IN THE HIGH COURT OF AUSTRALIA

Registry No C7 of 1989

In the matter of -

An application for leave to appeal pursuant to section 34(2) of the Judiciary Act 1903 by

ALAN GEORGE SKYRING

BRENNAN J
DAWSON J

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON FRIDAY, 30 JUNE 1989, AT 12.02 PM

MR A.G. SKYRING: Your Honour, this is a continuation of matters which I have been pursuing before this Court for some period of time, as you are no doubt well aware. I think on this instance we can keep it fairly quick and lively. That was my reference which I had sent down earlier. I was no quite sure on procedure. There were four copies to be handed up on the day so I will give you them anyway.

The points are, I think, fairly well spelt out - that is the legal points are fairly well spelt out in the actual appeal book. So what I had in mind, if I may, Your Honour, was just to speak very briefly to put those in their social context because that is really what the whole action is basically all about. Basically the process that I am seeking to put in train, which is really what this leave to appeal is about, is an endeavour, albeit using a process which is perhaps slightly unusual so far as the - - -

DAWSON J: That is probably the point, is it not, Mr Skyring. Is it not an inappropriate process to do what you want to do, irrespective of the merits of that?

MR SKYRING: Well, that is the point, Your Honour. Now, I would submit that it is not. It is different. I will certainly not deny that, but I believe - what the whole process that I am seeking to have put in train - you see, this is but the first step - would, in fact, allow some very fundamental matters to be addressed in a way which has become very apparent to me, it does not seem to be possible in any other forum where there is the strict control which the courts have evolved over the centuries. So what I am seeking to do is to basically make use of that particular ability which you have perfected and - - -

DAWSON J: But certiorari is a process whereby the record of an inferior tribunal is removed into the Court and it is corrected, but you cannot do that with Acts of Parliament, can you?

MR SKYRING: Yes, Your Honour. This is where I am saying, the technique that I am seeking to use is in fact a very old one and this point was actually raised in some of the very early actions before the State Supreme Court here, Your Honour, that in earlier times - this is going back to the 1300s when these writs were first evolved - that in fact they could be used to bring all manner of official documents before the courts. Now, that was in the days when the King actually sat on the court and matters requiring executive attention could in fact be given there and then by the King in person, no nonsense. Now, over the years there has been a

separation of this executive function from the judicial one and my sort of feeling of the situation here - and this is an engineer's view of the law, as opposed to a strict lawyer's view of the law - is that now matters have to be of sufficient moment to merit, in effect, what amounts to Crown intervention, because that is really what is being sought by the process and it is up to the judiciary as independent arbiters to say "yes", or "no, this is a matter of sufficient moment which ought to be brought before the courts".

Now, the practice which you have mentioned has, in fact, from my reading of the historical background, basically evolved since about 1700 wherein the application has been used in what I regard as a restricted sense which is what you had outlined; namely, where judgments are sufficiently bad on their face they deserve to be set aside. It is a form of appeal but when a decision has been taken, ostensibly in good faith, but when one stands back and looks at the whole picture in the direction that such a decision would tend to take society in is deemed to be bad, well okay, there has got to be a process somewhere whereby that can be stopped, and in essence - - -

DAWSON J: Is there any authority which says that this procedure is available in the case of an Act of Parliament?

MR SKYRING: Yes, Your Honour, in the appendix to dismiss judicial review, which was one of the documents that I filed in some of the earlier proceedings in this Court, and I have certainly argued before the State Supreme Court, the point was actually made. I do not, unfortunately, have the document with me here now but, in fact, Acts of Parliament were specifically one of the documents that could be brought before the courts, yes, in bygone times, but in that regard it is perhaps interesting to mention that in 9 GEORGE IV, Chapter 83, which basically set up the judicial system in this country there was a provision in effect in that for judicial review, before Acts of Parliament were actually promulgated. So the principle always has been there.

Now, in recent time it seems to have dropped into disuse. From other more recent reading that I have done, whether in fact this is a fair assessment of the facts or not, it would appear that much of the blame, if I could use that term, could be laid at the feet of Lord Mansfield who apparently basically took the view of the courts in the 1770s that, in fact, what Parliament said went and that is it, the courts did not intervene.

