

(4) *S. v. JACOBS*<sup>9</sup>*Sharing one counsel*

Two accused had been defended by one attorney and during the trial it had become apparent that there was a conflict in the defence of the two accused, but the attorney had not immediately clarified his own position nor immediately withdrawn from the defence of one or the other, and both accused had been convicted. The South African court held that as both accused had been prejudiced, the convictions and sentences should be set aside. However, in this instance the case was referred to the Attorney-General to consider a fresh prosecution.

(5) *R. v. LANE*<sup>10</sup>*Antagonistic defences*

If in *Jacobs* it had been known that there were to be conflicting defences, it might have been more convenient to have separate trials. The question of whether antagonistic defences is a good ground for ordering separate trials was considered in this case. The High Court of Ontario held that the fact that the defences of co-accused will be antagonistic is not an over-riding reason for granting separate trials. It is one of the factors which the judge must consider in exercising his discretion—a discretion which must not be exercised in a desultory or unmethodical manner, but must be guided and regulated by judicial principles and fixed rules.<sup>11</sup>

D.B.

KENNEDY v. MINISTER FOR WORKS<sup>1</sup>*Abstracting percolating underground water*

This is a disturbing case; it deals with the vexed problem of underground water in a vast State where water is precious.

K was the proprietor of Millstream Station in the Pilbara District of Western Australia. He had an estate in fee simple of forty acres which had been granted to his predecessor in title, under the terms of a Crown grant dated 11 July 1879. This area was completely surrounded by a pastoral lease comprising 640,110 acres. A spring called

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<sup>9</sup> 1970 (3) S.A. 493.

<sup>10</sup> [1970] 1 O.R. 681.

<sup>11</sup> *R. v. Weir*, (1899) 3 C.C.C. 351.

<sup>1</sup> [1970] W.A.R. 102.