TRANSCRIPT
OF PROCEEDINGS
AUSCRIPT

Brisbane
Level 10
MLC Court
15 Adelaide Street
Brisbane QLD 4000
PO Box 38
Roma Street
Brisbane
QLD 4003
Phone (07) 3229 5957
Fax (07) 3229 5996
Townsville
Level 2
Northtown Office
Tower
Flinders Mall
Townsville QLD 4810
GPO Box 1401
Townsville QLD 4810
Phone (077) 72 5762
Fax (077) 72 3424

IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Brisbane No B107 of 1996
No B104 of 1996

In the matter of -

An application by ALAN GEORGE SKYRING for leave to file an application for Writs of Certiorari and Mandamus

McHUGH J

(In Chambers)

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON TUESDAY, 18 JUNE 1996, AT 11.33 AM

HIS HONOUR: Yes, Mr Skyring?

MR A.G. SKYRING: As I understand these proceedings, there are two matters

HIS HONOUR: Well, you have B104 and B107, I think, have you not?

MR SKYRING: Yes. The first one was my challenge to Gaudron Js refusal to allow me to file documents challenging Kirby Js decision of 26 February, I think it was. That is one. The second one was in respect to my electoral petition which I sought to file and I was also - that also would not be

HIS HONOUR: Well, you are an old customer in these courts, Mr Skyring, and you are aware of the practice - 10 minutes in each matter.

MR SKYRING: Right. Fair enough. In view of that, to expedite proceedings, your Honour, there is a hand up here that I would like to make to you, to which I will speak very briefly, which will expedite proceedings very considerably.

HIS HONOUR: Yes.

MR SKYRING: I will whip through very smartly, your Honour. I will speak to them item by item. This first one is an extract of a book which I was only given about 10 days ago which goes to the heart - which gives the history of the evolution of the judicial system in Britain on which our effort here is an offshoot, going right back to Roman times. It is actually course notes for those studying legal history, so there is a certain authority about it. The index follows, giving the whole range of matters covered. On the next page, it talks about the origins and development of equity. In respect to the basis of this action of mine and, indeed, the two preceding me.

Item 2 there I have marked - The Residuary Jurisdiction of the King.

One of the functions of the King was to act as a fountain of justice. He had a residuary jurisdiction to ensure justice was done to his subjects. Men might appeal to him when justice had been denied elsewhere or when remedies which they sought did not exist. A jurisdiction exercised through the issue of the writs.

All right. Now, things have moved on a bit from those days. In essence, these manifest these days as what are referred to as the Constitutional writs, in particular, Mandamus and Certiorari. Now, from the next few pages which basically covers the changes that were made to the court system in Britain following the Great Reform Act of 1832, there have been problems going right the way back when the courts were split in the very early days of common law, equity and exchequer along with a couple of others. Problems were realised with the common law as it has evolved. Equity came in in an endeavour to try and correct that in accordance with these earlier principles.

In fact, the point that is made in that particular section which is why it was included is that although the courts were merged, in particular, equity and the common law - indeed, all of the courts as they had evolved over the preceding centuries - the point that was made in this which I think is highly relevant to this present situation, although the administration was

merged, there is no merging of the substantive law. Now, that is common law and equity which has been around for the best part of a thousand years. There is a newer effort which has come in which is central to the issues which I have been bringing before the courts over the years, and that is the evolution of the law merchant which really sort of only became important from about 1700 onwards.

There was a very interesting judgment by Lord Mansfield which has contributed to this. I believe - it is one which I have cited previously, *Pillons v Mt Miron*. I did not fully understand the significance of that judgment until I read this history, but it is crucial to the way that the law merchant has been applied and, although his judgment initially in 1765, I believe, was a good one, he was over-ruled. Now, the essential problem which underlies all of these actions you have heard this morning, and, indeed, all of my previous efforts, is that where an attempt has been made to try and merge common law and equity because it has been around for so long, this law merchant has crept in and there are practices which have got in there which are diametrically opposed to the fundamental common law principles on which the whole place is supposed to operate. And herein lies the difficulty. If that problem can be addressed, then I think something useful can be done.

