IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Brisbane No B 111 of 1996

In the matter of -

An application for writs of Mandamus and Certiorari against THE ATTORNEYGENERAL OF THE COMMONWEALTH OF AUSTRALIA, HON. D WILLIAMS, QC

Respondent

Ex parte -

ALAN GEORGE SKYRING, B.E., M.I.E AUST., CHARTERED ENGINEER (AUST.)

Applicant

Office of the Registry
Brisbane No B 109 of 1996

B e t w e e n -

ALAN GEORGE SKYRING

-

Applicant

and

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

-

Respondent

Office of the Registry
Brisbane No B110 of 1996

In the matter of -

An application for writs of Mandamus and Certiorari against THE DEPUTY REGISTRAR OF THE HIGH COURT OF AUSTRALIA, MR J. POPPLE

-

Respondent

Ex parte -

ALAN GEORGE SKYRING, B.E., M.I.E AUST., CHARTERED ENGINEER (AUST.)

Applicant

Applications for leave to commence proceedings

KIRBY J

-

(In Chambers)

-

-

TRANSCRIPT OF PROCEEDINGS

-

AT SYDNEY ON FRIDAY, 20 SEPTEMBER 1996, AT 9.31 AM

-

-

HIS HONOUR: You are appearing for yourself, are you, Mr Skyring?

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

HIS HONOUR: Thank you. This matter is before me by reason of the fact that Justice Toohey, in a reported decision to be found in (1992) 109 ALR 303 , made an order which declared that you should "not, without the leave of the court or a justice, begin any action appeal or other proceeding in the Court" otherwise than an appeal against that order. Subsequently, you did appeal against that order of Justice Toohey to a Full Court of this Court and on 1 July 1993 that Court dismissed that appeal. So, the order still stands and I understand that your application before me today is for leave within the terms of that order to proceed with three matters. Is that correct?

MR SKYRING: Your Honour, yes and no. In short, this may be regarded as a continuation of the effort when I appeared before you earlier this year on this general matter. Now, as I understood it - now, this is a matter which has been going on over a period of time.

HIS HONOUR: Yes. I have read Justice Toohey's decision this morning so I have a general understanding of the long background of the litigation.

MR SKYRING: Okay. In short, what I am about is questioning that in the light of what has now happened since I appeared before you last whether, in fact, that order validly stands. So I am, in effect, going back to the appeal and, by implication, to Justice Toohey's order in the first instance as to whether, in the light of further developments, that was, in fact, properly given at the time. Now, I argued that it was not and what has happened since, I think, basically confirms that view. So, in essence, that is the first point, really, that I am about. In essence, I am asking you basically to review that.

HIS HONOUR: But how can I do that, as a single Justice, given that you have appealed the decision to a Full Court and the Full Court has declined to set aside the decision? A single Judge cannot set aside the decision of another single Judge. It normally has to go through the appellate process.

MR SKYRING: Okay, all right. I take the point on that, your Honour. If we can regard the proceedings that have been going on actually since 1994, which is when I first, in essence, reinstituted the process to challenge the appeal because, as I saw it, the wording of the Full Bench, on appeal, was to me very ambiguous. All that Justice Brennan said was - and I was only on a five minute feud on that occasion - "Nothing has been presented in argument which would merit my disturbing the judgment of Toohey J". Now, the way I read that: that is not to say that there is no case, that I had not got it together properly. Given the matters that are in issue, to really unplug it, because if I do it starts an enormous process. So what I see has actually been happening is that I have endeavoured to act out and pick up at the various stages in the proceedings to, in effect, answer what Justice Brennan said. All right, if I did not put enough up then, well, okay, we will slog this out.

HIS HONOUR: I think I should tell you that the formula that his Honour Justice Brennan used was the usual formula that is used when there is an application to set aside an order of this character. It is not usual - at least, it is not invariable to give detailed reasons if the appellate court is of the opinion that nothing is shown that warrants disturbing the decision of the primary judge and that decision was of a procedural character and the Full Court heard your appeal and concluded that there was nothing shown in what you had said to them that warranted their disturbing that order.

MR SKYRING: Okay, your Honour, I think I understand that and, in essence, I basically do not disagree with it. But what I am about is that - if I can come at this from an engineering standpoint. As I understand what is happening here: if this whole thing is looked at from the standpoint of control systems. There are two basic formulas. You can have a feed-back system or a feed-forward system. Now, in a feed-back system the equipment is set up. That you have a reference and you have a signal which comes back from whatever it is that you are trying to control. Now, when the feed-back lines up with the reference, everything is okay and nothing happens. Now, if, as a result of external efforts, something happens which puts the output off the reference, an error is created and the system operates then to bring itself back into alignment.

> Now, the snag with that is that if you have very big inertias and you have very low gains and big damping, it takes a hell of a long time to go round that loop. Now, the alternative - - -

HIS HONOUR: I think it is natural that you should try to look at our problem from the point of view of your own discipline and sometimes that is actually helpful but the fact is that you are, at the moment, in my discipline, in the Court, and therefore you have to conform to what the - - -

MR SKYRING: I am just trying to get a real meeting of minds on this point. Now, the other form is what is referred to as a feed-forward system wherein you have sensing instruments around that if there is a change this change is sensed and action is taken to keep the thing roughly in position as to where it should be and then you have the feed-back loop then which will bring you back accurately in line.

> Now, as I see what has happened in this total system in which I am involved: we have got very high inertia, very low gain and a lot of damping and things are not responding as they should.

HIS HONOUR: Can I add something: you have a very, very busy machine.

MR SKYRING: Okay, well, fair enough.

HIS HONOUR: Which is dealing with matters of the greatest importance to this nation.

MR SKYRING: I am not unminded of that matter. Indeed, I believe this matter is also - something I have got to get attention to. This is very important and people really ought to have a look at this. So, if I could come back then to the point I was trying to make before, your Honour. In respect of this order that was pulled against me, there were basically three points which have to be demonstrated. I am not abusing process; I am not vexatious - and that is in the legal sense, that I am proceeding without proper - knowing that I have got no proper cause or I lack the wit to be able to form a rational opinion on the topic - that is out of Atlantic Star which was quoted by Justice Brennan - and also frivolous, in the legal sense which is associated with this vexatious. Now - - -

HIS HONOUR: Now, I do not think that is quite right and I think it is important that you should understand the barrier that is in your path. It is made clear actually in the judgment of Justice Toohey which I read again this morning and it is really reasonably simple. The Court is not focusing on you. Justice Toohey made it perfectly clear that he accepted that you are very sincere in your beliefs and the law does not focus on you. It focuses on your process - - -

MR SKYRING: I realise that.

HIS HONOUR: - - - which is focusing on whether objectively that process is frivolous or vexatious. So, it is not focusing on you or whether you are frivolous or you are being a nuisance. That is not the concern. It is focusing on the process. Secondly, it is asking itself, if you can get over that hurdle, whether a prima facie case has been shown to warrant your being given a chance to bring a proceeding in the Court because, of course, even somebody who has had an order that they are a vexatious litigant may have a motorcar accident and they may have a perfect reason to bring an action in a court to pursue their rights. So that you have to show both of those things: first, that your process is not vexatious and, secondly, that you have a prima facie case to pursue it, and they are cumulative. If you do not prove both, you do not get in the door.

MR SKYRING: That is basically as I understand the situation and is, indeed, how I am trying to respond to it. It is in the difficult situation - I am arguing my own case and that is never a simple thing to do.

HIS HONOUR: I realise that.

MR SKYRING: If I can just go back a bit after the judgments which were cited which brings us right up to date as to what has actually now. Okay. After I had that order put upon me, I sought to - there was an appeal of mine which had been lying dormant on my tax application going right back to 1984 which is really the thing which actually started this. This is B11 of 1984 which the filing fees were taken and that matter has never ever been brought on as an appeal. Now, it was that one that I thought, "Well, all right, I will try and stir this one up." In fact, I had done all of the appeal documentation for it and the word from the Registry in Canberra to Brisbane was, "Don't accept the documentation". Okay. So, that stymied that one.

