*Receiving.—Evidence of Other Property found in Defendant's Possession admissible as showing System.*

THE following decision in REGINA *v.* WILKINSON (17 N.Z. L.R., 1-6) is published for general information:—

Case stated for the opinion of the Court of Appeal under section 412 of "The Criminal Code Act, 1893," by his Honour Mr. Justice Conolly.

The prisoner Henry James Wilkinson was tried at Auckland on the 2nd of December, 1897, on a charge of receiving a watch, the property of one Herbert Henry Smith, knowing the same to have been dishonestly obtained. The theft of the watch on the 28th of September, 1897, and the receipt of it by the prisoner on the 29th of September, were proved. After proof of these and other relevant facts, the Crown Prosecutor proposed to give in evidence, under section 262, subsection 2, (*a*), of "The Criminal Code Act, 1893," that other property, stolen from a person other than Herbert Henry Smith, on the 1st of August, 1897, was found in the possession of the prisoner within twelve months of the time when he was first charged with the crime for which he was then being tried. Counsel for the prisoner objected to the evidence on the ground that such evidence could only be given when the property received was part of the proceeds of the same crime. The Judge admitted the evidence, reserving the question of its admissibility for the opinion of the Court of Appeal.

*Denniston, J.*:—

It seems to me that the point reserved in the case is stated in the case. The point noted and reserved for this Court seems to have been that evidence of other stolen property having been received by the prisoner could only be given when the property received was part of the proceeds of the same crime. On that point, I feel perfectly clear that the evidence was not inadmissible on that ground. The case depends upon subdivision (*a*) of subsection 2 of section 262 of the Criminal Code. I need not read it: it has been referred to by counsel. It first lays down the law as to receiving—what receiving is. It then proceeds to establish a rule of evidence on the subject, to the effect that when any person is being proceeded against for a crime under this section—that is, for the crime of receiving—there "may be given in evidence to prove guilty knowledge . . . the fact that other property obtained by means of any such crime or acts as aforesaid was found in the defendant's possession within twelve months of the time when the alleged offender was first charged with the crime for which he is being tried." The wording of subsection 2, therefore, is that it refers, first, to a person being proceeded against "for a crime under" the section, and then to other property obtained by means of "any such crime or acts as aforesaid." Now, do these latter words—"any such crime or acts as aforesaid"—refer to the previous words of the same subsection—that is, to the "crime" which the defendant is charged with—or do they refer generally to any such "crimes or acts" as are mentioned in subsection 1 of the same section? It seems to me obvious that they refer to the words of subsection 1, and not to those of subsection 2. The fact that the word "acts" is used in subsection 1 and not in subsection 2 shows this clearly. It is also obvious that it is the only construction which would give any effect to the alleged intention of the subsection—namely, to enable evidence to be given to prove guilty knowledge. It is obvious that, if the effect of the subsection were simply to provide that, in order to prove guilty knowledge in receiving stolen property, evidence might be given of the receipt by the prisoner of other property stolen at the same time, it would be entirely unnecessary and useless. Such evidence would be plainly admissible apart altogether from any statute. That deals with the matter as it stands on the New Zealand statute.

The cases cited on the English statute, Reg. *v.* Drage(1) and Reg. *v.* Carter(2), so far from supporting Mr. Cooper on this point, are directly contrary to his contention. For in those cases it was distinctly held that the English statute was intended not for the trifling and useless object suggested during the argument, but in order to make the possession of any other stolen property what to common-sense it always has been—namely, evidence of guilty knowledge. That is shown by the words of Mr. Justice Hawkins in the case of Reg. *v.* Carter(2).* This disposes of the point which seems to me to be the one noted and reserved.

As, however, the other point has been argued, and it may perhaps be held that the question is stated generally as to the admissibility of the evidence, I think, without expressing any opinion as to whether it is really open, that it is right that we should express our opinion upon the admissibility generally. In arriving at an opinion on that point we have to consider first the decisions upon the English statute, and secondly the difference in language between the English statute and our own. As to the question of the construction of the English statute, it was held by Baron Bramwell in Reg. *v.* Drage(1), and by the Court for Crown Cases Reserved in Reg. *v.* Carter(2), that the other property, as to the finding of which in the possession of the receiver evidence may be given, must be found in such possession at the time of the finding of the property in respect of which the charge is made. The words of the judgment of Hawkins, J., in Reg. *v.* Carter (2) were that "if you find other stolen property in the possession of the person charged as a receiver at the same time that you find the property with regard to which you are charging him with receiving, you can prove that you did so find such property if it be property stolen within twelve months preceding." The words of the section of the English Act are simply that evidence may be given that there was found other property; and that was held to mean, found at the same time. If our statute were in the same terms, we should be bound by that decision. But our statute was passed twenty-two years after the English one, and after the decision in the case of Reg. *v.* Carter(2), and the language of our statute is different. The English statute speaks of finding other property stolen within twelve months, our own of other stolen property found within twelve months. That in terms fixes a period of time within which the other property may be found. To give to our Act the same interpretation on this point as the English Act has received would be not only to ignore this provision as to time, but to negative it. It seems to me that, that being so, the English cases do not apply, and that, applying strictly the language of our own Act, the evidence is admissible generally.

I am therefore of opinion that the evidence was properly admitted, and that the conviction ought to be affirmed.

*Conolly, J.*:—

I am of the same opinion; and Mr. Justice Denniston has gone so fully into the matter that it is hardly necessary for me to add anything. I may say this, however: that at the trial I had no doubt about the admissibility of the evidence after hearing considerable argument on the point; but when the case was so strongly pressed, and the cases which have been cited were pressed upon me as they were, I thought it advisable, the liberty of the defendant being involved, to have the opinion of my brother Judges. I have no doubt upon the question, whether the argument were confined to the single point noted, or had reference to the admissibility of the evidence generally.

*Pennefather, J.*: I concur.

(1) 14 Cox C.C. 85. (2) 12 Q.B.D. 522.

*Erratum.*

(See *Police Gazette*, 1899, page 261.)

JOHN JOSEPH INKSTER, discharged from Auckland Gaol. The reference to previous conviction should read, "See *Police Gazette*, 1899, page 137," not page 245.

## Extracts from New Zealand Gazette.

(From *Gazette*, 1899, pages 2224 and 2266.)

*Inspector of Factories appointed.*

Department of Labour,
Wellington, 5th December, 1899.

HIS Excellency the Governor, by his Deputy, has been pleased to appoint the under-mentioned person to be an Inspector under "The Factories Act, 1894," and to assign to him the district set opposite his name, viz.:—

| Name. | District. |
|---|---|
| Constable MICHAEL JOSEPH WILDERMOTH | The Middle Island of the Colony of New Zealand, and the islands adjacent thereto. |

T. THOMPSON,
For Minister of Labour.

*Animals Protection Act.—Declaring Reserve for Native and Imported Game, Little Barrier Island (Hauturu), Auckland.*

RANFURLY, Governor.

By his Deputy,
ROBERT STOUT.

PURSUANT to the powers conferred upon him by "The Animals Protection Act, 1880," His Excellency the Governor of the Colony of New Zealand doth hereby notify that native and imported game shall not be taken or killed on the Little Barrier Island (Hauturu), Auckland Land District.

As witness the hand of His Excellency the Governor, this ninth day of December, one thousand eight hundred and ninety-nine.

W. C. WALKER.