



IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Brisbane

No B14 of 1991

B e t w e e n -

PATRICK LEO CUSACK

Applicant

and

AUSTRALIA & NEW ZEALAND BANKING
GROUP LIMITED

First Respondent

and

OFFICIAL TRUSTEE IN BANKRUPTCY

Second Respondent

Application for removal
pursuant to section 40 of
the Judiciary Act 1903

MASON CJ

(In Chambers)

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON THURSDAY, 27 JUNE 1991, AT 10.53 AM

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MR P.L. CUSACK: I appear in person.

MR P.E. HACK: If the Court pleases, I appear for the Official Trustee in Bankruptcy in this matter, Your Honour. (instructed by the Australian Government Solicitor.

MR G.L. DAVIES, QC, Solicitor-General for Queensland: I appear with my learned friend, MR J. BOND, for the Attorney-General for Queensland. (instructed by the Crown Solicitor for Queensland)

HIS HONOUR: Yes, Mr Cusack.

MR CUSACK: I am attempting to assimilate what you have said in relation to the previous case because there is a very tightly interlinked weaving of the matters of the currency question which Mr Skyring has dealt with on several occasions in the High Court before with appeals to the Full Court. On the basis of the most recent judgment you have given referring to those matters, I find myself forced to repeat and expand further upon some of the matters which have been spoken about so far. I find myself in something of a quandary here, having to face learned counsel in opposition and such an eminent person as yourself, speaking to reiterate matters which have been reiterated several times already, with the task ahead of me of demolishing all.

HIS HONOUR: Mr Cusack, could I ask you some questions with reference to the subject-matter of this litigation because I do not altogether understand it?

MR CUSACK: I am sorry, Your Honour, I can give you a very brief history of it.

HIS HONOUR: Yes, well, perhaps you can do it in response to questions that I put to you.

MR CUSACK: Very well.

HIS HONOUR: Now, as I understand it, you and your wife borrowed money from the Bank.

MR CUSACK: My wife and I signed a mortgage, Your Honour; credit was issued as a circulation. I contend that the term "borrowing" is not appropriate; it involves understanding of the contract law application to bank mortgages and, further, that fundamental principles of - - -

HIS HONOUR: Well, can we put it in a neutral way: credit was extended to you.

MR CUSACK: Credit was put into circulation - let us leave it at that for the moment, Your Honour - for business purposes, at my instance.

HIS HONOUR: Am I right in saying that the Bank alleged there was default under the mortgage?

MR CUSACK: Yes.

HIS HONOUR: And that as a result of the alleged default the Bank alleged that you owed it the sum of \$120,000 approximately?

MR CUSACK: Yes, Your Honour.

HIS HONOUR: Subsequently, the Bank then commenced an action against you seeking possession of the land. You sought to file, or did file, a defence and a counter-claim. What happened to that defence and counter-claim?

MR CUSACK: Pardon me if I am slightly incorrect, Your Honour. My memory of events is straight off the top of my head here. In effect, an application was made under a rule of the supreme court which carries the implication that there could be no grounds for defence in a case where a bank mortgage had been signed.

HIS HONOUR: What, an application was made to strike out the defence and the counter-claim, is that right?

MR CUSACK: The effect of the application by the Bank's counsel of this application - the mention of this rule in the supreme court rules was that the defence was struck from the record; leave being granted to enter an amended defence, as I recall, within 28 days.

HIS HONOUR: Did you enter an amended defence, or not?

MR CUSACK: I argued, Your Honour, consistently from the beginning that such striking was not appropriate.

HIS HONOUR: I am not so much concerned with the arguments you presented; I am rather concerned just to get in my own mind the history of the case.

MR CUSACK: I see. I cannot recall entering an amended defence, Your Honour. My objection all through here has been that that defence should not have been struck.

HIS HONOUR: If I can interrupt you, Mr Cusack, it may be that Mr Hack can provide me with some elucidation on this point. If you disagree with anything Mr Hack says you will have the right to do so.

MR CUSACK: Thank you, Your Honour.

