



IN THE HIGH COURT OF AUSTRALIA

Office of the Registry
Brisbane

No B24 of 1991

B e t w e e n -

ALAN GEORGE SKYRING

Applicant

and

COMMISSIONER OF TAXATION

Respondent

Application for leave
to appeal

BRENNAN J
GAUDRON J
McHUGH J

TRANSCRIPT OF PROCEEDINGS

AT CANBERRA ON WEDNESDAY, 6 NOVEMBER 1991, AT 11.48 AM

Copyright in the High Court of Australia

MR A.G. SKYRING: I appear in person, if it please the Court.

MR C.M. ERSKINE: May it please the Court, in this matter I appear for the respondent. (instructed by the Australian Government Solicitor)

BRENNAN J: Yes, Mr Skyring.

MR SKYRING: The immediate matters in issue are set out in the documentation which I have to hand. I thought, in order to put this matter in context, if I just mention briefly the background to how we come to be in this situation.

Basically, while the immediate application is for leave to appeal, the appeal itself is in respect of a judgment by the Chief Justice, in essence, in respect of the order that he gave on the matter of costs for the hearing which was held in Brisbane. But the whole activity that brought that lot on was an application to remove into this Court, for the purposes of making a proper determination on what seems to me to be a fairly fundamental matter which despite a number of attempts has not really yet been satisfactorily resolved. This has caused me a few problems.

BRENNAN J: What is the fundamental matter?

MR SKYRING: Basically, the small matter of what actually constitutes legal tender in this country.

BRENNAN J: That is the question you want removed into this Court?

MR SKYRING: In essence, that is the bottom line of what has to be determined. What has brought this matter to a head, although this started off at first instance in respect of the taxation case which really got under way in 1980 when I basically challenged that on two basic grounds. Firstly, I was attacking the - - -

BRENNAN J: This is the same question that you have raised in this Court on a number of occasions.

MR SKYRING: Yes, Your Honour, but to my mind we still have not got to the bottom line of the issue which is why I keep coming back. Now, what has happened - - -

BRENNAN J: This is the same point that was dealt with by Justice Deane in an application in February 1985?

MR SKYRING: That is when it started, Your Honour. My view was - - -

BRENNAN J: Is it the same point?

MR SKYRING: In essence yes, but my view of that matter was that he only ever stated the case at that time. There was never an opposing argument to - at least there was nobody else there at the time.

BRENNAN J: Mr Skyring, you have endeavoured to bring this matter before this Court time after time. Now, on each occasion, as I understand it, you failed.

MR SKYRING: Well, it is a moot point whether I have, Your Honour. That is the common perception, and I take your point on that. But have I really?

BRENNAN J: The Court has heard your applications on several occasions. You have been given full liberty to develop your arguments - - -

MR SKYRING: And I have taken the best of that but because of the sheer size of the matter which is in issue, Your Honour - - -

BRENNAN J: Be it so, the Court does not have the time or the resources to allow you repeatedly to come to this Court agitating a question on which you have repeatedly failed.

MR SKYRING: But have I failed, Your Honour? In support of that contention, might I put the point that if, in fact, the rulings that have been given are coherent and consistent and proper, then how come, in connection with the last federal election when I put my nomination fee on the table, that is, \$250 in gold coin which is strict legal tender in terms of the *Currency Act*, which cost me almost \$1500 to get, in terms of what purports to be legal tender, how come that can happen? Now, it seems to me there has got to be something terribly wrong.

BRENNAN J: Mr Skyring, I know the point that you wish to raise. The Court has heard it several times before. You shall have five minutes in which you can develop whatever you wish to say in order to obtain leave to appeal from the Chief Justice's order, but no more.

MR SKYRING: Fair enough. I thought I might have got rather a longer time, Your Honour. If I could just hand these up. It was a rather more comprehensive argument. There are just a couple of points that I would speak to, if I may, to try to answer your point.

BRENNAN J: You have five minutes, develop it as you wish.

MR SKYRING: Fair enough, okay. If I just go through it very quickly. It was the first four pages in that lead item which got me on to the subject, basically questioning the ultimate legality of taxation, half-way down page 19, which is on the back of the first page:

Though it was and still is the law that a tax on property is not a diminution of property rights, this is a very legalistic interpretation, because in fact taxation must be met out of property.

