Re: ALAN GEORGE SKYRING
And: COMMISSIONER OF TAXATION
No. G154 of 1990
FED No. 867
Constitutional Law - Bankruptcy
92 ATC 4028
(1991) 23 ATR 84

COURT

IN THE FEDERAL COURT OF AUSTRALIA

QUEENSLAND DISTRICT REGISTRY
GENERAL DIVISION
Gummow(1), Einfeld(1) and Heerey(1) JJ.

CATCHWORDS

Constitutional Law - whether bank notes in circulation in Australia are legal tender - whether s. 36 of the Reserve Bank Act 1959 is a valid law - Constitution ss. 51 (xii), 115 - whether Income Tax Assessment Act 1936 invalid.

Bankruptcy - application for annulment of bankruptcy - whether sequestration order ought not to have been made - whether bankruptcy notice based upon a "final judgment".

The Constitution

Judiciary Act 1903

Australian Notes Act 1910

Commonwealth Bank Act 1911

Income Tax Assessment Act 1936

Commonwealth Bank Act 1945

Reserve Bank Act 1959

Bankruptcy Act 1966

Re Hanby; Ex parte Flemington Central Spares Pty Ltd (1967) 10 FLR 378 , followed.

Clyne v Deputy Commissioner of Taxation (No. 4) (1982) 66 FLR 301 , followed.

Re Finn (1982) 58 FLR 54 , followed.

The Queen v Foster; Ex parte Eastern and Australian Steamship Co. Limited (1959) 103 CLR 256 , applied.

Union Steamship Company of Australia Proprietary Limited v King (1988) 166 CLR 1 , applied.

Re Skyring's Application (No. 2) (1985) 59 ALJR 561 , applied.

HEARING

BRISBANE

#DATE 22:11:1991

The appellant appeared in person.

Counsel and solicitors for the Respondent: Mr P.E. Hack

Instructed by: Australian Government Solicitor.

ORDER

The appeal is dismissed.

The appellant pay the costs of the respondent.
Note: Settlement and entry of orders is dealt with by Order 36 of the Federal Court Rules.

JUDGE1

On 24 April 1989, this Court, on a petition presented by the respondent, made a sequestration order against the estate of the appellant. The act of bankruptcy relied upon was failure to comply with the requirements of a bankruptcy notice: para 40 (1) (g) of the Bankruptcy Act 1966 ("the Bankruptcy Act"). The final judgment upon which the bankruptcy notice was based was a summary judgment for unpaid income tax, obtained against the appellant by the respondent in the Supreme Court of Queensland on 7 October 1987.

2. On 22 October 1990, the appellant made an application to this Court which on 22 November 1990 was heard by a Judge of the Court (Pincus J.) and dismissed. The present appeal is brought against the dismissal of that application.

3. In the application, the appellant sought an order annulling his bankruptcy on the footing that, within the meaning of para 154 (1) (a) of the Bankruptcy Act , the Court should be satisfied that the sequestration order ought not to have been made. He also sought orders for the dismissal of the creditor's petition pursuant to which the sequestration order was made, and leave to file a counter-claim "in response to" the bankruptcy notice.

4. In his reasons for judgment, Pincus J. pointed out that it would be inappropriate to file a counter-claim in response to any bankruptcy notice, particularly to one whose effect was spent. His Honour also held that no legal ground had been advanced for the annulment of the sequestration order, and that this meant that the application to dismiss the creditor's petition must also fail.

5. Whilst the appeal to this Full Court against the decision of Pincus J. was pending, the appellant applied for removal of the cause into the High Court of Australia pursuant to s. 40 of the Judiciary Act 1903 ("the Judiciary Act"), on the ground that the cause involved the interpretation of the Const itution . That application was dismissed by Mason C.J. on 27 June 1991. His Honour's oral judgment is reported (1991) 12 Leg Rep 19. An application for leave to appeal was dismissed by the Full Court of the High Court (Brennan, Gaudron, McHugh JJ.) on 6 November 1991.

6. The appellant's statement of affairs discloses assets of $28,311.54. Five creditors have proved their debts and have been admitted to rank for dividend. The total of the proved debts is $93,134.17. The largest creditor is the respondent, in the sum of $77,651.71. At the time of the Official Receiver's Report on 13 November 1990, the appellant was 54 years of age and employed as a chartered engineer.

