

Supreme Court Notes

by Anita Del Medico

• From Page 9

HELD, per curiam, allowing the appeal and ordering that R's plea of "already acquitted of the same or similar offence" was no defence to any of the counts contained in the October 1993 indictment; that the order discharging R in respect of the indictment be quashed and that the proceedings on the said indictment continue and R be tried thereon:

(1) R had been acquitted of the charges relating to the alleged unlawful killing (the second episode). It was the Crown's intention to prove the charges contained in the October 1993 indictment by relying on the first factual episode. Each of the three episodes comprising the entire factual scenario was quite distinct, in both a factual and temporal sense. There was no overlapping or intermingling of the facts which constituted each episode; there was a substantial interval of time between each. As the court has been advised that the evidence the Crown proposes to lead at the trial will not deal with events subsequent to the victim's departure from the caravan after the attempted shooting, there will be no Crown evidence touching the transaction of which R has been acquitted of criminal liability. Thus, there will be no question of R not getting the full benefit of his acquittal.

(2) The construction of s18 and the s17 definition of "similar offence" do not give rise to any ambiguity. The provisions appear to substantially reproduce the common law doctrine as laid down in the judgment of Lord Morris of *Borth-y-Gest in Connelly v DPP* [1964] AC 1254 @ 1305 - 6. The fundamental principle is that a person is not to be prosecuted twice for the same criminal conduct. If R were hereafter convicted of any of the offences charged in the present indictment, he will not have been prosecuted in breach of the stated principle. "Conduct impugned" refers to

the acts and accompanying states of mind which constitute the elements of an offence. In this case, in raising his defence, R had relied on conduct which related to an entirely distinct factual episode from that which was to be relied upon by the Crown to prosecute the charges contained in the October 1993 indictment. R's conduct in the caravan, to which the Crown seeks to attach criminal liability, is conduct which is separate in time and dissimilar in kind to that relied upon in the first instance on the charge of murder. The offence, if any, committed in the caravan, is neither the same, nor a similar, offence as that of which R was previously acquitted.

(3) The fact that the Crown had, in the previous trial, led evidence relating to the first episode in the caravan in order to prove the charge of murder (this evidence was clearly relevant to show that R had the requisite intent at the time of the fatal shooting), does not mean that R's conduct in the caravan was "... conduct impugned" within the definition of "similar offence", as

to establish the statutory defence of previous acquittal. This argument gives a construction to the definition of "similar offence" which is of almost limitless width. It amounts to a contention that any conduct of R's which provides evidence that he has committed an offence is conduct "therein impugned". "Conduct therein impugned" means the facts alleged to constitute the legal ingredients of the offence and does not include facts which merely provide evidence tending to prove the presence of the essential ingredients. In the course of the previous trial, R's conduct in the caravan was not impugned in the relevant sense. It was merely used by the Crown for the purpose of impugning R's conduct in relation to the later fatal shooting. It is commonplace for evidence in support of one count in an indictment to be used in support of a different count. But that circumstance does not produce the result that the two offences are "similar" for the purposes of the defence of *autrefois acquit*.

Crown appeal against ruling pursuant to s414 (1)(b) of the Criminal Code.

R. Wild QC, instructed by the ODPP, for the appellant.

C. R. McDonald, instructed by NTLAC, for respondent.

Simpler Corporate Bill released for comment

Federal Attorney-General Michael Lavarch has released the first Corporate Law Simplification Bill for public comment.

It is the first in a series being prepared by the Corporations Law Simplification Task Force, which comprises an experienced private commercial lawyer, a leading expert in plain English, a senior legislative drafter and a senior policy officer from the Attorney-General's Department. The task force works closely with a private sector consultative group comprising a wide range of users of the Corporations Law.

"The draft Bill makes significant improvements to this law covering share buy-backs, proprietary companies and company registers," Mr Lavarch said. "It is in plain English — clear layout, style and language make it easy to use and understand."

Five public seminars will be held to facilitate discussion of the draft Bill. The first of these will be held in Brisbane on September 7.

Comments on the draft Bill should be sent to the Corporations Law Simplification Task Force, Attorney-General's Department, Barton, ACT 2600 by October 28.

A copy of the draft Bill is available from The Law Society offices and all Commonwealth Government bookshops.