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**TRANSCRIPT OF PROCEEDINGS**

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O/N H-741509

**FEDERAL COURT OF AUSTRALIA**

**WESTERN AUSTRALIA REGISTRY**

**BARKER J**

**No. WAD 492 of 2016**

**BALWYN NOMINEES PTY LTD**

**and**

**RODNEY NORMAN CULLETON**

**PERTH**

**10.16 AM, MONDAY, 19 DECEMBER 2016**

**MR G.M. ABBOTT appears for the applicant**

**MR R.N. CULLETON appears in person**

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HIS HONOUR: Please call this matter on for hearing. Yes, Mr Abbott.

MR ABBOTT: If it pleases your Honour, I appear for the petitioning creditor, Balwyn Nominees Pty Ltd.

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HIS HONOUR: Yes. It does appear that Senator Culleton who has otherwise indicated he was – I think he might be arriving now. Senator Culleton.

MR CULLETON: Your Honour, how are you?

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HIS HONOUR: Please take a seat. I just had the matter called on. Senator Culleton, Mr Abbott has just announced his appearance for the applicant, and you obviously appear and self-represented in the proceeding.

15 MR CULLETON: Today – today I am, yes. That’s correct, your Honour.

HIS HONOUR: Yes. Thank you. And when you say “today”, what do you mean?

MR CULLETON: Well, for the purpose of today, I’m the self-represented litigant.

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HIS HONOUR: Yes.

MR CULLETON: Thank you.

25 HIS HONOUR: Yes. Thank you very much. Mr Abbott.

MR ABBOTT: Your Honour, I’ve received a copy of an email that was sent to the registry at 9.29 this morning that contains – sorry, it was sent to the registry at 9.18 this morning – that contains an affidavit of Edward John Maitland. I rather gathered as a result of that affidavit that Senator Culleton may be wishing to make some form of application before I have anything to say.

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HIS HONOUR: Yes. Senator Culleton, it appears that an affidavit – which hasn’t been filed but has been sent around, including to my chambers – made by Mr Maitland, a solicitor. Do you know anything about that?

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MR CULLETON: I believe it has been filed. I’ve spoken with John Maitland, and I apologise for the delay but we had a few hiccups on the way over. But what I will be doing on my address to you today, your Honour, is actually doing some housekeeping and making sure that certain affidavits have been submitted to the court, and otherwise I can hand them up as a document. But I spoke to John Maitland and he assured me that he had filed it, along with Peter King has also filed an affidavit this morning.

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45 HIS HONOUR: Well, Mr King’s affidavit has been filed in the court.

MR CULLETON: Has it been accepted, your Honour?

HIS HONOUR: I believe so. But not that of Mr Maitland's; it was just emailed to people.

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MR CULLETON: Well, I have a copy of that. It's all signed and witnessed, and if it serves the purpose, your Honour, which is – clearly shows that I have – I certainly have money in trust, which proves the solvency of myself and my wife. So it is a very important affidavit to submit because that is one of the key issues today, I would assume; is that correct, your Honour?

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HIS HONOUR: Well, assuming for the moment that Mr Maitland's affidavit has been filed and is before the court, what do you seek to make of it? Are you making an application for an adjournment or are you ready to proceed?

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MR CULLETON: Well, I will let his Honour – well, today I'm certainly looking for an adjournment. This has taken us by surprise and - - -

HIS HONOUR: Sorry. What has taken you by surprise?

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MR CULLETON: Well, the whole – you know, we're only less than a week away from Christmas, your Honour. I'm sitting here as a self-litigant. I haven't been served any documents. I understand you've got some particular gentleman up in northern New South Wales who appears behind you today as a police character, that he is giving evidence about some sort of service. So I guess they are the two issues that – well, not issues; they are the two points that will have to be raised today as well, your Honour. So - - -

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HIS HONOUR: All right. Well, I had the impression that you were ready. Despite Mr Maitland's affidavit, you - - -

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MR CULLETON: No. I am not ready for a full trial. This is – you know, I – in all due respect, your Honour, I have been forced into these court dates. I have been taken also by surprise to a High Court matter which I didn't intend, but that was referred by the Attorney-General, so I had to deal with that, and also my parliamentary duties. So I have been a bit busy, your Honour.

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HIS HONOUR: Well, the obvious - - -

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MR CULLETON: And I stand here as a senator and I equally hold that respect with yourself.

HIS HONOUR: Yes. The fact of the dates, Senator Culleton, are these: that the matter was originally listed before the District Registrar back in November; it was adjourned to a hearing before me which was listed for 8 December; and as you will recall, due to your delays out of Melbourne, I agreed to the adjournment of the hearing of the matter until today. So, I mean, that's the sequence of events and the

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application is before the court. I will construe what you've said to me as you making a formal application now for this hearing to be adjourned today to another date.

MR CULLETON: Absolutely.

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HIS HONOUR: All right.

MR CULLETON: And can I be mindful of his Honour that there appears to be some confusion right through the courts in a sense that it's saying that I don't have a right to appeal to the primary judgment. And - - -

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HIS HONOUR: Well, you're moving away from the question of whether today's hearing should be adjourned - - -

MR CULLETON: Well, it should be, your Honour.

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HIS HONOUR: - - - into the merits of - - -

MR CULLETON: Yes.

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HIS HONOUR: - - - the application itself. So let me deal with the adjournment request first off.

MR CULLETON: Okay. Thank you.

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HIS HONOUR: Just before I - - -

MR CULLETON: And, look, can I be guided, your Honour - - -

HIS HONOUR: Sorry. Just before I do, though, can you explain exactly what you propose would happen if the matter were adjourned. Are you intending to be represented by a lawyer in the matter?

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MR CULLETON: Absolutely. And there are constitutional issues around this as well. It is to deal with also the matter of, you know, the \$17.8 million price tag that came along with Rathgar, and the actual notes and contentious notes that Dick Lester and how Balwyn Nominees was never a party to any discussion or notes as appeared with a judgment.

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HIS HONOUR: Well, you've - - -

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MR CULLETON: So there has to be - this has to be vented properly and I have a right to appeal to the primary judgment against Curthoys. And I have counsel already lined up, but because it's so close to Christmas they cannot and there is funds in trust.

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HIS HONOUR: Well, you say you have counsel lined up. Do I have any evidence of that before me?

5 MR CULLETON: Well, I can get them on the phone now, if you wish, but John Maitland will be the instructing solicitor; Peter King; and James Kewley.

HIS HONOUR: Well, I have the affidavit of Mr King; it says nothing about being engaged as counsel in the matter.

10 MR CULLETON: Well, as you would appreciate, your Honour, Mr King will be engaged by John Maitland; I can't engage him. That's an agreement between John Maitland to instruct the solicitor. But they have been talking. I actually have spoken to them up to late yesterday, and history would show that I've had Peter King appear for me in a number of actions, you know, that I've been left a victim through the  
15 ANZ Bank.

HIS HONOUR: All right. I will hear from Mr Abbott in relation to the request for an adjournment. Mr Abbott.

20 MR ABBOTT: Your Honour, I oppose the application to adjourn. Can I just say immediately that I have not received any affidavit from Mr King. I only have an affidavit from Edward John Maitland.

HIS HONOUR: The affidavit of Mr King - - -  
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MR CULLETON: I have a copy here.

HIS HONOUR: The affidavit of Mr King dealt only with the question of whether he saw Senator Culleton serve in Maitland on the relevant day.  
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MR ABBOTT: I'm sorry, your Honour. Well, I haven't seen that.

HIS HONOUR: You haven't seen that affidavit.

35 MR ABBOTT: That goes to the substance of the application, of course. I have not seen that affidavit at all.

HIS HONOUR: Yes. Well, I understand that one has been filed; it may not have been served on your instructors yet.  
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MR CULLETON: Am I able to take you through the affidavits to make sure that my good friend over here has got these affidavits?

HIS HONOUR: Not at this stage we don't need to do that.  
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MR CULLETON: All right.

HIS HONOUR: But - - -

MR ABBOTT: So sorry, your Honour. I was at cross-purposes with the court. I thought that Mr King's affidavit was apposite to the adjournment application.

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HIS HONOUR: No. No. The point I was making was that the affidavit of Mr King's which is filed today doesn't say that he's acting as a lawyer in the matter.

MR ABBOTT: Very well, your Honour. The only affidavit that I have about Senator Culleton's representation is the affidavit of Mr Maitland, which he says, in effect, that he's – he has been instructed in effect this morning, and he hasn't had time to retain counsel or get anyone else to appear, and he says he has some money in trust. That's all he says. So there's no indication as to when representation otherwise will be available, when Mr Maitland or any counsel that he might engage will be available to attend or do any of the preparation or work for a hearing should this matter be adjourned. There's also no indication on the matter that one would have thought is the substance of the point, and that is that the senator may be able to pay some of his creditors. There's no indication about how much he might pay or when or anything else of that nature.

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Now, I say that only in the sense that typically when bankruptcy proceedings in my experience are adjourned, that's because there's going to be some offer on the table, and it makes sense for the parties to investigate that, but there's nothing of that sort that's put before the court. The other matter that's of significance, your Honour, is that in the submissions that the senator filed on Friday, he indicates by the first paragraph of his submissions that he has, and I quote:

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*I have decided to represent myself in these proceedings because what I want to say is not something a lawyer will argue in most cases.*

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He indicates in that – in those submissions that he has made a deliberate decision to argue the matter in accordance with the materials that he has put before the court already, and that he intends, at least on Friday, to do that without the assistance of counsel. Indeed, in his submissions he make some robust comments about the fact that litigants in persons are frequently asked if they wish to be represented, and he makes disparaging remarks about the legal profession in that context. All of those things indicate, in my respectful submission, that the senator has made a deliberate decision about the state of his representation. The senator is not a stranger to litigation. He's not a stranger to effectively every court in the country. He understands very well, in my submission, the nature of the court proceedings.

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He understands very well the ramifications of these particular proceedings for him. And, again, I say he has made a deliberate decision at the last minute to indicate that he's going to change his mind on those things and be represented by counsel. Your Honour, I do note that the current proceedings are very significant to the senator, and an adverse outcome today will have serious implications for him, but that's clearly understood in his submissions, and in my submission he has clearly understood that

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at all times when he has filed material from various witnesses, his several affidavits in these matters, and his several applications and submissions. In my submission, he has had plenty of time to engage counsel should he wish to, and he has deliberately taken that forensic decision not to do so. And in those circumstances, your Honour,  
5 we oppose the application for an adjournment.

HIS HONOUR: Yes. Thank you, Mr Abbott. Senator Culleton, do you have any further submissions on response?

10 MR CULLETON: Well, can I just firstly say, your Honour, I think we may need to adjourn. There are two gentlemen in here that have breached a VRO against my wife, and my wife has every right to be in this courtroom.

HIS HONOUR: Mr Culleton, Senator Culleton, Mr Abbott for the applicant has  
15 made submissions about why the proceedings shouldn't be adjourned and this is an opportunity to respond to those submissions, not go off on another matter.

MR CULLETON: Well, I think this is a very serious matter. There are two  
20 gentlemen in this courtroom who are breaching VROs against my wife, and my wife has every right to be sitting in this courtroom, your Honour. Can we adjourn for 10 minutes?

HIS HONOUR: Senator Culleton, no, I'm not going to adjourn. I would like you to  
25 respond to – if you want to – to Mr Abbott's submissions just made as to why the proceedings shouldn't be adjourned.

MR CULLETON: Well, I guess if his Honour's not going to address the issue of a breach of a violent restraining order - - -

30 HIS HONOUR: Senator Culleton, I'm running a bankruptcy court, not a police court.

MR CULLETON: Well, I have concerns that my wife is not in this court because  
35 she needs to be helping me with this and I've got two gentlemen who are breaching a violent restraining order sitting in the court who have no right to be – what are they here for?

HIS HONOUR: All right. Now, address, if you wish to, Mr Abbott's points as to  
40 why there shouldn't be an adjournment.

MR CULLETON: Well, okay. First of all, I have been forced to represent myself  
today. I have been forced to put on submission as a layman. Mr Abbott may say  
tongue in cheek I have been involved in other court matters and this is nothing new  
to me. That's just his assumption, and he has no right to stand there and make a  
45 statement like that and judge me. In actual fact, he has been in plenty of court proceedings himself. These legal proceedings I have not been able to properly prepare, and in any event, I'm not a legal practitioner, okay, other than a senator in

the Federal Parliament, which is a court you know yourself, your Honour. So I guess one – his Honour needs to take – first of all, I became aware of this through the newspaper that I had been served. I've never been served.

5 There seems to be a rush to have me be forced to come before a court unrepresented. However, his Honour was not in a mind to adjourn it. I did have to try and give available dates. It was only through a mishap with the Melbourne Airport that here we are today, but at no stage did we have any clear indication when this would run. I didn't even really believe this would be any sort of a major hearing. I just thought it  
10 may be more a mention to set down a proper date. So it's okay for Mr Abbott with his team to be able to prepare, but I'm not prepared fully for today, and I need legal representation. The court needs to be very mindful of that.

HIS HONOUR: Yes. Thank you. Well, I will deal immediately with the question  
15 of whether or not today's hearing should be adjourned to another date. I've heard Senator Culleton's submissions and I've heard Mr Abbott for the applicant on the matter. I'm satisfied that there should be no adjournment today. The hearing set for today is an adjournment from 8 December when the matter would have gone ahead save for Senator Culleton's inability to be here by reason of flight difficulties from  
20 Melbourne on that date. It's quite clear, despite what Senator Culleton has just said, that all parties have understood that this hearing today, as the hearing originally scheduled for 8 December, is the final hearing on the creditor's petition. It is correct, as Mr Abbott says, that in submissions filed very recently Senator Culleton has said that he seeks to represent himself in the matter. The affidavit, which came through  
25 just some 45 minutes before the hearing was to commence this morning from a solicitor in Melbourne to say that he has, by inference, just been instructed in the matter and has received some money into his trust account, adverts to holding a significant sum but not saying exactly what it is, does not provide me with any confidence in all the circumstances that the sending of that affidavit - - -

30 MR CULLETON: Can I give clarity to that, your Honour? Can you - - -

HIS HONOUR: - - - was anything but a last minute matter. The simple fact is that there have been a number of affidavits filed, including by Senator Culleton and other  
35 persons whose affidavits he has filed in the proceeding. I received submissions from Senator Culleton in relation to matters in issue which are reasonably extensive. A question of whether or not he has been served with the bankruptcy notice in the matter is a clear issue. Arrangements were being made as to whether or not Senator Culleton wished to cross-examine the person who says he served the bankruptcy  
40 notice on him. The circumstances are such that the court shouldn't simply agree to the adjournment of this proceeding in all of those circumstances. The court should proceed. It shouldn't delay. It shouldn't incur additional expense to any of the parties in the circumstances. I do not consider in the circumstances that the dictates of justice require a further adjournment of this proceeding. All right. So we proceed  
45 to the question of the hearing. Mr Abbott?

MR ABBOTT: Thank you, your Honour. There is one further matter that I understand Senator Culleton to wish to raise. I have a document that's headed Interim Application. It appears to be dated 9 December.

5 HIS HONOUR: Well, the interim application – I will come to that now – was – is actually filed on 16 December. Senator Culleton, before me is an interim application, so calls the heading on it, in which you make the following claim: a right under section 116 of the Constitution not to have to submit to judgment by a single individual and claims the right to jury trial under the discretion given to a  
10 Federal Court of Australia judge by section 30, subsection (3) of the Bankruptcy Act 1966.

MR CULLETON: Absolutely. And I require a jury, your Honour, and given my position as a senator and in a political career and my knowledge of what I know in  
15 the senate, I'm entitled to a jury, and I've made that application.

HIS HONOUR: Are you submitting that you are entitled as a right or in the discretion of the court to have an order?

20 MR CULLETON: Both. Both, your Honour.

HIS HONOUR: Well, it can't be both.

MR CULLETON: Okay. Of right under the Constitution. These are constitutional  
25 matters.

HIS HONOUR: Right. Do you have any more submissions to make about that?

MR CULLETON: Yes. And his Honour will have to guide me through – I need to  
30 have my wife in here to get other information, and yet until we deal with these two fellows breaching a violent restraining order, I'm being hindered from progressing in this matter, your Honour. I cannot stress that any more.

HIS HONOUR: Senator Culleton, I really want to deal with the matter that's in  
35 issue here.

MR CULLETON: Well, your Honour, if you're not going to remove them, I will stand down from the court, because you cannot ask me to go ahead with an application hindered when I need a party. My wife is here for a reason. These two  
40 gentlemen have a violent restraining order. They have been known gentlemen to make idle threats, and I am not comfortable having them in the courtroom.

HIS HONOUR: Senator Culleton, as a - - -

45 MR CULLETON: Please address the issue.

HIS HONOUR: You have an application for a trial by jury and I'm asking you to make submission about that.

5 MR CULLETON: Well, your Honour, unless you address the issue so I can perform my role – my duty here today, and if you're not prepared to remove them, I will remove myself.

HIS HONOUR: Mr Abbott, not in - - -

10 MR CULLETON: In actual fact, I'm going to adjourn, because these guys are breaking a violent restraining order and I need my wife in here. So you're not going to make it difficult like that.

15 HIS HONOUR: Don't try to control the proceedings here, please, Senator Culleton.

MR CULLETON: Well, how can I be controlled when there are two idling guys that have made threats through my political career in the courtroom.

20 HIS HONOUR: Please just take a seat for a moment.

MR CULLETON: Sitting behind me, I might add.

25 HIS HONOUR: Take a seat, please. Mr Abbott, it may not be a matter in your control or even awareness. The court isn't aware of these matters, obviously, that Senator Culleton refers to. I don't want through a side wind the proceeding to be distracted. Do you have any submissions to make in relation to the matter?

30 MR ABBOTT: Your Honour, I must say I'm taken by surprise by what's occurring. I'm unaware. I have no instructions about a violence restraining order. I have no instructions about the identity of the people to whom the senator is referring. So I'm not able to assist you in those regards, your Honour. I do say, however, that I'm not able to understand in what respect Mrs Culleton would otherwise be entitled to provide assistance to the senator. There's no application that she appear as his McKenzie friend, so I'm not quite sure the basis of his assertions on that regard.  
35 Your Honour, I can suggest, though – may I just get some instructions, your Honour?

HIS HONOUR: Yes.

40 MR CULLETON: Can I hand these documents up to your Honour.

HIS HONOUR: No. No. Just stay where you are please.

MR CULLETON: No. I'm going to do it. I will remove myself from the court.

45 HIS HONOUR: Stay where you are, please. Those documents are to be returned to Senator Culleton straightaway.

MR CULLETON: Well, your Honour, I will remove myself from the court.

HIS HONOUR: Just take a seat.

5 MR CULLETON: I'm going to remove myself from - - -

HIS HONOUR: There is - - -

MR CULLETON: No.

10

HIS HONOUR: There are ways – you will be heard - - -

MR CULLETON: You're not going to push me around.

15 HIS HONOUR: You will be heard - - -

MR CULLETON: I'm removing myself from the court.

HIS HONOUR: You will be heard in a moment, Senator Culleton.

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MR CULLETON: No, I won't. You're not - - -

HIS HONOUR: Mr Abbott is - - -

25 MR ABBOTT: You're directing it to another – until I have my wife show she has done the clerical part of this file, I will remove myself from the court.

