SUPREME COURT OF QUEENSLAND

CITATION:	*Re Robert Paul Long* [2001] QCA 318
PARTIES:	**In the matter of an application for a change of venue by ROBERT PAUL LONG** (applicant)
FILE NO/S:	CA No 113 of 2001 SC No 1 of 2001
DIVISION:	Court of Appeal
PROCEEDING:	Miscellaneous Application (Criminal)
ORIGINATING COURT:	Supreme Court at Bundaberg
DELIVERED ON:	10 August 2001
DELIVERED AT:	Brisbane
HEARING DATE:	30 July 2001
JUDGES:	McMurdo P, Williams JA and Byrne J Separate reasons for judgment of each member of the Court, Williams JA and Byrne J concurring as to the order made, McMurdo P dissenting
ORDER:	**The application for extension of time within which to appeal and the appeal are dismissed**
CATCHWORDS:	CRIMINAL LAW – PARTICULAR OFFENCES – OFFENCES AGAINST THE PERSON – HOMICIDE – PROPERTY OFFENCES – ARSON - where applicant charged with arson and murder – where indictment presented in Supreme Court at Bundaberg – where application made under s 559 *Criminal Code* for change of venue – where application refused – where applicant seeks to appeal that interlocutory order - whether there is a right of appeal from an order of a judge refusing an application for change of venue on indictment before the Supreme Court PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – JURISDICTION – CRIMINAL MATTERS - whether s 559 *Criminal Code* is limited by s 592A *Criminal Code* – where application for change of venue is not expressly provided for by s 592(A)(2) – where a s 559 application is caught by the general wording of s 592A – where rulings made under s 592A are binding unless 'special reason' is shown – where s 592A(4) operates to prevent an appeal from an interlocutory order prior to conviction

PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – JURISDICTION – CRIMINAL MATTERS - whether s 69(1)(a) *Supreme Court of Queensland Act* 1991 (Qld) provides the Court of Appeal with jurisdiction to entertain an appeal from an order of a Judge of the trial division of the Supreme Court in an interlocutory way in a criminal matter – *R v Lowrie* applied – no right of appeal against an order made in an interlocutory way in relation to a trial on indictment – s 69 does not confer upon the Court of Appeal any appellant jurisdiction not formally possessed by the Full Court or the Court of Criminal Appeal.

PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – DECLARATIONS - CRIMINAL PROCEEDINGS - whether s 69 *Supreme Court of Queensland Act* 1991 (Qld) is subject to the *Criminal Code* – where *Criminal Code* limits appeals from criminal matters commenced by indictment – *R v Lowrie* applied - where s 69 does not enlarge rights of appeal conferred by Chapter 67 of the *Criminal Code* in proceedings on indictment

CRIMINAL LAW – JURISDICTION, PRACTICE AND PROCEDURE – JURISDICTION - where s 223 *Supreme Court Act* 1995 (Qld) permits the Court of Appeal to order a change of venue - where such power is only to be exercised in appropriate circumstances –where it is not appropriate to exercise such power in this case

PROCEDURE – MISCELLANEOUS PROCEDURAL MATTERS – DECLARATIONS - CRIMINAL PROCEEDINGS - whether a declaration should be made that the trial be held in Brisbane – whether Court of Appeal in its original jurisdiction may by declaration pronounce on the correctness of interlocutory orders in proceedings upon indictment – where it is not appropriate to exercise such power in this case

Criminal Code s 557(1), s 557(9), s 559, s 592A, s 592A(1), s 592A (2), s 592A(4), s 668, s 668D, s 669A, s 669A(1A), Ch 67
Districts Court Act 1967 (Qld) s 92(2), s 118(3)
Judicature Act 1876 (Qld) s 10
Supreme Court of Queensland Act 1991(Qld) s 8(1), s 9, s 29(1), s 29(3), s 68(2), s 69(1), s 69(1)(a), s 69(2)
Supreme Court Act 1995 (Qld) s 254, s 223
Supreme Court Act 1867 (Qld) s 60

Coats & Ors v Southern Cross Airlines Holdings (In Liq) & Anor [1998] QCA 125, Appeal No 4718 of 1998, 12 June

1998, affirmed
Director of Public Prosecutions v His Honour Judge G D Lewis [1997] 1 VR 391, considered
Ex parte Edwards [1989] 1 QdR 139, considered
Ex parte Maher [1986] 1 QdR 303, referred to
Ex parte Veltmeyer [1989] 1 QdR 462, referred to
Glennon v R (1992) 173 CLR 592, considered
Jago v The District Court (NSW) & Ors (1989) 168 CLR 23, considered
Nguyen v Nguyen (1990) 169 CLR 245, referred to
Nicholas v State of Queensland [1983] 1 QdR 580, considered
R v Butler SC No 511 of 1998, 9 April 1999, considered
R v Cattell [1968] 1 NSWR 156, referred to
R v Davis (1964) NZLR 417, considered
R v Drozd (1993) 67 ACrimR 112, referred to
R v Farr (1994) 74 ACrimR 405, considered
R v His Honour Judge Noud, ex parte; MacNamara [1991] 2 QdR 86, referred to
R v Johannesen and Chambers (1996) 87 ACrimR 126, referred to
R v Lowrie [1998] 2 QdR 579, followed
R v Pettigrew [1997] 1 QdR 601, referred to
R v Queensland Television Ltd; ex parte Attorney-General [1983] 2 QdR 648, affirmed
R v Robertson (1997) 91 ACrimR 388, referred to
R v Skase [1995] 2Qd R 297, considered
R v Yanner [1998] 2 QdR 208, followed
Rozenes v Baljajev [1995] 1 VR 533, considered
The King v Foster & Ors: ex parte Gillies [1937] StRQd 67, affirmed
Yates v Wilson (1989) 168 CLR 338, considered

COUNSEL: T D Martin SC with M C Chowdhury for the applicant
M J Byrne QC for the Crown

SOLICITORS: Legal Aid Queensland for the applicant
Director of Public Prosecutions (Queensland) for the Crown

[1] **McMURDO P:** The applicant is charged with one count of arson and two counts of murder allegedly committed in Childers on 23 June 2000. The alleged offences relate to the notorious incident in which a Childers hostel was destroyed by fire and 15 young people, many of whom were overseas travellers, were killed. Although the committal took place in Childers and the nearest Supreme Court was the Circuit Court at Bundaberg, the magistrate committed the applicant for trial to the Supreme Court at Brisbane on the request of the applicant's counsel and with the concurrence of the prosecution.

