[HIGH COURT OF AUSTRALIA.]

HODGE AND OTHERS . . . . . APPELLANTS;

AND

THE KING (ON THE RELATION OF O'SULLIVAN AND OTHERS). . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF QUEENSLAND.

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SYDNEY, *Dec.* 16, 17.

Griffith C.J., Barton and Isaacs JJ.

Local Authorities Act 1902 (*Queensland*) (*No.* 19 *of* 1902), *3rd Schedule*, *rule* 11—*Election of councillors for shire—Extraordinary vacancy—No election held at time prescribed—Expiration of time for giving notice of election—Meaning of election—Ouster.*

Rule 4 of the 3rd Schedule to the *Local Authorities Act* 1902 (Qd.), provides that on the occurrence of an extraordinary vacancy in the Council of a Shire the Returning Officer shall within thirty days after the occurrence of the vacancy give public notice of an election to fill the vacancy, specifying a day not less than fourteen nor more than twenty-one days after the publication of the notice as the day of nomination. By rule 11, if at the time prescribed or appointed for holding an election no election is held, or no candidates are nominated, or the number of candidates nominated is less than the number of members to be elected, the Governor in Council may appoint a ratepayer or ratepayers to fill the vacancies which ought to have been filled at such election.

Held, that an election under the Act is not merely the taking a poll, but a continuous process consisting of several steps, notice of election, nomination of candidates, and taking a poll when a poll is necessary, and that as soon as the time prescribed by the Statute for the taking of any of these steps has expired without such steps having been taken, and it has thus become impossible to hold an election in accordance with the Statute, the power of appointment conferred upon the Governor comes into operation. It is not necessary that he should wait until the last day which could have been fixed for taking a poll has passed without a poll being taken.

Decision of the Supreme Court, *The King* v. *Hodge*; *Ex parte O'Sullivan*, 1908 St. R. Qd., 18, reversed.

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APPEAL from a decision of the Supreme Court of Queensland, ousting the appellants from the office of councillors of a shire.

The appellants were appointed by the Governor in Council, under rule 11 of the third Schedule to the *Local Authorities Act* 1902, to be members of the Council of the Shire of Rosewood, to fill four extraordinary vacancies that had occurred in that Shire. The relators applied to the Supreme Court under sec. 23 of the Act, to have the appellants ousted from office, on the ground that the circumstances had not arisen in which the Governor in Council had power to appoint councillors, and therefore the appellants were not duly elected. The appellants were called upon to show cause, and after argument the Supreme Court held that their appointment was invalid and ordered that they should be ousted: *The King* v. *Hodge*; *Ex parte O'Sullivan* (1).

The facts, and the material sections of the Act are fully set out in the judgments hereunder.

O'Sullivan and *Douglas*, for the appellants. No election was held at the time prescribed, within the meaning of rule 11, Schedule 3. "Election" is not merely the taking a poll, but consists of several steps: first, notice of election; second, nomination; and third, if more candidates are nominated than necessary to fill the vacancies, the polling. If any one of those steps is not taken at the time prescribed by the Act, there can be no election. By rule 4 the notice of election must be given within 30 days after the occurrence of the vacancy. That is the "time prescribed" intended by rule 11. It does not mean the time appointed by the Returning Officer for an election. As soon as the 30 days after the occurrence of the latest vacancy expired without any notice having been given, it became impossible to hold an election in accordance with the Statute in respect of any of the vacancies; in other words no election had been held. The notice is as essential to the validity of an election as any other step. There being no possibility of fixing a day for the election, it would have made no difference to the position if the Governor had waited until the expiration of the latest time that might have been fixed. [They referred to rules 2, 4 and 11 of the 3rd Schedule.]

(1) 1908 St. R. Qd., 18.

