

the care which taken in regard to the admission of confessions is to exclude testimony not probably true. But, when in consequence of an involuntary confession, the property stolen, or any other material fact is discovered, it is competent to shew that such discovery was made on account of the prisoner's information. In such a case, so much of the confession as strictly relates to the fact discovered, will be received in evidence. Thus, upon an indictment for burglary it was held admissible to shew the act of the accused in conducting the officers to the place where the stolen money had been hidden, and also his declaration while the search was in progress, "keep looking for the money up by the fence, it is there somewhere."

FOUNDATION MUST BE LAID WHEN VOLUNTARINESS OF CONFESSION IS DISPUTED.—We now pass on to consider the application of these principles we have been discussing to a concrete case. When a confession is introduced, must a foundation be laid negating any improper methods? It is the orthodox rule, and perhaps the prevailing doctrine, that all confessions are presumed to be *prima facie* involuntary, and satisfactory evidence must be introduced to shew that it was voluntary before it is admissible. In Ohio and in a few states, however, a confession is presumed to be voluntary and free from all fear and favour, but if the preliminary evidence is conflicting, the confession can be submitted to the jury under instructions to disregard it, if satisfied it was involuntary. The question as to whether the confession is voluntary, being in its nature preliminary, belongs to the judicial province alone, and he must decide it before admitting the confession in evidence. The defence with permission of the court, may introduce pertinent evidence in addition to that which results from the preliminary examination, and whether it is to be in the presence of the jury, rests with the judge. But the preliminary examination may be merely formal by the judge, declaring on hearing some witnesses without allowing the defendant's counsel to cross-examine or to introduce contrary evidence, that he is satisfied the confession is voluntary. An example of such an arbitrary ruling