Title
[Jehovah's Witness]: Investigations into Australian Activities - Adelaide Company of Jehovah's Witnesses Inc V The Commonwealth of Australia.

Series number
A467

Control symbol
SF43/39

Contents date range
22 Oct 1940 - 10 Jul 1944

Access status
Open

Location
Canberra

Barcode
99461

W 1256

R.S.

SPECIAL FILE No 43
No.

COMMONWEALTH OF AUSTRALIA.

Attorney-General's Department.

FILE OF PAPERS.

SUBJECT: ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INC.

V.

THE COMMONWEALTH OF AUSTRALIA.

2484

3rd

W 4236

[illegible]/MCF

10 JUL 1944

S.L.21369/6

29th June, 1944.

The Crown Solicitor:

ADELAIDE COMPANY OF JEHOVAH'S WITNESSE'S
v. THE COMMONWEALTH.

Herewith is forwarded a claim in the name of the Executors of the estate of the late E. M. Mitchell, K.C. for £142. 4. 0, being the amount due to Mr. Mitchell in respect of the several actions against the Commonwealth by various societies, corporations and adherents of the sect of the Witnesse's of Jehovah, in respect of action taken by the Commonwealth under the provisions of the National Security (Subversive Associations) Regulations.

2. The claim, which is correctly rendered, has been certified by me as correct, and is in order for payment.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per

Encl.

The Secretary.

Claim herewith for payment.

(H. F. E. WHITLAM)
Crown Solicitor
10/7/44.

Voucher detached
13-7-44

W 4256

T.L.S. COMMONWEALTH ATTORNEY GENERAL'S DEPT. RECEIVED 3 - JUL 1944 S.L.21369/6. CANBERRA

4256

26th June, 1944.

The Crown Solicitor:

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES v. THE COMMONWEALTH.

Forwarded herewith are claims in the names of Mr. C.A.Weston, K.C., and Mr. A.R.Taylor, K.C., for £459. 4. 6 and £395.14. 6 respectively, being the amounts due to them for appearing for the Commonwealth in connection with actions instituted against the Commonwealth by the Witnesses of Jehovah and cognate bodies. The claims which are correctly rendered, have been certified by me and are in order for payment.

2. A claim form in respect of the fees payable to the late E. M. Mitchell, K.C., has been sent to the executors of his estate for signature, and, upon receipt by me of the signed claim, it will be forwarded to you.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per

Vouchers detached 13-7-44

The Secretary.

Claim herewith for payment please.

Encl.

Accountant 1944

H.F.E. Whitlam

Crown Solicitor. per: 3.7.1944.

COMMONWEALTH ATTORNEY GENERAL'S DEPT.
RECEIVED
24 AUG 1943
CANBERRA

W 4256

CR.

24th August, 1943.

MEMORANDUM for -

The Secretary,
Department of External Affairs,
CANBERRA. A.C.T.

JEHOVAH'S WITNESSES : ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH.

In response to the request contained in the memorandum dated 2nd August, 1943, to you from the Official Secretary, Office of the High Commissioner in Australia, I am forwarding herewith typewritten copy of the High Court Judgment in the above matter.

Geo. J. Knowles.
Secretary.

LG

27th July, 1943.

MEMORANDUM for -

The Director-General of Security,
CANBERRA, A. C. T.

JEHOVAH'S WITNESSES.

I refer to my memorandum dated 30th April, 1943, returning certain papers made available by the Security Service for the purposes of the High Court proceedings as to the validity of the action taken by the Commonwealth against Jehovah's Witnesses and their associated bodies under the National Security (Subversive Associations) Regulations.

I now return herewith your file No. 16/5/395 regarding the withdrawal of certain wireless transmitting licences.

(Sgd.) Geo. S. [illegible]

Secretary.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

the place so specified any meat to which this Order applies -

(a) shall not dispose of or part with the possession of that meat except in accordance with directions given by the Controller or an authorized person.

(b) shall, if so directed by the Controller or an authorized person, place in cold storage that meat or the portion thereof specified in the direction; and

(c) shall comply with any directions so given by the Controller or an authorized person as to the disposal of the meat.

THE SCHEDULE.

Persons to whom this Order applies.

Name. Address.

Dated this day of , 1943.

Controller of Meat Supplies.

CR.

5th July, 43

W.4256

MEMORANDUM for -

The Director,
Investigation Branch,
CANBERRA. A.C.T.

I refer to the telephone message dated 24th June, 1943, from Inspector Williams in connexion with the handing over of Kingdom Hall to Jehovah's Witnesses.

I agree that Inspector Williams should take no action towards giving possession of the Hall to Jehovah's Witnesses until judgment is delivered by Mr. Justice Starke or until some arrangement is made with Jehovah's Witnesses for its earlier vacation.

I made no arrangement in Melbourne with Mr. Alderman with regard to possession of this Hall but the matter was discussed in Canberra on 30th June.

Pending further instructions, Mr. Williams should continue in occupation of the Hall on behalf of the Commonwealth.

If inquiries are made by Messrs. Alderman, Reid & Brazel, or by any other person, on behalf of Jehovah's Witnesses as to the use to which the Commonwealth has put or is putting the Hall, I see no reason why such information should be withheld.

(Sgd.) Geo. S. Knowles

Secretary.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

THE SCHEDULE—*continued.*

(3.) A Deputy Controller shall assist the Controller as directed by him in relation to matters arising in the regional area in respect of which the Deputy Controller is appointed.

Orders relating to production of stock.

14. Subject to these Regulations and to any order or direction of the Minister made or given in pursuance of these Regulations—

(*a*) in the case of a regional area constituted by a State, or by a State together with the whole or part of any Territory of the Commonwealth—the Governor in Council of that State; and

(*b*) in the case of a regional area constituted by the whole or part of any Territory or Territories of the Commonwealth—the Minister,

may make orders for the purpose of ensuring the adequate provision, for the purposes of these Regulations, in that regional area of stock and, without limiting the generality of the foregoing provisions of this regulation, for providing, in relation to that regional area, for one or more or all of the following :—

(i) The registration of the producers of any stock ;

(ii) The distribution of stock-feeds made available by the Minister or provided under any national scheme of fodder conservation or supplementary feeding ;

(iii) The stimulation, regulation or restriction of production of stock ; and

(iv) The control of the movement of stock within the regional area.

Minister may order supply and delivery of stock.

15. Notwithstanding anything contained in any law of any State or Territory of the Commonwealth, the Minister may, by order in writing, or by order published in the *Gazette*, require any person who produces or has control of any stock to supply and deliver to the Minister or to a person specified in the order, at such marketing place, slaughtering establishment or other place, and in such condition, as is so specified, such of the stock as is so specified, and that person shall, within such period as is specified in the order, supply and deliver that stock accordingly.

Controlled areas.

16. The Minister may, by order published in the *Gazette*, declare any area in the Commonwealth, or in any Territory of the Commonwealth, to be a controlled area for the purposes of these Regulations, and may, by the same order, or by a separate order, make provision for the regulation and control of the production, storage, canning, processing, marketing and distribution of meat in the controlled area.

Registration of slaughtering establishments.

17. The Minister may notify the proprietor of any abattoirs or other establishment where stock is slaughtered that the establishment has been registered for the purposes of these Regulations, and that establishment shall thereupon become a registered establishment for the purposes of these Regulations.

Slaughtering licences.

18.—(1.) The proprietor of any registered establishment, and any person who slaughters stock, or on whose behalf stock are slaughtered, at a registered establishment, may apply to the Minister, in a form approved by him, for a slaughtering licence.

(2.) The Minister may grant to any such person a slaughtering licence in such form as he thinks fit, or may refuse the application.

(3.) A licence under this regulation may contain such conditions and restrictions as the Minister thinks fit.

(4.) The Minister may at any time revoke any licence under this regulation.

(5.) A licensee shall not fail to observe and comply with the conditions and restrictions contained in the licence.

Stock not to be slaughtered without a licence.

19. A person shall not, in a controlled area, slaughter, or cause to be slaughtered, stock for the production of meat for sale for human consumption in any form except—

(*a*) in pursuance of a licence held by him ; or

(*b*) on behalf of a licensee in accordance with the terms and conditions of the licence.

Minister may require establishments to publish prices.

20. The Minister may require the proprietor of a registered establishment, or a licensee who slaughters stock, to publish, in such manner as the Minister directs, the prices at which that registered establishment or licensee will slaughter or otherwise treat stock or meat on owner's account on a weight and grade basis.

Transport of meat.

21. Except with the approval of the Controller, or by his direction, a person shall not transport any meat in a regional area from an uncontrolled area into a controlled area.

THE

RECEIVED
24 JUN 1943
CANBERRA

TELEPHONE MESSAGE FROM INSPECTOR WILLIAMS,
ADELAIDE - 3.15 p.m. on 24.6.43.

Mr. Brazel, of Alderman, Reid & Brazel, Counsel for Jehovahs' Witnesses has asked Inspector Williams whether Kingdom Hall can now be made available to Jehovahs' Witnesses for the purposes of holding meetings.

Inspector Williams informed Mr. Brazel that acting on legal advice he was retaining custody of the Hall until judgment was delivered by Mr. Justice Starke. Mr. Brazel said there was an arrangement made in Melbourne between Sir George Knowles and Mr. Alderman in regard to this Hall. Instructions are now sought by Inspector Williams as to whether he may now hand it over to Jehovahs' Witnesses. The Hall is in occupation by the military authorities as a Store, with the approval of Sir George Knowles. Mr. Williams has not informed the Solicitors of this approved arrangement.

A direction is sought by Mr. Williams as to whether, when the Hall is handed over, the Solicitors should be informed.

Mr. Brazel has not been told that the military authorities are at present using the Hall for their purposes.

EGP.

COMMONWEALTH
24 JUN 1943
CENTRAL
INVESTIGATION BRANCH

The Solicitor-General.

Forwarded for your information and advice as desired by Inspector Williams.

E C Beggs

xx 631

JH.

28th July, 42

W.1125

MEMORANDUM for:-

The Director,
Investigation Branch,
CANBERRA. A.C.T.

KINGDOM HALL, ADELAIDE - REPAIRS TO ROOF

I refer to your memorandum dated 22nd July, 1942, asking for authority to expend an estimated amount of £1.15.0 in repairing the roof to the abovenamed building and, in reply thereto, desire to state that this expenditure is approved.

(Sgd) Geo. S. Knowles.

J.J.

Secretary.

Mr Tibbling 28/7/42

COMMONWEALTH OF AUSTRALIA.

COMMONWEALTH EMPLOYEES COMPENSATION ACT 1930 : CLAIM FOR COMPENSATION BY SPECIAL PEACE OFFICER W.H.T. EASTON.

In the matter of the claim of Special Peace Officer William H.T. Easton, under the Commonwealth Employees' Compensation Act 1930 for compensation in respect of injury by accident caused to him on duty on 1st June, 1942, I, Sir George Shaw Knowles, a Delegate of the Commissioner for Employees' Compensation, hereby determine as follows:-

(a) that Special Peace Officer William H.T. Easton is entitled to compensation under the said Act

NRS 1921 DC
2315

TELEPHONE:
B. 098.
TELEGRAPH:
SUBSIDED, CANBERRA.

COMMONWEALTH OF AUSTRALIA.

COMMONWEALTH INVESTIGATION BRANCH.

CANBERRA.
(A.C.T.)

D/1551

W 1125

22nd July, 1942.

The Secretary,
Attorney-General's Department,
CANBERRA. A.C.T.

Repairs to Ceiling of Kingdom Hall, Adelaide -
Jehovah's Witnesses Organisation.

I have to advise that Inspector Williams recently reported that the ceiling of Kingdom Hall was in need of repair and I instructed him to have an examination made by an officer of the Works Department in order that an estimated cost of effecting the necessary repairs could be obtained.

I am now informed that the Works Department estimates cost of repair at £1.15.0

In the circumstances I have to ask if Inspector Williams may be authorised to have the necessary repair work carried out.

H.E. James
DIRECTOR.

COMMONWEALTH ATTORNEY-GENERAL'S DEPT.
RECEIVED
5 - JUL 1943
CANBERRA

TLS/HEW

SL.21369/6. 1st July, 1943.

The Crown Solicitor.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH.

I return herewith the files of papers forwarded to me by you and by the Secretary, Attorney-General's Department, for use in connection with this action.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per: Z.S.

ENCL.

The Secretary
Attorney-General's Department
Crown Solicitor
5 JUL 1943

V 4256

COMMONWEALTH ATTORNEY GENERAL'S DEPT. RECEIVED 23 JUN 1943 CANBERRA

22nd June, 1943.

The Crown Solicitor,
CANBERRA.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

I enclose herewith two copies of the Order of the High Court herein.

(F. F. CLAUSEN)
Deputy Crown Solicitor.

ENCS.
FFC.IW.

The Secretary
Attorney-General's Department
For your information
Crown Solicitor
23 JUN 1943

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY) No. 11 of 1941.

BETWEEN:

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA Defendant

BEFORE THEIR HONOURS THE CHIEF JUSTICE,
MR. JUSTICE RICH, MR. JUSTICE STARKE,
MR. JUSTICE McTIERNAN, AND MR. JUSTICE WILLIAMS.

MONDAY THE FOURTEENTH DAY OF JUNE 1943.

THE CASE STATED in writing by His Honour Mr. Justice Starke on the 10th day of February 1943 wherein certain questions of law were reserved for the consideration of this Court coming on for hearing before this Court on the 10th, 11th, and 12th days of March 1943 WHEREUPON AND UPON READING the said Case Stated and the annexures thereto AND UPON HEARING Mr. Fullagar K.C. and Mr. Alderman and Dr. Louat of Counsel for the abovenamed Defendant Plaintiff and Mr. Weston K.C. and Mr. Taylor of Counsel for the abovena THIS COURT DID ORDER that the said Case Stated should stand for judgment and the same standing for judgment this day accordingly THIS COURT DOTH DETERMINE AND ANSWER the questions reserved in the said Case Stated as follows:-

QUESTION 1:- Is the Adelaide Company of Jehovah's Witnesses Incorporated a party competent to maintain that the National Security (Subversive Associations) Regulations, the said Order in Council, and the said Direction of the Attorney-General above mentioned contravene the provisions of Sec. 116 of the Constitution?

ANSWER:- Yes.

QUESTION 2:- Do the National Security (Subversive Associations) Regulations or any and which of those regulations contravene the provisions of Sec. 116 of the Constitution?

ANSWER:- No.

QUESTION 3:- Do the Said Order in Council and the said Direction of the Attorney-General above mentioned or any and what part thereof so far as they affect the said incorporated association or the association of persons known as - Jehovah's Witnesses, contravene the provisions of Sec. 116 of the Constitution?

ANSWER:- No.

QUESTION 4:- Are the National Security (Subversive Associations) Regulations or any and which of those regulations, beyond the powers or authorities conferred by:-
(a) The Constitution.
(b) The National Security Act 1939-1940?

ANSWER:- As to (a) - As to Regulation 6A - Yes.
As to Regulations 3 to 6 and 6B - No answer.

As to (b) - Yes.

QUESTION 5:- Is the said Order in Council or the said Direction of the Attorney-General or any and what part thereof so far as either affects the said incorporated association or the association of persons known as Jehovah's Witnesses, beyond the powers and authorities conferred by:-
(a) The Constitution.
(b) The National Security Act 1939-1940.
(c) The National Security (Subversive Associations) Regulations?

ANSWER:- As to (a) - No Answer.

As to (b) - In respect of the Order in Council and the Direction of the Attorney-General - Yes.

As to (c) - In respect of the said Order in Council - No answer.
In respect of the said Direction of the Attorney-General - Yes.

QUESTION 6:- Do the said National Security (Subversive Associations) Regulations, upon their proper construction, extend to the said incorporated association or the association of persons known as Jehovah's Witnesses?

ANSWER:- Yes, as to both associations.

AND THIS COURT DOTH ORDER that the said Case Stated be and the same is hereby remitted with the answers aforesaid to His Honour --- Mr. Justice Starke AND that the costs of the said Case Stated be costs in the action.

BY THE COURT

(L.S.)

(Sgd) J. G. HARDMAN

Principal Registrar.

W 4256

COMMONWEALTH ATTORNEY-GENERAL'S DEPT. RECEIVED 21 JUN 1943 CANBERRA

16th June, 1943.

The Crown Solicitor,
CANBERRA.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

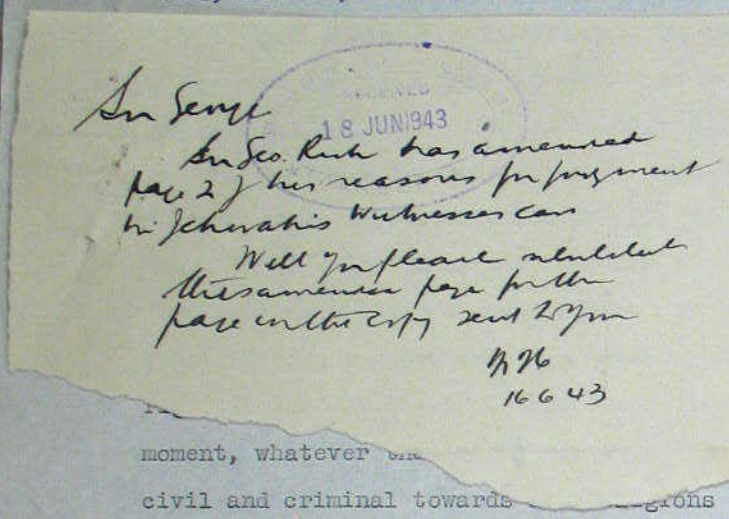
Herewith are forwarded two copies of amended page 2 of the Reasons for Judgment of His Honour the Chief Justice. Please substitute these for the page 2 of the copies already sent to you.

(F. F. CLAUSEN)
Deputy Crown Solicitor.

KNCS.
FFC.IW.

The Secretary
Attorney-General's Department
For your information
Crown Solicitor 19 JUN 1943

History of the Law, vol. VIII, pp.402-420, has traced the development of the law towards religious toleration and it may be said that "religious liberty and religious equality are now complete", Maitland Constitutional History of England, p. 520. This, however, does not afford an unlimited licence to propagate or



.s connection I would
d Sumner in Bowman v.
. 466, 467. "The words,
r society differ from
stable or insecure in
bers to be open to assault.
a danger to society is a
fact. Society has the
from the dangers of the
moment, whatever
attitude of the law both
civil and criminal towards
grons depends fundamentally on
the safety of the State".

Any regulations, therefore, which empower the government to prevent persons or bodies from disseminating subversive principles or doctrines or those prejudicial to the defence of the Commonwealth or the efficient prosecution of the war do not infringe sec. 116. The peace, good government and order of the Commonwealth may be protected at the same time as the freedom of religion is safeguarded. Freedom of religion is not absolute. It is subject to powers and restrictions of government essential to the preservation of the community. Freedom of religion may not be invoked to cloak and dissemble subversive opinions or practices and operations dangerous to the common weal. Any competition between governmental powers and liberty under the Constitution can be reconciled and made compatible. They co-exist without invasion of their respective spheres of action. Accordingly I consider the regulations in question do not infringe the section.

I am not, however, satisfied that the National Security (Subversive Associations) Regulations are within the defence power

History of the Law, vol. VIII, pp.402-420, has traced the development of the law towards religious toleration and it may be said that "religious liberty and religious equality are now complete", Maitland Constitutional History of England, p. 520. This, however, does not afford an unlimited licence to propagate or disseminate subversive doctrines. In this connection I would adapt some passages from the speech of Lord Sumner in Bowman v. Secular Society Ltd., 1917 A.C. 406, at pp. 466, 467. "The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. The question whether a given opinion is ~~in~~ a danger to society is a question of the times and is a question of fact. Society has the right to protect itself by process of law from the dangers of the moment, whatever that right may be. The attitude of the law both civil and criminal towards all religions depends fundamentally on the safety of the State".

Any regulations, therefore, which empower the government to prevent persons or bodies from disseminating subversive principles or doctrines or those prejudicial to the defence of the Commonwealth or the efficient prosecution of the war do not infringe sec. 116. The peace, good government and order of the Commonwealth may be protected at the same time as the freedom of religion is safeguarded. Freedom of religion is not absolute. It is subject to powers and restrictions of government essential to the preservation of the community. Freedom of religion may not be invoked to cloak and dissemble subversive opinions or practices and operations dangerous to the common weal. Any competition between governmental powers and liberty under the Constitution can be reconciled and made compatible. They co-exist without invasion of their respective spheres of action. Accordingly I consider the regulations in question do not infringe the section.

I am not, however, satisfied that the National Security (Subversive Associations) Regulations are within the defence power

History of the Law, vol. VIII, pp.402-420, has traced the development of the law towards religious toleration and it may be said that "religious liberty and religious equality are now complete", Maitland Constitutional History of England, p. 520. This, however, does not afford an unlimited licence to propagate or disseminate subversive doctrines. In this connection I would adapt some passages from the speech of Lord Sumner in Bowman v. Secular Society Ltd., 1917 A.C. 406, at pp. 466, 467. "The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. The question whether a given opinion is ~~in~~ a danger to society is a question of the times and is a question of fact. Society has the right to protect itself by process of law from the dangers of the moment, whatever that right may be. The attitude of the law both civil and criminal towards all religions depends fundamentally on the safety of the State".

Any regulations, therefore, which empower the government to prevent persons or bodies from disseminating subversive principles or doctrines or those prejudicial to the defence of the Commonwealth or the efficient prosecution of the war do not infringe sec. 116. The peace, good government and order of the Commonwealth may be protected at the same time as the freedom of religion is safeguarded. Freedom of religion is not absolute. It is subject to powers and restrictions of government essential to the preservation of the community. Freedom of religion may not be invoked to cloak and dissemble subversive opinions or practices and operations dangerous to the common weal. Any competition between governmental powers and liberty under the Constitution can be reconciled and made compatible. They co-exist without invasion of their respective spheres of action. Accordingly I consider the regulations in question do not infringe the section.

I am not, however, satisfied that the National Security (Subversive Associations) Regulations are within the defence power

as see 17.3.6. c3

W 4256

CASE STATED FOR THE CONSIDERATION OF THE FULL COURT.

Formal Order

Question	Answer
1. Is the Adelaide Company of Jehovah's Witnesses Incorporated a party competent to maintain that the National Security (Subversive Associations) Regulations, the said Order in Council, and the said Direction of the Attorney-General above mentioned contravene the provisions of sec. 116 of the Constitution?	1. Yes
2. Do the National Security (Subversive Associations) Regulations or any and which of those regulations contravene the provisions of section 116 of the Constitution?	2. No.
3. Do the said Order in Council and the said Direction of the Attorney-General above mentioned or any and what part thereof so far as they affect the said incorporated association or the association of persons known as Jehovah's Witnesses, contravene the provisions of section 116 of the Constitution?	3. No
4. Are the National Security (Subversive Associations) Regulations or any and which of those regulations, beyond the powers or authorities conferred by :- (a) The Constitution. (b) The National Security Act 1939-1940?	4. As to (a) - as to reg. 6A - Yes. as to regs. 3 to 6 and 6B - No answer. As to (b) - Yes.
5. Is the said Order in Council or the said Direction of the Attorney-General or any and what part thereof so far as either affects the said incorporated association or the association of persons known as Jehovah's Witnesses, beyond the powers and authorities conferred by :- (a) The Constitution. (b) The National Security Act 1939-1940. (c) The National Security (Subversive Associations) Regulations?	5. As to (a) - No answer. As to (b) in respect of the order and the direction - Yes. As to (c) in respect of the order - No answer: in respect of the direction - Yes.
6. Do the said National Security (Subversive Associations) Regulations, upon their proper construction, extend to the said incorporated association or the association of persons known as Jehovah's Witnesses.	6. Yes as to both Associations.

Attach to file

1. Latham No.
Rich Yes
Starke
McTiernan
Williams

2. Latham No.
Rich No
Starke
McTiernan
Williams

3. Latham No.
Rich Yes with regard to 3 to 6 B.
Starke
McTiernan
Williams

4(a)
Latham ~~3 4 6A 6B 6C 6D~~ No. Yes 6A unnecessary to answer this
Rich — Yes.
Starke — unnecessary to answer
McTiernan
Williams

4(b)
Latham
Rich
Starke — Yes
McTiernan
Williams

5(a) Latham No (omc Yes (as.)
Rich
Starke unnecessary to answer
McTiernan
Williams

5(b) Latham No Yes (as.)
Rich
Starke — Yes
McT.
Williams

5(c) Latham No. Yes (as.)
Rich
Starke — unnecessary to answer.
McT.
William

6. Latham Yes.
Rich
Starke — Yes.
McT.
Williams

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

v.

THE COMMONWEALTH OF AUSTRALIA.

REASONS FOR JUDGMENT. LATHAM C.J.

1. This proceeding raises important questions with reference to the nature and extent of the protection which is given to religion under the Constitution of the Commonwealth. Section 116 of the Constitution is as follows:-

> "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

It is plain that by this provision it is intended to place some restriction upon the power of the Commonwealth to enact legislation which favours any religion, or which interferes with any religion. The principal questions which arise in the case are:- Does section 116 prevent the Commonwealth Parliament from legislating to restrain the activities of a body, the existence of which is, in the opinion of the Governor-General, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, if that body is a religious organisation? Is the answer to this question affected by the fact that the subversive activities of such a body are founded upon the religious views of its members? Can such a body be suppressed

2. In the first place, it is important to observe that section 116 is an express prohibition of any law which falls within its terms. The section deals with laws which in some manner relate to religion. The Constitution, however, contains no provision which confers upon the Commonwealth Parliament any power to make laws with respect to the subject of religion. Section 116 therefore cannot be regarded as prescribing the content of laws made with respect to religion upon the basis that the Commonwealth Parliament has some power of legislating with respect to religion. Section 116 is a general prohibition applying to all laws, under whatever power those laws may be made. It is an overriding provision. It does not compete with other provisions of the Constitution so that the Court should seek to

reconcile it with other provisions. It prevails over and limits all provisions which give power to make laws.

Accordingly no law can escape the application of section 116 simply because it is a law which can be justified under sections 51 or 52, or under some other legislative power. All the legislative powers of the Commonwealth are subject to the condition which section 116 imposes.

3. Section 116 applies in express terms to "any religion", "any religious observance", the free exercise of "any religion" and any "religious test". Thus the section applies in relation to all religions, and not merely in relation to some one particular religion.

It would be difficult, if not impossible, to devise a definition of religion which would satisfy the adherents of all the many and various religions which exist, or have existed, in the world. There are those who regard religion as consisting principally in a system of beliefs or statement of doctrine. So viewed religion may be either true or false. Others are more inclined to regard religion as prescribing a code of conduct. So viewed a religion may be good or bad. There are others who pay greater attention to religion as involving some prescribed form of ritual or religious observance. Many religious conflicts have been concerned with matters of ritual and observance. Section 116 must be regarded as operating in relation to all these aspects of religion, irrespective of varying opinions in the community as to the truth of particular religious doctrines, as to the goodness of conduct prescribed by a particular religion, or as to the propriety of any particular religious observance. What is religion to one is superstition to another. Some religions are regarded as morally evil by adherents of other creeds. At all times there are many who agree with the reflective comment of the Roman poet - "Tantum religio potuit suadere malorum".

The prohibition in section 116 operates not only to protect the freedom of religion, but also to protect the right of a man to have no religion. No federal law can impose any religious observance. Defaults in the performance of religious duties are not to be corrected by federal law - Deorum injurias Diis curae. Section 116 proclaims not only the principle of toleration of all religions, but also the principle of toleration of absence of religion.

4. It was suggested in argument that no system of beliefs or code of

conduct or form of ritual could be protected under the section unless the general opinion of the present day regarded the belief or conduct or ritual as being really religious. It is true that in determining what is religious and what is not religious the current application of the word "religion" must necessarily be taken into account, but it should not be forgotten that such a provision as section 116 is not required for the protection of the religion of a majority. The religion of the majority of the people can look after itself. Section 116 is required to protect the religion (or absence of religion) of minorities, and, in particular, of unpopular minorities.

5. It is sometimes suggested in discussions on the subject of freedom of religion that, though the civil government should not interfere with religious opinions, it nevertheless may deal as it pleases with any acts which are done in pursuance of religious belief without infringing the principle of freedom of religion. It appears to me to be difficult to maintain this distinction as relevant to the interpretation of section 116. The section refers in express terms to the exercise of religion, and therefore it is intended to protect from the operation of any Commonwealth laws acts which are done in the exercise of religion. Thus the section goes far beyond protecting liberty of opinion. It protects also acts done in pursuance of religious belief as part of religion.

6. The scope of religion has varied very greatly during human history. Probably most Europeans would regard religion as necessarily involving some ideas or doctrines affecting the relation of man to a Supreme Being. But Buddhism, one of the great religions of the world, is considered by many authorities to involve no conception of a God. For example, Professor Gilbert Murray says: "We must always remember that one of the chief religions of the world, Buddhism, has risen to great moral and intellectual heights without using the conception of God at all; in his stead it has Dharma, the Eternal Law." - "Five Stages of Greek Religion", chapter 1. On the other hand, almost any matter may become an element in religious belief or religious conduct. The wearing of particular clothes, the eating or the non-eating of meat or other foods, the observance of ceremonies, not only in religious worship, but in the every day life of the individual - all of these may become part of religion. Once upon a time all the operations of agriculture were con-

trolled by religious precepts. Indeed, it is not an exaggeration to say that each person chooses the content of his own religion. It is not for a court, upon some a priori basis, to disqualify certain beliefs as incapable of being religious in character.

Thus in the early history of mankind it was almost impossible to distinguish between government and religion - Encyclopedia Britannica 14th Ed., Vol. 19, p. 105. A clear distinction between ruler and priest developed only at a relatively late stage in human development. Those who believe in a theocracy refuse to draw the distinction between government and religion which is implicit in section 116. The beliefs of the Anabaptists were similar to those of Jehovah's Witnesses, which the Court, as it will be seen, has to consider in the present case. The Anabaptists refused to take oaths, they refused to appear before civil law courts, they refused to bear arms or to make any resistance to wrongdoers. The civil governments of the world were regarded by them as pertaining to anti-Christ. Accordingly they would take no public office, and would render only passive obedience to Governments. Many of the early Christians hold similar beliefs. It cannot be said that beliefs upon such matters founded upon Biblical authority (as understood by those who hold them) are not religious in character. Such beliefs are concerned with the relation between man and the God whom he worships, although they are also concerned with the relation between man and the civil government under which he lives. They are political in character, but they are none the less religious on that account.

It is perhaps not out of place to mention at the present time that there are large numbers of people in Japan who believe that the Shinto religion, the Way of the Gods, affords a path to universal peace and prosperity under the guidance of the people of Japan. The worship of the Emperor as divine is represented to the Japanese people as the way of escape to happiness for the whole world.

At all periods of human history there have been religions which have involved practices which have been regarded by large numbers of people as essentially evil and wicked. Many religions involve the idea of sacrifice, and the practice of sacrifice has assumed the form of human sacrifice or animal sacrifice as appears in the Old Testament, and in many other sacred writings and traditions. So also religions

have differed in their treatment of polygamy. Polygamy was not reproved in the Old Testament; it has been part of the Mormon religion; it is still an element in the religion of millions of Mohammedans, Hindus, and other races in Asia. The criminal religions in India are well known. The Thugs of India regarded it as a religious duty to rob and to kill. The practice of suttee, involving the immolation of the widow upon the funeral pyre of her husband, was for centuries a part of the Hindu religion.

These examples are sufficient to show that religious belief and practice cannot be absolutely separated either from politics or from ethics. An inconsistency between religious and political duty has often appeared in history. The early Christians refused to take part in the worship of the Emperor as divine, just as Christian converts in Korea refuse to take part in Shinto ceremonial. In each case the State view is that the ceremony which has been made obligatory is merely political in character - a form of "saluting the flag" - but the other view of the question is that it is something which requires a true believer to abjure part of his cherished faith.

Section 116, however, is based upon the principle that religion should, for political purposes, be regarded as irrelevant. It assumes that citizens of all religions can be good citizens, and that accordinly there is no justification in the interests of the community for prohibiting the free exercise of any religion.

7. The examples which have been given illustrate the difficulty of the problem with which a court is confronted when it is asked to determine whether or not a particular law infringes the constitutional provision by prohibiting "the free exercise of religion". Can any person, by describing (and honestly describing) his beliefs and practices as religious exempt himself from obedience to the law? Does section 116 protect any religious belief or any religious practice, irrespective of the political or social effect of that belief or practice?

It has already been shown that beliefs entertained by a religious body as religious beliefs may be inconsistent with the maintenance of civil government. The complete protection of all religious beliefs might result in the disappearance of organised society, because some religious beliefs, as already indicated, regard the existence of

organised society as essentially evil.

8. Section 116 does not merely protect the exercise of religion, it protects the free exercise of religion. The word "free" is vague and ambiguous, as is shown by the many decisions in this Court and in the Privy Council upon the meaning of the word "free" in another place when it appears in the Constitution - in section 92, which provides for free trade, commerce and intercourse between the States. When a slogan is incorporated in a Constitution, and the interpretation of the slogan is entrusted to a court, difficulties will inevitably arise.

The word "free" is used in many senses, and the meaning of the word varies almost indefinitely with the context. A man is said to be free when he is not a slave, but he is also said to be free when he is not imprisoned, and is not subject to any other form of physical restraint. In another sense a man is only truly free when he has freedom of thought and expression, as well as of physical movement. But in all these cases an obligation to obey the laws which apply generally to the community is not regarded as inconsistent with freedom.

Freedom of speech is a highly valued element in our society. But freedom of speech does not mean that an individual is at liberty to create a panic in a theatre by raising a false alarm of fire, as was pointed out in the United States of America in the case of Schenck v. United States 249 U.S. 47 at p. 52. In James v. The Commonwealth, 1936 A.C. 578, the Privy Council dealt with the meaning of the words "absolutely free" in section 92 of the Constitution. It was there said (p. 627) "'Free' in itself is vague and indeterminate. It must take its colour from the context. Compare, for instance, its use in free speech, free love, free dinner and free trade. Free speech does not mean free speech; it means speech hedged in by all the laws against defamation, blasphemy, sedition and so forth; it means freedom governed by law, as was pointed out in McArthur's Case (1920) 28 C.L.R. 530. Free love, on the contrary, means licence or libertinage, though, even so, there are limitations based on public decency and so forth. Free dinner generally means free of expense, and sometimes a meal open to anyone who comes, subject, however, to his condition or behaviour not being objectionable. Free trade means, in ordinary parlance, freedom from tariffs." Thus there is no dictionary meaning

of the word "free" which can be applied in all cases."

In the Constitution of the United States there is a provision which is very similar to that contained in section 116 of our Constitution. The first amendment of the Constitution of the United States provides that Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof. In the United States the problems created by this provision have been solved in large measure by holding that the provision for the protection of religion is not an absolute, to be interpreted and applied independently of other provisions of the Constitution. The Supreme Court said in Jones v. Opelika, 316 U.S. 583 with Reference to the constitutional guarantees of freedom of speech, freedom of press and freedom of religion: "They are not absolutes, to be exercised independently of other cherished privileges, protected by the same organic instrument." It was held that these privileges must be reconciled with the right of a State to employ the sovereign power to ensure orderly living "without which constitutional guarantees of civil liberties would be a mockery". A practical illustration of the application of this doctrine of accommodation is to be found in the case of Cox v. New Hampshire 312 U.S. 569. It was said:- "One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions".

The result has been that the Supreme Court of the United States has refused to regard the provisions relating to freedom of religion, freedom of assembly and freedom of speech as involving the invalidity of all laws which in any degree interfere with such freedom. For example, the right of assembly is a right to peaceable assembly, and not a right to organise or promote riots; De Jonge v. Oregon 299 U.S. 353 pp. 363 et seq. So also in Stomberg v. California 283 U.S. 159 it was held that the liberty of the person which is protected under the due process clause of the American Constitution, while it embraces the right of free speech, does not protect seditious speech; see p. 368. In Schneider v. State (Town of Irvington) 308 U.S. 147 it was held that, while the municipal authorities may control the streets in order to keep peace and order therein, they may not exercise their

powers so as to interfere with a peaceable and non-obstructive distribution of literature in the streets. See also Cantwell v. Connecticut 310 U.S. 296. In this case the power to regulate the conduct of citizens in the public streets was recognised, but it was said with reference to religious freedom and liberty of speech and of the press that "In every case the power to regulate must be so exercised as not, in attaining a permissible end, unduly to infringe the protected freedom". This statement frankly recognises that the general protection given by the Constitution to the freedoms in question leaves it to the court to determine whether a particular measure which in fact limits complete freedom involves an "undue" infringement of that freedom. It is upon this principle that many cases have been decided in the American Courts. Willis, in his work on the American Constitution, states the effect of the constitutional guarantee by saying (p. 502) that its real purpose is to prevent religious persecution, but the cases show that "the Constitution does not protect religious liberty in the broad sense." It does not protect unsocial actions (p. 504).

9. The cases to which I have just referred are recent cases. But before the Constitution of the Commonwealth was adopted in 1900, decisions of the Supreme Court of the United States had dealt with the subject of the constitutional protection of religious freedom. These cases quite clearly determined that such protection was not absolute and that it did not involve a dispensation from obedience to a general law of the land which was not directed against religion.

In Reynolds v. The United States 1878 98 U.S. 145, a Mormon who had a religious belief in polygamy, and who had more than one wife, was indicted for polygamy. It was held that his religious belief could not be accepted as a justification for the commission of an overt act which was made criminal by the law of the land. Waite C.J., who announced the unanimous decision of the Court upon the relevant question referred to the history of legislation in favour of or directed against particular religions, and to the fact that polygamy had generally been a crime among the northern and western nations of Europe. He said, at p.166: "Suppose one believed that human sacrifices were a necessary part of religious worship, would it be seriously contended

that the civil government under which he lived could not interfere to prevent a sacrifice? Or if a wife religiously believed it was her duty to burn herself upon the funeral pile of her dead husband, would it be beyond the power of the civil government to prevent her carrying her belief into practice? So here, as a law of the organisation of society under the exclusive dominion of the United States, it is provided that plural marriages shall not be allowed. Can a man excuse his practices to the contrary because of his religious belief? To permit this would be to make the professed doctrines of religious belief superior to the law of the land, and in effect to permit every citizen to become a law unto himself. Government could exist only in name under such circumstances." Upon this reasoning the Court refused to set aside a conviction for bigamy

There are obvious difficulties in the principle laid down in the case cited. When the suggestion that religious beliefs should be superior to the law of the land is rejected as a matter of course, it may well be asked whether the very object of the constitutional protection of religious freedom is not to prevent the law of the land from interfering with either the holding of religious beliefs, or bona fide conduct in pursuance of such beliefs. But practical considerations persuaded the Court to give a practical interpretation to the constitutional provision and to abstain from giving it a meaning which was inconsistent with practical necessities.

In the year 1889 the case of Davis v. Beason 133 U.S. 333 was decided by the Supreme Court of the United States of America. This case also dealt with the polygamous beliefs and practices of the Mormon religion. Here it was contended that a statute disfranchising citizens and disqualifying them from holding office if they belonged to a Church which taught bigamy or polygamy as a doctrine of the Church was unconstitutional and void as prohibiting the free exercise of religion. Mr. Justice Field, after expressing strong views upon the subject of polygamy, said that it was never intended or supposed that the first amendment, which protected the free exercise of religion, "could be invoked as a protection against legislation for the punishment of acts inimical to the peace, good order and morals of

society. With man's relations to his Maker and the obligations he may think they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with. However free the exercise of religion may be, it must be subordinate to the criminal laws of the country, passed with reference to actions regarded by general consent as properly the subjects of punitive legislation."

This decision appears to make room for any kind of law thought proper by the legislature on grounds of peace and prosperity and the morals of the people, that is, in practice, upon any grounds at all, notwithstanding the constitutional protection of religion. The decision goes very far when it is said at p. 345; "Crime is not the less odious because sanctioned by what any particular sect may designate as religion." This method of approaching the question appears to me to treat the constitutional provision as it if were subject to the proviso which is to be found in, for example, the Constitution of New York of 1777, which is quoted in the report of Lavis v. Beason at p. 348. That Constitution provided as follows: "The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed, within this State, to all mankind; Provided, That the liberty of conscience, hereby granted, shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State." The opinion which in effect adds such a proviso to the absolute

words of the Constitution may be good practical commonsense, but it appears to me to be difficult to justify it upon any basis of legal interpretation.

But the cases which I have cited do show that in 1900 it had been thoroughly established in the United States that the provision preventing the making of any law prohibiting the free exercise of religion was not understood to mean that the criminal law dealing with the conduct of citizens generally was to be subject to exceptions in favour of persons who believed and practised a religion which was inconsistent with the provisions of the law. The result of this approach to the problem has been the development of the principle which has been applied in the later cases, to which I have already referred, according to which it is left to the Court to determine whether the freedom of religion has been unduly infringed by some particular legislative provision. This view makes it possible to accord a real measure of practical protection to religion without involving the community in anarchy.

10. There is therefore full legal justification for adopting in Australia an interpretation of section 116 which had, before the enactment of the Commonwealth Constitution, already been given to similar words in the United States. This interpretation leaves it to the court to determine whether a particular law is an undue infringement of religious freedom. It is possible, however, in my opinion, to decide the present case upon a narrower principle which escapes the criticisms to which that interpretation may be open.

John Stuart Mill in his Essay on Liberty critically examines the idea of liberty, and his discussion of the subject is widely accepted as a weighty exposition of principle. The author

had to make the distinction which is often made in words between liberty and licence, but which it is sometimes very difficult to apply in practice. He recognised that liberty did not mean the licence of individuals to do just what they pleased, because such liberty would mean the absence of law and of order, and ultimately the destruction of liberty. He expressed his opinion as to the limits of liberty when he said: "The sole and for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection". Essay on Liberty c. 1 - 1871 Edition p.6. It may be going too far to say that self-protection is "the sole end" which justifies any governmental action. But I think it must be conceded that the protection of any form of liberty as a social right within a society necessarily involves the continued existence of that society as a society. Otherwise the protection of liberty would be meaningless and ineffective. It is consistent with the maintenance of religious liberty for the State to restrain actions and courses of conduct which are inconsistent with the maintenance of civil government or prejudicial to the continued existence of the community. The Constitution protects religion within a community organised under a Constitution, so that the continuance of such protection necessarily assumes the continuance of the community so organised. This view makes it possible to reconcile religious freedom with ordered government. It does not mean that the mere fact that the Commonwealth Parliament passes a law in the belief that it will promote the peace, order and good government of Australia precludes any consideration by a court of the question whether or not such a law infringes religious freedom. The final determination of that question by Parliament would remove all reality from the constitutional guarantee. That guarantee is intended to limit the sphere of action of the legislature. The interpretation and application of the guarantee cannot, under our Constitution, be left to Parliament. If the guarantee is to have any real significance it must be left to the courts of justice to determine its meaning and to give effect to it by declaring the invalidity of laws which infringe it and by declining to enforce them. The courts will therefore have the

responsibility of determining whether a particular law can fairly be regarded as a law to protect the existence of the community, or whether, on the other hand, it is a law "for prohibiting the free exercise of any religion". The word "for" shows that the purposee of the legislation in question may properly be taken into account in determining whether or not it is a law of the prohibited character.

11. The Commonwealth Parliament has power to make laws "for the peace, order and good government of the Commonwealth with respect to the naval and military defence of the Commonwealth and of the several States, and the control of the Forces to execute and maintain the laws of the Commonwealth" - Constitution sec. 51(vi). "The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth" - sec. 61.

In pursuance of the powers so conferred, the Commonwealth can defend the people, not only against external aggression, but also against internal attack, and in doing so can prevent aid being given to external enemies by internal agencies. No organised State can continue to exist without a law directed against treason. There are, however, subversive activities which fall short of treason (according to the legal definition of that term) but which may be equally fatal to the safety of the people. These activities, whether by way of espionage, or of what is now called fifth column work, may assume various forms. Examples are to be found in obstruction to recruiting, certainly in war time, and, in my opinion, also in time of peace. Such obstruction may be both punished and prevented. So also propaganda tending to induce members of the armed forces to refuse duty may not only be subjected to control, but may be suppressed. In Hamilton v. Regents of the University of California 293 U.S.245, it was said at p. 262: "Government, federal and state, each in its own sphere owes a duty to the people within its jurisdiction to preserve itself in adequate strength to maintain peace and order and to assure the just enforcement of law. And every citizen owes the reciprocal duty, according to his capacity, to support and defend government against all enemies. Selective Draft Law Cases, 245

U.S. 366, p. 378. Minor v. Happersett, 21 Wall. 162. 166. United States v. Schwimmer, 279 U.S. 644, involved a petition for naturalisation by one opposed to bearing arms in defence of country. Holding the applicant not entitled to citizenship, we said (p. 650): 'That it is the duty of citizens by force of arms to defend our government against all enemies whenever necessity arises is a fundamental principle of the Constitution . . . . Whatever tends to lessen the willingness of citizens to discharge their duty to bear arms in the country's defence detracts from the strength and safety of the Government.'" So also in this Court it was held in Krygger v. Williams 15 C.L.R. 366 that a person who is forbidden by the doctrines of his religion to bear arms is not thereby exempted or excused from undergoing the military training and rendering the personal service required by the Defence Act 1903-1910; and that the provisions of the Act imposing obligations on all male inhabitants of the Commonwealth in respect to military training do not prohibit the free exercise of any religion, and, therefore, are not an infringement of section 116 of the Constitution.

12. It is a well established doctrine of constitutional law that it is for Parliament to choose the means by which its powers are to be carried into execution. In the absence of a relevant constitution prohibition it is not a proper function of a court to limit the method of exercising a legislative power. Marshall C. J. said in a famous statement in M'Culloch v. State of Maryland 4 Wheat 316 - "We admit, as all must admit, that the powers of the government are limited, and that its limits are not to be transcended. But we think the sound construction of the Constitution must allow to the national legislature that discretion, with respect to the means by which the powers it confers are to be carried into execution, which will enable that body to perform the high duties assigned to it, in the manner most beneficial to the people. Let the end be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consist with the letter and spirit of the Constitution, are constitutional."

This general proposition can in itself solve no particular constitu-

tional problem, but it does effectively state the constitutional principle. Parliament, for example, may legislate, not only for the purpose of punishing wrongful acts which have been committed, but also for the purpose of preventing the commission of such acts.

13. In the present case the validity of certainregulations made under the National Security Act 1939/1940 is challenged. The Act provides in section 5 that the Governor-General may make regulations for securing the public safety and the defence of the Commonwealth and the territories of the Commonwealth and for prescribing all matters which are necessary or convenient to be prescribed for the more effectual prosecution of any war in which His Majesty is, or may be, engaged. The National Security (Subversive Associations) Regulations, Statutory Rule No. 109 of 1940, as amended, were made under this power. It is contended that these regulations, or some of them, are not authorised by the National Security Act and, alternatively, that if they are so authorised, then that the Act itself exceeds the powers of the Commonwealth Parliament under the defence power.

I propose to take the regulations in turn and to state the objections which are made to them. In the first place, I direct particular attention to the fact that the regulations are concerned with the continued existence of certain bodies or associations. The regulations do penalise certain actions, but the object of the regulations, as is shown by the terms of the principal regulation, reg. 3, is to put an end to the existence of bodies the continued existence of which is regarded as being subversive of the war effort. Reg. 3 is as follows:- "Any body corporate or unincorporate, the existence of which the Governor-General, by order published in the Gazette, declares to be in hiw opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is hereby declared to be unlawful." It was not contended in argument that reg. 3 taken merely by itself is invalid. The mere proclamation that in the opinion of the Governor-General the existence of a body is prejudicial to the defence of the Commonwealth, etc., creates no offence and imposes no duty upon any person. The terms of the regulation, however, become important by reason of other regulations

which attach legal consequences to the order of the Governor-General. For example, under reg. 4 a body declared under reg. 3 is dissolved and under other regulations the property of the body may be seized. These consequences depend in the beginning upon an order made by the Governor-General under reg. 3.

It is objected that when reg. 3 is read, as it must be, in conjunction with such other regulations as those which I have mentioned, the result is that legal consequences are made to depend, not upon the fact that the existence of a body is prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, but upon the declaration of the opinion of the Governor-General to that effect. It probably would not be argued that the Commonwealth could not legislate, at least to some extent, against bodies the existence of which was in fact prejudicial in the manner stated. But it is said that regulations which make these consequences depend upon the opinion of the Governor-General are invalid.

In my opinion it is too late to raise this argument. In the case of Lloyd v. Wallach, 20 C.L.R. 299, this Court considered a regulation which provided that where the Minister for Defence had reason to believe that any naturalised person was disaffected or disloyal, he might, by warrant under his hand, order him to be detained in military custody in such place as he thought fit during during the continuance of a state of war. It was held that upon proof of the fact that the Minister believed that a naturalised person was disaffected or disloyal, detention of a person could be justified under a warrant issued in pursuance of the regulation and that the regulation, so construed, was valid. It was held by each of seven Justices that the existence in the mind of the Minister of the belief specified in the regulation was a sufficient foundation for action under the regulation: see 20 C.L.R. at pp. 304, 309, 313 and 314. See The King v. Halliday 1917 A.C. 260 where the House of Lords, after considering the arguments against opinion as a basis for action restricting the liberty of a British subject and taking into account the risk of abuse inherent in regulations of this character, upheld such a regulation. These decisions were considered and applied in the case of Ex parte Walsh 48 A.L.R. 359, where the validity of a National Security Regulation was challenged. The regulation was in the following terms :-

> "The Minister may if satisfied with respect to any particular person that with a view to prevent that person acting in any manner prejudicial to the public safety or the defence of the Commonwealth it is necessary to do so make an order directing that he be detained in such place and under such conditions as the Minister from time to time determines and any person shall while

detained in pursuance of an order made under this sub-regulation be deemed to be in legal custody."

The Court rejected the argument that the opinion of the Minister could not form a valid basis for detention under the regulation, holding that the case was governed by Lloyd v. Wallach (supra). See also The King v. Liversidge 1943 A.C. 206.

The cases cited relate to the liberty of the subject, which has always been a matter of the very highest concern to the law. If a basis in opinion is sufficient to authorise the most grave interference with personal liberty by indefinite imprisonment, namely imprisonment during the duration of a war, it can hardly be said that such a basis is insufficient to authorise interference with property. The rights of property, however important they may be, have never been held in the courts to be assacred as the right of personal liberty. In my opinion, therefore, the objection taken to the validity of reg. 3 as a basis for the operation of the other regulations must be held to fall.

14. Reg. 4 is as follows :- "Any body in respect of which a declaration is made in pursuance of the last preceding regulation shall, by force of that declaration, be dissolved". It is contended on several grounds that this regulation is invalid.

The first objection, as I understand it, is that, though the Commonwealth Parliament may legislate for the purpose of pinishing particular sets which are prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, it is beyond the power of the Commonwealth to provide for the dissolution of what may be called subversive associations, that is, bodies the existence of which is prejudicial to the defence of the Commonwealth or the efficient prosecution of the war. I admit that I have some difficulty in appreciating this objection. One obvious way of dealing with associations which aim at the destruction of the community is to disband and suppress them if they come into existence. Another means of dealing with them is to seek to prevent their formation by attaching consequences to their activities which are calculated to deter persons from forming them, or from becoming members of them. In my opinion it is within the legislative power to provide in effect "Associations of a particular subversive kind are not to be allowed to exist. If they do exist they shall be dissolved". As I have already said, the choise of the means

of exercising its powers is essentially a matter for Parliament, and not for the courts. Reg. 4 adopts means for the discouragement of such associations which the legislative authority regards as useful and effective. It is for Parliament, and not for the courts, to determine whether the institution of this means of discouragement is necessary or wise. In my opinion the power of the Commonwealth to protect the community against what are now called fifth column activities, that is internal activities directed towards the destruction of the people of the Commonwealth, is not so weak as to be limited to legislation for the punishment of offences after they have been committed. Parliament may, in my opinion, under the defence power, seek to prevent such offences happening by preventing the creation of subversive associations or ordering their dissolution.

An argument was submitted to the Court to the effect that, while Parliament can punish particular offences, it is going too far to dissolve an unlawful association. I find myself unable to appreciate the basis of this argument. It is not for a court to say that a particular law is too severe. A court may do so in America in extreme cases because there is there a constitutional provision prohibiting what are called "cruel and unusual" punishments. There is no such provision in our Constitution. But even if there were such a provision, the dissolution of an association which was treasonable in character is only a mild and natural precaution in the interests of the people. Such a law is directed towards the prevention of actions which may involve the destruction of the whole community, and if Parliament thinks it proper to destroy the association rather than to run the risk of the community being destroyed, it is not for a court to seek to interpose any veto. The regulations depend upon the possibility that the existence of some associations may be prejudicial to the defence of the Commonwealth or the efficient prosecution of the war. If there are such associations it is, in my opinion, within the defence power and within the powers conferred by the National Security Act to take steps to suppress them and to terminate their existence.

A separate objection to reg. 4 is based upon the suggestion that the dissolution of an association or a company lasts forever, whereas the National Security Act (see section 19) can continue in operation only until a date to be fixed by proclamation but, in any event, not longer than six months after His Majesty ceases to be engaged in war. It is suggested that as a body dissolved during the war continues to be dissolved after the war, the Act would in this matter operate after the war. I do not agree that this would be the case. A provision which gives a limited operation to an Act of Parliament does not mean that nothing having a permanent effect can be done under the Act or that there must be a kind of restitutio in integrum

after the period of operation has expired. It could not (I should think) be suggested, if a statute gave . . . power to demolish houses, but was limited in operation to a period of 5 years, that it would be unlawful to pull down any houses under the Act because the houses would remain pulled down after the period of 5 years had elapsed. Precisely similar considerations appear to me to apply to the argument that reg. 4 is inconsistent with sec. 19 of the National Security Act.

The final argument against the validity of reg. 4 is that the dissolution of a corporate body such as a company is an exercise of judicial power, that under the Commonwealth Constitution such a power must be exercised by a court, and that under these regulations dissolution is brought about by the order of the Governor-General and the direct operation of reg. 4 without any curial proceedings.

No authority was quoted for the proposition that the dissolution of a company is a judicial act. It was said in a general way that the dissolution of a company affected the rights of the company. It is true that dissolution terminates the rights of a company, but it is a common provision in Companies Acts to provide for the dissolution of a company, not only by a court, but also by the direction of an official. See, for example, the English Companies Act 1929, sec. 295, by which it is provided that, after certain notices have been given by the Registrar of Companies, a company may be struck off the register, with the result that the company is dissolved. See the New South Wales Companies Act, 1936 sec. 323, and the Victorian Companies Act 1928, sec. 230. Thus it is well recognised that a registered company may be dissolved without any judicial proceedings.

The "dissolution" of an unincorporated body appears to me to present no legal difficulty whatever. It is merely a legislative direction that the body shall not be allowed to continue to exist. The body is not a legal persons, and the "dissolution" can be made effective only by some other provisions dealing with the conduct of the natural persons who constitute the association. There are some provisions of that character in the regulations which will be considered in due course.

For these reasons I am of opinion that it has not been shown that reg. 4 is not authorised by the defence power fo the Commonwealth - Constitution sec. 51 (vi). For the same reasons it is, in my opinion, not beyond the powers conferred by the National Security Act, sec. 5. I can think of few measures more necessary for the purpose of securing the public safety and the defence of the Commonwealth than measures directed, not only towards the punishment of internal enemies, but also towards the prevention of the assiciation of internal enemies in subversive bodies. Accordingly, in my opinion, the regulation is justified by the initial words of sec. 5 of the National Security Act, as well as by the final words of sub-sec. (1) of that section, which authorises the Governor-General to make regulations for the more effectual prosecution of the war.

15. Reg. 5 provides that a Minister may require persons to answer questions, furnish information and allow the inspection of documents relating to the affairs of an unlawful body. This regulation is directly authorised by sec. 5(1)(g) of the National Security Act, and it was not argued that it was invalid as being beyond the defence power unless it should be held that the regulations as a whole were invalid.

16. Reg. 5A provides that a body corporate which has been declared to be an unlawful body if registered as a company under the law of a State or a territory may be wound up by a court of that State or territory which has jurisdiction to wind up companies. If reg. 4 is valid there can be no objection to this provision empowering courts to control the orderly liquidation of a company.

17. The first three paragraphs of reg. 6 are as follows:-

> "6-(1) Any person having in his possession or custody any property which immediately prior to the dissolution of a body which has been declared to be unlawful belonged to, or was used by or on behalf of, or in the interests of, that body or was held by trustees for and on behalf of that body, shall on demand deliver that property to a person thereto authorized by a Minister.
>
> (2) The acknowledgment in writing by the person so authorized of the receipt of any such property shall be a sufficient discharge to the person delivering the property to him.

(3) A person having in his possession or custody any such property shall not suffer or permit or be a party to any dealing with such property.

These regulations purport only to authorise and to require the delivery of certain property to a person authorised by a Minister. The terms of the Regulations show that they do not apply to real property, but only to things capable of transfer of possession by physical delivery. They do not profess to alter the ownership of property, and, standing by themselves, would give no power to detain property. If delivery of any property were made in pursuance of the Regulations, there is nothing in them which would prevent the owner from immediately recovering his property. They are therefore of no utility in themselves. Their importance and significance depends upon reg. 6B, which authorises the forfeiture of property taken possession of or delivered to a person in pursuance of the Regulations. In my opinion these regulations are necessarily connected with reg. 6B in the sense that they would be quite useless and futile apart from reg. 6B and are intended to operate only as a foundation for the application of reg. 6B. In my opinion they stand or fall with reg. 6B.

Reg. 6(4) provides that any member of a Police Force not below the rank of sergeant may, by notice in writing, served on any person (e.g. a bank, see reg. 2(2)), declare that any persons specified in the notice are, with respect to any account specified, trustees for a declared body. Such a declaration, the regulation provides, shall, as between the persons specified (e.g. the persons in whose name a bank account stands) and the person on whom the notice is served (e.g. a bank) be conclusive evidence that those persons are trustees of the declared body with respect to any moneys standing to the credit of the account.

At first sight there may be some difficulty in seeing how such a provision is related to defence. But it should be realised that subversive bodies, more especially in time of war, work in secret. In particular they will endeavour to have their property in the hands or in the names of agents or trustees who will have no apparent connection with the unlawful body. The real bank account of a spy organisation will not be in the name of the organisation, but in the name of some person or association which will present an innocent

facade to the public. Reg. 6(4) does not purport to provide, e.g. that money in a bank to the credit of AB shall, upon the declaration of a police officer, be conclusively deemed to be held in trust for an unlawful body. It provides only that as between the bank and AB it shall be so deemed. The effect of the regulation is to shift the area of controversy as to whether or not AB is a trustee for the unlawful body. It merely protects the bank against any claim by AB, leaving it to be determined by the courts in the ordinary way whether AB is in fact a trustee for the unlawful body. Reg. 6(1) applies only to property which in fact belonged to or was used by, etc., an unlawful body and to property which was in fact held by trustees for that body. (Property includes money and funds and anything capable of being the subject of ownership - reg. 2). Thus reg. 6(4) does not enable any Commonwealth authority arbitrarily to determine that moneys held by one person for another are in fact held for some unlawful body. It only simplifies procedure for determining the beneficial ownership of the moneys. When the meaning of the regulation is thus understood there is, in my opinion, no ground for objection to its validity.

18. Reg. 6A is as follows :-

> "Any house, premises or place or part thereof which was occupied by a body immediately prior to its having been declared to be unlawful may, if a Minister by order so directs, be occupied in accordance with the provisions of the order so long as there is in the house, premises or place or part thereof any property which a Minister is satisfied belonged to, or was used by or on behalf of, or in the interests of, the body, and which was therein immediately prior to the body having been declared to be unlawful."

This regulation relates to real property. It does not, nor does any other regulation, purport to affect the ownership of real property. It purports to authorise the occupation of certain real property on behalf of the Commonwealth for a particular period.

