" Although this by itself, as was conceded by Mr. Macaulay, would not constitute good ground for avoiding the election, yet viewed from his previous and future activities, it appears to supply *proof* of an organised modus operandi on his part."

The learned judge then went on to say this:

" On the evidence the paramount chief appeared to have embarked on a campaign of corrupt practices for the sole purpose of influencing the free will of the electors of his chiefdom, albeit the largest chiefdom of the constituency."

He then cites incidents of not only May 8 and 23, but also May 11 as if what happened on May 11 was improper.

In this state of mind the learned judge went on to consider whether the activities of the chief so " extensively prevailed " that they may reasonably be supposed to have affected the result of the election.

Here, I think, with respect, the learned trial judge allowed himself to be swayed by a matter that was totally irrelevant to the point he was considering since he himself had exonerated the action of May 11, 1962.

It is with this in mind that the learned trial judge found that the will of the paramount chief " may have affected " the result of the election.

In my opinion, without disturbing the learned judge's finding on the facts in respect of the two incidents of May 8 and May 23, I think he put too much emphasis on the happening of May 11 and allowed this to influence his finding as to the majority which the respondent got.

This, in my view, goes into the heart of the matter and I would allow the appeal.

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Freetown
*Nov.* 15,
1962

Ames Ag.P.,
Dove-Edwin
J.A.,
R. B. Marke
P.J.

[COURT OF APPEAL]

## MOHAMED KALLON *v.* REGINA

[Criminal Appeal 24/62]

*Criminal Law—Larceny—Receiving stolen property—Whether accused knew property had been stolen.*

Appellant was convicted of larceny of a radio valued at £30 10s. 0d. The theft was alleged to have occurred on April 3, 1962. Appellant said it was impossible for him to have stolen the radio as he had been in prison when the theft took place. The Acting Attorney-General confirmed appellant's alibi before the hearing of the appeal, but said that he would attempt to uphold a conviction for receiving stolen property. Appellant had sold the radio to another man for £20.

*Held*, allowing the appeal, (1) that the evidence could not support a conviction for receiving stolen property; and

(2) That the price of £20 for a second-hand radio costing £30 10s. 0d. was not such a low figure as to warrant the inference that the vendor knew it had been stolen or unlawfully obtained.

The appellant appeared for himself.

*John H. Smythe* (Acting Attorney-General) for the respondent.

DOVE-EDWIN J.A. The appellant and another were charged with housebreaking and larceny contrary to section 26 (1) of the Larceny Act, 1916.

It was alleged that on April 3, 1962, at Condama Village in the Bo Judicial District in the Southern Province of Sierra Leone, they broke and entered the dwelling-house of Abu Conteh and stole one radio, value £30 10s. 0d., property of Abu Conteh.

Three witnesses gave evidence for the prosecution. They were the owner of the wireless, whose house had been broken into and whose radio was stolen, and two constables who did the inquiries and took statements from the accused persons.

The first accused, who was found not guilty and acquitted and in whose possession the radio was found, said in evidence that he had bought the radio from appellant for £20 and had paid £10 in advance. He also stated that a sewing-machine, also found in his possession, had been brought to him for sale by the appellant.

The appellant denied this and said it was impossible for him to have stolen the radio as he was in prison when the theft had occurred. Appellant had made a statement to the police when he was arrested and in that statement he did not say he was in prison when the theft had occurred; he merely said: "I have nothing to say," so that the police were unable to check his later statement in evidence that he was in prison in April, 1962.

The evidence of the first accused was believed by the assessors and judge and he was acquitted. The appellant was found guilty of stealing by one assessor, guilty of breaking into the house and stealing by the other, and the judge found him guilty of simple larceny and sentenced him to four years' imprisonment with hard labour.

Against his conviction and sentence he has appealed to this court on several grounds. The most important being that he was in prison on April 3, 1962, and was not discharged until May 22, 1962.

The learned acting Attorney-General informed this court before the hearing of the appeal that he had checked the appellant's statement that he was in prison on April 3, 1962, and so cannot support the conviction of simple larceny but would seek to support a conviction for receiving.

This court is grateful to the learned acting Attorney-General for the information given which is in keeping with the high standards of his department.

In our view, the evidence cannot support a conviction for receiving.

It was alleged by the first accused that appellant had said that both the radio and sewing-machine were his and he wanted to sell them. He said he had marked the radio but this was not pursued by the prosecution to show that the mark on the radio was the mark or name of appellant. The sewing-machine has not been claimed by anyone. The value of the radio is put at £30 10s.; the price which first accused said he paid was £20. £20 for a second-hand radio costing £30 10s. is not such a low figure to warrant the inference that the vendor knew it was stolen or unlawfully obtained.

In our view, there must be some evidence from which guilty knowledge at the time of receiving could be inferred and in this case there is none.

The appeal is allowed, the conviction and sentence passed on appellant set aside and a verdict of not guilty, acquitted and discharged put in its place.