challenged every year. A body of competent jurisdiction should have sufficient jurisdiction to settle permanently questions of law and fact between the parties themselves, subject only to the normal rights of appeal.

D. J. BEATTIE

SYKES v. DIRECTOR OF PUBLIC PROSECUTIONS[1]

Criminal law—Misprision of felony—Existence and essence of the offence

Firearms were stolen from an Air Force camp by persons hoping to sell them to the Irish Republican Army. Sykes was charged with four others as being an accessory after the fact to the felony of receiving. Sykes was alleged to have introduced a member of the Army to these other four accused. All five were committed for trial. In preparing the indictment, the charge of misprision of felony (in that, knowing that others had received stolen firearms, he unlawfully concealed the commission of the offence) was substituted for that of being an accessory. Sykes was convicted and sentenced to five years imprisonment. He applied for leave to appeal against both conviction and sentence. The Court of Criminal Appeal refused him leave to appeal against conviction, but granted leave to appeal against sentence. When this appeal was heard, it was found that he did not need leave to appeal against conviction, since he had a right of appeal on a point of law. The Court of Criminal Appeal therefore treated his application for leave as a final appeal against conviction which had been dismissed, and gave him leave to appeal to the House of Lords on two points:

(i) Whether there is such an offence as misprision of felony.

(ii) Whether active concealment of the knowledge is an essential ingredient of the offence.[2]

The sentence was reduced by the Court of Criminal Appeal to such a period as would enable Sykes to be released the next day. The later appeal to the House of Lords was dismissed.

The case is the culmination of a series of cases in the last twenty years, in which a charge of misprision of felony has been included in the indictment. In 1866 Lord Westbury said that the charge of misprision of felony had 'passed into desuetude',[3] but in the post-War period the charge has been revived. In England, charges of misprision were included in *Rex v. Aberg*[4] and in *Regina v. Wilde*.[5] In Australia, *The Queen v. Crimmins*[6] and *The Queen v. Hosking*[7] were cases in which the sole charge was misprision of felony. In these cases some doubts were expressed as to

[1] [1961] 3 W.L.R. 371; [1961] 3 All E.R. 33. House of Lords; Lord Denning, Lord Goddard, Lord Morton of Henryton, Lord Morris of Borth-y-Gest and Lord Guest.

[2] [1961] 3 W.L.R. 371, 376.

[3] (1866) L.R. 1 H.L. 200, 220.

[4] [1948] 2 K.B. 173; [1948] 1 All E.R. 601.

[5] Noted in [1960] *Criminal Law Review* 116; see also other cases cited by Lord Denning [1961] 3 W.L.R. 371, 383.

[6] [1959] V.R. 270; noted: [1959] 2 *M.U.L.R.* 261.

[7] Noted in [1955] *Criminal Law Review* 291; a decision of Stephen J. in the Court of Quarter Sessions of New South Wales.

both the continued existence and the essential ingredients of the offence. Both courts did affirm that the charge was still open to the Crown. Any doubts that may have remained have now been dispelled by the House of Lords. Lord Denning traces the history of the offence from 'the days of hue and cry'.[8] Sir William Staunford summarized the early cases[9] and gave the offence its name. He saw the old offence of concealment of a felony as similar to the offence described in a 1555 statute dealing with misprision of treason. Every great authority since then has affirmed the existence of the offence—Coke, Hale, and Blackstone.[10] In the nineteenth century, Thompson B.,[11] Chitty,[12] and Parke B.[13] all drew attention to the existence of the offence. Lord Denning was able to conclude that although 'until recently it [the offence] has been rarely invoked . . . that is no ground for denying its existence'.[14]

The other Law Lords present[15] concurred in this conclusion, and, it is pleasing to note, all cited the Victorian case of *The Queen v. Crimmins*[16] —Lord Morton of Henryton adopting a passage from the judgment of the Victorian Supreme Court.[17] Definitions had been put forward as to the essential ingredients of the offence. The Supreme Court of Victoria in *The Queen v. Crimmins*[18] found that there was no authority for Lord Westbury's *dictum* in *Williams v. Bayley*[19] in which he held that the concealment of the knowledge of the felony must be for the benefit of the misprisor for the offender to be guilty of the misdemeanour of misprision of felony. The Supreme Court expressed the view that Lord Westbury was confusing misprision with the offence of compounding a felony[20] and therefore declined to follow the decision of Stephen J. in *The Queen v. Hosking*,[21] which was based on Lord Westbury's *dictum*. The Supreme Court held that the offence consisted in failing 'to make known to the authorities facts that he [the accused] knows of the felony that might lead to the apprehension of the felon'.[22] In *Regina v. Wilde*,[23] Slade J. felt the same difficulty: was a mere omission to act sufficient concealment of the knowledge, or did there have to be some positive

[8] [1961] 3 W.L.R. 371, 377.
[9] Staunford, *Pleas of the Crown* [1607] Paragraph 41; quoted by Lord Denning [1961] 3 W.L.R. 371, 378. [10] [1961] 3 W.L.R. 371, 381. [11] (1813) 31 State Tr. 969.
[12] *Chitty on Criminal Law* (2nd ed. 1826) ii, 232.
[13] *The Times*, 18 March 1852. [14] [1961] 3 W.L.R. 371, 382.
[15] Lord Goddard, Lord Morton of Henryton, Lord Morris of Borth-y-Gest, and Lord Guest. [16] [1959] V.R. 270.
[17] [1961] 3 W.L.R. 371, 390; the passage being: 'In our opinion . . . the citizen's duty to disclose . . . any treason or felony, of which he has knowledge, remains the same . . . as it was in the early days of the common law. And no doubt cases will arise, from time to time, when the public interest will best be served by the citizen who fails in this duty, being prosecuted for misprision of felony. There is certainly no justification for the view that such a prosecution is no longer available to the Crown.' [1950] V.R. 270, 272. It is pleasing to note that United Kingdom Appeal Courts are making wider use of Commonwealth authorities: See, for example, the citing of a passage from *The King v. Miller* [1951] V.L.R. 346, 356-357, in *D.P.P. v. Smith* [1961] A.C. 290, 318. [18] [1959] V.R. 270.
[19] (1866) L.R. 1 H.L. 200, 220.
[20] A view adopted in the case under review by Lord Denning and Lord Goddard.
[21] Noted in [1955] *Criminal Law Review* 291.
[22] [1959] V.R. 270, 274.
[23] Noted in [1960] *Criminal Law Review* 116.

