[TRIANTAFYLLIDES, P., A. LOIZOU, MALACHTOS, JJ.]

IOANNIS KYPRIANOU,

Appellant,

v.

THE POLICE,

Respondents.

(*Criminal Appeal No.* 3675).

Criminal Law—Receiving stolen property—Section 306(*a*) *of the Criminal Code, Cap.* 154—*Theft of the property concerned—Need not be proved by direct evidence—In a proper case it may be inferred from the circumstances of the case—Ownership of the property* —*Section* 255(2)(c) *of the Criminal Code* (supra)—*Identity of the property stolen—How it may be established—Inference, about receiving property known to have been stolen—May, legitimately, be drawn from circumstantial evidence—Close relationship with the thief—May be properly treated as relevant to the proof of guilt* —*Recent possession—Doctrine of "recent possession"—What time is near enough to be "recent"—Recent possession not always a decisive factor concerning guilt or innocence—It is an element to be taken into account together with all other relevant evidence—Reasonableness of account as regards manner in which appellant came to be possessed of the goods involved—A material consideration—Findings leading to conviction of appellant warranted, by the evidence, with the degree of certainty required in a criminal case.*

Criminal Law—Stealing by a person in the public service—Section 267 *of the Criminal Code, Cap.* 154—*Appellant transporting to house of his co-accused clothing stolen by such co-accused—An accomplice in the sense of section* 20 *of the Criminal Code* (supra) —*Fact that trial Judge did not refer expressly to s.* 20 *not constituting a substantial miscarriage of justice—Appellant being a person employed in the public service, as a policeman, and clothing stolen being the property of the Republic properly convicted under the first alternative of said section* 267—*Not necessary to prove, too, that he came into possession of such clothing by virtue of his employment.*

Judgment—Evaluation of evidence by trial Court—Court of Appeal to look at judgments of trial Court as a whole.

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IOANNIS
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Criminal Procedure—Charge—Of receiving stolen property—Particulars—Inaccuracy regarding time at which offence was committed—Has not prejudiced appellant in his defence—Treated as an irregularity which has not resulted in a miscarriage of justice—Proviso to s. 145(1)(c) *of the Criminal Procedure Law, Cap.* 155.

Evidence—Prosecution and defence evidence—Approach to by Judge.

The appellant, who was tried with six other persons, was convicted of the offences of receiving stolen property and of stealing by a person in the public service. At all material times he was a police constable and as from November, 1974 was assigned duties as a guard at a store of clothing for displaced persons at Kykko Gymnasium. Accused 5 at the trial was emloyed at the Gymnasium as a charwoman, and accused 6 and 7, her daughters, were also, employed there. Accused 1 was the person in charge of the store.

On January 16, 1975 the Police searched the house of the appellant and found there the clothing listed in the receiving charge; they, also, searched the house of accused 5, 6 and 7 and found there the clothing listed in the stealing charge.

The trial Court accepted evidence proving that the appellant visited the house of accused 5, 6 and 7 on, at least, two occasions, on one of which he carried there, in his car, some boxes, which were, eventually, found to contain the clothing listed in the stealing charge; and evidence which established a striking similarity between items of clothing at the store and items of clothing which were found in the possession of the appellant and were listed in the receiving charge. It also, accepted evidence to the effect that the appellant had developed a close relationship with the person in charge of the store—accused 1 at the trial—and was visiting the store regularly even when he was not on duty; and, furthermore, it rejected, as totally incredible, the explanation given by the appellant as regards the circumstances in which the clothing listed in the receiving charge came to be found in his possession, as well as his allegation that he had not even been at the house of accused 5, 6 and 7.

Upon appeal against conviction counsel for the appellant contended:

(a) That the trial Judge has erred in evaluating the evidence before him, in that he examined, first, and accepted as true, the evidence for the prosecution and, then, after

he had already made up his mind to accept the evidence against the appellant, he proceeded to examine the evidence for the defence and rejected it because it was not compatible with the evidence for the prosecution.

(b) That it has not been proved beyond reasonable doubt that the clothing listed in the receiving charge had been stolen prior to the time when the appellant took possession of it; and that the ownership of such clothing had not been established, and that in particular that it belonged to the Republic. It was contended, in this connection, that there was no direct evidence that any clothing was found to be missing from the Kykko Gymnasium store, and that there was no evidence showing when, actually, the appellant had taken possession of such clothing, or what was his state of mind at the material time; therefore, many essential ingredients of the offence of receiving such clothing as stolen property had not, been established with the certainty required in a criminal case.

