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Whether a Participant in Larceny May be Convicted of Receiving Stolen Goods

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WHETHER A PARTICIPANT IN LARCENY MAY BE CONVICTED OF RECEIVING STOLEN GOODS

X induces *T* and *P* to steal some goods. *T* breaks into the house and removes the goods stolen therein to the waiting car. While *T* entered the house, *P* remained outside in the car ready for a quick getaway in the event of any interference with the theft and to aid *T* in any other manner necessary to carry out the theft. *P* and *T* then take the goods to *X*. Having learned that the authorities have succeeded in tracing the theft to them, *X*, *P* and *T* take the goods to *A* and inform him of the theft. He buys the stolen goods from them and agrees to harbor them from the authorities. At this point, all the parties are apprehended by the authorities.

The parties are indicted on counts of larceny and receiving stolen goods. Of which crimes may the respective parties be convicted? May any of the parties be convicted of both larceny and receiving stolen goods? It is the writer's purpose to confine the scope of this article to answering these two questions.

The purpose of making the receiving the stolen goods a crime is to deter theft by punishing those who would make the theft profitable or easy.[1] As a practical matter, this effect could be achieved by one of two means: by punishing the giving end; or, by punishing the receiving end. The crime of receiving stolen goods is based on punishing the receiving end. As will presently be indicated, there is some conflict of authority concerning some of the factual situations presented by the above illustration. If the purpose of this crime is kept in mind, it is the writer's belief that much of this conflict can be easily avoided.

T, *Principal in the First Degree*

A principal in the first degree is one who physically executes the caption and asportation of the goods.[2] The universal rule obtains that a thief, merely as such, may not be convicted of receiving the same goods which he has stolen.[3] By virtue of the definition of a principal in the first degree, this rule applies equally to one who has acted jointly with another in the actual caption and asportation.[4] Various reasons have been assigned for the above rule: it is not the

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1 Adams v. State, 60 Fla. 1, 53 So. 451 (1910); Bargesser v. State, 95 Fla. 401, 116 So. 11 (1928).

2 2 BURDICK, THE LAW OF CRIME § 608 (1946).

3 Aaronson v. United States, 175 F.2d 41 (C. C. A. 4th 1949); Leon v. State, 21 Ariz. 418, 189 Pac. 433 (1920); People v. Taylor, 4 Cal. App. 2d 214, 40 P.2d 870 (1935); People v. Spinuzza, 99 Colo. 303, 62 P.2d 471 (1936); Adams v. State, 60 Fla. 1, 53 So. 451 (1910); Thomas v. State, 205 Miss. 651, 39 S.2d 272 (1949); Kondrk v. Foster, 75 N. Y. S.2d 180, 190 Misc. 698 (1947); Smith v. State, 59 Ohio St. 350, 52 N. E. 826 (1898); State v. Tindall, 213 S. C. 484, 50 S. E.2d 188 (1948); Byrd v. State, 117 Tex. Crim. Rep. 489, 38 S. W.2d 332 (1931); Rex. v. Owen, 1 Mood, 96, 168 Eng. Rep. 1200 (1825); Rex. v. Carmichael, 22 B. C. R. 375, 26 C. C. C. 443 (C. A.) (1915). As for Pennsylvania's position, see the discussion thereon, infra.

4 Leon v. State, 21 Ariz. 418, 189 Pac. 433 (1920); Adams v. State, 60 Fla. 1, 53 So. 451 (1910); People v. Romanelli, 197 App. Div. 876, 189 N. Y. Supp. 902 (1921); Sinder v. State, 119 Tex. Crim. Rep. 635, 44 S. W.2d 997 (1931).

purpose of this crime to inflict a double penalty on the thief;[5] the receiving of the property must be subsequent to the larceny and not a part of it;[6] a single act may not constitute both the larceny and the receiving;[7] because there can be no receiving unless there be a prior stealing by another;[8] or, a thief takes the goods from their owner without his consent, whereas a receiver takes the goods after a larceny is completed with the consent of the thief or some third person.[9]

