

SUPREME COURT OF NEW SOUTH WALES  
COMMON LAW DIVISION  
SYDNEY

FILE No. 11031 of 2007

MICHAEL FREDERICK ADAMS (His HONOUR)  
(DEFENDANT)

ATS

JOHN PETER BAUSKIS  
(PLAINTIFF)

SUMMARY OF SUBMISSIONS ON BEHALF OF THE DEFENDANT

1. By Notice of Motion, filed on 23 d April 2007 the Defendant seeks an order that the Plaintiffs Summons filed on 27h February 2007 be struck out upon the grounds referred to in the Affidavit of Warren Mark Abadee sworn on 23rd April 2007 and filed herein. The essential submission of his Honour, the Defendant, is to the effect that the Plaintiffs Summons discloses no cause of action and that the claims for relief made in the Summons cannot in law succeed.
2. The Defendant relies upon Part 13 rule 4 of the Uniform Civil Procedure Rules 2005 ("UCPR") for the purposes of the motion to strike out the Summons. Part 13 rule 4 provides: "(1) If in any proceedings it appears to the court at the in relation to the proceedings generally or in relation to any claim for relief in the proceedings:  
(a) the proceedings are frivolous or vexatious, or  
(b) no reasonable cause of action is disclosed, or  
(c) the proceedings are an abuse of the process of the court,  
the court may order the proceedings be dismissed generally or in relation to that claim.  
(2) The court may receive evidence on the hearing of an application for an order under subrule (1). "
3. The Plaintiffs Summons contains the following statement of charge:  
  
"It is alleged that, on Friday 4 August 2006, Michael Frederick Adams, acting as a Judge of the Supreme Court of New South Wales, Common Law Division in a courtroom in the King's Street, denied me, John Peter Bauskis, my Right to Trial by Jury by saying, 'You cannot have a trial by jury. There is no procedure for having a trial by jury for offences of this kind. ' In reply to my saying, 'We request trial by jury. ' This is an offence under s. 43 of the NSW Imperial Acts Application Act 1969 No 30 which says, 'Any person guilty of any offence under any Imperial enactment included in Part 1 of the Second Schedule for which

no punishment is otherwise provided is liable to imprisonment for a term of not more than five years or to a fine not exceeding 20 penalty units, or to both such imprisonment and fine. ' Such Imperial enactments are titled 'Constitutional Enactments' and include (1297) 25 Edward 1 (Magna Carta); (1627) 3 Charles 1 (The Petition of Right); (1640) 16 Charles 1 (The Habeas Corpus Act 1640); and (1688) 1 William and Mary (The Bill of Rights) which prescribe and guarantee a Freeman's Right to Trial by Jury. "

4. Accompanying the Plaintiffs Summons is an Affidavit sworn by the Plaintiff and dated 27 th February 2007. This Affidavit, together with the above statement, represents says the Defendant, a sanitised version of the Plaintiffs actions in Court before his Honour in July and August 2006, his subsequent incarceration, as well as certain other submissions that assert a general availability or right to a trial by jury. The Plaintiffs Affidavit also raises concerns as to the legitimacy of the appointments of the Governor General of the Commonwealth of Australia together with the Governor of the State of New South Wales.

5. It is also observed that annexed to the Plaintiffs Affidavit is a document that purports to be an indictment by a "grand jury" against his Honour, the Defendant, with the 'foreperson' of the grand jury nominated as being Mr John Wilson.

6. On the question of the appropriateness of and availability to strike out pleadings upon the basis that such pleadings/relief sought represent an abuse of process and/or cannot in law succeed, it is (with respect) instructive to note the observations of Johnson J. in *Clarke v State of New South Wales* [2006] NSWSC 673 (at paras.48 to 64). Johnson J. provided (with respect) a detailed review of when and in what circumstances the Court's power to so terminate proceedings ought be utilised. His Honour noted:

"48 In support of the application for a stay or dismissal of the proceedings, the Defendant relies principally upon Part 13 r 5 SCR which provides as follows:

"13.5 Frivolity etc

(1) Where in any proceedings it appears to the Court that in relation to the proceedings generally or in relation to any claim for relief in the proceedings:

(a) no reasonable cause of action is disclosed,

(b) the proceedings are frivolous or vexatious, or

(c) the proceedings are an abuse of the process of the Court, the Court may order that the proceedings be stayed or dismissed generally or in relation to any claim for relief in the proceedings.

