05/05; [2005] VSCA 38

SUPREME COURT OF VICTORIA — COURT OF APPEAL

R v VASIC

Vincent and Nettle JJ A, Cummins AJ A

1, 2 March 2005 — (2005) 11 VR 380; (2005) 155 A Crim R 26

CRIMINAL LAW – OBTAINING A FINANCIAL ADVANTAGE BY DECEPTION – TENDERING VALUELESS CHEQUE IN PRETENDED PAYMENT OF AN EXISTING DEBT – NATURE OF THE FINANCIAL ADVANTAGE – WHETHER CHARGE PROVED: *CRIMES ACT* 1958, S82(1).

V, a plasterer, established a credit account with a plasterboard supplier. V. made a number of purchases of plasterboard and associated products on credit but when payment of the account was sought, V. was financially embarrassed and he attempted to play for time. Eventually, V. tendered a cheque for the total amount owing but the cheque was dishonoured on presentation for payment. The cheque account on which the cheque was drawn had been closed some years before. V. was charged with obtaining a financial advantage by deception under s82 of the *Crimes Act* 1958 ('Act'). When the no case submission by V. was rejected, he then entered a plea of guilty and was convicted and sentenced to undergo a community-based order. Upon appeal—

HELD: Appeal dismissed.
In the commonplace situation of a debtor giving a valueless cheque to gain some time from his or her pursuers, the debtor obtains a 'financial advantage' within the meaning of s82 of the Act. In the present case, V. obtained a financial advantage by the gaining of further time in which to find another source of finance. Accordingly, the court was not in error in finding the charge proved.
***Matthews v Fountain* [1982] VicRp 104; [1982] VR 1045, affirmed.**

VINCENT JA:
1. I will invite Nettle JA to deliver the first judgment in this matter.

NETTLE JA:
2. This is an application for leave to appeal against conviction on one count of obtaining financial advantage by deception contrary to s82 of the *Crimes Act* 1958.

3. At relevant times the applicant was a self employed plasterer. In June 2000 he established a credit account with a plasterboard supplier called Itizideal Pty Ltd and between 13 June 2000 and 21 July 2000 he made fifteen purchases of plasterboard and associated products on credit at prices totalling $32,701.23. Early in August 2000 the manager of Itizideal Pty Ltd, Mr Ian Williams, made a number of telephone calls to the applicant seeking payment of the account. The applicant was financially embarrassed and he attempted to play for time. Eventually, however, he told Mr Williams that he would leave a cheque in his letter box for Mr Williams to collect. On 8 August 2000 Mr Williams collected the cheque from the letterbox as agreed. It was drawn on National Australia Bank account No. 67506 7430 in the name of "DV Plastering, D. Vasic, T/A" payable to Itizideal Pty Ltd in the amount of $32,701.23. But it was dishonoured on presentation for payment. Account No. 67506 7430 had been closed some years before.

4. On 15 August 2000 Mr Williams had the applicant sign a document in which he acknowledged that the debt was due, and admitted that he had offered the dishonoured cheque knowing that the bank account had been closed, and he also undertook to pay part of the amount owing by 18 August 2000 with the remainder to be paid by 31 August 2000. But the applicant did not honour the terms of that undertaking or otherwise pay the debt, and the police were later informed.

5. On 18 August 2003 the applicant was arraigned before Judge Davey in the County Court at Melbourne on the one count of dishonestly obtaining financial advantage by the deferment of a debt[1] by deception by falsely representing that the cheque was a good and valid order for the payment of $32,701.23. He pleaded not guilty and following the presentation of the Crown case his counsel submitted that there was no case to answer. That submission was based on the judgment

of Miles CJ of the Supreme Court of the Australian Capital Territory in *Fisher v Bennett*[2] that the mere presentation of valueless cheque in satisfaction of an antecedent financial obligation does not without more constitute the obtaining of a financial advantage within the meaning of s78C(1) of the *Crimes Act* 1900 (NSW).[3] Judge Davey rejected the submission and held that there was a case to answer. The applicant thereupon pleaded guilty and was convicted and sentenced to undergo a Community Based Order of six months duration.

