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SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

R v ROFFEL

Young CJ, Crockett and Brooking JJ

15, 16, 19 November, 19 December 1984

[1985] VicRp 51; [1985] VR 511; [1984] 9 ACLR 433; (1985) 14 A Crim R 134; (1985) 3 ACLC 339; noted 3 C & SLJ 235; [1986] Crim LR 154

CRIMINAL LAW – THEFT – APPROPRIATION – COMPANY – DEFENDANT A DIRECTOR OF – CHEQUES DRAWN BY DEFENDANT ON COMPANY'S ACCOUNT FOR HIS BENEFIT – RELATIONSHIP OF DEFENDANT *VIS-À-VIS* COMPANY DISCUSSED – COMPANY CONSENTED TO CHEQUES BEING DRAWN – WHETHER APPROPRIATION: *CRIMES ACT* 1958, SS72, 73.

Section 72 of the *Crimes Act* 1958 reads:

"(1) A person steals if he dishonestly appropriates property belonging to another with the intention of permanently depriving the other of it.
(2) A person who steals is guilty of theft; and 'thief' shall be construed accordingly."

Section 73(4) of the *Crimes Act* 1958 provides:

"Any assumption by a person of the rights of an owner amounts of an appropriation, and this includes, where he has come by the property (innocently or not) without stealing it, any later assumption of a right to it by keeping or dealing with it as owner."

R. and his wife were the sole shareholders and directors of a company CF P/L. They were both entitled to sign cheques drawn on the company's account. In 1979, R. drew five cheques against the company's account, of which four were payable to cash and the fifth payable to a travel agency. It appeared that R. used the proceeds of the cheques for his own purposes rather than for the purposes of the company. He was subsequently charged and tried on indictment with five counts of theft, and was convicted on all counts. Upon application for leave to appeal—

HELD: Per Young CJ and Crockett J, Brooking J dissenting –
Application granted. Conviction set aside and a verdict of acquittal entered.
(1) The concept of appropriation involves an element of adverse interference with or usurpation of some right of the owner.
***R v Morris* [1984] UKHL 1; [1984] AC 320; [1983] 3 All ER 288; (1983) 77 Cr App R 309; [1983] Crim LR 813; [1983] 3 WLR 697; MC 5/84, applied;**
***R v Lawrence* [1971] UKHL 2; [1972] AC 626, discussed.**

(2) As the company was a separate legal person and consented to enter into the transactions whereby R. received money for his own benefit, it could not be said that R. adversely interfered with or usurped some right of ownership possessed by the company.
***Salomon v Salomon & Co Ltd* [1897] AC 22; [1895-99] All ER 33; 66 LJCh 35;**
***Tesco Supermarkets Ltd v Nattrass* [1971] UKHL 1; [1972] AC 153; [1971] 2 All ER 127; [1971] 2 WLR 1166, applied.**

(3) Accordingly, in law, there was no appropriation.

YOUNG CJ: *[After referring to some preliminary matters and the relevant provisions of the* Crimes Act *1958, His Honour continued]:* ... **[3]** As Professor Glanville Williams pointed out in an earlier edition of his *Textbook of Criminal Law* (first ed 1978, at p726) the phrase "any assumption of the rights of an owner" is a remarkable juristic invention. It is virtually impossible for anyone to assume the rights of an owner by way of theft. A thief does not ordinarily acquire rights against the owner. No doubt it was considerations of that kind which led the Courts to treat "assumption" as meaning usurpation. In *R v Morris* [1984] UKHL 1; [1984] AC 320; [1983] 3 All ER 288; (1983) 77 Cr App R 309; [1983] Crim LR 813; [1983] 3 WLR 697 at p703 Lord Roskill said that "the concept of appropriation ... involves an element of adverse interference with or usurpation of some right of the owner ..."