BRENNAN J: Mr Skyring, we are not going to embark upon a general disquisition of constitutional history.

MR SKYRING: No, I was seeking to - - -

BRENNAN J: We have a judgment here from Mr Justice McHugh against which you are seeking leave to appeal.

MR SKYRING: Yes, Your Honour, yes, that is basically the point, right.

BRENNAN J: Now, you must demonstrate some error apparent in this judgment which justifies the grant of leave to appeal. Now, do you wish to set about doing that?

MR SKYRING: Yes, Your Honour.

BRENNAN J: Very well, then do so.

MR SKYRING: Right. In short, my reading of Justice McHugh's judgment was that he felt he was being asked as a single Judge, in effect, to give a ruling which flew in the face of previous Full Court determinations and that he was not prepared to do. Now, the basic judgment on which he predicated his case was, in fact, that given by Justice Deane in 1985 which really was the first action in what has become a whole series, wherein Justice Deane spelt out what he saw as the situation in respect to the matters that I am seeking to that question now, namely the validity of the two provisions of the CURRENCY ACT and the Reserve Bank vis-a-vis the CONSTITUTION. Now, I have, in fact since - he stated what I believe to be the status quo. In effect, that was then upheld on appeal before the Full Court in July 1985, and which I recollect both of Your Honours sat on.

Now, going on from that I then, in the following year - at that appeal hearing I never specifically addressed the particular points which Justice Deane had cited in his judgment. What I did was to broaden the issue and to bring in the whole matter of taxation because the issue that I am raising is funding of the Crown's purposes generally and associated with this the means whereby that should be accomplished. Now, the following year I did in fact specifically address the points which Justice Deane had stated in his February 1985 judgment, pointing out that there is a constitutional bar and how it, in fact, works, that when I specifically addressed those points Justice Deane when I confronted him did not - that there was no demur from him on the argument which I, in fact, put. The subsequent effort then basically hinged on the use of certiorari as the means of add ressing the whole issue, which is the point which has just been taken up here now. I subsequently then came back - now, on the basis of

the judgments that have been given and, in effect, upheld by the Full Court in July 1985, I then sought to pay my income tax and I got into an awful lot of strife, which situation has brought on this present situation wherein I did, in fact, make a genuine attempt to pay my tax - - -

BRENNAN J: We are not concerned with your tax liabilities, Mr Skyring.

MR SKYRING: All right. Carrying on then, I got into a conflict situation, not because of any action of mine but because of conflicts in the statutes which precluded my actually making a payment in a strictly legal manner in terms of the statues which are set down for making such payments within the Supreme Court Rules. Now, that is not a matter involving me. That is a total system problem which does need to be addressed. I then sought - basically in essence on advice from the bench here, given in a very nice way - I then sought an application to remove the matter again before the High Court, that the whole issue could be addressed. On that occasion again the Chief Justice, Justice Gaudron, and I have forgotten the third Judge who heard the case, basically concurred in essence that there was "insufficient substance to the point to merit it being removed before the Court".

Now, the whole argument there swung on what was the interpretation to be put on 'substance'. Was it the soundness of argument or the sheer social moment of the questions to be raised? My belief, in view of what I have just outlined was, in fact, the social moment of the matters to be raised. Again, I was refused leave to bring the matter up on that occasion so the system operated again on the basis of the previous rulings that they were in fact proper and correct which is, of course, the matter that I have been disputing. This then was to thicken the plot enormously in the intervening 12 months and has brought others in on the act so that it now involves the banks. I have had a sequestration order given against me because of a whole complicated effort which has followed.

BRENNAN J: Mr Skyring, we seem to be getting a long way away from the question of whether there is any error in Justice McHugh's judgment.

MR SKYRING: The error, I would suggest, Your Honour, is in fact in the interpretation which he has put on the Full Bench rulings. As I understand the situation, it is a single Judge, in effect, deferring to what he rightly believes, and not unreasonably, was a negative determination by the Full Bench of this Court - although all of them have only been by a

short Bench which is only four Judges, that was just because of the circumstances - and he was not prepared as a single Judge to fly in the face of that.