(c) That the guilt of the appellant of the offence of stealing has not been proved beyond reasonable doubt, because though it is a fact that he transported in his car to the house of accused 5, 6 and 7 the clothing which accused 1 stole from the said store, it is possible that the appellant's car was used merely as a means of transportation without the appellant being involved himself in the theft.

(d) That the appellant should not have been convicted and punished of the offence of stealing by a person in the public service under s. 267 of Cap. 154.

(e) That the judgment of the trial Court was not duly reasoned.

Held, (*I*) *with regard to contention* (*a*):

As the trial Judge must have made up his mind, on the evidence as a whole, regarding the vital issue of the guilt or innocence of the appellant before he began writing his judgment, the fact that in the judment he dealt, first, with the prosecution evidence and, while doing so, expressed the view that it was more credible than the evidence of the defence, does not indicate the judicial approach to the evidence at the particular moment when he was writing that specific part of his judgment. Moreover we

have to look at the judgment of the trial Court as a whole. Having done so we have been left with no doubt at all in our minds that the appellant was found guilty after a thorough consideration of all the evidence on record, as a whole, including both the evidence for the prosecution and that for the defence. (See *Charitonos and Others* v. *Republic* (1971) 2 C.L.R. 40).

Held, (II) with regard to contention (b) above:

(a) In a case of stealing or in a case of receiving stolen property, it is not necessary to prove by direct evidence the theft of the property concerned; in a proper case the theft may be inferred from the circumstances of the case. Moreover, a rightly drawn inference may be sufficient in order to establish the origin of goods alleged to be stolen; and the similarity of the goods found in the possession of the accused with goods alleged to have been stolen may be treated as evidence both of the fact of the theft and of the identity of the goods. Also, the circumstances in which an accused receives goods may of themselves prove that the goods were stolen, and further may prove that he knew it at the time when he received them. It is not a rule of law that there must be other evidence of the theft.

(b) The close relationship of the appellant with the person in charge of the store may be properly treated as relevant to the proof of guilt on a charge of receiving (see *D.P.P.* v. *Nieser* [1959] 1 Q.B. 254 at p. 267).

(c) The reasonableness of the account as regards the manner in which a defendant came to be possessed of the goods involved in a charge of receiving is a material consideration. An untrue account is something which may weigh the scales in favour of a finding of guilt. In the present case the trial Court held, quite rightly, that the story related by appellant to the police and on oath at the trial as to how he came to be in possession of the clothing, which is described in the receiving charge, was completely discredited by other evidence which the Judge found to be reliable.

(d) The clothing concerned came to be stored at the Kykko Gymnasium store as clothing donated to the Service for the Care and Rehabilitation of Displaced Persons, which was set up by the Government of the Republic. In view, also, of the definition of "owner" in section 255(2)(c) of Cap. 154, which as framed includes "any part owner, or person having possession or control of, or a special property in anything capable of being stolen,"

it may be taken as safely established that the clothing concerned was the property of the Republic.

(e) Having approached the question of the conviction of the appellant of the offence of receiving stolen property by bearing in mind all relevant considerations (including the fact that clothing in question was found in his possession recently, in the sense of the notion of "recent possession"), and also that it was up to the appellant to satisfy us that the verdict of the trial Judge is wrong we are not satisfied that the findings leading to the conviction were not warranted by the evidence with the degree of certainty which is required in a criminal case.

Held, III with regard to contention (c) above:

We are not prepared to say that the verdict of guilty of the offence of stealing was not warranted by the evidence on record. It should not be lost sight of that items of clothing stolen from the same store were actually found in the house of the appellant (namely those listed in the receiving charge); and, also, that the appellant denied having ever gone for any purpose, even an innocent one, to the house of accused 5, 6 and 7; and there was no reason for him to have denied having done so if when he went there to transport the clothing stolen by accused 1, he was not, to say the least, an accomplice in the sense of section 20 of Cap. 154, in relation to the theft of this clothing. The fact that the trial Court did not refer expressly, in its judgment to section 20 does not constitute a substantial miscarriage of justice which would entitle the appellant to succeed in this appeal.