[2] The Director of Public Prosecutions (Queensland) expressed an intention to present an indictment in the Supreme Court at Brisbane on 16 March 2001. On 27

February 2001, the Chief Justice wrote to the Director of Public Prosecutions in these terms:

> "I do not know the basis on which the magistrate would have considered it appropriate to commit the defendant for trial in Brisbane. Childers, the scene of the alleged crime, is in the Isis Shire, with the nearest Supreme Court sitting at Bundaberg. The matter should ordinarily have been committed for trial to the Supreme Court at Bundaberg (cf. *Yanner* [1998] 2 QdR 208). That being so, an agreement between the Crown and defence that a trial should proceed elsewhere - if there was such an agreement and it was a consideration before the magistrate - should not without more have warranted a committal to Brisbane. The appropriate course would in that case have been to commit to Bundaberg with any party seeking to change that venue in the position of appropriately justifying it by application to the court.
>
> A situation in some respects similar arose before Justice Mackenzie in the matter of *Butler*. I enclose a transcript of his reasons given on 9 April 1999 which I respectfully commend to you."

[3] The Director responded as follows on 1 March 2001:

> "Naturally, in light of the matters raised in your letter, I will make arrangements for the indictment in that matter to be presented in the Circuit Court, Bundaberg in the sittings listed to commence on 14 May 2001.
>
> As you have correctly perceived, there are factors which would favour the trial proceeding in Brisbane, however, such matters can, in proper course, be presented by the Crown and defence in a change of venue application."

[4] On 9 April 2001, an indictment was presented in the Supreme Court at Bundaberg and an application was made for a change of place of trial under s 559 *Criminal Code*. On 10 April 2001, the learned Central Judge, who travelled to Bundaberg to hear the application, refused it and the indictment was endorsed with an order to that effect. The applicant seeks to appeal from that order.

[5] The first question is whether there is a right of appeal from an order of a judge refusing an application for a change of venue. There is no right of appeal under the *Criminal Code*, Ch 67 of which generally applies only to those convicted.[1] Both the applicant and the respondent contend there is a right of appeal under s 69(1)(a) *Supreme Court of Queensland Act* 1991 ("1991 Act"). The 1991 Act relevantly provides:

> "**Jurisdiction generally**
>
> **8(1)** The [Supreme] Court has all jurisdiction that is necessary for the administration of justice in Queensland.
>
> …
>
> **Jurisdiction and powers**

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[1] Section 668B provides for a judge to reserve any question of law which arises on the trial for the consideration of the Court of Appeal.

> **29(1)** Subject to this Act the Court of Appeal has jurisdiction to hear and determine all matters that, immediately before the commencement of this section, the Full Court had jurisdiction to hear and determine.
> **(2)** The Court of Appeal has such additional jurisdiction as is conferred on it by or under this Act, another Act or a Commonwealth Act.
> …
> **Appeal in proceedings in the court**
> **69(1)** Subject to this and any other Act, an appeal lies to the Court of Appeal from -
> (a) any judgment or order of the court in the Trial Division;
> …
> **(2)** Subject to any other Act, a rule of court may provide that leave to appeal is required in proceedings specified in the rule."

[6] Prior to the 1991 Act, in *The King v Foster & Ors; ex parte Gillies*,[2] Webb and Henchman JJ (Blair CJ dissenting) concluded that s 10 *Judicature Act* 1876 (Qld)[3] provided for an appeal against a finding of contempt of court by a judge of the Supreme Court. That decision was followed in an appeal from a Supreme Court judge as to contempt in *R v Queensland Television Ltd; ex parte Attorney-General*[4] by Kelly SPJ and McPherson J (Campbell CJ dissenting) and in an appeal from a Supreme Court judge as to bail in *Ex parte Maher*[5] where Kelly SPJ noted:[6]

> "It was submitted on behalf of the respondent that an appeal did not lie against an order granting bail and that the general language of s 10 of the *Judicature Act* 1876 was not wide enough to give a right of appeal against such an order. In my opinion there is no reason to read down the clear language of s 10. The reasoning of the majority in *R v Foster; ex parte Gillies* [1937] StRQd supports the view that the effect of the repeal of s 19 of that Act by the *Supreme Court Act Amendment Act* of 1921 was to enlarge the scope of the operation of s 10 so as to include an order made in a criminal cause or matter and I can see no justification for excluding from its operation an appeal by the Crown or its representative. There is no authority binding on this court which would oblige it to hold that an appeal does not lie in these circumstances. Consequently I am of the opinion that the appeal lies."

Thomas J, as he then was, took a similar approach, noting:[7]

> "An application of the present kind was likened to the familiar example of an acquittal in a criminal trial, from which there is no appeal. He submitted that s 10 should be read so as not to interfere with the principles of the common law. However there is no ambiguity in s 10 and there is no reason to give it an artificial or restricted meaning. The above cases are consistent with the natural

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2 [1937] StRQd 67.
3 "An appeal shall lie to the Full Court from every order made by a judge in court or chambers except orders as to costs only."
4 [1983] 2 QdR 648, 657.
5 [1986] 1 QdR 303.
6 Ibid, 304.
7 Ibid, 307.

> reading of s 10 and it may now be taken as clearly established that an appeal will lie under s 10 of the *Judicature Act* 1876 from a decision of a judge in chambers who deals with bail applications."

Moynihan J (as he then was) agreed with both Kelly SPJ and Thomas J.
A similar approach was taken in an appeal from a Supreme Court judge's order as to bail in *Ex parte Veltmeyer*.[8]

[7] Since the passing of the 1991 Act, this Court has heard a number of appeals from decisions of Trial Division judges refusing applications to stay indictments to which Ch 67 *Criminal Code* had no application: see, for example, *R v Drozd*,[9] *Director of Public Prosecutions v Wentworth*,[10] and *R v Johannsen and Chambers*.[11] In none of those decisions was the Court's jurisdiction to hear the appeal questioned. Such appeals are now prevented by s 592A(4) *Criminal Code*.

