, if the accused does not adduce further evidence by way of explanation, the jury may, not must, find the accused guilty. Whether, however, the explanation is given or not the burden of proving the accused guilty beyond a reasonable doubt remains throughout upon the prosecution. If, therefore, the accused gives an explanation, as Ungaro did, then the trial judge must instruct the jury, or himself if he is presiding without a jury, as in the *Richler* Case, *supra*.

The learned trial judge in the present case in referring to the "fantastic" explanation made by the accused as to why he had made the false statement to the police

(1) (1864) 9 Cox C.C. 464. (2) (1914) 10 Cr. App. R. 208.

states, "This explanation is not reasonable." Then in his report under sec. 1020 he states, "The explanation given by the accused was not a reasonable one" and convicted him. On the assumption that he is in the latter referring to the explanation as to the source of the goods, it is clear the learned judge is directing his mind to whether the explanation is a reasonable one. He therefore falls into the same error that those who consider the truth, the reasonableness or the probability of the explanation rather than direct their attention to whether that explanation as made by the accused, having regard to all the circumstances, might reasonably be true and therefore set up in the mind of the judge a reasonable doubt to which the accused is entitled to the benefit.

The foregoing is of particular importance where, as in the present case, the explanation, having regard to the circumstances, is not unreasonable and contradicted only by the thief. *Reynolds* (1); *Rex* v. *Norris* (2).

The learned trial judge in the course of his reasons makes no mention of the explanation relative to the source of the goods nor of any indication that he had so directed himself. The Crown, under these circumstances, contends that it should be assumed that the learned trial judge directed himself in accord with *Richler* v. *The King, supra.* The learned Chief Justice, with whom Mr. Justice Smith agreed, stated as follows:

> In my view this case falls within *Rex* v. *Bush,* (1938) 53 B.C. 252, and *Rex* v. *Miller,* (1940) 55 B.C.R. 121 at 128. We must assume, in the absence of anything appearing on the record to indicate otherwise, that the learned trial Judge did apply the proper and relevant principles when considering the explanation of possession given by the appellant.

In *Rex* v. *Bush* (3), it was contended that a conviction upon the uncorroborated evidence of an accomplice could not be supported upon appeal unless the trial judge had specifically directed himself as to the danger of his so doing. The Court refused to so hold and in this regard did not follow *Rex* v. *Ambler* (4), decided in the same year by the Alberta Appellate Division in which the foregoing submission was accepted and the conviction quashed. This difference of opinion is commented upon in *Rex* v. *Tolhurst* (5), and *Rex* v. *Joseph* (6). It is unnecessary to here

(1) (1927) 20 Cr. App. R. 125.
(2) (1917) 86 L.J.K.B. 810.
(3) (1938) 53 B.C.R. 252.
(4) [1938] 2 W.W.R. 225.
(5) 73 C.C.C. 32.
(6) 72 C.C.C. 28.

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resolve this conflict as the authorities are unanimous that where the misdirection is "manifest" or the assigned reasons disclose self-misdirection the conviction cannot stand. *Rex* v. *Bush, supra; Rex* v. *Lockhart, supra; Rex* v. *Nelson* (1).

In his reasons, with great respect, the learned trial judge discloses that he had misdirected himself with respect to the relevancy of the denial and given to it an importance in relation to the main issue not justified upon the authorities. Moreover, a reading of the reasons as a whole suggests that he did not direct himself as to the explanation of the source of the goods in relation to the evidence as required in *Richler* v. *The King, supra.* There is at least "reason to doubt that he properly charged himself when forming his conclusions upon the evidence" as stated by Chief Justice Moss in *Rex* v. *Frank* (2), which, with respect would appear to be an accurate statement of the limitation in respect to the presumption upon which *Rex* v. *Bush, supra,* was decided.

Moreover, it may well be suggested that upon these reasons the learned judge directed himself to the effect that the onus rested upon the accused to establish a reasonable explanation.

The Crown contends that whatever consequences might have resulted from the omission to refer to the explanation as to the source of the goods given by the accused, it is remedied by the contents of the report submitted by the learned trial judge under sec. 1020 of the *Criminal Code.* His report concludes as follows:

> I found as a fact that the explanation given by accused was not a reasonable one and convicted him. In reaching this conclusion I found that accused knew the goods were stolen at the times he received them, that the Crown had satisfied the onus placed upon it and that I had no reasonable doubt.

