



## New South Wales Supreme Court

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<b>CITATION :</b>	<b>Prothonotary v Wilson [1999] NSWSC 1148</b>
<b>CURRENT JURISDICTION :</b>	Civil
<b>FILE NUMBER(S) :</b>	12914/97
<b>HEARING DATE(S) :</b>	9 November 1999
<b>JUDGMENT DATE :</b>	9 November 1999
<b>PARTIES :</b>	Prothonotary John Wilson
<b>JUDGMENT OF :</b>	Wood CJatCL
<b>LOWER COURT JURISDICTION :</b>	Supreme Court
<b>LOWER COURT FILE NUMBER(S) :</b>	
<b>LOWER COURT JUDICIAL OFFICER :</b>	
<b>COUNSEL :</b>	T. Budden SC Self
<b>SOLICITORS :</b>	Crown Solicitor Self
<b>CATCHWORDS :</b>	Contempt of Court
<b>DECISION :</b>	Convicted of two counts of contempt

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**THE SUPREME COURT  
OF NEW SOUTH WALES  
COMMON LAW DIVISION**

**WOOD CJ at CL**

**TUESDAY 9 NOVEMBER 1999**

12914/97 - THE PROTHONOTARY v WILSON

JUDGMENT

1 HIS HONOUR: This matter comes before the court by way of a summons, filed by The Prothonotary, seeking declarations in the following terms:

"1. A declaration that the defendant is guilty of contempt of court in that on 5 September 1997 after judgment was handed down by the Hon. Acting Justice Murray in the matter of John Wilson v Terence Greenwood and six others in the Supreme Court of New South Wales, the defendant did throw a plastic bag filled with paint at Acting Justice Murray and did thereby conduct himself in a manner which tended to interfere with the administration of justice.

2. A declaration that the defendant is guilty of contempt of court in that on 5 September 1997 after judgment was handed down by the Hon. Acting Justice Murray in the matter of John Wilson v Terence Greenwood and six others in the Supreme Court of New South Wales, the defendant did throw a further plastic bag filled with paint at Acting Justice Murray and did thereby conduct himself in a manner which tended to interfere with the administration of justice."

2 The summons further seeks orders that the defendant be punished or otherwise dealt with for contempt of court. The Statement of Charges annexed to the summons is in the following terms:

"1. It is alleged that the defendant is guilty of contempt of court in that on 5 September 1997 after judgment was handed down by the Honourable Acting Justice Murray in the matter of John Wilson v Terence Greenwood and six others in the Supreme Court of New South Wales, he did throw a plastic bag filled with paint at Acting Justice Murray and did thereby conduct himself in a manner which tended to interfere with the administration of

justice.

2. It is alleged that the defendant is guilty of contempt of court in that on 5 September 1997 after judgment was handed down by the Honourable Acting Justice Murray in the matter of John Wilson v Terence Greenwood and six others in the Supreme Court of New South Wales, he did throw a further plastic bag filled with paint at Acting Justice Murray and did thereby conduct himself in a manner which tended to interfere with the administration of justice."

3 The particulars of contempt alleged in the summons are as follows:

"1. On 24 July 1997 the defendant filed a Statement of Claim in the Supreme Court Registry, Common Law Division, against seven defendants namely Terence Greenwood, the Hon. Justice John Hamilton, the Hon. Matthew Clarke, the Hon. Justice Alan Abadee, the Hon. Sir Darryl Dawson, the Hon. Justice Michael Kirby and the Hon. Justice John Toohey.

2. On 4 August 1997 a Notice of Motion was filed in court on behalf of the defendants seeking that the proceedings be dismissed, alternatively, that the statement of claim be struck out.

3. On 25 August 1997 the Notice of Motion was argued before the Hon. Acting Justice Murray in the Supreme Court. Judgment was reserved.

4. On 5 September 1997 the matter was listed for judgment to be delivered. The defendant appeared in person. The defendant brought into court a black folder inside which was a hidden cavity containing three plastic bags filled with yellow paint.

5. Before judgment was delivered, the defendant asked his Honour:

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'May I record or will there be a transcript?'

At this time the defendant was observed to be holding a dictaphone in his hand.

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His Honour replied:

'I will be handing down a copy of my reasons

so there won't be anything to record, other than that the

proceedings are dismissed. I order the respondent to pay the applicants' costs. I publish my reasons.'

