

1985-048

IN THE MATTER OF AN APPLICATION FOR A WRIT OF CERTIORARI
AGAINST L.P. MITCHELL ESQUIRE, STIPENDIARY MAGISTRATE
SITTING AS A MAGISTRATES COURT IN BRISBANE: EX PARTE
ALAN GEORGE SKYRING

JUDGMENT
(ORAL)

9/7/85
WILSON J.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF CERTIORARI
AGAINST L.P. MITCHELL ESQUIRE, STIPENDIARY MAGISTRATE
SITTING AS A MAGISTRATES COURT IN BRISBANE: EX PARTE
ALAN GEORGE SKYRING

In this matter Mr Skyring seeks the issue of a writ of certiorari directed to the quashing of a conviction against him of an offence under s. 52(a) of the Reserve Bank Act 1959 (Cth). That section provides that:

"a person shall not -

(a) wilfully deface, disfigure or mutilate an
Australian note;

...

Penalty: One hundred dollars."

It is Mr Skyring's contention that s. 36(1) of the Reserve Bank Act, which provides that Australian notes are a legal tender throughout Australia is beyond the legislative power of the Commonwealth. This contention reflects his view that the entire currency and banking system as it is presently ordered in Australia is unconstitutional. His admitted defacement of an Australian bank note was undertaken, as he says, in order to permit the wider issues about which he was concerned to be addressed.

Mr Skyring frankly admits that the central issue is precisely the same issue which was the subject of consideration by Deane J. on 6 February 1985 when his Honour refused an application (in accordance with Order 58 Rule 4) for leave to Mr Skyring to institute proceedings

in the form of an application for a writ of certiorari. That refusal was the subject of appeal to a Full Court. That appeal was heard and dismissed this morning when the Court accepted the conclusions expressed by Deane J. as follows:

"I have come to a clear conclusion that there is no substance in the argument that there is a constitutional bar against the issue by the Commonwealth of paper money as legal tender. Nor, in my view, would there be any substance in an argument that the provisions of section 36(1) of the Reserve Bank Act 1959 are invalidated or overruled by the provisions of the Currency Act 1965."

The disposition of the appeal by the Full Court has the necessary practical effect that the issue is no longer open to be addressed in these proceedings. There is no reason, on the materials before the Court, to doubt the validity of s. 52(a) or that Mr Skyring was rightly convicted of an offence under that section. There is plainly no good purpose to be served by making an order nisi. It is unnecessary to consider the question of whether in any event there is jurisdiction in the Court to entertain the proceedings.

The application is refused.