

10/79

SUPREME COURT OF NEW SOUTH WALES (COMMON LAW DIVISION)

SHEEN v GEO CORNISH PTY LTD

Begg J

13, 30 October 1978 — [1978] 2 NSWLR 162; (1978) 22 ALR 155; (1978) 34 FLR 466

CRIMINAL LAW – CUSTOMS OFFENCES COMMITTED BY CORPORATION – CORPORATION RELEASED UPON ENTRY INTO A RECOGNIZANCE – WHETHER CORPORATION IS A "PERSON" – WHETHER MAGISTRATE IN ERROR IN MAKING ORDER: *CRIMES ACT* 1914 (CTH), S19B(a), (b) and (d).

At the hearing before a Magistrate in New South Wales, 4 charges laid under the *Customs Act* were found proved against a corporation. The defendant company was discharged upon entry into recognizances under Section 19B(1) (d) of the *Crimes Act* (Commonwealth). The appellant asked that four cases be stated, involving the determination of the following questions. Begg J having considered the provisions of Section 19B:

- (a) whether the word "person" in s19B(1)(a) and (b) of the Commonwealth *Crimes Act* 1914, as amended, includes a corporation? (a question left open by the Court of Criminal Appeal of New South Wales in *Collector of Customs v Tallerman and Co Pty Ltd* (1975) 2 NSWLR 832).
- (b) whether the word "person" in s19B(1)(d) of the same Act includes a corporation?
- (c) Whether s19B applies to the proceedings in respect of offences under the *Customs Act* 1901 to 1973 where a pecuniary penalty only is provided for?
- (d) Whether the recognizances entered into by Mr L Cornish on 17 April 1978, purportedly for and on behalf of the respondent were securities given by the respondent?

HELD:

1. **The provisions of the *Acts Interpretation Act* 1910 (Cth) (as amended) applied and that those provisions of s19B of the *Crimes Act* 1914 (Cth) which could properly be applied to a company should be so applied.**

Leyton Urban District Council v Wilkinson (1927) 1 KB 853; (1927) All ER Rep. 651; and *Mutual Loan Agency Ltd v Attorney-General* (NSW) (1909) 9 CLR 72 applied.

2. **While s19B(2) of the *Crimes Act* could not be enforced against a corporation, nevertheless, whether or not a warrant issues for breach of the recognizance is a discretionary matter for the court.**

3. **A court has jurisdiction to deal with the case under s19B of the *Crimes Act* where only maximum and minimum pecuniary penalties, such as those of ss234, 243 of the *Customs Act*, are provided in an Act because penalty provisions arise upon conviction while s19B applies when the Court refrains from proceeding to conviction in the first instance.**

4. **The recognizance should be given by a properly authorized agent of the company and should bind the company not the agent.**