PARTIES:	MUNN, Michael
	v
	AGUS & ANOR
TITLE OF COURT:	COURT OF APPEAL OF THE NORTHERN TERRITORY OF AUSTRALIA
JURISDICTION:	COURT OF APPEAL OF THE NORTHERN TERRITORY OF AUSTRALIA EXERCISING TERRITORY JURISDICTION
FILE NO:	No AP15 of 1996
DELIVERED:	Darwin, 17 January 1997
HEARING DATES:	9 December 1996
JUDGMENT OF:	MARTIN CJ, KEARNEY & PRIESTLEY JJ

CATCHWORDS:

Appeal and New Trial - Appeal - General principles - Interference with discretion of court below - Special Case stated - Whether Court of Summary Jurisdiction established pursuant to the Justices Act (NT) has jurisdiction to deal summarily with offences under s100 and 101 of the Fisheries Management Act 1991 (Cth) - "*Court of Summary Jurisdiction"* - Definition in s26(d) Acts Interpretation Act 1901 (Cth) - "*part of the Commonwealth, or of a State, or part of a State"* - Legislative history of Acts Interpretation Act and amendments to s26(d) - No basis for conclusion that any substantive alteration has been effected to the pre-existing position that Courts of Summary Jurisdiction in the Northern Territory fell within the description in s26(d).

Magistrates - Jurisdiction and procedure generally - Jurisdiction, powers and duties - Territories - Whether Court of Summary Jurisdiction established pursuant to the Justices Act (NT) has

jurisdiction to deal summarily with offences under s100 and 101 of the Fisheries Management Act 1991 (Cth).

Magistrates - Appeals from and control over justices - Northern Territory - Stated case - Appeal against finding that the Court of Summary Jurisdiction established pursuant to the Justices Act (NT) has no jurisdiction to deal summarily with offences under s100 and 101 of the Fisheries Management Act 1991 (Cth) - Appeal upheld - Question of law reserved by Special Case remitted for further consideration at first instance.

Primary Industry - Fish - Offences - Use and possession of a foreign boat equipped with nets, traps or other equipment for commercial fishing in the Australian Fishing Zone - Special Case stated - Appeal against finding that the Court of Summary Jurisdiction established pursuant to the Justices Act (NT) has no jurisdiction to deal summarily with offences under s100 and 101 of the Fisheries Management Act 1991 (Cth) - Appeal upheld - Question of law reserved by Special Case remitted for further consideration at first instance.

Procedure - Inferior Courts - Northern Territory - Courts of Summary jurisdiction - Jurisdiction - Special Case stated - Appeal against finding that Court of Summary Jurisdiction has no jurisdiction to deal summarily with offences under s100 and 101 of the Fisheries Management Act 1991 (Cth) - "*Court of Summary Jurisdiction"* - Definition in s26(d) Acts Interpretation Act 1901 (Cth) - "*part of the Commonwealth, or of a State, or part of a State"* - Legislative history of Acts Interpretation Act and amendments to s26(d) - No basis for conclusion that any substantive alteration has been effected to the pre-existing position that Courts of Summary Jurisdiction in the Northern Territory fell within the description in s26(d).

Acts Interpretation Act 1901 (Cth), s26(d)
Acts Interpretation Amendment Act (No 27 of 1984) (Cth)
Acts Interpretation Act 1937 (Cth) (No 10 of 1937)
Acts Interpretation Act 1973 (Cth), s4(1)(b)
Commonwealth of Australia Constitution Act
Fisheries Management Act 1991 (Cth), s100(3) & s101(3)
Northern Territory (Self Government) Act 1978 (Cth), s5
Bennion, Statutory Interpretation 2nd ed (1992) at 413, 416
Commonwealth Government Printer, The Acts of the Parliament of the Commonwealth of Australia Passed in the Session of 1901-2 (1903)
Quick & Garran, The Annotated Constitution of the Australian Commonwealth (1901) at 354

Magistrates - Miscellaneous matters in relation to justices - Actions against Justices - Whether appropriate for Magistrate to be made party to the proceedings - Magistrate should be a party to the proceedings but in general taking no greater part in them than prescribed by the High Court in *The Queen v The Australian Broadcasting Tribunal & Ors; Ex parte Haridman & Ors* (1980) 144 CLR 13.