HIS HONOUR: Yes, Mr Hack.

MR HACK: Your Honour, on the 19 October 1988 Master McLachlan ordered that the counter-claim be struck out and that Mr Cusack be given leave to deliver an amended pleading. No amended pleading was delivered. Thereafter, on 16 November 1988 Mr Cusack brought an application seeking a stay of execution of the judgments on the basis that he was - - -

HIS HONOUR: What happened to the defence?

MR HACK: The liberty to replead was not availed of.

HIS HONOUR: But you said that the counter-claim was struck out. I had understood that he had filed a defence and a counter-claim.

MR CUSACK: I think that is right, Your Honour. I think you are correct there.

HIS HONOUR: Yes, well, we will just see if we can follow it through.

MR HACK: Judgment was given on a summary judgment application.

HIS HONOUR: I see. The counter-claim was struck out, then there was an application for summary judgment notwithstanding the existence of the defence on the file?

MR HACK: No, there was an application for summary judgment. The orders sought were that the plaintiff recover possession and the further application was that the counter-claim be struck out.

HIS HONOUR: I see.

MR HACK: The plaintiff was successful in both of those. That is, it got judgment for possession and the counter-claim was struck out with Mr Cusack being given liberty to replead.

HIS HONOUR: Yes.

MR HACK: Thereafter, on 16 November, Mr Cusack brought an application seeking a stay of execution on the basis of proceedings he had commenced in this Court. Leave was refused to issue writs of certiorari by Mr Justice McHugh on 28 February 1989. There have been a great number of matters in the meantime, some of which are not

material there, as to the staying of sheriff's writs and such like.

HIS HONOUR: I take it from what you say that a direction had been given to the Registrar of the High Court by a Justice of the Court that no writ be issued by Mr Cusack without the leave of a judge first had and obtained?

MR HACK: Your Honour, I am not aware of that but - - -

HIS HONOUR: I do not understand why Justice McHugh would be concerned with leave to issue a writ of certiorari unless you are saying that he refused an application for an order nisi for certiorari.

MR CUSACK: No, Your Honour, that is correct. The Registrar did issue a note on the document that it not be issued unless leave was first had and obtained under order 40 - - -

HIS HONOUR: That means a Justice of the Court must have given a direction to the Registrar, Mr Cusack.

MR CUSACK: I am sorry, was it Wilson?

MR HACK: Yes, it was.

MR CUSACK: It was Justice Wilson, I think, who made that notation on that writ, Your Honour.

HIS HONOUR: Justice Wilson, I see.

MR CUSACK: That was about February of that year.

MR HACK: February 1989.

MR CUSACK: February 1989, yes.

HIS HONOUR: Well now, as I understand it from the history given to me by Mr Hack, the Bank obtained summary judgment and recovered possession of the land.

MR CUSACK: Firstly against my wife and subsequently against both - I am sorry, no. My wife did not enter a defence. I am afraid this has had rather traumatic effects on our family but, that aside, the summary judgment was effective against my wife very early in the piece, I recall, because she had entered no appearance or defence. Mr Hack was about to and did, I think, explain that I sought relief also from the supreme court itself.

HIS HONOUR: That was an application for stay of execution, was it?

MR CUSACK: That was an originating summons, yes, that is OS713.

HIS HONOUR: And that was refused?

MR CUSACK: That was refused and appealed to the Full Court. First determination there was by Justice Kelly, SPJ I think, is his full title. His judgment was appealed to the Full Court. Now, there were some interesting interactions in timing as to how things proceeded just at that instance, Your Honour. I am afraid I do not have a calendar memory. I may be a reasonable engineer, but I am not a good calendar.

MR HACK: Your Honour, my solicitors have prepared a chronology - - -

MR CUSACK: That may help.

MR HACK: - - - which sets out - - -

HIS HONOUR: Can you show it to Mr Cusack?

MR CUSACK: Thank you.

HIS HONOUR: Now, if you agree with that, Mr Cusack, it could be handed up to me and I could look at it.

