

IN THE HIGH COURT OF AUSTRALIA

THE KING

V.

LONG

(Ex-parte LONG)

REASONS FOR JUDGMENT

Judgment delivered at Sydney

on Wednesday, 26th November 1947.

JUDGMENT:

LATHAM, C.J: The prosecutor, Victor James Long, obtained an order nisi for a writ of habeas corpus with the object of obtaining the custody of his male child aged six years, who is at present with his mother in Sydney. The father is a resident of Queensland.

A question arose upon the application for the order nisi as to the jurisdiction of the Court. The contention that there was jurisdiction was based by the prosecutor upon the provisions of section 75 (4) of the Constitution which confers upon this Court jurisdiction in matters between residents of different States.

His Honour Mr. Justice Williams has referred to the Full Court, under section 18 of the Judiciary Act, the question whether this Court has jurisdiction to hear and determine the application.

It has been brought to the attention of the Court that, since these proceedings were instituted by the father, the mother has instituted proceedings under the Guardianship and Custody of Infants Act of New South Wales. Under that Act there is no doubt as to the jurisdiction of the Supreme Court of New South Wales to make an order with respect to the custody of this infant now in New South Wales.

This Court cannot properly refuse to exercise jurisdiction vested in it by the Constitution; but when another Court also has jurisdiction this Court may consider whether it should or should not immediately exercise the jurisdiction vested in it.

We think that in this case it is in the best interests of all the parties concerned to allow the proceedings in this Court to stand over until the proceedings in the Supreme

Court of New South Wales are determined.

We therefore adjourn this matter, referred, as I have said, to the Full Court by my Brother Williams, sine die with liberty to either party to apply for the matter to be placed in the list for hearing and reserve costs. That will leave the proceedings still pending before my Brother Williams but presumably, in accordance with this decision of the Full Court, those proceedings will not be resumed until the Supreme Court of New South Wales has determined the matter, but there again - if there is undue delay - it will be open to either party to make an application in the matter.

So the matter is adjourned sine die with liberty to either party to apply for the matter to be placed in the list and questions of costs are reserved.

MR. McCAWLEY: The question of the jurisdiction of the New South Wales Supreme Court not having been argued ----

LATHAM, C.J.: I will alter what I have said to "As at present advised I see no reason to suppose that the Supreme Court has not full jurisdiction."

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