Held, (IV) with regard to contention (d) above:

The appellant was properly convicted of the offence of stealing by a person in the public service under the first alternative part of section 267 of Cap. 154, because, at the time, he was a person employed in the public service, as a policeman, and the clothing stolen was the property of the Republic; therefore, it was not necessary to prove, too, that he came into possession of such clothing by virtue of his employment.

Held, (V) with regard to contention (e) above:

Bearing all relevant provisions, principles and consideration in mind, we have reached the conclusion that we cannot accept that the judgment of the trial Court, though perhaps not extensively reasoned in some respects, is not sufficently reasoned as a whole, so as to render it proper for us to set aside the appellant's

convictions on such a ground. (See *Christofides* v. *Police* (1965) 2 C.L.R. 69 at p. 71; *Katsaronas and Others* v. *Police* (1973) 2 C.L.R. 17 at pp. 35–37).

Appeal dismissed.

Per curiam: The inaccuracy regarding the time at which the offence of receiving was committed has not in any way prejudiced the appellant in his defence in this case; we would be inclined to treat such inaccuracy as an irregulatiry which has not in any way, resulted in a miscarriage of justice, substantial or otherwise; so this is not, in view of the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155, a reason for which the appeal against the conviction of the offence of receiving could succeed.

Cases referred to:

Charitonos and Others v. *The Republic* (1971) 2 C.L.R. 40;

R. v. *Dredge*, 1 Cox C.C. 235;

R. v. *Burton*, 6 Cox C.C. 293;

Noon v. *Smith* [1964] 3 All E.R. 895 at p. 897;

Kamilaris and Another v. The Police, 18 C.L.R. 78;

R. v. *Roche* [1887] 12 V.L.R. 150;

R. v. *Sbarra*, 13 Cr. App. R. 118 at p. 120;

R. v. *Fuschillo*, 27 Cr. App. R. 193;

Police v. *Haralambous* and Another, 14 C.L.R. 109 at p. 111;

D.P.P. v. *Nieser* [1959] 1 Q.B. 254 at p. 267;

R. v. *Langmead*, 9 Cox C.C. 464 at p. 468;

R. v. *Abramovitch*, 11 Cr. App. R. 45;

R. v. *Garth*, 33 Cr. App. R. 100;

R. v. *Young and Another* [1953] 1 All E.R. 21;

Mawaz Khan and Another v. *The Queen* [1966] 3 W.L.R. 1275 at p. 1279;

R. v. *Chapman and Another* [1973] 2 All E.R. 624;

D.P.P. v. *Boardman* [1974] 3 W.L.R. 673;

Vouniotis v. *The Republic* (1975) 2 C.L.R. 34;

Simadhiakos v. *The Police*, 1961 C.L.R. 64 at p. 88;

Paspalli v. *The Police* (1968) 2 C.L.R. 108 at pp. 111, 112;

Christofides v. *The Police* (1965) 2 C.L.R. 69 at p. 71;

Katsaronas and Others v. *The Police* (1973) 2 C.L.R. 17, at pp. 35–37.

Appeal against conviction.

Appeal against conviction by Ioannis Kyprianou who was convicted on the 4th December, 1975 at the District Court of Nicosia (Criminal Case No. 12041/75) on one count of the offence of receiving stolen property and on one count of the offence of stealing by a person in the public service contrary to sections 306(a) and 267 of the Criminal Code, Cap. 154, respectively, and was sentenced by Artemides, D.J. to concurrent terms of eighteen months imprisonment on each count.

L. Clerides with *A. Xenophontos*, for the appellant.

Gl. Michaelides, for the respondents.

Cur. adv. vult.

The judgment of the Court was delivered by:-

TRIANTAFYLLIDES, P.: The appellant has been convicted of the offences of receiving stolen property, contrary to section 306(a) of the Criminal Code, Cap. 154, and of stealing by a person in the public service, contrary to section 267 of Cap. 154.

The appellant, who was accused 4 before the Court below, was tried together with six other persons—(who are not appellants before us, but will be referred to in this judgment)—on a charge containing sixteen counts; but, he was convicted only of the offences of receiving stolen property, on count 12, and of stealing, on count 13.

According to the particulars of count 12, the appellant, on January 16, 1975, at Ayios Dhometios, received various items of clothing (described in Appendix 'C' to the charge) valued at C£234.500 mils, which were the property of the Republic of Cyprus, knowing that such clothing was stolen property; and according to the particulars of count 13, the appellant, between October 25, 1974, and January 16, 1975, at Ayios Dhometios, while being a person employed in the public service, stole various items of clothing (described in Appendices 'B' and 'D' to the charge) which were the property of the Republic of Cyprus; but, he was, actually, convicted, on this count, in respect only of the clothing listed in Appendix 'D', which was valued at C£72.500 mils.

