

IN THE HIGH COURT OF AUSTRALIA

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Office of the Registry  
Sydney No S368 of 2002

Between -

JOHN WILSON

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Applicant

and

DEPUTY COMMISSIONER OF TAXATION

-

Respondent

Application for special leave to appeal

KIRBY J  
HEYDON J

-

TRANSCRIPT OF PROCEEDINGS

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AT SYDNEY ON FRIDAY, 3 OCTOBER 2003, AT 12.40 PM

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MR J. WILSON appeared in person.

MR P.D. RODIONOFF: May it please the Court, I appear for the respondent. (instructed by the Australian Government Solicitor)

**KIRBY J:** Yes, thank you.

**MR WILSON:** Before proceedings can start, we must establish the jurisdiction of this Court. You two people, you two men, do not have authority to conduct any hearing in this Court because your appointments by the GovernorGeneral are invalid.

**KIRBY J:** Yes, we saw those submissions and you can take it we reject those submissions, so you should proceed.

**MR WILSON:** You can do what you like, but they are the fact and the Court is a place where the truth must be told – the truth, the whole truth and nothing but the truth. You cannot dismiss the facts.

**KIRBY J:** Yes, we have seen your written submissions on this point and your press release

**MR WILSON:** And this is why I am going to Court.

**KIRBY J:** and you can take it we have considered those matters. I think you should proceed to the matters of substance.

**MR WILSON:** But I have not discussed them in Court and I will discuss them in Court.

**KIRBY J:** You will discuss them in Court insofar as you observe proper courtesies and put arguments that have some substance.

**MR WILSON:** A good argument is the fact that I have an email from the Privy Council saying

**KIRBY J:** Yes, you set that out in your written submissions.

**MR WILSON:** Yes, and I will read it out so it goes in the transcript. That I have made inquiries of the Privy Council and I have said – this is on 1 September 2003:

Dear Sirs,

Re: Australian GovernorsGeneral Sir Ninian Stephen (1982 – 1989); William Hayden (1989 – 1996); Sir William Deane (1996 – 2001) and Dr. Peter Hollingworth (2001 – 2003).

Please tell me if there were Orders Approved at the Council were made appointing the above Australian GovernorsGeneral. If so, which ones and the dates those Orders were made.

I have a reply back from them saying:

I am sorry but there is no Order for this appointment.

And that means that the Queen in Council has not appointed the GovernorGeneral as she must by the [Constitution](#). Part of the submissions or the articles I put in were from the [Constitution](#), saying that under the United Kingdom Parliament's Act to Constitute the Commonwealth of Australia 1900, that the GovernorGeneral is appointed by the Queen. Now, clearly, the Queen in Council has not appointed the GovernorGeneral to the Commonwealth of Australia and the [Constitution](#) also says

**KIRBY J:** Her Majesty has appointed the successive GovernorsGeneral pursuant to the Australian Constitution in her capacity as Queen of Australia, not in her capacity as Queen of the United Kingdom.

**MR WILSON:** The Queen of Australia is the Queen of the United Kingdom. No power has been given to the Australian Parliament to strip Her Majesty of that title, so the Styles and Titles Act 1973 is null and void because that Act strips her of that title and the only

**KIRBY J:** This appears a little remote from the matters that you have come to argue.

**MR WILSON:** You are trying to divide the monarchy and that cannot be done. The Queen is the Queen. She is the Queen of the United Kingdom every second of every day, so the Queen of the United Kingdom has not appointed the GovernorGeneral of Australia as required in the [Constitution](#). In the [Constitution](#), Chapter III, section 72, says

**KIRBY J:** What has this got to do with the order against you concerning your unpaid taxes? Would it not be more appropriate for us to concentrate on that order?

**MR WILSON:** You cannot concentrate on anything. You have no authority. This matter must be dealt in the only way possible, which is by trial by jury.

**KIRBY J:** We have seen those written submissions, Mr Wilson. We have seen those submissions and we overrule them and you should proceed to deal with the other matter.

**MR WILSON:** But you have no authority to overrule anything.

**KIRBY J:** Yes, well, that is what you say, but we have to deal with the matter that is before us. Now, what are the other arguments that you have to put?

**MR WILSON:** Well, the matter before us is whether you have the jurisdiction, you and Mr Heydon

**KIRBY J:** Yes, we know that that is what you say.

**MR WILSON:** have the jurisdiction to deal with it – you do not. Your appointments are invalid.

**KIRBY J:** We note that that is your submission. Now will you proceed with the matters of substance as to the judgment against you concerning your unpaid taxes.