[8] In *R v Skase*,[12] Skase sought leave to appeal under s 92(2) *District Courts Act* 1967 (Qld) from an order of a District Court judge issuing a warrant for his arrest. The respondent submitted the Court of Appeal had no criminal appellate jurisdiction in relation to indictable offences other than that given by the *Criminal Code*. The applicant argued that through a combination of ss 9 and 29 1991 Act, this Court had jurisdiction to hear the appeal. Pincus JA, in an ex tempore judgment, Fitzgerald P and Davies JA agreeing, noted that:

> "… it appears to me improbable that the intention, in enacting s 9 *Supreme Court of Queensland Act* 1991 was that, in addition to any specific provision granting this Court appellate jurisdiction, this Court should have an appellate function in respect of all orders not otherwise specifically dealt with.
>
> More particularly, I am of the opinion that the provisions of the *Supreme Court of Queensland Act* 1991 on which Mr Herbert relied do not give this Court jurisdiction to hear an appeal from an order made by the District Court under s 562 of the *Criminal Code*."[13]

Pincus JA declined to determine whether s 92(2) *District Courts Act* 1967[14] provided for leave to appeal in such a case, determining that in any case the granting of leave was not justified. As *Skase* concerned a decision of the District Court no consideration was given to s 69(1) of 1991 Act.

[9] In *R v Lowrie*,[15] Lowrie sought to appeal from a refusal of a Supreme Court judge to stay proceedings on a charge of murder.[16] Pincus JA noted that the appellate jurisdiction of this Court in relation to charges of indictable offences is at least primarily, if not exclusively, that set out in Ch 67 of the *Code*.[17]

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8 [1989] 1 QdR 462, 464, 469.
9 (1993) 67 ACrimR 112.
10 CA No 4118 of 1996, 10 September 1996.
11 (1996) 87 ACrimR 126.
12 [1995] 2 QdR 297.
13 At 298-299.
14 See now s 118(3), *District Court Act* 1967.
15 [1998] 2 QdR 579.
16 An appeal is now prevented by s 592A(4) *Criminal Code.*
17 At 578.

[10] Pincus JA distinguished *Foster, Queensland Television* and *Maher* as they were not appeals against an interlocutory order made in relation to a trial on indictment and concluded that there is:

> "… no authority holding that there is a right of appeal against an order of the Supreme Court made in an interlocutory way in relation to a trial on indictment. It has always been assumed that no such appeal lies and, fortified by the views adopted in *Connell* [[1993] 10 WAR 424] I have concluded that s 254 of the *Supreme Court Act* 1995 (the present equivalent of s 10 of the *Judicature Act*) should be read as if it excluded from its scope interlocutory orders made in respect of trials on indictment. Since there is, in my opinion, no other provision which could give this Court jurisdiction to hear such appeals - i.e. no provision other than s 254 - there is no such jurisdiction in respect of the orders of White J refusing to stay the proceedings or quash the indictment."[18]

Pincus JA did not consider s 69(1) 1991 Act.

Davies JA also concluded that there was no right of appeal under the *Criminal Code* or under s 254 *Supreme Court Act* 1995 and noted as to s 69(1) 1991 Act:

> "It may be doubted whether, having regard to that historical context, its position in the Act and its section heading, s 69 was intended to confer on the Court of Appeal any appellate jurisdiction not formerly possessed by the Full Court or the Court of Criminal Appeal. Nor is there anything in the Explanatory Note to the Bill for that Act or in anything said by the Premier on its introduction into Parliament which indicates any such intention.
>
> But I think it is unnecessary here to explore that question further. The statutory context, to which I have already referred, with respect to proceedings on indictment, remained unchanged by the *Supreme Court of Queensland Act* 1991. I would therefore conclude that, whatever effect these provisions may have upon the jurisdiction of this Court in respects other than appeals against judgments or orders made in proceedings on indictment, they were not intended to enlarge the rights of appeal, conferred by Ch 67 of the *Criminal Code*, from judgments or orders made in such proceedings."[19]

Shepherdson J dissented, and after considering, inter alia, s 69(1) 1991 Act and *R v Pettigrew*,[20] concluded that a right of appeal existed to the Court of Appeal from a decision of a Supreme Court judge refusing a stay.

[11] Whilst Davies JA in *Lowrie* rejected the contention that s 69 1991 Act gave a right of appeal from orders made in proceedings on indictment, this Court has not as yet definitively determined the issue. It is desirable that there be an avenue of appeal from an order refusing a change of venue in the limited and important trials on indictment before the Supreme Court as the place of trial can help ensure that an accused person has and is seen to have as fair a trial as possible. Such a conclusion

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18 At 586.

19 At 584.

20 [1997] 1 QdR 601.

is consistent with the reasoning of this Court in *Coats & Ors v Southern Cross Airlines Holdings Ltd (In Liq) & Anor*[21] where this Court held that s 69(1)(a) 1991 Act gave a right of appeal from a Supreme Court judge's order giving directions under s 479(3) Corporations Law. It is also consistent with the reasoning in *Foster*, *Queensland Television* and *Maher*. In my view, the clear and unambiguous words of s.69(1) grant an appeal from a Supreme Court judge's order refusing an application under s 559 *Criminal Code*, providing such an appeal is not otherwise prohibited or limited. Chapter 67 *Criminal Code* has no application to such an order but a further consideration is whether any right of appeal is removed by s 592A *Criminal Code* which relevantly provides:

> "**Pre-trial directions and rulings**
>
> **592A**(1) If the Crown has presented an indictment before a court against a person, a party may apply for a direction or ruling, or a judge of the court may on his or her initiative direct the parties to attend before the court for directions or rulings, as to the conduct of the trial.
>
> (2) Without limiting subsection (1) a direction or ruling may be given in relation to -
>
> (a) the quashing or staying of the indictment; or
> (b) the joinder of accused or joinder of charges; or
> (c) the provision of a statement, report, proof of evidence or other information; or
> (d) noting of admissions and issues the parties agree are relevant to the trial or sentence; or
> (e) deciding questions of law including the admissibility of evidence and step that must be taken if any evidence is not to be admitted; or
> (f) ascertaining whether a defence of insanity or diminished responsibility or any other question of psychiatric nature is to be raised; or
> (g) the psychiatric or other medical examination of the accused; or
> (h) the exchange of medical, psychiatric and other expert reports; or
> (i) the reference of the accused to the Mental Health Tribunal; or
> (j) the date of trial and directing that a date for trial is not to be fixed until it is known whether the accused proposes to rely on a defence of insanity or diminished responsibility or any other question of a psychiatric nature; or
> (k) the return of subpoenas and notices to Crown witnesses; or
> (l) the *Evidence Act* 1977, part 2, division 6; or
> (m) encouraging the parties to narrow the issues and any other administrative arrangements to assist the speedy disposition of the trial.
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> …

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[21] [1998] QCA 125; Appeal No 4718 of 1998, 12 June 1998.