He was sentenced to eighteen months' imprisonment on both counts, the sentences to run concurrently as from December 4, 1975.

The salient facts of the case are as follows:-

When approximately 200,000 Greek Cypriots had become

displaced persons, as a result of the Turkish invasion of our country, the Government of the Republic set up what came to be known as the Service for the Care and Rehabilitation of Displaced Persons. To this Service there were donated, among other things, great quantities of clothing from Greece.

Such clothing was stored at various places, one of them being a big room at a secondary education school, the Kykko Gymnasium, in Nicosia, which was being used as a sorting centre from October 25, 1974, onwards; and the person who was accused 1 at the trial was placed in charge of this store as from that date.

The appellant who, at all material times was a police constable, was assigned, as from November 13, 1974, duties as a guard at the said store; and he used to go there, also, on many occasions when he was not on duty, because he developed a close friendship with accused 1.

Accused 5 at the trial was employed at the Gymnasium as a charwoman, and accused 6 and 7, her daughters, were, also, employed there.

On January 16, 1975, the police searched the house of the appellant and found there the clothing listed in Appendix 'C'; they, also, searched the house of accused 5, 6 and 7 and found there the clothing listed in Appendix 'D'.

The appellant, both when he made statements to the police and when he testified on oath at the trial, denied committing either of the offences in respect of which he was convicted; and, in particular, he denied being on friendly terms with accused 1, admitting only the existence of a mere acquaintance with him due to the fact that they happened to carry out their duties at one and the same place; the appellant, also, denied that he had ever visited the house of accused 5, 6 and 7.

The trial Court, however, accepted evidence proving that the appellant visited the house of accused 5, 6 and 7 on, at least, two occasions, on one of which he carried there, in his car, some boxes, which were, eventually, found to contain the clothing listed in Appendix 'D'; it, also, accepted evidence to the effect that the appellant had developed, indeed, a close relationship with accused 1, and was visiting the store regularly even when he was not on duty; and, furthermore, it rejected, as totally incredible, the explanation given by the appellant as regards the circumstances in which the clothing listed in Appen-

dix 'C' came to be found in his possession, as well as his allegation that he had not ever been at the house of accused 5, 6 and 7.

The first argument which was advanced, on appeal, by counsel for the appellant, has been that the trial Judge has erred in evaluating the evidence before him, in that he examined, first, and accepted as true, the evidence for the prosecution and, then, after he had already made up his mind to accept the evidence against the appellant, he proceeded to examine the evidence for the defence and, inevitably, rejected it, because it was not compatible with the evidence for the prosecution.

We have not been able to find any real merit in this contention, because we are of the view, having perused the carefully prepared judgment of the trial Judge, that he must have made up his mind, on the evidence as a whole, regarding the vital issue of the guilt or innocence of the appellant, before he began writing his judgment; so, the fact that in the judgment he dealt, first, with the prosecution evidence and, while doing so, expressed the view that it was more credible than the evidence of the defence, does not indicate the judicial approach of the Judge to the evidence at the particular moment when he was writing that specific part of his judgment; what is indicated thereby is only the mode in which the Judge chose to set out his reasons for finding the appellant guilty as charged.

A similar issue has come up before this Court in *Charitonos and Others* v. *The Republic*, (1971) 2 C.L.R. 40, and it was held there that the judgment of the trial Court had to be looked at as a whole; and the same applies to the judgment of the trial Court in the present case. Having done so we have been left with no doubt at all in our minds that the appellant was found guilty after a thorough consideration of all the evidence on record, as a whole, including both the evidence for the prosecution and that for the defence.

In relation to the conviction of the appellant, under section 306(a) of Cap. 154, of the offence of receiving stolen property, it was submitted by counsel for the appellant that it has not been proved, beyond reasonable doubt, that the clothing listed in Appendix 'C' had been stolen prior to the time when the appellant took possession of it; also, that the ownership of such clothing had not been established, and that, in particular, there was no evidence that it belonged to the Republic. It was

contended, in this connection, that there was no direct evidence that any clothing was found to be missing from the Kykko Gymnasium store, and that there was no evidence showing when, actually, the appellant had taken possession of such clothing, or what was his state of mind at the material time; therefore—argued counsel for the appellant—many essential ingredients of the offence of receiving such clothing as stolen property had not been established with the certainty required in a criminal case.