Now, on the next pages, starting 185, I give the opening comment about the law merchant. The crucial item is on page 189 that I have marked. It is in the lower part of the page.

The work of Holden CJ and Mansfield CJ in the 18th century were of great importance in the assimilation of the law merchant and the common law -

and this is the crunch line.

They used the juries of merchants and established the rule that immemorial usage need not be provided in a case of a mercantile custom provided that custom is not in opposition to any of the statutes, or accepted customs or rules.

Now, this is the crucial item, because this impinges on the matter of the currency. This has been the basis of my argument for years. Although it is said now the matter has been before the courts many times, the crucial item is that a final determination in the judicial sense has never been given on this vital conflict, and this is what I have been trying to get.

Now, what I am saying is that matters that have been accepted without question going back to this period of the 1700s were not unreasonable then because these practices did not bulk large in the general community operations. Since this century, with the advent of technology, they now do, and it seems to me high time that this matter was, in fact, looked at, because for reasons that I hope will become clear as I go through the rest of this, to me, it is from my reading of history very clear that there are untoward practices in there which do not reconcile and whenever attempts have been made to try to bring these out into the open and to have them questioned, the system has operated to close ranks, so to speak, so that these matters are never discussed and this is the problem, and that is what I have been trying to get at for years.

Now, for my own part, in respect to the use of these writs, I was directed along these lines by a couple of lawyers. I was told very early on the way to fly is prerogative writs, and that is not just from one source - it was from quite a few - which is why I persist with the approach. Now, I must say I do rather take issue with statements that have been made earlier but I will come to those later in my submission. Now, highly relevant to this matter is this matter of valuable consideration.

HIS HONOUR: You have only got 20 minutes. If you want to deal with these jurisdictional issues, then you should be using your time on that rather than this or we shall never reach those points.

MR SKYRING: All right. Well, okay. The points that you have made issue on was in respect to the use of these prerogative writs. Kirby J in the case yesterday, the applications brought by Mr Stanbridge, fairly early on I made the point - I think I recorded him rightly - that the writs apply to the officers of the Commonwealth who go outside what is warranted under law, and is not on the merits of the case, which is what appeals are about. This is where the process itself has actually gone wrong. Now, he did raise the matter of appeal, that one starts these proceedings in that matter. Now, I have, in fact, started on appeal. My approaches to use this have been knocked back consistently. It is not on one occasion; there are about three or four of them over a period of about a decade, and this is basically what has provoked me into using the prerogative writs.

Now, unlike Mr Owen, I do have order 63 rule 6 pulled against me, I believe quite wrongly, and it was in my endeavours to try to expose this wrong practice as I saw it in respect to the currency that that was imposed. If we jump fairly quickly then right - well, just homing in - there is an item two or three on entitled Banking Law and Practice in Australia. That is the lead page.

HIS HONOUR: Yes, that is a new book.

MR SKYRING: Well, it was in 1976. I will just mention there again this practice of merchants but the law merchant - at the top of the page there:

> *The law merchant is not a closed book. Nor is it fixed or stereotyped.*

So clearly, options are available there. There is a bit further down where I have marked with a blue pen, talking about bankers, trying to get at what they do, which is often cited in years to come, by Lord Denning -

> *...proceeded to illustrate to what extent the courts will go to recognise the extent the usages and customs of commercial men in commercial matters.*

> Now, Lord Denning's comment was highly relevant, and the point is that, even if someone should point out the flaws, the court should not seize on it so as to invalidate transactions or produce confusion. Now, okay, the whole point of the law is so that the affairs of state can be not only between people, but on a state basis, can be conducted in an orderly manner. If, however, there is something major wrong which is causing enormous difficulties, then it seems to me the courts are indeed duty bound to step in and make their contribution in time to help resolve the - they cannot do it on their own, but they can certainly make a contribution, and that is sought in this instance. Now, the final item on this page - in the section, rather, is that letter, which one Mr Norm Segal got back from his correspondence to the Attorney-General, which - that is the last page on that one which starts off on banking, your Honour.

