THE LAW REFORM COMMISSION
OF WESTERN AUSTRALIA

Project No 20

Evidence of Criminal Convictions in Civil Proceedings

REPORT

APRIL 1972

REPORT
ON
EVIDENCE OF CRIMINAL CONVICTIONS IN CIVIL PROCEEDINGS

To the Hon. T.D. Evans, M.L.A.,
ATTORNEY GENERAL

TERMS OF REFERENCE

1. "To consider the law relating to evidence of criminal convictions in civil proceedings and to report on the need, if any, for changes in the law."

2. The Committee was primarily concerned with whether the rule, known as the rule in *Hollington v Hewthorn*, (reported in [1943] K.B. 587) should be abolished or modified. This case, *Hollington v Hewthorn*, confirmed the rule that evidence that a person had been convicted of an offence is not admissible in a subsequent civil action as evidence that the person convicted was guilty of the conduct constituting the offence.

WORKING PAPER

3. In September 1971 the Committee issued a working paper. A copy of the paper is attached.

4. The only comments received by the Committee came from the Council of the Law Society and the Acting Commissioner of Police.

5. The following is an extract from a letter dated 18 November 1971 from the Executive Officer of the Law Society:

> "The Law Reform Committee's working paper on this subject has now been considered by the Council of this Society, which recommends as follows:-

1. **The Rule in *Hollington v Hewthorn*** should be preserved on the grounds that Section 79C of the *Evidence Act* makes it unnecessary to go further, but the rule should be so modified as to provide that in defamation proceedings a conviction is conclusive evidence that the person convicted committed the offence, except perhaps in the case of a plea of guilty.

2. **If it is decided to abolish the Rule in *Hollington v Hewthorn***, then:

   (i) A conviction should serve as proof only if no acceptable evidence to the contrary is adduced;
   (ii) An acquittal should not be conclusive evidence in defamation proceedings that the accused person did not commit the offence;
   (iii) Convictions on a plea of guilty and summary convictions should not be admissible;
   (iv) Convictions should not be admissible as against third parties;
   (v) The indictment or information should not be admissible to identify the fact on which the conviction was based."

6. The Acting Commissioner of Police, stated that he had read the working paper with interest and did not wish to make any suggestions.

THE COMMITTEE'S VIEWS

7. The Committee's views have not changed since the working paper was issued. They are substantially the same as the views contained in the recommendations of the Council of the Law Society which are set out in paragraph 5 above.

8. The Committee recommends:

   (1) that the rule in *Hollington v Hewthorn* be not abolished by statute; and

   (2) that legislation be enacted providing that in defamation actions in which the commission of an offence is in issue or is relevant to an issue, a conviction

after trial shall be admissible and shall be conclusive evidence that the party committed the offence.

9. The substantial reasons for the Committee's first recommendation are:

(1) Under s.79C of the *Evidence Act*, evidence given and recorded in a criminal proceeding would if relevant be admissible in a subsequent civil action. This would alleviate any possible hardship from the rule in *Hollington v Hewthorn* in the vast majority of cases. (And see working paper paragraph I5.)

(2) The question of the weight to be given to the evidence of the conviction would, in the Committee's opinion, raise real difficulties and the abolition of the rule excluding such evidence would create as many problems as it would solve (see working paper paragraphs 23-26).

10. The purpose of the Committee's second recommendation is to prevent persons convicted after trial from obtaining a retrial of the issues in a libel action (see working paper paragraphs 30-31). It will be noted that the recommendation refers only to convictions after trial. A conviction after a plea of guilty will continue to be admissible as it is under the present law, that is, as an admission against interest which the person may refute at the trial. (And see working paper paragraph 35). It will also be noted that the recommendation does not apply to acquittals. The Committee agrees with the view of the then Lord Chancellor who said in the debate in the House of Lords on the 1968 Evidence Bill, that it is in the public interest that a person should not be prevented from exposing the actions of someone lucky enough to be acquitted. (*Parl. Deb.* (Lords) Vol. 288, 1968 p. 1347).

11. Having made its recommendations the Committee feels that it should emphasise the following points which were referred to in the working paper:

(1) The rule in *Hollington v Hewthorn* has been almost universally criticised by commentators (see working paper paragraph 19) .

(2) Following the recommendations of the English Law Reform Committee, the rule has been abrogated in England (see working paper paragraphs 16 to 17).

(3) The rule has been substantially modified in South Australia (see working paper paragraph 14).

12. If in the light of paragraph 11 above the Government decides to reject the Committee's recommendations and to enact legislation abolishing the rule, then the Committee recommends that the legislation should provide that:

(1) the evidence of a conviction should be admissible as prima facie evidence only and should serve as proof only if no acceptable evidence to the contrary is adduced;

(2) the evidence of a conviction should not be admissible against third parties; and

(3) convictions after summary trial should only be admissible if to do so appears to the court necessary in the interest of justice (see the South Australian statutory provisions - working paper paragraph 14) .

13. The Council of the Law Society also recommended that “the indictment or information should not be admissible to identify the fact on which the conviction is based" but in the Committee's view if the abolition of the rule is to be effective some such formula as has been adopted in England (see working paper paragraph 17) would be desirable.

CHAIRMAN

MEMBER

MEMBER

27 April, 1972.