However, this rule is not without its exceptions. It has been held that where a thief steals goods from another thief, which the latter has stolen, the former may be indicted for larceny or receiving stolen goods at the election of the prosecution.[10] A second exception has been suggested that where a thief has parted with possession of the goods he has stolen and subsequently regains their possession, he may be convicted of receiving such stolen goods.[11] The third exception is confined to goods which are stolen while in inter-state commerce. A federal statute[12] punishes those who have in their possession goods knowing them to have been stolen while in inter-state commerce. In an indictment under this statute, it was held to be no defense that such person who had the goods in his possession was the thief himself.[13]

Thus, as none of the exceptions apply to our illustration, we can safely say that *T* cannot be convicted of receiving the goods which he stole.[14]

P, *Principal in the Second Degree*

A principal in the second degree is one who is present, aiding and abetting the commission of the crime[15] that is, one who is ready to assist the principal in the first degree in any manner that may be required to execute the theft. As we have noted above, one who physically assists in the caption or asportation of the goods is himself a principal in the first degree and thus cannot be guilty of receiving the goods which he has stolen.[16] There is a split of authority whether one who is physically present at the theft, but does not aid in the caption or asportation of the goods, can be guilty of receiving the goods stolen. The weight of recent American authority appears to hold that such a defendant can be guilty of

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[5] Adams v. State, 60 Fla. 1, 53 So. 451 (1910); Bargesser v. State, 95 Fla. 401, 116 So. 11 (1928); Thomas v. State, 205 Miss. 651, 39 S.2d 272 (1949); Smith v. State, 59 Ohio St. 350, 52 N. E. 826 (1898).

[6] People v. Romanelli, 197 App. Div. 876, 189 N. Y. Supp. 902 (1921); Smith v. State, 59 Ohio St. 350, 52 N. E. 826 (1898).

[7] Weisberg v. United States, 49 App. D. C. 28, 258 Fed. 284 (1919).

[8] 2 WHARTON, CRIMINAL LAW 1234 (12th ed. 1932).

[9] 2 BURDICK, THE LAW OF CRIME § 608 (1946).

[10] State v. Hauser, 183 N. C. 769, 111 S. E. 349 (1922); State v. Wincroft, 76 N. C. 38 (1877); Ward v. People, 3 Hill 395 (N. Y. 1842).

[11] Rex v. Carmichael, 22 B. C. R. 375, 26 C. C. C. 443 (C. A.) (1915).

[12] 37 Stat. 670 (1913), 18 U. S. C. A. § 409.

[13] United States v. Sullivan, 250 Fed. 632 (E. D. Pa. 1918).

[14] But see the Pennsylvania position, infra.

[15] Travis v. Commonwealth, 96 Ky. 77, 27 S. W. 863 (1894).

[16] Cases cited note 4, supra.

receiving the goods stolen.[17] The reason given for this view is that the receiving of the goods is subsequent to the larceny in fact, and not a part of it.[18] The contrary view, which appears to be supported mainly by the English authorities and early American cases, holds that a principal in the second degree cannot be guilty of receiving the stolen goods,[19] because a receiver must be a person who is not a principal felon.[20]

In our hypothetical situation, *P* could or could not be guilty of receiving the goods stolen depending whether a jury could find that *P* received possession of the goods and to which view the jurisdiction in which he is tried adheres.

