

**23/82****SUPREME COURT OF VICTORIA*****R v CLARKSON, FLANNERY and WILLIAMS*****O'Bryan J****1 October 1981**

**EVIDENCE - SUB-POENA TO PRODUCE DOCUMENTS - PRODUCTION OF PREVIOUS TAX RETURNS OF VICTIM SOUGHT - OBJECTION BY TAXATION COMMISSIONER - OFFICER NOT TO DISCLOSE SUCH INFORMATION UNLESS NECESSARY TO CARRY OUT PROVISIONS OF *INCOME TAX ASSESSMENT ACT* - COMMISSIONER NOT REQUIRED TO DISCLOSE DOCUMENTS.**

In the course of a murder trial, counsel for the three accused sought production of copies of all notices and demands for lodgment of income tax returns and payment of income tax sent to the alleged victim by the Commissioner of Taxation in the previous seven years. The documents were being sought to bolster defence claims that the alleged victim had absconded as he was heavily in debt. The Commissioner applied to have the subpoena set aside on the ground that its issue was oppressive, vexatious and an abuse of the process of the Court. Counsel for the Commissioner relied on sec 16 (the secrecy provision) of the *Income Tax Assessment Act*. Section 16(3), in particular, provides that a taxation officer "shall not be required to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duties as an officer, except when it is necessary to do so for the purposes of carrying out" the income tax law.

**O'BRYAN J** found that he had to give effect to the plain and unambiguous words in the income tax law notwithstanding that it could interfere with the exercise of criminal justice in a State Court. His Honour held that if a taxation officer was to produce in the Court copies of documents of the kind specified in the subpoena he would inevitably be divulging or communicating to the Court a matter or thing (ie the documents) coming under his notice in the performance of his duties as an officer. Such a disclosure would not be a disclosure necessary for the purpose of carrying out the provisions of the *Income Tax Act*. His Honour therefore ruled that the Commissioner was entitled to rely on section 16 to support his refusal to produce the documents – even though those documents were relevant to the issues raised in the trial and would otherwise have been admissible.

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