

IN THE HIGH COURT OF AUSTRALIA

MUNRO

V.

LOMBARDO

REASONS FOR JUDGMENT

Judgment delivered at MELBOURNE

on WEDNESDAY, 6TH MAY 1964

MUNRO

v.

LOMBARDO

DECISION OF THE COURT
DELIVERED BY BARWICK C.J.

CORAM: BARWICK C.J.
TAYLOR J.
MENZIES J.
WINDEYER J.
OWEN J.

MUNRO

v.

LOMBARDO

This cause comes before the Court removed from the Full Court of the Supreme Court of Western Australia under the provisions of sec. 40A of the Judiciary Act. The cause is one in which the respondent was charged, under sec. 24(3) of the Western Australian Fisheries Act, with having had in his possession at Bunbury female crayfish with eggs or spawn attached to the underside of the body. The magistrate discharged the respondent, taking the view that, although the respondent did have the crayfish tails in the condition as charged in his possession on the Fishermen's Jetty at Bunbury, he had no knowledge of that condition and that his possession was the result of accident or honest mistake.

On appeal from the decision of the magistrate, the Full Court of Western Australia were of a contrary opinion to him on the facts and concluded that the respondent had had crayfish, as described, in his possession in breach of the Western Australian law. Before the magistrate a number of submissions of law had been raised which included a submission that the provisions of the Commonwealth Fisheries Act 1952 were inconsistent with the relevant provisions of the Fisheries Act of Western Australia and that the latter, particularly sec. 24(3), were rendered inoperative by sec. 109 of the Commonwealth Constitution. The magistrate did not find it necessary to deal with this submission.

Before the Supreme Court of Western Australia, however, the appellant took a course in argument which virtually conceded that there was an inconsistency between the

two statutes as submitted before the magistrate by the respondent and proceeded to submit that the Commonwealth statute was invalid in so far as it purported to operate in what can be conveniently referred to as the territorial waters of the State.

It seems clear from the account of the proceedings before the Supreme Court which has been clearly and frankly given to us by Mr. Wilson that at this point, the Court having formed all its conclusions of fact and law which would have been otherwise necessary for the determination of the matter, an inter se question arose and sec. 40A operated.

However before us Mr. Wilson has said that the appellant wishes to present a substantial argument to convince us that there is in fact no inconsistency between the Commonwealth and the State statutes and that in his submission, having regard to what he hopes to induce us to decide, the inter se question will not fall for decision.

It is quite clear that the question of inconsistency does not itself raise a question inter se and that, but for the concession of the appellant, the Supreme Court of Western Australia would have had to decide this question before the inter se question arose so as to attract the operation of sec. 40A of the Judiciary Act.

The respondent is not represented before us and may be affected by this changed attitude on the part of the appellant. On the other hand, counsel representing three States have attended here and indicated that at some stage they might wish to seek leave to intervene in connexion with the inter se question which may emerge.

We have considered what in the circumstances is the preferable course to be taken and we have decided to adjourn the further hearing of this cause to the sittings of

3.

the Court to be held in Perth in September next, the respondent to be notified of the changed attitude of the appellant with respect to the question of whether or not the Commonwealth and State statutes are inconsistent.

The further hearing of the cause is therefore adjourned to the Perth sittings and there will be no order as to the costs of this day's hearing.