**MR WILSON:** You cannot even rule on that because you have no authority to rule on that. This matter must be dealt with by a jury.

**KIRBY J:** Yes, thank you, Mr Wilson.

**MR WILSON:** And the jurisdiction of the Court must be determined by a special jury.

**KIRBY J:** We note that is what you say.

**MR WILSON:** So before we even get to the matter of taxation, clearly, the jurisdiction of the Court must be established and it is clear that the correspondence which I have submitted to the Court proves beyond a shadow of a doubt that no judges of the High Court are legitimate judges of the High Court. Their appointments are invalid. I tried to file an affidavit in support of an application for quo warranto and the Deputy Registrar refused to accept it and passed it onto another judge to determine whether that could be filed and I told her, he cannot judge it because he would be judging in

his own cause, which is against natural justice, and beside that, he is not a valid judge anyway because his appointment is not legitimate. So we keep on going around in circles.

**KIRBY J:** Indeed, we do.

**MR WILSON:** But we cannot get away from the fact that you must have a competent, independent and impartial tribunal established by law. Any court constituted by judges, so-called appointed by the head of State, is not a court or a tribunal established by law because their appointments are invalid. So before we even get to the matter of being rejected, my right to trial by jury, we have to get a tribunal to determine that matter.

**KIRBY J:** I think you have raised this matter before this Court on at least two previous occasions, have you not? In the case of *Wilson v The Prothonotary* on 16 April 1999 and *Wilson v State of New South Wales* on 23 November 2001, is that correct?

**MR WILSON:** Over the past seven years I have been denied trial by jury on 11 separate occasions by judges.

**KIRBY J:** Yes.

**MR WILSON:** None of these judges have that authority to take away my right. In the material I have put into the Court a few days ago is a copy of a submission I put into the Human Rights Commission in Geneva and this details the incidents where I have been denied my rights.

**KIRBY J:** There is a right in the *District Court Act* to summon a jury and juries are summoned from time to time in that court. I have sat in appeals from the District Court where juries determined matters, but juries are not available, as I understand it, in interlocutory proceedings, and the proceedings before Judge Delaney in which the summary judgment was entered against you was an interlocutory proceeding.

**MR WILSON:** It does not matter how you try and split the hair, it comes out of the fact

**KIRBY J:** I am not trying to split the hair; I am trying to apply the law.

**MR WILSON:** The law is that the Australian citizen is entitled to trial by jury in any action.

**KIRBY J:** That is not the law of this country.

**MR WILSON:** That is the law because the *Supreme Court Act 1899* – no, 1900

**KIRBY J:** What has that got to do with the proceeding in the District Court, Mr Wilson?

**MR WILSON:** It is a matter of my rights.

**KIRBY J:** No, that is governed by the *District Court Act* and the rules made under that Act.

**MR WILSON:** But any court is a place where justice is administered.

**KIRBY J:** That might be so – I hope it is so – but it has to administer it according to law.

**MR WILSON:** Is it so, or is it not so? Is it so, or is it not so?

**KIRBY J:** I hope so, it has to be determined according to law.

**MR WILSON:** Justice is number one, protection of rights and the punishment of wrongs. Do you disagree with that?

**KIRBY J:** I am not here to answer your questions. You are here to answer mine.

**MR WILSON:** Yes, you are, that is why you are here. There is no other reason for you to be here.

**KIRBY J:** I am here to determine your application.

**MR WILSON:** In fact, you have got no right to be here anyway, but if you were entitled to be here, you would have to answer questions. A trial is questions and answers.

**KIRBY J:** Questions from the Bench, answers from the Bar table.

**MR WILSON:** The fact that I have been denied

**KIRBY J:** You might speak into the microphone, if you would, come into the centre.

**MR WILSON:** I am speaking loud now. But the fact that I have been denied my inalienable, constitutional and inherited right to trial by jury is fundamental and vital.

**KIRBY J:** I imagine if you had gone to Judge Delaney and said, "There is a substantive matter here where I wish to summon a jury and there is a factual question to be decided and I ask for and have issued a requisition for a jury", that might have been a basis on which his Honour might have adjourned the proceedings and ordered, if there was some substance in it, that the issues of fact be determined by a jury. That can be done in the District Court but, as I understand it, you did not seek that.