As at present advised, I can see no objection to the validity of a regulation providing for the occupation by Commonwealth authorities of premises occupied by an unlawful body for the purpose of preventing the use of such premises by that body. But under the regulation the premises may be occupied so long as there is in the premises any property which a Minister is satisfied belonged to, or was used by or on behalf of, or in the interests of the body, if that property was in the premises immediately prior to the body being declared to be unlawful. As long

as a table or chair belonging to an unlawful body remained in a building, the occupation of the building would be lawful under the regulation. The regulation, therefore, does not depend for its operation upon any connection between the premises and the continued use or continued risk of use of the premises by the unlawful body. The regulation, for example, is very different from what are known in Victoria as the quarantine provisions relating to gaming houses under the Police Offences Act: see Police Offences Act 1928, secs. 133-142. In other words, the occupation authorised by the regulation has no relation to actual or probable unlawful user of the premises. Accordingly in my opinion reg. 6A is not authorised by the defence power of the Commonwealth.

19. Reg. 6B provides that all property taken possession of or delivered to a person thereunto authorised by a person in pursuance of the regulation shall be forfeited to the King for the use of the King and shall, by force of the regulation, be condemned. Further provisions of the regulation entitle a Commonwealth authority to destroy or deal with such property as the Attorney-General directs. The property is divided into three classes :-

(a) property which the Attorney-General or an authorised person is satisfied belonged to a declared body - such property may be destroyed or otherwise dealt with as the Attorney-General directs;

(b) property which the Attorney-General or an authorised person is satisfied did not belong to such a body, and which consists of books etc. which he is satisfied were used or intended to be used in connection with the activities of the body, or which, in his opinion, advocate unlawful doctrines - such books etc. may be destroyed or otherwise dealt with as the Attorney-General directs;

(c) the remainder of the property may be returned to the owners or otherwise dealt with as the Attorney-General directs.

This regulation applies only to property taken possession of or delivered in pursuance of the regulations, that is, to property referred to in reg. 6. It applies, therefore, only to property which (see reg. 6) actually belonged to, or was used by or on behalf of, or in the interests of, the declared body, or was held by trustees for it. As already stated, the ownership, etc., of property under reg. 6 must be determined in the ordinary way by a court. The question arising under reg. 6B is whether such property may be forfeited to the King.

The objection taken to this regulation is that the forfeiture of property bringing about an extinction of proprietary rights involves an exercise of judicial power, so that under the Constitution of the

Commonwealth it can be effected only by a court exercising the judicial power of the Commonwealth - Constitution, section 71. This objection is, in my opinion, completely met by the clear decision of five Justices of this Court in the case of Roche v. Kronheimer, 29 C.L.R. 329, where a similar objection was raised against regulations made for the purpose of carrying into effect the Versailles Peace Treaty. In the joint judgment of Knox C.J., Gavan Duffy, Rich and Starke JJ. at p. 337 it was stated: "We see no reason why property should not be vested or divested by a legislative enactment or by an executive act done under the authority of the legislature, as well as by a judicial act". Higgins J., in a separate judgment, stated at p. 340 that he concurred in the opinion that the challenged regulation, which provided for the confiscation of property by a ministerial act, was not invalid as involving an exercise of the judicial power of the Commonwealth by other than Commonwealth Courts. He said : "I can hardly understand how the point is arguable, for the vesting is not the result of a judicial finding as to rights, it is in defiance of admitted rights. To give the property of A to B is not a judicial proceeding". In my opinion this case is decisive against the objection raised. If the property described in the regulation can be forfeited to the King, there can be no objection to it being dealt with by any Commonwealth authority in the manner prescribed by the regulation.

Reg. 6B(3) is a provision purporting to validate seizures made before the commencement of the regulation. The validity of this provision was not argued and I express no opinion upon it.

20. The other regulations the validity of which was discussed in argument all relate to some form of advocacy of "unlawful doctrines". Reg. 7 prohibits the printing and the publication of matter advocating any unlawful doctrines. Reg. 8 prohibits meetings for the purpose of advocating unlawful doctrines. Reg. 9 prohibits appeals for funds for the furtherance of unlawful doctrines. Reg. 11 enables a Minister to prohibit the holding of meetings at which a Minister is satisfied it is likely that unlawful doctrines will be advocated.

Unlawful doctrines is defined in the following manner in reg. 2:-

> "'unlawful doctrines' includes any doctrines or principles which were advocated by a body which has been declared to be unlawful, and any doctrines or principles whatsoever which are prejudicial to the defence of the Commonwealth or the efficient prosecution of the war."

This provision may be divided into two parts :-

(a) any doctrines or principles which were advocated by a body declared under reg. 3;

(b) any doctrines or principles whatsoever which are prejudicial to the defence of the Commonwealth or the efficient prosecution of the war.

It was suggested that the definition should be read as if there were a comma after the word "whatsoever", so that the final relative clause would apply first to doctrines or principles advocated by a declared body, and secondly to any doctrines or principles whatsoever. This interpretation, however, gives no effect to the first part of the definition, which is limited to doctrines or principles advocated by an unlawful body, because such doctrines would necessarily be included within the second part, namely "any" doctrines or principles whatsoever". Therefore, in my opinion, this interpretation must be rejected.

There can, in my opinion, be no doubt that under the defence power the Commonwealth Parliament may legislate to prevent propaganda of any kind prejudicial to the defence of the Commonwealth or the efficient prosecution of the war. Regulations for that purpose are authorised by the National Security Act, section 5.

But the definition of "unlawful doctrines" includes within that term any doctrine or principle which was advocated by a declared body. Thus, if a declared body advocated observance of the Ten Commandments, or annual elections to the Commonwealth Parliament, or improvements in the education system, all these matters would fall within the definition of unlawful doctrines. It is, in my opinion, clear that the defence power does not authorise the Commonwealth Parliament to prohibit the advocacy of such doctrines or principles simply because it happens that they have been advocated by a declared body. In my opinion the regulations, so far as they depend upon this part of the definition of unlawful doctrines, should be held to be invalid. The result is that, to this extent at least, the regulations last mentioned are invalid.

The question arises whether these regulations are completely invalid, or whether they are saved in part bythe application of the Acts Interpretation Act 1901-1937, sec. 46(b). This section provides that regulations shall be read and construed subject to the Act under which they are made, and so as not to exceed the power of the authority by which they are made to the intent that where a regulation would, but for

the section. have been construed as being in excess of the power conferred, it shall nevertheless be a valid regulation to the extent to which it is not in excess of that power. Sec. 46(b) is a direction by the legislature that regulations shall be held to apply so far as they can validly be applied. In the present case all the regulations in question will be valid if the first part of the definition, as set out in (a) is rejected. The policy and operation of the regulations in cases falling under (b), the valid and effective part of the definition, are not in any way affected by the rejection of (a), the part to which effect cannot validly be given. The regulations should, therefore, be held to be valid in so far as, but only in so far, as they apply in the case of unlawful doctrines comprehended within the second part of the definition. Thus regs. 7, 9, 9 and 11 (and also 6B(1)(b)) should be read and applied as if the first part of the definition of unlawful doctrines were struck out. Neither the complete nor the partial invalidity of these regulations as to publications, meetings etc. can, in my opinion, affect the validity of other regulations. They are completely severable from all the other regulations. The operation of the other regulations would not be in any manner either extended or limited by the invalidity of regs. 7, 8, 9 or 11.

21. This case has been stated by Starke J. in an action brought by the Adelaide Company of Jehovah's Witnesses Incorporated against the Commonwealth of Australia. The plaintiff claims an injunction to restrain the Commonwealth, its servants and agents, from continuing to trespass upon the Company's property, and it also claims damages for trespass. The alleged trespass consisted in acts done by servants of the Commonwealth in pursuance of the National Security (Subversive Associations) Regulations.

The Company is incorporated under the Associations Incorporation Act 1929-1935 of South Australia. It has rules and regulations which make no reference to religion, but which provide for management by trustees and for control over belongings and property to be exercised by the Australian representative of the Australian Watchtower Bible and Tract Society of New South Wales. (This Society has been declared an unlawful body under reg. 3) The plaintiff association was in exclusive occupation of land and buildings known as Kingdom Hall in Adelaide. The hall was used as a

meeting place for persons who designate themselves Jehovah's Witnesses. Services of a religious character were held in the hall, at which discourses were delivered upon the doctrines, beliefs and teachings of Jehovah's Witnesses.

On the 17th January 1941 the Governor-General declared by an Order in Council that the existence of the plaintiff company and of the organisation or association of persons known as Jehovah's Witnesses was prejudicial to the defence of the Commonwealth and the efficient prosecution of the war. On the same day the Attorney-General of the Commonwealth gave a direction to an officer of the Commonwealth to take possession of and occupy Kingdom Hall. An officer of the Commonwealth entered into possession of Kingdom Hall in accordance with the authority given, and this entry and subsequent occupation constitute the trespass alleged.

The case states the following facts :-

"7. Jehovah's Witnesses are an association of persons loosely organised throughout Australia and elsewhere who regard the literal interpretation of the Bible as fundamental to proper religious beliefs.

8. Jehovah's Witnesses believe that God, Jehovah, is the supreme ruler of the universe. Satan or Lucifer was originally part of God's organisation and the perfect man was placed under him. He rebelled against God and set up his own organisation in challenge to God and through that organisation has ruled the world. He rules and controls the world through material agencies such as organized political, religious, and financial bodies. Christ, they believe, came to earth to redeem all men who would devote themselves entirely to serving God's will and purpose and that He will come to earth again (His second coming has already begun) and will overthrow all the powers of evil.

9. These beliefs lead Jehovah's Witnesses to proclaim and teach publicly both orally and by means of printed books and pamphlets that the British Empire and also other organised political bodies are organs of Satan, unrighteously governed and identifiable with the Beast in the 13th chapter of the Book of Revelation.

ALSO that Jehovah's Witnessea are Christians entirely devoted to the Kingdom of God which is "The Theocracy", that they have no part in the political affairs of the world and must not interfere in the least manner with war between nations. They must be entirely neutral and not interfere with the drafting of men of nations that go to war.

AND ALSO that wherever there is a conflict between the laws of Almighty God the Christian must always obey God's law in preference to man's law. All laws of men, however, in harmony with God's law the Christian obeys. God's law is expounded and taught by Jehovah's Witnesses.

Accordingly they refuse to take an oath of allegiance to the King or other constituted human authority though they do not object to take an oath in a Court of law to speak the truth nor do they refuse the protection of the King's Courts or other constituted human authority."

It is also stated in paragraph 15 of the case :-

"15. The said incorporated association and the association of persons known as Jehovah's Witnesses proclaim and teach matters prejudicial to

the defence of the Commonwealth and the efficient prosecution of the war namely the matters set forth in paragraph 9 of this case, but otherwise their doctrines or believs are but primitive religious beliefs."

It needs no argument to show that the doctrine that the Commonwealth is an organ of Satan is prejudicial to any defence of the Commonwealth against any enemy. There was, in this case, full justification for the action of the Governor-General in deciding that the existence of the plaintiff association was prejudicial to the defence of the Commonwealth and the efficient prosecution of the war. But, as I have already said, the regulations leave the determination of the question to the Governor-General, and not to a court.

22. The contention for the plaintiff has been that, as Jehovah's Witnesses are a body of persons associated for religious purposes, they are completely exempt from the operation of the regulations in the form in which the regulations are actually drawn. The first principal argument is that the Commonwealth may legislate to punish subversive acts, but not to terminate the existence of any subversive bodies, whether those bodies are religious or not. The next principal argument is that in the case of a religious body the body has further the express protection of section 116 of the Constitution.

I have given my reasons for the opinion that it is within the power of the Commonwealth to terminate the existence of subversive bodies, and for the further opinion that the exercise of this power in the case of a religious organisation does not infringe section 116.

The questions asked in the case and the answers which, in my opinion, should be given to them are as follows :-

Question 1. Is the Adelaide Company of Jehovah's Witnesses incorporated a party competent to maintain that the National Security (Subversive Associations) Regulations, the said Order in Council, and the said Direction of the Attorney-General above mentioned contravene the provisions of sec. 116 of the Constitution?

It is obvious that a company cannot exercise a religion. In the United States of America it has been decided that only natural persons, and not artificial persons, such as corporations, have the privileges and immunities of free speech and of assembly under the Constitution: see Hague v. The Committee for Industrial Organisation, 307 A.S. 496 at 514.

To the objection that the plaintiff company is not entitled to the protection of section 116 of the Commonwealth Constitution the answer has been made and, in my opinion, effectively made, that in this case the defendant justifies under certain regulations what would otherwise have been a trespass; the plaintiff contends that those regulations are invalid because they have been made in breach of section 116 of the Constitution. If they are invalid for this or any other reason the defendant should not be allowed to rely upon them. I can see no answer to this argument.

But, for reasons which I have already stated, the declaration of the Governor-General was effective to bring the regulations into operation in the case of the plaintiff. Accordingly, under reg. 4 the plaintiff company has been dissolved. It is therefore no longer a competent plaintiff. For this reason, but only for this reason, in my opinion question 1 should be answered: No.

Question 2. Do the National Security (Subversive Associations) Regulations or any and which of those regulations contravene the provisions of section 116 of the Constitution?

Answer. No.

Question 3. Do the said Order in Council and the said Direction of the Attorney-General above mentioned or any and what part thereof so far as they affect the said incorporated association or the association of persons known as Jehovah's Witnesses, contravene the provisions of section 116 of the Constitution?

Answer. No.

Question 4. Are the National Security (Subversive Associations) Regulations or any and which of those regulations, beyond the powers or authorities conferred by:-

(a) The Constitution.
(b) The National Security Act 1939-1940?

Answer. I have stated by opinion as to the validity of all the regulations, but I cannot see that it is necessary to answer this question as to all of them. The only regulations which are directly in question in the present case are regs. 3, 4 and 6A. In my opinion this question is sufficiently answered by declaring that regulations 3 and 4 are not, but regulations 6A is, beyond the powers of authorities mentioned in the question.

Question 5. Is the said Order in Council or the said Direction of the Attorney-General or any and what part thereof so far as either affects the said incorporated association or the association of persons known as Jehovah's Witnesses, beyond the powers and authorities conferred by:-

(a) The Constitution.
(b) The National Security Act 1939-1940.
(c) The National Security (Subversive Associations) Regulations?

Answer. As to the Order in Council, as to (a), (b) and (c): No.
As to the Direction of the Attorney-General - as to (a), (b) and (c): Yes.

Question 6. Do the said National Security (Subversive Association) Regulations, upon their proper construction, extend to the said incorporated association or the association of persons known as Jehovah's Witnesses?

Answer. As to both associations: Yes.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

v.

THE COMMONWEALTH OF AUSTRALIA.

JUDGMENT.

RICH J.

In this matter the facts appear in the case stated. The main arguments addressed to us by counsel for the plaintiff company were that the National Security (Subversive Association) Regulations contravened sec. 116 of the Constitution and that the regulations are outside the defence power. As to the first argument I think that the Court should be very careful in applying sec. 116 of the Constitution to legislation impugned under its provisions. In one sense the provision is very wide and in another narrow. It is wide in the area of religious faith which it seeks to protect but it may be said to be narrow in its description of the kinds of laws which it disallows as impinging upon the freedom of faith. It is, I think, a mistake for the Court to lay down general or abstract propositions as to the effect of sec. 116. It is typically a provision the interpretation of which should be developed by specific decisions applicable to the particular facts of the given cases. In the present case we have been furnished by my brother Starke, from whom the case stated comes, with a precise account of the beliefs professed by the individuals who form the incorporated company - the plaintiff in this action. It is to the facts so stated that we must apply sec. 116. We must take the regulations, assume that in other respects they are valid and see whether the operation of those regulations on those facts would contravene any of the prohibitions contained in sec. 116. The only part of those prohibitions which appear to me to be relevant is that which expressly prevents the Commonwealth from making a law prohibiting the free exercise of any religion. The rest of the provisions of the section seems to be irrelevant. As to the relevant part of the prohibitions I cannot believe that the suppression of the plaintiff corporation prohibits the free exercise of any part of the religious faith ascribed by the case stated to the individual corporators. Sir William Holdsworth, History of the Law, vol. VIII, pp.402-420, has traced the development of the law towards religious toleration and it may be said that "religious liberty and religious equality are now complete", Maitland Constitutional History of England, p. 520. This, however, does not afford an unlimited licence

to propagate or disseminate subversive doctrines. In this connection I would adapt some passages from the speech of Lord Sumner in Bowman v. Secular Society Ltd., 1917 A.C. 406, at pp. 466, 467. "The words, as well as the acts, which tend to endanger society differ from time to time in proportion as society is stable or insecure in fact, or is believed by its reasonable members to be open to assault. The question whether a given opinion is a danger to society is a question of the times and is a question of fact. Society has the right to protect itself by process of law from the dangers of the moment, whatever that right may be. The attitude of the law both civil and criminal towards all religions depends fundamentally on the safety of the State". Any regulations, therefore, which empower the government to prevent persons or bodies from disseminating subversive principles or doctrines or those prejudicial to the defence of the Commonwealth or the efficient prosecution of the war do not infringe sec. 116. Accordingly I consider the regulations in question do not infringe the section.

The peace, good government and order of the Commonwealth may be protected at the same time as the freedom of religion is safeguard. Freedom of religion is not absolute. It is subject to powers and restrictions of government essential to the preservation of the community. Freedom of religion may not be invoked to cloak and dissemble subversive opinions or practices and operations dangerous to the common weal. Any competition between governmental powers and liberty under the Constitution can be reconciled and made compatible. They co-exist without invasion of the their respective spheres of action.

I am not, however, satisfied that the National Security (Subversive Associations) Regulations are within the defence power of the Federal Parliament. They are so widely expressed and the material parts are so difficult to restrain by interpretation or by any attempt at separation that I am disposed to agree with the view on this point of my brother Williams, whose judgment I have had the privilege of reading.

I answer the questions submitted as follows:-

1. Yes;
2. No;
3. Yes with regard to regulations 3 to 6B inclusive;
4. Yes.

I find it unnecessary to answer questions 3 and 6.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

V.

THE COMMONWEALTH OF AUSTRALIA

JUDGMENT STARKE J.

Case stated pursuant to the Judiciary Act 1903-1940 in an action of trespass based upon the entry of Commonwealth officers into certain premises known as "Kingdom Hall" belonging to or in the possession of the plaintiff company and its exclusion therefrom. The Commonwealth justified under the National Security Act 193901940, the National Security (Subversive Associations) Regulations and an Order in Council and direction of the Attorney-General made thereunder.

The plaintiff company contends that the National Security (Subversive Associations) Regulations and the Order in Council and the direction of the Attorney-General are unauthorised by the Constitution and the National Security Act 1939-1940, contravene the provisions of S. 116 of the Constitution invalidating any law for prohibiting the free exercise of religion and impinge upon the judicial power of the Commonwealth. They also contend that the National Security (Subversive Associations) Regulations do not extend upon their proper interpretation to the plaintiff.

1. The validity of the National Security Act 1939-1940 was not disputed and could not be disputed in this Court in view of its decisions (Wishart v Fraser, 64 C.L.R.

470; Roche v Kronheimer, 29 C.L.R. 329; Victorian Stevedoring & General Contracting Co. Pty Ltd. & Meakes. v Dignan, 46 C.L.R. 73). A multitude of regulations have been made by the Governor-General in Council under the powers conferred upon him by the National Security Act, and in the main their validity has been supported (Farey v Burvett, 21 C.L.R. 433; Andrews v Howell, 65 C.L.R. 255; Victoria v Commonwealth, 48 C.L.R. 336; Silk Bros. Ltd. v State Electricity Commission, (1943) 49 A.L.R. 142.

2. The National Security Act 1939-1940 authorises the Governor-General in Council (Acts Interpretation Act 1901-1937, S. 17, "Governor-General") to make regulations for securing the public safety and defence of the Commonwealth. The regulations authorised "are....of the widest possible character and may affect not only the liberty but also the property of all subjects". Extraordinary powers "are given....because the emergency is extraordinary", but they "are limited to the period of the emergency" (Liversidge v Anderson, (1942) A.C. 206, at pp. 212,161; Reference re Chemical Regulations, (1943) 1 D.L.R. 248). If the power is abused or misused, the only remedy is by political action and not by appeal to the Courts of law (R. v Halliday, (1917) A.C. 260, at p. 270; Victorian Stevedoring & General Contracting Co. Pty. Ltd. & Meakes v Dignan, 46 C.L.R. 73, at p. 84). Still the Governor-General is a subordinate authority and can no more transcend the powers contained in the Constitution than can the Parliament itself. Consequently the regulations must be "with respect to" defence: they must in substance relate to defence or, to use the words of the Chief Justice, have a "real connection with defence" (Victoria v The Commonwealth, 48 A.L.R. 336). No general test applicable to all cases can be laid down. The true character, object and effect of the

legislation or regulation can only, as has been said, be ascertained from an examination of the legislation or the regulation in its entirety. Moreover, the Governor-General cannot exceed the powers conferred upon him by the National Security Act 1939-1940 itself, which, as already noticed, are limited to regulations for securing the public safety and defence of the Commonwealth. And this, I think, may be asserted, that no regulation made by a subordinate authority, whether that authority be the Governor-General in Council or other public authority, can be within power if arbitrary or capricious. In other words, if the regulation involved such oppressive or gratuitous interference with the rights of those subject to them as could find no justification in the minds of reasonable men, the Court might well say: "Parliament never intended to give authority to make such rules". A regulation of that character would not be a law or a regulation "with respect to defence" or for securing the public safety or defence of the Commonwealth (Slattery v Naylor, 13 App. Cas. 446, at p. 452; Widgee Shire Council v Bonney, 4 C.L.R. 977, at p. 983; Kruse v Johnson, (1898) 2 Q.B. 91, at p. 99; R. v Broad, (1915) A.C. 1110, at p.1122; R. v Halliday, (1917) A.C. 260, at p. 272; Reference re Chemical Regulations, (1943) 1 D.L.R. 248, at p. 256). It would be more than anabuse or misuse of power: it would be beyond power.

The Courts must not, of course, forget that those who are responsible for the national security must be the best judges of what the national security requires, but still in Australia neither the Parliament nor the Governor-General in Council can transcend the Constitution nor can the Governor-General transcend the powers conferred upon him by the National Security Act 1939-1940. Thus, to suggest an extravagant illustration, a regulation under the National Security Act that any person who the Governor-General declares has acted, in his opinion, in a manner prejudicial to the defence of the Common-

wealth or the efficient prosecution of the war shall be executed, could not be supported as a regulation with respect to defence or the safety and defence of the Commonwealth, because of its arbitrary and capricious nature. It would not do to say that it was merely an abuse of power and that the remedy was political, for the regulation would be beyond power: it would not not be a regulation with respect to defence or the safety and defence of the Commonwealth.

This brings me to an examination of the Subversive Associations Regulations. It should be noted that the National Security Act 1939-1940 continues in operation "not longer than six months after His Majesty ceases to be engaged in war" and regulations made thereunder must also then cease to operate. The regulations provide that any body, corporate or unincorporate, the existence of which the Governor-General declares to be in his opinion prejudicial to the defence of the Commonwealth or the efficient prosecution of the war "is hereby declared unlawful". Standing alone, this provision is not open to attack (Lloyd v Wallach, 20 C.L.R. 299; Ex parte Walsh, 48 A.L.R. 359; R. v Halliday, (1917) A.C. 260; Liversidge v Anderson, (1942) A.C. 206). But it is not the declaration so much as the consequences of the declaration that have been attacked. Any body in respect of which a declaration is made is by force of the declaration, dissolved. A regulation providing for the precautionary detention of individuals has been upheld under provisions such as in the National Security Act (See cases supra). And, so I apprehend, could regulations controlling the activities or operation of any body mentioned in the Subversive Associations Regulations as was done in the case of enemy subjects by the Trading with the Enemy Act, No 14 of 1939, S. 13. But here are regulations of a temporary character which dissolve the body and wind it up. Further still, any person, including a Bank, having in his possession or custody any property which immediately

prior to the dissolution of the body belonged to, or was used by or on behalf of, or in the interests of that body or was held by trustees for and on behalf of that body, shall on demand deliver that property to a person authorised by the Minister. And any person not below the rank of sergeant may by notice in writing served on any person declare that any persons specified in the notice are, with respect to any account so specified, trustees for any such body, and that declaration is conclusive evidence that those persons are trustees of the body with respect to any moneys standing to the credit of the account. And any property taken possession of or delivered to a person authorised by the Minister is forfeited to the King for the use of the Commonwealth. It is not a precautionary detention of property but a forfeiture of property to the Crown, though no offence is created. The matter is entirely one for the discretion of the executive, regardless apparently, except by the grace of the executive, of obligations to creditors or others or even the interests of persons in property used by or in the interests of a declared body. Any house, premises, or place or part thereof occupied by a body prior to its declaration may, if the Minister so orders, be occupied so long as there is in the house, premises or place or part thereof any property which the Minister is satisfied belonged to, or was used by or on behalf of, or in the interests of, the body.

A regulation might be legitimate, if merely precautionary, but the operation of the regulation under consideration is to forfeit property to the Crown even though the property be not that of the declared body but only used on behalf of or in its interests. Further still, a person shall not publish or broadcast any unlawful doctrines or hold or convene any meeting or with any other person assemble in any place for the purpose of advocating

any unlawful doctrines. And unlawful doctrines include any doctrines or principles which were advocated by a declared body and also any doctrines or principles whatsoever which are prejudicial to the defence of the Commonwealth or the efficient prosecution of the war. So the doctrines of a declared body whether they be religious, political, economic or social, innocent or injurious, are all prohibited, whether they be or be not prejudicial to the defence of the Commonwealth or the efficient prosecution of the war.

In themselves the regulations are arbitrary, capricious and oppressive. Bodies corporate and unincorporate are put out of existence and divested of their rights and their property on the mere declaration of the executive Government. The operative clauses of the regulations, such as the provision relating to bank credits, forfeitures and unlawful doctrines have little, if any, real connection with the defence of the Commonwealth or the efficient prosecution of the war. Accordingly, in my judgment, the regulations are beyond the power conferred upon the Governor-General in Council by the National Security Act 1939-1940, and, even if enacted by the Parliament itself, they would, I venture to think, transcend the powers conferred upon the Parliament by the Constitution.

It was suggested, however, that the regulations are not wholly bad but are severable (See Acts Interpretation Act 1901-1937, SS.15A, 46 (b)). But these regulations are so bound up with invalid provisions that they cannot be severed. Notwithstanding the presumption in favour of divisibility which arises from the legislative declaration, the Court cannot rewrite a regulation and give it an effect altogether different from that sought by the regulations viewed as a whole (See Railroad Retirement Board v Alton Railroad Co., 295 U.S. 330, at p. 362; Australian Railways

Union v Victorian Railways Commissioners, 44 C.L.R. 319, at p. 386.

3. The Constitution, in S.116, enacts :-

> "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth."

It was contended that the Subversive Associations Regulations contravened this provision and were therefore void. In the view I take this case can be resolved without reference to the constitutional provision. But, as the matter was argued at some length, a few observations upon the subject are perhaps desirable. The Commonwealth is prohibited from making any law for the establishment of any religion or prohibiting the free exercise thereof. The Parliament is given no express power to legislate with respect to religion, but it has many other legislative powers. And those other powers cannot be exercised in contravention of the provision for religious liberty or freedom protected and guaranteed by the Constitution. But liberty and freedom in an organised community are relative and not absolute terms.

The present Chief Justice of the Supreme Court of the United States observed in his dissenting judgment in the case of Minersville School District v Gobitis, 310 U.S. 586, at pp. 602-3, "Concededly the constitutional guarantees of personal liberty are not always absolutes. Government has a right to survive and powers conferred upon it are not necessarily set at naught by the express prohibitions of the Bill of Rights. It may make war and raise armies. To that end it may compel citizens to give military service,

....and subject them to military training despite their religious objections....It may suppress religious practices dangerous to morals, and presumably those also which are inimical to public safety, health and good order."

The liberty and freedom predicated in S.116 of the Constitution is liberty and freedom in a community organised under the Constitution. The constitutional provision does not protect unsocial actions or actions subversive of the community itself. Consequently the liberty and freedom of religion guaranteed and protected by the Constitution is subject to limitation which it is the function and the duty of the Courts of law to expound. And those limitations are such as are reasonably necessary for the protection of the community and in the interests of social order. Therefore there is no difficulty in affirming that laws or regulations may be lawfully made by the Commonwealth controlling the activities of religious bodies that are seditious, subversive or prejudicial to the defence of the Commonwealth or the efficient prosecution of the war.

The critical question is whether the particular law, as in this case, is reasonably necessary for the protection of the community and in the interests of social order. In my opinion the present regulations, if they had been within power, would not have transcended those limits. The Constitution of the United States of America contains a provision substantially the same as that contained in S. 116 of the Constitution. But I shall not go through the American Cases which may be found at large in Willoughby on the Constitution of the United States, 2nd Edn. cap.65, p.1185, and in Willis on Constitutional Law, cap. XVII, XVIII, at pp.477-513 and in the late cases of Minersville School District v Gobitis, 310 U.S. 586, already mentioned, and Jones v Opelika, 316 U.S. 584, where the main American decisions may be found; see also James v The Commonwealth

(1936) A.C. 578, at p. 593.

4. The contention that the Subversive Associations Regulations impinge upon the judicial power of the Commonwealth is untenable. Indeed, a remarkable feature of the regulations is the number of consequences that follow the declaration that a body is unlawful without any resort to the judicial power (See, for instance, Regulations 4, 6A, 6B). But that does not impinge upon the judicial power, though it may be seriously affect the liberty of the subject and his property. Roche v Kronheimer, 29 C.LR. 329, decisively negatives the contention so far as this Court is concerned.

The questions stated should be answered as follows:-

1. Yes.

2. No.

3. No.

4 (a) Unnecessary to answer.

(b) Yes.

5.(a) Unnecessary to answer.

(b) Yes.

(c) Unnecessary to answer.

6. Yes.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

v.

THE COMMONWEALTH OF AUSTRALIA.

REASONS FOR JUDGMENT

McTIERNAN J.

Question 1. In my opinion the answer should be No. I agree with the reasons of His Honour the Chief Justice for answering this question in the negative.

Question 2. In my opinion the answer should be No. The reasons are that it is plain from the terms of the Regulations that none of them is "a law for profiting the free exercise of any religion"; it does not appear that the object of the Regulations is to arm the Executive with power to profit or restrict the exercise of any religion or that there is any attempt "to mock" the constitutional guarantee of religious freedom.

Question 3. In my opinion the answer should be No. The question turns upon the interpretation of the provisions of Section 116, which prohibit interference by the Commonwealth with the free exercise of any religion. The section creates a restriction both on legislative and executive power.

The word religion extends to faith and worship, to the teaching and propagation of religion and to the practice and observance of religion.

Section 116 imposes a restriction on all the legislative powers of Parliament. An Act passed by Parliament may be a law with respect to any of the subjects of power enumerated in Section 51 or with respect to any other subject of legislative power but if it answers to the description of "a law for prohibiting the free exercise of any religion" within the meaning of Section 116 it violates the Constitution and is void.

The terms of the Order in Council show that there is a conflict between the existence of the bodies mentioned in the Order and the security of the Commonwealth against the enemy. In these circumstances which is to prevail? It would be contrary to well settled principles for the Court to question in wartime the opinion of the Executive which is declared by the Order in Council. The Executive is in a better

position than the Court during war to form an opinion whether the existence of the bodies mentioned in the order is prejudicial to the defence of the Commonwealth and the prosecution of the war. By dissolving these bodies it is true that the Commonwealth has directly interfered with the teaching of the principles and with the practices described in the case stated and, if the guarantee of the free exercise of religion is absolute, it voilated the guarantee. Does the Constitution deprive the Executive in war time of the power to secure the safety of the Commonwealth against invasion by suppressing a body whose existence is prejudicial to the defence of the Commonwealth and the efficient prosecution of the war? The provisions of Section 116 that the Commonwealth shall not make any law for prohibiting the free exercise of any religion must obviously be limited in their legal effect by necessity and accommodated, at least, to the powers with which the Constitution arms the Commonwealth to defend itself against invasion. In my opinion Section 116 does not according to its true interpretation extend to the executive action which has been taken to suppress the plaintiff. I agree with the reasons which the Chief Justice has given for denying that the words of Section 116 on which the plaintiff relies create an absolute guarantee of the free exercise of any religion.

Questions 4, 5 and 6. I agree with the answers and reasons of the Chief Justice.

Regarding Question 4, I shall add that by Section 5 of the National Security Act, Parliament delegated to the Executive its own legislative power in the field limited by that Section. Regulations 3 and 4 are within that field and within the defence power of the Commonwealth.

The possible abuse of the power conferred on the Executive is not an argument against the existence of the power. See McCray v. United States 1904 195 U.S. 27; Twining v. State of New Jersey 211 U.S. 106 Hamilton, Collector of Internal Revenue v. Kentucky Distilleries, and Warehouse Co. 251 U.S. 146.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

V.

THE COMMONWEALTH OF AUSTRALIA.

Judgment — Williams J

The Questions asked in the Case stated relate mainly to the constitutional validity of the National Security (Subversive Associations) Regulations under which the defendant the Commonwealth of Australia seeks to justify what would otherwise be certain trespasses committed against the plaintiff.

The plaintiff is a body incorporated under the provisions of the Associations Incorporation Act (S.A.) 1929-1935. It was in exclusive occupation of certain lands and buildings known as Kingdom Hall situated in Sturt Street Adelaide in the State of South Australia. The Hall was used as a meeting place for an association of persons known as Jehovah's Witnesses. The Association held meetings of a religious character in the Hall whereat hymns were sung, prayers offered and discourses delivered upon the doctrines, beliefs and teachings of Jehovah's Witnesses.

By an Order in Council made on 17th January 1941 the Governor-General, after reciting regulation 3 of these Regulations, acting with the advice of the Federal Executive Council, declared that in his opinion the existence inter alia of the organisation or organisations known as Jehovah's Witnesses or Witnesses of Jehovah was prejudicial to the defence of the Commonwealth and the efficient prosecution of the war. By a direction of the Attorney-General made on the same date, after reciting regulation 6A of these Regulations, the declaration made by the Governor-General, and also reciting that immediately prior to the date of this declaration the premises in Sturt Street, Adelaide, were occupied by the organisation or organisations known as Jehovah's Witnesses or the Wit-

nesses of Jehovah, and that the Attorney-General was satisfied that there was on these premises property which belonged to or was used by or on behalf of or in the interests of this subversive Association having been declared to be unlawful directed that :- The Inspector, Commonwealth Investigation Branch in South Australia, should take possession of, control and occupy Kingdom Hall, that no person should, except with the consent of the Inspector, be in or enter or leave the Hall, and that no property whatsoever should, except with the consent of the Inspector, be brought into or removed from the Hall.

The Association of Jehovah's Witnesses is a religious sect professing primitive Christian beliefs, one of these being that the nations of the earth including the British Commonwealth of Nations are under the control of Satan, and that it will be necessary for Jesus Christ (whose second coming on earth has already begun) through his true followers to overthrow all these satanic governments in order to establish his kingdom on earth. Because the Government of the Commonwealth is a satanic government, the witnesses object to take the oath of allegiance or to assist in the defence of the Commonwealth in time of war. They do not engage in any overt hostile acts; their attitude to the war is one of strict neutrality, but it is apparent that an attitude of non-co-operation in the prosecution of the war and a propagation of a belief that no benefit will flow from defeating the enemy must have an eroding effect on the national war effort.

On these facts my brother Starke has found that the plaintiff and the association of persons known as Jehovah's Witnesses proclaim and teach matters prejudicial to the defence of the Commonwealth and the efficient prosecution of the war, but that otherwise their doctrines or beliefs are primitive religious beliefs.

The plaintiff's cause of action is that it was in exclusive occupation of the Hall and that the defendant, the Commonwealth of Australia, unlawfully trespassed upon and dispossessed it. The defence of the Commonwealth is that it acted lawfully under the powers conferred upon it by the National

Security (Subversive Associations) Regulations.

The plaintiff contends that: (1) these regulations are invalid in all cases or at least as against the plaintiff because they contravene sec. 116 of the Constitution; (2) that the regulations are invalid because they are beyond the ambit of the defence power; and (3) that certain of the regulations are invalid because they attempt to confer judicial power upon persons not eligible to exercise such power under sec. 71 of the Constitution.

As to the first of these contentions. Just as the meaning and scope of the powers conferred upon the Parliament of the Commonwealth by Constitution, however absolute their terms, must be ascertained, as in any other document, in the context of the whole of the Constitution; so must the meaning and scope of sec. 116 be determined, not as an isolated enactment, but as one of a number of sections intended to provide in their inter-relation a practical instrument of government, within the framework of which laws can be passed for organizing the citizens of the Commonwealth in national affairs into a civilized community, not only enjoying religious tolerance but also possessing adequate laws relating to those subjects upon which the Constitution recognises that the Commonwealth Parliament should be empowered to legislate in order to regulate its internal and external affairs. (The determination of the meaning of an ordinary English phrase or word in a Statute is a question of fact, the problem being to ascertain what the phrase or word meant in its ordinary popular acceptation at the date the Statute was passed. At the date of the Constitution it would not have been considered in a popular sense to have been an interference with the free exercise of religion for the legislation of the States to have included laws (as in fact it did) making poligamy or murder a crime, although it was still a tenet of some religious beliefs to practise poligamy or human sacrifice. Such laws would be classified as ordinary secular laws relating to the worldly organisation of the

community, even if their direct effect might be to prevent some religious sects indulging in practices which in the ordinary popular sense would be regarded as crimes and would certainly not be recognised as having any connection with any observance which an enlightened British community would consider to be an exercise of religion. The right to the free exercise of religion conferred by the Constitution postulates a continuous right to such freedom in a Commonwealth which will survive the ordeal of war. When, therefore, the safety of the nation is in jeopardy, so that the right to such free exercise can only survive if the enemy is defeated, laws which become necessary to preserve its existence would not be laws for prohibiting the free exercise of religion. There are many conceivable circumstances in wartime in which it might become necessary for the military authorities to take physical possession even of churches and other buildings where religion is practised, and a law enabling the military authorities to do so would not be a law prohibiting the free exercise of religion. It is impossible, in my opinion, to impute to the framers of the Constitution an intention that the phrase "the free exercise of religion" should confer an absolute right to propagate a belief that the system of government created by the Constitution was of a satanic nature, the functioning of which, in spheres which the common sense of the community generally would regard as entirely secular, was not to be judged on its merits or demerits as worldly legislation, but to be condemned in every instance as an emanation of Satan. The easy toleration of a British community often permits bodies with such beliefs to flourish in its midst in times of peace, although it is the usual practice of such bodies to accept the benefits but to refuse to shoulder the responsibilities incidental to citizenship in such a community. But the activities of such bodies can be subversive of good government even in peacetime,

and in war time can become a serious menace. If the regulations only conferred such powers as were reasonably required to prevent bodies disseminating principles and doctrines prejudicial to the defence of the Commonwealth during the war, they could not be impeached under sec.116, even if they interfered incidentally with activities that some persons in the community considered to be the free exercise of religion, because in its popular sense such principles and doctrines would not be considered to be religion but subversive activities carried on under the cloak of religion. The attack on the regulations as an infringement of sec.116 therefore fails.

As to the second contention. A state of war, however, prolonged the duration of conflict such as the present war may be, does not continue indefinitely. Because war promotes abnormal conditions, abnormal means are required to cope with them, and this justifies the Parliament of the Commonwealth under the defence power enacting many laws in times of war which would be beyond its scope in times of peace. As my brother Dixon said in Andrews. v. Howell 65 C.L.R. 255 at p. 278, in discussing the defence power :- "In dealing with that constitutional power, it must be remembered that, though its meaning does not change, yet unlike some other powers its application depends upon facts, and as those facts change so may its actual operation

as a power enabling the legislature to make a particular law. In the same way the operation of wide general powers conferred upon the Executive by the Parliament in the exercise of the power conferred by sec. 51(vi) is affected by changing facts. The existence and character of hostilities, or a threat of hostilities, against the Commonwealth are facts which will determine the extent of the operation of the power. Whether it will suffice to authorise a given measure will depend upon the nature and dimensions of the conflict that calls it forth, upon the actual and apprehended dangers, exigencies and course of the war, and upon the matters that are incident thereto."

A state of war, therefore, justifies legislation by the Commonwealth Parliament, in the exercise of the defence power, which makes many inroads on personal freedom, and which places many restrictions on the use of property of an abnormal and temporary nature which would not be legitimate in times of peace. A law that called up the whole of the civil population between the ages of 18 and 60 for continuous military service during the whole of these years in times of peace would be so fantastic that it could not be said to be a real exercise of the defence power. The substance and purpose of such a law would be to organize the Commonwealth as a military state and not to take the necessary steps to prepare for war; but it is a valid exercise of the power to call up all or any citizens between these ages for continuous military service for the indefinite period of the war.

So bodies corporate and unincorporate and individuals may profess ideas or carry on activities which in times of peace may be harmless, but which in time of war may interfere with the successful defence of the Commonwealth.

It is recognised that the internment of such persons on mere suspicion without trial for some period not exceeding that of the war upon the opinion of a Minister that their liberty is prejudicial to the safety of the realm is a valid exercise of a plenary administrative discretion. The

justification of what would be in times of peace an unwarranted interference with the liberty of the subject is that in many instances it would be against the public interest for the Minister to have to disclose to a Court the confidential information upon which he acted: Liversidge v. Sir John Anderson 1942 A.C. 206: R. v. Secretary of State for Home Affairs ex parte Budd 1942 2 K.B. 14 at pps. 19-21. It is the exercise of an administrative discretion to interfere with the freedom of individuals by conscripting them for service in the armed forces of the Commonwealth, or by compelling them to labour in some particular locality at some particular form of work connected with the prosecution of the war. It is also an interference with the freedom of individuals in a somewhat different but no more extreme form necessitated by the same emergency to compel them to undergo internment. Such an interference was described by Lord MacMillan in Liversidge's case at p.257 to be, in comparison with conscription, a relatively mild precaution.

The right of the Commonwealth Parliament to require Australian citizens to serve in the armed forces or engage in some form of work connected with the prosecution of the war is, of course, absolutely clear; and, for the reasons already given, it is equally clear, as this Court has decided, that the rightto intern other citizens of the character mentioned must also exist: ex parte Walsh 1942 A.L.R. 357. But an Act which said that if, in the opinion of a Minister, the existence of any body of individuals was considered to be prejudicial to the defence of the Commonwealth during the war, these individuals were forthwith to be cremated and all their property confiscated to the Crown, would be such a complete destruction of the personal and proprietary rights of individuals for an offence of such an indefinite nature that it would go so far beyond anything that was reasonably required for the purposes of meeting the abnormal conditions created by war.

The same principles must apply mutatis mutandis to property. Nearly all rights of property arise under the

justification of what would be in times of peace an unwarranted interference with the liberty of the subject is that in many instances it would be against the public interest for the Minister to have to disclose to a Court the confidential information upon which he acted: Liversidge v. Sir John Anderson 1942 A.C. 206: R. v. Secretary of State for Home Affairs ex parte Budd 1942 2 K.B. 14 at pps. 19-21. It is the exercise of an administrative discretion to interfere with the freedom of individuals by conscripting them for service in the armed forces of the Commonwealth, or by compelling them to labour in some particular locality at some particular form of work connected with the prosecution of the war. It is also an interference with the freedom of individuals in a somewhat different but no more extreme form necessitated by the same emergency to compel them to undergo internment. Such an interference was described by Lord MacMillan in Liversidge's case at p.257 to be, in comparison with conscription, a relatively mild precaution.

The right of the Commonwealth Parliament to require Australian citizens to serve in the armed forces or engage in some form of work connected with the prosecution of the war is, of course, absolutely clear; and, for the reasons already given, it is equally clear, as this Court has decided, that the right to intern other citizens of the character mentioned must also exist: ex parte Walsh 1942 A.L.R. 357. But an Act which said that if, in the opinion of a Minister, the existence of any body of individuals was considered to be prejudicial to the defence of the Commonwealth during the war, these individuals were forthwith to be cremated and all their property confiscated to the Crown, would be such a complete destruction of the personal and proprietary rights of individuals for an offence of such an indefinite nature that it would go so far beyond anything that was reasonably required for the purposes of meeting the abnormal conditions created by war.

The same principles must apply mutatis mutandis to property. Nearly all rights of property arise under the

common law or Statutes of the States. Most corporations are incorporated under State laws, and the rights of the corporators and creditors, including their rights to have the corporation dissolved, and their rights upon dissolution, depend upon these laws. It is the duty of the Commonwealth under sec.119 of the Constitution to protect every State against invasion. This duty must be fulfilled in order to preserve the Constitutions of the States and the rights of citizens and corporations under the laws of the States. For the purposes of defence the Commonwealth can in times of war pass legislation affecting the rights of the States and of their citizens and corporations under State laws to a greater extent than it can in times of peace: South Australia v. The Commonwealth 65 C.L.R.373 at p.468. But the extent to which it can entrench upon these rights is limited by the reasonable necessities of defence during the period of the war. If it is necessary for the Commonwealth to acquire such property, it can do so subject to sec.51 (xxxi) of the Constitution. But the mere fact that the corporation or individual or body of individuals is carrying on some activity, which in the opinion of Parliament or of some Minister is prejudicial to the defence of the Commonwealth, cannot, in my opinion, reasonably require that the Commonwealth should enact that the property of such corporation or individual or body should be forfeited to the Crown, and the rights of all corporators and creditors in that property under State law completely destroyed.

Under the Subversive Regulations, 3 to 8 inclusive, if the Governor-General, by Order published in the Gazette, declares that the existence of any body corporate or unincorporate is prejudicial to the defence of the Commonwealth or the prosecution of the war, that body becomes an unlawful body and is dissolved by force of the declaration (regulations 3 and 4). Any doctrines or principles which were advocated by that body become unlawful and any printing or publishing or such doctrines or principles becomes unlawful; and no person shall hold or convene any meeting or with any other person assemble in any place for the purpose of advocating such doctrines (regulations 7 and 8). Any Minister can order any person to deliver any

property of the body which was held by or on behalf of or in the interests of the body to a person thereto authorised by a Minister; any member of the police force of the Commonwealth or a State or Territory of the Commonwealth, if not below the rank of sergeant, may by notice in writing declare that any persons specified in the notice are, with respect to any bank account so specified trustees for the body. and that declaration shall, as between the persons so specified or any of them and the person on whom the notice is served. be conclusive evidence that those persons are trustees of the body with respect to any moneys standing to the credit of the account (regulation 6). Any property taken possession of or delivered to a person thereby authorised by a Minister in pursuance of the regulations becomes forfeited to the King for the use of the Commonwealth and is condemned by force of the regulation; such of the property as the Attorney-General or an authorised person is satisfied belonged to the body which has been declared to be unlawful may be destroyed or otherwise dealt with as the Attorney-General directs; such of the property as the Attorney-General or an authorised person is satisfied did not belong to such a body and as consists of books, documents or papers which the Attorney-General or an authorised person is satisfied were used or intended to be used in connection with the activities of such a body, or which, in the opinion of the Attorney-General or an authorised person, advocate unlawful doctrines, may be destroyed or otherwise dealt with as the Attorney-General directs; and the remainder of the property may be returned to the owners thereof or otherwise dealt with as the Attorney-General directs (regulation 6B).

This brief analysis of the contents of these regulations is sufficient to show that the purpose of the enacting authority was, by the mere force of an order made under regulation 3, instantly to dissolve the body and to place the disposal of the whole of its assets and certain assets of third parties in the absolute discretion of the Attorney-General, to vest in police officers and the Attorney-General judicial powers not subject to appeal of determining the ownership of property and to place a complete veto upon the dissemination of any

doctrines or principles whatever advocated by a body which has been declared to be unlawful. The definition of "unlawful doctrines" includes any doctrines or principles which were advocated by a body which has been declared to be unlawful, and any doctrines or principles whatsoever which are prejudicial to the defence of the Commonwealth or the efficient prosecution of the war. Mr Weston submitted that on its true construction this definition should be read so that the words "which are prejudicial to the defence of the Commonwealth or the efficient prosecution of the war" govern the whole of the preceding words of the definition. On this construction the first branch of the definition would read "any doctrines or principles which were advocated by a body which has been declared to be unlawful which are prejudicial to the defence of the Commonwealth or the efficient prosecution of the war. It would be included in the second branch of the definition and so would be tautologous. But the definition appears to me to include two distinct classifications of unlawful doctrines, the one a more definite class consisting of those doctrines which were advocated by a body which has been declared to be unlawful, and the other a more indefinite class consisting of any doctrines which are prejudicial to the defence of the Commonwealth or the prosecution of the war whether advocated by the unlawful body or not. Regulations 7 and 8 would operate whether a body has been declared unlawful or not. But a prosecution for a breach of these regulations would have to aver that the doctrine was unlawful because it was prejudicial to the defence of the Commonwealth or the prosecution of the war, where it could not be averred that it had been advocated by some body which had been declared to be unlawful; whereas, if a body had been declared to be unlawful, it would only be necessary to aver that the doctrine had been advocated by that body. If there was any intention apparent in the context of the regulations as a whole that any limitation was to be placed on the wide meaning of many of the expressions which they contain, it might be permissible to construe the definition in this narrow way, even at the risk of doing some

violence to its language, to avoid a capricious and absurd result; but, far from indicating any intention to narrow the meaning of such expressions the context indicates an intention to give the regulations the widest possible operation, without any real regard being had to what the possible repercussions of such an operation might be. The definition is therefore wide enough to include perfectly innocent principles and doctrines advocated by a body which has been declared to be unlawful. As the religion of Jehovah's Witnesses is a Christian religion, the declaration that the Association is an unlawful body has the effect of making the advocacy of the principles and doctrines of the Christian religion unlawful and every Church service held by believers in the birth of Christ an unlawful assembly. Apart from sec.116 such a law could not possibly be justified by the exigencies and course of the war. But it is also prohibited by sec.116.

Mr. Weston, after pointing out that the whole of the action taken by the Commonwealth against the plaintiff fell within the ambit of regulations 3 and 6(A), also contended that these regulations were severable, even if the remainder of the regulations or some of them were unconstitutional. Regulation 6(A) provides that any house, premises or place or part thereof which was occupied by a body immediately prior to its having been declared to be unlawful may, if a Minister by order so directs, be occupied in accordance with the provisions of the order so long as there is in the house, premises or place or part thereof any property which a Minister is satisfied belongs to, or was used by or on behalf of, or in the interests of, the body, and which was therein immediately prior to the body having been declared to be unlawful. The right to occupy a house, premises or other place given by the regulation is wide enough to authorise an occupation of any premises, whether owned by the unlawful body or not, so long as there is on the premises any property which a Minister was satisfied belonged to or was used by or in connection with the body. As a purely temporary occupation pending dissolution of the body, the regulation might be justified as an

/ administrative

administrative act, but if it is read as an independent power giving an indefinite right of occupation the determination of a controversy as to the ownership of the property or the premises would be an attempted exercise of the judicial power of the Commonwealth by a Minister and therefore unlawful. It is impossible, in my opinion, applying the tests of severability referred to by my brother Dixon in The King v. Poole ex parte Henry (No.2) 61 C.L.R. 634 at pps.651-653 to sever regulations 3 and 6(A) in this way, as the effect of this would be to give these regulations a completely different operation from that which they would have as part of the regulations as a whole.

As to the validity of regulations 3 to 8 considered as a whole. There is no doubt, in my opinion, that the Commonwealth is justified under the defence power in times of war in taking possession of and controlling during the war the property of organisations whose activities are prejudicial to the defence of the Commonwealth or the prosecution of the war, in confiscating any literature which is being used to promote subversive doctrines, and in preventing such bodies from holding meetings; but the vice of these regulations is that the consequences to a body to those interested in the property of a body as shareholders and creditors and to third persons which flow from the declarations are so drastic and permanent in their nature that they exceed anything which could conceivably be required in order to aid, even incidentally, in the defence of the Commonwealth. Even if a narrow construction could be placed on the definition of "unlawful doctrines", in which event regulations 7 and 8 might be valid, regulations 3 to 6B would still be objectionable. The Governor-General could form an opinion that the existence of a body was prejudicial to the defence of the Commonwealth or to the efficient prosecution of the war on an almost indefinite number of wholly undefined grounds. To quote the words of Lord Wright in Liversidge's case at p.270: "There is no hard and fast issue of fact, such as there is in the trial of a specific charge or indictment. "It could be an offence for a corporation to occupy too many buildings or to

/ employ

employ too many employees. The corporation is not told what the prejudicial conduct consists of or given an opportunity of rectifying it. The declaration can result in the forfeiture of the whole of the property of the corporation to the Crown in destruction of the rights of every person interested in the property, including even creditors who have bona fide dealt with the body in the ordinary course of business, and in a complete overriding of State laws not only relating to events in which the corporation can be dissolved but to the right of the shareholders and the creditors upon a dissolution. None of these creditors may have been aware of any conduct of the corporation which could be prejudicial to the conduct of the war. If the shareholders were aware of any such conduct, the rights of a minority who might have done all they could to oppose it would be forfeited in the same way as the rights of the majority who approved of or condoned it. Such a holocaust of proprietary rights could not, in my opinion, conceivably be required, even incidentally, for the purposes of defence.

Regulation 5(a) provides that (1) where a body corporate which has been declared to be unlawful is registered as a company under the law of any State or Territory a Court of that State or Territory which has jurisdiction to wind up companies shall, subject to this regulation, have the same powers, and the provisions of the law of that State or Territory relating to companies shall apply, as if a winding up petition had been duly presented to the Court by the company and the Court had made an order for winding up the company; provided that it shall not be necessary for the Court to make an order that the company be dissolved (2) the Attorney-General may by an order appoint a person to be a liquidator of the company, and such a liquidator shall be the sole liquidator of the company and shall have all the powers of a liquidator or official liquidator appointed by the Court. But the powers of the Court under this regulation would be subject to the right of the Commonwealth to take possession of any property whether belonging in law to the unlawful body or not under the other regulations

/ and

and thereby cause it to be forfeited to the King. The powers of the Court would be confined, therefore, to distributing such of the assets of the body as were not taken possession of by a person authorised by a Minister and thereby forfeited to the King.

For these reasons I am of opinion that regulations 3 to 8 are an invalid exercise of the defence power. I express no opinion as to the validity of the remaining regulations.

It is therefore unnecessary to discuss at any length the extent to which the regulations are invalid because they transgress the judicial power of the Commonwealth. This power can only be exercised by this Court, some other federal Court created by the Commonwealth Parliament, or some Court of a State duly invested with federal jurisdiction: The Constitution secs. 71 and 77. The meaning of judicial power has been discussed by this Court in many cases including the recent decisions of the King v. Federal Court of Bankruptcy ex parte Lowenstein 59 C.L.R. 556 at pps. 575-576: Australian Apple and Pear Marketing Board v. Tonking 66 C.L.R. 77 at pps. 83-85; 103 and 104: and Silk Bros Pty. Ltd. v. State Electricity Commission of Victoria 1943 A.L.R. 142. It is as clear "as burning daylight" that the determination of the controversies which could arise under regulations 6(4) and 6B(1) and 2 would be an exercise of judicial power so that these sub-regulations would be invalid on this ground. Regulation 6B(3) is also invalid because it is made to operate retrospectively in breach of the provisions of the Acts Interpretation Act 1901-1937 sec.48(2)(a).

In my opinion the questions should be answered as follows:-

(1) Yes

(2) No

(3) Does not arise

(4) (a) and (b) Yes at least as to regulations 3 to 6B inclusive.

(5) (a) Yes (b) Yes (c) Yes

(6) Does not arise

NATIONAL SECURITY (GENERAL) REGULATIONS.

REQUISITION UNDER REGULATION 57.

To Sport Radio Broadcasting Co. Ltd., and to all persons having possession of any property of or under the control of Sport Radio Broadcasting Co. Ltd.

WHEREAS it appears to me to be necessary so to do in the interests of the public safety, the defence of the Commonwealth, and the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community:

NOW THEREFORE, I, William Patrick Ashley, the Postmaster-General of the Commonwealth of Australia, in pursuance of the powers conferred by regulation 57 of the National Security (General) Regulations, do hereby make the following Order :-

1. I requisition all the property (other than land), wheresoever situated, of or under the control of Sport Radio Broadcasting Co. Ltd.

2. I authorize every person being a peace officer appointed in pursuance of the Peace Officers Act 1925 to seize and remove all or any of that property for the purpose of giving effect to this requisition, and for that purpose to have at all times full and free access to, and to have power, if need be by force and with such assistance as is necessary, to break open, enter and search, any premises or place, in or at which that property or any of it is situated or he suspects that that property or any of it is situated.

3. For the purpose of ensuring that all property requisitioned in pursuance of this Order shall be safely and securely held for and on behalf of the Postmaster-General pending his determination of the purpose for which and the manner in which that property or any of it is to be used or dealt with, I order that -

/(a) no

(a) no person shall, without the approval of the Postmaster-General, remove any of that property from any premises or place in or at which it is situated at the date of this Order;

(b) any person authorized in pursuance of paragraph 2 of this Order may enter any premises or place in or at which that property or any of it is situated or he suspects that that property or any of it is situated and remain on those premises or at that place for such period as he thinks necessary; and

(c) any person so authorized may, if need be by force and with such assistance as is necessary, prevent any person from entering upon any such premises or place or eject from any such premises or place any person obstructing or attempting to obstruct him in the exercise of his duties under this Order, or interfering, or attempting to interfere, with any property on any such premises or at any such place.

Dated this day of June, 1943.

Postmaster-General.

Similar Orders made in respect of Port Augusta Broadcasting Co. Ltd., Airsales Broadcasting Company Pty. Ltd.

The High Court judgment may be briefly summed up as follows.

The Court held:-

(1) that the National Security (Subversive Association) Regulation did not contravene 116 of the Constitution;

(2) that the Order in Council and the direction of the Attorney-General did not contravene 116 of the Constitution;

(3) that the Regulation 6 (A) is invalid and is beyond the power conferred by the Constitution and the National Security Act;

(4) that the Order in Council and the direction of the Attorney-General were beyond the power conferred by the National Security Act, and in respect of the direction beyond the powers conferred by Regulations.

J.H.S. Martin
14:6:43

NATIONAL SECURITY (GENERAL) REGULATIONS.

REQUISITION UNDER REGULATION 57.

To Sport Radio Broadcasting Co. Ltd., 99 Currie St., Adelaide,

and to

all persons having possession of any property of or under the control of Sport Radio Broadcasting Co. Ltd.

WHEREAS it appears to me to be necessary so to do in the interest of the public safety, the defence of the Commonwealth and the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community:

NOW therefore, I, William Patrick Ashley, the Postmaster-General of the Commonwealth of Australia, in pursuance of the powers conferred by Regulation 57 of the National Security (General) Regulations, do hereby make the following Order :-

(1). I requisition all the property (other than land), wheresoever situated, of or under the control of Sport Radio Broadcasting Co. Ltd.

(2). I authorise every person being a Peace Officer appointed in pursuance of the Peace Officers Act 1925 to seize and remove all or any of that property for the purpose of giving effect to this requisition, and for that purpose to have at all times full and free access to, and to have power, if need be by force and with such assistance as is necessary, to break open, enter and search, any premises or place, in or at which that property or any of it is situated or he suspects that that property or any of it is situated.

(3). For the purpose of ensuring that all property requisitioned in pursuance of this Order shall be safely and securely held for and on behalf of the Postmaster-General pending his determination of the purpose for which and the manner in which that property or any of it is to be used or dealt with, I order that :-

(a) no person shall, without the approval of the Postmaster-General, remove any of that property from any premises or place in or at which it is situated at the date of this Order;

(b) any person authorised in pursuance of paragraph 2 of this Order may enter any premises or place in or at which that property or any of it is situated or he suspects that that property or any of it is situated and remain on those premises or at that place for such period as he thinks necessary; and

(c) any person so authorised may, if need be by force and with such assistance as is necessary, prevent any person from entering upon any such premises or place or eject from any such premises or place any person obstructing or attempting to obstruct him in the exercise of his duties under this Order, or interfering or attempting to interfere, with any property on any such premises or at any such place.

Dated this fourteenth day of June 1943.

Postmaster-General.

NATIONAL SECURITY (GENERAL) REGULATIONS.

REQUISITION UNDER REGULATION 57.

To Sport Radio Broadcasting Co. Ltd., 99 Currie St., Adelaide,

and to

all persons having possession of any property of or under the control of Sport Radio Broadcasting Co. Ltd.

WHEREAS it appears to me to be necessary so to do in the interest of the public safety, the defence of the Commonwealth and the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community:

NOW therefore, I, William Patrick Ashley, the Postmaster-General of the Commonwealth of Australia, in pursuance of the powers conferred by Regulation 57 of the National Security (General) Regulations, do hereby make the following Order :-

(1). I requisition all the property (other than land), wheresoever situated, of or under the control of Sport Radio Broadcasting Co. Ltd.

