IN THE HIGH COURT OF AUSTRALIA

Registry No C17 of 1992

B e t w e e n -

ALAN GEORGE SKYRING

Appellant

and

FRANK WILLIAM DUDLEY JONES

Respondent

BRENNAN ACJ
DAWSON J
GAUDRON J

TRANSCRIPT OF PROCEEDINGS

AT BRISBANE ON THURSDAY, 1 JULY 1993, AT 12.35 PM

MR A.G. SKYRING: Skyring in person, Your Honour.

MR D J McGILL: May it please, Your Honour, I appear for the respondent. (instructed by the Australian Government Solicitor)

BRENNAN ACJ: Mr Skyring.

MR SKYRING: In an endeavour to expedite proceedings I have forwarded a written copy of my argument which I trust would have got through the system to you. Have you had a chance to have a look at it?

BRENNAN ACJ: Yes, it did, and it seems to relate chiefly to the questions of currency and the judgment of Justice Deane.

MR SKYRING: The one to which I was referring was specifically in respect of this judgment by Justice Toohey which is the immediate business here.

BRENNAN ACJ: Yes.

MR SKYRING: That was a fairly short one, or short by my standards, a 14-page effort wherein I specifically addressed the questions of vexatious litigation.

BRENNAN ACJ: Yes.

MR SKYRING: As an attachment to that I had also included the much larger one which seeks to address what I have always seen as the major problem which is what I have been trying to get at for over a decade.

BRENNAN ACJ: That is right. Your submissions do seem to come back again to the question of whether the reasons which were given by Justice Deane have illuminated the problems that you want to address.

MR SKYRING: In short, yes. My view of that is that have partly, but that by no means constitutes all that ought to be said on the subject. Against that background, as I do point up in that argument, these old proceedings which have reached this stage, actually originated in my challenge to the Taxation Commissioner's assessment going back to 1980. That eventually came on in 1984, or rather in 1983 in the Supreme Court here, wherein the fundamental case was actually stated as I see it. I believe some errors had been made in that statement. That was appealed to the Federal Court, wherein the first check that was run on it was whether that appeal was competent. It was ruled that it was. It was spoken to there. Again, although my appeal was dismissed, it seemed to me

that the essential problems which were raised in that action actually went to the validity of statutes which it seemed to me was really the role of the High Court to address.

I sought leave to appeal that Federal Court decision. I put the documentation in, but it is that application which has never really proceeded, and the question arises as to whether, in fact, I have been done justice. This really becomes the central issue as I understand proceedings.

Because of the sheer complexity of the matters which I had raised in this action, plus the fact that I am not a lawyer, this raises enormous questions in respect of what actually does constitute correct procedure in such a situation. I had realized when I brought the action in the Federal Court that there were constitutional matters which really did quite properly involve the Attorneys-General. I did serve a 78B notice on both the Commonwealth and our State Attorney-General. They did not take a hand in the proceedings in the Federal Court as I believe that they should have.

This immediately raised problems then when I sought to get my leave to appeal up in this Court in 1984 after the Federal Court ruling. Although I had put the documentation in, I did approach the Registrar during the Adelaide sittings in 1984 as to whether I would be listed, and he made the point to me, "Even if you were a barrister, you could not handle this case". Now, that really posed enormous problems. So this then, basically, launched me on other directions to try to break the problem down into something tractable, and all the actions which have really happened subsequent to that really were my efforts in an endeavour to try to reduce the problem to something which the Court could cope with. As you were indeed to point out in 1989, "Action must be brought in a form with which the Court can cope". So that I have been endeavouring to do.

There has been a whole stack of hearings, both in this Court and in the lower courts, my view of which is that the argument, as I believe now, has been got into a tractable form where it ought to be able to be dealt with reasonably promptly by the appropriate parties. So, to this end, it was my argument to that original 1984 motion which was the fairly comprehensive effort which I had put in in this latest round and was the attachment to my argument to address the judgment of Justice Toohey in respect of whether or not I am a vexatious litigant.

