

the plaintiff gave the clerk cheques payable to his own order, the proceeds of which he misapplied to his own use. The jury on this evidence found (1) that the clerk had no express authority to receive orders for the defendants, but (2) that the defendants had held him out to the plaintiff as having such authority. On the latter point, however, the majority of the Court of Appeal (Smith and Chitty, L.JJ.) held that the judge at the trial was right in holding that there was no evidence to support such a finding. Collins, L.J., was, however, unable to agree with the rest of the Court, and was of opinion that there was some evidence that the defendants by their conduct represented or permitted the clerk to represent, that orders received by him would be executed by the defendants unless they gave notice to the contrary. He also thought there was evidence of the defendants having held the clerk out as having authority to receive payments by cheque payable to his own order.

**CRIMINAL LAW**—MALICIOUS INJURY TO PROPERTY—ACT DONE IN ASSERTION OF RIGHT—EXCESS OF DAMAGE.

In *The Queen v. Clemens* (1898) 1 Q.B. 556, the Court for Crown cases reserved (Russell, C.J., and Grantham, Wright, Bigham and Darling, JJ.), lay down that the proper direction to be given to a jury on an indictment for malicious injury to property where it is claimed by the defendant that the act was done in the assertion of a right, is: Did the defendants do what they did in exercise of a supposed right? And if they did, but on the facts before them the jury are of opinion that the defendants did more damage than they could reasonably suppose to be necessary for the assertion or protection of the alleged right, then that the jury ought to find them guilty of malicious damage. In this case two wooden structures were erected on a piece of meadow land on the sea shore, over which the defendants claimed to have certain rights of user for recreation and for mending and drying nets, etc., and the defendants in the assertion of these rights pulled down the buildings and threw them into the sea. The Court thought that this was an excess of damage for which they might properly be convicted.