IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Brisbane

No C100 of 1994

In the matter of -

An Application by
ALAN GEORGE SKYRING, B.E.
M.I.E.Aust

DAWSON J

(In Chambers)

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON WEDNESDAY, 29 JUNE 1994, AT 9.00 AM

HIS HONOUR: Mr Skyring, you appear in person, do you?

MR A.G. SKYRING: Yes, Your Honour.

HIS HONOUR: Yes, Mr Skyring, and your application is for leave to proceed with the proceedings which are outlined in not this summons, but the summons which you want to issue - - -

MR SKYRING: The one of 11 May, yes, as I understand proceedings.

HIS HONOUR: Yes, Mr Skyring. I should say that time is limited this morning - - -

MR SKYRING: I will be very quick, Your Honour.

HIS HONOUR: So, what I propose to do is to give you 20 minutes which is the time that is normally given to applications for special leave to appeal, and I will give you a warning at 17 minutes.

MR SKYRING: That is far better than I have had on the last couple of occasions, it has been five minutes, so I am really sharpened up.

HIS HONOUR: Well, time is ticking for you now, Mr Skyring.

MR SKYRING: To formally commence proceedings then I read my notice of motion of 18 May and the affidavit of that date, and the supplementary affidavits of 3 June and of 24 June.

HIS HONOUR: I have read the affidavits.

MR SKYRING: Right, and if I may, Your Honour, I would also like to hand up one now with today's date, which is a very brief one, which brings the information right up to date.

HIS HONOUR: All right, well if you will hand that up.

MR SKYRING: In the first part, the first item refers to the delay in my getting the documentation on this particular hearing.

HIS HONOUR: Well now, if you would just give me a minute to read it.

MR SKYRING: Yes, Your Honour.

HIS HONOUR: Yes, Mr Skyring.

MR SKYRING: Okay, it is that last matter which affects me very personally, the fact that I can be charged with an offence under section 16 of the *Crimes*

*Currency Act*. The basis of the argument put is whether, in fact, these items are in fact lawfully current - - -

HIS HONOUR: But what you seek to do in the present application is to obtain leave - - -

MR SKYRING: Right, the point I wish to address is that there is a - - -

HIS HONOUR: Can I just get clear what this application is. It is for leave to apply for a writ of certiorari to quash several decisions, and the decisions are - now listen carefully - first of all that the judgment of Justice Spender in the Federal Court - - -

MR SKYRING: This court here, yes, Your Honour, that is what started it, right.

HIS HONOUR: Secondly, an order made by Justice Dowsett in the Supreme Court - - -

MR SKYRING: That was back in 1990 - - -

HIS HONOUR: The 17 December 1990 - - -

MR SKYRING: Yes, right, which - - -

HIS HONOUR: And, thirdly, a decision of the Queensland Court of Appeal which was entitled *Skyring v The Commissioner of Taxation*.

MR SKYRING: Yes, that is the fairly recent one which was only just at the end of April, right - - -

HIS HONOUR: Now, those are the decisions you seek to attack, are they not?

MR SKYRING: Yes, but going further than that, then there is the matter of the legality of the statutes behind them, which is what brought them on in the first place, and that is the much bigger issue.

HIS HONOUR: So then, in addition, you seek to attack the validity of the *Telecommunications Act* 1975?

MR SKYRING: Certain provisions in respect of payment. It is all these provisions to do with payment, where there are penalties - - -

HIS HONOUR: Yes, there is that Act - - -

MR SKYRING: That Act, yes.

HIS HONOUR: The *Currency Act* 1965?

MR SKYRING: Yes, there are provisions in it in respect of the minor coinage, but that is a small order effect. By and large it is okay, as I understand it.

HIS HONOUR: But, you seek to attack some provisions of it?

MR SKYRING: Yes, minor detail on that one, yes.

HIS HONOUR: And, the *Income Tax Assessment Act*?

MR SKYRING: Yes, it is the ultimate legality of that, as a broad issue.

HIS HONOUR: Yes, and finally the *Commonwealth Electoral Act*?

MR SKYRING: Yes, the point here is this matter of legal tender versus banks' cheques, as though they are both equivalent.

HIS HONOUR: So, that is the nature of the proceedings which you seek - - -

MR SKYRING: I really seek to put in train, yes, Your Honour.