The Governor had no power under rule 10 to extend the time for giving notice. He could only extend the duration of the notice after it was given. Even if he had such power, he was not bound to exercise it, but was entitled to exercise the power of appointment. Upon the relators' construction of rule 11, the Governor, if he had not the power when he purported to appoint the appellants, has no power now. Consequently no election of any kind can ever be held without fresh legislation, and the affairs of the shire will fall into chaos. A construction which has such a result will not be adopted in an Act intended to provide for efficient local government unless no other construction is open. The construction contended for by the appellants is a reasonable one and should be adopted. It is in accordance with the obvious purpose of the legislature, that there should be no breach of continuity in the system of local government: *Widgee Shire Council* v. *Bonney* (1).

The section as to ouster, sec. 23, does not apply to the case of persons appointed by the Governor in Council. It applies only to persons elected, or purporting to have been elected, by the ordinary process. *Quo warranto*, therefore, is the proper remedy. That is a discretionary writ, and would not be granted under the circumstances. The appointment was, as the evidence showed, a salutary one, and the relators were not acting *bonâ fide*. There was also delay in making the application, and it would now be futile to put the appellants out of office, as the Governor could immediately re-appoint them. [They referred to *The King* v. *Venn King*; *Ex parte Maloney* (2); *Shortt on Mandamus and Prohibition*, 1887 ed., p. 149.]

By sec. 368, sub-sec. (4), no Order shall be deemed invalid on account of any omission.

[GRIFFITH C.J.—That refers only to cases where certain prescribed preliminaries have been omitted, not to cases of total want of authority.]

McGregor (*Watson* with him), for the respondent. The Court, if it sees that no serious harm has been done, should rescind the special leave.

(1) 4 C.L.R., 977, at p. 983.

(2) 1903 St. R. Qd., 336.

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[GRIFFITH C.J.—The ground for granting special leave to appeal was that, since the Governor should not interfere unnecessarily in elections for local authorities, it was important to know whether a case for his intervention arose under the actual circumstances.]

The whole question depends upon the construction of rule 11. According to the proper construction of that rule the Governor has no power to appoint members until a day has been appointed by the Returning Officer for the election, and that day has passed without an election being held. The day of election would be the day of nomination where no more than the required number of candidates are nominated, or the day of polling where more than that number are nominated. No day having been appointed, the power conferred upon the Governor never came into operation. The day prescribed or appointed for an election means the day fixed by the Returning Officer in his notice. If, owing to the mistake or default of the Returning Officer, no day is appointed and the Statute provides no way of getting over the difficulty, then the legislature can make provision to meet the case.

[ISAACS J.—The main object of the legislature is not to be defeated merely because the draughtsman has used inexact words: *Salmon* v. *Duncombe* (1); *Maxwell on Interpretation of Statutes*, 3rd ed., p. 319; *The King* v. *Vasey* (2).]

"Election" should be construed in the same sense as in other parts of the Act. It is in general used to mean the polling, not the preliminary steps. [He referred to sec. 28; rules 38, &c.]

[ISAACS J.—I do not think there is much strictness in the use of words in the Act.]

It was not absolutely necessary that the notice should be given within the thirty days. That provision is merely directory to ensure that there will be no delay; but if no notice is given within the time, one may be given later, and the Governor may validate it. The ousting of the appellants, therefore, need not interfere with the working of the system. [He referred to *Reg.* v. *Moffatt* (3); rule 15 (3); and the *Divisional Boards Act* 1887, sec. 53.]

(1) 11 App. Cas., 627.
(2) (1905) 2 K.B., 748.
(3) 5 Q.L.J., 79.

O'Sullivan in reply, referred to *The King* v. *O'Donahue and Sloane*; *Ex parte Grant* (1).

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Dec. 17.

Cur. adv. vult.

GRIFFITH C.J. This is an appeal from an order of the Supreme Court of Queensland making absolute an order *nisi* for the ouster of four members of the Council of the Shire of Rosewood. The four members in question were appointed by the Governor in Council, and the point taken by the relators was that the Governor had no authority in law to appoint them.