(2) The Court may receive evidence on the hearing of an application for an order under subrule (1). "

49 Part 13 r 13.4 UCPR is in similar terms to Part 13 r 5 SCR except that the reference to staying proceedings no longer appears in the Rules. Section 67 Civil Procedure Act 2005 provides:

"67 Stay of proceedings

Subject to rules of court, the court may at any time and from time to time, by order, stay any proceedings before it, either permanently or until a specified day.

50 The Defendant also called in aid Part 33 r 6(2) SCR which provided:

"(2) Where a plaintiff makes default in complying with any order or direction as to the conduct of the proceedings, or does not prosecute the proceedings with due despatch, the Court may, on application by any party or of its own motion, stay or dismiss the proceedings. "

51 Section 61(3)(a) Civil Procedure Act 2005 appears to cover the field previously occupied by Part 33 r 6(2) SCR with respect to the power to dismiss proceedings. As mentioned, s. 67 Civil Procedure Act 2005 now contains the power to stay.

52 Prima facie, the provisions of the Civil Procedure Act 2005 and the UCPR have application to the present proceedings unless the Court makes an order dispensing with the requirements of the UCPR in relation to the proceedings if that was considered appropriate in the circumstances: clause 5, Schedule 6, Civil Procedure Act 2005.

53 For present purposes, there is no significant difference between the provisions in the SCR or those contained in the Civil Procedure Act 2005 and the UCM I will approach the present application upon the basis that the provisions of the Civil Procedure Act 2005 and the UCPR are to be applied.

54 The historical development of Part 13 r 5 SCR was considered by the High Court of Australia in *Batistatos (by his Tutor William George Rosebottom) v Roads and Traffic Authority of New South Wales* [2006] HCA 27 ("*Batistatos*"). Gleeson CJ, Gummow, Hayne and Crennan JJ said at paragraphs 24~26:

"[24] If the provenance of Pt 13 r 5 is kept in mind, it is apparent that it serves several purposes, not all of a piece. Rule 5(1) (a) may be traced to the provision made in England in 1883 after the departure of the demurrer. Paragraph (b) of r 5(1) may be seen as a species of the genus of abuse of process identified specifically for the first time in para (c).

[25] A further and significant consideration is that, at the critical time for this litigation, there existed in the Supreme Court both the inherent jurisdiction or power to which reference has been made and the power under Pt 13 r 5 of the Rules to order a stay or dismissal of proceedings as an abuse of the process of the court, in each situation evidence being admissible on an application.

[26] It is with the several fields of operation of Pt 13 r 5 itself and with the duality of available avenues with respect to the agitation of allegations of an abuse of process leading to stay or dismissal, and the attendant possibility of confusion at several levels, that attention should be given to what now follows in these reasons.

55 The term "abuse of the process of the court" is used in many senses: *Batistatos* at paragraph 1.

56 What amounts to abuse of court process is insusceptible of a formulation comprising closed categories: *Batistatos* at paragraph 9.