MR CUSACK: I have seen a similar document to this. Has this been copied from that in full detail? Mr Shirley, I think, might be able to give me an assurance on that.

MR SHIRLEY: Yes, it has.

MR CUSACK: If Mr Shirley assures me that it is a document which I have seen in another form before and on which I made some corrections at the time and those corrections have been incorporated, I will accept Mr Shirley's assurance on that point, Your Honour.

HIS HONOUR: Can you give me a copy of it, Mr Hack?

MR HACK: I will hand up this copy, Your Honour, yes. I am sorry if I appear a bit slow about this particular action but this is the first chapter I have been involved in on this one, Your Honour.

HIS HONOUR: Mr Cusack, what was the proceeding you proposed to institute in respect of which you sought leave from Justice McHugh to issue writs of certiorari?

MR CUSACK: That was February 1989.

HIS HONOUR: Yes, it is on page 2, No 12.

MR CUSACK: My recollection, Your Honour, is that it was against the action by the Bank having been rejected by the full supreme court on appeal. There should be some matter on that in my documents.

HIS HONOUR: Now, do I take it that it was really directed to the Full Court's decision dismissing the appeal from the refusal to grant a stay of execution? Was that it?

MR CUSACK: In effect, yes, Your Honour, that certainly is - the effect I was seeking all the way through all of these actions was a stay; not to argue the point even, just to stay the action of dispossession in order that the points at issue could be argued in a civil way and properly resolved by formal legal process without dispossession having to be the lever to institute those proceedings.

HIS HONOUR: Now, did His Honour deliver a judgment on that application?

MR CUSACK: It is fair to say, Your Honour, that the judgments that have been delivered against both Mr Skyring and myself in all cases have hinged on this same matter, this currency question. By the time this question was raised before Mr McHugh an implication in relation to taxation had been published in the media at my instance which showed that there was a legitimate tax minimization process available through this anomaly in the currency of the nation.

That matter has been extremely favourably received by the general public and a futile effort at responding to my propositions by the Taxation Commissioner is all that has developed. My understanding from contacts I have is that there are a substantial number of people taking advantage of the anomalies in the *Currency Act* and will be saving themselves substantial sums in taxation assessments by that very simple device.

That issue was placed before Mr McHugh in documentary form and has since been spoken about publicly in many places and yet the Tax Commissioner whose minions, I presume, would have heard about it again by now, take no steps to deal with that issue possibly because they now realize that there are no steps they can take unless this issue is addressed by this Court, as I am seeking.

HIS HONOUR: Now, do I gather from what you say that the grounds for the issue of this writ of certiorari were the grounds that Mr Skyring had taken in the litigation that he has brought in this Court?

MR CUSACK: Well, not precisely, Your Honour. The issue which underlies the refusal of McHugh J was the same but my argument against the Bank initially was that if money had been borrowed, as they had alleged, then I had the right to make the payment in a manner of my choosing which was provided for within the law, namely, constitutional gold coin of which I have one here in case you have not yet seen one.

This has become the substance of my submissions in this application now and although I have approached the currency question from a different perspective than that of Mr Skyring the hinge of the matter again is whether such things as these funny pieces of coloured paper which the Crown seeks to make available to us - two of these yellow ones being equivalent to \$100 - are or are not equivalent to the yellow metal which I also have with me here.

HIS HONOUR: Yes.

MR CUSACK: In my tourings of the countryside in recent weeks and months, audiences of over 100 people have looked astonished as I have taken a \$100 note from the floor of the meeting, spoken to the public about the differences between the coin and the note and then handed the note back to the person from the floor who contributed it for discussion purposes, thanking him for his contribution of the \$20. In fact what he was handing up to me was a \$100 note but by the actions of banks the supposed value of the \$100 note comes into direct conflict with the coin when it is discovered that you can only obtain a coin by paying \$500 for a \$100 coin, both denominations being in Australian dollars.