6 Immediately upon these words being uttered by his Honour, the defendant threw one of the bags of paint towards him. The bag hit his Honour and landed on the bench before him, causing yellow paint to splash onto his Honour's coat. The defendant then threw a second plastic bag of yellow paint towards his Honour. The second bag landed between the judge's Associate and the Court Reporter, splashing paint on impact. The court staff thereafter restrained the defendant.

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8 6. The actions of the defendant referred to in the paragraph 5 of these particulars tended to interfere with the administration of justice in that:

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(a) they were intended or were likely or calculated to intimidate his Honour and discourage him from performing his judicial function:

(b) they were intended or were likely or calculated to intimidate judicial officers and discourage them from performing their judicial function; and

(c) they were intended or were likely or calculated to impair public confidence in and respect for the courts.

7. On 12 September 1997 the Honourable Mr Justice David Hunt, Chief Judge at Common Law, ordered the Acting Prothonotary of New South Wales to commence proceedings against the defendant for contempt."

10 When the matter came on for hearing this morning the defendant, Mr Wilson, pursued his claim to trial by jury and objected to the jurisdiction of the court.

11 Having heard various objections formulated by him in this regard, it was my decision that the matter should proceed in a summary fashion without a jury. Evidence was called from various witnesses in the form of affidavits. None of those deponents was required for cross-examination and none of their evidence was challenged in any form.

12 In substance, the events of the day upon which the offences are alleged to have occurred were recalled by Catherine Olsen, the Associate to Acting Justice Brian Murray, in the following terms:

"5. At about 10am on 5 September 1997 Murray AJ came onto the bench in Court 1 in the King Street Court building. I called the case and handed to the Judge the written judgment. After I called the case Mr Wilson came forward to the bar table and said to Murray AJ words to the following effect:

'Can I record the proceedings?'

At this time I saw that he had in his hand a small recording machine.

Murray AJ said words to the following effect:

'That will not be necessary as I am about to hand down a written judgment.'

6. Murray AJ then said words to the following effect:

'In this matter the proceedings are dismissed. The respondent is to pay the applicants' costs.'

As Murray AJ was saying these words, I saw that John Wilson was still standing at the bar table with a black Lever Arch folder on the table. I saw John Wilson's arms move and then wave about in a throwing motion. I saw an object hurl very quickly towards Murray AJ. I then turned around and saw that Murray AJ's suit coat was splashed with a yellow substance. There were also splashes of the same substance on the bench in front of him. A plastic bag which looked as if it had burst had landed on the bench above me. At first I did not know what the yellow substance was. It looked as if the substance may be an acid of some type and quickly pulled it off the bench onto the floor between the Court Reporter and myself. While I was doing this, another missile was thrown. This second missile landed between myself and the Court Reporter. At this time the Court Officer grabbed Mr Wilson who struggled with him. The Judge's Tipstaff Bernard Roach then went to assist. The Court adjourned and I went to the ante room to help Murray AJ. I then saw Bernard Roach telephone security. I subsequently examined the Murray AJ's coat and found that the substance appeared to be yellow paint. This paint was on the left breast and lapel area of Murray AJ's suit. I also saw the Court Reporter's dress was splattered with yellow substance. There was also some yellow paint on my jacket."

13 The account given by Ms Olsen has been supplemented by a further affidavit to which were annexed a series of photographs showing the paint which landed on the bench and on the floor in the vicinity of the bench. Those photographs further show the black folder which was found on the Bar table in the immediate presence of Mr Wilson, which contained a further plastic container within the hollowed out cavity.

14 Ms Olsen's account has been corroborated in the affidavit of the Tipstaff, Bernard Lee Roach, who was similarly present on 5 September

1997 when the incident described occurred.

15 Mr Roach described how he and Walter Baer, the Court Officer, took hold of Mr Wilson after the paint was thrown and restrained him pending arrival of security. That account is corroborated by the Court Officer, Walter Baer, who described seeing Mr Wilson open up a folder which he had placed on the Bar table, remove a yellow packet from the folder and throw it at Acting Justice Murray. This witness said that he saw the packet hit Acting Justice Murray in the region of his left chest shoulder area, after which he saw Mr Wilson remove a second yellow package from the folder which was then thrown towards the bench.

16 The accounts of these witnesses have been supplemented by affidavits sworn by Gregory Peter McNally of counsel, who was waiting in court for the matter of **Duggan v Parrett** to be called on, after judgment was delivered in the reserved matter concerning Mr Wilson. This witness said that he examined the folder which had been placed on the Bar table. He confirmed that, when seen by him, it appeared to contain a number of court documents which had been cut out, to create a cavity. Within that cavity were contained the plastic bags filled with paint.