The Queen v The Australian Broadcasting Tribunal & Ors; Ex parte Hardiman & Ors (1980) 144 CLR 13, at 36, followed.

REPRESENTATION:

Counsel:

Appellant:	Mr Burmeister Mr Sylvester
Respondent:	Not represented
Second Respondent:	Mr Reeves

Solicitors:

Appellant:	AGS
First Respondent:	Not represented
Second Respondent:	Ward Keller

Judgment category classification:	B
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IN THE COURT OF APPEAL
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No AP 15 of 1996

BETWEEN:

MICHAEL MUNN

Appellant

AND:

AGUS & ANOR

Respondent

CORAM: Martin CJ, Kearney and Priestley JJ

REASONS FOR JUDGMENT

(Delivered 17 January 1997)

THE COURT: On 15 January 1996 Mr M. Munn laid an information charging a person named Agus (no other names appear in the court papers) with using a foreign boat on or about 30 December 1995 in the Australian Fishing Zone for commercial fishing contrary to s 100(1) of the Fisheries Management Act 1991 (Cth) and further with having in his possession or charge a foreign boat equipped with nets, traps or other equipment for fishing contrary to s 101(1) of the same Act.

Sections 100(3) and 101(3) of the Act each read:

> "*An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.*"

A summons was issued and served upon Agus commanding him to appear to answer to the charges at Darwin Court of Summary Jurisdiction on 16 January 1996.

On that day he duly appeared and he and the prosecutor consented to the hearing and determination of the matter in the Court of Summary Jurisdiction. On 3 May 1996 the summons came on for hearing in the Court of Summary Jurisdiction before Mr Wallace SM. Agus did not appear, and was not represented. Ms E. Morris appeared as *amicus curiae*.

Counsel for the informant applied for leave to proceed against Agus in his absence. The Magistrate took the view that s 29 of the Justices Act had the effect that he had no power to proceed with the hearing in the absence of Agus, and therefore refused leave to proceed ex parte. He was asked to state a Special Case on the question, and did so. The Special Case set out the facts already narrated and defined the question of law for the opinion of the Supreme Court as being:

> "*Whether, on a true construction of the **Justices Act**, a Court of Summary Jurisdiction may hear and determine **ex parte** a charge laid pursuant to s 100(1) or s 101(1) of the **Fisheries Management Act 1991** (Commonwealth) in circumstances where the defendant and prosecution have consented to the charge being heard and determined by a Court of Summary Jurisdiction.*"

The Special Case came on for hearing before Angel J on 23 September 1996. Mr Sylvester appeared for the informant appellant. No-one appeared for Agus. Mr R.J. Coates appeared as *amicus curiae*. Submissions were made to Angel J both on the question already set out and on the further question whether, even if Agus had appeared or been represented, the Court of Summary

Jurisdiction had power to hear the case. Angel J answered this latter question as follows:

> "*No, the 'Court of Summary Jurisdiction' established pursuant to the Justices Act (NT) has no jurisdiction to deal summarily with offences under ss 100 and 101 of the Fisheries Management Act 1991 (Cth).*"

Angel J therefore found it unnecessary to deal with the original question raised by the stated case.

Mr Munn has appealed against this decision. Mr Burmeister and Mr Sylvester appeared for the appellant. There was neither appearance by, nor *amicus curiae* for Agus. Mr Reeves appeared for the Magistrate.

