



HIGH COURT CASE STUDY



AUSTRALIAN CONSTITUTION CENTRE

Even a murderer deserves a fair trial

*Tait v the Queen; Scott v Chief
Secretary of the State of Victoria*
(1962)

Facts of the case

In December 1961 Robert Tait was convicted of murdering Ada Ethel Hall. It took the jury 55 minutes to reject Tait's defence of insanity and find him guilty. Tait was sentenced to death, scheduled for 22 October 1962

As the execution date loomed, David Scott (of the Brotherhood of St Laurence) became very concerned that the Bolte Liberal Government in Victoria was about to hang an insane person. He asked the Supreme Court of Victoria to order an inquiry into Tait's mental state. Tait also made an application that his death sentence be postponed on the grounds of insanity.

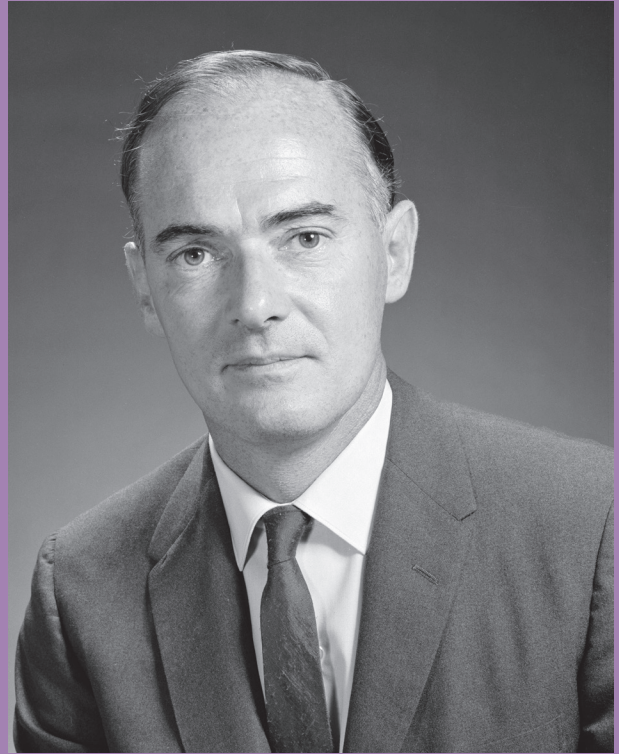
The Supreme Court of Victoria did not have the power to stop the execution. The Government was pressured to postpone the execution while the judicial process continued. However, they were determined to hang Tait and moved the date to 1 November.

Scott and Tait applied to the High Court for special leave to appeal.

Issues considered by the court

The High Court had to determine whether the Full Court was correct in deciding that a judge of the Supreme Court of Victoria has no power to order a respite of sentence.

Whether the application for an inquiry into Tait's mental state should have been allowed was also considered.



David Scott from the Brotherhood
of St Laurence became involved
in the case

Source: State Library of Victoria

Decision

The day before the scheduled execution three High Court Justices flew down to Melbourne and met two other Justices for an emergency sitting. The High Court ordered that the execution be postponed while the judicial process was still being conducted.

Before the High Court could further hear the matter, Tait was certified as "mentally ill or intellectually defective" under the *Mental Health Act 1959 (Vic)*. His death sentence was commuted to a sentence of life imprisonment.

The High Court ultimately did not need to hear the case. However the Tait case is important because the Court's orders make clear that the High Court has the power to take steps to protect its processes.

Background to the case

The public thirst for executions had waned by the 1960's. Protest campaigns popped up across legal, academic, church, community and union groups. This was encouraged by the Melbourne press. Ada Hall's son, Reverend George Hall, vowed to 'do everything [he could] to prevent....Tait from being hanged'.

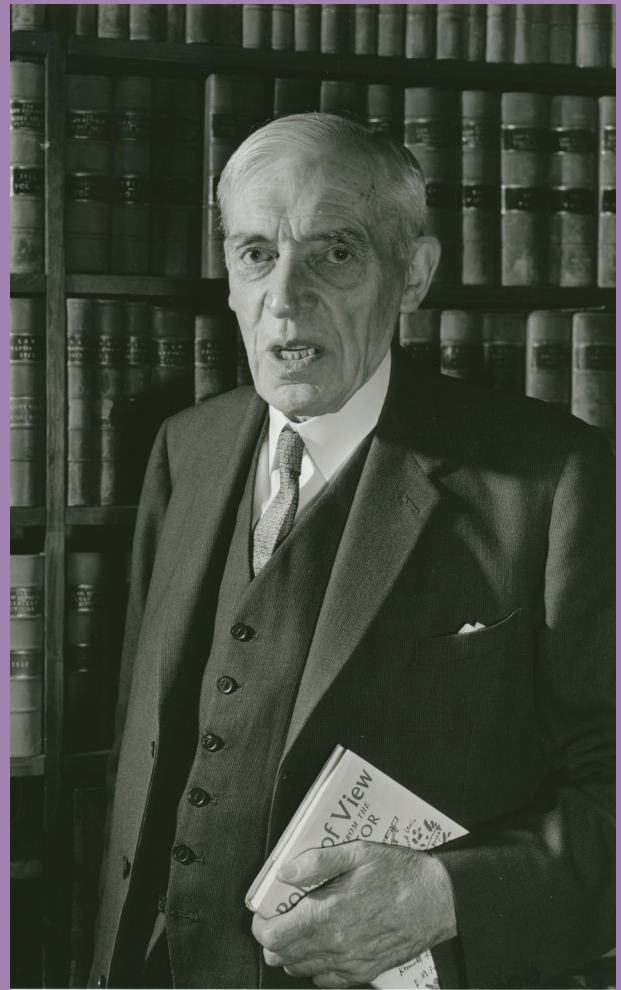
The Mental Health Act 1959 (Vic) had been proclaimed and was due to come into force on 1 November 1962. The Bolte Government moved Tait's execution to 8.00am on that day to try and have him hanged before the government psychiatrist could certify him as mentally ill.

'I have never had any doubt that the incidental powers of the Court can preserve any subject matter, human or not, pending a decision.'
Tait, per Dixon CJ (in oral argument)

The last time a person was hanged in Australia was in 1967. Against widespread appeals and protests, Premier Bolte had persisted in enforcing the death penalty for Ronald Ryan. It is argued today that Ryan was innocent of the crime that he was hanged for.

Did you know?

- The High Court of Australia is the highest Court of Appeal in Australia. This case was appealed from the Full Court of the Supreme Court of Victoria to the High Court.
- Tait died in 1985, at which time he was the longest serving prisoner in Victoria.



Chief Justice Dixon.
Source: High Court of Australia



Chief Justice Dixon bench
Source: High Court of Australia