57 In *Walton v Gardiner* (1993) 177 CLR 378 at 393, Mason CJ, Deane and Dawson JJ accepted as correct a passage in *Hunter v Chief Constable of the West Midlands Police* (1982) AC 529 at 536 in which Lord Diplock spoke of:

"... the inherent power which any court of justice must possess to prevent misuse of its procedure in a way which, although not inconsistent with the literal application of its procedural rules, would nevertheless be manifestly unfair to a party to litigation before it, or would otherwise bring the administration of justice into disrepute among right-thinking people. "

58 A distinction has been drawn between the policy considerations affecting abuse of process in criminal proceedings and civil proceedings. In *Williams v Spautz* (1992) 174 CLR 509 at 520, Mason CJ, Dawson, Toohey and McHugh JJ identified two fundamental policy considerations affecting abuse of process in criminal proceedings:

"The first is that the public interest in the administration of Justice requires that the court protect its ability to function as a court of law by ensuring that its processes are used fairly by State and citizen alike. The second is that, unless the court protects its ability so to function in that way, its failure will lead to an erosion of public confidence by reason of concern that the court's processes may lend themselves to oppression and injustice. "

59 These considerations are not present with the same force in civil litigation where the moving party is not the State enforcing the criminal law: *Batistatos* at paragraph 8. The criteria for determining what amounts to injustice in a civil case will necessarily differ from those appropriate to answering the question in a criminal context: *Jago v District Court (NSW)* (1989) 168 CLR 23 at 26.

60 The inherent power to deal with abuse of process exists to enable the Court to protect itself from abuse of its process thereby safeguarding the administration of justice. That purpose may transcend the interest of any particular party to the litigation: *Batistatos* at paragraph 12.

61 In *Batistatos*, the High Court determined that it was not necessary that there be an element of contumelious disregard, oppressive conduct or moral delinquency before the power to intervene with respect to abuse of process could be exercised. In this regard, the Court determined that statements to this effect in *Birkett v James* (1978) AC 297 ought not be followed in Australia: *Batistatos* at paragraphs 6770, 137, 142. Gleeson CJ, Gummow, Rayne and Crennan JJ said at paragraph 70 (footnotes excluded):

"What Deane J said in *Oceanic Sun Line Special Shipping Company Inc v Fay* [(1988) 165 CLR 197 at 2471 with respect to the staying of local proceedings, is applicable also to a case

such as the present one. His Honour emphasised that there was no 'requirement that the continuance of the action would involve moral delinquency on the part of the plaintiff'; what was decisive was the objective effect of the continuation of the action.

I note that *Batistatos* was a case involving abuse of process by reason of delay and not conduct of the type involved in this case. Nevertheless, the statements concerning the elements of abuse of process assist in the resolution of the present case.

62 Although his Honour dissented as to the outcome of the appeal in *Batistatos*, Kirby J agreed with the majority that misconduct or delinquency was not an essential requirement for a stay. Kirby J said at paragraphs 141-142 (footnotes excluded):

"[141] Misconduct not essential for a stay: The suggestion that the respondents had to prove misconduct of some kind on the appellant's part before they could secure relief against proceedings classified as an abuse of process should be rejected. The considerations to be given weight are much more numerous. The preclusory theory of the power, propounded for the appellant, cannot be reconciled with the purposes of the power. The power to terminate or stay proceedings as an abuse of process does not exist simply to punish a party or its legal representatives who deliberately delay proceedings to the disadvantage of other parties. In the exceptional cases to which it applies, the power to stay exists to prevent the conduct, or further conduct, of proceedings that would be fundamentally unfair to another party, because, for example, of serious delay in the commencement, or continuation, of the proceedings.

[142] In some cases an order made under this power, or under analogous powers, will indeed be made to protect the parties proceeded against from the serious injustice involved in subjecting them to litigation in circumstances that render the proceedings grossly unfair. However, part at least of the reasons for the termination of such proceedings, or the provision of a permanent stay, on the ground of an abuse of process, is the self-regard of the court itself. At the one time, the court is protecting parties and defending the 'temples of justice'. This is inherent in the performance by the court of its jurisdiction and the exercise of its powers. Thus, preclusion by misconduct is a consideration. But it is not the only consideration. Nor is it essential. Of its nature, the power exists for application in a wider range of circumstances. "

63 These principles must be considered against the background of the fundamental right of access to courts by citizens and that such access should not be denied other than in exceptional circumstances: *Dey v Victorian Railways Commissioners* (1949) 78 CLR 62 at 91; *General Steel Industries Inc v Commissioner for Railways (NSW)* (1964) 112 CLR 125 at 130; *Webster v Lampard* (1993) 177 CLR 598 at 602; *Williams v Spautz* at 519; *Batistatos* at paragraph 157ff.