17 Similar observations were made by Maina Gordon, a Solicitor instructing Nicole Abadee of counsel, who was similarly briefed to appear in the matter of Duggan v Parrett.

18 The final piece of evidence in the proceedings concerns a facsimile transmission and press release, which Natalie Jane Adams, a Solicitor employed in the office of I V Knight, Crown Solicitor, has said was received by her on 14 November 1997. This document purports to be under the hand of Mr Wilson and, so far as it constitutes a press release, contains a clear admission that he had thrown paint at Acting Justice Murray.

19 Relevantly, the document contains various complaints made by Mr Wilson concerning the judicial system and concludes with the following paragraph:

"Frustration at the total corruption of our system of law and justice meant that something had to be done to break out of the clutches or stranglehold maintained by the judges who were not only protecting fraud but each other. But this judge caused me to hold out a glimmer of hope because, at the first hearing when I presented my verbal argument, he did not immediately dismiss my claims but reserved his judgment to go away and consider the situation saying he would let me know when he had made up his mind. However, when I was called to return for his ruling eleven days later, no representative was there from the solicitors for the seven judges to hear the decision which indicated collusion (a secret understanding). When the judge smiled and dismissed the claim, I threw a plastic bag containing yellow paint which made a 7 mm stain on the judge's suit. If the judge was doing 'a lawful thing', causing an injury or detriment to him and

an indictable offence and I am liable to a penalty of ten years' imprisonment and the destruction of my own life. But the banks have destroyed countless numbers of Australian lives by their fraudulent contracts and those crimes are being covered up by judges whom are supposed to be administering law and justice but who are, in fact, accomplices. The entire situation is gravely serious and the way of a jury trial is our last hope."

20 It is clear from this recital of the evidence that the particulars contained in the summons have been made good upon an evidentiary basis.

21 The principles applicable to a case such as the present are clear:

(a) The form of contempt in question is that which involves conduct in the face of the court or in the course of proceedings and which obstructs or interferes with the due administration of justice or is calculated to do so - as that concept has been explained in decisions such as **Parashuram Detaram Shamdasani v King-Emperor** [1945] AC 264 and **Ex parte Bellanto re Prior** [1963] SR NSW 190 especially at pp 199 to 204.

(b) The gravamen of the offence lies not in protecting the personal dignity of the judge who may be the object of an assault or personal attack but of protecting the public from the mischief that will incur if the authority of the courts is undermined or impaired. The point is well made in the judgments of the Court of Appeal in **Re Johnson** (1887) 20 QBD 68 where Bowen LJ said:

"What is the principle which we have here to apply? It seems to me to be this. The law has armed the High Court of Justice with the power and imposed on it the duty of preventing *brevi manu* and by summary proceedings any attempt to interfere with the administration of justice. It is on that ground, and not on any exaggerated notion of the dignity of individuals that insults to judges are not allowed. It is on the same ground that insults to witnesses or to jurymen are not allowed. The principle is that those who have duties to discharge in a court of justice are protected by the law, and shielded on their way to the discharge of such duties, while discharging them, and on their return therefrom, in order that such persons may safely have resort to courts of justice."

22 Lord Esher MR similarly emphasised that the gravamen of the offence is an attack on a judge in his judicial capacity and in the exercise of his office, the contempt not being of the judge, but of the court in which he is acting.

23 These observations were cited with approval by the court in **Ex parte Bellanto re Prior** at 203. Observations to similar effect may be seen in **Bell v Stewart** (1920) 28 CLR 413 at 428 to 429; **R v Dunbabin**; **Ex**

**parte Williams** (1935) 53 CLR 434 at 442 to 443 and **Ex parte Tuckerman re Nash** (1970) 3 NSW 23.

(c) Conduct which qualifies as contempt of this kind is not confined to something said or done while the proceedings are pending, or even in the course of being heard. As Donovan LJ said in **Attorney General v Butterworth** [1963] 1 QB 696, in a passage at 723, applied in **R v Wright (No 1)** [1968] VR 164 at 166:

"The question to be decided here, as in all cases of alleged contempt of court, is whether the action complained of is calculated to interfere with the proper administration of justice. There is more than one way of so interfering. The authority of a court may be lowered by scurrilous abuse. Its effectiveness to do justice may be diminished or destroyed in a pending case by frightening intending witnesses from the witness box. After giving evidence a witness may be punished for having done so, thereby deterring potential witnesses in future cases from risking a like vengeance. I see no such difference between any of these three methods as makes the first two contempt of court, and the third not. Each is calculated to do the same thing, namely, to interfere with the proper administration of the law in courts of justice."

