

IN THE HIGH COURT OF AUSTRALIA

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Office of the Registry  
Sydney No S127 of 1998

Between -

JOHN WILSON

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Applicant

and

THE PROTHONOTARY

Respondent

Application for special leave to appeal

GAUDRON J

CALLINAN J

TRANSCRIPT OF PROCEEDINGS

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AT SYDNEY ON FRIDAY, 16 APRIL 1999, AT 2.17 PM

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**GAUDRON J:** Yes, Mr Wilson, you appear for yourself, do you?

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

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

**MR T.L. BUDDIN. SC:** May it please the Court, I appear on behalf of the respondent. (instructed by the Crown Solicitor for New South Wales)

**GAUDRON J:** Yes, Mr Wilson.

**MR WILSON:** I would like to start off with a few words as an introduction. I have made copies of these words, which I would like to read to the Court. Would your Honours like copies to follow the words?

**GAUDRON J:** We have a transcript, thank you.

**MR WILSON:** OK. Contempt of court is contempt of court, whether it occurs inside or outside any court in the land. Contempt of court is the interference with the administration of justice, and is an offence against common law. Common law is a law of the States and it is a law of the Commonwealth. Section 80 of the Australian Constitution guarantees trial by jury on indictment of any offence against any law of the Commonwealth. Indictment includes an information and a presentment. There are no State laws which preclude trial by jury for contempt of court, and if there were, they would be invalid under section 109 of the Australian Constitution, and the covering clause of the Constitution Act, UK, says that :

This Act, and all laws made by the Parliament of the Commonwealth under the [Constitution](#), shall be binding on the courts, judges and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State;

Covering clause 6 says:

“The States” .....are parts of the Commonwealth.

As an Australian I am a subject of the Queen, and am entitled to the protection of the Crown and the charters such as Magna Carta, which guarantees the inalienable right of trial by jury. This right is further protected by other charters of the Crown, such as the Bill of Rights 1688 and the Petition of Right 1627. These rights and freedoms have been fought for and died for by countless generations of men and women. Lest we forget. These charters are listed in the New South Wales [Imperial Acts Application Act 1969](#) and an offence against them is punishable by imprisonment.

English common law and the rights and freedoms granted by the charters of the Crown are our heritage because we are a constitutional monarchy, and we are under the Crown of the United Kingdom and Great Britain and Ireland. These rights and freedoms are yours and mine. They belong to our children and our grandchildren. They belong to your children and grandchildren.

When what is now the United States of America broke away from the Crown, they were forced to draw up their Declaration of Independence to ensure the continuance of these same rights and freedoms, and their system of justice is founded on, and reliant upon, those charters of the Crown.

The role of the jury in the protection of liberty has been emphasised by numerous authorities and the High Court has the power to direct trial by jury in any suit. This case is

of national importance because (a) it is in defence of Australians' rights, and (b) it exposes the seriousness of judicial corruption. I have documented my experiences through the courts over the last three years and ordinary people are amazed and horrified at what has happened.

Contempt of court is a serious offence and it is the only vehicle to bring the seriousness of judicial corruption before the people. A conviction for contempt of court is personally very serious to me because it would mean deregistration as a dentist and the destruction of my livelihood, which in turn would mean the dispossession of my home and the devastation of my family.

Trial by jury is trial by the country. With our heritage and the very survival of democracy at stake, the people must be educated and learn what is happening.

Judges are academics, and the weakest element in our community. They must be protected against subversion and must never be given absolute power whereby they can conceal their own incompetence, corruption and treachery. They have sworn to do right, but when they fail they must be accountable to the people. Without trial by jury for contempt of court, judicial corruption knows no bounds. That is my introduction. I have also filed

**GAUDRON J:** Mr Wilson, you must address yourself to the question of error in the court below.

**MR WILSON:** That is my establishment, the fact that Justice Hidden has denied the right to trial by jury, and that is the error. It is a guarantee under Magna Carta and Magna Carta is in force in Australia. That is the error. And what I am appealing for now is that Justice Hidden's ruling that Magna Carta has been overridden should be struck out, and that I am allowed my right to trial by jury.