HIS HONOUR: Senator Culleton, you – if you choose to do that, let me tell you immediately - - -

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MS CULLETON: Rodney?

HIS HONOUR: - - - the proceeding will continue in your absence.

35 MR CULLETON: No. They're not removing me through - - -

MS CULLETON: Rodney, I want you to – no. Carry on. I've organised it. Please carry on.

40 MR CULLETON: I cannot. I need you to do this and his Honour is not allowing me - - -

MS CULLETON: Your Honour, I have – these gentlemen – excuse me, your Honour. I'm in court for a breach of an already existing VRO on 1 February, and they are also in court for trespassing onto our premises.

45

MR CULLETON: I'm going to stand outside until .....

MS CULLETON: We have a bad, bad history.

HIS HONOUR: I ask you - - -

5 MR CULLETON: I've asked the police to come and remove them and arrest them.

HIS HONOUR: Well, you're not being heard. Will you just please remain silent.  
Mr Abbott?

10 MR ABBOTT: Your Honour, if it assists the court, my instructions are that we can stand the matter down for five minutes or so while I take some instructions.

HIS HONOUR: Right. Well, I'll adjourn for five minutes - - -

15 MR ABBOTT: Thank you, your Honour.

HIS HONOUR: - - - while you take some instructions.

MR ABBOTT: Thank you, your Honour.  
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**ADJOURNED** **[10.41 am]**

25 **RESUMED** **[10.56 am]**

HIS HONOUR: Mr Abbott.

30 MR ABBOTT: I understand – I've spoken briefly to Senator Culleton, and I understand he's not prepared to come back in to the courtroom unless the two gentlemen to whom he refers remove themselves. I'm not in a position to advance that further, save to inform your Honour that on my instructions the two gentlemen who sit behind me, although I receive no instructions from them, I must stress,  
35 purport to be creditors of the senator. Beyond that I have no further instructions about what they're doing or why they're here. But I'm otherwise ready to proceed, if – in the absence or otherwise of the senator.

40 HIS HONOUR: Yes. Well, can you identify the two persons who are sitting at the table?

MR BELL: Your Honour, if I may.

45 HIS HONOUR: Just identify yourself, please.

MR BELL: Yes. My name is Ian Bruce Bell, and I happen to be the applicant in the High Court matter against Mr Culleton as well as a creditor and as well here on behalf of other creditors.

5 HIS HONOUR: Right. You've identified yourself. And the gentleman next to you?

MR BERTOLA: Yes, your Honour. I'm Francis Peter Bertola. I carry a personal creditor's list, which I would join to the application.

10

HIS HONOUR: Why are you sitting at the table where you are?

MR BERTOLA: Why are we sitting where we are?

15 HIS HONOUR: Yes. You're not parties to this proceeding.

MR BELL: Your Honour, I have instructions in great urgency to make representations on behalf of parties that want to be joined.

20 HIS HONOUR: Well, you're not going to be heard today in any such matter. There's a party before the court, Balwyn Nominees. Mr Abbott is of counsel representing them. And you shouldn't be sitting there expecting to be heard or acting as though you will be. I had assumed when I saw you there without knowing that you were officers of the applicant company and that you were sitting there with their  
25 instructing solicitor. So it's not appropriate for you to be where you are, and you should absent yourself from that desk.

MR BELL: Thank you, your Honour.

30 HIS HONOUR: Just ask the court officer to call Mr Culleton or, if he's still outside, let Senator Culleton know that the proceeding is about to continue.

COURT OFFICER: Your Honour, he still refuses .....

35 HIS HONOUR: Yes. All right. Well, the court has the distinct impression that one way or the other it's being made a participant in something approaching a carnival, if not a circus. There's no reason why, in the court's estimation, in all the circumstances Senator Culleton should have absented himself from the hearing room. There's an application currently before the court upon which Senator Culleton briefly  
40 made some submissions as to why I should exercise a discretion under section 30, subsection (3), of the Bankruptcy Act to require the jury to deal with the matter. The only matter it could deal with, a jury, is a question of fact. I will finally deal with that matter as I proceed with the application before the court. Mr Abbott, do you have any submissions about the application for the jury order?  
45

MR ABBOTT: Yes, your Honour. Clearly you hold a discretion to allow a matter to proceed by way of jury, but the Federal Court Act, the Bankruptcy Act and

- bankruptcy rules make it abundantly clear that the prima-facie position is that these matters will be heard by a judge alone unless there are circumstances that justice requires the matter to be determined by a jury. In my submission, typically matters that would be removed from a single court judge to a jury are those which are
- 5 described as having some quintessential element of jury trial about them, an example of which would be defamation proceedings, which appears to be the most common instance in which a matter would be – where the discretion to allow a jury trial would be removed.
- 10 So in my respectful submission, there is nothing about this matter that could be described as requiring a jury trial in order to determine the facts of the matter. Bankruptcy proceedings, of course, of their general nature proceed ordinarily before a single judge and on affidavit material. Insofar as there is reference to section 116 of the Constitution, it's my submission that that section of the Constitution in no way
- 15 requires that the senator in bankruptcy proceedings have this matter determined before a jury. And I'm afraid that I can't assist the court any further on the constitutional issue that Senator Culleton appears to try and raise, because without his oral submissions on it I – with great respect – don't understand exactly his point.
- 20 HIS HONOUR: Yes. Thank you. I've given some consideration to the application. It's expressly made under section 30, subsection (3), of the Bankruptcy Act. It's plain that the court does have a discretion to have questions of fact resolved by a jury. There is authority that deals with the nature and the circumstances in which that power would be exercised, and I refer to *Harding v the deputy commissioner of taxation*, (2008) FCA 1403 reported at 172 FCR 206, in which Flick J of this court
- 25 adopted other ..... which suggests there needs to be special circumstances identified before the court would order a jury trial on a question of fact in a bankruptcy proceeding. Ordinarily the trial would be before a single judge alone.
- 30 I've considered the facts as they lie before me, having regard to the issues that appear to be raised in the affidavit and submission materials filed by Senator Culleton, and can see no basis upon which it would be appropriate to exercise that discretion by ordering a jury trial. The primary question of fact which has been raised by his affidavit materials and his submissions is whether or not he was in fact served with a
- 35 bankruptcy notice by a Sergeant Scott at the Armidale police station on the relevant date in question. So the application for the jury trial order as set out in the interim application to which I've referred is dismissed. That then brings us to the substantive application. Mr Abbott.
- 40 MR ABBOTT: Your Honour, there is of course authority that gives you full power to determine the matters before you in the absence of a party, these proceedings. I refer to Federal Court rule 3021 and in addition, as I understand, the discretions that reside in you as a result of sections 30 of the Bankruptcy Act.
- 45 HIS HONOUR: Yes.

MR ABBOTT: So in my submission, it's open for me to proceed in the absence of Senator Culleton if he doesn't wish to proceed any – participate any further in the proceedings. And I indicate to the court that that's my intention.

5 HIS HONOUR: Yes. The court in all the circumstances has already refused an earlier adjournment, and subsequent events the court considers – I choose my words carefully – to be largely contrived to force the court to abandon the hearing today. The court in these circumstances considers it ought to proceed to hear the matter. Senator Culleton has been advised by the court officer again very recently that I am  
10 proceeding with the matter. He has chosen to absent himself from the hearing room. That's his decision. The court will proceed.

MR ABBOTT: Excuse me for one moment, your Honour. Your Honour, I just wish to check that the affidavit of Pierce Tait McMahon sworn on 19 December 2016 has  
15 arrived on the court file.

HIS HONOUR: Yes.

MR ABBOTT: This is Mr McMahon's affidavit confirming the searches required of  
20 the national personal insolvency index and confirmation that he has spoken to the director of the petitioning creditor to confirm that the debts remain outstanding as set out in the bankruptcy petition.

HIS HONOUR: Yes.  
25

MR ABBOTT: Now, the orders that are sought here are in relation to a failure to comply with a bankruptcy notice as grounding the bankruptcy petition and a failure to comply with the payment request that's demanded under the bankruptcy notice. The applicant of course relies on section 43 of the Bankruptcy Act for that purpose.  
30 Your Honour should have before you a series of affidavits that are, in my submission, compliant with rule 4, particularly rules 4.04 and 4.06 of the bankruptcy rules. If I may take you to those. First can I just ask your Honour to see the affidavit of Matthew David Scott, who is a police officer from Armidale. His affidavit is sworn on 13 October 2016. Your Honour, this is the affidavit that Senator Culleton  
35 indicated that he wished to cross-examine the deponent, Sergeant Scott. That is of course why Sergeant Scott appears on the screens in the courtroom.

HIS HONOUR: Yes.

40 MR ABBOTT: Because my - - -

HIS HONOUR: Arrangements were made. I alluded to them earlier, and Sergeant Scott is available in this visual presence at the moment but not connected audibly – I don't think – to the court.  
45

MR ABBOTT: Yes, your Honour.

HIS HONOUR: To be examined or cross-examined as the parties might require.  
Do you require him?

5 MR ABBOTT: I don't require him, your Honour. In my submission, his affidavit  
establishes that he served Senator Culleton with the bankruptcy notice. And the  
question then would be if there's any materials that Senator Culleton wished to  
adduce either by way of cross-examination or contradictory affidavit material to  
displace that evidence. In my submission, it's for Senator Culleton to embark on the  
cross-examination, should he wish to.

10 HIS HONOUR: Yes. Well, Senator Culleton has chosen not to participate in the –  
in this proceeding at this point. So the answer to that seems to be that he doesn't  
wish to take advantage of the opportunity to cross-examine.

15 MR ABBOTT: Thank you, your Honour. I simply note that that opportunity as a  
result of his request for cross-examination was made available to him. Sergeant  
Scott is available; I don't intend to call him and, in those circumstances, his affidavit  
would be admissible.

20 HIS HONOUR: All right. So you read his affidavit.

MR ABBOTT: Yes, I do, your Honour.

25 HIS HONOUR: We should indicate to Sergeant Scott that he is no longer required  
and doesn't need to stand by.

MR ABBOTT: Thank you very much, your Honour.

30 HIS HONOUR: All right. Thank you. We will disconnect the – well, just a  
moment, please. Senator Culleton. Senator Culleton, I'm proceeding with the  
hearing.

MR CULLETON: Can you please - - -

35 HIS HONOUR: Mr Abbott has just formally read the affidavit of Matthew David  
Scott – Sergeant Scott. Do you wish to cross-examine him?

MR CULLETON: Absolutely.

40 HIS HONOUR: All right.

MR CULLETON: But can his Honour please enlighten me that you continue to go  
ahead without me today, considering there's a major security breach. Hang on. No,  
you - - -

45 HIS HONOUR: No. Senator Culleton - - -

MR CULLETON: Listen to me. I'm a little bit rattled at the moment.

HIS HONOUR: Senator Culleton, I really have had my patience tested this morning.

5

MR CULLETON: So have I.

HIS HONOUR: I'm running this court, not you; okay?

10 MR CULLETON: Well - - -

HIS HONOUR: Now, just pause. I have just heard the affidavit read. You've disputed in your materials that you filed and in your submissions that you were served. You've indicated that you wanted to cross-examine Sergeant Scott. This is your opportunity to do so. He's present by video conference; he's on the screen. So this is the time now to take that opportunity.

MR CULLETON: Well, you know, your Honour, I have sat here – in all due respect, I've come to this court with clean hands today, okay? I've put my application on in haste. I have put to the court where you denied – or didn't want to have a look at the violent restraining orders of two individuals sitting at a bar table behind a barrister. And that, to me, was a serious breach of security. Now, these individuals have threatened to shoot me, okay? Let's be fair about it. And you're now asking me to just, you know, grapple along and say, "Where are we up to now?", and, "Let's start cross-examining." Can we adjourn and I go and ring a legal – my barrister to be. I need a little bit of time to just get my head around this and where we're up to. You just seem to be proceeding on like this is, you know, some sort of a bear trap.

30 HIS HONOUR: Senator Culleton, this is your opportunity to cross-examine Sergeant Scott.

MR CULLETON: Well, I need five minutes to prepare myself. So is the gentleman at the end there – can I go to a conference room and pick up where I need to go with my notes - - -

35

HIS HONOUR: Well, you - - -

MR CULLETON: - - - since I can't have my wife here to help me.

40

HIS HONOUR: I will give you two minutes to prepare because you must have been prepared by now. You've raised - - -

MR CULLETON: I'm not prepared. This is done in haste, your Honour.

45

HIS HONOUR: Nothing has been done in haste.

MR CULLETON: Well, come on, I've had a High Court challenge.

HIS HONOUR: You've put on affidavits, you've put on submissions, you've raised this issue in your original grounds of objection that you filed - - -

5

MR CULLETON: You've just knocked back my jury; why is that?

HIS HONOUR: You should have been here to listen.

10 MR CULLETON: Well, I couldn't; it was a VRO.

HIS HONOUR: Senator Culleton, I am sorry that I am allowing myself to engage with you in this way. This is a court. This is the Federal Court of Australia. This is a bankruptcy court.

15

MR CULLETON: I understand that.

HIS HONOUR: This is your opportunity, if you wish to take advantage of it, to cross-examine this witness. I will give you a very short - - -

20

MR CULLETON: Okay. Well, can I respectfully ask to adjourn for - - -

HIS HONOUR: I will give you a short period to - - -

25 MR CULLETON: Well, can we make it – two minutes is not - - -

HIS HONOUR: Please listen to me.

MR CULLETON: Five minutes?

30

HIS HONOUR: Please listen to me. I'm giving you a short period. I will give you five minutes.

MR CULLETON: Thank you. Thank you, your Honour.

35

HIS HONOUR: You prepare and come back then.

MR CULLETON: Thank you.

40 HIS HONOUR: Okay.

MR CULLETON: Thank you.

HIS HONOUR: We will adjourn for five minutes.

45

**ADJOURNED**

**[11.15 am]**

**RESUMED**

**[11.24 am]**

5 HIS HONOUR: Senator Culleton, now proceed with the cross-examination.

MR CULLETON: Yes.

10 <MATTHEW DAVID SCOTT, CALLED

**[11.25 am]**

HIS HONOUR: Now, we have Sergeant Scott on the video conference. Sergeant Scott, can you hear me speaking?---Yes, I can, your Honour.

15

Your affidavit has been formally read in this proceeding, but just before Senator Culleton commences questions of you, could you just repeat what's in the affidavit as to your full name, your occupation, where you're based and then I will proceed after that?---Yeah. Sergeant Matthew David Scott. I'm a sergeant attached to Armidale Police Station in New South Wales. Yes. I prepared an affidavit after some serving some paperwork.

20

Thank you. And you're on your oath in the affidavit and you remain on your oath now. Do you understand that?---Yes, I do, your Honour.

25

Thank you. Senator Culleton?

<CROSS-EXAMINATION BY MR CULLETON

**[11.25 am]**

30

MR CULLETON: Please state your name again for the record?---Yeah. Matthew David Scott.

35

And you're here today swearing on oath giving evidence in the matter?---Yeah. That's correct.

I'm just referring off your affidavit, and is true that you're a police officer and rank as a sergeant?---That's correct.

40

And please state your number?---Say that again, thanks.

Could you please state your number?---30861.

45

Thank you. On Monday, 8 August – I'm just reading point 2 of your affidavit. It clearly states on Monday, 8 August 2016 at about 11 am, you say you personally

handed to an individual who you knew as Rodney Norman Culleton. How long have you known me?---That was the first morning I'd ever met you.

5 At that time, I perhaps could say that we actually hadn't met. Would that be fair?---No. I'd spoken to you earlier in the morning.

Had you? Or was I speaking to Matthew Robinson?---No. You were speaking to me. You also spoke to a Matt Robinson earlier.

10 Right. Are you able to produce video footage of you purportedly or where you say you personally handed me bankruptcy papers?---No. There's no CCTV coverage at that location.

15 Why not? It's a police station?---If we would have went by protocol, we would have done it out in the charge room. That would have been covered by CCT footage, but unfortunately the room that you were in didn't have CCT footage, so - - -

So this affidavit - - -?--- .....

20 So this affidavit is hearsay?---No, it's not.

So you can clearly state that what – who did you think that you may have received documents off?

25 MR ABBOTT: Objection, your Honour. That's - - -

HIS HONOUR: What do you mean, Mr Culleton? I think - - -

30 MR CULLETON: Well, I don't think there should be an objection. I should be able to - - -

HIS HONOUR: No. Forget about that.

35 MR CULLETON: I'm going off his affidavit here.

HIS HONOUR: Yes. There's just confusion about the way you put the question, I think. You say in – perhaps put the question to him again. There's just some confusion in the question. He didn't understand the question. Proceed.

40 MR CULLETON: Well, it's his affidavit, your Honour.

HIS HONOUR: It's your words. You out the question to him again.

45 MR CULLETON: Well, no. I'm off his affidavit.

HIS HONOUR: Sure. Put the question to him.

MR CULLETON: It's under oath.

HIS HONOUR: Put the question - - -

5 MR CULLETON: He has sworn it.

HIS HONOUR: But the question to him again.

10 MR CULLETON: Well, now I've forgotten what I asked him. Did you – okay.  
Let's proceed. And can I just have a little bit of respect from - - -

HIS HONOUR: Senator Culleton - - -

15 MR CULLETON: Okay. All right. I'm - - -

HIS HONOUR: Senator Culleton, have I not made my position here clear. This is the court. It's not some other place.

20 MR CULLETON: Your Honour, I'm fully aware it is the court.

HIS HONOUR: Put the questions to the witness that you want to ask him.

MR CULLETON: Okay. How long have I got to examine him?

25 HIS HONOUR: Just ask the questions you need to ask.

MR CULLETON: Okay. All right. So I don't need to be rushed in this, your Honour. I need to go through it, because this is very important.

30 This alleged piece of paper that you say that you personally handed it to me, what colour was it?---What colour?

Yes?---It was a black and white document.

35 Okay. And was it folded or was it just normal A4 paper?---It was A4 paper and stapled or pinned at the top corner.

40 Okay. So it was stapled and pinned. So that means it would have just been clear on the outside. Is that correct?---It would have been what, sorry?

Just blank on the outside. If you – writing outwards or writing inwards?---No. The top – the top cover was a cover note for a bankruptcy notice and on the back there was a court notice from the Western Australian Court.

45 But how did that happen when it was folded?---It wasn't folded. It was in A4 form.

You just said it was folded and stapled and now you're saying it's not folded.

HIS HONOUR: He didn't say it was folded. He said it was A4 paper.

MR CULLETON: Well, he said it was stapled, your Honour.

5 HIS HONOUR: All right. Ask your question.

MR CULLETON: You said it was folded and stapled, did you not?---No. I said it was in A4 form and it was either stapled or pinned in the top corner.

10 Right. Did you read the contents?---I perused the top cover and the back notice, and then I brought it in and gave it to you.

And do you know the protocol in – did you at any stage know that I was a senator for Federal Parliament?---You told me earlier.

15 Did I?---Yes.

And what – at what time did I tell you that?---I'm not sure. Might have been an hour, an hour and a half earlier. I'm not sure of the time, but you did make me  
20 aware.

Sorry?---You did make me aware.

25 Okay. In – you say in paragraph – sorry – in paragraph 2(a) a bankruptcy notice addressed to both Rodney Norman Culleton and Ioanna Culleton, but you've just said it was a bankruptcy notice for me?---That's correct.