So, I then saw no option then but to get back into the prerogative process and, in effect, in this I was actually following the points which you had made in *In Re Stanbridge's Application* in respect of appeals versus prerogative writs. Appeals are on the merits on the basis that process is carried through properly. If in fact process is fouled up in some way or other, then, all right, you have really got to go back one step and get the process right. So, I then, basically, reinstituted what I had actually done a decade before because - - -

HIS HONOUR: I realise that, but in your pathway stands an obstacle.

MR SKYRING: I know. I am coming to the point. I think you will see why I am doing this when I am finished. Okay. My first effort then was to raise a matter against Telecom as I had done back in 1986. That came on before Justice Spender again. I put a certiorari on that and on the way through, its my application to satisfy the 63, rule 6 provision, there was a judgment which had been given in the State Supreme Court, again, on these tax matters going back to 1986. I got knocked back on that one and I reckon that tax appeal gave, as I saw it, sufficient cause then to fire the previous one.

That came on then before Justice Dawson in the June of '94 up in Brisbane and, in essence, the upshot of his judgment was to focus on the aspect of whether I was abusing process. Now I then made an application then, again, based on the ANZ effort for mandamus - no, still certiorari. I have not picked up about the mandamus at this stage - to have that matter brought on. Now, that took about a further 18 months and that was the matter which came on before you earlier this year. Now, as I understand the proceedings before yourself, you focused on the matter of the vexatious bit which, as I understood it, was as I had defined earlier, that I was proceeding without proper cause.

All right, now, I reckon you were not right in that in the way you had assessed me so I then came back - - -

HIS HONOUR: It is not whether you were proceeding; it was whether the process was vexatious.

MR SKYRING: Okay, I will try and - whether that view that was taken of my application was, in fact, correct.

HIS HONOUR: Did you take that view to the Full Court or did you seek to pursue that?

MR SKYRING: No, what actually happened: because I had got the 63 rule 6 pulled on me, I cannot get up. So what I did then was to basically seek to challenge you on a mandamus and certiorari because, as I thought, as an officer of the Commonwealth, you had not done quite the right thing. That came before Justice Gaudron and she very promptly jumped on that, not unreasonably, so the hearing before her then focused - or the outcome of it was that she then focused on the attention of it being frivolous. Now, I reckon it was not frivolous either and I brought a further action against that and it was at this stage then that I began to realise what was causing all the problems and it was this effort going back to 1943. So, I had realised then that, okay, seen from your position, you are then stuck in a bind in respect - all right, statutes are there. They are there and you have got to uphold them. So, the question arose then in respect of the validity of the basis on which these rules came to be written into the High Court Rules in the first place.

> Now, I realised then that this has got to do with the mechanism in respect of how this sort of thing gets done and from my discussion with Mr Popple up in Brisbane where I bounced this one off him, his comment to me was that, "All right, if the Judges see things are not - if the system is not operating properly as they see it, they put a proposition to the AttorneyGeneral. It goes to the Parliament. It lies on the table for a while. If there is no objection, then it comes back and accept it, and so we steam on."
>
> All right, now, so that was how I changed over then from putting the mandamus and certiorari on the Judges, which was ruled in *Re Gunter's Application* which was heard on 18 June. It was after you had heard *Stanbridge's Application*. Cases were cited going back to earlier this century which laid it on the line, fair and square, that okay, mandamus and certiorari does not apply to the Judges. Although it might apply to everybody else it does not apply to the Judges and, from my perspective, sort of seeing the whole system operating in a very public manner which it has to be, that has to be so because the Judges, for the purposes of this argument, are seen to be of the Crown and they are deemed to know what is right and the place steams on. Now, this follows on from the philosophy that the King can do no wrong. If the King does wrong, it is because he has got bad advice, because that is the way the place operates.
>
> Now, what I am about here is, homing in on this matter that, okay, the advice that resulted in that effort being written into the law was, in fact, wrong. That is what this is about. Now, in

the proceedings before Justice McHugh which came on after *Re Gunter's Application* I had given a hand-up in which I had a chamber summons directed to the Attorney-General, which is now in the form which I formally presented. Now, in the course of my argument, when I was going through - when we came to what is with this chamber summons, well that is the way I see that it ought to be dealt with. His rejoinder, quick as a flash, was, "I cannot deal with it now because you have not put it in through the Registry". All right, fair enough. Now, at the conclusion

HIS HONOUR: Let me just pause to understand it, that since Justice Toohey's order was made in 1992, you have brought at least 4 applications.

MR SKYRING: Seeking to take up the point as I understood what Justice Brennan had said, not sufficient was shown to merit overturning the application.

HIS HONOUR: Yes. Now, they were before Justice Dawson in 1994

MR SKYRING: Justice Dawson in 1994 where

HIS HONOUR: Before myself earlier this year and before Justice Gaudron subsequently, seeking to bring a prerogative process against myself.

MR SKYRING: Yes, and again before Justice McHugh in June.

HIS HONOUR: In Brisbane, yes.

MR SKYRING: Yes. As I see the thing, what actually happened here in my effort before Justice McHugh, there was actually two judgments given. It was very subtle how it was done. There was an oral effort which was recorded that he, in effect, upheld Justice Gaudron's view that I was being frivolous. But by action, as others had observed to me when I got into what I saw was the real problem, which is the conflict between the law merchant and the Magna Carta based common law which goes back about 200 years, it was observed that Justice McHugh sat forward on his seat and listened very hard to what I had to say. And when the proceedings were over, he gave me back my hand-up and at the top of the pile was, in fact, the draft order nisi against the Attorney-General. Now, by action, I read

that as indicating, all right, well that is more or less the way to go, seen from a judicial point of view and looking at it as hard law over an extended period of history with the law set in its full context as it should be for the welfare of society. Now, it was from that then that I put in

HIS HONOUR: Where is this draft order nisi against the Attorney-General?

MR SKYRING: I just do not know to what extent you have got

HIS HONOUR: I have the full file. I think it would be desirable that we deal with this in a fairly formal way. What is it that you wish - I understand from something I was told by the Deputy Registrar in Sydney that you do not now wish to pursue the application in respect of Dr Popple, is that correct?

MR SKYRING: That is correct, your Honour, although since it is on the books and I formally raised it, I think it would be worthwhile your making a judgment on the point as to whether or not mandamus and certiorari does apply against registrars.

HIS HONOUR: No, I would not deal with that just for theoretical benefit. You have enough to do dealing with real disputes. Can I take it that you are withdrawing the application against Dr Popple?

MR SKYRING: In essence, yes, because as I see him, he is caught in a bind that on the one hand he has the order which requires him to put this Order 63, rule 6 on me, yet his own response seemed to me that he did not when I spoke to him he just did not raise that matter yet he would not issue my process. So that became quite frustrating for me and that was how it came to be.

HIS HONOUR: I understand that but at least we have cleared the decks to this extent that the one in relation to Dr James Popple

MR SKYRING: Okay. I believe that would be quite unjust to do that, all things considered in the circumstances.

HIS HONOUR: I note that that is withdrawn and struck out.

MR SKYRING: Right, okay.

HIS HONOUR: Then we confine ourselves - there are two other matters. One is in relation to the Australia and New Zealand Banking Group and that concerns proceedings in Queensland that have come before a single justice in the Supreme Court of Queensland.

MR SKYRING: Right, now what has actually - it is not quite that simple, your Honour, because this

HIS HONOUR: Can I explain to you what worries me about it. Normally, even if you did not have this order that has been made against you by Justice Toohey, it would be necessary for you to exhaust your rights of appeal within the court system of Queensland, which means that you would have to go to the Full Court or the Court of Appeal of Queensland, and you have not done that in relation to the judge in Queensland, Justice de Jersey. Now, why should you not proceed to exhaust any remedies you have in Queensland in relation to him?