HIS HONOUR: Yes.

MR SKYRING: On that one if you just go right to the end of the section, it is all stapled together, there was one by the

HIS HONOUR: Yes, yes. I see.

MR SKYRING: Now, okay -

I assure that the government fully supports the maintenance of the Constitution as the basis of Australia's system of parliamentary government.

Now, as I read that, that means the entire Constitution , not just little bits and pieces which happen to suit

HIS HONOUR: I am sorry, Mr Skyring. I have not got this. Which one is it?

MR SKYRING: That is the letter, your Honour, and it is stapled on the back of the one which starts

HIS HONOUR: Oh, yes. Yes; okay.

MR SKYRING: I just grouped them altogether. Now, in between those two covering sheets are a series of items which I have collected over the years, which is the basis of my effort that there is quite a major malpractice that has crept in deriving from this law - from this law merchant that has got into the whole political system which causes enormous problems. Now, if we come down to the final party, really, which is - which I get to the crux of the matter, there is an item there on an international conference that was held in fatigue of engineering materials.

HIS HONOUR: Yes, the changing face of fatigue.

MR SKYRING: Yes; okay. Now, if you just turn over on the final page of that one that you just pulled up the page there, the comments that were made by the one who gave - by Professor Crossland, although they are applied in an engineering context, it seems to me apply equally well in this arena, and it is in his last paragraph which I have marked in blue on the final page:

Thirty years ago I was involved in tri-axial fatigue and high pressure environment torsional fatigue, and with the enthusiasm of youth I thought we were going to understand the mysteries of fatigue which had escaped previous workers. However, what it has taught me is that every age is inhibited by the accepted ideas of that age, and advance is only possible by those few who dare to break free of their day and age. I will look with interest to see who of those attending this conference have broken away from the restraining views of accepted wisdom of the time and who will make the next quantum leap in our understanding.

Now, it is that sort of thing which, it seems to me, needs to happen in this legal arena. It is the legal

HIS HONOUR: Well, it may be that you are a modern Copernicus and you

MR SKYRING: Well, all right. Well, that is all I am trying - I guess it is my engineering background. I must say

HIS HONOUR: Yes. Well, you may

MR SKYRING: All right. Well, okay

HIS HONOUR: History may prove you right, Mr Skyring, but

MR SKYRING: Okay. Well, all right. Well, I will try

HIS HONOUR: but you are long way behind at the moment.

MR SKYRING: Right. Well, that is part of the problem. All right. Well now, I would like to take up the point that was made by Mr Owen in respect of the background as to how this order 63 rule 6 and 58 (4) got introduced. Now, 6 - although you knocked Mr Owen back and say 63 rule 6 did not apply to him, it does apply to me and it is because I - I guess in the sense of the - in the sense of the Japanese saying the nail that sticks up gets hammered down. I have been very much subject to that treatment. Now, the crucial point is - and I would come in on this point:

The person named in the application has the right to appear in opposition.

Now, this is the punch-line:

Leave cannot be granted under the order if it is proved that the proceedings are not an abuse of the processes of the Court and that there is prima facie ground for issuing the proceedings.

Now, when I was given this documentation at the time when the move was taken against me to have me declared a vexatious litigant I whipped through it, and that seemed a bit odd to me because if you look at the current rule it says "unless it is proven". Now, that "unless" seems to me to be the right way in terms of the common law process that goes back centuries. This "if" was a furphy, but as I understand it that enabling statute is still on the books, and this is what is causing the difficulties. Now, there was a point that Kirby J made in respect of the Wik case, I think it was, in the public arena, and as I understood him he was talking about laws and statutes that have been passed; that they cannot be wished away; they have got to be dealt with.