HIS HONOUR: Right. Well now, if you would address me on that.

MR SKYRING: Right. The point is why should I want to do such a thing like that? In short, the situation in which I find myself, personally, at the moment seems to, from my reading of history and of the law reports relevant, seems to have derived from the fact that on the two major occasions when these major matters have come before this Court, first of all in 1932 there were three actions there involving *The State of New South Wales v the Commonwealth*, there were three actions involved in that over the period March to about May, the upshot of which was the downfall of the Lang administration in the State of New South Wales.

My reading of that is that on the third one, particularly, when the Commonwealth moved to garnishee the accounts of the State of New South Wales, nobody sought to raise the matter of the formal making of the payment, it was paid by cheque as though this were quite a legitimate way to proceed. Had that matter been raised then, I believe the outcome of that hearing could have been very, very different.

The next major occasion when this matter came up is what has been referred to as *The Bank*

*Nationalization case*, about 1947, 1948, I am not exactly sure just when. My understanding - - -

HIS HONOUR: 1948.

MR SKYRING: 1948, yes, right. My understanding of that was that it was argued, essentially, under section 92 of the *Constitution*. Now, that section treats trade, so the premise that was made was that banking is properly regarded as trade. Now, the fact of the matter is that that was presumed. Nobody has ever formally demonstrated that banking is properly to be regarded as trade because the essential function in the banking operation, of which I have become aware of, is this matter of creation of money in the deemed materialized form of credit by taking a mortgage against property.Now, it seems to me there is an awful illegality in respect of that particular operation.

Now, my own view is, and I argued this before the Federal Court back in the late 1980s, that I believe the proper way to attack this problem is jointly, under sections 51, 12, 13 and 16. Section 12 treating currency coins and legal tender; 13 is banking, with the exception of State banking, but including the issue of paper money; and, 16 which treats promissory notes and bills of exchange. These are all of your forms of money, and these heavily impinge on the currency. Those heads of power which are assigned to the Commonwealth, in conjunction with section 115 of the *Constitution* which treats States' rights, and that brings in this whole legal tender question.

HIS HONOUR: Basically, and you can develop this - - -

MR SKYRING: Yes, that is what I have done previously.

HIS HONOUR: Basically, you say that the issue of paper money as legal tender is invalid, constitutionally invalid?

MR SKYRING: Strictly, yes. Now, I have broached this matter in 1985 before Justice Deane, which judgment I have had cited and cited against me ever since.

HIS HONOUR: Yes.

MR SKYRING: There is a procedural point in that, which I have pointed up and I have never been able to make stick, is that although I did attempt to serve the summons it was a matter of whether I served it properly. I went basically through the A-G's office up here, because I had made that approach work previously, and I presumed it would work again. The fact was that nobody from the other

side fronted in the court as they should have, in that hearing before Justice Deane. So, he was put in quite a bind as to how to deal with the matter, and he got out of it all quite well, in that he dealt with it ex parte because I was there. I believe he sized up my side of the argument remarkably well, but then he jumped and gave those conclusions, which have formed the basis for everybody's action ever since.

Now, on my view, those conclusions do not follow from the argument that was presented. The other side should have put the bit inbetween to demonstrate where I was wrong - - -

HIS HONOUR: Well, Mr Skyring, you appealed against Justice Deane's judgment.

MR SKYRING: Yes, but again, it was an extremely brief appeal, and - - -

HIS HONOUR: But, you lost the appeal.

MR SKYRING: Yes, but that appeal was an extremely ambiguous wording of just what that appeal meant, and this is the difficulty. My view is that because the thing was never ever argued properly in the first instance, yet has been used as though it had been properly argued, the net effect is to show up that it is, in fact, wrong, is the situation that we have now, wherein we have this enormous conflict in respect of just what actually does constitute legal tender. It is that point that I believe is wrong.

Now, the form of the proceedings that I am seeking to get underway here is, basically, to bring in the proper authorities who should have a say on this. I am the proverbial meat in the sandwich, so to speak. On the two previous occasions, as I understand it, it was actually the counsel for the State of New South Wales and counsel for the Commonwealth who did actually appear in 1932 in the *Banking case*. I am not exactly sure who appeared there. I think, as I understand, the action was actually brought by the National Bank challenging the nationalization provisions.