Well, then why have you put Ioanna Culleton in there if you read it?---The document I served on you I gave to you and then I recorded that I had served it on you.  
30

But then how would you have known that my wife's name was spelt I-o-a-n-n-a if it was a – wouldn't it have been two?---I don't know.

I don't know, because I didn't receive them. So when you say you personally  
35 handed to them, did you – how did you do that? Re you saying that you placed it in my top pocket, did you?---No. You were standing behind a table in the corner of the room. I've walked in and I've said, Mr Culleton, I've got some bankruptcy notice for you, and also a court notice. I said I've got to serve it on you. You stood back, went to the corner of the room, raised your hands up and you said, "I'm not fucking  
40 taking that." I said, Mr Culleton, this is going to be served.

Well, one would have thought - - -?--- .....

Well, hang on. The experience I've had with you guys, perhaps I might have thought  
45 I was going to be tasered.

MR ABBOTT: I object to the commentary, your Honour.

MR CULLETON: The point is – the point is you’re saying I refused to take any papers, because there were no papers, and I did - - -

HIS HONOUR: Well - - -

5

MR CULLETON: Would it be fair – hang on, your Honour.

HIS HONOUR: No, no.

10 MR CULLETON: Would it be fair to say - - -

HIS HONOUR: Just pause. Pause. It’s important in cross-examination to ask the witness questions.

15 MR CULLETON: Yes.

HIS HONOUR: So if there’s a question, you want to put it to him that you didn’t have any papers at all, if that’s the proposition, then you should ask him the question. So you ask questions of the witness. Don’t make statements.

20

MR CULLETON: Okay. So when I put my hands up above my head, had I had any prior discussions with you – did you come in to me and say anyone was outside in the police station?---No, I did not.

25 Then did I at any stage say to you that I can’t take documents for security reasons?---No, you did not.

Did I ever say to you that would I have ever expected that you were serving - - -

30 MR ABBOTT: Objection, your Honour.

HIS HONOUR: Just a moment. Yes, Mr Abbott.

35 MR ABBOTT: The senator is asking the witness to speculate about what was in the senator’s head with this question.

HIS HONOUR: Well, let’s see the question put again.

40 MR CULLETON: Yes. Okay. So you agree that there was only one bankruptcy petition?---There was a bankruptcy notice and there was a court notice on the back. I walked in. When I went to hand it to you, you put your hands up to the side. You said, “I’m not fucking taking that.” I leaned forward and said, Mr Culleton, this notice is to be served on yourself. You said no, you’re not taking that. I then reached across the table. I placed it on the table in front of you and I said Mr  
45 Culleton is deemed served as of this point and I will make the record that the service has been made. Then I left the room, and you sat back down at the table a short time later.

Okay. Well, I deny that, as you know. That's not the event. And can I also say, is it normal practice that police officers serve documents in the confinement of the courts, considering I had my barrister and other individuals with me?---Your barrister wasn't with you at the moment – at the time. But yes, we can serve papers. That's part of our duties. It's a legal process that has to be done.

On the court grounds, is it?---I don't understand your question.

Are you able to serve bankruptcy petition papers on the court grounds, confinement of the courts?---You were in the police station, Mr Culleton.

Yes. But I was linked to the court, as you know. I walked through the back passageway which has got checker plating all through it?---No. I'm not aware of that. No.

No. Well, that's show - - -?---You were .....

Well, that's how I – that's where I went. I was taken through – I've actually got footage of that.

HIS HONOUR: Well - - -

MR CULLETON: But what I would like to do also ask the question, considering it was an interview room, it would have been under recording, would it not?---It was an interview room. It was just a waiting room. There's a table and chairs and a computer in there.

But would it be fair to say that I was – that's where I – it was the only room that I was shown and that's where I gave my evidence to Matthew Robinson. He did the paperwork and he told me to come into the interview room?---What happened is you were - - -

MR ABBOTT: I object, your Honour.

THE WITNESS: Yes.

HIS HONOUR: Just a moment.

MR CULLETON: Yes. No?---You were .....

It was the interview room, so there would be a tape recording.

HIS HONOUR: Just – everybody, just a moment, please. Mr Abbott?

MR CULLETON: Can I not have - - -

HIS HONOUR: Just - - -

MR CULLETON: Can I have not commentary from the - - -

HIS HONOUR: Just - - -

5 MR CULLETON: - - - chamber, your Honour, because it's putting me off.

HIS HONOUR: Yes. We won't have any comments in - - -

MR CULLETON: Well, there is.

10

HIS HONOUR: All right. I'm not hearing it, but we shouldn't - - -

MR CULLETON: They need to keep it to themselves.

15 HIS HONOUR: We won't have any. But Mr Abbott is on his feet. Yes, Mr Abbott.

MR ABBOTT: Your Honour, the question that has just been put to the witness asked him to adduce hearsay evidence about what some other officer may or may not have done.

20

HIS HONOUR: Well, I'm not sure that the witness was actually responding to that. Let's proceed with the next question.

25 MR CULLETON: Well, I have filed documents, your Honour - - -

HIS HONOUR: Well, that's fine, but this - - -

MR CULLETON: - - - in that court case of - - -

30

HIS HONOUR: We're not - - -

MR CULLETON: Where I had to hand myself in.

35 HIS HONOUR: We're not here to take your evidence.

MR CULLETON: Yes. Okay. Well, I'm just - - -

HIS HONOUR: It's your opportunity to ask questions in cross-examination of Sergeant Scott.

40

MR CULLETON: Yes.

HIS HONOUR: Anything that he can personally give direct evidence about.

45

MR CULLETON: Yes. Well, can I say - - -

HIS HONOUR: Ask.

MR CULLETON: Yes. Can I ask.

5 HIS HONOUR: You need to ask.

MR CULLETON: I – well, can you please repeat what I said to you.

10 HIS HONOUR: I'm not going to ask you do that. He has done it twice.

MR CULLETON: Has he? Okay. Well, I do find it offensive, your Honour, because I didn't say that at all.

15 Now, I guess paragraph 5, you say I – am I Mr Culleton's – am I the person standing before you today that was at Armidale? I suppose it should say that?---Yes, you are, Mr Culleton.

20 And would it be – you say that I refused to take bankruptcy notice with the attached order of the District Court of Western Australia and said words to the effect of I then placed the bankruptcy notice with the attached order of the District Court on a table, yet you say in paragraph 2 that you personally handed it to them. A bit contradictory, would you say?---I accept I served the papers. The papers were deemed serve.

25 A belief. Would - - -?---You wouldn't .....

I would – I would have to object that there's no video footage of that room, because I would be fully aware that that station would have video surveillance, and I would request - - -

30 HIS HONOUR: Well, you've already – you've already asked that question.

MR CULLETON: Yes, well, I request that. This is important.

35 HIS HONOUR: It's a submission you can make - - -

MR CULLETON: Yeah.

40 HIS HONOUR: - - - later, if you want to, to the court.

MR CULLETON: Yeah, okay.

45 HIS HONOUR: You've got this witness here. If you've got any other questions for him, you should ask them of him.

MR CULLETON: Yeah, okay. Okay.

So you've fully read all the contents of the notice?---No, I did not.

Well, then how did you know what you were serving?---Because I had a conversation with the gentleman that's given me the paperwork. I've perused the .....  
5 but I didn't go through the whole document, no.

But then if you're a server – if you're a process server, wouldn't you have to be fully aware of the contents of the documents?---No, I just - - -

10 Not a perusing. Hey?---No, I'm just aware of the documents I did serve, and then I've served them on you.

You just said that you weren't, in a sense. You were just – you just perused it. You didn't read all the contents.  
15

HIS HONOUR: This is becoming argumentative.

MR CULLETON: Okay. Well, I'm just putting it across on – you know.

20 Who else was in the room at the time when you served the document – or purportedly served the documents?---Just yourself and myself. Just the two of us.

Are you sure about that?---Yes, Mr Culleton. Yeah.

25 You would – you say on oath you are very sure of that? Certain? Are you certain?---Yes, I am.

Are you certain?---I've already answered that question.

30 And please answer it again?---There was only two of us in the room.

And could you describe that room to me, please?---So it's got an internal door that goes into the police station in the hallway, where the sergeant's office is; glass panels, where I could see from my office into that room; at the back, where there's a  
35 table with a computer and a telephone. At the back of that room, there's another doorway that opens in the hallway that leads out to the main foyer of the police station.

And did I have free access around the station that day?---No, you did not.  
40

Did I go to the toilet at any stage through that station or talk to the other people in the other room where all the security screens were?---You may have, Mr Culleton. I'm not sure. You may have went to the toilet. I'm not aware that – what you did.

45 Yeah, and what were your duties that day? Were you - - -?--- .....

Yeah. You were in and out of the station, weren't you, and Matthew Robinson was the gentleman that was interviewing me, not you?---I'm not aware what his role is. You presented with a first instance warrant. I was the custody officer, and I completed your bail to attend court that day.

5

Yeah, and then what else did you do that day? Did you go back to the court?---I had a lot of things on. It was a very busy day, yes.

What would you say if I was to say I was never alone?---That wouldn't be true.

10

Well, that's why we need the video footage of that room, and I understand, your Honour, there is video – there would be video footage of that room. Also could I please – also say this into the court, that from my memory, I could go out into the hallway and there was glass panels, so I could see the gentleman who – who I believe was a gentleman that was hanging around with court papers. I could've seen him prior - - -

15

HIS HONOUR: You're making statements as though you are giving evidence. The witness - - -

20

MR CULLETON: Well, I just need the officer to - - -

HIS HONOUR: The witness is here.

25

MR CULLETON: Yeah.

You can see outside from that room, can't you? From the - - -?---What was the question?

30

From the hallway, as I understand it, if anyone came into the police station they would walk up the steps, off memory, in the front entry, anyway. They would come in and there's the hallway, and I was on the first room, off memory, on the left. I could simply see out the glass to see who was outside the police station.

35

HIS HONOUR: The question isn't so much what he could see but whether a person in that room where he was, where you served him, could see out - - -

MR CULLETON: I wasn't locked in there. I had free range of the police station.

40

HIS HONOUR: Whether a person in that room could see out through the glass panel.

MR CULLETON: Yes.

45

HIS HONOUR: That's the question?---If he – your Honour, if he was seated in the room where I served the papers, no one from the front of the station would be able to

view him, no. He wouldn't be able to see out into the foyer of the station if he was in the room, no.

5 MR CULLETON: No, no. I'm saying outside the front of the court – the police station?---No, I don't know what you mean. If you were standing in the hallway - - -

10 In the hallway, correct, through the door?--- ..... you could only see the rear of the police station. If anyone was up near the front counter you wouldn't have vision because .....

10 No, I'm not saying the front counter; I'm saying anyone out on the front footpath?---I don't know, Mr Culleton.

15 Well, then, one would say you're a bit confused about what room you may have been in.

HIS HONOUR: Well, that's a – that really is an observation.

20 MR CULLETON: Yes. Okay. Well, I deny all that evidence, your Honour.

HIS HONOUR: Yes, well, you're asking him the questions.

25 MR CULLETON: And one thing that my – before I sit down, my lawyer has just rang me and said because I have the amount to pay out the petition I would ask the court to give a springing order considering you have refused the application of my jury, and that I would appeal that in any light that you make a springing order to whereby I pay funds into the court and exhaust my legal remedies. Now, I have cleared funds, or certainly would have cleared funds because it is logistic. We're talking a - - -

30 HIS HONOUR: Let's just pause for a - - -

MR CULLETON: Yes. But I'm just asking - - -

35 HIS HONOUR: No, no. No, no. No, no.

MR CULLETON: - - - could that – could that be an application right now.

40 HIS HONOUR: Senator Culleton, stop for the moment. Have you finished your cross-examination?

MR CULLETON: For the time being, yes.

45 HIS HONOUR: No, no, there's no time beings. Have you finished your cross-examination of Sergeant Scott?

MR CULLETON: Yes, I have.

HIS HONOUR: Is there anything else – you're finished?

MR CULLETON: Just one moment, sorry.

5 HIS HONOUR: All right.

MR CULLETON: One moment. May I ask how many other creditors petitions you may have served in your past six months or a year at your police station?---Look, what documents are you referring to, Mr Culleton? How many - - -

10

Well, you say that you – you say that you serve – you serve bankruptcy petitions. How many of those have you served in the last 12 months, or done process serving? How often have you done that?---I haven't served a bankruptcy notice before, no.

15 Okay. And how often have you served other documents at the - - -?---It can be on a daily basis, so AVOs or subpoenas, a lot of different types of paperwork, Family Court orders.

20

Yes?---It can be on a daily basis, but nothing set in – I don't have a - - -

And could you please say to the court who the gentleman who you – you know, when you took – you say you took these papers. Who did you take them off? What was the gentleman's name and did you have a look at his identification?---No, I did not. I probably should have. I didn't get his name. He was from a local – one of the law firms. But I did not get his name at the time, but I had a conversation with him out the front, but I didn't recall his name.

25

So you don't introduce yourself normally when you engage in conversation?---I did, but I didn't recall his name, Mr Culleton.

30

No. And what law firm was he working for?---I don't recall, just for interest. I'm sorry, I just cannot recall who he was with now.

35

So you've just gone out and taken anything and gone and served a senator what could have – what if it was something else. You didn't check?---I had a look at the notices. We had a conversation and I served the paperwork, yes.

So if you had a conversation, what did you talk about?

40

MR ABBOTT: With respect, I object. The question is confusing.

HIS HONOUR: Yes. I can't see the relevance.

45

MR CULLETON: Well, I mean, did they go through what - - -

HIS HONOUR: Senator Culleton, this isn't – this isn't the opportunity to try and chew up time, if that's your intent. Have you got any questions that are relevant to your - - -

5 MR CULLETON: Your Honour, I have to be very – you know - - -

HIS HONOUR: Senator Culleton, have you got questions that are relevant that you want to put? You're just about finished and you've got a new breath. That's fine. Have you got any relevant questions to be put?

10

MR CULLETON: Okay. Can you access the court from the Armidale Police Station?---Yes, you can.

15

Would you say that the Armidale Police Station and the court is connected?---Yes, it is. Yes.

20

Can you please say to the court – well, on this question, would you say that's all on the one ground, the Armidale Police Station and the local court?---It is joined at the back section, but the front is a different type of building and there's car parks in between, but the back section has got a tunnel where we can walk through people through .....

Yes. So the buildings are all joined?---They're joined at the back. Yes, they are .....

25

Yes. So the court is on the same location. It's not a block, five blocks down the road. It's all on the same side?---It's next door.

Thanks. Well, and it's joined?---Joined at the back, yes.

30

Yes. So because that's how I went over to the court.

HIS HONOUR: Well, you've asked him the question.

35

MR CULLETON: Okay. That's all I have to say, your Honour.

HIS HONOUR: Yes. Thank you very much. Mr Abbott, do you have any re-examination?

40

MR ABBOTT: No. Thank you, your Honour.

HIS HONOUR: Thank you. Sergeant Scott, thank you for attending the court via the video conference facility. You're now free to go about your ordinary business and this connection will terminate. Thank you?---Okay. Thank you, your Honour.

45

Yes. Thank you.

HIS HONOUR: Mr Abbott, back to you.

5

MR ABBOTT: I rather had the impression that the senator had some further application that he wished to make whilst he was cross-examining, your Honour. Is it convenient that that be dealt with?

10 HIS HONOUR: I'm not - - -

MR CULLETON: Well - - -

15 HIS HONOUR: You raise a question – apparently you've been told about the language of the springing order and you wanted me to make an order. In what terms?

MR CULLETON: Well, your Honour - - -

20 HIS HONOUR: No. Tell me the - - -

MR CULLETON: In what – okay.

HIS HONOUR: Tell me the terms of the order you want me to make.

25

MR CULLETON: Well, you can make a springing order.

HIS HONOUR: No, no. Tell me the terms of the order you want me to make.

30 MR CULLETON: Okay. That I pay the funds in cleared funds into the court of two hundred and – well, there's over 300,000. So two hundred and whatever the purported amount is, considering I still have the right to my first appeal, that it gets paid into the court and that that satisfies today and then perhaps I put on an application to appeal the jury.

35

HIS HONOUR: I'm sorry.

MR CULLETON: Well, the issue here today is whether I'm solvent, and I am solvent, your Honour.

40

HIS HONOUR: What you're – no, no. Just pause. Pause. What you're proposing is that you will put up funds equal to the amount which is alleged to be owing under the judgment, subject to the bankruptcy notice carrying presumably whatever interest it carries up to this point. Is that right?

45

MR CULLETON: Well, I've already done that - - -

HIS HONOUR: You mentioned it - - -

MR CULLETON: - - - in a solicitor's account. But my concern was that you said you have no - but I can give you evidence of that funds.

5

HIS HONOUR: All right. Pause. No, no. I'm not interested in the evidence; I'm interested in the actuality at this moment. You say that whatever is due and owing you will pay, you're saying, into court - - -

10 MR CULLETON: Yes.

HIS HONOUR: - - - and you would do that - - -

MR CULLETON: To be held in trust.

15

HIS HONOUR: - - - and you would want to preserve, however, a right to appeal so that you can have a jury trial.

20 MR CULLETON: Yes. And as his Honour - and I'm hoping his Honour is prepared to accept some hand-up documents today because that was my - - -

HIS HONOUR: Well - no, no. I'm just trying to understand what - - -

25 MR CULLETON: No, no. But I still have the right to appeal in the Supreme Court, as you know, your Honour.

HIS HONOUR: Well, I - you're talking about the appeal in the Supreme Court.

30 MR CULLETON: Well, I have the right to appeal the primary judgment of Curthoys in the West Australian Supreme Court, which I think is up on 2 February of next year. So I have a right to appeal the judgment against Balwyn who appeared - has a judgment when it was not - nowhere near the notes and discussions.

HIS HONOUR: All right.

35

MR CULLETON: I have that appeal. You've just denied my right for a jury - - -

HIS HONOUR: Well, I found you don't have it.

40 MR CULLETON: - - - and I can appeal that.

HIS HONOUR: I found you don't - - -

MR CULLETON: But as an act of good faith - - -

45

HIS HONOUR: Senator Culleton.

MR CULLETON: - - - I can do – you could grant a springing order - - -

5 HIS HONOUR: Senator Culleton, I haven't denied your right; I've found you don't have a right to just have a jury trial. I've exercised the power where I can exercise a discretion and I found there aren't appropriate grounds for doing so. Now - - -

MR CULLETON: Well, I do have a right, if it's a constitutional matter. I have a right to a jury, your Honour.

10 HIS HONOUR: Well, I've ruled that you haven't. So - - -

MR CULLETON: Well - - -

15 HIS HONOUR: - - - you want to appeal that.

MR CULLETON: - - - that's an appealable point, your Honour.

20 HIS HONOUR: Well – all right. You want to appeal it, but more to the point, so far as this bankruptcy proceeding is concerned, you want to put the moneys that the applicant would like to receive into the court pending the finalisation of an appeal that's pending in the Supreme Court - - -

MR CULLETON: Absolutely.

25 HIS HONOUR: Hang on. Let me finish. I'm trying to understand what you're asking for an order. And also subject to the conclusion of any appeal concerning my ruling today that you don't have a right – or I'm not exercising - - -

30 MR CULLETON: Or setting – any right that's open to me through the legal channel, your Honour.

HIS HONOUR: To enable you – well, to the jury trial.