X, *Accessory Before the Fact*

An accessory before the fact is one who induces or procures the commission of a crime.[21] The general rule is that an accessory before the fact can be guilty of receiving the stolen goods.[22] The reasons ascribed for this rule are: only where the defendant had a part in the actual caption or asportation of the goods can he not be guilty of receiving them;[23] the receiving of the property is subsequent to the larceny in fact and not a part of it;[24] or, because the receiving is a separate and distinct offense from the larceny.[25] In those jurisdictions which have statutes making an accessory to the crime liable as a principal, it has been held that such artificial principals may still be found guilty of receiving.[26]

The Texas courts have developed an exception to the rule that an accessory before the fact can be guilty of receiving stolen goods. The test they use to determine whether such a participant in the larceny can be guilty of receiving is

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17 People v. Taylor, 4 Cal. App. 2d 214, 40 P.2d 870 (1935); People v. Spinuzza, 99 Colo. 303, 62 P.2d 471 (1936); Adams v. State, 60 Fla. 1, 53 So. 451 (1910); Smith v. State, 59 Ohio St. 350, 52 N. E. 826 (1898); State v. Tindall, 213 S. C. 484, 50 S. E.2d 188 (1948); Jenkins v. State, 62 Wis. 49, 21 N. W. 232 (1884).

18 Leon v. State, 21 Ariz. 418, 189 Pac. 433 (1920); Adams v. State, 60 Fla. 1, 53 So. 451 (1910); Smith v. State, 59 Ohio St. 350, 52 N. E. 826 (1898).

19 State v. Coppenburg, 33 S. C. L. (2 Strob.) 273 (1848); State v. Honig, 9 Mo. App. 298 (1880); Reg. v. Coggens, 12 Cox C. C. 517 (Eng. 1873); Reg. v. Kelly, 2 Car. & K. 379, 175 Eng. Rep. 157 (1847); Reg. v. Perkins, 2 Den. 459, 169 Eng. Rep. 582 (1852); Rex v. Owens, 1 Mood. 96, 168 Eng. Rep. 1200 (1825).

20 Reg. v. Coggens, 12 Cox C. C. 517 (Eng. 1873); Reg. v. Perkins, 2 Den. 459, 169 Eng. Rep. 582 (1852).

21 Aaronson v. United States, 175 F.2d 41 (C. C. A. 4th 1949).

22 Aaronson v. United States, 175 F.2d 41 (C. A. A. 4th 1949); Weisberg v. United States, 49 App. D. C. 28, 258 Fed. 284 (1919); Leon v. State, 21 Ariz. 418, 189 Pac. 433 (1920); Reser v. State, 27 Ariz. 43, 229 Pac. 936 (1924); People v. Stoddard, 48 Cal. App. 2d 86, 119 P.2d 160 (1941); People v. Spinuzza, 99 Colo. 303, 62 P.2d 471 (1936); State v. Webber, 112 Mont. 284, 116 P.2d 679 (1941); People v. Rivello, 39 App. Div. 454, 57 N. Y. Supp. 420 (1899); State v. Tindall, 213 S. C. 484, 50 S. E. 2d 188 (1948); State v. Mosher, 46 S. D. 336, 192 N. W. 756 (1923); Kaufman v. State, 70 Tex. Crim. Rep. 438, 159 S. W. 58 (1913).

23 Aaronson v. United States, 175 F.2d 41 (C. C. A. 4th 1949); Reser v. State, 27 Ariz. 43, 229 Pac. 936 (1924); People v. Stoddard, 48 Cal. App. 2d 86, 119 P.2d 160 (1941); State v. Tindall, 213 S. C. 484, 50 S. E. 2d 188 (1948).

24 State v. Webber, 112 Mont. 284, 116 P.2d 679 (1941).

25 2 WHARTON, CRIMINAL LAW 1234 (12th ed. 1932).

26 Aaronson v. United States, 175 F.2d 41 (C. C. A. 4th 1949); Weisberg v. United States, 49 App. D. C. 28, 258 Fed. 284 (1919); People v. Rivello, 39 App. Div. 454, 57 N. Y. Supp. 420 (1899).

whether the interest of the thief in the goods ceases at the time of his delivery to the accessory.[27] If the conspiracy is completed upon the surrendering of the possession of the goods to the accessory, then he can be convicted of receiving: otherwise if the principal thief's interest therein continues.[28] Thus, an accessory cannot be guilty of receiving the goods where he takes them in furtherance of a plan to divide the proceeds, that may be realized from their sale, among the thieves, even though this part of the scheme is not carried out.[29] The reasoning behind this view is that such an accessory is in fact a principal to the larceny.[30]

Thus in our illustration, it can be said that with the possible exception of Texas, *X* could be convicted of receiving the goods stolen.