MR SKYRING: That particular hearing before Justice de Jersey was, in fact, for a stay of execution of proceedings under a writ of fieri facias which was to move against my property for outstanding costs orders which were involved in this ANZ action which actually goes right back to 1986. Now, the Full Court judgment relevant to which that fieri facias applied was, in fact, the judgment of the Full Court on 8 August, I think it was, 1995, and my initial response to that was for the mandamus and certiorari, which was what came on before you earlier this year. Now, this is where I believe, because I am still hung up on this 63 rule 6 thing, that should have gone ahead at that time, in which case the whole subsequent problem would not have arisen. So I say that the principal judgment did actually go before the Court of Appeal, and this was just a follow-on where, okay, because the way this Court has been dealing with things, the fact that I get tossed out, everybody is viewing that as though that I have got no case. And this is the difficulty.

Now, what has actually happened, which has precipitated this, and this is where we come back

HIS HONOUR: Let us just pause to understand. On 8 August 1995 the Court of Appeal of Queensland dismissed an appeal in the substantive matter in relation to your challenge to the fieri facias orders.

MR SKYRING: On the matter which is the subject, yes.

HIS HONOUR: And you wish to bring those to this Court. You then proceeded by way of an order for mandamus and certiorari against the Court of Appeal of Queensland but that was not permitted to proceed because you ran into the order that Justice Toohey had made.

MR SKYRING: Yes, that is right.

HIS HONOUR: So now, subsequently, an application was made by you to Justice de Jersey to seek a stay of execution of the order which was confirmed by the Court of Appeal. His Honour refused that stay and that is why you are now before me. But again you run into the order made by Justice Toohey.

MR SKYRING: In effect, yes. Now, the point which has happened, though, since that time - and this starts to bring in the synchronisity of the two actions that we are still talking about - if we get them chronologically correct, continuing in effect the 1995 effort before Justice Gaudron, which you have just recited before, I then put in the mandamus and certiorari then directed to the Attorney-General, following on from my appearance before Justice McHugh which indicated, all right, this seems to be more or less the way to go. Now, what in fact happened was that when that hit the Registry it promptly bounced and I literally had my documents sent back to me. I got very upset about this and I put them back in again saying, "Look, this is not proper and correct".

> Now curious things from my point of view started to happen at that time, because the day I put that effort in I got the letter from the Sheriff saying that basically demanding this outstanding payment, for about $20,000 it was, for a series of costs orders that had been made against me.

HIS HONOUR: How much are the costs orders?

MR SKYRING: It is of the order of $20,000, your Honour.

HIS HONOUR: I see.

MR SKYRING: So he put the bite on me, "Pay up or else", the "or else" being they would move to seize my property. So as soon as I got that then, my immediate response was to seek a stay of proceedings before Justice de Jersey.

HIS HONOUR: Yes, I have the transcript of what took place before Justice de Jersey.

MR SKYRING: Okay. The gist of what actually sparked this was that he put the point that maybe the High Court might at some time hear argument but in the meantime the banks are entitled to their payment, so he would not stay things. So in a round about sort of way he is putting it back onto this Court in respect of the hearing of what I regard as the substantive issue which is what I have been on about for at least a decade and I have been having great difficulty getting attention focused on the fact that there is an enormous problem here. Right, okay, so my first response then was to put in a further supplementary affidavit

HIS HONOUR: Can I just ask you this, as an engineer? You might sometimes get a case where an engineer considers that a particular cog in a machine - that sounds rather old fashioned in the days of electronics

MR SKYRING: They still work.

HIS HONOUR: a cog in a machine is defective but in fact the machine works perfectly all right. Other engineers say it is perfectly all right; in fact the College of Engineers or the Association says it is perfectly all right, and everybody says it is perfectly all right. Now, a point is reached where the fact that one engineer thinks that the cog is not all right and is defective cannot really take up the whole time of the College of Engineers or the Association of Engineers or everybody else in the business, particularly if the person who is running the machine thinks it is running perfectly all right.

MR SKYRING: That is a fair enough question, your Honour. I will put one back to you in reply. What does everybody do when the tooth falls off the cog?

HIS HONOUR: So far it has not fallen off.

MR SKYRING: That is the point at issue, your Honour, because I would submit that it has, and it has happened in the last couple of months.

HIS HONOUR: But you cannot really expect to go into litigation involving other people, even a Bank, to get barristers and to come to court and fight cases and then lose them and not pay up the costs. It is not the way it works in this country.

MR SKYRING: All right, but what if, in fact, the basis on which the judgments have been given are wrong, the court orders against me are wrong and I am stuck in a hell of a bind through no problem of my own, no fault of my own, just seeking to do the right thing. That is the situation

HIS HONOUR: I realise that you look at it on the view that you are seeking to do the right thing and do your public duty, but the fact is that repeated decisions of the Justices of this Court, who have the ultimate responsibility to determine what the Constitution means, have decided the issue against you and in a rational and civilised society, you have to ultimately have somebody who is the decision maker, otherwise matters would go on interminably and there would never be any social order or peace.

MR SKYRING: I am not arguing - I do not disagree with you. The question is that - okay, becomes the matter of the competence of the parties involved in such a decision-making process. This is now what is actually on the line. But by way of answer to your question and to come back to the case, the hard facts on the ground and law against what you have just said. Now, what happened then, I got knocked back by Justice de Jersey on the basis - he said, "Well, okay, maybe the court might brings things on at a future time." All right. Well, that did not impress me so I put in my first supplementary affidavit then. That was the ex parte affidavit in support of my application of 28 June. It was at that stage - I had had party with Dr Popple and he raised the matter about dealing with - - -

HIS HONOUR: We do not have to go into that because you are not pressing on with that.

MR SKYRING: Okay. At that stage that was how the writ came to be put in because this whole matter - the court does not have the jurisdiction to deal with it. No humbug. I basically do not agree with you. Okay, so the next thing that happened then - I got that application in on 16 July. All right, now, as had been intimated to me by the Sheriff after the proceedings before Justice de Jersey, he had indicated what he was going to do, that he would advertise the effort for sale. What he had done was to move against some property which I had inherited from my mother when she passed on at the end of October 1992 and has been in the family since about 1920. I happen to be an only child which is how I come to have it.

HIS HONOUR: That is not the home that you live in yourself?

MR SKYRING: No. Now, I actually got the draft of the letter that he - as he was going to advertise it, about the 16th or 17th, which is a couple of days after I had put in the ex parte application and I noticed

on it that the crucial item that he had at the bottom of the page, "Payment to be by cash or bank cheque only" and that raised my hackles because this goes to the heart of the whole matter, and I come back to my point about the tooth falling off the cog. That can really stuff up the works.

> Now the point was - and this is the conflict that I have had now, going right back to 1983 when I first brought this matter before the courts - period. This was in my tax case which came on before Justice McPherson. Now, he made the classic observation - and there having gone through a brief history as I have done before yourself - having made the point about the legislation being for Parliament, he then came to the crunch line which has formed the basis of my action ever since, "In this court, the matter of discharge of debts is governed by the Currency Act, section 16 of which prescribed what is legal tender in Australia. That Act binds me. It is no way governed by section 115 which merely puts a bar against the States coining money", and then, "No problems will arise if sufficient notes and coins within section 16 are tendered to discharge the debt." Now, herein lies the rub because if you look at section 16 it speaks only of "gold and silver coin to the amount" - - -

HIS HONOUR: Yes, but I think you are seeking to reopen - - -

MR SKYRING: No, no, this is the point, your Honour.

HIS HONOUR: At the moment you are at the gateway. There is a big door that stands in front of you. It is locked and barred and it has got double chains on it because it - - -

MR SKYRING: I know, I am mindful of that.

HIS HONOUR: - - - has been shut several times now.

MR SKYRING: Maybe it has been but has that been rightly done? Now, that is the bind that I am stuck with. We have that judgment by Justice McPherson which, in effect, still stands. Although I sought to appeal it - and that goes back to my effort in 1984 - that matter was never brought on so that Supreme Court judgment still stands and I have got to work on it. So, here we have the bind then, that we have a Sheriff of the Supreme Court advertising for the payment - and the fact that he advertised it is what has upset me.