This, Your Honour, I believe is where a breakthrough exists for the currency question; that there really is no malice involved in any of these actions between either the Bank and myself or Mr Skyring and the Taxation Commissioner. I had intended to open with the words of the Earl of Portsmouth, which are quite an appealing way of explaining that attitude. But the issue is quite a simple observational phenomenon. It depends on no special qualifications; it depends on a mere fact that a person has eyes, is capable of seeing, can recognize the difference between a round piece of yellow metal and rectangular pieces of colour paper and then is brought to a full stop when he is asked to believe that both are the same, under our law, and yet they are not the same, under a different law. Laws which say that two things are, at the same time, the same and not the same are impossible

to comprehend let alone to obey or execute in reality.

My contention has been the nature of that conflict, or the nature of that contradiction, provides me with several things. It provides me with an argument, at first instance, that what has been involved between the Bank and myself must be able to be settled by a constitutionally correct process. If the law or, even worse, the actions of the Bank making the claim against me itself, interferes with my ability to adopt a constitutionally correct manner of settling that claim based on the oldest principles of contract law and common law in terms of settlement of debts by legal tender, then whether or not the Court judges that this issue is important or not, the option remains open to me to take the physical manifestation of these two laws out into the public arena and to simply make use of the conflict which exists in physical reality; which course of action I have already instituted by invitation of interested members of the public.

And it seems to me that while there may be difficulties for the legal profession in understanding how to deal with this problem because it touches so deeply the roots of economic life - which is life, in all its aspects, every day for 24 hours - despite the possible embarrassment, even, of the legal profession and the political profession - if "profession" is the correct title for that group - the matter is so uniquely different from any that I have ever come across in my experience as a professional engineer that I will always retain the right to simply present the physical manifestations of the contradiction to the public and proceed to that higher judgment which is, in fact, the judgment of the general public in terms of what can be achieved for their own peace, welfare and good government by adopting one of two alternatives which are made available by the Crown.

HIS HONOUR: Now, Mr Cusack, I wanted to ask you this: one of your complaints, as I understand it, is that you presented to the Bank gold coin which was rejected by the Bank.

MR CUSACK: You have read the detailed submissions in the documents, Your Honour.

HIS HONOUR: Yes.

MR CUSACK: In brief, there are now five incidents starting on 25 February - that was one key incident. The next three were of a type but the final one, again, needs to be spoken of. In the first incident, on

25 February this year, this particular coin, in fact, with I hold up, was deposited at a local branch of the plaintiff Bank. It was accepted by the teller and a record of that deposit is in the statements of account which have been rendered subsequently. The transaction took place at the face value of the coin which is \$100.

Immediately after that first transaction, the teller, having exhibited some concern as to what she was going to do with this unusual and rather beautiful coin, I suggested to her that she would be at liberty to exchange it for a \$100 note which I had with me at the time. The teller agreed to do so and did so and the \$100 note was exchanged for the coin. By those two transactions I retain the coin here in my possession and have it here with me today.

Now, those two transactions are possibly historic, Your Honour. I would hope and pray, in a way, that the teller who was involved in that transaction feels no qualms if she has suffered any retributive reaction by her employers. But, subsequent to that, I tried to repeat that performance on two occasions and the coin was refused. Twice - no, I am sorry, it was only once on its own and once when it was tendered in conjunction with a paper note of \$100 denomination at the same time. When it was tendered with the note the reaction of the Bank was that they could accept the note portion but they could not accept the coin portion of the deposit. Unable to convince them otherwise, at the time, the entire deposit was refused.

The final transaction - I just cannot recall the date now, it is in my documents. What was the final date? I suppose I should refer you to my petition documents, Your Honour, which details the story.

HIS HONOUR: I have read them.

MR CUSACK: 24 April 1991.

HIS HONOUR: I just do not follow at the moment, Mr Cusack, how it is that this argument of yours would lead to a different result in the proceedings that were brought against you by the Bank.