A, *Accessory After the Fact*

An accessory after the fact is one who aids the thief in some manner after the crime has been committed.[31] It has been held that such a defendant can be convicted of receiving the goods stolen,[32] there being no good reason why his liability for the larceny should bar a prosecution for receiving.[33] By analogy to the cases which hold that an accessory before the fact may be guilty of receiving although there is a statute making an accessory before the fact a principal,[34] it should follow that although statutes make an accessory after the fact a principal to the larceny, it is no bar to his conviction of receiving.

Therefore, in our hypothetical situation, *A* can be convicted of receiving stolen goods.

Continuation of Asportation

In passing, it may be interesting to note that it has been held that where a thief removes the goods and carries them to the defendant who continues the asportation, such continuation of asportation precludes the defendant's being a receiver of the goods.[35]

Is the Thief an Accessory to the Receiver?

If one bears in mind the reasons for the rule that a thief cannot be guilty of receiving the goods which he *himself* has stolen,[36] it would appear absurd that

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27 Byrd v. State, 117 Tex. Crim. Rep. 489, 38 S. W. 2d 332 (1931); Coy v. State, 131 Tex. Crim. Rep. 489, 100 S. W. 2d 1016 (1937); Evans v. State, 211 S. W. 2d 207 (Tex. 1948); Gammel v. State, 124 Tex. Crim. Rep. 328, 62 S. W. 2d 139 (1933); Hochman v. State, 156 Tex. Crim. Rep. 23, 170 S. W. 2d 756 (1943).

28 Ibid.

29 Coy v. State, 131 Tex. Crim. Rep. 489, 100 S. W. 2d 1016 (1937).

30 Byrd v. State, 117 Tex. Crim. Rep. 489, 38 S. W. 2d 332 (1931); Coy v. State, 131 Tex. Crim. Rep. 489, 100 S. W. 2d 1016 (1937); Evans v. State, 211 S. W. 2d 207 (Tex. 1948); Hochman v. State, 156 Tex. Crim. Rep. 23, 170 S. W. 2d 756 (1943).

31 State v. Pomeroy, 30 Ore. 16, 46 Pac. 797 (1896).

32 Lassiter v. Commonwealth, 280 Ky. 502, 133 S. W. 2d 728 (1939); State v. Pomeroy, 30 Ore. 16, 46 Pac. 797 (1896).

33 State v. Pomeroy, 30 Ore. 16, 46 Pac. 797 (1896).

34 Cases cited note 26, supra.

35 Shacklett v. State, 23 Okl. Cr. 4, 211 Pac. 1063 (1923). *But cf.* Lassiter v. Commonwealth, 280 Ky. 502, 133 S. W. 2d 728 (1939).

36 See discussion thereon, infra.

a court should resort to the logic that as a thief procures or induces the commission of the crime of receiving stolen goods where he delivers the goods to the receiver, he is liable as an accessory before the fact or a principal in the second degree to this crime. And so it has been held quite recently that the thief is not amenable as a participant in the crime of receiving the stolen goods.[37]