On that point perhaps I might be able to deal with things fairly promptly, in view of the case that was cited to me from the AG's office yesterday.

In respect of the documentation which I had put into the Court - all of my authorities, which I have put in as a sizable bundle yesterday, those basically provide the background information which is required by your practice rules as what is the basis on which I have acted. That is intended to provide the hard documentation to supplement my arguments on both this present appeal in respect of Justice Toohey's judgment, which I see as a preliminary, and a very essential preliminary, to what I regard as the main action and always have regarded as the main action, namely the way that the whole national enterprise is financed. And this involves an interaction between taxation and banking and moneys remitted.

BRENNAN ACJ: This is the very problem, Mr Skyring: that has been what you have seen as the principal subject.

MR SKYRING: Your Honour, okay, right. Now I would specifically like to address the question in respect of procedure. On this matter of vexatious litigant, one of the cases which was cited in the hearing before Justice Toohey was that of *Re Chaffers*, which is an 1896 action wherein Mr Chaffers had apparently been issuing process against a very large number of influential people. When that case came before the courts the criterion that was advanced by the Attorney-General in that action was that a case can be regarded as frivolous and vexatious:

in the absence of an explanation given -

being given, if one can be given, and in that case none was given. That seems to me to be a pretty fair basis for sorting out whether or not one is being oppressive and vexatious in the sense that these matters have been used judicially.

My presentations that I put in these last two sets of arguments is my overview, my explanation if you like, not only of the series of actions that I have taken since 1985, because that appears to be the - what appears to be the contentious actions of mine, but also the much more difficult question, which is what I sought to address by my leave to appeal from the Federal Court back in 1984. So, by that criterion I believe I have provided what seems to me to be the information that ought to be provided as per the Attorney-General's ruling back in 1885, ie, you provide an explanation.

The question arises, "Is it creditable?", and a whole lot of other things which become important in the judicial sense.

A very specific item which comes up in respect of this vexation, which is mentioned in the cases which I had listed there, is that the matters which have been properly tried and are sought to be relitigated, where there is no basis for the relitigation. That is deemed in the judicial sense to be vexatious, and it is in this regard that it seems to me that this judgment of Justice Deane's and the Full High Court ruling on it later in 1985 seeming to confirm it, has formed the basis for the view that I am vexatious. I have always made the point that that was never, ever properly tried. It was an interlocutory - - -

BRENNAN ACJ: You made the point. You have made it consistently and you have made it frequently.

MR SKYRING: Right.

BRENNAN ACJ: And it is the consistency and frequency of your having made the point which founds the order made by Justice Toohey.

MR SKYRING: Without reasonable grounds. It is not - frequency and vexation is without the reasonable grounds.

BRENNAN ACJ: Yes. That is right.

MR SKYRING: It is this reasonable grounds effort which is the contentious item. Now I say - - -

BRENNAN ACJ: Mr Skyring, I think you will have to address this point and that is that the matter has been held to have been decided contrary to your views. You may not wish to accept that, but the view of this Court has been expressed repeatedly that that issue has been decided and that any repetition of an attempt to raise that issue again is unjustified and unreasonable.

MR SKYRING: That is the point on which I do take issue with you, Your Honour, because as I understand proceedings, that judgment by Justice Deane is deemed to have been the initial action which is what starts off the whole process, and the presumption is that it had been tried properly. Now, my contention always has been that that was never the initial action. The initial action was by Justice McPherson in the Supreme Court in 1983 when the matters in issue were actually raised and Justice McPherson stated the case as to what was really in issue. And that was how the matter came

up. It is not just a currency matter per se. It is currency in respect of taxation. There are the two, and they have always been held together.

So my contention is, and to which I have maintained, although I have not perhaps pushed it as forcibly as I have been, because I have tended to have been overwhelmed by just the sheer weight that has been attached to these other matters, is that Justice McPherson's judgment, I believe - although he restated what is the given legal wisdom in respect of the extent of powers under section 115, is, I believe, incomplete and it is in error.