(2). I authorise every person being a Peace Officer appointed in pursuance of the Peace Officers Act 1925 to seize and remove all or any of that property for the purpose of giving effect to this requisition, and for that purpose to have at all times full and free access to, and to have power, if need be by force and with such assistance as is necessary, to break open, enter and search, any premises or place, in or at which that property or any of it is situated or he suspects that that property or any of it is situated.

(3). For the purpose of ensuring that all property requisitioned in pursuance of this Order shall be safely and securely held for and on behalf of the Postmaster-General pending his determination of the purpose for which and the manner in which that property or any of it is to be used or dealt with, I order that :-

(a) no person shall, without the approval of the Postmaster-General, remove any of that property from any premises or place in or at which it is situated at the date of this Order;

(b) any person authorised in pursuance of paragraph 2 of this Order may enter any premises or place in or at which that property or any of it is situated or he suspects that that property or any of it is situated and remain on those premises or at that place for such period as he thinks necessary; and

(c) any person so authorised may, if need be by force and with such assistance as is necessary, prevent any person from entering upon any such premises or place or eject from any such premises or place any person obstructing or attempting to obstruct him in the exercise of his duties under this Order, or interfering or attempting to interfere, with any property on any such premises or at any such place.

Dated this fourteenth day of June 1943.

Postmaster-General.

NATIONAL SECURITY (GENERAL) REGULATIONS.

REQUISITION UNDER REGULATION 57

To Port Augusta Broadcasting Co. Ltd., 99 Currie Street, Adelaide

and to

all persons having possession of any property of or under the control of Port Augusta Broadcasting Co. Ltd.

WHEREAS it appears to me to be necessary so to do in the interest of the public safety, the defence of the Commonwealth and the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community:

Now therefore, I, William Patrick Ashley, the Postmaster-General of the Commonwealth of Australia, in pursuance of the powers conferred by Regulation 57 of the National Security (General) Regulation do hereby make the following Order :-

(1) I requisition all the property (other than land), wheresoever situated, of or under the control of Port Augusta Broadcasting Co. Ltd.

(2) I authorise every person being a Peace Officer appointed in pursuance of the Peace Officers Act 1925 to seize and remove all or any of that property for the purpose of giving effect to this requisition, and for that purpose to have at all times full and free access to, and to have power, if need be by force and with such assistance as is necessary, to break open, enter and search, any premises or place, in or at which that property or any of it is situated or he suspects that that property or any of it is situated.

(3) For the purpose of ensuring that all property requisitioned in pursuance of this Order shall be safely and securely held for and on behalf of the Postmaster-General pending his determination of the purpose for which and the manner in which that property or any of it is to be used or dealt with, I order that:

(a) no person shall, without the approval of the Postmaster-General, remove any of that property from any premises or place in or at which it is situated at the date of this Order;

(b) any person authorised in pursuance of paragraph 2 of this Order may enter any premises or place in or at which that property or any of it is situated or he suspects that that property or any of it is situated and remain on those premises or at that place for such period as he thinks necessary; and

(c) any person so authorised may, if need be by force and with such assistance as is necessary, prevent any person from entering upon any such premises or place or eject from any such premises or place any person obstructing or attempting to obstruct him in the exercise of his duties under this Order, or interfering or attempting to interfere, with any property on any such premises or at any such place.

Dated this fourteenth day of June, 1943.

Postmaster-General.

NATIONAL SECURITY (GENERAL) REGULATIONS.

REQUISITION UNDER REGULATION 57

To Port Augusta Broadcasting Co. Ltd., 99 Currie Street, Adelaide

and to

all persons having possession of any property of or under the control of Port Augusta Broadcasting Co. Ltd.

WHEREAS it appears to me to be necessary so to do in the interest of the public safety, the defence of the Commonwealth and the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community:

Now therefore, I, William Patrick Ashley, the Postmaster-General of the Commonwealth of Australia, in pursuance of the powers conferred by Regulation 57 of the National Security (General) Regulations, do hereby make the following Order :-

(1) I requisition all the property (other than land), wheresoever situated, of or under the control of Port Augusta Broadcasting Co. Ltd.

(2) I authorise every person being a Peace Officer appointed in pursuance of the Peace Officers Act 1925 to seize and remove all or any of that property for the purpose of giving effect to this requisition, and for that purpose to have at all times full and free access to, and to have power, if need be by force and with such assistance as is necessary, to break open, enter and search, any premises or place, in or at which that property or any of it is situated or he suspects that that property or any of it is situated.

(3) For the purpose of ensuring that all property requisitioned in pursuance of this Order shall be safely and securely held for and on behalf of the Postmaster-General pending his determination of the purpose for which and the manner in which that property or any of it is to be used or dealt with, I order that:

(a) no person shall, without the approval of the Postmaster-General, remove any of that property from any premises or place in or at which it is situated at the date of this Order;

(b) any person authorised in pursuance of paragraph 2 of this Order may enter any premises or place in or at which that property or any of it is situated or he suspects that that property or any of it is situated and remain on those premises or at that place for such period as he thinks necessary; and

(c) any person so authorised may, if need be by force and with such assistance as is necessary, prevent any person from entering upon any such premises or place or eject from any such premises or place any person obstructing or attempting to obstruct him in the exercise of his duties under this Order, or interfering or attempting to interfere, with any property on any such premises or at any such place.

Dated this fourteenth day of June, 1943.

Postmaster-General.

~~NATIONAL SECURITY (GENERAL) REGULATIONS~~

REQUISITION UNDER REGULATION 57.

To Airealas Broadcasting Co. Pty. Ltd., Maitland Rd., Sandgate,

and to

all persons having possession of any property of or under the control of Airealas Broadcasting Co. Pty. Ltd.

WHEREAS it appears to me to be necessary so to do in the interest of the public safety, the defence of the Commonwealth and the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community:

NOW therefore, I, William Patrick Ashley, the Postmaster-General of the Commonwealth of Australia, in pursuance of the powers conferred by Regulation 57 of the National Security (General) Regulations, do hereby make the following Order :-

(1). I requisition all the property (other than land), wheresoever situated, of or under the control of Airealas Broadcasting Co. Pty. Ltd.

(2). I authorise every person being a Peace Officer appointed in pursuance of the Peace Officers Act 1925 to seize and remove all or any of that property for the purpose of giving effect to this requisition, and for that purpose to have at all times full and free access to, and to have power, if need be by force and with such assistance as is necessary, to break open, enter and search, any premises or place, in or at which that property or any of it is situated or he suspects that that property or any of it is situated.

(3). For the purpose of ensuring that all property requisitioned in pursuance of this Order shall be safely and securely held for and on behalf of the Postmaster-General pending his determination of the purpose for which and the manner in which that property or any of it is to be used or dealt with, I order that :-

(a) no person shall, without the approval of the Postmaster-General, remove any of that property from any premises or place in or at which it is situated at the date of this Order;

(b) any person authorised in pursuance of paragraph 2 of this Order may enter any premises or place in or at which that property or any of it is situated or he suspects that that property or any of it is situated and remain on those premises or at that place for such period as he thinks necessary; and

(c) any person so authorised may, if need be by force and with such assistance as is necessary, prevent any person from entering upon any such premises or place or eject from any such premises or place any person obstructing or attempting to obstruct him in the exercise of his duties under this Order, or interfering or attempting to interfere, with any property on any such premises or at any such place.

Dated this fourteenth day of June 1943.

Postmaster-General.

NATIONAL SECURITY (GENERAL) REGULATIONS

REQUISITION UNDER REGULATION 57.

To Airsales Broadcasting Co. Pty. Ltd., Maitland Rd., Sandgate,

and to

all persons having possession of any property of or under the control of Airsales Broadcasting Co. Pty. Ltd.

WHEREAS it appears to me to be necessary so to do in the interest of the public safety, the defence of the Commonwealth and the efficient prosecution of the war and for maintaining supplies and services essential to the life of the community:

NOW therefore, I, William Patrick Ashley, the Postmaster-General of the Commonwealth of Australia, in pursuance of the powers conferred by Regulation 57 of the National Security (General) Regulations, do hereby make the following Order :-

(1). I requisition all the property (other than land), wheresoever situated, of or under the control of Airsales Broadcasting Co. Pty. Ltd.

(2). I authorise every person being a Peace Officer appointed in pursuance of the Peace Officers Act 1925 to seize and remove all or any of that property for the purpose of giving effect to this requisition, and for that purpose to have at all times full and free access to, and to have power, if need be by force and with such assistance as is necessary, to break open, enter and search, any premises or place, in or at which that property or any of it is situated or he suspects that that property or any of it is situated.

(3). For the purpose of ensuring that all property requisitioned in pursuance of this Order shall be safely and securely held for and on behalf of the Postmaster-General pending his determination of the purpose for which and the manner in which that property or any of it is to be used or dealt with, I order that :-

(a) no person shall, without the approval of the Postmaster-General, remove any of that property from any premises or place in or at which it is situated at the date of this Order;

(b) any person authorised in pursuance of paragraph 2 of this Order may enter any premises or place in or at which that property or any of it is situated or he suspects that that property or any of it is situated and remain on those premises or at that place for such period as he thinks necessary; and

(c) any person so authorised may, if need be by force and with such assistance as is necessary, prevent any person from entering upon any such premises or place or eject from any such premises or place any person obstructing or attempting to obstruct him in the exercise of his duties under this Order, or interfering or attempting to interfere, with any property on any such premises or at any such place.

Dated this fourteenth day of June 1943.

Postmaster-General.

TELEPHONE—
CANBERRA 531.
TELEGRAPHIC ADDRESS—
"FEDSOL."
CANBERRA.
IN YOUR REPLY PLEASE
QUOTE THIS NUMBER.

COMMONWEALTH OF AUSTRALIA.

CROWN SOLICITOR'S OFFICE.

CANBERRA, F.C.T.

14th June, 1943.

MEMORANDUM for -

The Secretary,
Attorney-General's Department,
CANBERRA. A.C.T.

ADELAIDE COMPANY OF JEHOVAHS WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

The Deputy Crown Solicitor, Melbourne, telephoned to me this morning that the judgment of the Full Court had been delivered on the case stated herein. The answers to the questions in the case stated are as follows :-

(1) Yes.

(2) No.

(3) No.

(4)
(a) As to Regulation 6A. Yes.
As to Regulation 3 to 6 and 6B. No answer.
(b) Yes.

(5)
(a) No answer.
(b) Yes, in respect of order and direction.
(c) In respect of order, no answer.
In respect of direction, Yes.

(6) Yes as to both associations.

The case was ordered to be remitted to Starke J. for appropriate order to be made on application of either party.

H. F. E. Whitlam

(H. F. E. WHITLAM)
CROWN SOLICITOR.

VR.

14th June, 1943.

MEMORANDUM for -

The Secretary,
Attorney-General's Department,
CANBERRA. A.C.T.

ADELAIDE COMPANY OF JEHOVAHS WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

The Deputy Crown Solicitor, Melbourne, telephoned to me this morning that the judgment of the Full Court had been delivered on the case stated herein. The answers to the questions in the case stated are as follows :-

(1) Yes.

(2) No.

(3) No.

(4)
(a) As to Regulation 6A. Yes.
As to Regulation 3 to 6 and 6B. No answer.
(b) Yes.

(5)
(a) No answer.
(b) Yes, in respect of order and direction.
(c) In respect of order, no answer.
In respect of direction, Yes.

(6) Yes as to both associations.

The case was ordered to be remitted to Starke J. for appropriate order to be made on application of either party.

(H. F. E. WHITLAM)
CROWN SOLICITOR.

5138

KM

5.21

1st August, 1928

The Secretary,
Attorney-General's Department,
Canberra.

OFFICE STAFF
SENIOR CLERK, DEPUTY CROWN SOLICITOR'S OFFICE,
NEW SOUTH WALES.

I forward herewith copy of an Appeal against the provisional appointment of Mr Lindsay to the office of Senior Clerk (Common Law), Crown Solicitor's Office (New South Wales), which has been received from Mr G. Poimezel of my Melbourne Office.

I understand the Appeal has been transmitted to the Public Service Inspector, New South Wales, in accordance with Public Service Regulation No 109.

W. H. SHARWOOD
F. K. G.

Enc

Crown Solicitor

Appeals agst W Lindsay
have been disallowed
vide S. 130

11/10/28

In 18(2) (30 & 17 Vict. chap.) employer
or employed may when employer
refuses employed.

Statute

1. Yes.
2. no
3. no
4. (a) answers to answer
(b) Yes
(c) answers to answer
5 (a)
(b) Yes
(c) answers answer
6. Yes.

Lewis

1. Yes
no.
2. does not answer
3. (a) } Yes, although true 3 - 63
(b) } [illegible]
5 (a) Yes
(b) Yes 6. Does not answer
(c) Yes

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

lacies of rationing from another viewpoint. He is a very practical man who was brought back to Australia by the University of Adelaide in view of the services which he had been rendering to the British Government in relation to the re-establishment of depressed industry. I am afraid that when the Minister for War Organizaton of Industry has completed his work in this country, an expert on the restoration of depressed industry will be a very valuable asset. Recently Professor Isles published a study of rationing in South Australia which shows the weaknesses of the system. He writes as follows:—

> The efforts of the Government to secure the release of the man-power necessary for the execution of the defence programme—especially the efforts of the Department of War Organization of Industry as the co-ordinating body—seem to be hampered by a failure to conceive the problem and the various methods by which the release of man-power from civil employments can be effected—in their proper perspective. Rationing of consumers would be an ineffective way of dislodging the man-power required from civil occupations, and if the execution of the programme in South Australia, and later in other States, is not to be seriously held up, both civil and defence industries must be deliberately nationalized and nationalized at once.

Even in its existing scope, the rationing policy of the Government—particularly in relation to the wholesale rationing—is already threatening grave hardships and injustices, particularly in respect of small businesses. In that regard I speak with knowledge of South Australia, but from what I have read, it seems clear that the policy threatens to drive a great many small businesses in Victoria into a morass.

I turn now to the last and probably the strongest of my four criticisms of the budget. It is on the question of credit release. With inadequate taxation, no provision for post-war credits, and admitting also the improbability of securing the full amount sought by way of voluntary loans, the Government must fall back upon credit release at a time when that policy is apt to be particularly dangerous because the unemployed have been absorbed into industry, and civil production is on the decrease. Moreover, the Government admits that it has already released £70,000,000 or £80,000,000 in the form of treasury-bills. In addition, the note issue has been increased by £32,000,000 since this Government assumed office. Already there is great discontent and alarm at the rising prices in this country. Our prices have now risen 18 per cent. since the outbreak of war, and it is interesting to note that in the United States of America prices have risen 17 per cent., a fact which is causing considerable unrest. Americans estimate that their price rise, which is about equal to ours, constitutes a tax of approximately 9 per cent. to 15 per cent. on lower incomes. The effect of that tax is a considerable depreciation of the capital that people on smaller incomes have to invest in life assurance companies and bank savings. In the words of the *New York Times* of 29th July last—

> Is this the kind of taxation we want now? If we do not, then we had better settle down seriously to a taxation programme designed to remove excess purchasing-power in an equitable manner, before inflation devours that excess purchasing-power in a manner without any fairness and beyond any one's control.

The *Yale Review* which, as I have said, is one of the most reliable papers in the United States of America, makes this statement in its last summer number—

> The factors operating in the present situation, which threatens serious inflation, are much more clearly visible than is usually the case. At the present time, mainly because of the growth of war expenditure by borrowing, the money incomes of the civilian population are increasing while the production of civilian goods on which those incomes can be spent, is decreasing. This excess of civilian spending-power must in one way or another be tapped by direct controls; otherwise the possibilities of inflation will be unlimited.

I submit that the comparison with Australia is excellent. So far both countries have been able to release credit to enable idle factories and unemployed persons to undertake war work, but clearly the situation is changing dangerously. Unfortunately, our leader laughs at inflation whereas the President of the United States of America has found that the inflationary measures which were adopted in that country after the great depression ten years ago brought the United States of America out of its difficulties far more slowly than was the case with our system of combining deflation and inflation in what was known as the Premiers Plan. To quote the *New York Times*, the President has taken "command of the fight against inflation", and is battling against a politically-minded Congress to save the country from the dangers into which this country is rushing. I do not condemn a policy of credit release under all circumstances, for there may be circumstances in which that policy would be valuable and safe; but I believe that in both the United States

W 4256
66

17 JUN 343
CANBERRA

C.L.16,169.

14th June, 1943.

The Crown Solicitor,
CANBERRA.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
V. THE COMMONWEALTH OF AUSTRALIA.

With reference to previous correspondence herein, I desire to inform you that the Judgment of the High Court on the Case Stated herein was delivered this morning.

2. The Order of the Court was that the questions in the Case be answered as follows :-

1. Yes
2. No
3. No
4. As to (a) - as to reg. 6A - Yes
   as to regs. 3 to 6 and 6B - No answer
   As to (b) - Yes.
5. As to (a) - No answer
   As to (b) in respect of the order and the direction - Yes.
   As to (c) in respect of the order - No answer: in respect of the direction - Yes.
6. Yes as to both Associations.

3. A copy of the Reasons for Judgment has been supplied to Sir George Knowles direct in Melbourne and also to the Postmaster-General's Department.

4. I enclose two other copies of the Reasons for Judgment and am forwarding two copies to Sydney.

5. After the Order of the Court had been delivered, Mr. Justice Starke announced that the parties could move for judgment at some convenient date.

(F. P. GLAUSKEN)
Deputy Crown Solicitor.

RECS.
FPG.IW.

The Secretary
Attorney-General's Department
For your information
W. R. Whitlam
Crown Solicitor

15 JUN 1943

COMMONWEALTH CENSORSHIP DEPOT
RECEIVED
21 JUL 1943
CANBERRA

2300

THE NEW YORK TIMES

15th June, 1943.

SUPREME COURT ENDS COMPULSION OF FLAG SALUTE

Reverses 1940 Stand in 6-to-3 Decision Upholding Jehovah Sect Under Bill of Rights

GIVEN ON EMBLEM'S DAY

Jackson, for Majority, Forbids 'Coercion'—Frankfurter Sees No Curb on Religious Belief

By LEWIS WOOD
Special to THE NEW YORK TIMES.

WASHINGTON, June 14—In a reversal of the Gobitis decision of June, 1940, the Supreme Court held by 6 to 3 today that under the Bill of Rights public school children could not be compelled to salute the American flag if this ceremony conflicted with their religious beliefs.

The ruling was handed down while the nation was celebrating Flag Day in commemoration of the 164th anniversary of the Stars and Stripes.

It upheld a challenge by members of the sect of Jehovah's Witnesses to a flag-salute regulation issued by the West Virginia Board of Education.

In the Gobitis case the Witnesses brought a test against similar regulations of the Minersville, Pa., School District, but the Supreme Court then sustained the flag-salute order by 8 to 1.

Protection by Constitution

Writing the majority opinion in today's case, Justice Robert H. Jackson said:

"We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

The First Amendment protects freedom of religion, speech and the press, and right of assembly and petition.

Specifically overruling the Minersville and similar decisions, Justice Jackson also said:

"To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind left it open to public authorities to compel him to utter what is not in his mind."

Justices Owen J. Roberts, Stanley F. Reed and Felix Frankfurter all dissented, standing by their attitude in the Gobitis case, in which Harlan F. Stone, then an associate justice, alone opposed the compulsory flag salute.

Justices Hugo L. Black, William O. Douglas and Frank Murphy, who were in the majority in the Gobitis decision, written by Justice Frankfurter, switched in the new test. Justices Jackson and Wiley Rutledge were not members of the court in 1940.

Sect Wins Other Cases

Dealing with other controversies involving Jehovah's Witnesses, the Supreme Court today unanimously held invalid a Mississippi statute under which three members of the sect were convicted of sedition for disseminating teachings "tending to create an attitude of stubborn refusal to salute, honor and respect" the flag and the Federal Government.

Justice Roberts wrote this opinion, which was controlled by the West Virginia ruling. Following recent precedents, the jurists also arranged for dismissal of a case in which a Jehovah's Witness was convicted for selling literature in the District of Columbia.

In the West Virginia case Justice Jackson pointed out that children of the Jehovah's Witnesses, obeying a canon of the sect against worshiping an image, had been expelled from school and threatened with reformatory terms for refusal to salute the flag, while their parents had been prosecuted.

"Rights of the Individual"

Asserting that the refusal of the children to participate in the ceremony did not interfere with or deny the rights of others to do so, Mr. Jackson continued:

"Nor is there any question in this case that their behavior is peaceful and orderly. The sole conflict is between authority and rights of the individual.

"The State asserts power to condition access to public education on making a prescribed sign and profession and at the same time to coerce attendance by punishing both parent and child. The latter stand on a right of self-determination in matters that touched individual opinion and personal attitude."

Discussing the meaning of pledges and the flag salutes as symbols of an idea, Mr. Jackson remarked:

"A person gets from a symbol the meaning he puts into it, and what is one man's comfort and inspiration is another's jest and scorn."

More than ten years ago, Mr. Jackson recalled, Chief Justice Charles Evans Hughes "led this court in holding that the display of a red flag as a symbol of opposition to peaceful and legal means to organized government" was protected by the free-speech guarantees of the Constitution.

"Here it is the State that employs a flag as a symbol of adherence to government as presently organized," he went on. "It requires the individual to communicate by word and sign his acceptance of the political ideas it thus bespeaks.

"Objection to this form of communication when coerced is an old one, well known to the framers of the Bill of Rights."

"Futility" of Compulsion

Justice Jackson also said that there was a doubt whether Abraham Lincoln "would have thought that the strength of government to maintain itself would be impressively vindicated by our conforming power of the State to expel a handful of children from school."

Dwelling upon "the ultimate futility of such attempts to compel coherence," he added:

"To believe that patriotism will not flourish if patriotic ceremonies are voluntary and spontaneous instead of a compulsory routine is to make an unflattering estimate of the appeal of our institutions to free minds.

"If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word of act their faith therein."

Dissent by Frankfurter

In a separate dissent, Justice Frankfurter, a Jew, said that "one who belongs to the most villified and persecuted minority in history is not likely to be insensible to the freedoms guaranteed by our Constitution."

He said that, were his "purely personal attitude relevant," he would whole-heartedly associate himself with "the general libertarian views in the Court's opinion, representing as they do the thought and action of a lifetime."

But, he contniued, saluting the flag did not curb religious beliefs, and West Virginia had power to make the regulations without violating constitutional rights.

"It is self delusive to believe that the liberal spirit can be enforced by judicial invalidation of illiberal legislation," he stated.

Noting the existence of 250 religious denominations in the United States, he commented:

"Certainly this court cannot be called upon to determine what claims of conscience should be recognized and what should be rejected as satisfying the 'religion' which the Constitution protects.

"I cannot bring my mind to believe that the 'liberty' secured by the Due Process Clause gives this court authority to deny to the State of West Virginia the attainment of that which we all recognize as a legitimate legislative end—namely, the promotion of good citizenship, by employment of the means here chosen."

Mr. Frankfurter pointed out that the flag salute had been fi times previously before the S preme Court, and that every jus tice—thirteen in all—who had participated "found no constitutional informity in what is now condemned."

Justices Roberts and Reed said in four lines that their judgment in the Gobitis decision was still correct. Justices Black and Douglas and Justice Murphy presented special concurrences with Justice Jackson.

FOR INFORMATION SOLICITOR GENERAL

SECRET

COMMONWEALTH OF AUSTRALIA. Z.149

PHONE: B 1715.

COMMONWEALTH ATTORNEY-GENERAL'S DEPT.
RECEIVED
18 MAY 1943
CANBERRA

INVESTIGATION BRANCH,
6TH FLOOR, COMMONWEALTH BANK.
PITT STREET AND MARTIN PLACE,
BOX 4269Y, G.P.O.,
SYDNEY. 17th May, 1943.

The Director,
Commonwealth Investigation Branch,
CANBERRA, A.C.T.

JEHOVAH'S WITNESSES.

With reference to your minute D.155/Gen/2 forwarding Secretary's memorandum of 14thMay, 1943, I feel that I must stress the extent of the ramifications of the unlawful organizations in this State in order to demonstrate what is entailed by the Acting Attorney-General's instructions as set out in the memorandum.

Since the advent of Security Service, my Officers have lost touch with the general activities of Jehovah's Witnesses. Officers of Security Service have, however, maintained a close oversight of their doings and have noted their activity in commercial, etc., circles. I attach hereto a list of business undertakings and property which, according to Officers of Security Service specialised in Jehovah's Witnesses matters, are believed to be owned and controlled by the unlawful Watch Tower Bible & Tract Society.

This list was obtained after conference with Senior Officers of Security Service, particularly for the purpose of considering the most suitable action if the High Court judgment is favourable to the Commonwealth. It is noted that Bonnyrigg Milling Co. appears (although the list was prepared in the last few days) despite the knowledge that there might be outward signs that this concern was disposed of. In addition, Austin Engineering Co. is shown although this business is now ostensibly in the hands of one Delandro who was not known to be connected with the Jehovah's Witnesses organisations at the time of the ban but was at that time well known as a garage proprietor in Sydney. Security Service Officers believe, however, that Delandro is controlled by or working for Jehovah's Witnesses.

The extent of the list clearly shows that an army of guards would be required for thorough steps towards preventing assets being disposed of. Such steps are, therefore, impracticable. To inquire now with a view to furnishing evidence as to the present connection between business concerns and/or property and the unlawful organisations involves risk of the leaders being forewarned of possible Commonwealth action and might precipitate action on their part at places which will not be guarded. In all probability such inquiries, if now undertaken, would not be completed before the judgment is known and, consequently, we would then be without a complete plan of action. It is unlikely from our knowledge that such inquiries would result in other than merely circumstantial evidence being obtained and our position would be no better than it is now. In any case, it does not seem that we should trust outward signs that a business or property connected with the organisation has been disposed of. We believe Jehovah's Witnesses' Brooklyn (U.S.A.) headquarters favour disposing of commercial interests, but I feel sure that at least some of the Jehovah's Witnesses leaders in this State would hesitate to forego this lucrative and considerable side line with its material reward and confine themselves exclusively to explaining the Bible for mere spiritual reward.

It seems to me that the only practical way of dealing with

/the position

the position which a favourable High Court decision will create so far as business and property interests of the unlawful organizations in this State is to leave the whole thing to be unravelled by a selected Liquidator and staff. Senior Officers of Security Service concur in this, except in respect of the printing establishments. They favour closing down and guarding Rollo and Pinnacle Press immediately on receipt of favourable judgment in order to deprive the organization of the means to prepare printed propaganda. In this respect I desire your special instructions.

D. A. Alexander,
A/g. Inspector.

The Secretary,
Attorney-General's Department,
CANBERRA.

(D/1551 Gen2.)

Forwarded in response to request contained in your memorandum of 13th instant.

H.E. JONES
DIRECTOR

JH COPY.

Security Service, Sydney.

15th May, 1943.

Attached is a list of Business undertakings and property believed to be owned and controlled by The Watch Tower Bible & Tract Society.

Rollo Printing Co., Humphreys Lane, Hurstville.

Pinnacle Press, 431b Kent Street, City.

Monks Advertising AGency, 26 Hunter Street, City.

Bonnyrigg Milling Co. which controls timber mills at Avoca, via Moss Vale; Termeil via Milton, and property at Cabramatta Road, Bonnyrigg.

Property known as "Pine Villa" Sheepwash Road, Avoca.

Property known as "The Wattles"near Fitzroy Falls, Avoca.

Canteen and "Victree" Pig Farm, Hume Highway, Ingleburn.

Canteen and Poultry Farm near Wallgrove Camp.

Austin Engineering Co., 17a Everton Road, Strathfield.

Workshops and Office, 2 Elava Street, Strathfield.

Two storey house, 54 Broughton Road, Homebush.

Two storey house, 28 Abbotsford Road, Homebush.

Two storey house, 245 Rocky Point Road, Kogarah.

10 Bridge Road, Homebuh.

25 Oxford Road, Strathfield.

Warwick Farm Hotel, Moore Street, Liverpool.

Shop, opposite School, Moore Street, Liverpool.

Blacksmith Shop, Moore Street, Liverpool.

Farm "Billabong", Narrabri.

Broadcasting Station, Newcastle Airsales Broad-Casting Co.

No. 2 Homebush Road, Strathfield.

Liverpool Baking Co., Liverpool.

91 acres Hargrave Park, near Warwick Farm.

ZP8.

43.

30 APR 1942

MEMORANDUM for -

The Director-General of Security,
CANBERRA, A.C.T.

JEHOVAH'S WITNESSES.

In May, 1941, you made available to this office your departmental files relating to the above matter for use by the Crown Solicitor in preparing the case for the Commonwealth in the proceedings brought against in the High Court.

Your file No. 175/701/808 is still with the Deputy Crown Solicitor, Sydney, but I return herewith the following files:-

16/3/535 - Military Board file

175/701/597

Anti-war Files No. 16 and 17

338/702/15 - Summary and copy of report to A.H.Q.

As negotiations are proceeding for the issue of fresh broadcasting licences to stations 5KA and 5AU, I am retaining file No. 16/5/395 relating to the withdrawal of the licences from the four Jehovah Witnesses' stations for the present.

(SGD.) A.J. [illegible]

for Secretary.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

COPY. LG.

COMMONWEALTH OF AUSTRALIA.

Public Service Board,
Inspector's Office,
CANBERRA, A. C. T.

11th March, 1943.

Mr. J. G. B. Castieau,
C/- Attorney-General's Department,
CANBERRA, A. C. T.

Dear Mr. Castieau,

Man Power Statistics.

A statistical statement on the following lines, giving an up to date picture of the position as regards staff, is required by the Director-General of Man Power in respect of Commonwealth Departments. Would you kindly arrange for such a statement to be supplied in respect of each branch or activity within or attached to your Department for which separate statistics were supplied in the earlier reviewing reports. It is desired that the statement should be prepared as at the 1st March, 1943.

1. Number of males now employed. (The number will be arrived at as in previous statistics supplied in the reviewing reports except that those who have already enlisted or been called up and those on loan to other authorities will be excluded from this total).

2. Number of officers and employees who have already enlisted or been called up.

3. Of those referred to in 1 (i.e., still on duty) -

   (a) The number awaiting call-up on voluntary enlistment (similar to A.1 in previous reports);

   (b) The number medically unfit;

   (c) The number available for and awaiting call-up (This number will cover those marked A.3 in earlier report who, although available, are still on duty awaiting call-up);

   (d) The number whose call-up has been deferred pending replacement (corresponding to B.1 in previous reports);

   (e) The number whose call-up has been deferred subject to review in three months (corresponding to C. in previous reports);

   (f) The number whose call-up has been deferred subject to review in six or twelve months (corresponding to D. in former reports);

   (g) The number outside military age (i.e., under 18 or over 60 years of age);

   (h) The number granted indefinite deferment of call-up.

2. It would be appreciated if the report which will now be submitted could be kept up to date by the forwarding at the close of each month, commencing from 1st April, 1943, a statement incorporating any variations which have taken place during that month.

3. The sections covered in your Department by the Central Committee were as indicated in list appended.

Yours faithfully,
(SGD.) J. T. PINNER,
Public Service Inspector.

TLS/BJ

COMMONWEALTH ATTORNEY GENERAL'S DEPT. RECEIVED 30 MAR 1943 CANBERRA

W 4256 K.K.

SL.21369/6 29th March, 1943.

The Crown Solicitor.

ADELAIDE COMPANY OF JEHOVAHS WITNESSES INCORPORATED v. THE COMMONWEALTH OF AUSTRALIA.

The case stated pursuant to Section 18 of the Judiciary Act 1903-1940, by His Honour Mr. Justice Starke, was heard in Melbourne by a Full Court consisting of all the Justices of the High Court on the 10th, 11th and 12th March, 1943.

2. Mr. W.K. Fullagar, K.C., with him Mr. H.G.Alderman and Dr. P. Louat of Counsel, instructed by Messrs. Remington & Co. by their Melbourne agents Messrs. Pearce and Webster, appeared for the plaintiff, and Mr. C.A. Weston K.C. with him Mr. A. R.Taylor of Counsel, appeared for the defendant.

3. Mr. Fullagar opened by reciting the facts and reading the National Security (Subversive Associations) Regulations. He then dealt with the South Australian Act under which the Plaintiff was incorporated, and the Chief Justice remarked that the rules of the plaintiff did not appear to be within that Act, although that could not be gone into here.

4. Mr. Fullagar's arguments with some elaboration, followed the same course as those presented by him at the original hearing of the action before His Honour Mr. Justice Starke. He argued generally that the Regulations were bad as being wide enough to allow the dissolution of religious bodies and the prohibition of meetings for purely religious purposes, and for the propagation of purely religious doctrines. The Chief Justice pointed out that the logical conclusion of the application of the Regulations, as at present framed, was that advocacy of the Ten Commandments was now illegal.

5. Mr. Fullagar's arguments were set out in detail in my memorandum dated 1st December, 1942.

6. Mr. Weston has kindly supplied me with a summary of his arguments, of which a copy is forwarded herewith.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per

The Secretary
Attorney-General's Department
For your information
Crown Solicitor

30 MAR 1943

It is respectfully submitted:

1. The Governor-General's opinion is conclusive and is not examinable by the Court.

The case must therefore be dealt with on the basis that the continued existence of the plaintiff is prejudicial to the War effort.

2. The findings in paragraphs 8, 9 and 15 of the case are substantially to the same effect as the Governor-General's opinion.

3. If Regulations 3 and 6A are valid the plaintiff fails, because if valid these afford a defence although other Regulations may be invalid.

4. In America the first and fourteenth Amendments are expressed so as to prohibit any interference in fact with the exercise of any religion.

5. The American Courts have recognised that the literal meaning of these provisions must be qualified to some extent and that they are not "absolutes".

6. One test is that a general law directed to the protection and preservation of the State as a political organisation is valid even if its operation is to interfere with the free exercise of a religion.

7. Section 116 of the Constitution is substantially in accordance with the American interpretation of the first and fourteenth Amendments.

8. Regulations 3 and 6A are a law for defence and not a law for the prevention of the free exercise of any religion.

9. If subversive action can be prohibited, the extent of the prohibition and the choice of means to attain it are a matter for the Legislature and not for the Court.

10. If Regulations 3 and 6A alone would be valid and any one or more of the other Regulations is or are invalid Regulations 3

and 6A are saved by the Interpretation Act.

11. The judicial power of the Commonwealth is the power to interpret existing law, to ascertain existing facts, to apply such law to the facts and to declare, and if necessary enforce, the rights duties and obligations of parties.

The creation or abolition of rights duties and obligations is a legislative function and not part of the judicial power.

The function of the Governor-General informing the opinion under Regulation 3 is not an exercise of the judicial power of the Commonwealth (Lloyd v. Wallach; Rex v. Bevin; Ex parte Walsh).

The Regulations as to dissolution, forfeiture of personalty and occupation of realty confer no function upon anybody of a judicial character but are self-executing legislative provisions.

COMMONWEALTH ATTORNEY GENERAL'S DEPT. RECEIVED 25 FEB 1943 CANBERRA

W 425 b

C.L.16,169.

24th February, 1943.

The Crown Solicitor,
CANBERRA.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
and THE COMMONWEALTH OF AUSTRALIA.

With reference to my memorandum to you of the 22nd February, I desire to inform you that the date of hearing of the Case Stated herein has been fixed by the Court for the 10th March.

(F. F. CLAUSEN)
Deputy Crown Solicitor.

FFC.IM.

The Secretary
Attorney-General's Department
For your information.
Crown Solicitor

25 FEB 1943

COMMONWEALTH ATTORNEY GENERAL'S DEPT. RECEIVED 24 FEB 1943 CANBERRA

W 4256

The Secretary
Attorney-General's Department
For your information
Crown Solicitor
24 FEB 1943

C.L.16,169.

22nd February, 1943.

The Crown Solicitor,
CANBERRA.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

On the 10th February the Principal Registrar of the High Court informed me that His Honour Mr. Justice Starke had given a direction as follows :-

"Case stated pursuant to sec. 18 of the Judiciary Act 1903-1940.

"Direct this case be placed in list of appeals for hearing before Full Court at February Sittings 1943.

"Direct that Commonwealth do print this case and documents referred to therein and lodge six copies in Court for the use of the Court and justices.

"Direct that each party pay one half of costs of the printing in the first instance and that the ultimate incidence of the costs of printing be reserved for the Justice who disposes of the case.

"The Commonwealth to supply plaintiff with as many printed copies as it requires at reasonable rates."

2. As far as I can see, His Honour made practically no alterations to the Case as the result of the submissions by Counsel for the parties.

3. The annexures to the Case ordered by His Honour were the Rules and Regulations of the Adelaide Company of Jehovah's Witnesses Incorporated and the Order in Council and Direction of the Attorney-General of 17th January 1941.

4. In accordance with the directions of Mr. Justice Starke, the Case has been printed and copies have been served upon the Melbourne Agents for the Plaintiff's Solicitors and copies have been dispatched to the Deputy Crown Solicitor, Sydney.

P.T.O.

5. Three copies of the printed Case Stated are enclosed for your records.

6. It is not likely that the Case can be heard before the 8th March, but an application will be made to the High Court to have the date fixed, probably in the week commencing 8th March. I shall inform you when a date has been fixed.

(F. F. CLAUSEN)
Deputy Crown Solicitor.

ENCS.
FFC.IW.

In the High Court
OF AUSTRALIA.

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA

Defendant.

Case Stated Pursuant to Section 18 of the Judiciary Act 1903-1940

INDEX OF REFERENCE.

No.	Document.	Date.	Page.
1	Case Stated	10th February 1943	1
2	Rules and Regulations of Adelaide Company of Jehovah's Witnesses Incorporated		3
3	Order in Council	17th January 1941	4
4	Direction of Attorney-General	17th January 1941	5

In the High Court

OF AUSTRALIA.

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA
Defendant.

Case Stated Pursuant to Section 18 of the Judiciary Act 1903-1940

PEARCE & WEBSTER,
191 Queen Street, Melbourne,
Agents for—
R. J. M. NEWTON,
Sydney,
Solicitors for Plaintiff.

H. F. E. WHITLAM,
Crown Solicitor for the Commonwealth,
450 Law Courts Place, Melbourne,
Solicitor for Defendant.

Harston, Partridge & Co. Pty Ltd., Printers, Melbourne.

In the High Court
OF AUSTRALIA.

NEW SOUTH WALES REGISTRY.

No. 11 OF 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA

Defendant.

Case Stated Pursuant to Section 18 of the Judiciary Act 1903-1940

No. 1.

CASE STATED.
Dated 10th February 1943 } STATES—

1. Adelaide Company of Jehovah's Witnesses Incorporated is an association incorporated under and pursuant to provisions of the *Associations Incorporation Act* 1929-1935 of South Australia (No. 1912 of 1929, No. 2246 of 1935).

2. The rules and regulations of the Association filed in the office of the Registrar of Companies pursuant to the said Act are attached to and form part of this Case.

3. The association so incorporated was in exclusive occupation of certain land and buildings known as Kingdom Hall situate in Sturt Street Adelaide in the State of South Australia.

4. The hall was used as a meeting place for an association of persons known as Jehovah's Witnesses.

5. The association held meetings of a religious character in the hall whereat hymns were sung, prayers offered and discourses delivered upon the doctrines, beliefs and teachings of Jehovah's Witnesses.

6. The association so incorporated has no register of members. It comprises an indefinite number of persons, some 200 to 250 persons who attend meetings at the hall and profess the beliefs of Jehovah's Witnesses.

7. Jehovah's Witnesses are an association of persons loosely organized throughout Australia and elsewhere who regard the literal interpretation of the Bible as fundamental to proper religious beliefs.

8. Jehovah's Witnesses believe that God, Jehovah, is the supreme ruler of the universe. Satan or Lucifer was originally part of God's organization and the perfect man was placed under him. He rebelled against God and set up his own organization in challenge to God and through that organization has ruled the world. He rules and controls the world through material agencies such as organized political, religious, and financial bodies. Christ, they believe, came to earth to redeem all men who would devote themselves entirely to serving

God's will and purpose and that He will come to earth again (His second coming has already begun) and will overthrow all the powers of evil.

9. These beliefs lead Jehovah's Witnesses to proclaim and teach publicly both orally and by means of printed books and pamphlets that the British Empire and also other organized political bodies are organs of Satan, unrighteously governed and identifiable with the Beast in the 13th chapter of the Book of Revelation.

Also that Jehovah's Witnesses are Christians entirely devoted to the Kingdom of God which is "The Theocracy," that they have no part in the political affairs of the world and must not interfere in the least manner with war between nations. They must be entirely neutral and not interfere with the drafting of men of nations that go to war.

And Also that wherever there is a conflict between the laws of Almighty God the Christian must always obey God's law in preference to man's law. All laws of men, however, in harmony with God's law the Christian obeys. God's law is expounded and taught by Jehovah's Witnesses.

Accordingly they refuse to take an oath of allegiance to the King or other constituted human authority though they do not object to take an oath in a Court of law to speak the truth nor do they refuse the protection of the King's Courts or other constituted human authority.

10. On the 17th January 1941 the Governor-General acting with the advice of the Federal Executive Council pursuant to the authority conferred upon him by the National Security (Subversive Associations) Regulations, declared certain bodies including the Adelaide Company of Jehovah's Witnesses Incorporated and the organization or association of persons known as Jehovah's Witnesses prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

A copy of the Order in Council is attached to and forms part of this Case.

11. On the 17th day of January 1941 a Minister of State, namely the Attorney-General of the Commonwealth, pursuant to the authority conferred upon him by the said regulations, directed an officer of the Commonwealth to take possession of, control and occupy, certain premises including the premises mentioned in paragraph 3 hereof and known as Kingdom Hall.

A copy of the said Direction is attached to and forms part of this Case.

12. Accordingly on or about the 17th January 1941 an officer of the Commonwealth entered and took possession of the said Kingdom Hall and has ever since excluded therefrom the Adelaide Company of Jehovah's Witnesses Incorporated and all persons professing the beliefs of Jehovah's Witnesses.

13. On the 4th September 1941 the said Adelaide Company of Jehovah's Witnesses Incorporated issued a writ out of this Court against the Commonwealth and delivered a Statement of Claim claiming an injunction to restrain the Commonwealth and its servants and agents from continuing or repeating the trespass before mentioned, damages for the said trespass and other relief.

14. The Adelaide Company of Jehovah's Witnesses Incorporated and the association of persons known as Jehovah's Witnesses are not engaged in any seditious enterprise nor in the printing or publishing of any seditious words within the meaning of the *Crimes Act* 1914-1932.

15. The said incorporated association and the association of persons known as Jehovah's Witnesses proclaim and teach matters prejudicial to the defence of the Commonwealth and the efficient prosecution of the war namely the matters set forth in paragraph 9 of this Case, but otherwise their doctrines or beliefs are but primitive religious beliefs.

Case Stated.

16. The said incorp
Security (Subversive As
Council, and the said Di
ized by the Constitutio
contravene the provisio
upon the judicial powe
that the National Secu
not upon their proper
as the said incorporat
known as Jehovah's W

Upon the Case ab
the Full Court the foll

1. Is the Adela
porated a
Security (S
Order in C
General ab
sec. 116 of

2. Do the Nati
tions or a
the provisi

3. Do the said
Attorney-G
thereof so
tion or th
Witnesses,
the Consti

4. Are the Nat
tions or a
powers or
(*a*) The
(*b*) The

5. Is the said
Attorney-
either aff
associatio
beyond th
(*a*) The
(*b*) The
(*c*) The
Re

6. Do the sa
Regulatio
the said
persons k

10th February 1943.

RULES AND REG
JEHOVAH

1. Limitation :
Incorporated shall h
Jehovah's Witnesses

2. Management
Jehovah's Witnesses
be members of the
required shall be app
necessary at a gener

16. The said incorporated association contends that the National Security (Subversive Associations) Regulations, and the said Order in Council, and the said Direction of the Attorney-General are unauthorized by the Constitution and the National Security Act 1939-1940, contravene the provisions of sec. 116 of the Constitution, and impinge upon the judicial power of the Commonwealth. They also contend that the National Security (Subversive Associations) Regulations do not upon their proper construction include religious associations such as the said incorporated association or the association of persons known as Jehovah's Witnesses.

Upon the Case above stated I reserve for the consideration of the Full Court the following questions of law :—

1. Is the Adelaide Company of Jehovah's Witnesses Incorporated a party competent to maintain that the National Security (Subversive Associations) Regulations, the said Order in Council, and the said Direction of the Attorney-General above mentioned contravene the provisions of sec. 116 of the Constitution ?
2. Do the National Security (Subversive Associations) Regulations or any and which of those regulations contravene the provisions of section 116 of the Constitution ?
3. Do the said Order in Council and the said Direction of the Attorney-General above mentioned or any and what part thereof so far as they affect the said incorporated association or the association of persons known as Jehovah's Witnesses, contravene the provisions of section 116 of the Constitution ?
4. Are the National Security (Subversive Associations) Regulations or any and which of those regulations, beyond the powers or authorities conferred by :—
   (*a*) The Constitution.
   (*b*) The National Security Act 1939-1940 ?
5. Is the said Order in Council or the said Direction of the Attorney-General or any and what part thereof so far as either affects the said incorporated association or the association of persons known as Jehovah's Witnesses, beyond the powers and authorities conferred by :—
   (*a*) The Constitution.
   (*b*) The National Security Act 1939-1940.
   (*c*) The National Security (Subversive Associations) Regulations ?
6. Do the said National Security (Subversive Associations) Regulations, upon their proper construction, extend to the said incorporated association or the association of persons known as Jehovah's Witnesses ?

(Sgd.) H. E. STARKE J.

10th February 1943.

No. 2.

RULES AND REGULATIONS OF ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

1. Limitation : The Adelaide Company of Jehovah's Witnesses Incorporated shall have no doctrinal or other jurisdiction over any of Jehovah's Witnesses in South Australia.

2. Management : The management of the Adelaide Company of Jehovah's Witnesses Incorporated is vested in four trustees who shall be members of the Incorporation. A secretary and other officers required shall be appointed annually or at such other times as deemed necessary at a general meeting.

3. The trustees shall have the power to purchase, hold, sell, lease, transfer or mortgage land or buildings or property. The trustees may hold or invest monies and may issue interest-bearing debentures and may redeem debentures and/or mortgages and do such acts matters or things as they deem fit with the approval of the Australasian Representative of the Watch Tower Bible & Tract Society, of Strathfield, New South Wales. The signature of any three trustees shall be necessary to bind such transactions.

4. The trustees shall be :

FRANK O'CONNOR FITZGERALD, of 4 Marine Flats, Esplanade, Grange, South Australia.

SYDNEY HAROLD JONES, of 22 Devonshire Street, Hawthorn, South Australia.

KINGSLEY CARNEGIE SMITH, of 176 Fisher Street, Malvern, South Australia.

JOHN KENNEDY JAMESON, of 39 Hewett Avenue, Rose Park, South Australia.

and shall hold office till the annual general meeting of members in July 1940. The trustees shall be elected annually or at other times as it becomes necessary through death, resignation or any other reason.

5. A two-thirds vote at any general meeting may remove a trustee from office provided notice of motion to that effect appeared on the notice calling such meeting.

6. Meetings : The annual general meeting shall be held in July of each year.

7. A special meeting may be called at any time by resolution of the trustees or by the secretary or the requisition of ten members of the company.

8. At all general meetings of members seven shall form a quorum.

9. Notice of general meetings of members shall be given by announcement at one meeting of the Adelaide Company of Jehovah's Witnesses Incorporated for two successive weeks.

10. General meetings shall elect one of the trustees to be chairman, but if a trustee be absent or refuse to act, any member may be elected chairman.

11. Any member present at a general meeting may vote at such meeting. In the event of any doubt arising as to the status of a person claiming membership, the matter shall be decided by the meeting : a two-thirds majority shall be necessary to reject any claim to vote and/or speak as a member.

12. Alteration of Rules : Any rule may be altered by resolution of a special meeting provided that notice of a proposed alteration shall have been given in accordance with Rule 9.

No. 3.

ORDER IN COUNCIL. Dated 17th January 1941 } STATES—

ORDER

Commonwealth of Australia to wit.
GOWRIE
Governor-General.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

WHEREAS by regulation 3 of the National Security (Subversive Associations) Regulations it is provided that any body corporate or unincorporate the existence of which the Governor-General, by order published in the *Gazette*, declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is thereby declared to be unlawful :

Now therefore I, Alexand
Governor-General aforesaid, a
Executive Council do, by this
existence of the following bod

The organization or or
nesses or the Witn
The Watch Tower Bibl
The International Bibl
The Adelaide Company
Consolation Publishing

is prejudicial to the defence
prosecution of the war.

Given under my Han
this seventeenth
(L.S.) One thousand ni
fifth year of His

By His Excellency's C

for Min

DIRECTION C
Dated

NATIONAL SECURIT
R

ORDER UN

WHEREAS it is provided
(Subversive Associations)
place or part thereof whic
prior to its having been de
so directs, be occupied in a
so long as there is in the
any property which a Min
by or on behalf of, or in t
therein immediately prior
unlawful :

AND WHEREAS, by o
seventeenth day of Januar
one, the following bodies,

The organization or
nesses or the W
The Watch Tower
The International B
The Adelaide Comp
Consolation Publishi

(hereinafter referred to as
declared to be unlawful :

AND WHEREAS, imme
the premises situated at
occupied by one or more of

(*a*) 7 Beresford Roa
(*b*) 22A George Stree
(*c*) Ann Street, Bris
(*d*) 33 Sturt Street,
(*e*) 15 Catherine Str
(*f*) 403 Elizabeth St

Now therefore I, Alexander Gore Arkwright, Baron Gowrie, the Governor-General aforesaid, acting with the advice of the Federal Executive Council do, by this order declare that, in my opinion, the existence of the following bodies, namely :—

The organization or organizations known as Jehovah's Witnesses or the Witnesses of Jehovah ;
The Watch Tower Bible and Tract Society ;
The International Bible Student's Association ;
The Adelaide Company of Jehovah's Witnesses ; and
Consolation Publishing Co.

is prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

Given under my Hand and the Seal of the Commonwealth, this seventeenth day of January, in the year of our Lord One thousand nine hundred and forty one, and in the fifth year of His Majesty's reign.

(L.S.)

By His Excellency's Command,

W. M. HUGHES
for Minister of State for Defence Co-ordination.

No. 4.

DIRECTION OF ATTORNEY-GENERAL.

Dated 17th January 1941.

NATIONAL SECURITY (SUBVERSIVE ASSOCIATIONS) REGULATIONS.

ORDER UNDER REGULATION 6A.

WHEREAS it is provided by regulation 6A of the National Security (Subversive Associations) Regulations that any house, premises or place or part thereof which was occupied by a body immediately prior to its having been declared to be unlawful may, if a Minister so directs, be occupied in accordance with the provisions of the order so long as there is in the house, premises or place or part thereof any property which a Minister is satisfied belonged to, or was used by or on behalf of, or in the interests of, the body, and which was therein immediately prior to the body having been declared to be unlawful :

AND WHEREAS, by order published in the *Gazette* dated the seventeenth day of January, One thousand nine hundred and forty-one, the following bodies, namely :—

The organization or organizations known as Jehovah's Witnesses or the Witnesses of Jehovah ;
The Watch Tower Bible and Tract Society ;
The International Bible Students' Association ;
The Adelaide Company of Jehovah's Witnesses ; and
Consolation Publishing Co.

(hereinafter referred to as "the said subversive associations") were declared to be unlawful :

AND WHEREAS, immediately prior to the date of the said order, the premises situated at the addresses hereinafter specified were occupied by one or more of the said subversive associations, namely :—

(*a*) 7 Beresford Road, Strathfield, New South Wales ;
(*b*) 22A George Street, East Melbourne, Victoria ;
(*c*) Ann Street, Brisbane, Queensland ;
(*d*) 33 Sturt Street, Adelaide, South Australia ;
(*e*) 15 Catherine Street, Subiaco, Western Australia ;
(*f*) 403 Elizabeth Street, Hobart, Tasmania.

AND WHEREAS I am satisfied that there was on each of the said premises property which belonged to, or was used by or on behalf of, or in the interests of the said subversive associations and which was therein immediately prior to the said subversive associations having been declared to be unlawful:

NOW THEREFORE I, William Morris Hughes, do hereby direct that—

(*a*) the Inspector, Commonwealth Investigation Branch, in the State in which any of the said premises is situated shall with such assistance as he thinks fit, take possession of, control and occupy the premises so situated;

(*b*) no person shall, except with the consent of the said Inspector, be in or on or enter or leave, the said premises;

(*c*) no property whatsoever shall, except with the consent of the said Inspector, be brought into or removed from the said premises.

DATED this seventeenth day of January 1941.

W. M. HUGHES,
Attorney-General.

In the High Court
OF AUSTRALIA.

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA

Defendant.

Case Stated Pursuant to Section 18 of the Judiciary Act 1903-1940

INDEX OF REFERENCE.

No.	Document.	Date.	Page.
1	Case Stated	10th February 1943	1
2	Rules and Regulations of Adelaide Company of Jehovah's Witnesses Incorporated		3
3	Order in Council	17th January 1941	4
4	Direction of Attorney-General	17th January 1941	5

In the High Court
OF AUSTRALIA.

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA

Defendant.

Case Stated Pursuant to Section 18 of the Judiciary Act 1903-1940

No. 1.

CASE STATED.
Dated 10th February 1943 } STATES—

1. Adelaide Company of Jehovah's Witnesses Incorporated is an association incorporated under and pursuant to provisions of the *Associations Incorporation Act* 1929-1935 of South Australia (No. 1912 of 1929, No. 2246 of 1935).

2. The rules and regulations of the Association filed in the office of the Registrar of Companies pursuant to the said Act are attached to and form part of this Case.

3. The association so incorporated was in exclusive occupation of certain land and buildings known as Kingdom Hall situate in Sturt Street Adelaide in the State of South Australia.

4. The hall was used as a meeting place for an association of persons known as Jehovah's Witnesses.

5. The association held meetings of a religious character in the hall whereat hymns were sung, prayers offered and discourses delivered upon the doctrines, beliefs and teachings of Jehovah's Witnesses.

6. The association so incorporated has no register of members. It comprises an indefinite number of persons, some 200 to 250 persons who attend meetings at the hall and profess the beliefs of Jehovah's Witnesses.

7. Jehovah's Witnesses are an association of persons loosely organized throughout Australia and elsewhere who regard the literal interpretation of the Bible as fundamental to proper religious beliefs.

8. Jehovah's Witnesses believe that God, Jehovah, is the supreme ruler of the universe. Satan or Lucifer was originally part of God's organization and the perfect man was placed under him. He rebelled against God and set up his own organization in challenge to God and through that organization has ruled the world. He rules and controls the world through material agencies such as organized political, religious, and financial bodies. Christ, they believe, came to earth to redeem all men who would devote themselves entirely to serving

God's will and purpose and that He will come to earth again (His second coming has already begun) and will overthrow all the powers of evil.

9. These beliefs lead Jehovah's Witnesses to proclaim and teach publicly both orally and by means of printed books and pamphlets that the British Empire and also other organized political bodies are organs of Satan, unrighteously governed and identifiable with the Beast in the 13th chapter of the Book of Revelation.

Also that Jehovah's Witnesses are Christians entirely devoted to the Kingdom of God which is "The Theocracy," that they have no part in the political affairs of the world and must not interfere in the least manner with war between nations. They must be entirely neutral and not interfere with the drafting of men of nations that go to war.

And Also that wherever there is a conflict between the laws of Almighty God the Christian must always obey God's law in preference to man's law. All laws of men, however, in harmony with God's law the Christian obeys. God's law is expounded and taught by Jehovah's Witnesses.

Accordingly they refuse to take an oath of allegiance to the King or other constituted human authority though they do not object to take an oath in a Court of law to speak the truth nor do they refuse the protection of the King's Courts or other constituted human authority.

10. On the 17th January 1941 the Governor-General acting with the advice of the Federal Executive Council pursuant to the authority conferred upon him by the National Security (Subversive Associations) Regulations, declared certain bodies including the Adelaide Company of Jehovah's Witnesses Incorporated and the organization or association of persons known as Jehovah's Witnesses prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

A copy of the Order in Council is attached to and forms part of this Case.

11. On the 17th day of January 1941 a Minister of State, namely the Attorney-General of the Commonwealth, pursuant to the authority conferred upon him by the said regulations, directed an officer of the Commonwealth to take possession of, control and occupy, certain premises including the premises mentioned in paragraph 3 hereof and known as Kingdom Hall.

A copy of the said Direction is attached to and forms part of this Case.

12. Accordingly on or about the 17th January 1941 an officer of the Commonwealth entered and took possession of the said Kingdom Hall and has ever since excluded therefrom the Adelaide Company of Jehovah's Witnesses Incorporated and all persons professing the beliefs of Jehovah's Witnesses.

13. On the 4th September 1941 the said Adelaide Company of Jehovah's Witnesses Incorporated issued a writ out of this Court against the Commonwealth and delivered a Statement of Claim claiming an injunction to restrain the Commonwealth and its servants and agents from continuing or repeating the trespass before mentioned, damages for the said trespass and other relief.

14. The Adelaide Company of Jehovah's Witnesses Incorporated and the association of persons known as Jehovah's Witnesses are not engaged in any seditious enterprise nor in the printing or publishing of any seditious words within the meaning of the *Crimes Act* 1914-1932.

15. The said incorporated association and the association of persons known as Jehovah's Witnesses proclaim and teach matters prejudicial to the defence of the Commonwealth and the efficient prosecution of the war namely the matters set forth in paragraph 9 of this Case, but otherwise their doctrines or beliefs are but primitive religious beliefs.

Case Stated.

16. The said incorpo
Security (Subversive Ass
Council, and the said Dir
ized by the Constitution
contravene the provision
upon the judicial power
that the National Securi
not upon their proper co
as the said incorporate
known as Jehovah's Wi

Upon the Case abo
the Full Court the follo

1. Is the Adelaid
porated a pa
Security (Su
Order in Cou
General abo
sec. 116 of t

2. Do the Nation
tions or any
the provisio

3. Do the said O
Attorney-Ge
thereof so fa
tion or the
Witnesses,
the Constitu

4. Are the Natio
tions or any
powers or a
(*a*) The C
(*b*) The N

5. Is the said O
Attorney-Ge
either affec
association
beyond the
(*a*) The C
(*b*) The N
(*c*) The
Regu

6. Do the said
Regulations,
the said in
persons kno

10th February 1943.

RULES AND REGUL
JEHOVAH'S

1. Limitation: Th
Incorporated shall have
Jehovah's Witnesses in

2. Management: T
Jehovah's Witnesses Inc
be members of the Inc
required shall be appoint
necessary at a general m

16. The said incorporated association contends that the National Security (Subversive Associations) Regulations, and the said Order in Council, and the said Direction of the Attorney-General are unauthorized by the Constitution and the National Security Act 1939-1940, contravene the provisions of sec. 116 of the Constitution, and impinge upon the judicial power of the Commonwealth. They also contend that the National Security (Subversive Associations) Regulations do not upon their proper construction include religious associations such as the said incorporated association or the association of persons known as Jehovah's Witnesses.

Upon the Case above stated I reserve for the consideration of the Full Court the following questions of law :—

1. Is the Adelaide Company of Jehovah's Witnesses Incorporated a party competent to maintain that the National Security (Subversive Associations) Regulations, the said Order in Council, and the said Direction of the Attorney-General above mentioned contravene the provisions of sec. 116 of the Constitution ?
2. Do the National Security (Subversive Associations) Regulations or any and which of those regulations contravene the provisions of section 116 of the Constitution ?
3. Do the said Order in Council and the said Direction of the Attorney-General above mentioned or any and what part thereof so far as they affect the said incorporated association or the association of persons known as Jehovah's Witnesses, contravene the provisions of section 116 of the Constitution ?
4. Are the National Security (Subversive Associations) Regulations or any and which of those regulations, beyond the powers or authorities conferred by :—
   (*a*) The Constitution.
   (*b*) The National Security Act 1939-1940 ?
5. Is the said Order in Council or the said Direction of the Attorney-General or any and what part thereof so far as either affects the said incorporated association or the association of persons known as Jehovah's Witnesses, beyond the powers and authorities conferred by :—
   (*a*) The Constitution.
   (*b*) The National Security Act 1939-1940.
   (*c*) The National Security (Subversive Associations) Regulations ?
6. Do the said National Security (Subversive Associations) Regulations, upon their proper construction, extend to the said incorporated association or the association of persons known as Jehovah's Witnesses ?

