

73
IN THE HIGH COURT OF AUSTRALIA

BRADY AND OTHERS

V.

STAPLETON

O R A L.
REASONS FOR JUDGMENT

FILED
18 AUG 1952
BRISBANE

Judgment delivered at SYDNEY

on TUESDAY, 29TH. JULY, 1952.

BRADY & ORS.

V.

STAPLETON

JUDGMENT

MCTIERNAN J.

BRADY & ORS.

V.

STAPLETON

JUDGMENT

MCTIERNAN J.

In my opinion this appeal should be dismissed.

The principal question is the construction of s. 16 of the Income Tax Assessment Act. I agree with the construction which the Chief Justice placed upon the section. That is expressed in the judgment which His Honour delivered at the hearing of the motion, after the argument upon the objection, founded upon s. 16, to the admission of Mr. Tobin's affidavit. He was an "officer" within the meaning of s. 16 of the Act. Having regard to the proceedings out of which the motion arose, the exception in sub-section 2 of s. 16 applied to the affidavit, because the furnishing of the information which it contained for use as evidence in the motion, was connected with the office in which Mr. Tobin was employed by the Commonwealth. The furnishing of this information for use as evidence in the motion was done in performance of Mr. Tobin's duty as an officer. The question then arises whether the admission of the affidavit was prohibited by sub-section 3. Mr. Tobin was not required to give the evidence contained in the affidavit. There is nothing in sub-section 3 which made the affidavit inadmissible. The sub-section excludes the obligation of an officer to produce certain documents and give certain evidence, except in the circumstances which it mentions. This is as far, as Rich J. said in delivering the judgment of the Court in O'Flaherty v. McBride, 28 C.L.R. 283 at p. 286, that the sub-section goes. If an officer is ^{not} "required" to give evidence, there is nothing in the sub-section which excludes his evidence. I am of the opinion that the affidavit was rightly admitted in evidence.

The next question is whether the finding that there was a breach of the undertaking was correct. When the evidence provided by Mr. Tobin's affidavit is taken into consideration, there can be no doubt that the ^{Chief} Justice was well justified in arriving at the conclusion that there was a breach of the undertaking.

For these reasons I think the appeal should be dismissed.

CANADIAN PACIFIC COMPANY LIMITED & POOLEY

V.

STAPLETON

JUDGMENT
(ORAL)

WILLIAMS J.

I agree. Mr. Gilmour's main submission, as I understand it, is that Mr. Tobin's affidavit is not admissible because there arises from section 16, sub-section (3), of the Income Tax Assessment Act, which provides that an officer shall not be required to produce in Court any return, etc., or to divulge or communicate to any Court any matter or thing coming under his notice in the performance of his duty as an officer except etc., a necessary implication that he is prohibited from doing those things.

In my opinion, there is no justification for making such an implication, or for giving the sub-section a wider meaning than its express terms. In express terms the sub-section only protects an officer from being required to do those things, it does not forbid his doing them. The difference between compellability and competency to give evidence is well known and the sub-section is concerned only with compellability and not with competency.

I agree that His Honour the Chief Justice rightly
it is not contested
admitted Tobin's affidavit and/that, on the evidence as a whole,
that affidavit forming part of it, His Honour was justified in
coming to the conclusion to which he came.

CANADIAN PACIFIC COMPANY LIMITED AND POOLEY

V.

STAPLETON.

JUDGMENT:

KITTO J.

I agree. I may say that I am sure the careful argument to which we have listened from Mr. Gilmour has placed before us every consideration which could fairly be urged against the conclusion to which His Honour the Chief Justice came. However, I am satisfied that the conclusion which His Honour has expressed is correct, I agree with the reasons which he gave for it.