From the contents of the judgment it appears that the Judge had quite clearly in mind the need for proof, beyond reasonable doubt, of the guilt of the appellant; and, also, he examined to what extent it was properly open to him, in the present case, to draw inferences from the circumstantial evidence which had been adduced at the trial.

In a case of stealing, or in a case of receiving stolen property, it is not necessary to prove by direct evidence the theft of the property concerned; in a proper case the theft may be inferred from the circumstances of the case. It is correct that, initially, in *R.* v. *Dredge*, 1 Cox C.C. 235, the view was taken that the theft had to be directly established, but, later on, in cases such as *R.* v. *Burton*, 6 Cox C.C. 293, it was held that this was not necessary on all occasions. In the *Burton* case Maule J. said (at p. 294):-

> " The offence with which the prisoner is charged must be proved; and that involves the necessity of proving that the prosecutor's goods have been taken; but why is that to be differently proved from the rest of the case? If the circumstances satisfy the jury, what rule is there which renders some more positive and direct proof necessary?"

The same view of the law was taken in *Noon* v. *Smith*, [1964] 3 All E.R. 895, where Ashworth J. stated (at p. 897):-

> " At the conclusion of that evidence it was submitted on behalf of the appellant that there was no case for him to answer as the burden of proof lay on the prosecution and the prosecution had not proved that the goods mentioned in the charge were stolen or that the appellant stole them. Reference was made to four cases[1], which are set out in

1. *R.* v. *Burton*, [1854], Dears C.C. 282; *R.* v. *Mockford* [1868], 11 Cox, C.C. 16; *R.* v. *Sbarra*, [1918], 13 Cr. App. Rep. 118; and *R.* v. *Fuschillo*, [1940] 2 All E.R. 489.

the Case Stated, but the learned magistrate rejected the submission. The appellant called no evidence and did not give evidence himself and he was duly convicted.

It is now said there was no material on which the learned magistrate could come to that conclusion. Counsel for the appellant has cited to this Court a number of authorities. Perhaps the most important concession which counsel for the appellant really made, after citing two authorities, was to this effect, that each case depends on its own facts. So it does and some of the cases to which he referred this Court are cases in which the Court had come to the conclusion that, on the facts there proved, there was no material from which the Court could either infer or reach a conclusion on the evidence that larceny had been proved; on the other hand there were cases where the evidence was the other way. Another way of stating the matter which counsel for the appellant readily accepted was that larceny can be established by evidence tendered directly proving the theft or by evidence of facts from which any reasonable person could draw the inference that a theft had taken place. That concession was, in my view at any rate, right to be made, and so it reduces the matter to the simple question whether on the facts which I have outlined, the learned magistrate, acting reasonably, was entitled to come to the conclusion that the appellant had stolen the articles referred to in the charge."

We would like to point out, at this stage, that the case of *Kamilaris and Another* v. *The Police*, 18 C.L.R. 78, is in no way inconsistent with the above cited English case-law; actually, the *Burton* case, *supra*, is referred to with approval in the judgment of Jackson C.J. in the *Kamilaris* case (at p. 81); but, the *Kamilaris* case is distinguishable from the present one, because in that case the Court was not satisfied as regards the identification of the goods alleged to have been stolen.

Regarding the identification of the clothing, listed in Appendices 'C' and 'D', as being clothing which emanated from the store of the Kykko Gymnasium, it is correct that there exists direct evidence that clothing was removed from the said store, to the house of accused 5, 6 and 7, only in so far as is concerned the clothing to which Appendix 'D' relates; but, there exists evidence which was accepted—and quite rightly so—by the trial Court and which establishes a striking similarity between

items of clothing at the store and items of clothing which were found in the possession of the appellant and are listed in Appendix 'C'; especially significant are the indications that part of the clothing listed in Appendix 'C' was sent to Cyprus from Greece in the same circumstances as much of the clothing at the store.

The *Kamilaris* case, *supra*, may, properly, be treated as an authority for the proposition that a rightly drawn inference may be sufficient in order to establish the origin of goods alleged to be stolen; and in *R.* v. *Roche*, [1887] 13 V.L.R. 150—(an Australian case which is summarized in the English and Empire Digest, vol. 14, Blue Band ed., p. 435, para. 2707)—it was held, on a charge of larceny, that similarity of the goods found in possession of the accused with goods alleged to have been stolen may be treated as evidence both of the fact of the theft and of the identity of the goods.

