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## SUPREME COURT OF VICTORIA — COURT OF CRIMINAL APPEAL

**R v SYMONS**

Young CJ, Crockett and Tadgell JJ

21 November 1981 — [1981] VicRp 33; [1981] VR 297

**PRACTICE AND PROCEDURE – ACCUSED CHARGED WITH COUNTS OF RAPE – ACCUSED ARRAIGNED MORE THAN THREE MONTHS AFTER COMMITTAL – MEANING OF "A TRIAL" – WHETHER TRIAL IRREGULAR: CRIMES ACT 1958, S359A(1).**

Between 25th December 1978 and 19th August 1979, the applicant committed a series of attacks upon a number of young women. The applicant was arrested and charged with a number of offences and in due course committed for trial. His trial was to commence upon a presentment that contained twenty-four counts and that arraignment was three months and thirteen days after the date of committal. The presentment contained two counts of rape and one of assault with intent to rape. When indicted the applicant pleaded guilty to all counts except one of theft.

**HELD: The trial commenced at the latest when the trial judge acted in a way that determined the guilt of the accused. In the circumstances, the commencement of the trial was irregular.**

**TADGELL J:** (Crockett J dissenting) ... The central question arising upon this application is whether the expression "... the trial of a person ... shall not be commenced ..." in s359A(1) of the *Crimes Act* 1958 is confined to prohibiting the commencement of the trial by jury of a person who has pleaded not guilty to an allegation of one of the offences referred to therein or whether it also prohibits the commencement of proceedings in which a person pleads guilty to such an allegation and is convicted and sentenced. *[After canvassing the various cited cases, Tadgell J continued]* ... In the present case the trial Judge (I use that expression advisedly) did convict and sentence the applicant following his plea of guilty to counts of rape and assault with intent to rape. The proceedings in the course of which he did so were in my opinion a trial in terms of s359A of the *Crimes Act*. The trial must have commenced, at the latest, when the learned Judge acted in a way which determined the guilt of the applicant, which determination produced his conviction on those counts. The convictions, having occurred in proceedings, the commencement of which was prohibited *ex concessis* to the extent that they constituted a trial in respect of those counts, were irregular. I would allow the application.

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