MR CUSACK: Your Honour, the common law concept and contract law precedents in relation to settlement of a debt are very, very clear and very well settled, in my submissions. Also, something which has occurred to my mind in very recent days, of which I have not yet spoken and of which I have prepared some

submissions in writing for handing out to all present, involve the fundamental philosophy of the accounting system known as double entry in which the Bank claims to be an expert - probably the pre-eminent expert in the country since that is their entire function to provide accounting records of transactions and to maintain those records in strict trust for the clients who deal with them.

These two areas of common law, contract and equity in accounting - three areas I suppose - touch the very nature of what is called credit, as it appears out of our banking system as a new creation every time a so-called loan is made by a bank and I believe provide absolutely unshakable grounds on which this Court would find itself quite stably set against all opposition in determining that a bank mortgage of any type is an invalid contract and cannot be enforced in any court of law. The most telling argument in that regard - the most telling evidence - is that no valuable consideration moves from a bank in the process of what is commonly called bank lending.

There are ample historical references to quotations from such eminent people as governors of the Bank of England, presidents of the United States, governors of Canada, eminent economists and bankers, going back through probably the last century and further, which indicate quite clearly that banks have a special power, namely, that of creating bookkeeping entries, which entries are placed effectively into circulation in the community as money.

For nigh on 300 years now that power, I submit, has been abused; perhaps not always knowingly, perhaps sometimes in ignorance, which is why I adopt the benign view of the plaintiff in this case where it has proceeded against me. I believe these arguments are so entirely new that they are - well, some of the argument is not entirely new - - -

HIS HONOUR: But they are not really constitutional points, are they?

MR CUSACK: Well, the constitutional point remains the same constitutional point which Mr Skyring has sought to raise on two separate occasions.

HIS HONOUR: Exactly, but these other points you are referring to are contractual points; they are not constitutional points.

MR CUSACK: There is an interpretation of the *Constitution* required in relation to the public credit of the Commonwealth, Your Honour, which is section 51(iv), I think it is - may I check that - for I believe that the banks are, in fact, touching the public credit of the Commonwealth - yes, it is section 51(iv). The connection between the *Constitution* and my arguments appears at the head of the *Banking Act*, immediately under the title on the front page, where is described the purpose of the *Banking Act*. It is said there - I do not have it with me, but my recollection of the wording is that the Act has been passed for the purposes of protection of the currency and the public credit of the Commonwealth.

That being the case, I believe the *Banking Act*, although it may purport to have been passed pursuant to that section of the *Constitution* - section 51(iv) - and stating immediately below its title that it has a specific purpose of protecting the public credit of the Commonwealth has, in fact, done enormous damage to the public credit of the Commonwealth. Unfortunately this will require detailed discussion on exactly what is the Commonwealth, what is the credit of the Commonwealth and, more specifically, what is the public credit of the Commonwealth and whether or not it has, in fact, been tampered with by the private banking system in ways which infringe rules of equity which must apply to their accounting process; whether that accounting process is provably fraudulent and, if so, whether the fraud is possibly criminal.

That argument would be effectively an equitable determination as to whether the accounting process is equitable. If, in equity, the public credit of the Commonwealth is being damaged by the private banking industry, as it is presently operated. Does this not also imply a breach of trust by the elected authorities in so allowing the banking system to operate; that public trust being founded on the first clause of section 51 which includes the words "for the peace, welfare and good government of the Commonwealth"?

If the peace, welfare and good government of the Commonwealth with respect to the public credit of the Commonwealth is being disturbed by the manner in which the *Banking Act* is being interpreted and applied, then I believe there is a serious breach of the constitutional duty of the authorities under that section of the *Constitution*.

I do not, at this stage, propose to go into the detailed provisions of the *Banking Act* which

enable the public credit of the Commonwealth to be abused. I guess I merely need to say that, while a power to pass laws for borrowing on the public credit of the Commonwealth is stated in those words of the *Constitution*, there is no implication in that provision that borrowing must occur on the public credit of the Commonwealth. In fact, the rider - the supervening words in the first part of section 51 which refer to these laws being for the "peace, welfare and good government of the Commonwealth", I will argue, on removal, that that provision requires that borrowing on the public credit of the Commonwealth ought properly not to occur.

