LOCAL GOVERNMENT

Council Rights over Caravans

In *Schulz* v. *Paige*,[1] the Full Court delivered an interesting judgment concerning the power of Councils to regulate the use of caravans under s. 667 (8b) of the Local Government Act, 1934-1959. This section authorises any Council to make by-laws "for regulating, controlling or prohibiting the use within the municipality . . . of any caravan or other vehicle as a place of habitation".

By-law XXXVI of the Town of Port Lincoln provides for caravan parks, and states in para. 3: "No person shall within the municipality (except in a caravan park) use or occupy any caravan or other vehicle as a place of habitation unless he shall have first obtained a permit from the Council for that purpose. . . . " The appellant, a motel proprietor at Port Lincoln, conducted a caravan park on his premises before receiving a permit from the Council. His caravan park was freely used during the summer months, and one particular caravan specified by the complainant remained there and was lived in for a period of five days.

In an appeal against the appellant's conviction for being concerned in the commission of an offence against para. 3 of By-law XXXVI, it was contended that a caravan which is used as a temporary residence at a tourist resort is not used as a place of habitation within the meaning of the enactment. However, the Full Court held that the Magistrate was justified in finding that the specified caravan had been used as a "place of habitation" within the meaning of s. 667 (8b) and of the by-law. The Court noted that a housing shortage existed in 1946 when Parliament first enacted 8b and 8a,[2] and that people then had commonly resorted to temporary accommodation such as tents and caravans. The sub-sections were passed to remedy this mischief, and so "place of habitation" in sub-section 8b should not be limited to a permanent home.

The question arises whether a caravan which is in the course of travelling, and merely stops for the night until it can go on in the morning, falls within s. 667 (8b).

Reed J. thought that the use of a caravan for the purpose of eating and sleeping may produce equally detrimental results whether this use is for only one night or for a longer period; accordingly, "place of habitation" should be construed so as to cover both these uses. But Napier C.J. and Chamberlain J., in a joint judgment, thought that in the case of a caravan stopping for a night in the course of a journey it might well be that the occupants are living in it, but they doubted whether the "use as a place of habitation would be a use within the municipality". They added: "It may well be a question of fact and degree whether the use is as a place of habitation."

It is also interesting to note that the Court felt "quite unable to follow" the contention that the by-law was void as unreasonable or uncertain, and considered that this argument was in substance no more

---

1. [1961] Law Society Judgment Scheme 37.
2. Sub-section 8a authorises any Council to regulate the building of tents or other temporary structures which are used for the purpose of habitation.

than the appellant's previous objection[3] that the by-law gave the Council a discretion which was uncontrolled. Strictly speaking this was said in reference to the argument of counsel, but it would appear that the Court's attitude was in conformity with the "growing disinclination" on the part of courts to interfere with by-laws on the ground of unreasonableness.[4]

3. This was disallowed on the authority of *Fox* v. *Allchurch* (1927) 40 C.L.R. 135; *County Roads Board* v. *Neale Ads Pty. Ltd.* (1930) 43 C.L.R. 126; and *Swan Hill Corporation* v. *Bradbury* (1937) 56 C.L.R. 746, 762.
4. See Gavan Duffy J. in *Proud* v. *City of Box Hill* [1949] Argus L. R. 549, 551.

EVIDENCE

Omnia Praesumuntur Contra Spoliatorem

If a plaintiff, by his own act, fails to furnish a court with important evidence concerning his claim, the court will not hesitate to draw inferences against him. Such was the case in *Saloustis* v. *Nikic*,[1] where the plaintiff sought rescission in equity, or alternatively damages, concerning an agreement in writing whereby the plaintiff had agreed to purchase from the defendants a business known as the "Night Spot Café". The basis of the claim was a fraudulent misrepresentation, alleged to have been made orally by the defendants, as to the profits of the business.

Soon after signing the contract and paying a deposit, the plaintiff destroyed the only copy of the agreement, intending to terminate the contract and dispose of the documentary evidence concerning its provisions. Accordingly, when a dispute arose, no written evidence as to the terms of the contract was available, and the plaintiff failed to call as a witness the person who had drafted the document, or any other person who had seen it.

From the insufficient and conflicting evidence that was given by the parties, it was impossible to decide whether the missing evidence would affect the issue. Hence Mayo J. applied two principles of law and equity against the plaintiff.

First, following *Lawton* v. *Sweeney*,[2] he held that the maxim *omnia praesumuntur contra spoliatorem* applied. His Honour said: "The general principle is that where a person intentionally puts it out of his power to produce something which he could produce, the object or article being of a nature relevant to the claim or defence, the principle . . . will cause an unfavourable inference to be drawn against that person."

A good illustration of the application of this principle can be seen in the famous case of *Armory* v. *Delamirie*.[3] Since the jeweller failed to produce the jewel found by the chimney sweep, the court adopted the presumption that it was of the highest quality and assessed damages accordingly.

In applying this principle, as the court in *Saloustis* v. *Nikic* hastened to point out, one must distinguish between a case of intentional sup-

1. [1961] Law Society Judgment Scheme 11.
2. (1844) 8 Jur. 964.
3. (1772) 1 Stra. 504.