35 MR CULLETON: Yes. Because – can I - - -

HIS HONOUR: All right. No, no. No, no. No, no.

40 MR CULLETON: You know, the whole issue today is you're going to say, "Are you solvent, Mr Culleton?" And I am.

45 HIS HONOUR: No, no. I'm wanting to understand clearly the terms of the proposition put. And the reason is this: Mr Abbott on behalf of the applicant earlier in the day, when the question of the adjournment came up, said there was obviously no firm proposal, as sometimes happens in bankruptcy proceedings, where at the last minute people find the wherewithal to settle up with the creditor, and everyone is then happy because the matter is resolved. What I'm going to do for a short period is adjourn so that you can outline to Mr Abbott – I'm not in a position immediately to

accede to that, but the applicant might possibly be interested; I don't know. So I'm going to give you the opportunity to explain exactly what you're proposing to him. He may need to take some instructions about it. And – it's 5 to 12. At a quarter past 12, I will open the court again and I will see what has happened to your proposal.

5

MR CULLETON: Yes. Can I just say for the record, your Honour, that has always been the case with - - -

HIS HONOUR: Well, I'm - - -

10

MR CULLETON: Mr Lester has always wanted the intellectual property as a patent troll.

HIS HONOUR: No. Save me that. I'm interested in the bankruptcy proceeding. So - - -

15

MR CULLETON: Yes. Okay. He has never wanted to take any funds, your Honour.

20

HIS HONOUR: If you can deal with the precise sums involved and there was consent to an order being made, that may possibly resolve the matter presently. I will adjourn to a quarter past.

MR CULLETON: Thank you.

25

**ADJOURNED**

**[11.54 am]**

30

**RESUMED**

**[12.30 pm]**

MR ABBOTT: Your Honour - - -

35

HIS HONOUR: Yes, Mr Abbott.

MR ABBOTT: - - - the parties are very grateful for that indulgence. The position that has been reached is this, Senator Culleton has put a proposal to my client. He has now been invited to put that in writing so that it can be properly considered and, as things currently stand, we propose that we continue until whenever is the appropriate luncheon adjournment. He can then speak to his solicitors when we break, so that he can put whatever proposal he wants to put in writing. And if it finds favour with the petitioning creditor, so be it. If it doesn't, well, then, we will continue in any event.

45

HIS HONOUR: Well, it's half past 12. I would normally rise for the luncheon adjournment at quarter to 1. I could adjourn now and resume again at 2 o'clock.

MR ABBOTT: That would be very convenient to me. Thank you, your Honour.

HIS HONOUR: Senator Culleton, would you like - - -

5 MR CULLETON: Well, my – sorry.

HIS HONOUR: Would you like to take the opportunity to have an adjournment to respond to the proposal that you put whatever this proposal is in writing?

10 MR CULLETON: Your Honour, I am very – I have been asking for that all morning and I'm happy to do that.

HIS HONOUR: All I - - -

15 MR CULLETON: Nothing takes away what I've already put before the court.

HIS HONOUR: That's all I want to know at this point, though.

MR CULLETON: Yes.

20

HIS HONOUR: So you intend to put a proposal in writing and you will do that quite soon and hopefully before 2 o'clock.

MR CULLETON: Yes. And Johnny Maitland, I've just spoken to - - -

25

HIS HONOUR: Tell me no more.

MR CULLETON: Well, hang on a minute. This is important, your Honour. My lawyers are in Melbourne, which is three hours at – nothing takes away which I've put on the court transcript. We have the money in trust.

30

HIS HONOUR: You don't - - -

MR CULLETON: It's about putting the offer that I've put to the court in writing for them to get sincerity over it, your Honour.

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HIS HONOUR: It's between the two of you at the moment.

MR CULLETON: Yes. No, no, I understand that, so - - -

40

HIS HONOUR: I'm only partially interested.

MR CULLETON: But they want it in writing from my lawyer.

45 HIS HONOUR: I can understand all of that.

MR CULLETON: Okay. So let's just say that we hope that it's fine.

HIS HONOUR: All right. Well, I will leave it in your various hands to - - -

MR CULLETON: Yes. Thank you.

5 HIS HONOUR: - - - if you can, to bring that to some resolution, otherwise we're  
back at 2 o'clock. And we will be back in any event, you can tell me what the  
decision is then.

MR ABBOTT: Thank you, your Honour.

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MR CULLETON: Thank you, your Honour.

HIS HONOUR: All right. We will adjourn till 2 o'clock.

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**ADJOURNED**

**[12.32 pm]**

**RESUMED**

**[2.05 pm]**

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HIS HONOUR: Yes, Senator Culleton.

MR CULLETON: Your Honour, I have gone away, as requested. I've spoken to  
25 the other side. I have had – I have contacted my solicitors in Victoria and they have  
come back, which you have a copy of that letter. But I wish to read it to the court, if  
I may.

HIS HONOUR: Yes. A copy of this has been given - - -

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MR CULLETON: Yes.

HIS HONOUR: - - - to Mr Abbott, has it?

MR CULLETON: Yes.

a

MR ABBOTT: Yes, it was just given to me before your Honour came in, five  
minutes or so.

40 HIS HONOUR: All right.

MR ABBOTT: I've expressed - - -

MR CULLETON: It was actually emailed - - -

45

HIS HONOUR: Just – sorry - - -

MR CULLETON: It was actually emailed to the other side at 1.29 pm our time, so they've had it for over half an hour.

5 HIS HONOUR: Well, let me just check. Before we broke there was a proposal to be put in writing.

MR ABBOTT: Yes.

10 HIS HONOUR: And we were going to see where it got us, and we're back here. You had – is your – have you or your client seen this now, Mr Abbott?

MR ABBOTT: Yes, I've seen it and I've taken instructions about it.

15 HIS HONOUR: Yes.

MR ABBOTT: And my instructions are to proceed.

HIS HONOUR: All right. So, Senator Culleton - - -

20 MR ABBOTT: That is, sorry, your Honour, that the content of the letter doesn't meet a proposal that's sufficient to enable us to continue to negotiate on it.

25 HIS HONOUR: All right. Well, the court doesn't need to enter into the negotiation, but you – the document has been given to the other side. They have it. That's all that I need to know at this point.

MR CULLETON: Well, have you considered the contents of the letter, your Honour?

30 HIS HONOUR: Well, it's not – the letter was shown to me a moment ago.

MR CULLETON: Yes. Have you read it?

35 HIS HONOUR: But it's not – it's not for me to engage in the dealings between the parties.

40 MR CULLETON: Well, it clearly shows that we – what we've been saying this morning, that substantial moneys are in trust and that we're affirmed instructions to supply those funds in certification of a creditors petition.

HIS HONOUR: Well - - -

45 MR CULLETON: So it's basically saying what we were speaking about. I have the primary appeal, we have the moneys. If that appeal falls over in February and all my legal channels are exhausted, also so the foreshadowed right to the appeal for the section 78B notice this morning that we will pay.

HIS HONOUR: Well, it doesn't identify a sum of money that's being held by the lawyers. It's intended to - - -

MR CULLETON: Substantial moneys which it - - -

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HIS HONOUR: It doesn't say the amount. It doesn't say that it's going to be paid into court either.

MR CULLETON: Well, there's in excess of \$300,000, your Honour, and I think by - - -

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HIS HONOUR: It doesn't say that. It doesn't say that, Senator Culleton.

MR CULLETON: Well, I'm telling you under oath in this court, that's what there is.

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HIS HONOUR: Well, you're not under oath, you're making submissions from the bar table.

MR CULLETON: Well, I – do you – would you like me to swear an affidavit quickly on it, your Honour?

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HIS HONOUR: It would have been an easy thing for evidence to cover these matters.

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MR CULLETON: Well, I can go. I can go and swear an affidavit. I have a justice of the peace here in the court. I can go off and put in an affidavit. In actual fact, I would prefer to do that.

HIS HONOUR: Senator Culleton, look, the real point is this, I'm here to determine an application, a creditors petition, to sequester your estate. There are issues of law and fact that pertain to that. That's the jurisdiction I'm here to exercise. I'm not here to act as a mediator or an arbitrator in relation to some bargain that you would like to put to the other side. As I understood, you were going to put a firm proposal to them in writing.

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MR CULLETON: Well, I've done that, your Honour.

HIS HONOUR: You've done that, and it has not been - - -

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MR CULLETON: Through my solicitors.

HIS HONOUR: It has not been accepted. The court is not here to tell the parties what to do.

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MR CULLETON: Okay. Well, if we're going to proceed on, I call to – I will need to call on my witnesses. Thank you.

HIS HONOUR: Yes. All right. But I will come back to Mr Abbott because he's still dealing with the applicant's case at this point.

MR ABBOTT: Thank you, your Honour.

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HIS HONOUR: Mr Abbott.

MR ABBOTT: Can I just make one observation about the letter and the matters that the senator has just raised. If they – they are matters that the senator may wish, in the way he runs his defence to the application, to raise, at whatever points he wants to raise it, but for current purposes, the proposal, as I've said, is unacceptable to my client and I'm to proceed. Your Honour, in the submissions that were filed on behalf of the petitioning creditor on 20 November 2016, at page 2 of those submissions there is a list of affidavits that have been filed in the proceedings, or had been filed in the proceedings up to that point in time. I intend now to formally read those affidavits.

Obviously I'm not going to read them word for word, but I, for the record, read the affidavit of Richard Denis Lester AM, sworn on 18 October 2016, verifying the creditors petition. And my submission is that that's compliant with section 47 of the Bankruptcy Act and the Bankruptcy Rule 4.04. I also formally read the affidavit of Michael Grant Lundberg, sworn on 19 October 2016, verifying searches of the Federal Court as to the applications in relation to the bankruptcy notice and, in my submission, that complies with rule 4.04.

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And also the affidavit of Pierce Tait McMahon, which was sworn on 21 November 2016. That affidavit serves two purposes. The first is, of course, to verify the currency of the indebtedness as at the date that it was sworn, and that was when the matter came before Registrar Jan, so that's to comply at that point in time with rule 4.06. Mr McMahon has sworn another affidavit which I've already referred to, which is sworn today, which is compliant, in my submission, with 4.06 for the – to complete the formalities.

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MR CULLETON: can I have a copy of that, please?

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MR ABBOTT: They have all been served, as I understand.

MR CULLETON: I haven't got that one.

MR ABBOTT: Sorry, which one don't you have?

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MR CULLETON: I haven't got the latest one that you've just said. I was just looking through my file. I appear not to have it.

MR ABBOTT: Just bear with me, your Honour. The second purpose of Mr McMahon's first affidavit, that's the one sworn on 21 October – sorry, November this year, is to establish that Mr McMahon sent by email to Senator Culleton,

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addressed to two different email addresses, all of the affidavits that I've referred to, except the ones that are prepared by Mr McMahon, sworn by Mr McMahon. Now, that in a sense, your Honour, is overkill to this extent. That is that the bankruptcy petition has to be proved to be served on Senator Culleton. However, Senator  
5 Culleton – and so that, Mr McMahon says, was achieved by email. However, in any event, the senator has entered an appearance to this matter, and that's dated 16 November 2016. And in consequence - - -

10 MR CULLETON: Now, can I object to that – am I allowed to object to that?

HIS HONOUR: We will come to it in a minute.

MR CULLETON: Well, I must say it's - - -

15 HIS HONOUR: We will come to it in a minute.

MR CULLETON: Okay. Conditional appearance, your Honour.

20 HIS HONOUR: Let Mr Abbott - - -

MR CULLETON: Conditional appearance.

HIS HONOUR: Let Mr Abbott finish.

25 MR ABBOTT: Your Honour, I will come back to the point about the conditionality in a moment, but the Federal Court Rules, of course, by rule 10.11, provide that entering an appearance is effective to prove service. There is no issue about the service of the bankruptcy petition in instance, as a result of the entry of the appearance; that is irrespective of the content of Mr McMahon's affidavit in  
30 November, which we say, in any event, establishes service by email.

Your Honour, if it's convenient, I'm quite happy to deal with the appearance issue, as far as Senator Culleton appears to have raised it just now, but, otherwise, it's my submission that the petitioning creditor has satisfied all of the requirements of the  
35 Act and that matter now turns to Senator Culleton to persuade your Honour that a sequestration order ought not be made for any of the reasons that he contends that that order shouldn't be made. I intend, with your leave, your Honour, to wait to address Senator Culleton's propositions until after he has disclosed them in argument and I propose, with your leave, to address those effectively by way of response. I  
40 can deal with the question of the appearance immediately, if that's convenient to your Honour.

HIS HONOUR: Yes, certainly.

45 MR ABBOTT: The notice of appearance is dated 16 November 2016. It doesn't contend, by its heading, in any way, to be conditional. It's merely expressed to be a notice of appearance filed in this registry in these proceedings. It has an address for

service. It has an email address for service, which appears to be the senator's parliamentary office, and it's signed by the senator. In addition, it includes, as an attachment, a notice stating grounds of opposition to the application, an interim application or petition, and the senator sets out there seven propositions that he contends are a basis to oppose the order that is being sought.

None of those things are consistent with this document being in any way conditional. The appearance isn't conditional and it doesn't follow a form where there would be a contention about the substance of the matter contained within the document if there was any conditional purpose to the notice of appearance. I also just note that this doesn't appear to be any question where there is a jurisdictional issue to be drawn on the service of the process, which would be a circumstance in which one would ordinarily see a conditional appearance, where that issue would need to be dealt with before the appearance itself became conditional. So in my submission, the notice of appearance is unconditional and it serves the purpose of proving service of the sequestration order – the sequestration – sorry, the petition for the bankruptcy. Thank you, your Honour.

HIS HONOUR: Yes, thank you. Yes, Senator Culleton.

MR CULLETON: Your Honour, on the 13<sup>th</sup> – first of all, it must be said to the court that the first time I ever was aware of a potential creditors petition is where I read about it in the newspaper. Based on that, and with my very busy schedule, I was obliged to enter a conditional appearance, meaning I will put it in, but I'm not sure where this is all going. You must remember I lost a farm on a – by a – by a registrar because I appeared in the court and I said I wasn't – didn't enter an appearance. So lost a multi-million dollar outfit, so I wasn't prepared to lose my credibility and livelihood the second time, your Honour.

So I did file a conditional appearance, yet it was rejected by the Federal Court, and they said that you had to enter an appearance, otherwise you cannot enter an appearance, so my hands were effectively tied. So with that I basically threw what I needed to throw so that we would come before the court. At no stage have I been served. And I say the contrary, the proof is on the applicant to prove that service was given.

Now, I've had a look at the affidavit and it clearly says that I was – Rodney – served on a Rodney Norman Culleton email. I don't have an email of Rodney Norman Culleton and I have affidavits and witnesses before the court to whereby I have not seen any substituted service, nor have I given consent in any degree to the other party, and nor have I got problems of insolvency. So I am dealing with it as I – I am, as I need to, so I will – I requestfully ask, if we're going to go ahead and my learned friend's potent man doesn't want to accept money, well, then I need to be able to read out all my affidavits and bring – call my witnesses. Otherwise, we could have a springing order, your Honour, as I suggested to you earlier, considering there is substantial money in trust to deal with this.

HIS HONOUR: Now, in relation to the affidavits that you seek to rely upon, there are a number have been filed, including today and quite recently - - -

MR CULLETON: Yes, that's correct.

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HIS HONOUR: - - - can we formally read those – that means they don't have to be read out loud, but we - - -

MR CULLETON: Yes.

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HIS HONOUR: - - - we note the affidavits that you're actually relying on in the proceeding.

MR CULLETON: Yes.

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HIS HONOUR: So I'm looking at a list of them here on this computer screen in front of me. Mr Abbott?

MR ABBOTT: Your Honour, I just foreshadow that, in relation to the affidavits that are – sorry, the documents that are headed Affidavits and apparently sworn by the senator, I wish to make some submissions about the general admissibility and/or weight of those documents.

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HIS HONOUR: All right. Well, let's proceed on the basis that you have foreshadowed some objections to, perhaps, some of these materials - - -

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MR ABBOTT: Yes, thank you, your Honour.

HIS HONOUR: - - - and you will deal with that in a minute.

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MR ABBOTT: Thank you, your Honour.

HIS HONOUR: Well, let's identify the documents, first of all, that you want to rely on, Senator Culleton. I note an affidavit that you made dated 6 December 2016.

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MR CULLETON: Yes, your Honour.

HIS HONOUR: I note a further affidavit of yours dated 12 December 2016.

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MR CULLETON: That's correct.

HIS HONOUR: A further affidavit of yours made 16 December 2016, which it might actually be the size of it, it comes in two parts to me.

45

MR CULLETON: That's correct.

HIS HONOUR: There's a, I think, another affidavit of yours of 12 December 2016.

MR ABBOTT: I'm sorry, your Honour, do you have two affidavits from the senator of 12 December?

HIS HONOUR: Are there two or is there only one?

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MR ABBOTT: I understand there to be only one.

HIS HONOUR: It might be - - -

10 MR CULLETON: It must have come in two, did it? There's two.

HIS HONOUR: I have one that was filed – I will just need to check whether they're one and the same affidavit, but Senator Culleton is saying there's two. And then there are some affidavits concerning service of the bankruptcy notice; there's an affidavit of Peter Edward – sorry, John Alexander Codrington.

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MR CULLETON: Yes, do you want me to read them out for your Honour?

HIS HONOUR: Well, just identify them at this point.

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MR CULLETON: Hang on.

HIS HONOUR: It's 8 December 2016, affidavit of Peter Edward King sworn 19 December 2016. And they're the ones that I've seen. There were some affidavits that were not accepted for filing.

25

MR CULLETON: Yes. Well, there was a Leona Jones, which was 19 December 2016. You've got that?

HIS HONOUR: I see that listed here. I haven't actually read it. It must have come in after we started or about the same time.

30

MR CULLETON: Yes. Well, I've got the copies here, so - - -

35 MR ABBOTT: Your Honour, I haven't been - - -

HIS HONOUR: Do you have a copy of that, Mr Abbott?

MR ABBOTT: I haven't been served with an affidavit from Ms Jones, nor an affidavit from - - -

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MR CULLETON: No. They have been done electronically.

MR ABBOTT: - - - Mr – what is it – Codrington?

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HIS HONOUR: Yes. Do you have that?

MR ABBOTT: No.

HIS HONOUR: Mr King?

5 MR CULLETON: I've got – yes.

MR ABBOTT: Yes. The one that came this morning.

10 MR CULLETON: 8 December 2016. Mr John Alexander Codrington. Have you not got that?

HIS HONOUR: Yes.

15 MR CULLETON: Yes.

HIS HONOUR: The question is – Mr Abbott is suggesting he hasn't received it.

MR CULLETON: Okay. Well, I've probably got a copy here, so - - -

20 MR ABBOTT: So the date of that was 8 December, was it?

MR CULLETON: Yes.

25 HIS HONOUR: Have you got a copy of Ms Jones' affidavit of 19 December for him?

MR ABBOTT: No, I don't, and I'm instructed that my instructors haven't been served with that affidavit.

30 HIS HONOUR: So Mr Culleton may have a copy as well. I see it, but I haven't seen any other affidavit that appears to be filed of Anne Marie Leonard of 19 December. So, Mr Culleton, has that, do you understand, been filed and served?

35 MR CULLETON: Yes.

HIS HONOUR: Do you have that one, Mr Abbott?

MR ABBOTT: Leonard? No.