6. The applicant now contends that Judge Davey was wrong in law in holding that there was a case to answer.

The decision below

7. In his reasons for ruling, Judge Davey said:

> "Mr Danos submitted that an element of the offence was not made out. He submitted that although there was evidence of dishonesty in his client's conduct and of deception there was no evidence on which a jury, properly instructed, could find that the accused had obtained a financial advantage. In support of his submission he relied upon two decisions...[*R v Locker*[4] and *Fisher v Bennett*[5]]... The Victorian legislation is very different from the English Act and I must say, after having considered [*R v Locker*], I have not found it of any assistance to me. The second decision [*Fisher v Bennett*] ... was an appeal against conviction in the Canberra Magistrates' Court. The legislation there is in very similar terms to the Victorian Act. In that case [Miles CJ] concluded that in the absence of evidence that the appellant's position was improved by the giving of the valueless cheque to the creditor, the prosecution failed. With the greatest respect to [Miles CJ], I do not think that the law as it appears applied in the ACT is the law in this State. In the case of *Matthews v Fountain*[6] Gray J considered the operation and effect of s82(1) of the *Crimes Act.* He held, as the headnote states: 'A person who knowingly proffers a valueless cheque in purport[ed] discharge of an antecedent debt obtains a financial advantage within the meaning of s82 of the *Crimes Act* 1958.' He went on to say that it did not matter that the person who knowingly proffers a valueless cheque is penniless... Justice Gray's decision was briefly considered in the Court of [Criminal] Appeal in the case of *John Richard Walsh*[7]. O'Bryan J in delivering the first judgment referred to the judgment of Gray J in *Matthews v Fountain* and stated: `The concept of financial advantage is a simple one. It is expressed by the use of two common words, each of clear meaning' and then went on to say - and I might say he was there quoting from the judgment of Gray J.: "I agree that the words should be given their plain meaning and that no narrow construction should be given to them" and then went on to say, and [in so doing] in my view expressed a contrary view to the opinion of Miles CJ: 'It is not to the point that the applicant might have obtained a financial advantage from the errant bank in New York. The critical question indeed an essential element of the charge laid is whether the applicant attempted to obtain a financial advantage from Westpac by his conduct.'[8] On the present facts in my view it is clear that the accused attempted to gain a financial advantage and did in my view obtain a financial advantage in the wide sense in which the term has been interpreted in both the *Mathews* decision and the *Walsh* decision. At the very least the financial advantage was the giving to the accused of further time in which to find another source of finance. In the present circumstances there is, in my view, evidence upon which a properly instructed jury could find the accused guilty of the offence."

The concept of financial advantage

8. In my opinion Judge Davey was right. Much of what was said by Miles CJ in *Fisher v Bennett* was based on questions posed by Professor David Lanham in his 1977 article on the meaning of financial advantage.[9] They in turn were based upon the rhetorical question posed by Lord Widgery CJ in *R v Turner*[10] as to how it can be said that a penniless man owing a debt which he has no prospect of being able to pay evades the debt by giving the creditor a worthless cheque in pretended payment of it. Miles CJ embraced the question, and the answer which it may be supposed that Lord Widgery might have given to it, as follows:

> "The reference to the financial position of the defendant [in *Matthews v Fountain*] relates to the hypothetical example of the 'penniless man' mentioned initially by Lord Widgery CJ when *Turner's* case was before the Court of Criminal Appeal at [1973] 2 All ER 828 and by Lord Reid in the House of Lords in the passage referred to above. That concept is discussed in an article in (1977) 1 Crim LJ 188. In that article the author, Professor Lanham, discusses the example of a person [scil. a penniless man] who incurs a debt perfectly honestly but practises deception at a later stage in order to obtain relief from the creditor's claim. On p193 the author observes that in a case of what he calls 'unilateral evasion' the deceitful debtor gains nothing which he could not have obtained by outright refusal to pay or by keeping out of the creditor's way, and that where the debtor passes a valueless cheque, it is hard to see what financial advantage is obtained. The example of unilateral evasion is contrasted by the author with the situation where by deception the debtor secures the agreement of the creditor to reduce or forgive the debt. I think that there is force in the authors remarks."