Now, my belief is that because of the subtlety of the argument, in essense, the stance he took was not unreasonable. I believe the matter has been raised again - that the matter can be brought back before the Full Court so that it may give its determination of what it really meant and this is the only way it can be done because there is a key issue which is involved here which goes to the heart of the way this nation operates. It touches everybody. I think any reasonable assessment of the situation at the moment would have to be that there is something terribly, terribly wrong with the way we conduct our financial affairs. Those who have responsibility for them do not seem to be able to provide the answer. It is a simple one as I see it: basically, it has got to do with a wrong form of accounting. Sort that ought and everything will fall into place. But it is to get the people who must make those decisions to be brought to see that what they are doing is wrong and with some simple adjustments the whole place can be sorted out and that is, in essence, what the whole action really, that is the bottom line, is all about. To deny that, Your Honours, I believe is - well, it would just be terribly wrong.

To bring the matter home in so far as it affects this Court, you will have notices that there is a small matter of 40 pages have been left out of the appeal record and in lieu of that was a letter from the Registry seeking 14 bucks for a transcript. Now, the key item here is individual liberties which I level with Chapter 29 of the great Charter which was set up as part of the law in this land when the judicial system was first set up in 1828 and the final punch line which says and which I have argued consistently since I brought this action before the Court formally in 1983, but it was in my original objection in 1980 when it started:

> To no man shall we sell, defer or deny right or justice.

Now, my submission is in this "sell" bit - and this is the key thing that I have homed in on from day 1 - ordinary meaning of words, dictionary definition:

> sell - Make over or dispose of in exchange for money.
>
> money - Current -

coin, the first definition, and then there are others. But it is the current coin bit which is the lead definition

Now, my submission is that despite all the talk that has been done, the simply fact on the ground which my footnote to that letter added, we do not have in physical form legal tender as prescribed within the CURRENCY ACT which I can use to effect that charge and therefore I get my transcript so that I could include it in the record. That is a simple effort. There is, of course, the much bigger effort of the legality, in fact, of that levelling of charge against me anyway in terms of that statute provision. Now, okay, that is a mere pittance, 14 bucks - tends to be regarded as nothing, so to speak, but in fact that principle though is looming large in a number of places around this island. If I could just build up progressively, in other cases, where that is the key issue. On this appeal - - -

BRENNAN J: Well, it does not seem to me to have very much to do with the points in Mr Justice McHugh's judgment.

MR SKYRING: Well, if I could home in on the record. The key point to which I took issue on is on page 50 of his judgment which is on page 62 of the appeal record. Having sort of outlined the case, what he said was:

> In the circumstances, it is plain that the matters which are sought to be litigated by the issue of process in this case have been already litigated and ruled on by the Full Court and by Justice Deane in 1985. Mr Skyring sought to distinguish the judgment of the Full Court by suggesting that it has been overruled by implication by subsequent decisions of the Court, apparently in further applications brought by him. However, I was not referred to any remarks of this Court specifically reversing that decision.

Now, that is the difficulty because it has all got to do with how you interpret the judgments which have, in fact, been given. Now, what I am saying is that we have an absurd situation on the ground which is what we - well, I and, indeed, my associate, Mr Cusack - are seeking to address by formal processes of the law in the forum where we see the ultimate - well, wisdom, if you like - have before you when you are adjudicating on these matters the collective record over centuries to be brought to bear on cases such as this.

Now, on the matter of absurd situations because that is really what we are dealing with here: the absurdity of the situation as it seems to me is that we have a whole - three major sectors of society: the partisan/political, legal and financial communities

who do not seem to be able to come to grips with the fact, and it is a cold, hard fact on the ground - - -

BRENNAN J: Mr Skyring, I have asked you to confine yourself to the points of error in Justice McHugh's judgment. Now, either you will do so or you will cease your argument.

MR SKYRING: Okay. Well, my point is - you posed the question, points of error. It is a subtle point whether, in fact, that is the issue; whether it is an error because in one sense I can see that what Justice McHugh has in fact said is not unreasonable - the lawyer's term - but in another, it is quite unreasonable inasmuch as he is relying on a firm decision in 1985, which I would submit again to you, has in fact been overruled by implication. Now, while - it was easy to state the negative case very clearly. It is not nearly so easy to be able to state the positive case which is the one that I am seeking to argue, in that sort of way. That is why I have got on to these other matters, because what we are dealing with is a matter of fact which it seems the legal fraternity collectively seems unable to come to grips with. So, if there is an error, that is the error. It is not of Justice McHugh, as such, it is the entire legal fraternity and dependent on them both the partisan/political and the financial communities. If there is an error, that is the error. It is the perception of what the situation is on the ground.