(Sgd.) H. E. STARKE J.

10th February 1943.

No. 2.

RULES AND REGULATIONS OF ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

1. Limitation : The Adelaide Company of Jehovah's Witnesses Incorporated shall have no doctrinal or other jurisdiction over any of Jehovah's Witnesses in South Australia.

2. Management : The management of the Adelaide Company of Jehovah's Witnesses Incorporated is vested in four trustees who shall be members of the Incorporation. A secretary and other officers required shall be appointed annually or at such other times as deemed necessary at a general meeting.

3. The trustees shall have the power to purchase, hold, sell, lease, transfer or mortgage land or buildings or property. The trustees may hold or invest monies and may issue interest-bearing debentures and may redeem debentures and/or mortgages and do such acts matters or things as they deem fit with the approval of the Australasian Representative of the Watch Tower Bible & Tract Society, of Strathfield, New South Wales. The signature of any three trustees shall be necessary to bind such transactions.

4. The trustees shall be :

FRANK O'CONNOR FITZGERALD, of 4 Marine Flats, Esplanade, Grange, South Australia.

SYDNEY HAROLD JONES, of 22 Devonshire Street, Hawthorn, South Australia.

KINGSLEY CARNEGIE SMITH, of 176 Fisher Street, Malvern, South Australia.

JOHN KENNEDY JAMESON, of 39 Hewett Avenue, Rose Park, South Australia.

and shall hold office till the annual general meeting of members in July 1940. The trustees shall be elected annually or at other times as it becomes necessary through death, resignation or any other reason.

5. A two-thirds vote at any general meeting may remove a trustee from office provided notice of motion to that effect appeared on the notice calling such meeting.

6. Meetings : The annual general meeting shall be held in July of each year.

7. A special meeting may be called at any time by resolution of the trustees or by the secretary or the requisition of ten members of the company.

8. At all general meetings of members seven shall form a quorum.

9. Notice of general meetings of members shall be given by announcement at one meeting of the Adelaide Company of Jehovah's Witnesses Incorporated for two successive weeks.

10. General meetings shall elect one of the trustees to be chairman, but if a trustee be absent or refuse to act, any member may be elected chairman.

11. Any member present at a general meeting may vote at such meeting. In the event of any doubt arising as to the status of a person claiming membership, the matter shall be decided by the meeting : a two-thirds majority shall be necessary to reject any claim to vote and/or speak as a member.

12. Alteration of Rules : Any rule may be altered by resolution of a special meeting provided that notice of a proposed alteration shall have been given in accordance with Rule 9.

No. 3.

ORDER IN COUNCIL. Dated 17th January 1941 } STATES—

ORDER

Commonwealth of Australia to wit.
GOWRIE
Governor-General.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

WHEREAS by regulation 3 of the National Security (Subversive Associations) Regulations it is provided that any body corporate or unincorporate the existence of which the Governor-General, by order published in the *Gazette*, declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is thereby declared to be unlawful :

Now therefore I, Alexander
Governor-General aforesaid, acti
Executive Council do, by this or
existence of the following bodies

The organization or orga
nesses or the Witnes
The Watch Tower Bible a
The International Bible S
The Adelaide Company o
Consolation Publishing C

is prejudicial to the defence of
prosecution of the war.

Given under my Hand
this seventeenth da
(L.S.) One thousand nine
fifth year of His Ma

By His Excellency's Co

for Minist

DIRECTION OF
Dated 1

NATIONAL SECURITY
RE

ORDER UND

WHEREAS it is provided
(Subversive Associations) R
place or part thereof which
prior to its having been dec
so directs, be occupied in acc
so long as there is in the h
any property which a Minis
by or on behalf of, or in th
therein immediately prior t
unlawful :

AND WHEREAS, by or
seventeenth day of January
one, the following bodies, na

The organization or
nesses or the Wi
The Watch Tower Bi
The International Bi
The Adelaide Compa
Consolation Publishi

(hereinafter referred to as
declared to be unlawful :

AND WHEREAS, immed
the premises situated at t
occupied by one or more of t

(*a*) 7 Beresford Road
(*b*) 22A George Stree
(*c*) Ann Street, Brisb
(*d*) 33 Sturt Street, A
(*e*) 15 Catherine Stre
(*f*) 403 Elizabeth St

Now therefore I, Alexander Gore Arkwright, Baron Gowrie, the Governor-General aforesaid, acting with the advice of the Federal Executive Council do, by this order declare that, in my opinion, the existence of the following bodies, namely :—

The organization or organizations known as Jehovah's Witnesses or the Witnesses of Jehovah ;
The Watch Tower Bible and Tract Society ;
The International Bible Student's Association ;
The Adelaide Company of Jehovah's Witnesses ; and
Consolation Publishing Co.

is prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

Given under my Hand and the Seal of the Commonwealth, this seventeenth day of January, in the year of our Lord One thousand nine hundred and forty one, and in the fifth year of His Majesty's reign.

(L.S.)

By His Excellency's Command,

W. M. HUGHES
for Minister of State for Defence Co-ordination.

No. 4.

DIRECTION OF ATTORNEY-GENERAL.

Dated 17th January 1941.

NATIONAL SECURITY (SUBVERSIVE ASSOCIATIONS) REGULATIONS.

ORDER UNDER REGULATION 6A.

WHEREAS it is provided by regulation 6A of the National Security (Subversive Associations) Regulations that any house, premises or place or part thereof which was occupied by a body immediately prior to its having been declared to be unlawful may, if a Minister so directs, be occupied in accordance with the provisions of the order so long as there is in the house, premises or place or part thereof any property which a Minister is satisfied belonged to, or was used by or on behalf of, or in the interests of, the body, and which was therein immediately prior to the body having been declared to be unlawful :

AND WHEREAS, by order published in the *Gazette* dated the seventeenth day of January, One thousand nine hundred and forty-one, the following bodies, namely :—

The organization or organizations known as Jehovah's Witnesses or the Witnesses of Jehovah ;
The Watch Tower Bible and Tract Society ;
The International Bible Students' Association ;
The Adelaide Company of Jehovah's Witnesses ; and
Consolation Publishing Co.

(hereinafter referred to as "the said subversive associations") were declared to be unlawful :

AND WHEREAS, immediately prior to the date of the said order, the premises situated at the addresses hereinafter specified were occupied by one or more of the said subversive associations, namely :—

(*a*) 7 Beresford Road, Strathfield, New South Wales ;
(*b*) 22A George Street, East Melbourne, Victoria ;
(*c*) Ann Street, Brisbane, Queensland ;
(*d*) 33 Sturt Street, Adelaide, South Australia ;
(*e*) 15 Catherine Street, Subiaco, Western Australia ;
(*f*) 403 Elizabeth Street, Hobart, Tasmania.

AND WHEREAS I am satisfied that there was on each of the said premises property which belonged to, or was used by or on behalf of, or in the interests of the said subversive associations and which was therein immediately prior to the said subversive associations having been declared to be unlawful:

NOW THEREFORE I, William Morris Hughes, do hereby direct that—

(*a*) the Inspector, Commonwealth Investigation Branch, in the State in which any of the said premises is situated shall with such assistance as he thinks fit, take possession of, control and occupy the premises so situated;

(*b*) no person shall, except with the consent of the said Inspector, be in or on or enter or leave, the said premises;

(*c*) no property whatsoever shall, except with the consent of the said Inspector, be brought into or removed from the said premises.

DATED this seventeenth day of January 1941.

W. M. HUGHES,
Attorney-General.

In the High Court

OF AUSTRALIA.

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
Plaintiff

and

THE COMMONWEALTH OF AUSTRALIA
Defendant.

Case Stated Pursuant to Section 18 of the Judiciary Act 1903-1940

PEARCE & WEBSTER,
191 Queen Street, Melbourne,
Agents for—
R. J. M. NEWTON,
Sydney,
Solicitors for Plaintiff.

H. F. E. WHITLAM,
Crown Solicitor for the Commonwealth,
450 Law Courts Place, Melbourne,
Solicitor for Defendant.

Harston, Partridge & Co. Pty Ltd., Printers, Melbourne.

Tipping
16
12/11

COMMONWEALTH OF AUSTRALIA.

POSTAL ADDRESS:
BOX 46, G.P.O., CANBERRA, A.C.T.
TELEPHONE NUMBERS:
CANBERRA, 629; 620; B 814.
TELEGRAPHIC ADDRESS:
"COMPOSITELY,"
CANBERRA, A.C.T.

SECURITY SERVICE,

Canberra, A.C.T., 25th January, 19 43.

Ref. No. 3666/a/52.

P.J. Tipping, Esq.,
Attorney-General's Department,
CANBERRA.

Dear Mr. Tipping,

The accompanying file of papers is now returned with thanks.

Yours faithfully,

Secretary

W 4256

S.L.21369/6

NOV 26 1942

24th November, 1942.

The Crown Solicitor,
CANBERRA, A.C.T.

ADELAIDE COMPANY OF JEHOVAHS' WITNESSES INCORPORATED v. THE COMMONWEALTH OF AUSTRALIA.

Forwarded herewith for your information are two copies of the transcript of evidence taken on the first day of the hearing of this matter in Melbourne on 23rd November, 1942.

2. At the commencement of the case, Mr. Weston made an application for permission for the shorthand-writer to report the argument as well as the evidence. This, however, was refused and the evidence only will be reported.

3. Mr. Weston also objected to any evidence being given as to the beliefs and practices of the plaintiff, on the ground that the opinion of the Governor-General upon which his order was made under regulation 3 and the grounds therefor were unexaminable. After considerable argument, His Honour decided to admit the evidence, subject to the objection.

F. F. CLAUSEN
Deputy Crown Solicitor
per

The Secretary
Attorney-General's Department
For your information
Crown Solicitor

25 NOV 1942

Encs.

TLS/LR

Copyright Reserved.

(N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Commonwealth, proceedings for infringement will be taken.)

IN THE HIGH COURT OF AUSTRALIA

(Original Jurisdiction).

Between

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES, INCORP.

Plaintiff

- and -

THE COMMONWEALTH OF AUSTRALIA,

Defendant

CORAM: STARKE, J.

MELBOURNE, MONDAY, 23RD NOVEMBER, 1942, AT 10.30 A.M.

MR. W. K. FULLAGAR, K.C., with him MR. H. C. ALDERMAN and DR. FRANK LOUAT (instructed by Messrs Remington & Co., Solicitors of Sydney, by their Melbourne agents, Messrs Pearce and Webster) appeared for the plaintiff.

MR. C. A. WESTON, K.C., with him MR. A. R. TAYLOR (instructed by the Commonwealth Crown Solicitor) appeared for the defendant.

MR. ALDERMAN opened the case for the plaintiff and called:

WILLIAM KARL SCHNEIDER, sworn: Examined by Mr.Alderman:

Insofar as the body known as the Adelaide Company of Jehovah's Witnesses Incorporated is still inexistence, you are a member of it, I think?---I am.

You are a Jehovah's Witness?---Yes.

And you have been for how long?---Since 1922.

Prior to being a Jehovah's Witness, what was your religion?---I was Church of England.

What was your occupation before the last war?---Dairy farmer and primary producer.

Did you go to the last war?---Yes.

And saw active service?---Yes.

And it was after your return that you became a Jehovah's Witness?---Yes.

For some time now, you have devoted all your time to the work of the organisation, have not you? --Yes.

Since when?---Since 1925.

In what States?---Queensland, Victoria, N.S.W. and South Australia.

You have been wholly in S.A., I think,for how long?---The last ten years.

And you would be regarded as the senior man in S.A.?---Yes.

You have, I believe, prepared a statement of your own religious beliefs and the beliefs of Jehovah's Witnesses?---I have.

(The witness tendered a statement of his beliefs and the beliefs of the association of persons known as Jehovah's Witnesses; Mr.Weston objected not to the form of the statement, but to the substance of it; His Honor marked the document Exhibit A for identification, and heard legal argument on the objection.)

SITTING SUSPENDED FROM 1 P.M. TO 2.15 P.M.

(CONTINUED ON PAGE 3)

UPON RESUMING AT 2.30 P.M. -

(His Honor heard further argument on the objection and admitted as Exhibit A, subject to objection, the statement of beliefs.)

MR.ALDERMAN (To witness): How many members of the Jehovah's Witnesses are there in S.A.?---

HIS HONOR: Who are the association of persons called Jehovah's Witnesses of Adelaide?---All those who have read in the Scriptures that they notice that Christ's Kingdom is here, that it is being set up, and are desirous of being a witness to that fact and to the name of Jehovah, and acclaim themselves as Jehovah's Witnesses.

Have you any register of members?---No.

Any subscriptions?---No.

It is a loose, ill-defined body?- -

MR.ALDERMAN: To put it in another way, how would you know whether any persons is or is not a member?---Because of their activity, they would demonstrate that they are a witness, and a witness is one who speaks and tells us something he actually knows is true.

How do you know that they belong to the Adelaide Company and not Melbourne, Sydney, Queensland or whatever other company there is?---They would attend the meetings of the Adelaide Company of Jehovah's Witnesses, held at Kingdom Hall.

HIS HONOR: It is the people who attend at Kingdom Hall in Adelaide who are the members of Jehovah's Witnesses in Adelaide?---That is correct.

And you do not know who they are?---We have not a list.

MR.ALDERMAN: Could you, with some-thing to assist your memory, tell us who they are?---Yes.

What is the number, approximately?---I should say 200 to 250.

Most of them attend regularly, do they?---Yes.

HIS HONOR: Do you give them any notices of meetings?---Yes; they are notified on the Sunday afternoon and evening sessions.

That is verbally?---Yes.

But you do not know who will be there; you do not send out written notices or publish notices of your meetings?---No.

It is just a chance who will come and it is a chance whether they belong to Jehovah's Witnesses; there may be people who are just there out of curiousity?---Yes; they are all welcome.

MR.ALDERMAN: There are named trustees of the property, under the rules?---Yes.

HIS HONOR: If you are going to prove the rules, there is a proper way of doing it.

MR.ALDERMAN (To witness): When was this plaintiff body first incorporated?---About 1938 or 1939.

Prior to that, you had been carrying on holding your meetings where?---At the Builders and Contractors Rooms in Waymouth Street.

You hired a hall?---Yes.

Then in 1938 you bought this block of land in Sturt Street?---Yes.

I think that quite a large number of Jehovah's Witnesses contributed in individual sums something like £2,000?---Yes.

But before erecting the building on the land, the company was incorporated to facilitate the holding of the title, for the purpose of being the registered proprietor of the land; that was the main object at the time?---Yes.

But speaking from a practical point of view, it made no difference to your meetings?---No.

The hall when it was built, I think, was built very largely by voluntary labour of members of your organisation? -Yes.

I think the money that was collected was expended in buying materials?---Yes.

And where you did not have an adherent who could carry out the particular work, the money was used in paying an outside contractor or sub-contractor?---That is correct.

From the time when that hall was completed, has the Adelaide Company held its meetings in there?---Yes.

Anywhere else?---No.

The executive meets in the building to transact the business of the organisation?---Yes.

HIS HONOR: Have you minute books?---No.

Have you any records at all from which we can see what your objects are or what business you do?---No, we have no records of our activities.

Neither of the management nor of the associated persons?---No.

MR.ALDERMAN: Have you a Management Committee, or Executive or whatever it may be called?---Yes.

How many are on that?- -Three.

They are?---O'Connor Fitzgerald, Harold A.Jones and Harold Wakefield Allison.

HIS HONOR: Who has the money? --I believe it is in Kingdom Hall or in the bank.

Do you mean in cash in the hall?---Cash kept in the hall or in the Savings Bank.

In whose name is the Savings Bank account?---The Adelaide Company of Jehovah's Witnesses Incorporated.

MR.ALDERMAN: The hall is in Sturt Street, Adelaide?---Yes.

What is the size of the building ?---Approximately 150 ft by 50 ft.

What is the nature of the material?---Brick walls with a galvanized roof, and plaster walls.

Taking the ground floor, what is on that?---A wooden floor without partitions, to enable free sight of the speaker on the platform.

There is a platform?---Yes.

And there are two rooms which can be used as offices?---Yes.

They are in the front?- -Yes, in the front of the building.

Lavatory accommodation at the back?---Yes.

And the rest is one assembly hall?---Yes.

And that is where your meetings are held?---Yes.

The executive meetings are held in one of the offices?---Yes.

And in that hall, I think there is a piano on the platform?---Yes.

No organ?---No.

And seating accommodation?---Yes.

What is there upstairs?---Two rooms and a balcony on the front of the building, but those are two rooms are used as bedroom and sitting-room for the caretaker. At the back, there is another room used as a bedroom and store space.

A bedroom used by?---The caretaker.

On the 17th January, who was living there?---Mr.Fitzgerald and Mr. Kingsley Smith.

And their wives?---Yes.

They were the caretakers?---Yes.

I think that both of them have other occupations?---Yes.

Are there texts in the hall?---Yes; if my memory serves me rightly, there is one.

And that is?---"Salvation unto our God".

Were there regular meeting nights at the hall?---Yes.

What meetings were held and on what nights?---Sunday afternoons, 2.30 till 5, study on the bible; 5 o'clock to 6, discussion on the daily text whilst tea was served; then from 7 to 8.30, either a discourse by disc transcription or verbal discourse was given. On Monday nights, the executive met, and on Thursdays, those who lived within the vicinity of the city of Adelaide would meet there for study. It was known as a group meeting.

MR.ALDERMAN: Taking Sunday afternoons, what would be the normal procedure?---The chairman would open the service with a song from the Songs of Praise book. After the singing of this hymn or song, he would call on someone to lead in prayer. Then a study would commence on some particular theme of the bible, using the Watchtower as the basis for study.

HIS HONOR: What is the Watchtower?---A magazine which is promulgating the message of God's Kingdom.

MR.ALDERMAN: Published where?---In Brooklyn, New York.

And extensively used by the Adelaide Company?---Yes.

Is it fortnightly, monthly or weekly?---It is published on the 1st and 15th of every month.

Where are the themes chosen from?---Maybe prophesies, maybe doctrines such as baptism or consecration, or the memorial of the Lord's death.

Is there a text chosen?---Yes; that is chosen at the afternoon tea, between 5 and 6 o'clock, and is termed the daily text.

Where do you get that from?---The year book of Jehovah's Witnesses.

Is that (shown to witness) the book from which you choose the themes? --Yes.

There is a text or a theme for each day in the week?---Yes.

To what extent are those texts at the back there used?---One is called upon to read a text, and then someone having tea, one of Jehovah's Witnesses, is asked for his comment on this text.

You take the text for the day, as a rule?---Yes.

And what is the practice, if there is a meeting other than on a Sunday; do you still take the text for the day of the meeting?---On Thursday before the study, they take the text, but not at the business meeting on the Monday.

We have got to the cup of tea on Sunday afternoon and the study of the text. After that, what happens?---The chairman sums up by reading the comments which are taken from the Watchtower, and that ends the discussion on the text at teatime.

What time is that?---Between 5 and 6.

Then you carry straight on, do you? --There is a break until 7 o'clock when the evening session commences.

What happens at the evening session?---The chairman appointed opens with sometimes two or three songs of praise; he calls on someone to lead in prayer. Then one listens to a transcription record by Judge Rutherford, or listens to a discourse by some competent Jehovah's Witness.

During these discussions, is there any special emphasis placed upon the Armageddon or the return of the Kingdom of Christ to earth?---No.

MR.ALDERMAN: Then the Monday night is purely a business meeting?---Yes.

No religion at all?---They do open with prayer.

Thursday night is the bible study?---Yes.

By the way, how many attend these meetings - take Sunday?---I would say approximately 200 on Sundays, 25 to 30 on Thursdays, and about 3 to 5 on Mondays.

What does this bible study on Thursday evening consist of?---It consists of studying probably a prophesy or a parable or some biblical theme like the Lord's return, the thief in paradise, the keys of heaven, or some suitable topic, which is found in Judge Rutherford's books, and the book is used as a basis for the study.

How long would that occupy?- -One hour.

What material would you have in the hall, apart from the accommodation for seating people; you have a gramophone?---Yes, with pick-up and speakers.

And the records?---Yes.

Mostly or all Judge Rutherford's records?---All.

HIS HONOR: Who is Judge Rutherford?

MR.ALDERMAN: He is the gentleman who argued the cause before the United States Supreme Court.
(To witness): He was the head of your world organisation for some years?---Yes.

How many?---I can say from 1916 to April of last year, when he died.

And those records which you discuss are recordings of speeches made by him in the United States and then imported to Australia?---Yes.

(CONTINUED ON PAGE 9)

MR. ALDERMAN: Who is the present head of the World organisation?---Nathan Knorr.

Is he a lawyer too?---Yes.

Do you keep Bibles there?---Yes.

How many would be kept there?---Say, a thousand.

What Bible do you use?---King James' version, either Oxford or Cambridge - the authorised version.

I think this is a Bible produced by the Jehovah's Witnesses in the U.S.A., is it not (book to witness)?---Yes.

This shows "The Watchtower Bible and Tract Society." That is the Jehovah's Witness organisation in the United States?---Yes.

I put that in.

EXHIBIT. EXHIBIT B. Copy of the Bible.

That Hymn Book in front of you: are all your hymns taken from that?---Yes.

You do not depart from that?---Some we do not sing.

But you do not depart from it: that is, you do not sing hymns other than what are in there?---No.

You may not sing all that are in there?---No.

I tender that.

EXHIBIT. EXHIBIT C. Hymn Book.

HIS HONOR: Where do you get those hymns from?---Some are Sankey and Moody's, Church of England, Methodist, and so on.

MR.ALDERMAN: The best from all sources?---Yes.

In the building is there a Baptismal Font?---Yes.

What is the nature of that? Give a general description of it?---It is a large galvanised bath, about 8' long, about 3' wide, 3 or 4' high, and is underneath the platform.

HIS HONOR: Are any of your members authorised to celebrate marriages?---I do not know, Sir. They used to and I do not know if they still do so.

MR.ALDERMAN: But they were authorised at one time: you know that?---Yes.

That is as Jehovah's Witnesses; that was the religion. Is that so?---Yes.

Who were they?---I think H. W. Allison.

When you say you do not know what the position is now, do you mean that you do not know whether that has been cancelled on account of the banning of the organisation?---No; because

the name changed from International Bible Students' Association to Jehovah's Witnesses in 1936.

It was as members of the International Bible Students that your members were authorised to celebrate marriages?---Yes.

That is the Year Book 1942 containing the texts to which you referred previously (book to witness)?---Yes.

I put that in.

EXHIBIT. EXHIBIT D. Year Book.

The texts that we are particularly referring to are at the back, if Your Honor pleases.
(To witness): At these meetings at Kingdom Hall has anything ever been done other than what you have told us, that is, the reading of texts?---No.

Anything subversive?---No.

Have any subversive activities emanated from Kingdom Hall?---No.

Have you ever advocated there that any steps should be taken that would interfere with the war effort of Australia or England?---No.

Has anything ever been said there to suggest that you would be pleased if the Australian war effort failed and we lost the war?---No.

Would you at any meeting discuss at all whether Australia should or should not win thewar?

HIS HONOR: Did you discuss it?---No.

MR. ALDERMAN: What is your own view as regards Australia winning the war - your own personal opinion?--My personal feelings: I hope she does.

How are you affected yourself? If we have an Australian or English success, what are your feelings then?---I am very pleased.

And if we have a failure or temporary defeat?--The reverse.

Have you ever heard anything said at Kingdom Hall contrary to that view?---No.

Or seen anything done which suggests that any of Jehovah's Witnesses hold any contrary views?---No.

I tender the "Watchtower" of 1st January 1939, 1st November 1940, 15thDecember 1940.

EXHIBIT. EXHIBIT E. Copies of "Watchtower".

CROSS-EXAMINED BY MR. TAYLOR:

The premises known as Kingdom Hall in Adelaide were occupied by the Adelaide Company of Jehovah's Witnesses, were they not?---Yes.

Do you remember the order being made declaring the Adelaide Company of Jehovah's Witnesses to be an unlawful body?---Yes.

I think those premises were occupied by that body immediately prior to that order having been made?---Yes.

And there was quite an amount of property in those premises which belonged to the Adelaide Company of Jehovah's Witnesses?---Yes.

That property was and had in fact been used prior to the making of that declaration by the Adelaide Company of Jehovah's Witnesses?---Yes.

You said that at one time members of your organisation had authority to celebrate marriages in South Australia?---Yes.

Did you yourself have such authority?---No.

Who were the persons who had authority?---Harold Wakefield Allison.

That was as a member of the International Bible Students' Association, was it?---Yes.

And how was it he ceased to be a person authorised to celebrate marriages in that State?---I am not suggesting he has ceased.

You say he does not do so now.

MR.ALDERMAN: He said he did not know.

MR.TAYLOR: Tell me if this is correct: did not I understand you to say that they had not, as far as you knew, had authority to celebrate marriages for some years?---No.

You made some reference to the change of name from the International Bible Students' Association to Jehovah's Witnesses in relation to the question of authority to celebrate marriages. Do you remember making that reference?---Yes.

What was that reference directed to?---To the fact that I do not know if Mr.Allison still applied for registration to celebrate marriages in South Australia under the new name of Jehovah's Witnesses.

You knew that he did celebrate marriages before the name was changed? ---Yes.

And where were those marriages celebrated?---At homes or the Builders Contractors rooms.

Have you any knowledge of any marriages being celebrated by that gentleman since that time?---No.

Or have you any knowledge of any marriages that have been celebrated by any other member of your organisation since the name Jehovah's Witnesses was taken?---No.

And do you believe that these persons have not celebrated any marriages since that time?---I believe not.

Has there been any change of attitude on the part of your organisation towards the marriage laws since the name Jehovah's Witnesses was taken?---No.

Do you know why it is that such marriages have not been celebrated? ---I have not suggested that no marriages have been celebrated.

You say you believe none have been celebrated?---Yes. I do not know of any instance of any marriages having been cele-brated under the new name of Jehovah's Witnesses.

Do you know if there is any reason why any such marriage should not have been celebrated since the new name was taken?--No.

You know of none whatever?---No.

If Your Honor pleases, I need to refer to a number of publications of this particular Society and the books may be tendered. I thought it might be convenient for Your Honor to have them in front of you while I refer to them. I have here the 1940 Year Book, a book called "Prophesy", three volumes of "Vindication", volumes 1 and 2 of "Light", one volume of "Religion" and a number of booklets - "Neutrality", "Face the Facts", "Loyalty", "Government."
(To witness): I am referring to page 5 of that particular publication, about halfway down. Would you agree that the members of the Adelaide Company of Jehovah's Witnesses were a company of men and women who jointly go forward to publish the doctrines and teaching of Jehovah's Witnesses?---Yes.

They are very active in that respect, are they not?---Yes.

And I think you heard Mr.Alderman this morning say they go from house to house and door to door to publish their beliefs? ---Yes.

And to endeavour, I imagine, to obtain converts?---No.

However, they do go abroad to publish their beliefs to other people who are not members of the movement?---Yes.

And they do so aggressively, do they not?---No, not every one.

Some of them do?---Very few.

Without referring to particular individuals, the campaign of propagation of the movement's teachings is an aggressive campaign, is it not?---Yes.

And you adopt all the means that appear to you to be reasonable to bring your teachings to the knowledge of the people of South Australia?---Yes.

I think you claim that Jehovah's Witnesses is not a religion, do you not?---Yes.

It is not a religion at all?---I would like to add something to that: whilst we may not regard the word "religion" as the correct word, we like to use the word "worship".

(CONTINUED ON PAGE 13).

MR. TAYLOR: You would agree, would you not, that Jehovah's Witnesses are not a political or religious organisation?

MR. ALDERMAN objected.

HIS HONOR: I do not think this is an objection to a cross-examiner. If he does not understand the meaning of the words, the witness can ask what they mean.

MR. TAYLOR: This movement, the Jehovah's Witnesses, claims not to be a religious movement at all; is not that so?---Yes.

And that they do not practice religion in the commonly accepted meaning of that word?--Yes.

Do you mean that you agree with me?--Yes.

In fact, part of your teaching is this, is it not: that religion in the commonly understood meaning of that word is the work of the devil?--Yes.

I think you also claim - and Jehovah's Witnesses - to have no part in the political affairs of the world, not even of the nations where you have your domicile?---No.

Do you mean that you agree with that statement?---Yes.

That you are in the country, and you are not part of it; is that so?---Yes.

They are some of the things that are, or were, taught and discussed at Kingdom Hall?---Yes.

From which members of the organisation went out for the purpose of publishing their teachings to the people of South Australia?---Yes.

And that is where these missionaries, if we may call them such, receive their instruction?---Yes.

I think you told His Honor that anybody who came to the meetings at Kingdom Hall was a member of the Adelaide company of Jehovah's Witnesses?---No. If my memory serves me correctly, I added that all were welcome.

I thought you said in answer to His Honor, "Yes, they are all members; all were welcome." Who are the members?---Those who are really and truly witnesses for Jehovah.

How do they become witnesses?--By witnessing; by telling others of God's Kingdom and of the establishment of it, and of Jehovah's purpose to bring about these things.

I suppose you have Jehovah's Witnesses from other States, from other towns, from other parts of South Australia, who come to Kingdom Hall sometimes, do you not?---Yes.

And there are not always the same Jehovah's Witnesses present at those meetings at Kingdom Hall, are there?---No.

Then how do you distinguish between those who are members and those who are not?--There is no distinction made.

Do you mean that every Jehovah's Witness who comes there is for the time being a member of the Adelaide company?---Yes.

I see. So the membership, so far as you know, changes, as it were, from meeting to meeting?---Yes.

HIS HONOR: I do not think that represents his meaning very accurately, that they change. It is simply that not all the members are present every time, but every one who professes this Jehovah's Witnesses belief is a member of the Association of Jehovah's Witnesses?---Yes.

In South Australia or anywhere else, apparently?---Yes.

MR. TAYLOR: Do you mean whether they have been to the meetings or not?---No.

You mean any Jehovah's Witness who has attended the meeting of the Adelaide company has become a member?---Yes.

Was Judge Rutherford a member of the Adelaide company?---No.

Did he attend any meeting there?---No.

Your Honor, I am going to refer to the publication called "Life". I first refer to the foot of page 24.
(TO WITNESS): Mr. Schneider, you said in answer to Mr. Alderman that there was no subversive activity at Kingdom Hall?---Yes.

What did you understand to be the meaning of the term "subversive"? ---Anything that may be detrimental to mankind's welfare.

Would you regard as subversive anything that was detrimental, for instance, to the continuance of the British Empire?--- Would you repeat the question?

(I) I Would you regard as subversive anything detrimental to the continuance of the British Empire?---No.

Would you regard as subversive any activity detrimental to the prosecution of the war?---Yes.

II Would you regard as subversive anything detrimental to the continuance of the Commonwealth?---No.

As a matter of fact, your teachings and your beliefs are, are they not, that the second coming of Christ cannot take place until no nations exist as such; is not that so?---Yes.

(III) And you are working, are you not, towards that end; that is, the second coming of Christ?---Yes.

IV That involves you, does it not, in working for the destruction of the nations as such?---Yes.

IV Including the British Empire and the Commonwealth?--Yes.

HIS HONOR: I do not quite follow what you meant by that, Mr. Schneider. Do you mean that your Society works for the destruction of all political organisations?---To answer the question, Sir, I would suggest that we look forward to the completed establishment of Christ's Kingdom, which will do away with the present world powers and governments. It will not be done by Jehovah's Witnesses;

it will be done by the Lord Himself.

MR. TAYLOR: I suppose, Mr. Schneider, you regard yourself as actively engaged in a fight against Satan?---Yes.

And it is your belief, is it not, that other Jehovah's Witnesses are similarly engaged?---Yes.

And that is an active fight, is it not?---Yes.

You are determined, are you not, to do all you can to destroy the works of Satan?---Yes, and I might add that we cannot use physical force to destroy the works of Satan. It largely depends upon how you base your question.

May I put it this way, that you are determined to do all in your power short of physical force to destroy the works of Satan?---No - the question is not correct yet. I might suggest, if I can interpret your mind, that we are endeavouring to destroy the works of the devil by publishing what is God's Will; so far as it is for the purposes of mankind, for peace, happiness and contentment, then the works of the devil are being punished.

May I put it this way; that not only you, but the members of the Adelaide company of Jehovah's Witnesses, are actively engaged in the destruction of the works of the devil by the dissemination and propagation of the teachings of Jehovah's Witnesses?---Yes.

And you regard the British Empire, do you not, as the work of the devil?---No, not in those words.

Do you regard Great Britain as an instrument of the devil?---One may use the expression "under the domination of Satan."

And that Satan is using the British Empire as his instrument?---Yes.

Is not that so?---Yes.

And that the English-speaking countries of Britain and America in fact form one earthly empire where Satan has maintained his chief office on earth. That is one of the teachings, is it not?---Yes.

Do you believe that?---Yes

And that has been taught and discussed at Kingdom Hall, I take it? --Yes.

And actively disseminated and propagated throughout South Australia? ---Yes. I would not say from house to house, though.

Not necessarily from house to house. Is not this the result: that you view the British Empire as a wicked thing - something sinister and wicked?---No.

As something beastly?---No, only in so far as the picture is shown in the Scriptures, taken from the last book of Revelation. What is in the book is highly symbolical. You are picking pieces out of it and attributing to our view that we are up against the British Empire, that we think it is beastly and degrading and so on. That is not our view at all.

I will read this passage from page 24, Vol. 1, of "Life". "During this period of time the truth was published chiefly in the English-speaking countries of Britain and America, which in fact form one earthly empire and are the place where Satan has maintained his chief office on earth." There is nothing allegorical in that, is there?---No.

That you understand as real, do you not?---Yes.

And it follows, does it not, that you regard the works that are performed by the British Empire as works of the devil? --Not necessarily all the works.

The present war, for instance?---The present war is not controlled or sanctioned by Jehovah, and therefore it must be Satan.

We are speaking of the activities of the British Empire. At the moment the British Empire has troops in the field and fighting ships on sea. You regard those troops, and the Navy, as instruments of the devil, do you not, being used for a Satanic purpose?---Yes.

(CONTINUED ON PAGE 16)

MR. TAYLOR: In the same book, page 149, where it refers to a proclamation or resolution.

HIS HONOR: What book are you reading from?

MR.TAYLOR: The same book, Your Honor, on page 149.

MR.ALDERMAN: You will find it onpage 137.

MR.TAYLOR: Let the witness give his evidence.

HIS HONOR: Page 149; yes, I have it.

MR.TAYLOR: What was that proclamation? That was the proclamation of Jehovah's Witnesses?---Yes.

What do you understand by the declaration, that the British Empire is Satan's Beastly organisation. What do you understand by that in reality, Mr. Schneider?---At the time Jesus was on the earth and he was surrounded by - - -

Cann-ot you tell me what you understand by it, now?- -No, because I think you might misunderstand me.

I will do my best to understand you if you tell me it right now.

MR.ALDERMAN: He is trying to tell you, but you are stopping him? ---I am sorry, but will you please repeat your question.

MR. TAYLOR: What do you understand by the proclamation that the British Empire is the seat of Satan's beastly organisation. What do you understand by that now?---I would understand that this Empire of the British Nations is the last of the ones that are permitted to remain to be Christ's Kingdom as set up on earth.

You are taught and you preach that the British Empire is the seventh of the last worlds. Is that so?---Yes.

And that the British Empire in common with the preceding six is Satan's instrument?---Yes.

And something to be destroyed as quickly as possible?---Not by human agencies.

Not by human agencies and not by physical force of Jehovah's Witnesses?---No.

You do believe, do you not, that you are contributing to the downfall of the British Empire by the dissemination and teaching of Jehovah's Witnesses?---Not necessarily, no.

Why did you say "Not necessarily"?---Because I get my food, living and clothing and everything by the protection of the British Empire and I would not conscientiously say that I would like to see, in my heart, the British Empire destroyed.

If the British Empire is destroyed, you have the second coming of Christ?---Yes.

And you have protection then?---Yes.

And immortality?---Yes.

And you prefer that to your life under the British Empire?---Yes.

And the difference to you will be the difference between the curse of death over-hanging and everlasting life?---Yes.

That is what you set out in the document?---Yes.

That is what you are hoping and trying and working for?---Yes.

And that involves working by the dissemination of the teaching and the downfall of nations, including the British Empire?--- Yes, but only in a measure. That is one of the principles involved with Jehovah's Witnesses.

That is one of them?---Yes, a minor one.

(THE WITNESS WITHDREW).

THE COURT, AT 4.30 P.M., ADJOURNED UNTIL THE FOLLOWING DAY, TUESDAY, 24th NOVEMBER, 1942, AT 10.30 A.M.

Copyright Reserved.

(N.B. Copyright in this transcript is the property of the Crown. If this transcript is copied without the authority of the Attorney-General of the Commonwealth, proceedings for infringement will be taken).

IN THE HIGH COURT OF AUSTRALIA

(Original Jurisdiction).

Between

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES, INCORP.

Plaintiff,

- and -

THE COMMONWEALTH OF AUSTRALIA.

Defendant.

CORAM: STARKE, J.

MELBOURNE, TUESDAY, 24th NOVEMBER, 1942, AT 10.30 A.M.

(Second Day).

MR. W. K. FULLAGAR, K.C., with him MR. H. S. ALDERMAN and DR. FRANK LOUAT (instructed by Messrs. Remington & Co., Solicitors, of Sydney, by their Melbourne agents, Messrs. Pearce and Webster) appeared for the plaintiff.

MR. C. A. WESTON, K.C., with him MR. A. R. TAYLOR (instructed by the Commonwealth Crown Solicitor) appeared for the defendant.

WILLIAM KARL SCHNEIDER, Continuing his evidence:

MR. TAYLOR: I was asking you yesterday about the teachings of the Jehovah's Witnesses in relation to the British Empire and the Commonwealth, and I think you told me that your teachings involved working, by the dissemination of the literature - the publications of Jehovah's Witnesses -

for the downfall of all nations, including the British Empire; is that so?---To answer the question properly, Your Honor, I would like to refer to scripture, which might explain the difference between comparing the spiritual things with natural things.

HIS HONOR: Well, what is the answer to the question? You can give your own answer to it without giving us a lesson from the scriptures?---I am finding it exceedingly difficult to answer questions by mere passages of a book as to our fundamental teaching of the scriptures, because he has taken it from the book of Light, which is an explanation of the book of Revelation - the book of symbols - one of the hardest books in the scriptures to understand.

For that reason, I would suggest that it is very difficult for anyone to understand the book of Revelation without having some fundamental knowledge of the tenets or the teachings of the scriptures.

Take the passage which Mr.Taylor has asked you about and tell us in plain English what it means?---Do you mind repeating the question, please.

MR.TAYLOR: It is Volume 1 of Light, page 149, the last paragraph: "The London proclamation or resolution and the accompanying argument set forth that Satan is the god of this world; that the British Empire is the seat of his beastly organisation; that the League of Nations is the child of Satan, and its mother is the beastly governments on earth". What does that mean in plain language?---We would understand that, when it says that Satan is the god of this world, it means that Satan, to use the language of the man in the street, is the god of Mammon, commercialism; and as to "the British Empire being the seat of his beastly organisation", it is beastly because the picture in Revelation is a beast.

You do not mean to suggest, do you, that this language I have read to you does not say in plain language that the British Empire is a wicked thing and should be destroyed?--I would say that, because- - -

I want to be clear about it. You say it does not mean that?---Yes, I do, because- - -

Then do you mind telling me what this passage means?- - -

HIS HONOR: If he wants to make some explanation of the statement, I think he should be allowed to do it.
(To witness): You assented to Mr.Taylor's statement, but you were going to add something. You said "Because"?---Yes, because we understand that the book of Revelation being a symbol, a person to understand these truths must be in heart relationship with the creator to have a spiritual understanding of them. This book is designed to teach people the Bible truths of Revelation. The man in the street cannot understand the book of Revelation until he has some help, and his mind must be given to spiritual things.

Is this book published for anyone who likes to take it?---Yes.

Anyone who wishes to have it can buy it?---Yes - not at the moment, because it is banned.

HIS HONOR: I mean while you were in full communion with the public? ---Yes.

MR.TAYLOR: And in fact, there were some hundreds of copies of that particular book at Kingdom Hall when you left there, were not there?---Yes.

And they were sold freely to anybody who wanted to buy them?---Yes.

You have told me that the passage I have just read is not intended to indicate that the British Empire is a wicked organisation in the ordinary sense of the word; do you really mean that?---Yes, I do.

Then will you tell me what this passage means: I am referring to the book called Vindication, Volume 2, at page 320, about half-way down the page: "The League of Nations is supposed to be the special guard of the safety and territorial integrity of the member nations of the League, and Britain is the chief guard over the League of Nations. Jehovah by his prophet declares his purpose to visit this wicked organisation, and when he visits them, it means their destruction". What does that mean in plain English?--- If I may use an illustration, it means that shortly the present world power known as the British Nation will disappear, and God's Kingdom - that which we have long been taught to pray for - will be established here on earth. We claim that this Kingdom is being established - has begun to be established from 1914.

I think we understand that, but what does the expression "wicked organisation" mean, in plain English?---Selfishness - worldliness.

It means wicked, does not it?---I am just giving you the plain English.

(CONTINUED ON PAGE 21).

MR.TAYLOR: You understand the meaning of the word "wicked", do you not?---Yes.

Do you suggest that the word "wicked", where it is used in this particular passage, means anything else than wicked in its ordinary meaning?---Yes, I do.

What do you suggest that it means in that passage?---When we use the word "wicked" here, it means that we are speaking in a spiritual terms.

It is used there in spiritual terms?---Yes.

You are not suggesting, are you, that the British Empire is going to be destroyed in any spiritual sense?---I am going to suggest that the British Empire will be done away with, through the bringing in of the Throne of Christ's Kingdom.

And that is your purpose on earth, is it, to bring about that destruction as soon as possible?---Definitely no.

You hope, do you not, by teaching and the dissemination of literature to point out to people that the British Empire is a wicked thing and should be destroyed?---No; I would like to illustrate it again, if I may.

Must you illustrate that answer to that question?---I think so, without being misunderstood. His Majesty the King, in service and in Divine Service, praise the Lord's Prayer, and he himself says "Thy Kingdom Come". In other words, he, being the ruler of the British Empire and the Commonwealth of Nations, looks forward to a time when even his own Throne as King will disappear, and God's Kingdom, for which he is praying, will take its place.

HIS HONOR: How does it appear from that, that His Majesty the King, in charge of the British people, over whom he rules, is wicked, or beastly, or something that should be destroyed?---I think you will agree with me that when we speak of "wicked" or "beastly" we speak in terms of worldliness, and greed for money, and selfishness, and in that sense. It is in that sense that the word "beastly" or the word "wicked" should be understood.

Why apply it only to the British people?---Because we are taking a passage here, a prophecy, which refers to the Seventh World Power, which we understand, according to literature, refers to the British Empire. There are some others as well.

You mean in Revelations?---Yes. There are other literatures, which indicate the other Nations. All nations will be disentegrated and will disappear with Christ's Kingdom coming on earth.

MR. TAYLOR: Your teachings and your literature represent Britain and America as the instruments of Satan; that is so, is it not? ---Only in a spiritual sense.

In any sense?---No, a spiritual sense.

I put this to you that your literature abounds with references such as I have just read from page 320 of "Vindication"; that is so, is it not?---I would say No. It abounds because there are many books on exhibit here, which do not do anything but prophesy.

Will you agree that there are hundreds of such references in such books?---No, I would not even go so far as to say that there are hundreds such references.

We will go through them, or some of them, in a moment. You represent Britain and America as the work and horns of the devil; that is so, is it not?---No.

Do you not refer to the two horns of the beast; which are the two horns of the beast; what beast?

HIS HONOR: That is the Book of Revelations?

MR.TAYLOR: Yes, the horns of the beast?---That is symbolic of the worldliness of the British Nation.

Symbolic of everything that you regard as wicked, is that so?---I object to the word "wicked".

What would you like to substitute for it?---Worldliness.

So that where the word "wicked" is referred to in this passage at page 320 of "Vindication", you would like to substitude the word "worldliness"?---Yes.

The word "wicked" there is wrong, is it?---From my own point of view - I would not abuse the word.

There are many words that you would not abuse?---Yes.

So that you represent Britain and America as being the twin horns of this beast, which represents worldliness or wickedness; is that so?---Yes.

And no other country is referred to in any such way in your literature?---Yes.

Will you indicate where it is?---Germany.

Would you indicate to me any passage in any of these books referring to Germany?---Yes, Revelation 30 and the light book.

Would you mind finding those passages for me?

HIS HONOR: Before you pass on to that, you referred to "beast"; do you mean the "beast" as mentioned in the Book of Revelations?---Yes.

So that, if we read the book of Revelations, we can understand by references there, within our limited capacities, what you mean by a reference to the beast?---Yes. I believe that one would nedessarily have to have some help to understand the Book of Revelations. It is generally agreed that the Book of Revelations is one of the hardest books to understand, and I may say in Court here that it is not necessarily the only tenant of Jehovah's Witnesses.

MR. TAYLOR: It is not necessarily what?---Not necessarily the only tenant.

I am not suggesting that it is. Will you please find that passage or passages to which you made reference. (Books handed to witness)?---Page 269, Revelation 13, Light Book 1.

Where is the reference to Germany on that page 269?---That is the commencement.

On what part of that page, is there any reference to Germany; that is what I am asking you?---The last word there is the word Ger" and, over the page, there is the word "Germany". That refers in explanation of the verse.

This is a reference to Germany of many years ago?---Yes.

Not the present day Germany?---No.

This is a reference to the Germany which existed many years before the book was written?---That is correct.

And you speak of the old German Empire as the Sixth World Power; is that correct?---No.

The passage reads (read from the words: "In 1914, and for some years prior thereto, the sixth world power" down to the words "chief one in that empire")?---Yes.

Is that correct?---That is correct.

That is the reference to which you referred; is there anything else to which you want to refer?---Yes, this shows that the book was published - - -

All I want you to do is to direct my attention to a passage in that book.

(CONTINUED ON PAGE 23)

MR. TAYLOR: I want you, first of all, to direct my attention to a passage relating to the matter which I have indicated to you?---I will direct your attention to pp.272 and 273; 274 deals with the same subject.

Yes, and they are references, are they not, to Germany as a composite part of what you call the 6th World Power. Is not that so?---It says - - -

Listen to my question, Mr. Schneider, will you please. That is a reference to Germany many years ago and part of what you call the 6th World Power?---Yes, a part of it.

A part of the 6th World Power, is that correct, Mr. Schneider?---Yes.

There is no reference to modern Germany?--Yes.

Where?---Because it says that the beast would become alive again.

That means after the downfall of Great Britain, does it not?---No.

HIS HONOR: If you will leave that for a moment. Will you look at chapter 13 of the Book of Revelations and tell me whether that is symbolical of the British Nation and Germany and other modern States, and what you mean by it?--There is 14. That is the one we are discussing.

I am asking you to look at chapter 13. Is the description of the beast in Chap.13 symbolical of the British Empire and other Nations of the modern world?---Yes, Sir.

MR. TAYLOR: You regard it as symbolical of what is known as the world power for the time being?---Yes.

Britain is the 7th World Power?---Yes.

Preceding Britain as the 7th World Power, there were six other world powers symbolised by the beast?---Yes.

And at the present time, Britain and America are so symbolised?---Yes.

And the reference to Germany as being part of the 6th World Power that preceded the civilisation of Great Britain and America is symbolised by the beast. Is that correct?---Yes.

HIS HONOR: Do you go from house to house in S.A. preaching that doctrine to whoever you see, that Great Britain and other world powers represent the beast in the 13th Chapter in the Book of Revelations?---No.

What do you do?---We would not be understood. We preach the Kingdom of God and especially the next Kingdom of which we have been taught, and pray.

To preach that you must preach the destruction of some other organisation that at present exists, and that is the existence, as I understood you to say, of the organisation represented by the beast in Revelations?---Yes, Sir. We do not preach the destruction of it in the sense of the disappearance of it.

MR. TAYLOR: You hope by the dissemination of this knowledge or

teaching to bring about the destruction of these Nations?---Just as I illustrated with King George - - -

Illustrate my question. You have illustrated it by reference to King George. You hope to open the eyes of the people to what you consider the real facts, do you not?---Yes, but it takes time.

It takes time to do what?--To give them an understanding of the Book of Revelations.

That is your purpose and object, and the sooner the eyes of the people are opened, the sooner the second coming of Christ will take place?---No.

You do teach that the Kingdom of God will not come until these Nations are destroyed?---No.

Did you not agree to that yesterday?---If you will remember I mentioned Christ's Kingdom has already come.

It has already become and the Nations have already begun to disintegrate?---To disappear.

Do you quarrel with the word "disintegrate"?---No. I sometimes mention it myself.

You mean they will be destroyed as Nations, do you not? You do not quarrel with the word "destroy"?---Yes, I do.

You do?---Yes, I do.

Let me go again to the second book, Vindications. Have you got a copy of it there?---Yes.

The passage you referred to; I referred you to a passage on P.320, "The League of Nations.....destruction." You quarrel with the word "destruction" or is that a wrong word?---I would not say that I quarrel with the word "destruction", except that it is used in scripture. To the man in the street we prefer the word "disappear".

The word "destruction" is referred to in the Book?---Yes, because it is used in America.

This is the Book you sell in S.A. to anybody who cares to buy it?---Yes.

And in the passage there are two words that you do not agree with - thewords "wicked" and "destruction"?---Yes.

You will agree with me that it conveys to the average man the view that the British Empire is a wicked thing and the sooner it is destroyed the better?- -No.

You would not agree with that?---No.

I think you have the second volume of "Light"?---I have.

HIS HONOR: I think from Mr. Schneider's view it is undesirable to go into all these questions of belief more than is absolutely necessary; and as far as I can follow Mr. Schneider, this organisation is working for the incoming Kingdom of God?---Correct.

And that I suppose involves the principles or ethics of the Christian Religion?---Yes.

And that anything that stands in the way of that you regard as typical of the beast in Revelations?---Yes.

Of which world political organs of the present world are examples. Is that substantially your attitude towards present society?---Yes.

(CONTINUED ON PAGE 26.)

MR. TAYLOR: The passages, of course, are the things disseminated.

HIS HONOR: It is undesirable in a public Court, I think, to enter into the metaphysics of religion. I do not think anyone can thoroughly understand it, and it is not desirable. If you give the broad outline of it, well and good.

MR.TAYLOR: There are a number of references in the books which I will have typed out and given to Your Honor, but there are a few of them I would like to refer to, not to show what this witness thinks but merely to show the activities of this organisation - the propaganda that is disseminated.

Have you a copy of the second volume of "Light" there, Mr. Schneider? ---Yes.

Page 32, at the foot of the page:- "No empire on earth has ever so completely.....and all have been acting as the ventriloquist of Satan the Devil." That is what you taught and disseminated in South Australia, is it not? ---Spiritually, yes.

In those very words, as they appear in this book. That is so, is it not?---That is so, but the man in the street could not understand these.

How many copies of "Light" were sold in South Australia during, say, 12 months before the organisation was declared to be unlawful?---I have no record.

But there are dozens of publications, dozens of books and dozens of booklets that were sold by your organisation?---Yes.

And they were sold in many hundreds, were they not?---The books, yes, but not "Light". If I might add why?

HIS HONOR: How many of those books are distributed?---I would suggest, say, one combination of "Light"1 and "Light" 2 per week.

That is to the public you mean, not merely to what I would call the members of your Association who go forth amongst the public?---Perhaps not so many as that then.

It is handed to the public if they want it and pay for it?---Yes.

MR. TAYLOR: There is an illustration in that book to which I direct Your Honor's attention, at page 101, which illustrates a passage appearing on page 98.

HIS HONOR: Page 98: that "Two horned beast" refers also to Chapter 13 of the Book of Revelations - "And I beheld another beast..... .....he spake as a dragon." It refers to that passage?--- Yes.

Then he referred to Great Britain and America - that the Anglo-American Empire is the two horned beast. It is symbolical of these two political organisations known as the United States and Great Britain?---Yes.

MR. TAYLOR: I do not know where the other reference comes from, at the foot of page 32 and the top of page 33.

HIS HONOR: I suppose that refers to Chapter 13 - the beast with seven heads and ten horns. It refers to that chapter,

does it not?---Yes, Sir.

MR. TAYLOR: There are a number of other references which are not exhaustive but which I will have typed out and to which Your Honor will be able to refer.

HIS HONOR: I think you had better put them to the witness. He may have explanations of them. It is not completely fair to him to pass them by. I think it is pretty plain what their attitude is: that there is a higher form of knowledge or belief than the mere worldly organisations that exist at present.

MR.TAYLOR: Yes. I am not so much concerned with this witness' belief as with the method by which this information is disseminated. He does not regard this as subversive. He does not regard it as subversive to work, by the dissemination of this information, for the downfall of the United States and the British Empire. He said that yesterday.

Do you know the booklet "Face the Facts"?---Yes.

That is a comparatively recent publication, is it not?---Yes.

Written since the present war began. Is that correct?---I would like to see the date on it.

MR. FULLAGAR: 1938 is the date outside. (Book to Witness).

MR. TAYLOR: I am referring to page 27?---"Copyright 1938."

It was written shortly before the present war commenced. Who compiled this?---Judge Rutherford.

And is this printed in Australia or in America?---I cannot tell you.

Did you distribute copies of this in South Australia?---Yes.

Many of them?---Yes.

On page 27 of this pamphlet "Face the Facts" this passage appears:- "The totalitarian combine is going to get control of England and America. You cannot prevent it. Do not try.....will hold sway." The totalitarian combine, I take it, was Germany and Italy: is that so?---No, I think there was another meaning to that.

What was the other meaning?---Even the Prime Minister has said - -

What was the other meaning?---The totalitarian combine would be the combination of religion, commerce and politics dominating and controlling England and America, regimenting the people.

Is that an honest answer?---I have sworn an oath.

Is it honest? Would you swear to that?---Yes.

You know what were commonly known as the totalitarian countries in 1938, do you not?---Yes.

Germany and Italy?---Yes.

Do you suggest that the reference on page 27 of this booklet is to

does it not?---Yes, Sir.

MR. TAYLOR: There are a number of other references which are not exhaustive but which I will have typed out and to which Your Honor will be able to refer.

HIS HONOR: I think you had better put them to the witness. He may have explanations of them. It is not completely fair to him to pass them by. I think it is pretty plain what their attitude is: that there is a higher form of knowledge or belief than the mere worldy organisations that exist at present.

MR.TAYLOR: Yes. I am not so much concerned with this witness' belief as with the method by which this information is disseminated. He does not regard this as subversive. He does not regard it as subversive to work, by the dissemination of this information, for the downfall of the United States and the British Empire. He said that yesterday.

Do you know the booklet "Face the Facts"?---Yes.

That is a comparatively recent publication, is it not?---Yes.

Written since the present war began. Is that correct?---I would like to see the date on it.

MR. FULLAGAR: 1938 is the date outside. (Book to Witness).

MR. TAYLOR: I am referring to page 27?---"Copyright 1937."

It was written shortly before the present war commenced. Who compiled this?---Judge Rutherford.

And is this printed in Australia or in America?---I cannot tell you.

Did you distribute copies of this in South Australia?---Yes.

Many of them?---Yes.

On page 27 of this pamphlet "Face the Facts" this passage appears:- "The totalitarian combine is going to get control of England and America. You cannot prevent it. Do not try.....will hold sway." The totalitarian combine, I take it, was Germany and Italy: is that so?---No, I think there was another meaning to that.

What was the other meaning?---Even the Prime Minister has said - -

What was the other meaning?---The totalitarian combine would be the combination of religion, commerce and politics dominating and controlling England and America, regimenting the people.

Is that an honest answer?---I have sworn an oath.

Is it honest? Would you swear to that?---Yes.

You know what were commonly known as the totalitarian countries in 1938, do you not?---Yes.

Germany and Italy?---Yes.

Do you suggest that the reference on page 27 of this booklet is to

any other combine?---(No answer).

Is there any difficulty about that question?---Yes, there is.

Is it a reference to that combine or to some other combine?---It refers to Germany and Italy and probably Japan.

So the totalitarian combine referred to was Germany and Italy, possibly with the addition of Japan?---Yes.

You did not tell me that when I first asked you, did you?---No.

Why not?---Because I was not clear in my mind whether this really meant the totalitarian combine of politics, commerce and religion.

You have read this booklet before, have you not?---A long time ago.

And you discussed it and talked about it?---Yes.

And you were in no doubt then as to what it meant, were you?---No.

Had you forgotten what its meaning was?---No.

So that you knew, did you, when I directed your attention to the passage, that the reference to the totalitarian combine was a reference to Germany and Italy?---I was not sure.

Are you sure now?---Yes.

You remember I asked you was your first answer an honest one?---Yes.

Was it an honest one?---Yes.

You thought it had reference to something else?---Yes.

Would you mind telling me what you thought it was a reference to, in the first place?---The combine, I thought, represented the combination of religion, politics and commerce.

Had you ever heard that spoken of as the totalitarian combine?---Yes.

By whom?---I could not name anyone.

When?

MR. FULLAGAR: I think you are both wrong.

HIS HONOR: I am not quite certain that you are right about the totalitarian combine necessarily referring to Germany and Italy. At page 20 it talks about the totalitarian Catholic combine.

MR.ALDERMAN: At page 16 it refers to Germany being in line with the Papacy and Great Britain rapidly moving in that direction.

HIS HONOR: I do not suppose the witness remembers all that is in this book, but I notice at page 20 that they talk about the totalitarian Catholic combine and that when that gains control of the British Isles, "as it is certain to do", all the liberties of the people will be at an end. Then they go on at page 27 that the totalitarian combine is going to get control of England and America.

MR.TAYLOR: There are other passages to which I will refer in a moment. Would Your Honor look at page 13, the second

paragraph? I do not want to read it to the witness at the moment. Also the first paragraph on page 15.

HIS HONOR: Yes.

MR. TAYLOR: I read the booklet and I think I understood what it meant. The witness has agreed with me. You can have time for consideration again if you like, Mr. Schneider. I ask again: the reference to "the totalitarian combine" on page 27 is a reference, is it not, to Germany and Italy, and possibly Japan?

HIS HONOR: This can all be summed up, I think, from pages 3 and 4, that:- "The Almighty God declared his purpose to set up a righteous government which will rule the world in righteousness.....Today there is no righteous government on the earth." And not only is there no righteous government, but the British Government and the American Government are typical instances of very unrighteous Governments. That is your belief?---Yes, Sir.

MR.TAYLOR: And, following on that, you teach people not to try and prevent the downfall of the British Empire, do you not?--(No answer).

Do you not, Mr. Schneider?---Yes - with reservations.

You tell them that it is useless to try?---Yes.

That teaching has been disseminated by your Society freely throughout South Australia?---Yes.

And you know, of course, that the Society has also acted in all the other States of the Commonwealth?---Yes .

And that teaching has been disseminated orally and by the distribution of literature and by the playing of gramophone records? That is so?---Yes.

HIS HONOR: How would you carry these beliefs of yours into action? ---I would suggest, to answer your question, that, to carry them into action, I still appreciate that a Government whether it is good or bad is better than no Government, and whilst we are looking forward to a government of righteousness we appreciate the fact that the British Government and the American Government are doing their best for the peoples in providing food and the necessities of life.

(CONTINUED ON PAGE 30).

THE WITNESS (Continuing): But when they are full of worldliness, we look higher to a spiritual government in control of Christ Jesus for the benefit- - -

HIS HONOR: I quite under tand that, but I merely asked you - in action, how would you carry your beliefs into effect? You do not sit down and do nothing, I presume. What would you do to carry your beliefs into action and make them effective? ----We go from house to house preaching the gospel of the Kingdom as the main thing.

And preaching these principles in which you believe?--We belive that that will come in time. We do not go to a house and say, "The American and the British Governments are the seat of the beast and they are going to be destroyed". We would not get a hearing.

But you endeavour to propagate those views in the people you address? ---Not, if I might say so, till we have given them the milk of the word; that is to say, the simpler truths respecting the establishment of the Kingdom.

Such as the truths of the book of Revelations?---That would be strong meat.

MR.TAYLOR: You also teach, do not you, that the last war was commenced by America and England for their own purposes? ---I do not know.