9. With respect, however, Gray J explained in *Matthews v Fountain*[11] why Lord Widgery's conception of the penniless man should be avoided for the purposes of s82 of the *Crimes Act*. As Gray J said:

> "...the proposition put forward by Lord Widgery presents considerable difficulty. It is difficult to imagine a factual situation in which a creditor is offered cash but is induced by deception to take a valueless cheque. What is a 'penniless person' for this purpose? Is he a man who cannot conveniently pay the debt or one who cannot beg, borrow or steal the amount required? It is difficult to imagine a man in such depleted circumstances that he derives no financial advantage from the evasion of a debt. It is clear enough that the appellant was not, on the facts stated, a 'penniless person' in any sense. All that the facts show is that he had no funds in a particular bank account at a particular time. ...
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> The difficulties which would flow from the adoption of Lord Widgery's formulation are touched upon in an interesting article by David Lanham, *Obtaining a Financial Advantage by Deception in Victoria*, [1977] 1 Crim LJ 188. ...The writer points out that if 'pennilessness' is available as a defence, the court would become involved in an investigation of the defendant's financial position. If he takes the defence of an intention not to pay in any event, that issue would have to be investigated. As already stated, I do not consider that these problems arise. In the commonplace situation of a debtor giving a valueless cheque to gain some time from his pursuers the debtor does, in my opinion, obtain a 'financial advantage' within the meaning of s82".

10. It may also be observed in passing that the suggested "penniless man" exception to obtaining financial advantage by deception is as flawed as a matter of economic theory as it is intractable in practice. Evidently, the idea of the exception depends upon the premise that there is no advantage to a debtor in deferring payment of a debt unless the debtor has the money or the means of obtaining the money with which to pay the debt. According to that conception of things, if a debtor has the money or the means of obtaining it, the delay affords him or her a financial advantage equal to the time value of the debt for the period of the delay; in other words, the return which the money would generate in that period or the cost of borrowing the money for that period. Conversely, if the debtor has no money and no means of obtaining it, the delay affords him nothing; for without money he has no means of obtaining a return on money and if he cannot borrow money he cannot be said to have avoided the costs of borrowing it. But as a matter of economic theory a debtor can always borrow money. In theory it is all just a matter of price, and so everyone can borrow – at a price – no matter what the level of their credit risk. As the economist would have it, the price elasticity of credit may be hyperbolically sensitive to borrower security, but the gradient of that function never reaches infinity.

11. And so it is too in reality. For in reality, in the society in which we live, there are no penniless men. Widespread and deep though poverty may be in some sections of our society, all men in it have some money or at least the ability to obtain some money, by work or by the realisation of assets or by borrowing, even at exorbitant rates, or perhaps even in the form of social security entitlements. To that extent, all men obtain a financial advantage by deferring the payment of a debt; no matter how poor they may be. They are relieved of a claim upon such money or ability to generate it as they may have, for the period of the deferral.

12. In the article by Professor Lanham already mentioned, reference is made[12] to an example (cited by the Criminal Law Revision Committee) of a woman who obtains forbearance by telling a debt collector falsely that her husband is off work sick. The Committee considered that the ordinary man or woman would be surprised to be told that conduct of that kind was criminal and not merely discreditable. Maybe that is so. But as at present advised I am not prepared to exclude the possibility of its criminality. It is one thing to be without the money with which to meet an obligation. Obviously, there is no offence in a debtor responding to a debt collector in those circumstances that he or she is unable to pay the debt. Furthermore, if that is the truth of the matter, and it is that fact alone which causes the creditor to give time, there is nothing necessarily criminal in the debtor embroidering the facts with a story or two as to how the debtor's state of financial embarrassment came about. But it may well be otherwise if the debtor has the money and says that he or she does not have it or, even if the debtor does not have it immediately available, he or she buys time by telling a false story as to how that situation came about. I am inclined to think that most ordinary men and women would agree that the latter as not only dishonest but possibly also fraudulent.[13]

