

[HIGH COURT OF AUSTRALIA.]

THE GREATER J. D. WILLIAMS AMUSE- }
MENT COMPANY LIMITED } APPELLANTS;

AND

THE LORD MAYOR, ALDERMEN, COUN- }
CILLORS AND CITIZENS OF THE CITY } RESPONDENTS.
OF MELBOURNE }

ON APPEAL FROM THE SUPREME COURT OF
VICTORIA.

H. C. OF A. *Local Government—By-law—Regulation—Validity—Buildings used for amusements*
1915. *—Prohibition of use on Sunday—Local Government Act 1903 (Vict.) (No. 1893),*
sec. 197 ; Sched. 13, Part VI.

SYDNEY,
Nov. 15.
Griffith C.J.,
Isaacs and
Gavan Duffy JJ.

Part VI. of the Thirteenth Schedule to the *Local Government Act 1903* (Vict.) provides (clause 1) that every occupier of any hall or other building used for public meetings, or of any building in which public amusements are conducted, shall in each year register such building, together with the situation and description thereof, and the purpose being such as aforesaid for which the same is to be kept, and that every occupier of any such premises who permits any public meeting to be held or any public amusement to be conducted in any such premises not being registered for the purpose or without a certificate of registration shall be liable to a specified penalty ; (clause 2) for the issue of certificates of registration ; and (clause 4) that it shall be lawful for a municipal council from time to time to make regulations “for appointing the times and hours during or at which respectively any such registered building . . . shall be used for the purpose for which it is registered or shall be closed,” and that every occupier of any such premises who “permits the same to be used for such purpose during or at any other time or after any such hour respectively ” shall be liable to a specified penalty.

A municipal council, having made a by-law adopting Part VI. of the Schedule, under clause 4 thereof made a regulation providing that “The times and hours during or at which respectively any registered hall or other building situate in ” the municipality “used for public meetings or any registered

building . . . within the said" municipality "in which public amusements are conducted shall be used for the purpose for which it is registered and the hours at which the same shall be closed shall be as follows, viz. :—On the Monday, Tuesday, Wednesday, Thursday and Friday in each week from the hour of eight o'clock in the morning until the hour of twelve o'clock midnight when the same shall be closed, and on Saturday in each week from the hour of eight o'clock in the morning until the hour of half-past eleven at night when the same shall be closed. Where the building is used for picture shows it shall not be used for such purpose between half-past eleven o'clock on Saturday night and eight o'clock in the morning of Monday in the week following."

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Held, that the regulation was within the power conferred by the by-law.

Special leave to appeal from the Supreme Court of Victoria: *In re City of Melbourne; Ex parte Greater J. D. Williams Amusement Co. Ltd.*, (1915) V.L.R., 689; 37 A.L.T., 94, refused.

APPLICATION for special leave to appeal.

Pursuant to the power contained in sec. 197 of the *Local Government Act* 1903 the Council of the City of Melbourne had, by by-law, adopted the provisions of Part VI. of the Thirteenth Schedule to the Act, which were as follows:—

"1. Every occupier of any hall or other building used for public meetings, or of any building, or any ground in which public amusements are conducted, shall in each year register at the office of the Council such building or ground, together with the situation and description thereof, and the purpose being such as aforesaid for which the same is to be kept, and the name of such occupier and every person who causes and every occupier of any such premises who permits any public meeting to be held or any public amusement to be conducted in or on any such premises not being registered for the purpose or without such certificate of registration as hereinafter mentioned having been obtained for the same shall forfeit for every such offence a sum not exceeding ten pounds.

"2. The Council, upon the written application of any such occupier as aforesaid stating the particulars aforesaid, may if upon inspection by the proper officer the premises have been found to be secure and proper for the purpose stated, and if the Council see fit, cause the premises to be registered in a registry book to be kept for that purpose, and shall thereupon grant to

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the applicant a certificate of such registration of such premises in the appointed form, and the Council may at any time suspend for a stated period the effect of or cancel any such registration, and shall forthwith give notice of such suspension or cancellation to the occupier of the registered premises, and during such suspension or after such cancellation such premises shall be deemed to be unregistered in respect of the purpose mentioned in the certificate of registration, and such certificate shall be of no force or virtue.

"3. The proper officer of the Council may at all reasonable times enter and inspect any such registered premises as aforesaid.

"4. It shall be lawful for the Council from time to time to make regulations for appointing the times and hours during or at which respectively any such registered building or ground shall be used for the purpose for which it is registered or shall be closed; and every occupier of any such premises who permits the same to be used for such purpose during or at any other time or after any such hour respectively shall for every such offence forfeit a sum not exceeding ten pounds."

Purporting to act under clause 4 the Council made a regulation which was as follows:—

"1. The times and hours during or at which respectively any registered hall or other building situate in the said City of Melbourne used for public meetings or any registered building or any registered ground within the said City in which public amusements are conducted shall be used for the purpose for which it is registered and the hours at which the same shall be closed shall be as follows, viz.:—On the Monday, Tuesday, Wednesday, Thursday and Friday in each week from the hour of eight o'clock in the morning until the hour of twelve o'clock midnight when the same shall be closed, and on Saturday in each week from the hour of eight o'clock in the morning until the hour of half-past eleven at night when the same shall be closed. Where the building is used for picture shows it shall not be used for such purpose between half-past eleven o'clock on Saturday night and eight o'clock in the morning of Monday in the week following. Provided that nothing in this regulation shall apply to any ball, private party or social held in any registered building

on any Monday, Tuesday, Wednesday, Thursday or Friday in any week."

The Greater J. D. Williams Amusement Co. Ltd. occupied premises in the City of Melbourne, which were registered under the regulation as a "building for public amusements." That Company obtained an order *nisi* to quash the regulation on the ground that it was illegal and invalid, but the Full Court discharged the order *nisi*: *In re City of Melbourne; Ex parte Greater J. D. Williams Amusement Co. Ltd.* (1).

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The Company now applied for special leave to appeal from that decision.

Bryant, for the applicants. There is no power under the by-law to make the regulation. The by-law does not authorize the Council to discriminate between the days of the week or between the purposes for which buildings are to be used. It gives no power to totally prohibit the user of buildings on a particular day of the week, but only to fix the hours or the times of the day when they may be used and to control the manner in which they are conducted.

[GAVAN DUFFY J. It appears to me that the by-law contemplates a registration for a particular class of amusement. If the regulation does not apply where the registration is for public amusements generally, that affords no ground for quashing the regulation.]

If the appellants produce picture shows they are hit by the regulation. A municipal council has no right to say for what particular form of amusement a building shall be used. The regulation in any event creates uncertainty as to whether a building used for picture shows may be open for any other purpose on Sundays.

PER CURIAM. We see no reason to doubt the validity of the regulation. Special leave to appeal will therefore be refused.

Special leave to appeal refused.

Solicitors, for the applicants, *Westley & Dale*.

B. L.