PARTIES:	MUNN, Michael
	v
	AGUS
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	Civil
FILE NO:	85 of 1996
DELIVERED:	31 October 1996
HEARING DATES:	23 September 1996
JUDGMENT OF:	ANGEL J

CATCHWORDS:

Procedure - Primary industry - Fish and fisheries - Federal offence - Indictable offence - Appeal - Jurisdiction of Northern Territory court of summary jurisdiction to hear ex parte applications - "a Court of Summary Jurisdiction" s26(d) Acts Interpretation Act 1901 (Cth) - excludes Northern Territory court of summary jurisdiction - effect of self-government

Acts Interpretation Act 1901 (Cth), s 12, s 17, 2 26
"a court of summary jurisdiction"
Fisheries Management Act 1991 (Cth), s 100, s 101
Judiciary Act 1903 (Cth), s 68
Northern Australia Act 1926 (Cth), s 4
Northern Territory Acceptance Act 1910 (Cth), s 6, s 9
Northern Territory (Self-Government) Act 1978 (Cth), s.5, s 74
Justices Act 1995 (NT)

Goodwin v Phillips (1908) 7 CLR 1 at 14, applied

REPRESENTATION:
Counsel:

Appellant:	A H Sylvester
Amicus Curae:	R J Coates

Solicitors:

Appellant:	Australian Government Solicitor
Amicus Curae:	Northern Territory Legal Aid Commission

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

No. 85 of 1996

BETWEEN:

MICHAEL MUNN
Appellant

AND:

AGUS
Respondent

CORAM: ANGEL J

REASONS FOR JUDGMENT

(Delivered 31 October 1996)

Question of law reserved pursuant to the *Justices Act* by Wallace SM.

The question of law so reserved is:

> "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 s100(1) or s101(1) of the *Fisheries Management Act 1991 (Cth)* in circumstances where the defendant and prosecution have consented to the charge being heard and determined by a court of summary jurisdiction."

On 23 September 1996 I heard submissions and reserved my decision.

Later that same day, for reasons which will become apparent, the court was re-

convened at my request and additional submissions were sought. The matter was then adjourned sine die with liberty to file further written submissions. Having received further written submissions from both parties I now deliver judgment.

Two immediate issues arise from the reserved question of law; the power to proceed ex parte by consent and the power to proceed at all. I shall deal with the latter issue, which was the subject of the supplementary submissions, first.

The question reserved by Wallace SM assumes that the Court of Summary Jurisdiction, established under the *Justices Act (NT)*, is competent to proceed in the first place. The case as stated concerns offences under the *Fisheries Management Act 1991 (Cth);* ss100(1) and 101(1).

Section 100 relevantly provides:

> "100
> (1) A person must not, at a place in the AFZ ['Australian Fishing Zone'], use a foreign boat for commercial fishing unless.
>
> ...
>
> (3) 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."

Section 101 also creates an indictable offence that may be disposed of in identical terms to s100(3). Both sections refer to "a court of summary

jurisdiction". That term is not defined in the *Fisheries Management Act 1991 (Cth)*. In the absence of such definition one turns to the *Acts Interpretation Act 1901 (Cth).* Section 26 of the *Acts Interpretation Act* relevantly provides:

> "26. 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."

The Northern Territory is an internal Territory: s17 (pe) of the *Acts Interpretation Act*. Courts of summary jurisdiction within the Northern Territory are not encompassed by the above definition. Prima facie, then, the court established in the Northern Territory by the *Justices Act (NT)* known as the Court of Summary Jurisdiction, is not empowered to hear and determine offences under ss100(3) and 101(3) of the *Fisheries Management Act*. There is, of course, the important proviso: "unless the contrary intention appears". I shall return to this.

Courts of the Northern Territory are empowered generally to deal with Commonwealth offences summarily. Provision is made for such in the *Judiciary Act 1903 (Cth)*. Section 68(2) of that Act provides:

> "The several courts of a State or Territory exercising jurisdiction with respect to:
>
> (a) the summary conviction; or
>
> (b) the examination and commitment for trial on indictment; or
>
> (c) the trial and conviction on indictment;
>
> of offenders, persons charged with offences against the laws of the State or Territory, and with respect to the hearing and determination of appeals arising out of any such trial or conviction or out of any proceedings connected therewith, shall, subject to this section and to section 80 of the Constitution, have the like jurisdiction with respect to persons who are charged with offences against the laws of the Commonwealth."

