

HIGH COURT OF AUSTRALIA

Toohy J.

FRANK WILLIAM DUDLEY JONES v. PATRICK LEO CUSACK

27 August 1992

Decision

TOOHEY J. The Registrar of the High Court of Australia seeks an order pursuant to O.63 r.6(1) of the High Court Rules ("the Rules") that the respondent, Mr Cusack, "shall not, without the leave of the Court or a Justice, begin any action, appeal or other proceeding in the Court".

2. This application was heard immediately following a similar application by the Registrar against Alan George Skyring and in respect of which I have just given judgment. For this reason I do not propose to set out the relevant rule or to canvass in any detail questions of law examined in the other application. They should be taken as read for the purpose of this application. It is however necessary to consider the facts in some detail.

3. In January 1985 Mr Cusack lodged with the Court a number of documents (B33/85), including some which purported to be writs of summons against "the Judge of the Federal Court of Australia holden at Brisbane" and several Commonwealth Ministers. These documents are singularly uninformative as to what they hope to achieve. The lengthy affidavit which accompanied them raises various matters of a political nature but eventually comes to "the question of the legality of Australia's paper money and banking system with reference to the [Currency Act 1965](#) and [Reserve Bank Act 1959](#)". The affidavit makes it clear that Mr Cusack contends, as Mr Skyring contends, that banknotes issued by the Commonwealth do not constitute legal tender.

4. On 5 February 1985 Gibbs C.J. directed the Registrar, pursuant to O.58 r.4(3) of the Rules, "to refuse to issue the process without the leave of a Justice first had and obtained".

5. By summons dated 17 June 1985 (also identified as B33/85), Mr Cusack sought leave to issue a writ of certiorari to remove into the Court judgments and orders made by Spender J. in the Federal Court in Brisbane, dismissing applications for orders for review made by Mr Cusack under the [Administrative Decisions \(Judicial Review\) Act 1977 \(Cth\)](#). It is hard to discern from the affidavit lodged with the summons exactly what was Mr Cusack's complaint.

6. On 9 July 1985 Wilson J. refused leave to issue the documents lodged by Mr Cusack in January 1985. From the terms of his Honour's judgment, I take the refusal to have extended to the summons of 17 June 1985. His Honour described Mr Cusack's submission, "based on the alleged unconstitutionality of the [Reserve Bank Act 1959 \(Cth\)](#) and having regard to the provisions of the [Currency Act 1965 \(Cth\)](#)", (1) *Re Cusack* (1985) 60 ALJR 302, at p 303; 66 ALR 93, at p 95., as similar to that advanced by Mr Skyring and rejected by Deane J. (2) *Re Skyring's Application (No.2)* (1985) 59 ALJR 566; 58 ALR 629, and the Full Court. The circumstances of that rejection are dealt with in my judgment relating to the application against Mr Skyring. In refusing leave to issue the documents lodged by Mr Cusack, Wilson J. endorsed the decision of Deane J.

7. In November 1988 Mr Cusack lodged with the Court a document, purporting to be a writ against the Attorney-General of Queensland. On 21 November 1988 Wilson J. gave a direction, pursuant to O.58 r.4 (3) of the Rules, "that this process not issue without the leave of a Justice first had and obtained".

8. In December 1988 or January 1989 Mr Cusack lodged with the Court a summons by which he sought: "an order nisi to issue a Writ of Certiorari to remove into the High Court for review to determine the constitutional validity of certain Commonwealth statutory provisions contained within the [Reserve Bank Act 1959](#), Commonwealth Bank Act 1959, [Banking Act 1959](#) and [Currency Act 1965](#)". The timing of this summons (C4/89) is of interest because it is in the same terms as a summons lodged by Mr Skyring about the same time, as appears from my judgment in that application. The affidavit lodged in support of the summons makes it clear, if it needed to be made clear, that Mr Cusack was seeking to argue yet again the question of legal tender which Wilson J. had resolved against him.

9. On 7 February 1989 Wilson J. gave the by now customary direction under O.58 r.4(3) of the Rules in respect of the summons mentioned in the preceding paragraph. By summons dated 20 February 1989 Mr Cusack applied for leave "to issue the process reviewed by Honourable Mr. Justice Wilson on 7th of February, 1989". On 28 February 1989 McHugh J. refused that application. It is apparent from his Honour's reasons that Mr Cusack wished, inter alia, to re-agitate the questions which Wilson J. had resolved against him as Deane J. had resolved them against Mr Skyring.

10. By notice of motion dated 20 March 1989 (C6/89), Mr Cusack applied for leave to appeal from the judgment of McHugh J. On 30 June 1989 a Full Court, comprising Brennan and Dawson JJ., refused the application.

11. By notice of motion dated 29 May 1991 (B14/91), Mr Cusack applied for an order for removal into the Court of "the whole cause pending in the Supreme Court of Queensland in W3423/88 ... on the grounds that it is a cause involving an interpretation of the Constitution". The affidavit lodged in support of the notice of motion leaves no doubt of Mr Cusack's intention to raise again the questions determined against him. On 27 June 1991 Mason C.J. refused the application.

12. By notice of motion dated 16 July 1991 (B23/91), Mr Cusack applied for leave to appeal from the judgment of Mason C.J. On 6 November 1991 a Full Court (Brennan, Gaudron and McHugh JJ.) rejected

that application.

13. To make an order against Mr Cusack under O.63 r.6(1) of the Rules, I must be satisfied that he "frequently and without reasonable ground has instituted vexatious legal proceedings". There is a question here, as there was in the application against Mr Skyring, whether process which has been refused leave to issue is a legal proceeding which has been instituted. For the reasons given in the other application, I am of the opinion that, while the process itself has not been issued, the application for leave to issue the process does itself constitute the institution of legal proceedings. On that basis, how many legal proceedings has Mr Cusack instituted? The summons dated 17 June 1985, the summons dated 20 February 1989, the notice of motion dated 20 March 1989, the notice of motion dated 29 May 1991 and the notice of motion dated 16 July 1991 readily answer that description. So too does the application which led to the refusal on 9 July 1985.

14. "Frequently" is a relative term; in the present context of proceedings instituted in the High Court, I am satisfied that Mr Cusack has frequently instituted legal proceedings. That he has done so without reasonable ground is clear enough, at least once Wilson J. delivered his judgment of 9 July 1985. Mr Cusack contended that Deane J.'s judgment of 9 February 1985 (which Wilson J. endorsed) remained "open to challenge" as it contained no reasons to support its conclusions and was therefore "an unsubstantiated opinion". However, the fact is that the Court has determined the legal questions against Mr Cusack.

15. It is clear also that the legal proceedings instituted by Mr Cusack have been vexatious. As I explained in the application against Mr Skyring, the question is whether the legal proceedings are vexatious, not whether they have been instituted vexatiously. It is not Mr Cusack's belief in the correctness of his arguments with which the Court is concerned. The fact is that he has persisted and clearly intends to persist, if allowed, in bringing before the Court the same arguments which have been determined against him as they have been determined against Mr Skyring. There is no doubt that, to some extent at least, both men move in concert in the mechanisms they employ to get before the Court.

16. I shall not repeat what I said, in connection with Mr Skyring's application, about the importance of the Court controlling its process so as to avoid unwarranted usurpation of its time and resources. I am satisfied that Mr Cusack falls squarely within the language of O.63 r.6(1) of the Rules.

17. There will be an order in terms of the Registrar's notice of motion.

Orders

The respondent shall not, without the leave of the Court or a Justice, begin any action, appeal or other proceeding in the Court other than an appeal against this order.

Reserve the costs of the notice of motion.