The House of Lords has also decided that the English equivalent of section 72 should not be read as if it contained the words "without the consent of the owner" – see *R v Lawrence* [1971] UKHL 2; [1972] AC 626 per Viscount Dilhorne at pp631-2. Thus it is not an element of the offence to be proved by the Crown that the "appropriation" was without the consent of the owner. Nevertheless it is difficult to imagine that Parliament intended to treat as an appropriation the taking of property from a person if the taking was done **[4]** with the full concurrence of the original owner. Thus if A gives $10 to B, intending B to have the money for his own use and benefit, there can be no appropriation (within the meaning of the section) by B. If it were said that the receipt of an unsolicited gift was an appropriation within the section but that the recipient would not be guilty of theft because the appropriation would not be dishonest, criminal liability would be made to depend upon the subjective view of the recipient. Thus if A gave B an oil painting believing and stating that it was of little value, would B be guilty of theft because he believed that its value was substantially greater? Or suppose that B had no belief as to the value of the painting when he received it but subsequently learned that its value was very much greater than A had stated. In neither case is B guilty of theft. He is not guilty of theft because he has not "appropriated" the painting. He has not appropriated the painting because there is no element of adverse interference with or usurpation of some right of the person who gave it to him in his receipt of the painting.

It follows as a matter of principle that although the Crown does not have to prove that a defendant did not have the consent of the owner to take the property alleged to have been stolen, where it appears that the defendant had the consent of the owner, there can be no appropriation within the section. See *R v Morris*, *supra*, per Lord Roskill at p703.

At first sight it might appear that Viscount Dilhorne expressed a contrary view in *R v Lawrence*, *supra*, where he said (at p632): "Belief or the absence of belief **[5]** that the owner had with such knowledge" (i.e. full knowledge of the circumstances) "consented to the appropriation is relevant to the issue of dishonesty, not to the question whether or not there has been an appropriation". Upon examination, however, I do not think that Viscount Dilhorne was expressing a contrary view. Certainly Lord Roskill in *R v Morris*, *supra*, saw no inconsistency between the view of "appropriation" which he was expressing and anything said by Viscount Dilhorne in *R v Lawrence*, *supra*. But in any event the passage quoted from Viscount Dilhorne's speech was concerned with the belief of the defendant. His Lordship was dealing with the English equivalent of section 73(2). That sub-section reads, so far as relevant:

> "(2) A person's appropriation of property belonging to another is not to be regarded as dishonest—
> (a) if he appropriates the property in the belief that he has in law the right to deprive the other of it, on behalf of himself or of a third person;"

A little later on p632 Viscount Dilhorne's language may be capable of being construed as meaning that there could be an appropriation within the section notwithstanding that the owner consents and certainly Lord Roskill in *R v Morris*, *supra*, at p702 appears to have treated his Lordships as indicating that opinion. But Lord Roskill also pointed out that the House did not in *R v Lawrence* have to consider the precise meaning of the word "appropriation". It may be that some of the reasoning in *R v Lawrence* and *R v Morris* cannot be satisfactorily reconciled. If that be so, I am content to follow the latter for it contains an analysis of the word "appropriation" and **[6]** as the later decision it is in any event to be preferred.

I now turn to the case made by the Crown against the applicant. He is charged in four counts with stealing money the property of Cresida Fashions Pty Ltd It was proved that the applicant and his wife were the sole shareholders and directors of the company. At the material time the applicant was also the secretary. The authority lodged with the company's Bank for the signing of cheques on the company's account was proved. It showed that either the applicant or his wife was entitled to sign cheques. The actual cheques by which the moneys were drawn from the Bank were tendered in evidence. They were drawn on the company's account and were signed by the applicant alone. Evidence was led from which it might be inferred that the applicant used the proceeds of the cheques for his own purposes rather than for the purposes of the company. That a company is a legal entity separate from its corporators has been trite law at least since *Salomon v Salomon & Co Ltd* [1897] AC 22; [1895-99] All ER 33; 66 LJCh 35. Thus there is no doubt that a natural person can steal from a company. Nor is there any reason in logic or in legal theory why a person should not be guilty of stealing from a company of which he was the

dominant shareholder and director, although it will not often be possible to prove that he has done so. It is also true that a company which gives property to one of its shareholders or to one of its directors does not by that act alone, without more, commit any offence against the criminal law. Nor is a person who received a gift from a company by that act alone, without more, guilty of theft from the company even if he owns almost all of the shares **[7]** and is the governing director with plenary powers.