**MR WILSON:** Yes, I did.

**KIRBY J:** Did you file a requisition for a jury?

**MR WILSON:** It is on record. In fact, it was scheduled for a jury. The last hearing before Mr Delaney, on the noticeboard outside it had printed "Jury" and when we got into court he was very agitated, cranky, whatever, but he would not allow a jury. He maintained that he constituted the court and I said, "No, he does not constitute the court" and in light of recent revelations from the Privy Council, he is not even a judge. You are not a judge.

**KIRBY J:** Yes, you have said all that. We have moved on from there.

**MR WILSON:** And that is the truth.

**KIRBY J:** That water has flown under the bridge. We are a little bit down the river now.

**MR WILSON:** No, you cannot get over the bridge until you put your first step along the bridge.

**KIRBY J:** Yes, very well. We have noted

**MR WILSON:** And that is that you do not have jurisdiction to deal with any matter. The previous cases this morning, the last umpteen years, I was talking to people at the tennis last night and they said, “What about all the previous cases?” and I said

**KIRBY J:** What has the tennis last night got to do with your case before the High Court of Australia today?

**MR WILSON:** It is the fact that the jurisdiction is in question. It is not only in question, it is proven, that you do not have jurisdiction. So before we even get onto the matter of the substance of taxation, you have got to establish the boundaries or the guidelines or the parameters of what constitutes a competent, independent and impartial tribunal established by law, which is international law.

This correspondence from the Privy Council says that there is no order for the appointment of the GovernorGeneral and the **Constitution** says that the Justices of the High Court and any other court created by the **Constitution**, the judges are appointed by the GovernorGeneral in Council. Well, that GovernorGeneral in Council is a fraud because he has not been appointed by the Queen. So, therefore, this Court has no authority to even listen, let alone make a ruling, on what is the substances of the matter.

**KIRBY J:** Have you finished your submission?

**MR WILSON:** No, I will go on for years yet.

**KIRBY J:** Mr Rodionoff, can you just help me. There is a power under the *District Court Act* and Rules to

**MR WILSON:** Excuse me, Mr Kirby, do you intend hear this matter, do you?

**KIRBY J:** I do, indeed. Sit down, please. Take your place.

**MR WILSON:** Well, you have no jurisdiction to do so.

**KIRBY J:** You have had your opportunity, sit down please.

**MR WILSON:** And I have established the fact that you do not have jurisdiction.

**KIRBY J:** Take you place, please. You have finished your submission, you sat down and you have concluded.

**MR WILSON:** It is more than a submission, it is a statement of fact

**KIRBY J:** Very well.

**MR WILSON:** that you do not have jurisdiction.

**KIRBY J:** Sit down please, Mr Wilson.

**MR WILSON:** That your appointment is invalid.

**KIRBY J:** You have made that submission and we have heard it, thank you very much.

**MR WILSON:** But you cannot even decide on that, because you will be judging in your own cause.

**KIRBY J:** Yes, sit down please. If you do not sit down, I will have you removed. Sit down.

**MR WILSON:** You cannot determine any issue in this matter.

**KIRBY J:** Sit down please, Mr Wilson. Mr Rodionoff, what is the position so far as the summoning of a jury in this case? Come to the centre, please. Come to the microphone, if you would.

**MR RODIONOFF:** Yes, thank you, your Honours. Your Honours, there is power in the *District Court Act* for the summoning of a jury if it is done within

**KIRBY J:** And did Mr Wilson summon a jury for the trial of contested issues of fact in the District Court?

**MR RODIONOFF:** Your Honour, he put in an application that was out of time under the rules.

**KIRBY J:** And was there an application to extend the time to summon the jury?

**MR RODIONOFF:** Not that I am aware of, your Honour, no.

**KIRBY J:** So it was on that footing, was it, that Judge Delaney proceeded to deal with the matter as a judge sitting alone?

**MR RODIONOFF:** Well, that was one of the matters, your Honours. The other matter, of course, is that these were, as your Honours pointed out, interlocutory matters, which under the *District Court Act* –

and if I could specifically refer your Honours to section 11 of the *District Court Act* and an extract of that appears in the authorities which

**KIRBY J:** Yes, tab 3.

**MR RODIONOFF:** Behind tab 3, yes, your Honour. Your Honours will see that:

All civil and criminal proceedings in the Court, and all business arising out of any such proceedings, shall, subject to this Act and the *Jury Act 1977*, be heard and disposed of before a Judge –

and behind tab 3 then appear the provisions of the *District Court Act* relating to jury trials and, of course, important in that, your Honours, is section 79A also, that notwithstanding that there has been a requisition for a jury the court may, despite those sections, order that any question of fact be tried

**KIRBY J:** That requires an order. That is not simply proceeding without an order. The court would have to order that there be a trial without a jury where a jury has been properly requisitioned.