64 When considering the notion of a fair trial, it should be borne in mind that, for a trial to be fair, it need not be perfect or ideal. *Holt v Wynter* (2000) 49 NSWLR 128 at 142;

Batistatos at paragraph 163; Commonwealth of Australia v Smith [2005] NSWCA 478 at paragraph 129. "

## JUDICIAL IMMUNITY

7. In considering the above observations of Johnson J., particular attention is drawn to *General Steel v Commissioner for Railways* (supra) and to the well known principle of utilising summary judgment to strike out proceedings, being only in "plain and obvious cases". The instant proceedings is such a case. In considering the relief sought as a consequence of his Honour's actions as a judicial officer, the issue of judicial immunity is relevant for present purposes. It is well established that, as Clarke JA observed in *Najjar v Haines* (1991) 25 NSWLR 224 at 249, "a judge is immune from any action, be it for costs or otherwise, in respect of acts performed in the exercise of his or her judicial function." (see also *Gallo v Dawson* (1992) 66 AWR 859 at 869).

8. In *Wentworth v Wentworth* (2000) 52 NSWLR 602, the Court of Appeal emphasised that the immunity is a wide one. Fitzgerald JA, at [24], criticised a suggested exception to the general principle of immunity where allegations of actual bias and malice are made against the judicial officer:-

"Unless it is properly understood, this suggested exception to judicial immunity will continue to lead to litigation which is incompatible with the necessity on which the doctrine is founded: cf *Mann v O'Neill* (1997) 191 CLR 204 at 213, 239-240. Judicial immunity is an essential corollary of judicial independence, which requires that judges be free to administer justice free from not merely the risk of personal liability but also the burden of resisting the claims and allegations of disaffected litigants. The protection which judicial immunity is intended to provide to those who perform the controversial but essential function of adjudicating disputes would be denied them if the ambit and operation of the doctrine were open for debate. Decisions subsequent to *Sirros* illustrated that, if judicial immunity is subject to the exception there suggested, the exception is unlikely to have any practical utility. There seems to be no reported case in Australia or England in which effect has been given to the suggested exception and attempts to do so here have failed. "

9. His Honour went on to observe that a judicial officer is acting within jurisdiction for the purposes of the principle "if he or she is exercising a jurisdiction which the court of which he or she is a member possesses", that is, 'judicial immunity extends to whatever a judge who is a member of a court does in the exercise of 'the broad and general authority conferred upon a court to hear and determine a matter'".

10. Recently the High Court reaffirmed the scope of judicial immunity (see *Fingleton v The Queen* (2005) 216 ALR 474 [2005] HCA 34). In that case Gleeson CJ confirmed (at [35]) the broad sense in which an exercise of Jurisdiction" is understood for the purposes of judicial immunity at common law, that is to say, it is not open to review the exercise of a power by a judicial officer and, by demonstrating lack of reasonable cause, or even

improper motive, so as to assert that it was not an act done "in the performance of his or her duties as a judicial officer": see *Fingleton* per Kirby J at [ 1761; see also *Fleet v RSPCA & Ors* [2005] NSWSC 926 at [3 6].

11. As to the application of the principle of judicial immunity to circumstances similar to the instant case, in *Yeldham v Rajski* (1989) 18 NSWLR 48 this involved allegations of contempt against a Supreme Court Judge. In that case the litigant charged Yeldham J. with contempt of court alleging that the Judge knowingly and wilfully abused the process of the court and interfered with the course of justice. The allegations arose out of the way in which the Judge had disposed of an application for leave to prosecute a witness for perjury. Like the instant proceedings the charge of contempt in *Rajski* was essentially a charge of a criminal offence.

