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IN THE MATTER OF AN APPLICATION FOR
A WRIT OF PROHIBITION AND A WRIT OF
CERTIORARI AGAINST MR JUSTICE JOSKE
OF THE FAMILY COURT OF AUSTRALIA

EX PARTE IAN BARTON CHITTICK

JUDGMENT
(ORAL)

DAWSON J.

IN THE MATTER OF AN APPLICATION FOR
A WRIT OF PROHIBITION AND A WRIT OF
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This is an application for orders nisi for prohibition and certiorari in relation to an order made by Joske J. in the Family Court pursuant to s.64(11B) of the Family Law Act 1975 (Cth), as amended. Joske J. refused to stay the operation of the order which he made.

Under s.94(1) of the Family Law Act an appeal lies from the order of Joske J. to a Full Court of the Family Court and I think that for this reason I ought not grant the orders nisi for prerogative writs. No doubt in an exceptional case I would be entitled to do so but I do not think that this case exhibits the necessary exceptional features. Two reasons were suggested to me as justifying that course:

- (1) The matter is of importance and is likely to require attention by the High Court eventually.

Be that as it may, I do not think the High Court should be required to consider the matter without the benefit of a prior consideration by the Full Court of the Family Court unless circumstances were to compel that course.

(2) Secondly, it was suggested that protracted delays are involved in bringing on an appeal before the Full Court of the Family Court.

I do not understand why this should be so in an urgent matter. It is not, however, in my view, a reason for invoking the jurisdiction of the High Court.

In The Queen v. Cook; ex parte Twigg (1980) 147 C.L.R.15, a number of members of this Court adverted to the undesirability of substituting review by prerogative writ for the ordinary remedy of appeal. There were exceptional circumstances in that case justifying the procedure there which I think are absent in this case. I refuse the application.

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REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on 23rd July 1984

..... Dawson J
