THE COURT OF APPEAL [1994] QCA 143

SUPREME COURT OF QUEENSLAND

Appeal No. 176 of 1993

Brisbane

Before Macrossan C.J.
McPherson J.A.
Pincus J.A.

[Skyring v. A.N.Z. Banking Group Limited]

BETWEEN

ALAN GEORGE SKYRING
(Plaintiff) Appellant

AND

AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED
(Defendant) Respondent

REASONS FOR JUDGMENT - THE COURT

Judgment delivered the Twelfth day of May 1994

This is an application by Alan George Skyring, who is the plaintiff in action no. 3358 of 1987 against the Bank as defendant, for an extension of time within which to appeal against an order that was made on 17 December 1990. The order, which was made by Dowsett J. in Chambers, was that the action be struck out.

On hearing of the application before us, the plaintiff, who appeared in person, relied principally on two points that he claimed would arise if the appeal were permitted to proceed. He said they were of fundamental importance and had never been properly considered or correctly determined in previous proceedings. The first of them is essentially that there is no proper authority for the use of paper

currency in Australia or for its acceptance as legal tender. The second is that the legal effect of the Magna Carta, and in particular chap. 40 of it, is to prevent the making of orders for costs against unsuccessful litigants in proceedings before the courts. Both points appear in para. 11 of the lengthy indorsement on the writ of summons in the action that was struck out in 1990.

As regards the first of these matters, s.51 of the Constitution confers on the Parliament of the Commonwealth of Australia power to make laws with respect to: "(xii)currency, coinage, and legal tender". Acting under this power the Commonwealth Parliament has on at least two separate occasions legislated on the subject of legal tender. One is the *Currency Act 1965*, of which s.16 defines what constitutes legal tender if it is made in coins. The other is the *Reserve Bank Act 1959*, of which s.34 confers on the Reserve Bank power to issue and print Australian notes, which by s.36(1) are declared "a legal tender throughout Australia". Both ss.34 and 36 are in Part V of the Act, which is entitled *The Note Issue*.

Part V plainly affords ample foundation in law for the use of paper currency in the form of Australian notes, and for its status as legal tender. It provides a form of currency in addition to the coinage specified in the *Currency Act.* Nothing specific was suggested by the applicant to show that Part V of the *Reserve Bank Act* is not directly within the constitutional power to legislate with respect to legal tender conferred by s.51(xii) of the

Constitution; and also by s.51(xiii), to legislate with respect to "Banking ... and the issue of paper money"; or by a combination of both powers, in conjunction possibly with yet other legislative authority conferred by s.51 of the Constitution. See also the discussion in F.A. Mann *Legal Aspects of Money* (5th ed.), 14-18, of the prerogative power to issue currency.

We are therefore of the opinion that, to the extent that the application before us turns on what we have described as the first point, there is no proper basis in law for doubting that the decision to strike out the action was correct.

The second point relied on is in some ways less easy to identify. It depends on the clause in Magna Carta that provides:

> "To none will we sell, to none will we deny, to none will we delay right or justice."

Mr Skyring said it formed chapter 27; on another view, it is chapter 40. The chapter number varies with the particular version of the Magna Carta that is being used; and is partly because, in the original, the articles or chapters were not numbered. There is, however, no room for doubt that what we are referring to here as chapter 40 is the provision of Magna Carta that Mr Skyring relies on. It is set out in para. 11 of the indorsement on the writ of summons in the action that he instituted.

Mr Skyring submitted that Magna Carta would have been brought here as law when Australia was settled. Being one of the laws or statutes of England, it now forms part of our

law by force of s.24 of the *Australian Courts Act* 1829. Strictly speaking, it is not a statute at all but, as its Latin name conveys, a Great Charter, which was originally issued by King John in 1215, and later confirmed or renewed by subsequent monarchs. There has, however, been a long tradition of treating the Great Charter, in one or more of its versions, as a statute, and of giving it a regnal year and chapter number. That is how the Magna Carta which Edward I renewed in 1297 comes to be designated 25 Edw. I, c.29. See generally on this Richard Thomson's *Historical Essay on Magna Carta*, at 376-381.

It is Magna Carta in the form confirmed in 1297 that is recognised by s.5 of the Imperial Acts Application Acts 1984 as continuing in force in Queensland. That Act treats Magna Carta as an Imperial Act. Whether it is regarded in that light, or simply as a royal charter, it remains the case that an applicable enactment, whether Queensland, Commonwealth or Imperial, is capable in law of repealing Magna Carta either completely or to the extent that it is inconsistent with that enactment. As Griffith C.J. acknowledged in Chia Gee v. Martin (1905) 3 C.L.R. 649, 653, the contention that a law of the Commonwealth is invalid because "it is not in conformity with Magna Carta is not one for serious refutation". His Honour's reasons in that case were concurred in by the other two members of the High Court, who were Barton and O'Connor JJ.

We are, of course, bound by what was said in Chia Gee v. Martin. We are therefore required to give primacy to

legislation whether or not it is inconsistent with Magna Carta. The power to award costs against an unsuccessful party to an action in the Supreme Court is said by Mr Skyring to be inconsistent with chapter 40 of Magna Carta. He argues that to award costs against such a party would be to sell, delay or deny right and justice contrary to that provision. That argument receives no support from the interpretation traditionally given to chapter 40 : see Thomson *Magna Carta*, at 220-228. However, even if the argument in other respects was well-founded (which we doubt), the power of the Supreme Court to award costs would not be abrogated, limited or affected by chapter 40 of Magna Carta. The power to award costs derives from several sources, but principally now from O.91, r.1 of the *Rules of the Supreme Court*. The validity of those Rules was placed beyond question when Parliament enacted *the Supreme Court (Rules Ratification) Act of* 1928. Hence, to the extent that there is any inconsistency between chapter 40 of Magna Carta and the power of awarding costs vested in the Supreme Court by the Rules, the latter must prevail.

We have considered at some length and detail what we understand would be Mr Skyring's grounds of appeal if time for appealing were extended. We have done so because of his complaint that, in so many of his previous applications to the courts, the question he regards as important and the points he wishes to have determined have not, or have not always, been the subject of careful judicial scrutiny.

For the reasons given we are of the opinion that

Mr Skyring's appeal would have no prospect of success. Because of that the application to extend the time for appealing must be refused with costs.

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AUSTRALIA AND NEW ZEALAND
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(Defendant) Respondent

Macrossan C.J.
McPherson J.A.
Pincus J.A

Judgment delivered 12/05/94

Reasons for judgment by the Court

APPLICATION FOR EXTENSION OF TIME WITHIN WHICH TO APPEAL REFUSED WITH COSTS.

CATCHWORDS **PRACTICE - Application for extension of time to appeal - Merit of appeal considered.**

CONSTITUTIONAL LAW - CURRENCY - Whether paper currency legal tender - Application of Part V Reserve Bank Act 1959 - Whether power to legislate under ss.51(xii), (xiii) of the Constitution.

COSTS - Whether Magna Carta prevents cost orders against unsuccessful litigants - Application of s.5 Imperial Acts Application Acts 1982 - *Chia Gee v. Martin* (1905) 3 C.L.R. 649 - Order 91, r.1 Rules of the Supreme Court.

Counsel: Appellant Skyring in person

R. Derrington for the respondent

Solicitors: Gadens Ridgeway for the respondent

Hearing Date: 28 April 1994