



New South Wales Supreme Court

CITATION :	Wilson v State of New South Wales [2001] NSWSC 880
CURRENT JURISDICTION:	Common Law Division
FILE NUMBER(S) :	SC 20653/00
HEARING DATE(S) :	8 October 2001
JUDGMENT DATE :	8 October 2001
PARTIES :	John Wilson - Plaintiff / Respondent State of New South Wales - Defendant / Applicant
JUDGMENT OF :	Dunford J

COUNSEL :	Plaintiff / Respondent in person CA Webster - Defendant / Applicant
SOLICITORS :	Plaintiff / Respondent in person IV Knight, Crown Solicitor - Defendant / Applicant
CATCHWORDS :	PRACTICE & PROCEDURE - Application for summary judgment - no right to trial by jury
LEGISLATION CITED :	Crimes Act 1900, s 138 Law Reform (Vicarious Liability) Act 1983, s 8 Crown Proceedings Act 1988 Imperial Acts Application Act 1969 Commonwealth of Australia Constitution Act 1900, cl 5, s 80 Interpretation Act 1987, s 30 Supreme Court Procedure Act 1900 Supreme Court Act 1970, ss 5, 40, 48, 51, 86-89 Supreme Court Rules, Pt 13 r 5, Pt 15 r 26 District Court Act 1973, ss 11, 18G-18J, 44, 51 District Court Rules, Pt 30 r 6, Pt 43 rr 10A, 15, Pt 47 r 3(9)

CASES CITED :	The Prothonotary v John Wilson (Dunford J - 3 Dec 1997)
DECISION :	Summary judgment for defendant with costs.

**IN THE SUPREME COURT
OF NEW SOUTH WALES
COMMON LAW DIVISION**

20653/00

Dunford J

Monday, 8 October 2001

JOHN WILSON v STATE OF NEW SOUTH WALES

Judgment

1 His Honour: By Amended Notice of Motion filed in court on 2 April 2001, the defendant, the State of New South Wales, seeks an order pursuant to SCR Pt 13 r 5 that the proceedings be dismissed or stayed; or alternatively, pursuant to Pt 15 r 26 that the Statement of Claim be struck out, in both cases on the grounds that the proceedings disclose no reasonable cause of action and/or are an abuse of process.

2 The Statement of Claim which has apparently been drafted without professional assistance relates to certain proceedings in the District Court.

3 The evidence discloses that such proceedings, no. 349/2000, were commenced in the District Court at Parramatta by the Deputy Commissioner of Taxation seeking to recover moneys, allegedly due from the present plaintiff to such Deputy Commissioner.

4 On 17 October 2000 Mr Wilson sought to file a Notice of Cross-Claim in such proceedings, naming as cross-defendants the then plaintiff (Deputy Commissioner of Taxation) and also the Commonwealth of Australia and the State of New South Wales, and also an affidavit.

5 The Notice of Cross-Claim claimed an amount of \$5,000,000.00, well in excess of the jurisdictional limit of the District Court, namely \$750,000: **District Court Act 1973** (the "**District Court Act**") s 44(1)(a)(ii), and was not accompanied by a Memorandum of Consent to unlimited jurisdiction (s 51), whilst the filing of the affidavit was contrary to the provisions of DCR Pt 30 r 6.

6 By letters dated 10 and 22 November 2000 a Registrar or an Assistant Registrar rejected these documents for filing, although the letter of 10 November 2000 advised the plaintiff that if the Cross-Claim complied with the Act and Rules it would be accepted for filing.

7 The plaintiff thereupon, on 30 November 2000, commenced these proceedings in this Court claiming that the actions of the Registrars of the District Court in rejecting the documents constituted a tort or civil wrong, being a denial of natural justice and an offence against s 138 of the **Crimes Act 1900**, that the Crown is vicariously liable for such wrong, pursuant to s 8 of the **Law Reform (Vicarious Liability) Act 1983** and was, therefore, liable to be sued pursuant to the **Crown Proceedings Act 1988** and

sought:

*"Relief by the jury and the Court making the following orders:
(i) A writ of mandamus directing the District Court of New South Wales at Parramatta to perform its duty by reinstating the filing of the above- mentioned documents,
(ii) A writ of certiorari to bring the whole of the proceedings, number 349/00 to the Supreme Court of New South Wales, Queens Square Sydney (NSW),
(iii) Costs."*

8 Upon the application being called on for hearing this morning the plaintiff, who appears in person, submitted, or rather stated, that I had no jurisdiction in the matter because I was sitting without a jury.

9 He submitted, as I understand his argument, that by determining any matters, including the present application, without a jury, I was in breach of both the Oath of Allegiance and the Judicial Oath, which I took on my appointment to this Court, that I was acting unlawfully, maliciously, corruptly and oppressively, and that I was in breach of various of the statutes set out in Pt 1 of the Second Schedule to the **Imperial Acts Application Act 1969**, and liable to imprisonment and/or fine in accordance with s 43 of that Act.

10 He also submitted that any law or Act of Parliament purporting to deny him trial by jury in this or any other application was invalid.

11 He submitted that any Act taking away or denying trial by jury was contrary to the Constitution of the Commonwealth of Australia, made applicable to the States by cl 5 of the covering clauses of the **Commonwealth of Australia Constitution Act 1900** and that s 30 of the **Interpretation Act 1987** preserved the right to trial by jury which he asserted was guaranteed by the **Supreme Court Procedure Act 1900**, notwithstanding the repeal of that Act by the **Supreme Court Act 1970** .