Now, because of the way that case was attacked, and they were proper authorities basically bringing the actions, in fact the point that was never queried, and which I believe should be queried, was, firstly, the right of the banks to create money at first instance, because that is the sovereign right of the Crown and then to go on, and for their right to charge interest. This is presumed as being proper and correct, so how does

one tackle that one? Well, this is where, I think, it is not improper to make use of the amalgamation between the ecclesiastical courts and the common law courts that happened in the UK back in the 1600s, in that there is a very real sense in which this Court is seen to be the moral custodian, if I may use those terms.

So that, following this line through, if one then brings in the good book on which all those are sworn before this Court for when that approach is used, and particular reference is made to Deuteronomy, Chapter 15, a couple of very interesting questions arise. Reference is made to the chosen people who may lend but shall not borrow, but the interesting point is that there shall be a release after "seven years", no matter what. The other very interesting point, there is no mention in the concordance of interest. So what then is the ultimate basis for the practice which is widely accepted through the financial community of loans that go on indefinitely, and interest that can be charged at what were, in former times, regarded as usurious rates. My own view - - -

HIS HONOUR: Well, it is certainly not Deuteronomy as the basis.

MR SKYRING: Well, whatever, but that is my point. It is a not insignificant fact that it is these Hebrew gents, as I have referred to, who are one way or another involved with this whole of this banking practice and this goes back a very, very long way. Their practice would appear to be very clearly at odds with the words in the good book, as we are understood and as we are led to believe, is in fact the basis of the operation. So the question I am putting, and this is the one which really needs to be answered because it is a very hot topic at the moment - interest rates are going to go up and they are already moving up at behest of the banks - what is the ultimate authority for that action, indeed for their creation of credit by book entry, which is in fact what happens and which is what Abraham Lincoln was on to way back in the 1860s. He saw how the thing could be set up. Indeed, it is what he formulated then is in fact what I am about now. I believe the place has moved on sufficiently. There is sufficient experience gained. We now have the technical capability to be able to do things properly but there is this crucial practice that dates back centuries that needs to be formerly questioned. If it cannot be properly substantiated then it needs to be set aside and a proper procedure put in train for the organizing, not only of this nation's affairs, but if we as a nation

were to make a move I believe we would lead the way for the rest of the world.

As a somewhat lighter aside in regard to that term of phrase which is currently doing the rounds, there is another aspect that if one cares to take down a topical version, interesting things happen in that particular region of the body. Things also begin there. If they do not function properly it can cause great anguish for the whole of the body. So being geographically located as we are, if we function properly, then we can help the rest of the world. Indeed, in a much broader sense, that is what I am about but I of myself cannot do it. All I can do, which is what I am seeking to do, is to be a catalyst to formerly bring in others who are in the positions of authority and who have the authority to be able to determine these things and, indeed, who should determine them. But it seems that, of themselves, they cannot seem to get underway, so I seek to do it.

HIS HONOUR: The trouble is, Mr Skyring, and it is the trouble which I have in accepting what you say, is that there is a decision of the Full Court against you on these matters.

MR SKYRING: Yes, but I would make the point to, Your Honour - - -

HIS HONOUR: You see, I am bound by what the Full Court has said.

MR SKYRING: Okay, but the point is that I would point up to you, Your Honour, that that was an incompletely argued case. While there is a decision, I am not disputing that, what I am saying is that that decision is incomplete and because of the way the matter was argued at the time the other side did not front to present an argument. Now they come - - -

HIS HONOUR: I am merely pointing out to you I am bound by that decision.

MR SKYRING: I would put the question to you, (a), while there is the - for procedural stability I take the point that you make, in this instance, there is a very grave wrong here which really needs to be sorted out. I would have thought and hoped that in fact it is possible, with these shortcomings, that given the nature of what is in issue, that a single judge can, of himself, quite properly act where major things are shown to be wrong, which they are. It was very clear. There can be no doubt about that and it manifests in the day to day effects, not only on me personally, but there is a whole lot

of other things that concern a whole lot of other people and therefore it seems to me that this is a proper way for it to be for things to be moved.

I suppose if you see that you cannot, then I guess the only way I can go an get it is to basically appeal this decision then to the Full Court.