But in a recent English case,[38] it was held that a thief is guilty of receiving the goods which he has stolen because he was an accessory before the fact to that crime. It would appear that the decision must be confined to the peculiar factual circumstances out of which it arose. The defendant in that case was a truck driver for a firm of carriers. He had in his truck two packages which, due to an oversight, were not entered on his consignment note. On his journey, he stopped along the road and removed these packages from the truck to the roadside. After arriving at his destination, the defendant and another man returned in an automobile to the spot where the defendant had left the packages. While driving back to the city, the defendant and his confederate were apprehended with the goods in their possession. The defendant was indicted for larceny, and, together with his confederate, of receiving stolen goods knowing them to have been stolen. For some unknown reason, the defendant was acquitted of larceny and, together with his confederate, convicted of receiving. On appeal, the recorder quashed the conviction for receiving. On further appeal to the King's Bench, it was held that because of the Aiders and Abettors Act, 1861, which was declaratory of the common law, to the effect that where two persons are concerned in the commission of an offense, both are equally guilty, the defendant was therefore guilty of receiving. The court, in the course of its opinion, admitted this was a case of first impression. It also conceded that the defendant should have been convicted of larceny, but having been convicted of receiving, the first appeal should have been dismissed. Clearly, the defendant was guilty of larceny and as such should have been found guilty. Because of the peculiar facts of this case, no one will deny that justice was done by finding the defendant guilty of some crime. The court concluded its opinion with this statement:

> "Therefore, it seems to me to be clear, although this point has not arisen before, that a man who acts in this way can properly be convicted as a receiver although he is also the thief, because he has in this case procured the commission of the offence by the receiver."

The writer submits that if this is accepted as the law, all sight has been lost of the purpose of the offense of receiving stolen goods. As was noted in the introduction, the crime of receiving is intended to punish the receiver. The thief is adequately punished for his part in the transaction, namely, the giving end, by the crime of larceny.

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37 Gaspin v. State, 76 Ga. App. 375, 45 S. E. 2d 785 (1947).
38 Carter Patersons & Pickfords Carriers Limited v. Wessel, [1947] K. B. 849.

"Guilty of Larceny and Receiving Stolen Goods"—Inconsistent Verdict[39]

As a preliminary matter, it may be stated that where the nature of the defendant's participation in the larceny renders him amenable to an indictment of larceny or receiving stolen goods, the election lies with the prosecution, and the defendant cannot complain which one the prosecution elects to indict him for.[40] It has also been held that an acquittal of larceny is not a bar to a prosecution for receiving.[41]

Same—T, *Principal in the First Degree*

It is apparent that where the defendant's participation in the larceny was of such a nature to preclude his conviction of receiving,[42] he cannot be convicted of both larceny and receiving. Thus a principal in the first degree cannot be convicted of both crimes. It was noted that the first exception to the general rule that a thief may not be guilty of receiving, was where a thief steals from a thief he can be convicted of receiving or larceny at the election of the prosecution,[43] and because the *election* lies with the prosecution, it would appear that the defendant may be convicted of only one of the crimes. As to the second exception, although there are no cases on point, it would appear that where a thief may be convicted of receiving the goods which he has stolen because he has parted with their possession and subsequently reacquired them,[44] there is no valid reason why such a defendant could not be convicted of both crimes. The two crimes in such a case, would not be based on one single act, and his receiving would be subsequent to the larceny in fact, and not a part of it. In the third exception, where a principal in the first degree may be convicted of receiving the goods which he has stolen while in inter-state commerce,[45] it has been expressly held that such a defendant may not only be convicted of both crimes, but also that the serving of separate consecutive sentences for the two crimes is not unconstitutional on the grounds that such a defendant is suffering double punishment.[46]

None of the exceptions being present in our illustration, *T* could only be convicted of larceny and not of receiving.

Same—P, *Principal in the Second Degree*

It was noted above that where the defendant has assisted in the caption or asportation of the stolen goods, he is not liable for receiving stolen goods.[47] It was also noted that the trend of recent American authority appears to permit a

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39 For the Pennsylvania position, see infra.
40 Kaufman v. State, 70 Tex. Crim. Rep. 438, 159 S. W. 58 (1913).
41 State v. Wasinger, 133 Kan. 154, 298 Pac. 763 (1931).
42 See discussion thereon, infra.
43 Cases cited note 10, supra.
44 Cases cited note 11, supra.
45 Cases cited note 13, supra.
46 Carroll v. Sanford, 167 F.2d 878 (C. C. A. 5th 1948).
47 Cases cited note 4, supra.