This report read as a whole is another or supplementary statement of reasons supporting the conviction in which the explanation of the source of the goods is as prominent as the explanation of the denial in the reasons given at trial.

The question is, how did the learned trial judge direct himself at trial? In his reasons at trial emphasis is placed upon one of two explanations to the entire exclusion of

(1) [1949] 1 W.W.R. 211. (2) (1910) 16 C.C.C. 237.

the other and that other the more important to the main issue, and concludes "this explanation is not reasonable . . . I have no hesitation in finding that the accused is guilty." Then in his report under sec. 1020 he deals with both explanations and then states "that the explanation given by the accused was not a reasonable one and convicted him." It is impossible under these circumstances for an Appellate Court to conclude that he has directed himself within the meaning of *Richler* v. *The King, supra.*

The appeal should be allowed, the conviction quashed and a new trial directed.

The dissenting judgment of Taschereau and Locke JJ. was delivered by

LOCKE, J.:—The appellant having elected for a speedy trial upon three charges of receiving and having in his possession stolen goods, knowing the same to be stolen, was tried by the County Court Judge for the County of Yale and found guilty. The conviction was upheld by a judgment of the majority of the Court of Appeal for British Columbia (1) and the appeal comes before us upon the grounds of dissent expressed in the reasons for judgment of Mr. Justice O'Halloran.

The case raises important questions relating to the due administration of the criminal law and it is desirable, in my opinion, to set forth the circumstances in some detail. Ungaro is a hotel keeper living in the city of Vernon, where he operates the Kalamalka Hotel. He has a place of residence elsewhere in Vernon and on January 10, 1949, was there found to be in possession of a brown leather jacket, a quantity of nylon silk stockings and a green and black check car robe, all of which had recently been stolen by one Ernest Seguin. At the trial Seguin swore that the car robe had been stolen by him from an automobile on the streets of Vernon on December 31, 1948: the stockings formed part of a quantity stolen from a parcel in the Canadian Pacific Railway station on January 3, 1949, and the leather jacket from a store at Armstrong, a village some miles to the north of Vernon, on the evening of January 7th. On the evening of the same day, he said that he had gone to the Kalamalka Hotel where he had a room, taking two leather jackets which he had stolen at Armstrong and

(1) 94 C.C.C. 184.

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put them in his room, then went to the beer parlour and waited until it closed at 11.30 p.m. and then took Ungaro to his room, showed him the two jackets and asked him if he wanted to buy them. According to Seguin, Ungaro did not ask him where he had got the jackets but agreed to buy them and gave him $4.00 for the two of them. It is not clear from the evidence of this witness whether or not the transactions in regard to the stockings and the car robe were on January 7th, but the evidence as a whole would indicate that they were earlier on that day. Seguin said as to these that he had gone to the beer parlour of the hotel carrying thirteen pairs of the nylon stockings in a bag: that he had asked Ungaro if he wanted to buy them and that the latter had said that he wanted some member of his family to look them over and, having left apparently for this purpose, returned and paid $7.00 as the purchase price. According to Seguin, he had asked $8.00 but the appellant did not pay this amount. At the same time as he made these sales, he claims to have told the appellant that he had two new blankets and that at about 5 o'clock he brought them to the office of the hotel and sold them to him for $6.00 or $7.00. As in the case of the stockings, Seguin said that Ungaro made no enquiry as to where he had obtained them.

Constable Knox, a corporal in the Provincial Police, said that on January 10, 1949, he spoke to the appellant at the Kalamalka Hotel telling him that a green car robe had been stolen from one Campbell and that the police had information it had been sold to him. To this the appellant replied that he knew nothing about it. The constable then asked him if he could help him to locate two leather jackets, asking him if he had seen anyone around the hotel wearing them. To this Ungaro replied that he knew nothing about the leather jackets. The constable further asked the accused if he had been in Seguin's room in the hotel on the night of January 7th and he said he had not. Search warrants were then issued, one for the hotel and one for the home of the appellant and Corporal Knox went to the hotel that night and again asked the appellant if he had any knowledge of the green car robe or leather jackets or windbreakers and a quantity of stockings, warning him that he did not have to say anything in reference to these

matters but that if he did it could be used in evidence. After again denying any knowledge of these things, Ungaro, according to the police officer, took him to his own home in a car where two other constables were then executing the search warrants and had already located the robe and the stockings. There the appellant produced a leather jacket or windbreaker. On the way from the hotel to the house, Ungaro had told the officer that the things for which the officer was searching had been purchased by him from a man "who told him he could get clothes of like materials and articles from bankrupt houses in Vancouver."