HIS HONOUR: But, can I ask you, is it not possible for you, keeping your own mental reservation about the correctness of what the Sheriff demands and perhaps asserting that in the payment, to simply send the payment and say, "I adhere to the view which I have always held"? I mean, you must have had to pay for your air ticket to come down to Sydney and I doubt if Qantas or Ansett would have accepted gold coins.

MR SKYRING: Well now, this is the bind that I am stuck in, your Honour. In an endeavour to maintain my sanity, long ago, I realised I had to make a split here and what I do - - -

HIS HONOUR: Why do you not make a split in this case?

MR SKYRING: No, because - just bear with me. The crunch is that Crown instrumentalities operate in a manner to pull the law hard against because they are in a position to be able to fix things. Private citizens have to take what they get. Now, at the moment - actually, it was Ansett that I came down but they are a private deal so, all right, we will leave them on the side for the moment. Now, there are two points by way of answer to your question, one of which has actually been raised in this Court, in that if I were to do what you had indicated, that is tantamount to accepting that the tender is, in fact, correct.

HIS HONOUR: Not really. Many people have to do things which they do under protest and they assert their position.

MR SKYRING: All right. Well, I have been doing it under protest for a decade and nothing is happening and I am not impressed any more.

HIS HONOUR: It is not a case, Mr Skyring - it is not really for me to advise you. I am just seeking to find some rational way out of the problem that is presented.

MR SKYRING: Okay, bear with me. Another 5 minutes and I will present it to you. Now, this whole question about legal tender has been given quite an airing in the US in the latter part of the last century. They keep boxing on with it over there because that is where our provision - - -

HIS HONOUR: Yes, I remember those cases.

MR SKYRING: Right, okay.

HIS HONOUR: They arose out of President Lincoln's action during the Civil War.

MR SKYRING: Yes, very interesting when you look at the historical context of that. Anyway, the point I am making is that a tender is deemed to be good unless it is challenged at the time of payment. Now, in fact, what actually happened began as a sequel to the Sheriff's effort. I did not pay, although I did query with the Sheriff about 15 minutes before the matters were to proceed, was he going to go on with this effort because, as I saw it, he had reduced the whole thing to a charade by the way he had advertised the form of payment and, as such, I believed he had gone beyond his warrant. I had indicated to him that I would put a further supplementary - for mandamus in against him which I had done on the Monday after it was advertised on Saturday, 20 July.

> Right, now, at the proceedings then the Bailiff went through this effort and there were two points of interest to me were made in that. First of all, he is required to get a fair price and, secondly, he made the statement that he had seized my property. Now, here we come back to the celebrated Chapter 29 of our Magna Carta, about being disseised of your property on an unlawful basis because, in terms of what Justice McPherson had said, "Payment in this court is by legal tender only", and that should have been advertised that way and it was not. So, that effort was wrong.
>
> The sequel to that then was that I - I am just trying to get the sequence right because this is quite important. Now, what happened then - okay, as soon as that was done I then put the bite on the Registry of this Court to bring the matter on for determination before - - -

HIS HONOUR: Is that the matter relating to Justice de Jersey?

MR SKYRING: Yes.

HIS HONOUR: And his failure to provide you with a stay?

MR SKYRING: In effect, yes. I sought to have that matter brought on before 7 August which was when the Sheriff's sale actually went ahead and the response that I got from the Registry was, "The Court is in recession until the 5th and we will be in touch with you after that." So, in fact, I was unable to get any response out of the system as I saw it, because what has now happened is that as a result of the effort by

the State Supreme Court and the synchronisity of that with my actions here, is that I am now in exactly the situation that is foreshadowed in section 128 - that is the US section - 178 of Quick and Garran, talking about legal tender. The full text of it is in my - - -

HIS HONOUR: What has actually happened to the property? Was it, in fact, put to sale?

MR SKYRING: No. What happened was nobody else fronted. There was only the two lawyers from the ANZ and a gent from the Bank itself and myself and after the Bailiff had gone through his procedure, he looked at me and asked for a bid and I shook my head and said I was not bidding and that cut the whole proceedings. So, in essence, the question of being able to challenge the tender at the time of payment did not arise because that was what I was going to do.

HIS HONOUR: Yes, but presumably he will put it up for sale again.

MR SKYRING: Well, that is the point and that is what I am seeking to head off, because what we have now - - -

HIS HONOUR: Very well. Well, I understand the case involving Justice de Jersey. Would you tell me now something about the case involving the federal AttorneyGeneral?

MR SKYRING: The process that I have in mind here interacts now between my application for leave to appeal - this ANZ effort which is the Justice de Jersey effort which actually goes back to 1987, because while I have challenged this most recent judgment of the Full Court which is the effort on 8 July 1995, that effort really arose from all the previous judgments and I am actually bringing all of them up for challenge as well because when we go right back, when I sought to bring that matter on back in 1987 in conjunction with my tax case, seeing I had not been able to get my appeal up in 1984 - but I had observed that while the Court will not bring matters on on appeal, they will sort of deal with it on these other matters which made me think, "Well, maybe this is the way to go and that's what the Court really thinks".

HIS HONOUR: I have in the file, which is placed before me by the Registry, an affidavit which is sworn by you dated 28 June 1996 in the matter of the application for an order for mandamus or certiorari against the federal AttorneyGeneral. Do you read that affidavit?

MR SKYRING: Yes.

HIS HONOUR: Formally.

MR SKYRING: Yes.

HIS HONOUR: Very well. Are there any other affidavits that you would wish - - -

MR SKYRING: Yes, there are, your Honour, yes. There is the first supplement which was dated 16 July.

HIS HONOUR: Just a moment, I will just make sure that I have that.

MR SKYRING: We will get all the bits and pieces right. This is quite critical. That was a tolerably thick one, your Honour.

HIS HONOUR: Yes, I have got that one. Do you read that affidavit too?

MR SKYRING: Yes. There was a further one then of 22 July, the one I put in when the Sheriff advertised.

HIS HONOUR: I do not seem to have that one. Is that in the case involving the federal AttorneyGeneral?

MR SKYRING: What I had done - - -

HIS HONOUR: The affidavits I have are dated 28 June 1996 - - -

MR SKYRING: Yes, there should be two of those.

HIS HONOUR: Yes, and there is another one of 28 June 1996, which is a longer one, but I do not have the affidavit of July that you are referring to. Would you tell me, in a short sentence, what it is that you are seeking the order against the federal AttorneyGeneral to do? Is it related to a challenge to the rule which stands in the way of your proceeding as a litigant or is it in relation to your view concerning the meaning of the Constitution and legal tender?

MR SKYRING: Actually both are involved. Hang on, I am seeking to address the latter one with the appeal - - -

HIS HONOUR: Well, I will hang on but I will not hang on for long. You have already had much longer than a special leave application.

MR SKYRING: Okay, all right, but this is a major problem of major social consequences, your Honour.

HIS HONOUR: It may be but the Court has to confine time.

MR SKYRING: Okay. In short, the chamber summons that you have got is specifically directed to this Order 74 of 1943 which is the instrument by which the two provisions in the High Court Rules came to be written in there in the first place. That is 58, rule 4 and 63, rule 6. That was the instrument which allowed them to be brought in in the first instance. Now, the only thing I have got on this is the law report on that particular case which I got from the AttorneyGeneral's Department when this - - -

HIS HONOUR: What is your complaint about the statutory rule that brought - - -

MR SKYRING: In effect, on the law report - and that is all, apparently, which remains extant. The point is made in respect of the application of 63, rule 6, that a person can appeal - if you are declared you can apply for leave, but then the punch line:

> leave cannot be granted if -

and I stress the "if" -

it is proven that there is not an abuse of the processes of the Court and prima facie grounds exist for issuing process.

That is the wording in the law report. Now, if you read that, that is in clear contravention of the fundamental principles on which the whole system is based because if you have a bona fide case and you are not abusing process, you should be able to get leave.