conviction of receiving where the receiving did not embrace the caption or asportation.[48] However, few of these cases discuss the present point.[49] There would appear to be no reason why such a participant in the larceny should not be amenable to indictments of both receiving and larceny, as his receiving is subsequent to the larceny in fact, and his reception does not embrace the caption or asportation required to constitute the larceny. In such a situation, two separate and distinct acts constitute the respective crimes, and the policy behind the crime of receiving stolen goods, namely, the punishing of the receiving end, would be served by holding such a receiver, although he was a participant in the larceny and liable as such, accountable for his receiving.

Thus in our illustration, if the jury could find that *P* received the goods, the weight of present day authority might hold him liable for both crimes.

Same—X, *Accessory Before the Fact*

There seems to be no doubt that an accessory before the fact to the larceny may be convicted of both receiving the stolen goods and larceny.[50] It has been held that such a conviction does not subject the defendant to double punishment for the same crime in violation of the Fifth Amendment of the Federal Constitution, because the two convictions are based on separate and distinct transactions.[51]

Therefore, in our hypothetical situation, *X* may be convicted of both larceny and receiving stolen goods.

Same—A, *Accessory After the Fact*

It has been expressly held that although an accessory after the fact is liable for the crime of larceny, his conviction of larceny is no bar to a prosecution for receiving.[52]

Thus in the illustration, *A* could be convicted of both larceny and receiving stolen goods.

Pennsylvania's Position

As a matter of introduction, it may be well to note that a Pennsylvania lower court has held that "a thief cannot be convicted of receiving goods which he stole."[53] As this decision was an alternative holding in a case involving unusual

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48 Cases cited note 17, supra.

49 E. g., People v. Taylor, 4 Cal. App. 2d 214, 40 P.2d 270 (1935).

50 Aaronson v. United States, 175 F.2d 41 (C. C. A. 4th 1949); Leon v. State, 21 Ariz. 418, 189 Pac. 433 (1920); State v. Webber, 112 Mont. 284, 116 P.2d 679 (1941); State v. Tindall, 213 S. C. 484, 50 S. E.2d 188 (1948); State v. Mosher, 46 S. D. 336, 192 N. W. 756 (1923). 2 WHARTON, CRIMINAL LAW 1234 (12th ed. 1932).

51 Aaronson v. United States, 175 F.2d 41 (C. C. A. 4th 1949).

52 State v. Pomeroy, 30 Ore. 16, 46 Pac. 797 (1896).

53 Commonwealth v. Maxberry, 13 Pa. D. & C. 371 (1930).

facts,[54] it is of little value as authority in view of the appellate courts' view on this problem.

At first glance, it would appear that in several cases the Pennsylvania courts have permitted convictions of both larceny and receiving stolen goods against a defendant regardless of the capacity of his participation in the larceny.[55] None of the decisions of such cases discuss the point whether a participant in the larceny can be guilty of receiving stolen goods.

In order to understand these cases, one must note the Act of March 31, 1860 P. L. 427, § 24, 19 P. S. 411:

> "In every indictment for feloniously stealing property it shall be lawful to add a count for feloniously receiving the said property, knowing it to have been stolen; and in any indictment for feloniously receiving property, knowing it to have been stolen, it shall be lawful to add a count for feloniously stealing said property; and it shall be lawful for the jury trying the same to find a verdict of guilty *either* of stealing the property, *or* of receiving the same, knowing it to have been stolen; and if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty of *either* stealing the property *or* of receiving it, knowing it to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving it, knowing it to have been stolen."[56]

Clearly this statute does not contemplate the conviction of a defendant on both counts. The trial court should instruct the jury to find a verdict of guilty of either larceny or receiving stolen goods, but not of both of the crimes.