The starting point of the reasoning which led Angel J to his conclusion was that the term "*a court of summary jurisdiction*" is not defined in the Fisheries Management Act 1991 (Cth). It is however defined in s 26 of the Acts Interpretation Act 1901 (Cth) as follows:

> "*In any Act, unless the contrary intention appears:*
>
> ...
>
> *(d) '**Court of Summary Jurisdiction**' shall mean any justice or justices of the peace or other magistrate of the Commonwealth or part of the Commonwealth, or of a State or part of a State, or of an external Territory sitting as a court for the making of summary orders or the summary punishment of offences under the law of the Commonwealth or part of the Commonwealth or under the law of the State or external Territory or by virtue of his or their commission or commissions or any Imperial Act.*"

This is not the original form of the paragraph, which had been amended in 1937 and 1984 in ways which will be discussed later.[1]

The Acts Interpretation Act has, since 1973, defined the terms "*External Territory*" (s 17(pd)) and "*Internal Territory*" (s 17(pe)). The Northern Territory is an Internal Territory, and because there is no reference to "*Internal Territory*" in s 26(d), Angel J took the definition in s 26(d) as, prima facie at least, excluding the Northern Territory.

He then went on to consider the history of the section, noting that in its original form it did not exclude the Northern Territory. It was not necessary, on the view he took, to identify precisely when the Northern Territory first became excluded from the definition, but in his view, whatever the position was prior to 1984, the insertion of the words "*or of an external Territory*" in s 26(d) by the Acts Interpretation Amendment Act (No 27 of 1984) made it clear that at that point the Commonwealth Parliament chose not to include the Northern Territory Courts of Summary Jurisdiction within the s 26(d) definition.

He considered the argument that there was no need, at the time of the 1984 amendment, to include the term "*Internal Territory*" in the definition because it was already included as "*part of the Commonwealth*". It appears from Angel J's reasons that the submission which had raised this argument was linked with the submission that as the Northern Territory was a part of the Commonwealth, magistrates of the Northern Territory were magistrates of the Commonwealth. Angel J therefore took the submission to be based upon the

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[1] at 14-16 below; the original version of par (d) is set out on p 11 below.

premise that the Northern Territory was not competent in its own right and existed only as part of the Commonwealth, a submission which he rejected on the basis that the Northern Territory had become a body politic in its own right upon the grant of self government by the Northern Territory (Self Government) Act 1978 (Cth), s 5.

To the extent that the submission depended upon the premise of the non competence of the Northern Territory, we respectfully agree with Angel J's rejection of it. However, we do not think that the argument needs to rest on that premise. Indeed, in this court, that submission was disclaimed by the appellant. The submission was simply that the Northern Territory is a part of the Commonwealth in the sense in which that term is used in s 26(d) and is a part of the Commonwealth which has its own magistrates who sit as courts for (inter alia) the making of summary orders or the summary punishment of offences under the law of the Commonwealth or part of the Commonwealth.

When the argument for the appellant is put in this way, the relevant parts of Angel J's reasons for his conclusion are left as being, first, the argument already mentioned based on the inclusion of the words "*or of an external Territory*" in 1984 and second, that to accept the view that the Northern Territory is a "*part of the Commonwealth*" within the meaning of s 26(d) would be to render most of the provision otiose because any reference to a State, or part of a State or an external Territory "*would be useless as all are a 'part of the Commonwealth'*".

Our conclusion, shortly stated, is that we agree with Angel J that s 26(d) when enacted included the Northern Territory, but do not agree that anything subsequently happened to change that position.

The circumstances in which the Acts Interpretation Act 1901 became law seem to us to be of some importance in understanding s 26(d). The Commonwealth of Australia Constitution Act (the Constitution Act), an Act of the then Imperial Parliament, was assented to by Queen Victoria on 9 July 1900. Section 4 provided that the Commonwealth should be established and the Constitution of the Commonwealth should take effect on a day to be appointed by the Queen by proclamation. Sections 5 and 6 were as follows:

> "***5***. *This Act, and all laws made by the Parliament of the Commonwealth under the Constitution, shall be binding on the courts, judges, and people of every State and of every part of the Commonwealth, notwithstanding anything in the laws of any State; and the laws of the Commonwealth shall be in force on all British ships, the Queen's ships of war excepted, whose first port of clearance and whose port of destination are in the Commonwealth.*
>
> ***6***. *'The Commonwealth' shall mean the Commonwealth of Australia as established under this Act.*
>
> *'The States' shall mean such of the colonies of New South Wales, New Zealand, Queensland, Tasmania, Victoria, Western Australia, and South Australia, including the northern territory of South Australia, as for the time being are parts of the Commonwealth, and such colonies or territories as may be admitted into or established by the Commonwealth as States; and each of such parts of the Commonwealth shall be called 'a State.'*
>
> *'Original States' shall mean such States as are parts of the Commonwealth at its establishment.*"

The words, "*as for the time being are parts of the Commonwealth*" in the second paragraph of s 6 are explained, at least partly, by the fact that when the

Act was assented to, Western Australia had not yet agreed to become a member of the new federation.

Section 9 of the Act began:

> " *The Constitution of the Commonwealth shall be as follows:-*
>
> *THE CONSTITUTION*."

and there then followed the whole of the Constitution.

On 17 July 1900, by which time Western Australia had agreed to become an Original State, the appointed day for the establishment of the Commonwealth and the Constitution pursuant to s 4 of the Constitution Act was proclaimed to be 1 January 1901. The first Parliament was opened on 9 May 1901. The first Act of the Parliament, assented to 25 June 1901, was an Act of three short sections making good the supply necessary to pay the Commonwealth public service for the period to 30 June 1901. The second Act was the Acts Interpretation Act 1901 (No 2 of 1901) assented to 12 July 1901. During 1901, Quick & Garran's "*The Annotated Constitution of the Australian Commonwealth*" was published. Amongst the many matters annotated were the words "*and of every part of the Commonwealth*" in s 5 of the Constitution Act. One paragraph of this, pertinent for present purposes, was as follows:

> "*But there may be ' parts of the Commonwealth' which are not States. The territorial limits of the Commonwealth will not be necessarily co-terminous with the boundaries of the States and their territorial waters added; they will also embrace any other regions, with their adjacent territorial waters, which for the time being may not be included within the boundaries of a State, but which may be acquired by the Commonwealth in any of the ways authorized by the Constitution. Thus the seat of government, when*

> *determined by the Parliament and made federal territory, will no longer be part of the State of New South Wales, but will be a part of the Commonwealth. Again, the Queen might place British New Guinea under the control of the Commonwealth; she might detach a part of the vast area of Western Australia from that State and hand it over to the Commonwealth; she might do the same with the Northern Territory of South Australia; Tasmania might agree to surrender King's Island to the Commonwealth. Upon acceptance by the Commonwealth in each of these cases, the territory so surrendered to or placed under the authority of the Commonwealth would even before its erection into a State, or States, become a part of the Commonwealth, and the Constitution and laws of the Commonwealth would be as binding on the people there as on those of a State*." (at 354)

The reference in this passage to what would happen in regard to the seat of government, was a reference to s 125 of the Constitution, the actual operation of which would depend upon s 111, which provided the machinery for the surrender by a State to the Commonwealth, and the acceptance by the Commonwealth of part of that State, which would then become "*subject to the exclusive jurisdiction of the Commonwealth*". The references to what might happen in regard to other territories were references to the examples given in s 122 of the ways in which territories might be acquired. The section referred to the acquisition by the Commonwealth of a territory surrendered by a State and accepted by the Commonwealth or a territory placed by the Queen under the authority of and accepted by the Commonwealth or otherwise acquired by the Commonwealth. Quick and Garran's view was that any territory acquired by any of the means contemplated by s 122 would be part of the Commonwealth. We are not aware of any plausible argument against this opinion.