Now, my submission is that this rule that have been pulled against myself, and indeed was also pulled against those who have made submissions previously. It is ultimately based on a thoroughly unlawful premise. Now, if you look over the page at the basis, or the action that was brought which precipitated the inclusion of the statutory process that took place by which that rule got to be written - and as I understand the proceedings these rules issue under the Judiciary Act, so there necessarily has to be an inter-play between those responsible for the statutes, which I presume is the Attorney-General, and indeed the Judges of the Court themselves, because they have to uphold the whole system.

It seems to me that that was a quite improper process that was worked. Now, when you see the opening - I have just marked on the page opposite that I have under statute November 7, number 15907 - to apply to you to answer certain questions dealing with bank credit money and interest money - which I have not been answered - charge - delay in prosecution against the laws of the Commonwealth. And it goes on a little bit further down:

I claim that taxes have been collected to pay interest on money borrowed from banks, which involves the robbery of someone else's loan. Criminal Code section part 63 - section 370 - force me to steal someone else's loan.

Now, that follows from the normal deal what the banks tell us - we have to put in so they can lend to others. Now, that is the furphy and this is part of the effort which has been concealed, as I see it, in the whole process because of this lack of harmonisation, as I guess the word was used overseas when they are trying to merge statutes to get them to line up. Now, it seems to me that the proper approach that ought to be done here is that process ought to be instituted to allow that statute very - now, this applies highly personally to me and all the constraints that you have mentioned against others do not apply in this case - that I have been barrelled through this, quite wrongly, I believe, as I have been declared a

vexatious litigant when I should not have been, because all I was seeking to do was to point up that there is a massive inconsistency between the provisions of the Reserve Bank Act, section 36(1) in particular, which flies in the face of section 22 of the Currency Act.

The whole system is fundamentally in error, and it all has to do with this concealment of an improper practice. Now, there was - back in that section - no - at the end of the previous section where I started off this current line I am in about the change in pace of fatigue, I would draw the comment to the observation of - in respect of the development of monetary policy in Australia given by the then Governor of the Reserve Bank, Nugget Coombes - *There has been in recent years a change in attitude towards monetary policy. Most of us can remember when anything which had anything to do with money was both medieval, in the modern sense of the term, something of a mystery; an activity carried on by an exclusive group behind closed doors. There used to be a saying the bankers was "Never explain, never justify".*

Now, that always intrigued me, coming from the Governor of the Reserve Bank as he would be in a position to know what is going on, and my

HIS HONOUR: Just let me get plain what is going on. I have got before me B104

MR SKYRING: Right.

HIS HONOUR: B107.

MR SKYRING: Right. Okay

HIS HONOUR: Now, these arguments that you are addressing have got nothing to do with those.

MR SKYRING: Well, okay. I - well, I should have thought that they were central to the whole issue, your Honour.

HIS HONOUR: But they are not. They proceed on the basis that orders have been made

MR SKYRING: All right; okay.

HIS HONOUR: under the rules.

MR SKYRING: Okay; all right. I take your point. All right. What I am saying is that I am - okay. In my own case, as I understand the proceedings that have been going on since Toohey J made the declaration against me, that it was, in effect, on the - it was set out in order 58 rule 4 - that is, I have to demonstrate that the process is not an abuse of process, vexatious, or frivolous. Now, what has been happening, as I understand it, the first two were in fact dealt with in previous judgments, firstly by Dawson J where I addressed the matter of abuse of process, certiorari can be used to bring in prior judgments in lower courts that are wrong, and indeed to challenge statutes.

> This goes right the way back, so there is no substance to the argument certiorari cannot be used in this manner. The second one was in respect of being vexatious. Now, that was the essence of the matter which appeared before Kirby J. I went right through in an effort to demonstrate why the action I was taking was not vexatious. He, in his closing comment, made the point in respect of this rule there is no doubt that the rule is valid, and in any case Toohey J had held it and he was prepared to go along with that. Now, I am suggesting to you that in fact that statement is based on presumption. The law is presumed to be correct unless it is challenged. I am saying is that there has never been a formal argument to demonstrate that the rule is in fact valid.

HIS HONOUR: But neither B104 or B107 raised that point.