Ungaro who gave evidence on his own behalf said that he had first met Seguin on the day he had purchased the articles, that early in the afternoon of that day Seguin had come in to the beer parlour and stopping at the counter had asked him if he wanted some silk stockings and, when the appellant expressed his desire to see them, produced them contained in individual envelopes in a box and asked how much he (Ungaro) would pay for them. Ungaro says that he then asked Seguin where he got them and that "he said he got them from bankrupt houses in Vancouver and sold them through the Valley." According to the appellant, a large number of people were in the beer parlour when this transaction took place and there was no secrecy about it. On the evening of the same day, the appellant says that Seguin came into the office in the lobby of the hotel with two blankets which were wrapped as if they were new merchandise and offered to sell them. One of these was the stolen car robe. Later that night, he says that Seguin told him he had a jacket for sale in his room and he went up and bought it. He admitted that he made no enquiry as to where Seguin had obtained either the car robe or the jacket. As to the jacket, he said there was no conversation as to the price other than that Seguin asked how much he would pay for it and he told him he would give him $4.00 and did so. At the same time he said that Seguin told him that he would bring a car full of blankets if Ungaro needed them for the hotel and that he had told him that that would be all right. The appellant admitted that he had told Corporal Knox that he did not know where the car robe or leather jacket were but said that this was due to the fact that he had had some previous

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difficulty with the constable and that he was afraid. While Seguin did not make clear in his evidence the sequence in which the stockings, car robe and windbreaker were sold by him to Ungaro, it is a proper inference, in my opinion, that they were all sold on the same day and that the stockings were sold first. It should, therefore, be taken that if, in truth, Ungaro asked the thief where he had obtained the stockings it was at the first of the three transactions, so that it may fairly be urged on behalf of the appellant that while he did not make the same enquiry as to the other stolen articles he thought they had been obtained by Seguin in the same way. The jacket was shown to be of the value of $16.00: as to the stockings the appellant admitted on cross-examination that he knew that he was getting a bargain in buying thirteen pairs of nylon stockings for $7.00.

At the conclusion of the evidence the learned County Court Judge found the accused guilty. His remarks which prefaced the finding were as follows:—

> In this case it has been proved that the goods were stolen in each case and sold very much below their value in each case, and it was also proved that they were found in the possession of the accused.
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> When he was asked by the police regarding these goods, he denied knowing anything about it, that, of course, is a factor against him. He has been proved to have made a false statement in one instance, which I am not saying that that detracts from his evidence today, but, it is a factor, and I would say that when he had had other dealings with the police that that would have taught him.
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> Now, considering all the circumstances of the accused—Mr. Ungaro—and the other circumstances of the case, it is plain to my mind that this explanation is not reasonable. He says he was scared. It is fantastic.
>
> I have no hesitation in finding that the accused is guilty.

It is, I think, apparent that the explanation referred to in these remarks of the learned trial judge was that given by the appellant for making the false statement to Corporal Knox, to the effect that he knew nothing about the stolen goods. If he had said nothing beyond announcing that he found the accused guilty of the charges, it can scarcely be suggested that the convictions would have been open to attack on any of the grounds now urged against them, since this would involve asking the Appellate Court to assume that the judge had acted upon some wrong principle of law. Here, apart from the statement that the goods had been purchased at an undervalue, the judge

directed his remarks to the question of Ungaro's credibility and in considering this mentioned what he thought absurd the explanation given for having made the false statement to the police officer. Why these remarks should be taken to indicate that the trial judge had failed to consider the credibility of the witnesses or, assuming that he believed that Seguin had made the statement attributed to him by Ungaro as to where he had obtained the goods, whether that was an explanation that might reasonably be true, I am unable to understand. If the contention is that where a County Court Judge is conducting a speedy trial and chooses to make any observations as to any aspect of the case before announcing his judgment he must make a complete statement of all of the reasons which have led him to his conclusion, the argument appears to me to be quite without foundation. The learned judge was not required to give any reasons for his judgment unless he chose to do so but, of course, if in stating the reasons for his conclusions he showed that he had proceeded upon some wrong principle of law, the conviction might be set aside, as might the verdict of a jury when there has been misdirection. I find nothing of that nature in what was said by the learned trial judge in the present case and if the matter is to be considered divorced from the report made by him, as required by section 1020 of the *Criminal Code,* the appeal, in my opinion, fails.