The law as to local government in Queensland is contained in the *Local Authorities Act* 1902. The Council of the shire in question consists of seven members, of whom three form a quorum. The manner of election of councillors is prescribed by the rules of the third Schedule of the Act. It will be necessary therefore to refer to some of the provisions of that Schedule. Rule 2 provides that:—"At every election the Chairman or other person appointed by the Local Authority; or, if there is no Local Authority, or no person is appointed by the Local Authority, then such person as the Governor in Council appoints, shall be the Returning Officer." Rule 4 provides that:—"In every year, on or before the tenth day of January, the Returning Officer of every shire shall give public notice of the annual election by advertisement in some newspaper," which is to specify a day, "not less than fourteen nor more than twenty-one days after the publication of the notice, as the day of nomination," and to fix the place of nomination. Paragraph 4 of that rule provides that:—"On the occurrence of an extraordinary vacancy, a like notice shall be given within thirty days after the occurrence of the vacancy," that is to say, a notice specifying a day not less than fourteen days nor more than twenty-one days after the publication of the notice, as the day of nomination. Rule 10 provides that the time prescribed for the length of the notice of the day of nomination or of the day for taking or closing the poll may be extended by the Governor in Council. Rule 11 provides that "if at the time prescribed or appointed for holding an election no election is held, or no candidates are nominated, or the number of candidates

(1) 1907 St. R. Qd., 16, at p. 20.

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nominated is less than the number of members to be elected, the Governor in Council may appoint a ratepayer of the Area or a sufficient number of such ratepayers to be a member or members of the Local Authority to fill the vacancies which ought to be filled at such election, and the ratepayer or ratepayers so appointed shall be deemed to have been duly elected at such election." In the events that have happened five of the seven members of the Council of this shire resigned their seats, three on 23rd March, one on 30th March, and one on 4th April. The Chairman was not amongst those who resigned, but he was advised that he could not act as Returning Officer without a formal appointment by the Governor in Council, and as it was impossible to form a quorum, the local authority could not appoint any person to act in that capacity. It was therefore necessary, if an election was to be held at all, for the Governor in Council to appoint a Returning Officer. Accordingly that was done on 22nd April, but the gentleman appointed was not notified of his appointment until 24th April. The time prescribed by rule 4 for giving notice of the election to fill extraordinary vacancies is, as I have pointed out, thirty days after the occurrence of the vacancy, so that the notice for the election to fill the vacancies created by the resignations of the three councillors on 23rd March could not be given later than 22nd April, the day on which the Returning Officer was appointed. The last day for giving notice of an election to fill the vacancies created by the resignations of the other two Councillors would have been a few days later. But for some reason, to which it is not necessary to refer, as we are dealing with a dry point of law, the Returning Officer failed to give any notice of election within thirty days after the occurrence of any of the vacancies. The last day on which a notice could have been given for the latest of them was 4th May. No election, therefore, was held. In point of law none could be held. Thereupon the Governor in Council, on 13th May, appointed five ratepayers, including the four appellants, to fill the vacancies.

The objection now taken is that the Governor in Council, in the events which happened, had no authority to fill the vacancies. That depends wholly upon the meaning of rule 11, which pro-

vides that if at the time prescribed no election is held, or no candidates, or an insufficient number, are nominated, the Governor in Council may fill the vacancies. The learned Chief Justice, as I understand his judgment, was of opinion that that rule did not come into operation until some of the proceedings for holding an election had been taken. *Power* J. concurred in this view. *Noel* J., on the other hand, was of opinion that the time appointed for holding an election meant the time appointed for taking the poll, and that as no time had been appointed for taking the poll, the occasion provided for by the section had not arisen.