When the Commonwealth Parliament passed its second Act, the only Commonwealth statutory law in existence was the three section supply Act already mentioned. The third Act, assented to on the same day as the second, was another three section Act like Act No 1, dealing with supply, this time for the year ending 30 June 1902. The next Act was assented to on 7 August 1901. So, in passing the Acts Interpretation Act when it did, Parliament was providing definitions and clarifications for its future statutes, and providing for a future the details of which, so far as Commonwealth legislation was concerned, were in some respects unclear. The judicial system by which Commonwealth law would be administered was as yet unsettled. Chapter III of the Constitution envisaged the creation of a Federal Supreme Court to be called the High Court of Australia, in terms suggesting that Parliament would be bound to create such a court. The Parliament was also given power to create other federal courts but in terms not making it obligatory that that power be exercised.

In 1903 the Commonwealth Government Printer published a volume entitled "*The Acts of the Parliament of the Commonwealth of Australia Passed in the Session of 1901-2"*. The Acts Interpretation Act 1901 is printed in this volume. A side note to s 26(d) says "*See 52 and 53 Vict. c.63 s.13*". That is a reference to an Act of the Imperial Parliament entitled the Interpretation Act 1889. Section 13 consists of "*Judicial definitions in past and future Acts*". Paragraphs (6) to (10) provide clarifying and referential definitions[2] of various summary jurisdiction Acts dealing with the exercise of summary jurisdiction in

different parts of the United Kingdom: in England and Wales, in Scotland, in Ireland, and, in one instance in respect of the Dublin Metropolitan Police District. Paragraph (11) then provides:

> "*The expression 'Court of Summary Jurisdiction' shall mean any justice or justices of the peace, or other magistrate by whatever name called, to whom jurisdiction is given by, or who is authorised to act under, the Summary Jurisdiction Acts, whether in England, Wales, or Ireland, and whether acting under the Summary Jurisdiction Acts or any of them or under any other Act, or by virtue of his commission, or under the common law.*"

Subsequent paragraphs (12) and (13) refer to persons sitting in courts of summary jurisdiction where the jurisdiction is apparently territorially limited.

The reference in the side note to s 26(d) to s 13 of the UK Act and the identity of the opening words of s 26(d) to those in par (11) of s 13 of the UK Act show that that section was before the drafter of s 26(d) at the time it was being prepared. The drafter would thus be aware, as in any event would be clear enough, that within any polity it would be possible for some courts to have jurisdiction throughout that polity and some only within a part of it. It seems to be clear that the drafter must also have had in mind that the Commonwealth statutes to come would create rights enforceable in courts and offences punishable in courts. The drafter would also know that in the different jurisdictions operating in the Australian colonies before the establishment of the Commonwealth, courts of summary jurisdiction had been available and would continue to be available for the making of summary orders enforcing rights of

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[2] See Bennion, *Statutory Interpretation*, 2nd ed 1992 at p 413.

particular kinds and administering summary punishment of offences of various kinds.

For convenience, s 26(d) as enacted in 1901, is here set out:

> "*'**Court of summary jurisdiction**' shall mean any justice or justices of the peace or other magistrate of the Commonwealth or part of the Commonwealth, or of a State or part of a State, sitting as a court for the making of summary orders or the summary punishment of offences under the law of the commonwealth or of a State or by virtue of his or their commission or commissions or any Imperial Act.*"

The terms of the provision in our opinion make it clear that the drafter was seeking to describe the courts which would make such orders and administer such punishment where provided for in future Commonwealth Acts. It seems probable that the drafter must have had in mind, for example, provisions of the kind that very shortly after appeared in the Audit Act 1901 (No 4 of 1901 (Cth)), assented to 7 August 1901; this Act imposed obligations on, amongst others, public accountants and subjected them to penalties for breaches. Section 70 provided that penalties incurred under the Act might "*be imposed and recovered by and before any Court of Summary Jurisdiction upon ... information or complaint* ...". It seems plain enough that the drafter of s 26(d) was intending that the definition in that paragraph would make it clear that any Court of Summary Jurisdiction then operating in Australia would be a court contemplated by references such as those in s 70 to a Court of Summary Jurisdiction in which rights could be enforced and punishment administered. Further, there can be no doubt that in the first year of the Commonwealth's establishment the drafter was keenly aware of both the Constitution Act and the Constitution. One pointer to

this is that in s 16 of the Acts Interpretation Act the drafter made plain the distinction between the Constitution Act on the one hand and the Constitution contained in s 9 of that Act on the other.

