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SUPREME COURT OF VICTORIA

GALLAGHER v STREET

Harris J

12 May 1976

CRIMINAL LAW – THEFT – PROPERTY TAKEN FROM A CAR IN A CAR YARD OWNED BY MATADOR MOTORS – PROOF OF OWNERSHIP ON A THEFT CHARGE INCLUDES POSSESSION OR CONTROL – NO-CASE SUBMISSION MADE – UPHOLD BY JUSTICES – WHETHER JUSTICES IN ERROR: *CRIMES (THEFT) ACT 1973, S71(2)*.

An umbrella was taken from a person who said that he was the owner of a car yard trading under the name of Matador Motors; that the police had produced a brown umbrella to him at the yard and he identified it as the umbrella that was left in a car in his yard on a certain day. He said that the umbrella was valued at \$10.00 and he gave no person permission to take the umbrella. In cross-examination Mr Trahair said the umbrella was not his, but when cars are in his yard they are in his custody or control as are items in such cars, maintaining that if he had found the umbrella in a car in the yard, if he knew whose car the umbrella had come from he would return it to the owner. Counsel for the defendant submitted there was no case to answer on the ground that there had been no evidence of ownership of the umbrella by Matador Motors relying on *Anglim and Cooke v Thomas* [1974] VicRp 45; [1974] VR 363 as authority for the proposition that where a person is named in the information as the owner of the property alleged to have been stolen, then there must be proper evidence of ownership from that person. The prosecutor in answer to this submission said that since *Anglim and Cooke v Thomas* had been decided the *Crimes (Theft) Act 1973* came into operation on 1 October 1974 and s71(2) altered the position. That sub-section says:- "In this division property shall be regarded as belonging to any person having possession or control of it." The no-case submission was upheld by the Justices. Upon Order Nisi to review—

HELD: Order absolute. Decision quashed.

The evidence established a *prima facie* case that the umbrella which was the subject of this transaction was property which was at the relevant time in the possession or control of Colin Trahair the car yard owner. Consequently, it followed from that that any person who dishonestly appropriated that umbrella at that time dishonestly appropriated property which belonged to Colin Trahair within the meaning of the provisions of s71 and 72 of the *Crimes Act 1958*.

HARRIS J: ... "The evidence established, at all events a *prima facie* case that the umbrella which was the subject of this transaction was property which was at the relevant time in the possession or control of Colin Trahair. Consequently, it followed from that that any person who dishonestly appropriated that umbrella at that time dishonestly appropriated property which belonged to Colin Trahair within the meaning of the provisions of s71 and 72 of the *Crimes Act 1958*. The point that was decided in *Anglim and Cooke v Thomas* [1974] VicRp 45; (1974) VR 363 had been rendered out of date by the legislative provisions that I have referred to, insofar as it referred to the need to provide evidence of the true ownership of the goods stolen. The Justices ought to have applied the provisions of s71 sub-s2 and s72 sub-s1 of the *Crimes Act 1958*. Had they done so it would have followed and it then would have been seen that the Informant had not failed to prove that the umbrella was property belonging to Matador Motors insofar as the legislative extension of what constitutes 'property belonging to any person' is concerned. Consequently, the Justices ought to have held that there was a case to answer and they were in error in upholding the submission put on behalf of the accused man".