> (4) A direction or ruling must not be subject to interlocutory appeal but may be raised as a ground of appeal against conviction or sentence."

[12] Section 592A was incorporated by amendment into the *Criminal Code* and became operational on 1 July 1997.[22] Section 559 *Criminal Code* is in substantially the form in which it was originally enacted in the *Criminal Code Act* of 1899. An application for a change of place of trial under s 559 *Criminal Code* is not an application for a direction or ruling under s 592A and the right of appeal is therefore not removed by s 592A(4). In my view, there is a right of appeal in this case, although a trial judge's discretion would not lightly be overturned, especially in an interlocutory appeal in a criminal matter.

[13] It is unnecessary to consider whether this Court has declaratory powers to make the orders sought[23] or whether this is an appropriate case in which to invoke the Court's inherent power to fulfil its judicial functions in the administration of justice: *R v Pettigrew*[24] and *R v McGrath*.[25]

[14] Even if there is no right of appeal, that does not mean the trial must proceed in Bundaberg. Section 557 *Criminal Code* relevantly provides:

> "**Place of trial**
>
> **557**(1) A person charged with committing an offence may be tried in any jurisdiction within which any act or omission or event which is an element of the offence takes place.
>
> …
>
> (9) A person charged with committing an offence can be tried with the person's consent in any jurisdiction."[26]

[15] In *R v Butler*,[27] the case referred to by the Chief Justice in his letter to the Director,[28] the accused would ordinarily have been committed to the Circuit Court at Mackay but at the request of both the defence and the prosecutor the committal was to Brisbane where the indictment was presented. After giving the parties an opportunity to be heard, Mackenzie J under s 223 *Supreme Court Act* 1995 ("the

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22 Act No 3 of 1997, s 108.

23 See *R v Farr* [1994] 74 ACrimR 405 where the applicant and others were prisoners serving lengthy sentences in a high security prison and were charged with murdering another prison inmate. The trial judge gave directions for the conduct of the trial following violence exhibited by the applicants at the committal proceedings. The applicants sought a declaration that compliance with the directions would effectively deny them a fair trial. The application was dismissed on its merits, but McPherson JA noted that directions given by a trial judge in the exercise of the administrative function of matters of security within the court room itself are not susceptible to the ordinary processes of appeal; without finally holding there was no remedy, the question should be approached with a powerful predisposition in favour of the correctness of the directions given by the judge who is to preside at the trial: "For reasons of costs and otherwise there is an obvious desire to ensure that, before it starts, the trial is not doomed to be rerun."
Williams J (as he then was) noted as to the respondent's submission that this Court had no jurisdiction to make the declaration sought that: "There is not doubt that at least in certain circumstances this Court would have power to grant relief by way of declaration."

24 [1997] 1 QdR 601.

25 [2001] QCA 131; CA No 369 of 2001, 10 April 2001, [8].

26 Sub-section (9) was added by Amendment Act No 17 of 1999, s 48.

27 SC No 511 of 1998, 9 April 1999.

28 See [2] of these Reasons.

Act"), found that the interests of justice, particularly the public interest, required the trial to be transferred to Mackay. That section provides:

> "It shall be lawful for the said court at any stage of any proceedings civil or criminal depending therein or in any Circuit Court whether the venue be by law local or not to order that the venue be changed and to direct that the trial thereof be had in Brisbane or in some particular circuit district of the said State in such cases and for such reasons as the justice of the case may require and subject to such conditions as the court may in its discretion impose."

[16] The procedure followed in *Butler* was not adopted here. Although the applicant was committed for trial to the Brisbane Supreme Court and the prosecution, with the consent of the applicant, intended to present the indictment in Brisbane, following the Chief Justice's letter, the indictment was not presented in Brisbane but in the Circuit Court at Bundaberg.

[17] Even though the learned Central Judge declined to exercise his discretion in favour of a change of venue, there is no impediment to the Director now presenting an indictment in this matter in the Supreme Court at Brisbane under s 557(9) *Criminal Code* if the Director considers this appropriate and the defence consents. Sub-section (9) was added to s 557 by s 4 of the *Criminal Code and Justices Act Amendment Act* No 5 of 1956. The then Attorney-General, the Hon W Power in the Second Reading Speech,[29] noted:

> "It is quite a simple Bill. It makes provision for a change of venue of the trial of a prisoner, at the same time providing a safeguard to the prisoner because his consent must be obtained."

The intent of the legislature is that an accused person can be tried in any jurisdiction chosen by the prosecution with the consent of the accused. The district in which a prosecution is brought is a matter for the prosecution: *R v Yanner*,[30] *R v Dorrington*[31] and *R v Cattell*.[32] The prosecution from time to time presents indictments in districts other than those where the offence was committed: see, for example, *R v Robertson*.[33] The plain meaning and intention[34] of s 557(9) *Criminal Code* is that the prosecution can present an indictment in any district with the consent of the accused. The provisions of s 559 *Criminal Code* and s 223 1995 Act will then be apposite and full weight will be given to the principle that charges are ordinarily heard in the area in which they are alleged to have been committed.

[18] The "court" has power under s 223 1995 Act to order the venue be changed: cf *Butler*. "Court" in s 223 1995 Act can only refer to the Supreme Court of Queensland which comprises the office of the Chief Justice and two Divisions, the Court of Appeal and the Trial Division.[35] I am satisfied that this Court has the power to order a change of venue under s 223 1995 Act where justice requires it.[36]

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29 See *Acts Interpretation Act* 1956, s 14B(f).

30 See *R v Yanner* [1998] 2 QdR 208, 215.

31 [1969] 1 NSWR 381, 382.

32 [1968] 1 NSWR 156, 157, 159-160.

33 (1997) 91 ACrimR 388.

34 See *Acts Interpretation Act* 1954, s 14A.

35 *Supreme Court of Queensland Act* 1991, s 16.

36 Cf the New South Wales cases of *R v Cattell* [1968] 1 NSWR 156 and *R v Dorrington* [1969] 1 NSWR 381, where the application for change of venue was made directly to the appeal court.