And there may well be very solid arguments for a complete prohibition of borrowing on the public credit of the Commonwealth implied in the wording, "for the peace, welfare and good government of the Commonwealth". I believe there is ample evidence to demonstrate that borrowing on the public credit of the Commonwealth, as it has occurred, has so disturbed the peace, order and good government of the nation that that is the only reasonable interpretation and the only equitable interpretation which can be placed on that provision of the *Constitution*, that being the case.

HIS HONOUR: You are asserting that it should be construed as a prohibition against borrowing on the public credit of the Commonwealth?

MR CUSACK: I do not come prepared to give full documentary evidence of that argument this morning, Your Honour, but I believe that is the argument which ought to be put on removal of this issue.

HIS HONOUR: Yes, all right. Well, I think I understand what the case involves.

MR CUSACK: Now, that is the new issue which has not been raised before.

HIS HONOUR: Yes.

MR CUSACK: But I must revert to Mr Skyring's argument - the one you have referred to, yourself, in the previous judgment concerning Justice Deane's judgment being upheld and his second judgment in July 1988 being upheld by the Full Court. I support Mr Skyring's submissions in that matter, Your Honour. The physical demonstration is, I believe, all that is necessary to make all of those comments fall into their proper perspective.

While nothing has been said which is legally incorrect in any of the judgments the implication

must be drawn, by upholding those judgments, that the paper money I now hold in my right hand - consisting of two \$50 notes - is legal tender for \$100 in Australia and cannot be refused as a tender of \$100. Those same judgments do not properly address why, in the real world, I cannot obtain a \$100 gold coin - also said by our laws to be legal tender for \$100 - in exchange for the paper money claiming to be \$100.

So long as that physical contradiction within our banking system remains there is a mechanism by which the absurdity can be turned against the Crown to the detriment of Crown revenues in taxation. That is now being done. I state again in public and in the presence of this Court that I am doing it and I challenge this Court to show me where I am wrong. As Martin Luther says, "I am prepared to admit I am wrong but will somebody please tell me where I am wrong".

I do not believe that anyone will ever prove to me that five is equal to one. If the law can be made to say that five equals one then the words have lost their meaning and the law has lost its power to operate. Because, as engineering is material construction, the law is verbal construction and if the foundations of the verbal construction are unsound then the verbal construction will collapse on itself. I adopt the engineering approach where the physical reality must agree with the words. When it does not, I stick with the physical reality and ask that the words be reinterpreted or re-examined and reconsidered.

So there are two legs to the constitutional basis of my action, Your Honour: one is the same as Mr Skyring's and has been pronounced on already; the second is that - well, now, in regard to the second leg. I have prepared quite a comprehensive statement of my position on that; not specifically from the constitutional point but from the point of view of the common law and equity which I believe may be appropriate to consider at this level.

HIS HONOUR: Well, would you hand it in and I will look at it, Mr Cusack.

MR CUSACK: I have copies, if - - -

HIS HONOUR: Yes, now is there anything else you want to say in support of this application?

MR CUSACK: Something did occur to me just a moment ago, Your Honour, but I will just need to recover the thought; it has slipped out of my mind. I am

sorry, Your Honour, I am at a disadvantage in this situation from the point of view of a layman. The need to present a constitutional argument as a layman is somewhat daunting.

HIS HONOUR: I follow that.

MR CUSACK: I just need to regather why I have presented that to you and now connect it back to what I said previously. What I am giving you in that submission is argument not of a traditional legal form but based on the simplest understanding of what the equity principle in accounting is. If agreement can be obtained on some such assessment of the equity principle underlying double entry bookkeeping and the implication of that and other evidence which will be presented in detail on removal concerning the absence of a valuable consideration being given, then, upon foundations of that type, it is possible to examine more carefully the breach of the *Constitution* which has occurred in two ways: not only in the specific wording of the *Banking Act* but more particularly in the manner in which it has been applied.