Section 82 of the Crimes Act

13. Fortunately, the problem here is not as difficult. We are concerned only with the question of whether it is an offence under s82 of the *Crimes Act* 1958 for a debtor to defer the payment of a debt by giving his creditor a cheque, which the debtor knows to be worthless, in pretended payment of the debt. In my opinion that question should be answered affirmatively, just as it was by Gray J in *Matthews v Fountain.*

14. Section 82 of the *Crimes Act* was designedly based on s16 of the *Theft Act* 1968 (UK), on the recommendation of the Chief Justice Law Reform Committee, with the intention that it apply to cases of common fraud involving the dishonest obtaining of credit or services[14]. As it was put in the explanatory memorandum:[15]

> "[The Chief Justice's Law Reform Committee] decided to recommend the enactment of the English statute with some minor modifications; a few of these modifications relate to matters of basic principle, but most of them are needed to take account either of the relationship between federal and state spheres of legislative authority or of the general pattern of Victoria legislation. Its decision was based on the fact that the English reform has proved highly successful in practice. The English courts have shown a determination to interpret the new provisions according to their letter and spirit, and to discourage attempts to introduce into new law the technicalities that disfigured the old. Their decisions will be readily available as precedents and guidance for our own courts. ... Section 82 creates a new offence of obtaining a financial advantage by deception. It is needed because certain types of common fraud, involving a dishonest obtaining of another's services (for example, without any intention of paying for them), are not covered by the offence of theft (section 72) or criminal deception (section 81); since no 'property' is obtained, neither of those sections is available. It was thought undesirable, because of possible unfortunate repercussions, to deal with the problem by defining 'property' so as to include services."

15. Section 82 was, however, also made different to s16 of the *Theft Act* in two respects, so as to overcome problems that had been found in England to result from a proscription in s16(1) which spoke in terms of obtaining a "pecuniary advantage" and an exhaustive definition of that expression in s16(2).[16] The matter was explained in detail in the Committee's Report[17] and in the explanatory memorandum, as follows:

> "The present section [scil. s82] differs, however, in two respects from its English counterpart [s16]. The English Act uses the phrase 'pecuniary advantage', and provides a definition for the phrase. This definition is unhappily worded, and has given rise to a set of technicalities described recently by an eminent English judge as a 'judicial nightmare'.[18] It is thought that the proposed section 82 will remove these difficulties. *Sub-section (1)* defines the offence as dishonestly obtaining by deception a 'financial advantage'. This phrase is thought more apt to describe what is meant than is the phrase 'pecuniary advantage' used in the English Act; and in order to avoid a repercussion in Victoria of the 'judicial nightmare' no attempt is made to define it. The offence is, in common with all other analogous offences under the Act, declared to be felony. It carries a maximum penalty of 5 years. Sub-section (2) applies the definition of 'deception' in section 81 to his offence."

16. Thus as I read the Committee's report and the explanatory memorandum,[19] "financial advantage" was thought to be a broader notion than "pecuniary advantage", and so to cover at least all of those things embraced in the extended definition of "pecuniary advantage" in s16(2) of the *Theft Act*, and an exhaustive definition of the kind contained in s16(2) was eschewed lest it be taken to limit ordinary conceptions of financial advantage. If that be so, it can scarcely be doubted that s82 was intended to have an operation as broad as s16 of the *Theft Act*, if indeed not broader.[20]

17. At least, in as much as s82 was enacted in the belief that "the English reform [had] proved highly successful in practice", and with evident approval of the way in which "the English courts [had] shown a determination to interpret the new provisions according to their letter and spirit, and to discourage attempts to introduce into the new law the technicalities that disfigured the old" and in the hope that the English decisions would "be readily available as precedents and guidance for our own courts", I conclude[21] it was intended that the decisions of the House of Lords in *Turner's* case and *DPP v Ray*[22] should apply as much to s82 as they do to s16 of the *Theft Act*.