A more difficult question arises, however, by reason of the terms of this report. It is, I think, unfortunate that the section of the Code does not indicate more clearly the nature of the report to be made. The judge is required to "furnish to the Court of Appeal in accordance with rules of Court a report giving his opinion upon the case or upon any point arising in the case." Whatever else may be included in this language, the trial judge may properly, in my opinion, state, if he wishes, his findings as to credibility if there are any such issues involved and his other reasons for arriving at his conclusion. Of course, if he has given reasons for his judgment at the time of announcing it, he cannot properly give inconsistent reasons as had been done in *Baron* v. *The King* (1). Such a report would be disregarded for the reasons indicated in the judgment

(1) [1930] S.C.R. 194.

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of the Court delivered by Chief Justice Anglin. The report and such reasons, if any, as have been delivered are to be read together (*Rex* v. *Reid* (1)). If the report should indicate that the trial judge has proceeded upon a wrong principle, it is manifest that the judgment might properly be set aside, even though reasons given at the time of delivering it indicated no such irregularity.

In the report in the present case the following appears:

> Corporal Knox gave evidence of interviewing the accused and receiving an explanation by accused as to his possession of the stolen goods. But this explanation was not given on the first interview. When first interviewed he denied that he had received the goods. On being taken to his residence some hours later he made the explanation which he gave in evidence at his trial. He said the accused told him that he bought the goods from a man who was able to get quantities of bankrupt stock from Vancouver. The thief in his evidence said that accused did not ask him where he got the goods nor did he tell him anything at all as to where he got them. Corporal Knox found the stolen goods in the possession of accused. The accused gave evidence of his financial worth and the explanation he had given Corporal Knox. On cross-examination he stated that previous to coming to Vernon he had been owner of a store dealing in general merchandise.
>
> I found as a fact that the explanation given by accused was not a reasonable one and convicted him. In reaching this conclusion I found that accused knew the goods were stolen at the times he received them, that the Crown had satisfied the onus placed upon it and that I had no reasonable doubt.

The "explanation given by accused" referred to in the concluding paragraph, I think, clearly refers to the explanation given by Ungaro as to the statement he said Seguin had made to him as to where he had obtained the goods. The learned trial judge apparently did not note that the explanation made to Corporal Knox by Ungaro was not quite the same as that stated by the latter in his evidence at the trial, so that apparently the difference did not weigh with him. It is, therefore, apparent that the trial judge had directed his attention to the question as to whether the explanation given by the accused was a reasonable one and had come to the conclusion it was not. I do not find that this is inconsistent with anything said by the learned trial judge at the conclusion of the trial. His comments there touched only upon the veracity of Ungaro.

It is said for the appellant that there was in the present case no judicial determination of the question as to

(1) (1942) 57 B.C.R. 20; [1943] 2 D.L.R. 786.

whether the explanation given by the accused as to how he obtained possession of the goods might reasonably be true and reference is made to a passage from the judgment of Duff, C.J. in *Richler* v. *The King* (1), reading as follows:

> The question, therefore, to which it was the duty of the learned trial judge to apply his mind was not whether he was convinced that the explanation given was the true explanation, but whether the explanation might reasonably be true; or, to put it in other words, whether the Crown had discharged the onus of satisfying the learned trial judge beyond a reasonable doubt that the explanation of the accused could not be accepted as a reasonable one and that he was guilty.

The statement referred to follows a quotation from the judgment of Reading, L.C.J. in *Rex* v. *Schama and Abramovitch* (2). The language there used has unfortunately given rise to some misunderstanding: the passage in question, which is not stated in full in the judgment in *Richler's* case, reads:—

> Where the prisoner is charged with receiving recently stolen property, when the prosecution has proved the possession by the prisoner, and that the goods had been recently stolen, the jury should be told that they may, not that they must, in the absence of any reasonable explanation, find the prisoner guilty. But if an explanation is given which may be true, it is for the jury to say on the whole evidence whether the accused is guilty or not; that is to say, if the jury think that the explanation may reasonably be true, though they are not convinced that it is true, the prisoner is entitled to an acquittal, because the Crown has not discharged the onus of proof imposed upon it of satisfying the jury beyond reasonable doubt of the prisoner's guilt. That onus never changes, it always rests on the prosecution. That is the law; the Court is not pronouncing new law, but is merely restating it, and it is hoped that this re-statement may be of assistance to those who preside at the trial of such cases.