40 HIS HONOUR: I think Senator Culleton has a copy for you. Now, I think that covers the file.

MR CULLETON: No. There's more, your Honour.

45 HIS HONOUR: What else is there?

MR CULLETON: There's Bradley Glen Ward.

HIS HONOUR: Who?

MR CULLETON: Bradley Glen Ward, which was filed on the date – hang on.

5 MR ABBOTT: I have that sworn 14 December, your Honour.

MR CULLETON: 14<sup>th</sup> day of December. Have you got that one?

MR ABBOTT: I do.

10

MR CULLETON: He does. So have you got that one, your Honour?

HIS HONOUR: No. It doesn't seem to have been filed electronically.

15 MR CULLETON: Well, just as well I've got copies, hey?

HIS HONOUR: Just double check through my associate to make sure I haven't missed it. Well, it doesn't seem to have been electronically filed. Do you have the electronic filing confirmation form?

20

MR CULLETON: Not with me, your Honour.

HIS HONOUR: I will just check. Is there any objection, Mr Abbott, to the court receiving this on the understanding that if it hasn't been filed, it will be filed?

25

MR ABBOTT: That's – I have no objection to Mr Ward's affidavit. No, your Honour.

HIS HONOUR: All right. Well, I will - - -

30

MR ABBOTT: I reserve my position just presently until I've read these other affidavits, if that's - - -

HIS HONOUR: Yes. So far as the court receiving Bradley Glen Ward's affidavit, 14 December 2016, subject to it being formally filed, if it hasn't been – it doesn't appear on my electronic court record – it will be otherwise be received and now it's formally read. Is there any other affidavit?

35

MR CULLETON: Yes. There's Chamonix, my adviser.

40

HIS HONOUR: I don't - - -

MR CULLETON: And that was done on 19 December.

45 HIS HONOUR: Have you received a copy of that, Mr Abbott?

MR ABBOTT: I'm about to.

HIS HONOUR: Has it been electronically filed or otherwise filed?

MR CULLETON: Yes, it has, your Honour.

5 HIS HONOUR: It doesn't appear on my list. Did you cause the electronic filing or did somebody else?

MR CULLETON: Well, I'm not – sorry?

10 HIS HONOUR: Did you cause the electronic filing or did somebody else?

MR CULLETON: Mr Gargan is in the court. Mr Gargan.

MR GARGAN: ..... didn't have time for this morning, the last one.  
15

HIS HONOUR: Well, this is the question I'm asking. I don't want - - -

MR CULLETON: Well, no. Well, hang on. That's a genuine mistake. I was under  
- - -  
20

HIS HONOUR: I don't want guesses as to whether or not they've been done.

MR CULLETON: Well, I – sorry?

25 HIS HONOUR: All right. Let me just check.

MR CULLETON: Well, this is dated the same time.

HIS HONOUR: Well, it might be – it appears to be – it's not actually dated at the  
30 base of it. I'm not sure when it was made. I see 19 December now.

MR CULLETON: And - - -

HIS HONOUR: Well, let me just check, first of all. Mr Abbott, do you have any  
35 objection on the same basis as the last document that the court might receive this and allow it to be read, subject to it being filed if it hasn't been yet?

MR ABBOTT: Sorry. Which one are we talking about now, your Honour?

40 HIS HONOUR: The - - -

MR CULLETON: Chamonix.

HIS HONOUR: Chamonix Terblanche.  
45

MR ABBOTT: No, your Honour. I don't have any objection to that.

HIS HONOUR: All right. Well, at this stage, the affidavit of Mr Ward and Mr Terblanche are received, subject to them being filed. Are there any others, Senator Culleton?

5 MR CULLETON: We've got John Maitland, haven't we? We're all agreed on that one. Johnny Maitland. The solicitors.

HIS HONOUR: It hasn't been filed, as far as I'm aware.

10 MR CULLETON: Affidavit of Edward John Maitland. It was sent through today.

HIS HONOUR: Well, it was emailed to people. That's not the way the court process gets filed.

15 MR CULLETON: Okay. All right. Okay. Well, it is an affidavit, your Honour.

HIS HONOUR: Well, that doesn't make any difference. It hasn't been filed.

MR CULLETON: Well, I was understanding it came through to the registry and it  
20 was filed. So - - -

HIS HONOUR: Well, I am instructed it hasn't been. Do you have that affidavit - - -

*MR CULLETON:* I do, indeed, here.  
25

HIS HONOUR: - - - Mr Abbott?

MR ABBOTT: I do have that affidavit. I understand – well, I'm assuming that  
30 that's the affidavit that referred to the fact that Mr Maitland was instructed but didn't have time to get anyone to be here.

HIS HONOUR: Yes. The affidavit was referred to in passing this morning.

MR ABBOTT: Yes. That – I don't have any objection to it being - - -  
35

HIS HONOUR: All right.

MR ABBOTT: - - - tendered. Its purpose has now expired, but - - -

40 HIS HONOUR: The affidavit which is referred to of Edward John Maitland which was emailed this morning but not filed, as I understand it, also dated 19 December 2016 will be received again on the understanding, if it hasn't been, that it will be filed.

45 MR CULLETON: Yes. And you've got the one for Peter King?

HIS HONOUR: Peter King's has been referred. That has been filed.

MR CULLETON: Yes. And Lampert.

HIS HONOUR: I beg your pardon?

5 MR CULLETON: Lenny Lampert.

MR ABBOTT: I've got no - - -

HIS HONOUR: I don't know that name.

10

MR ABBOTT: - - - affidavit from Lenny Lampert.

HIS HONOUR: It's not on my list.

15 MR CULLETON: Okay. Well, I've got that one here somewhere. Just give me a moment. But that was filed some time ago. That was filed some time ago, your Honour.

HIS HONOUR: Maybe I'm looking in the wrong place.

20

MR CULLETON: Yes. Here it is. William Leonard.

HIS HONOUR: William Leonard.

25 MR CULLETON: Sorry. What did I say?

HIS HONOUR: Lenny Lampert.

MR CULLETON: William Leonard.

30

HIS HONOUR: Which person is he? You're referring to the affidavit of Leonard William.

MR CULLETON: Leonard William QC. Yes. 4 Purnell Street, Kallangur.

35

HIS HONOUR: Well, it has not been accepted for filing, but let me check with Mr Abbott.

MR CULLETON: I have a copy for his – that was done on 7 December, your Honour.

40

HIS HONOUR: Well, it might have been made then, but it wasn't filed then, I don't believe.

45 MR ABBOTT: Just bear with me, your Honour.

HIS HONOUR: Yes.

MR ABBOTT: Your Honour, if this affidavit hasn't been filed, we object to it being filed. The basis of that is that the affidavit purports to be of Leonard William QC, copyright symbol, TM, registration symbol.

5 HIS HONOUR: Sounds like someone has tried to trademark the letters QC and represent themselves as a Senior Counsel in the legal profession.

MR CULLETON: Well, I wouldn't - - -

10 HIS HONOUR: Is this person a lawyer?

MR CULLETON: Well, he's an - - -

15 MR ABBOTT: No. They - - -

MR CULLETON: He's an Australian citizen, your Honour, and he was there on the day, so it doesn't matter what he is, really.

20 HIS HONOUR: Well, the post-nominals, as they're sometimes called, might be meaningless.

MR CULLETON: Well, I'm not aware of any of that. That could be - - -

25 HIS HONOUR: Is there any other content in the affidavit to be objected to?

MR ABBOTT: Your Honour, I'm not - - -

MR CULLETON: That could be just his initials.

30 HIS HONOUR: Yes. Just wait a moment.

35 MR ABBOTT: From what Senator Culleton has just said that this is an affidavit that he relies on from Lenny Lampert, I'm just confused as to what the rest of the symbols after Leonard William is and whether this person is Mr William or something else.

HIS HONOUR: Well, on the face of it – I'm looking at the court's summary – it's an affidavit of Leonard William.

40 MR CULLETON: That's correct. I mean, I could have him appear by video like the other gentlemen, your Honour.

45 HIS HONOUR: Well, only – no one is required to be by video unless they're required for cross-examination; their affidavits otherwise go in.

MR CULLETON: Well, I would like – I'm thinking my witnesses could be cross-examined.

HIS HONOUR: Well, they may not need to be, I don't know. Is there any - - -

MR ABBOTT: Your Honour, there's no issue.

5 HIS HONOUR: All right.

MR ABBOTT: I will accept that it can be - - -

10 HIS HONOUR: So subject to being filed, the affidavit, which is by the deponent with the name, apparently, Leonard William with some letters after his name, made 7 December 2016, subject to it being formally filed, will also be received. Anything – any others, Senator Culleton?

15 MR CULLETON: I will just check with my McKenzie friend. That's all, your Honour.

20 HIS HONOUR: All right. Now, all of those affidavits that have been formally identified, can be, in the case – as in the case of other affidavits, referred to – be treated as having been formally read in the court. You raised a question of cross-examination. The applicant hasn't given any notice of an intention to cross-examine any of the earlier deponents. I will just check with Mr Abbott if there is any requirement for the ones that have just gone in.

25 MR ABBOTT: No, there isn't, your Honour.

30 HIS HONOUR: All right, thank you, very much. All right. Well, the evidence is now in and we – I need to hear these submissions from the parties on the matters in issue. Senator Culleton, as I read the papers, broadly speaking, there seem to be three issues: one, whether the bankruptcy notice was served on you and that, broadly speaking, is the subject not only of Sergeant King's evidence from this morning, but also a number of the affidavits that you formally read and including some of the ones that just went in about people saying they were with you on the day, etcetera. The second issue seems to go to the question of the validity, if I can put it in those terms, of the District Court judgment of Curthoys J, as he was then, now, of course, 35 Curthoys J on the Supreme Court, but questions going to the validity of that judgment; you raised some constitutional issues and - - -

40 MR CULLETON: Well, that's right, and that was my first question in the Parliament and there are issues with the High Court - - -

HIS HONOUR: Well, just hold on for a moment.

MR CULLETON: - - - Rules, yes.

45 HIS HONOUR: I'm just trying to get the three - - -

MR CULLETON: Yes, yes.

HIS HONOUR: - - - broad issues.

MR CULLETON: No, I think they're very important issues, your Honour.

5 HIS HONOUR: Yes, I'm trying to get them clear - - -

MR CULLETON: Yes, I just - - -

10 HIS HONOUR: - - - so I know what you are agitating. So, one - - -

MR CULLETON: I'm not agitating. I just need to let you know.

15 HIS HONOUR: No, no. No, no, what issues you're agitating, the lawyer – an expression - - -

MR CULLETON: Venting, yes, okay.

20 HIS HONOUR: - - - that lawyers and sometimes judges obviously use. So there's the question of the service of the bankruptcy notice, there's the question of the validity, putting it in those round terms, of the judgment of Curthoys J in the District Court - - -

MR CULLETON: Mmm.

25 HIS HONOUR: - - - and then, thirdly, there's another question, all those things aside, whether you've got a counter-claim set off or cross-demand equal to or greater than the judgment debt and, as far as I can see, they seem to be the three broad fields, the paddocks, in which you are operating. Would you agree?

30 MR CULLETON: Well, there was the one of the jury, too, but you seem to have stamped that out pretty quick.

HIS HONOUR: Well, that was a preliminary application - - -

35 MR CULLETON: Well, that was an application, yes. Well, that was part of my submission to - - -

HIS HONOUR: - - - to send off questions of fact, and I've ruled against you on that.

40 MR CULLETON: Yes.

HIS HONOUR: I'm not prepared to exercise discretion - - -

45 MR CULLETON: Any particular reason why?

HIS HONOUR: I gave reasons earlier, you should have been here.

MR CULLETON: Well, I wasn't in the court to hear that.

HIS HONOUR: Well, you should have been.

5 MR CULLETON: Well, I was facing a – as you know, the police put them in a - - -

HIS HONOUR: Well, let's not get distracted.

10 MR CULLETON: Well, let's leave that one open - - -

HIS HONOUR: You will get - - -

MR CULLETON: - - - to argue it later in the day if we need to.

15 HIS HONOUR: No, we're not arguing it again. I ruled on it. You will get my reasons in writing in due course.

MR CULLETON: Are you with – yes, okay.

20 HIS HONOUR: Very simply, let me tell you: I've got a discretion under section 30, subsection (3) of the Bankruptcy Act. The usual course – the way of dealing with matters in bankruptcy is before a judge alone. There is authority in decided cases that something along the lines of special cases need to be advanced before you go to a jury.

25

MR CULLETON: Yes.

HIS HONOUR: Some possibilities have been thrown up, including fraud and the like, where that might be an appropriate way to go. You're not entitled to - - -

30

MR CULLETON: Well, there is the issue about the judgment, your Honour.

HIS HONOUR: You asked for my reasons. I'm giving them to you very briefly.

35 MR CULLETON: Yes, yes.

HIS HONOUR: You're not entitled, as a matter of right, to go straight to a jury.

MR CULLETON: Well, I object that.

40

HIS HONOUR: Well, sure, that's fine, but I've ruled against you.

MR CULLETON: But I had my case references too.

45 HIS HONOUR: And I haven't found that, in the circumstances here, it's appropriate for me to exercise a discretion to send it to a jury. So there you are, you will get them in – in - - -

MR CULLETON: Well, it is because this is my livelihood and I stand here as a senator and, as yesterday, I was the senator of - - -

5 HIS HONOUR: Well, it doesn't matter whether you're a senator or a janitor working in Perth, the position is that everybody is equal before the law. You get the same - - -

MR CULLETON: Well, I'm glad you've made that point.

10 HIS HONOUR: You get the same treatment.

MR CULLETON: And that's why I want a jury, your Honour.

15 HIS HONOUR: Well, you're not getting it. I've decided against you, and I will give you the full reasons - - -

MR CULLETON: Well, I will appeal that.

20 HIS HONOUR: I will get you full reasons later. I'm not here to debate. I have made the ruling, and we move on. So there's the other three broad issues that I've said. Now, do you want to address me - - -

MR CULLETON: What about procedural fairness, your Honour?

25 HIS HONOUR: Well, it's a quarter to 3.

MR CULLETON: Considering I do – I do want to, you know, law is not my game, although I'm learning very quickly.

30 HIS HONOUR: Well, look - - -

35 MR CULLETON: I do want a judge – I do want a barrister and a solicitor. Like, I've come to this court with clean hands to say that we've got moneys in trust. Mr Lester didn't want to take money. He wanted to take the intellectual property of a company and we've got a right to an appeal and you want to keep pushing on, I mean, for a bankruptcy.

40 HIS HONOUR: Senator Culleton, I've told you, I am here to decide on a bankruptcy application.

MR CULLETON: Right.

45 HIS HONOUR: I'm not here to retry the case in the District Court. You've got a judgment against you - - -

MR CULLETON: And a counter-claim.

HIS HONOUR: So we will get to that, that's your third broad point. The first - - -

MR CULLETON: Okay. And I want to put procedural fairness too, your Honour.

5 HIS HONOUR: Well, at this - - -

MR CULLETON: I think so, in all due respect.

10 HIS HONOUR: All right. Now - - -

MR CULLETON: Thank you.

15 HIS HONOUR: Now, Mr Abbott, I probably should hear from you first. They, it seemed to me – but I wanted to clarify them with Senator Culleton – to be the three broad areas, but I didn't want submissions to be poorly targeted. I need to understand what people are putting.

MR ABBOTT: Yes. I – that's what I - - -

20 HIS HONOUR: Do you – would you agree, broadly speaking, that they are the three areas which are raised by the grounds of objection and other submissions made?

25 MR ABBOTT: Yes, your Honour. In the – I agree service of the bankruptcy notice is the obvious and first matter. So that probably turns on an analysis of the affidavits and Sergeant Scott's oral evidence. The counter-claim, etcetera, I agree with that, your Honour. The validity of the District Court judgment seems to me may fall within two sub-categories, and that relates to the substantive issues that were before Curthoys J, and, secondly, what appears to be the question of allegiance to the  
30 Crown, etcetera.

HIS HONOUR: Well, we will call them constitutional issues.

35 MR ABBOTT: Yes, the constitutional issues, your Honour.

HIS HONOUR: All right. Well, would you like - - -

MR ABBOTT: So that seems to be the two - - -

40 HIS HONOUR: The - - -

MR ABBOTT: - - - sub-elements.

45 HIS HONOUR: - - - subheadings of validity. All right. Now, are there any other issues that you ,for the applicant, seek to identify?

MR ABBOTT: There aren't any others that I – I think they fall within those broad categories.

HIS HONOUR: All right.

5

MR ABBOTT: Exactly where your Honour, I hope we could come - - -

HIS HONOUR: Would you like to address the issues by way of submission on the evidence and then I will go to Senator Culleton for his responsive submissions?

10

MR ABBOTT: Yes. So can I deal with the service of the bankruptcy notice. Just bear with me while I find my piece of paper. It's clear from the affidavit of Sergeant Scott – I'm sorry, your Honour, I've lost my note – I will do it without my note. It's clear from the cross-examination of – sorry, the affidavit, itself, of Sergeant Scott makes it plain that he handed the bankruptcy notice to Senator Culleton whilst Senator Culleton was within the police station at Armadale. Now, there was cross-examination of Sergeant Scott, and Sergeant Scott confirmed, on at least two and probably three separate occasions, that he in fact served the petition – sorry, the bankruptcy notice together with the District Court order, on Senator Culleton in the manner that he describes in his affidavit.

20

He went into quite an amount of detail in his cross-examination about the matters in paragraph 5 of his affidavit, and Senator Culleton's direct response to refuse to take the document when it was shown to him and told him what it was. It was critical, in that cross-examination, that it was stated that from within the room where Sergeant Scott served the bankruptcy notice and order upon Senator Culleton, you could not see out of that room to the foyer of the police station, or outside of the police building. Now, that's a critical matter because of what is said in the affidavits that are produced in support of Senator Culleton's defence. It's important to note first, however, that Senator Culleton, although he swears three separate affidavits, does not in any one of them say directly that he was not served.

25

30

MR CULLETON: I object to that, your Honour.

35

HIS HONOUR: It's a submission, you're going to respond.

MR CULLETON: Can you explain that, what was that?

HIS HONOUR: I said it's a submission and you will be able to respond.

40

MR CULLETON: Okay.

HIS HONOUR: Your turn will come along soon.

45

MR ABBOTT: What Senator Culleton says in his first affidavit - - -

HIS HONOUR: What date?

MR ABBOTT: That's of 6 December 2016. In paragraph 1, and I read it:

5 *My first objection to this proceeding is that the affidavit of service by a police officer at Armidale is put to strict proof, and in that event I require the maker of the affidavit to be presented to the court for cross-examination as I had four witnesses with me at all times in Armidale, and legal rep, and none of them saw me served.*

10 Now, I won't read the rest of the sentence because that is somewhat scandalous.

MR CULLETON: Is that the 6 December affidavit?