The legal view seems to be that what is on the ground is proper and correct. I would submit that is not, in fact, so. The error is in the assessment of the situation.

BRENNAN J: Mr Skyring, whatever might be the situation, as you described it, "on the ground", the question is whether or not you should be permitted to commence proceedings in this Court by the issue of the process which was the subject of Justice Wilson's order.

MR SKYRING: Well, I believe that should - I personally - - -

BRENNAN J: Yes. Well, whatever your personal belief is, of course, that is a matter upon which - - -

MR SKYRING: Yes, well, put the argument to be put, right.

BRENNAN J: - - - you are entitled to respect. The question is, however, whether the proceedings which you seek to commence are appropriate to agitate any question or decision by this Court.

MR SKYRING: Well, yes, Your Honour. If I may speak to that, I believe they are and, furthermore, such proceedings as might be started in this Court would not be taken in

isolation. Now, in this regard, might I draw attention to the senate committee which has currently been set up and is operating on the subject of the cost of justice?

BRENNAN J: No, you may not, Mr Skyring, because it will have nothing to do with this matter.

(Continued on page 10)

MR SKYRING: Okay. In respect of the process to be issued, the point is, what in fact I am seeking to have done is a very simple matter - I can appreciate your not wanting to launch the Court into a matter that will go on for years and costs millions, I take that point. I believe as a result of the activities that have happened over a period of years, the issues have now been brought down to about half a dozen points which have been summarized in the documentation and elaborated - if you sort of work backwards through the documentation as it has been filed - which require answers in effect by the ministers of the Crown who are ultimately responsible for the present law. Okay, maybe they might have inherited it; they have done what they can. But the fact of the matter is they are, for the time being, the Queen's ministers who are required to administer these matters. There is an awful conflict there which I believe they ought to be called upon to give account of why that conflict is allowed to stand.

In order that the Court might know where it is going, so to speak, our submissions have outlined - mine, supplemented by Mr Cusack's - what we see is the proper order of affairs, having regard for some very fundamental statutes which not only impinge on the liberties of the citizen versus the State, but also of the States versus the Federation. What we are talking here is, basically, validity of statutes and it is within the Court's powers to adjudicate on such matters. There can be no doubt about that.

What we are saying is that there are conflicts in there vis-a-vis our own CONSTITUTION which I believe have come in there as a result of treaty obligations. How this RESERVE BANK ACT is a case in point is one in particular; exactly how that came about, I have since become aware through extra reading on the history of the Commonwealth Bank and apparently it was made as a decision by the - it was a ratification on 20 March 1947 of a proposal which had in fact come from the IMF.

If I may - two spots of advice I have picked up over the years: one from my dad, "Any law is better than no law."; and from the professor of engineering, "Always make a decision. If you have made a bad one, you can always go back and change it." My view of the whole historical situation - this is both legal, financial, chased back over centuries, all is based on the documentation which I have since filed in this Court - is that I believe in 1947 the powers that be then made what they

believe was a good decision, having regard to the total world situation. In the 50 years since what has evolved, I think, has become very clear was that in fact they were conned and the place is in a hell of a mess because of that decision. There is a very great need - - -

BRENNAN J: Now, Mr Skyring, - - -

MR SKYRING: - - - to go back - - -

BRENNAN J: - - - you are going on to the situation as you see it on the ground again.

MR SKYRING: Yes, but my point is - - - -

BRENNAN J: Now, I think we have allowed you to speak for some considerable time now and thus far I think it is right to say we have heard very little that has anything to do with the application for leave to appeal. Now, we do not wish to shut you out from presenting your argument, but there must be some limitation on it. Now, are you able to present your argument in another five minutes?

