

SUPREME COURT OF NEW SOUTH WALES
COMMON LAW DIVISION
SYDNEY

File No: 11031 of 2007

John Peter Bauskis
(Plaintiff)

-v-

Michael Frederick Adams
(Defendant)

PLAINTIFF'S REPLY TO THE SUBMISSIONS ON BEHALF OF THE
DEFENDANT:-

1. The Notice of Motion, filed on 23 rd April 2007 by the Defendant seeking an order that the Plaintiff's 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 is to be determined by a Jury. It cannot be determined by any other means. No Judicial Officer and, indeed, no one can judge in their own cause.
2. That Notice of Motion, if successful, would have the effect of placing Judicial Officers above the Law – an intolerable situation which is repugnant to the Rule of Law and in contempt of the Administration of Justice when everyone is equal.
3. The Habeas Corpus Act 1640 abolished the Star Chamber and made it quite clear that Judges are not above the Law.
4. The Defendant asserts that Judges are above the Law and have "Immunity". However, there is nothing in our Federal nor State Constitutions which grants anyone immunity and nothing which grants any person the power to grant immunity to another person.
5. No one is immune from a Jury.
6. No one claiming immunity can expect to be taken seriously.

7. The Defendant relies upon various parts and various rules of a “Uniform Civil Procedure Rules 2005 (“UCPR”)” which call for “the court” to adjudge whether the Summons ought to be struck out for reasons of there being “no reasonable cause of action is disclosed” or that “the proceedings are frivolous or vexatious, or “the proceedings are an abuse of the process of the court”.

8. “The court” has no Jurisdiction to proceed summarily, ie: without a Jury, without the consent of both parties to be without a Jury. Therefore, “the court” must proceed with a Jury who will judge the Justice of those “Rules” as well as the validity of those “Rules”.

9. The Plaintiff’s Summons does indeed contain 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. "*

10. This charge is of the most serious kind and the Defendant’s actions strike at the very core of our System of Justice. Denying an Australia the Right to Trial by Jury is tantamount to Treason, ie: a violation of allegiance to the People of Australia. It is even a sinister betrayal of the Judicial Oath the Defendant sworn to Her Majesty Queen Elizabeth the Second of the United Kingdom which is an Oath that obligates the Defendant to be loyal to a “foreign power”.

11. CAP 52 of Magna Carta says, “If anyone has been dispossessed or removed by us, without the legal judgment of his peers, from his lands, castles, franchises, or from his right, we will immediately restore them to him;”. This action of John Peter Bauskis –v- Michael Frederick Adams is for that exact purpose.

12. This action of John Peter Bauskis –v- Michael Frederick Adams is to confirm the Sovereignty which the People of Australia have in their own country.

13. Sovereignty is “the ultimate authority to make and impose laws”.
14. This Sovereignty is exercised by way of Referenda and Trials by Juries.
15. The denial of the Right to Trial by Jury is an act of Treachery and Treason.
16. The Defendant says in paragraph 4 of his Submission that, “Accompanying the Plaintiffs Summons is an Affidavit sworn by the Plaintiff and dated 27th 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.”. All this is true and deserves to be brought to the attention of the people of Australia.
17. In paragraph 5 of the Defendant’s Submission, he says, “ 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.” This is wrong as the document from the Australia People’s Grand Jury conducted at Kogarah on the 18th of February 2007 is a “RECORD OF GRAND JURORS CONCURRING..... **in finding for an indictment** pursuant to Section 13 (a) of the Crimes Act 1914 (Cth)” (emphasis added). The Indictment against Michael Frederick Adams is the SUMMONS filed in the Sydney Registry of the Supreme Court of New South Wales on the 27th of February, 2007.
18. As to the precedents, raised by the Defendant in his Submission, relating to various Judges making rulings as to striking out pleadings using various “Supreme Court Rules” and “Uniform Civil Procedure Rules” regarding “Frivolity”, etc., a Jury will judge the legitimacy, the value and the applicability of those “Rules”.
19. A Jury will decide the Laws and the Facts of this and any action brought before them. Any Judge attempting to tamper with a Jury in the execution of their duty is guilty of a Felony.
20. The Defendant uses the term “abuse of the process of the court”. Indeed, that is the situation because the Supreme Court of New South Wales has been used wrongly by Michael Frederick Adams to incarcerate me, John Peter Bauskis.

Instead of the court being “a place where Justice is administered”, Michael Frederick Adams did abuse (use wrongly) that process.

21. I am not abusing the process of the court by seeking to remedy a wrong. “He who uses his legal right, harms no one.” (a Legal Maxim).

22. The Defendant tries to claim “JUDICIAL IMMUNITY” and quotes: “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).”.

23. There is NO SUMMARY JUDGMENT in any action unless consent that is clear and unequivocal has been obtained from both parties, ie: the court has no jurisdiction to proceed summarily. Any “summary judgment to strike out proceedings” without consent is void and the culprit making that “summary judgement” ought to be punished as prescribed by law.

24. “JUDICIAL IMMUNITY” is a myth. It is an invention by Judges.

25. As to the Defendant’s statement of “a judicial officer is acting within jurisdiction”, unless both parties consent to be without a Jury, a judicial officer has no jurisdiction. “One who exercises jurisdiction out of his territory is not obeyed with impunity”; “To a judge who exceeds his office or jurisdiction, no obedience is due”; “A judgment given by an improper judge is of no moment” (Legal Maxims)

26. The Defendant’s referral to “*judicial immunity at common law*”, in his paragraph of “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].”, is a most dreadful lie. Common law has NEVER

sanctioned “judicial immunity” in any manner or at any time. “Judicial immunity” has never been, nor is ever likely to be, part of common law.