15 MR ABBOTT: That's 6 December. So there's no statement there from the senator that he in fact was not served. He says that he's going to adduce evidence from four other people – sorry, five other people to say that none of them saw him being served. And indeed, the evidence from four of the people who have sworn affidavits going to that issue, including Mr Ward, Mr King, Mr William and Mr Codrington, none of them say that they were with Senator Culleton in the police station at the time that Sergeant Scott says he served Senator Culleton. And I will take you to those, each of them, if I may, the first from Mr William. He says:

20 *I was at the Armidale Courthouse all day in New South Wales on the day in question, regarding documents being served upon Senator Culleton. At no time during the day did I see any document served upon the senator, and I was with him at all material times in the courthouse and precincts.*

He doesn't say he was in the police station. He then says:

30 *We occupied an interview room in the courthouse all day and at one stage Jack Cracroft Vivers approached the interview room about four metres from the door with a sheet of paper under his arm and raised his clenched fist and waved it at Senator Culleton, mouthing words in a contemptuous manner.*

35 HIS HONOUR: I think he says there metres, not four.

MR ABBOTT: Sorry. Three metres. I beg your pardon. And then he deposes to some advice that he gave to Senator Culleton. So there's no statement by Mr William to say that he accompanied Senator Culleton to the police station. The evidence of Sergeant Scott, of course, was that the service occurred within the interview room at the police station and the evidence – his evidence under cross-examination was no one else was in that room apart from Senator Culleton and no one could see into the room. Mr Ward's affidavit of 14 December, the critical part of his affidavit is in paragraph 3 and I read it:

45 *The only time I was not with him –*

that's Senator Culleton –

*was a period of around five minutes as I went to bring in Peter King, barrister.*

And then he says:

5           *I saw no signs of any papers. Rodney was an interview room inside the police station and only support people of which I was one were admitted.*

He has just said he wasn't there for five minutes whilst Mr – sorry – Senator Culleton was in the interview room in the police station, and that's entirely consistent with Sergeant Scott's evidence that he served the senator in that room. Mr  
10           Codrington's evidence, his affidavit of 8 December, says in paragraph 3:

15           *The only time that I was not with Rodney Culleton was after I escorted him to the Armadale Police Station as part of the court procedures when he was taken into custody. I then escorted him back to the courthouse upon his release from custody from the Armadale Police Station. I was present in the reception area of the Armadale Police Station after Rodney Culleton was taken into custody when an individual approached the Armadale Police desk sergeant and asked if the police could give some documents to Rodney Culleton. The desk sergeant  
20           refused the individual's request.*

Well, that's still consistent with Sergeant Scott's evidence that he served the papers on Senator Culleton in the interview room in the Armadale Police Station and no one else was present. Finally we get to the affidavit of Peter Edward King, which was  
25           sworn this morning. His affidavit is slightly more detailed than the others, but the thrust of what he has to say really begins at paragraph 5 where he says:

30           *For the purposes of the application on 8 August, I recall that I arrived at the courthouse around 9.30 am. I was then present at the courthouse and in the Armadale Police Station throughout the day. The police station is situated adjacent to the Armadale Courthouse. To the best of my recollection, Senator Culleton was accompanied that day except whilst in conference with myself and a local solicitor by three other persons who were introduced to me as Bradley Ward –*

35           we have an affidavit from him – Len Lampert, which appears, although there's no direct evidence about this, but that seems to be Mr Williams – and John Codrington.

40           *When he was not in conference, they appeared to remain with the senator.*

He then in paragraph 7 indicates that before the matter was called at about 10 am there was someone standing outside who had papers and was a process server, and then at paragraph 10 the critical aspect arrives, and that is:

45           *At the initial mention, the magistrate requested that Senator Culleton attend the police station next door to require a bench warrant. He agreed to do so. I then walked with Senator Culleton out of the courthouse, onto the street and to the*

5 *police station. I noticed that the person in question holding the papers then followed us to the station. I thought this was odd in light of the answer the person had made to my earlier question. Nonetheless, in my presence I did not observe him either approach Senator Culleton nor serve him with any documents. After requiring the warrant, we returned along the street to the courthouse again. I did not observe the person with the papers either serve or approach Senator Culleton in my presence or to my observation.*

10 That doesn't mention anything about Sergeant Scott, and it is still consistent with what the sergeant has said in his affidavit and in his evidence under cross-examination. So, in my submission, on taking all of those affidavits together, the consistent reading of them is that Sergeant Scott did indeed serve the bankruptcy notice and order in the interview room. The only people present then were Senator Culleton and Sergeant Scott, and no one could have seen them from outside of that  
15 room. Nowhere does the senator provide his account of what occurred in the interview room. Now, there is one matter of law that I suspect is intended to be raised here by Senator Culleton. It appears to me that what is intended by some of the questions in the course of the cross-examination was that the police station forms part of the precinct of the court. Your Honour may recall the cross-examination  
20 about the tunnel between the police station and the courthouse and whether they were on adjoining blocks or one lot.

HIS HONOUR: Yes.

25 MR ABBOTT: Now, over luncheon I was able to find this decision, which I think is helpful. It's a case called *Re O'Sullivan; ex parte O'Sullivan v The Commonwealth Bank of Australia* (1995) 57 FCR 145, a decision of Lindgren J in the Bankruptcy District in New South Wales. I read from the headnote, your Honour:

30 *A bankruptcy notice was served on a debtor in the foyer of barrister's chambers adjoining the law court building in Sydney. The debtor sought various forms of relief, including an order that service of the notice be set aside on the ground that the service of process in the precincts of the court is a contempt of that court.*

35 I'm only speculating that that's, in fact, the submission that the senator wishes to make, but it was held by his Honour that it is not the law that service of any process within the precincts of a court constitutes a contempt of that court. Even if it were, it would not follow that service would be set aside. And I'm missing the authorities  
40 that his Honour relies on for those propositions or that are set out in the headnote. In any event, his Honour found that the foyer of the barrister's chambers in question is not within the precincts of the Supreme Court of New South Wales. His Honour was obviously familiar with the locale and took judicial notice of it. After reviewing the authorities about service within the court building itself and proximate to it, his  
45 Honour said at page 149, beginning at about paragraph D to E – E to F:

5 *In my view, it is not the law that service of any process within the precincts of a court constitutes a contempt of that court, and even if it were, it would not follow that service would be set aside. Whether conduct constitutes contempt of court by reason of its being calculated to interfere with the administration of justice by a court is to be determined by reference to matters of greater substance than the general proposition contended for by the debtor would allow. No doubt the physical proximity of conduct to a court may be a factor sometimes to be taken into account when a contempt of court of a relevant kind it is alleged, it cannot be said that service of process within the precincts of the court can never with other circumstances constitute a contempt, but this is hardly a useful statement. Analysis shows that it signifies only that service within the precincts of the court is not precluded from being part of a contemptuous conduct.*

15 Now, the proposition here, your Honour, that in the facts of this case there was nothing that interfered with the processes of the court in Armadale. There's nothing to suggest that the senator was somehow tricked into attending at court for the purpose of being affected by service of the bankruptcy notice. It just so happened that he attended the police station which was adjacent to the court and the police officer served him with the process. So issues regarding contemptuous behaviour of someone serving process in those circumstances, in my submission, would not arise, but in any event, even if they were to arise, that doesn't mean that the service itself is invalid.

25 Indeed, as I've submitted to your Honour, the evidence shows that the bankruptcy notice and order were served personally on Senator Culleton in the police station. So, in my submission, that covers off those two particular points that arise from the question of service. One is on fact and the other, as I say, is, I apprehend, the senator's argument. I don't intend – I intend only to say this about the affidavits of Ms Jones, Ms Leonard and Dr Terblanche. They merely say that they can't recall receiving an email in the senator's email box. They, of course, go to the issue about whether the bankruptcy petition has been served, and I say that's brought to an end by the unconditional appearance that was entered by Senator Culleton. But those affidavits in any event don't say – or they aren't proof that the document was not received, but simply a statement by people to say that they didn't see it.

Can I – unless you have anything from me on either of those points, your Honour, I intend to go to the third area of issue. That's the counter-claim, etcetera. I apologise in advance if I haven't completely apprehended the way in which Senator Culleton wishes to put these propositions, but can I deal first with the material that's contained in the affidavit of Senator Culleton which was sworn on the 16<sup>th</sup> of December 2016. That's a one-page – a one-paragraph affidavit, your Honour, but it has a significant number of documents that are contained in annexure RC9. In my submission, the materials that are within this affidavit are wholly irrelevant to the current proceedings. Indeed, the sole paragraph is what amounts, in my submission, to a contention or submission that Senator Culleton suggests that he is able to prove that

he has good grounds for believing the ANZ Banking Corporation is using the director of my client as a proxy for their interests to stop a claim against them.

5 There is no basis for that assertion in any of the materials that are annexed to the affidavit. Indeed, I've been unable to find any reference to my client or its director, and most of the materials relate to other companies of which Senator Culleton at least was at some time a director, including Elite Grains Pty Ltd which was one of the defendants in the District Court proceedings out of which the judgment that is the foundation of the bankruptcy notice was obtained. So to the extent that Senator  
10 Culleton is attempting to raise some issues relating to ANZs conduct, that does not, in my submission, amount to a counter-claim setoff or a cross-claim that could be brought to account against the judgment debt that is the foundation of the bankruptcy notice in these proceedings. If I can then go back to the affidavit that the senator swore of 6 December 2016.

15 There's a reference in paragraph 6 of that affidavit that is again an assertion, and I say to your Honour that it should be given no weight, that the real reason for the proposed deal with Dakin Farms Proprietary Limited, which again was a plaintiff in the District Court action but not a creditor for the purpose of these proceedings, was the foreclosure of a 22-year term loan interest only, which my company, Elite Grains, had in hand – I'm skipping some words – in favour of the ANZ Banking Corporation which was unwilling to perjure themselves to attempt to prove a debt at the meeting of creditors of Elite Grains. Well, that has nothing to do with these proceedings. It has nothing to do with a party in these proceedings, and does not  
20 form any basis whatsoever of any cause that could be brought to account to offset against the judgment debt.

So, in my submission, there's no material that's before your Honour in either of those two affidavits that goes to any question of a counter-claim or offsetting claim.  
30 I pause over the affidavit that's sworn 12 December 2016 which, in my respectful submission, does not go to questions of fact at all, but is really a set of submissions made on the part of Senator Culleton in a document that's otherwise headed Affidavit. So that doesn't assist on the counter-claim and offsetting claims argument.

35 That takes me, your Honour, to the category that you identified as the second head, that's the validity of the District Court judgment of Curthoys J, as he then was. There is some material that relates to that issue that's found in paragraph 5 of Senator Culleton's affidavit of 6 December 2016. For what it's worth, your Honour, I say  
40 that the assertion that the judgment is obtained – attained by fraud should be disregarded. But the concept that appears to be from paragraph 5 is that his Honour, when awarding damages to the petitioning creditor in the District Court proceedings, made some sort of error by finding that the contract was a completed contract in circumstances where he ought to have found on Senator Culleton's submission that it  
45 was a conditional one.

And he also sets out various submissions in relation to that contract in subparagraph B of that paragraph. In the written submissions, your Honour, there's reference made to the chronology District Court and Supreme Court proceedings. But the short point is that – the short point is that his Honour Curthoys J ruled that there was indeed a contract in writing made between Mr and Mrs Culleton on the one hand as lessors – lessees, rather, and Balwyn Nominees Pty Ltd on the other hand as lessor of a particular property. His Honour found as fact that a payment had been made in respect of that lease, and that there was, in fact, a repudiation by Mr and Mrs Culleton of those – of that lease.

His Honour found that my client was entitled to accept the repudiatory conduct as a repudiation, and to terminate the lease. And that allowed that entitled Balwyn to recover damages from Mr and Mrs Culleton in the amount that equalled the difference between the rentals due under the lease that his Honour found was made between the Culletons and Balwyn, and a subsequent lease that Balwyn entered in to with a third party. That matter was then the subject of an appeal, which was instituted by Mr and Mrs Culleton. But by the time that the matter arrived to be argued at the Court of Appeal Mr Culleton was, at that point, a subject of a sequestration order, which was subsequently set aside.

But the Court of Appeal directly dealt with the substance of these matters that Mr Culleton – sorry – Senator Culleton now seems to assert. Directly ruled against those propositions and upheld the decision of Curthoys J. Mrs Culleton attempted to pursue a further appeal in that matter by bringing an application for special leave to the High Court. And in the meantime Mrs Culleton attempted to stay the execution of the judgment that was against her and upheld in the Court of Appeal. And that matter went before Troy DCJ. And his Honour found that all avenues of appeal against the primary decision had been exhausted.

And there was no basis upon which its enforcement might properly be suspended. And that's set out on page 6 of the submissions. The point of all of that, your Honour, is whilst it is the case that this court is not obliged to accept the judgment it's only in circumstances that show – that indicate that that judgment might be unsound that the court - - -

MR .....: Hans and Murphy J are paedophiles fabricating evidence about my children and a lot of other children.

HIS HONOUR: Please absent yourself from the hearing room immediately.

MR .....: The Court of Appeal in WA is involved in a massive .....

HIS HONOUR: Please call the court officer. Proceed, Mr Abbott.

MR ABBOTT: Your Honour, there is no reason in the circumstance of this matter where Senator Culleton and Mrs Culleton were represented in the District Court proceedings before Curthoys J. Mrs Culleton was represented by counsel on the

appeal, which was dismissed. And Mrs Culleton was represented in the matter before Troy J, which, again, was dismissed. All of those circumstances indicate that there has been a full and open opportunity to contest the underlying circumstances that found the judgment.

5

And there's no reason to go behind the judgment on any substantive basis at all. That, your Honour, I think, leads me to the constitutional contentions. The first of which – I premise it by saying there's a series of submissions that appear to be made in the affidavit of Senator Culleton of 6 December when read with the grounds of opposition that he has attached to his appearance.

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HIS HONOUR: There's also the submission that I mentioned earlier.

MR ABBOTT: That's at the – sorry – of 16 December.

15

HIS HONOUR: Yes.

MR ABBOTT: Yes, your Honour.

20

HIS HONOUR: Which – it canvasses some of those issues too, I think.

MR ABBOTT: Yes. It seems to me, on my reading of the material in the submissions of 16 December there's somewhat of an expansion of the issues. I will attempt, your Honour, to summarise what I understand – the constitutional point that the senator is trying to raise. The first of them seems to be that because the Parliament of Western Australia affected laws in which oaths were made to the people of Western Australia rather than to her majesty the Queen means that anyone who has sworn such an oath is either invalidly appointed under their act of appointment or that they have sworn their allegiance to some entity other than the Queen.

25

30

And by doing so are conducting themselves in a treasonous fashion while they serve their public office and perform their public duties. Those issues, I say with great respect, have been dealt with by the Supreme Court of Western Australia in Glew and in Shaw. And I've put direct references.

35

HIS HONOUR: I've noted those. I've actually referred and read those authorities.

MR ABBOTT: Yes. Thank you, your Honour.

40

HIS HONOUR: I think it's a very difficult argument for Mr Culleton to run.

MR ABBOTT: Thank you, your Honour. Now, the next category of constitutional issue appears to be an argument that was the subject of the film The Castle in that the Commonwealth of Australia can only makes laws for – to remove someone's property on just terms. I understand the proposition from Senator Culleton here to be that the office as a senator in the federal parliament of Australia constitutes some

45

form of chose in action or bundle of personal rights that could be withdrawn from him if he were to be bankrupted and if proceedings were to be taken to the High Court to have him removed from office pursuant to the Constitution. The difficulty with that, your Honour, is that holding the office itself, in my submission, isn't a  
5 personal right. So the foundation of his argument, in my submission, doesn't exist.

But even if that were to be a correct assertion, the proposition that a person bankrupting a senator might be acting unlawfully or treasonously in my submission should be dismissed, because the Constitution itself makes reference to the  
10 circumstances in which a senator can be removed from office, and those circumstances include that the senator is bankrupt or insolvent. I referred in the list of authorities to Nile v Wood, where that point was considered by the High Court, and nowhere does the High Court in that decision say "Well, of course you can't remove a senator from office on the basis of bankruptcy". Indeed, that's what the  
15 Constitution provides.

To the extent that Senator Culleton suggests that the operation of section 30, subsection (3), of the Bankruptcy Act in some way entitles to him to a constitutional point, in my submission, for the reasons that I've already expressed in relation to the  
20 holding of a jury trial in these proceedings it's an erroneous submission, I say with respect. The proposition that, I think, a senator, as opposed to any other person, is entitled to take the benefit of any fines that are levied under a Crimes Act prosecution, in my submission, is completely without foundation. And the extent to which the senator relies on propositions that, as I apprehend them, mean he is  
25 entitled to do certain things in criminal proceedings as a consequence of him holding the office of – the office of a senator of the federal parliament – just don't have any relevance even if they were right to these proceedings, because these are not criminal proceedings, and there are no rights that either impugn the original decision or the process of this court in that context. Your Honour, I think I've taken those matters as  
30 far as I can. I'm happy to reply to whatever Senator Culleton raises. Unless you've got some questions for me.

HIS HONOUR: Thank you, Mr Abbott. If anything comes up in – that you wish to reply to, you can deal with it then.  
35

MR ABBOTT: Thank your Honour.

HIS HONOUR: Thank you. Yes, Senator Culleton.

40 MR CULLETON: I was just thinking whether I can take a short adjournment to – they were pretty comprehensive. I just need to ring a legal person and brush on a couple of issues.

HIS HONOUR: No. No. Court is not giving you that indulgence.  
45

MR CULLETON: Right.

HIS HONOUR: So it's time for you to address your points.

MR CULLETON: With great leisure, your Honour. I've heard the submissions from the other side, and it came across as though they were there and I was not. But  
5 it is clear through the cross-examination today of Sergeant Matthew David Scott that he never said he purportedly or potentially or tried or whatever in a interview room – he clearly stated ..... a room. I've always said that I was an interview in an interview room. And in actual fact when Mr Abbott said in his pleadings that you could not see outside the court-house, that was incorrect. The room that I was in had a door  
10 and a passage-way, and I could clearly see out through the windows. It was not obstructing any part of the entryway of the court, and it certainly was not – I couldn't see the foyer.

However, at all material times I believe that in any event, if one of my colleagues  
15 happened to leave, even if to go to the toilet, it doesn't say in that five-minute window that that happened around about 11 o'clock, as you heard in the cross-examination or in the affidavit. The policeman states that it was 11 o'clock. He stated in paragraph 2 on Monday, 8 August 2016 at about 11 am – he doesn't say "on or about". He says "at about". Clearly Mr Abbott was not there at the time, and  
20 clearly Mr Abbott has concerns with my counsel, considering the gentleman that appeared to be the phantom on the day hung around the courts, and Mr King approached that gentleman holding folded paperwork to see and specifically asked that – "Are you here on business for Senator Culleton?", and he clearly stated to Peter King he was not.

25 Now, your Honour, you're going to have to be pretty mindful of me to – there's a fair bit of paperwork here, and I want to go through it in much detail. But – however, I want to know what time I have, considering it is getting late in the afternoon, and I do need to go to the bathroom before I start reading through the affidavits. Am I  
30 going to have time this afternoon, your Honour?

HIS HONOUR: Yes. I intend to finish today. The - - -

MR CULLETON: What time will you run the court till, your Honour? 6 o'clock?  
35

HIS HONOUR: Senator Culleton, the – have you finished your submissions on the  
- - -

MR CULLETON: No, not yet. I haven't started.  
40

HIS HONOUR: No, no. Let me finish my sentence. Have you finished your submissions on the question of the service?

MR CULLETON: No, not at all. Haven't started.  
45

HIS HONOUR: What else do you want to submit about that?

