

IN THE COMMONWEALTH INDUSTRIAL COURT

In the matter of the *Conciliation and Arbitration Act 1904-1969*

and of

CLYDE WILLIAM MILLER and others

v.

Informants

THE AUSTRALIAN TRAMWAY AND MOTOR OMNIBUS
EMPLOYEES' ASSOCIATION

Respondent

(B Nos 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54,
55 and 56 of 1966; 669 of 1968; 1 of 1969)*ex parte*: THE INDUSTRIAL REGISTRAR

and of

THE INDUSTRIAL REGISTRAR

v.

Informant

CLARENCE LYELL O'SHEA

Defendant

(B No. 34 of 1969)

and of

THE INDUSTRIAL REGISTRAR

v.

Applicant

THE AUSTRALIAN TRAMWAY AND MOTOR OMNIBUS
EMPLOYEES' ASSOCIATION

Judgment Debtor

(B No. 42 of 1969)

*Applications for oral examination of holders of office of judgment debtor—Production of books and documents—Conciliation and Arbitration Regulations reg. 105A.**Contempt of Court—Failure of person to comply with orders of Court—Failure to attend and be orally examined, etc.—Penalty imposed—Costs—Conciliation and Arbitration Act 1904-1968 s. 111.*

1969.

MELBOURNE,
Feb. 18;
March 26,
April 10.Kerr J.
April 17.Spicer C.J.,
Dunphy J.,
Kerr J.
May 15, 21.

Kerr J.

On 10 and 17 January 1966 the Commonwealth Industrial Court made orders imposing seven penalties of \$300 and nine penalties of \$400 upon The Australian Tramway and Motor Omnibus Employees' Association hereinafter referred to as the judgment debtor in respect of contempts of the Court consisting of failures by the judgment debtor to comply with an Order of the Court made on 23 December 1965 (B Nos 41 to 56 of 1966). On 30 December 1968 and 7 January 1969 the Court imposed further penalties of \$200 and \$2,200 upon the judgment debtor in respect of contempts of the Court consisting of failures by the judgment debtor to comply with an order of the Court made on 19 December 1968. On 29 January 1969 the judgment debtor had not paid anything in satisfaction of those penalties.

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On 31 January 1969, pursuant to regulation 105A of the *Conciliation and Arbitration Regulations*, and upon an application being made by the Industrial Registrar, an order was made by His Honour Mr Justice Dunphy that James Thomas Coulthart and Clarence Lyell O'Shea, being the holders of an office of the judgment debtor, attend and be orally examined and that the said James Thomas Coulthart shall produce and hand over to the court such books and documents specified in the said order.

The matter was listed before the Court (Kerr J.) in Melbourne on 18 February 1969.

R. L. Gilbert, of counsel, for the Industrial Registrar.

J. T. Coulthart in person, and for the judgment debtor.

No appearance for Clarence Lyell O'Shea.

On the same day the Court made the following order:

Order:

I That the further examination of the said James Thomas Coulthart be and the same is hereby adjourned to a date to be fixed at Melbourne.

II That the said order of Mr Justice Dunphy in so far as it relates to the said Clarence Lyell O'Shea be and the same is hereby discharged.

III Pursuant to regulation 105A of the *Conciliation and Arbitration Regulations* that the said Clarence Lyell O'Shea the holder of the office of Secretary to the Victorian Branch of the abovenamed judgment debtor attend and be orally examined before a Judge of this Court on Thursday 20 March 1969 at 10.30 o'clock in the forenoon at 451 Law Courts Place, Melbourne.

IV Pursuant to the said regulation that the said Clarence Lyell O'Shea shall at the time and place aforesaid produce and hand over to this Court the following books and documents relating to the affairs of the Victorian Branch of the said judgment debtor, namely, any deed account book or account bank slip voucher receipt letter memorandum paper or writing or any copy or extract from any such document or any other document relating to the goods chattels real and personal money bank notes cheques bills of exchange promissory notes bank specialities securities for money inscribed stock shares or debentures and any interest accrued or accruing thereon which are or form part or which shall form part of the funds which have been allocated to and the expenditure of which is or shall be controlled by the Victorian Branch of the said judgment debtor.

The matter was again listed before the Court (Kerr J.) in Melbourne on 20 March 1969.

R. L. Gilbert, of counsel, for the Industrial Registrar.

No appearance for Clarence Lyell O'Shea.

On the same day the Court made the following further order:

Order:

I That the date fixed for the hearing of this matter be altered to Thursday 10 April 1969 at this Court in Melbourne at 10.30 a.m.

