

DECEMBER 2023

The Authorised Reports of the Decisions of the
Supreme Court of Tasmania

THE
TASMANIAN
REPORTS

2020-2023

EDITOR

L W MAHER

REPORTERS

BENEDICT BARTL
ADAM BEESON

ROLAND BROWNE
CHRISTOPHER GROVES

VOL 35 — PART 1

PAGES 1-127

PUBLISHED FOR THE COUNCIL OF LAW REPORTING
OF TASMANIA BY THOMSON REUTERS (PROFESSIONAL) AUSTRALIA LTD.

The mode of citation of this part will be:
35 Tas R

TABLE OF CASES REPORTED

Part 1 — Pages 1-127

Andrews; Rowe v	43
Donohue v Tasmania	106
Hansen Yuncken Pty Ltd v Parliament Square Hobart Landowner Pty Ltd	56
JSP; Director of Public Prosecutions v	1
Parliament Square Hobart Landowner Pty Ltd; Hansen Yuncken Pty Ltd v	56
Public Prosecutions, Director of v JSP	1
Rowe v Andrews	43
Tasmania v Thompson	98
Tasmania; Donohue v	106
Thompson; Tasmania v	98

(Cases in **bold** reported in this part)



THOMSON REUTERS

© 2023 Thomson Reuters (Professional) Australia Limited

Lawbook Co.

ABN 64 058 914 668

Published in Sydney

ISSN 0085-7106

INDEX

Part 1 — Pages 1-127

CONTRACTS

Construction of particular contracts and implied conditions — Building, engineering and related contracts — Security and retention funds — Performance and defects bonds — Whether principal can have recourse to bond constituted by an unconditional bank guarantee without notice to builder — Recourse sought in good faith — Certification of liquidated damages by sub-independent certifier — Whether valid — Whether builder required to pay damages so certified on provisional basis — Intention of parties.

- Hansen Yuncken Pty Ltd v Parliament Square Hobart*
Landowner Pty Ltd 56

CRIMINAL LAW

Appeal and new trial — Appeal against sentence — Crown appeals — Specific grounds — Manifest inadequacy — Exercise of discretion — Generally — Young offender for imminent release — Purpose of appeal served by identification of specific error and correct sentence.

- Director of Public Prosecutions v JSP* 1

Appeal and new trial — Appeal against sentence — Grounds for interference — Judge acted on wrong principle — Rape — Erroneous failure to find aggravating factors — Sentencing Act 1997 (Tas), s 11A(2).

- Director of Public Prosecutions v JSP* 1

Appeal and new trial — Appeal against sentence — Manifest excess or inadequacy — Armed robbery — Prior convictions — Failure of personal deterrence and rehabilitation — General deterrence and condemnation — No evidence of remorse — Premeditated robbery in a public place — Lenience — Totality — Sentence of three years and nine months with non-parole period of half of that term not manifestly excessive.

- Donohue v Tasmania* 106

Appeal and new trial — Verdict unreasonable or insupportable having regard to evidence — Circumstantial case — Appeal dismissed — Appellant found guilty of armed robbery — Appellant giving and calling evidence — Analysis of entirety of the evidence — No significant possibility an innocent person had been convicted — Verdict open — Criminal Code (Tas), s 240(3), 402(1)(b).

- Donohue v Tasmania* 106

Particular offences — Offences relating to the administration of justice — Perverting the course of justice — Whether an objective tendency to pervert the course of justice an element of the crime of perverting justice — Evidence of a communication — Evidence of a document — Submission that evidence was subject to client legal privilege — Criminal Code (Tas), ss 3(1)(b), 105 — Evidence Act 2000 (Tas), s 119.

- Tasmania v Thompson* 98

INDEX

CRIMINAL LAW — *continued*

Particular offences — Sexual offences — Rape and sexual assault — Consent — Self-induced intoxication — Mens rea, honest and reasonable mistake and recklessness — Honest or reasonable mistake operating as exculpation — Evidentiary onus — Criminal Code (Tas), ss 2A, 14A.	
<i>Director of Public Prosecutions v JSP</i>	1
Search warrants — Voir dire — Use of surveillance device by police — Application to magistrate for issue of warrant — Suspicion that a person had been involved in production of false affidavit relied upon in Court of Criminal Appeal — Conversation between person and accused person recorded in prison interview room — Failure by applicant to specify alleged crime by precise reference to Criminal Code (Tas) — Failure to call magistrate on voir dire — Listening Devices Act 1991 (Tas), s 5(2) — Police Powers Surveillance Devices Act 2006 (Tas), ss 8, 9, 11.	
<i>Tasmania v Thompson</i>	98
Sentence — Relevant factors — Nature and circumstances of offence — Circumstances of offence — Rape — Absence of protection during sexual intercourse and presence of others as aggravating factors — Sentencing Act 1997 (Tas), s 11A.	
<i>Director of Public Prosecutions v JSP</i>	1

PROCEDURE

Costs — Security for costs — Proceedings by natural persons — Judicial discretion — Relevant considerations — Generally — Plaintiff a natural person — Absolute requirement that there needed to be something more than impecuniosity — Trustee seeking equitable relief — Alleged forgery by defendant of instrument of transfer of land — Alleged failure to account for another parcel of land — Plaintiff not suing only for the benefit of others — Plaintiff in receipt of disability pension — Other assets — Need for cautious assessment of merits of plaintiff's claim — Clear that plaintiff could not provide security for costs estimated at \$200,000 — Proper course for defendants was to apply for summary dismissal — Application for security for costs dismissed.	
<i>Rowe v Andrews</i>	43

STATUTORY INTERPRETATION

Plain English and logic.

<i>Tasmania v Thompson</i>	98
----------------------------------	----

WORDS AND PHRASES

“Any act or any omission done or made with intent”.

<i>Tasmania v Thompson</i>	98
----------------------------------	----

“Attempt”.

<i>Tasmania v Thompson</i>	98
----------------------------------	----

INDEX

WORDS AND PHRASES — *continued*

“Consent”.

Director of Public Prosecutions v JSP 1

“In the presence of”.

Director of Public Prosecutions v JSP 1

“Intent”.

Tasmania v Thompson 98