7. After the entry against him in the Supreme Court of Queensland of the summary judgment on 7 October 1987, the appellant took various steps to dispute that judgment. These are detailed in his affidavit sworn on 22 October 1991 in support of the annulment application. When that application came before Pincus J., the appellant, who appeared in person (as he did before us) was unable to advance any ground for the annulment which flowed from the terms of the Bankruptcy Act . He told us that he had not read that Act at the time and was therefore unable to advance an argument based on any of its provisions.

8. However, on the appeal, he submitted that the sequestration order ought not to have been made because the bankruptcy notice was not based upon a "final judgment" within the meaning of para 40 (1) (g) of the Bankruptcy Act . The earlier efforts which had been made by the appellant to challenge the summary judgment had included an unsuccessful application for removal of the cause into the High Court, also pursuant to s. 40 of the Judiciary Act . The appellant had been anxious to have the High Court decide certain constitutional issues and, in his view, a successful result on those issues would impeach the summary judgment.

9. As we understood the submissions on the appeal, the appellant sought to argue that a "final judgment" within para 40 (1) (g) had not been pronounced because neither the High Court nor this Court had yet ruled definitively on his fundamental challenges to the judgment upon which the bankruptcy notice was based.

10. We shall deal with these arguments shortly.

11. It is well settled that a judgment may be a final judgment within the meaning of para 40 (1) (g) even though the judgment is one in respect of which there is an avenue for appeal, or the judgment may otherwise be set aside on sufficient cause being shown. The point is that until set aside the summary judgment was final and conclusive and it never has been aside: Re Hanby; Ex parte Flemington Central Spares Pty Ltd (1967) 10 FLR 378 at 380-381 ; Clyne v Deputy Commissioner of Taxation (No. 4) (1982) 66 FLR 301 at 309-312 .

12. We should add that even if, contrary to our conclusion, Pincus J. should have been satisfied that the sequestration order ought not to have been made, his Honour would not have been bound as a matter of course to annul the bankruptcy. The Court would have been required to consider in the light of all the circumstances of the case whether the bankruptcy ought to be annulled. In that regard, it would be a significant circumstance that the appellant has not produced evidence to show that he is in truth solvent: Re Finn (1982) 58 FLR 54 at 62-63 .

13. The Notice of Appeal refers to several constitutional issues upon which the appellant says no final determination has been made, thereby depriving the subject bankruptcy proceedings of any "proper legal foundation". There are two such contentions in para 6 of the Notice of Appeal. The first challenges the legality of the "physical tokens presently in circulation with which debts incurred may be properly discharged by monetary means, having regard (to) the provisions of sections 51 (xii) and 115 of the Constitution , taken together, and the provisions of the Currency Act enacted pursuant to these constitutional constraints". The second contention is that the Income Tax Assessment Act 1936 , as presently framed, contains provisions which violate property rights of the individual secured by Magna Carta, being "part of the inherited law which provides a constitutional protection of rights of the individual against the Crown in right of both the Commonwealth and the State". We were told that there had been compliance with the requirements of s. 78B of the Judiciary Act .

14. At the heart of the first contention is the proposition that s. 36 of the Reserve Bank Act 1959 ("the Reserve Bank Act") is invalid. This section provides that notes issued under the Australian Notes Act 1910 , the Commonwealth Bank Act 1911 and the Commonwealth Bank Act 1945 or under Part V of the Reserve Bank Act itself are legal tender throughout Australia.

15. The appellant argued that the bank notes in general use in Australia are not legal tender because they or their issue infringe the Constitution . In consequence, the general conduct of public and private affairs in this country is, and for decades has been, proceeding illegally. He contended that this illegality was being condoned consistently by, inter alia, the courts, and explained that as taxation goes to the heart of the funding of our society's dealings and activities, it was appropriate for this Court to define and declare this unlawfulness in a case involving his alleged liability to taxation.

16. To establish the alleged unconstitutionality of the currency notes now in circulation, the appellant fixes upon s. 115 of the Constitution . This states:
"115. A State shall not coin money, nor make anything but gold and

silver coin a legal tender in payment of debts."

He complains that by s. 36 of the Reserve Bank Act , the Commonwealth has made notes rather than gold and silver coin legal tender in payment of debts throughout Australia. However, s. 115 is directed in terms to the States, not to the Commonwealth.