In our view the drafter of s 26(d) must have had in mind at least two considerations when referring to "*part of the Commonwealth, or of a State, or part of a State*". One would be the need to provide for the possibility that within a State or States there might already be, and that in the Commonwealth or a State or States there might be in the future, Courts of Summary Jurisdiction whose jurisdiction was geographically limited to part only of the Commonwealth or the State. The other consideration would be the quite distinct one that s 5 of the Constitution Act referred to "*every part of the Commonwealth*", in a way that carried with it the possibilities described by Quick and Garran in the passage above cited. Garran was the Secretary of the Attorney-General's Department which had the task of drafting the bill for the Acts Interpretation Act, and he was himself either the drafter, or oversaw the drafting[3] so it seems likely that s 26(d) was drafted with the comment from the passage in mind. In any event we find it hard to suppose that any other view was then current. Although the two considerations we have mentioned are distinct, we do not see any inconsistency in their concurrent operation to produce the references to a part of the Commonwealth or of a State in s 26(d).

Put briefly, our view is that in the original form of s 26(d), the drafter intended to achieve and did achieve the result that when a Court of Summary

Jurisdiction was mentioned in subsequent Commonwealth statutes it would be clear that any Court of Summary Jurisdiction in the Commonwealth would be within the meaning of that term in the Commonwealth Act.

We do not see that anything that has happened since has diminished the application of the defined term to Courts of Summary Jurisdiction within the States of Australia and Territories within Australia. In 1911, pursuant to s 111, by the Northern Territory Surrender Act 1907 (SA) and the Northern Territory Acceptance Act 1910 (Cth), South Australia surrendered the Northern Territory to and it was accepted by the Commonwealth; in our view the Northern Territory then directly became part of the Commonwealth within the meaning of s 5 of the Constitution Act. From that time, the Northern Territory has, in our opinion, been a part of the Commonwealth within the meaning of those words in s 26(d).

The Northern Territory (Self Government) Act 1978 (Cth) made the Northern Territory a body politic in its own right. It nonetheless remained a part of the Commonwealth, (and remained a Commonwealth Territory), despite having gained by the Self Government Act a significant (but still not final) level of self government.

This brings us to the other principal reason relied upon by Angel J for taking a contrary view of the present effect of the definition in s 26(d), that is, that to give the paragraph the meaning that seems to us to be the appropriate one, would be to render much of its working otiose.

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[3] Garran "*Prosper the Commonwealth*" 1958 pp 143-146.

It may be that in light of developments since the original version of s 26(d) came into force, and in light of the consequential amendments to it, it could now be rewritten in a shorter form. However, the fact that it now uses more words than may be necessary to convey the desired meaning, does not in our opinion justify an attempt to give all parts of the definition separate and independent operation which results in a substantive change to an existing legal position. Our understanding of the received approach to statutory interpretation in these circumstances is as described by Bennion, *Statutory Interpretation*, 2nd ed 1992 at p 416:

> "*It is a drafting error (less frequent now than formerly) to incorporate a substantive enactment in a definition. A definition is not expected to have operative effect as an independent enactment. If it is worded in that way, the courts will tend to construe it restrictively and confine it to the proper function of a definition.*"

Our view of the present meaning of the relevant part of s 26(d) can be tested by considering the position at the time of each of the amendments to s 26(d).

The first was made by the Acts Interpretation Act 1937 (No 10 of 1937). No change in the status of the Northern Territory had occurred since its acceptance by the Commonwealth as a Commonwealth Territory. Commonwealth statutes operated in the Northern Territory in the same way as in the rest of the Commonwealth. Local law was enacted by Ordinances having effect in the Northern Territory. The amendment made by the 1937 Act was to insert in s 26(d) after the words "*Commonwealth or*" where last appearing the words "*part of the Commonwealth or under the law*". When the present appeal

was argued counsel were unable to suggest any reason for the insertion of these words. It seems to us that they may well be explicable by the feeling of a need to eliminate a possible ambiguity in the paragraph as it stood before the amendment; it may have been possible to argue that the phrase "*the law of the Commonwealth*" as it originally stood referred only to either Commonwealth statutes or law which applied generally throughout the Commonwealth and did not include the law established by Northern Territory Ordinances. The 1937 amendment would overcome any such possible objection. On this view "*the law of ... part of the Commonwealth*" would include the Ordinance law of the Northern Territory (and also the Australian Capital Territory).