BRENNAN ACJ: Mr Skyring, you must address the question of whether you can justify a continuing repetition of this argument, once it has been held against you that the decision of Justice Deane, affirmed by a Full Court, has concluded the matter.

MR SKYRING: I put the proposition very simply to you, Your Honour, in respect of what I have just said about Justice McPherson's judgment in respect of paying tax. He made the point in that - the full text of that judgment is actually given in that hand-up which I gave to you. In this matter on the matter of discharge of debts, he made this statement which I believe is in fact quite correct:

> In this court, the matter of the discharge of debts is governed by the *Currency Act* section 16 of which prescribed what is legal tender.

That Act binds me. Now, that statement, I believe, is fair and proper and is basically backed up by the Rules of the Supreme Court or to by Order 1A of which refers to what is currency in terms of which debts - - -

BRENNAN ACJ: You are not addressing the point I drew your attention to, Mr Skyring.

MR SKYRING: The essential point is - if perhaps I can come at it this way - a reductio ad absurdum type proof. If in fact, what everybody is saying is correct, and that is the basic assumption which underlies your observation, the question I put to you is, "How can I pay my tax in a strictly legal manner in light of Justice McPherson's judgment?" As I understand proceedings, the initial judgment stands until it is overturned on appeal. That judgment - although I have sought to appeal it, I have not even been heard on the matter, on that judgment, and that is the initial judgment in the whole train which started everything off. On that

basis, my contention is, with the currency in circulation that is made available by the Crown, I cannot pay that tax in a strictly legal manner, and if I cannot pay it legally, I will not pay it at all, as is my entitlement.

Having realized where the problem is, the nature of it and what could be a possible answer to it, were matters properly aired, I have dug my heels in. On the basis of that, I am entitled to process. This is a point which is made in the - - -

BRENNAN ACJ: Mr Skyring, we are not going to sit here listening to you continuing to canvass issues which have already been conclusively decided against you.

MR SKYRING: But I contest your - - -

BRENNAN ACJ: We are here to consider whether there is any ground for interfering with the order made by Justice Toohey. The more that you have said, the more you have reinforced the validity of what Justice Toohey observed, namely, that nothing seems to prevent you from continuing to advance arguments which have already been decided adversely to you.

MR SKYRING: But have they been decided adversely, Your Honour? That is the point you are making. The Full Court on appeal merely said, "We are not persuaded that errors have been made." That is not to say that I am wrong. They are not persuaded. Now, I am seeking to make the point to you here now, as a situation live on the ground which I and 17 million other people in this nation have to contend with in respect of paying tax. Now, I say the total situation which the Crown apparently upholds is such that I cannot pay my tax legally. Very simple.

BRENNAN ACJ: Mr Skyring, we will now give you five minutes in which you can state as succinctly as possible any points which you think are worthy of our consideration in entertaining an appeal from the judgment of Justice Toohey.

MR SKYRING: All right, well I will cite the - - -

BRENNAN ACJ: Now, you have five minutes and at the end of that time if there has been nothing further said, we will not hear you further.

MR SKYRING: On this basis then, I would cite extracts from the case which was mentioned to me yesterday, or the copy of which was given to me yesterday, which is *Oceanic Sun Line Special Shipping Co v Fay* at pages 232, 233. This treated the general matter of

forum non conveniens plus a few other matters in which the whole matter of vexation and oppression was raised in respect of forums in which hearings ought to be conducted. At page 232, and this was in respect of your own judgment:

> A brief statement of the established law can be extracted from the judgment of Gibbs J in *Cope Allman (Australia) Ltd v Celermajer.*
>
> "However, the question that I am bound to pose to myself is not simply, "Which is the more convenient forum?" The principles to be applied in such a case as this were laid down by the High Court in *Maritime Insurance Co Ltd v Geelong Harbor Trust Commissioners.* Sir Samuel Griffith, whose judgment was concurred in by the other members of the court, said: "I will read one or two passages from the judgment of the President, Sir Gorell Barnes, in which the other members of the Court of Appeal concurred, in *Logan v Bank of Scotland (No 2).* He said: "The court should, on the one hand, see clearly that in stopping an action it does not do injustice, and, on the other hand, I think the court ought to interfere whenever there is such vexation and oppression that the defendant who objects to the exercise of the jurisdiction would be subjected to such injustice" [I interpolate there the words supplied by Warrington J in *Egbert v Short*] in defending the action that he ought not to be sued in the court in which the action is brought, to which injustice he would not be subjected if the action were brought in another accessible and competent court."'"

So, the essential point being made there: if process is to be exercised properly, and it is the matter of the forum in which it is done, there must be no injustice to the plaintiff and, indeed, no oppression or vexation to the defendant.

Now, in respect of the initial action to which I took great exception: the plaintiff in that case was the Tax Commissioner as he got into me for tax. I was the defendant, and I say I have been subjected to massive oppression and vexation in the sense which was defined on the page opposite by Lord Kilbrandon:

> The grounds on which the court is justified in refusing to exercise its jurisdiction when it is regularly invoked are, and in my opinion, should be, grave and narrowly confined. The construction placed on

the words "oppressive or vexatious" gave Scott LJ's formulation of the principle a narrow and precise operation, as Lord Kilbrandon pointed out in *The Atlantic Star*.

> "There are plenty of earlier examples of the use of the words "oppressive" and "vexatious" in this context. But the words have, at all events today, certain shades of meaning which make it difficult to accept an uncritical construction as appropriate to all circumstances in which guidelines - and they are nothing more - may be required. "Oppressive" is an adjective which ought to be, and today normally is, confined to deliberate acts of moral, though not necessarily legal, delinquency, such as an unfair abuse of power by the stronger party in order that a weaker party may be put in difficulties in obtaining his just rights. "Vexatious" today has overtones of irresponsible pursuit of litigation by someone who either knows he has no proper cause of action, or is mentally incapable of forming a rational opinion on that topic."

It is my submission, that, in fact, it is precisely in those terms of "oppression" and "vexation" that the Taxation Commissioner has behaved towards myself as the initial defendant. I put up a very strong defence going to the very heart of the way the whole judicial system operates. That has never been satisfactorily answered. I believe in terms of the criteria set out in *Chaffers* to which I mentioned at the outset:

> in the absence of an explanation given, if any explanation could be given, and none has been given -

the party is "vexatious". In this action I submit it is the Taxation Commissioner who was the vexatious litigant, not myself, and if the Court sees fit to condone such practice then it seems to me the Court is doing not only itself, but this nation a grave injustice. Thank you, Your Honour.

BRENNAN ACJ: Thank you, Mr Skyring.

No argument has been raised which justifies disturbing the order made by Toohey J. that the appellant should not, without the leave of the Court or a Justice, begin any action, appeal or other proceeding in the Court. The appeal is dismissed.

MR McGILL: I am instructed to ask for costs.

BRENNAN ACJ: Yes. Mr McGill. What do you have to say about costs?

MR SKYRING: Well, I come back to my fundamental point, Your Honour: no man should we sell, defer or deny justice or right. And it comes back to the crucial question which has run right through this and which I raised before Justice McPherson back in 1983, in terms of the ordinary meaning of words: "sell", make over or dispose of in exchange for money; "money", current coin.

In terms of the *Currency Act* to which he referred, section 16 of the *Currency Act* speaks only of gold and silver coin. We do not have any, so, not only do I object to the basis on which the claim is made, it is without foundation and that particular statute forms a fundamental law of this State, it also cannot be discharged in a lawful manner. The role of the courts as I see it is to dispense justice in accordance with the law. That is the law and justice is not being dispensed in accordance with that if that order is upheld.

BRENNAN ACJ: The appeal is dismissed with costs.

AT 12.59 PM THE MATTER WAS ADJOURNED SINE DIE