



New South Wales Court of Appeal

CITATION :	WILSON v THE PROTHONOTARY [2000] NSWCA 16
FILE NUMBER(S) :	CA 40731/99
HEARING DATE(S) :	23 February 2000
JUDGMENT DATE :	23 February 2000
PARTIES :	John Wilson - Appellant The Prothonotary - Respondent
JUDGMENT OF :	Sheller JA at 1
LOWER COURT JURISDICTION :	Supreme Court - Common Law Division
LOWER COURT FILE NUMBER(S) :	12914/97
LOWER COURT JUDICIAL OFFICER :	Sully J
COUNSEL :	R S Toner SC - Appellant T L Buddin SC - Respondent
SOLICITORS :	P J Weldon & Co - Appellant I V Knight - Crown Solicitor - Respondent
CATCHWORDS :	APPLICATION FOR LEAVE TO APPEAL - ABUSE OF PROCESS

DECISION :

Application for leave to appeal dismissed as an abuse of process of the Court. No order as to costs.

**THE SUPREME COURT
OF NEW SOUTH WALES
COURT OF APPEAL****CA 40731/99
CL 12914/97****SHELLER JA****Wednesday, 23 February
2000****WILSON v THE PROTHONOTARY
JUDGMENT**

1 **SHELLER JA:** On 16 February 2000, there was listed before the Court comprising Justices Meagher, Heydon and myself, a summons for leave to appeal by the claimant, John Wilson, against the opponent, The Prothonotary. The order sought was leave to appeal from a decision of Sully J given on 6 September 1999.

2 The application before Sully J was one effectively for a declaration that Mr Wilson was entitled to have charges of contempt of Court against him tried by jury. That same question had already been decided against Mr Wilson by Hidden J in a decision given on 16 March 1998. Leave to appeal from the decision of Hidden J was refused by this Court on 24 August 1998. On 16 April 1999, special leave to appeal from the decision of this Court was refused by the High Court comprising Justices Gaudron and Callinan. In the course of his reasons for judgment, Sully J said that the application brought to the Court by Mr Wilson was in every sense the same as the application dealt with successively by Hidden J, the Court of Appeal and by the High Court. In dismissing the application his Honour said that it was sufficient to say of the submissions put by Mr Wilson that they were in his respectful view wholly and transparently without merit either in law or in fact.

3 When this application came before this Court on 16 February, Mr Toner SC, who appeared for Mr Wilson in his appeal on the contempt charges, announced that he had at that time no instructions to appear for Mr Wilson

on the leave application. Accordingly, that was stood over to be mentioned before me this morning.

4 When the matter was mentioned this morning, Mr Buddin SC, who appears for The Prothonotary, moved on a notice of motion filed by The Prothonotary for an order that the summons for leave to appeal be dismissed on the basis that the question as to whether the claimant was entitled to a jury in the proceedings below had already been determined by this Court. Mr Buddin relied upon Pt 13 Rule 5 of the Supreme Court Rules and submitted that, pursuant to s46 of the *Supreme Court Act*, I have power to dismiss the application for leave to appeal on these grounds.

5 Mr Toner, who today has announced his appearance for Mr Wilson, stated in Court the reasons why Mr Wilson claims to be entitled in the contempt matter to be tried by a jury. In my opinion, in light of the decisions of Hidden J, this Court and the High Court, which are annexed conveniently to the affidavit of Natalie Jane Adams of 26 October 1999 which was filed on behalf of The Prothonotary and has been read, the present application for leave to appeal is a proceeding which can be appropriately described as one amounting to an abuse of the process of the Court. I am quite satisfied that, for that reason, the Court may order that the proceedings be dismissed. I am also satisfied that sitting alone I have power pursuant to s46(1)(b) to make such an order as an order of the Court of Appeal. Accordingly, the application for leave to appeal in matter 40731 of 1999 is dismissed as an abuse of the process of the Court.

6 Mr Buddin does not seek any order for costs. Accordingly, I make no order for costs.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.