

## Obtaining by deception

first published in the Law Quarterly Review (1974, p. 446)

In the recent case of *R. v. Kovacs* (1974 1 WLR 370) D's conviction under s.16 of the Theft Act 1968 rested on the allegation that by deceiving a retailer she had obtained a pecuniary advantage from her bank. The interest of the case lay in the ruling that for the purposes of this section, the deception need not be practised upon the person from whom the advantage is obtained. It was accepted by the Court of Appeal (Lawton and James LJ and Michael Davies J) that by offering a cheque supported by a card D was impliedly representing to the shopkeeper with whom she was dealing that she was authorised by the bank to draw the cheque and to use the card.

Might it not be argued, however, that the sole purpose of the cheque card is the protection of the retailer against what would otherwise be a bad cheque. By proffering the card D says,

If the bank would not otherwise honour the cheque, either because I have insufficient funds, or because it is not my account on which it is drawn, or for any other reason whatever, nevertheless the bank will, if the conditions stipulated are satisfied (and in the instant case they were), meet the cheque at its own risk.

In this way cheque cards guarantee the shopkeeper against the unauthorised use of both cheque and card, and this is why retailers demand them. In refusing to accept the cheque without a supporting card, the shopkeeper refuses to act on D's implied representation that the use of the cheque is legitimate, and relies instead on the bank's assurance that his interests will not be prejudiced should D be acting dishonestly. It is respectfully submitted, therefore, that in these circumstances D does not deceive the retailer.

### 2007 note

A year or so after this was published a similar case (whose name I've forgotten) went to the House of Lords, with disappointing results for the defendant and for my hopes of immortality. Try as I might, I never did understand Lord Dilhorne's speech dismissing the appeal. Any ideas on where I went wrong?