MR SKYRING: Right - well, no. The point - Justice - okay. I was not

HIS HONOUR: Well, you handed up among this bundle of document a draft Chamber summons

MR SKYRING: Right; okay. Now - all right

HIS HONOUR: which seems to challenge the rule.

MR SKYRING: Well, okay. Now, that - now

HIS HONOUR: That is quite different from B104, B107.

MR SKYRING: Okay. Now, what I am saying is that in effect on Gaudron Js effort, she refused to accept my documentation challenging Toohey J on the basis, in effect, that - she ruled on both of them - they were in fact frivolous.

HIS HONOUR: Not Toohey J; it was Kirby J, was it not?

MR SKYRING: No. No, things happened quite fast, your Honour. This second application that I bring is actually against - the two presently before you are in fact against Gaudron J for not - for refusing to allow me to file the documentation on the basis that she held that - she held them to be frivolous, and I am challenging her

HIS HONOUR: But the only document I have - I have got two matters before me. One is in B104

MR SKYRING: Okay. Now, that is directed to Gaudron J.

HIS HONOUR: Yes.

MR SKYRING: Okay, and what that was about was challenging her decision not to allow me to file documentation to bring action to get at the prior matters, which were Kirby Js decision

HIS HONOUR: Correct, yes.

MR SKYRING: and in turn, the matters which I addressed.

HIS HONOUR: Yes.

MR SKYRING: Now, central to those matters was in fact this whole matter of abuse of process, vexation and frivolousness.

HIS HONOUR: Yes.

MR SKYRING: Now, what I am saying is that in the prior proceedings the first two matters have been dealt with, and they have been, in effect, as I understand it, because nothing was mentioned, my case is stuck: ie, they are not vexatious, and they are not an abuse of the processes of the Court. The only thing which is left is this matter of them being frivolous. Now, I had addressed that in my principal affidavit in terms of prior judgments. Okay, as a matter of straight law - and this goes back to Lord Blackburn in 1885, when the first of this type of action was brought - okay, frivolous they are in the sense that unless all prior judgments are wrong - now, I am saying in this instance all prior judgments are wrong, because we have this massive conflict between the statutes of what is the Currency Act, the Reserve Bank Act - and the question has not been answered: what constitutes constitutional legal tender in this country? So now that - now, if you get into the legal/political, that gets into the matter of a constitution of interpretation, and that is anything but frivolous. If it is seen to be so, then something has gone terribly, terribly wrong.

HIS HONOUR: What is frivolous is the grounds you rely on.

MR SKYRING: Which are, as you see them?

HIS HONOUR: Well, you have been putting them through the Courts for years.

MR SKYRING: Okay. But I come back to the point that was raised earlier on: no decision has been given in respect of what constitutes a definitive argument spelling out chapter and verse what constitutes a legal tender of money in this country. The only thing that has been given was the determination by Deane J at first instance in 1985, and if you look at that, he drew certain conclusions, but then - now, it was an ex parte application. I only appeared myself. I sought to serve the summonses, but in fact they were not taken up, I have reason to believe, because of the previous effort where in this 58 rule 4 was brought in, although I did not realise what was happening then, and his conclusions are diametrically opposed to what argument was put.

Now, it is exactly the same situation as came up in 1943. Certain questions were asked, and they have not been answered, and it seems to me they should be answered, and this is the point I am trying to get at. So my approach is - now, the same thing applies in respect of the

electoral petition; similar sort of thing. Now, you raised the matter of standard. Now, okay, I come into this as a candidate for the - actually, the last three elections: 1990, 1993 and this current one; and the point of the matter is that I have questioned the validity of the nominations of all candidates for those elections, and I question in fact whether in fact the Parliament since 1990 has been properly based.

If nobody is properly nominated, then everything else that follows is a heap of humbug. Attention focuses on that. But the crucial matter is that this matter has not been addressed. So what - so that my answer to this was - and this what that effort that this - was included in that hand-up - that if we come back to what Kirby J said yesterday:

Certiorari applies to officers of the Commonwealth who have gone outside what is warranted under the law.