[19] As has been noted, both defence and prosecution support a change of venue to Brisbane for convenience and to avoid unfairness or the perception of unfairness. Investigating officer Kentwell deposes that the prosecution presently intends to call 161 witnesses, 38 of whom will travel from overseas, 10 from interstate, 21 from various Queensland locations, 51 from Brisbane and 41 from the Bundaberg/Childers area; most international flights will arrive and leave from Brisbane in the early hours of the morning at times when there are unlikely to be connecting flights to Bundaberg; the additional cost of flying witnesses to Bundaberg and accommodating them there would add tens of thousands of dollars to the cost of the trial. She additionally deposes that the large number of local witnesses raises concerns as to the impartiality of jury members; the offence occurred in a small community and had far-reaching effects on the surrounding areas, so that it would prove difficult to find a jury of 12 totally impartial people.

[20] Whilst the publicity throughout Queensland, nationally and even internationally in respect of this matter has been extensive and understandably emotive, this was particularly so in the immediate vicinity of the tragedy. The Bundaberg News Mail,[37] reported that "a disgruntled backpacker had threatened to return and burn down the Childers Backpacker Hostel where at least 15 people died". Two days later, that paper[38] published a photograph of the applicant referring to him as the "wanted man". It later reported[39] that residents of Childers "were on edge yesterday after the man wanted for questioning over the fire which killed 15 backpackers was spotted near the town", again referring to the applicant by name.[40] The next day that newspaper reported[41] as its headline story "Manhunt ends in shooting - GOT HIM", again referring to the applicant by name and later in the edition publishing another named photograph of him.[42] After the applicant's apprehension, a local newspaper published the headline "Howard residents are able to sleep better" and an article containing the comment "I think we'll sleep a lot better tonight now he's caught". The applicant was described as "a troubled soul, a bit of a loner" and "Australia's most wanted man". One article quoted Dr Paul Wilson:

> "Arsonists usually enjoy their handiwork and often stay back to watch the fire they have started …
> You find that, too, arsonists are trying to maliciously get back at somebody."

Another article reported that the applicant's former partner said the applicant had previously tried to set fire to a caravan she was staying in with her three children; he had psychiatric problems and had once tried to strangle her young daughter. The News Mail[43] contained the headline story, "Survivors face Long in court" with an artist's impression of the applicant in the Bundaberg Magistrates Court. That newspaper published the applicant's picture again on its front page[44] together with pictures of his elderly parents leaving the court with the headline "Long's lawyer doubts justice".

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37 Saturday, June 24, 2000.
38 26 June 2000.
39 28 June 2000.
40 p 56.
41 29 June 2000,
42 At p 60.
43 Saturday, 19 August 2000.
44 Wednesday, 3 January 2001.

[21] Local television news in the Childers area reported the taking into custody of the applicant and televised intemperate comments from Childers residents; one stated the applicant should be strung up against a telephone pole, have a fire lit beneath him and left to burn slowly to death, whilst another said the police should have shot the applicant in the heart rather than the arm. These inflammatory remarks were not broadcast in Brisbane.

[22] The shock and grief of the local community was such that the Governor-General and later HRH Princess Anne visited Childers to comfort those affected and thank those who assisted. Even 12 months later media reports reflected the depth of feeling in the community on the first anniversary of the tragedy.

[23] An employee of Legal Aid Queensland, John Esmond, deposes that the distance between Bundaberg and Childers is about 54km, 40 minutes travelling time and:

> "In general conversation with local residents, there is a broadly held view that the accused is the person responsible for the fire. The incident shocked and surprised the local community and continues to be discussed within the community."

[24] The additional costs for the defence of conducting the trial at Bundaberg over a six week period would be almost $30,000. If the trial were to take place in Bundaberg the applicant would be housed in the watch house which is located three kilometres from the court house; the watch house does not have the facilities of a correctional centre.

[25] During oral submissions in this application the possible use of video-link evidence for overseas witnesses to save cost and inconvenience was raised; we were informed the Bundaberg court house does not have video-link facilities which are available in the Brisbane Supreme Court.

[26] As there is no resident judge in Bundaberg, additional expenses would be incurred by a judge and support staff on circuit.

[27] A trial should ordinarily proceed in the district in which the offence charged is alleged to have been committed: *R v Yanner*.[45] Relevant considerations are:

> "The cost, expense and inconvenience involved in a change of venue including disruption to court schedules and a waste of court resources.
> Delay which might be occasioned by change of venue.
> Ensuring that a fair trial is had and is seen to be had.
> The system of administration of justice in this State which established court districts and enables the Crown to select the district in which criminal proceedings will be commenced.
> That the result of acceding to the application will be to move the trial from the locality in which the offence was allegedly committed.
> The weight, if any, to be given to those and other factors will vary from case to case."[46]

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45 [1998] 2 QdR 208, 209, 210.

46 Ibid, at 215.

[28] In this case, expense and convenience all strongly favour the conduct of the trial in Brisbane. There is no suggestion that delay would be occasioned by a change of venue. Whilst I am confident jurors from the Bundaberg area would conscientiously carry out their duty according to their oaths, the depth of feeling and great local involvement in the tragedy the subject of the charges and its aftermath have the result that this Court and the Queensland public can have more confidence that a fair trial will both be had and be seen to be had in Brisbane rather than Bundaberg. The system of administration of justice in this State, which, subject to s 577 *Criminal Code* and s 223 1995 Act, allows the prosecution to select the place of trial, in its ordinary course may well have seen the prosecution of these offences in Brisbane. The only, but nevertheless very important, consideration which favours the hearing of the trial in Bundaberg is that it is the locality in which the offences were allegedly committed. I have no hesitation in concluding that a review of the relevant factors requires the applicant's trial be heard in Brisbane in the interests of justice. Changing the place of trial will assist in counteracting the prejudice which the applicant may suffer despite the most conscientious efforts of the trial judge and jurors: *Glennon v R*[47] and *Jago v The District Court (NSW) & Ors*.[48] Whilst it is true that if the applicant is convicted he may raise as a ground of appeal the place of trial and pre-trial publicity, that does not remove the obligation on this Court to do all possible to ensure that someone charged with such an offence has as fair a trial as is reasonably possible.[49] The local community is understandably outraged by the tragedy; whilst the Brisbane community is also outraged it is separated to a further degree so that the prospects and perception of a fair trial in Brisbane are necessarily greater than if the trial were held in Bundaberg. Under s 223 1995 Act, I am satisfied the interests of justice require that the trial be held in Brisbane. I am also satisfied the learned Central Judge erred in concluding to the contrary and in refusing the application for change of venue under s 559 *Criminal Code*.

[29] I would order that the trial of this matter be heard in Brisbane.