17. Section 51 (xii) of the Constitution provides that the Parliament shall, subject to the Constitution , have power to make laws for the peace, order and good government of the Commonwealth with respect to currency, coinage and legal tender. The appellant sought to have the expression "the peace, order, and good government of the Commonwealth" construed as if it contained words of limitation upon what otherwise would be the legislative power of the Parliament. However, the expression does not contain any such words of limitation: The Queen v Foster; Ex parte Eastern and Australian Steamship Co. Limited (1959) 103 CLR 256 at 307 ; Union Steamship Company of

Australia Proprietary Limited v King (1988) 166 CLR 1 at 10. The Parliament has legislated for the issue of paper money as legal tender and there is no constitutional bar against it having done so.

18. As to the appellant's contention directed to the validity of the income tax legislation, it is sufficient to refer to what was said by the Full Court of the High Court on 9 July 1985 in dismissing an appeal against a decision of Deane J. in Re Skyring's Application (No. 2) (1985) 59 ALJR 561 . The Full Court said:

> "(T)he power conferred upon the Commonwealth
>
> Parliament by s. 51 (ii) of the Constitution to legislate with respect to taxation extends to the imposition of taxation and its collection, even though it has the effect of requiring the person on whom taxation is levied to pay the tax out of property which he owns."

It is worth noting that both Deane J. and the Full High Court in this case also comprehensively rejected the appellant's constitutional challenge to the legality of the currency notes in circulation in Australia.

19. In short, there is no substance in either of the contentions advanced by the applicant upon matters of constitutional law.

20. The appeal is dismissed. We order that the appellant pay the costs of the respondent.

Cited by:

Ledger Acquisitions Australia MB Pty Ltd v Kiefer [2014] FCCA 2216 (30 October 2014) (Judge Antoni Lucev)

Skyring v Federal Commissioner of Taxation (1991) 23 ATR 84
Suh & Ors v Minister for Immigration & Citizenship & Anor

Ledger Acquisitions Australia MB Pty Ltd v Kiefer [2014] FCCA 2216 (30 October 2014) (Judge Antoni Lucev)

> 64. In *Skyring v Federal Commissioner of Taxation* [74] the High Court of Australia held that the power conferred on the Commonwealth Parliament by the taxation power in s. 51(ii) of the Commonwealth *Constitution* , to legislate with respect to taxation, extends to the imposition of taxation and its collection, even though it has the effect of requiring the person on which taxation is levied to pay the tax out of property which he owns. [75]

via

[74] (1991) 23 ATR 84 (" *Skyring*").

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via

[75] *Skyring* at 87 per Gummow, Einfeld and Heerey JJ .

Skyring, in the matter of Skyring [2014] FCA 397 (23 April 2014) (Rangiah J)

18. As to his application to rescind the vexatious proceedings order made by Sackville J against him, Mr Skyring asserts that such order has no "proper basis in law" and is not "legally sound", and accordingly seeks compensation (presumably in gold and silver coin) for "general distress". An appeal against that order was dismissed by the Full Court: *Skyring v Ramsey* [2000] FCA 774. Mr Skyring has also in the past attempted to commence proceedings to annul his bankruptcy. That claim has also been litigated and ultimately determined against Mr Skyring by the Full Court: *Re Alan George Skyring v Commissioner of Taxation* [1991] FCA 564 ; *Skyring v Commissioner of Taxation (Cth)* (2007) 244 ALR 505.

Clampett v Attorney-General (Cth) [2009] FCAFC 151 (28 October 2009) (Black CJ, Finkelstein, Greenwood JJ)

96. An appeal from the orders of Deane J was dismissed by their Honours Mason, Wilson, Brennan and Dawson JJ on 9 July 1985. See also *Skyring v FCT* (1992) 23 ATR 84 ; *Ramsey v Skyring* (1999) 164 ALR 378 per Sackville J at [2] , and [13] to [50]; *Jones v Skyring* (1992) 109 ALR 303 per Toohey J; *Skyring v Ramsey* [2000] FCA 774 per Ryan, O'Connor and Weinberg JJ; *Re Skyring* (1994) 68 ALJR 618 per Dawson J at pp 618619 ; *In the Matter of Skyring* [2004] FCA 827 per Dowsett J at [2] and *Skyring v Commissioner of Taxation* (2008) 244 ALR 505 at [6] to [26] in which the authorities are gathered together.