for here (£87 10s.) is calculated in compliance with the provisions of sec. 11A, and the defendant must pay it in fulfilment of his obligation to pay the city rate under the provision in his lease.

H. C. OF A. 1918.

PETERSON v. KELLY.

Appeal dismissed with costs.

Solicitors for the appellant, *Biddulph & Salenger.*
Solicitors for the respondents, *Murphy & Moloney.*

B. L.

[HIGH COURT OF AUSTRALIA.]

GUMLEY . . . . . APPELLANT;
INFORMANT,

AND

BREEN . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1918.

SYDNEY, *April* 3.

Barton, Gavan Duffy, Powers and Rich JJ.

Police Offences—Insulting words—Use in public street—Words referring to persons not present—Special leave to appeal to the High Court—Police Offences (Amendment) Act 1908 (*N.S.W.*) (*No.* 12 *of* 1908), *sec.* 6.

Sec. 6 of the *Police Offences (Amendment) Act* 1908 (N.S.W.) imposes a penalty on "every person who, in or near any public street, thoroughfare, or place, or within the view or hearing of any person passing therein—(*a*) behaves in a riotous, indecent, offensive, threatening, or insulting manner; or (*b*) uses any threatening, abusive, or insulting words."

The Full Court of the Supreme Court having held that a statement made at a meeting of over two hundred people that there were thirty thousand British

H. C. OF A. 1918.

GUMLEY v. BREEN.

women behind the firing line doing servile work and acting as concubines to the British officers, was not "insulting words" within the meaning of the section.

Held, that special leave to appeal to the High Court should be refused.

Special leave to appeal from the Supreme Court of New South Wales: *Ex parte Breen*, 18 S.R. (N.S.W.), 1, refused.

APPLICATION for special leave to appeal.

At the Paddington Court of Petty Sessions at Paddington, Sydney, before a Stipendiary Magistrate, an information was heard whereby Charles Gumley charged that James Breen did in a public street use insulting words, to wit, that thirty thousand British women were behind the firing line in France doing servile work and acting as concubines to the British officers. Evidence was given that the statement complained of was made by the defendant at an anti-conscription meeting in the street at which two hundred or three hundred persons were present, including a large number of women, and that very considerable disorder arose immediately after the statement was made. The defendant was convicted and fined £5. He then obtained an order *nisi* for prohibition on the ground that no offence was disclosed.

The order *nisi* was discharged by *Street* J., but on appeal the Full Court reversed the order of *Street* J. and made the order *nisi* absolute on the ground that sec. 6 of the *Police Offences (Amendment) Act* 1908 did not go further than to provide a penalty for a violation of public order by language calculated to hurt the personal feelings of individuals whether the words are addressed directly to those individuals or are used in their hearing, and whether the words refer to their own character or that of persons closely associated with them: *Ex parte Breen* (1).

The informant now applied for special leave to appeal from the decision of the Full Court.

Milner Stephen, for the applicant. To constitute the offence of using insulting words under sec. 6 of the *Police Offences (Amendment) Act* 1908, it is not necessary that the person to whom the words

(1) 18 S.R. (N.S.W.), 1.

are directed should be present when the words are used. The object of the provision is not to protect persons who are present from insult, but to secure the observance of the proprieties in the street and to prevent disorder arising. The section is intended to deal with the same class of offences as sec. 8 of the *Vagrancy Act* 1902, but the Legislature intended to make sec. 6 of the Act of 1908 as wide as possible and to remove the necessity of proving either an intention to provoke a breach of the peace or that a breach of the peace had been occasioned. The statement made comes within the literal meaning of the section, and there is no reason to limit that meaning. There is evidence from which the Magistrate might fairly have found that there was an insult to persons who were present. The words were a direct insult to any British subject who was present.

BARTON J. We do not think that this is a case in which special leave should be granted.

Special leave to appeal refused.

Solicitor, *J. V. Tillett*, Crown Solicitor for New South Wales.

B. L.