The importance of trial by jury has been emphasised by many authorities. I have, and you have, the case of *Brown v The Queen*. In that the judges in the High Court emphasise the important role that trial by jury has in the administration of justice. On page 179 Chief Justice Gibbs said:

The requirement that there should be trial by jury was not merely arbitrary or pointless. It must be inferred that the purpose of the section must be to protect the accused – in other words, to provide the accused with a “safeguard against the corrupt or over-zealous prosecutor and against the compliant, biased, or eccentric judge” –

He goes on to say:

the jury is a bulwark of liberty, a protection against tyranny and arbitrary oppression, and an important means of securing a fair and impartial trial. It is true that the jury system is thought to have collateral advantages (e.g., it involves ordinary members of the public in the judicial process and may make some decisions more acceptable to the public) –

This is a common theme in the High Court.

**GAUDRON J:** Yes, but now, Mr Wilson, the procedures for dealing with contempt are dealt with in the rules of the Supreme Court, are they not?

**MR WILSON:** They are dealt with in a number of courts. They are dealt with in the High Court as well.

**GAUDRON J:** Well, so far as you are concerned, the procedures are dealt with in the Supreme Court Rules, are they not?

**MR WILSON:** No. In fact, I have a letter from the Supreme Court of New South Wales – I am sorry I did not put this one in – but it is from the Chief Executive Officer and Principal Registrar of the Supreme Court. The second paragraph says:

There is no State legislation which makes contempt of court an offence.

**GAUDRON J:** Yes, but the procedures for dealing with contempt are set out, are they not, in the Supreme Court Rules?

**MR WILSON:** Yes, and I can find nowhere where they preclude trial by jury.

**GAUDRON J:** Do they say you can have trial by jury?

MR WILSON: It is my right to have trial by jury, and I am demanding that I have my right.

GAUDRON J: Well, that is what you have to establish. You cannot simply assert it, Mr Wilson, you have to establish it.

MR WILSON: Trial by jury for contempt of court is the will of the people. There was a referendum in 1988 whereby the politicians tried to change section 80 of the Constitution to exclude trial by jury for contempt of court, and the people said

GAUDRON J: That is contempt of a court exercising federal jurisdiction.

MR WILSON: Contempt of court is contempt of court whether it is in any court of the land, inside or out. In the Constitution it does not say anything to the contrary. Contempt of court is contempt of court, and the people expressed themselves very clearly by an overwhelming majority that trial by jury shall not be exempt for contempt of court. You have the voting figures there, you have the proposed alteration and that was rejected overwhelmingly by the people. It is the will of the people that there should be trial by jury for contempt of court.

The other side, the opponents, quote *Willesee* back in 1984 in which the judges then said that the practice of trial by jury for contempt of court was “obsolete”. According to Magna Carta, the rights have been granted forever. So something that has been granted forever can never become obsolete. And also, in the Bill of Rights and also in the Petition of Right referring to – in fact the Petition of Right actually restates Magna Carta. There is a section where it says:

that no freeman may be taken or imprisoned or be disseised of his freehold or liberties, or his free customs, or be outlawed or exiled, or in any manner destroyed, but by the lawful judgement of his peers, or by the law of the land.

and the law of the land is the Constitution, which guarantees trial by jury.

GAUDRON J: Now, would you like to read section 80 of the Constitution, Mr Wilson?

MR WILSON: Read section 80?

GAUDRON J: Yes, that is what – and see exactly what it relates to.

MR WILSON: I will read section 80 of the Constitution. It says:

The trial on indictment of any offence against any law of the Commonwealth shall be by jury

GAUDRON J: That is right, “against any law of the Commonwealth”. You are charged with contempt of court of the Supreme Court of New South Wales.

