



IN THE HIGH COURT OF AUSTRALIA

Office of the Registry  
Brisbane

No B23 of 1991

B e t w e e n -

PATRICK LEO CUSACK

Applicant

and

AUSTRALIA AND NEW ZEALAND  
BANKING GROUP LIMITED

First respondent

OFFICIAL TRUSTEE IN BANKRUPTCY

Second respondent

Application for leave  
to appeal

BRENNAN J  
GAUDRON J  
McHUGH J

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON WEDNESDAY, 6 NOVEMBER 1991, AT 12.01 PM

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BRENNAN J: Are you appearing for yourself, Mr Cusack?

MR P.L. CUSACK: Yes, I appear on my own behalf,  
Your Honour.

MR W.B. LOFTUS: If the Court pleases, I appear for the  
first respondent, the ANZ Bank. (instructed by  
Gadens Ridgeway)

BRENNAN J: Yes, Mr Cusack.

MR CUSACK: Your Honour, the only material I have prepared  
to hand up as a submission involves the statutory  
basis of my submissions. I have three copies for  
the bench and one for my learned friend.

BRENNAN J: What is the point you wish to make, Mr Cusack?

MR CUSACK: Am I on a time limit, Your Honour?

BRENNAN J: That depends on the point you wish to make.

MR CUSACK: Your Honour, something happened outside this  
Court yesterday which I would mention very briefly,  
which bears on this matter. I was graciously  
permitted to use the telephone to make two local  
phone calls, as a result of which disciplinary  
action appears to have been taken against members  
of staff. I have explained why I did what I did  
and why that is improper. It relates to the form  
of money I had on me at the time. I had only one  
gold coin which will not be accommodated by public  
telephones. It is coin of the realm, bearing  
Her Majesty's face, and when I cannot use the  
Queen's money in a public telephone, this Court was  
gracious enough to render assistance, and I would  
place that on record.

BRENNAN J: Very well. Yes. Now, are we dealing with the  
same question as we have just been dealing with,  
with Mr Skyring?

MR CUSACK: Not in - no. That question is involved,  
Your Honour, but it is not involved alone. There  
is a much deeper issue which extends into the  
banking area and involves a separate area of the  
*Constitution*. Insofar as you have dismissed that  
previous application, I will remake the points  
which are made therein, but on a basis which  
involves the plain meaning rule and the wording of  
section 115, which I believe has not been addressed  
by any of Mr Skyring's applications sufficiently or  
by the Court's hearing on appeal of that matter.

BRENNAN J: What is the proposition that you wish to have  
removed into this Court for hearing and

determination and which is pending in the Supreme Court of Queensland?

MR CUSACK: The initiating matter is a petition in the Supreme Court of Queensland which has been refused, and that refusal is currently on appeal. The petition was to overturn all judgments and orders given against me in favour of the ANZ Bank, effectively dispossessing me of my matrimonial home, in relation to terms of a mortgage document which I have consistently maintained, from the outset, in my original defence and counter claim, to have been a fraudulent document.

That argument has been dismissed, improperly, from the very first hearings of that matter back in 1988. All efforts to reinstate that ground of fraud have been overlooked, and on the basis of this continuing refusal to admit and accept the proposition that banking mortgage processes are fraudulent and provably so on a constitutional basis, I believe warrant overturning His Honour the Chief Justice's refusal to remove that central question of banking fraud into this Court.

BRENNAN J: What is the state that your litigation has reached in Queensland? Is there an appeal pending to the Full Court?

MR CUSACK: There is an appeal filed in the supreme court against the refusal to grant my petition to overturn all previous orders and judgments.

BRENNAN J: Why should this Court not leave that matter to be determined by the Full Court of the Supreme Court of Queensland?

MR CUSACK: Because, Your Honour, there is a constitutional basis on which the banking fraud issue needs to be determined.

BRENNAN J: And that is the question you want removed?

MR CUSACK: I believe that is the crucial question, Your Honour, which I require to be removed and if it is removed then it will involve some elements of, at least part of the evidence which will - I guess what I ought to term the answer to the currency question may need to be reconsidered.

BRENNAN J: Well, now, is that the question that you want removed?

MR CUSACK: No, no, the banking question is the essential question, the question of fraud on a constitutional basis.

