



IN THE HIGH COURT OF AUSTRALIA

Office of the Registry  
Sydney

No S284 of 2001

B e t w e e n -

JOHN WILSON

Applicant

and

ST GEORGE BANK LIMITED

First Respondent

STATE OF NEW SOUTH WALES

Second Respondent

Application for special leave to appeal

GUMMOW J  
CALLINAN J

TRANSCRIPT OF PROCEEDINGS

AT SYDNEY ON FRIDAY, 14 FEBRUARY 2003, AT 2.53 PM

Copyright in the High Court of Australia

**MR A.J. O'BRIEN**: May it please the Court, I appear for the first respondent. (instructed by St George Bank Limited)

5

**MS C.A. WEBSTER**: May it please the Court, I appear for the second respondent. (instructed by Crown Solicitor's Office for the State of New South Wales)

10 **MR J. WILSON** appeared in person.

**GUMMOW J**: Do you know if there is any appearance for the applicant?

**MR O'BRIEN**: I think he is outside.

15

**GUMMOW J**: Yes, well call the matter, officer, outside the Court.

**MR WILSON**: Sorry, I thought your Honour had seen me.

20 **GUMMOW J**: It is all right, officers. Yes, Mr Wilson. Take a minute to unpack your things.

**MR WILSON**: Your Honours, this is my case, appealing against the lack of a jury. Have you read the application book?

25

**GUMMOW J**: We have.

**MR WILSON**: Thank you. Have you read the "Notice Of A Constitutional Matter"?

30

**GUMMOW J**: Yes, we have read all the relevant materials. Now, what do you wish to say by way of supplementary - - -

**MR WILSON**: Have you read the affidavit I filed on 6 February?

35

**GUMMOW J**: Yes.

**MR WILSON**: In that I refer to an Act of the New South Wales Parliament. Do you have the material, in this plastic folder?

40

**GUMMOW J**: Yes.

**MR WILSON**: You will find that particular Act is No 24 amongst the material.

45

**GUMMOW J**: Yes.

50 **MR WILSON:** That is the blatant act of betrayal, denying the people of  
New South Wales the right to trial by jury.

**GUMMOW J:** Now, what do you say is the error in the reasoning of the  
New South Wales Court of Appeal in their judgment which appears in the  
55 book at page 9 I think it is, in Justice Priestley's judgment.

**MR WILSON:** For any judge to say that an Australian has not got the  
right to trial by jury and - - -

**GUMMOW J:** Well, it is just not right.

60 **MR WILSON:** Pardon? It is not - - -

**GUMMOW J:** It is not correct. Section 80 of the Constitution makes  
certain provision in criminal matters.

65 **MR WILSON:** In section 80 of the Constitution to constitute the  
Commonwealth of Australia is one part of the Constitution of Australia. It  
is only one single document. In fact, the right to trial by jury is well  
70 established as a constitutional law, constitutional law.

**GUMMOW J:** Look, you can try and lecture us about these matters if you  
wish.

**MR WILSON:** Pardon?

75 **GUMMOW J:** You can try and lecture us about these matters if you wish,  
Mr Wilson.

**MR WILSON:** Well, obviously the judiciary is in gross error and gross  
80 ignorance.

**GUMMOW J:** That would be fairly unlikely. You might have - - -

**MR WILSON:** It is not - I have been fighting for the right to trial by jury.

85 **GUMMOW J:** You continue with what you say - - -

**MR WILSON:** Can I say - this is my 20 minutes. Can I say my  
20 minutes?

90

**GUMMOW J:** Just listen to me for a minute and you might be better off. You proceed to say what you wish for the next 20 minutes, right, which is your time. Now, go ahead.