12. In dismissing the Summons, Kirby P observed (at pp.58-59):

"(5) A judge, like any other citizen, is liable for a breach of the criminal law or for a civil wrong where the acts or omissions concerned occurred otherwise than in the performance by the judge of his or her judicial functions. In any such cases the judge's liability will be clear, as where the judge is apprehended speeding in a private car on the highway. In other cases, the position will be less clear where the acts or omissions complained of have some arguable connection with the judge's judicial functions. In such cases, it is necessary, to show either that, properly classified, the conduct alleged was not performed as part of the judge's judicial functions or that what was done was done in the clear absence of jurisdiction: cf *Stump v Sparkman* 435 US 349 at 357(1978); *pet denied* 436 US 951 (1978) and *Bradley v Fisher* 80 US 335 (1871). ... If a judge were to accept a bribe and enter judgment for the party who offered such inducement, that judge would remain immune from suit for damages occasioned by his judicial act. But he or she would be liable to the criminal law for the offences constituted by the taking of the bribe. Liability to removal from office would also follow. But the judicial act, being within jurisdiction, would be immune from suit: *Sparkes v Duval County Ranch Co Inc* 604 F 2d 976 (1979); *certden* 445 US 943 (1980); see also *Rankin v Howard* 633 F 2d 844 (1980); *cert denied* 451 US 939 (1981). A judge who, in a newspaper interview, made comments upon a pending or current trial would render himself or herself liable to proceedings for contempt of court. But such proceedings, although brought against a person who was a judge, would be concerned with activities having nothing to do with the judge's judicial functions. Those activities would be entirely non-official and private. In respect of them, no immunity is provided to the judge by the law. The judge is as much responsible for such actions as any other individual. "

13. Hope MA, with whom Priestley JA agreed, said (at p.69):-

"If a judge has been bribed, the contempt is the giving and receiving of the bribe. What the judge does in court following the receipt of the bribe may be relevant to establish mens rea or otherwise, but it is not the act of contempt. As it seems to me, this position was clearly explained as long ago as the decision in *Floyd v Barker* [(1607) 12 Co Rep 23; 77 ER 1305 cited by Hope AJA at 681 ... . A conclusion that the law of contempt does not apply to the

acts of a judge in the exercise of his judicial function does not mean that a person who happens to be a judge is not liable to be charged with contempt. It simply means that the law of contempt does not apply to extend to the acts of a judge in the performance of his judicial function. If a judge bribes another judge, or if he publishes a statement urging the conviction of an accused person in a current trial, he will be as guilty of contempt as any other person. The basis of the immunity of judges from civil proceedings in respect of their judicial acts, which has been part of the law for centuries, is based on high policy which has been put in a number of ways but in essence is that the immunity is essential to the independence of judges. It is a policy designed to protect the citizen and not merely to give protection to judges. As it seems to me this policy is as equally applicable to criminal proceedings for the acts of judges, in the exercise of their judicial functions, as it is in respect of civil proceedings. ... If the law were that any disgruntled litigant could charge a judge with contempt for being wrong and malafide in his conclusion, or in arriving at the conclusion without any or any sufficient evidentiary basis, the independence required of judges would be greatly eroded.

14. The last passage has been cited, with approval, in a number of subsequent cases: see, for example *Wentworth v Wentworth* (2000) 52 NSWLR 602 per Fitzgerald JA at [41]; *Fingleton v The Queen* (supra) per Gleeson CJ at [40].

15. In referring to *Fingleton v The Queen* (supra) the High Court considered the liability of the Queensland Chief Magistrate for a criminal offence allegedly committed in the course of administrative duties associated with the exercise of her judicial functions. Gleeson CJ noted that the Court was there concerned with a statutory immunity from criminal liability, but that it was material to review the common law reflected in its provisions. His Honour did so in the following terms:-

" [36] ... Most discussion of judicial immunity concerns the possibility of civil liability, including liability for damages, at the suit of an aggrieved litigant. The general principle is as stated by Lord Denning MR in *Sirros v Moore* [1975] 1 QB 118 at 132: 'Ever since the year 1613, if not before, it has been accepted in our law that no action is maintainable against a judge for anything said or done by him in the exercise of jurisdiction which belongs to him. The words which he speaks are protected by an absolute privilege. The orders which he gives, and the sentences which he imposes, cannot be made the subject of civil proceedings against him. No matter that the judge was under some gross error or ignorance, or was actuated by envy, hatred and malice, and all uncharitableness, he is not liable to an action.