Appeal is made by the relators to the literal words of the rule. Let us take that view and see what it means. There are three alternatives mentioned, one that no election is held within the time prescribed for holding the election; the second that no candidates are nominated; and the third that the number of candidates nominated is less than the number to be elected. Now the construction contended for by the relators assumes that a nomination is necessary. But, read literally, the rule itself shows that the case where no candidates are nominated does not fall within the scope of the words "no election is held." Supplying the words necessary to be supplied the rule would read: "If no election is held, or, although an election is held, no candidates are nominated." But the word election, it was said, must mean polling. No doubt polling is part of an election. So is nomination. The polling may perhaps be considered as an adjournment of the election from the day of nomination. But the election begins when the first step is taken that is prescribed by law as a necessary step in the process of holding an election. The term "election," in my opinion, includes the whole proceeding from the first step taken by the Returning Officer, in giving notice to the electors, to the day of the return of the candidates, if any are elected. The fact that the words if "no election is held" precede the words "or no candidates are nominated," shows, indeed, that the failure to hold an election may precede the time for the nomination of candidates. I think that, as soon as it becomes apparent that no election can be held, the jurisdiction of the Governor in Council comes into operation. The words are: "At the time prescribed or appointed for holding an election." Seeing,

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therefore, that an election consists of various steps, the giving notice of the election, the appointment of a day of nomination and of a day for holding a poll, if a poll becomes necessary, and that the rules fix limits of time for each step, when once the limit of time for any particular step is passed, it becomes impossible to do what the Act has prescribed. When a step prescribed has not been taken and cannot be taken, it is, in my opinion, right to say that an election has not been held. On 13th May it was impossible that there should be an election for the extraordinary vacancies that had occurred. The case is therefore within the plain meaning of the words. I think that the appointment by the Governor in Council was warranted by the Statute, and that the order for ouster should be discharged.

BARTON J. Sec. 23 of the *Local Authorities Act* 1902 provides that "When any person declared duly elected to the office of member has been elected unduly or contrary to this Act, . . . the Supreme Court, or a Judge thereof, may, upon the application of any five ratepayers of the Area, grant an order calling upon such person to show cause why he should not be ousted from such office." That is the section under which the proceedings were taken that resulted in the Supreme Court of Queensland ousting the five persons, of whom four are now appellants, and who became holders *de facto* of the office of councillor in this way. The Shire of Rosewood should have seven councillors. On 23rd March Councillors Lane, O'Donahue and Sloane resigned from office, the first named being the person elected for division 1 of the shire, the second for division 2, and the third for division 3. Councillor Coulson, also a representative of division 1, resigned his office on 30th March, and on 4th April Councillor Just, a representative of the same division, also resigned. On 4th April, there being these five vacancies, there appears to have been a consultation between the remaining members, as a result of which the chairman offered himself for the appointment of Returning Officer. By sec. 31, sub-sec. 1, a separate election must be held to fill any vacancy arising from any cause except annual retirement. Sec. 28 provides that the rules contained in the third Schedule shall regulate the proceedings in relation to

elections under the Act. By rule 2 it is provided that at every election, if there is no local authority, or no person is appointed by the local authority (which were the conditions in the present case) then such person as the Governor in Council appoints shall be the Returning Officer. On 22nd April the Governor in Council by Order in Council appointed H. N. Stevens Returning Officer to conduct the election of five members to fill the vacancies. By sec. 31, sub-sec. 3, the election in a shire is to be held at the time appointed by the Returning Officer, and by rule 4, paragraphs 2 and 4, on the occurrence of an extraordinary vacancy, public notice of the election shall be given by that officer within thirty days after the occurrence of the vacancy, that is to say, a notice specifying a day of nomination not less than fourteen nor more than twenty-one days after the publication of the notice. By rule 8, if the number of persons nominated as candidates does not exceed the number of members to be elected, the persons nominated are to be declared duly elected by the Returning Officer, on the day of nomination; and by rule 9, if the number of persons nominated as candidates exceeds the number of members to be elected, a poll must be taken on a day and at a place appointed by the Returning Officer, not more than thirty nor less than fourteen days from the day of nomination. Now, in the present case the Returning Officer, though appointed on 22nd April, did not receive notice of his appointment until 24th April. It is not necessary to inquire how it came about that it was so late, but the required thirty days had expired as to three of the vacancies, and the Returning Officer pointed that out to the Department. He expressed the opinion that under the circumstances it would be useless to conduct an election, and recommended the Minister to obtain an appointment by the Governor in Council to fill the vacancies, referring to the provisions of rule 11. Whether that advice was good or bad we need not now inquire. But the Governor in Council, finding that the means adopted to fill all the vacancies had been abortive, appointed the four appellants and another gentleman, all of whom were ousted by the Supreme Court of Queensland on the ground that no day had been appointed for the election. This action of the Governor was taken under rule 11. The real question is whether this was a valid exercise of the