It was that which started me on the whole thing, which made me suspect whether in fact taxation as a means of funding the Crown's purposes is legal. I believe, on the basis of that, it was not. The other side of the argument is - okay, if that is legal, that is a Crown charge which ought to be paid in the Queen's money, which in terms of the *Currency Act* is in gold and silver coin, which we do not have any of.

If we jump over very quickly, at the top of page 43 there, about the third page in, talking about the case of perpetuities by which he meant the laws of England:

expressed some apprehension that an Act of Parliament might sweep away what he called 'all these perpetuities', by which he meant especially the laws and liberties of England.

Now the point in respect of that I would make is that while no single Act has in fact done that, there has been - by a series of acts of slow attrition, in fact, these liberties have been slowly encroached on. It comes up in the form of money. In terms of the interpretation of statutes, the next couple of items out of Gifford, which I previously presented: the Plain Meaning Rule, that overrides everything else. If we get absurdities, which is the basis of my original application, at the bottom of page 72 - no sorry, the next couple of pages over:

An absurd result...is only to be accepted if there is no acceptable alternative available.

That is under the heading "Manifest Absurdity". It is in respect of that that I say manifest absurdity does exist in respect of the currency.

In terms of the currency what we are supposed to have - there is an extract out of the *Currency Act* which states what in fact is legal tender, and in the item in the schedules it is gold

and silver coin only. No mention is made in terms of paper money - specifically excluded. This matter came up when my taxation case came up on appeal to the Federal Court in 1984. I specifically raised the point: "How should I pay it?" Very clearly stated "By legal tender", and then went on some nice things about the argument. I had got on to that lot in view of what Justice McPherson said in his original judgment in my tax case in 1983:

In this court the matter of the law governing the discharge of obligation is determined by the *Currency Act 1965*, section 16 of which prescribes what is legal tender. That Act binds me.

Then he went on to make other statements which I queried him on, which is how the whole matter came up. So very clearly what is legal tender is stated there. It was that which I followed through I was unable to get. I sought to have the fundamental statutes which I believe had been lost to sight basically reinstated, so to speak, put back in their rightful place, in fact, with the Act of Parliament in Queensland, No 70 of 1984. This was, in fact, done, which puts Magna Carta right back at the top of the pile, item 1 schedule 1. We therefore have the text then out of Sir Edward Coke's famous text on the subject, which is what I had formed the basis of my action against.

On the appeal, there was an interesting effort came up before the Federal Court which was a judgment in chambers by the then Chief Justice of the day on the matter of security costs and payment of same in a case in this Court in 1981. The clear inference from the body of that is that it is taken as right and proper that there should be this encroachment of property rights to pay legal costs.

The contention in terms of Sir Edward Coke's observations on Magna Carta, which in Queensland is now reinstated - and indeed always has been the law; it is just that it has been lost to sight and it has rather lost its force - is that that has never been on. The fact is that a situation has never been evolved whereby justice can be done to this end.

That brings us then to the powers of the Federal Parliament which is set up to legislate in this area and should give us a set of laws which will satisfy these requirements. I just cite there in respect of taxation - the essential point is they shall make laws for the peace, order and good

government of a nation. If this is not done, they are not doing their duty properly.

There are very severe constraints on what they can do, not only in terms that they are restricted to their own area, but bear in mind that this *Constitution* is an Act of British Parliament. It therefore has to be read in conjunction with other relevant Acts which are in fact this celebrated Magna Carta and indeed the Bill of Rights. All three must be taken together and if the feds do anything which violates that, then it is just - - -

BRENNAN J: Your time has expired, Mr Skyring. We need not trouble you, Mr Erskine. The application is refused.

MR ERSKINE: I seek an order for costs, may it please the Court.

MR SKYRING: I am unable to pay in a strictly legal manner. If I am unable to pay, I shall not pay at all. That is the point that I sought to have addressed by this action to allow a process to be instituted which will allow that to be brought in properly. Because you have denied me this, you have denied me justice and I am quite unable to - much as I would desire to, I am physically constrained from meeting your order. I cannot do it. It is not that I will not; I cannot, strictly legally.

BRENNAN J: It will be refused with costs.

AT 12.00 PM THE MATTER WAS ADJOURNED SINE DIE