Summary

1. There is a right of appeal from an order refusing a change of venue under s 557 *Criminal Code* under s 69(1) *Supreme Court Act* 1991, although a court would not lightly interfere with an exercise of judicial discretion in an interlocutory matter in a trial on indictment

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47 (1992) 173 CLR 592, 614.

48 (1989) 168 CLR 23, 34.

49 After conviction, the issue for determination is different and concerns whether there has been a miscarriage of justice. In *Montgomery v HM Advocate* (2001) 2 WLR 779, 809 some reliance was placed upon the report of recent research conducted for the New Zealand Law Reform Commission (Young, Cameron and Tinsley, *Juries in Criminal Trials: Part 2*) but that Report expressly acknowledged the limitations of the study especially as to pre-trial publicity: see p 5, paras 1.12-1.16 and p 60 paras 7.49-7.50. In the recent New South Wales study entitled *Managing Prejudicial Publicity: An Empirical Study of Criminal Jury Trials in New South Wales* conducted by the Justice Research Centre of the Law and Justice Foundation of New South Wales published February 2001, it was found that publicity was determinative of the verdict in 3 out of 40 trials with the possibility that publicity was determinative of the verdict in a further 7 trials and likely to have influenced individual jurors (but not the verdict) in 11 additional cases and perhaps in a further 5 trials, so that in 26 out of 40 cases pre-trial publicity had an effect on jurors.

2. The Director of Public Prosecutions (Queensland) can present an indictment in any jurisdiction with the consent of the accused under s 557(9) *Criminal Code*. Section 559 *Criminal Code* and s 223 *Supreme Court Act* 1995 will then be apposite.

3. Under s 223 *Supreme Court Act* 1995, the interests of justice require that the trial of this matter be had in Brisbane.

4. On the facts of this case, the learned judge erred in refusing the application for a change of venue under s 559 *Criminal Code*.

5. I would allow the appeal, vacate the order refusing the application for a change of venue and order that the trial of this matter be held in Brisbane.

[30] **WILLIAMS JA:** An indictment has been presented in the Supreme Court of Queensland at Bundaberg against Robert Paul Long, charging him with two counts of murder and one count of arson. On 10 April 2001, before arraignment, Long through his counsel orally applied to Dutney J for an order pursuant to s 559 of the Criminal Code for an order that the place of trial be changed to Brisbane. After hearing argument Dutney J refused to make an order changing the venue. The indictment was endorsed with an order: "Application for change of venue refused".

[31] From that ruling Long has purported to appeal to this Court. On the basis that the Notice of Appeal may have been out of time, an application for an extension of time within which to appeal was also filed.

[32] Substantively s 559 has been in the Code since first enacted in 1899. Relevantly it provides that after an indictment has been presented the accused or the Crown may apply for an order that the trial be held at some other place than that named in the indictment. It was a statutory grant of power which prior thereto had been recognised as an inherent power of the court (see *R v Holden* [1833] 5 B & Ad 347 at 354; 110 E R 819 at 821, and per McPherson J in *R v His Honour Judge Noud, ex parte: MacNamara* [1991] 2 Qd R 86 at 93). As McPherson J pointed out in *R v His Honour Judge Noud* at 91 and 93 such an application was an example of a limited number of applications which could be made at that time to the court after presentation of the indictment and before arraignment, the stage at which the trial commenced (s 594(3) of the Code). However, as pointed out in *R v His Honour Judge Noud*, the matters that could be dealt with prior to arraignment were very limited and, in most instances, the rulings were not binding on the trial judge. It was for that reason that s 592A was introduced by way of amendment in 1997. The first paragraph thereof provides:

> "If the Crown has presented an indictment before a court against a person, a party may apply for a direction or ruling, or a judge of the court may on his or her initiative direct the parties to attend before the court for directions or rulings, as to the conduct of the trial".

Paragraph 2 contains an extensive list of matters on which a direction or ruling may be given; that list is prefaced by the words: "Without limiting subsection (1) a direction or ruling may be given in relation to . . . ". One of the few, if not the only one, of interlocutory applications specifically provided for by the Code not expressly provided for in s 592A(2) is an application for change of venue pursuant

to s 559. However I can see no good reason for concluding other than that such an application is caught by the general wording of s 592A.

[33] Importantly for present purposes rulings made under the section are binding unless "special reason" is shown and s 592A(4) provides that a "direction or ruling must not be subject to interlocutory appeal that may be raised as a ground of appeal against conviction or sentence". The latter was a statutory enactment of a well recognised principle that there could not be an appeal from an interlocutory order made in the course of a criminal trial. There was no right of appeal, either on the civil side or the criminal side, at common law; an appeal is a creature of statute. The Criminal Code provided in Ch 67 for appeals in certain circumstances. Critically s 668D, inserted into the Code by amendment in 1913, provided that a "person convicted on indictment may appeal" to the Court of Criminal Appeal "against his conviction". There was no significant amendment of that prior to 1991. If one looks at the position in, say 1990, there was no s 592A and relevantly only a person convicted on indictment had a right of appeal pursuant to s 668D. In the light of those provisions the Court of Criminal Appeal between 1899 and 1990 would not have had jurisdiction to entertain an appeal against an order made on an application for a change in the place of trial. Indeed it is not without significance that there is no recorded case between 1899 and 1990 of such a matter coming before the Court of Criminal Appeal, except as a ground of appeal taken after conviction.

[34] The *Supreme Court of Queensland Act* 1991 abolished the Court of Criminal Appeal and invested the newly created Court of Appeal with jurisdiction to hear appeals against convictions on indictment; see the amendments to ss 668 and 668D of the Code. But importantly the right of appeal pursuant to s 668D was still limited relevantly to a "person convicted on indictment".

[35] Between 1991 and 1997 (when s 592A was inserted) there was no provision of the Code which would have entitled an accused person to appeal to the Court of Appeal against an order made pursuant to s 559 prior to conviction (see per Davies JA at 580 and Pincus JA at 586-7 in *R v Lowrie* [1998] 2 Qd R 579). In the light of that, as already noted, the inclusion of sub.s (4) in s 592A was no more than an express statutory recognition of a position which already existed.

[36] Senior counsel for Long, however, has submitted that this Court does in fact have jurisdiction to entertain the appeal because of s 69(1) of the *Supreme Court of Queensland Act* 1991. That provision provides:

> "(1) Subject to this and any other Act, an appeal lies to the Court of Appeal from –
>
> (a) any judgment or order of the court in the Trial Division; and
>
> (b) without limiting paragraph (a) –
>
> (i) a judgment or order of the court in the Trial Division made under this Act; and
>
> (ii) any opinion, decision, direction or determination of the court in the Trial Division on a stated case; and
>
> (iii) any determination of the court in the Trial Division or a District Court in a proceeding remitted under s 68".