Do not you? You have read the book called Vindication, have not you?---Yes.

And do not you remember reading that? Has not it been discussed at your me tings?--No, I cannot say that it has.

Then let me read you this in Volume 1, page 326: "Then came the World War of 1914, in which America without just cause or excuse engaged". Do you remember reading that?--I cannot call it to mind. I am not disputing that it is there.

Do you believe that America without just cause or excuse engaged in the last war?---At the moment, I cannot subscribe to that, because I do not remember.

Do you remember reading this: "And that conflict caused the death of hundreds of thousands of men, who left behind them a multitude of widows and orphans to mourn their loss. In that war both Britain and America pushed their poor to the front, there to bleed and die....(Reads).....seventh world power". Have you no recollection of that?---I can truthfully say that I do not remember.

Do you agree with it?---Not necessarily.

It is quite wrong, is not it?--I would not say that.

But you do not agree with it? Has this book Vindication been discussed in Kingdom Hall?---I do not remember.

It has been freely sold there, has not it?---Yes.

And there were mahy copies on hand at the time when the Commonwealth went into occupation of the building?---Yes.

MR.TAYLOR: Do you remember this passage in the same volume at page 326: "The war produced a new crop of rich.....(reads)..... ....greater amount of fraud escaped unscathed". Do you remember reading that?---No, it is so long ago; I do not.

You have read this book Vindication, have not you?---Ten years ago.

I am referring now toVolume 2, at page 54: "Tyre seems to specifically refer to the Mercantile Marine Division.... ...(reads).....ships at sea". Do you remember to what that reference is, without reading any further? Have you read the next sentence?---No, I have not.

How far did you read?--I was reading the word "Tyre".

Do you remember to what that particular passage makes reference?--- It refers to the commercial interests. Since Tyre is on the Sea of Sidon, it pictorially shows that the Tyre would refer to the commercial interests of these organisations.

And the British Empire - Britain and America; that is to say, that their Mercantile Marine is one of Satan's instruments?---No, I cannot say that in the natural sense; it is in the spiritual sense, but not in the natural sense.

Now, whom did you regard as the people of God during the last war?--- Those people who had entered into a vow or covenant to do his will.

You mean the people who are now known as Jehovah's Witnesses?---Yes.

Were they scattered during the last war?---Yes.

Where?---In Canada, particularly, if a person had a Bible, one was imprisoned.

Do you say that seriously?---Yes; it was recorded in the Golden Age magazine many years ago.

Were they scattered by the Mercantile Marine?---I do not know.

I would like to refer you now to a passage on page 55 of the same volume: "It was in 1917-1919 that the seventh world power, particularly the Mercantile Marine of Satan's organisation, succeeded in scattering the people of God". Is that a reference to a scattering of Jehovah's Witnesses?--I must confess I do not know.

Do you think it is a reference to the people of Germany?--I do not know.

It may well be read as a reference to the scattering of the peoples of Germany and Austria, may it not?---I do not know; I do not remember.

I now refer you to a passage a little further down: "The World War was really a contest for the control of the commerce of the earth.....(reads).....to control the great commerce of the seas of the earth". Is that what has been taught by Jehovah's Witnesses in S.A. and other places?---I do not know.

Have you discussed it?---No.

You knew it was in this book, did not you?---I have forgotten what was in the book.

MR.TAYLOR: Do you agree with it?--With reservations.

Do you regard that as subversive?---No.

You do not think it is?---No.

I think you told me that you read Vindication bout ten years ago?---Yes.

But copies of Vindication were sold by the Adelaide Company right up to the time they were declared an unlawful body?--Yes.

And there was a stock of copies of Vindication on hand for sale at that time?---Yes.

Going to this booklet called Government, when did you last read that?--- That is a very old one, too.

When did you last read it?--Just after it was published; I cannot tell you the date.

I want to refer you to a passage on page 4 of Government: "Immediately before God destroyed the first world power.....(reads)..... .....tottering to the fall". That is Britain, is it?--- I have not the booklet here.

Have you any doubt as to what the "last world power" means?--I really did not hear you say that when you read it.

The reference to the last world power is a reference to Great Britain, is not it?---Yes. I did not hear you say "the last world power".

That booklet was published in 1935, was not it?---Yes.

And is this one of Judge Rutherford's compilations, too?---Yes.

Then it says, "Disregarding the word of God, the blind governing powers.... ...(reads).....headed to the ditch". Do you remember reading that; it is rather a striking phrase?--- Yes.

That has been freely disseminated throughout S.A. by the Adelaide Company of Jehovah's Witnesses, has not it?---Yes.

And you yourself have taught that, no doubt?---Yes.

I would now like to go to the booklet called Neutrality. Have you a copy of that?---Yes.

I am referring to page 3. This booklet made its appearance after the commencement of the war, did not it?---Yes.

And it was published, really, because there was a war on, I take it? ---Yes.

And this teaching was disseminated to indicate to people how they should conduct themselves in relation to the war and warlike activities?---To Christians - not the public.

It was sold publicly, was not it?---I do not have any recollection that it was.

But you had many copies of this publication on hand at the Kingdom Hall, had not you, and you have only between 200 and 250 members?---Yes.

MR.TAYLOR: How many copies did you have on hand when the Commonwealth officers went into occupation?---I have no idea.

Will you agree with me that you had between 150 and 200 on hand then?---I would be surprised.

Q . . . .You know that an inventory was taken?---I did not know.

Would you agree that there were as many as 157 copies of it still there?---Yes.

Would that indicate to you that it was a stock being kept for sale? ---Not for the public.

I now want to refer to page 3, the last paragraph: "There is now war among some of the nations on earth.....(reads).... ...no doubt as to the correctness of the position they take or have taken". That was the real purpose of the publication of this book, was not it?---Yes.

And without going any further with the book at the moment, they were taught, were not they, that they must not in any way assist the war effort?---No.

Mr. McGillivray is the leader of Jehovah's Witnesses in Australia, was not he?---Yes.

Did he speak at Kingdom Hall?---Yes.

Did he tell Jehovah's Witnesses that they were not even to lend money to the country?---I do not know.

Did he tell them that they were to be entirely neutral in this conflict?---He suggested that they should be entirely neutral. The whole thing is an individual matter.

Then let us go to page 5, at the top of the page: "Jehovah's Witnesses are nota political or religious organisation, and they have no part in the political affairs of this world, not even of the nations wherein they have their domicile". Is that what has been taught to Jehovah's Witnesses in S.A.?---Yes, but I would like to add that the definition given by Mr.Alderman yesterday was the correct one. When we say that we are not a religious organisation, we are not religious in the sense that we are commercial or political.

I think you told us that yesterday. I am asking you this question for an entirely different purpose, and I want you to direct your attention to this part of the statement, that "Jehovah's Witnesses have no part in the political affairs of this world, not even of the nations wherein they have their domicile". That has been freely taught and disseminated throughout S.A. by your Society, has not it?---Yes.

And they have taught, have not they, that they do not owe any allegiance to the country?---To the King.

To the country, I am suggesting to you. Is that correct?---I am not sure.

HIS HONOR: The beliefs have been stated over and over again. You believe that there is a higher duty than to the organised State?---Yes.

HIS HONOR: And if there is any conflict between that higher duty and the duty imposed by the law of the State, then the law of the State need not be obeyed?---Yes.

And in this book of Neutrality, in another sense, you point that out by saying, "It is the privilege of all nations to fight it out amongst themselves....(reads).....God and his government"?---Yes.

Your view is that you ought to be neutral, and whatever the State thinks about it or provides, your duty is to a higher power? ---Yes.

And that is part of the doctrine which you propagate amongst your believers and the public?---Yes.

I am not certain that other religions do not teach much the same, too.

MR.TAYLOR: But it is not done by the dissemination of this matter, and we submit that is the important thing.
(To witness): When did you last read this book Religion?---Three or four years ago.

And it is correct to say, is not it, following on what His Honor has put to you, that you teach that it is wrong to take an oath of allegiance?---Yes, but may I add that you must mean that it is one of Jehovah's Witnesses who has already taken an oath of allegiance to Jehovah God.

(CONTINUED ON PAGE 35).

MR. TAYLOR: Yes, of course I understand that. It is a plain question I am putting to you. It is wrong to take the oath of allegiance even in one's own country?---One cannot do that.

You teach that, do you not?---Yes.

And there are very few matters upon which your conception of God's laws and this contry's laws do not come into conflict?---Yes.

Because you regard the laws of this country as the Devil's laws. Is not that so?---No.

Why?---Many arebased on God's law.

Referring to this book "Religion", I would like to read a passage on p.125. (Reads "Furthering.....religious leaders.") Do you remember that passage?---Yes.

You regard the taking of the Oath of Allegiance to the country or to the King as a very wrong thing to do?---In so far as Jehovah's Witnesses are concerned, yes.

I am speaking of Jehovah's Witness;and that has been taught in Kingdon Hall and right throughout the whole of S.A.?---Yes.

And this book was for public sale?---Yes.

HIS HONOR: Of course, you endeavoured to induce every member of the public to become a witness of Jehovah?---Yes, but we are not out for converts.

That is your aim?---Yes.

MR. TAYLOR: And you do know, Mr. Schneider that may Jehovah Witnesses have refused to take the Oath of Allegiance?---Yes.

In S.A.?---Yes.

And in other places?---Yes.

And they have refused to offer for registration of Military service?---I am not quite clear about registering.

A number of them have not sent in any return for Military service. You do know that?---No.

HIS HONOR: The principles of your belief are they should be neutral and they should not enter upon this war in any capacity?---Yes.

And therefore they should not enlist and they should not subscribe to the funds of the State, and so forth, and they should be completely neutral?---We have no objection to one registering or putting in one's name for registration under the State Law. There is no conflict with the word of God to do that.

Is there any harm in making munitions?---From my point of view I would not make munitions. Others of Jehovah's Witnesses are in the munitions.

MR. TAYLOR: Mr. Schneider, I just want to ask you one other question

on these matters. You have taught that all established Institutions in this country are instruments of the Devil?---Only in the spiritual sense, yes.

You have taught that they are wicked things.

HIS HONOR: I think we had better leave out religious institutions. It is a matter of political bodies that concern us. I know from what I have seen in these papers that they are bitterly opposed to the Catholic Church. It is undesirable to enter into these matters so far as it affects religious institutions. It concerns us in so far as it affects the State.

MR. TAYLOR: I would like to put one question, Your Honor, in regard to established Institutions.
(To witness): You regard all our established Institutions of this country as works of the Devil?---From a spiritual standard, yes.

From wordly standards?---No.

Why?---You could not say that a hospital is a work of the Devil.

But you could in the spiritual?---Yes.

They are all dominated by the Devil?---Yes.

You have taught that in S.A.?---Yes.

How many members are in the organisation in N.S.W.?---I could not say.

More than in S.A.?---Yes.

And in Victoria?---Yes.

And in Queensland?---Yes.

(CONTINUED ON PAGE 37)

MR.TAYLOR: (To witness): His Honor asked you a question yesterday, which had reference to the finances of the Adelaide Company of Jehova's Withesses. Do you remember that question that His Honor asked you?---Yes.

Are any financial records kept?---Yes, with reference to the building of the hall.

Where were they kept?---At Kingdom Hall.

Were any other financial records kept?---Yes.

What sort of records?---In connection with the sale of literature.

Do you know where those records are now?---No.

His Honor asked you who had the money, and I think you answered in this way: I believe it is in Kingdom Hall or in the Bank; do you remember making that answer?---Yes.

Was that answer truthful?--- Yes.

Do you remember His Honor asking you this question: Do you mean in cash in the hall, and your answer was: Cash kept in the hall or in the Savings Bank?---Yes.

Do you remember His Honor asking you this question: In whose name is the Savings Bank Account, and your answer was: The Adelaide Company of Jehova's Witnesses Incorporated?---Yes.

Were they truthful answers?---Yes, to the best of my ability.

Do you know what money there is in any bank account in the name of the Adelaide Company of Jehovas Witnesses Incorporated?---No.

Did you ever know? --No.

Did you ever operate on the account?---No.

You had a joint account with your wife, had you not, in a bank in Adelaide?---Yes.

Do you remember that account being closed?---A persodal account being closed.

Do you remember a personal account of your own being closed?---Yes.

Do you remember that an account in the name of yourself and your wife, a joint account, was closed?---Yes.

When?---After the bann.

How long after the bann?---I do not know.

Three days, was it not?---Probably, yes.

And what money was drawn out of that account?---Exactly.

Was that your money, or did it belong to the Adelaide Company of Jehovas Witnesses?---It was my money.

And it did not belong at all to the Adelaide account of the Jehova Witnesses?---No, not at all.

Was that your only bank account?---No.

Did you have any other bank account?---Yes.

Where? - - -

HIS HONOR: What is the relevance of this, Mr. Taylor? (After discussion between His Honor and Mr. Taylor on the relevance of questions on bank account, the questions were not pursued any further.)

EXHIBIT EXHIBIT NO.11.....Books referred to by Mr. Taylor with passages marked that were quoted.

HIS HONOR: Give me a list of those books with a list of your references, Mr. Taylor, which can go into the shorthand notes; we cannot take your passages without the context.

MR. TAYLOR: Very well, Your Honor. I will have those lists typed out.

MR.ALDERMAN: (To witness): Are these books in this suit case in Court (indicating) the remainder of the literature which was disseminated from Kingdom Hall?---Yes.

Some more and some less?---Yes.

I will tender these books, if Your Honor pleases.

HIS HONOR: What is the relevance of them? (A discussion took place between His Honor and Mr. Alderman as to the relevance of a large number of books contained in a suit case in Court).

MR.ALDERMAN: (To witness): These are books which deal with the objectives of Jehova's Witnesses?---Yes. (identifying books in Suit case).

Which are the books, which have been mostly and usually disseminated since the War?---The last three.

Which are they?---"Riches", "Religion" and "Enemies".

They are the three latest books, are they?---Yes.

Are those three the only books that have been published since the war?---Yes.

I do not mean distributed, but published?---Yes.

HIS HONOR: What is the argument in those books; I am using the word "argument" in the reasoning sense?---The book does not deal in controvery with either political nations nor with any religious organisation. It is purely showing the riches of God as compared with earthly riches.

MR. ALDERMAN: And "Enemies"; what does that show?---Fundamentally, the enemies that are against the Kingdom of God whether invisible or visible.

HIS HONOR: Do you say that those books contain no statements against the State at all?---The book "Riches" does not.

It does not refer to the greed of the modern State or people of the State; the argument is not concerned with that idea?---No.

It is merely a religious argument expressing your belief in what you call the Kingdom of God?---Yes.

MR.ALDERMAN: And "Enemies" ?---Yes, somewhat similar to "Religion".

"Religion" is the one that has already been put in?---Yes.

HIS HONOR: Denouncing modern States, greed and their own righteousness?---Yes.

EXHIBIT EXHIBIT "F".....Books "Enemies" and "Riches".

MR.ALDERMAN: I also tender a list of the other publications which have been disseminated. (To witness): Is this a list of the other works that have been published, with the year of their publication, which were disseminated, and which were in Kingdom Hall, and which were distributed. (List produced)?---Yes. (Identified).

EXHIBIT EXHIBIT "G".....List of published books.

(The books or the contents of the books were not tendered, just the list).

MR.WESTON K.C.,: At page 366 of "Riches" there is an attack on the Roman Catholic Church.

MR. ALDERMAN (To witness): As to this pamphlet "God", was it disseminated from Kingdom Hall?---No.

Have you seen this pamphlet before?---Yes.

It has a form of oath that applies to the United States. Is that the form of oath that Jehova Witnesses could and would take in Australia or in England, as applied to Australia and England?---Yes.
(Mr. Alderman was heard to read the form of oath, 1941).

HIS HONOR: Do you take that oath amongst your adherents in South Australia?---We do not do that as a practice, but I would take that oath.

And you would not take any other?---No.

How did you come to be sworn in the witness box in this case?---I am sorry. I misunderstood you. The swearing in of an oath on the Bible is not contrary to the literatures.

That is what I should have thought. That is a form of oath that your adherents are prepared to accept?---Yes.

And you are also prepared to take the oath in the witness box?---Yes.

MR.ALDERMAN: I tender this pamphlet.

EXHIBIT EXHIBIT "H".....Pamphlet called "God and the State", containing the form of oath.

MR.ALDERMAN: I did tender the Year Book for 1942, Your Honor.

HIS HONOR: Yes, that is marked Exhibit "D".

MR.ALDERMAN (To witness): This is the Year Book for 1941 (produced). ?---Yes. (Identified).

Was that book used by the Jehovah's Witnesses?---By the Jehovah's Witnesses.

Freely?---Yes.

I want to ask you if you agree with these two passages which appear at pages 100 and 101. I will read them so that they may appear in the transcript. "All sincere lovers of liberty and righteousness admire the courage and fortitude of the British people. They are fighting against a beastly horde of gangsters that are taking all peace from the earth. While being harrassed and constantly assaulted by the wicked horde from Continental Europe, the British people show far greater consideration and kindness for Jehovah's Witnesses than any other nation now on the earth. Britain has always favoured freedom, and her people have given much attention to the study of the Scriptures, and no doubt this has greatly helped them in this present hour of distress." Again, further down on that page 101, about two-thirds of the way down, this appears: "The government officials generally have been very considerate with Jehovah's Witnesses and their work, and for that kindness the Lord may be expected to show them some substantial favour. It is not for us to say what the Lord will do, but we take this occasion to express appreciation of the stand the British Government takes in behalf of freedom of speech and freedom of worship and the proclamation of the only message that shall bring peace and comfort and blessings to the world."
(To witness): That was disseminated amongst the Jehovah's Witnesses in Adelaide, at least?---Yes.

And you believe, elsewhere?---Yes.

MR.ALDERMAN: To show the continued teaching in these books, Your Honor, I desire to tender also the Year Books of 1939 and 1940; they show the religious principles upon which they teach.

EXHIBIT EXHIBIT "I".....Three Year Books of 1939,1940 and 1941.

(To witness): Was this book entitled "Judge Rutherford Uncovers the Fifth Column" published in 1940?---Yes.

Was this one of the books (produced) disseminated from Kingdom Hall ?---Yes. (identified).

EXHIBIT EXHIBIT "J".....Book published in 1940 entitled "Judge Rutherford Uncovers the Fifth Column".

(CONTINUED ON PAGE 41)

MR. ALDERMAN: I draw attention, in particular, to the following passages. Page 6:- "Everybody who knows Jehovah's Witnesses knows that they are against the totalitarian state.....to crush all of Jehovah's Witnesses." That appears there?---Yes.

And page 8:- "Not one word can be found in any of our publications .....are working together."?---Yes.

(Mr. Weston objected to the question as being any evidence of what is stated.)

The book "Prophesy", page 132: You were asked yesterday about "Satan's Organisation" and that the British Empire was part of "Satan's Organisation" and so on?---Yes.

Is there in this book "Prophesy", at page 133, a description of what is "The Devil's Organisation", according to the way in which you were using the phrase yesterday?---Yes.

What is that description?---The organisation is designated "This Present Year World over which Satan is the God"... 2 Cor., verses 3 and 4. "The invisible part is called Heaven because invisible, while the visible part is called Earth because visible to man"..& 2 Peter, 3 and 7.

Applying that, according to your use of the phrase "Devil's organisation" in that literature it includes Heaven and Earth?---Yes.

In what sense are they used? Can you give us shortly the sense in which "Heaven" and "Earth" and "The Devil's organisation" are used in your literature?---I might refer to the Bible to get the true words. This citation from Peter refers to the world which will be done away with, but the Heavens and the Earth which are now by the same Word are kept in store, reserved unto fire, against the day of the judgment and partition of ungodly men. Nevertheless we, according to this promise, look for a new Heaven and a new Earth wherein dwelleth righteousness.

Can you tell me now the sense in which you use the phrase "Devil's organisation " in your literature?

HIS HONOR: Is it not plain? The Devil's organisation is an organisation that is not of the Kingdom of God. That is your definition of it? Whatever the Kingdom of God may be is another matter.

MR. ALDERMAN: But do you use the word "Devil" in the sense in which it is used in plain English?---I would say the Devil is Mammon or worldliness.

You do not mean it in the very sinister sense in which it is used ordinarily as a matter of plain English?---No.

Was it in that sense that you said yesterday that you thought that troops and the Navy were being used for a Satanic purpose?---Yes.

What did you mean when you said yesterday you regard those troops and Navies as instruments of the Devil being used for a Satanic purpose?---I would suggest there that the troops

were being used in a commercial sense, in that the leaders are out for greed, they are unrighteous, they are worldly, and they worship the god of Mammon.

Did you intend to convey that soldiers and sailors were in themselves in any way wicked?---No, I could not say that because some are conscientiously serving their country, they are doing humanitarian work in hospitals and looking after the sick in the Army Medical Corps and other units.

HIS HONOR: However, apart from Jehovah's Witnesses, mankind seems to be serving the Devil?---In a broad sense.

MR.ALDERMAN: Too worldly.

HIS HONOR: I think it is useless getting into this theological disputation. The question is whether the beliefs that they propagate and publish to the world are subversive of the State.

MR. ALDERMAN: Yesterday you were asked "Would you regard as subversive anything detrimental to the continuance of the Commonwealth?" You said "No". That means you would not regard as subversive anything which was detrimental to the Commonwealth?---I meant "Yes". I answered incorrectly.

HIS HONOR: I think your answer in the negative was right, from your point of view, was it not? You do not regard your association as subversive of the Commonwealth of Australia? ---No.

That is all that answer means, I think. Is that not how you regarded it, Mr. Alderman?

MR. ALDERMAN: Reading it through last night, I did not quite know what it meant. "Would you regard as subversive anything detrimental to the continuance of the Commonwealth?" The answer was "No", and it just conveyed nothing.

HIS HONOR: I understood you to mean that you do not regard your organisation and its activities as detrimental to the Commonwealth of Australia. That is your view?---Yes.

MR. ALDERMAN: And when you, yesterday, assented to the proposition that Britain and America form an earthly empire where Satan is maintained as chief officer on earth, in what sense did you use that?

MR. WESTON: The witness gave a categorical answer yesterday.

THE WITNESS: I did not mean that he had an office in The Strand or in Picadilly in London. I understood that to be, since the Devil, as we have explained, is invisible and has a seat in the Heavens, it is regarded in the Heavens that his influence over these nations is worldly, unrighteous, wanton and greedy.

And the British Empire, as a financial centre, is one of the centres of that: is that the idea?---Yes.

(THE WITNESS WITHDREW).

KINGSLEY CARNEGIE SMITH, sworn and examined:

MR. ALDERMAN: Insofar as the Body exists, you are the secretary of the Adelaide Company of Jehovah's Witnesses?---Yes.

You have been Secretary since when?---It would be for the last six or seven years, I think.

You have continued as such right up to the present time?---Yes.

What is your occupation?---Tram Conductor.

Did you go to the last war?---Yes, I served four years overseas.

Did you have anything to do with the building of Kingdom Hall?---Yes, I was actively engaged in the work.

And actively engaged in collecting the funds?---I helped to, and also in erecting the building.

It is a fact that the funds were collected from Jehovah's Witnesses?---That is so.

And a lot of voluntary work in erecting the building was done by Jehovah's Witnesses?---Yes, a great deal of it.

You heard Mr. Schneider's description of the building?---Yes.

And that description was accurate, for our purposes?---Yes.

What would be the approximate value of the place?---A conservative estimate would be £3,000.

What is regarded as a fair rate of return on property - 10 per cent gross?---10 per cent, yes.

You think £6 a week would be a fair rent?

HIS HONOR: Do you think you could rent it at that?---I would imagine so. There have been several inquiries since the ban for it to be rented.

MR. ALDERMAN: I think you were instrumental in having the Adelaide Company of Jehovah's Witnesses incorporated?---I was one.

I think that is a copy of the rules. (Book to witness). My friend is not objecting to my proving it informally, Your Honor.

THE WITNESS: It is.

MR. ALDERMAN: And you were one of the four trustees named there?---Yes.

EXHIBIT EXHIBIT "K".....Rules of Jehovah's Witnesses.

HIS HONOR: These are the rules filed in the Registry, are they?

MR. ALDERMAN: Yes.

HIS HONOR: What is its object?

MR. ALDERMAN: I think Your Honor would be interested to read them. They are somewhat unusual rules. The only object is a limitation, as far as I can see.

MR. WESTON: Does Your Honor see Rule 9?

HIS HONOR: Yes, I am more interested in Rule 1.

MR. ALDERMAN: It is perfectly consistent with the idea that this church shall not be an organised religious body. There is a consistency about it. That is one merit it has.

You went to live on the premises, with your wife, about the middle of 1940?---Yes.

And continued there till you were excluded by the Military?---Yes.

That hall, I think, was never used for anything other than religious meetings?---Nothing whatever.

It was never used for dancing or let to the public in any way?---No.

When were meetings held there?---On Sunday afternoon and evening. On Monday night there was an Executive meeting. On Tuesday night there was what we call a group meeting, consisting of eight, nine or ten members living in the vicinity who met there for study. On Thursdays for a while there was a study, and then once a month on Saturday evenings, after engaging in the service work in the afternoon the members returned to the hall for tea and there was either a discussion on the work generally or else there was a discourse by one of the Brethren or else a transcription record by Judge Rutherford.

How many would attend, on the average, such a meeting on a Saturday night?---Anything up to 100 I expect.

And the group meeting, the Tuesday one?---Eight, nine or ten.

And the Sunday?---Sunday, up to 200.

And the Thhrsday one?---Thursday there would be in the vicinity of 100 also.

You heard Mr. Schneider's description of what was in the hall?--- Yes.

And his description of your meetings?--Yes.

In substance, is his evidence accurate?---Yes.

Is there anything of any substance that you want to correct?---I cannot think of anything just now.

On the 10th January, I think the Military people came to the place. Did they take anything away? ---Yes, they took documents, records. I understand they were financial records. Practically, I think, that was all financial records concerning the transactions of the organisation.

Do you know the name of the officer who removed those? Was it Forgan?---He was there, but whether he was the one responsible for the removal I do not know. I understand Mr. Williams of the Attorney-General's Department was there also.

The two responsible people present were Mr. Williams of the Attorney-

General's Department and Capt. Forgan?---Yes.

And they removed some records which you believe were financial or business records?---Yes.

On the 17th January I think you were out when the Military came? ---I was at work at the time.

I think you returned to Kingdom Hall?---I was met by my wife at my place of employment.

You went to the hall and tried to get in?---Yes.

You used a key?---Yes, a key in my possession, and the key would not work; that is to say the lock inside the door was switched over and I could not operate the key.

You could not get in at all on that occasion?---No.

You went to the Police Station and a policeman was sent with you and you went back to the premises?---That is so.

And I think you and your wife were allowed to remove your personal belongings?---Yes.

All of them?---Just clothing.

Did they prevent you taking anything in the nature of personal property?---Yes: there were papers in the wardrobe and papers in the dressingtable, private papers, letters, which the detective who was searching took from me. He refused to let me have them.

That was on the 17th, and I think you went back. You were not allowed in the hall again till the 27th January?---No. Under in tructions from Mr. Trezona I was not permitted to go into the hall for any purpose without his permission.

And I think on the 27th January you were permitted to go in and remove your furniture?---Thereabouts.

HIS HONOR: It is only the exclusion of the company from the hall, Mr. Alderman.

MR. WESTON: That is admitted on the pleadings.

MR. ALDERMAN: From the 27th January you have been excluded from the hall altogether?---Absolutely.

The hall has been locked against everyone, as far as you know?---Yes.

And for any purpose?---Yes.

When you were there on the 27th January is it a fact that there were goods there that were not there on the 17th January?--- That is so.

They had been brought there in the meantime?---Yes.

I think you were able to identify some of them?---Yes.

Whose were they?---They belonged to members of the organisation, private members - gramophones and records. They were collected from various homes by the police and brought to the hall.

The hall was being used as a storeroom?---As a storeroom.

I think you saw the document tendered by Mr. Schneider as a statement of his religious beliefs and the beliefs of Jehovah's Witnesses (Exhibit "A")?---Yes.

I think you have been through that document?---Yes.

Does that accurately represent your views?---Yes.

I think to some extent you and Mr. Schneider prepared that together? ---Yes, largely.

In order to set out accurately the beliefs of Jehovah's Witnesses? ---Yes.

At meet-ings at that hall have you ever known anything subversive to take place?---Nothing at all.

Have you ever heard anyone there speak disloyally of Australia?--- No, Sir.

Or advocate the doing of anything actively to interfere with Australia's war effort?---No, Sir, I never heard it.

CROSS-EXAMINED BY MR. WESTON:

Were you in Court while Mr. Schneider gave evidence?---Yes.

And were you listening carefully to the answers he made to Mr. Taylor? ---Yes.

And, broadly, do you agree with the answers he made to the questions put to him by Mr. Taylor?---In some cases I did not agree with it.

Was there any matter which appeared to you material on which you disagreed with Mr. Schneider, or were they matters of detail on which you disagreed with him?---Matters of detail rather.

HIS HONOR: Was this hall used exclusively for the meeting of the Association of persons known as Jehovah's Witnesses?--- Yes, Sir.

And for no other purpose?---No other purpose at all.

And the books and so forth that were found in the hall were used by the Association of persons known as Jehovah's Witnesses?---That is so.

(CONTINUED ON PAGE 47).

HIS HONOR: And can you tell me, who are the members of the Incorporated Company of Jehovah's Witnesses?---We regard those as members who have made a consecration to do God's will, and who, in our presence, and to our knowledge, have symbolished that consecration by water immersion.

MR.FULLAGAR: Baptism?---Yes.

HIS HONOR: By Jehovah's Witnesses?--Yes, those who have shown by their course of action that they have devoted their lives to the service of Jehovah, and in the majority of cases we know by their having undertaken this step of immersion that they have adopted that course of action.

In short, all adherents to your religious beliefs?--Yes, those who are in harmony with those beliefs.

And is baptism an essential for membership or just indicative of membership?---Indicative of membership.

You have no list of members?---No.

And you have no subscriptions?--No, only voluntary contributions.

A sort of offertory at meetings?---Yes. We do not take a collection plate round. It is just a matter of each one giving what they feel disposed to do.

MR.FULLAGAR: You are acquainted, are not you, with all those who habitually come to Kingdom Hall?---Yes.

And about how many of those are there roughly?---200 to 250.

And they are acquainted with one another, I take it?---Yes.

(THE WITNESS WITHDREW).

MR.FULLAGAR: That, if Your Honor pleases, is the case for the plaintiff.

MR.WESTON: I tender -

EXHIBIT. EXHIBIT 2. Commonwealth Government Gazette dated 17th January 1941, showing publication of the opinion of the Governor-General.

EXHIBIT. EXHIBIT 3. Order of the Attorney-General dated 17/1/41.

MR.WESTON. That is my case, Your Honor.

(Counsel then addressed the Court).

TLS/BJ

W 4256

SL.21369/6 1st December, 1942.

The Crown Solicitor.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

This action came on for hearing in the High Court in Melbourne on 23rd November 1942, before His Honour Mr. Justice Starke. The hearing continued on 24th and concluded on 25th November, 1942. Mr. W.K. Fullager K.C. with him Mr. H.C. Alderman and Dr. Frank Louat of Counsel, instructed by Messrs. Remington & Co. of Sydney, by their Melbourne Agents Messrs. Pearce and Webster, appeared for the plaintiff, and Mr. C.A. Weston K.C. with him Mr. A.R.Taylor of Counsel, instructed by this Office, appeared for the defendant.

2. At the commencement of the hearing the plaintiff applied for, and obtained, leave to amend its replication, and a copy of the amendments is herewith. The defendant also obtained leave to amend its statement of defence, by inserting in paragraph 2, after the words "and not otherwise" the words "and the property mentioned has at all material times been on the said land and in the said premises." The defendant also applied for leave for notes to be taken of the argument as well as the evidence, but such leave was refused, His Honour stating that only the evidence could be taken.

3. Mr. Alderman opened and addressed himself to illustrating the results of the Governor-General's order. He submitted that, as many of the ordinary doctrines of Christianity were tenets of Jehovah's Witnesses, the Bible was now a banned book, and it was illegal for, say, a Roman Catholic priest, to preach such a doctrine as the divinity of Christ. He expressed the view that, if a religio could be shown to be a cloak for subversiveness, or if, in addition to being religious, a body could be shown to be subversive, an order could be made under the Regulations in respect of the subversiveness, but not in respect of the religion. The Jehovah's Witnesses, he stated, are religious and wholly so. At this point His Honour expresse the view that, in the case put, religion could not be separated from subversiveness. He added that the only two courses open to the plaintiff were to prove an infringement of the judicial power, or else that the Regulations were contrary to Section 116 of the Constitution. He also stated his view was that Regulation 3 had, in its terms, no relation whatever to Section 116, but whether the infringement of rights could be left to the Governor-General and not to a Court was another matter.

4. Mr. Alderman, continuing, submitted that the Regulations were penal in that they operated to forfeit property by executive action. Also the Commonwealth acquired property on unjust terms. His Honour stated that an argument based on Section 51 (xxxi) could not be sustained, but he would have thought that the provision was a penal one. Further, he did not think an incorporated body could have a religion, and, in any case, the free exercise of religion cannot possibly sanction seditious practices. Constitutional safeguards are necessary, but Section 116 does not mean exactly what it says. If a religion is seditious, it must be suppressed.

5. On the question of the plaintiff's capacity for religious beliefs, Mr. Alderman showed that the Associations Incoporation Act of South Australia provides for incorporation for certain purposes only. Also, he submitted that even if the religion of which the suppression was complained of were someone else's religion, i.e. the religion of the members, the plaintiff had suffered the damages.

P.T.O.

6. Evidence was then given by William Karl Schneider concerning the building of Kingdom Hall, in Sturt Street, Adelaide, the incorporation of the plaintiff and his own beliefs as a Witness of Jehovah as illustrative of the general beliefs of the members and tenets of the body.

7. Mr. Weston objected to the statement on a number of grounds of which the first was that the Governor-General's opinion was not examinable. He cited Liversidge's case in support of his argument and suggested that His Honour, as a single Judge, would not decide contrary to the House of Lords. His Honour stated that he desired it to be argued whether in the face of Sections 71 and 116 of the Constitution Regulation 3 of the National Security (Subversive Associations) Regulations could operate validly on the opinion of the Governor-General.

8. On the question of Section 116, Mr. Weston suggested that there were three positions to which the regulation could apply. They were - (a) if religion was used as a cloak for subversive action; (b) if a body was religious, but was also, in addition, seditious; and (c) if the religion itself was subversive. In any of these cases, Section 116 would not operate to prevent the application of the regulation.

9. On the question whether the power given by the regulation to the Governor-General infringed upon the judicial power, Mr. Weston referred to R. v. Bevan (now reported in the current Argus Law Reports) in which the Court held that the setting-up of a Court Martial under the Naval Defence Act was not an infringement of that power, and submitted that, in relation to the present case, the test was whether the forfeiture provided for by the regulations was a precautionary or a punitive measure. If the Governor-General had been adjudicating upon acts which were antecedently unlawful, that would have been an infringement on the judicial power but it was the regulation itself which made acts unlawful consequent upon a decision of the Governor-General. The difference was, he submitted, that the Regulations gave power to the Governor-General to effect the future existence and acts of a body, whereas the exercise of judicial power involved the passing of judgment upon past acts, and any future effect of such a judgment was penal, as opposed to precautionary. The present action, he said, was an indication that the matter was not withdrawn from the judiciary.

10. At this point His Honour stated that he did not, at the moment, agree that there was no exercise of judicial power involved in the order of the Governor-General. The plaintiff appeared to him to have become unlawful as a result of a judicial decision given otherwise than by a judicial body constituted in accordance with the Constitution.

11. In answering His Honour, Mr. Weston referred to Farey v. Burnett and Lloyd v. Walloch and submitted that the Regulations went no further than precautionary administrative and legislative action. He submitted that they were preventive and not remedial, and cited the recent decision of the Court in the application for release from internment of Adela Pankhurst Walsh.

12. In conclusion Mr. Weston cited the American cases in support of his arguments concerning Section 116. The cases were:- Hamilton v. University of California, 79 U.S. Law Ed.; Minersville School v. Gobitis, 84 U.S., Law Ed., and submitted that the inclusion of the word "for" in Section 116 argued that the purpose rather than the effect of the law was the test of its constitutionality. The present regulations, he said, were a law for the defence of the Commonwealth, and any incidental interference with religion could not invalidate it.

13. Mr. Fullagar stated the evidence was for the purpose of establishing that the plaintiff was a religious body. He submitted that the evidence was necessary to his argument that it was the effect and not the purpose of an enactment which determined whether it was contrary to Section 116. He stated that his argument on this point would be that, if Section 116 did not apply to the effect, rather than the purpose, of legislation, it would have no meaning. As the Commonwealth has no power to pass legislation of a religious nature, a prohibition against the passing of a law of such a nature would be abortive. The section could therefore be effectual only if it affected legislation of which the effect was an interference with the free exercise of religion. Reference was made to the American case of Do Jonge v. The State of Oregon (299 U.S. 353).

14. His Honour expressed the opinion that it would be necessary for section 116 to be "read down" in a manner similar to the decisions on Section 92. He decided to admit the evidence, subject to the objection.

15. Schneider's evidence was then continued, and a transcript thereof has been furnished.

16. Evidence was then given by Kingsley Carnegie Smith as to the actual acts of trespass complained of, and the case for the plaintiff was closed at 12.50 p.m. on 24th November, 1942.

17. The case for the defence consisted of tendering the Gazette containing the Governor-General's Order of 17th January 1941, and the original Order of the Attorney-General of the same date. Mr. Weston then addressed the Court.

18. His submissions were, first, that the opinion of the Governor-General was not examinable. In support of this argument, reference was made to Liversidge v. Anderson 58 T.L.R. 35. His Honour expressed the view that the opinion was not examinable, and that the question calling for his consideration was the validity of the order and the Regulations.

19. Mr. Weston divided his argument on validity into two main divisions, the first concerning Section 116 and the second on the question whether the Governor-General's order was a usurpation of the judicial power.

20. Under the first head he recapitulated his argument that, in view of the use of the word "for" in Section 116, it was the purpose and not the effect of legislation which must be regarded in considering its validity. In support of this argument he cited a number of American cases, to which the references are set out below, and argued that those cases established that principle for the United States, even though the First Amendment did not contain the word "for" in the context in which it appears in our Section 116.

21. Mr. Weston also submitted that the government has a right to survive and that that right is paramount. Section 116, he said, must be "read down", and should not be allowed to afford a protection for acts subversive to good order and the peace and welfare of the community.

22. The Regulations, he said, are a law for defence purposes, and not for the suppression of religion, and, if they have an incidental effect which infringes on the free exercise of religion, that does not invalidate them.

23. His Honour then stated, and repeated several times later, that, in his view, the question was simply a matter of operation If the law was sufficiently wide to allow the suppression of all religions, how could it be good in the face of Section 116. At the moment, it appeared to him that the Governor-General, by an unexaminab decision, could declare illegal such a body as the Roman Catholic Church, and all we could say would be "rely upon the good faith of the government." His Honour added that it was erroneous to imagine that

P.T.O.

the defence power had no limits, as that power, like the others, is expressed to be subject to the Constitution. The Commonwealth could certainly suppress all subversive acts, and could probably leave it to the Governor-General to decide if particular acts were subversive, but this regulation appeared to be toowide. What power was there that would justify the Governor-General in ignoring Section 116? There was, he said, nothing to prevent the penalisation of anti-social acts, and this regulation would be good if only particular acts were proscribed, but it appeared to allow the prohibition of religion as such.

24. Mr. Weston then referred His Honour to Section 15A and 46 of the Acts Interpretation Act 1901-1937.

25. The cases referred to in this portion of the argument were:- Liversidge v. Anderson (58 T.L.R. 35), Krygger v. Williams (1915 C.L.R.), Davis v. Beason (133 U.S. 333), Minersville School Board v. Gobitis (310 U.S.), Farey v. Burvett (21 C.L.R. p. 443), Lloyd v.Wallock (28 C.L.R.), Hamilton v. University of California (79 U.S. Law Ed.)

26. Mr. Weston then proceeded to argue the question of whether the Governor-General's order was an exercise of judicial power. He referred to the Unlawful Associations Act 1916, Pankhurst v. Kiernan (24 C.L.R.), the recent application of Mrs. Adela Walsh in connection with her detention under Regulation 26 of the National Security (General) Regulations, Rex v. Halliday (1917 H.L.), and submitted that the exercise of a similar discretion had been held valid in each case. Further, Liversidge's Case related to a provision that an order could be made where a Secretary of State "had reasonable grounds to believe", whereas the present Regulation provided for the action being taken on the formation of an opinion, and contained no provision for the existence of reasonable or any grounds, and was therefore a stronger regulation in this direction than that upon which that case was decided.

27. In conclusion Mr. Weston raised the point of how far the plaintiff, being dissolved by the Regulations, and, in any case being incorporated for certain purposes only, could litigate, and whether an incorporated body could have religious beliefs.

28. He also raised the question of the meaning of "religion" in Section 116. He suggested that the American cases drew a strong line of demarcation between a man's attitude to his Maker, and interference with his fellow men, and that a cult was not necessarily a religion.

29. Mr. Fullagar submitted that, in its relation to Section 116, the object of legislation did not matter. The effect of it was the test of its validity. The Commonwealth had no power to legislate with respect of religion, and Section 116 must mean that no law of the Commonwealth under any of its powers should have the effect of prohibiting the free exercise of religion. He submitted that the Regulations are tremendously far-reaching and that there could be no doubt that they could operate to restrict religion, and that the existence in the Regulations of such a power must invalidate them, irrespective of whether that power had in fact been exercised.

30. He referred to Myer v. The State of Nebraska (262 U.S.390 at 399, 400), Hamilton v. The University of California (293 U.S. 245 at 262), De Jonge v. The State of Oregon (299 U.S. 353 at 362), Hardam v. Lowry (301 U.S. 242 at 258-9) and Stromberg v. The State of California. His Honour here stated that apart from the question of the judicial power, there seemed to be no objection to the form of this regulation.

31. Mr. Fullagar, however, stated that it applied to all doctrines, prejudicial or otherwise and so could apply to innocent acts, and cited Hague v. C.I.O. (307 U.S.496 at 515,516).

Crown Solicitor.

His Honour expressed the opinion that the American cases showed that there is still power to prohibit unsocial acts even in the face of the religious guarantee, and that, like the "free trade" provisions, Section 116 simply would not work if read absolutely. He also stated that, in his view, the plaintiff, although probably not actually seditious was a body dangerous to the Commonwealth in time of war. Mr. Fullagar cited Schneider v. The State of New Jersey (308 U.S. 141 at 158-165), Cantwell v. The State of Connecticut (301 U.S. 296 at 303-4), and Krygger v. Williams (15 C.L.R.)

32. He then proceeded to his argument on the question of judicial power, and submitted that it was an exercise of judicial power to say whether or not facts existed from which penal consequences flowed, and, if the final decision rested in a body other than a judicial one, s. 71 was infringed. He distinguished Pankhurst v. Kiernan and the other immigration cases, and referred to Wong Wing v. U.S. (163 U.S. 228). He submitted that the confiscation provided for by the Regulations is punitive and not precautionary.

33. In reply Mr. Weston submitted that the regulation was precautionary and not punitive and suggested that the definition of "unlawful doctrines" in Regulation 2, could, in order to avoid an absurdity, and should, be read by inserting a comma after "whatsoever."

34. His Honour reserved judgment, and enquired whether, in the event of him coming to a decision adverse to the Regulations, the parties desired him to refer the matter to the Full Court. He referred to Section 23 of the Judiciary Act, and pointed out the possible difficulties of obtaining a decision on appeal. After some discussion, in the course of which the plaintiff indicated that it would prefer a decision from His Honour, and the defendant inclined in favour of a reference, His Honour said that he would discuss the matter with the Chief Justice before deciding on his course of action.

35. I should be glad to receive your instructions in this connection.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per

The Secretary.

Referred for instructions. I suggest that a reference is preferable.

H. F. E. Whitlam

(H. F. E. WHITLAM)
CROWN SOLICITOR.
3/12/1942.

Mr Latham has file

TLS/OB

W 4256

SL/21369/6 18th December, 1942.

THE DEPUTY CROWN SOLICITOR
MELBOURNE.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA

I refer to my telephone conversation with you in which you informed me that His Honour Mr. Justice Starke had marked on the draft reference herein the following notes:

"Paragraph 1 of Mr. Weston's memorandum. Issue is joined upon paragraph 3 of the Replication.

Paragraphs 2 and 3. Is there evidence of any other matters? Otherwise paragraph 4 of case is sufficient.

I see no reason for adopting the suggestions made by Counsel".

2. These notes have been shown to Counsel, who have made observations set out hereunder in connection with the comments of His Honor.

3. With reference to His Honour's note concerning paragraph 1 of the memorandum, Counsel points out that paragraph 3 of the Replicati makes no reference to any seditious enterprise, but concerns itself solely with the religion of the plaintiff. Issue is joined thereon, bu the question whether or not the plaintiff was engaged in a seditious enterprise did not become an issue. Evidence given by witnesses for th plaintiff was directed to showing that it was a religious body, and the defendant's cross-examination, upon His Honour admitting the evidence subject to objection, was directed only to the question whether the existence of the plaintiff was prejudicial to the defence of the Common- wealth and the efficient prosecution of the war.

4. Counsel suggest that such matters did not raise the questio whether or not the plaintiff was engaged in a seditious enterprise, an that paragraph 13 of the case be deleted.

5. With regard to His Honour's note on paragraphs 2 and 3 of t memorandum, Counsel are not so much concerned with the additions to paragraph 4 of the case, suggested in paragraph 3 of the memorandum, which they regard as of minor importance, as with the restrictive phraseology of paragraph 14 of the stated case, which appears to conf to the matters set out in paragraph 8, the matters, taught and procla by the plaintiff, which are prejudicial to the defence of the Commonwe and the efficient prosecution of the war.

6. Counsel point out that the matters in paragraph 8 were proved as being illustrative only of the doctrines and teachings of t plaintiff. No claim was made by either side to have proved complete and in detail, all the doctrines of the plaintiff and/or the practic consequences of their application.

7. Evidence was given generally of the beliefs of the plain and the cross-examination was upon a number of selected passages fro certain of the plaintiff's literature, and was for the purpose of il strating, by example, the nature of the doctrines subscribed to and disseminated by it.

8. For these reasons, Counsel have taken the view that para 14 of the case should not be so phrased as to state that the doctrin mentioned in paragraph 8 are the only doctrines of the plaintiff. T

think that, although no concrete evidence of other doctrines was given, it was made clear by both parties, that those doctrines were not exhaustive. Accordingly, they suggested in the memorandum that paragraph 14 should not refer to paragraph 8 as containing a statement of the beliefs of the plaintiff, but only of those proved at the hearing as examples.

9. Counsel have suggested that, if His Honour were approached through the Deputy Registrar, he might consent to consider the relevant portions of this memorandum so that he might be informed of the reasons for the submissions made by Counsel.

ATTORNEY-GENERAL'S DEPT. RECEIVED DEC 24 1942 CANBERRA

(GEORGE A. WATSON)
Deputy Crown Solicitor

The Crown Solicitor,
CANBERRA.

Forwarded for your information.

GEORGE A. WATSON
Deputy Crown Solicitor.
Per:

The Secretary
Attorney-General's Department
For your information
Crown Solicitor

23 DEC 1942

COMMONWEALTH ATTORNEY-GENERAL'S DEPT. RECEIVED DEC 10 1942 CANBERRA

W 2556 K.K.

TLS/BJ

SL.21369/6

9th December, 1942.

The Crown Solicitor.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH OF AUSTRALIA.

Forwarded herewith are three copies of a memorandum prepared by Counsel for submission to His Honour, Mr. Justice Starke, containing comments on the draft stated case herein.

2. Copies have been forwarded to the Deputy Crown Solicitor, Melbourne, for transmission to His Honour through the Registrar of the High Court.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per

The Secretary
Attorney-General's Department
For your information
Crown Solicitor

Encl.

10 DEC 1942

THE COMMONWEALTH OF AUSTRALIA ats ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

MEMORANDUM.

It is respectfully submitted -

1. That paragraph 13 of the draft Case be deleted. Whether the plaintiff or the persons known as Jehovah's Witnesses were engaged in sedition or in a seditious enterprise is not and was not in issue and the defendant did not take upon itself the burden of establishing this. It took up the position that the Governor-General's opinion was not examinable but upon His Honour admitting oral evidence subject to objection it directed cross-examination only to the question whether the existence of the plaintiff was prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

2. That the finding in the first part of paragraph 14 should not be limited to the matters set forth in paragraph 8 of the Case in as much as such matters are only illustrative and not exhaustive of the subversive teachings and activities of Jehovah's Witnesses. Effect can be given to this submission by substituting a modified clause 14 as follows:-

> "The said incorporated association and the association of persons known as Jehovah's Witnesses proclaim and teach matters prejudicial to the defence of the Commonwealth and the efficient prosecution of the war some of which matters are set forth in paragraph 8 of this Case, but otherwise their beliefs or teachings are but primitive religious beliefs."

3. That there should be added to clause 4 of the draft Case the following words or words to the following effect:-

> "and the matters referred to in paragraph 14 hereof were in common with the other teachings of Jehovah's

Witnesses proclaimed and taught in the said hall and instruction in the said matters was there given to members of the association and other persons. The offices contained in the said hall were used as the offices of the association in the State of South Australia from which the activities of the association were conducted."

(Sgd.) C. A. WESTON

A. R. TAYLOR

THE COMMONWEALTH OF AUSTRALIA ats ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

MEMORANDUM.

It is respectfully submitted -

1. That paragraph 13 of the draft Case be deleted. Whether the plaintiff or the persons known as Jehovah's Witnesses were engaged in sedition or in a seditious enterprise is not and was not in issue and the defendant did not take upon itself the burden of establishing this. It took up the position that the Governor-General's opinion was not examinable but upon His Honour admitting oral evidence subject to objection it directed cross-examination only to the question whether the existence of the plaintiff was prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

2. That the finding in the first part of paragraph 14 should not be limited to the matters set forth in paragraph 8 of the Case in as much as such matters are only illustrative and not exhaustive of the subversive teachings and activities of Jehovah's Witnesses. Effect can be given to this submission by substituting a modified clause 14 as follows:-

> "The said incorporated association and the association of persons known as Jehovah's Witnesses proclaim and teach matters prejudicial to the defence of the Commonwealth and the efficient prosecution of the war some of which matters are set forth in paragraph 8 of this Case, but otherwise their beliefs or teachings are but primitive religious beliefs."

3. That there should be added to clause 4 of the draft Case the following words or words to the following effect:-

> "and the matters referred to in paragraph 14 hereof were in common with the other teachings of Jehovah's

Witnesses proclaimed and taught in the said hall and instruction in the said matters was there given to members of the association and other persons. The offices contained in the said hall were used as the offices of the association in the State of South Australia from which the activities of the association were conducted."

(Sgd.) C. A. WESTON

A. R. TAYLOR

TELEPHONE— CANBERRA 631.

TELEGRAPHIC ADDRESS— "FEDSOL," CANBERRA.

DP.

IN YOUR REPLY PLEASE QUOTE THIS NUMBER. A.11969.

COMMONWEALTH OF AUSTRALIA

CROWN SOLICITOR'S OFFICE, CANBERRA, A.C.T.

W 4256 K.K.

COMMONWEALTH ATTORNEY GENERAL'S DEPT. RECEIVED DEC 8 1942 CANBERRA

7th December 1942.

MEMORANDUM TO:

The Secretary,
Attorney-General's Department,
CANBERRA. A.C.T.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH OF AUSTRALIA.

Copy of the proposed draft Case herewith.

2. Copies have been sent to the Deputy Crown Solicitor, Sydney with instructions to place before Counsel for the Commonwealth for their comments.

(H. F. E. WHITLAM)
CROWN SOLICITOR.

W 4256 K.R.

3rd December, 1942.

The Crown Solicitor,
CANBERRA. A.C.T.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

The Deputy Registrar of the High Court has informed me that His Honour Mr. Justice Starke proposes to state a Case in this matter for the Full High Court pursuant to section 18 of the Judiciary Act 1903-1940.

2. His Honour has handed a draft of the proposed Case prepared by himself to the Deputy Registrar to pass on to the parties so that they may make any amendments or comments thereon.

3. His Honour stated that he would be prepared to consider any amendments, whether made by a letter to the Registrar or by attendance of the Solicitors or Counsel for the parties before him.

4. I enclose herewith five copies of the proposed draft Case, as I assume you will be forwarding copies to the Deputy Crown Solicitor, Sydney, to submit to Counsel for their observations.

5. I await your instructions as to any further action to be taken by me in the matter.

Enc.
FFC.LC.

(F. F. CLAUSEN)
Deputy Crown Solicitor.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY) No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED Plaintiff

A N D

THE COMMONWEALTH OF AUSTRALIA Defendant

CASE STATED PURSUANT TO SEC. 18 OF THE JUDICIARY ACT 1903-1940.

1. Adelaide Company of Jehovah's Witnesses Incorporated is an association incorporated under and pursuant to provisions of the Associations Incorporation Act 1929-1935 of South Australia (No. 1912 of 1929, No. 2246 of 1935).

2. The rules and regulations of the Association filed in the office of the Registrar of Companies pursuant to the said Act are attached to and form part of this Case.

3. The Association so incorporated was in exclusive occupation of certain land and buildings known as Kingdom Hall situate in Sturt Street Adelaide in the State of South Australia.

4. The hall was used as a meeting place for an association of persons known as Jehovah's Witnesses.

5. The association so incorporated has no register of members. It comprises an indefinite number of persons, some 200 to 250 persons who attend meetings at the hall and profess the beliefs of Jehovah's Witnesses.

6. Jehovah's Witnesses are an association of persons loosely organised throughout Australia and elsewhere who regard the literal interpretation of the Bible as fundamental to proper religious beliefs.

7. Jehovah's Witnesses believe that God, Jehovah, is the supreme ruler of the universe. Satan or Lucifer was originally part of God's organisation and the perfect man was placed under him. He rebelled against God and set up his own organisation

in challenge to God and through that organisation has ruled the world. He rules and controls the world through material agencies such as organised political, religious, and financial bodies. Christ, they believe, came to earth to redeem all men who would devote themselves entirely to serving God's will and purpose and that he will come to earth again, (his second coming has already begun) and will overthrow all the powers of evil.

8. These beliefs lead Jehovah's Witnesses to proclaim and teach publicly both orally and by means of printed books and pamphlets that the British Empire (and also other organised political bodies) are organs of Satan, unrighteously governed and identifiable with the Beast in the 13th chapter of the Book of Revelation.

Also that Jehovah's Witnesses are Christians entirely devoted to the Kingdom of God which is "The Theocracy", that they have no part in the political affairs of the world and must not interfere in the least manner with war between nations. They must be entirely neutral and not interfere with the drafting of men of nations that go to war.

And also that wherever there is a conflict between the laws of Almighty God the Christian must always obey God's law in preference to man's law. All laws of men, however, in harmony with God's law the Christian obeys. God's law is expounded and taught by Jehovah's Witnesses.

Accordingly they refuse to take an oath of allegiance to the King or other constituted human authority though they do not object to take an oath in a Court of law to speak the truth nor do they refuse the protection of the King's Courts or other constituted human authority.

9. On the 17th January 1941 the Governor-General acting with the advice of the Federal Executive Council pursuant to the authority conferred upon him by the National Security (Subversive Associations) Regulations, declared certain bodies including the Adelaide Company of Jehovah's Witnesses Incorporated and the organisation or association of persons known as Jehovah's Witnesses prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

A copy of the Order in Council is attached to and forms part of this Case.

10. On the 17th day of January 1941 a Minister of State, namely the Attorney-general of the Commonwealth, pursuant to the authority conferred upon him by the said regulations, directed an officer of the Commonwealth to take possession of, control and occupy, certain premises including the premises mentioned in paragraph 3 hereof and known as Kingdom Hall.

A copy of the said Direction is attached to and forms part of this Case.

11. Accordingly on or about the 17th January 1941 an officer of the Commonwealth entered and took possession of the said Kingdom Hall and has/since excluded therefrom the Adelaide Company of Jehovah's Witnesses Incorporated and all persons professing the beliefs of Jehovah's Witnesses.

12. On the 4th September 1941 the said Adelaide Company of Jehovah's Witnesses Incorporated issued a writ against the Commonwealth and delivered a Statement of Claim claiming an injunction to restrain the Commonwealth and its servants and agents from continuing or repeating the trespass before mentioned, damages for the said trespass and other relief.

13. The Adelaide Company of Jehovah's Witnesses Incorporated and the association of persons known as Jehovah's Witnesses are not engaged in any seditious enterprise nor in the printing or publishing of any seditious words within the meaning of the Crimes Act 1914-1932.

14. The said incorporated association and the association of persons known as Jehovah's Witnesses proclaim and teach matters prejudicial to the defence of the Commonwealth and the efficient prosecution of the war namely the matters set forth in paragraph 8 of this Case, but otherwise their beliefs or teachings are but primitive religious beliefs.

15. The said incorporated association contends that the National Security (Subversive Associations) Regulations, and the said Order in Council, and the said Direction of the Attorney-General are unauthorised by the Constitution and the National Security Act 1939-1940, contravene the provisions of Sec. 116 of the Constitution, and impinge upon the judicial power of the Commonwealth. They also contend that the National Security (Subversive Associations) Regulations do not upon their proper

construction include religious associations such as the said incorporated association or the association of persons known as Jehovah's Witnesses.

Upon the Case above stated I reserve for the consideration of the Full Court the following questions of law:-

1. Is the Adelaide Company of Jehovah's Witnesses Incorporated a party competent to maintain that the National Security (Subversive Associations) Regulations, the said Order in Council, and the said Direction of the Attorney-General above mentioned contravene the provisions of Sec. 116 of the Constitution?

See:
307 U.S. at p.527
118 U.S. at p.396
262 U.S. at p.550

2. Do the National Security (Subversive Associations) Regulations or any and which of those regulations contravene the provisions of Sec. 116 of the Constitution?

3. Do the said Order in Council and the said Direction of the Attorney-General above mentioned or any and what part thereof so far as they affect the said incorporated association or the association of persons known as Jehovah's Witnesses, contravene the provisions of Sec. 116 of the Constitution?

4. Are the National Security (Subversive Associations) Regulations or any and which of those regulations, beyond the powers or authorities conferred by:-

   (a) The Constitution?

   (b) The National Security Act 1939-1940

5. Is the said Order in Council or the said Direction of the Attorney-General or any and what part thereof so far as either affects the said incorporated association or the association of persons known as Jehovah's Witnesses, beyond the powers and authorities conferred by:-

   (a) The Constitution

   (b) The National Security Act 1939-1940

   (c) The National Security (Subversive Associations) Regulations?

6. Do the said National Security (Subversive Associations) Regulations, upon their proper construction, extend to the said incorporated association or the association of persons known as Jehovah's Witnesses.

TLS/OB

W 4256

SL/21369/6

19th November, 1942.

THE CROWN SOLICITOR

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

I refer to previous correspondence in connection with this matter and desire to inform you that the case has been listed for hearing in Melbourne on 23rd November, 1942, before His Honour Mr. Justice Starke.

2. Mr. E. M. Mitchell, K.C. has indicated that he will be unable to proceed to Melbourne and, after consultation with the Solicitor-General, I have briefed Mr. C. A. Weston, K.C. to represent the Commonwealth, Mr. A. R. Taylor will be with him.

3. Enclosed herewith is a copy of the brief delivered to Counsel in the matter.

Please note Counsel &c

GEORGE A. WATSON
Deputy Crown Solicitor

The Secretary
Attorney-General's Department
For your information

per: [signature]
Crown Solicitor

Letter not seen by Sec. 20/11/42

Counsel Noted 19.11.42

19 NOV 1942

IN THE HIGH COURT OF AUSTRALIA)
PRINCIPAL REGISTRY.) No. 11 of 1941.

BETWEEN

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED,

Plaintiff,

- and -

THE COMMONWEALTH OF AUSTRALIA,

Defendant.

BRIEF ON HEARING.