Section 68 also provides how "State or Territory" courts are to deal with offences against the laws of the Commonwealth. It was in 1976 such jurisdiction was conferred upon the courts of the Northern Territory: see *Judiciary Amendment Act*, number 164 of 1976. It is somewhat anomalous that jurisdiction exists for the Northern Territory to deal with Commonwealth offences summarily, yet the definition in s26(d) of 'Court of Summary Jurisdiction' in the *Acts Interpretation Act* specifically excludes courts of summary jurisdiction in the Northern Territory. It is a not unnatural expectation that a court of summary jurisdiction in the Northern Territory would be the forum for disposing of Commonwealth offences summarily in the Northern Territory.

The legislative history of s26(d) of the *Acts Interpretation Act* sheds little light upon the anomaly. The Northern Territory was not always excluded from the scope of the definition of 'court of summary jurisdiction' as found in s26(d). That section was enacted in 1901 as part of the original *Acts Interpretation Act* and save for any reference to 'external territories' s26(d) is in near identical terms today. In 1901 the Northern Territory was part of South Australia, or to use the terms of s26(d) as it then stood, "part of a State". The Northern Territory later became a federal territory in 1911 by virtue of the *Northern Territory Acceptance Act 1910 (Cth)*, section 9 of that Act providing:

> "All magistrates and Justices of the Peace in and for the State of South Australia residing in the Northern Territory and entitled to exercise jurisdiction therein at the time of acceptance, and all public officers and public functionaries in and for the Northern Territory at that time, shall continue to hold office under the Commonwealth in relation to the Northern Territory on the same terms and conditions as they held office under the state."

Thus, at least at the time of handover from South Australia to the Commonwealth, magistrates or justices of the peace within the Northern Territory became officers of the Commonwealth. Section 9 was repealed in 1926: s4, *Northern Australia Act 1926 (Cth)*. Perhaps from this one could view future appointed magistrates within the Northern Territory as being magistrates "of the Commonwealth". However, absent any clear legislative intent, no such inference could be drawn beyond 1978. In 1978 the Northern

Territory became a body politic in its own right upon the grant of self-government: see *Northern Territory (Self-Government) Act 1978 (Cth)*.

Section 26(d) remained unaltered after the Northern Territory achieved self-government. It was amended in 1984. The *Acts Interpretation Amendment Act* (27 of 1984) inserted the words "or of an external Territory" in to the section. An explanatory memorandum was circulated at the Second Reading Speech of the *Amendment Act* but it gives no clue regarding the purpose or design of the amendment of s26(d). Prior to that amendment the section had remained unaltered since its inception in the original Act of 1901. Thus, some eight years after summary jurisdiction was generally conferred upon the courts of the Northern Territory for Commonwealth offences, and some six years after self-government, the Commonwealth parliament amended s26(d) choosing not to include the Northern Territory Court of Summary Jurisdiction within the s26(d) definition.

Additional to being an internal territory, the Northern Territory is also a federal territory of the Commonwealth of Australia by virtue of s6(1) of the *Northern Territory Acceptance Act 1910 (Cth)*. Section 26(d) of the *Acts Interpretation Act* is inclusive of courts presided over by magistrates that are part of the Commonwealth. The "Commonwealth" is defined by the *Acts Interpretation Act* to mean the Commonwealth of Australia. It was submitted

that although the expression "internal Territory" is not used in s26(d), there was in fact no need for the expression to appear because the Northern Territory was/is a part of the Commonwealth (as defined) and as such magistrates of the NT are magistrates of the Commonwealth. The submission is based upon the premise that the Northern Territory is not competent in its own right and exists only as part of the Commonwealth. This submission can not be accepted. The Northern Territory became a body politic in its own right upon the grant of self-government in 1978: see s5 of the *Northern Territory (Self-Government) Act*. Furthermore, the *Northern Territory (Self-Government) Act* itself, envisaging co-operative arrangements between the then newly self-governing Northern Territory and the Commonwealth, provides in s74:

> "The Minister may arrange with the Administrator for the Territory to perform functions on behalf of the Commonwealth or for the Commonwealth to perform functions on behalf of the Territory."