In *Woolmington* v. *Director of Public Prosecutions* (3), Lord Sankey, L.C. delivering the judgment of the House of Lords and pointing out that the burden of proving the guilt of the prisoner always rests upon the prosecution and that there is no such burden laid on the prisoner to prove his innocence, since it is sufficient for him to raise a doubt as to his guilt, said in part:—

> This is the real result of the perplexing case of *Rex* v. *Abramovitch*, 11 C.A.R. 45, which lays down the same proposition, although perhaps in somewhat involved language.

The language used by Lord Reading has been interpreted otherwise than in the manner stated by Lord Sankey. In

(1) [1939] S.C.R. 101 at 103.
(2) (1914) 11 C.A.R. 45 at 49.
(3) (1935) 30 Cox C.C. 234.

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Rex v. *Searle* (1), (a case which is mentioned without comment in *Richler's* case) Harvey, C.J.A. said in part (493):

> While recent possession of stolen property is always considered as circumstantial evidence of guilt it is evident that alone it could not, without violation of the general principle, suffice for proof of guilt, because it is not inconsistent with innocence and in *Rex* v. *Schama* it was pointed out that it would be a wrong direction in law to tell the jury that, it being established that recently stolen goods were in the prisoner's possession, they might convict, if not satisfied of the truth of the explanation given by the prisoner.

and again, after referring to the fact that the police magistrate in his report to the court had said in part: "The accused endeavoured to give an explanation which I have no hesitation in saying was false," said (495):—

> In the present case if the magistrate thought it was sufficient that he should disbelieve the story told he was wrong in his law.

The learned Chief Justice, judging from the passages quoted, appears to have overlooked the statement of Blackburn, J. in *Reg.* v. *Langmead* (2), where he states the rule:—

> If a party is in possession of stolen property recently after the stealing, it lies on him to account for his possession, and if he fails to account for it satisfactorily, he is reasonably presumed to have come by it dishonestly;

a statement which, as stated by Reading, L.C.J. in *Thomas Henry Curnock* (3), is the leading authority on the point. With respect, I think it was error to say that possession of recently stolen property did not in itself give rise to a presumption upon which there might be a conviction, in the absence of an explanation. I think also the statement of the learned Chief Justice that if the magistrate thought it was sufficient that he should disbelieve the story told he was wrong in his law, is expressed too broadly and is not justified by anything said in *Schama's* case. If by this the learned Chief Justice meant that if the explanation given by the accused was considered by the magistrate upon all of the evidence to be untrue and if, accordingly, it raised no reasonable doubt in his mind of the guilt of the accused he was not entitled to convict, I respectfully disagree. Where a person is found in possession of recently

(1) [1929] 1 W.W.R. 491.
(2) (1864) 9 Cox C.C. 464 at 468.
(3) (1914) 10 C.A.R. 208.

stolen property, the presumption referred to in *Reg.* v. *Langmead* arises, but this may be rebutted by an explanation by the prisoner as to how it came into his possession. This question was considered in *Rex* v. *Gfeller* (1), a judgment of the judicial committee on appeal from the West African Court of Appeal. The accused in that case was charged with having received a quantity of gin, knowing the same to have been stolen. The appellant, whose wife had an interest in and was manageress of the Grand Hotel at Lagos, assisted her in the buying of goods and spirits and some six months before the date of the offence a Syrian named Jaffar had been introduced to him as a person who could get supplies of alcohol and provisions and he had given him many orders which were fulfilled from time to time. The appellant said that he believed that Jaffar was getting the supplies from various shops and stores. On the day in question Jaffar had told him that he could obtain a large quantity of gin at something less than the current price and the appellant had agreed to take it and to pay him a commission. Later in the day 156 bottles of gin were delivered to the hotel, not packed in any way and being brought there in a taxicab. The appellant said that he did not remember asking Jaffar where he had obtained the gin and Jaffar deposed that he did not tell the appellant where he got the gin. Sir George Rankin, in delivering the judgment of the court, said that the trial judge had dealt with the charge of receiving on the basis of the law laid down in the well known case of *Rex* v. *Schama* and quoted from the following statement made in the charge to the jury:

> Upon the prosecution establishing that the accused were in possession of goods recently stolen they may in the absence of any explanation by the accused of the way in which the goods came into their possession which might reasonably be true find him guilty, but that if an explanation were given which the jury think might reasonably be true, and which is consistent with innocence although they were not convinced of its truth the prisoners were entitled to be acquitted inasmuch as the prosecution would have failed to discharge the duty cast upon it of satisfying the jury beyond reasonable doubt of the guilt of the accused.

and, after expressly approving this statement of the law and pointing out certain circumstances which might cast

(1) [1944] 3 W.W.R. 186.