If the foregoing explanation is incorrect, then the position remains as it was at the end of the argument in the appeal, that no explanation of the insertion of the words in 1937 is available. Either on the suggested explanation, or on the basis of there being no explanation, there seems to be no reason for drawing any conclusion that there had been any substantive alteration effected by the amendment to the pre-existing position that Courts of Summary Jurisdiction in the Northern Territory fell within the description in s 26(d).

The 1984 amendments were made by Act No 27 of 1984 which inserted, after the words "*or other State or part of a State,*" the words "*or of an external Territory,*" and also omitted the words "*the law of a State*" and substituted for them "*the law of the State or external Territory*".

The subdivision of Territories into External and Internal Territories had been introduced by the Acts Interpretation Act 1973, s 4(1)(b). Counsel told the

court that no material was discoverable which explained the 1984 insertion of the reference to an External Territory in s 26(d). In the absence of any explanation, and in the absence of any words plainly bringing about or showing an intention to bring about any change to the Northern Territory's position, first, there seems to be no warrant for concluding that the change was intended to bring about a substantive change in the jurisdiction of Northern Territory Courts of Summary Jurisdiction and second, it would seem reasonable to deduce that the change was a logical extension of the amendment made by the Acts Interpretation Act 1973. It also seems likely that the drafter saw no need to include reference to the Internal Territories, since they were already covered by s 26(d) as it stood.

Our conclusion therefore is, as earlier indicated, that Northern Territory Courts of Summary Jurisdiction fall within the definition contained in the current provision in s 26(d) of the Acts Interpretation Act. The appeal should therefore, in our opinion, be upheld and the answer made by Angel J to the question in the Special Case set aside. This leaves the question asked unanswered. The parties were agreed that if the court reached this position, then the question of law reserved by the Special Case should be remitted for further consideration at first instance. We so order.

A practical matter raised by what happened in this appeal needs to be mentioned. Both before the Magistrate and before Angel J, in the absence of Agus, the court had the benefit of submissions from an amicus curiae and had the advantage of full adversarial argument on the points argued in those courts. In the appeal, budgetary exigencies brought about the situation that no advocate was

able to appear as amicus curiae. Mr Reeves appeared for the Magistrate who was, properly, a party to the proceedings. Mr Reeves drew to the court's attention the constraints he submitted were upon counsel in his position when appearing, in substance, for the tribunal whose original decision was being called in question, and made submissions accordingly, within the perceived limits of what was laid down by the High Court in *The Queen v The Australian Broadcasting Tribunal & Others Ex parte Hardiman & Others* (1980) 144 CLR 13 at 36. This meant that full adversarial argument was not presented to this court, a most undesirable situation. Mr Reeves also had been asked by his client Magistrate to submit to the court that it was not appropriate for the Magistrate to be made a party to the proceeding and to seek a ruling from the court as to how such proceedings should be brought before the court without involving the Magistrate as a party.

The proper situation is that the Magistrate should be a party to the proceedings in the customary way, but in general taking no greater part in them than the High Court prescribed in *Hardiman*; the relevant governmental authorities should be able to instruct an amicus curiae to present appropriate adversarial argument so that the court has the assistance of hearing the case professionally argued from both sides. If practical problems mean that the foregoing desirable situation cannot be attained, then the court will have to devise procedures suitable for the circumstances of particular cases as they arise. The present appeal was one in which the issue was limited to the powers and procedures of the Court of Summary Jurisdiction and the submissions were so limited.