27. The Defendant’s Submission continually presumes the the existence of “JUDICIAL IMMUNITY”. Another instance of this is the following:- “ 13. Hope MA, with whom Priestley JA agreed, said (at p.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.*”.

“high policy”? “high policy”? What and whose “high policy”? It certainly isn’t from the higher Jurisdiction that belongs to the People, ie: from Common Law. It certainly isn’t from the Bureaucratic laws that create the Office of Judgeship, ie: from Statute Law. No, this “policy” is a concoction from the Judiciary, itself.

28. The Defendant goes on with more quotes such as “ [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. ...*”.

29. This “[38]....” quote makes not the slightest bit of sense. Common Law is the “law of the People, by the People and for the People”. The People have never granted immunity to their servants, the Judges. This would have the servants at liberty to do whatever they liked to their masters, ie: it would have the servants ruling their masters.

As for “judicial independence”, by the very nature of the Office of Judgeship and the Judicial Oath, a Judge must “well and truly serve”. They are not free to arbitrarily do or say anything – least of imprison anyone, as Michael Frederick

Adams imprisoned me. Judges are not self-governing. They are governed by the Executive that appointed them and by the Statute Laws which created and maintain their Office and their activities. Most of all, they are governed by the People of Australia....notably, the WILL OF THE PEOPLE, which was categorically and emphatically demonstrated and recorded at a Referendum in 1988 when the Commonwealth Parliamentarians drafted and passed through those two Houses a proposed alteration to section 80 of the Australian Constitution to exclude Contempt of Court and Courts Martial from Trial by Jury. By the largest majority in the history of holding section 128 Referenda, it was the WILL OF THE PEOPLE OF AUSTRALIA that “NO” – Contempt of Court and Courts Martial shall NOT BE EXCLUDED FROM TRIAL BY JURY.

30. This WILL OF THE PEOPLE has been, nevertheless, been completely disregarded by the Australian Judiciary. The Australian Judiciary refuse to obey the WILL OF THE PEOPLE. Michael Frederick Adams denied me, John Peter Bauskis, my Right to Trial by Jury when Michael Frederick Adams accused me of and charged me with Contempt of Court with not even an Indictment being filed.... and proceeded, without obtaining my consent to be without a Jury, to arbitrarily imprison me for 14 days.

31. Trial by Jury is also referred to as “trial by the country”. Michael Frederick Adams has been indicted and must now face twelve of his countrymen empanelled as Jurors. The offence with which he is charged carries a punishment of “not more than five years imprisonment” and/or a totally inadequate fine, upon being found “GUILTY”, ie: upon being found to have done wrong.

32. The defendant tries to mitigate the seriousness of his offence by saying, “[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.*” and “[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''.

33. AND what do all these words amount to? What the Australian Judiciary are doing is INDEFENSIBLE therefore, all the words in the world will not excuse the DENIAL OF THE RIGHT TO TRIAL BY JURY.

34. Michael Frederick Adams denied me, John Peter Bauskis, MY RIGHT TO TRIAL BY JURY.

35. “cannot succeed”? The Indictment against Michael Frederick Adams “cannot succeed”? It not only can succeed but it MUST SUCCEED, if Truth, Justice, Freedom and Democracy are to prevail.

36. The section of the Defendant’s Submission entitled “THE RIGHT To TRIAL BY JURY” only serves to highlight the GUILT of the Australian Judiciary in its persistently denying Australians their RIGHT. “Rights never die” (a Legal Maxim)

37. I submit that “the issue is settled” AGAINST Michael Frederick Adams and, most definitely, NOT in his favour.

38. The Defendant’s Submission does no more than reveal the depth of Judicial Corruption in Australian Courts.

39. The Defendant's Submission talks of my "prayers for relief". I thank Mr Christopher Lonergan for drawing my attention to the participation of God in these proceedings and the words, "God and my Right" in the Royal Coat of Arms.

A "prayer" is a "solemn request to God" and "relief" is the "deliverance from pain, distress, anxiety", "reparation, redress", and "rectify wrong, damage, grievance, abuse". I am requesting this. I am requesting that "No free man shall be taken indeed imprisoned, either dispossessed, or outlawed, or exiled, or in any manner destroyed, nor pass over him, nor send over him, except by means of the legal judgment of his own equals indeed the law of the land" (Magna Carta 1215 and Confirmation of Charters 1297).

Trial by Jury is when twelve free men gather and pray, "So help me God", in order to administer Justice.

Mr Christopher Lonergan writes, "and indeed the prayers for relief cannot in law succeed". What "law" is he talking about? In Common Law, "the prayers for relief" will certainly "succeed" because in Common Law there is Trial by Jury. Trial by Jury is an inalienable Right and no law from any Parliament can take away that Right because it is the People's Right. The Australian Constitution is Common Law because a Referendum in 1899 adopted it. Australian Parliaments are under that Constitution and no Parliament can make laws *ultra vires*, ie: that exceed or violate Common Law.

I do make a "solemn request to God" for the "reparation and redress". This Indictment is an action to be judged by a Jury, as a matter of due process. The proof as to Michael Frederick Adams committing the offence is irrefutable. The responsibility to decide on the appropriate way his wrong should be dealt with is up to the Jury.

Considering the Bill of Rights 1688 says it is "*evil counsellors, judges and ministers*" that "*endeavour to subvert and extirpate (our) laws and liberties*", an even greater prayer comes to mind which is:-

"Deliver us from evil".

40. In the circumstance, "Let Right be done" (a Legal Maxim).

.....
John Peter Bauskis. Plaintiff
79 Beckenham Street,
Canley Vale, NSW 2166.
2nd May, 2007.