Now, this is not - the problem is not the current officers of the Crown; it is the inherited deal that goes back to 1943. That statute is still on the books, and the rules are in - the High Court Rules are still in there pursuant to that. Now, what I believe is the proper thing that should happen here is that that summons that I - that is included in that hand-up that I gave you now should be issued to the Attorney-General, because he is an officer

HIS HONOUR: Well, I am not dealing with that at all. It is not before me, and I am not dealing with it. So you are dealing with B104, B107.

MR SKYRING: Well, my submission is, your Honour, that

HIS HONOUR: And you have got about three minutes, Mr Skyring.

MR SKYRING: Okay. My submission is that in terms of what has been pulled against me - 63 rule 6, which is the basis on which this application is made - the requirement is that I have to demonstrate that I am not abusing process, I am not - my proceedings are not vexatious, nor are they frivolous. The argument that has been put in effect surely makes the point in respect of those. On the face of that then, process should issue, and there should be no problem for you to issue the proceedings.

Now, the proceedings I suggest to start the whole ball rolling would in fact be that that I handed up in this hand-up that I gave you now. There is no - because that starts the process

that gets at the root cause of the problem, which will allow us to talk about a matter which is taboo in public debate. No one will talk about these matters that were raised in 1943. Now, they came up in 1943 in a way that made it very difficult for the authorities to deal with, and I see why it was done.

But the problem is that - and given that that law report is correct, and I have no reason to think it is not - a massive error of process occurred then wherein the current officers of the day - and that involved both the Attorney-General and the court officers who were responsible collectively for that statutory order 74 of 1943 issuing - plainly went beyond what is warranted by law, and that is the point that needs to be addressed. That is properly done by issue of this prerogative process, and that should be done. If it is not done, then that, as I understand it, would constitute an error of law on your part.

HIS HONOUR: Yes.

MR SKYRING: Well, that is the essence of what I

HIS HONOUR: Thank you, Mr Skyring. In this matter, No B104 of 1996, Mr Skyring seeks an order that he be given leave pursuant to order 63 rule 6 to institute proceedings for the issue of writs of Certiorari and Mandamus against Gaudron J. On 3 May of this year, her Honour refused leave to issue Writs of Mandamus and Certiorari against Kirby J, who had refused the applicant leave to commence proceedings in three matters. In giving her judgment, her Honour said, and I quote from page 4 of the transcript:

Whether or not the argument has been so confined, it is entirely without merit and has been so held by this court on numerous occasions.

In addition, for the reasons I gave in Mr Gunter's matter, this Court has no jurisdiction to issue Writs of Mandamus or Certiorari against Gaudron J. Accordingly, in matter B104, leave to issue process is refused.

I then deal with matter B107 of 1995. This is a summons for leave to issue proceedings to quash an order of Gaudron J made on 3 May 1996 in which she refused the applicant leave to file an election petition in respect of the election held on 2 March of this year. Her Honour gave judgment, which is set out at page 4 of the transcript of 3 May 1996:

HER HONOUR: This is an application by Mr Skyring who has been declared a vexatious litigant. He seeks leave to issue process, being an application for writs of mandamus and certiorari directed to Justice Kirby of this Court. That application arises out of the refusal of Justice Kirby to grant leave to issue process in three separate proceedings in which Mr Skyring wishes to agitate, once again, the proposition that the Constitution mandates gold coin rather than paper money as legal tender. Perhaps the argument is now confined to transactions which involve larger amounts of money.

> Whether or not the argument has been so confined, it is entirely without merit and has been so held by this Court on numerous occasions. The proceedings which Mr Skyring sought the leave of Justice Kirby to institute were clearly frivolous. The application was properly refused. This application must also be refused.

In my view, her Honour was plainly correct in saying that the application is clearly frivolous. For those reasons, leave is refused in this matter as well as in B104.

AT 12.03 PM THE MATTER WAS ADJOURNED