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SECOND REPORT

of the

LAW REFORM COMMITTEE of SOUTH AUSTRALIA

to

THE ATTORNEY-GENERAL

OATHS ACT, 1936

1969



The Law Reform Committee of South Australia was established by Proclamation which appeared in the South Australian Government Gazette of 19th September, 1968. The Members are:

THE HONOURABLE MR. ACTING JUSTICE ZELLING, Chairman.

W. A. N. Wells, Q.C., Solicitor-General.

S. J. JACOBS, Q.C.

K. P. LYNCH.

D. ST.L. KELLY.

The Secretary of the Committee is Mr. H. G. Edwards, c/o Adelaide Magistrates' Court Department, Adelaide, South Australia.

SECOND REPORT OF THE LAW REFORM COMMITTEE OF SOUTH AUSTRALIA

To:

The Honourable R. R. Millhouse, M.P., Attorney-General for South Australia.

Sir,

The Committee has the honour to submit the following report, which contains recommendations for two amendments to the Oaths Act, 1936.

A. Section 25 of the Oaths Act reads:—

"It shall be lawful for any justice or notary public, or any officer by law authorized to administer an oath or affirmation, to take the declaration of any person voluntarily making the same before him in the following form:—

I, do solemnly and sincerely declare that . And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act, 1936".

Section 27 reads:—

"Any person who wilfully and corruptly makes any declaration by virtue of this Part, knowing that declaration to be untrue in any material particular, shall be guilty of a misdemeanour, and shall be liable, upon conviction thereof, to be imprisoned for any term not exceeding four years, with hard labour".

It has been submitted to the Committee that the words "and corruptly" should be deleted from section 27. It is said that in conjunction with the word "wilfully" the words in question are either (a) redundant or (b) place such a difficult and heavy onus of proof upon the complainant as to whittle away the value of statutory declarations by reducing the chance of a conviction. The Committee agrees with this submission and recommends that the words "and corruptly" be deleted.

COMMENT

The word "wilful" must be given some meaning. It is obviously the word which emphasises the requirement of mens rea or wrongful intention as an element of the offence.

Generally speaking, the word "corruptly", standing alone has been held to require some element of bad faith or wrongful intention, in effect a dishonest intention (Bradford Election Case No. 2 1869 L.T. 723; R. v Stevenson 1907 V.L.R. 475; Reg. v. Lindley 1957 Cr. L.R. 321; Clark v. Johnson S.A. Supreme Court 7th August, 1967). If this is all the word means, then it has no real significance in the section. If, however, by reason of its conjunction with the word "wilfully", there must also be a motive or intention to produce an unlawful or wrong effect (Launceston Election Case (1874) 30 L.T. 823 per Mellor J.) i.e., if it is necessary to prove that the declarant knew the true purpose for which the declaration was made and that he intended an unlawful effect, then the person who makes the false declaration, although knowing it to be false, may well escape conviction.

- B. The Committee has also considered the effect of taking a declaration in an "irregular" form. The Act prescribes a form for the declarant (Sec. 25, supra) but says nothing as to the manner in which the declaration is to be taken, and it is well known that attesting justices and others often use a form of words of their own choosing. It accordingly recommends a new subsection (2) to section 27 as follows:—
 - (2) "In any proceedings for an offence against this Part, if the Court is satisfied by evidence as to the manner in which the declaration was made that the declarant knew he was required to declare his belief in the truth of the declaration it shall not be a defence that the declaration was not duly made."

We have the honour to be

HOWARD ZELLING. W. A. N. WELLS. S. J. JACOBS. K. P. LYNCH. D. ST.L. KELLY.

Law Reform Committee of South Australia.