HIS HONOUR: That may be so but you must understand that every court in this land has people who come before it who do not have a case and who just waste the time of the court. I have been a judge for many years now and I can tell you it happens quite a lot and, therefore, courts which are very busy and have to decide very important and urgent cases that have to be decided have to have some protection for themselves against such people and courts have traditionally had that for centuries.

MR SKYRING: On this point, there is a further affidavit - just going on your point - if I may hand it up now.

HIS HONOUR: Yes, certainly.

MR SKYRING: This was the one dated - - -

HIS HONOUR: I was told that you brought an affidavit down but I did not take that when I was in chambers. I thought you should hand it up in Court.

MR SKYRING: Actually, what had happened, I had put that in through the Registry in Brisbane as per the stamp. I had put it in there.

HIS HONOUR: I see. I have not looked at that. Just give me a moment to have a look at that document. I read an affidavit of Mr Skying which is sworn 17 September 1996.

HIS HONOUR: Can I just get it clear. Is the only reason that you seek to challenge the validity of Order 63, rule 6 that you wish to reagitate in this Court your contention about the currency?

MR SKYRING: The fact of the matter is I

HIS HONOUR: That permits of an answer yes or no.

MR SKYRING: Because of the situation I am in I am properly agitating it because it has never been dealt with properly. It was silenced when it was raised in 1943 and it has been silenced since and this rule has been improperly invoked against me consistently in my efforts for

HIS HONOUR: But the only reason you want to challenge the gateway which stands in your path is so that you can come back to the Court without that gateway in the way to challenge the constitutional validity of the provisions of the Currency Act ?

MR SKYRING: Because of the ramifications in other directions. Not just simply

HIS HONOUR: The answer to the question is yes.

MR SKYRING: But not that alone.

HIS HONOUR: What other matters do you wish to challenge?

MR SKYRING: The whole of the operation of the financing of the nation, your Honour, because this is tied up with the currency question. The money we are operating on is

HIS HONOUR: It is all connected with the currency issue?

MR SKYRING: It is all associated with that and because of the statement

HIS HONOUR: You told me at the outset of these proceedings today that, in effect, this is a continuation of the previous

MR SKYRING: Yes, because the situation

HIS HONOUR: Now, the problem that you run into there is whether or not you have a proper basis for challenging the rule relating to

MR SKYRING: I would submit that I now have, your Honour, because of the action of the State Supreme Court

HIS HONOUR: Yes, but it is related to the core issue that you have now raised several times in this Court.

MR SKYRING: Okay, I refer to your effort in Quick and Garran. If a State endeavoured to compel a person to accept something other than gold and silver as a legal tender, the person aggrieved could appeal to the courts of the Commonwealth for relief. That is what I am doing.

HIS HONOUR: Yes, I realise that, but this Court has said now, long before I joined it, that there is no substance in your point, therefore the only basis on which you are challenging the rule is in order to take up once again a point which successively the Justices of this Court have said has got no substance.

MR SKYRING: And that was a bald assertion without any substantive constitutional argument. As I see it - and I have always maintained the position - it was an interlocutory statement to put the thing into a form in which the courts could deal with it. That was all that Justice Deane ever did, which is in effect what Justice McPherson did - it was June 1985 and I had appeared before Justice McPherson on 19 August 1983. So it was the crucial point that I had State authorities involved and I had sought to get the Commonwealth involved. Now, the problem arose - and this has always been my contention, which I raised in the matter before Justice Toohey when it first came up - that the inference in all of this is that there has to have been a final judgment given, determining the rights of the parties - in this instance, the rights of the parties are the very Crown itself - in respect of its rights in respect of the currency.

> Now, the fact of the matter is that we have statutes which are very clear about the currency. It is the Currency Act , pure and simply on McPherson's say so, that is what governs things. That is what speaks about the - it is because that is not being enforced as it should be which

is the basis for my action. Now, on this latest affidavit - there is a further handup that I would like to give you that it was drawn to my attention that perhaps I should. Right at the very end, just before my confirmation about facts and circumstances, there is a statement I made there, "This application is as much for myself as it is for the Crown", in what I am doing - what I am about. Now, that refers to qui tam law which is something I had drawn to my attention by other bodies with whom I have been speaking. But the hand-up I would like to give your Honour, just a brief item in respect of the background to this. That was put in - that is a bit of US practice because that was where this came from. Now, our problem has come from the US

HIS HONOUR: I am reading now a document headed "Qui Tam Law - How to be the Prosecutor".

MR SKYRING: In effect, yes. Now, this is - I will just let you have a quick read through it. It is only a couple of pages.

HIS HONOUR: I am familiar with the law of standing. It deals with the issue of the law of standing to bring a constitutional point.

MR SKYRING: Okay. Now, the point as I understand that effort is this is actually part of the law of Queensland still, because that endorsement that I put on the affidavit and which is on a related summons, I think, is made there pursuant to Order 57 of the Supreme Court Rules which says that where Queensland was involved, the document shall be so endorsed. And that is why I have put it on there. Now, this raises the matter, and this goes to the heart of what this problem is all about because what we are having is the selected enforcement of the statutes. Those which happen to suit those who have power and the ones that - if they do not suit them, they do not come up, which is precisely why qui tam law was brought in. Now, it is a queer twist because qui tam was brought in against monarchs or as a counter for monarchs who would not do the right thing. The situation we have here is that it is the inverse case, that it is the legislature that is not doing the right thing and they are improperly encroaching on the rights of the monarch in respect of the currency.

This is why I keep coming back to this matter about the statutes, that there are statutes in respect of the currency which ought to be enforced and they are not being enforced on a quite wrong basis. This is what is causing all the difficulty. So this action is actually a double-header. I have been coming in on the prerogative writs, because that is the monarch' s own defence for challenging officers who are ostensibly employed in its behalf to carry out the laws which the monarch has consented to. I am also coming in on this one as a private citizen to in effect back the Crown because on this one I believe the Crown is right. There are a lot of things the Crown have done wrong over the centuries, and I am not denying that,

but on this one I believe they are right. So that is what I am about, that it is an extremely difficult question that I am seeking to get at here, and how the problem comes about is that I believe - and the historical record will

HIS HONOUR: I think you should try to finish in about 5 minutes, if you can.

MR SKYRING: Okay. Now, the point is that as I see it, the situation we have in this country has been imposed on us, quite wrongly, as a result of unwitting - well, action unwitting or otherwise - by the legislature back in 1947 when we went along with this Brenton Woods effort and this in effect locked us into this international effort and things have gone wrong in that, and because we are hooked in on this treaty effort, we are having this imposed on us, quite contrary to our own law. So the question arises, how do we get out of a bind like that? In my correspondence to the Registrar, which is appended to that affidavit which I just handed up, I have given a rather more detailed effort which carries on from what I have previously put up and explains how it has all happened and how we can get out of it.

Right, now, so what I regard as the principal action is this effort - the one we have just been going through - which is my chamber summons of 28 June with the four supplementary affidavits which really seek to unplug this stay that was wrongly put on me in respect of this mandamus and certiorari. Now, there is a further case, just to take up the point that you mentioned about the courts protecting themselves. There was a case in 1920, *Chester v Bateson*, which the full text is appended to the affidavit that I just handed up, and it talks about the *Notorious Vexatious Actions Act* in the UK of 1896. Now, it is spelled out there very very thoroughly and the point is made very severely by the bench - that was three judges in effect on appeal - they spell out the Act as it is over there which, in fact, actually lines up with 63 rule 6 as it is now written into the books here. "If" is changed to "unless" and with that change having been made, "unless it is proven" then you do not get leave.

