

It seems to be established therefore that a State Parliament may refer to the Commonwealth Parliament a matter, the reference being limited in time. Whether a State Parliament can revoke a reference it has made raises a different question. Of this the High Court said "The question which was discussed at length before us as to whether when the Parliament of a State has made a reference it may repeal the reference does not directly arise in this case. It forms only a subsidiary matter which if decided might throw light on the whole ambit or operation of the paragraph. We do not therefore discuss it or express any final opinion upon it. We think that the Tasmanian Act as framed is fairly within the paragraph and does refer a matter. But it must be remembered that the paragraph is concerned with the reference by the Parliament or Parliaments of a State or States. The will of a parliament is expressed in a statute or Act of Parliament and it is the general conception of English law that what parliament may enact it may repeal."⁵ Although the matter is not free from doubt, one might hazard the opinion that a State Parliament may, by a later Act, revoke a reference it has made in favour of the Commonwealth Parliament.

J. M. MORRIS*

CRIMINAL LAW

S. 23 of the Code and bodies corporate

S. 23 of the Queensland *Criminal Code* provides, *inter alia*, that subject to certain provisions of the *Code* "a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will." In *Hunt v. Maloney, Ex parte Hunt*¹ the Queensland Full Court unanimously held that a master is not criminally responsible for the act of his servant if the act done is contrary to the master's instructions. Two of the judges constituting the Court, Stanley and Mack JJ. relied upon s. 23 of the *Code* to reach their decision.² In this case the master was a natural person, not a body corporate.

In *Grain Sorghum Marketing Board v. Supastok Pty. Ltd., Ex parte Grain Sorghum Marketing Board*,³ the question arose whether the principle in *Hunt v. Maloney, Ex parte Hunt* applied when the master was a body corporate, not a natural person. All

5. *Ibid.*, p. 508.

1. [1959] Qd.R. 164.

2. All three members of the Court relied upon s. 7 of the *Code*.

3. [1964] Qd.R. 98. Special leave to appeal to the High Court was refused: 37 A.L.J.R. 178.

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three members of the Full Court held that it did. Gibbs J. expressed the matter as follows, "*The Criminal Code* provides that the provisions of Ch. V 'apply to all persons charged with any offence against the Statute Law of Queensland.' It would indeed be anomalous if the criminal responsibility of bodies corporate must be determined by the application of the rules of the common law that have been replaced, so far as natural persons are concerned, by Ch. V, and I am satisfied that this is not the intention. 'Persons' in s. 36 in my opinion includes bodies corporate. The definition of 'person' in s. 1 of *The Criminal Code* does not indicate an intention that the definition of 'person' in s. 36 of *The Acts Interpretation Act of 1954* should not apply to the provisions of Ch. V. (cf. *Smith v. Trocadero Dansant Ltd.* (1927 St.R.Qd. 39 at p. 45)). It follows that a corporation, like a natural person, is not criminally responsible for an act which occurs independently of the exercise of its will (s. 23), including, on the authority of *Hunt v. Maloney, Ex parte Hunt* (*supra*) an act done by a servant in violation of his instructions."⁴

Though there was agreement upon this matter of principle, there was, nevertheless, disagreement among the members of the Court about its application to the facts of the case. The body corporate in question, a private company, had been charged with buying (and receiving) grain sorghum from a person other than the Grain Sorghum Marketing Board. The company had its registered office at Brisbane and carried on business in Warwick. The evidence, upon which the appeal was determined, established that the purchases forming the foundation of the charges had been made by D, the company's manager at Warwick, contrary to the instructions of B, the company's general manager, to buy all grain sorghum grown in Queensland from the abovementioned Board, and that further requirements were to be the produce of New South Wales.

The dissenting judge, Jeffriess J., considered that though D has disobeyed his instructions, he had acted within the scope of his authority, and that his act was the act of the company. In so acting "he represented the mind and will of the company and was not a hand simply to do the work."⁵ However the majority, Stable and Gibbs JJ., held that D's Act had occurred independently of the exercise of the will of the company. Stable J. said, "The appellants Board argues, as I understand and summarise it, that a company, unlike a human employer, literally never sleeps and never has its back turned, so that it is liable for the acts of its

4. [1964] Qd.R. 98 at pp. 111-2. S. 36 of *The Acts Interpretation Act*, to which Gibbs J. refers, defines the word "Person" to include a body corporate.

5. [1964] Qd.R. 98 at p. 105.

servants, in this case Downie, all the time . . . In a sense this is tantamount to saying that a corporate body has as many wills as it has employees, or, rather, employees in the position of branch managers whose authority has been limited by orders from the corporate body's directing centre. In my view that concept is too wide."⁶ Gibbs J. observed, "It is clear that a master is liable in a civil suit for a wrongful act done by a servant in the course of his employment, although the act done by the servant was one that he had been expressly forbidden by his master to do. This rule applies to bodies corporate as well as to natural persons. However in *Hunt v. Maloney, Ex parte Hunt (supra)* this Court held that in Queensland a master is not criminally responsible for the act of his servant, done within the apparent scope of his authority, if the act done was contrary to the master's instructions."⁷

One matter which clearly emerges from the reasoning of the majority in the *Supastok Case* is that a distinction must be drawn between civil responsibility and criminal responsibility in master and servant cases. There are many cases where the master may be liable in a civil suit for the act of his servant. However such liability does not necessarily entail criminal responsibility. By virtue of s. 23 of the *Code* criminal responsibility depends upon the additional consideration whether or not the act of the servant occurred independently of the will of the master. This will be so whether the master is a natural person or a body corporate.

J. M. MORRIS

INDUSTRIAL LAW

Wages and Bonus

In s. 12 of the *Industrial Conciliation and Arbitration Acts* 1961-1964 appears a provision that, in fixing rates of wages in a calling, the Industrial Commission shall be entitled to consider the prosperity of the economy "but in so doing it shall not award bonus payments". The words included in quotation marks did not appear in pre-1961 industrial arbitration legislation. The words "bonus payment" were defined in the Act as "a payment by way of the division of the profits of an industry or undertaking, being a payment in excess of a just wage including all proper allowances such as are ordinarily and usually prescribed by an award or industrial agreement". This definition, described by Hanger J., the President of the Industrial Court, as a strange piece of legislation in so far as it included as an element of a bonus the

6. *Ibid.*, at pp. 109-110.

7. *Ibid.*, at p. 111.