BRENNAN J: Right. Now, can you identify or express, as briefly as you can, what this banking question is?

MR CUSACK: Yes, Your Honour. As briefly as possible, it involves a very clear and precise understanding of the term "credit" which term is the foundation and possibly sole purpose of banking as an industry so called. The nature of credit, that concept needs to be expanded at great length in order for the fraudulent nature of the banking process, in relation to mortgage taking, to be exposed for what it is. That is one of the essential elements which will need to occupy this Court's mind, because on the proper construction of the meaning of the term "credit" which, ultimately, is the lifeblood of an entire nation, and which exists on a foundation of another form of money which relates to the currency question itself but is of much larger scope and of much more immense social impact because of the enormous ramifications of the credit process into the bowels of the nation, including the administration of justice.

That concept needs to be expounded on at great length. That exposition of the concept of what credit actually is, how it comes into existence, the ownership of it, the true and proper assessment of ownership of credit at the moment when it appears in existence has never properly been addressed by any court. Despite my efforts to do so in the lower courts it has been side stepped, ignored and overlooked by using a much more simplistic approach that I have a bee in my bonnet or that I am a rat bag; terms which have been used by our learned justices of the Federal Court, albeit not in a direct way but implicitly, implying that I may well have that bee in my bonnet or be a rat bag on this issue.

BRENNAN J: What is the question though that requires this Court to remove a matter which is already pending in the Supreme Court of Queensland?

MR CUSACK: Following on from a full understanding of credit, there arises the question of ownership of credit by a bank which has induced me to enter into an agreement known as a mortgage. The implication within that document, on its face, is that the bank is properly entitled to ownership of credit. And this is related to the *Constitution*, in section 51(iv) of the *Constitution*, which must be read in its entirety.

The entire quote of that section is extremely important:

subject to this *Constitution*.....for the peace, order, and good government of the Commonwealth with respect to.....

(iv) Borrowing money on the public credit of the Commonwealth -

In my argument, I will outline a basis of interpretation of all of that wording, the restriction within the first line within this *Constitution*, another restriction "for the peace, order, and good government", and another implication in the absence of any specific requirement that borrowing itself is necessary or permitted or whatever. There is no exclusion in that section to prohibit borrowing in certain circumstances or "for the peace, order, and good government of the Commonwealth".

My argument will go further to suggest that the current *Banking Act*, which is the lead document, in my submission, by the wording of its long title, allegedly has been established to make provision for the protection of the currency and the public credit of the Commonwealth, would purport to have been enacted under two heads of power: the banking head of power and the section 51(iv).

If the *Banking Act* has, indeed, been enacted for the protection of the public credit of the Commonwealth, as its long title suggests, I will demonstrate on removal that the manner in which that Act has been administered has debauched the public - far from protecting it, has debauched the public credit of the Commonwealth to the point where the nation verges on bankruptcy and that either the Act itself or the manner of its administration in allowing under the licensing process for bank licences - or whatever that is called - the use of mortgage processes which achieve this end must be considered unconstitutional in so far as they do not protect the peace, order and good government of the Commonwealth and, in fact, damage the public credit of the Commonwealth to the extent that we see all around us today.

The Chief Justice, in his dismissal of my application for removal, denied justice - - -

The Chief Justice in his dismissal of my application for removal denied justice - - -

BRENNAN J: Mr Cusack, I think we understand the nature of the problem that you wish to agitate. Are you

wishing to attack the validity of the *Banking Act* or the validity of its administration?

MR CUSACK: Permit me to just assimilate what you are saying, Your Honour. I do not want to take that as a - - -

BRENNAN J: No, I just want to identify precisely the point that you are - - -

MR CUSACK: It goes a little further than that, in my mind. I am not sure whether that covers it completely. As a layman, I see the problem as somewhat removed from those two specific areas, but I imagine that the bank mortgage process, as it impinges on a layman, could be said to come under the administration of the *Banking Act*.

BRENNAN J: Well, state it as you wish, whatever the point is. I am endeavouring to identify what the point is.

MR CUSACK: Yes, it would come under one or other of those two areas. I think that is a fair statement, Your Honour.