24 To similar effect were the observations of Lord Denning MR at 719 and of Pearson LJ at 728.

25 This principle has similarly been recognised in decisions such as **In the matter of Samuel Goldman** [1968] 3 NSW 325 at 328 and **Re Johnson** per Bowen LJ at 74.

(d) The principle expressed in these cases concerning witnesses and parties is equally applicable to conduct that can be seen as calculated to deter judicial officers from doing their duty. The concern is similarly with the harm done to the present and future administration of justice, a system in which judicial officers possess an integral role.

(e) Contempt of the kind here charged is criminal in nature. The ingredients of the charge must be proved to the criminal standard; that is, beyond reasonable doubt: see **Witham v Holloway** (1995) 183 CLR 525 at 550.

(f) Proof of an intention to interfere in the administration of justice is not an ingredient of the charge ( **Attorney General of New South Wales v Dean** (1990) 20 NSWLR 650 at 655.) The relevant principles was stated in this decision by the Court in the following terms at p 656:

"The matter of overriding importance is to prevent interference with the proper course of trials; that interference is just as real, and needs to be prevented, whether it is intentional or not. At all



events, the law binding on and applied by this Court is clear. It is sufficient that the prosecution show that the alleged contemtor had the intention to make the statements which, objectively, had the requisite tendency to interfere in the fair trial of the accused.

26 The statements must be looked at objectively to determine whether they were calculated to interfere with the course of justice. It is necessary for the prosecutor to prove that tendency beyond reasonable doubt. The absence of the specific intent, by those words, to interfere in the administration of justice is no answer or defence to a charge of contempt. On the other hand, the presence or absence of such an intention will be relevant to the Court's decision as to penalty."

(g) Summary trial is now the ordinary procedure for the determination of contempt charges. ( **The Registrar of Court of Appeal v Willesee** (1984) 2 NSWLR 378 and **United Telecasters Sydney Ltd v Hardy** (1991) 23 NSWLR 323 at 330.) Any suggestion to the contrary in earlier decisions has to be understood as confined to the circumstance that the remedy should not be misused and is reserved for clear cases.

(h) Criminal contempt is an offence punishable by imprisonment or fine or release on recognisance. Other sentencing options such as community service are open within the inherent jurisdiction of the court ( **Registrar, The Court of Appeal v Manian (No 2)** (1992) 26 NSWLR 309). The Sentencing Act 1989 applies to any sentence of an imprisonment that may be imposed ( **Young v Jackman** , Court of Appeal New South Wales, 2 June 1993, unreported).

It is obvious beyond question that a physical assault upon a judicial officer in connection with the performance of his or her duty constitutes not only a contempt in the face of the court but a very serious contempt. It would be extraordinary if it were otherwise. If support were needed for such a proposition it can be seen in Halsbury's Laws of England, 4th ed, vol 9, pp 4 to 5 and in the decision of Acting Justice Slattery in **R v Keith David Herring** , 3 October 1991, unreported.

The conduct of the defendant in the present case is of that kind. His acts, I find, were intended, in the sense that he deliberately threw a plastic bag of paint at Acting Justice Murray, some of which struck his clothing and then threw a second container in the direction of the bench. These acts occurred while his Honour was announcing his decision in a proceeding, in which the defendant was a party, and while he was publishing his reasons for that decision before proceeding to the other matters listed for hearing that day. It occurred in the presence of other litigants. It was of a kind that was likely to occasion serious alarm, and it was such as to interfere with the administration of justice, and to undermine the authority of the Courts.

27 I am satisfied that the actions of the defendant were premeditated and

that he came to court with the paint concealed in a folder containing a number of documents which had been cut out in order to create a cavity to contain the bags of paint. The only rational inference open is that he came to court prepared to throw the paint at Acting Justice Murray in the event of the proceedings being decided adversely to himself.

28 Each of the acts described above in these circumstances constitutes a separate and clear contempt of court.

29 I make declarations in accordance with pars 1 and 2 of the summons. The defendant is convicted of the two counts of contempt which have been preferred, as particularised in the summons. I will hear submissions on sentence.

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Last Modified: 11/29/1999

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