95 **MR WILSON:** Well, the right to trial by jury is far more than an  
entitlement precious to Australians. It is the only way to guarantee truth,  
justice and freedom. Thomas Jefferson said trial by jury is the only anchor  
yet imagined by man which can hold a government to the principles of its  
100 Constitution. Sovereignty lies with the people of Australia, and it is the will  
of the people that governs this nation. Sovereignty does not lie with the  
Parliament nor the judiciary. They swear an oath to be faithful and they  
have true allegiance and well and truly serve Queen Elizabeth II of England  
who - - -

105 **GUMMOW J:** No, not Queen Elizabeth II of England.

**MR WILSON:** Queen Elizabeth II of England.

110 **GUMMOW J:** No, there is no such person. In the first place,  
Her Majesty's sovereignty is the United Kingdom of Great Britain and  
Northern Ireland and in the second place, relevantly for this, she is the  
Queen of Australia.

115 **MR WILSON:** The first Queen Elizabeth was Queen of England.

**GUMMOW J:** Of course, before the union of the Crowns in 1603.

120 **MR WILSON:** So therefore Queen Elizabeth II is the second Queen to be  
called Elizabeth of England, not of Australia. She is not Queen Elizabeth II  
of Australia. You have sworn an oath to Queen Elizabeth II, have you not?

**GUMMOW J:** Do not ask questions of the Bench, please.

125 **MR WILSON:** You refuse to answer? Okay, so sovereignty does not lie  
with the Parliaments nor the judiciary. They swear an oath to be faithful  
and bear true allegiance and well and truly serve Queen Elizabeth II of  
England, who has in turn sworn to govern the peoples of Australia  
according to our laws and customs. The way in which she has done this is  
130 laid out in the words of the Coronation ceremony. I have included that as  
one of the documents for your enlightenment.

**GUMMOW J:** Do not use expressions like that either, please.

135 **MR WILSON:** Pardon?

**GUMMOW J:** Do not insult the Bench with expressions like that.

**MR WILSON:** What is wrong with “enlightenment”?

140 **GUMMOW J:** Carry on.

**MR WILSON:** The right to trial by jury is entrenched in our laws, and anyone such as the diverse “evil counsellors . . . and ministers”, mentioned in the Bill of Rights 1688, who endeavour to “subvert and extirpate . . . the laws and liberties” is treacherous and they must be punished according to laws for their evil doings. This is all laid out, again, in section 43 of the *Imperial Acts Application Act*, which carries a penalty for anybody who offends against the Imperial enactments - - -

150 **GUMMOW J:** No, that is a law of the Parliament of New South Wales, is it not?

**MR WILSON:** Yes. The Supreme Court is in New South Wales.

155 **GUMMOW J:** Yes. Controlled by the *Supreme Court Act* of New South Wales too.

**MR WILSON:** The *Supreme Court Act* of New South Wales?

160 **GUMMOW J:** Yes. *Supreme Court Act* 1970.

**MR WILSON:** Yes, which still must observe constitutional laws such as the confirmation of charters, the petition of rights, habeas corpus, 1620. There is a whole list. This is why I included this booklet - this Act in my submissions, because it clearly states here that Magna Carta and all the other Acts - in fact in the habeas corpus Act of 1640 it says quite clearly that:

170 the Great Charter (many Times confirmed in Parliament)

Now, these constitutional laws - - -

**GUMMOW J:** Look, do you think that if this case had been tried in the United Kingdom you would have had a right to trial by jury?

175 **MR WILSON:** I have got the right to trial by jury in Australia.

**GUMMOW J:** Because of some English laws?

180 **MR WILSON:** Yes, because I have inherited those laws.

**GUMMOW J:** Do you think they apply in England to this day?

185 **MR WILSON:** Pardon?

**GUMMOW J:** Do you think they apply in England in this day, in this way?

190 **MR WILSON:** I am not concerned what they do in England.

**GUMMOW J:** I see.

195 **MR WILSON:** It is my inherited right, it has been laid down in the Charters of Liberty - you can read the actual words:

200 No freeman shall be taken, or imprisoned, or be disseised of his freehold, or his liberties, or free customs, or be outlawed, or exiled, or in any other wise destroyed, nor will we pass upon him nor condemn him unless by the lawful judgment of his Peers, or by the law of the land.