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doubt upon the story of the accused that he had made no inquiry as to the source of the supply or the immediate supplier, said:—

> In this summary every single fact might turn out to be free from suspicion, but if it can be regarded as a broad statement of the main facts the appellant had something to explain. The question must then be whether the explanation given was such that the learned Judge ought to have directed himself or the jury to the effect that, while they might or might not think it proved, they were obliged to hold that it might reasonably be true and in this limited sense to accept it. Their Lordships are unable so to hold. They think that it was open to the jury to reject as untrue the story that the appellant asked Jaffar nothing and was told nothing about the person from whom Jaffer got so substantial a quantity of gin. The appellant did not have to prove his story but if his story broke down the jury might convict. In other words the jury might think that the explanation given was one which could not reasonably be true, attributing a reticence or an incuriosity or a guilelessness to the appellant beyond anything that could fairly be supposed. The verdict must in view of the summing-up be taken in this sense. Whether it was right, may depend in some measure on the habits of the people and the conditions of life in Lagos at the time or on the mentality of the appellant—whether he was shrewd or dull, quick or slow-witted, sharp or unsuspecting. These matters are typical of the considerations which a jury may be taken to appreciate, but the existence of a case to go to the jury did not depend upon them.

The case gives a practical illustration of the application of the principle in *Reg.* v. *Langmead* and of the rule as to the burden of proof.

In *Rex* v. *Currell* (1), Hewart, L.C.J. said that *Schama's* case decided no more than this, that the burden of proof was always upon the prosecution. The passage in that case which has caused so much difficulty was referred to by Lord Goddard, C.J. in *Rex* v. *Booth* (2):—

> That is a very hard-worked case, and, I think, very often misunderstood. It laid down no new rule of law. All that it said was this: The onus is always on the prosecution in a criminal case. In the case of receiving stolen goods, the prosecution may discharge the onus by showing that the prisoner was in possession of property recently stolen, and, in the absence of any explanation given by the prisoner, the jury are entitled, on that evidence alone, to convict. If, however, the prisoner gives in evidence a story which leaves the jury in doubt, that is to say, creates a doubt in their minds whether he received the goods feloniously, then they should acquit. *Rex* v. (*Schama and*) *Abramovitch* merely means that if the story told by the prisoner has caused doubt in the jury's mind, they should acquit him.

This statement and that of Sir George Rankin in *Gfeller's* case are to be contrasted with the above quoted language from *Rex* v. *Searle* and in other cases in which what was

(1) (1935) 25 C.A.R. 116 at 118. (2) (1946) 175 L.T.R. 306.

said in that case has been adopted. The quoted passage from the judgment of Duff, C.J. in *Richler* v. *The King* above mentioned is to the same effect as the language used by Goddard, L.C.J. in *Booth's* case. The burden is not upon the accused to convince the judge or jury that he is innocent and if his explanation raises a reasonable doubt he is entitled to be acquitted. The effect of the authorities is accurately summarized in Phipson on Evidence (8th Ed. 33) as follows:—

> Similarly, on charges of stealing or receiving, proof of recent possession of the stolen property by the accused, if unexplained or not reasonably explained, or if though reasonably explained, the explanation is disbelieved, raises a presumption of fact, though not of law, that he is the thief or receiver according to the circumstances; and upon such unexplained, or not reasonably explained, possession, or disbelieved explanation, the jury may (though not must) find him guilty. It is not, however, for the accused to prove honest dealing with the property, but for the prosecution to prove the reverse; and if an explanation be given which the jury think may be true, though they are not convinced that it is, they must acquit, for the main burden of proof (i.e., that of establishing guilt beyond reasonable doubt) rests throughout upon the prosecution. and in this case will not have been discharged.

In the present case the learned trial judge, as stated in his report, did not consider that the explanation given by the accused was a reasonable one and was satisfied beyond a reasonable doubt that the accused knew the goods were stolen at the time he received them.

I would accordingly dismiss this appeal.

Appeal allowed; new trial directed.

Solicitors for the appellant: *Farris, Stultz, Bull and Farris.*

Solicitor for the respondent: *E. Pepler.*