[37] The first question for determination by this Court is whether or not it has jurisdiction to entertain an appeal from an order of a judge of the Trial Division of the Supreme Court made in an interlocutory way in a criminal matter. That question was addressed by the Court in *Lowrie*. There a judge had made a decision "not to stay or quash the indictment for murder". That decision was made prior to the amendment inserting s 592A into the Code, and in consequence its provisions were not determinative of the matter then before the Court. Davies and Pincus JJA (Shepherdson J dissenting) held that there was no right of appeal against an order made in an interlocutory way in relation to a trial on indictment. Pincus JA considered at length the effect of s 254 of the *Supreme Court Act* 1995, which provided: "An appeal shall lie to the Court of Appeal from every order made by a judge in court or chambers except orders made in the exercise of such discretion as aforesaid". That was a re-enactment of s 10 of the *Judicature Act* 1876. With respect I agree with his Honour's reasoning for concluding that s 254 does not operate to provide for an appeal in the present circumstances. Ultimately Pincus JA concluded, at 589, that there was “no authority holding that there is a right of appeal against an order of the Supreme Court made in an interlocutory way in relation to a trial on indictment”.

[38] Davies JA also addressed s 10 and reasoned much along the same lines as Pincus JA in concluding that it did not provide a right of appeal in such circumstances. Davies JA also expressly considered s 69 of the 1991 Act. In that regard he said (at 584):

> "It may be doubted whether, having regard to the historical context, its position in the Act and its section heading, s 69 was intended to confer on the Court of Appeal any appellate jurisdiction not formerly possessed by the Full Court or the Court of Criminal Appeal. Nor is there anything in the explanatory note to the Bill for that Act or in anything said by the Premier on its introduction into Parliament which indicates any such intention.
>
> But I think it is unnecessary here to explore that question further. The statutory context, to which I have already referred, with respect to proceedings on indictment remained unchanged by the *Supreme Court of Queensland Act* 1991. I would therefore conclude that, whatever effect these provisions may have upon the jurisdiction of this Court in respects other than appeals against judgments or orders made in proceedings on indictment, they were not intended to enlarge the rights of appeal, conferred by Chapter 67 of the Criminal Code, from judgments or orders made in such proceedings".

I adopt that reasoning. Further, in my view the introductory words to s 69 make it subject to the provisions of any other Act, and that includes the Criminal Code. That Code is, as its title indicates, a Code with respect to the criminal law. As by its terms appeals from criminal matters commenced by indictment are strictly limited, there is no room for a general provision such as s 69 to enlarge the right of appeal.

[39] When s 592A was inserted recognising that a ruling thereunder could not be subject to an interlocutory appeal, s 669A was also amended by inserting (1A) providing that the Attorney-General may appeal against an order staying proceedings or further proceedings on an indictment. It would be unusual to say the least to

conclude that Parliament intended by s 69(1) of the 1991 Act to confer a right of appeal from an order under s 559 of the Code where no appeal existed prior thereto and when, by virtue of the 1997 amendments to the Code, no appeal would lie with respect to any other interlocutory order, except an appeal by the Attorney-General pursuant to s 669A(1A).

[40] After conviction the refusal to order a change of venue pursuant to s 559 could be taken as a ground of appeal against conviction. That was the situation which arose in *R v Yanner* [1998] 2 Qd R 208. That is the case which reaffirms the basic principle that a criminal trial should ordinarily proceed in the district in which the offence charged was alleged to have been committed. It was in the light of that long line of authority that the order committing Long for trial in Brisbane was inappropriate, and led to the intervention of the Chief Justice resulting in the indictment being presented in the court at Bundaberg.

[41] Undoubtedly one of the reasons why there is no appeal from an interlocutory order is that such an order is not conclusive; that would be the case with respect to an order relating to change of venue. Though there is no Queensland authority on point it has been held in New Zealand that successive applications for a change of venue may be made: *R v Davis* [1964] NZLR 417. If the application was made under s 559 alone (not under s 592A) the ruling would not be binding on the trial judge (see *R v His Honour Judge Noud*) and a further application could be made. Ordinarily, of course, there would have to be some fresh basis for the application before it would be successful.

[42] Reference has also been made to s 223 of the *Supreme Court Act* 1995 which re-states s 60 of the *Supreme Court Act* of 1867; it is in these terms:

> "It shall be lawful for the said court at any stage of any proceedings civil or criminal depending therein or in any Circuit Court whether the venue be by law local or not to order that the venue be changed and to direct that the trial thereof be had in Brisbane or in some particular circuit district of the said State in such cases and for such reasons as the justice of the case may require and subject to such conditions as the court may in its discretion impose".

As is made clear by sub ss. (2), (3) and (4) of s 2 of the 1995 Act, s 223 did not operate as a re-enactment of s 60 of the 1867 Act, thereby giving it some later statutory force than s 559 of the Code. Section 223 is wider than s 559 to the extent that it permits the court of its own motion to order a change of venue notwithstanding that, for example, the prosecution and defence have agreed in pursuance of s 557(9) of the Code that the indictment should be presented at a particular venue. That is what was done by Mackenzie J in *Butler* (SC 511 of 1998, 9 April 1999); the parties wanted the trial to proceed in Brisbane, but his Honour exercised his power under s 223 to order the transfer to Mackay. In this case Long applied pursuant to s 559 of the Code for the change of venue and in consequence the matter must be regarded as governed by that provision of the Code. In theory the Court of Appeal would have the power conferred on the "court" by s 223, but that power should only be exercised in appropriate circumstances. Where an application has been made to a single judge pursuant to s 559 and it has been refused and when in those circumstances there is no appeal from that decision, it would not be appropriate in my view for this Court to order of its own motion that the venue be changed. The basic principle is that an order of a Supreme Court

judge must stand unless it is overturned on appeal. Section 223 therefore does not avail the appellant.