205 Now, this is clearly put down that it is a right which has been granted to the free men of England and to their heirs forever. It is never going to become obsolete. It is forever. I have also included a copy of my birth certificate, just to show that I am the son of an Englishman. It says here that my father was born in London, England. So I have that right personally, but I also have the right as an Australian because it is part of our constitutional law that we must have trial by jury. The only way that there will not be - - -

210 **GUMMOW J:** For all cases?

**MR WILSON:** In any action.

215 **GUMMOW J:** I see. For divorce?

**MR WILSON:** Any action at all. Any action at all. I have also included - - -

220 **GUMMOW J:** For traffic fines?

**MR WILSON:** If they so wish. In any action.

225 **CALLINAN J:** Mr Wilson, do you not understand that New South Wales and Australia have their own parliaments and they can change the law and they have changed the law.

**MR WILSON:** But they cannot remove the rights of the people. They cannot remove the right to trial by jury. There is nothing in any constitution

230 which gives a Parliament, either State or Federal the power to make laws to  
take away the rights of the people. This is clearly stated in Quick and  
Garran. In a full-blown appeal all these things can be gone into detail and if  
any attempt is made to truncate or stop that you will be denying the normal  
process of what is fair.

235 **GUMMOW J:** No, we will just be applying a section in the *Judiciary Act*  
which is a law of the Parliament of the Commonwealth.

**MR WILSON:** It must be fair that I must be allowed a full hearing. This  
is natural justice. These - - -

240 **GUMMOW J:** No. One of the things we are obliged to do is to obey the  
laws of the Commonwealth - - -

**MR WILSON:** Yes.

245 **GUMMOW J:** - - -insofar as they are valid under the Constitution of  
Australia.

250 **MR WILSON:** Yes, that is fair enough and this is what I am insisting  
upon, that these laws are obeyed and to deny a person such as myself or  
anybody here in this room the right to trial by a jury is a violation of those  
laws. It is clearly established that we have the right to trial by jury.

255 **GUMMOW J:** It is not clearly established. There is no - - -

**MR WILSON:** How many times does it have to be put in front of you that  
we have the right to trial by a jury. It says:

many times confirmed in Parliament –

260 This has always been the issue. So many famous people in history have  
endorsed trial by a jury. I have included a chapter of  
Sir William Blackstone. Have you got a copy of that? Now, he says that  
trial by a jury is in fact the savour of a nation, it is the protector of liberty.  
265 Anybody who tries to take away that right to trial by jury must be regarded  
as sinister and devious and basically doing wrong. You cannot take away  
the – this is our protection against a judiciary. The judiciary should never  
be given, nor allowed to assume, total power whereby they can conceal  
their own incompetence, corruption and treachery. I have said that many  
270 times.

**GUMMOW J:** We cannot have total power, and I will not hear you use  
expressions like that.

275 **MR WILSON:** It is plain English.

**GUMMOW J:** Talking generally about corruption.

280 **MR WILSON:** It is intended to get the message across that - - -

**GUMMOW J:** The message is one of total constitutional incoherence at the moment I am afraid I have to tell you.

285 **MR WILSON:** The Constitution – the Constitution which has been thrown as me time and time again has been section 80 of the United Kingdom Act to constitute the Commonwealth of Australia and they keep on saying this over and over again but never do they say that within that very Act there is a section - section 118:

290 Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

295 This came in in 1900 and it applies to all the constitutional laws which were in place at that time and these constitutional laws in Schedule 2 of the *Imperial Acts Application Act* were cemented in Australia in New South Wales in 1828. It says that quite clearly in here. So that is a continuation. So, the right to trial by jury is not only found in section 8 of the Constitution to constitute the Commonwealth of Australia, it is covered by  
300 this clause, by this section, where it says that:

305 Full faith and credit shall be given, throughout the Commonwealth to the laws, the public Acts and records, and the judicial proceedings of every State.