After the outbreak of the present war, on 3rd September 1939, there was passed the National Security Act No. 15 of 1939 expressed to be "an Act to make provision for the safety and defence of the Commonwealth and its territories during the present state of war" which same into operation on 9th September 1939. Section 5 of that Act conferred upon the Governor-General power to make regulations, and, on 15th June 1940 there were made under the National Security Act 1939 the National Security (Subversive Associations) Regulations, which were notified in the Commonwealth Gazette, and therefore came into operation, on the same day.

Regulations 3 and 4 of those Regulations provide as follows:-

"3. Any body corporate or unincorporate, the existence of which the Governor-General, by order published in the Gazette, declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is hereby declared to be unlawful

4. Any body in respect of which a declaration is made in pursuance of the last preceding regulation shall, by force of that declaration, be dissolved."

By order dated 17th January 1941 and published in the Gazette on the same day and expressed to be made in pursuance of Regulation 3, the Governor-General declared that, in his opinion the existence of certain bodies was prejudicial to the defence of the Commonwealth and the efficient prosecution of the war. The bodies were:- The organisation or organisations known as Jehovah's Witnesses or the Witnesses of Jehovah; The Watch Tower Bible and Tract Society; The International Bible Students' Association; The Adelaide Company

of Jehovah's Witnesses; and Consolation Publishation Co.

Regulation 6A of the National Security (Subversive Associations) Regulations provides as follows:-

"6A. Any house, premises or place or part thereof which was occupied by a body immediately prior to its having been declared to be unlawful may, if a Minister by order so directs, be occupied in accordance with the provisions of the order so long as there is in the house, premises or place or part thereof any property which a Minister is satisfied belonged to, or was used by or on behalf of, or in the interests of, the body, and which was therein immediately prior to the body having been declared to be unlawful."

In pursuance of that regulation, the Attorney-General on 17th January 1941 made an order wherein, after reciting -

(a) the provisions of the regulation;

(b) the effect of the Governor-General's order of 17th January 1941;

(c) that certain premises were immediately prior to the date of the order occupied by one or more of the organisations declared by the Governor-General to be unlawful; and

(d) the presence on each of the premises of property which

(i) belonged to or was used by or on behalf of or in the interests of such unlawful bodies, and

(ii) was present on the premises immediately prior to such bodies having been declared unlawful -

the following terms were included as the operative words:-

"Now, therefore, I, William Morris Hughes, do hereby direct that -

(a) the Inspector, Commonwealth Investigation Branch, in the State in which any of the said premises is situated shall, with such assistance as he thinks fit, take possession of, control and occupy the premises so situated;

(b) No person shall, except with the consent of the said Inspector, be in or on or enter or leave the said premises;

(c) No property whatsoever shall, except with the consent of the said Inspector, be brought into or removed from the said premises."

As to the effect of such action Counsel is referred to Regulation 6B.

On 19th February 1942 a writ was issued out of the New South Wales Registry of the High Court by Jehovah's Witnesses, Watch Tower Bible & Tract Society, International Bible Students' Association, Consolation Publishing Co., Adelaide Company of Jehovah's Witnesses, Airsales Broadcasting Co. Proprietary Limited, Sport Radio Broadcasting Company Limited, Atherton Tablelands Broadcasters Proprietary Limited, Port Augusta Broadcasting Company Limited, and Alexander

MacGillivray suing for himself and for all the other members of the plaintiffs, as plaintiffs, against The Commonwealth of Australia and the Postmaster General, claiming:-

1. A declaration that the National Security (Subversive Associations) Regulations are ultra vires the Commonwealth Parliament in that they contravene Section 116 of the Constitution in that they prohibit the free exercise of religion;

2. A declaration that the Regulations are ultra vires so far as they may and do prohibit the free exercise of religion, and that so much of the Regulations and orders and declarations made thereunder as may be valid have no application to the activities and exercise of the plaintiffs or any of them;

3. A declaration that the order and declaration of 17th January 1941 was invalid;

4. A declaration that the seizure, detention and occupation by the defendants of the real and personal property of the plaintiffs was unlawful and a trespass;

5. A declaration that the purported revocation by the Postmaster General of the broadcasting licences held by Airsales Broadcasting Co. Proprietary Limited, Sport Radio Broadcasting Company Limited, Atherton Tablelands Broadcasters Proprietary Limited, and Port Augusta Broadcasting Company Limited was void and of no effect;

6. A declaration that the use and occupation by the Postmaster-General of the premises and equipment of Atherton Tablelands Broadcasters Proprietary Limited was illegal and a trespass;

7. Injunctions;

8. Damages.

Counsel is informed that of the five plaintiffs who were not declared to be unlawful, Alexander MacGillivray, who is since deceased was a member and an ordained Minister of Jehovah's Witnesses. He was also a member of The Watch Tower Bible and Tract Society, and of the International Bible Students' Association and sued on behalf of himself and all the other members of Jehovah's Witnesses. Four of the remaining Plaintiffs are limited liability Companies in which the shares are owned or controlled by or on behalf of Jehovah's Witnesses. Each conducted the business of commercial broadcasting stations, for the purpose of propagating the religion and teachings of Jehovah's Witnesses. On 8th January 1941 those plaintiffs were directed to cease transmission, and on 7th February 1941, their licenses were revoked.

Counsel has herewith a copy of the Statement of Claim and Statement of Defence in the action, as well as a copy of the

Governor-General's Order of 17th January, 1941 and the Attorney-General's order of the same date.

On 13th August 1941 a Notice of Motion was issued asking for orders - (1) restraining the defendants, pending the hearing of the action, from acting against the plaintiffs in pursuance of the orders hereinbefore discussed; (2) restraining the defendants, pending the hearing of the action, from obstructing the full and free exercise by the plaintiffs of their religion; restraining the defendants from retaining possession of the plaintiffs property.

The application was heard on 18th August 1941 before Starke, J. at Sydney, when His Honour advanced the suggestion that the whole issue could be brought before the Court in a simpler manner if an action for trespass was instituted in the name of one of the limited companies whose premises had been entered. The matter was adjourned until 22nd August 1941 to enable Counsel for the plaintiffs to consider the suggestion. His Honour's suggestion arose out of his desire to be informed as to four matters:-

(a) the extent to which unincorporated and voluntary organisations were joined as plaintiffs, and upon what authority could such plaintiffs, not being legal persons, be joined;

(b) how could it be said that incorporated bodies have religious beliefs;

(c) how could it be shown that Alexander MacGillivray, described as suing "for himself and for all the other individual members in Australia of the above bodies, organisations and companies" was suing in a representative capacity;

(d) why should an injunction be granted when the action was, or ought to be, ready for trial.

On 22nd August 1941 the motion was dismissed with costs.

On 4th September 1941 there was issued out of the New South Wales Registry of the High Court a writ of summons, wherein the Adelaide Company of Jehovah's Witnesses Incorporated claimed against the Commonwealth of Australia -

"1. A perpetual injunction restraining the defendant its servants or agents from continuing to trespass upon the land and buildings known as Kingdom Hall situate at Sturt Street, Adelaide in the State of South Australia;

2. Damages for the said trespass;

3. Such further and other relief as the nature of the case may require."

An appearance was entered on 9th October 1941 and the statement of claim was delivered on 4th September 1941, with the Writ.

The Statement of Claim alleges a simple trespass by the Commonwealth and claims a perpetual injunction and damages.

The Defence was delivered on 30th October 1941 and alleges that the plaintiff became an unlawful body and was dissolved by virtue of the action taken under regulation 3 of the National Security (Subversive Associations) Regulations; that certain property of the plaintiff was in premises occupied by it immediately prior to its dissolution and that such premises were occupied by the defendant in accordance with the Regulations; that the defendant remains in occupation only in pursuance of the Regulations; and that the plaintiff, being dissolved and non-existent, is not competent to sue.

In its Replication, dated 7th November 1941, the plaintiff joined issue on the Defence, and alleged that at all material times it was a religious body devoted solely to the exercise of its religion; that the Governor-General's order was made with the object of suppressing and preventing the exercise of the religion; and that the National Security (Subversive Associations) Regulations, in so far as they authorise the making of the order are contrary to Section 116 of the Constitution.

The Rejoinder was delivered on 19th November 1941 and joins issue on the allegation in the Replication that the plaintiff was at all material times a religious body devoted solely to the exercise of its religion; repeats the allegation that the defendant's action was taken in accordance with the Regulations; and alleges that the portions of the Replication whichdeal with the exercise of religion do not in law constitute any answer to the Defence.

The Surrejoinder is a joinder of issue on the Rejoinder and was delivered on the 24th November 1941.

Counsel has herewith a copy of each pleading.

On 12th December 1941 it was arranged between the parties that the matters should be stood over generally, to be restored to the list on sevendays' notice.

On 29th October 1942 an application was made by the defendant to the High Court for restoration of the matter to the list and for a time and place to be fixed for trial, and it was ordered

that the cause be transferred to the Principal Registry and be placed in the list of causes for hearing at Melbourne.

On the hearing of the application, Counsel informed His Honour that, if the plaintiff was unsuccessful in this action, proceedings would not be continued in the action Jehovah's Witnesses and Ors. v. The Commonwealth of Australia and Anor.

OBSERVATIONS.

Counsel will have observed that the action which will be tried has been designed with a view to bringing before the Court in the simplest and most compendious form, the questions raised by the original action instituted by all the bodies and associations who considered themselves aggrieved by the action taken - (a) under the National Security (Subversive Associations) Regulations and (b) in respect of the wireless licences of the broadcasting stations.

It seems desirable, therefore, to submit certain observations with a view to showing, to some extent, the history and objects of the organisation which may be described as Jehovah's Witnesses.

It should be noted that the term "Jehovah's Witnesses" can be used generically to describe the adherents to the beliefs of the sect, or, alternatively, may be used to describe the members of the organisation actively engaged in practising and advocating the precepts of the body. Furthermore, the Jehovah's Witnesses, using the terms in the sense of the members of an organised body, deny that they are an organised body. Furthermore, they deny that their beliefs constitute a religion, although, in the present action, it is clear that the argument will be advanced that the Commonwealth legislation under which action was taken against the plaintiff and others, prohibits the free exercise of their religion.

Although it may be claimed that Jehovah's Witnesses have existedthroughout the history of the world - Christ was (and is) the Chief Jehovah's Witness, and all the prophets were Jehovah's Witnesses - yet it is true to say that as an "organisation" they can hardly claim existence prior to 1884. In that

year on 15th December, 1884, incorporation was effected in Pennsylvania, U.S.A., of a corporation known as Zion's Watch-tower Society. Twelve years later on 22nd September 1896 the Society's name was changed to Watch Tower Bible and Tract Society. The work of the Society having been somewhat extended apparently, the Peoples Pulpit Association was formed in New York State, U.S.A. in 1909. Similarly, in later years the name of this latter Society was changed to Watchtower Bible and Tract Society Incorporated. Still later on 30th June 1914 a Society became registered in London U.K. pursuant to the Companies Acts 1908 and 1913 under the name of International Bible Students Association. From such beginnings the "organisation" has extended to practically all parts of the world, the ultimate control being exercised by the head office of the "organisation" at Brooklyn, N.Y., U.S.A.

The object of the original Pennsylvanian body was stated in the following words extracted from its Charter of Incorporation:-

"II. The purpose for which the corporation is formed is, the dissemination of Bible truths in various languages by means of the publication of tracts, pamphlets, papers and other religious documents, and by the use of all other lawful means which its Board of Directors, duly constituted shall deem expedient for the furtherance of the purpose stated."

Clause 3 of the Memorandum of Association of the English Company reads:-

"III. The objects for which the Association is established are:-

(a) To promote Christian knowledge by the dissemination of Bible truths, orally and by the printed page, and by means of the distribution of Bibles and the printing and publication of Bible study helps,

tracts, pamphlets, papers and other religious documents, and by the use of all other lawful means which may seem to the Council of the Association directly or indirectly conducive to the furtherance of the above objects of the Association.

(b) To purchase or otherwise acquire sketches, photographs, drawings, publications, manuscripts, notes, data and memoranda bearing upon the above objects of the Association and to print, publish display and distribute the same.

(c) To enter into any arrangement with any Government or authority, supreme, municipal, local or otherwise, and to obtain from any such Government or authority all rights, concessions or privileges that may seem conducive to the above objects or any of them.

(d) To promote any association or associations, whether limited or not, for the purpose of its or their acquiring all or any of the property, rights and liabilities of the Association, or for any other purpose which may seem, directly or indirectly, calculated to further the objects of the Association.

(e) To purchase, take on lease or in exchange, hire or otherwise acquire, and to sell, exchange, surrender, lease, mortgage, charge, convert, turn to account, dispose of and deal with any estate or interest in any lands, buildings, easements, rights, privileges, mortgages, debentures, options, contracts, licences or other rights, and any real or personal property of any kind necessary or convenient for the attainment of the objects of the Association mentioned in paragraph 3(a) hereof, and to erect, construct, enlarge, alter, furnish, maintain and improve buildings of all kinds.

(f) To make donations to such persons and in such cases, and either of cash or other assets, as may be

thought directly or indirectly conducive to any of the objects of the Association, or otherwise expedient, and to subscribe or guarantee money for charitable or benevolent objects or for any exhibition or for any public, general or other objects, and to grant pensions and allowances and to make payments towards insurance.

(g) To borrow or raise, or secure the payment of money in such manner as the Association shall think fit.

(h) To pay out of the funds of the Association all expenses of or incident to the formation and registration of the Association.

(i) To do all such other things as are incidental or conducive to the attainment of the above objects

Provided that the Association shall not support with its funds or endeavour to impose on or procure to be observed by its members, or others, any regulation, restriction or condition which if an object of the Association would make it a Trade Union.

Provided also that in case the Association shall take or hold any property subject to the jurisdiction of the Charity Commissioners or Board of Education for England and Wales, the Association shall not sell, mortgage, charge or lease the same without such authority, approval or consent as may be required by law, and as regards any such property the Managers or Trustees of the Association shall be chargeable for such property as may come into their hands, and shall be answerable and accountable for their own acts, receipts, neglects and defaults, and for the due administration of such property in the same manner and to the same extent as they would as such Managers and Trustees would have been if no incorporation had been effected, and the incorporation of the Association shall not diminish or impair any control or authority exercisable by the Chancery Division, the Charity Commissioners or the Board of Education over such Managers or Trustees, but they shall, as regards any such property, be subject jointly and separately to such control or authority as if the Association were not incorporated

In case the Association shall take or hold any property which may be subject to any trusts, the Association shall only deal with the same in such manner as allowed by law, having regard to such trusts."

The first President of the "organisation" was Charles Taze Russell (1852-1916), commonly known as Pastor Russell. He was succeeded on his death by the present President, Joseph F. Rutherford, commonly known as Judge Rutherford. If necessary, much could be written concerning the personal characters of these men, but observations of such a nature are unnecessary for the purposes of these Instructions.

The beliefs of Jehovah's Witnesses are claimed to be based exclusively on the Bible. That claim is also asserted by other associations of a religious nature, but such other associations arrive at conclusions far different from those asserted by Jehovah's Witnesses. For example, Jehovah's Witnesses deny the truth of the Trinity; other associations assert that doctrine. Hence the difficulty is manifest when the same authority (the Bible) is invoked to establish the authenticity of claims mutually exclusive and repugnant to each other. In this regard, the following is quoted from one of Rutherford's Treatises - "Knowledge and Understanding" contained in a booklet entitled "Intolerance" (see pages 45-47):-

".....You may reply that there are several hundred different denominational religious organisations called "Churches," all teaching different doctrines and all claiming to base their teachings upon the Bible, and, you ask how may we know who is right? The answer is that all of these organisations have some knowledge of the text of the Bible but are utterly without understanding as to the meaning thereof.....Jehovah God reveals an understanding of his Word only to those who are devoted to him.... That which is of first importance to gain a knowledge and understanding of the Bible is to know that Jehovah is God and have a proper fear of him and not to have fear of man. It is only to such that God reveals an understanding of his

Word.....The understanding and interpretation of the Bible is not committed to any one man or any company of men. The Bible was written for all persons who honestly seek to understand it and who follow God's appointed way to gain an understanding thereof. It is written that the Scriptures are given for the instruction of the man who devotes himself to God. None other can have an understanding."

At pages 59 and 60 of the same treatise, Rutherford proceeds to say:—

"Jehovah God is no respecter of persons. He has not committed to any organisation or man, be he pope, priest or lawyer, the right to interpret his Word, but, on the contrary, has caused to be written in His Word that no scripture is of private interpretation. Jehovah God and Christ are the teachers, and through them knowledge and understanding are obtained."

The foregoing quotations suggest that divine private revelation is vouchsafed to each individual Jehovah's witness; and thereby the apparent unanimity of Jehovah's Witnesses in their beliefs may be explained. The difficulty is, however, to prove that divine private revelation is available to each and every person who may seek the same. (Sceptical persons may incline to the belief that in practice Jehovah's witnesses accept and adopt Rutherford's interpretations).

It is recognised, of course, that the failure or success of the defence to this action does not depend on the establishment or rejection of the truth of the beliefs of Jehovah's Witnesses; to that extent, therefore, a consideration of such beliefs may seem to be unnecessary. Nevertheless, since it may be reasonably expected that the plaintiff may seek to define the word "religion" in section 116 of the Constitution and to contend that their beliefs come within that definition, it may be desirable to attempt a brief outline of such beliefs.

God, "whose name alone is Jehovah" created heaven and earth and all things therein. Among others He created Lucifer and made him overseer or overlord of earth's creation.

Lucifer, contrary to his duty, coveted the place and honour given by all creatures to God and set to work to poison the minds of Adam and Eve. He succeeded in this; accordingly Adam "was sentenced to death, driven from Eden into the unfinished earth, degraded and cursed and subjected to a lingering death".

Following Lucifer's rebellion his name was changed so that he became known as Satan, Serpent, Dragon or Devil. Satan is the "complete expression of wickedness", and in due time shall suffer complete destruction. However, the fact is that in his success in debasing Adam, Satan was seemingly successful, so "that raised the question of who is all-powerful, Satan the Devil or Jehovah God. All creation would look on and see what would be the results, and this creation included the angelic host of heaven. That all creation might in due time know that Jehovah God is the Almighty One and that Satan is the chief one of the wicked, Jehovah God accepted the challenge of the Devil and permitted him to put forth his best endeavours to prove his wicked challenge. Although Satan had been sentenced to death Jehovah God delayed the execution of that sentence of death until such time as the Devil might have full and fair opportunity to demonstrate the fallacy of his challenge. For this reason God said to the Devil, addressing him under the symbol of an earthly ruler, to wit: "But for this cause have I allowed thee to remain, in order to show thee my power; and in order that they may proclaim my name throughout all the earth"

It is claimed from the foregoing that "in God's due time his own name shall be proclaimed throughout all the earth and that this must be done immediately preceding the time when Jehovah God would exercise or demonstrate his unlimited power against Satan and his cohorts".

After the rebellion Jehovah God "announced his purpose to produce a royal seed, that is a great governing power, which would act under Jehovah's command and would destroy Satan and all his power". That seed was Jesus Christ who justly received the title "The Faithful and True Witness". "Every one who is a faithful follower of Christ Jesus, and who is therefore

a Christian, must be a witness to the name of Jehovah God".

Jesus Christ is the son of Jehovah God and was born a man for the primary purpose of vindicating Jehovah's name because by His faithfulness even unto death Christ proved that Satan was a liar in respect of his claim to alienate the affections of man from Jehovah. The secondary purpose of the coming of Christ was to provide a ransom for men who would devote themselves entirely to Jehovah and His Theocratic Government. (The Theocracy is the Government of Jehovah God, Who is the great Theocrat, and Whose King is Christ). Christ came as a man; He died as a man; but Jehovah raised Him from death as the immortal spirit creature, and thus Jehovah gave complete proof of His supremacy. Christ, of course, ascended into heaven.

Throughout earthly time - at least up to 1914 - Satan has been at complete freedom in debauching the hearts of men by turning them from Jehovah God. In that regard, Satan has been operating from heaven but in his original capacity as overseer or overlord of earth. This long period of his more or less effective control has been allowed to Satan by Jehovah God consequent upon His statement: "But for this cause have I allowed thee to remain, in order to show thee my power; and in order that they may proclaim my name throughout all the earth." The greater the opportunity thus given to Satan the greater and more glorious the ultimate vindication of Jehovah. "Up to the present time Jehovah God has not taken a hand in the troubles that are afflicting the peoples of the world"

Some lengthy account could be given of the machinations by which Satan has achieved or endeavoured to achieve his purpose - but such a relation of the story is not only tedious but possibly here unnecessary. It is sufficient to say that Satan's principal methods have been by means of the three systems of religion, politics and commerce created by him. (From the point of view of one who is not a Jehovah's Witness, allegations

as to the source and use of such systems appear incredible. To the Jehovah's Witness, however, the allegations are incontrovertible facts). It might be added that the chief human representative of Satan is said to be His Holiness the Pope.

The Jehovah's Witness is an Adventist believing that the second coming of Christ is near at hand. Upon His coming the great Armageddon war will be waged to the defeat of Satan leading his hordes of the unrighteous at the hands of the righteous with Christ as their Field Marshal.

To indicate how soon these "last days" may be expected to end, the Jehovah's Witness says that the sway - in the sense of its being an uninterrupted sway - of Satan ended in 1914. In that regard, the following is quoted from page 7 of the treatise by Rutherford "The Way of Escape" published in a booklet entitled "Escape to the Kingdom":-

> "In 1914 that due time of waiting came to an end, and God immediately installed Christ Jesus as the King of the World. There followed a war in heaven between Christ Jesus and the Devil, resulting in ousting the Devil from heaven and the casting of him to the earth. Although invisible to human eyes, Satan and his hordes have continued to operate amongst rulers and the peoples of earth"

It might be added that this war in heaven ended in 1918.

Satan of course knows that he is destined to fail at Armaggedon, but his endeavours are to effect as much separation as possible between Jehovah and men.

Then after Armaggeddon - "Restoration or restitution will be going on for a thousand years. Those who refuse to obey the Lord will be destroyed with an everlasting destruction. But all those who obey the Lord and try to do the right shall be aided and led in the right way, and at the end thereof will be granted life everlasting upon the earth. Man, then fully restored to life and all the rights incident thereto, and having a just and perfect government upon the earth in which peace shall

reign completely and forever, will have come to a full restoration of all that was lost in Adam. Then you and the other members of your family .....all of you rendering yourselves in obedience to the Lord, shall live and not die. The promise of the Lord is that those who have done bad but who then turn to righteousness and walk righteously before the Lord shall live and shall never die."

The foregoing sketch of the beliefs of Jehovah's Witnesses may be concluded by enumerating some beliefs held by the majority of Christians but denied by Jehovah's Witnesses:-

1. The fall of Lucifer and his associated Angels before the creation of Adam;
2. The existence of Hell and that Lucifer was cast down thereto;
3. The Trinity;
4. The existence of the Holy Ghost as an independent Divine Person;
5. The Divinity of Christ either before or after His coming as man;
6. His resurrection and ascension by His own Divine power;
7. The immortality of the soul;
8. That man is made of a body and soul;
9. The Beatific Vision;
10. Purgatory;
11. The existence in heaven of the souls of men;
12. The Sacramental System, except, perhaps, Baptism.

In preparing the above list, selections have been made at random; the doctrines cited should be interpreted in the senses adopted by recognised Christian religions; and the list is by no means exhaustive - for example, Jehovah's Witnesses deny such Catholic doctrines as Papal Infallibility, Apostolic Succession, the Assumption, etc.

It seems appropriate to quote the following description of what the author calls "Rutherfordism - The Great Anti-

Religion" in his booklet "Witnesses out of the Bottomless Pit?" -

"It is anti-Christ, Anti-Church, Anti-Clergy, anti-Sabbath, Anti-British, anti-Prohibition, anti-League of Nations, anti-everything that organised Christianity stands for."

It has been stated earlier in these Instructions that the "organisation" has now extended throughout practically the whole of the world. This action is concerned with Commonwealth circumstances, particularly necessitating a consideration whether or not there is evidence that the Australian section of the "organisation" is such that its existence was prejudicial to the defence of the Commonwealth or the efficient prosecution of the War.

The Commonwealth forms part of the terriroty of what might be called the Australasian section of the "organisation." That section includes -

Australia
Burma
Fiji
French Indo-China
Thailand
Hong Kong
Malaya
Netherlands East Indies
New Zealand

and was controlled from what was known as the "Theocratic Embassy" 7 Beresford Road, Strathfield, under the leadership of a man named Alexander MacGillivray, now deceased.

MacGillivray was a Scotchman, and he came to the Commonwealth in or about 1930, to assume to control of the "organisation." For that purpose he was the Attorney under Power of Attorney given to him by the English body, the International Bible students Association - an association incorporated under the English Companies Act.

The "Organisation" extends throughout the length and breadth of the Commonwealth, and it would seem that the title generally used is that of the Watch Twoer Bible and Tract Society. Neither that Society nor the International Bible Students Association is registered in the Registrar-General's Office. Although usually the State "organisations" are unregistered bodies, nevertheless, there are at least two registered bodies, so that they are legal entities.

namely Adelaide Company of Jehovah's Witnesses incorporated under the Associations Incorporation Act 1929-1935 of South Australia - another of the present plaintiffs - and the International Bible Students Association of Western Australia Incorporated, incorporated under the Associations Incorporation Act 1895 Western Australia. For some reason or other - probably an oversight - that body has not been declared to be unlawful under the National Security (Subversive Associations) Regulations.

So far as is practicable, the "organisation" aims at being self-contained. It has its own farms, the produce from which maintains the members who usually live in community style, where the number of members warrant such action, the "organisation" has its own flour mill; it has its own workshops etc. etc.

The "organisation" does not seek to convert people to its views; its job is merely to inform to people of the alleged truth. But, of course if a person so informed embraces the alleged truth, it is reasonable that such a person offers his services to the "organisation". The extent of his offer and the use to which his services might be put determine the services asked of him. The ultimate object is probably that each person should engage in witnessing - that is, disseminating Bible truth either by the distribution of literature, playing gramophone records of Rutherford's speeches, engaging in "Kingdom Parades", when his duty might extend to the carrying of placards - and so on. Full-time witnessing would be impracticable, of course, with many Jehovah's Witnesses. Some of these may be married, and because of economic conditions could only engage in spare-time witnessing; the same would apply also to married women and to Jehovah's Witnesses whose services are utilised in an administrative capacity. Some, again, are employed as printers, timber mill hands, mechanics, clerical workers, etc. But all Jehovah's Witnesses would do some witnessing even if only in their spare time.

Those Jehovah's Witnesses more or less exclusively engaged in the service of the "organisation" live in community style where the circumstances permit - the members of each particular community forming what is known as a "Bethel" family or home. Full-time servants do not receive wages; to each an allowance to cover incidental expenditure is made; but it appears that each Jehovah's Witness is required to purchase his portable gramophone; and, of course, he accounts for all monies received by him.

The "organisation" is financed by donations, subscriptions on the distribution of literature and commercial profits. Literature is said not to be sold, but judged by normal standards it is hard to deny that sales thereof are made. In its business manifestions - printeries, timber mills, broadcasting etc. - the "organisation" will undertake work apart from its own requirements, and thus profits are made. If necessary, a separate memorandum will be prepared in relation to the financial condition of the Australasian section of the "organisation". It has been stated, that the Australasian section is worth £100,000.

In addition to the bodies already mentioned there are four incorporated companies which may be regarded as commercial manifestations of the Australasian section of the "organisations." Legally, of course, they are separate entities. They are Airsales Broadcasting Company Proprietary Limited, incorporated in New South Wales, Sport Radio Broadcasting Company Limited, incorporated in South Australia, Atherton Tablelands Broadcasters Proprietary Limited, incorporated in Queensland, and Port Augusta Broadcasting Company Limited, incorporated in South Australia. These companies operated the radio stations known respectively as 2HD, 5KA, 4AT and 5AU.

The shares of each company are held by leading witnesses (or were, on the date of filing of the latest list of shareholders).

By an order made by the Chief of the Naval Staff of the Royal Australian Navy, each of the abovementioned broadcasting stations was, on 8th January 1941, directed to cease transmission.

The order was made pursuant to the Wireless Stations Control Order made under the National Security (General) Regulations, Regulation 11.

Counsel is informed that, in his affidavit in support of the notice of motionfor an interim injunction, which has been discussed above, Alexander MacGillivray stated:-

"The Adelaide Company of Jehovah's Witnesses is a voluntary association incorporated under the Associations Incorporation Act 1929-1935 of South Australia, and is composed exclusively of members of the class of Jehovah's Witnesses. The sole aim object purpose and activity of the said voluntary Association and of the said members in forming and carrying it on is the exercise of the religion of Jehovah's Witnesses."

Counsel's attention is drawn to the contention of the defendant that the plaintiff, being an unlawful body and dissolved, is legally non-existent and cannot sue. Any submissions on this point must of necessity depend upon the decision of the Court as to the validity of the National Security (Subversive Associations) Regulations and the Governor-General's Order of 17th January 1941.

The principal questions involved in the action appear to be whether or not the plaintiff is a body engaged solely or at all in the exercise of a religion, and, if so, whether Section 116 of the Constitution operates to invalidate the Regulation or the Order of 17th January 1941, in so far as they prohibit or permit the prohibition of, the free exercise of that religion even though the beliefs of the body can be shown to be of a subversive nature.

Some comment to demonstrate the subversive nature of the doctrines of Jehovah's Witnesses is therefore necessary. The literature of the organisation is very extensive, and has been examined with a view to obtaining therefrom illustrations of the nature of the doctrines of the organisation. Quotations from the literature are submitted hereunder:-

1. "Freedom or Romanism?" p.26,27.

What is the great crisis now impending?

It is a time of trouble that will completely wreck every state and institution of the world, destroy religion and religious

"institutions, wipe out commercial and political organisations and all persons who refuse to put themselves under the protection of the Lord Jesus Christ, the world's righteous Ruler."

2. "........That great tribulation will not be merely a war among men and nations such as the world war of 1914, but it is the battle of Jehovah God and of all his forces now unseen by human eyes, which forces led by the Lord Jesus Christ will sweep into destruction all of the enemies of God and man. On the opposing side are Satan the Devil and all his host of wicked angels, the religious institutions, the armies and navies, land and air forces of all the nations of the earth, and all filled with and moved by the spirit of the Devil, fully bent upon destruction."

3. @ p. 48. "Such work" (i.e. of Jehovah's Witnesses) "is for the purpose of notifying the people of God's purpose to destroy religion and all other instruments of the Devil."

4. @ p. 52. "We see and declare that this is the day of Jehovah God and that soon he will destroy every vestige of Stan's Organisation including the wicked rule of this world....."

5. "<u>Government</u>" @ p.5, 6.

"Ancient Egypt was the first world power. That government defied Jehovah God and cruelly persecuted and oppressed those people who served God. That world power was destroyed. The course taken by that Government and its untimely end foreshadowed the course and untimely end of the governments that now rule the earth. In their order Ancient Egypt was followed by other world powers, to wit, Assyria, Babylon, Medo-Persia, Greece and Rome.....All of those governments went to destruction. Today the nations called "Christendom" dominate the peoples of the earth. These nations claim to be Christian nations, but they proceed exactly contrary to the teachings of Jesus Christ.....In all of such governments religion is employed as a means to keep the people in ignorance of Jehovah's truth.....the religions which are practiced by the governments of each art diametrically

opposed to God and to Christ Jesus."

6. @ p.p.7,8. "The testimony of the keenest statesmen of the world today is that the governments of the earth not only are imperfect and unsatisfactory but are generally corrupt. It is freely admitted that all the efforts of men to establish a just and satisfactory government have signally failed. All must admit that the combined wisdom and counsel of men have failed to set up and administer a satisfactory government."

7. @ p. 11. "Disregarding such divine injunction, men have organised governments and followed their own devices. Disaster has resulted. In the organization and conduct of governments men have chosen to honor man and not God, and for that reason many men have fallen easy victims to the subtle influence of Satan."

8. @ p. 24. "The present day governors or rulers of the earth, by reason of their wealth and influence and their armies and navies, and strong-arm squads, and their instruments of destruction, foolishly think that they are impregnably entrenched and that their power is unbreakable. But the demonstration of Jehovah's power at Armageddon will be as great that all earthly rulers will come to know that they are merely pygmies....."

9. @ p. 29. "Such governments and their leaders have sought to carry on everything contrary to Jehovah's law. Their end has come.....Therefore the governments of the world shall be destroyed"

10. @ p. 32. "Monarchies, democracies, aristocracies, fascism, communism and Nazis, and all suchlike efforts to rule, shall pass away at Armageddon and will soon be forgotten".

11. @ p. 33. "Present-day governments are controlled by Satan and are unsatisfactory, and can never bring blessings to mankind".

12. "Model Study No. 2" @ p. 8.

" Q. As all nations are against the Theocracy, will all be destroyed?

A. All nations will be destroyed, but not all people of all nations."

These quotations are merely representative of the material extracted from the literature. The number of illustrations of this nature is so large that quotation in toto is impracticable. The portion of the literature in which there have been found passages which it is thought indicate the subversive nature of the beliefs of the organisation, is available for Counsel if and when required.

The question of the admissibility in evidence of the publications has been considered and is discussed in the advice on evidence and the memorandum thereon, of each of which Counsel has a copy herewith.

Further, as this action has been brought for the specific purpose of testing the validity of the National Security (Subversive Associations) Regulations, and of the orders made thereunder with reference to the whole organisation of Jehovah's Witnesses, it is thought that no point will be taken so far as the linking up of the plaintiff with the organisation is concerned. The memorandum referred to above concerns itself with the linking of the literature to the organisation.

Apart from the literary publications, certain aspects of the other activities of the organisation can be adduced in evidence. Counsel's attention will be drawn, in conference, to certain activities of the organisation as to which evidence can be called, and appropriate action will be taken in accordance with any decisions then arrived at.

The plaintiff has alleged that the Regulation and/or the order made thereunder are invalid on the ground that they contravene Section 116 of the Commonwealth Constitution. That section provides:-

> "The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion....."

The words upon which it may be assumed the plaintiff will rely in particular are "for prohibiting the free exercise of any religion." In this connection Counsel is advised that, on several occasions since the organisation became unlawful, Alexander

MacGillivray has sought permission to hold certain meetings of members of the organisation for religious purposes. Action taken by the Commonwealth was with Counsel's advice, and was designed to allow the members to meet for religious purposes only, and to do so freely and without hindrance, without in any way recognising the existence of the organisation. It was made a condition of the meetings that only religious matters be discussed and only religious uses observed.

There have been in the United States several decisions upon certain aspects of the question whether various laws which had the effect of imposing certain restrictions upon the practice by Jehovah's Witnesses of their religion and matters pertaining thereto. The cases are:-

1. State of Connecticut v. Russell Cantwell, Connecticut Reports Vol. 126 p. 1 to 8 and 310 U.S. p. 296, in which it was held that a municipal law imposing certain restrictions upon solicitations for religious purposes was not an infringement of the constitution.
2. Minersville School District v. Gobitis, 310 U.S. 586, a case concerning the school ceremony of saluting the flag.
3. Reynolds v. United States, 95 U.S. 145;
4. Davis v. Beason, 133 U.S. 341;
5. Mormon Church v. United States, 136 U.S. 49;
6. Jones v. City of Opelika, in which judgments were delivered on 8th June 1942 by the Supreme Court of the United States, and of which Judgments a copy is available for Counsel's perusal.

Counsel is also referred to the case of Herbert v. Allsopp (1941 N.Z.L.R. p. 370) in which the Supreme Court held that Regulation 2A of the New Zealand Public Safety Emergency Regulations 1940 was valid, being reasonably capable of being a regulation for the purpose of securing the public safety or defence of New Zealand or the maintenance of public order or the sufficient prosecution of the war.

Other American cases concerning Jehovah's Witnesses are:- Nicholls. v. School Committee of Lynn (110 A.L.R. 377); and Fish v. Landstrom (120 A.L.R. 646).

It is the contention of the Commonwealth that Section 116 of the Constitution was never intended to afford a

protection for acts or doctrines inimical to the peace and good order of society or the safety of the nation.

The action taken against the plaintiff was taken against it, not in its religious sphere, but insofar as it went beyond the sphere of religion and dictated to its members their attitude to government and other profane, as opposed to sacred, aspects of life. The subsequent policy has been to allow the free exercise by the members of their religion, but to prevent anything of a corporatre nature, where the secular teachings of the organisation could be canvassed.

Further, the action was taken by the Commonwealth in exercise of the defence power, to secure the defence of the Commonwealth and the efficient prosecution of the war, and for no other purpose, and was not "for prohibiting the free exercise of any religion." The judgments in Farey v. Bennett (1916) 21 C.L.R. 433 leave no doubt that, in time of war, the defence power is enlarged in scope to an extent undreamed of in time of peace, and is exerciseable in such a way as to deprive persons of certain liberties for the duration of the time of war.

A law such as the National Security Act and the Regulations and orders made thereunder, is avowedly made, in time of war, and only for the duration of the war, for the protection of the nation, and is therefore an exercise of the defence power. It may be that, if the plaintiff succeeds in establishing that the exercise of its religion has been interfered with, the defendant could persuade the Court that the law concerned is an exercise of the defence power, and is not "for prohibiting the free exercise of any religion", and that, if it incidentally infringes on such exercise, it is nevertheless, a valid exercise of the defence power.

Counsel has raised the point that the validity of the Regulations may be attacked from another angle. The point may be taken that the executive has no power to frame a punitive, as distinct from a precautionary regulation, which would have a punitive result without the intervention of the judiciary. In this connection the difference between the National Security (Subversive

Associations) Regulations and the Unlawful Associations Act 1916-1917 has been noted, in that the latter preserves the right by which a Court may be approached, whereas the former purport to dissolve certain associations and bodies and to condemn their property.

There remains to be considered the question of how far, if at all, the Court can enquire into the evidence upon which the Governor-General acted in making his order of 17th January 1941.

In the course of these proceedings Counsel drew attention to expart Lees, 57 T.L.R. p. 26 which, he said, indicated that the Court may have jurisdiction to enquire into the validity of the order. He further stated that, while the Court will not require production of the information on which the Governor-General acted, it may require an affidavit that such information was studied by the Executive Council and that the Council was of the opinion that the advice tendered to the Governor-General was justified.

It is pointed out in this connection that, in ex parte Lees (also reported in 41 K.B.D. 72) the Court of Appeal considered Regulation 18B(1A) of the Defence (General) Regulations, which gave power to make the order if the Secretary of State had reasonable cause to believe etc. The Court held that it was not its function to enquire into the grounds on which the Secretary of State had come to his belief. In the present case the Governor-General has stated his opinion with the result that the organisations have been declared to be unlawful, and, if the point arises, it is the Commonwealth's view that it is not the function of the Court to go behind that statement, as the Regulations make no provision for the Governor-General to have reasonable grounds, or any grounds for his opinion.

All matters of formal evidence have been provided for, and the matter will be heard in Melbourne on 23rd November 1942 when Counsel will please appear for the defendant.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY.

No. 5 of 1941.

BETWEEN Jehovah's Witnesses, Watch Tower Bible & Tract Society, International Bible Students' Association, Consolation Publishing Co. Adelaide Company of Jehovah's Witnesses Incorporated, Airsales Broadcasting Co. Proprietary Limited, Sport Radio Broadcasting Company Limited, Atherton Tablelands Broadcasters Proprietary Limited, Port Augusta Broadcasting Company Limited, and Alexander MacIllivray for himself and for all the other individual members in Australia of the above bodies organisations and companies.

Plaintiffs

AND The Commonwealth of Australia and the Post Master General.

Defendants

STATEMENT OF CLAIM

1. The Plaintiff Jehovah's Witnesses is a numerous class of Christian worshippers having no rules or constitution of membership and associated as such class only by their common belief in and profession of their religion and whose sole aim object purpose and activity in such association is the exercise of such religion.

2. Such class of religious worshippers consists not only of numerous adherents of the said religion in Australia but also of adherents in forty-six other countries of the world numbering in all not less than Five million persons.

3. The form of Christian religion believed in and professed by Jehovah's Witnesses is distinguished from other forms of such religion by its particular interpretation of the writings contained in the Holy Bible and its consequent particular conception of the Divine plan for mankind and of the moral and spiritual relation of human beings to Divine precept but in its general nature as a creed and body of doctrine for the spiritual

guidance of mankind is similar in all material respects to many other forms of Christian religion the exercise of which is and has been since before the establishment of a Federal Commonwealth general throughout Australia.

4. The Plaintiff "Watch Tower Bible and Tract Society" consists exclusively of the members of the class of Jehovah's Witnesses the name of the said Plaintiff being a name under which they carry out their religious exercise of publishing and teaching the scriptural writings of the Holy Bible together with the interpretation thereof which distinguishes the religious faith believed in and professed by Jehovah's Witnesses.

5. The Plaintiff "International Bible Students Association" is an unincorporated voluntary association and is composed exclusively of members of the class of Jehovah's Witnesses. The sole aim object purpose and activity of the said voluntary association and of the said members in forming it and carrying it on is the study and dissemination of the teachings of the Holy Bible and the exercise of the religion of Jehovah's Witnesses.

6. The Plaintiff "Consolation Publishing Co." is the business name under which certain members of the class of Jehovah's Witnesses carry on the work of publishing the magazine "Consolation" on behalf of Jehovah's Witnesses in Australia. The sole aim object purpose and activity of those engaged in the said work and the sole purpose and character of the said magazine is to disseminate the scriptural teachings of the Holy Bible as interpreted by Jehovah's Witnesses and thereby to facilitate and encourage the exercise of their said religion.

7. The Plaintiff "Adelaide Company of Jehovah's Witnesses" is a voluntary association incorporated underthe Associations Incorporation Act 1929-1935 of South Australia and is composed exclusively of members of the class of Jehovah's Witnesses. The sole aim object purpose and activity of the said voluntary association and of the said members in forming it and carrying it on is the exercise of the religion of Jehovah's Witnesses.

8. The Plaintiffs "Airsales Broadcasting Co. Proprietary Limited", "Sport Radio Broadcasting Company Limited," "Atherton Tablelands Broadcasters Proprietary Limited" and "Port Augusta Broadcasting Company Limited" are limited liability companies incorporated in accordance with the laws of the States of New South Wales, Queensland and South Australia in which they carry on business and respectively entitled to sue in and by their said corporate names and the shares in which are owned or controlled by or on behalf of Jehovah's witnesses. The said Companies have for many years conducted the business of broadcasting as commercial stations pursuant to licences issued to them by the Post Master General. These broadcasting stations were maintained and used for the purpose of propagating the religion and teachings of Jehovah's Witnesses and of raising funds to be used exclusively in such propagation.

9. The Plaintiff Alexander MacGillivray is a member and an ordained minister of Jehovah's Witnesses. He is also a member of the Watch Tower Bible and Tract Society and of the International Bible Students' Association and is suing herein on behalf of himself and of all other individual members in Australia of the class of Jehovah's Witnesses who have the same interest in the subject matter of this suit as the said Plaintiff and are too numerous to be joined as Plaintiffs herein.

10. On 17th January 1941 in the Commonwealth Gazette an order and declaration was published as follows:-

"Whereas by regulation 3 of the National Security (Subversive Associations) Regulations it is provided that any body corporate or incorporate, the existence of which the Governor-General, by order published in the GAZETTE, declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is thereby declared to be unlawful;

Now therefore I, Alexander Gore Arkwright, Baron Gowrie, the Governor General aforesaid, acting with the advice of the Federal Executive Council do, by this order declare that, in my opinion, the existence of the following bodies, namely:-

The organisation or organisations known as
Jehovah's Witnesses or the Witnesses of Jehovah.
The Watch Tower Bible & Tract Society.
The International Bible Students Association.
The Adelaide Company of Jehovah's Witnesses, and Consolation Publishing Co.
is prejudicial to the defence of the Commonwealth and

the efficient prosecution of the war.

Given under my Hand the Seal of the Commonwealth, this seventeenth day of January in the year of our (L.S.) Lord One thousand nine hundred and fortyone, and in the fifth year of His Majesty's reign.

By His Excellency's Commands.

W. M. HUGHES.

for Minister of State for Defence Co-ordination.

11. The said Order was made and published with the purpose and object of suppressing and preventing all the exercises and activities of the Plaintiffs as herein before mentioned.

12. Following upon such publication and for the purpose of suppreseing all the exercises and activities of the plaintiffs in purported pursuance of the said Order the Commonwealth of Australia wrongfully and by force or the threat of force prohibited obstructed and prevented members of the Plaintiff bodies from meeting for public worship and prevented the members of the plaintiff bodies from entering or using halls for the purpose of the Plaintiffs' religious exercises and devotion.

13. The Commonwealth on and since 18th January 1941 wrongfully entered upon premises at Strathfield in New South Wales and occupied by the International Bible Students' Association and trespassed thereon and excluded the occupants of the premises from using all except a small residential part of the premises and prevented the members of the plaintiff bodies and the public from meeting there for public worship and the exercise of their religion. The Commonwealth wrongfully seized books and papers and chattels the property of the plaintiffs and in particular a large number of authorised versions of the Holy Bible which had been and were being used for the purpose of the said religious exercises.

14. The Commonwealth on and since the 18th January 1941 wrongfully entered and trespassed upon and occupied Kingdom Hall Sturt Street Adelaide the property of the Adelaide Company of Jehovah's Witnesses and excluded the plaintiffs therefrom.

15. The Commonwealth on and since January 18, 1941 wrongfully entered upon and occupied and trespassed upon premises owned and occupied by the International Bible Students' Association at East Melbourne in the State of Victoria.

16. On January 8, 1941 the Commonwealth for the purpose alleged in paragraph 11 hereof wrongfully and without lawful authority purported by order to direct the plaintiffs Airsales Broadcasting Co. Proprietary Limited, Sport Radio Broadcasting Company Limited, Atherton Tablelands Broadcasters Proprietary Limited and Port Agusta Broadcasting Company Limited to close the respective broadcasting stations operated by the said plaintiffs and to cease to transmit programmes therefrom. The said plaintiffs submit that such order was void and of no effect firstly because it was made for the purpose of suppressing the functions of the said broadcasting stations as stated in paragraph 8 hereof and secondly because the said order was made without lawful authority having regard to the true meaning of the National Security Act (General) Regulations.

17. On January 25, 1941 the Commonwealth and the Post Master General wrongfully entered upon and took possession of and trespassed upon the premises owned and occupied by the plaintiff Atherton Tablelands Broadcasters Proprietary Limited at Atherton Queensland and wholly excluded the said plaintiff and its servants and agents and the occupants of the said premises from such premises including the residential portion thereof which exclusion of the said plaintiff by the defendants is still continuing.

18. On February 7, 1941, the Post Master General with the object and purpose of suppressing and preventing the religious activities of the plaintiffs and not otherwise purported to revoke the four licences for wireless broadcasting then current in favour of the plaintiffs Airsales Broadcasting Co. Proprietary Limited, Sport Radio Broadcasting Company Limited, Atherton Tablelands Broadcasters Proprietary Limited, and Port Augusta Broadcasting Company Limited in respect of the broadcasting stations owned and operated by each of them respectively.

19. By reason of the premises, the Commonwealth and the Post Master General have wrongfully prohibited and obstructed the free exercise by the plaintiffs of their religion.

20. The Defendants are still committing and threaten and intend unless restrained by this Court to continue the commission of the trespasses and other wrongful acts herein set forth to the further serious injury and damage of the plaintiffs.

21. In addition to committing the wrongful acts herein specifically alleged the Commonwealth with the object and purpose hereinbefore mentioned and in purported pursuance of the order set forth in Paragraph 10 hereof has on and since January 18,1941 entered upon occupied trespassed upon and converted to its own use other land buildings equipment and chattels belonging to the plaintiffs.

THE PLAINTIFFS THEREFORE CLAIM: -

(a) A declaration that the National Security (Subversive Associations) Regulations are ultra vires the Commonwealth Parliament because they contravene Section 116 of the Commonwealth Constitution in that they prohibit the free exercise of religion.

(b) A declaration that the said regulations are ultra vires and invalid so far as the regulations and orders and declarations made thereunder may and do prohibit the free exercise of religion and that so much of the regulations and orders or declarations made thereunder as may be valid have no application to the plaintiff bodies or to the plaintiff MacGillivray.

(c) A declaration that the order and declaration of 17th January 1941 purporting to be made under the said regulations and purporting to have the effect of rendering unlawful the organisations mentioned therein is invalid.

(d) A declaration that the purported revocation by the Post Master General of the broadcast licences held by Airsal Broadcasting Co. Proprietary Limited, Sport Radio Broadcasting Company Limited, Atherton Tablelands Broadcaste Proprietary Limited and Port Augusta Broadcasting Comps

Limited is void and of no effect.

(e) A declaration that the four orders each dated January 8, 1941 directing and requiring the closing of the four broadcasting stations referred to herein were and are unlawfully made and invalid.

(f) A declaration that the seizure and detention and occupation by the Commonwealth and the Post Master General of the real and personal property of the plaintiffs and each of them (including Holy Bibles) was and is unlawful and a trespass.

(g) A declaration that the use and occupation by the Post Master General and the Australian Broadcasting Commission of the premises and equipment of Atherton Tablelands Broadcasters Proprietary Limited is illegal.

(h) Injunctions to restrain the defendants and each of them from -

(1) Acting against the plaintiffs or any of them under the said orders declarations and regulations.

(2) Further prohibiting obstructing or hindering the full exercise of their religion by the plaintiffs' religious bodies.

(i) Damages for trespass to and conversion of the plaintiffs' goods and property, and for all other acts of the defendants herein alleged which are found to be unlawful.

(j) Such further and other relief as the nature of the case may require.

DATED at Sydney this thirteenth day of May, 1941.

FRANK LOUAT,

Counsel for the Plaintiffs.

NOTE: This Statement of Claim is filed by Russell Jack Mille Newtown of 17 O'Connell Street Sydney the Solicitor fo the abovenamed plaintiffs.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 5 of 1941.

JEHOVAH'S WITNESSES & ORS.

v.

THE COMMONWEALTH OF AUSTRALIA AND ANOR.

STATEMENT OF CLAIM

R.J.M. Newtown,
Solicitor,
17 O'Connell Street,
SYDNEY.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY

No. 5 of 1941.

BETWEEN JEHOVAH'S WITNESSES, WATCH TOWER BIBLE & TRACT SOCIETY INTERNATIONAL BIBLE STUDENTS' ASSOCIATION, CONSOLATION PUBLISHING CO. ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED, AIRSALES BROADCASTING CO. PROPRIETARY LIMITED, SPORT RADIO BROADCASTING COMPANY LIMITED, ATHERTON TABLELANDS BROADCASTERS PROPRIETARY LIMITED, PORT AUGUSTA BROADCASTING COMPANY LIMITED, ID ALEXANDER MACGILLIVRAY for himself and for all the other individual members in Australia of the above bodies organisations and companies

Plaintiffs

-and-

THE COMMONWEALTH OF AUSTRALIA and the POSTMASTER-GENERAL

Defendants

STATEMENT OF DEFENCE

1. In answer to so much of paragraph 1 of the Statement of Claim as alleges that the plaintiff Jehovah's Witnesses is a numerous class of Christian worshippers having no rules or constitution of membership and associated as such class only by their common belief in and profession of their religion the defendants say that they do not know and cannot admit the said allegations or any part of any of them.

2. In further answer to paragraph 1 of the Statement of Claim the defendants as to so much of the said paragraph as alleges that the sole aim object purpose and activity in such association is the exercise of such religion deny the said allegations and each and every part thereof and further say that the activities of Jehovah's Witnesses include matters and things which do not constitute the exercise of a religion.

3. In answer to paragraph 2 of the Statement of Claim the defendants say that they do not know and cannot admit the allegations therein or any part of any of them, and the defendants repeat the statement in paragraph 2 hereof that the activities of Jehovah's Witnesses both in the Commonwealth and elsewhere embrace amongst other things matters and things which do not constitute the exercise of a

religion.

4. In answer to paragraph 3 of the Statement of Claim the defendants say that they do not know and cannot admit the allegations therein or any part of any of them, and the defendants further say that the said alleged particular interpretation includes amongst other things statements and explanations of matters other than religious matters including the attitude to be adopted by citizens towards governments (including the government of the Commonwealth of Australia) and towards national institutions and also including the attitude to be adopted by citizens towards the Law of the land and towards their fellow citizens.

5. In answer to paragraph 4 of the Statement of Claim the defendants say that they do not know and cannot admit the allegations therein or any part of any of them and the defendants in relation to the said interpretations repeat the allegations in paragraph 4 hereof in relation to the interpretation mentioned in paragraph 3 of the Statement of Claim.

6. In answer to paragraph 5 of the Statement of Claim the defendants say that they do not know and cannot admit the allegations therein or any part of any of them and the defendants further say that the alleged religion of the plaintiff Jehovah's Witnesses includes matters and things which do not constitute the exercise of a religion.

7. In answer to paragraph 6 of the Statement of Claim the defendants say that they do not know and cannot admit the allegations therein or any part of any of them and the defendants further say that the alleged religion of the plaintiff Jehovah's Witnesses includes matters and things which do not constitute the exercise of a religion.

8. In answer to paragraph 7 of the Statement of Claim the defendants say that they do not know and cannot admit the allegations therein or any part of any of them and the defendants further say that the alleged religion of the plaintiff Jehovah's Witnesses includes matters and things which do not constitute the exercise of a religion.

9. In answer to so much of paragraph 8 of the Statement of Claim as alleges that the said broadcasting stations were maintained and used for the [illegible]

teachings of Jehovah's Witnesses and of raising funds to be used exclusively in such propagation, the defendants say that they do not know and can ot admit the allegations therein or any part of any of them and the defendants further say that the said alleged religion and teachings included amongst other things, matters and things which did not constitute a religion or part of a religion.

10. In answer to so much of paragraph 9 of the Statement of Claim as alleges that the plaintiff Alexander MacGillivray is a member and an ordained minister of Jehovah's Witnesses and that he is also a member of the Watch Tower Bible and Tract Society and of the International Bible Students' Association, the defendants say that they do not know and cannot admit such allegations or any part of any of them.

11. In answer to paragraph 11 of the Statement of Claim the defendants say that the said order was made and published by the Govenor General acting by and with the advice of the Federal Executive Council in pursuance of and in accordance with the powers vested in him by the National Security (Subversive Associations) Regulations and not otherwise and save as aforesaid the defendants deny the allegations in the said paragraph and each and every part of them.

12. In answer to paragraph 12 of the Statement of Claim the defendants as to so much of the said paragraph as alleges that following upon such publication and for the purpose of suppressing all the exercises and activities of the plaintiffs in purported pursuance of the siad Order the Commonwealth of Australia wrongfully and by force or the threat of force prohibited obstructed and prevented members of the plaintiff bodies from meeting for public worship deny the said allegations and each and every part thereof, and in further answer to so much of the said paragraph 12 as alleges that the defendants prevented the members of the plaintiff bodies from entering or using halls for the purpose of the plaintiffs' religious exercises and devotion deny that they or either of them so prevented the members of the plaintiff bodies except in so far as such halls were lawfully occupied by Commonwealth officers thereunto authorised under and in accordanc

with the provisions of the National Security (Subversive Associations) Regulations.

13. In answer to paragraph 13 of the Statement of Claim the defendants say that the premises therein referred to were occupied by the plaintiff International Bible Studnets' Association immediately prior to its having been declared unlawful and thereupon the Attorney General of the Commonwealth being satisfied that certain property then in the said premises belonged to or was used by or on behalf of or in the interests of the said last mentioned plaintiff and that such property was in the said premises immediately prior to the said last mentioned plaintiff having been declared unlawful by order directed that the said premises should be occupied and the same were occupied by a person authorised by the said Attorney General in accordance with the said last mentioned Regulations and not otherwise. In further answer to the said last mentioned paragraph the defendants say that the books papers and chattels therein referred to were duly taken possession of by a person authorised by the said Attorney General and impounded in pursuance of and in accordance with the provisions of Regulation 5 (2) of the National Security (Subversive Associations) Regulations and not otherwise. Save as aforesaid the defendants deny the allegations contained in paragraph 13 of the Statement of Claim and each and every one of the allegations.

14. In answer to paragraph 14 of the Statement of Claim the defendants say that the premises therein referred to were occupied by the plaintiff Adelaide Company of Jehovah's Witnesses immediately prior to its havingbeen declared unlawful and thereupon the Attorney General of the Commonwealth being satisfied that certain property in the said premises belonged to or was used by or on b behalf of or in the interests of the said lastmentioned plaintiff and that such property was in the said premises immediately prior to the said lastmentione plaintiff having been declared unlawful by order directed that the said premises should be occupied and

the same were occupied by a person authorised by the said Attorney General in accordance with the said lastmentioned Regulations and not otherwise. Save as aforesaid the defendants deny the allegations contained in paragraph 14 of the Statement of Claim and each and every one of the allegations.

15. In answer to paragraph 15 of the Statement of Claim the defendants say that the premises therein referred to were occupied by the plaintiff International Bible Students' Association immediately prior to its having been declared unlawful and thereupon the Attorney General of the Commonwealth being satisfied that there was in the said premises property which belonged to or was used by or on behalf of or in the interests of the said lastmentioned plaintiff and that such property was in the said premises immediately prior to the saidlastmentioned plaintiff having been declared unlawful by order directed that the said premises should be occupied and the same were occupied by a person authorised by the said Attorney General by the defendant Commonwealth in accordance with the said lastmentioned Regulations and not otherwise. Save as aforesaid the defendants deny the allegations contained in paragraph 15 of the Statement of Claim and each and every one of the allegations.

16. In answer to paragraph 16 of the Statement of Claim the defendants say that the orders therein referred to were duly and validly made in pursuance of and in accordance with the provisions of the National Security (General) Regulations and lawfully required the plaintiffs in the said lastmentioned paragraph respectively to close their said wireless stations and to refrain from transmitting messages therefrom until the said orders respectively should be revoked. The defendant Commonwealth craves leave to refer to the said orders when produced as if the same had been set forth herein. Save as aforesaid the defendants deny the allegations contained in the said lastmentioned paragraph and each and every one of the said allegations.

17. In answer to paragraph 17 of the Statement of Claim the defendants say that the premises therein specified constituted a

wireless telegraph within the meaning of the Telegraph Act 1909 and thereupon on the twenty fourth day of January one thousand nine hundred and forty one the Deputy of the Covenor General in and over the Commonwe lth of Australia having formed the opinion that an emergency had arisen which in his opinion rendered it desirable in the public interest to authorise an officer of the defendant Commonwealth to take possession and control of the said premises and to continue in possession and control thereof by order duly made under the provisions of the said lastmentioned Act so directed and thereupon the officer of the Commonwealth so authorised as aforesaid took possession and control of the said premises and has continued in control and possession thereof accordingly and not otherwise. Save as aforesaid the defendants deny the allegations contained in the said lastmentioned paragraph and each and every one of the said allegations.

18. In answer to paragraph 18 the defendants say that the licenses in the said paragraph referred to were duly revoked by the defendant Postmaster-General in pursuance of and in accordance with theprovisions of Regulation 11 of the National Security (General) Regulations and not otherwise. Save as aforesaid the defendants deny the allegations contained in the said lastmentioned paragraph and each and every one of the said allegations.

19. In answer to paragraph 21 of the Statement of Claim the defendants deny the allegations and each and every allegation therein made.

20. In answer to paragraph 21 of the Statement of Claim the defendants say that the only land buildings equipment or chattels which have been entered upon or occupied or of which possession has been taken by the defendant Commonwealth are such land buildings equipment or chattels which have been occupied or of which possession has been taken in pursuance of and in accordance with the provisions of the National Security (Subversive Associations) Regulations and not otherwise. Save as aforesaid the defendants deny the allegations contained in the said lastmentioned paragraph and each and every one of the said allegations.

21. The defendants submit that Jehovah's Witnesses, Watch Tower Bible and Tract Society, International Bible Students' Association, and

Consolation Publishing Co. disclose no right entitling them to sue as plaintiffs in their said names and the defendants further submit that the aforesaid parties have no right to be joined or sue as plaintiffs.

22. The defendants further submit that by force of the order and declaration in the tenth paragraph of the Statement of Claim set out and by force of the National Security (Subversive Associations) Regulations in pursuance of which the said order and declaration were made the said Jahovah's Witnesses, Watch Tower Bible & Tract Society International Bible Students' Association, Consolation Publishing Co. and Adelaide Company of Jahovah's Witnesses Incorporated (in the writ herein described as Adelaide Company of Jehovah's Witnesses) became and were dissolvent and non-existent and are not competent or entitled to sue as plaintiffs herein.

