

“promise or threat must be of a description which may be presumed to have such an effect on the mind of the defendant as to induce him to confess; and therefore an exhortation, admonition, promise or threat, proceeding at a prior time from some one who has no concern in the apprehension, prosecution or examination of the prisoner, but interferes without any authority, will not be sufficient to render a confession inadmissible;” and at page 240: “The only proper question is, whether the inducement held out to the prisoner was calculated to make a confession an *untrue* one; if not, it will be admissible.”

The defence has cited particularly the case of *Drew* and that of *Morton*, reported in *Roscoe's Crim. Evid.*, p. 40. In the case of *Drew* the prisoner was told “not to say anything to prejudice himself, as what he said would be taken down, and would be used for or against him at his trial.” Coleridge, J., considered this to be an inducement to make a statement and rejected the evidence. In *Morton's* case the constable told prisoner “what you are charged with is a very heavy offence, and you must be very careful in making a statement to me or to anybody else that may tend to injure you, but anything that you can say in your defence we shall be very ready to hear, or to send to assist you.” Coleridge, J., again rejected the confession. With regard to the decisions in these two cases, Rolfe, J., said: “With the greatest respect for my brother Coleridge, I do not approve of the decision in the former, or the arguments used to support it in the latter.” Parke, J., said: “I have reflected on *R. v. Drew* and *R. v. Morton*, and I have never been able to make out that any benefit was held out to the prisoner by the cautions employed in those cases.” And Lord Campbell, C. J., said: “With regard to the decisions of my brother Coleridge, with the greatest respect for him, I disagree with his conclusions.”

In this case the only inducement held out, if any, came from Copeland, who might say he had it from Hubbell, and who, he supposed, had his authority from the bank. Does not this look, at first sight, a little far-fetched? Would not the courts be stretching the law somewhat in holding that A can authorize B

to make a promise to an accused, and then that B would employ C to hold it out to him? Besides, we have it positively from Hubbell that he proposed the interview himself to the directors for his own benefit, that they agreed to it and gave him permission to go, without the least mention of a promise of any kind. And is it reasonable to suppose that a man of the matured age and intelligence of the accused would, in presence of Hubbell, his inferior in the bank, after being warned at the beginning that he must not tell him anything that he does not want him to repeat to the directors, would still be influenced by his conversation with Copeland which had taken place the day before? I don't believe it possible, and I hold that the confession can be admitted.

We find further that all that the accused acknowledged to Hubbell in this confession is confirmed by facts subsequently discovered. The defalcation had taken place in the Baltimore Bank account; the exact amount was \$95,000, just as he stated; his method of doing this by getting the collection clerk to enter in his books a draft on Baltimore, waiting a reasonable time, then getting a ticket from another clerk and presenting it to the teller and drawing the money, then that ticket being missing the next morning, is all confirmed by the evidence of the different employees of the bank. Next his being on the look out for the monthly statement of the Baltimore Bank, and when received, altering the figures and amounts to suit himself, is evident from the appearance of the exhibits filed, and the proof made by those acquainted with his handwriting. Woolrich, in the same volume quoted before, at page 195, says: “Can a fact be ascertained so as to be given in evidence, in consequence of the prisoner's confession, although the confession itself be not admissible? As a general principle the fact is admitted in evidence, but not the acknowledgment of prisoner, and the reason is this: the ground for excluding confessions is the apprehension that the accused may have been induced to say that which is false, whereas the fact discovered shows that so much of the confession as immediately relates to it is true.”