

Adelaide Company of Jehovah's Witnesses Incorporated v The Commonwealth of Australia (1943) 67 CLR 116

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Facts

- In January 1941, acting pursuant to the *National Security (Subversive Organisations) Regulations 1940* (Cth) (**the Act**), the Government declared Jehovah's Witnesses to be "prejudicial to the defence of the Commonwealth" and to the "efficient prosecution of the war".
- Police immediately occupied premises of the organisation.
- The Jehovah's Witnesses occupied land and buildings known as Kingdom Hall situated in Sturt Street, Adelaide, South Australia.
- In September 1941, Jehovah's Witnesses applied to the High Court for an injunction to restrain the Commonwealth from further trespassing on their premises, and seeking damages.
- The Jehovah's Witnesses argued that the regulations contravened the protections for freedom from religious discrimination contained in section 116 of the Constitution.

Held

- The High Court unanimously held that the Act did not infringe against section 116.
- However, the High Court did hold that the Government had exceeded the scope of section 51(vi) of the Constitution.
- Latham CJ held that the Constitution permitted the Court to "reconcile religious freedom with ordered government".
- Williams J stated that the meaning and scope of section 116 must be determined, not as an isolated enactment, but as one of a number of sections intended to provide religious freedoms to citizens while at the same time permitting the Commonwealth to legislate in respect to its internal or external affairs.
- Section 116 is "subject to limitations which it is the function and duty of the courts to expound. And those limitations are such as are reasonably necessary for the protection of the community and in the interests of social order" (Starke J).
- This was similar to the narrow approach taken in *Krygger v Williams*.
- Section 116 is a general prohibition applying to all laws, under whatever power those laws may be made. It is an overriding provision.
- This was only the second case to consider section 116.

Quotes

"The Constitution protects religion within a community organized under a Constitution, so that the continuance of such protection necessarily assumes the continuance of the community so organized. **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."

(Latham CJ at [10])

Full Text

The full text is available here: <http://www.austlii.edu.au/au/cases/cth/HCA/1943/12.pdf>

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