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statutory power given by the rule. I am of opinion that it was. I think that the rule covers the case where steps have been taken to hold an election, and those steps have been abortive or have failed, so that without action by the Governor in Council there would be no representation of the local authority at all. I think that the prevention of such a state of affairs was the absolute purpose and design of rule 11, and it was in view of that that the appointments in question were made. The rule contemplates the case in which there has been a miscarriage or blunder, because it speaks of the vacancies which *ought* to be filled, as where duty has not been done, where efforts to hold an election have failed, so that no election has been held, or no candidates have been nominated, or a less number has been nominated than the number to be elected. There is in each of those cases a failure to fill a vacancy that ought to have been filled. Rule 11 was devised in order to enable the machinery of local government to go on working. Without it there would be a necessity for passing special legislation. The necessary consequence of Mr. *McGregor's* argument would be to defeat the very purpose for which this rule has been framed. It has been urged for the appellants that the section as to ouster, sec. 23, does not apply to the case of an appointment by the Governor in Council. It is true that the section refers in terms to cases where members declared elected have been elected unduly or contrary to the Act, and it may be that there is some force in the argument that these words do not apply to the cases of persons not declared elected within the meaning of the section, or, rather, that the words do not cover such cases as the present, but I will not go into that question. In the view I take it is not necessary to decide it. But it seems to me that the view of the Chief Justice of Queensland, with reference to disqualification and the effect of irregularities or disqualifications upon the election by force of rule 11, might have been strongly tenable but for the concluding words of rule 11 from "at such election" down to the end. That puts such persons, once appointed, upon the footing of persons duly elected, and seems to me to obviate all questions of the kind raised as to the validity of the proceeding taken by the Governor in Council so long as at the time prescribed there have been no elections, or

no candidates, or a less number than the number to be elected has been nominated, and the Governor in Council has in due form appointed a ratepayer or ratepayers to fill the vacancy or vacancies. There is nothing in rule 11 which appears to me to be new, or indeed anything more than a transcript from the *Divisional Boards Act* 1887, sec. 50.

The meaning of the word "election" was the subject of considerable argument in this case, and Mr. *McGregor* pointed out certain sections and rules in which that word could only mean the poll. In some cases it may mean nothing but the poll; but there are other cases in which it obviously means, or includes nomination, for instance, where the requisite number of candidates has been nominated, and none in excess. And there are cases where the word as obviously applies to the whole process adopted under this law for bringing about the result of an election. Now, where the words "holding an election" are used as they are in this rule, it seems clear that they contemplate the whole process of election, so that full effect may be given to the rule by the construction that, when the means adopted for bringing about an election break down, and it becomes plain that the election cannot be held and the very consequence that must be provided against occurs, this rule may be brought into operation for the purpose of preventing the proceedings from being altogether futile. I am therefore in accord with the view of the construction of rule 11 taken by the Chief Justice, and think it applies expressly and designedly to the present case, and that its provisions are sufficient for the purpose of preventing the deadlocks that would otherwise occur. The construction contended for by Mr. *McGregor* has no doubt a good deal of support in the literal signification of the words used in this and other parts of the Act, but it is a construction which, if adopted, would result in there being a *casus omissus* in the Act. That is a construction against which the Court will generally lean as strongly as it can within reason. Because it is not lightly to be assumed that a provision, either by design or forgetfulness, has been left out which would be only an ordinary provision for securing the proper and continuous working of the machinery of local government. There is certainly that construction open, and