That cements it in our Constitution. The total Constitution. Not that narrow little Constitution which is a manual to amalgamate the States. So the Constitution - - -

310 **CALLINAN J:** Not just the State – there were no State laws before 1900.

**MR WILSON:** I still cannot hear you.

315 **CALLINAN J:** There were no State laws before 1900. They were colonial laws, and after 1900 the States not only adopted earlier laws but they also changed the law from time to time and that is what “Full faith and credit” has to be given - - -

320 **MR WILSON:** You can change the law, but - - -



**CALLINAN J:** Listen to me, please. That is what “Full faith and credit” has to be given to, the laws as they are, from time to time.

325 **MR WILSON:** Fair enough. Yes. Yes. But those laws – even though those - - -

**CALLINAN J:** It is not as though they are in 1215, Mr Wilson.

330 **MR WILSON:** No, even though those laws are amended or repealed that repeal or amendment does not affect any right. This has been stated both in the State *Interpretations Act* and the Commonwealth Interpretations Act. I have included both those documents in these submissions, that the repeal or amendment of an Act does not take away or affect any right – this is the Commonwealth one which is exactly the same wording as the State one and  
335 says where an Act repeals in the whole or part of the former Act then unless the contrary indication appears the repeal should:

not affect . . . any right, privilege, obligation or liability -

340 So they could totally scrap an At but they cannot get rid of the right, especially the right to trial by jury. Now, this is the most important Act we have, because it is our only protection that we have. We are free men and we are entitled to be judged by our equals and the only time we might give that right over is that if both parties give their consent to be without a jury.  
345 This is stated also in the legislation. You have copies of that, too.

The Magna Carta has established itself as the most essential – most important treat every to be devised. This is acknowledged even down in Canberra. Down in Canberra they have erect the Magna Carta monument.  
350 Have you been to see it? You will not answer? Mr Callinan, have you seen it?

**CALLINAN J:** Look, you cannot really ask me questions, but, yes, I did see it, Mr Wilson.

355 **MR WILSON:** Well, this is a two-way thing, you were asking me questions and I am asking you.

**GUMMOW J:** No, it is not a two-way thing, actually.

360 **MR WILSON:** It is not?

**GUMMOW J:** No.

365 **MR WILSON:** You are a dictator, are you?

**GUMMOW J:** No.

370 **MR WILSON:** “You just lay down and I say nothing.”

**GUMMOW J:** No.

**MR WILSON:** It is not on.

375 **GUMMOW J:** No, you are here to make your submissions on which we then rule.

**MR WILSON:** Yes.

380 **GUMMOW J:** We try to assist you by asking questions so that you can respond to what is on our mind.

**MR WILSON:** Your job - - -

385 **GUMMOW J:** Do not lecture us on what our job is, please.

**MR WILSON:** Your job is to ensure fairness.

**GUMMOW J:** No, it is not.

390 **MR WILSON:** It is not?

**GUMMOW J:** It is to apply justice, according to law.

395 **MR WILSON:** And what is justice? Justice is the protection of rights and the punishment of wrongs and justice is what I am after. Justice means - - -

**GUMMOW J:** Justice, according to law.

400 **MR WILSON:** Yes, that is right. Real law. Not no law. If there has been a law that it passed which takes away our right to trial by jury, it is no law. This is clearly spelt out in Quick and Garran. It is no law.

405 **CALLINAN J:** Mr Wilson, how many other judges have you run this argument past?

**MR WILSON:** Quite a few.

410 **CALLINAN J:** And you have never brought the flags up once, is that correct?

**MR WILSON:** No, that is the dreadful situation.

415 **CALLINAN J:** So, all the judges - - -

**MR WILSON:** That we have a judiciary - - -

420 **CALLINAN J:** Just listen to me a moment. All the judges are wrong and you are right?