In *Commonwealth v. Holgate*[57] the trial judge inadvertently instructed the jury that they could return a verdict of guilty on both counts. The jury returned a verdict of guilty of larceny and receiving. The Superior Court stated that "he could not be guilty of both." But the trial judge had arrested the judgment on the

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[54] The thief was a servant of a wealthy family. A third person agreed to buy the ring to be stolen by the thief, the defendant agreeing to help finance the buyer in the venture. The defendant was indicted on counts of a conspiracy to receive stolen goods and a conspiracy to become an accessory after the fact. The court did not sustain the indictments and granted a new trial and gave the district attorney leave to submit the bills for verdicts of "not guilty" because (1) "there could be no conspiracy to commit the crimes mentioned" and (2) "a person can hardly be charged with a conspiracy to do something which he could not do. As is well known, larceny and receiving stolen goods are two seperate and distinct offenses. A thief cannot be convicted of receiving goods which he stole."

[55] Commonwealth v. Doran, 145 Pa. Super. 173, 20 A.2d 815 (1941) (defendant was a principal in the first degree); Commonwealth v. Elias and Johns (No. 1), 76 Pa. Super. 576 (1921) (defendants were accessories before and after the fact); Commonwealth v. Goodelman, 74 Pa. Super. 526 (1920); Commonwealth v. Lindie, 147 Pa. Super. 335, 24 A.2d 39 (1942); Commonwealth v. Ott, 154 Pa. Super. 647, 36 A.2d 838 (1944) (defendant was a principal in the second degree who did not physically participate in the caption and asportation of the goods); Commonwealth v. Rose, 74 Pa. Super. 96 (1920).

[56] Italics supplied.

[57] 63 Pa. Super. 246 (1916).

count charging receiving and sentenced the defendant for larceny. The Superior Court said:

> "Had the defendant been sentenced on both counts, he would undoubtedly have just grounds for complaint. He was convicted and sentenced on but one count. Conviction in its legal and technical meaning is not complete until sentence is passed. [Citations.] There is no difference in effect between a general verdict of guilty and a verdict of guilty on all counts. If one count sustains the verdict sentence may be imposed upon that: [Citations.]."

Other cases have held that where the jury returns a general verdict of guilty on both counts, the defendant is not entitled to have judgment arrested on all counts. When the counts refer to the same property, it will be the duty of the court to impose a sentence which is sustained by one of the counts.[58] Still another case has affirmed the lower court's imposing sentence for larceny on counts of larceny and receiving stolen goods on the grounds that "the offense of receiving stolen goods, being a constituent part of the offense of larceny, merged therewith."[59]

Thus in Pennsylvania, the topic under discussion should be: "Whether a participant in a larceny may be sentenced for receiving stolen goods?" The answer to this appears to be that he may.[60] The additional query would then be: "Whether a participant in a larceny may be sentenced for both larceny and receiving stolen goods?" In view of the authority on this point, this must be answered in the negative.[61]

It is submitted as the writer's opinion that in these cases the court has adopted the most expedient means at its disposal. Justice is served and the cost of a new trial is saved the taxpayers. But would it not be better for the trial court to instruct the jury, as the statute provides, that the defendant can be found guilty of *either* crime and not to return a general verdict of guilty or a verdict of guilty on both counts?[62]

—Emanuel A. Cassimatis

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58 Commonwealth v. Brown, 71 Pa. Super. 575 (1919); Commonwealth v. Samson, 76 Pa. Super. 226 (1921).

59 Commonwealth ex rel. Madden v. Ashe, 162 Pa. Super. 39, 56 A.2d 335 (1948).

60 Cases cited note 55, supra.

61 Commonwealth v. Brown, 71 Pa. Super. 575 (1919); Commonwealth v. Holgate, 63 Pa. Super. 246 (1916); Commonwealth v. Samson, 76 Pa. Super. 226 (1921).

62 E. g., Commonwealth v. Simpson, 60 York Leg. Rec. 5 (1946).