Now, I say if you take it in that sense and when one has due regard to that effort in 1920, the presumption is if you demonstrate that you are not abusing process, you are not vexatious and you are not frivolous, then okay, the proceedings properly lie. That is the point that I say I am now - the situation I am now in because of what the State Supreme Court has done to me in seeking to - not seeking, they have - seized my property on the basis of improperly - of a half-argued case in this Court, going right back to 1985. The point is that I say that all prior judgments that have been given - it is not the judgment of the Court itself, it is what has been inferred from those judgments by others. Okay, while Justice Deane did make the statements that he did, if you look at his judgment there is no substantive argument backing what he said. In fact, the only argument which is put in that case was the summary of mine which I cited to you last time when I fronted, that I believe he sized me up very well, that there were two points which, if accepted, would mean that there is a bar against the feds making paper money legal tender. That choice of wording is very accurate and very precise because it raises the matter of acceptance which necessarily brings in, "Okay, by whom?". Well, it has to be the whole community and the fact that the interpretation that I have

sought to put on it is deemed to be the right one follows on from the fact of the way the Currency Act itself is worded. Although it has got a few funnies in it in more recent time, and particularly in regard to the regs that have been brought in since 1986, where clearly things have got off the rails because of this subversion of process which happened as a result of the ruling that was given in the Bank Nationalisation Case in 1948 and going back then to 1931 in the State of New South Wales v The Commonwealth which was heard by this Court in three parts between March and about May of 1932, which was to result in the downfall of the Lang administration here in New South Wales.

Now, when you read through the report on that, they ducked the issue as to this crucial thing which I am on about now. Indeed, when one goes back some 12 months before, when our gold currency was withdrawn in 1931, there never was a proper basis for that having been done. Indeed, I believe it is on record, although I have not actually seen it myself, that there are executive minutes that those who did that knew they were acting unconstitutionally, yet they did it.

Now, okay, how does one justify this? There is the classic response, "It seemed like a good idea at the time". That is good enough reason as any for moving. What, I think, has to be acknowledged is that in the last 60-odd years since that was done, there have been a whole lot of things happen which demonstrate that that was in fact not a smart thing to do, in view of what is actually happening in this country at this very time. This is the real effort which I am on about having addressed. Because the issue was ducked quite improperly by the ministers of the Crown, as is mentioned in the opening part of that effort of Justice Deane's, as he observed:

It would appear the summonses were not served but in any case no one appeared before me. It is appropriate that I deal with the matter ex parte.

Which he promptly did and gave the summary that he did that has allowed a basis for argument ever since. Now, what I am trying to do, and have tried to do ever since that judgment was given, was to get the little bit of the argument that fits in between what I said, which is the constitutional argument to justify the statutes on the books, and the bit that properly justifies what Justice Deane said, "there is no substantive argument". Now, that argument was never put and that is what I am trying to get, and my own view is I do not believe it was there.

So what we have is a monumental con that has been put on the trusting people of this country, at least for 60 years, if not longer, and that is what has got me very upset because I happen to be one of those ordinary folk who is caught up in this and been minced up by it and I am not at all impressed with it.

So, that then is what I am really about with the mandamus and certiorari. It is a matter of pull the plug that will let us ask these questions because this is where the gag has been put on, quite improperly, because here we have the clash which, when the law merchants and the Magna Carta based common law which is what I spoke to before Justice McHugh, how this has all happened and where it is wrong. So, the question is, okay, how to correct it?

Well, this brings me then to the second leg of the argument which is this appeal. Now, as was pointed out by the Victorian Supreme Court in this case of Elliott that has just been recently concluded in respect of the improper use by the NCA of its coercive powers. Now, to an extent, once one starts talking these prerogative writs, I mean, they are pretty powerful weapons and I am not unmindful of that - if that is going to be done then there has to be a proper basis for doing it. Now, as was pointed out to me although I initially came in on certiorari which I thought was all you had to do, it was pointed out to others back in June 1995 before I started the second round that certiorari has to be brought in conjunction with some other writs. This was the point that was made to us: either mandamus or prohibition.

Now, okay, in this instance prohibition is not really appropriate. It is mandamus which compels the public duty, because here we have a major matter of States' rights which, for this to be properly argued - and I have always maintained this - this is something that the State and Commonwealth Attorneys ought to get stuck into and continue the case that was here in 1932 that only New South Wales and the Commonwealth fronted on.

Now, for that to happen properly, they have to be given notice. Now, in so far as I have done things wrong - and I am quite prepared to acknowledge this because, again, it was out of ignorance, and when I initially came in on this I was very green, very innocent. I thought it was only sufficient for me to raise the matter and the system would then pick it up and would deal with it. Anything but that has happened. It has been of great interest to me to find out why and it has taken me a hell of a long time but I think I have homed in on what the problem is now.

So, this is where the second leg of the argument now comes in. If I take literally the wording in Quick and Garran which I cited here before, "the aggrieved person may appeal", and I stress the "appeal" - "to the courts of the Commonwealth for relief". Now, this backs up the point which Justice McHugh made very firmly in *Re Gunter's Case*: "If a judge errs, the remedy is appeal". Right, okay, so we come in on appeal in the normal manner. Now, at the time I had put this mandamus and certiorari in I did not have the appeal in because I was continuing on on the line that I had been on, well, right back since 1985, because that was the one that the courts, my action, dealt with, whereas they would never deal with it on appeal.

So, what I am saying is, to conclude, is that because of the way the Court has now got itself up for its own protection - just to take your point earlier, once upon a time you could appeal as of right. Now, because of the loading that the Court has got on it, it has interposed this leave process which is a sifting out one and it at least gives you a chance to have a quick look, "Well, is there something here or isn't there?" Now, what I am saying is that because you have that leave process in the system now, that one leave is sufficient.

HIS HONOUR: I realise you say that but the fact is that an order has been made against you which puts a second process that you have to get through.

MR SKYRING: Okay, but what I am saying is while that might have been done in good faith and generally believing to be the proper thing at the time, events surely now have demonstrated that that is no longer appropriate

because I am now literally, in the words of the celebrated Chapter 29 of Magna Carta - I am being disseised of my property on a quite unlawful basis, certainly in terms of what McPherson had said in the State Supreme Court, and I believe, while he got it partly right, he also was stuck in a bind and he had to make a judgment which, if it was not challenged, at least it would be passable on the record or if it was challenged then, okay, there was enough in there to form a proper basis for challenge.

HIS HONOUR: Yes. Well, I think I understand now what the case is about.

MR SKYRING: So, what I am seeking, your Honour, is - and here I am following that celebrated advice of Teddy Roosevelt, "Talk quietly but carry a big stick". Right, the big stick is the mandamus and certiorari which I do not want actioned at this time. What I believe should happen is that because I think I - the situation I am currently in was, as I have just said, the State of Queensland on the say-so of the State Supreme Court has, in effect, seized my property, I say, on a wrongful basis, and that is the principal effort to be challenged.

HIS HONOUR: Yes. Well, I understand that. I think I have got what you want to do.

MR SKYRING: So, what I am seeking - and I have actually stated this in my effort to the Registrar - my purpose is to put - it is not the appeal, it is to put the 78B notice out because in that I have spelled out in that what the case and what it is all about.

HIS HONOUR: Yes, very well. I understand that.

MR SKYRING: And if the Attorneys do not respond on that one, then, all right, I will play heavy. But at the moment I am pulling back and, indeed, I do not want that mandamus and certiorari actioned at this time. The only thing I am seeking to have done is for leave to be granted to start the leave process which will allow the documentation to be filed and I can then serve my 78B notice and after that the system will take over itself. That is basically what I am about.

HIS HONOUR: On 27 August 1992 a Justice of this Court (Toohey J) heard an application brought by the Registrar of the Court for an order against Mr Alan Skyring, ("the applicant") that he not begin any action, appeal or other proceeding in the Court without leave of the Court or of a Justice. The ground of the application was that the applicant had frequently, and without reasonable cause, instituted vexatious legal proceedings. It was made clear in the course of the hearing that the vexatious proceedings relied upon were proceedings in this Court.

History of the litigation and order requiring leave

> The decision of Toohey J is reported: *Jones v Skyring* (1992) 66 ALJR 810; 109 ALR 303. It conveniently collects the large number of applications which Mr Skyring to that date had brought in this Court.. After having set out the history of the proceedings Toohey J said (at page 309):
>
> > I have set out the history of Mr Skyring's approaches to the court in considerable detail for several reasons. To begin with, as a matter of quantification, counsel for the Registrar said that the matters dealt with by Deane J and the Full Court: "are the selfsame points that in substance have been attempted to be relitigated, or relitigated on the application by Mr Skyring, in, on a conservative count, 22 applications to the court and, in relation to which, 11 judgments, both at first instance by single justices and on appeal, have been given."