**MR WILSON:** I am not the only one right. The people are right. The previous Chief Justices throughout the centuries are right. It is only the judges we have got in these courts which are wrong and this is what must be overturned. Now, down at the Magna Carta monument, which is a most important feature in Canberra, there are plaques on the wall. I have made copies of the photograph of John Howard opening it. This is a copy of his transcript of his speech which talks about the importance of trial by jury.

425

**GUMMOW J:** Of course - - -

430 **MR WILSON:** Of course.

**GUMMOW J:** In an historical sense, of course.

435 **MR WILSON:** And it is very real today.

**GUMMOW J:** It is very real today, undoubtedly so.

**MR WILSON:** And it says on the wall of the Magna Carta monument;

440  
Magna Carta is now seen as a traditional mandate for trial by jury, justice for all, accountable government and no arbitrary imprisonment.

445 Now, that says it all in one sentence. And for the judges of this country to deny that right to Australians is the greatest - - -

**GUMMOW J:** It is not the judges denying it.

450 **MR WILSON:** They are denying it.

**GUMMOW J:** It is not - - -

455 **MR WILSON:** I asked for trial by jury and they say, "One is not available. You don't get trial by jury.", that is denying it.

**GUMMOW J:** Because various parliaments had made various statutes which provide for this situation.

460 **MR WILSON:** They can't make any statutes which take away the right to trial by jury.

**GUMMOW J:** All right.

465 **MR WILSON:** Are you saying they can? That is another question. Are you saying that - - -

**GUMMOW J:** I am not here to answer your questions.

470 **MR WILSON:** Well, that is what it is all about.

**GUMMOW J:** Your time - - -

**MR WILSON:** That is why I am here today.

475

**GUMMOW J:** Your time – no, you are not here today for all of that. And, your time is almost up.

480 **MR WILSON:** I will be coming back time and time again because this issue must never be destroyed. Justice, which is the protection of rights, must never be destroyed in Australia.

**GUMMOW J:** Now - - -

485 **MR WILSON:** In spite of the judges, in spite of the Parliaments, justice must never be destroyed in Australia. Justice is, again, the protection of rights and the punishment of wrongs.

**GUMMOW J:** Now, your time is almost up.

490

**MR WILSON:** No, I intend to go on time and time again.

495 **GUMMOW J:** No, no, no. On this particular occasion your time is almost up and I am inviting you to sum up anything more you want to say before the red light - - -

500 **MR WILSON:** It is very simple. I am saying the same thing over and over again. I have included a copy of a case in the Court of Appeal in England and Wales. Here they uphold the right to trial by jury where a trial by jury was denied.

**GUMMOW J:** They certainly do not. Have you ever heard of the Diplock Courts in Northern Ireland? They have tried very serious criminal matters without any juries for some years.

505

**MR WILSON:** And you say that is right?

**GUMMOW J:** I am not saying it is right or wrong but you say that is what happened in England. I say it does not.

510

**MR WILSON:** Well, I am putting my case that the people of Australia are entitled to this inherited –

for ever –

515

it says – Magna Carta:

for ever –

520

it says, in confirmation of charters that we are entitled to trial by jury and it says, quite clearly, in another constitution of law – petition of right – that any acts:

doings or proceedings –

525

denying trial by jury – in so many words:

shall not be drawn . . . into consequence or example.

530

So, all the cases I have had over the last six years where I have been denied trial by jury - and this is just another one - they are to be struck out because I have been denied this most fundamental right, this protection of freedom of trial by jury.

535

**GUMMOW J:** Yes. Well, the red light is now on.

**MR WILSON:** It is not going to stop me.

540

**GUMMOW J:** I am afraid it is. We will hear you no further. And we do not need to hear from you, Mr O'Brien, or you, Ms Webster.

There is no reason to doubt the correctness of the decision in this matter reached by the New South Wales Court of Appeal. Accordingly, special leave is refused.

545

Do you seek costs?

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

550

**MS WEBSTER:** We seek costs.

555 **GUMMOW J:** Yes, very well. It is refused with costs. We will take a short adjournment.

**AT 3.16 PM THE MATTER WAS CONCLUDED**