MR CULLETON: Well, I asked you a question. Am I going to have time to go through the four points today? I've got a fair bit of ..... and there's witnesses that need to come for the court. I'm concerned - - -

5 HIS HONOUR: Well, I expect parties to co-operate in the efficient disposition of matters in the court. I don't want this just strung out. That's why I'm asking you - - -

10 MR CULLETON: Well, I'm not stringing out. I've got a right to put my case to the court. I've now - - -

HIS HONOUR: Yes, you have.

15 MR CULLETON: Hang on. I've now been able to stand at half past 3 in the afternoon.

HIS HONOUR: No, no, don't – senator, don't hang me on. Listen here. You have these matters that you need to address.

20 MR CULLETON: Yes.

HIS HONOUR: And I want you do it efficiently.

25 MR CULLETON: I am going to do it efficiently.

HIS HONOUR: Okay.

30 MR CULLETON: But I'm going to do it precisely too. This is my livelihood, your Honour.

HIS HONOUR: I will give you a quick bathroom stop. We've had a few today.

MR CULLETON: Yes. I do need to go to the bathroom.

35 HIS HONOUR: And we will recommence very shortly.

MR CULLETON: Thank you.

40 HIS HONOUR: Okay?

MR CULLETON: I appreciate that.

HIS HONOUR: We will adjourn very shortly.

45 MR CULLETON: Thank you.

**ADJOURNED**

**[3.30 pm]**

**RESUMED**

**[3.42 pm]**

5

MR CULLETON: Thank you, your Honour.

HIS HONOUR: Yes, Senator Culleton.

10

MR CULLETON: First of all, I just want to double check again. The four issues here today is one of service and my good friend was saying the validity of the order of Curthoys; is that correct?

15

HIS HONOUR: We've been over this a couple of times. Are you trying to - - -

MR CULLETON: The void – is it - - -

HIS HONOUR: Are you trying to string things out, Senator Culleton?

20

MR CULLETON: I beg your pardon?

HIS HONOUR: Are you trying to string things out?

25

MR CULLETON: No. I need to be very certain.

HIS HONOUR: All right.

30

MR CULLETON: This is my livelihood, your Honour. I'm not trying to string anything out. Do you think I'm stringing it out?

HIS HONOUR: The first question was the question of service.

MR CULLETON: Correct.

35

HIS HONOUR: The second was the question whether the bankruptcy notice was - - -

MR CULLETON: Void.

40

HIS HONOUR: - - - defective because you consider the District Court judgment to be of no effect.

MR CULLETON: Yes.

45

HIS HONOUR: The third question went to the general question of the counter-claim or an offset.

MR CULLETON: Yes.

HIS HONOUR: And they were the essential question. There were some constitutional issues - - -

5

MR CULLETON: Okay.

HIS HONOUR: - - - thrown in as well. So - - -

10 MR CULLETON: All right.

HIS HONOUR: Just go through them point by point.

MR CULLETON: Thank you, your Honour. Well, look, just by way of background before I get on to each point – well, actually. No. I can do validity, number 2, if you think that – so that I don't be seen I'm ticking the clock down. The 31<sup>st</sup> – background. Okay? 31 March 2009, the settlement of Rathgar West in Williams was executed whereby Elite Grains Proprietary Limited, the company, purchased a property off Mr Richard Lester. On or about late September, it was common knowledge that Dick Lester had become distressed in assets and was divesting due to fallout of the GST. Mr Stephen Vaughan from VNW real estate had contacted me to see whether I could purchase the rest of the balance of Rathgar for \$17.8 million.

MR ABBOTT: Your Honour - - -

25

MR CULLETON: No. No. I'm going through it.

MR ABBOTT: I'm going to object to the scandalous way in which my – Senator Culleton wants to - - -

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MR CULLETON: Well, it was common knowledge at the - - -

MR ABBOTT: To put this. There's no evidence of any - - -

35 MR CULLETON: - - - back end of the GST, your Honour.

HIS HONOUR: This isn't the opportunity, Senator Culleton, to stand here and use - - -

40 MR CULLETON: No. I just need to give a bit of background to the validity of the - - -

HIS HONOUR: To use this as some theatre to just - - -

45 MR CULLETON: No. No. I'm not, your Honour.

HIS HONOUR: - - - speak about anything you want. You have to go – the question is why the bankruptcy notice - - -

MR CULLETON: I'm working to the validity - - -

5

HIS HONOUR: Why the bankruptcy notice might be considered defective because of the District Court judgment. It appears to be a regular judgment obtained after a trial - - -

10 MR CULLETON: Okay.

HIS HONOUR: - - - which has been the subject of proceedings in the Court of Appeal.

15 MR CULLETON: First of all, I turn to the affidavit of – dated the - - -

HIS HONOUR: Is this your affidavit?

MR CULLETON: Yes, it is.

20

HIS HONOUR: 6 December?

MR CULLETON: Dated 16 December 2016.

25 HIS HONOUR: Yes.

MR CULLETON: I'm taking his Honour through to the IR11, which is page 14, Rathgar discussion note, 7 November 2009. Clearly says there in a meeting on 7 November with Mr Lester – not Balwyn Nominees, but Mr Lester:

30

*Things that are important to Rodney: (1) property's strategic location, size, facility; (2) can't commit to purchase unconditionally, doesn't have support of bankers for whole of the property; (3) has need to develop committed production for Elite Grains business. Things that are important to Dick: the price is 13.2 million reduction; (2) would prefer to sell as one whole, rather than break it up; (3) has decided that he needs to retire from the rural investment, but timing not critical; and (4) plant and equipment to be sold.*

35

I will take his Honour over to the next page.

40

HIS HONOUR: Just tell me this. I need to understand why you are referring to this. What's - - -

MR CULLETON: Well, I'm giving you some background.

45

HIS HONOUR: Well - - -

MR CULLETON: This is the validity of Curthoys' - - -

HIS HONOUR: Don't worry about the background. Don't worry about the background. Tell me - - -

5

MR CULLETON: Well, okay. This is - - -

HIS HONOUR: Tell me what the point is that you want to get to.

10 MR CULLETON: To the validity of the court order due to a counter-claim against the erroneous judgment of Curthoys.

HIS HONOUR: Well, you want to - - -

15 MR CULLETON: At nowhere - - -

HIS HONOUR: You want to establish that the judgment was - - -

MR CULLETON: That's right.

20

HIS HONOUR: - - - erroneous.

MR CULLETON: Well, there is no – what I'm saying here today, your Honour, and what is very clear – Balwyn Nominees does not appear anywhere on any proposal, notes or discussions, yet it stands in front of this court today as a creditor to bankrupt me, yet I can't see where it has a legal right to be here in the court today. It is important that I take his Honour through this.

25

HIS HONOUR: Well, you had a litigation - - -

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MR CULLETON: I haven't had enough time.

HIS HONOUR: You had a litigation in the District Court where there was a trial - - -

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MR CULLETON: Which I have a right to my primary appeal. I have not been given that right to appeal my primary judgment. Just because my learned friend says my wife ran an application, that is not me. And my wife, due to the onslaught of the ANZ Bank, had to in most times represent herself as a self-litigant.

40

MR ABBOTT: That's patently not true in relation to the Court of Appeal matters, your Honour.

MR CULLETON: Well, it is, Mr Abbott. And can - - -

45

HIS HONOUR: All right. Well, that's your submission.

MR CULLETON: No. No. I haven't finished my – I haven't started my submission.

HIS HONOUR: Don't refer to the court as "mate". Now, complete - - -

5

MR CULLETON: Look, your Honour, if you're not going to give me appropriate time to put my - - -

HIS HONOUR: I'm not going to - - -

10

MR CULLETON: - - - submissions to the court - - -

HIS HONOUR: I'm not permitting you to try and run the District Court trial again.

15

MR CULLETON: No, I'm not. I'm - - -

HIS HONOUR: I want you - - -

MR CULLETON: You've allowed - - -

20

HIS HONOUR: Senator - - -

MR CULLETON: - - - their submissions to refer back to my affidavit of that primary judgment. I'm telling you where our cross-claim is.

25

HIS HONOUR: Well, you - - -

MR CULLETON: My cross-claim. I'm sorry.

30

HIS HONOUR: You explain to me directly what your cross-claim is.

MR CULLETON: My cross-claim is - - -

HIS HONOUR: Articulate it.

35

MR CULLETON: - - - that Balwyn Nominees has no right to have a judgment against us, and we have never defaulted any agreement with Balwyn Nominees. As you can see, all agreements have been just nothing more than notes and arrangements and agreements to do with storing of grain with Dick Lester and Rodney Culleton.

40

So that is our cross-claim when we go into February or perhaps setting the court order aside of Curthoys, which I have been unable to do because this Supreme Court in Western Australia seems to think that I had no standing in the court, as much as I tried to get in there.

45

HIS HONOUR: All right. So - - -

MR CULLETON: So there is a very valid cross-claim, your Honour.

HIS HONOUR: Your argument is that there was never a contract between you and  
- - -

MR CULLETON: Well, if I would like - - -

5

HIS HONOUR: And the applicant - - -

MR CULLETON: Can I take his Honour to it?

10 HIS HONOUR: No. No. Just understanding your submission. You're saying there  
was never a contract between you and Balwyn Nominees.

MR CULLETON: Well - - -

15 HIS HONOUR: Is that the point?

MR CULLETON: Correct.

HIS HONOUR: All right.

20

MR CULLETON: There was never an offer and acceptance, formation accept or  
reject, a counter-offer layman negotiation free of encumbrances, intention to enter  
legal relations of the parties, consideration act for an act, certainty and capacity.  
That was simply notes that were to go away and get financial approval, which I will  
25 read on page 18:

*...agreed that the above notes are true records of discussions and agreements  
at meetings held at Lester house in East Perth on Saturday, 7 November and at  
the Culleton house in Williams on Thursday, 3 December.*

30

Simply just notes, your Honour. And if I was to refer you to the affidavit, one would  
say that clearly could not be a contract to purchase a \$17.8 million property.

35 HIS HONOUR: All right. Well, I am wanting to understand the submission, and I  
now understand it clearly. Thank you.

MR CULLETON: Okay. Now, what had happened was it came through as a  
proposal. The two were conjunctive. And Mr Lester was appearing at my farm on a  
regular basis, trying to get some sort of a deal going with VMW. In actual fact, he  
40 took over from his real estate agents, and – but what it clearly said – it went from  
appraisal and it had agreement to lease and purchase. So the two were conjunctive.  
Now, I had 3000 acres, your Honour. This was going to step it up to near thirteen  
and a half thousand acres. And it is clear that the input costs would need financial  
approval. It multiplied our input cost by five. So at all material times, it was never  
45 an – Rodney and Ioanna Culleton, my wife being a psychologist at the time and  
Rodney being a director of a very good business, even then, my director's salary  
would not service a \$17.8 million property, including all inputs.

So that is our very valid cross-claim and it needs to be also said that in the event that arrangements are interrupted by unforeseen equine influenza and palatability, well, that was at the period of time when there was equine influenza and we were having major palatability. And then it said as we were looking at going through to get  
5 finance we must – to exercise their best endeavours to be just and faithful to one another, to negotiate in good faith, to agree to pay and receive the maximum amount that Rodney and Ioanna can manage on that date, a minimum of half the amount date and the balance remaining immediately increasing by 10 per cent.

10 Rodney and Ioanna – well, this was never to be. To go away to get – in actual fact, the bank could never give Rodney and Ioanna in their own personal names a facility to purchase such a – and we’ve never purchased land in our own name. It has always been in the company of Elite Grains Proprietary Limited, which I was forced to put into liquidation because of all the onslaught. So we continue through: that that is  
15 our cross-claim. Now, I have respect for my learned friend next door, and that is that he states that our – my – well, Rodney Culleton’s appeal have all been exhausted. Well, let me tell you this. Rodney Culleton hasn’t had a right to an appeal.

Rodney Norman Culleton has appeared on the papers because it was a part to the  
20 primary action. So my name would always appear, and yet all those applications were brought to the court and I can humbly say and under oath say today that I have never had a right; nor have I engaged any solicitors prior to today to deal with the appeal to the primary judgment of Curthoys, which I as an individual and an Australian citizen have every right to do, your Honour. I have a right to exhaust and  
25 appeal the first decision and I have not – I have been precluded by the West – well, precluded from doing so. So that just gives you a little bit of background. But the dates really marry up, your Honour, because on 21 December 2009 – sorry, 14 December 2009, we got a letter in the mail. It said, “Dear Valued Customer”, where ANZ announced it was doing a new working relationship with Landmark –  
30 Landmark Financial Services or Permanent - - -

MR ABBOTT: I’m sorry to interrupt this.

MR CULLETON: Sorry.  
35

MR ABBOTT: I’m sorry to interrupt the Senator.

MR CULLETON: This is my submissions.

40 MR ABBOTT: Is this on the paper?

MR CULLETON: Yes.

MR ABBOTT: Is this in the papers?  
45

MR CULLETON: Yes, it’s in the affidavit.

MR ABBOTT: I would just like to be able to read it as we go.

MR CULLETON: Sorry?

5 MR ABBOTT: I just want to be able to find it in the papers.

MR CULLETON: Well, aren't you reading the affidavit or – I'm going over it page by page.

10 MR ABBOTT: Okay. All right. Thank you. Which affidavit are you in?

MR CULLETON: It's my affidavit – are you there, your Honour, or – this is page 35.

15 MR ABBOTT: Of which one?

MR CULLETON: The affidavit of – the one that I referred – the one that we're on, sorry.

20 HIS HONOUR: Well, you had better just double check the date of that one.

MR CULLETON: Yes, yes. Sorry, yes. Well, just – I appreciate that. Sorry. I'm getting carried away. 16 December 2016. Anyway, that was the notice. Then it said what happens to my lending facilities. Your lending facilities – on page 36, three-  
25 quarters of the way down, your Honour:

*Your lending facilities remain unchanged in the short term, although management of these facilities will transfer to ANZ in early 2010.*

30 Well, that was the time when Mr Lester has – if we have gone ahead with the deal and the lease would have taken over the property. Mr Lester did not – at all material times we had nothing over the line, but we had – the company had bought 3000 tonnes of grain of oats off Mr Lester which he defaulted. He failed to deliver and that is a potential cross-claim, but that's with the liquidator and the premium funders.  
35 That will go with Elite Grains. But that's Dakins Farms. So Dakin Farms were clearly on those discussion papers, but at no stage did Mr Lester ever say to Mr and Mrs Culleton in those meetings, nor was there ever a meeting of minds between Mr Lester disclosing that Rathgar belonged to Balwyn Nominees and I do notice in Mr Lester's affidavit that he said he was a director.

40

So it does not say he was a sole director; he was a director. So we don't know whether there are any encumbrances over the property. Those discussion papers clearly had showed the total area that was – and it is normal practice under leasing arrangements that you lease arable acres. So we did say in our affidavit as well that  
45 our – the solicitors, which were Freehills at the time, were to go and get title searches so that we could simply find out what arable acres were available and go and put up a proper proposal to the bank. Okay. So that at that time ANZ Bank had clearly come

in and was the imposter of not only my financial arrangement, but a lot of farmers around Australia and, as you know, has caused a lot of grief to whereby now it has claimed it's not the creditor of Elite Grains and the liquidator is very excited about a cross-claim now, which is foreshadowed to come forward.

5

However, I do want to as a senator and, you know, as a father of my children and, you know, and in my own personal capacity, want to remain not bankrupt because I'm not insolvent and I want to have the right to challenge Mr Lester – sorry, Balwyn Nominees judgment which I have now got proper legal advice to for the February to openly vent why Balwyn Nominees mysteriously has appeared on some court order when it was never part of the notes and discussions between myself and my wife and Dick – Dick, not Richard – Dick Lester. Okay. So we also – coming back to the – that is our reason for the appeal, your Honour.

15 HIS HONOUR: All right. I understand your submissions about that.

MR CULLETON: Okay. And that's the validity.

HIS HONOUR: Well, that's - - -

20

MR CULLETON: The service, the service - - -

HIS HONOUR: That's the – sorry, that's the counter-claim really.

25 MR CULLETON: Yes.

HIS HONOUR: Yes.

MR CULLETON: Sorry, that's the counter-claim.

30

HIS HONOUR: Yes.

MR CULLETON: The service – well, there was no one else. I want to take through the affidavits.

35

HIS HONOUR: Well, I've read them all.

MR CULLETON: Yes.

40 HIS HONOUR: So what's the nut of the submission that you want to make?

MR CULLETON: Well, the nut of the submission – there's no – I can – I make to this court, at no stage was I ever served any documents and I wish to ask the court to actually ask for the video footage. There must be video footage there which will clearly give evidence to whether this particular gentleman said that he served me in person, which he did not, and he is clearly – he also said that there was two bankrupts. You can only have – even if he has served – he said he was doing one for

45

Ioanna as well. Well, where's Ioanna Culleton's bankruptcy service? And at all times I said to the instructing solicitor, Michael Lundberg, that we have never been served of any bankruptcy documentation or any order of whatever it may be. And on that day, I was clearly represented.

5

Mr King approached the so-called gentleman who the policeman didn't know from a bar of soap that if he was there for Culleton he would have been there to accept service. I mean, I've never tried to avoid accepting service. I would accept service. That would give me 21 days to consider the position. But that clearly did not happen and there seems to be a lot of confusion (a) that the police officer, who I didn't think could – his recollection was too true, but he was saying that it was a room. He said it – and my learned friend is saying it's – that I was – it was an interview room, but he clearly said a room and he wasn't sure which room it was. But I'm very sure of the room that I was in; it was an interview room, the first one on the corridor on the left-hand side. I understand that he also said he personally served me. I was never personally served of any documentation, and in any event I deny ever telling him to eff off. I would've said if there is anything, he needs to go and address my solicitor, who was freely walking around on the day and had approached the process server – purported process server who – okay. So that is the service.

20

Now, the validity over the court order. Well, your Honour, on the 9<sup>th</sup> of the 11<sup>th</sup> 2016 – sorry. I will take you to 12 September on the floor of Parliament. I raised a question due to the villains that were in the court here earlier in an application that was given to the High Court, and that was to test the validity of my being a chosen senator by 50-odd thousand people in Western Australia. And it clearly went on to say that when I looked at it, to look at an avenue, it came to my attention that the writ was not in the name of the Queen. So I used the opportunity, as a federal senator, to table that question in the Parliament, and that was on 12 September whereby I asked the – it was without notice to the Attorney-General, and that was a message to the Attorney-General why, under section 33, the writ had not been made in the name of the Queen. Well, it – the Attorney-General referred it to the High Court reviews committee, as it is tabled, and the review committee came back and announced that it would look at the matter and it would get back to me in November. I have that now from the Attorney-General. He personally signed a document, clearly saying from the Attorney-General, on the 9<sup>th</sup> of the 11<sup>th</sup> 2016. I actually have a copy here, your Honour. Would you mind if I hand it up to you?

25

30

35

HIS HONOUR: Well - - -

40

MR CULLETON: Yes. No, I would like - - -

HIS HONOUR: - - - I'm really not terribly interested in what has been going on in the Senate. I want to know what your submission is.

45

MR CULLETON: Well, it's important – you're asking me the validity of the court order out of the Magistrates Court, your Honour.

HIS HONOUR: Yes. Well, what's – just tell me about - - -

MR CULLETON: Well, it says:

5           *Dear Rod - - -*

HIS HONOUR: What's the submission you're making?