In the present case it is necessary to ask upon what act of appropriation the Crown relies to prove the theft. Since it is, in the four counts presently under consideration, the theft of money that is alleged, the Crown doubtless relies upon the receipt of the money from the company's bankers as the act of appropriation. But where is the element of usurpation of the company's rights in the act of receiving the money? The cheque was the company's cheque, made payable to cash and in the possession of the applicant who was the *de facto* controller of the company. There was no evidence to suggest that the company did not intend the applicant to have the money and to use it for his own purposes. If the company decided to give the money to the applicant in order to defeat its creditors, that would be quite irrelevant. The motive of the company in making the gift could not convert the applicant's act in receiving the money into a usurpation of the company's rights. If it be assumed that the act of the company in giving the cheque to the applicant to enable him to obtain the money was beyond the powers of the company, that consideration would not turn the applicant's act of receiving the money into an act of usurpation of the rights of the company. The fact that the applicant was "the directing mind and will of the company" (see *Bolton (HL) (Engineering) Co Ltd v TJ Graham & Sons Ltd* [1957] 1 QB 159 per Lord Denning at p172; [1956] 3 All ER 624 seems to me to be irrelevant.

Though the applicant's purpose may have been the purpose of the company, to treat that purpose as attributable to him as the recipient of the cash which he is alleged to have appropriated seems to me to ignore the **[8]** fact that the company is a separate legal person. Similarly I would regard the fact that it was *ultra vires* of the company to give the money to the applicant (if it be a fact) as equally irrelevant. If the act of the company were void and the company were able to recover the money from the applicant, it would be able to do so not because the applicant had stolen the money from the company but because he had as the directing mind and will of the company caused the company to apply its money in a manner or towards objects which the company had no power to entertain. Cf. *Spackman v Evans* [1868] LR 3 HL 171 at pp244, 245. Thus even if the act of the company were void, the directing mind and will of the company still concurred in the applicant's receiving the money for his own benefit and thereby precluded his receipt of it from being an appropriation within the meaning of the *Crimes Act*. If this conclusion means that a person whom common sense would regard as a thief is not a thief in law, that result follows from the fact that the law has at least since 1897 treated a company as a legal person entirely separate from and, in law, independent of those who own it or who control or manage its affairs.

I have dealt with the four counts of stealing money but the same reasoning applies to the count charging theft of a cheque. In no case does the evidence justify a conviction and as it was not suggested to us that the Crown could lead any other evidence on a re-trial, I would order that a verdict of acquittal be entered.

CROCKETT J: *[After setting out the circumstances giving rise to the charges, relevant grounds of the application for leave to appeal, some matters which emerged in evidence at the trial and relevant provisions of the* Crimes Act *1958, His Honour continued]:* … **[6]** The first question then is – was there evidence of an appropriation? The Crown case was that, if the jury were to find – as it was strongly suggested it should – that the applicant did not, as he claimed he did, pay the company's creditors, that finding would permit an inference to be drawn that the applicant had appropriated the proceeds of the cheques or, in the case of the cheque payable to the travel agency, the cheque itself, because he had kept for himself the proceeds from or the benefit of each of the **[7]** cheques. Consideration of this question focuses attention upon the words in the statutory definition "any assumption by a person of the rights of an owner amounts to an appropriation". Can there be an assumption of the rights of another if that other agrees to be dispossessed? The applicant's contention is that to assume the rights of an owner of property necessarily involves the usurpation of that owner's rights i.e. the depriving of the owner of his property by a unilateral act. If the transaction that gives rise to the transferee's taking possession of the property is consensual in the true sense (that is to say consent has not been induced by duress or deception) can such taking of possession

amount to theft? This is not to say that lack of consent is an ingredient of the offence of theft. But where there is a grant of consent not induced by duress or deception that, so it was said, cannot allow any consequent taking of possession to be describable as an "assumption of the rights of an owner". The validity of that proposition, so it was submitted, must now be beyond question since the very recent decision of the House of Lords in *R v Morris* [1984] UKHL 1; [1984] AC 320; [1983] 3 All ER 288; (1983) 77 Cr App R 309; [1983] Crim LR 813; [1983] 3 WLR 697. At p703 WLR Lord Roskill, with whom the other law lords agreed, stated that "the concept of appropriation in s3(1) [of the English Act] involves an element of adverse inference with or usurpation of some right of the owner".