The evidence

18. What I have said so far assumes that it would have made a difference in this case if the

judge had been in error in following the observations of Gray J in *Matthews v Fountain* in preference to the judgment of Miles CJ in *Fisher v Bennett*. In fact it would not.

19. In his record of interview (which was tendered as part of the Crown case) the applicant admitted that he was carrying on business as a plasterer and had a number of jobs running and that he had to pay men to keep working on those jobs and purchase supplies. He also admitted that it was in that state of affairs that he passed the valueless cheque, in order to buy time, relieve pressure, and generate the money with which to pay and ultimately to continue to trade with Itizideal Pty Ltd.[23] It follows that even if the law were that a so-called penniless man is incapable of obtaining a financial advantage by passing a false cheque, it would not have availed the applicant. For on the evidence before the judge, the applicant was not a penniless man and he clearly did obtain a financial advantage by passing the valueless cheque.

The plea of guilty

20. As has already been noted, the conviction was entered upon a plea of guilty following the dismissal of the applicant's no case submission. Ordinarily that would raise a question as to the competence of the application. A plea of guilty once entered constitutes an admission as to each element of the offence[24] and, consequently, an application for leave to appeal against conviction entered on a plea of guilty is seldom entertained unless the applicant did not appreciate the nature of the charge or did not intend to admit he was guilty of it or if upon the admitted facts he could not in law have been convicted of it or unless for some other reason the court is satisfied that a miscarriage of justice would or might occur if the accused is held to his plea.[25] In this case it is said that it would be a miscarriage of justice to hold the applicant to his plea because it was entered only after the no case submission was decided adversely to the applicant and only because the applicant was for the purposes of the trial forced to accept that the law was as the judge had determined it to be.

21. I am aware that such a view of the matter may appeal to other members of the court. But with respect I wish to say for my own part that I think it at least to be arguable that the applicant went further by his plea of guilty than simply admitting that he was bound to be convicted upon the law as determined by the judge. Since a plea of guilty is an admission of each of the elements of the offence, why should not the applicant be thought to have admitted all the facts necessary to show that he had dishonestly obtained a financial advantage by passing the valueless cheque? He had the choice of standing mute and attacking the ruling on appeal. And he could have done that without making any admissions of fact. He chose instead to plead, and no doubt he did that in order to obtain such advantage upon sentencing as a plea of guilty entails. In that sense his position is little different to an accused who having failed in a no case submission goes into evidence and is then convicted on all of the evidence.[26] In cases of that kind it is not regarded as unfair that an applicant may have been led by judicial error to expose himself to a determination that he is guilty. In point of principle it is not immediately apparent to me why it should be thought to be different here.

22. We were nevertheless referred to the decision of the South Australian Court of Criminal Appeal in *R v Cheng*[27] where it was said that an appeal against conviction upon the ground that a demurrer was wrongly overruled was competent notwithstanding a plea of guilty entered after the demurrer had been overruled and in the knowledge that the ruling on the demurrer was inevitable and an appeal almost certain.[28] Mr McArdle for the Crown submitted that it would not be inappropriate for this Court to follow a similar approach, upon the basis that the applicant had by his plea admitted no more than that if the law were as determined by Judge Davey he was liable to be convicted. In the circumstances I am prepared to follow that course.

Conclusion

23. In the event I would dismiss the application.

VINCENT JA:

24. I also agree that this application for leave to appeal against conviction should be dismissed, and I do so essentially for the reasons advanced by Nettle JA.

25. However, I would add that it is not, I consider, necessary to express any view as to the proper answers to a number of the difficult questions, posed by his Honour in his judgment,

concerning the concept of financial advantage encompassed by s82 of the *Crimes Act*. Those questions simply do not arise for consideration in this case, although I would also add that I am of the opinion that the approach adopted by him is almost certainly correct.