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there is also a possible construction which gives at the same time effect to all the words now in question in the Act and in the rules, and provides against a *casus omissus* by giving this and other portions of the Act a meaning which ensures that the operation of the law shall be continuous, and not subject to a break down such as would be the consequence of adhering to a too literal construction of the mere words. If we follow the principle that, where you find a word used in one sense in a Statute you are to construe the word in the same sense whenever it appears throughout the Statute, there is a great deal in the respondent's contention. But there are parts of the Act where it is impossible to give the word the limited application contended for, because to do so would result in defeating the chief purpose aimed at by Parliament in the Act or the part of it in question. That is very frequently the case with Statutes. I think that this word has been used in various senses in the Act, and must be construed in the different sections in its relation to the subject with reference to which it is used. That being so, I am unable to take the view put forward by the respondent, but I think the construction of the other side is the reasonable one, giving fair force and effect to the various provisions of the Act, and, on that construction, what has taken place is well within the provisions of rule 11, and the gentlemen whose appointment is now in question have been duly appointed whether duly elected or not, and as such duly appointed persons are entitled to be deemed to have been duly elected, and to be continued in their office.

ISAACS J. The question this Court has to determine turns entirely upon the proper interpretation of rule 11 of the third Schedule of the *Local Authorities Act* 1902. The respondent's case depends entirely upon what may be called a rigid construction. Mr. *McGregor* contends, as *Noel* J. held in effect, that unless the date of an election has been fixed and that date has elapsed, and having elapsed it is found that no poll has been taken, or that no candidates are nominated, or that an insufficient number are nominated, the Governor in Council has no power to act. There is a serious difficulty on ordinary principles of con-

struction that bears against the adoption of that construction, because it would attribute no meaning whatever to the second and third elements or conditions, as they may be called, referred to in the rule. It is very plain that if it is sufficient to allow the time prescribed for taking the poll to pass, and no poll is held, if that is both sufficient and essential, it is perfectly immaterial whether the cause of the failure was or was not the absence of candidates or the absence of a sufficient number of candidates, and, therefore, that construction would assume that the legislature was using expressions that were immaterial, unnecessary, and meaningless. So that, for what I may call a comparatively unimportant reason, there is already a difficulty in the path. I say comparatively unimportant reason because there is behind a very much more important matter, namely, the question whether it is absolutely necessary that the scheme of local government shall in certain instances fail beyond any power of being retrieved so long as the law stands as it is. If the words mean what is contended for by the respondent, then in such a case as the present the Governor in Council has no power whatever to mend the matter at any time or under any circumstances, because, as I read rule 10, although His Excellency might in a proper case extend the length of the notice of the day of nomination or of the day for taking or concluding the poll, that would not give him the power, and there is no other power existent in the Act, to allow that notice to be given beyond the period of thirty days from the occurrence of the vacancies; it is made imperative by rule 4. So that, that time having passed without any notice being given by the Returning Officer, it means that, as far as the Shire of Rosewood is concerned, local government is at an end. That is a construction that a Court will not adopt if by any reasonable interpretation to be placed upon the words of the legislature another construction can be given to the rule. I have never yet seen a case where the rule in *Heydon's Case* (1) is more necessary to be applied than the present, the rule that it is the office of the Court, having ascertained the mischief and defect for which the law did not otherwise provide, and the remedy Parliament hath resolved and appointed, and the true reason of

(1) 3 Rep. 7a, at p. 7b.

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the remedy, "to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*." Now the intent of the legislature here is transparent, and sec. 31, sub-sec. 1, is in these terms: [His Honor read the sub-section.] There can be no shadow of doubt that the legislature meant a vacancy to be filled in some way, and made somewhat elaborate provisions for filling it, and we cannot assume that they intended that there should be a means by which that intent should be frustrated. The question is whether, therefore, the words of rule 11 are reasonably open to a construction which will effectuate the intention that has been declared by the legislature itself. The respondent's construction, of course, makes that intention fail utterly, as I have pointed out. During the argument I read a passage to which I will now only refer, from the case of *The King* v. *Vasey* (1), where Lord *Alverstone* C.J. adopted a passage from *Maxwell on Interpretation of Statutes*, 3rd ed., p. 319. But I will quote a few words from the judgment of *Fry* L.J. in *Curtis* v. *Stovin* (2):—"If the legislature have given a plain indication of this intention, it is our plain duty to endeavour to give effect to it, though, of course, if the words which they have used will not admit of such an interpretation, their intention must fail. Do the words which they have used in this case present any insuperable difficulty?" And then further on his Lordship, after explaining one possible construction, said:—"The only alternative construction offered to us would lead to this result, that the plain intention of the legislature has entirely failed by reason of a slight inexactitude in the language of the section. If we were to adopt that construction, we should be construing the Act in order to defeat its object rather than with a view to carry its object into effect." Now these are only some of the numerous authorities in which the Courts have not been merely careful but astute to see that the plain intention of the legislature did not fail by reason of some inexactitude, as it has been called, in the method of