In the present instance the issue of the identification of the clothing concerned is placed, really, beyond any doubt, by, in particular, the evidence given by prosecution witness Tsialides, who testified that the appellant admitted, actually, to him that accused 1 had, on one occasion, allowed him to take away from the store two sackfuls of clothing. Also, there exists the testimony of accused 7 who stated, in unmistakeable terms, that the clothing shown to her at the trial, including the clothing listed in Appendices 'C' and 'D', was clothing which had been kept at the Kykko Gymnasium store, where she was employed.

It may be pointed out, at this stage, that, in view of the fact that the clothing concerned came to be stored at the Kykko Gymnasium store as clothing donated to the aforementioned Government Service for Displaced Persons, and, in view, also, of the definition of "owner" in section 255(2)(c) of Cap. 154, which, as framed, includes "any part owner, or person having possession or control of, or a special property in, anything capable of being stolen", it may be taken as safely established that the clothing concerned was the property of the Republic.

Regarding, next, the inferences, about receiving clothing known to be stolen, that may, legitimately, be drawn from circumstantial evidence in a case of this nature, it is useful to refer to *R. v. Sbarra*, 13 Cr. App. R. 118, where (at p. 120) Darling J. said:-

> "The Court desires to express the law in the following terms. The circumstances in which a defendant receives

goods may of themselves prove that the goods were stolen, and further may prove that he knew it at the time when he received them. It is not a rule of law that there must be other evidence of the theft."

Another relevant decision is *R.* v. *Fuschillo*, 27 Cr. App. R. 193; and, the *Sbarra* case, *supra*, was referred to with approval by our own Supreme Court in *Police* v. *Haralambous and Another*, 14 C.L.R. 109, 111.

In this respect, a significant piece of circumstantial evidence is the fact that the appellant was, as found by the trial Court, associating a lot, even when he was not on duty, with accused 1, whom he used to visit at the Kykko Gymnasium store; and that such a close relationship may be properly treated as relevant to the proof of guilt, on a charge of receiving, is to be derived from the judgment of Diplock J. in *D.P.P.* v. *Nieser*, [1959] 1 Q.B. 254, 267.

Another issue with which we have to deal, in this case, is whether or not it may be said that the clothing which is described in Appendix 'C' was found in the possession of the appellant "recently", as compared to the period of time during which it could have been taken from the Kykko Gymnasium store:

In the *Nieser* case, *supra*, the following was stated by Diplock J., in relation to the matter of "recent possession" in connection with a charge of receiving stolen goods (at pp. 266–267):–

> " It may, we think, be misleading to speak of the 'doctrine' of recent possession in cases of receiving. It is a convenient way of referring compendiously to the inferences of fact which, in the absence of any satisfactory explanation by the accused, may be drawn as a matter of common sense from other facts, including, in particular, the fact that the accused has in his possession property which it is proved had been unlawfully obtained shortly before he was found to be in possession of it.
>
> The so–called 'doctrine of recent possession' is not limited to cases of receiving nor to inferences as to the accused's knowledge or state of mind. The right inference from recent possession may be that the accused himself has stolen the property, as where he is found in the street near the scene of the house–breaking in possession of the

property which has been taken from the house which has been entered. On the other hand, where property has been stolen and there is nothing in the circumstances to point to the accused's having himself committed the crime of stealing, the proper inference from its being found in his possession may be that he received the property knowing, not merely that it had been unlawfully obtained, but knowing that it had been stolen. Such an inference is justified by the fact that by far the commonest way in which property is unlawfully obtained is by stealing. But, conversely, where property has been obtained under circumstances which amount to misdemeanour, the inference cannot be drawn from its being found in his possession that he knew that it had been obtained in this much less common way as opposed to having been stolen. There may, however, in such a case be facts proved additional to the fact of recent possession which entitle the Court to draw the inference that the accused knew the true facts as to the circumstances in which the property was unlawfully obtained, as where there is evidence of some association between the receiver and the person who obtained the goods, from which it might be inferred that the receiver was in the confidence of the other person, and knew what he had in fact done.

But the inference appropriate to the particular facts proved is not a presumption of law; it is merely an inference of fact drawn by applying common sense to the proved facts, and there is no 'doctrine' that in a receiving case where recent possession on the part of the accused is proved he is presumed, in the absence of evidence to the contrary, to have known the true facts of the way in which the goods were obtained."