Was there, then, evidence that his writing of the cheques was, in the relevant sense, a unilateral act of the applicant or was it the result of a "transaction" between him and the company? That is to say, did he or did he not have an untrammelled right to do what he did? It was not, of **[8]** course, for him to show that he did but for the Crown to establish beyond reasonable doubt that he did not. He contended that, by virtue of his position as a co-director and co-shareholder with his wife and the power conferred by Article 94 of the Articles of Association (permitting him as director and secretary to be sole signatory of cheques drawn on the company's account) together with his sole conduct of the company's day to day management, he was the "embodiment" of the company. He was its "ego" if not its "alter ego", see *Tesco Supermarkets Ltd v Nattrass* [1971] UKHL 1; [1972] AC 153, per Lord Reid at 171-172; [1971] 2 All ER 127; [1971] 2 WLR 1166; although compare the observations of Lord Pearson at p190. His mind was the company's mind. As such he could, and did, make out cheques payable to himself. It may be conceded that in drawing the cheques the subject of the charges his object was to defeat the rights of the company's creditors and to benefit himself. In doing what he did he may have been conferring an improper preference or breaching a statutory provision concerning the conduct of directors. However such considerations, it was said, are not to the point. The company was in truth, if strictly not in law, no more than a family partnership business carried on by the applicant within a corporate shell. If the directors held a meeting and resolved that cheques be drawn on the company's funds as in fact they were drawn, and the resolution was duly minuted together with an acknowledgment that the course adopted was with the object of defeating the claims of the company's trade creditors, it was said that it could scarcely be maintained that the payee of the cheques had stolen them or their proceeds from the company. Can it be any different if the company has followed such a course, not formally, but **[9]** informally? If done informally, it means the evidentiary question might arise in a more acute form. For instance there may be no direct evidence that the applicant's wife, as a co-director, approved the payments. But if the circumstances of the transaction suggested that she did, it would be for the prosecution to prove that she did not; not for the applicant to prove expressly that she did.

Lord Reid elucidated the concept of an individual's being not merely the servant or agent of a company but its embodiment in *Tesco Supermarkets Ltd v Nattrass*, *supra*, in a passage at p170 as follows:

> "I must start by considering the nature of the personality which by a fiction the law attributes to a corporation. A living person has a mind which can have knowledge or intention or be negligent and he has hands to carry out his intentions. A corporation has none of these: it must act through living persons, though not always one or the same person. Then the person who acts is not speaking or acting for the company. He is acting as the company and his mind which directs his acts is the mind of the company. There is no question of the company being vicariously liable. He is not acting as a servant, representative, agent or delegate. He is an embodiment of the company or, one could say, he hears and speaks through the persona of the company, within his appropriate sphere, and his mind is the mind of the company. If it is a guilty mind then that guilt is the guilt of the company. It must be a question of law whether, once the facts have been ascertained, a person in doing particular things is to be regarded as the company or merely as the company's servant or agent. In that case any liability of the company can only be a statutory or vicarious liability."

See also *FCT v Whitfords Beach Pty Ltd* [1982] HCA 8; (1982) 150 CLR 355; (1982) 39 ALR 521; (1982) 12 ATR 692; (1982) 56 ALJR 240 per Gibbs CJ at 245 and the judgment of Cooke J in *Nordik Industries Ltd v Regional Controller of Inland Revenue* [1976] 1 NZLR 194 in which at pp199-202 the speeches given in the *Tesco Case* are subject to some analysis. **[10]** In my opinion the evidence in the present case can admit of no finding other than that the applicant was to be identified with the company. If ever there were a case in which a natural person could be said to

be the embodiment of a corporate entity then this is that case. Once that conclusion is reached then his actions in relation to the company's affairs must be treated as being the company's actions. The cheque dealings were thus "transactional". Does this conclusion prevent the dealing from forming the foundation for charges of theft?

The recent case of *Attorney-General's Reference (No. 2 of 1982)* [1984] QB 624; [1984] 2 All ER 216; (1983) 78 Cr App R 131; [1984] Crim LR 241; [1984] BCLC 60; [1984] 2 WLR 447 is of no assistance to the prosecution on the point. Whatever may be said of the Court of Appeal's judgment – and in the course of an elaborate analysis of it by the applicant's counsel it was attacked at almost every line – it is plain that it is not concerned with the question of appropriation of property. The case related to the efficacy of counts alleging theft by the defendants from companies wholly owned and controlled by them. Counsel for the defendants at the hearing of the appeal "conceded that, with the exception of 'dishonestly', all the ingredients of the definition of 'theft' were *prima facie* satisfied, viz., the definitions of 'appropriates' under section 3 ..." See p459. The Court was thus constrained to confine its attention to submissions which essentially rested on the proposition that, as the owners of the company they were the owners of its property and as they could not steal from themselves, their acts in appropriating the company's property could not be characterised as a dishonest appropriation. The Court of Appeal held that the question **[11]** of whether an appropriation is honest or not is always (as it is clear the law in England is) a question for the jury. In the trial Court the Judge had accepted the defendants' submissions on this point and directed an acquittal on the basis that what the defendants did could not be found to be dishonest vis-à-vis the company.