(1) (1905) 2 K.B., 748, at p. 751. (2) 22 Q.B.D., 513, at p. 519.

expression. Having already pointed out that the words "election held" would lead to a difficulty in intrinsic construction, having regard to the other words which I have already quoted, I turn to the Act to see whether there is anything in its object which is adverse to the more liberal construction. I find in sec. 28, sub-sec. 2, the provision upon which the third Schedule depends, these words: [His Honor read the sub-section.] Now I cannot, I do not think anyone could, say that the legislature by the phrase used there, "elections held," wished to confine itself to the taking of a poll. I should think that there, as in other places in the Act, the legislature has referred to the whole of an election as a combined process, a continuous process, consisting of a number of steps ending in the election of some representatives for local Councils. And that is borne out by other phrases frequently used, as for instance, in secs. 20, 29, 30 and 32, in which we find such expressions as "conclusion of an election," "conclusion of an annual election," "conclusion of such election," by which it is manifest that the legislature meant the final step, the taking of the poll, or declaration of election where no poll was taken, the conclusion of a combined process. Once you arrive at that point, rule 11 may be well approached in order to see whether it is not, not only reasonably, but better open to the more liberal construction than to the rigid one which would defeat the intention of the legislature as manifested throughout the Act. Turning to the rule again, it seems to me that it means this, that if the time prescribed or appointed for holding an election, that is, if the point of time has passed, by which the Act requires some definite and assigned step to be taken for the purpose of holding an election, or in other words, for the purpose of this combined process, and one or other of three things is found to exist, then, in my opinion, no election is held; that is to say, if no election at all is in course of being held, or if, though an election is in course of being held, no candidates are nominated when they ought to be nominated, or if, although some are nominated, an insufficient number is found to be nominated, then it is found that there is a failure, or that there must be a failure to have a valid election, and the Governor in Council may step in and appoint a ratepayer or ratepayers to make up the requisite number to fill the vacancies

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which ought to be filled at such election. What is the meaning of "such election"? If election is to be held to mean a poll, then it seems to me that there is a departure in the meaning, according to the respondent's argument, of the word "election," when we read the phrase "the ratepayer or ratepayers so appointed shall be deemed to have been duly elected at such election." That, according to the argument, must mean at the polling. The rule shows intrinsically that the legislature were using the expression "election" in the widest sense in which they have used it throughout the Act. There are some instances where "election" must from the context bear the narrower signification, but not in this instance. And where you find that in a regulation introduced for the purpose of preventing paralysis of the system of local government, words are used, which, construed in the narrower sense contended for, would produce that paralysis and lead to a result obviously not consistent with the purpose of the regulation itself, and utterly opposed to the intent of the Act, I think we are taking the right course in giving effect to the intent of the legislature and putting on their words the most reasonable construction that they are susceptible of in order to prevent the disastrous results that would otherwise follow.

For these reasons I agree with my learned brothers that the appeal should be allowed, and the rule for ouster discharged.

Appeal allowed. Order appealed from discharged. Rule nisi discharged with costs. Respondent to pay the costs of the appeal.

Solicitor, for the appellants, *G. V. Hellicar*, Crown Solicitor for Queensland.

Solicitor, for the respondent, *J. A. Snow* for *W. H. Summerville.*

C. A. W.