bankruptcy occurring in the course of the very execution in question; and, in any case, there was no necessity to fix the creditor with constructive notice. The Court appreciated this, but, for 'reasons of convenience as well as of policy and tradition',[24] preferred to follow the law as it had evolved in England.

The wisdom of this policy has been seen in the instances where it has not been adopted (e.g. in the standard of proof required in divorce cases founded on adultery). It is a policy which eliminates much confusion and provides a far greater breadth of authority for the Courts to draw upon in reaching their decisions.

P. G. NASH
J. T. BENNETT

[24] [1955] A.L.R. 49, 63, *per* Dixon C.J.

CRIMINAL LAW — ACCESSORY AFTER THE FACT — KNOWLEDGE REQUIRED

R. v. Tevendale[1]

One G. D. committed the felony of larceny of a motor car. Within the next ten days T. altered the engine number of the car in order to hinder recognition. T. was charged with being an accessory after the fact to the larceny of the motor car. The presentment alleged that he, 'well knowing the said felony to have been committed, assisted the said G. D.' Before a Court of General Sessions, T. was convicted of this offence. He then applied for leave to appeal against the conviction, alleging that the trial judge was mistaken in his direction to the jury as to the essential ingredients of the offence. His application was dismissed.

Four questions arose for consideration:

1. Were the acts of the applicant, namely the alteration and repainting of the engine number of the car, sufficient to constitute him an accessory after the fact to a felony, according to the common law definition of that crime?

2. Was it open to the trial jury on the facts before them to infer that T. knew both that the motor car had been stolen, and that G. D. had stolen it?

3. What degree of knowledge concerning the principal crime must an accused have?

4. Is a desire for personal gain an essential ingredient of the offence?

The answers given by the Full Court to these questions are as follows:

1. All three judges were unanimous in deciding that the acts of

[1] [1955] A.L.R. 260. Supreme Court of Victoria; Herring C.J., Martin and Sholl JJ.

the applicant were sufficient to constitute him an accessory after the fact.

The generally accepted definition of an accessory is that he is a person 'who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon.'[2] Now it was the universally-held concept until the middle of the nineteenth century that this definition was designed to cover cases where one person gives succour to a felon in his flight from justice. However, in the case of *R. v. Levy*,[3] the Court of Criminal Appeal gave the word 'assist' in the definition an interpretation wide enough to cover the present factual situation.

2. In answer to this question, which is of a purely evidentiary nature, it was held by all three judges that the trial jury on the facts before them were entitled to draw such an inference.

3. In view of the decision on the second question, the Court was excused from deciding whether any degree of knowledge, less than that possessed by the applicant, would be sufficient to constitute him an accessory after the fact. However the law was canvassed by the judges and Herring C.J. and Sholl J. were finally of opinion that the accessory must be aware of the existence of that particular felony from which his offence has sprung, and that it had been committed by the principal felon, to whom he is accused of rendering assistance. On the other hand, Martin J., while agreeing with this conclusion as a general principle, said that there may be cases in which knowledge of *a* felony having been committed would be sufficient. It will be of assistance to consider the judgments separately.

The first judgment was delivered by Herring C.J. and it is submitted that His Honour either considered the matter unimportant (as indeed, not being part of the *ratio decidendi*, it was), or assumed the principle as general knowledge, for he quoted no authority for his proposition.

[2] Archbold's *Criminal Pleading, Evidence and Practice* (33rd edn., 1953) at p. 1507; based on 1 *Hale's History of Pleas of the Crown* 618; 3 *Coke's Institutes* 138; 4 *Blackstone's Commentaries* 37; Foster *Crown Cases* 373; 2 *Hawkins' Pleas of the Crown* c. 29 s. 1 and *R. v. Burridge* (1735) 3 P. Wms. 439, 475.

[3] [1912] 1 K.B. 158. On this point Sholl J. quoted as the first case introducing the modern interpretation *R. v. Butterfield* (1843) 1 Cox C.C. 39 and especially the judgment of Maule J. Martin J. said the matter also appeared to have been decided by *R. v. Reeves* (1892) 13 N.S.W.R. (L) 220. It may be pointed out that there have been doubts felt about this wide interpretation—see *R. v. Lee* (1834) 6 C. & P. 536, and the question whether the statement of the accused's counsel was accepted by Williams J. in that case. Halsbury quotes as his authority for the wide interpretation *R. v. Chapple* (1840) 9 C. & P. 355, but it is submitted that this decision, in spite of the general principle in the headnote, is more closely concerned with the series of cases dealing with the combined effects of receiving and being an accessory after the fact. *(Halsbury* (2nd edn.) vol. 9 at p. 36, note (k)). Another decision questioning the wide interpretation is the New Zealand case of *R. v. Sweeney*, 7 G.L.R. 529 (quoted by G. Williams, *Criminal Law: The General Part* (1953) at p. 226.

Martin J. delivered the second judgment, and in the course of his consideration of the problem said that, in some cases, 'it seems to me, on some of the authorities which have been referred to, and which are mentioned in *R. v. Levy*, that all that it may be necessary for the Crown to prove is the existence of a felony, without specifying the actual felony'.[4] Now the cases mentioned in *R. v. Levy* are *R. v. Butterfield*,[5] *R. v. Greenacre*,[6] *R. v. Chapple*,[7] and *R. v. Blackson*.[8] And it is submitted that the first, the third and the fourth of these cases appear to deal with a situation where the accessory ***did*** know of the particular felony. The second case is concerned with the peculiar problems of knowledge arising when the principal felony is either murder or manslaughter according to the *mens rea* of the principal offender.