None of this reasoning would thus appear to have any relevance to the question presently being considered. The somewhat puzzling concession made in the *Attorney-General's Reference* may perhaps be explained by the fact that argument had concluded before the decision in *R v Morris*, *supra*, was published. At all events the decision in the *Attorney-General's Reference* left unresolved the primary proposition upon which reliance has been placed in the present application, namely, was it open upon the evidence for an "appropriation" of the property in the cheques to be found?

For the respondent it was submitted that it was open to the jury to have found that the applicant drew the cheques for his own purposes and without entitlement in the sense that the moneys from the cheques payable to cash were not intended to pay creditors and were for the use of the applicant personally and the property in the other cheque was greatly in excess of any amount owed by the company to the applicant and his wife and, to the extent that it was, was intended not as a reimbursement but for the applicant's personal use. If such a finding were made it would support a conclusion that there had been, in the case of each count, not only an appropriation but a dishonest appropriation. The doctrine of identification cannot alter the fundamental **[12]** propositions that the company was a legal entity separate from the defendant notwithstanding that he and his wife were the sole shareholders and directors and that the chose in action and the money alleged to have been stolen were the company's property and not that of the defendant and his wife. The company's purposes can be, and in the present case were, different from those of its owners. Those of the latter were, in the event, to arrange the company's affairs so as to maximise their own pecuniary advantage. Those of the company were to employ its funds in the payment of its creditors. The doctrine of identification does not mean that the company is to be identified with the acts of a director if those acts are totally unrelated to the interests and business of the company – indeed are, or may be, *ultra vires*.

However, the question whether the disposition is *ultra vires* the company and therefore void or voidable is not one which should be allowed to intrude into this branch of the criminal law. As Lord Roskill said in *Morris* at p705:

> "...I respectfully suggest that it is on any view wrong to introduce into this branch of the criminal law questions whether particular contracts are void or voidable on the ground of mistake or fraud or whether any mistake is sufficiently fundamental to vitiate a contract. These difficult questions should so far as possible be confined to those fields of law to which they are immediately relevant and I do not regard them as relevant questions under the *Theft Act* 1968."

The short answer to any suggestion to the contrary is that, even if what the company may do through the agency of its servant is *ultra vires* the company and property in **[13]** the goods thus

cannot be passed to the transferee, the transaction remains "consensual". That the transaction may be void or voidable is irrelevant. By virtue of the consent (even if unlawfully – and even dishonestly – given) of the company it cannot be asserted that the donee has assumed the rights of the company as owner. This is because he has not interfered adversely with or usurped some right of the owner. The company in a sense relevant for the penal law must be treated as having a "right" unlawfully to give away its own property.

The director who, (no matter how dishonestly or unlawfully) as the mind" of the company causes its property to be transferred to himself must necessarily be doing so pursuant to a transaction that is consensual. Consent is foreign to the notion of usurpation which the expression "appropriates" connotes. As has already been observed, the argument relies for support upon some observations to be found in *R v Morris*, *supra*. In that case Lord Roskill, with whom each of the other law lords agreed, said (at p703) that "the concept of appropriation in my view involves not an act expressly or impliedly authorised by the owner but an act by way of adverse interference with or usurpation of those rights". It was said that this may involve a consideration of whether the owner has given consent to the taking. So in some cases it inevitably must.