In *R.* v. *Langmead*, 9 Cox C.C. 464, Blackburn J. said (at p. 468):–

"As a proposition of law, there is no presumption that recent possession points more to stealing than receiving. If a party is in possession of stolen property recently after the stealing, it lies on him to account for his possession, and if he fails to account for it satisfactorily, he is reasonably presumed to have come by it dishonestly; but it depends on the surrounding circumstances whether he is guilty of receiving or stealing. Whenever the circumstan-

ces are such as render it more likely that he did not steal the property, the presumption is that he received it."

The *Langmead* case was referred to with approval by our Supreme Court in the *Haralambous* case, *supra* (at p. 111).

In Kenny's Outlines of Criminal Law, 19th ed., 461, para. 500, it is pointed out that—

" As to what time is near enough to be 'recent', no general rule can be given; for the period within which the presumption can operate will vary according to the nature of the article stolen. Three months has been held sufficiently recent for a motor car, and four months for a debenture bond*. But for such articles as pass from hand to hand readily, two months would be a long time, particularly in the case of money. In regard to a horse, it has been held that six months is too long**. Eight months is too long to be 'recent' for a bale of silk***. And it would seem that, whatever the article were, sixteen months would be too long a period****".

In the present case it is in evidence that the store concerned was set up on October 25, 1974, that the appellant was posted, for the first time, for duty at the store on November 13, 1974, and that the clothing was found in his house on January 16, 1975.

Taking all relevant considerations into account we are inclined to the view that it may be said that the clothing, which is described in Appendix 'C', was found in his possession recently, in the sense of the notion of "recent possession"—as explained above—but, we would not be prepared to say, in this particular case, that this should be treated as a decisive factor concerning the guilt or innocence of the appellant; it is an element to be taken into account together with all other relevant evidence.

From Archbold's Criminal Pleading, Evidence and Practice, 38th ed., pp. 578–580, paras. 1141–1150, it appears that the reasonableness of the account as regards the manner in which a defendant came to be possessed of the goods involved in a charge

* *R.* v. *Livock* [1914] 10 Cr. App. R. 264, and see *R.* v. *Wood* [1965] Crim. L. R. 233.

** *R.* v. *Cooper* [1852] 3 C. and K. 318.

*** *R.* v. *Marcus* [1923] 17 Cr. App. R. 191.

**** Anon. [1826] 2 C. and P. 459, per Bayley, J.

of receiving stolen property is a material consideration (see, also, *inter alia*, *R.* v. *Abramovitch*, 11 Cr. App. R. 45, and *R.* v. *Garth*, 33 Cr. App. R. 100). It is quite clear, in this respect, that an untrue account is something which may weigh the scales in favour of a finding of guilt (see, *inter alia*, *R.* v. *Young and another*, [1953] 1 All E.R. 21); a concocted story of an accused person being, in general, indicative of his guilt.

In *Mawaz Khan and Another* v. *The Queen*, [1966] 3 W.L.R. 1275, Lord Hodson said (at p. 1279):-

> " What is found against the appellants is that the statements were concocted for the purpose of escaping from the consequences of their crime and if false are admissible to show guilt. As has been said: 'The recourse to falsehood leads fairly to an inference of guilt' ".

In *R.* v. *Chapman and Another*, [1973] 2 All E.R. 624, 630, it was, again, stressed that a false version given by an accused may be taken into account in conjunction with other evidence against him. The *Chapman* case was referred to in *D.P.P.* v. *Boardman*, [1974] 3 W.L.R. 673, 679, 680, in which it was pointed out that lies said out of Court by an accused person may be relied upon as evidence against him. Both the *Chapman* case and the *Boardman* case were referred to by this Court in *Vouniotis* v. *The Republic*, (1975) 2 C.L.R. 34, but in connection with a different matter, namely the proposition that lies stated in evidence by an accused cannot amount to corroboration of other evidence against him in a case where corroboration is required by a rule of law or practice.

In the present case the trial Judge held, quite rightly, that the story related by the appellant to the police, and on oath at the trial, as to how he came to be in possession of the clothing, which is described in Appendix 'C', was completely discredited by other evidence, which the Judge found to be reliable.

