

HIGH COURT OF AUSTRALIA

BRENNAN CJ

RAVENOR OVERSEAS INC & ORS

PLAINTIFFS

AND

PHILIP MARTIN READHEAD & ORS

DEFENDANTS

Ravenor Overseas Inc v Readhead (P52-1997) [1998] HCA 17
Date of Order and Reasons for Judgment Delivered: 11 March 1998

ORDER

1. *Summons dismissed.*
2. *Matter remitted to the Federal Court of Australia.*

Representation:

M J McCusker QC with P W Johnston for the plaintiffs (instructed by Jackson McDonald)

H C Burmester, Acting Solicitor-General for the Commonwealth for the defendants (instructed by Australian Government Solicitor)

Notice: This copy of the Court's Reasons for Judgment is subject to formal revision prior to publication in the Commonwealth Law Reports.

CATCHWORDS

Ravenor Overseas Inc & Ors v Philip Martin Readhead & Ors

Practice - High Court - Case stated - Question reserved - *Judiciary Act* 1903 (Cth), s 18.

Practice - High Court - Remitter - *Judiciary Act* 1903 (Cth), s 44.

Fisheries Management Act 1991 (Cth).

Judiciary Act 1903 (Cth), ss 18, 44.

1 BRENNAN CJ. This is a summons seeking the stating of a case and the reserving of questions for the opinion of the Full Court in a matter arising out of the arrest of a ship which was allegedly found in waters off Heard Island engaged in fishing activities contrary to the provisions of the *Fisheries Management Act* 1991 (Cth).

2 In substance, the question that the plaintiffs seek to raise is whether there is any constitutional impediment to Defence Force personnel assisting in the enforcement of the *Fisheries Management Act*. This question was raised and decided in *Li Chia Hsing v Rankin*¹. The entire Court, with the possible exception of Murphy J, were of the opinion that there is no constitutional reason why members of the Defence Forces should not assist in carrying out the provisions of the fisheries legislation.

3 At present prosecutions are pending in the Magistrates Court of Western Australia and, as the plaintiffs acknowledge, that Court and the State Court of Criminal Appeal, if the matter should reach that Court, are likely to take the view that they are bound by *Li Chia Hsing*. And so they should. Nothing is more important to the due administration of justice than that the Courts of Australia should faithfully follow decisions of this Court. This Court has the responsibility of determining the law applicable throughout the Commonwealth. Nor should it be thought that, because some new argument can be devised contrary to a holding of this Court, the authority of its decisions become problematic. Although the decisions of this Court will, when this Court deems it necessary, be revisited, there should be no qualification about the duty of other Courts faithfully to apply the decisions of this Court as they stand. Although in recent times rapidly changing social conditions and new insights into the Constitution have led to some notable instances where this Court has revisited earlier decisions, it would be erroneous to assume that the corpus of jurisprudence laid down by this Court over nearly a century does not have complete authority. The decisions of this Court determine the law to be applied by courts throughout the Commonwealth.

4 In the present case it would be destructive of the authority of this Court to entertain an application to revisit *Li Chia Hsing* for the purpose of deciding a question to be raised in a summary prosecution in which no evidence has been taken. I decline to reserve a question for the consideration of the Full Court.

5 Further, there is the question of the remission to the Federal Court of the action commenced by the plaintiffs in this Court. A statement of claim has been pleaded to by a defence so that there are issues joined between the parties which must be resolved by judicial determination. The power of remitter contained in s 44 of the *Judiciary Act* 1903 (Cth) is designed to ensure that this Court is not diverted from its principal functions by the need to hear and determine matters in

1 (1978) 141 CLR 182.

2.

the original jurisdiction which could properly be brought in an Australian trial court.

6 In remitting this matter to the Federal Court of Australia, I would observe that parties who seek interlocutory relief, or relief which has to do with the conduct of proceedings in other courts, even if it be based on some constitutional point, ought to seek that relief from a court in which the trial of issues is ordinarily conducted, not from this Court.

7 Accordingly, I dismiss the summons and refuse to state a case or to reserve questions for the opinion of the Full Court. I remit the matter to the Federal Court of Australia.