[38] This immunity from civil liability is conferred by the common law, not as a perquisite of judicial office for the private advantage of judges, but for the protection of judicial independence in the public interest. It is the right of citizens that there be available for the resolution of civil disputes between citizen and citizen, or between citizen and government, and for the administration of criminal justice, an Independent judiciary whose members can be assumed with confidence to exercise authority without fear or favour. ...

[39] This does not mean that judges are unaccountable. Judges are required, subject to closely confined exceptions, to work in public, and to give reasons for their decisions. Their decisions routinely are subject to appellate review, which also is conducted openly. The ultimate sanction for judicial misconduct is removal from office upon an address of Parliament. However, the public interest in maintaining the independence of the judiciary requires security, not only against the possibility of interference and influence by governments, but also against retaliation by persons or interests disappointed or displeased by judicial decisions.

[40] ... At common law, judicial officers enjoy no immunity or protection from criminal responsibility for their extra-judicial conduct, and even in respect of their judicial conduct there are well-established limits to their immunity. Judicial corruption of the kind dealt with in s120 of the Code is an obvious example. Subject to those limitations, however, the public policy which supports immunity from civil liability even in respect of conduct alleged to be malicious and lacking in good faith extends to immunity from criminal responsibility. In *Yeldham v Rajski* (1989) 18 NSWLR 48, a litigant charged a judge with contempt of court (a criminal offence) alleging that the judge knowingly and wilfully abused the process of the court and interfered with the course of justice.. The allegations arose out of the way in which the judge had disposed of an application for leave to prosecute a witness for perjury. The New South Wales Court of Appeal dismissed the proceedings, on the ground that the judge was entitled to invoke judicial immunity. Hope AJA, with whom Priestley JA agreed, said (at 69):

'The basis of the immunity of judges from civil proceedings in respect of their judicial acts, which has been part of the law for centuries, is based on high policy which has been put in a number of ways but in essence is that the immunity is essential to the independence of judges. It is a policy designed to protect the citizen and not merely to give protection to judges. As it seems to me this policy is as equally applicable to criminal proceedings for the acts of judges, in the exercise of their judicial functions, as it is in respect of civil proceedings. ... If the law were that any disgruntled litigant could charge a judge with contempt for being wrong and malafide in his conclusion, or in arriving at the conclusion without any or any sufficient evidentiary basis, the independence required of judges would be greatly eroded '

[41] Because the present case does not fall to be determined under the common law, it is unnecessary to explore the precise boundaries of the common law immunity from criminal responsibility in the exercise of judicial functions. (emphasis added)

16. It is instructive and relevant for present purposes to appreciate(with respect) the highlighted passage of the Chief Justice to "well-established limits" to judicial immunity in relation to criminal responsibility "even in respect of ... judicial conduct". Further In *Feldham v RajsM* the court appeared to find that all judicial conduct was covered by the

immunity in relation to both criminal and civil liability, though certainly there were limits in that liability could be established in relation to nonjudicial conduct, such as accepting a bribe, even if it was related to later judicial conduct (that later conduct, however, remaining immune).

17. In the instant case it is plain from the Plaintiffs statement of charge and in the particulars contained in the Plaintiffs Summons, and indeed in the Plaintiff's Affidavit, that the conduct the subject of the "charge" was conduct of his Honour engaged in the course of his judicial duties. While the allegations are of criminal conduct, on the basis of the above review of the authorities, all such conduct fall clearly within the scope of the doctrine of judicial immunity and cannot succeed.

