

IN THE HIGH COURT OF AUSTRALIA

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VAN SOMEREN

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V.

THE QUEEN

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## REASONS FOR JUDGMENT

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Oral

Judgment delivered at Sydney

on Thursday 13th November 1969

VAN SOMEREN

v.

THE QUEEN

ORDER

Appeal allowed. Order of the Court of Criminal Appeal set aside and in lieu thereof order that the appeal to that Court be allowed and the convictions of the appellant quashed.

VAN SOMEREN

v.

THE QUEEN

JUDGMENT

(ORAL)

BARWICK C.J.

VAN SOMEREN

v.

THE QUEEN

In this matter, the Court granted special leave to appeal and on this appeal the counts of the indictment which are material to be considered are the second and third counts.

In respect of the second count which charged the accused with fraudulently applying property of the company to purposes other than the lawful purposes of the company, the Court of Criminal Appeal ordered a new trial, but the Crown has conceded before us that, having regard to the attitude which it took at the original trial, there is really no material upon which a new trial could be had of that count. I am of the opinion that that is a proper attitude on the part of the Crown and accordingly the conviction on that count will be quashed.

As to the third count, the accused was charged that being an officer of a company, Rural Developments Pty. Limited, he, with intent to defraud, did concur in the making of a false entry in a book of account of the company, namely, a journal, by causing falsely to be entered in such book, under a certain date, a certain entry.

As to this count, a number of matters have been discussed in the argument but it suffices, in my opinion, to say that having looked through the whole of the evidence and heard what the Crown has had to point to as evidence of

the fact that the accused did concur by causing the entry in question to be made in the book, I am of the opinion that there was no evidence at all before the jury that the accused concurred by causing the entry to be made in the journal. For that reason, in my opinion, the conviction on this count ought to be quashed. Being of that opinion, there is no need for me to enter upon any discussion of the other matters which have been agitated before us in the argument of the appeal.

In my opinion, therefore, the appeal should be allowed and the convictions of the appellant quashed. That involves the order of the Court of Criminal Appeal being set aside and the appeal to that Court being allowed.

VAN SOMEREN

v.

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JUDGMENT  
(ORAL)

KITTO J.

VAN SOMEREN

v.

THE QUEEN

I agree.

VAN SOMEREN

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JUDGMENT  
(ORAL)

MENZIES J.



VAN SOMEREN

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I agree.

VAN SOMEREN

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JUDGMENT  
(ORAL)

WINDEYER J.

VAN SOMEREN

v.

THE QUEEN

I agree.

VAN SOMEREN

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JUDGMENT  
(ORAL)

WALSH J.

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I agree.