II That service of a copy of this Order and of a copy of the Order made 18 February 1969 and filed herein 20 February 1969 and of the affidavit of Ian Gordon Sharp sworn and filed herein 29 January 1969 by leaving them with a person apparently above the age of 14 years at the registered office of the Victorian Branch of the Australian Tramway and Motor Omnibus Employees' Association at 636 Bourke Street, Melbourne or by posting them in a pre-paid letter sent by registered post addressed to the said Clarence Lyell O'Shea at the registered office of the Victorian Branch of the Australian Tramway and Motor Omnibus Employees' Association at 636 Bourke Street, Melbourne and by posting them in a pre-paid letter sent by registered post addressed to the said Clarence Lyell O'Shea at his usual place of residence namely, Flat 1, 37 George Street, East Melbourne and by posting them in a pre-paid letter sent by registered post addressed to the said Clarence Lyell O'Shea at Christmas Hills, Victoria, shall be deemed good and sufficient service of this order and the order aforesaid dated 18 February 1969 and of the affidavit of Ian Gordon Sharp aforesaid dated 29 January 1969.

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The matter was again listed before the Court (Kerr J.) in Melbourne on 10 April 1969.

R. L. Gilbert, of counsel, for the Industrial Registrar.
No appearance for Clarence Lyell O'Shea.

On the same day the Court delivered the following judgment and made the order hereinafter appearing:

In these matters there was no appearance by Mr O'Shea on his being called outside the Court. It was proved that he had been duly served in accordance with the previous order for substituted service made by me.

In these circumstances I cannot proceed with the present matter any further today, and I will adjourn it *sine die*. It may be restored to the list on two days notice to Mr O'Shea. That notice may be given to him by letter addressed to him at the office of the Victorian branch of the union.

That disposes for present purposes of the matters before me.

Mr Gilbert, who appeared for the Industrial Registrar in all of those matters, now informs me that, having regard to the failure of Mr O'Shea to attend here today in response to my order, the Industrial Registrar proposes upon information to seek the issue of a summons under section 111 of the Act calling upon Mr O'Shea to answer a charge that he has committed a contempt of Court.

My attention is drawn to the fact that the appropriate forms—namely, forms 20 and 21—envisage that an informant will attend before the Industrial Registrar and that the appropriate summons will be issued by the Industrial Registrar. It is submitted that the form thus prescribed is not suitable to the circumstances of the particular case as the Industrial Registrar will himself be the informant. In those circumstances, proceeding under regulation 67, I direct that the information of the Industrial Registrar may be laid before the Deputy Industrial Registrar in Melbourne and that any summons to issue upon that information shall be issued by the Deputy Industrial Registrar. Otherwise the forms appropriate for an information and a summons to answer a charge of contempt of Court will be in the usual form.

In the matters which were originally called on, and which I have already said are to be adjourned *sine die*, with appropriate provisions for notice of their relisting, I indicate that I have done that upon the basis that costs of these proceedings to date are reserved and there is to be liberty to apply in respect of costs reserved to the Industrial Registrar.

Order:

I That the hearing of this matter be adjourned *sine die*.

II That this matter may be brought on for further hearing on 48 hours notice in writing to the said Clarence Lyell O'Shea such notice to be given by posting it in a pre-paid letter sent by registered post addressed to the said Clarence Lyell O'Shea at the registered office of the Victorian Branch of the Australian Tramway and Motor Omnibus Employees' Association at 636 Bourke Street, Melbourne.

III That the costs to date of this matter be reserved with liberty to the Applicant to apply as he may be advised.

Order and direct, pursuant to regulation 67 of the *Conciliation and Arbitration Regulations* that any information for an offence pursuant to section 111 of the *Conciliation and Arbitration Act* 1904-1968 and regulation 76 of the *Conciliation and Arbitration Regulations* arising out of this matter may be laid by the Applicant herein before the Deputy Industrial Registrar in Melbourne and any Summons to issue upon such information shall be issued by the said Deputy Industrial Registrar and it is directed that for such purpose Forms 20 and 21 in the First Schedule of the *Conciliation and Arbitration Regulations* be amended accordingly.

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On 16 April 1969 a summons (B No. 34 of 1969) was filed on behalf of the Industrial Registrar calling upon Clarence Lyell O'Shea to answer a charge that on 10 April 1969 he did commit a contempt of Court by failing to comply with the orders made by His Honour Mr Justice Kerr dated 18 February 1969 and 20 March 1969 and filed in the several matters numbered B 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55 and 56 of 1966; 669 of 1968 and 1 of 1969 in that he did on 10 April 1969 fail to attend and be orally examined and to produce and hand over to the Court the books and documents relating to the affairs of the Victorian Branch of The Australian Tramway and Motor Omnibus Employees' Association as specified in the said orders dated 18 February 1969 and to show cause why he should not be punished by committal or otherwise as to the Court shall seem fit for such offence.

