ATTORNEY-GENERAL

v.

YEE NOON

[SUPREME COURT, 1965 (Mills-Owens C.J.), 15th January, 1965]

Appellate Jurisdiction

Criminal law—charge—receiving property knowing the same to have been stolen or unlawfully obtained—felony or misdemeanour—bad for duplicity or uncertainty.

A charge of "receiving" takes its character, as a felony or misdemeanour, according as the circumstances of the obtaining amount to larceny or unlawful obtaining. Therefore a charge of receiving property "knowing the same to have been stolen or unlawfully obtained" is bad, if not for duplicity, then for uncertainty.

Case referred to: *Director of Public Prosecutions v. Nieser* (1959) 43 Cr. App. R. 35; [1958] 3 All E.R. 662.

Appeal by Crown against acquittal in a Magistrate's Court.

B. A. Palmer for the Crown.

H. M. Scott for the respondent.

MILLS-OWENS C.J.: [15th January, 1965]—

In this case the Crown appeals against an acquittal on a charge which is represented by the petition of appeal to be a charge of receiving property knowing the same to have been unlawfully obtained. Upon it appearing that the actual charge was of receiving the property "knowing the same to have been stolen or unlawfully obtained", Crown Counsel has quite properly conceded that a conviction on such a charge could not possibly be supported having regard to the decision in *D.P.P. v. Nieser* (1959) 43 Cr. App. R. 35. Clearly, a charge of receiving takes its character, as a felony or misdemeanour as the case may be, according as the circumstances of the obtaining amount to larceny or unlawful obtaining. It would, therefore, be uncertain on the face of such a charge whether the accused is charged with a felony or with a misdemeanour. Crown Counsel was prepared to concede that such a charge was void for duplicity. In the case cited, counsel for the prosecution conceded that in a charge of receiving property knowing it to have been obtained under circumstances amounting to misdemeanour it would be insufficient, and indeed would be an effective defence, if it were shown that the accused believed, although erroneously, that the goods had been stolen. The Divisional Court referred to the legislation as

creating two classes of offences, one a felony the other a misdemeanour, according to the circumstances in which the property received was stolen or obtained. It was not sufficient merely to prove that the receiver knew that the property fell into the category of property which has been dishonestly obtained; that is equally consistent with differing circumstances, namely circumstances in which the obtaining was a felony and circumstances in which the obtaining was a misdemeanour.

Counsel for the Appellant makes the same point and I have no doubt that the charge was bad, if not for duplicity then for uncertainty. In these circumstances a conviction could not lawfully have been had.

Accordingly the appeal is dismissed.

Appeal dismissed.