HIS HONOUR: You can do that, of course.

MR SKYRING: All right, the process has to be started, that is all, and I have to come before a single judge as I understand it - - -

HIS HONOUR: Yes.

MR SKYRING: - - - just to get the show rolling. If that is what you have got to do, well, okay, so be it, I guess everybody is happy that way and then the formal process has been done. I just feel I must move and whatever has got to be done, well so be it, Your Honour. That is basically all I want to say.

HIS HONOUR: Thank you, Mr Skyring. You still have not run out of your time and you have not addressed the question of the validity of those acts. The argument is basically the same, is it?

MR SKYRING: In essence I am saying, yes, Your Honour. The point that I have made in my submissions which I was not aware of when I first fronted Justice Deane back in 1985, was a marvelous little observation in Quick and Garran on article 178 talking about the powers of the Commonwealth on this legal tender subject wherein they made the point, "but if a State were to endeavour to compel a person to accept anything but gold or silver as a legal tender then the person aggrieved could appeal to the courts of the Commonwealth for relief".

Very clearly, what is happening to me now, and this is what has precipitated these efforts from ....., I am really being coerced, as I see it, from State level, to accept something other than gold or silver as a legal tender. The general tenor of that basically confirms completely the argument as Justice Deane summarized me back in 1985, but there is nothing being advanced from the other side to either rebut me then, or as I have put it, I have sought to get up in argument since to now rebut Quick and Garran. Those particular provisions of the *Constitution* are still relevant because there has been no change made by the prescribed manner set out in section 128 as to how the *Constitution* should be changed. So if it has been changed

de facto then there is basically no de jure basis for it being done, and that is what I am up tight about.

HIS HONOUR: Yes, I follow.

MR SKYRING: It is not so much what - Justice Deane on my own argument, we now get back then to the earlier efforts of again, what I believe was a quite wrong interpretation of the first Chief Justice, Sir Samuel Griffith, in *Chia Gee v Martin* on the matter of Magna Carta. Because the case was lost the Magna Carta was mentioned, Magna Carta in effect, has been downgraded as a basis for action, yet it underpins the whole basis of operation as a series of judgments over the years from this Court in fact confirm that it is still there. So, in essence, I am - - -

HIS HONOUR: That is the argument as to costs you want to raise, is it?

MR SKYRING: That comes in on the matter of costs as well. This really vitally affects the whole operation of the courts themselves, because how, as I have said in my affidavits,.....somewhat upset if the courts cannot get their own house in order, what hope is there for the rest of society. If the courts were to move on the sort of effort that Abe Lincoln was about, then you have the answer to your problem. It is completely in accordance with Magna Carta and the whole place ties together quite magnificently. That is what I understood the law of this land was.

HIS HONOUR: Yes.

MR SKYRING: It would appear to be that, well certainly, there is a lot of decisions around that would appear to lead one to the conclusion that it is not so, so further argument - look, there needs to be a statement, what is the ultimate basis of the law of this land? They say we do not have a Bill of Rights. My understanding of the history is that we have two quite magnificent ones, namely Magna Carta and the Bill of Rights of 1689 which is part of our inheritance, it underpins the entire operation, so why is it not formerly stated at a very high level, this is the basis and any statutes which are at odds with this are invalid of necessity.

It is an enormous thing but it all comes back and it focuses very simply on this matter of what is legal tender in this country and it is the sovereign right of the Crown the creation of money in all of its forms that is the crucial effort. My effort is to get that right restored back to the Crown that it can act with the advice and the

consent of Parliament, which is the legislature, which is the representative of the people, and that is what I seek to have implemented.

HIS HONOUR: Yes, thank you, Mr Skyring.

On 27 August 1992 Toohey J. ordered pursuant to Order 63, rule 6(1) that the applicant, Mr Skyring:

> "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."

His appeal to the Full Court against that order was dismissed. The decision of Toohey J. is reported in *Jones v Skyring* (1992) 66 ALJR 810 at page 814; 109 ALR 303 at page 312. The decision of the Full Court is unreported and is dated 1 July 1993.

By a summons dated 22 June 1994 Mr Skyring has applied for an order that leave be granted pursuant to Order 63, rule 6 to commence proceedings for prerogative relief in relation to a number of matters. Order 63, rule 6(2) provides that:

> "Leave shall not be given under this rule unless the Court or a Justice is satisfied that the proceedings are not an abuse of the process of the Court and that there is a prima facie ground for the proceedings."