Such a provision is not consistent with the submission that the Territory does not exist independently within the Commonwealth as a body politic. Also, if the submission be correct, most of s26(d) is rendered otiose; any reference to 'the state, parts of states and the external territories' would be useless as all are a "part of the Commonwealth".

For some reason, difficult to devine as it may be, ‘internal Territories’ were not included within the definition.

The maxim ‘generalia specialibus non derogant’ suggests that the general provision of jurisdiction (s68 of the *Judiciary Act*) does not override the pre-existing, specific, definition of Court of Summary Jurisdiction contained in the *Acts Interpretation Act*. The court’s approach to such a conflict is stated by O’Connor J in *Goodwin v Phillips* (1908) 7 CLR 1 at 14 as follows:

> “Where there is a general provision which, if applied in its entirety, would neutralise a special provision dealing with the same subject matter, the special provision must be read as a proviso to the general provision, and the general provision in so far as it is inconsistent with the special provision, must be deemed not to apply.”

Application of this rule of statutory interpretation in the present matter means this: the courts of the Northern Territory have jurisdiction to deal with offences against the Commonwealth summarily - even within the Court of Summary Jurisdiction - but, where, as is the case with the *Fisheries Management Act* 1991 (Cth) here, the Commonwealth statute specifically provides for the summary determination of an offence by way of proceeding in a ‘court of summary jurisdiction’ such a matter can only proceed in a court of summary jurisdiction as defined in the *Acts Interpretation Act*, which does not include the court established under the *Justices Act (NT)*.

Does s68 of the *Judiciary Act* evince a contrary intention to that contained in the *Acts Interpretation Act* definition by empowering generally the court of summary jurisdiction established under the *Justices Act (NT)* with jurisdiction to dispose of Commonwealth offences summarily? I think not. To so hold would render the *Acts Interpretation Act* definition of court of summary jurisdiction wholly inapplicable to the Northern Territory; it could never apply. If the submission were correct then s26(d) is not only rendered otiose vis-a-vis the Northern Territory but is rendered otiose vis-a-vis all States and Territories. The conferral of jurisdiction by s68 of the *Judiciary Act* is a general conferral upon the several courts of all "State[s] or Territory[ies]". To view s68 of the *Judiciary Act* as envincing a contrary intention to that contained in the *Acts Interpretation Act* definition also is to ignore s12 of the *Acts Interpretation Act.*

Applying the common law rules of statutory interpretation in *Goodwin v Phillips*, supra, and the provisions of the *Acts Interpretation Act* itself, no contrary intention appears by virtue of the general conferral of jurisdiction contained in s68 of the *Judiciary Act 1903 (Cth).* If a contrary intention is to appear, it must appear from some other specific source. Such a source may be the Act which creates the offence and provides for its possible summary

determination. In this case the *Fisheries Management Act* itself does not disclose any such intention.

The relevant sections of the *Fisheries Management* Act make specific reference to a "Court of Summary Jurisdiction". Inexorably this attracts the *Acts Interpretation Act* definition of Court of Summary Jurisdiction in the absence of a contrary intention. There is no such contrary intention. It follows the Court of Summary Jurisdiction established by the *Justices Act (NT)* has no jurisdiction in the present matter. Had the Commonwealth legislature used some such expression as "may be disposed of summarily" and made no reference to a court of summary jurisdiction in ss100, 101 of the *Fisheries Management Act,* that would have permitted summary disposal in the Court of Summary Jurisdiction established pursuant to the *Justices Act (NT)* by reason of s68 of the *Judiciary Act*.

The conclusion is surprising, but in my view inevitable, given the terms of the legislation. In the Northern Territory offences against ss100 and 101 of the *Fisheries Management Act 1991 (Cth)* must proceed as indictable offences in the usual way and can not be dealt with summarily.

I would answer the question of law as follows: "No, the 'Court of Summary Jurisdiction' established pursuant to the *Justices Act (NT)* has no jurisdiction to deal summarily with offences under ss100 and 101 of the *Fisheries Management Act* 1991 (Cth)".

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