Toohey J also referred to the history of the litigation which showed that Mr Skyring had persisted over many years in seeking to reargue a constitutional question which had been resolved against him in 1985. He also referred to what he described as Mr Skyring's relentlessness in the pursuit of his claims.

> The order made by Toohey J was made pursuant to O 63, r6 of the High Court Rules. That rule, so far as is relevant, says:

6(1) Upon the application of.....the Principal Registrar of the Court.....a Justice, if satisfied that a person, ... , frequently and without reasonable ground has instituted vexatious legal proceedings, may, after hearing that person ... or giving him an opportunity of being heard, order that he shall not, without the leave of the Court or a Justice, begin any action appeal or other proceeding in the Court.

6(2) 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 prima facie ground for the proceedings.

Since that order was made, the applicant has continued to endeavour to agitate in this Court the matters which are recounted in the decision of Toohey J. I do not have the full record of the post-1992 proceedings. However, they include an application which was dismissed by Dawson J in 1994 (*Re Skyring* (1994) 68 ALJR 618), an application which was dismissed by me earlier this year (*Re Attorney-General (Cth); ex parte Skyring* (1996) 135 ALJ 29), an application for prerogative relief directed against my decision which was dismissed by Gaudron J in 1996; and a further application which came before McHugh J in Brisbane in June 1996. It was likewise dismissed.

Now before me is the latest application. It has been placed before me because the applicant has sought, in the Registry of the Court, to prosecute three proceedings notwithstanding the order which Toohey J made. The three proceedings are:

(1) an action against Dr James Popple, Deputy Registrar of this Court, for refusing to accept documents which attempt to commence proceedings against the AttorneyGeneral for the Commonwealth;

(2) an application seeking special leave to appeal against a judgment and orders of the Supreme Court of Queensland (de Jersey J); and

(3) a purported application for mandamus and certiorari directed to the Attorney-General for the Commonwealth.

At the commencement of the proceedings today, when all of these files were before me, the applicant made it clear that he did not wish to proceed with the action against Dr Popple. He accepted that Dr Popple had merely conformed to the rule of the Court and the

order of Toohey J. His contention today was more fundamental. He sought to get behind the order made by Toohey J or, in accordance with the procedure contemplated by that order and the rule, to have the leave of the Court to proceed with the two remaining processes.

Proposed proceedings for a stay of execution upon land

So far as the application for special leave to appeal against the judgments and orders of the Supreme Court of Queensland are concerned, these relate to an order made by de Jersey J, a judge of that Court, on 11 July 1996. Before de Jersey J, on that day, was an application for relief in the nature of a stay, or other similar order, following a decision of the Court of Appeal of Queensland of 8 August 1995. Pursuant to that decision, (which concerned an order in the nature of the writ of *fieri facias*, directed at the property of the applicant) the applicant claimed the stay in order to protect property which would otherwise be the subject of that order. The order had been sought by the Australia and New Zealand Banking Group ("the Bank") to enforce orders for costs which had been made against the applicant and in favour of the Bank in respect of some of the proceedings described in the reasons of Toohey J.

The applicant told me today that the outstanding cost orders in favour of the Bank amount to about $20,000. Perhaps not surprisingly, the Bank is now seeking to recover that sum. The property which has been identified as a potential source of funds to reduce this debt is, apparently, a property inherited by the applicant from his mother. It is not the property he lives in. But it is a property which he wishes to retain unencumbered by the debt to the Bank.

The applicant's objection to the execution by the Sheriff of the Supreme Court of Queensland against that property was enlivened by the terms of the advertisement which was published in respect of the order for a writ of *fieri facias*. This advertisement made it clear that the officer of the Court would accept, in respect of the judgments for costs, only payment "by cash or bank cheque". To the applicant, this was a provocation. It was in clear contradiction of the view which he holds concerning the duty of the Crown and its officers and, indeed, of all citizens in Australia to conform to the Constitution . In his opinion, the Co nstitution prohibits (or at least does not authorize) the use, as legal tender, of currency notes or their equivalent. This is the essential question which the applicant has been seeking to agitate in this Court, and in other courts, since 1984. The advertisement caused him to revive his objection.

De Jersey J rejected the applicant's application for relief. He held himself bound by the decision of the Court of Appeal of Queensland to the effect that the Bank was entitled to levy

execution. Accordingly, the applicant now wishes to challenge in this Court de Jersey J's procedural order. He told me that execution upon the writ of *fieri facias* was not in fact completed on the first return because no purchaser attended the Sheriff's sale. Accordingly, the writ could not be executed. However, the applicant is apprehensive that the Sheriff will proceed to resubmit the property for sale. That is why he wishes to commence proceedings in this Court for relief and for ancillary orders protective of his property.

The applicant's problems in doing so are many. They include the fact that, ordinarily, an application for relief against an order of a single judge of a Supreme Court must pass to this Court through the Full Court or Court of Appeal of the State or Territory in question. The order by de Jersey J is a procedural order. For an appeal, it would, presumably, require leave of the Court of Appeal of Queensland. The applicant has not prosecuted any application for leave to that Court to challenge it. In saying this, I do not wish to encourage any thought that there would be any ground for seeking leave to challenge the order. However, it is clearly irregular for the proceedings to be brought directly to this Court, bypassing the Court of Appeal.

Even more fundamentally, the applicant runs into the order made by Toohey J under O 63, r 6. It is that order which is the essential barrier to his proceeding in this Court. The question which I have to determine is whether, within O 63, r 6(2), it has been shown that the proceedings contemplated by the applicant are "not an abuse of the process of the Court and that there is prima facie ground for the proceedings". Despite the energetic submissions of the applicant over the course of the past hour, I am not convinced that the proceedings, in challenge against the order of de Jersey J, fall within either of the two requirements stated in the sub-rule.

The applicant made it abundantly plain at the beginning of the hearing that he regards the application before me as a continuation of the effort which he has been mounting for more than a decade and which is described, to that time, in the reasons of Toohey J. He told me that he wanted to go back to Toohey J's order and, in the light of what had happened since that order, in effect to have it set aside. He expressed the opinion that the real problem was that this Court had never properly considered his constitutional challenge or his submission that, at the heart of the problem before the Court, was a conflict between what he described as the law merchant and the common law or the requirements of Magna Carta. He said that he wanted to get back to the "substantive question" which had never been satisfactorily dealt with by the Court. He said that this was basically what he had been seeking to do for a very long time.

The problem for the applicant is that this endeavour is conditionally forbidden by the order made by Toohey J. It also flies in the face of the decision of Deane J who, in *In the matter of an application by Alan George* Skyring (1985) 59 ALJR 561; 58 ALR 629, said:

> I have come to a clear conclusion that there is no substance in the argument that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender nor, in my view, would there be any substance in an argument that the provisions of section 36(1) of the *Reserve Bank Act 1959* are invalidated or overruled by the provisions of the *Currency Act 1965*.

That opinion has now passed under the scrutiny of numerous Justices of this Court and of the Full Court of this Court. Indirectly, it was involved in the applicant's application for leave to appeal against the order of Toohey J. That application was dismissed by a Full Court of this Court, comprising Brennan CJ and Dawson and Gaudron JJ, on 1 July 1993.

> In the face of such repeated authority, it might have been expected that the applicant would have accepted that he had come to the end of the road. However, he has not accepted this. Hence, the application before me today. I have listened patiently to the applicant. It is always necessary to keep open the possibility, particularly where a person is not legally represented, that there might be, in the issues which he or she wishes to litigate, some question of substance hidden amongst all the words. It is a serious matter to prevent a person prosecuting a contention before a court of law and of justice. However, as I explained to the applicant, courts for a very long time have needed, and asserted, a power to prevent their time being occupied by proceedings which are, in the legal sense, an abuse of process or in respect of which there is no prima facie ground for prosecuting the point.