[43] In the course of oral argument reference was made to the decision of the Court of Appeal in *Farr v R* (1994) 74 A Crim R 405. In that case, prior to the trial commencing, the trial judge, exercising his administrative power of regulating and controlling the conduct of his own court, gave directions as to security arrangements which were to be in place during the trial. An accused person then applied to the Court of Appeal for a declaration that the orders were beyond jurisdiction, unnecessary for the proper conduct of the trial, and inconsistent with the applicant's right to a fair trial. An order was also sought that the trial be stayed until such orders were vacated. That immediately distinguishes that case from the present; there was there no attempt made to appeal from the orders, undoubtedly because they were made in the exercise of an administrative, and not judicial, power. In that case the Court of Appeal refused the application. It was contended by the Attorney-General that the Court had no jurisdiction to grant the declaratory relief sought. Davies JA (at 406) did not find it necessary to address that submission. McPherson JA (at 408) without finally concluding that such a remedy would never be available questioned the expedient of "moving this Court at an interlocutory stage for declarations designed to persuade the judge to abandon or modify the security arrangements he has made".

[44] The submissions made in this case focused on two observations of mine in *Farr*. Firstly at 411 where I said: "There is no doubt that at least in certain circumstances this Court would have power to grant relief by way of declaration.", and secondly at 412 where I said: "All of that makes it clear that this Court could only exercise its jurisdiction to interfere at this stage in the most exceptional circumstances". Those remarks were made with respect to the power of this Court to grant, in exercise of a supervisory jurisdiction, declaratory relief in exceptional circumstances where an appeal would not lie pursuant to the provisions of the Code. If such statements be correct in principle they are of no avail to Long in this case. Of some relevance is my statement at 412 that after the trial, if a conviction was recorded, Farr could appeal against that conviction on the ground that he did not have a fair trial because of the security measures which were in place.

[45] Nothing in *Farr* supports the proposition that Long has an appeal in this case, or the proposition that he might be able to obtain some declaratory relief reversing the ruling of Dutney J.

[46] As I have come to the conclusion that this Court has no jurisdiction to deal with the appeal there is no point in embarking upon any consideration of the merits of the decision.

[47] The application for extension of time within which to appeal and the appeal are therefore incompetent and should be dismissed.

BYRNE J: No Right of Appeal

[48] The indictment having been presented, according to *R v Lowrie*,[50] the appeal is incompetent. And we ought not to depart from *Lowrie* unless "compelled to the conclusion" that the decision is "wrong".[51]

[49] In *Lowrie*, Davies JA concluded that s 69(1) of the *Supreme Court of Queensland Act* 1991 did not enlarge the rights of appeal conferred by Chapter 67 of the *Criminal Code* in proceedings on indictment.[52] Pincus JA, having decided that s 254 of the *Supreme Court Act* 1995 conferred no right of appeal, said that there was "no other provision which could give this Court jurisdiction to hear …appeals" against interlocutory determinations in proceedings commenced by indictment.[53] As s 69(1) had received considerable attention in the reasons of the other judges, it is scarcely to be supposed that Pincus JA overlooked it.

[50] To the persuasive considerations Davies and Pincus JJA mention, and the additional factor Williams JA discusses,[54] I would merely add this: were s 69(1) to accord a right of appeal in respect of interlocutory orders in proceedings upon indictment, the entitlement would exist only in respect of decisions of Supreme Court Judges, which would be a surprising thing for the Parliament to have done.

[51] *Lowrie* correctly decides that there is no right of appeal here.

Declaration?

[52] A declaration, however, is sought[55] to the effect that the trial should be Brisbane. Such a determination is said to be useful on the basis that it would sustain a future decision by the Director of Public Prosecutions to present a fresh indictment in Brisbane - a course to which the appellant would assent pursuant to s 557(9) of the *Code*.

[53] Perhaps despite Chapter 67 of the *Code*, this Court, in an original jurisdiction, may by declaration effectively pronounce on the correctness of interlocutory orders in proceedings upon indictment.[56] But if that be so, the jurisdiction would not be exercised in other than most exceptional circumstances.[57] For if interlocutory rulings could routinely be challenged by claims for declaratory relief, the expeditious conduct of criminal cases would be in serious jeopardy. And "the undersirability of fragmenting the criminal process is so powerful a consideration that it requires no elaboration".[58]

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50 [1998] 2 Qd R 579.

51 *Nguyen v Nguyen* (1990) 169 CLR 245, 269.

52 see, particularly, at 583-584.

53 at 589.

54 see para 9 of his reasons in this case.

55 no mention was made of this in the notice of appeal.

56 See ss 29(3), 68(2) *Supreme Court of Queensland Act* 1991; cf *Nichols v State of Queensland* [1983] 1 Qd R 580, 587-588, 590; and *Biggs v Director of Public Prosecutions* (1997) 17 WAR 534, cases where appellate jurisdiction was in issue. But see RP Meagher, WMC Gummow and JRF Lehane, *Equity Doctrines and Remedies*, 3rd ed (1992), [1919].

57 *Anderson v Attorney-General (NSW)* (1987) 10 NSWLR 198, 200; *Rozenes v Beljajev* [1995] 1 VR 533, 571.

58 *Yates v Wilson* (1989) 168 CLR 338, 339; cf *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321, 339.

[54] If a change of trial venue for this potentially lengthy, very expensive and, for many witnesses, inconvenient case probably would make the difference between a fair and an unfair trial, or if the case seemed doomed to be retried in Brisbane if the trial takes place in Bundaberg, there could well be cause to intervene by declaration,[59] if this Court may. But this case does not bear that complexion.

Section 223 *Supreme Court of Queensland Act* 1995

[55] As in the Court's appellate jurisdiction we cannot interfere, and as we ought not do by declaration, it would not be appropriate to act under s 60 of the *Supreme Court Act* 1867[60] to order a change of venue. In any event, I did not understand the appellant to invoke that provision; and so it is not necessary to dispose of such an application, by remitter or otherwise.

Outcome

[56] I agree in the orders Williams JA proposes.[61]

Order:

The application for extension of time within which to appeal and the appeal are dismissed.

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59 in the expectation that the (or another) Judge would order a change of venue on a renewed application: cf *Director of Public Prosecutions v His Honour Judge G D Lewis* [1997] 1 VR 391, 401, 403. Incidentally, I agree with Williams JA that such an application is an interlocutory application that may be made more than once, though in the absence of changed circumstances, ordinarily a second application could not expect to be favourably received: cf *Ex parte Edwards* [1989] 1 Qd R 139, 142.

60 "relocated", "merely moved", and expressly "not re-enacted" by the *Statute Law Revision Act (No. 2)* 1995 and now to be found as s 223 of the *Supreme Court of Queensland Act* 1995.

61 They ought to suffice to dispose of any application instituted orally before us, if that is what mention of the claim for declaratory relief in argument amounts to.