The matter came on for hearing before the Court (Spicer C.J., Dunphy and Kerr J.J.) in Melbourne on 30 April 1969.

R. L. Gilbert, of counsel, for the Industrial Registrar.

No appearance for Clarence Lyell O'Shea.

On the same day the following judgment was delivered:

Spicer C.J.:

In this matter we find that the defendant, Clarence Lyell O'Shea, is guilty of the contempt of Court which has been alleged against him. It is, if I may say so, a very serious contempt in that what Mr O'Shea was charged with was failure to obey a subpoena, failure to attend Court, failure to answer questions on a subpoena.

The obligation to obey a subpoena is one which any of us may be called upon to obey at any time and obedience by citizens to such a command is essential to the administration of justice. Therefore, I say that the contempt of which Mr O'Shea has been found guilty is a very serious contempt, indeed. He cannot put himself above the law any more than any other person can, and having regard to all the circumstances I think we should at this stage impose a penalty on the defendant to the extent of \$500.

I point out that this is not the last of the matter, that an order still exists which Mr O'Shea must obey. If he does not see fit to do so it will be necessary for this Court to take further action.

Dunphy J.:

I agree with the decision. Union secretaries generally respect the law and observe the law and there is no justification for anybody's belief that union secretaries are above the law.

Mr O'Shea was only brought before this Court because he failed to attend to be orally examined, to produce and hand over to the Court the books and documents relating to the affairs of the Victorian Branch of the Tramway and Motor Omnibus Employees Association. There has been some misrepresentation in the Press that section 109 and section 111 matters, the so-called penal provisions, were involved in these proceedings. All that is involved is a failure by the Secretary of the Victorian Branch of the Union to attend to be orally examined and to produce certain books. His failure to obey that order leaves me with the feeling that it is possible Mr O'Shea has something he does not want disclosed through the examination either of himself or the books, but if I am wrong in that respect it is for Mr O'Shea to appear before the Court to clear that suspicion from my mind. Because that is my feeling, it makes the

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contempt all the more serious and I think that the penalty of \$500 as announced by the Chief Judge is adequate in the circumstances, when one realises that if it is not obeyed, if the fine is not paid, there are further proceedings which are available.

Kerr J.:

I should like to add something to what has already been said.

The two orders which are involved in this case were orders made by me for the oral examination of the defendant and it should be understood by everybody that there is nothing unusual about this procedure in this Court. In most jurisdictions judgment debtors or, in the case of companies, persons representing judgment debtors, are regularly brought before the Court to be examined as to their assets. The law requires that judgment debts should be paid. The law requires in all of these jurisdictions that judgment debtors or their officials, in the case of companies, shall be brought along to be examined as to their possession of assets. That is what has been done in this case. It is part of the ordinary routine for the administration of justice, and if that system is to be flouted, if such persons are to be permitted to refuse to obey orders that they should come along to be examined as to the assets of either themselves, if they are the judgment debtors, or their companies or bodies, the administration of justice would in a very substantial way collapse.

All orders of Courts have to be obeyed. The law requires it. It requires Judges to see that orders of the Court are obeyed. This is a Court of law and it follows, therefore, with impeccable logic, that it cannot have its orders flouted. Trade unions secretaries and trade unions are in no different position in this respect to other persons and other bodies. Limited companies and their directors and ordinary citizens are all subject to this kind of obligation. Trade unions and trade union secretaries have no immunity under the law. It is the duty of this Court to make sure that the law applies to them as it applies to everyone. It is for that reason that it seems to me that we should deal with the matter in the way that has been proposed.

My orders are still there to be obeyed and it is within my power to nominate the day upon which I shall require those orders to be complied with at an adjourned hearing. The contempt which has so far been committed applies to the last occasion on which I nominated a date.

In respect of that deliberate refusal to attend, I agree that a fine should be imposed and I agree that the fine stated by the Chief Judge is the appropriate fine.

I indicate that I shall re-list the oral examination at a later time and that the defendant will have proper notice of the resumed hearing.

Spicer C.J.:

We find the defendant guilty of the contempt which was alleged against him. We impose on him a penalty of \$500 and we direct that he pay to the informant the informant's taxed costs, to be taxed by the Deputy Registrar.

Order accordingly.

On 6 May 1969 pursuant to regulation 105A of the *Conciliation and Arbitration Regulations*, and upon an application being made by the Industrial Registrar, an order (B No. 42 of 1969) was made by His Honour Mr Justice Kerr that Clarence Lyell O'Shea being the holder of an office of the Victorian

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Branch of The Australian Tramway and Motor Omnibus Employees' Association, attend and be orally examined before a Judge of the Court and shall produce and hand over to the Court such books and documents specified in the said order.