BRENNAN J: Now, the next question is this: why should not that point, whatever it may be and however you wish to develop it, why should it not be left for determination by the Supreme Court of Queensland? Now, understanding, broadly at all events, though not in detail, the nature of the point you wish to make, it seems to us that you should be able, within five minutes, to tell us why the matter should not be left in the Supreme Court of Queensland, rather than being brought here.

MR CUSACK: My understanding of the legal processes, Your Honour, is that a constitutional interpretation can only be given by this Court.

BRENNAN J: Well, that is not correct.

MR CUSACK: Is not the jurisdiction of the High Court exclusive in that area, interpretation of the *Constitution*?

BRENNAN J: It is not.

MR CUSACK: I believe it is in the *Constitution* itself.

BRENNAN J: You may believe it, if you wish, but in all events, you have five minutes from now to tell us why it should not stay in the supreme court.

MR CUSACK: I would appreciate some assistance, as a layman Your Honour, in an explanation of why the

*Constitution* does not mean what it says. The *Constitution* I referred to is one of the later section which invests this Court with exclusive jurisdiction. Could I be referred to a statute which has changed that situation. "The judicial power of the Commonwealth shall be vested in a Federal supreme court to be called the High Court of Australia." The interpretation of the *Constitution* - I cannot find the section.

BRENNAN J: Well, it is in Chapter III of the *Constitution* and in the *Judiciary Act*.

MR CUSACK: It is Chapter III I have, Your Honour.

MCHUGH J: Before the *Judiciary Act* was passed, before this Court was set up, the State courts, in a series of cases, interpreted the *Constitution*. There was no High Court; there were no federal courts.

MR CUSACK: I take that point, Your Honour, as an historical evolution, but once the High Court came into existence did it not assume the judicial power of the Commonwealth exclusively in the area of interpretation of the *Constitution*?

MCHUGH J: No, it did not, and State courts interpret the *Constitution* probably every day of the week.

MR CUSACK: Where conflict between statutes arise and require an interpretation of the *Constitution*, I am at a loss, Your Honour; I believed that that was a function of this Court.

BRENNAN J: Well it may be that that is your belief; it may be that is the problem of why you are here, Mr Skyring, but this Court - - -

MR CUSACK: I am Mr Cusack, Your Honour.

BRENNAN J: Mr Cusack, my apologies to you.

MR CUSACK: Thank you; accepted.

BRENNAN J: But that is the very problem, you see; if you do not understand the basic propositions, we really do not have time to instruct you in them, nor is it our function.

MR CUSACK: On the basis of what you are saying, Your Honour, I do understand the point you are making, that the Supreme Court of Queensland can judge on whether the *Banking Act* is valid or not; whether the federal Act is valid.

MCHUGH J: It is a combination of section 77 of the *Constitution* and section 39 of the *Judiciary Act*,

off the top of my head, are two bases for the Supreme Court of Queensland adjudicating the matter.

MR CUSACK: Can the Supreme Court of Queensland overturn a federal Act of Parliament?

BRENNAN J: You must find the answers to these questions so that you can make your submissions if you wish to, Mr Cusack. But again, half of your time has elapsed. Let it start if you like from now.

MR CUSACK: No, I am on notice, Your Honour. I accept the notice originally given of five minutes. The quandary which you have presented me with prevents me from making sensible submissions until I can resolve this point in my own mind. If what you are saying is the case, then the five minutes is well spent in my learning so much of the law as applies in this case, then I can better prosecute the case in the lower courts. I am seeking to make the best use of my five minutes by learning from the best teachers there are.

BRENNAN J: Well, let it be assumed that if there is some constitutional challenge that you wish to raise against the validity of the *Banking Act*, or the operation of the *Banking Act*, which is material to the case in which you are involved - and that is a big qualification - - -

MR CUSACK: Yes, I understand that.

BRENNAN J: - - - then, the question can be determined in the course of that litigation wherever it is now pending, and that it is not necessary to remove some of that litigation into this Court so that this Court can determine only part of the cause of action.

MR CUSACK: How much time do I have left?

BRENNAN J: About two minutes, Mr Cusack.

MR CUSACK: Let me digest what you have said, Your Honour. I am most intrigued by what you have said. Let me perhaps try and make what I consider to be the major point. It will be in defence of the stand that Mr Skyring and I have each separately taken, although they appear to be deeply intertwined.