act? The learned Justice held that the omission to inform the appropriate authority was sufficient concealment, but was further troubled by the scope of the offence. He sought to limit it by a test of 'reasonable seriousness' extending the duty to inform the police only to cover felonies 'which a reasonable person would regard as sufficiently serious to report . . .'.[24] He formulated three questions to be answered positively before the charge was proved: Had a felony been committed? Did the accused know of the commission of the felony? Was the nature of the offence such as the reasonable man would report?[25] This limitation covers the case of the boy who steals an apple, but in the case under review, Lord Goddard specifically mentions this example and states that:

> The Law is nowadays administered with dignity and common sense. And if it is said it obliges a father to inform against his son, or vice versa, I would answer that in the case of a really heinous crime be it so.[26]

Lord Denning agreed:

> misprision comprehends an offence which is of so serious a character that an ordinary law-abiding citizen would realize he ought to report it. . . .[27]

Thus the offender must at least know that a serious crime has been committed, even if he does not know whether it is a misdemeanour or a felony. It is a citizen's public duty to disclose to proper authorities such knowledge of the crime as he has, and if he does not do so he is guilty of misprision of felony after the lapse of a reasonable time for such disclosure. He need not act positively—mere omission to disclose his knowledge is concealment, and therefore misprision. He must tell everything he knows, whether it be the time or place of the commission of the felony or the name of the felon.[28] The definition phrased by Lord Goddard agrees with the views expressed by the other Lords present:

> . . . a person is guilty of the crime [of misprison of felony] if knowing that a felony has been committed he conceals his knowledge from those responsible for the preservation of the peace . . . within a reasonable time and having a reasonable opportunity for so doing. What is a reasonable time and opportunity is a question of fact for a jury, and also whether the knowledge that he has is so definite that it ought to be disclosed.[29]

Thus the offence is based on the common sense and feeling of civic duty in the ordinary man, and it should be used sparingly. The charge of misprision is distinguishable from all other similar offences—accessory after the fact, compounding a felony, interfering with the course of

[24] *Ibid.* 118.
[25] *Ibid.* 118-119.
[26] [1961] 3 W.L.R. 371, 389.
[27] [1961] 3 W.L.R. 371, 384.
[28] As in *The Queen v. Crimmins* [1959] V.R. 270.
[29] [1961] 3 W.L.R. 371, 389.

justice and obstructing the police.[30] An accessory after the fact receives, relieves, comforts or assists the felon—all active acts of assistance. Compounding is an agreement not to prosecute in consideration for reward. Interfering requires something active to be done to pervert the course of justice. Obstructing the police applies more to wilfully misleading the police. After thus limiting the scope of the charge of misprision by a description of the differences between it and other offences, Lord Denning puts forward another rather interesting limitation.[31] The non-disclosure of the knowledge may be due to a claim of right made in good faith. He suggests that the relationship between lawyer and client, doctor and patient, clergyman and parishioner, may be such that it can never be misprision for the former not to tell to the authorities circumstances told to him in confidence by the latter. He also suggests that in certain cases other relationships may be sufficient to justify non-disclosures: as with teacher and pupil, master and servant. However, Lord Denning agrees with Lord Goddard in that 'close family or personal ties will not suffice where the offence is of so serious a character that it ought to be reported'.[32] Thus the notion of 'desuetude' put forward in the nineteenth century has been cleared away by the House of Lords, and misprision of felony will receive more attention from text writers in their future editions.

J. J. TAIT

PETERS ICE CREAM (VIC.) LTD v. TODD[1]

Contract—Uncertainty—Restraint of trade—Severance—Reasonableness in the interests of the parties

The plaintiff company brought an action against Todd seeking damages and an injunction restraining him from selling, at his shops in East Newborough, ice-cream and kindred products manufactured by persons other than the plaintiff. At the outset, counsel for the plaintiff intimated that he did not intend to press the claim for damages.

This action arose out of an alleged breach of the defendant's covenant:

> Not to sell, serve, supply or vend any other make of ice-cream and/or kindred products or make any of same myself during the period this agreement is in force within a reasonable distance from my present place of business, so long as you are ready and willing to supply me with your ice-cream and kindred products at the undermentioned prices or such other reasonable prices as may for the time being be charged by you to your customers generally.[2]

It was proved at the trial that Todd had, prior to 5 February 1959 and thereafter, sold at his shop at East Newborough 'kindred products' not manufactured by the plaintiff, and that he intended to continue so to do. The evidence also showed that apart from two items the plaintiff company was at all times ready and willing to supply Todd with its

[30] [1961] 3 W.L.R. 371, 382-383. [31] [1961] 3 W.L.R. 371, 385. [32] *Ibid.*
[1] [1961] V.R. 485. Supreme Court of Victoria; Little J. [2] *Ibid.* 486.