I think I need to call upon Your Honour's intuitive senses here. I am unable to further support, with specific information and evidence, grounds on which the breach of the *Constitution* exists within the *Banking Act* and/or its application to private banking. I believe that what I must insist upon this morning is that the nature of the injustice which springs from this breach is so widespread, so massive, so inequitable and so patently easy to demonstrate that it will be something of a dereliction of the duties of your office, under the oath which you swear on your appointment, to attempt to avoid addressing these issues by denying the right of this issue to be addressed.

It is not a right; an issue does not have a right. I am trying to say that the issue itself almost has rights in this matter; it deserves to be heard. Not because I raise it; I am a mere instrument or a catalyst of some kind, Your Honour. Many influences have passed through me to bring me to this point, not the least of which has been the actions of a business partner which first induced me to meet the Bank that I am now confronting, nor the magical support which a good lady has given me to sustain me through this.

This issue, Your Honour, will not go away. As Mr Skyring has said in his own way, I say in my way: no matter how the Court attempts to avoid this issue, as it has been avoided on many, many

occasions previously when raised by either Mr Skyring or myself, the issue will not go away. Down through the ages the societies of all civilized societies have called for a hearing of a case which will eventually be titled "The people versus the banks". It is the people on this side, Your Honour, who ask that the High Court of Australia adjudicate in the battle which I believe must eventually be joined between the people on this side and the banks on the other.

If the Attorneys-General at State and Federal level are not prepared to intervene in this matter on the side of the people, and I do not say against the banks. I believe that is an antagonistic view; I do not see the judicial process as necessarily antagonistic in this matter. I believe that a co-operative approach can be adopted but I believe the issue must be addressed and the level at which it ought properly to be addressed is the level of the Attorneys-General of both the States and the Commonwealth.

In a way, the second application which I made would perhaps best be seen as an incentive to urge the Attorney-General to reconsider the position he took in the earlier matter today in that he has the option of intervening in this matter on the side of the people "against" - in quotes - the banks for the benefit of both the people and the banks. There is no intention in this matter - on my sight, anyway - that banking be abolished or radically disturbed or against the interests of the largest portion of that industry.

A flaw in the machine which needs to be corrected, I believe, is disclosed by this action. The flaw is causing damage to society and the duty of the Crown, upon proper evidence having been presented to prove the damage being caused, is to address the issue - at least address it formally and properly in a court of law - taking the benign view of the other side and simply dispassionately gathering, examining and testing the evidence which can be presented to support my case.

HIS HONOUR: Yes. Now, Mr Cusack, I have heard you at some length and I follow what you put in support of this application. There is nothing to be gained by repeating ideas that you have already expressed.

MR CUSACK: I understand, Your Honour, and most of what I am saying has either been said or is in the documents. All right, well, in that case, I will hear what the other side have to say.

HIS HONOUR: Mr Hack, do you want to say anything?

MR HACK: Your Honour, all I wanted to say was that there is considerable doubt, in my submission, as to whether there is indeed a pending proceeding which can be removed. If Your Honour looks at the chronology, the action has effectively been ended; there is no appeal pending. What there is is - - -

HIS HONOUR: A petition.

MR HACK: - - - what purports to be a petition under a rule which has no application in a form not recognized by the rules. So there is at least that doubt as well. Those are the only matters that I wanted to raise, Your Honour.

HIS HONOUR: Mr Solicitor.

MR DAVIES: Your Honour, our submission would be exactly the same as in the previous matter.

HIS HONOUR: Do you wish to say anything in response to what has fallen from Mr Hack and from the Solicitor?

MR CUSACK: I am at a loss, Your Honour. I am not aware that a rule of the supreme court, under which my petition has been filed, is invalid or been repealed. If that is the case I would seek the leave of the supreme court in due course to place that matter on a proper basis if such action be necessary. I believe procedural errors in a case like this ought not to even be raised let alone seriously considered as an objection to the propositions I have put.

HIS HONOUR: Yes, thank you.