23. The defendants will object that the Statement of Claim herein is bad in law and discloses no cause of action against them or either of them in respect of the relief claimed in paragra hs (a) (b) and (c) of the claim for relief and in respect so much of paragraph (h) of such claim as asks for an injunction in respect of the declaration and order set forth in paragraph (10) of the Statement of Claim.

24. The defendants will object that no cause of action is disclosed by the Statement of Claim for the relief claimed in paragraphs (a) and (h) of the claim for relief upon the ground that the National Security (Subversive Associations) Regulations are not within the meaning of Section 116 of the Commonwealth Constitution a law for prohibiting the free exercise of any religion, and upon the further ground that the said Regulations do not prohibit or purport to prohibit the free exercise of any religion.

25. The defendants will object that no cause of action is disclosed by the Statement of Claim for the relief claimed in paragraph (c) of the claim for relief upon the ground that nothing has been alleged to show that the order and declaration set forth in paragraph (10) of the Statement of Claim was not within the

powers of the Governor General acting by and with the advice of the Federal Executive Council.

86. The defendants will object that no cause of action is disclosed by the Statement of Claim for so much of the relief claimed in paragraph (h) of the claim for relief as asks for an injunction in respect of the declaration and order set forth in paragraph (10) of the Statement of Claim upon the grounds mentioned in paragraphs 23 and 24 hereof.

DATED the day of May 1941.

Counsel for the Defendants.

This Statement of Defence was filed by act.

Extract - COMMONWEALTH OF AUSTRALIA GAZETTE.

No. 8, Dated 17th January, 1941.

ORDER.

Commonwealth of Australia to wit.
GOWRIE.
GOVERNOR-GENERAL.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

WHEREAS by regulation 3 of the National Security (Subversive Associations) Regulations it is provided that any body corporate or unincorporate, the existence of which the Governor-General, by order published in the Gazette, declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is thereby declared to be unlawful:

Now therefore I, Alexander Gore Arkwright, Baron Gowrie, the Governor-General aforesaid, acting with the advice of the Federal Executive Council do, by this order declare that, in my opinion, the existence of the following bodies, namely:--

The organisation or organizations known as Jehovah's Witnesses or the Witnesses of Jehovah;

The Watch Tower Bible and Tract Society;
The International Bible Students' Association;
The Adelaide Company of Jehovah's Witnesses; and
Consolation Publishing Co.

is prejudicial to the defence of the Commonwealth and the efficient prosecution of the war.

Given under my Hand and the Seal of the Commonwealth, this seventeenth day of January, in the year of our Lord One thousand nine hundred and forty-one, and in the fifth year of His Majesty's reign.

By His Excellency's Command,

W. M. HUGHES.

for Minister of State for Defence Co-ordination.

NATIONAL SECURITY (SUBVERSIVE ASSOCIATIONS)

REGULATIONS.

ORDER UNDER REGULATION 6A.

WHEREAS it is provided by regulation 6A of the National Security (Subversive Associations) Regulations that any house, premises or place or part thereof which was occupied by a body immediately prior to its having been declared to be unlawful may, if a Minister so directs, be occupied in accordance with the provisions of the order so long as there is in the house, premises or place or part thereof any property which a Minister is satisfied belonged to, or was used by or on behalf of, or in the interests of, the body, and which was therein immediately prior to the body having been declared to be unlawful:

AND WHEREAS, by order published in the Gazette dated the seventeenth day of January, One thousand nine hundred and forty-one, the following bodies, namely:-

The organization or organizations known as Jehovah's Witnesses or the Witnesses of Jehovah.

The Watch Tower Bible and Tract Society;

The International Bible Students' Association;

The Adelaide Company of Jehovah's Witnesses; and

Consolation Publishing Co.

(hereinafter referred to as "the said subversive associations") were declared to be unlawful:

AND WHEREAS, immediately prior to the date of the said order, the premises situated at the addresses hereinafter specified were occupied by one or more of the said subversive associations, namely:-

(a) 7 Beresford Road, Strathfield, New South Wales;

(b) 22A George Street, East Melbourne, Victoria;

(c) Ann Street, Brisbane, Queensland;

(d) 33 Sturt Street, Adelaide, South Australia;

(e) 15 Catherine Street, Subiaco, Western Australia;

(f) 402 Elizabeth Street, Hobart, Tasmania.

AND WHEREAS I am satisfied that there was on each of the said premises property which belonged to, or was used by or on behalf of, or in the interests of the said subversive associations and which

was therein immediately prior to the said subversive associations having been declared to be unlawful:

NOW THEREFORE I, William Morris Hughes, do hereby direct that -

(a) the Inspector, Commonwealth Investigation Branch, in the State in which any of the said premises is situated shall, with such assistance as he thinks fit, take possession of, control and occupy the premises so situated;

(b) no person shall, except with the consent of the said Inspector, be in or on or enter or leave, the said premises;

(c) no property whatsoever shall, except with the consent of the said Inspector, be brought into or removed from the said premises.

DATED this seventeenth day of January, 1941.

W. M. HUGHES.

Attorney- General.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 11 of 1941.

BETWEEN: ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED,

Plaintiff.

AND THE COMMONWEALTH OF AUSTRALIA.

Defendant.

George the Sixth by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King Defender of the Faith, Emperor of India.

To the Commonwealth of Australia. We command you that within 28 days after the service of this writ on you inclusive of the day of such service, you do cause an appearance to be entered for you in Our High Court of Australia in an action at the suit of Adelaide Company of Jehovah's Witnesses Incorporated of Adelaide in the State of South Australia AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

Witness: The Right Honourable Sir John Greig Latham, C.C.M.G., Chief Justice of Our said High Court, the fourth day of September in the year of Our Lord one thousand nine hundred and forty-one. (L.S.)

(Sdg.) J. G. HARDMAN.
District Registrar.

N.B. This writ is to be served within twelve calendar months from the date thereof, or if renewed, withing six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

(L.S.)

Appearance to this writ may be entered by the Defendant either personally or by Solicitor at the District Registry of the High Court at Sydney.

If the Defendant neither resides nor carries on business in the State of New South Wales its appearance may at its option be entered at the place abovementioned or at the Principal Registry of the High Court at Melbourne.

The Plaintiff's claim is for:-

(1) A perpetual injunction restraining the defendant its servants and agents from continuing to trespass upon the land and buildings known as Kingdom Hall situate at Sturt Street Adelaide in the State of South Australia.

(2) Damages for the said trespass.

(L.S.)(3) Such further and other relief as the nature of the case may require.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

WRIT.

This Writ was issued by Russell Jack Miller Newton of Sydney, whose address for service is at 17 O'Connell Street, Sydney Solicitor for the plaintiff registered office of which is situate at Kingdom Hall 33-35 Sturt Street, Adelaide.

R. J. M. NEWTON, ESQ.,
Solicitor,
17 O'Connell Street,
SYDNEY.

B.7091.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY

No. 11 of 1941.

BETWEEN ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff

A N D THE COMMONWEALTH OF AUSTRALIA

Defendant

STATEMENT OF CLAIM

1. The Plaintiff is a voluntary association incorporated under the Associations Incorporation Act 1929-1935 of South Australia and entitled to sue in and by its said corporate name.

2. Prior to and at the time of the committing of the grievances hereinafter mentioned the Plaintiff was in exclusive possession and occupation of certain land and buildings known as Kingdom Hall situated at Sturt Street Adelaide in the State of South Australia.

3. On and after the 17th January, 1941 the Defendant by its servant and agent wrongfully broke and entered the said land and buildings of the Plaintiff and excluded the Plaintiff therefrom.

4. The Defendant threatens and intends to repeat and continue the said trespass.

THE PLAINTIFF THEREFORE CLAIMS

1. A perpetual injunction to restrain the Defendant its servants and agents from continuing or repeating the said trespass.

2. Damage for the said trespass

3. Such further and other relief as the nature of the case my require

DATED at Sydney this FOURTH day of SEPTEMBER, 1941.

R. J. M. NEWTON
Solicitor for the Plaintiff
17 O'Connell Street
Sydney.

NOTE:- This Statement of Claim is filed by Russell Jack Miller Newton of 17 O'Connell Street, Sydney, the solicitor for the abovenamed Plaintiff.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA

STATEMENT OF CLAIM

R. J. M. NEWTON. ESQ.
Solicitor,
O'Connell Street
SYDNEY. B7091.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 11 of 1941.

BETWEEN

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

Plaintiff.

- and -

THE COMMONWEALTH OF AUSTRALIA.

Defendant.

D E F E N C E.

DELIVERED THE 30th DAY OF OCTOBER, 1941.

1. In answer to paragraph 1 of the Statement of Claim the defendant says that on and prior to the seventeenth day of January 1941 the plaintiff was a society or organization incorporated under the provisions of the Associations Incorporation Act 1929-1935 of South Australia and was known as the Adelaide Company of Jehovah's Witnesses. On the said lastmentioned date the Governor-General of the Commonwealth of Australia acting with the advice of the Federal Executive Council in pursuance of and in accordance with the powers vested in him by the National Security (Subversive Associations) Regulations and not otherwise made and caused to be published in the Commonwealth Gazette an order in the following terms:-

ORDER.

Commonwealth of Australia to wit
GOWRIE
Governor-General.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

WHEREAS by regulation 3 of the National Security (Subversive Associations) Regulations it is provided that any body corporate or unincorporate, the existence of which the Governor-General, by order published in the Gazette, declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is thereby declared to be unlawful:

Now therefore I, Alexander Gore Arkwright, Baron Gowrie, the Governor-General aforesaid, acting with the advice of the Federal Executive Council do, by this order declare that, in my opinion, the existence of the following bodies, namely:-

The organization or organisations known as Jehovah's Witnesses or the Witnesses of Jehovah;
The Watch Tower Bible and Tract Society;
The International Bible Students' Association;
The Adelaide Company of Jehovah's Witnesses; and
Consolation Publishing Co.

is prejudicial to the defence of the Commonwealth and the

efficient prosecution of the war.

Given under my Hand and the Seal of the Commonwealth, this seventeenth day of January, in the year of (L.S.) our Lord one thousand nine hundred and forty-one, and in the fifty year of His Majesty's reign.

By His Excellency's Command
W. M. HUGHES
for Minister of State for Defence Co-ordination."

and the defendant says that by force of the said Regulation the plaintiff was thereupon declared to be unlawful and was dissolved. Save as aforesaid the defendant denies the allegation contained in the said lastmentioned paragraph and each and every one of the said allegations.

2. In answer to paragraph 3 of the Statement of Claim the defendant says that the land and buildings in the said paragraph referred to were occupied by the plaintiff immediately prior to its having beendeclared unlawful as aforesaid and thereupon the Attorney-General of the Commonwealth being satisfied that certain property in the said premises belonged to or was used by or on behalf of or in the interests of the plaintiff and that such property was in and upon the said land and buildings immediately prior to the plaintiff having been declared unlawful as aforesaid by order directed that the said land and buildings should be occupied and the same were occupied by a person authorised by the said Attorney-General in accordance with the said Regulations and not otherwise. Save as aforesaid the defendant denies the allegations contained in paragraph 3 of the Statement of Claim and each and every one of the said allegations.

3. In answer to paragraph 4 of the Statement of Claim the defendant denies that it intends or threatens to remain in occupation of the said land andbuildings except in pursuance of the order in the last preceding paragraph hereof referred to and save as aforesaid it denies that it threatens or intends to repeat or continue the said alleged trespasses.

4. In further answer to the Statement of Claim herein the defendant submits that by force of the order published in the Commonwealth Gazette set out in paragraph 1 hereof and by force of regulations 3 and 4 of the National Security (Subversive Associations) Regulations the plaintiff association became and was dissolved and non-existent and was not and is not competent or entitled to sue as plaintiff herein.

DATED the thirtieth day of October, 1941.

(H. F. E. WHITLAM)
Crown Solicitor for the Commonwealth
and Solicitor for the Defendant,
Commonwealth Bank Chambers,
108-120 Pitt Street, Sydney.

The plaintiff is required to deliver its pleading in reply within eight days of the delivery of the Defence herein.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

D E F E N C E.

H.F.E. WHITLAM,

Crown Solicitor for the Commonwealth.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY

No. 11 of 1941.

The day of November one thousand nine hundred and forty one.

REPLICATION.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

V

THE COMMONWEALTH OF AUSTRALIA.

1. In answer to paragraph 1 of the Defence the plaintiff admits the allegation that on and prior to the seventeenth day of January 1941 the plaintiff was a society or organisation incorporated under the provision of the Associations Incorporation Act 1929-1935 of South Australia.

2. Except as aforesaid the plaintiff join issue on the Defence herein.

3. In further answer to the Defence and with reference to the Order of the seventeenth day of January therein set forth the Plaintiff says that the five bodies or organisations referred to by name in the said Order including the plaintiff were at all material times religious bodies or organisations devoted to the exercise of the Christian religion of Jehovah's Witnesses and that the sole aim object purpose and activity of the said bodies or organisations and each of them including the plaintiff was at a material times the exercise of the said religion.

4. In further answer to the Defence the plaintiff says that the said Order [illegible] was made with the object of suppressing and preventing all the said exercises and activities of the bodies or organisations named in the said Order including therein the use and occupation by the plaintiff of the said land and buildings in the manner and for the purpose mentioned in paragraph 4 hereof.

5. In further answer to the Defence the plaintiff submits that the said Order of the seventeenth day of January 1941 and the National Security (Subversive Associations) Regulations so far as they purport to authorise the making of the said Order in respect of the bodies or organisations therein named are contrary to Section 116 of the Commonwealth Constitution in that they prohibit the free exercise of religion and are therefore void and of no effect.

DATED the Seventh day of November 1941.

R.J.M. NEWTON.

Solicitor for the Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

V

THE COMMONWEALTH OF AUSTRALIA

} PUBLICATION.

R. J. M. NEWTON. Esq.
Solicitor,
17 O'Connell Street,
SYDNEY. B7091.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY } No. 11 of 1941

BETWEEN ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff

- and -

THE COMMONWEALTH OF AUSTRALIA

Defendant

R E J O I N D E R.

DELIVERED THE 19th DAY OF NOVEMBER 1941.

1. The defendant accepts the plaintiff's admission contained in paragraph one of the Replication herein.

2. The defendant joins issue with the plaintiff on paragraph three of the said Replication.

3. In answer to paragraph 4 of the Replication the defendant repeats the allegation made in the Statement of Defence herein that the Order therein referred to was made and published by the Governor General acting with the advice of the Federal Executive Council in pursuance of and in accordance with the powers vested in him by the National Security (Subversive Associations) Regulations and not otherwise and save as aforesaid the defendant denies the allegations in paragraph 4 of the Replication and each and every part of each of them.

4. In further answer to paragraphs 3. and 4. of the Replication the defendant submits that the matters in the said paragraphs set forth do not in law constitute any answer to the matters in the Statement of Defence alleged.

(H.F.E. WHITLAM)
Crown Solicitor for the Commonwealth
and Solicitor for the Defendant
Commonwealth Bank Chambers
108-120 Pitt Street,
Sydney.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA

REJOINDER.

H.P.E. WHITLAM
Crown Solicitor for the Commonwealth
Telephone B.W.1057

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY

No. 11 of 1941.

BETWEEN ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff

AND THE COMMONWEALTH OF AUSTRALIA

Defendant

S U R R E J O I N D E R.

DELIVERED THE TWENTY FOURTH DAY OF NOVEMBER, 1941.

The Plaintiff joins issue on the Defendant's Rejoinder herein.

(Sgd.) R. J. M. NEWTON

Plaintiff's Solicitor

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA

} SURREJOINDER

R. J. M. NEWTON. ESQ.
Solicitor,
O'Connell Street,
SYDNEY. B7091.

IN THE HIGH COURT OF AUSTRALIA

PRINCIPAL REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

BRIEF ON HEARING.

Mr. C.A. Weston, K.C.
with you
Mr. A.R. Taylor,

guas.

H.F.E. WHITLAM,
Crown Solicitor for the Commonwealth.

JH.

11 November, 1942

W.4356

MEMORANDUM for:-

The Director-General
Security Service,
CANBERRA. A.C.T.

JEHOVAH'S WITNESSES.

I refer to your memorandum (No.661/103) inquiring as to the present position of the matter of the Adelaide Company of Jehovah's Witnesses Inc. v. The Commonwealth of Australia.

Advice has now been received that the case has been tentatively set down for hearing by the High Court on 23rd November, 1942, and every effort will be made to have the hearing expedited as far as possible.

(Sgd.) Geo. S. Knowles.

Secretary.

W 2300

MD.

4th Nov. 1942

W.2300

MEMORANDUM for:-

The Commonwealth Crown Solicitor,
CANBERRA A.C.T.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH OF AUSTRALIA.

I refer to your minute of 30th October, 1942, concerning the abovementioned case.

In reply, I desire to inform you that the Deputy Crown Solicitor, Sydney, should be requested to keep in touch with the Deputy Crown Solicitor, Melbourne, as to the probable date of hearing, and arrange for Counsel to be ready to leave for Melbourne at short notice to argue the case.

I shall be glad if you will so inform the Deputy Crown Solicitor, Sydney.

(Sgd.) Geo. S. Knowles

Secretary.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

STATUTORY RULES.

1939. No. .

REGULATIONS UNDER THE NATIONAL SECURITY ACT 1939.*

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *National Security Act* 1939.

Dated this

day of , 1939.

Governor-General.

By His Excellency's Command,

for and on behalf of the Minister of State for Defence Co-ordination.

NATIONAL SECURITY (REINSTATEMENT IN CIVIL EMPLOYMENT) REGULATIONS.

Citation. 1. These Regulations may be cited as the National Security (Reinstatement in Civil Employment) Regulations.

Definition. 2.—(1.) In these Regulations, "war service" means—

(*a*) the service of a member of the Citizen Forces when called out for war service in pursuance of the *Defence Act* 1903-1939, or during continuous training under that Act or the *Naval Defence Act* 1910-1934, or the *Air Force Act* 1923; or

(*b*) the continuous service under any of those Acts of any person who volunteers and is accepted for such service during the present war.

(2.) Any reference in these Regulations to an employer shall, in relation to any person who is rendering or has rendered war service, be construed as including a reference to any person for the time being—

(*a*) carrying on any undertaking or service in which the first-mentioned person was employed immediately prior to the commencement of his war service; or

---

* Notified in the *Commonwealth Gazette* on , 1939.

6648.—8/23.11.1938.—PRICE 3*d*.

W2300

COMMONWEALTH ATTORNEY-GENERAL'S DEPT.
RECEIVED
30 OCT 1942
CANBERRA

C.L.

29th October, 1942.

The Crown Solicitor,
CANBERRA.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

When the Attorney-General was in Melbourne recently, he instructed me to take the necessary action to have this action heard by the High Court before the end of the year.

2. The action was instituted in the New South Wales Registry of the Court and I ascertained from the Deputy Crown Solicitor, Sydney, that on the 29th April 1942 Mr. Justice Starke had directed that this action and also an action by Jehovah's Witnesses and Others v. The Commonwealth of Australia and Another should be taken out of the Court list for trial and not restored thereto until 14 days' notice of restoration should be given by either of the parties.

3. A Chamber Summons was taken out by me on the 28th Octob in the Principal Registry at Melbourne asking for an Order that action be restored to the cause list for trial and that a date a place be fixed for the hearing of the action.

4. I had communicated with Mr. Alderman, Counsel for the plaintiff, who is in Melbourne, and had informed him of the pro application. Mr. Alderman stated that he would accept service the Summons, which was directed to Mr. R.J.M. Newton, the plain solicitor.

5. This morning Mr. Alderman and myself appeared before His Honour Mr. Justice Starke in Chambers on the hearing of the Summons.

6. After discussing possible dates for trial of the action, His Honour intimated that as he probably would not be proceeding to Sydney, he would restore the action to the list of causes for hearing in Melbourne and that he would hear it as soon as possible, probably at the conclusion of the hearing of the indictments in the Canteens cases. His Honour intimated to Mr. Alderman, however, that in the event of any of the Canteens cases breaking down or not being proceeded with, he should be ready to proceed with the trial of this action.

7. Mr. Alderman informed His Honour that if the plaintiff was unsuccessful in this action, proceedings would not be continued in the action Jehovah's Witnesses & Ors. v. The Commonwealth of Australia & Anor.

(F. F. CLAUSEN)
Deputy Crown Solicitor.

FFC.IW.

The Secretary
Attorney-General's Department
For your information
W. Wrightman
Crown Solicitor
30 OCT 1942

Read to leave for Melbourne at next sitting of case
A.D. 7/11/42

Seen
7/11/42

Advise OCS to set OCS to Hear in Melbourne as with OCS well as Melbourne dates and hearing and arrange for counsel

COMMONWEALTH OF AUSTRALIA.

POSTAL ADDRESS:
BOX 46, G.P.O., CANBERRA, A.C.T.
TELEPHONE NUMBERS:
CANBERRA, 629; 620;
TELEGRAPHIC ADDRESS:
"COMPOSITELY,"
CANBERRA, A.C.T.

COMMONWEALTH ATTORNEY-GENERAL'S DEPT.
RECEIVED
18 SEP 1942
CANBERRA

W TIMA FILE
2300 F.

SECURITY SERVICE,

Canberra, A.C.T., 17th September 19 42.

Ref. No. 661/103

The Solicitor-General
for the Commonwealth,
CANBERRA. A.C.T.

SUBJECT: Jehovah's Witnesses.

It is desired to refer to your letter of the 22nd May last, W.2300, in regard to the abovementioned matter, and particularly the last paragraph thereof wherein you stated as follows:-

> "If some move is not made shortly by the other side, I shall consider whether steps should not be taken by the Commonwealth to have the claim struck out for want of prosecution.".

Perhaps you may now consider whether the time has not arrived when some definite action should be taken to have this case struck out?

Wm. J. MacKay.
Director-General of Security.

COMMONWEALTH OF AUSTRALIA.

ATTORNEY-GENERAL'S DEPARTMENT.

EM

MINUTE PAPER.

W.4256.

SUBJECT:

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH.

The Attorney-General.

The organization known as Jehovah's Witnesses and its associated bodies were declared unlawful on 17th January, 1941.

On 19th February, 1941, the organizations concerned issued a writ against the Commonwealth and, on 22nd August, 1941, this action was dismissed. In dismissing the action, His Honour Mr. Justice Starke suggested that the questions at issue could be more readily determined by a simple action for trespass.

The Adelaide Company of Jehovah's Witnesses Incorporated issued a fresh writ on 4th September, 1941, claiming a perpetual injunction against the Commonwealth from continuing to trespass on its land and damages for such trespass.

This action came before the High Court on 29th April, 1942. Counsel for the Commonwealth was instructed to oppose any adjournment and to do everything possible to bring the matter to finality as soon as possible. Counsel for the plaintiffs applied for an adjournment on the ground that great difficulty was being experienced in presenting its case by reason of its attorney, Mr. Alderman, being ill with dengue fever.

The Court directed that the causes be taken out of the Court's list for trial and not restored until fourteen days' notice of restoration be given by either party. His Honour intimated that Counsel for the plaintiff should inform the Commonwealth of any progress made by Mr. Alderman in recovering his health.

The Director-General of Security has inquired as to when the case is likely to be heard as he has a number of matters outstanding which could be readily dealt with if he knew something definite in regard to the disposal of the appeal.

Mr. Alderman telephoned me from Adelaide on 16th July stating that he was proceeding ~~with Mr. Justice O'Bryan~~ to Darwin on official business and, on his return, he would be going to Port Moresby on Commonwealth business. He expects to be absent for about two months in all and is desirous that the case should not come on in his absence. Mr. Alderman again referred to the possibility of a settlement.

It is now sixteen months since the original writ was issued and, as the High Court will be sitting in Sydney only next month, instructions are desired as to whether the Commonwealth should, in view of Mr. Alderman's request, give notice of restoration of the cause to the Court's list. I recommend that pending his return no action be taken.

Secretary.
17/7/1942.

Action is being taken to have the hearing of the case expedited & it is expected to be heard in Sept. 1942
31/8/42

EM

W.4256.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH.

The Attorney-General.

The organization known as Jehovah's Witnesses and its associated bodies were declared unlawful on 17th January, 1941.

On 19th February, 1941, the organizations concerned issued a writ against the Commonwealth and, on 22nd August, 1941, this action was dismissed. In dismissing the action, His Honour Mr. Justice Starke suggested that the questions at issue could be more readily determined by a simple action for trespass.

The Adelaide Company of Jehovah's Witnesses Incorporated issued a fresh writ on 4th September, 1941, claiming a perpetual injunction against the Commonwealth from continuing to trespass on its land and damages for such trespass.

This action came before the High Court on 29th April, 1942. Counsel for the Commonwealth was instructed to oppose any adjournment and to do everything possible to bring the matter to finality as soon as possible. Counsel for the plaintiffs applied for an adjournment on the ground that great difficulty was being experienced in presenting its case by reason of its attorney, Mr. Alderman, being ill with dengue fever.

The Court directed that the causes be taken out of the Court's list for trial and not restored until fourteen days' notice of restoration be given by either party. His Honour intimated that Counsel for the plaintiff should inform the Commonwealth of any progress made by Mr. Alderman in recovering his health.

The Director-General of Security has inquired as to when the case is likely to be heard as he has a number of matters outstanding which could be readily dealt with if he knew something definite in regard to the disposal of the appeal.

Mr. Alderman telephoned me from Adelaide on 16th July, stating that he was proceeding with Mr. Justice O'Bryan to Darwin on official business and, on his return, he would be going to Port Moresby on Commonwealth business. He expects to be absent for about two months in all and is desirous that the case should not come on in his absence. Mr. Alderman again referred to the possibility of a settlement.

It is now sixteen months since the original writ was issued and, as the High Court will be sitting in Sydney only next month, instructions are desired as to whether the Commonwealth should, in view of Mr. Alderman's reques give notice of restoration of the cause to the Court's list.

Secretary.
/7/1942.

of tea and the question at issue involves many thousands of pounds.

The object of the National Security (Prices) Regulations is the regulation of the prices in Australia and, although regulation 44 is in general terms, it was intended to apply only to goods in Australia. Regulation 44 (3.) provides that all persons to whom a requisitioning notice applies shall, without delay, give immediate possession of the goods to the Minister.

In the present case, D. and J. Fowler has not yet given possession of the tea in question to the Minister nor is it likely that they will, even after the war, be in a position to deliver that tea to the Minister in accordance with regulation 44(3.).

The Company declared that it had some 33,000 pounds of tea in its possession or under its control on the relevant date and, over three months after the date fixed for lodging the return of tea so held, it produced a statement to the effect that it had purchased in Java an additional 262,000 pounds approximately.

There is no evidence that the Company had this tea in its control at midnight on 28th February. No information has been furnished as to whether it was paid for or where it was stored and by whom.

The evacuation of Java had been proceeding and the island was being subjected to air raids for some days prior to 28th February. The Japanese actually invaded Java on 1st March and the tea could no longer be in its control on that date or since.

It appears to me that the only goods which the owners are entitled to be paid for under the regulation are those in their possession or under their control which are capable of being delivered without delay to the Minister.

In my view, the Company is not entitled to payment for the tea in question unless and until it gives immediate possession thereof to the Minister.

Solicitor-General.

/ /1942.

The Acting Chairman,
Tea Control Board,
CANBERRA. A.C.T.

xx651.

W. 2300

MB.

23rd. May, 1942.

W.2500.

MEMORANDUM for:

The Director-General of Security,
CANBERRA.

re JEHOVAH'S WITNESSES.

I refer to your memorandum dated 23rd April, 1942, asking for advice as to whether there is any legal ground upon which action can be taken against persons seeking to enlist members for the organization known as Jehovah's Witnesses.

In reply thereto, I desire to state that, by virtue of the order dated 17th January, 1941, this organization is legally non-existent and it is accordingly not possible to take any action on the suggested lines.

The actions by the declared organizations against the Commonwealth came before the High Court in Sydney on 29th April. Counsel for the Commonwealth was instructed to oppose any adjournment and to do everything possible to bring the matter to finality as soon as possible. Counsel for the plaintiffs applied for an adjournment on the ground that great difficulty was being experienced by reason of the illness of the plaintiff's attorney, Mr. Alderman, who was ill with dengue fever.

The Court directed that the causes be taken out of the Court's List for Trial and not restored until fourteen days' notice of restoration be given by either party. His Honour intimated that counsel for the plaintiffs should inform the Commonwealth of any progress made by Mr. Alderman in recovering his health.

I think it is clear that the plaintiffs are not anxious for the actions to be brought on. Quite recently Mr. Alderman mentioned the possibility of the actions being settled.

Mr. Alderman went to Darwin with Mr. Justice Lowe the first week in March - over two months ago - and his attack of dengue fever appears to be rather protracted. If some move is not made shortly by the other side, I shall consider whether steps should not be taken by the Commonwealth to have the claim struck out for want of prosecution.

(Sgd.) Geo. L. Knowles.

Secretary.

COMMONWEALTH OF AUSTRALIA.

NATIONAL SECURITY (TEA CONTROL) REGULATIONS

TEA CONTROL ORDER NO. 3.

In pursuance of the powers conferred upon it by the National Security (Tea Control) Regulations, the Tea Control Board hereby makes the following Order :-

Citation. 1. This Order may be cited as the Tea Control Order No. 3.

Definitions. 2. In this Order, unless the contrary intention appears -

"household consumption" means all consumption of tea, other than tea consumed in any hospital, public or charitable institution, boarding establishment, residential establishment, cafes, restaurants, or similar catering establishments or consumed by any group of consumers employed in any workshop, factory or approved essential service;

"Rationing Authority" means any authority appointed by the Board to be the Rationing Authority for the purposes of this Order.

Tea to be obtained or supplied only in accordance with this Order. 3. Except under and in accordance with the provisions of this Order, a person shall not obtain or attempt to obtain any tea from any retailer and a retailer shall not supply, or offer or attempt to supply, any tea for any purpose whatsoever.

Tea for household consumption. 4.-(1.) Except as hereinafter provided, any person over nine years of age shall be entitled to a ration of two ounces of tea for household consumption per fortnight.

(2.) A person entitled to a ration of tea shall register with a retailer for a period of six months.

(3.) Rations for household consumption may be purchased from the retailer once each 4 weeks or fortnightly at the discretion of the retailer.

(4.) One person in a family or household shall be responsible for the registration of himself and the other members of his family or household.

(5.) The person responsible for registration shall lodge a declaration with one retailer in accordance with the form set out in Form No. 1. in the Schedule to this Order.

Tea for hospitals and public or charitable institutions. 5.-(1.) Subject to sub-paragraph (2.) of this paragraph, each member of the staff and inmate of any hospital or public or charitable institution approved by the Rationing Authority shall be entitled to a ration of two ounces of tea per fortnight.

(2.) The number of persons so entitled shall be determined on the basis of the daily average number of members of the staff and inmates of the establishment during the fortnight ended 29th March, 1942.

(3.) The declaration to be made on behalf of any such establishment shall be lodged with one wholesaler or one retailer and shall be in accordance with Form No. 2. in the Schedule to this Order.

/6.-(1.)

WMcG.

COMMONWEALTH OF AUSTRALIA.

2300
4/6

POSTAL ADDRESS:
BOX 46, G.P.O., CANBERRA, A.C.T.
TELEPHONE NUMBERS:
CANBERRA, 629; 620; B 614.
TELEGRAPHIC ADDRESS:
"COMPOSITELY,"
CANBERRA, A.C.T.

5660

SECURITY SERVICE.

Canberra, A.C.T., 21st May, 1942 19

Sir George Knowles,
Solicitor General.
CANBERRA. A.C.T.

Dear Sir George,

In accordance with the request contained in my communication of the 23rd ultimo, could you let me have some indication as to when the appeal of Jehovah's Witnesses is likely to be heard.

Yours faithfully,

Wm. J. MacKay,
Director General of Security.

TELEPHONE
CANBERRA 631.

TELEGRAPHIC ADDRESS—
COMATTGEN, CANBERRA.

COMMONWEALTH OF AUSTRALIA.

ATTORNEY-GENERAL'S DEPARTMENT.

CANBERRA, A.C.T. May, 1942

IN REPLY, PLEASE QUOTE No. W.2600

The Director-General of Security,
CANBERRA.

re JEHOVAH'S WITNESSES.

I refer to your memorandum dated 23rd April, 1942, asking for advice as to whether there is any legal ground upon which action can be taken against persons seeking to enlist members for the organization known as Jehovah's Witnesses.

In reply thereto, I desire to state that, by virtue of the order dated 17th January, 1941, this organization is legally non-existent and it is accordingly not possible to take any action on the suggested lines.

The actions by the declared organisations against the Commonwealth came before the High Court in Sydney on 29th April. Counsel for the Commonwealth was instructed to oppose any adjournment and to do everything possible to bring the matter to finality as soon as possible. Counsel for the plaintiffs applied for an adjournment on the ground that great difficulty was being experienced by reason of the illness of the plaintiff's attorney, Mr. Alderman, who was ill with dengue fever.

The Court directed that the causes be taken out of the Court's List for Trial and not restored until fourteen days' notice of restoration be given by either party. His Honour intimated that counsel for the plaintiffs should inform the Commonwealth of any progress made by Mr. Alderman in recovering his health.

I think it is clear ~~It is quite apparent~~ that the plaintiffs are not anxious for the actions to be brought on, ~~and that Mr. Alderman's illness was only an excuse to prolong the present admittedly unsatisfactory state of affairs.~~

Quite recently Mr Alderman mentioned the possibility of the actions being settled.

Mr. Alderman went to Darwin with Mr. Justice Lowe the first week in March - over two months ago - and his attack of dengue fever appears to be rather protracted. ~~It is suggested that your Adelaide representative should make inquiries as to Mr. Alderman's present state of health.~~

If some move is made shortly by the other side, I shall consider whether the actions should be finally settled.

Secretary.

May, 42

W.2300

The Director-General of Security,
CANBERRA.

re JEHOVAH'S WITNESSES.

I refer to your memorandum dated 23rd April,1942, asking for advice as to whether there is any legal ground upon which action can be taken against persons seeking to enlist members for the organization known as Jehovah's Witnesses.

In reply thereto, I desire to state that, by virtue of the order dated 17th January, 1941, this organization is legally non-existent and it is accordingly not possible to take any action on the suggested lines.

The actions by the declared organisations against the Commonwealth came before the High Court in Sydney on 29th April. Counsel for the Commonwealth was instructed to oppose any adjournment and to do everything possible to bring the matter to finality as soon as possible. Counsel for the plaintiffs applied for an adjournmend on the ground that great difficulty was being experienced by reason of the illness of the plaintiff's attorney, Mr. Alderman, who was ill with dengue fever.

TheCourt directed that the causes be taken out of the Court's List for Trial and not restored until fourteen days' notice of restoration be given by either party. His Honour intimated that counsel for the plaintiffs should inform the Commonwealth of any progress made by Mr. Alderman in redovering his health.

It is quite apparent that the plaintiffs are not anxious for the actions to be brought on and that Mr. Alderman's illness was only an excuse to prolong the present admittedly unsatisfactory state of affairs.

Mr. Alderman went to Darwin with Mr.Justice Lowe the first week in March - over two months ago - and his attack of dengue fever appears to be rather protracted. It is suggested that your Adelaide representative should make inquiries as to Mr. Alderman's present state of health.

Secretary.

taken by the Cth to have the claim struck out for want of prosecution.

Sir George

1940-41.

A BILL

FOR

AN ACT

To authorize the Raising and Expending of a certain Sum of Money.

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title.

1. This Act may be cited as the *Loan Act (No. 4)* 1941.

Commencement.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Authority to borrow £50,000,000.

3. The Treasurer may, from time to time, borrow, under the provisions of the *Commonwealth Inscribed Stock Act* 1911–1940, or under the provisions of any Act authorizing the issue of Treasury Bills, moneys not exceeding in the whole the amount of Fifty million pounds.

Purposes of which money may be expended.

4. The amount borrowed may be issued and applied for the expenses of borrowing and for the purposes of appropriations made, or to be made, by law.

Issue and application of £50,000,000.

5. There may be issued and applied out of the proceeds of any loan raised under the authority of this Act, or of any other Act, the sum of Fifty million pounds for war purposes.

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.

[134]—150/16.12.1941.—F.7145.

WJR/JA

S.L.21369/6. 29th April, 1942.

The Crown Solicitor:

JEHOVAH'S WITNESSES AND OTHERS v. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER (HIGH COURT WRIT NO. 5 of 1941): ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH OF AUSTRALIA (HIGH COURT WRIT NO. 11 OF 1941).

I refer to previous correspondence herein and I desire to inform you that these Actions were mentioned before His Honour Mr. Justice Starke in the High Court at Sydney on 29th April, 1942.

2. Mr. S. Redshaw of Counsel appeared for the various plaintiffs and Mr. A. R. Taylor of Counsel appeared for the defendants.

3. Mr. Redshaw said that he appeared on behalf of Dr. F. Louat of Counsel to apply that the hearing of the Actions be adjourned. Mr. Redshaw said that great difficulty was being experienced because of the illness of the plaintiffs' Attorney. He said that the Attorney was Mr. Alderman of Adelaide, S.A., who had recently been engaged on national work in the Northern Territory where he became ill with dengue fever. Mr. Redshaw said that it was expected that Mr. Alderman would be ill for another month or so.

4. Upon His Honour asking whether the parties were really willing to proceed, Mr. Taylor said that the Action Jehovah's Witnesses and others v. The Commonwealth of Australia and another would probably not be proceeded with, but with respect to the other Action the Commonwealth desired that the hearing should take place at the earliest opportunity.

5. After making a few general observations His Honour directed that the causes be taken out of the Court's List for Trial and not restored thereto until fourteen days' notice of restoration be given by either of the parties. His Honour said that the adjournments thereby granted should not be allowed to prejudice the determination of proceedings pending in other jurisdictions. At Mr. Taylor's request, His Honour intimated that Mr. Redshaw should inform the Commonwealth of any progress made by Mr. Alderman in recovering his health.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per

The Secretary
Attorney-General's Department
For your information
W. R. Whitlam
Crown Solicitor

30 APR 1942

xxx 631.

C.

29 APR 1942 42.

W.4356.

MEMORANDUM for -

The Crown Solicitor,
CANBERRA.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES v THE COMMONWEALTH.

I refer to your minute dated 20th April, 1942, forwarding copy of a memorandum from the Deputy Crown Solicitor, Sydney, stating that the plaintiffs would probably apply for an adjournment of the hearing of the above matter.

In reply thereto, I desire to state that the Acting Attorney-General has directed that, if any such adjournment is applied for, it is to be opposed and that everything possible should be done to bring the matter to finality as soon as possible.

(Sgd.) Geo. S. Rennie.

Secretary.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

Once an amount in cash equal to the value of the quantity of motor spirit which he desires to purchase and shall obtain a receipt for the payment; and

(*b*) before delivery of the motor spirit is made to him, surrender that receipt together with motor spirit emergency ration tickets, or ration tickets overprinted with the letter D, corresponding to the quantity of motor spirit which he desires to purchase to the person making delivery of the motor spirit on behalf of the Department of the Army.

Notification of affected liquid fuel areas and mobilized areas.

"39M.—(1.) A notification declaring an area to be an affected liquid fuel area or a mobilized liquid fuel area, or a notice in pursuance of paragraph (*c*) of sub-regulation (1.) of regulation 39K of these Regulations, may be given—

(*a*) by publication of the notification or notice (as the case may be) in a newspaper circulating in that area, or

(*b*) by broadcast announcement from a national or commercial wireless broadcasting station situated in the Military District in which that area is included.

"(2.) Directions to licensed retailers or other persons in possession of motor spirit under sub-regulation (2.) of regulation 39K of these Regulations may be given by the Commandant or by an officer authorized by him to act on his behalf—

(*a*) orally or in writing to the retailer or other person concerned;

COMMONWEALTH OF AUSTRALIA.

ATTORNEY-GENERAL'S DEPARTMENT.

MINUTE PAPER.

C.

SUBJECT: JEHOVAH'S WITNESSES - ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INC. v THE COMMONWEALTH.

The Attorney-General.

The organization known as Jehovah's Witnesses and its associated bodies were declared unlawful on 17th January, 1941.

On 19th February, 1941, the organizations concerned issued a writ against the Commonwealth claiming that the National Security (Subversive Associations) Regulations were ultra vires because they contravene section 116 of the Constitution in that they prohibit the free exercise of religion. On 20nd August, 1941, this action was dismissed with costs against the plaintiffs.

On 4th September, 1941, one of the plaintiffs, the Adelaide Company of Jehovah's Witnesses Inc. issued a fresh writ against the Commonwealth claiming damages for trespass etc.

Counsel for the organization recently informed counsel for the Commonwealth that his clients were quite satisfied with the Commonwealth's present attitude towards them and that they were not anxious to bring the actions on immediately.

The Crown Solicitor has asked for instructions as to the attitude to be adopted in the event of the plaintiffs taking steps to have the hearing of the action postponed.

The present position is unsatisfactory from the Commonwealth's standpoint.

Peace Officers are employed to guard the various premises taken over by the Commonwealth. The cost to the Commonwealth of looking after the Strathfield premises is stated to be £87 per week.

Although Judge Rutherford is dead, his followers in recent months have been most active and many complaints have been received regarding their anti-war activities.

I recommend that, if any adjournment of the action is applied for, it be opposed and that everything possible be done to bring the matter to finality as soon as possible.

COMMONWEALTH ATTORNEY-GENERAL'S DEPT. RECEIVED 27 APR 1942 CANBERRA

Approved. H.V. 26/4/1942

Secretary.

24/4/1942.

JEHOVAH'S WITNESSES - ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INC. v THE COMMONWEALTH.

The Attorney-General.

The organization known as Jehovah's Witnesses and its associated bodies were declared unlawful on 17th January, 1941.

On 19th February, 1941, the organizations concerned issued a writ against the Commonwealth claiming that the National Security (Subversive Associations) Regulations were ultra vires because they contravene section 116 of the Constitution in that they prohibit the free exercise of religion. On 22nd August, 1941, this action was dismissed with costs against the plaintiffs.

On 4th September, 1941, one of the plaintiffs, the Adelaide Company of Jehovah's Witnesses Inc. issued a fresh writ against the Commonwealth claiming damages for trespass etc.

Counsel for the organization recently informed counsel for the Commonwealth that his clients were quite satisfied with the Commonwealth's present attitude towards them and that they were not anxious to bring the actions on immediately.

The Crown Solicitor has asked for instructions as to the attitude to be adopted in the event of the plaintiffs taking steps to have the hearing of the action postponed.

The present position is unsatisfactory from the Commonwealth's standpoint.

Peace Officers are employed to guard the various premises taken over by the Commonwealth. The cost to the Commonwealth of looking after the Strathfield premises is stated to be £87 per week.

Although Judge Rutherford is dead, his followers in recent months have been most active and many complaints have been received regarding their anti-war activities.

I recommend that, if any adjournment of the action is applied for, it be opposed and that everything possible be done to bring the matter to finality as soon as possible.

Geo. L Knowles

Secretary.

24/4/1942.

Approved
JB
24/4/42

STATUTORY RULES.

1941. No. .

REGULATIONS UNDER THE NATIONAL SECURITY ACT 1939-1940.*

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *National Security Act* 1939-1940.

Dated this

day of , 1941.

By His Excellency's Command, Governor-General.

for Minister of State for Defence Co-ordination.

AMENDMENTS OF NATIONAL SECURITY (SUPPLEMENTARY) REGULATIONS.†

Amendment of Statutory Rules, 1941, No. 249.

1. Regulation 2 of Statutory Rules 1941, No. 249 is amended by omitting the figures "16", "17" and "18" and inserting in their stead the figures "15", "16" and "17", respectively.

2. The National Security (Supplementary) Regulations are amended by adding at the end thereof the following regulation:—

Transportation to Australia of wives and children of members of the Forces.

"18.—(1.) The Commission may, without regard to the financial means of any person concerned, authorize the transportation to Australia at the expense of the Commonwealth, within the limits prescribed by this regulation, of the wife or wife and children of a member of the Forces who married during the period of his active service outside Australia.

"(2.) Except as prescribed by sub-regulation (3.) of this regulation, the expense to be borne by the Commonwealth, in respect of each person whose transportation to Australia is authorized, shall be—

(*a*) the cost of that person's transportation by the most economical means of conveyance deemed suitable by the Commission, from the person's place of residence abroad

---

* Notified in the *Commonwealth Gazette* on , 1941.

† Statutory Rules 1940, No. 126, as amended by Statutory Rules 1940, Nos. 151, 169, 213, 228, 233, 234, 245 and 257; and 1941, Nos. 75, 88, 100, 140, 222 and 249.

7440.—20/18.11.1941.—PRICE 3D.

1.61

COMMONWEALTH OF AUSTRALIA

W 2300 sept

SECURITY SERVICE.

COMMONWEALTH ATTORNEY-GENERAL'S DEPT. 28 APR 1942 CANBERRA

POSTAL ADDRESS: Box 454 G.P.O. Sydney.
TELEGRAPHIC ADDRESS: "Compositely," Sydney.

Sydney, 23rd April, 19 42.

Sir George Knowles,
Solicitor General,
CANBERRA, A.C.T.

Dear Sir George,

I have received from the Commissioner of Police, Adelaide, an intimation that persons are visiting certain towns in South Australia in an endeavour to enlist members as Jehovah's Witnesses. Brigadier-General Leane goes on to say -

> "I am of the opinion that to permit this is not in the interests of the conduct of the war. May I be informed please what action it is intended to take?"

I have looked at Regulations 3 and 4 of the National Security (Subversive Associations) Regulations, as well as Regulations 8(1) and 8A, and would be glad of your advice as to whether there is any legal ground upon which action can be taken against persons seeking to enlist members for this organisation. The Regulations deal primarily with the holding of meetings and I can quite realise that the wording of Regulation 8(1) "or with any other person assemble" might mean that two persons can constitute a meeting. However, in the case of one member of the illegal body approaching a non-member, it would hardly constitute an offence of two persons assembling for the purpose of advocating an unlawful doctrine.

Perhaps you would be able to give me some indication as to the probable date upon which the appeal of Jehovah's Witnesses, which is now pending, is likely to be heard. There are a number of matters outstanding which could readily be dealt with if I knew something definite in regard to the disposal of the appeal.

Yours faithfully,

Wm. J. MacKay,
Director-General of Security.

COMMONWEALTH ATTORNEY-GENERAL'S DEPT. CANBERRA 28 APR 1942 RECEIVED

WR/KH

SL/21369/6 17th April 1942.

The Crown Solicitor.

WITNESSES OF JEHOVAH.

The High Court proceedings in this matter are listed for trial before a single Justice during the current sittings in Sydney. It is likely that the matters will be reached early next month.

2. These proceedings were recently mentioned in a conversation between Dr. Louat of Counsel for the Witnesses of Jehovah and Mr. A.R. Taylor of Counsel for the Commonwealth. Dr. Louat said that his clients were quite satisfied with the Commonwealth's present attitude towards them and that they were not anxious to bring the actions on for hearing immediately. Nevertheless they will not discontinue those actions.

3. Two other matters are in abeyance pending the decision of the High Court, namely -

(a) Criminal proceedings against MacGillivray and Rees on assault charges; and

(b) An application by Rees for exemption from Military Service.

Adjournments in these matters were secured by MacGillivray and Rees upon contentions that in the High Court proceedings, the High Court would, no doubt, decide the following questions, inter alia:-

(a) Whether the National Security (Subversive Associations) Regulations are valid; and

(b) Whether the beliefs etc. of the Witnesses of Jehovah constitute a religion (Rees claims to be a Minister of Religion).

4. I shall be glad to receive your instructions urgently as to the attitude to be adopted in the event that any step is taken by or on behalf of the plaintiffs to postpone the hearing of the High Court Actions.

GEORGE A. WATSON,

Deputy Crown Solicitor.

per

The Secretary
Attorney-General's Department
Referred for instructions, please
W. Whitlam
Crown Solicitor
20 APR 1942

NOV 20 1941
CANBERRA

W 4256

S.L21369/6.

19th November, 1941.

The Crown Solicitor.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

I forward herewith for your information a copy of the Defendant's Rejoinder herein.

GEORGE A. WATSON,
Deputy Crown Solicitor,
per

The Secretary
Attorney-General's Department
For your information
Crown Solicitor
20.11.41

Encl.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY } No. 11 of 1941.

B E T W E E N ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff,

- and

THE COMMONWEALTH OF AUSTRALIA

Defendant.

R E J O I N D E R.

DELIVERED THE NINETEENTH DAY OF NOVEMBER 1941.

1. The defendant accepts the plaintiff's admission contained in paragraph one of the Replication herein.

2. The defendant joins issue with the plaintiff on paragraph three of the said Replication.

3. In answer to paragraph 4 of the Replication the defendant repeats the allegation made in the Statement of Defence herein that the Order therein referred to was made and published by the Governor General acting with the advice of the Federal Executive Council in pursuance of and in accordance with the powers vested in him by the National Security (Subversive Associations) Regulations and not otherwise and save as aforesaid the defendant denies the allegations in paragraph 4 of the Replication and each and every part of each of them.

4. In further answer to paragraphs 3. and 4. of the Replication the defendant submits that the matters in the said paragraphs set forth do not in law constitute any answer to the matters in the Statement of Defence alleged.

(H. F. E. WHITLAM)
Crown Solicitor for the Commonwealth
and Solicitor for the Defendant,
Commonwealth Bank Chambers,
108-120 Pitt Street,
S y d n e y.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA

REJOINDER.

H. F. E. WHITLAM,

Crown Solicitor for the Commonwealth,

per

COPY.
JK

COMMONWEALTH OF AUSTRALIA.

W 4256

NOV 12 1941

21369/6.

COMMONWEALTH CROWN SOLICITOR'S OFFICE,
COMMONWEALTH BANK CHAMBERS,
108-120 PITT STREET,
SYDNEY.

The Crown Solicitor.

13th November, 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA.

I forward herewith for your information a copy of the Plaintiff's Replication herein.

GEORGE A. WATSON,
Deputy Crown Solicitor,

The Secretary,
Attorney-General's Dept.,

Encl.

Copy herewith for you information.

H.F.E. Whitlam
(H.F.E. WHITLAM)
CROWN SOLICITOR.
17/11/41.

file - Deputies

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 11 of 1941.

The day of November one thousand nine hundred and forty one.

REPLICATION.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

1. In answer to paragraph 1 of the Defence the plaintiff admits the allegation that on and prior to the seventeenth day of January 1941 the plaintiff was a society or organisation incorporated under the provisions of the Associations Incorporation Act 1929-1935 of South Australia.

2. Except as aforesaid the plaintiff joins issue on the Defence herein.

3. In further answer to the Defence and with reference to the Order of the seventeenth day of January therein set forth the Plaintiff says that the five bodies or organisations referred to by name in the said Order including the plaintiff were at all material times religious bodies or organisations devoted to the exercise of the Christian religion of Jehovah's Witnesses and that the sole aim object purpose and activity of the said bodies or organisations and each of them including the plaintiff was at all material times the exercise of the said religion.

4. In further answer to the Defence the plaintiff says that the said Order was made with the object of suppressing and preventing all the said exercises and activities of the bodies or organisations named in the said Order including therein the use and occupation by the plaintiff of the said land and buildings in the manner and for the purpose mentioned in paragraph 4 hereof.

5. In further answer to the Defence the plaintiff submits that the said Order of the seventeenth day of January 1941 and the National Security (Subversive Associations)Regulations so far as they purport to authorise the making of the said Order in respect of the bodies or organisations therein named are contrary to Section 116 of the Commonwealth Constitution in that they prohibit the free exercise of religion and are therefore void and of no effect.

DATED the seventh day of November, 1941.

(Sgd.) R. J. M. NEWTON.
Solicitor for the Plaintiff.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED.

v.

THE COMMONWEALTH OF AUSTRALIA.

REPLICATION.

P. J. M. NEWTON, ESQ.
Solicitor,
17 O'Connell Street,
SYDNEY. B. 7091.

WR/JA

W 4256

21369.

30th October, 1941.

The Crown Solicitor.

JEHOVAH'S WITNESSES AND OTHERS v. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER (HIGH COURT ACTION NO. 5 OF 1941); ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH OF AUSTRALIA (HIGH COURT ACTION NO.11 OF 1941).

I forward herewith a copy of each of the following documents:--

(a) Formal Order of Starke, J. in Action No. 5/1941;
(b) Defence in Action No. 11/1941; and
(c) Letter to plaintiff's Solicitor dated 30th October, 1941.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per

The Secretary
Attorney-General's Department
For your information

Encl.

W. R. Whitlam
Crown Solicitor
31.10.41

No Listing.

ML/mm

21368. 30th October, 1941.

Messrs. Remington & Co.,
Solicitors,
Brook House,
17 O'Connell Street,
SYDNEY.

Dear Sirs,

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED
v. THE COMMONWEALTH OF AUSTRALIA. (HIGH COURT ACTION
No. 11 OF 1941).

The Defence herein is being delivered herewith.

2. I desire to draw your attention that the trespasses etc. alleged in this action are presumably identical with those alleged in respect of the same plaintiff in High Court Action No. 5 of 1941. Accordingly, I shall be glad to receive your early advice as to whether you propose to discontinue the earlier action.

3. In this regard Counsel has advised that it is not competent to have two proceedings at one and the same time for the same cause of action.

Yours truly,
E. P. M. WHITLAM,
Crown Solicitor for the Commonwealth.
per

Encl.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY

No. 5 of 1941.

BETWEEN

JEHOVAH'S WITNESSES, WATCH TOWER BIBLE AND TRACT SOCIETY, INTERNATIONAL BIBLE STUDENTS' ASSOCIATION, CONSOLATION PUBLISHING CO., ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED, AIRSALES BROADCASTING CO. PROPRIETARY LIMITED, SPORT RADIO BROADCASTING COMPANY LIMITED, ATHERTON TABLELANDS BROADCASTERS PROPRIETARY LIMITED, PORT AUGUSTA BROADCASTING COMPANY LIMITED and ALEXANDER MacGILLIVRAY for himself and for all the other individual members organisations and Companies.

Plaintiffs.

- and -

THE COMMONWEALTH OF AUSTRALIA and THE POSTMASTER-GENERAL,

Defendants.

BEFORE HIS HONOUR MR. JUSTICE STARKE

FRIDAY THE TWENTYSECOND DAY OF AUGUST, ONE THOUSAND NINE HUNDRED AND FORTYONE.

UPON MOTION made on the eighteenth day of August 1941, and this day, before this Court on behalf of the abovenamed Plaintiffs in pursuance of Notice of Motion filed in this Court on the thirteenth day of August 1941 WHEREUPON AND UPON HEARING READ the said Notice of Motion the affidavit of Alexander MacGillivray sworn the thirteenth day of August 1941 and the affidavit of William Joseph Roberts sworn the eighteenth day of August 1941 and both filed herein AND UPON HEARING Dr. Loust of Counsel for the said Plaintiffs and Mr. Mitchell of King's Counsel with whom was Mr. A.R. Taylor of Counsel for the abovenamed Defendants THIS COURT DOTH ORDER that the Motion be and the same is hereby dismissed AND THIS COURT DOTH FURTHER ORDER that it be referred to the proper officer of this Court to tax and certify the costs of the Defendants of and incidental to this Motion and that such costs when so taxed and allowed be paid by the following Plaintiffs namely, Adelaide Company of Jehovah's Witnesses Incorporated

Airsales Broadcasting Co. Proprietary Limited, Sport Radio Broadcasting Company Limited, Atherton Tablelands Broadcasters Proprietary Limited, Port Augusta Broadcasting Company Limited and Alexander MacGillivray to the Defendants or to their Solicitor, Harry Frederick Ernest Whitlam, Crown Solicitor for the Commonwealth.

By the Court

District Registrar.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY

No. 5 of 1941.

BETWEEN

JEHOVAH'S WITNESSES, WATCH TOWER BIBLE AND TRACT SOCIETY, INTERNATIONAL BIBLE STUDENTS' ASSOCIATION, CONSOLATION PUBLISHING CO. ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED, AIREDALES BROADCASTING CO. PROPRIETARY LIMITED, SPORT RADIO BROADCASTING COMPANY LIMITED, ATHERTON TABLELANDS BROADCASTERS PROPRIETARY LIMITED, PORT AUGUSTA BROADCASTING COMPANY LIMITED and ALEXANDER MacGILLIVRAY for himself and for all the other individual members organisations and Companies.

Plaintiffs.

- and -

THE COMMONWEALTH OF AUSTRALIA and THE POSTMASTER-GENERAL.

Defendants.

O R D E R
dated
22nd day of August 1941.

H. F. E. WHITLAM,

Crown Solicitor for the Commonwealth.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 11 of 1941.

BETWEEN

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED,

Plaintiff,

- and -

THE COMMONWEALTH OF AUSTRALIA,

Defendant.

D E F E N C E.

DELIVERED THE 30th DAY OF OCTOBER, 1941.

1. In answer to paragraph 1 of the Statement of Claim the defendant says that on and prior to the seventeenth day of January 1941 the plaintiff was a society or organization incorporated under the provisions of the Associations Incorporation Act 1929-1935 of South Australia and was known as the Adelaide Company of Jehovah's Witnesses On the said lastmentioned date the Governor-General of the Commonwealth of Australia acting with the advice of the Federal Executive Council in pursuance of and in accordance with the powers vested in him by the National Security (Subversive Associations) Regulations and not otherwise made and caused to be published in the Commonwealth Gazette an order in the following terms:-

"O R D E R.

Commonwealth of Australia to wit
GOWRIE
Governor-General.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

WHEREAS by regulation 3 of the National Security (Subversive Associations) Regulations it is provided that any body corporate or unincorporate, the existence of which the Governor-General, by order published in the GAZETTE, declares to be in his opinion, prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is thereby declared to be unlawful:

Now therefore I, Alexander Gore Arkwright, Baron Gowrie, the Governor-General aforesaid, acting with the advice of the Federal Executive Council do, by this order declare that, in my opinion, the existence of the following bodies, namely:-

The organization or organizations known as Jehovah's Witnesses or the Witnesses of Jehovah;
The Watch Tower Bible and Tract Society;
The International Bible Students' Association;
The Adelaide Company of Jehovah's Witnesses; and
Consolation Publishing Co.

is prejudicial to the defence of the Commonwealth and the

efficient prosecution of the war.

Given under my Hand and the Seal of the Commonwealth,
this seventeenth day of January, in the year of
(L.S.) our Lord one thousand nine hundred and forty-one,
and in the fifth year of His Majesty's reign.

By His Excellency's Command
W. M. HUGHES
for Minister of State for Defence Co-ordination."

and the defendant says that by force of the said Regulations the plaintiff was thereupon declared to be unlawful and was dissolved. Save as aforesaid the defendant denies the allegations contained in the said lastmentioned paragraph and each and every one of the said allegations.

2. In answer to paragraph 3 of the Statement of Claim the defendant says that the land and buildings in the said paragraph referred to were occupied by the plaintiff immediately prior to its having been declared unlawful as aforesaid and thereupon the Attorney-General of the Commonwealth being satisfied that certain property in the said premises belonged to or was used by or on behalf of or in the interests of the plaintiff and that such property was in and upon the said land and buildings immediately prior to the plaintiff having been declared unlawful as aforesaid by order directed that the said land and buildings should be occupied and the same were occupied by a person authorised by the said Attorney-General in accordance with the said Regulations and not otherwise. Save as aforesaid the defendant denies the allegations contained in paragraph 3 of the Statement of Claim and each and every one of the said allegations.

3. In answer to paragraph 4 of the Statement of Claim the defendant denies that it intends or threatens to remain in occupation of the said land and buildings except in pursuance of the order in the last preceding paragraph hereof referred to and save as aforesaid it denies that it threatens or intends to repeat or continue the said alleged trespasses.

4. In further answer to the Statement of Claim herein the defendant submits that by force of the order published in the Commonwealth Gazette set out in paragraph 1 hereof and by force of regulation 3

and 4 of the National Security (Subversive Associations) Regulations the plaintiff association became and was dissolved and non-existent and was not and is not competent or entitled to sue as plaintiff herein.

DATED the thirtieth day of October, 1941.

(Sgd) H.F.E. Whitlam

(H. F. E. WHITLAM)
Crown Solicitor for the Commonwealth
and Solicitor for the Defendant,
Commonwealth Bank Chambers,
108-120 Pitt Street, Sydney.