The proceedings which the applicant, Mr Skyring, wishes to commence are by way of a summons seeking writs of certiorari to quash decisions adverse to the applicant. Those decisions are contained first in a judgment of Spender J. of the Federal Court of Australia in *Skyring v Telecom Australia*, dated 18 February 1994. Secondly, there is an order made on 17 December 1990 by Dowsett J. of the Supreme Court of Queensland in *Skyring v Australia and New Zealand Banking Group Ltd*, in respect of which the Court of Appeal refused the applicant an extension of time to appeal because, in its view, the appeal had no prospect of success. That decision of the Court of Appeal is unreported but is dated 12 May 1994. And lastly, there is a decision of the Queensland Court of Appeal in *Skyring v Commissioner of Taxation* which is also unreported but is dated 25 March 1993.

In all these matters, apart from the ground which I will mention in a moment, the applicant's argument has relied on the proposition that it is beyond the power of the Commonwealth Parliament to

legislate to make paper money legal tender. This in essence is the same argument as that put by the applicant in *Re Skyring's Application (No 2)* (1985) 59 ALJR 561, which was rejected by Deane J. His judgment was confirmed on appeal by the Full Court. The judgment of the Full Court is unreported but is dated 9 July 1985. The matter was concluded in the view of the Court by sections 51(xii) and 51(xiii) of the *Constitution* and section 36(1) of the *Reserve Bank Act* 1959 (Cth). (See also *Skyring v Australia and New Zealand Banking Group Ltd* which is the unreported judgment of the Court of Appeal of Queensland dated 12 May 1994.) It would, in my view, be an abuse of process to allow the applicant to relitigate a matter which has already been decided adversely to him. Accordingly, I would not grant leave under Order 63, rule 6(2) to issue proceedings challenging the decisions on this ground.

The only other matter raised by the applicant in the courts below was an argument as to costs which he put in his application for an extension of time to appeal against the order of Dowsett J. in *Skyring v Australia and New Zealand Banking Group Ltd.* There he argued that the trial judge erred in awarding costs against him as the unsuccessful party to the action. He submitted that such an order was inconsistent with Magna Carta. I do not think that there is any inconsistency between Magna Carta and an award of costs against an unsuccessful litigant. But even if there were, it is clear that a subsequent statute can displace Magna Carta: see *Chia Gee v Martin* (1905) 3 CLR 649 at 653; *Re Cusack* (1985) 66 ALR 93 at 95. Under section 58 of the *Supreme Court Act* 1867, the Supreme Court has power to award costs: that power is governed by the *Supreme Court Rules*, Order 91, rule 1. Accordingly, Dowsett J. clearly had power to make an award for costs and there is no prima facie ground on which to challenge his order. I would also refuse leave under Order 63, rule 6(2) to issue proceedings to challenge on this ground the decision of Dowsett J. or the Full Court in *Skyring v Australia and New Zealand Banking Group Ltd.*

The proceedings which the applicant wishes to issue also seek orders quashing in whole or in part the *Telecommunications Act* 1975 (Cth) (that Act has been repealed and is now replaced by the *Telecommunications Act* 1991 (Cth)), the *Currency Act* 1965 (Cth), the *Reserve Bank Act* 1959 (Cth), the *Banking Act* 1959 (Cth), the *Income Tax Assessment Act* 1936 (Cth) and the *Commonwealth Electoral Act* 1918 (Cth). Even if prerogative relief were appropriate for this purpose, the only ground put forward by the applicant is the alleged

invalidity of paper money as legal tender. As I have said this issue has been concluded against the applicant. In the absence of any other ground, the applicant has failed to establish a prima facie ground for this aspect of the proceedings.

The application for leave to begin proceedings under Order 63, rule 6(2) is refused.

There is nothing else, is there, Mr Skyring?

MR SKYRING: I think you have covered most of it there, Your Honour, not quite in the way I had hoped but I guess that is the way it has got to be. Right, Your Honour, thank you.

HIS HONOUR: Very well, I will leave the bench now.

AT 9.29 AM THE MATTER WAS ADJOURNED SINE DIE