

24/74

SUPREME COURT OF VICTORIA

BURDETT v HAMMENT

Norris J

6 August 1974

PROCEDURE – ACCUSED ACQUITTED IN THE COUNTY COURT – WHETHER SUCH ACQUITTAL GIVES RISE TO ISSUE ESTOPPEL IN THE MAGISTRATES' COURT.

HELD: Whatever the effect of the jury verdict in proceedings between the Crown and an accused may be, no possibility exists of asserting that what has been determined by a jury on a trial on presentment in the County Court can give rise to any issue estoppel in a Magistrates' Court between a member of the police force as informant and a person acquitted in the County Court as a defendant.

R v Tween [1965] VicRp 89; [1965] VR 687, followed.

NORRIS J: ... Whatever the effect of the jury verdict in proceedings between the Crown and an accused may be, no possibility exists of asserting that what has been determined by a jury on a trial on presentment in the County Court can give rise to any issue estoppel in a Magistrates' Court between a member of the police force as informant and a person acquitted in the County Court as a defendant.

It appears that the New South Wales Supreme Court may have taken a different view, but for Victorian Courts the matter was decided by the Full Court in the case of *R v Tween* [1965] VicRp 89; [1965] VR 687. The opinion expressed by Sholl J, in his judgment at pp697 to 699 is directly in point and I see no escape from that view.

Mr Graham argued the matter on the first of these orders to review No. 7000, which related to an information under s7(1)(g) of the *Vagrancy Act* 1966 and he has repeated the argument by reference to the other two proceedings. No. 7001 and No. 7002, which relate to informations alleging contraventions of s31(1) of the *Firearms Act* 1958 and s32(1) of the *Firearms Act* 1958 respectively.

For the reasons I have already given, I think in all three cases the order nisi to review must be made absolute on the third ground, which was, in each case, that the Magistrates' Court should have found as a matter of law that the applicant could not be estopped by any finding made in proceedings in which he was not a party, the applicant in each of these three cases being, of course, the informant. For those reasons the order nisi in each case is made absolute on the third ground.