MR WILSON: Which is part of the Commonwealth.

GAUDRON J: Well, it may be part of the Commonwealth, but it deals with

MR WILSON: You cannot exclude New South Wales from the Commonwealth.

GAUDRON J: it deals with a distinct area of judicial power. It involves a distinct area of judicial power.

CALLINAN J: Mr Wilson, both the Commonwealth

MR WILSON: I am a bit hard of hearing and I ask you to speak louder.

CALLINAN J Both the Commonwealth and the States in Australia can make laws.

MR WILSON: And any law of a State

**CALLINAN J:** No, no, you just listen to me for a moment

**MR WILSON:** which is inconsistent with a law of the Commonwealth is invalid under section 109.

**CALLINAN J:** No, Mr Wilson, you are not understanding what I am saying. They each can have laws within their own areas of power and the States have power to make laws for the regulation of the State courts, and that is, in effect, what you are charged with, breaking a law made for the regulation of proceedings in the State courts.

**MR WILSON:** And if that law is inconsistent with a law of the Commonwealth, that is invalid. And as reinforced by the Bill of Rights and by the Petition of Right, which says:

noe Declarations Judgments Doeings or Proceedings to the Prejudice of the People in any of the said Premisses ought in any wise to be drawne hereafter into Consequence or Example.

So, the precedent with *Willesee* where they said that – which is “to the Prejudice of the People” – is null and void. And also in the Bill of Rights it says the same thing:

that the awards, doings and proceedings, to the prejudice of your people in any of the premises, shall not be drawn hereafter into consequence or example –

So any time a court tries to disadvantage or take rights away from the people, those rulings are of no example, they are invalid.

There have been many learned people talk about the importance of trial by jury. I would refer to Chapter 1 of this essay by Lysander Spooner, and there they go to the importance, the fact that trial by jury is:



a “palladium of liberty” – a barrier against the tyranny and oppression of the government – they are really mere tools in its hands, for carrying into execution any injustice and oppression it may desire to have executed.

So, in other words, only by putting such an important issue as contempt of court to the people can there be justice, and the court is purely here to administer justice, whether it is the High Court, Supreme Court or any court.

So, also the Universal Declaration of Human Rights, which is the United Nations Charter, also emphasises the importance of having “a fair.....and impartial tribunal”. I cannot get a fair or impartial tribunal from any judge because I have found in the last three years, as I have put in this leaflet, which I have also submitted to the Court, that in my experience “Australian judges are liars, criminals and traitors”, and I have listed their offences. I have gone into more detail in the publication which you also have before you in chapter 12, “What Crimes Have the Judges Committed”. Now I list there the offences such as “Concealing a serious offence”,

“.....perverting the course of justice”, “Judicial corruption”. And there is no way other than trial by jury can I get an impartial tribunal.

So, fundamentally, the [Constitution](#), section 80, guarantees trial by jury for any offence against any law of the Commonwealth and New South Wales is part of the Commonwealth. The will of the people must be respected. The will of the people was expressed in the referendum of 1988 in which they overwhelmingly ruled out any question that contempt of court shall be exempt from trial by jury.

So I can only say that in the interests of justice, there can only be trial by jury in my case. Thank you.

**GAUDRON J:** Thank you, Mr Wilson. We need not hear you, Mr Buddin.

The applicant’s argument fails to distinguish between State laws regulating procedures in State courts and offences against the laws of the Commonwealth. Section 80 of the [Constitution](#) has nothing to say as to the former. It follows that the decision of the Court of Appeal is correct and special leave is refused.

**MR WILSON:** Could I interrupt there? Can the Court prove to me legally that I have no entitlement to trial by jury?

**GAUDRON J:** Do you seek costs, Mr Buddin?

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

**GAUDRON J:** Special leave is refused, Mr Wilson, and the Court will now adjourn.

**AT 2.36 PM THE MATTER WAS CONCLUDED**