MR SKYRING: All I would say in summary, Your Honour, is that you ask is there an error: I am submitting that the error is in respect of total system operation, perception of same by the judiciary which is at odds in so far as words describe situations. The error is in that perception, vis-a-vis what is on the ground. What the whole process sought to be instituted is in fact to call the relevant parties together, that this can be pointed up, acknowledged and readjust the whole nation, because that is really what is involved here, on what seems to me in the spirit of the law, in the broad sense of the law, as evolved over centuries in a thoroughly constructive way, which it is, to reset the national course. There is a proper way to do this. I believe it can only be done - well, it really needs to take place concurrently in three fora: one is in the courts; secondly in the legislature - I believe that is already underway with this cost of justice senate inquiry; but also in society at large to basically talk about this in the round. In society at large the discussion is going on, as I understand it, the effect of which is to point up, "Well, look, there is something terribly wrong here", but they themselves do not seem to be able to come up with the answer. The legislators to whom society at large basically delegates authority in these matters, because they seem to be blinded by their partisan ideology cannot come up with the answer. The courts then, who basically, as I see it, run the forum wherein the law meets the people in real life situations

on the ground, have a role because the situation in which I personally am cast is not one of my own making. I sought to discharge my obligations under the law in the strict sense, as I understood it, and I was utterly frustrated. That is not my problem. That is a system problem which the system must respond to and that is the process that I am seeking to put in train with the action that I am seeking to launch.

Mr Cusack and I have jointly, because it is a joint effort that has evolved over a period of years - have put a proposition that - or certainly for my part seems to me anyway, to answer or to have right cardinal principles that have long been upheld by the courts as the proper way to run society. What needs to be done is for that in effect to be tested in court. I take the stand that Martin Luther did in that celebrated.....in 1521: I am prepared to admit I am wrong. But will somebody please tell me where I am wrong? At the moment everybody is ducking the issue and that is that which is wrong, that the process will not be allowed to proceed and that I say is the denial of justice and that is what I am upset about. "To no man shall we sell, defer or deny".

I have got the sequestration order seeking to wrest my property from me. When I sought to pay the bloody tax I was not prepared to use what I saw as wrongful means and then I had the rug pulled out from under me and the whole place has gone terribly wrong. And that is not my problem. I have tried to do it properly. Now, if the courts do not intervene then they will stand as frauds, deserving of the utmost contempt and to be defamed utterly. I am not mincing my words on that, Your Honour. If this is not allowed, that is the course of action which must be put in train. It is one I hesitate to do but if it must be done it will be done because that is where the error lies. You have within your power to move on this case; if you do not, then collectively I believe that is a derogation of duty for which you deserve to be removed from the Bench.

No doubt word would have got down south that rather further down George Street they do tend to be a bit rough on judges up here these days. You have ventured up here into this territory. A key item comes up there on this matter of costs which is central to that issue: whether in fact that judge was properly removed from the Bench. These are the sort of issues which are involved, Your Honour, and they cannot be treated lightly. The proper course for this which is one thing Justice Connolly mentioned earlier on in one of

the earlier actions, it was proper that the matter be dealt with in the court and not on the street, which is what I am trying to do and I am being frustrated at every turn to which I object profusely and I believe rightly so too. I have tried to do what I believe - the right thing. It is - again, as an engineer - and this is perhaps partly my problem. As an engineer I have ventured into the legal arena where there are clearly cultural differences which show up. Now, engineers' scientific-type thinking is basically oriented towards society as opposed to the other older professions. Perhaps this shows up no more clearly than in the way in which one pays one's bills. Lawyers, doctors, very simple - the person you deal with, you send your bill to him but when a group get together to build a road or a bridge, who do they send their bill to? Now, this is community things. So, our thinking is totally different and the whole proposal which has evolved has derived from that and not to allow the whole process to follow its natural course is, I believe, an outright denial of justice; not only to me as an individual but to the other 15 or 16 million who are in the same position as I am.

I believe it would be utterly wrong for this action not to be allowed to get up, and on that point, Your Honours, I will let my case rest.

BRENNAN J: Thank you, Mr Skyring.

Having heard all that Mr Skyring wishes to say with regard to the judgment of Mr Justice McHugh, it appears to us that the judgment of Mr Justice McHugh was correct and, accordingly, a grant of leave is refused.

MR SKYRING: Thank you, Your Honour.

AT 12.32 PM THE MATTER WAS ADJOURNED SINE DIE