**MR RODIONOFF:** Where one has been properly sought, yes, your Honour.

**KIRBY J:** In any case, you say in this case that Mr Wilson did not requisition a jury within time but requisitioned a jury out of time

**MR RODIONOFF:** Yes, your Honour.

**KIRBY J:** and made no application for an extension of time for the requisitioning of a jury?

**MR RODIONOFF:** Your Honour, what he did seek for was a grand jury.

**KIRBY J:** Has there ever been a grand jury in New South Wales?

**MR RODIONOFF:** Not that I am aware of, your Honour. In fact, your Honour will see that in the application book there is a judgment of Judge Delaney starting on page 13 of the application book dealing with his application for the summoning of a grand jury, and that application was considered by Judge Delaney and rejected.

**KIRBY J:** There is no provision in the *District Court Act* for a grand jury?

**MR RODIONOFF:** No, your Honour.

**KIRBY J:** I think there was a grand jury in Victoria for a very short time, but I do not believe that there has ever been a grand jury in New South Wales and, in any case, it is not provided for in the *District Court Act*.

**MR RODIONOFF:** That is correct, your Honour.

**KIRBY J:** Yes, thank you very much. Mr Wilson, do you wish to reply to those submissions of counsel?

**MR WILSON:** Before a jury of my peers and my equals, not before you. You have no jurisdiction, you have no authority, you have no warrant, nothing.

**KIRBY J:** Yes, thank you very much.

**MR WILSON:** You are illegitimate, you are an impostor, you are committing an offence

**KIRBY J:** Sit down, please. You do not have to proceed with that submission.

The Deputy Commissioner of Taxation sued Mr Wilson for unpaid income tax, provisional tax, penalties and interest. Mr Wilson filed a defence which included an assertion of a right to trial by jury. Various interlocutory motions then came before Judge Delaney in the

District Court of New South Wales. Amongst them was a motion by Mr Wilson for a grand jury and for leave to file out of time a crossclaim seeking to recover some \$5 million from the Commissioner. The primary judge rejected the motions. He entered summary judgment against Mr Wilson for the sums proved. Mr Wilson then appealed to the Court of Appeal of New South Wales. That court dismissed the appeal.

Now Mr Wilson seeks special leave to appeal to this Court. He wishes to argue that trial by jury is an inalienable constitutional right which the Federal and State Parliaments cannot remove by legislation. It is true that the Federal Constitution contains in section 80 a limited guarantee of jury trial in trials of certain federal crimes prosecuted on indictment. Consistent with the authority of this Court, that section had no application to Mr Wilson's proceedings. See *Re Colina; Ex parte Torney* (1999) 200 CLR 386 at 396, 405 and 427; *Brownlee v The Queen* (2001) 207 CLR 278; and *Fittock v The Queen* (2003) 77 ALJR 962; 197 ALR 1.

Although a proceeding in federal jurisdiction, Mr Wilson's case related to civil, not criminal, claims. There is accordingly no indictment. In Australia the constitutional guarantee of jury trial is much narrower than in the United States. Accordingly, there is no relevant limitation on the right of legislatures to restrict the right of jury trial in civil cases as they have under the *District Court Act 1973 (NSW)*.

Other arguments were raised by Mr Wilson which concerned the validity of the appointment of the Justices of this Court. Those points were without merit. They are rejected. On the face of things, Mr Wilson has raised these meritless contentions to avoid paying his taxes in accordance with law, as any other person subject to taxes must do. No error is shown in the orders of the court below. Special leave is therefore refused.

You have sought indemnity costs in this matter.

**MR RODIONOFF:** I have, your Honour.

**KIRBY J:** What is the basis for making an order for indemnity costs which is exceptional?

**MR RODIONOFF:** The basis, your Honour, is that the arguments that have been propounded by Mr Wilson have no merit and they never have had any merit. They have been rejected on at least two prior occasions in special leave applications and I have included in the authorities the two transcripts on his last two occasions where, if your Honour turns to the transcript of 16 April 1999, on page 3

**KIRBY J:** Which tab is that?

**MR RODIONOFF:** That is tab 5. On page 3 of that transcript you will see that Justice Gaudron asked Mr Wilson to address himself “to the question of error in the court below” and his answer to that was that:

Justice Hidden has denied the right to trial by jury, and that is the error.