The matter was listed before the Court (Kerr J.) in Melbourne on 15 May 1969.

R. L. Gilbert, of counsel, for the informant.

C. L. O'Shea in person.

On the same day the following judgment was delivered:

Clarence Lyell O'Shea, I find you guilty of contempt of court committed in the face of the court. I find the charge that was orally preferred against you proved. Every week in this country judgment debtors—that is what your organization is in this respect—are called upon by orders of courts to attend to be examined as to their assets. The same applies every week to secretaries and other officers of limited companies that operate throughout this country. The general administration of the laws of this country, not only in cases like this one but in many, many cases requires that a court order should be obeyed. Trade Unions and Trades union officials do not enjoy any special exemption under the law. Judges have a duty to administer the law as it stands. People who choose, by what is fashionably called nowadays civil disobedience, to defy the law do so on their own responsibility and must take the consequences. You have frankly said you have deliberately—and having thought about it in advance—refused to answer these questions and by way of defence from the floor of the Court you have said your reasons for doing this is that if you were to answer the questions truthfully, as you say you would do if you were to do it at all, you would in fact disclose what the assets of the union are and where they are. Because you are unwilling to do that you have deliberately, and without any doubt in your own mind about it, committed contempt of Court. You have refused to accept any opportunity to purge your contempt and you have seen fit to seek no legal representation or to ask for any adjournment to enable your position to be further thought about by someone on your behalf.

If you choose to defy the Court as you have deliberately done, for some special reason of your own in order to make some protest about what the law is, then you must take the consequences just as other citizens, young and old, must do; and if you seek to have the law reformed you must do this by other processes that have nothing to do with this Court or what is going on in this Court today. Whilst the law remains in its present form, it must be carried out and the Court has a positive duty to see that it is.

You have, as I have said, deliberately defied the Court. You have refused to be orally examined and you have refused to produce the books which I previously directed you to produce when I ordered you to do so in this Court.

In those circumstances, Clarence Lyell O'Shea, I have no alternative but to order you to be committed to prison, there to be detained until you shall make to the satisfaction of the Court proper answers on your oral examination or until the Court should otherwise order.

My order of committal will be that you shall be committed to Her Majesty's Prison, Pentridge, at Coburg in the State of Victoria.

Order accordingly.

The matter was again listed before the Court (Kerr J.) in Melbourne on 21 May 1969.

R. L. Gilbert for the Industrial Registrar.

The Court]

On the same day the following judgment was delivered:

The order of 6 May 1969 with which Clarence Lyell O'Shea refused to comply has now been discharged by me upon the application of the person who originally obtained that order. Clarence Lyell O'Shea is therefore no longer under any obligation to attend before this Court to be orally examined or to produce books.

I wish to make it clear, as I am sure by now it must be clear, that it was the deliberate refusal to obey my order which was the sole reason for committing Clarence Lyell O'Shea to prison for contempt of court committed in the face of Court. The fact that his union had not paid fines, which had been imposed upon it under section 111 of the Act, had nothing whatsoever to do with his committal. The law does not permit officers of unions to be imprisoned because their organizations have not paid fines imposed on organizations under section 111 of the Act for breach of orders made under section 109 of the Act.

The changed situation that the fines have now been paid also makes no difference to the problems connected with the imprisonment of Clarence Lyell O'Shea for reasons which must be obvious.

It is true, of course, that the Crown now, having been paid the fines, does not wish to examine O'Shea and for that reason the order for his examination has been rescinded. This in turn means that he will no longer be in continuing contempt of any order of this Court, and those are the facts which I have regard to.

Clarence Lyell O'Shea could of course, had he been so minded, have been released from his imprisonment at any time had he obeyed the order whilst it was operative. This is illustrated by the fact that another officer of this union, to whom a similar order was addressed to attend for oral examination, did attend for oral examination and although the fines were unpaid he of course satisfied his obligation to answer the order in full.

I mention these matters because I want it to be quite clear that O'Shea was imprisoned solely for his contempt in this courtroom in the face of this Court.

The position now is that I have discharged the order and he will be no longer in continuing contempt of this Court from the time when I discharged it. For his original contempt of court he has been imprisoned since Thursday last, 15 May, and I am satisfied that in all the events which have happened he has been punished enough for that contempt.

I therefore order that Clarence Lyell O'Shea be released from custody forthwith.

Order accordingly.

Solicitor for the Industrial Registrar, *H. E. Renfree*, Crown Solicitor for the Commonwealth of Australia.
