

Letters to the Editor

The Drafting of Section 3 of the Theft Act 1978

Sir,

In his article 'Are Cheque Frauds Covered by Section 3 of the Theft Act 1978?' ([1980] Crim.L.R. 413) G. Syrota says that obscure and ambiguous drafting has given rise to the question posed by the title of the article. It is submitted that on the contrary the drafting is clear. All that is needed is for the reader to do what the draftsman reasonably expects, and accord their natural meaning to the words used.

Mr. Syrota's supposition is that a bilking debtor has persuaded his victim to accept a cheque without production of a cheque card. In course of time the victim finds to his dismay that the cheque is dishonoured. Has there been a breach of section 3?

The answer is no, but not for the reasons discussed by Mr. Syrota. The offence is committed only if the accused 'makes off' without having paid. Professor Griew says that this phrase is simply an atmospherically loaded synonym for 'leaves' or 'goes away' (The Theft Acts 1968 and 1978, p. 210). I do not know why he says this. Parliamentary draftsmen do not use words that are loaded (atmospherically or otherwise) just for the sake of it. There is a purpose, and it is to indicate the desired meaning.

The Shorter Oxford Dictionary defines to make off as 'To depart suddenly, often with a disparaging implication; to hasten away: to decamp.' The man whose dud cheque is accepted does not hasten away. He has no need to. The processes of the clearing banks are not so rapid that he need fear immediate discovery. So he strolls off rather than making off, and a necessary ingredient of the section 3 offence is lacking. If in a particular case he did hasten away (say because he had a train to catch or was late for an appointment) he would not be 'making off' within the meaning of section 3. His reason for haste would be extraneous to the offence.

By carefully chosen language the draftsman of section 3 has required guilty haste (or something like it) as an ingredient of the *actus reus*. The crook of cool nerve who walks steadily away without any gesture of payment is of course still 'making off.' He is quite ready to break into a run if pursued.

Yours sincerely,

FRANCIS BENNION.