And the decision of that Court on page 6 just seemed to be that:

It follows that the decision of the Court of Appeal is correct and special leave is refused.

Two years later

**KIRBY J:** Now, Mr Buddin, who was counsel for the Prothonotary there, did not seek an order for costs at all.

**MR RODIONOFF:** No, he did not seek any costs at all, your Honour.

**KIRBY J:** Yes.

**MR RODIONOFF:** No, and likewise in the next transcript that I have referred your Honours to on 23 November 2001, one can see from the transcript on page 2 that again there was an answer to I think one of your Honours’ questions “that jurisdiction must be decided by a jury”, at approximately line 21 following to line 32.

**KIRBY J:** Which page?

**MR RODIONOFF:** Page 2, sorry, of the transcript, from lines 21 to 32, your Honour can see that that special leave application concerned the right to trial by jury as well.

**KIRBY J:** Yes.

**MR RODIONOFF:** And on that occasion the decision of the Court was that:

there is no ground for thinking that the decision of the Court of Appeal is wrong.

**KIRBY J:** Again, there was no application for costs in that case.

**MR RODIONOFF:** There was not, your Honour.

**KIRBY J:** So costs were not ordered at all.

**MR RODIONOFF:** No. In this case there is an application for costs, your Honour, and we say in light of the groundlessness of the arguments that have been raised, it is appropriate that those costs be done on an indemnity basis. I do not think I can put the argument for indemnity costs higher than that, your Honour.

**KIRBY J:** The Court has just given its reasons for dismissing an application by Mr John Wilson for special leave to appeal from a decision of the Court of Appeal of New South Wales in proceedings concerning him.

During the giving of the reasons for that order, Mr Wilson absented himself from the Bar table and left the courtroom. After the reasons had been given and the order pronounced, counsel for the Deputy Commissioner of Taxation pressed an application (which was contained in the submissions which were filed in these proceedings) for an order for costs and that that order be made on an indemnity basis. That application is noted in paragraph 4.1 of the written submissions of the respondent. In his written reply to the application, Mr Wilson made no reference to the application for indemnity costs. Nor did he make answer to that application whilst he was present in the Court.

The ordering of costs is within the discretion of the Court. The proceedings are civil proceedings. Ordinarily, if the successful respondent sought costs, the Court would order, upon the dismissal of the application, that those costs be paid by the applicant. The ordering of indemnity costs is truly exceptional. Such an order would not ordinarily follow the dismissal of the application for special leave.

However, counsel for the Deputy Commissioner of Taxation drew attention to two earlier proceedings involving Mr Wilson which had been before this Court. The first was a proceeding on 16 April 1999 between Mr Wilson and the Prothonotary of the Supreme Court of New South Wales. That application was heard by Justices Gaudron and Callinan. It was rejected. No order for costs was made. However, as in the proceedings today, Mr Wilson pressed upon the Court his contentions concerning his right to trial by jury.

The second application referred to was one between Mr Wilson and the State of New South Wales which was heard and determined by the Court on 23 November 2001. On that day the Court was constituted by Justices McHugh and Callinan. Once again, the application by Mr Wilson was rejected. No order for costs was sought in that case. Once again, the foundation for the arguments advanced by Mr Wilson concerned his right to jury trial.

It follows that on two occasions Mr Wilson has been heard by Justices of this Court in respect of his unsustainable applications for jury trial. On both occasions those applications have been rejected. He has now appeared today to press those applications once again. In the Court's opinion, these are once again without merit. After repeated rejection of the same contentions, which are completely without legal merit, a point is reached where the Court is entitled to conclude that other litigants are deserving of protection from futile claims of the same kind. Such protection justifies a cost order that ensures that the litigants concerned are spared unnecessary costs in defending themselves from applications repeatedly shown to be without legal merit.

In these circumstances the application by the Deputy Commissioner for indemnity costs is made good. The application for special leave is therefore refused. Mr Wilson must pay the Deputy Commissioner's costs. Those costs must be paid on an indemnity basis. Certify for counsel.

**AT 1.08 PM THE MATTER WAS CONCLUDED**

