

(AT SANTO)

CIVIL JURISDICTION

IN THE MATTER OF : WESTPAC BANKING CORPORATION
an overseas company duly
registered in the Republic
of Vanuatu and having its
established places of
business at Port Vila, Efate
and Luganville, Santo in the
Republic of Vanuatu

A N D :

IN THE MATTER OF : THE FAMILY COURT OF AUSTRALIA

Mr John Ridgway for the Applicant,

This is an exparte application by Westpac Banking Corporation an overseas company duly registered in the Republic of Vanuatu for :

(1) Directions as to the obligations of the Applicant to comply with an order issuing from an Australian Court, namely the Sydney Registry of the family court of Australia, in these terms :

- i) "Statements or other records in relation to any bank account in his name [Robert James TILL] which may be with the bank in Vanuatu or any other place overseas."

Having read the Affidavit of Robert Bruce Wright dated 2nd September 1992, it is plain that the client of Westpac Banking Corporation the subject of whose account disclosure is sought, has refused his permission for disclosure of information held in his Vanuatu account.

It is plain that there are no reciprocal agreement between Australia and Vanuatu. Vanuatu is an independant sovereign Territory where Australian Writs do not run.

Under Article 5(1)(d) of the Constitution of Vanuatu, one of the fundamental rights preserved to the individual is his right not to be unfairly deprived of his property. A bank account for these purposes I hold to be "property" on the wider constitutional meaning of that word.

Under common law, the bank would be entitled to disclose information in circumstances :

- (1) where the customer consents, here he plainly has not;
- (2) by operation of law - namely a court order effective in the jurisdiction - see *Tournier V National Provincial and Union Bank of England* (1924) C.A.1 KB 461.

In this instance neither of the above conditions have been fulfilled.

In *Richardson v. Richardson* (1927) P.D. 229 Hill J. held that an order based on a judgement obtained in the U.K. cannot attach money of the judgement debtor in the hands of the Garnishee bank at its branches abroad, for these branches are not within the jurisdiction. I for one cannot fault the reasoning of Hill J. in that case with which I fully agree. If such an order be right with regards a Garnishee order, where judgement has been heard, a fortiori where the matter is at an *ex parte* level and the issues not yet determined.

- (2) An order is sought as to whether the applicant should or should not produce documents in Australia as referred to in paragraph (1) above.

Having reviewed the law as above, I order that no document should be produced by the Westpac Banking Corporation in Vanuatu as the same would be a breach of the trust vested in them.

Nevertheless, it is not to be thought that the "Australian" parties are entirely prevented from obtaining such an order from this court, if they are able to prove sufficient interest for such an order to be made by this court.

Liberty to apply.
Costs reserved.

Dated at Luganville, 4th September 1992.


HON. CHARLES VAUDIN d'IMECOURT
Chief Justice

