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IN THE HIGH COURT OF AUSTRALIA

BRAITHWAITE

V.

COUTOUPES.

REASONS FOR JUDGMENT

Judgment delivered at SYDNEY.

on MONDAY, 6th December, 1948.

JUDGMENT

LATHAM C.J.

The respondent here is registered as proprietor of lands in Darwin under the provisions of the Real Property Act 1886 of South Australia, which has been applied by ordinance to the Northern Territory.

The Darwin Lands Acquisition Act 1945 provides that certain lands specified in the schedule to that Act may be acquired under the provisions of the Lands Acquisition Act 1906-36, which has been applied to the Territory by the Lands Acquisition Ordinance 1911-26. The land in question is included in the schedule. Section 3 provides that that land may be acquired and section 6 provides that land acquired in pursuance of the Act shall become Crown land of the Territory.

The proceedings before the Magistrates' Court were brought under the Crown Lands Ordinance 1931, sections 118 and 119. In relation to section 118 complaint was made that the respondent was in possession and unlawful occupation of certain Crown lands, namely, the lands of which he was the registered proprietor under the South Australian Real Property Act 1886 as applied to the Territory. He was charged also with the offence under section 119 of unlawfully occupying Crown lands. Under section 118 a warrant for possession of the lands was issued against him and under section 119 he was convicted of the offence thereby created and fined the sum of £10. Upon appeal to the Supreme Court of the Northern Territory the order and conviction were set aside upon the ground that they involved a decision as to whether the land in question was Crown land and therefore the Magistrate had determined a question of title.

It has long been the law that a Magistrate exercising summary jurisdiction has no jurisdiction to determine a bona fide

question of title which is raised on substantial grounds. If there is obviously nothing in the point, the mere fact that the question is raised does not oust the jurisdiction of the Magistrate.

The point made here is that by the Real Property Act of South Australia, section 6, this Act having been applied to the Territory, "No law, so far as inconsistent with this Act, shall apply to land subject to the provisions of this Act, nor shall any future law, so far as inconsistent with this Act, so apply unless it shall be expressly enacted that it shall so apply notwithstanding the provisions of the Real Property Act 1886".

It is contended that as the relevant Federal Legislation, comprised in the Lands Acquisition Act, the Crown Lands ordinance (I presume), and certainly the Darwin Lands Acquisition Act 1945, did not contain these words, namely, "Notwithstanding the provisions of the Real Property Act 1886" those laws do not apply to land in the Northern Territory.

This matter was determined by this Court quite clearly in the case of the South Eastern Drainage Board v. Savings Bank of South Australia (62 C.L.R. 303) where it was held that the South Australia legislature, which passed the Act of 1886, did not thereby impose a fetter or limitation in relation to the form of subsequent legislation dealing with land under the Act and that if in a subsequent Statute there was a provision inconsistent with the 1886 Act, the later Act prevailed.

That was determined in relation to a South Australian later Statute; in the present case the matter arises in relation to a Federal Statute. After this decision it is quite impossible to contend with any show of justification that section 6 of the South Australian Act limits or controls in any way the legislative power of the Commonwealth Parliament or the effect of legislation passed by that Parliament.

The rule excluding the jurisdiction of Magistrates where questions of title are raised applies only where there is a bona fide raising of the point upon substantial grounds, as it was put in the N.S.W. case of Ex parte Coffill (10 W.N. 222). Accordingly there is nothing whatever in the point raised and the legislation was effective to convert this land into Crown land and the defendant was in unlawful occupation of the land. Accordingly, the jurisdiction of the Magistrate was not ousted, the order for the issue of a warrant was rightly made and the defendant rightly convicted.

We are prepared however, in the circumstances, while setting aside the order of the Supreme Court and restoring the order and conviction of the Magistrate, to reduce the fine to the amount of 1/- and there will be no order as to costs.

RICH J. I agree.

STARKE J. I agree.

WILLIAMS J. I agree.

ORDER

Leave to appeal granted, appeal allowed, order of the Supreme Court discharged. Magistrate's order and conviction restored but fine reduced to 1/-, no order as to the costs of proceedings in this Court.