We have approached the question of the conviction of the appellant of the offence of receiving stolen property bearing in mind the totality of all relevant considerations, and, also, that it was up to the appellant to satisfy us that the verdict of the trial Judge is wrong (see, *inter alia*, *Simadhiakos* v. *The Police*, 1961 C.L.R. 64, 88, *Paspalli* v. *The Police*, (1968) 2 C.L.R. 108, 111, 112). As we are not satisfied that the findings leading to the conviction of the appellant were not warranted, by the evidence, with the degree of certainty which is required in a cri-

minal case, we have to dismiss the appeal of the appellant as regards his conviction on count 12, which charged him with receiving stolen property.

It is correct that in the particulars of that count it is stated that the offence in question was committed on January 16, 1975 whereas a better way of framing such particulars would be to state that the offence was committed during the period between November 13, 1974, when the appellant took up, for the first time, his duties at the store, and January 16, 1975, when the clothing described in Appendix 'C' was discovered at his house; but, as we do not consider that the inaccuracy regarding the time at which the offence was committed, as found in the particulars of count 12, has, in any way, prejudiced the appellant in his defence in this case, we would be inclined to treat such inaccuracy as an irregularity which has not, in any way, resulted in a miscarriage of justice, substantial or otherwise; so this is not, in view of the proviso to section 145(1)(b) of the Criminal Procedure Law, Cap. 155, a reason for which the appeal against the conviction of the offence of receiving could succeed.

Coming, next, to the conviction of the appellant of the offence of stealing, on count 13, we need not repeat what have been already stated and which are, also, applicable in relation to this count.

It has been submitted, in this respect, on behalf of the appellant, that his guilt has not been proved beyond reasonable doubt, because though it is a fact that he transported in his car to the house of accused 5, 6 and 7 the clothing which accused 1 stole from the store at the Kykko Gymnasium, it is possible that the appellant's car was used merely as a means of transportation without the appellant being involved himself in the theft; and, in this connection, it was stressed by counsel for the appellant that accused 1 has, also, pleaded guilty to stealing the clothing in Appendix 'D', in respect of which the appellant was convicted of theft on count 13.

Having given this matter careful consideration we do not find ourselves prepared to say that the verdict of guilty, against the appellant, on count 13, was not warranted by the evidence on record. In this respect, it should not be lost sight of that items of clothing stolen from the same store were actually found in the house of the appellant (namely those listed in Appendix 'C' in respect of which he was convicted on count 12); and, also, that the appellant denied having ever gone for any purpose, even an

innocent one, to the house of accused 5, 6 and 7; and there was no reason for him to have denied having done so if when he went there to transport the clothing stolen by accused 1 he was not, to say the least, an accomplice, in the sense of section 20 of Cap. 154, in relation to the theft of this clothing. We do not think that the fact that the trial Court did not refer, expressly, in its judgment, to section 20 constitutes a substantial miscarriage of justice, which would entitle the appellant to succeed in this appeal.

Another point raised in relation to the conviction of the appellant on count 13 has been that he should not have been convicted and punished under section 267 of Cap. 154. We are of the view that he was properly convicted under the first alternative part of that section, because, at the time, he was a person employed in the public service, as a policeman, and the clothing stolen was the property of the Republic; therefore, it was not necessary to prove, too, that he came into possession of such clothing by virtue of his employment.

Before we conclude this judgment we must deal, also, with a contention concerning the whole of the judgment of the trial Court, namely that it was not duly reasoned. In *Christofides* v. *The Police*, (1965) 2 C.L.R. 69, it was pointed out by Zekia, P. (at p. 71) "... that adequate reasons should be given by trial Judges in their judgments when they record their findings in respect of the ingredients of offences for which an accused person is found guilty"; and, more recently, in *Katsaronas and others* v. *The Police*, (1973) 2 C.L.R. 17, 35–37, the matter of sufficient reasoning for a judgment was examined in quite some detail. Bearing all relevant provisions, principles and considerations in mind, we have reached the conclusion that we cannot accept that the judgment of the trial Court, though perhaps not extensively reasoned in some respects, is not sufficiently reasoned as a whole, so as to render it proper for us to set aside the appellant's convictions on such a ground.

For all the foregoing reasons this appeal is dismissed as a whole; and, though we do consider that the sentence imposed on the appellant is a very lenient one in view of the nature of the offences which he committed, we have decided not to order that the sentence should run as from today, as his conviction is bound to entail repercussions to his detriment other than the time which he will spend in prison.

Appeal dismissed.