The final judgment was that of Sholl J., who considered the law on the point at some length. He came to the conclusion that the definition of Archbold[9] and others is ambiguous. His Honour then resolved that ambiguity by an examination of the earlier texts and pleas of indictment, and he came to the conclusion that there were no cases in which the wider definition – knowledge of *a* felony – would be a sufficient test.

It is submitted that 'ambiguity' is perhaps too lenient a word to use with reference to the definitions framed in the wide sense. The classic definition was laid down, after a consideration of the earlier law, by Hawkins in these terms, 'There is no doubt that it is necessary that such receiver have notice of *the* felony either express or implied '.[10] However, many of the modern text writers have defined an accessory after the fact as one 'having knowledge of *a* felony'.[11] Many of the texts quote Hawkins as their authority for this wide definition, and those writers who do not quote Hawkins directly quote Archbold, who uses Hawkins' *Pleas of the Crown* as his authority. It is submitted then that these wide definitions are no more and no less than the result of a mis-reading of the law, since s. 32 of Hawkins by its language alone, and also when read in the context of the rest of c. 29. simply does not lay down the wide definition, that is so often attributed to it.

It will be noticed that the narrow definition and the wide definition may both, in certain circumstances, lead to patent absurdities. On

[4] [1955] V.L.R. 95, 97. [5] (1843) 1 Cox C.C. 39. [6] (1837) 8 C. & P. 35.
[7] (1840) 9 C. & P. 355. [8] (1837) 8 C. & P. 43. [9] *Op. cit.*, 1507.
[10] *Pleas of the Crown*, Book ii, c. 29, s. 32 (Italics supplied).
[11] Archbold, *op. cit.*, (32nd edn. 1949) at p. 1479, (33rd edn. 1954) at p. 1507; Williams, *op. cit.*, at p. 228; *Russell On Crime* (10th edn. 1950) at p. 1867; Harris & Wilshere, *Criminal Law* (19th edn. 1954) at p. 40; Harris, *Criminal Law* (19th edn. 1954) at p. 42; Stephen, *Digest of the Criminal Law* (9th edn. 1950) at p. 22; Kenny, *Outlines of Criminal Law* (16th edn. 1952) at p. 89; and several American authorities – Hall, *Criminal Law and Procedure* at p. 714; Clements, *Comments, Cases and Texts on Criminal Law and Procedure*, at p. 278. But *cf.* Halsbury, *op. cit.*, (2nd edn. v. 9) at p. 37 and Cross & Jones, *Introduction to Criminal Law* (3rd edn. 1953) at p. 75.

the wide interpretation: A has committed murder. A says to B, 'Help me, I have just committed the crime of larceny!' B believes A and helps him. B is therefore guilty of being an accessory after the fact to murder. On the narrow interpretation: B thinks A has committed murder and assists him. A has actually only been guilty of manslaughter. It would seem that B cannot be guilty of being an accessory after the fact to the manslaughter.[12]

4. This question never arose as part of the *ratio decidendi,* and was in fact considered only by Sholl J., who answered it decidedly in the negative.

No novel points of law arose in *R. v. Tevendale,* but its importance lies in the fact that two matters were resolved from the confusion that had surrounded them in previous years. The first is, that the word 'assisted' in the presentment will, following the trend of overseas authority, be interpreted widely. Secondly, the accused, in order to be constituted an accessory after the fact to a felony, must possess knowledge of the existence of the particular principal felony.

P. R. JORDAN

[12] Sholl J. suggests remedial legislation to avoid this latter situation.

WORKERS COMPENSATION — DISEASE — CONTRIBUTION

Taylor v. McQueen[1]

The applicant's husband died during his employment from a heart attack which resulted from a long standing and progressive heart disease. His employers, against whom an award of compensation was made under s. 12 (1) (b)[2] of the Workers Compensation Act 1951, (Victoria), sought contribution under s. 14 (c)[3] from the Tramways Board by whom the deceased had previously been employed for approximately thirty-four years. On a case stated by the Workers Compensation Board, the Supreme Court held that the definition of 'disease' contained in s. 3 (1) of the Act is inapplicable to these

[1] [1955] A.L.R. 232. Supreme Court of Victoria; Gavan Duffy, O'Bryan and Hudson JJ.

[2] S. 12 (1) (b) provides that where the 'death of a worker is caused by any disease—and the disease is due to the nature of any employment in which he was employed at any time prior to the date of disablement, then . . . the worker . . . shall be entitled to compensation.'

[3] S. 14 provides that 'compensation shall be recoverable from the employer who last employed the worker prior to the date of disablement in the employment to the nature of which the disease was due . . . .' 'Provided that: . . . .

(b) if that employer alleges the disease was in fact contracted whilst the worker was in the employment of some other employer he may join such other employer as a party and the latter shall be the employer from whom the compensation is recovered;

(c) if the disease is of such a nature as to be contracted by a gradual process any other employers who previously employed the worker in employment to the nature of which the disease was due shall be liable to make such contribution as is determined by the Board.