

given an account of how the stolen property came into his possession, an account and presumption entirely unconnected with his not giving evidence on his own behalf as a witness at the trial.

Then upon the merits. The prisoner was not charged with burglary alone, but with burglariously stealing property of which the pouch or purse found upon him at the time of his arrest formed part. I do not think the trial Judge could properly have ruled, under all the circumstances of the case, that the lapse of time between the burglary and the arrest was so great as absolutely to repel any presumption that the prisoner was concerned in the burglary, at which, as the evidence strongly tended to shew, the property had been stolen. It was a piece of property of rather a peculiar or unusual kind, not a thing likely to be the subject of daily sale or constant passing from hand to hand. It bore on its face evidence of an attempt to destroy its identity; and the prisoner's possession of it, his intimate association with the deceased man Wilson, in whose possession was found other property stolen on the same occasion, and the latter's prompt response to the prisoner's call to resist his arrest, even unto death, were all circumstances from which the jury might well draw an inference of guilt, more especially if they concluded, as they evidently did, that the witness Richardson was put forward or had come forward to give a false account or explanation of how the prisoner came into possession of the purse.

I refer to *Regina v. Exall*, 4 F. & F. 922; *Rex v. Adams*, 3 C. & P. 600; *Rex v. Patridge*, 7 C. & P. 551; *The Queen v. Dredge*, 1 Cox C. C. 235; *Rex v. Furnival*, Russ. & Ryan 445.

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FEBRUARY 1st, 1906.

DIVISIONAL COURT.

METELLI v. ROSCOE.

*Sale of Goods—Contract—Appropriation of Goods to Contract—Interception by Assignment—Fraud—Warehoused Goods.*

Appeal by plaintiff from judgment of BRITTON, J. (6 O. W. R. 880), dismissing action to recover possession of certain goods in the possession of defendant Roscoe at Toronto, and declaring that the goods in question were the goods of defendant Clarkson as against plaintiff. Plaintiff claimed title