### THE RIGHT To TRIAL BY JURY

18. The right to trial by jury in contempt proceedings was considered by this Court in *Prothonotary v Wilson* (NSWSC, 16 March 1998, unreported). The litigant in that case, Mr John Wilson, is a colleague of the present Plaintiff and, incidentally the nominated 'foreperson' on the indictment. Hidden J observed:-

"The application before me must also be dismissed for the same reason that Dunford J refused to grant a stay. [Registrar of Court of Appeal v Willesee & Ors [1984] 12 NSWLR 3781 is clear authority for the proposition that trial by jury for contempt is obsolete and that summary trial is now the normal procedure. Before me, the defendant was represented by counsel who tried valiantly, but unsuccessfully, to find some way around that decision. He referred to Cap 29 of Magna Carta, affirming the right to trial by one's peers, and its incorporation into the law of New South Wales by s6 of the Imperial Acts Application Act 1969. However, by that section, various imperial enactments have the force of law in New South Wales 'except so far as affected by ... State Acts from time to time in force in New South Wales': s6(b). In *Galea v New South Wales Egg Corporation* (C ofA, unreported, 21 November 1989) Kirby P (at p]] observed that this 'would appear to envisage the affectation and modification of the continuing application of the enumerated Imperial Acts by ordinary legislation enacted by the State Parliament'. Accordingly, any guarantee -of trial by jury in Magna Carta can be, and has been, overridden by the Supreme Court Act and Rules as far as contempt is concerned. Counsel made reference to the guarantee of trial by jury in respect of indictable offences against any Federal law in s80 of the Commonwealth Constitution. In oral argument he acknowledged that s80 is concerned only with Commonwealth offences and, as I understand it, his reference to the section was merely as part of the history of the development of trial by jury in this country, and as an indication of the respect afforded to that method of trial. ... "

19. On 20 August 1998 leave to appeal from Hidden Ys decision was refused by the Court of Appeal. In refusing leave, Handley JA observed:-

"The question whether a person accused of the offence of contempt of court is entitled to a trial by jury is obviously an important one. However, a consistent course of decision of this Court establishes that there is no right to trial by jury in such cases. The earliest of these decisions is *The Registrar of the Court of Appeal v Willesee & Ors* fl 98412 NSWLR 3 78. Mr Willesee sought special leave to appeal from the High Court of Australia from that decision which was refused on 7 December 1984. This Court followed that decision in *Galea v New South Wales Egg Corporation* on 28 November 1989 and again in [*United Telecasters Sydney Limited v Hardy* (1991) 23 NSWLR 3231 In view of that consistent body of decision extending back over some fifteen years, and the refusal of special leave to appeal by the High Court on 7 December 1984, the proposed appeal of Mr Wilson has no prospects of success. For that reason leave to appeal is refused and it must be refused with costs.

20. An application for special leave to appeal to the High Court was refused on 10 April 1999. Gaudron J. said:-

"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. "

21. It is submitted that the issue is settled. The purported prosecution of his Honour (i.e. a right to trial by jury in contempt proceedings) is also without merit.

22. It is the Defendant's submissions that the Summons, as presently particularised, discloses no cause of action. In the alternative the Defendant says that the grounds and indeed the prayers for relief cannot in law succeed. Any review of the transcript of the proceedings before his Honour, the Defendant, in August 2006 and, indeed, his reasons for decision (in the matter of *Bauskis* [2006] NSWSC 90), make clear that, in all events, a full and considered hearing was given to both contemnors, including this Plaintiff. Further, and as the learned Crown Advocate observed in his submissions to the Court, (tp. 117. 10 of 24 h August 2006), there was sufficient evidence for the finding of proof beyond reasonable doubt that a contempt had been committed by the Plaintiff (as a contemnor). Finally it is observed that there was no appeal by this Plaintiff from his Honour's findings nor on sentence.

23. In the circumstances the Defendant asks that the Court make the orders sought in the Defendant's Notice of Motion and filed herein.

CHRISTOPHER LONERGAN  
CHAMBERS  
26<sup>TH</sup> APRIL 2007