The plaintiff is required to deliver its pleading in reply within eight days of the delivery of the Defence herein.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

D E F E N C E.

E. P. E. WHITLAM,

Crown Solicitor for the Commonwealth.

~~X~~ 631

ML.

A 23rd October, 41

W.4256

MEMORANDUM FOR:-

The Director,
Investigation Branch,
CANBERRA A.C.T.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH.

The Deputy Crown Solicitor, Sydney, has asked that the papers relating to the action taken in Adelaide consequent on the above body being declared illegal be forwarded to him.

I shall be glad if you will ask the Inspector, Adelaide, to forward at once to the Deputy Crown Solicitor, Sydney, all his papers relating to this particular matter.

The Sydney sittings of the High Court commence on 11th November.

(Sgd.) Geo. S. Knowles
Secretary, J.I.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

the movements, navigation, pilotage, anchorage, mooring, berthing and lighting of vessels, and any order made under this regulation is in these Regulations referred to as "a navigation order."

(2.) If, in the case of any vessel, a navigation order is contravened or not complied with, the master of the vessel shall be guilty of an offence against the Act.

(3.) Any Commonwealth officer may, in relation to any vessel, take such steps, and use such force, as appear to that person to be reasonably necessary for securing compliance with any order under this regulation relating to the vessel, or, where any contravention in respect of this regulation has occurred in the case of the vessel, for enabling proceedings in respect of the offence effectually to be taken.

(4.) The preceding provisions of this regulation shall apply in relation to seaplanes on the surface of the water as those provisions apply in relation to vessels, and seaplanes taking off from, or alighting on, the water shall be deemed, for the purposes of this regulation, to be on the surface of the water while in contact therewith.

Control of lighthouses, &c.

43.—(1.) Except under permission granted by or on behalf of the Minister—

(*a*) no light, buoy, beacon, marine mark or other apparatus used for the purpose of aiding navigation in or on the water shall be discontinued, altered or removed; and

(*b*) no variation shall be made in the mode of exhibiting or operating any such light, buoy, beacon, marine mark or other apparatus.

xxx 631

ML.

A 23rd October, 41

W.4256.

MEMORANDUM FOR:-

The Crown Solicitor,
CANBERRA A.C.T.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH.

I refer to my memorandum dated 23/9/1941 forwarding copy of cable from the Australian Legation, Washington, stating that two opinions regarding the Gobiti's case were being forwarded, these have now been received and are attached hereto.

I have asked the Investigation Branch to forward to you direct the papers as to the action taken in Adelaide consequent upon the above company being declared illegal.

(Sgd.) Geo. S. Knowles
Secretary.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

appearance of the ship, and in respect of the equipping of the ship with any particular apparatus, contrivance or appliance, as are contained in the order have been complied with;

(*b*) for securing the proper maintenance and efficient use of any apparatus, contrivance or appliance with which any ship is equipped in pursuance of the order; and

(*c*) for any incidental and supplementary matters for which it appears to the Minister to be necessary or expedient for the purposes of the order to provide.

(2.) An order under this regulation may be made so as to apply either to a particular ship or to ships of a particular class, and so as to apply to any such ship or ships either wherever it or they may be or while in such waters, or engaged on such voyages, as are specified in the order.

(3.) If any ship proceed or attempts to proceed to sea in contravention of an order made under this regulation, the master of the ship and the person having the management thereof shall each be guilty of an offence against the Act.

(4.) Any Commonwealth officer may, in relation to any ship, take such steps, and use such force, as appear to him to be reasonably necessary for securing compliance with any order under this regulation relating to the ship, or, where any contravention in respect of this regulation has occurred in the case of the ship, for enabling proceedings in respect of the offence effectually to be taken.

xxx 631

ML.

A 23rd October, 41

W.4256.

MEMORANDUM FOR:-

The Crown Solicitor,
CANBERRA A.C.T.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH.

I refer to my memorandum dated 23/9/1941 forwarding copy of cable from the Australian Legation, Washington, stating that two opinions regarding the Gobiti's case were being forwarded, these have now been received and are attached hereto.

I have asked the Investigation Branch to forward to you direct the papers as to the action taken in Adelaide consequent upon the above company being declared illegal.

(Sgd.) Geo. S. Knowles
Secretary.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

(2.) The Minister or any person thereto authorized by him, may, if it appears to him to be necessary in the interests of the public safety or the defence of the Commonwealth so to do, give directions for prohibiting or restricting the exhibition or operation of, or requiring the removal, alteration or concealment of, or the making of any variation in the mode of exhibiting or operating, any such light, buoy, beacon, marine mark or other apparatus.

(3.) If this regulation, or any direction given under this regulation, is contravened or not complied with in the case of any light, buoy, beacon, marine mark or other apparatus, the person responsible for the maintenance of the light, buoy, beacon, marine mark or apparatus, as the case may be, shall be guilty of an offence against the Act; and, in the case of a failure to comply with any direction requiring the removal, alteration or concealment of any light, buoy, beacon, marine mark or other apparatus, the Minister may, without prejudice to any proceedings which may be taken in respect of the offence, cause to be done all work necessary for securing compliance with the direction.

Measures for safety of Australian ships.

44.—(1.) Subject to these Regulations, the Minister may, if it appears to him to be necessary or expedient for the safety of ships registered in Australia and of persons on board such ships so to do, make provision by order—

(*a*) for securing that any ship to which the order applies shall not, except under permission granted by the Minister or any person thereto authorized by him, proceed to sea from any port (whether within or outside the Commonwealth) unless such requirements in respect of the alteration of the structure or external appearance of the ship and in respect of the equipping

WR/JA

W 4256

21369.

15th October, 1941.

The Crown Solicitor.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v.
THE COMMONWEALTH.

I shall be glad if you will obtain and forward to me the papers relating to action, etc., taken in Adelaide consequent upon the Adelaide Company of Jehovah's Witnesses being declared to be an unlawful body.

GEORGE A. WATSON,

Deputy Crown Solicitor.

per

The Secretary
Attorney-General's Department
Referred
For your information
Crown Solicitor
16-10-41

No - Ziviling

COMMONWEALTH OF AUSTRALIA.

W 2300

COMMONWEALTH ATTORNEY GENERAL'S DEPARTMENT
OCT 18 1941
CANBERRA

DEPARTMENT OF EXTERNAL AFFAIRS,

Canberra, A.C.T. 10th October, 1941.

MEMORANDUM to :

The Secretary,
Attorney General's Department.

Jehovah's Witnesses.

With reference to my minute of 17th September, 1941, forwarding a copy of telegram No. 746 from the Australian Legation at Washington, I now forward herewith the two opinionsof the United States Supreme Court regarding the above matter.

W. R. Hodgson
Secretary.

W-JR/LM

W 4256

ATTORNEY-GENERAL'S DEPARTMENT ADELAIDE OCT 10 1941

9th October, 1941.

21369.

The Crown Solicitor:

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED v. THE COMMONWEALTH. (HIGH COURT WRIT NO. 11 of 1941).

I desire to inform you that an appearance was entered in this Action on behalf of the defendant on 9th October, 1941.

GEORGE A. WATSON,

Deputy Crown Solicitor.

per

The Secretary
Attorney-General's Department
For your information

Crown Solicitor
10.10.41

JP

23rd September, 41

MEMORANDUM for -

The Crown Solicitor,
CANBERRA.

ADELAIDE COMPANY OF JEHOVAH WITNESSES LTD. v. THE COMMONWEALTH.

I refer to my memorandum dated 3rd September, 1941, stating that I had caused a cable to be sent to the Australian Legation, Washington, for information as to the activities of Jehovah's Witnesses in U.S.A. and particularly as to whether the Dies Committee had considered the matter.

The following replies have now been received from the Australian Legation:-

Dated 17th September, 1941 -

"Your telegram No. 758 Ø Dies Committee considered question but has not reported. Hope to secure confidential memorandum of evidence shortly. United States stopped discussions of Society in connection with flag saluting in schools in Gobitis versus Minersville School Society June 3rd 1940. Two copies of opinions being sent by next air mail due Sydney about September 27th."

Dated 20th September, 1941 -

"My telegram 746. Confident that memorandum from Dies Committee will be sent by next air mail arriving Sydney about October 11th. It contains inter alia following points:-

(1) Selective service. Society tried to get classification for all members as pillars of religion. This was only granted for a few special sections - other members had to register as conscientious objectors.

(2) War Department confidential view is that witnesses are fanatics but not under Nazi or Communistic influence.

/Some

The Customs Ordinance 1921-1941 is incorporated with the Customs Tariff Ordinance 1933-1941 and section 121 of the first-mentioned Ordinance must therefore be read as if it were enacted in the Customs Tariff Ordinance 1933-1941. This section is as follows:-

"121. All export duties shall be finally payable at the rate in force when the goods are actually exported but in the first instance payment shall be made by the owner to the Collector at the rate in force when the goods are entered for export.".

The dates of actual export are dates between the 1st July and the 15th August, 1941 and the question to be determined is whether any rate of duty was in force during that period. Rates of duty on the export of copra are imposed by section 5 and the Third Schedule of the Customs Tariff Ordinance 1933-1941. Section 5 is as follows:-

"5. The Duties of Customs specified in the Third Schedule to this Ordinance are hereby imposed in accordance with that Schedule as from the date of commencement of this Ordinance and such duties shall be charged, collected and paid on all goods dutiable under that Schedule exported from the Territory on or after that date.".

The Third Schedule, so far as relevant, is as follows:-

"

The Third Schedule.

Exports.

Item No.	Articles.			
1	Copra when the assessed value is less than £5.15s. Free when the assessed value is £5.15s. or more but does not exceed £11 per ton. ..... 2s.6d. For the purposes of this item the expression "assessed value" means the value declared by the Administrator by notice to be the value per ton of copra exported during the month specified in the notice.	Item 1-2½ lb. per bag off gross weight if in bags.	Items 1, 2 and 5 - Any weight at pro rata rates.

In my opinion the effect of section 5 when read in conjunction with the Third Schedule is that there is an

/immediate

Some police authorities take contrary view. Dies Committee's Investigator found no evidence that they were "under any foreign domination".

(3) Most newspaper articles have taken Committee's view though deploring difficulties caused by the Society and in some cases emphasizing that in the event of war it will no doubt supply largest number of and most troublesome conscientious objectors."

As soon as the opinions come to hand, they will be made available to you.

Yours sincerely,

(sd.) Geo. S. Knowles

Secretary.

The Customs Ordinance 1921-1941 is incorporated with the Customs Tariff [illegible] section 121 of the first-mentioned Ordinance must therefore be read as if it were enacted in the Customs Tariff Ordinance 1933-1941. This section is as follows:-

"121. All export duties shall be finally payable at the rate in force when the goods are actually exported but in the first instance payment shall be made by the owner to the Collector at the rate in force when the goods are entered for export.".

The dates of actual export are dates between the 1st July and the 15th August, 1941 and the question to be determined is whether any rate of duty was in force during that period. Rates of duty on the export of copra are imposed by section 5 and the Third Schedule of the Customs Tariff Ordinance 1933-1941. Section 5 is as follows:-

"5. The Duties of Customs specified in the Third Schedule to this Ordinance are hereby imposed in accordance with that Schedule as from the date of commencement of this Ordinance and such duties shall be charged, collected and paid on all goods dutiable under that Schedule exported from the Territory on or after that date.".

The Third Schedule, so far as relevant, is as follows:-

"

The Third Schedule.

Exports.

Item No.	Articles.		
1	Copra when the assessed value is less than when the assessed value is £5.15s. or more but does not exceed £11 per ton. ..... For the purposes of this item the expression "assessed value" means the value declared by the Administrator by notice to be the value per ton of copra exported during the month specified in the notice.	£5.15s.- Free Item 1-2½ lb. per bag 2s.6d. off gross weight if in bags.	Items 1, 2and 5 - Any weight at pro rata rates.

In my opinion the effect of section 5 when read in conjunction with the Third Schedule is that there is an

/immediate

xx681.

MB.

September, 41.

MEMORANDUM for:

The Crown Solicitor,
CANBERRA.

AUSTRALIAN COMPANY OF JEHOVAH WITNESSES LTD. V. THE COMMONWEALTH.

I refer to my memorandum dated 3rd September, 1941, stating that I had caused a cable to be sent to the Australian Legation, Washington, for information as to the activities of Jehovah's Witnesses in U.S.A. and particularly as to whether the Dies Committee had considered the matter.

The following reply has now been received from the Australian Legation:-

"Your telegram No. 758 ∅ Dies Committee considered question but has not reported. Hope to secure confidential memorandum of evidence shortly. United States stopped discussions of Society in connection with flag saluting in schools in Gobitis versus Minersville School Society June 3rd 1940. Two copies of opinions being sent by next air mail due Sydney about September 27th."

As soon as the opinions come to hand, they will be made available to you.

Secretary.

DEPARTMENT OF EXTERNAL AFFAIRS.

CABLEGRAM.

2516

DECYPHER FROM AUSTRALIAN LEGATION, WASHINGTON. SECRET

No. 770 Date Sent: 1.37 p.m. - 20/9/41.
Date Recd: 21st September, 1941.

My telegram 746. Confident that memorandum from Dies Committee will be sent by next air mail arriving Sydney about October 11th. It contains inter alia following points:

(1) Selective service. Society tried to get classification for all members as pillars of religion. This was only granted for a few special sections - other members had to register as conscientious objectors.

(2) War Department confidential view is that witnesses are fanatics but not under Nazi or Communistic influence. Some police authorities take contrary view. Dies Committee's Investigator found no evidence that they were "under any foreign domination".

(3) Most newspaper articles have taken Committee's view though deploring difficulties caused by the Society and in some cases emphasising that in the event of war it will no doubt supply largest number of and most troublesome conscientious objectors.

* Jehovahs Witnesses

Copy to:
A.G.'s Dept. 22/9/41.

The Secretary,
Attorney-General's Department.

Referred.

for Secretary,
Dept. External Affairs.
22/9/41

DEPARTMENT OF EXTERNAL AFFAIRS.

CABLEGRAM.

2516

DECYPHER FROM AUSTRALIAN LEGATION, WASHINGTON. SECRET

No. 770 Date Sent: 1.37 p.m. - 20/9/41.
Date Recd: 21st September, 1941.

My telegram 746.* Confident that memorandum from Dies Committee will be sent by next air mail arriving Sydney about October 11th. It contains inter alia following points:

(1) Selective service. Society tried to get classification for all members as pillars of religion. This was only granted for a few special sections - other members had to register as conscientious objectors.

(2) War Department confidential view is that witnesses are fanatics but not under Nazi or Communistic influence. Some police authorities take contrary view. Dies Committee's Investigator found no evidence that they were "under any foreign domination".

(3) Most newspaper articles have taken Committee's view though deploring difficulties caused by the Society and in some cases emphasising that in the event of war it will no doubt supply largest number of and most troublesome conscientious objectors.

* Jehovahs Witnesses

Copy to:
A.G.'s Dept. 22/9/41.

DEPARTMENT OF EXTERNAL AFFAIRS.

URGENT

CABLEGRAM.

SECRET

W 2468 2300

COMMONWEALTH ATTORNEY-GENERAL'S DEPT. RECEIVED 17 SEP 1941 CANBERRA

DECYPHER FROM: AUSTRALIAN LEGATION, WASHINGTON.
No. 746

DATE SENT: 5.3 p.m. 16/9/41
*RECD: 17th September, 1941.

Your telegram No. 758 Ø Dies Committee considered question but has not reported. Hope to secure confidential memorandum of evidence shortly. United States stopped discussions of Society in connection with flag saluting in schools in Gobitis versus Minersville School Society June 3rd 1940. Two copies of opinions being sent by next air mail due Sydney about September 27th.

AUSTLEG.

Ø Jehovah's Witnesses.

Copy to A.G.'s Dept.
[illegible]. 17/9/41.

The Secretary,
Attorney-General's Department.

Referred.

for Secretary, 17/9/41.

17/9/41

16th Sitting

DEPARTMENT OF EXTERNAL AFFAIRS.

CABLEGRAM.

SECRET

2468

DECYPHER FROM
AUSTRALIAN LEGATION,
WASHINGTON.
No. 746

DATE SENT: 5.3 p.m. 16/9/41
RECD: 17th September, 1941.

Your telegram No. 758 Ø Dies Committee considered question but has not reported. Hope to secure confidential memorandum of evidence shortly. United States stopped discussions of Society in connection with flag saluting in schools in Gobitis versus Minersville School Society June 3rd 1940. Two copies of opinions being sent by next air mail due Sydney about September 27th.

AUSTLEG.

Ø Jehovah's Witnesses.

Copy to A.G.'s Dept.

17/9/41.

COPY. 16.

COMMONWEALTH OF AUSTRALIA.

COMMONWEALTH ATTORNEY GENERAL RECEIVED SEP 9 1941

Commonwealth Crown Solicitor's Office,
Commonwealth Bank Chambers,
108-120 Pitt Street, Sydney,
5th September, 1941.

The Crown Solicitor:

NATIONAL SECURITY (SUBVERSIVE ASSOCIATIONS) REGULATIONS: ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INC. v. THE COMMONWEALTH OF AUSTRALIA.

There has been tendered to me for acceptance of service a Writ of Summons and Statement of Claim issued out of the High Court of Australia by the abovenamed plaintiff against the Commonwealth of Australia.

2. This Writ has been issued in pursuance of a suggestion made by His Honour Mr. Justice Starke, that the questions at issue between the Witnesses of Jehovah and the Commonwealth could be more readily determined in a simple action for trespass.

3. Three copies of the writ and Statement of Claim are forwarded herewith for your information. Kindly let me have instructions as to acceptance of service.

GEORGE A. WATSON,

Deputy Crown Solicitor.

The Secretary,
Attorney-General's Department,
CANBERRA. A.C.T.

Two copies of Writ and Statement of Claim herewith. The Deputy Crown Solicitor has been instructed to accept service of the Writ.

H. F. E. Whitlam

(H. F. E. Whitlam)
Crown Solicitor.

9th September, 1941.

11/9/41

Mr Zipping

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

BETWEEN ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED,

Plaintiff,

AND THE COMMONWEALTH OF AUSTRALIA,

Defendant.

George the Sixth by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King Defender of the Faith, Emperor of India.

To the Commonwealth of Australia. We command you that within 28 days after the service of this writ on you inclusive of the day of such service, you do cause an appearance to be entered for you in Our High Court of Australia in an action at the suit of Adelaide Company of Jehovah's Witnesses Incorporated of Adelaide in the State of South Australia AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

Witness: The Right Honourable Sir John Greig Latham, G.C.M.G., Chief Justice of Our said High Court, the fourth day of September in the year of Our Lord one thousand nine hundred and forty-one. (L.S.)

(Sgd.) J. C. HARDMAN.
District Registrar.

N.B. This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

(L.S.)

Appearance to this writ may be entered by the Defendant either personally or by Solicitor at the District Registry of the High Court at Sydney.

If the defendant neither resides nor carries on business in the State of New South Wales its appearance may at its option be entered at the place abovementioned or at the Principal Registry of the High Court at Melbourne.

The Plaintiff's claim is for:-

(1) A perpetual injunction restraining the defendant its servants and agents from continuing to trespass upon the land and buildings known as Kingdom Hall situate at Sturt Street Adelaide in the State of South Australia.

(2) Damages for the said trespass.

(L.S.) (3) Such further and other relief as the nature of the case may require.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

W R I T.

This Writ was issued by Russell Jack Miller Newton of Sydney, whose address for service is at 17 O'Connell Street, Sydney Solicitor for the Plaintiff registered office of which is situate at Kingdom Hall 33-35 Sturt Street, Adelaide.

R. J. M. NEWTON, ESQ.,
Solicitor,
17 O'Connell Street,
SYDNEY.

B.7091.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 11 of 1941.

BETWEEN ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED,

Plaintiff,

AND THE COMMONWEALTH OF AUSTRALIA,

Defendant.

George the Sixth by the Grace of God of Great Britain, Ireland and the British Dominions beyond the Seas, King Defender of the Faith, Emperor of India.

To the Commonwealth of Australia. We command you that within 28 days after the service of this writ on you inclusive of the day of such service, you do cause an appearance to be entered for you in Our High Court of Australia in an action at the suit of Adelaide Company of Jehovah's Witnesses Incorporated of Adelaide in the State of South Australia AND TAKE NOTICE that in default of your so doing the Plaintiff may proceed therein, and judgment may be given in your absence.

Witness: The Right Honourable Sir John Greig Latham, G.C.M.G., Chief Justice of Our said High Court, the fourth day of September in the year of Our Lord one thousand nine hundred and forty-one. (L.S.)

(Sgd.) J. G. HARDMAN.
District Registrar.

N.B. This writ is to be served within twelve calendar months from the date thereof, or if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

(L.S.)

Appearance to this writ may be entered by the Defendant either personally or by Solicitor at the District Registry of the High Court at Sydney.

If the defendant neither resides nor carries on business in the State of New South Wales its appearance may at its option be entered at the place abovementioned or at the Principal Registry of the High Court at Melbourne.

The Plaintiff's claim is for:-

(1) A perpetual injunction restraining the defendant its servants and agents from continuing to trespass upon the land and buildings known as Kingdom Hall situate at Sturt Street Adelaide in the State of South Australia.

(2) Damages for the said trespass.

(L.S.) (3) Such further and other relief as the nature of the case may require.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

W R I T.

This writ was issued by Russell Jack Miller Newton of Sydney, whose address for service is at 17 O'Connell Street, Sydney Solicitor for the Plaintiff registered office of which is situate at Kingdom Hall 35-55 Sturt Street, Adelaide.

R. J. M. NEWTON, ESQ.,
Solicitor,
17 O'Connell Street,
SYDNEY.

B.7091.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 11 of 1941.

BETWEEN ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff,

AND THE COMMONWEALTH OF AUSTRALIA,

Defendant.

STATEMENT OF CLAIM.

1. The Plaintiff is a voluntary association incorporated under the Associations Incorporation Act 1929-1935 of South Australia and entitled to sue in and by its said corporate name.

2. Prior to and at the time of the committing of the grievances hereinafter mentioned the Plaintiff was in exclusive possession and occupation of certain land and buildings known as Kingdom Hall situate at Sturt Street Adelaide in the State of South Australia.

3. On and after the 17th January 1941 the Defendant by its servants and agents wrongfully broke and entered the said land and buildings of the Plaintiff and excluded the Plaintiff therefrom.

4. The Defendant threatens and intends to repeat and continue the said trespass.

THE PLAINTIFF THEREFORE CLAIMS

1. A perpetual injunction to restrain the Defendant its servants and agents from continuing or repeating the said trespass.

2. Damages for the said trespass.

3. Such further and other relief as the nature of the case may require.

DATED at Sydney this Fourth day of September, 1941.

(Sgd.) R. J. M. NEWTON.

Solicitor for the Plaintiff,
17 O'Connell Street,
S Y D N E Y.

NOTE: This Statement of Claim is filed by Russell Jack Miller Newton of 17 O'Connell Street, Sydney the Solicitor for the abovenamed Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

STATEMENT OF CLAIM.

R.J.M. NEWTON,
Solicitor,
17 O'Connell Street,
SYDNEY. B7091.

IN THE HIGH COURT OF AUSTRALIA)
NEW SOUTH WALES REGISTRY.) No. 11 of 1941.

BETWEEN ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff,

AND THE COMMONWEALTH OF AUSTRALIA,

Defendant.

STATEMENT OF CLAIM.

1. The Plaintiff is a voluntary association incorporated under the Associations Incorporation Act 1929-1935 of South Australia and entitled to sue in and by its said corporate name.

2. Prior to and at the time of the committing of the grievances hereinafter mentioned the Plaintiff was in exclusive possession and occupation of certain land and buildings known as Kingdom Hall situate at Sturt Street Adelaide in the State of South Australia.

3. On and after the 17th January 1941 the Defendant by its servants and agents wrongfully broke and entered the said land and buildings of the Plaintiff and excluded the Plaintiff therefrom.

4. The Defendant threatens and intends to repeat and continue the said trespass.

THE PLAINTIFF THEREFORE CLAIMS

1. A perpetual injunction to restrain the Defendant its servants and agents from continuing or repeating the said trespass.

2. Damages for the said trespass.

3. Such further and other relief as the nature of the case may require.

DATED at Sydney this Fourth day of September, 1941.

(Sgd.) R. J. M. NEWTON.

Solicitor for the Plaintiff,
17 O'Connell Street,
SYDNEY.

NOTE: This Statement of Claim is filed by Russell Jack Miller Newton of 17 O'Connell Street, Sydney the Solicitor for the abovenamed Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF [illegible]
LITHOGRAPH

v.

THE COMMONWEALTH OF AUSTRALIA.

STATEMENT OF CLAIM.

R.J.E. BENTON,
Solicitor,
17 O'Connell Street,
SYDNEY. B7031.

IN THE HIGH COURT OF AUSTRALIA
NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

BETWEEN ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

Plaintiff,

AND THE COMMONWEALTH OF AUSTRALIA,

Defendant.

STATEMENT OF CLAIM.

1. The Plaintiff is a voluntary association incorporated under the Associations Incorporation Act 1929-1935 of South Australia and entitled to sue in and by its said corporate name.

2. Prior to and at the time of the committing of the grievances hereinafter mentioned the Plaintiff was in exclusive possession and occupation of certain land and buildings known as Kingdom Hall situate at Sturt Street Adelaide in the State of South Australia.

3. On and after the 17th January 1941 the Defendant by its servants and agents wrongfully broke and entered the said land and buildings of the Plaintiff and excluded the Plaintiff therefrom.

4. The Defendant threatens and intends to repeat and continue the said trespass.

THE PLAINTIFF THEREFORE CLAIMS

1. A perpetual injunction to restrain the Defendant its servants and agents from continuing or repeating the said trespass.

2. Damages for the said trespass.

3. Such further and other relief as the nature of the case may require.

DATED at Sydney this Fourth day of September, 1941.

(Sgd.) R. J. M. NEWTON.

Solicitor for the Plaintiff,
17 O'Connell Street,
S Y D N E Y.

NOTE: This Statement of Claim is filed by Russell Jack Miller Newton of 17 O'Connell Street, Sydney the Solicitor for the abovenamed Plaintiffs.

IN THE HIGH COURT OF AUSTRALIA

NEW SOUTH WALES REGISTRY.

No. 11 of 1941.

ADELAIDE COMPANY OF JEHOVAH'S WITNESSES INCORPORATED

v.

THE COMMONWEALTH OF AUSTRALIA.

STATEMENT OF CLAIM.

R.J.H. HEWTON,
Solicitor,
17 O'Connell Street,
SYDNEY. B7091.

DEPARTMENT OF EXTERNAL AFFAIRS.

CABLEGRAM.

1629.

TO AUSTRALIAN LEGATION,
WASHINGTON. Dated 3rd September, 1941.

No.758.

Jehovah's Witnesses Watch Tower Bible and Tract Society and associated bodies are contesting constitutionality of Commonwealth's action in declaring them unlawful as contravention of Section 116 of Constitution. Has question as to whether they are genuine religious body and as to their non-religious activities ever been considered by governmental investigation in United States. Did Dies Committee on Un-American Propaganda consider the matter. Cable reply and forward by Air Mail any relevant report also forward two copies of Dies Committee Report and annexures.

Copy to - A.G's.Dept. (their memo. 631 of 3.9.41).

DEPARTMENT OF EXTERNAL AFFAIRS.

CABLEGRAM.

1629.

TO AUSTRALIAN LEGATION,
WASHINGTON.

Dated 3rd September, 1941.

No.758.

Jehovah's Witnesses Watch Tower Bible and Tract Society and associated bodies are contesting constitutionality of Commonwealth's action in declaring them unlawful as contravention of Section 116 of Constitution. Has question as to whether they are genuine religious body and as to their non-religious activities ever been considered by governmental investigation in United States. Did Dies Committee on Un-American Propaganda consider the matter. Cable reply and forward by Air Mail any relevant report also forward two copies of Dies Committee Report and annexures.

Copy to - A.G's.Dept. (their memo. 631 of 3.9.41).

XX031.

MB.

3rd September 41.

MEMORANDUM for:

The Secretary,
Department of External Affairs,
CANBERRA. A.C.T.

I shall be glad if you will cause a cablegram in the following terms to be sent to His Majesty's Envoy Extraordinary and Minister Plenipotentiary in the United States of America:-

"Jehovah's Witnesses Watch Tower Bible and Tract Society and associated bodies are contesting constitutionality of Commonwealth's action in declaring them unlawful as contravention of section 116 of Constitution stop. Has question as to whether they are genuine religious body and as to their non-religious activities ever been considered by governmental investigation in United States stop. Did Dies Committee on Un-American Propaganda consider the matter stop. Cable reply and forward by Air Mail any relevant report also forward two copies of Dies Committee Report and annexures."

16 Lippmann

(Sgd) Geo. S. Knowles.
Secretary.

THIS PAGE IS THE REVERSE OF THE PREVIOUS PAGE
AND MAY NOT BE RELEVANT TO THE FILE

[Extract from *Commonwealth of Australia Gazette*, No. 15, dated 14th March, 1935.]

PROCLAMATION.

Commonwealth of Australia to wit.
ISAAC A. ISAACS
Governor-General.

By His Excellency the Governor-General in and over the Commonwealth of Australia.

WHEREAS by Proclamation dated the thirteenth day of August One thousand nine hundred and thirteen issued under section nine A of the *Trade Marks Act* 1905-1912 it was declared that that Act should apply to the Territory of Papua on and after the first day of September One thousand nine hundred and thirteen:

And whereas by Proclamation dated the twentieth day of December One thousand nine hundred and twenty-two issued under section nine B of the *Trade Marks Act* 1905-1922 it was declared that that Act should apply to the Territory of New Guinea on and after the first day of January One thousand nine hundred to twenty-three:

And whereas, since the application of the said Acts to the Territories of Papua and New Guinea, the *Trade Marks Act* 1905-1912 and the *Trade Marks Act* 1905-1922 have been amended from time to time and, as amended, may now be cited as the *Trade Marks Act* 1905-1934:

And whereas it is desirable that the *Trade Marks Act* 1905-1934 should be declared to apply to the Territories of Papua, New Guinea and Norfolk Island:

Now therefore I, Sir Isaac Alfred Isaacs, the Governor-General aforesaid, acting with the advice of the Federal Executive Council, in pursuance of the powers conferred by sections nine A and nine B of the *Trade Marks Act* 1905-1934 do hereby—

(*a*) revoke the said Proclamations dated the thirteenth day of August, One thousand nine hundred and thirteen and the twentieth day of December, One thousand nine hundred and twenty-two as on and from the first day of April, One thousand nine hundred and thirty-five; and

(*b*) declare that the *Trade Marks Act* 1905-1934 shall, on and from the first day of April, One thousand nine hundred and thirty-five, apply to the Territories of Papua, New Guinea and Norfolk Island.

Given under my Hand and the Seal of the Commonwealth this thirteenth day of March in the year One
(L.S.) thousand nine hundred and thirty-five, and in the twenty-fifth year of His Majesty's reign.

By His Excellency's Command,

ROBERT G. MENZIES
Attorney-General.

GOD SAVE THE KING!

x 631.

MB.

3rd September, 41.

MEMORANDUM for:

The Crown Solicitor,
CANBERRA.

JEHOVAH'S WITNESSES v. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER.

I refer to your minute dated 1st September, 1941, forwarding copy of memorandum from the Deputy Crown Solicitor containing a suggestion of Counsel that communications be sent to the Commonwealth representatives in the United States of America, New Zealand and Canada asking whether there exists in those countries some adequate compilation dealing with the question as to whether Jehovah's Witnesses are a genuinely religious body, etc.

I do not think that any good purpose would be served by making inquiries in New Zealand or Canada, but the Dies Committee on Un-American Propaganda in the United States may possibly have investigated the matter. I have accordingly asked by cable for advice on this point and asked that any relevant report be forwarded by Air Mail.

The attitude to be adopted by Jehovah's Witnesses towards government, national institutions and movements and towards the law of the land is clearly and consistently set out in the many Watch Tower publications, copies of which are no doubt available to Counsel.

(Sgd.) Geo. S. Knowles.

Secretary.

x 631.

MB. 3rd September, 41.

MEMORANDUM for:

The Crown Solicitor,
CANBERRA.

JEHOVAH'S WITNESSES v. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER.

I refer to your minute dated 1st September, 1941, forwarding copy of memorandum from the Deputy Crown Solicitor containing a suggestion of Counsel that communications be sent to the Commonwealth representatives in the United States of America, New Zealand and Canada asking whether there exists in those countries some adequate compilation dealing with the question as to whether Jehovah's Witnesses are a genuinely religious body, etc.

I do not think that any good purpose would be served by making inquiries in New Zealand or Canada, but the Dies Committee on Un-American Propaganda in the United States may possibly have investigated the matter. I have accordingly asked by cable for advice on this point and asked that any relevant report be forwarded by Air Mail.

The attitude to be adopted by Jehovah's Witnesses towards government, national institutions and movements and towards the law of the land is clearly and consistently set out in the many Watch Tower publications, copies of which are no doubt available to Counsel.

(Sgd.) Geo. S. Knowles.

Secretary.

x 651.

MB. 3rd September, 41.

MEMORANDUM for:

The Crown Solicitor,
CANBERRA.

JEHOVAH'S WITNESSES v. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER.

I refer to your minute dated 1st September, 1941, forwarding copy of memorandum from the Deputy Crown Solicitor containing a suggestion of Counsel that communications be sent to the Commonwealth representatives in the United States of America, New Zealand and Canada asking whether there exists in those countries some adequate compilation dealing with the question as to whether Jehovah's Witnesses are a genuinely religious body, etc.

I do not think that any good purpose would be served by making inquiries in New Zealand or Canada, but the Dies Committee on Un-American Propaganda in the United States may possibly have investigated the matter. I have accordingly asked by cable for advice on this point and asked that any relevant report be forwarded by Air Mail.

The attitude to be adopted by Jehovah's Witnesses towards government, national institutions and movements and towards the law of the land is clearly and consistently set out in the many Watch Tower publications, copies of which are no doubt available to Counsel.

(Sgd.) Geo. S. Knowles.

Secretary.

Employers' Association

[Extract from *Commonwealth of Australia Gazette* No. 107, dated 21st August, 1941.]

AUSTRALIAN CAPITAL TERRITORY.

Industrial Board Ordinance 1936-1941.

DECLARATION BY THE ATTORNEY-GENERAL UNDER SECTION 15.

WHEREAS by section 15 of the *Industrial Board Ordinance* 1936-1941 it is provided, *inter alia*, that the Attorney-General may, by notice in the *Gazette*, declare that the Ordinance shall apply to any organization in or in connexion with any industry on compliance with the prescribed conditions:

And whereas the Hotel and Guest House Proprietors Association of the Australian Capital Territory as an organization in or in connexion with the industry of conducting hotels and guest houses and has complied with the prescribed conditions:

Now therefore I, William Morris Hughes, the Attorney-General of the Commonwealth of Australia, in pursuance of section 15 of the *Industrial Board Ordinance* 1936-1941, do hereby declare that the said Ordinance shall apply to the Hotel and Guest House Proprietors Association of the Australian Capital Territory.

Dated this thirteenth day of August, 1941.

W. M. HUGHES, Attorney-General.

By Authority: L. F. JOHNSTON, C'wealth Govt. Printer, Canberra.

Employers' Association

COMMONWEALTH ATTORNEY GENERAL'S DEPT.
RECEIVED
SEP 1 1941
CANBERRA

W 2300

21369

29th August, 1941.

The Crown Solicitor.

JEHOVAH'S WITNESSES AND OTHERS **v.** THE COMMONWEALTH OF AUSTRALIA AND ANOTHER.

In the Defence delivered herein, it is stated that the activities of Jehovah's Witnesses, both in the Commonwealth and elsewhere, embrace amongst other things, matters and things which do not constitute the exercise of a religion, including statements and explanations of matters other than religious matters and including the attitude to be adopted by citizens towards government and towards national institutions and movements and the attitude to be adopted by citizens towards the law of the land and towards their fellow citizens.

2. In connection with the above aspect of the Defence Mr. Mitchell K.C. has suggested that perhaps in the United States of America or in New Zealand or in Canada, there exists some adequate compilation containing an analysis and criticism of Jehovah's Witnesses, their beliefs and their organisation, more particularly with a view to considering whether they are genuinely a religious body and whether, and, if so, to what extent their activities extend to matters which cannot properly be called the exercise of a religion.

3. Mr. Mitchell further suggests that the Commonwealth authorities might consider it to be desirable that appropriate communications be addressed to its representatives in America, New Zealand and Canada, with a view to ascertaining whether a compilation referred to above has been made in any of these countries and if so to arrange that a copy thereof be obtained.

GEORGE A. WATSON,

Deputy Crown Solicitor,

per

Copy.
JH.

10th June, 1941.

MEMORANDUM for:-

The Deputy Crown Solicitor,
SYDNEY.
(Forwarded through the Crown Solicitor).

JEHOVAH'S WITNESSES AND OTHERS v. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER.

I refer to your memorandum dated 5th June, stating that, in Counsel's opinion, the High Court may require an affidavit that the information etc. on which the Executive Council acted was studied by the members of the Council and that the Council was of opinion that the advice tendered to His Excellency was justified.

In reply thereto, I desire to state that the question of banning Jehovah's Witnesses had come before Cabinet at various times prior to the Cabinet Meeting held on 15th January, 1941. On 15th January, the Full Cabinet had before it a strong recommendation from the Department of the Army that the organization be banned. These papers have been obtained and I attach hereto Secret Army file G.175/701/898. Special attention is invited to the minute dated 22nd November, 1940 by the Chief of the General Staff recommending that the organizations in question be banned. Please treat Army file as secret.

When Full Cabinet had decided the matter, the usual procedure to give effect to the Government's decision was taken. A meeting of the Executive Council was held on 17th January, presided over by Senator McLeay (Deputy of the Governor-General) with the following Ministers present:- The Treasurer (Mr. Fadden), the Minister for the Army (Mr. Spender), the Minister for Air (Mr. McEwen) and an Assistant Minister (Mr. Collins).

All these Ministers had been previously present in Cabinet when the matter was considered and were fully acquainted with all the facts. It is not the practice for the Departmental papers to be presented to the Executive Council when meeting to give formal effect to a decision arrived at by Full Cabinet. When, however, a recommendation to the Executive Council is made by an individual Minister and not as a result of a Cabinet decision, an explanatory memorandum for the information of the members of the Executive Council is submitted to the Council and sometimes an individual Minister's recommendation is rejected as happened last week when a recommendation by the Postmaster-General for an amendment of the Wireless Telegraphy Regulations was not approved.

Regulation 3 of the National Security (Subversive Associations) Regulations provides that any body, the existence of which the Governor-General, by order, declares to be in his opinion prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is thereby declared to be unlawful.

This provision is different to regulation 18B (1A) of the Defence (General) Regulations considered by the Court of Appeal in ex parte Lees (41 K.B.D.72) referred to in your memorandum. In that case there was power to make the order if the Secretary of State had reason to believe etc. The Court held, in Lees Case, that it was not its function to inquire into the grounds on which the Secretary of State had come to his belief.

In the present case, the Governor-General has stated his

cop to McCaughey 11/7

/opinion

opinion with the result that the organizations have been declared to be unlawful and it should be submitted, if the point arises, that it is not proper for the Court to go behind that statement as the National Security (Subversive Associations) Regulations do not provide that the Governor-General should have reasonable grounds or any grounds for his opinion.

In order that the fullest information should be made available to Counsel, I propose to forward to you in the next few days certain further Departmental files from the Prime Minister's Department, the Department of the Army and the Department of the Navy.

I shall be glad if this memorandum is submitted to Mr. Mitchell, K.C. and his advice obtained as to whether the Commonwealth's position in the matter could in any way be strengthened by a regulation made under the National Security Act.

(sgd.) Geo. S. Knowles.
Secretary.

xx 651.

D.

10 June, 41.

MEMORANDUM for -

The Deputy Crown Solicitor,
SYDNEY.
(Forwarded through the Crown Solicitor).

JEHOVAH'S WITNESSES AND OTHERS V. THE COMMONWEALTH OF AUSTRALIA AND ANOTHER.

I refer to your memorandum dated 5th June, stating that, in Counsel's opinion, the High Court may require an affidavit that the information etc. on which the Executive Council acted was studied by the members of the Council and that the Council was of opinion that the advice tendered to His Excellency was justified.

In reply thereto, I desire to state that the question of banning Jehovah's Witnesses had come before Cabinet at various times prior to the Cabinet Meeting held on 15th January, 1941. On 15th January, the Full Cabinet had before it a strong recommendation from the Department of the Army that the organization be banned. These papers have been obtained and I attach hereto Army file G.175/701/898. Special attention is invited to the minute dated 22nd November, 1940 by the Chief of the General Staff recommending that the organizations in question be banned. Army file as secret. Please treat

When Full Cabinet had decided the matter, the usual procedure to give effect to the Government's decision was taken. A meeting of the Executive Council was held on 17th January, presided over by Senator McLeay (Deputy of the Governor-General) with the following Ministers present:- The Treasurer (Mr. Fadden), the Minister for the Army (Mr. Spender), the Minister for Air (Mr. McEwen) and an Assistant Minister (Mr. Collins).

All these Ministers had been previously present in Cabinet when the matter was considered and were fully acquainted with all the facts. It is not the practice for the Departmental papers to be presented to the Executive Council when meeting to give formal effect to a decision arrived at by Full Cabinet. When, however, a recommendation to the Executive Council is made by an individual Minister and not as a result of a Cabinet decision, an explanatory memorandum for the information of the members of the Executive Council is submitted to the Council and sometimes an individual Minister's recommendation is rejected as happened last week when a recommendation by the Postmaster-General for an amendment of the Wireless Telegraphy Regulations was not approved.

Regulation 5 of the National Security (Subversive Associations) Regulations provides that any body, the existence of which the Governor-General, by order, declares to be in his opinion prejudicial to the defence of the Commonwealth or the efficient prosecution of the war, is thereby declared to be unlawful.

This provision is different to regulation 18B (1A) of the Defence (General) Regulations considered by the ~~High Court~~ in ex parte Lees (41 K.B.D. 72) referred to in your memorandum. In that case, the order was made if the Secretary of State had reason to believe etc. The Court held, in Lees Case, that it was not its function to inquire into the grounds on which the Secretary of State had come to his belief.

In the present case, the Governor-General has stated his opinion that the organizations ~~should be~~ declared unlawful and it should be submitted, if the point arises, that it is not proper for the Court to go behind that statement as the National Security (Subversive Associations) Regulations do not provide that the Governor-General should have reasonable grounds or any grounds for his opinion.

In order that the fullest information should be made available to Counsel, I propose to forward to you in the next few days certain further Departmental files from the Prime Minister's Department, the

/Department

Work on hand on 9.10.1939.

MR. EWENS.

W.194	National Security (Fair Rents) Regulations	
W.179	National Security (Shipping Control) Regulations	5.10.39
W.189	Licence to pay patent, etc. fees	4.10.39
W.230	Institute of Patent Attorneys of Australia - Re applications from Germany	4.10.39
39/861	Trading Hours Ordinance - A.C.T.	29.8.39
39/405	Lands Ordinance - Nauru	1.5.39
39/980	Tractor Bounty Regulations	4.10.39
39/979	Wire Netting Bounty Regulations	4.10.39
34/1089	Quarantine (Animals) Regulations	

MR. FANNING.

	National Register Inquiries	
35/210	Naval Financial Regulations (Complete Revision)	12.12.38
39/563	Question of validity of regulation 119 of Military Financial Regulations	20.6.39
39/765	Air Force Regulations - Re long service leave on resignation	14.8.39
39/865	Sergeant Shephard - Court Martial Proceedings	6.9.39
39/870	H. Porter - ex Staff Cadet - Claim for Compensation on Discharge	6.9.39
34/1170	Australian Military Regulations	4.10.39

MR. SANDARS.

35/179	Juvenile Offenders Ordinance - A.C.T.	24.6.39
33/437	Amendment of Crown Lands Ordinance, N.T.	24.7.39
35/1500	Education Regulations - A.C.T.	25.8.39
36/1171	By-laws, Canberra Community Hospital	8.9.39
33/1821	Amendments to Fire-arms Regulations - New Guinea	19.9.39
38/508	Amendment - Canberra Community Hospital Ordinance	22.9.39

Department of the Army and the Department of the Navy.

I shall be glad if this memorandum is submitted to Mr. Mitchell K.C. and his advice obtained as to whether the Commonwealth's position in the matter could in any way be strengthened by a regulation made under the National Security Act.

(Sgd.) Geo S [illegible]

Secretary.

MR. TIPPING.

Work on hand on 18.9.39.

MR. EWENS.

W.65	War Patents Legislation	8.9.39
W.136	G. Arnold & Co. Pty. Ltd. - Application for Permission to use Trade Mark	15.9.39
W.139	Davies & Collison - Patents licence on behalf of a German firm	15.9.39
W.137	M. Starfield - Re application on behalf of person in Czechoslovakia	15.9.39
W.138	Modern Economic Construction Company Ltd. - re Companies operating under Licence from principals in Germany	15.9.39
W.125	Trade Mark No.51098 - Application for registration of subsequent proprietor	13.9.39
W.110	Authority for Commissioner of Patents to omit or delay procedure under Patents and Designs Acts	14.9.39
W.123	Application for extension of Patent Specification	13.9.39
W.126	Patent Application No.3928/39	13.9.39
W.127	Request for copies of German Patent Specifications	13.9.39
W.120	Gold tax	
W.135	Customs (War Powers) Bill	30.6.39
W.12	Customs (Export Licensing) Regulations	
W.64	National Security (Enemy Property) Regulations	8.9.39
W.134	R.W. Brison - Re Neutrality of British Dominions	13.9.39
35/160(2)	Patents Regulations	29.8.39
39/905	Apple and Pear Export Licences Regulations	11.9.39
39/908	Lac Malac - Soldiers Memorial Hall - Re Performing Right Fees	11.9.39

MR. FANNING:

	National Register Inquiries	
35/210	Naval Financial Regulations (Complete Revision	12.12.38
39/563	Question of Validity of regulation 119 of Military Financial Regulations	20.6.39

COPY.

SECRET.

STAMP
Northern Command
M.I. 9/6/56.
4th Nov., 1940.

I.S.G.S.,
A.H.Q.,
MELBOURNE.

JEHOVAH'S WITNESSES.

With reference to A.H.Q. M.I.S. 3066 of 10 October, 40, it is advised that the activities of the above organisation in this Command were reported in N. Command M.I. 9/6/56 of 14 Sep. 40.

It is noteworthy that in a list of 360 names of members of this organisation in Queensland as supplied by I.S.G.S., E. Command, 90 were of alien origin and of 45 cars which were noted as being used at a convention of Jehovah's Witnesses in Brisbane between 18 Oct. 40 and 21 Oct. 40. 40, 13 were registered by persons with names of alien origin.

In a recent search of the home of one Jehovah's Witness of German origin, ten county maps were discovered and there was evidence that a further 15 had been ordered from the Lands Department. The explanation given was that these maps were to be used for allocating areas for the distribution of literature.

The Brisbane branch of Jehovah's Witnesses operate a banking account which on 9 June 30 was opened with the Commonwealth Bank of Australia in the name of the International Bible Students Association Brisbane Ecclesia. On 19th Jul 40 a cheque was drawn for £356. 0. 7 in favour of three members of Jehovah's Witnesses and this cheque was paid into the Commercial Banking Co. of Sydney on 22 Jul 40 to a joint account which these three men opened and which could be operated by any two of them. On 17 Oct 40 the account was altered to be known as the F.R.H. & J. Syndicate and to include a fourth member. By the withdrawal of £356.0.7 the balance standing to the credit of the original account was reduced to £74. 8.10.

In the course of a conversation with an agent, the State treasurer of Jehovah's Witnesses stated that the organisation expected some action by the authorities to suppress their activities, but that they were prepared and would continue their work.

This would appear to explain the withdrawal of funds from the banking account of the organisation and the placing of these funds to the credit of individual members.

The meeting place for the convention which began on 18 Oct. 40 was kept a secret which was only divulged to members a day or two prior to the opening of the convention. At the inaugural meeting, which was only open to members, it was explained that this secrecy was to prevent the "enemy opposition" from knowing of the convention as had the "enemy opposition" known it, no hall would have been available in Brisbane.

At this meeting, Lloyd Barry of Sydney, one of three senior leaders of the organisation stated: "We are up against a strong enemy opposition, therefore get rid of all books on hand. If we are defeated, it will only be temporarily. There will be ways and means of carrying on." An agent was informed that the Military authorities were the "enemy opposition."

At a session on 20 Oct 40, McGilvray, another of the senior leaders of the organisation, warned members not to discuss the war when "witnessing", and on no account to approach a soldier. He added that members should not support any charitable organisation, but should give their money solely to the cause of Jehovah's Witnesses. With regard to the playing of the National Anthem at the conclusion of broadcasts from their radio station, 4AT, the speaker said that this was required by the Government. "There is no law to say you have to listen", he said and added that Jehovah's Witnesses could choose between sitting, standing up or lying down when the National Anthem was played. He stated that, in his opinion, the necessity for playing the National Anthem from radio stations would not exist for long.

/At

At a session on 19 Oct 40, it was stated that Jehovah's Witnesses were now claiming to be ministers of religion so as to avoid military training and to keep their organisation from being declared illegal. It was also stated that they owed no allegiance to any King, but were completely neutral.

At the concluding session, McGilvray stated that the Brisbane Branch lacked "Units", which had been formed in Sydney. Each of these "Units" was fully equipped and ready for emergency. If the Brisbane Branch had only formed a "Unit" they would have had use for it at the Sunday night meeting when men were hanging about near the hall, taking the numbers of cars which had brought people to the hall. If a "Unit" had been available, said the speaker, he would have come down from the platform and taken these men by the scruff of the neck.

It was announced on the last day of the convention that whereas Jehovah's Witnesses had only four groups operating in Brisbane in February of this year, they now had more than 100.

It was observed that throughout the convention, every effort was made to prevent any persons other than members from obtaining information relative to the sessions. The meeting place was kept secret, and even members did not know where the convention was to be held until about two days before it began. The door of the hall was kept closed only members were admitted and outside the hall a watch was kept on all persons loitering in the vicinity.

On 22 Oct 40, when 28 internees were being transferred to E. Command, Mansuelo Dalla-Costa, who gave up gold mining in North Queensland to join Jehovah's Witnesses and for some time has been travelling throughout Australia "witnessing", was aware that the transfer was being made, despite the fact that the internees had been informed only 24 hours previously. Dalla-Costa, who travelled to Sydney in the same train as the internees, made repeated inquiries at the railway station to ascertain by which platform entrance the internees would arrive. When the internees did arrive he watched them very closely, but made no attempt to establish contact with them. This, however, may have been due to the fact that portion of the platform was cleared of civilians and an adequate guard was present to prevent civilians approaching the internees. Dalla-Costa stated that he was going to Sydney to continue his work for Jehovah's Witnesses and he gave his address as C/- Watch Tower, Strathfield.

(Sgd.) G. M.
Major.
General Staff.

COPY.

Stamp.
Northern Command
M.I. 9/6/56.
22 Oct 40.

CONFERENCE JEHOVAH'S WITNESSES

SCHOOL OF ARTS, SOUTH BRISBANE.

Pte Wardle and I attended the conference of the abovenamed on Saturday night 19 Oct 40.

Prior to the meeting proper we were informed by a sister Mrs. Green that McGilveray the leader of the movement in Australia had made a hurried trip to New Zealand last week, remaining for 3 days.

The meeting proper was opened by W. Funnell who lead the singing of two hymns, and then introduced Lloyd Barry, from the Watchtower Press, Strathfield, Sydney, who took charge of the meeting.

A number of books and booklets were on sale, but we were unable to obtain a copy of "The Informant" which is issued only to the leaders of each group. I was informed by Bro. T. Bridges, leader of the Ipswich Group that this book contained all instructions for the prosecution of their campaign. Only four copies come to Brisbane, and the reason they were not issued to the public, was that "the enemy" would get hold of it, and use the information in an attempt to nullify their efforts. Bridges asked McGilveray for permission to lend me the book, but was refused.

The main points of the meeting were as follows:-

1. The Heirachy of Catholicism was the main enemy of the movement.

2. That come what may, and however hot the opposition they must still witness.

3. 109 arrests of their followers had been made in Sydney, and this was under consideration at present in Canberra. They have nothing to fear, as they had friends on the Cabinet who were not afraid to fight for them. This lead to a remark by a woman sitting near us "Good old Billy Hughes."

4. Queensland was not taking strict action against them, as the other States were, because they had a more sensible Government under good leadership. The conclusion drawn was that Forgan Smith was on their side and would look after their interest.

5. They were now claiming to Ministers of Religion so as to avoid Military training and to keep their organisation from being declared illegal.

6. They owed no allegiance to any King, but were completely neutral. No other body really understood the real meaning of neutrality.

7. There would come a time, as shown by the Bible, when their activities as a body would cease. They would not actually cease to exist, but would carry on individually, as they would have a new and glorious work to do. If declared illegal they would still find some way in which to continue.

8. The short notice of the convention, less than a week, was necessary, so that no action could be taken by the authorities to debar them from renting a hall or building in which to hold their gathering.

9. The sale of books, booklets and magazines must be prosecuted with the greatest energy, as there would be only a short time before Armageddon when they would be prevented from selling.

10. The booklet "Uncovering the Fifth Column" must all be distributed before 31 Oct 40, to make way for an important new publication which would be ready by then.

11. In Feb 40 they had only 4 groups operating in Brisbane but now had over 100.

12. "The enemy" claimed they they Witnesses were right behind the Nazi (Government

Government, and quoted from a J.W.Book published in 1934 in evidence of it. The public must not forget that since 1934 the Nazi policy had changed considerably, and the Witnesses were now 100% against them.

13. They were not to witness to any soldiers in uniform for obvious reasons.

Mr. Hoare, Watchtower Press, Strathfield, Sydney, also spoke for a short time, mainly on Field Work, and how to introduce their booklets and magazines to the public, gaining increased sales and bringing further funds to the organisation.

Sunday afternoon 19 Oct 40.

This meeting commenced with a study of the booklet "Neutrality" conducted by Mr. Hoare.

It was stated that even as Christ was not a Pacifist, Jehovah's Witnesses who belonged to Christ were not Pacifists. This was an answer to the authorities who wished to have them declared illegal. In fact "We will fight like hell" against the devil and his angels so how can we be Pacifists" was an expression used later in the meeting by Mr. McGilveray.

Jehovah's Witnesses were the only true neutrals at present. The U.S.A. claimed neutrality and was not scorned as they were. Anyhow the U.S.A. were in the game commercially so how could they be really neutral. Jesus stated (John 17 verse 16) "They are not of the world even as I am not of the world". This applied solely to Jehovah's Witnesses, and must be their policy. They belong to no earthly or political party, therefore owe allegiance to no King. Their only duty was the proclamation of the Theocracy.

They must take no part in war between nations. Nation will rise against nation and the Fascists say "We expect to rule the earth" while the Democracies say "We will rule the earth" but what do the Scriptures say Luke 12 verse 32 "Fear not little flock, for it is your Father's pleasure to give <u>you</u> the Kingdom." This is of course a promise to Witnesses only.

The question "What constitutes Satan's Empire?" was hurried over without comments.

Study of "Neutrality" ceased with the arrival of Mr. McGilveray whose address took chiefly the form of answering a number of questions which had been asked previously by members of the audience.

He stated:-

1. That they must on no account witness to soldiers in uniform, and must be particularly careful as sometimes men in plain clothes might be soldiers on special duty.

2. They must be completely neutral, and at no time when witnessing should they enter into an argument on the war, or anything worldly. If Police or anyone else challenged them take out the Bible and witness to them. The police had no right to molest Jehovah's Witnesses in any way as they were acting with due respect to the laws of the country.

3. When trouble develops in any particular area do as Jesus did, leave that locality and witness elsewhere.

4. Do not contribute to any so called charitable institution as the only true charity on earth was "Jehovah's Witnesses." Let each and every one give their money entirely for the advancement of their organisation.

5. It was a Commonwealth law that the National Anthem must be played over all Broadcasting Stations. As they owned no allegiance to any earthly King they could please themselves whether they stood up, sat down, or even listened at all. The time would soon be here when there would be no kings, and they could then own their own radio stations and play

(whatever

whatever suited themselves.

6. England was being protected by God because she had not endeavoured to suppress Jehovah's Witnesses. So long as they continued to do this they would be alright but if otherwise look out!

A letter from Judge Rutherford in U.S.A. to McGilveray was read by Lloyd Barry. It mentioned that two parts had been cut out by the Censor and that he (McGilveray) was the only one who knew how important they were. He advised the Witnesses to hold all their money in Australia to help their brothers in these perilous times.

The letter stated that as Britain was the only nation fighting for freedom she must receive some portion of Divine protection.

The meeting unanimously decided to forward a cable and a letter to Judge Rutherford as a message from the convention. A collection box was made available for donations to defray the cost of same.

McGilveray continued his address with an attack on "Truth" and "Smith's Weekly" papers, who were giving them the best advertisement they had ever had. Let them publish what they like, he said, they are not worthy of an answer. He advised them not to build a Hall at present as there were more important things to do with their money.

I gathered the impression from those around me that the real idea wa: that if they were declared illegal the hall would be so much wasted cash.

McGilveray attacked the Heirachy of Roman Catholicism denouncing Hitler as a Catholic and a puppet who did as the Pope directed him.

The night meeting, also conducted by McGilveray was practically a religious gathering, with the address taking the form of an exhortation to his followers to be of good faith, and fear not for God was with them.

Towards the close reference was again made to the attacks on them by Smith's Weekly and Truth.

The impression gained during both meetings was that the mentality of those attending of whom the majority appeared to be country folk, was of a poor quality. They were apparently quite honest in their beliefs, but a type who would swallow blindly a good tale so long as it was well told, while the speakers with the exception of a few breaks, endeavoured to create the impression of loyalty to Britain with a view, probably, to influencing the authorities to allow their organisation to continue.

Sunday night's meeting terminated with an invitation to members to attend a wind-up party at Granville Street, Wilston, on Monday 21 Oct 40 commencing at 1300 hrs. We were successful in obtaining an invitation from Bro. Bridges and arrived at Wilston on time.

A brother, Mick O'Halloran, had taken ill last night, and Mr. McGilveray was not able to attend this gathering till about 1500 hrs. When he arrived he spoke of the success of the convention as a whole, but stated that Brisbane lacked one thing. In Sydney they had formed "Units" each of which was fully equipped and ready for any emergency. Brisbane had only formed such a unit they would have had use for it Sunday night when three men were hanging round the hall taking the numbers of the cars. If had only known and a unit was available, he would have come down from the platform taken them by the scruff of the neck, and told them with a few strong adjectives where they got off. Get to work he said form these units and fight like Hell against the devil and his angels.

He informed me that he was going to Cairns on Wednesday mornir but had not finally decided if he would go by car or plane. His

(original

intention was to travel by car, but O'Halloran's illness had rather complicated matters. Money evidently counts with the Witnesses, as McGilveray told me £400 was not sufficient for a person to have if he wished to enter into full time service. It is apparently the practice for members to give their farms and business to the society when they join. These are then worked for the benefit of their organisations.

During the afternoon Bro. T. Bridges, group leader, Ipswich explained to me from the Bible how even if Britain appeared to win this war she would eventually be conquered. The Chapter for study is Revelation Chapter 17. Bridges on behalf of Jehovahs Witnesses stated that verses 10 and 11 of this chapter refer to the nations of the world. The 7 Kings represent 7 nations, and as the book was written during the days of the Roman Empire, and Rome is the 6th on the list, Rome is the one referred to as the one "which is" The British Empire, and seventh at that time was the one "yet to come" and when he cometh he must continue for a short space. The eighth follows and is of the seventh (verse 11) so that if another is to follow the seventh (which is the British) then the British Empire must fall. Various other aspects of the case were explained to me, but I must confess that I am apparently too dull to follow the rather weird and remarkable explanations and translations he gave me.

(Sgd.) R. D. CAMPBELL,

Cpl. F. S. P.

I certify that to the best of my knowledge and belief the statements made in the above report dated 22/10/40 are true.

(Sgd.) F. A. WARDLE,
6/8/41.
Sergt. F.S.P.

Witness:

(Sgd.) R. W. RITALLOCK.
6/8/41.