12 Finally, he claimed I was biased against him and against trial by jury because in my judgment of 3 December 1997, in proceedings number 1294/97 **The Prothonotary v John Wilson**, I held there was no right to trial by jury in proceedings for contempt of court, a decision which was later upheld by the Court of Appeal.

13 I reject all of these submissions. I have no bias against Mr Wilson, who is otherwise unknown to me. I have no bias against trial by jury. The proceedings of this Court are now regulated by the **Supreme Court Act 1970**, which provides that a single Judge shall constitute the court: s 40(1). Provision is made in ss 86 to 89 for the trial of certain issues of fact in particular cases to be with a jury, but those provisions do not affect interlocutory proceedings such as the present. I am satisfied that s 40 is a valid law of the Parliament of New South Wales. I reject Mr Wilson's submission that it is contrary to the Commonwealth of Australia Constitution. The only provision in that Constitution relating to trial by jury is s 80 which provides that the trial on indictment of any offence against any law of the Commonwealth shall be by jury. This is not a trial on indictment and it does not relate to any offence against any law of the Commonwealth and, accordingly, s 80 is of no application.

14 The **Supreme Court Procedure Act 1900** was repealed by the **Supreme Court Act 1970** , s 5 and the First Schedule. In any event it never provided for trial by jury in applications such as the present. I am, therefore, satisfied that I have jurisdiction to hear and determine the defendant's application without a jury.

15 Part 13 r 5 of the Supreme Court Rules provides that proceedings may be stayed or dismissed when no reasonable cause of action is disclosed and

where the proceedings are frivolous or vexatious or an abuse of process of the Court, whilst Pt 15 r 26 provides that where a pleading discloses no reasonable cause of action, or has a tendency to prejudice, embarrass or delay proceedings, or is otherwise an abuse of the process of the Court, the Court may at any stage of their proceedings, on terms, order that the whole or any part of the pleadings be struck out.

16 In my view the present proceedings are completely misconceived. The documents in question were rejected for filing by the Registrar of the District Court at Parramatta. The positions of Registrar and Assistant Registrar are established, and the powers relating to them are established by s 18G to 18J of the **District Court Act**. The relevant powers are set out in Pt 43 r 10A but are subject to Pt 47 r 3(9) which provides:

"A document shall not be filed if, by reason of any defect or failure to comply with any rule or otherwise, the document would if filed be ineffective for the purpose for which it is lodged for filing."

17 It was in purported pursuance of these powers and authorities that the Registrar and/or Assistant Registrar purported to act. A person dissatisfied with a ruling by a Registrar (or Assistant Registrar) has a right to have the ruling reviewed by the Court constituted by a Judge: see DCR Pt 43 r 15 and s 11 of the **District Court Act** which provides that:

"Except in the case of a Registrar or other officer exercising powers conferred on him or her by the Act or the Rules, the Court shall be constituted by a Judge thereof."

18 This procedure for review of the Registrar's decision has not been followed in this case. Instead the proceedings have been commenced in this Court and, as I understand the Statement of Claim, the allegation that the Registrar, in rejecting the document committed a tort or civil wrong, being a violation of the rules of natural justice, and an offence against s 138 of the **Crimes Act 1900**, can only be construed as an allegation of misfeasance in public office; but there is no claim for damages in respect of such alleged tort or civil wrong.

19 The Statement of Claim does go on to claim a writ of mandamus and/or of certiorari but seeks that relief from a jury and the Court. However, as a claim for an order in the nature of mandamus and/or certiorari, the proceedings are improperly constituted, in so far as the District Court has not been joined as a defendant, nor have the other parties to the District Court proceedings, namely, the Deputy Commissioner of Taxation or the Commonwealth of Australia.

20 In addition, no ground is shown which, in the absence of an application for review by a Judge under DCR Pt 43 r 15, would justify an application for orders in the nature of mandamus or certiorari.

21 Furthermore, proceedings in the nature of mandamus or certiorari in respect of the District Court, or a Judge of that Court, are normally assigned to the Court of Appeal pursuant to s 48 of the **Supreme Court Act**. Section 51 of that Act provides that where proceedings which ought to have been commenced in the Court of Appeal, are commenced in a Division, as these have, the Court of Appeal, or the Court in the Division may, on application by a party or of its own motion, order that the proceedings be removed into the Court of Appeal, or the proceedings may be continued and disposed of in the Division.

22 No one has asked that these proceedings be removed into the Court of Appeal and, in my view, nothing would be achieved by such an order because Mr Wilson would still be deprived of his right to have this application determined by a jury as juries are never used in the Court of Appeal. In any event, having regard to the fact that the proceedings are not

properly constituted and that no reasonable cause of action or ground for mandamus or certiorari is disclosed, I am satisfied that the proceedings are an abuse of process and that, therefore, the appropriate course is to make an order for summary dismissal pursuant to SCR Pt 13 r 5.

23 I therefore order, pursuant to Pt 13 r 5, that the proceedings be dismissed.

24 I order the plaintiff to pay the defendant's costs of the application and of the proceedings to date.

oOo

Last Modified: 10/25/2001

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