The House of Lords in *R v Lawrence* [1971] UKHL 2; [1972] AC 626 made it plain that the absence from the modern statutory definition of theft [*Theft Act* 1968] of the previous requirement that the taking be "without the consent of the owner" was deliberate and accordingly that the lack of the **[14]** proprietor's consent is no longer an ingredient of the offence. The respondent, accordingly, contended that at most a belief in the grant or absence of consent may be relevant to the issue of dishonesty but not to the question whether or not there has been an appropriation. It was said that the two cases are in conflict and that *Lawrence* should be followed. I doubt whether there is any such conflict. *Lawrence* was fully considered in *Morris* and nowhere in the latter case does it appear that what was said in the former is in error. The fact is that absence of consent to the taking may, and often will be, relevant to a determination of whether there has been an appropriation bearing in mind that that element of the offence involves adverse interference with or usurpation of some right of the owner. A typical case might be one in which it is shown that, although the right of the owner does not appear to have been usurped because the appropriation is seemingly consensual, due to deception, the transaction cannot be properly so described. See, e.g. *R v Baruday* [1984] VicRp 59; [1984] VR 685; (1984) 13 A Crim R 190, a decision of this Court in which it was held that there was an appropriation of property where possession was gained by consent if that consent has been gained by deception or fraud. In that case both *Lawrence* and *Morris* were considered without any suggestion's being made that the two were in conflict.

Then Lord Roskill in *Morris* (at p702) pointed out that in *Lawrence* a dishonest appropriation had beyond question occurred and consideration of the precise meaning of "appropriation" was therefore not required. There will **[15]** be cases in which the presence or absence of consent to the taking will be an issue, not because its absence is an element of the offence, but because it will be relevant to another element, appropriation. If the question of whether there has been an adverse interference with or some usurpation of some right of an owner by reason of the defendant's taking possession of property is in issue then whether, and the extent to which, the owner's consent to the taking has been given may he critical to the resolution of the issue.

This view of the matter is consistent with the opinion which Professor Smith has expressed after an analysis of the cases in *The Law of Theft*, 4th edition. This edition published in 1979 precedes, or course, the decision in *Morris*. Cases in which the defendant did no more than he was authorised to do by the owner and was acquitted despite doing what he did with a dishonest intention are discussed and the conclusion reached that they were correctly decided. The author then remarks at p15:

> "These decisions raise fundamental questions about the nature of 'appropriation'. They suggest that 'helping oneself' to the property of another is an essential characteristic, that a man does not 'assume' the right of an owner if the owner confers those rights on him; and that, notwithstanding the fact that the words 'without the consent of the owner' are neither expressed nor implied in the Act, 'appropriation' implies something done without the owner's authority. This is far from being an unreasonable interpretation of the words 'appropriation' and 'assumption'; but there remains an element of doubt whether it is consistent with the decision of the House of Lords in *Lawrence*. It is submitted, however, that the better view is that *Skipp, Meech* and *Hircock* in this respect are rightly decided and that *Lawrence* is distinguishable."

Morris's Case makes it plain that that doubt is now removed **[16]** and that this expression

of opinion is correct. As Professor Smith observes (at p19), *Lawrence* should be interpreted in the light of its own peculiar facts. It remains then to determine whether in the light of the foregoing discussion there was evidence upon which an appropriation could be found on the facts of the present case. The applicant appears to me clearly to have been identified with the company at the relevant time. Whether what the company did through the agency of the applicant was dishonest *vis-à-vis* the trade creditors or was *ultra vires* the company is not to the point. By the instrumentality of the only person through which it could effectively act it consented to entry into the impugned transactions. They were thus not unilateral. Or, to describe it in the terms of *Morris*, by reason of its very acquiescence in the drawing of the cheque on its funds the company was not acting so that it could be said the applicant was adversely interfering with or usurping some right of ownership possessed by it.

It was suggested on behalf of the respondent that the test is whether the adverse interference with or usurpation of some right that is alleged is with or of a right of the "true" owner. In this case it was said that the owners were the trade creditors. It was said the company held its funds in trust for its creditors. Section 73(8) provides that "Where property is subject to a trust, the persons to whom it belongs shall be regarded as including any person having a right to enforce the trust ..." It was said that the beneficial ownership of the **[17]** funds held by the creditors had been usurped. The answer to this contention is, of course, that the trade creditors had no such beneficial ownership. Each had no more than a cause of action against the company in respect of its indebtedness to him. The conclusion thus reached that the evidence could not sustain a finding that the applicant had appropriated the company's funds makes it unnecessary to consider whether there was evidence on which it could be held that any appropriation was dishonest. It is also unnecessary to deal with the first and third grounds upon which the applicant placed reliance. I would grant the application, allow the appeal and quash the convictions and sentences.

[Brooking J delivered a separate judgment in which he differed from the majority as to what constitutes "appropriation" in law.]

Solicitors for the applicant: John V Hayes and Co.
Solicitor for the respondent: RJ Lambert, Crown Solicitor.