10           MR CULLETON: This is it. This is to the validity of the court order in the  
Magistrates Court:

*Dear Rod*

15                   *Here is the message from the High Court. Congratulations. You spotted it and  
nobody else did.*

*Senator Brandis*

20           Then it goes on to say that the High Court – an exposure draft of the High Court  
Rules - - -

25           MR ABBOTT: I'm sorry, your Honour. Just so that the record reflects it, I am not  
going to press an objection here but I do object to this material not being put in in  
any form at all.

MR CULLETON: Well, it's on Hansard and it's at Parliament so - - -

MR ABBOTT: So - - -

30           HIS HONOUR: Yes. I appreciate you got no prior notice of it.

MR ABBOTT: I don't want to interrupt .....

35           MR CULLETON: Okay. Well, this is the validity of my case. And given the short  
time - - -

HIS HONOUR: But I want to know what the legal submission is you're making.

40           MR CULLETON: Well, this is a legal submission. The rules - - -

HIS HONOUR: Yes. Well, tell me.

45           MR CULLETON: The rules of the committee of the High Court considered that  
issue on 12 October 2016:

*The committee proposes a number of amendments to the rules to address the  
issue. The proposed amendments will be drafted by the Office of Parliament*

*Counsel and will be the subject of consultation with professional bodies before being finalised by the court.*

5 In other words, the court has admitted it has been out to lunch, your Honour, and there are issues over the state jurisdictions.

HIS HONOUR: So what's your particular submission? How does it affect the validity of anything here?

10 MR CULLETON: Well, that questions the validity of the court order, in any event, of Mr Curthoys – his Honourable Curthoys.

HIS HONOUR: All right. Well, you've referred to the Magistrates Court but you're talking about the District Court of Western Australia judgment.

15 MR CULLETON: I'm – the state courts – all the state courts, your Honour.

HIS HONOUR: All right.

20 MR CULLETON: Not the Federal Court. I'm very happy with the Federal Court, I might add.

HIS HONOUR: All right. All right. Well, I understand, I think, the proposition you've made.

25 MR CULLETON: Okay. I will give you credit there. Okay.

HIS HONOUR: Now, was there some more of those constitutional arguments? There's the - - -

30 MR CULLETON: Well, there's a lot and my concern is we're not going to have time.

HIS HONOUR: Well, I've read what you've written and I've heard the submissions made.

MR CULLETON: Well, I would like to read those. Sorry?

40 HIS HONOUR: What – I mean, I'm wanting to understand how you want to put that submission.

MR CULLETON: Well - - -

45 HIS HONOUR: It was probably fairly summed up by Mr Abbott as the just terms submission by reason of your status.

MR CULLETON: Well, I would like to read those - - -

HIS HONOUR: Yes.

MR CULLETON: I would like to read those submissions out, your Honour.

5 HIS HONOUR: Well, you don't need to. I've read them. I'm happy for you to tell me the essence of your submission.

MR CULLETON: I don't think you've got them, your Honour.

10 HIS HONOUR: Well, I've got a document called Submissions.

MR CULLETON: These ones here?

15 HIS HONOUR: Have you read your own documents?

MR CULLETON: Of course I have, in the short term that I've had. You know - - -

HIS HONOUR: No, no. You filed them. You prepared them, you tell me.

20 MR CULLETON: Yes. Absolutely. But I'm here as a self-litigant.

HIS HONOUR: So what?

25 MR CULLETON: Well, I've got - - -

HIS HONOUR: You prepared the documents.

MR CULLETON: Well, I've got - sorry?

30 HIS HONOUR: You prepared the documents.

MR CULLETON: Yes.

35 HIS HONOUR: You filed them in the court. I've read them. I'm wanting to know what the essence of the argument is that you want to put.

MR CULLETON: Well, the essence of the argument is that there are real issues around the service. There are real issues - - -

40 HIS HONOUR: Yes. Not the ones. I'm talking about these constitutional issues that you want to raise.

MR CULLETON: Well, can I - - -

45 HIS HONOUR: You touched on this validity point and the Senate statement and Senator Brandis' letter to you and the revision of the rules of the High Court.

MR CULLETON: Well, under section 109 I believe that there is a constitutional issue over the order that the Commonwealth shall override the order of Curthoys. So that's section 109 of the Constitution.

5 HIS HONOUR: Well, that says that - - -

MR CULLETON: But I would like to read you out these authorities too.

10 HIS HONOUR: Well, before you leave section 109, it provides, paraphrasing, that a Commonwealth law, if it's inconsistent with a state law, shall prevail over it.

MR CULLETON: Correct.

15 HIS HONOUR: Where is the inconsistency here that you're wanting to argue?

MR CULLETON: Well, with the High Court Rules, your Honour. Until they come back with an answer on that, there's a cloud over it.

20 HIS HONOUR: I see. All right. I get your point.

MR CULLETON: Okay. I mean - - -

HIS HONOUR: Thank you.

25 MR CULLETON: - - - these are things that have been tabled in the Senate and the Senate is where we make the laws and - - -

30 HIS HONOUR: I'm just trying to see how you make the connections, and I see how you're trying to make - - -

MR CULLETON: Yes. No. That's okay. And I appreciate that.

HIS HONOUR: All right. Now - - -

35 MR CULLETON: I would just like to read these out too.

HIS HONOUR: Your next point.

40 MR CULLETON: List of authorities. Mobil Oil Australia v Victoria (2002) Gleeson CJ at 11, page 1. Have you got a copy of these too, your Honour?

HIS HONOUR: Well, if you gave them to me, I have. Have you previously put them in your list?

45 MR CULLETON: Yes, I have, haven't I? Yes. Yes. But I can read them out for the record.

HIS HONOUR: Well, I've got them here.

MR CULLETON: Yes. Laurie v Carroll.

5 HIS HONOUR: I've got the list of authorities for the respondent.

MR CULLETON: Yes.

HIS HONOUR: That's Bayne v Baillieu.

10

MR CULLETON: Yes, that's it, Dowling v CML.

HIS HONOUR: Dowling v Commercial Mutual Life, Fencott - - -

15 MR CULLETON: Yes.

HIS HONOUR: - - - v Muller.

MR CULLETON: Montrose in sequestration - - -

20

HIS HONOUR: University of Wollongong v - - -

MR CULLETON: - - - in sequestration order and was – yes.

25 HIS HONOUR: - - - Metwally, Gye v McIntyre.

MR CULLETON: Yes, okay.

HIS HONOUR: Kable - - -

30

MR CULLETON: No, all good.

HIS HONOUR: And Gerlach v Clifton Bricks.

35 MR CULLETON: Yes, yes.

HIS HONOUR: Kirk v Industrial Relations Commission, Forge v Australian Securities Commission.

40 MR CULLETON: Well, I rely on all those submissions, your Honour.

HIS HONOUR: Yes.

MR CULLETON: Yes.

45

HIS HONOUR: And you've referred to them in your submissions.

MR CULLETON: Yes, okay.

HIS HONOUR: I've read – that's what I'm saying.

5 MR CULLETON: You've read them.

HIS HONOUR: I've read your submissions. You don't have to, in that sense, re-read them to me again. What I'm interested to know is if you want to put a succinct proposition to me to really try and nail your point. I have to say that I don't, at this  
10 stage, having read your submissions, find any of them convincing, so I'm wanting you to, as I say, try and nail your point.

MR CULLETON: Yes, they're the important ones. Well, I guess if we look at those. So where do they get read out? Here, okay. You just have to give me some –  
15 paragraph – the focus of attention in that – or go to paragraph 11, your Honour.

HIS HONOUR: Which one are you in?

MR CULLETON: Gleeson CJ.  
20

HIS HONOUR: But which case?

MR CULLETON: Of Mobil Oil Australia v Victoria:

25 *The focus of attention in the argument of Mobil is not the defendant, but the group members.*

Okay, that's page 1 of my - - -

30 HIS HONOUR: I don't see Mobil Oil on your list of authorities.

MR ABBOTT: It's not on the one I have either.

HIS HONOUR: No, I don't. So I - - -  
35

MR CULLETON: It's Mobil Oil - - -

HIS HONOUR: I just called out everything on your list of your authorities, and I don't see it in your part A authorities.  
40

MR CULLETON: Well, should I hand you up a copy?

HIS HONOUR: Well, I mean, the whole point of giving a list of authorities is - - -

45 MR CULLETON: Well, I've just read it out for the - - -

HIS HONOUR: - - - so the court can get prepared. What's the paragraph from Mobil Oil?

MR CULLETON: Paragraph number 11.

5

HIS HONOUR: And it's Gleeson CJ, is it?

MR CULLETON: Yes.

10 HIS HONOUR: And what's the citation the Mobil Oil in front of you?

MR CULLETON: The citation is Mobil Oil Australia v Victoria [2002].

15 HIS HONOUR: And can you see is it Commonwealth Law Reports, or something like that, at the top of the page?

MR CULLETON: Yes, hang on.

HIS HONOUR: What's the volume number?

20

MR CULLETON: High Court of Australia. Yes, there's Victoria – HCA 27.

HIS HONOUR: Yes.

25 MR CULLETON: 211 CLR 1 – 189, is that what you - - -

HIS HONOUR: All right. Thank you. So it's paragraph 11 I need to look at?

MR CULLETON: Yes.

30

HIS HONOUR: Okay.

MR CULLETON: And then we go on to Laurie v Carroll.

35 HIS HONOUR: Well, I don't see that on your list either.

MR CULLETON: Well, it's important these are – you need - - -

40 HIS HONOUR: Well, you've got to try to give me all these cases, and I've got them here. I've got all the cases in front of me.

MR CULLETON: Well, yes, we - - -

45 HIS HONOUR: But I don't have these ones.

MR CULLETON:

*The root principle of the English law –*

98 CLR 323 citation.

5 HIS HONOUR: And what's the paragraph you want me to read?

MR CULLETON: Okay, well, what's the paragraph?

HIS HONOUR: What page?

10

MR CULLETON:

*The root principal of the English law about jurisdiction is that the judges stand  
in the place of the sovereign.*

15

HIS HONOUR: What page is it on?

MR CULLETON: 323.

20 HIS HONOUR: All right. And it's about some fundamental principle, from what  
you're saying.

MR CULLETON: Correct. Righto, next one.

25 HIS HONOUR: Yes.

MR CULLETON: Bayne v Baillieu.

HIS HONOUR: I've got Bayne, that's number 1 on your list.

30

MR CULLETON: Okay, it's on page 4, so halfway down the page where it says:

*Several cases referred to by Mr Duffy in support of his contention - - -*

35 HIS HONOUR: All right.

MR CULLETON:

*- - - in ex parte Bauers.*

40

That one.

HIS HONOUR: I will read that as well.

45 MR CULLETON: Dowling v CML.

MR ABBOTT: I'm sorry, your Honour. I hate to interrupt my friend, but when he says page 4, I've got the - - -

5

HIS HONOUR: The citation is – it's a very old case, it's 6 CLR 382 - - -

MR ABBOTT: Yes.

10 HIS HONOUR: - - - from 1908. It seems to start at page 382 in the Commonwealth Law reports of that year. So page 4 doesn't seem to be an obvious one. You've got a different printout of the case there, have you? Can you work out what page it is? In the original High Court version - - -

MR CULLETON: Okay. Well, let's go on to Bayne v Baillieu because that's - - -

15 HIS HONOUR: That's that one we were looking at.

MR CULLETON: Yes, it's citation is High Court.

20 HIS HONOUR: I've got the citation, what page do you want to look at? That's number 1 on your list of authorities?

MR CULLETON: Yes. Well, why can't we just read the whole lot? Page 4 of 11 on that citation, your Honour, that's all we've got.

25 HIS HONOUR: Well, I think you've got a different printout.

MR CULLETON: Have we? Okay. Well, how do I help you there?

30 MR ABBOTT: Sorry, senator, is the paragraph that you were referring to:

*Again, several cases were referred to by Mr Duffy in support of his contention in ex parte Bauers decided by Lord Loughborough.*

35 Is that where you're reading from?

MR CULLETON: Well, whereabouts do I read it out to his Honour.

MR ABBOTT: Your Honour, that paragraph that was just read is on page - - -

40 MR CULLETON: Here we go.

MR ABBOTT: - - - 394.

45 MR CULLETON: In actual fact, it has been highlighted because the photocopy has come, it's made it - - -

HIS HONOUR: So how does the passage commence that you want to refer me to?

MR CULLETON:

5           *Which would not taint the procedure without proof of positive fraud which was absent. There was no evidence of collusion between the creditor and the debtor partner, so that the petition was not, as in Bauer's case, 15, and Hepworth's case, 16, a step in the litigation between the judgment creditor and his debtor.*

HIS HONOUR: All right. So that's Bayne.

10 MR CULLETON: Yes. What has happened, your Honour, is we have taken a photocopy and it has diluted out the highlight unfortunately.

HIS HONOUR: Well, that's all right, just tell me the - - -

15 MR CULLETON: So we need Montrose Re Sequestration.

HIS HONOUR: Just tell me the passages you want me to read.

MR CULLETON: Montrose:

20

*If a sequestration order were to be made while an appeal is pending.*

Well, yes, Downing v CML and we have that, as you know, as I've highlighted and brought to the court's attention where there's an appeal present in the court. Then  
25 Fencott v Muller [1983] HCA 12 at 21.

HIS HONOUR: Yes.

MR CULLETON: You got that one?

30

HIS HONOUR: Yes, I have.

MR CULLETON: Well, I think we're pretty right, now, aren't we? No. University of Wollongong v Metwally.

35

HIS HONOUR: Yes, Metwally, I've got that - - -

MR CULLETON: You've got that?

40 HIS HONOUR: - - - as well.

MR CULLETON: Okay. Gye v McIntyre.

HIS HONOUR: Yes.

45

MR CULLETON: You got that one? High Court 8, yes. Kable v DPP of New South Wales. That goes to the jury trial – trial question.

HIS HONOUR: Yes.

MR CULLETON: Toohey J:

5           *Some common law rights may go deep, so deep that even Parliament cannot be  
accepted to have destroyed them.*

Page 11.

10 HIS HONOUR: Yes.

MR CULLETON: Of itself assume an exercise – okay.

15 HIS HONOUR: Well, I've got your – in your list of authorities, you've given me  
the page references to various judges.

MR CULLETON: Yes, yes. And Kirk v WorkCover.

20 HIS HONOUR: Yes.

MR CULLETON: Good. High Court of Australia:

25           *The supervisory functions of the Supreme Court must not be impaired. This  
must apply to Federal Supreme Court as well as state Supreme Court.*

HIS HONOUR: Well, you've given me pages in your list, 95, 98 and 99.

MR CULLETON: Yes. Forde v ASIC.

30 HIS HONOUR: Yes. I've read the written submission on that and - - -

MR CULLETON: Okay.

35 HIS HONOUR: - - - you refer to Kirby J and you say there's an error, that's page  
210.

40 MR CULLETON: Yes, yes. All right. So that's the validity in case. Now, his  
Honour has taken on board all the affidavits where it profusely says that, at all  
material times, no one had seen nor had I left with any court documents that day?  
His Honour is prepared to read all those affidavits?

HIS HONOUR: Yes, they've all been formally read and I have actually read them.

45 MR CULLETON: Okay. And the other:

*I do not and I am not aware of any substituted service order. It is very  
important that anyone serving bankruptcy papers on individuals - - -*

HIS HONOUR: No one is relying on a substituted service order.

MR CULLETON: Okay. Well, as you know, I have certain staff in my office. I get thousands of emails. This is a Government Senator's email address. I have high-  
5 grade staff that vet all the emails and they get back to me and at no stage have they ever obtained any petition, and so that's that. And then the other one is – have I covered it all now, your Honour? Procedural fairness – I haven't ticked that one over. I did request that – you know, I've had to limp through this. I also have  
10 endured some litigation due to – you know, to bigger forces, and I have dealt with them the best I can, your Honour. I certainly didn't come here today to be disrespectful to the court, but however I did request that adjournment be made so close to Christmas and that I could have proper legal representation, and you denied that. That is perhaps - - -

15 HIS HONOUR: That's all on record, so - - -

MR CULLETON: Sorry?

HIS HONOUR: That's all on record.  
20

MR CULLETON: Yes.

HIS HONOUR: I dealt with that earlier.

25 MR CULLETON: Because this is very important. So in summary, I am not insolvent. I have never been insolvent and I can deal with them as they come. I would like to have an end to my litigation experience. It's something that I've had to endure in the last few years, not because – before that I was clean. So, you know, and some of them have stemmed into criminal over such a minute key and gone to  
30 the High Court. So as long as his Honour is mindful of that I've tried to deal with it the best way I can today, and that I reiterate and stress that I have never been served any bankruptcy petition papers whatever. However, it would be very wise to the judge – although I must be careful saying that, because I seem to get in trouble leading – getting in the way of justice – that the reset button be pushed. I have 21  
35 days to negotiate, and then I will deal with my proper cross-claims which can be vented out by a proper legal party, which I can do after Christmas.

HIS HONOUR: Thank you, Senator Culleton. Is there anything in reply, Mr Abbott?  
40

MR ABBOTT: Just two very small points if I may, your Honour. The first, in fact, doesn't arise out of reply. I indicated to the court that Mrs Culleton was represented before Judge Troy. I've been told by instructors that I have got that wrong and Mrs Culleton was - - -  
45

MS CULLETON: Excuse me, your Honour. That is incorrect. I was self-represented. I was a self-represented litigant in front of Troy J of the District Court.

MR CULLETON: Thank you.

MR ABBOTT: That's exactly what I was trying to correct, your Honour.

5 HIS HONOUR: All right.

MR CULLETON: Thank you.

MR ABBOTT: But I'm obliged to Mrs Culleton.

10

HIS HONOUR: I've noticed that.

MR ABBOTT: The second is a matter of reply and it goes to the question of whether or not – to pick up on the senator's last remarks about his solvency, there's  
15 no material before your Honour, your Honour, that indicates that Senator Culleton is solvent. He doesn't bring anything to indicate the level of his assets or his liabilities. He raises by assertion only in the letter from Maitland Lawyers and in the affidavit of Mr Maitland himself where it's said that there's a certain amount of funds that are held on trust, but there's no indication of the quantity of those funds. There's no  
20 indication of the source of those funds. So, your Honour, in short, there's no material before the court that indicates any question of solvency at all on the part of Senator Culleton.

MR CULLETON: I object to that, your Honour. I stand here before you as a  
25 Senator for Parliament under oath and I tell you if a letter has come from my lawyer, there is substantial funds to extinguish this petition held in trust of a lawyer's account. I totally object to Mr Abbott saying where do those funds come from? What's that? That's none of his business. They're my funds and they are – and at all material times, I've had four companies and I've got one company that's sitting on a  
30 multi-million dollar court order and I haven't executed it yet. So I'm okay. My wife and I are very fine. We just need to start sorting some of these things out.

HIS HONOUR: Yes. Thank you.

35 MR ABBOTT: If it pleases, your Honour, I have no further submissions.

HIS HONOUR: Yes. Thank you.

MR CULLETON: And we own everything, your Honour. My wife and I own  
40 everything.

HIS HONOUR: I will reserve a decision. I will have further regard to the submissions that have been made today. I will look again at the written submissions that have been made and the authorities that have been referred to, and I will deliver  
45 my reserved judgment at 10 am on Friday morning. The court now adjourns.

**MATTER ADJOURNED at 4.24 pm UNTIL FRIDAY, 23 DECEMBER 2016**

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