26. I would finally add that, in a situation in which an accused person enters a plea of guilty, having accepted a ruling of law from the trial judge that his proposed defence would avail him nothing, the fact that the individual has acted on that basis would constitute exceptional circumstances justifying this Court not holding him to his plea of guilty.

CUMMINS AJ A:

27. I agree with the disposition of this matter proposed by Nettle JA and, save in one respect, I agree with what Nettle JA has stated as the reasons for that disposition.

28. In relation to the corollaries of the plea of guilty, I consider it would be unfair to hold against an accused person in circumstances such as here a plea of guilty. On the contrary, I think it is to the credit of his counsel, Mr Danos, and to the credit differentially of the accused, that in their respective capacities they accepted the consequences of the ruling of the trial judge. It was the trial judge who determined the law in the case. Mr Danos having made the submission and it having failed, it is to the credit of counsel and of the accused that the accused then complied with the direction of law, rather than spend more time and function of the administration of justice pursuing a right merely for future purposes. Accordingly, with every respect, I have a different view from Nettle JA on that point alone.

29. However, I do wish to add one brief word on the procedure where, as here, during a trial, an accused pleads guilty. In this case the accused had been arraigned on the count of obtaining financial advantage by deception on the morning of Monday 18 August 2003 and the trial proceeded throughout the day. At 3 p.m. the prosecution case concluded and the prosecutor announced in the presence of the jury that the prosecution case had concluded. Mr Danos in the presence of the jury then said that there was a matter of law he wished to raise, and the learned judge said to the jury that, "Frequently at these trials matters arise where there are issues of law which are discussed in the absence of the jury, and this is such a matter." He sent the jury away until the next day. Submissions were heard by the judge from Mr Danos and counsel for the prosecution late on the Monday. Then on the next morning the learned judge gave his ruling on the matter. The judge having ruled as he did, at 10.45 am the jury was brought in and immediately, in the presence of the jury, the accused was re-arraigned on the original count and pleaded guilty to it.

30. His Honour treated the jury with courtesy, twice thanking them in generous terms. However, with every respect, I consider that his Honour failed to inform the jury of the nature and incidents of the process which was then occurring. The jury were given no direction of law or information as to what was occurring, other than being invited to consider their verdict and being informed by the judge that there was only one verdict they could bring in. There is no need for lengthy directions or explanations from a judge to a jury in such circumstances, but in my view certain minimum direction is required. I would regard that as then involving, first, direction to the jury, which doubtless the judge had given at the start of the case anyway, of the differing functions between judge and jury. Second, a direction of law by the judge to the jury that a plea of guilty by an accused person involves in law an admission to each of the necessary elements of the crime charged. I think the jury certainly should have been given that direction of law in this case. Third, although this might vary as a matter of personal approach between judges, I think it would have been helpful to the jury for the jury to have been informed that in this case the accused had had the benefit of knowledgeable counsel, that there was a ruling (as the jury would have anticipated from the afternoon before) which was a matter for the judge who determined the law, and that as a consequence the procedure now occurring had taken place. All of that would have had the benefit of including the jury in the process; because the jury, after all, was the judge of the facts. More fundamentally, it would have informed the jury as a matter of law so that the verdict was an informed verdict. The jury was in charge, as is evident, as his Honour appreciated: *R. v Paprounas*[29]. In my view the jury should have been given the directions I have stated.

VINCENT JA:

31. The order of the Court is that this application for leave to appeal against conviction is dismissed.

[1] Meaning by deferment of payment of the debt: *Matthews v Fountain* [1982] VicRp 104; [1982] VR 1045 at 1049 cf. *R v Turner* [1974] AC 357 at 365; [1973] 3 All ER 124.
[2] (1987) 85 FLR 469.
[3] As it applied in the ACT.
[4] [1971] 2 QB 321.
[5] (1987) 85 FLR 469.
[6] [1982] VicRp 104; [1982] VR 1045.
[7] *R v Walsh* (1990) 52 A Crim R 80 at 81.
[8] See too *Murphy v R* [1987] TASSC 15; (1987) Tas R 178 (Tas CCA) at [14] per Nettlefold J; cf. *R v Rosar* [1999] TASSC 7 at [6]; (1999) 8 Tas R 344 per Slicer J.
[9] Lanham, *Obtaining a Financial Advantage by Deception in Victoria - The Meaning of Financial Advantage*, [1977] 1 Crim LJ 188.
[10] [1973] 1 WLR 653 at 656; [1973] 2 All ER 828.
[11] [1982] VicRp 104; [1982] VR 1045.
[12] (1977)1 Crim LJ at 193.
[13] And see *DPP v Ray* [1973] UKHL 3; [1974] AC 370 at 382-3; 387; 391; [1973] 3 All ER 131; (1974) 58 Cr App R 130.
[14] See *Crimes (Theft) Bill*, Second Reading Speech, *Hansard*, Legislative Council, Session 1972-3, Vol 311, at 3845, and the Explanatory Memorandum at 8.
[15] Which, significantly, was drafted by Professor Peter Brett of the University of Melbourne, who was one of the members of the committee.
[16] See Chief Justices Law Reform Committee, *Report on the Law of Theft*, at par 13.
[17] ibid.
[18] *R v Royle* [1971] 3 All ER 1359; [1971] 1 WLR 1764 (1971) 56 Crim App R 131 at 136, per Edmund-Davies LJ.
[19] Pursuant to s35 of the *Interpretation of Legislation Act* 1984, see *Catlow v Accident Compensation Commission* [1989] HCA 43; (1989) 167 CLR 543 at 549; 87 ALR 663; (1989) 63 ALJR 619; *Mills v Meeking* [1990] HCA 6; (1990) 169 CLR 214 at 235; (1990) 91 ALR 16; (1990) 64 ALJR 190; (1990) 45 A Crim R 373; (1990) 10 MVR 257.
[20] See Williams, *The Crimes Theft Act 1973*, (1974) 48 LIJ 75 at 86; although cf. Williams, *Property Offences*, 3rd Ed. at 186 -187.
[21] See Pearce & Geddes, *Statutory Interpretation in Australia*, 5th Ed. at [3.39].
[22] [1973] UKHL 3; [1974] AC 370; [1973] 3 All ER 131; (1974) 58 Cr App R 130.
[23] ROI, qq. 73, 106, 109, 179-184, 200, 216, 232, 234-6, 261-2.
[24] *Maxwell v R* [1996] HCA 46; (1996) 135 ALR 1; [1997] 4 Leg Rep C1; (1996) 70 ALJR 324; (1996) 87 A Crim R 180; (1996) 184 CLR 501 at 510.
[25] *R v Forde* [1923] 2 KB 400 at 403; [1923] All ER 477; (1924) 17 Cr App R 99*; R v Parsons* [1998] 2 VR 478 at 482; (1997) 97 A Crim R 267; *R v Reed* [2003] VSCA 95 at [16].
[26] *R v Wood* [1974] VicRp 16; [1974] VR 117 at 119; *R v Stennett* [1994] NTSC 30; (1994) 4 NTLR 103 at [3]; *R v Parsons* [1998] 2 VR 478 at 482-3; (1997) 97 A Crim R 267; *R v Cheng* [1999] SASC 175; [1999] 73 SASR 502 at [8] - [12]; (1999) 107 A Crim R 460; *R v Draper* [2000] WASCA 160 at [40]; *R v Reed* [2003] VSCA 95 at [2].
[27] [1999] SASC 175; (1999) 73 SASR 502, (1999) 107 A Crim R 460.
[28] ibid. at 462, per Bleby J.
[29] [1970] VicRp 107; [1970] VR 865 at 866 per curiam. See also *R v Nicholas* [1921] VicLawRp 106; (1921) VR 602; 27 ALR 369; 43 ALT 91.

APPEARANCES: For the Crown: Mr JD McArdle QC, counsel. Mr S Carisbrooke, Acting Solicitor for Public Prosecutions. For the Applicant Vasic: Mr TF Danos, counsel. C Marshall & Associates, solicitors.