This is an application by Mr Cusack to have removed into this Court a petition pending in the Supreme Court of Queensland in which he seeks the setting aside of all judgments and orders made in an action brought against him and his wife by the Australia and New Zealand Banking Group Limited, along with other relief. Whether that petition has been correctly presented in accordance with the Rules of the Supreme Court of Queensland is a question which I do not stay to consider.

As far as I can make out, Mr Cusack had borrowed money from the bank, repayment of the loan and the payment of interest on the loan being secured by a mortgage on certain land. The Bank claimed that there was default under the mortgage and, in consequence of that default, that Mr Cusack owed the Bank the sum of \$120,000 approximately. The Bank, in the action, sought possession of the land. The Bank obtained summary judgment and recovered possession of the land. An application

to stay execution was refused and an appeal to the Full Court of the Supreme Court of Queensland from that refusal was dismissed.

Thereafter, in consequence of a direction given by a Justice of this Court to the Registrar that a writ be not issued by Mr Cusack out of the Court without the leave of a Justice, Mr Cusack sought leave to issue a writ of certiorari directed to the Full Court of the Supreme Court of Queensland in respect of the decision to which I have just referred. That application was refused by McHugh J.

Mr Cusack sought to raise, by that writ, the argument he seeks to raise in the petition said to be pending in the Supreme Court of Queensland. That argument is, as Mr Cusack frankly concedes, the currency question which Mr Skyring has raised on so many occasions in this Court and which has been rejected by this Court. In addition, Mr Cusack seeks to raise what he describes as a question of interpretation of section 51(iv) of the *Constitution* relating to borrowing on the public credit of the Commonwealth. He contends that, on its true construction, the *Constitution* prohibits borrowing on the public credit of the Commonwealth. The argument is plainly untenable.

Furthermore, I am unable to see how the interpretation of section 51(iv) is relevant to the proceedings between the Bank and Mr Cusack. It follows that the so-called constitutional questions are without substance and that the application for removal must be refused.

Yes, Mr Hack.

MR HACK: I ask for costs of the application, Your Honour.

HIS HONOUR: Yes.

MR DAVIES: So do we, Your Honour.

HIS HONOUR: Yes. Yes, Mr Cusack.

MR CUSACK: Your Honour, I draw your attention to the cancelled receipt in the Registry of this Court which immediately precedes the receipt which I obtained when I paid \$100 to appear here. The number of that receipt is No AR739443. On that document you will find the words "gold coin" written in a place where it is provided that you may cross out cheque or cash. I propose to you, Your Honour, that Court adopts an improper attitude in distinguishing, or attempting to distinguish, between gold coin and cash money. Having done that

in relation to my payment of money to appear in this Court, I make two submissions to you, Your Honour.

Firstly, that the Court damages its reputation by prejudging an issue which I have sought to have judged properly on removal. By refusing to grant that application for removal, this Court maintains what I now state to be a biased attitude towards the material evidence which has been the foundation and basis of this argument from the beginning.

HIS HONOUR: But now, Mr Cusack - - -

MR CUSACK: And an order for costs - - -

HIS HONOUR: Mr Cusack, just listen to me for a moment. I am going to hear you if you want to present an argument that you should not be ordered to pay costs but I am not going to hear you canvassing the decision that I have given.

MR CUSACK: Your Honour, this submission is directed to the costs application and my anticipating that you will decide in favour of that application.

HIS HONOUR: Well, now, when you say you anticipate that, that is the normal rule that applies in litigation that costs follow the event.

MR CUSACK: Your Honour, with respect - and this is becoming harder and harder for me to say the longer this issue remains unaddressed in this Court. With so much respect as is due to this Court in the circumstances, the manner in which the eye has been blinded, the mind clouded by 300 years of historical precedent will not - will not - make the realities, which we seek to put before you, go away.

HIS HONOUR: Well, let me tell you this, Mr Cusack.

MR CUSACK: I am unable to - - -

HIS HONOUR: Would you resume your seat, please. This application for removal is dismissed with costs. The Court will now adjourn.

AT 11.51 AM THE MATTER WAS ADJOURNED SINE DIE