**JAMES WADE**, Appellant, v. **REPUBLIC OF LIBERIA**, Appellee.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT, MONTSERRADO COUNTY.

Argued May 9, 1956. Decided June 29, 1956.

1. Acts or omissions not named as crimes by the Criminal Code or by subsequent statutes are not indictable thereunder.

2. An indictment charging larceny by trick or artifice must specifically set forth the nature of the alleged trick or artifice so as to provide the required notice to the defendant.

3. An indictment for larceny must set forth the value of the property alleged to have been stolen, so as to specify whether the indictment charges grand larceny or petit larceny.

4. In a trial on an indictment for larceny, proof of the value of the property alleged to have been stolen is insufficient without evidence as to the method of valuation employed.

5. An indictment for larceny must allege the possession from which the property was taken.

Appellant was indicted, tried and convicted of larceny. On appeal to this Court from the judgment of conviction, the indictment and proof were found defective, and the *judgment* was *reversed.*

*J. Dossen Richards* for appellant. *The Solicitor General* for appellee.

MR. JUSTICE SHANNON delivered the opinion of the Court.

The appellant, James Wade, and one Edwin Smythe, were jointly indicted for "Larceny by Tricks and Artifice" before the Circuit Court of the First Judicial Circuit, Montserrado County, and were brought to trial. They both having pleaded not guilty, Edwin Smythe was acquitted. The appellant, James Wade, was convicted and has appealed to this Court from the judgment of conviction.

The indictment in its main part charges the defendants in the following words :

"That on the eleventh (11th) day of October, in the year of our Lord one thousand nine hundred and fifty-four (A.D. 1954), within the building of the Commonwealth District of Monrovia, Montserrado County and Republic of Liberia, James Wade and Edwin Smythe, Defendants aforesaid, then and there being, unlawfully, wrongfully, willfully, maliciously and feloniously by tricks and artifice, did steal, take and carry away fourteen (14) pieces of diamond property of the Republic of Liberia, brought into its possession as fruit of crime in the case: Republic of Liberia, Plaintiff, versus Assumanu Seesay and Momo Kamara, Crime : SMUGGLING, pending trial with intent in so doing feloniously, unlawfully, wrongfully, willfully and intentionally to deprive the Republic of Liberia the rightful owner thereof against her will and consent, and to convert same to their (Defendants') use and benefit; then and there the Crime Grand Larceny by Tricks and Artifice the said Defendants did do and commit contrary to the form, force and effect of the Statute laws of Liberia in such cases made and provided and against the peace and dignity of this Republic."

Because of the many irregularities and defects apparent on the face of the record, the judgment appealed from must be reversed. There is an obvious slackness and indifference in the preparation and presentation of the case, commencing with the indictment and including the defense of the defendants as well as the conduct of the case by the trial court. The first thing to observe is that, under our Criminal Code, there is no such offense as "Larceny by Tricks and Artifice" as charged in the indictment, *supra.* Moreover, the Criminal Code provides: "No act or omission begun after the day this act takes effect as a law shall be deemed criminal or punishable except as prescribed or authorized herein or by subsequent statute." Crim. Code, § 2. Although, under our Criminal Code, larceny may be committed by "trick or artifice," (Crim. Code, § 73 (2) ), it is not intended that the title of the charge should be so laid, and, in such a case, the alleged trick or artifice must be specified in the indictment so as to give the defendant the required notice. Defendant should therefore have moved to quash the indictment instead of proceeding into trial thereupon.

Another defect in the indictment is the absence of any allegation as to the value of the property alleged to have been stolen. It is necessary in the framing of an indictment that the value of the property involved be stated. The reason for this is that the crime of larceny is divided into grand larceny and petit larceny by reference to the value of the property alleged to have been stolen. Therefore the omission of such an allegation would leave the court as well as the defendant uncertain as to the nature of the charge and the punishment to expect in the event of conviction. We quote the

following:

"It is a well-settled rule of the common law that an indictment for larceny must allege the value of the article alleged to have been stolen. This rule had its origin in the practice of distinguishing between grand and petit larceny with reference to the extent of the punishment, that being dependent in some measure upon the value of the article stolen. And at the present time the rule is that where the grade of larceny, and consequently the punishment, depends on the value of the property, it is essential that value be alleged." 32 AM. JUR. 1023 *Larceny* § 112.

The principle is substantially so stated in 17 R.C.L. 59 *Larceny § 65* 52 C.J.S. 879 *Larceny* § 78.

This Court has held : "In larceny, under our statute as under the principles of law in all jurisdictions where larceny is divided into grades, the value of the property taken must be alleged and proven as a constituent element of the offense." *Cummings v. Republic,* 4 L.L.R. 16 (1934). In that case, the value of the property stolen was alleged in the indictment, but not proven at the trial, whilst in the instant case we have the reverse ; that is, no allegation of the value of the property alleged to have been stolen was laid in the indictment although testimony as to same was offered on the trial in the court below.

The evidence heard on the trial did not support the charge as laid. For, whilst the indictment laid ownership of certain diamonds in the Republic of Liberia, the evidence established that the diamonds were the property of one Momo Kamara. The fact that the diamonds in question belonged to the said Momo Kamara appears to have been conceded by the prosecution in referring to Momo Kamara as the private prosecutor and owner of the diamonds and in showing that the alleged tricks and artifice were played on him.

Because of this we do not hesitate to say that the owner-ship of the property was not proved as laid in the indictment, and this is also another legal requisite and necessity.

"An essential element of larceny is that the goods stolen must have been the property of another than the thief. It is therefore essential that the indictment or information contain an averment that the property belonged to some person other than the defendant, or as otherwise expressed, it must allege the possession from which the property was taken." 32 AM. JUR. 1024-25 *Larceny* § 113. See also : 52 C.J.S. 885 *Larceny* § 81; 17 R.C.L. 60 *Larceny* § 66.

Not only does the evidence fail to establish ownership of the property in the Republic of Liberia; it does not even show that, at the time when the property was allegedly stolen, it was in the possession, control, care or management of the Republic, or that it was in the possession of a sheriff or similar officer who was holding it "pursuant to a levy and seizure under a valid process," as alleged.

What the evidence shows is that Nlomo kamara and Assumanu Seesay were arrested without warrant, taken to the police station, and charged with smuggling, which charge was never processed because of the interposition of defendant Tames Wade, now appellant, who claimed that these two men were his people and that he was a diamond dealer. As a result of this interposition, and of an approach made to Police Specialist Jordan by defendant Wade through Police Inspector Smythe who was formerly a co-defendant, an order for release of the two men was secured and they were released the same day together with their diamonds. This phase of the evidence was never rebutted even though notice was given thereof.

For better guidance of prosecutors and trial judges hereafter, we say that value of property involved in a larceny is not sufficiently proved by the mere statement of the prosecutor or other witnesses as to the said value without showing by what means said valuation is made or arrived at. Any other rule would afford prosecutors the opportunity to attach an unreasonable valuation to any property.

Because of the several defects which we have pointed out in the indictment, which defects, in our opinion, were not cured by the verdict, and because of the insufficiency of proof of the allegations set out in said indictment, we have come to the conclusion that the verdict and judgment given at the trial in the court below should be reversed and set aside and the appellant discharged forthwith from further answering the charge of larceny of diamonds from the Republic of Liberia ; and it is hereby so ordered.

*Reversed.*