



IN THE HIGH COURT OF AUSTRALIA

Registry            No C4 of 1992

B e t w e e n -

FRANK WILLIAM DUDLEY JONES

Applicant

and

ALLAN GEORGE SKYRING

Respondent

For Judgment

Registry            No C5 of 1992

B e t w e e n

FRANK WILLIAM DUDLEY JONES

Applicant

and

PATRICK LEO CUSACK

Respondent

For Judgment

TOOHEY J

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON THURSDAY, 27 AUGUST 1992, AT 9.01 AM

(Continued from 26/6/92)

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HIS HONOUR: In this matter there will be an order in terms of paragraph 1 of the application, an order that the respondent shall not, without the leave of the Court or a Justice, begin any action, appeal or other proceeding in the Court.

Mr Erskine do you wish to be heard as to the terms of the order?

MR C.M. ERSKINE: (instructed by the Australian Government Solicitor). Yes, may it please Your Honour. The application would be that Your Honour's order not exclude the respondent from being able to appeal against Your Honour's judgment were he so minded to do so.

HIS HONOUR: Yes, I certainly accept that.

MR ERSKINE: And on my reading of the *Judiciary Act* and the rules of this Court it would be necessary for Your Honour to frame the order in that way because he would otherwise have a right of appeal as a separate action without otherwise requiring leave. Your Honour's order would, therefore, preclude him from doing that unless it were to exclude an appeal against this order.

HIS HONOUR: Yes, I am certainly prepared to do that. Do you have any suggestions as to the language of the order?

MR ERSKINE: Perhaps adding at the end of the paragraph words something like this, Your Honour, "other than an appeal against this order".

HIS HONOUR: Anything else?

MR ERSKINE: I am also instructed to seek an order for costs, Your Honour.

HIS HONOUR: Yes. Well, Mr Skyring is not here.

MR ERSKINE: Yes.

HIS HONOUR: I am not disposed to make an order for costs against him in his absence. I suppose what I could do is direct that within 14 days he make any submission in writing he wishes to make against an order for costs. Do you see any problem with that?

MR ERSKINE: I do not, Your Honour, no.

HIS HONOUR: Would the applicant then want some time to respond?

MR ERSKINE: It might be appropriate, Your Honour; another 14 days from that.

HIS HONOUR: And the other way, I suppose, is to invite you to make submissions as to why an order for costs should be made. Perhaps that ought to be done so that there is something on transcript that Mr Skyring can see as to the basis upon which an application is made for costs, then give him time to respond and give the applicant time, if he wishes, to make use of that opportunity to respond to any submissions made by Mr Skyring.

MR ERSKINE: Yes. Your Honour, in my submission the reason for an order for costs would be simply that it is the standard practice that the successful party is entitled to the costs of the application as brought to the Court. In my submission, this application is no different from any other application that might have been brought in the jurisdiction of the Court, from the point of view of the principle that is espoused there and, in my submission, there is no reason to depart from the ordinary course, which is that a successful party has the costs of the application.

HIS HONOUR: Yes. Well, at least that much appears on transcript. Before I make a formal order I should publish my reasons which I now do.

I understand, Mr Erskine, the reasons are available in Registry for collection.

MR ERSKINE: Thank you, Your Honour.

HIS HONOUR: There will be an order then that the respondent, Mr Skyring, 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. I reserve the question of costs and direct that if the respondent wishes to oppose the order for costs made on behalf of the applicant he do so in writing within 14 days, and that on receipt of any such submission the applicant shall have 14 days in which to make a reply in writing if he so wishes.

MR ERSKINE: May it please the Court.

HIS HONOUR: In the matter of Cusack there will be an order in terms of paragraph 1 of the application, subject to the matters that Mr Erskine has raised with me. I publish my reasons.

I would think, Mr Erskine, that there should simply be an order in the same terms as in the previous matter, again reserving the question of

costs with the same direction that I gave in the matter relating to Mr Skyring.

MR ERSKINE: Indeed, Your Honour.

HIS HONOUR: Very well. There will be an order and direction in those terms.

AT 9.06 AM THE MATTER WAS ADJOURNED SINE DIE