> So far as the application to file the documents challenging the orders of de Jersey J are concerned, I am not satisfied that either of the requirements set out in O 63, r 6(2) has been satisfied. Accordingly, leave in respect of that matter must be refused.

Proposed proceedings against the Federal Attorney-General

> The third proceeding, relating to the application to file process for a constitutional order of mandamus (and supporting order of certiorari) against the Attorney-General for the Commonwealth, raises two questions. The first of these is yet another attempt by the applicant to prosecute, as against the AttorneyGeneral for the Commonwealth, as the law officer responsible for upholding federal law, the point which he raises in challenge to the validity of federal legislation authorising currency notes. But there is also suggested, although never clearly stated, a possible challenge to the validity of O 63, r 6(2) which is the source of the barrier which stands in the way of the applicant's prosecuting any claim he has against the AttorneyGeneral.

So far as the latter question is concerned, it is a matter which was raised by Toohey J in the course of his reasons in *Jones v Skyring* (1992) 66 ALJR 810; 109 ALR 303. At page 311, Toohey J said:

> Mr Skyring did not question the validity of O 63, r 6 of the Rules but I raised with Mr Robertson the source of authority for the rule. In *Commonwealth Trading Bank v Inglis* the court (Barwick CJ, McTiernan and Walsh JJ) held that a court has no inherent jurisdiction to restrain a person from commencing new proceedings against any person without leave of the court but that a court does have inherent jurisdiction to restrain a person from making unwarranted and vexatious applications in an action which is pending in the court without the leave of the court. In the case of the High Court, it was held, that power has not been superseded by O 63, r 6(1). That decision does not resolve the matter raised with counsel. However, Mr Robertson referred to the unreported decision of this court in *Bienvenu v R B Hutchison* [unreported, High Court of Australia, 19 October 1971]. Delivering judgment, in which McTiernan, Menzies, Windeyer and Owen JJ agreed, Barwick CJ said that there was no substance in a challenge to the validity of O 63, r 6(1), adding:
>
> "The rule is made in pursuance of the rule-making power of the court which is ample to sustain it and not in conflict with any constitutional or statutory provision."
>
> Mr Robertson drew attention to s 86 of the *Judiciary Act* 1903 (Cth) , the rule-making provision, and in particular para (h): "Generally regulating all matters of practice and procedure in the High Court."
>
> It might be said that an order precluding the bringing of any further action by a person goes beyond practice and procedure. But an order under O 63, r 6(1) does not have that effect. The rule sustains an order that the person shall not, without the leave of the court or a justice, begin any action, appeal or other proceedings in the court; that leave shall not be given 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 prima facie ground for the proceedings". Read in its entirety, the rule is concerned with practice and procedure, reinforcing the power of the court to protect its own process against unwarranted usurpation of its time and resources and to avoid the loss caused to those who have to face actions which lack any substance. The recent decision of this court in *Williams v Spautz* [(1992) 174 CLR 509] gives effect to the philosophy underlying provisions such as O 63, r 6.

In the light of this holding which was, in effect, confirmed by the refusal of a Full Court to grant leave to the applicant to appeal from it, I consider that there is no prima facie case for re-opening the question as to the validity of the rule under which the applicant must have leave before being permitted to proceed in this Court.

Even if, contrary to this view, I were of the opinion that there was a point worthy of argument in the Court or, at least, of such a character as properly to require the AttorneyGeneral to answer it, it is relevant to consider the reason for which the applicant wishes to challenge the validity of O 63, r 6(2). The only given reason is so that he might proceed to agitate once again the contention concerning his view of the requirements of the Constitution and the invalidity of the issue by the Commonwealth of paper money as legal tender. Because, as I have said, that contention has now been rejected many times, no point of substance exists to warrant reconsidering the barrier which descended upon the order of Toohey J. I am likewise of the view that no prima facie ground for allowing the proceedings to go forward is demonstrated.

The remaining contentions which the applicant wishes to agitate by his constitutional writ concern his arguments about the constitutional validity of the legislation under which paper money is issued by the Commonwealth as legal tender. I have already said that that question has been passed upon by single Justices of this Court by the Full Court. Therefore, I am of the view that no prima facie ground for the proceedings is made out.

Order 63 r 16(1) is not redundant

The applicant is a citizen. He approaches the highest court in the land with what is, undoubtedly, a sincere view which he passionately holds. He has now been heard on many applications. The hearings have continued to accrue even since the order made by Toohey J in 1992. Already, this year, there have been four applications heard before Justices of the Court. Each of these has taken up a considerable amount of time: more than is ordinarily devoted to an application for special leave to appeal. The applicant says that, since the special leave provisions were inserted in the *Judiciary Act* 1903, s. 35 , (Cth), the need for O 63, r 6(2) has evaporated. He submitted that there is now no reason for the Court to protect itself by an order of the kind contemplated by O 63, r 6(1) because it can do so adequately by the special leave procedure. He complains that, in effect, he stands at risk of being deprived of his property, contrary to the Magna Carta, without ever having had a real opportunity to challenge the lawfulness of the process by which that is being done.

There are several answers to these contentions. First, the provision for special leave is a provision of general application. It by no means removes the need for courts to be protected against vexatious or misguided litigants who persist with applications in the face of repeated statements by courts that their applications have no legal merit. Secondly, O 63, r 6 remains part of the Rules of the Court. I see no conflict between its provision and the provisions of the *Judiciary Act* relating to special leave. It is a special provision. It prevents a second gateway through which a litigant such as the applicant must pass. Thirdly, it is not true that the applicant has been denied the opportunity of challenging the lawfulness of the process being taken against him. Few persons in the history of this Court have had so many opportunities of having points considered, reconsidered and reconsidered once again.

In the end, there has to be finality to litigation. This is particularly true of the High Court of Australia which has many important obligations to fulfil. I explained this to the applicant but not, I think, with success. Sincerity of conviction does not purchase the key that unlocks the door that is shut under an order made pursuant to O 63, r 6.

Orders

The three applications before me must be dismissed. The application in respect of Dr Popple is dismissed by the consent of the applicant. The other two applications in which he persisted must likewise be dismissed for the reasons I have given. The decision of the Registrar to refuse the receipt of the documents tendered by the applicant is confirmed.

AT 11.04 AM THE MATTER WAS CONCLUDED

Cited by:

Forrester and Repatriation Commission [2012] AATA 846 (30 November 2012) (Deputy President J W Constance, Dr K J Breen, Member)

54. In *Repatriation Commission v Owens [56]* (in refusing a special leave application) the High Court said:

> *Mr Justice Lockhart correctly perceived that the issue before the Administrative Appeals Tribunal was a question of fact. The Administrative Appeals Tribunal had not simply chosen between two professional opinions but accepted that the actual cause of the claimant's injury, an adenocarcinoma, had been identified and thus any hypothesis was excluded. A majority of the Full Court allowed an appeal from Mr Justice Lockhart but their Honours seemed to*

> *have misunderstood the nature of the issue arising under section 120(3). It is not whether an hypothesis of connection would be reasonable if some facts are ignored; the question is answered by reference to the whole of the material before the Administrative Appeals Tribunal.*

Forrester and Repatriation Commission [2012] AATA 846 (30 November 2012) (Deputy President J W Constance, Dr K J Breen, Member)

54. In *Repatriation Commission v Owens* *[56]* (in refusing a special leave application) the High Court said:

> *Mr Justice Lockhart correctly perceived that the issue before the Administrative Appeals Tribunal was a question of fact. The Administrative Appeals Tribunal had not simply chosen between two professional opinions but accepted that the actual cause of the claimant's injury, an adenocarcinoma, had been identified and thus any hypothesis was excluded. A majority of the Full Court allowed an appeal from Mr Justice Lockhart but their Honours seemed to have misunderstood the nature of the issue arising under section 120(3). It is not whether an hypothesis of connection would be reasonable if some facts are ignored; the question is answered by reference to the whole of the material before the Administrative Appeals Tribunal.*

via

[56] [1996] HCATrans 290 p.10.