Both the lower courts and this Court consistently in all applications by Mr Skyring and myself have attempted to uphold the proposition that there is no inconsistencies between two federal Acts. Yet the facts which have been presented in all the jurisdictions we have appeared



in demonstrate a patent contradiction which even the simplest child can comprehend, namely, that Australia's legal tender gold coins are not exchangeable with Australia's legal tender paper money.

If that patent contradiction is not sufficient evidence to convince this Court that there is an inconsistency between two federal Acts related to the specific wording of the *Constitution*, I would simply put these final statements to you in relation to that argument which ought, I believe, to give this Court ground to overlook all previous judgments and decisions - let me call them opinions - given in previous hearings of this issue. It is an English language analysis of section 115.

Ignore the first part, the States shall not coin money, that is too obvious to spend time on. Let me convert the word "nor" to "and not". English grammar "nor" is exactly equivalent to "and not". Let me, therefore, restate the second phrase of section 115 "and a State shall not make anything but gold and silver coin a legal tender in payment of debts".

The phrase which I have developed there, "shall not make anything but" requires very careful consideration for it creates a boundary around one thing and talks about what is outside that boundary. If I talk about anything but, I am talking about what is inside the boundary and, therefore, if I restate "shall not make anything but", which is a double negative in a positive language, it says, "shall make only". A "shall make only" is exactly equivalent in this language to "shall not make anything but".

BRENNAN J: Mr Cusack, section 115 - - -

MR CUSACK: Section 115, yes, Your Honour.

BRENNAN J: - - - is directed to the powers of the States.

MR CUSACK: No, it is directed to the inconsistency between the *Currency Act* section 36(1), sorry, the *Reserve Bank Act* section 36(1) and the *Currency Act* section 16, which are in conflict as to what constitutes legal tender.

McHUGH J: That is your whole trouble, 115 has got nothing to do with - - -

MR CUSACK: The Commonwealth, it has nothing to do with the Commonwealth, it has been put many times.

McHUGH J: Yes.

MR CUSACK: Yes. All right, let me proceed a little further, "A State shall only make golden coin a legal tender". The States can make gold and silver coin legal tender; still does not involve the Commonwealth. Let me go one point further, how can the States make gold and silver coin a legal tender if they cannot make coin, physically, is the first point - - -

McHUGH J: But they have not made anything tender?

MR CUSACK: No, no, right. There are only two possibilities, either the States act positively in the legislative field to pass an enactment or they do nothing. Doing nothing is within the *Constitution*, effectively making something else legal tender from some other source. The States have, in fact, although by passive inaction, effectively made paper money legal tender in the State of my home. Paper money has been made legal tender in Queensland by the passive inactivity of the State legislature in breach of its duty - I call it a duty, Your Honour - it is a duty in so far it is mandatory by my interpretation of "shall not make anything but", that the States are obliged to make only gold and silver coin legal tender.

BRENNAN J: Your time is up, Mr Cusack.

MR CUSACK: Yes, Your Honour, so that it is completely obvious to both the Court and the gallery that that coin is \$100, it is legal tender under the *Currency Act*, it is not exchangeable for \$100 note. At face value it also claims to be legal tender. I therefore have a choice and I will take this choice - the Court may not be aware that the ANZ Bank in this case has refused to accept this in settlement of an outstanding account, and that is one of the issues in the case in Queensland. Thank you for your time, Your Honours.

BRENNAN J: The application is refused.

MR LOFTUS: If the Court pleases, the first respondent seeks an order for costs.

BRENNAN J: What do you have to say about that, Mr Cusack?

MR CUSACK: The submission is that the award of costs is a penalty in fact, if not in its intention. I believe that no penalty ought to be imposed upon a layman who seeks to correct an error which is not of his making and, apart from that basis, I urge and on a legal basis, that if the Crown insists on costs being paid by me it ought to provide the

means by which I can pay them strictly legally, which requires an unambiguous form of currency which can be used to settle the debt. I have a \$100 coin in my possession. If the costs exceed that I am physically unable to pay the remainder strictly legally, according to my interpretation of the *Constitution* and I will be unable to pay costs because of inaction of the Crown in Queensland.

BRENNAN J: The application will be refused with costs.

AT 12.25 PM THE MATTER WAS ADJOURNED SINE DIE