PARTIES:	KELLS, Jonathon
	v
	PRYCE, Leonard David
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	11 of 1997
DELIVERED:	ALICE SPRINGS, 2 May 1997
HEARING DATES:	18 April 1997
JUDGMENT OF:	MARTIN CJ

CATCHWORDS:

Criminal law - Appeal - Jurisdiction practice and procedure - Alternative verdicts - Indictment for stealing - Not guilty of stealing but guilty of receiving - No charge laid for offence of receiving - For stealing and receiving to be available as alternatives must be separately charged - No power to find a person guilty of either stealing or receiving unless the indictment or information contains the alternative.

Justices Act (NT) 1928, ss49, 50(2), 101, 102(2) and 130A
Interpretation Act (NT) 1978, ss3(3) and 17
Criminal Code (NT) 1983, ss210, 229, 303, 305(2), 309(2), 314 and 323

REPRESENTATION:

Counsel:

Appellant:	Mr M Brogman
Respondent:	Mr J Birch

Solicitors:

Appellant:	CAALAS
Respondent:	Office of the Director of Public Prosecutions

Judgment category classification:	B
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mar97019

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 11 of 1997

BETWEEN:

JONATHON KELLS
Appellant

AND:

LEONARD DAVID PRYCE
Respondent

CORAM: MARTIN CJ.

REASONS FOR JUDGMENT

(Delivered 2 May 1997)

The appellant was charged with unlawful entry into a building with intent to commit a crime therein, namely stealing and also of stealing. He was found not guilty after trial in the Court of Summary Jurisdiction sitting at Alice Springs, but guilty of receiving the property, the subject of the stealing charge. He appeals against the consequent conviction upon the ground that he was not charged with that offence.

The outcome is governed by the provisions of the *Interpretation Act* (NT) 1978, the *Criminal Code* (NT) 1983 and the *Justices Act* (NT) 1928. It is first necessary to look at some definitions with a view to determining what is meant by the word "indictment" in the relevant provisions of the Code. By s17 of the *Interpretation Act*, indictment "includes information". That is subject to the definition yielding to the appearance of an intention to the contrary (s3(3)). Information is not defined in that Act or elsewhere. Proceedings in a Court of Summary Jurisdiction may be instituted upon complaint in the case of a simple offence, or information in the case of a charge for an indictable offence (ss49 & 101 *Justices Act*). Neither a complaint nor an information need be in writing (ss50(2) & 102(2)). A complaint includes a charge of a minor indictable offence, if, and when, a Court of Summary Jurisdiction proceeds to dispose of the charge summarily, as here.

Turning to the provisions regarding indictments, in Division 2 of Part IX of the Code - Procedure: Except as otherwise expressly provided, an indictment must charge one offence against one person (s303) and if more than one offence is charged, each shall be set out separately (s305(2)). Charges of stealing any property, or, alternatively, of receiving the same property knowing or believing it to have been stolen may be joined in the same indictment (s309(2)). Those provisions (and others) are expressly applicable to complaints (s314). The implication is that in this context indictment includes information and does not yield to a contrary intention, s314 being included to ensure that the same rules apply to all means of initiating prosecutions for a criminal offence.

Division 3 of Part IX - Effect of Indictment : Alternative Verdicts - includes provisions relating to conviction on alternative verdicts. There are two means by which that course may be open. The first is by providing simply that on a specific charge a person may be found guilty of an alternative, for example, manslaughter or murder (s316) and dangerous act (s318). It is not required that the alternative be separately charged. Those provisions, and others to like effect, are to be compared with s323 which provides that upon an indictment charging a person with stealing any property, or, alternatively, receiving the same property and knowing or believing it to have been stolen, he may be found guilty of stealing the property; receiving the property; or either stealing or receiving the property. That provision in unique to that Division of the Code and the distinction between it and the others is clear. For stealing and receiving to be available as alternatives they must be separately charged. It is not open to consider receiving when the only charge is stealing, or to consider stealing when the only charge is receiving.

It appears that the Magistrate may have relied upon that provision as providing the basis upon which the appellant could be found guilty and convicted of receiving, although not charged with the offence. That was an error. There is no power to find a person guilty of either stealing or receiving, unless the indictment or information contains the alternative. The information in this matter did not.

It is noted that s323 is not mentioned in s130A of the *Justices Act*, and it might be thought that that means that because it was omitted, then it does not operate upon summary trial of an indictable offence. I think not. There would be no power in a Court of Summary Jurisdiction to make findings of guilt in the alternative to a charge as envisaged in ss322, 324, 326 and 329 of the Code without the authority in s130A of the *Justices Act*. The authority in relation to stealing and receiving only lies in s323 and if the procedure is followed. It is of equal application to trial before a jury on an indictment and summary trial in a Court of Summary Jurisdiction.

There are sound reasons lying behind s323 of the Code. The elements of stealing (s210) and receiving (s229) are quite different, although the penalty is the same. A defendant faced with one such charge may well choose to conduct a defence quite differently to that which might be adopted when charged with both in the alternative.

The appeal is allowed, the conviction and sentence quashed.
