portion of the claim covered by the settled account, judgment must be entered for the defendants. I agree, therefore, that with these variations the judgment of the Supreme Court should be affirmed, I concur in the form of order suggested by my learned brother the Chief Justice, and in his judgment as to costs.

Judgment varied.

Solicitors, for appellant, *Flower & Hart.*
Solicitors, for respondents, *Foxton, Hobbs & Macnish.*

H. V. J.

[HIGH COURT OF AUSTRALIA.]

RICHARD ARMSTRONG CROUCH . . PETITIONER;

AND

ALFRED THOMAS OZANNE . . . . RESPONDENT.

CORIO ELECTION PETITION.

COURT OF DISPUTED RETURNS.

Parliamentary election—Liability of candidate for acts of his agent—Canvassing at entrance to polling booth—Scrutineers—Avoiding election—Evidence that result of election was affected—Commonwealth Electoral Act 1902-1909 (*No.* 19 *of* 1902—*No.* 19 *of* 1909), *secs.* 182A, 198A.

Where a candidate at an election is sought to be made responsible for illegal acts done during the election by his agent, it must be proved that the candidate either countenanced or directed the doing of those acts.

Semble, that canvassing for votes on or at the top of the steps leading to a polling booth, is within the prohibition in sec. 182A of the *Commonwealth Electoral Act* 1902-1909 against canvassing for votes at the entrance to a polling booth, but canvassing between the gate of the land on which the polling booth is and the building itself is not within that prohibition.

H. C. OF A. 1910.

CROUCH v. OZANNE.

The presiding officers at certain booths wrongly prevented scrutineers for the defeated candidate from entering the polling booths,

Held, that the mere fact that at those booths the majority of votes polled for the successful candidate was larger than his total majority, was not a sufficient ground for avoiding the election in the absence of reasonable grounds for concluding that the result of the election was affected by the exclusion of the scrutineers.

HEARING of election petition.

At the election held on 13th April 1910 for the Division of Corio, in the State of Victoria, for the House of Representatives, there were two candidates, Richard Armstrong Crouch and Alfred Thomas Ozanne, of whom Ozanne was on 22nd April 1910 declared by the returning officer to be duly elected.

A petition was subsequently filed by Crouch seeking a declaration that Ozanne was not duly elected and a declaration that Crouch was duly elected, or alternatively that the election be declared absolutely void.

The matters upon which the election was challenged were as follow :—

1. That presiding officers improperly prevented scrutineers from performing their duties.

2. That contrary to secs. 128 and 147 of the *Commonwealth Electoral Act* 1902-1909 presiding officers permitted voting at such election to be other than by ballot and did not comply with the requirements of those sections.

3. That the presiding officers permitted voters to be improperly influenced inside and outside the polling booths.

4. That persons who improperly influenced voters were allowed by presiding officers in the polling booths.

5. That presiding officers improperly permitted persons other than scrutineers to perform scrutineers' duties.

6. That at such election several persons who were qualified to vote thereat were not permitted to do so.

7. That voters were so unduly delayed by the presiding officers that they were unable to vote.

8. That certain persons were allowed to vote twice at such election.

9. That there were generally such undue influence, illegal

practices, irregularities and illegalities tending to benefit Ozanne at such election as were sufficient to avoid such election.

The petition was heard by *O'Connor* J.

The facts are sufficiently stated in the judgment hereunder.

McArthur, for the petitioner.

McCay, for the respondent.

O'CONNOR J. The grounds upon which this petition is based divide themselves naturally by a very sharp line of division into two classes. The first is the ground of bribery. If I were to find bribery proved, I would have no option than to declare the election void and, necessarily, the sitting candidate unseated. It even might be that the act of bribery was an attempt only which failed and that no single vote was affected by it, yet if I were to find that bribery had been established, I should be obliged to declare the election void.

The other class of complaints which forms the ground of all the other allegations in the petition come within sec. 198A (3). (His Honor read it). In regard therefore to all the irregularities—I use a general word that will include all the charges—whether illegal practices within the meaning of sec. 198 or not, it is not sufficient to show that they took place, but it also must be shown that their taking place was likely to have affected the result of the election, and that, because of their having taken place, it is just that the candidate should be declared not to be duly elected. Bearing in mind the law with regard to these two different classes of grounds, I turn to a consideration of the facts.

Now in regard to the charge of bribery, the allegation in substance is that there was an attempt to bribe an elector named Maggie Connors by promising her a silk dress if she voted for Ozanne, and it is alleged that the promise was made to Maggie Connors by Ozanne himself. There are two witnesses only who support it. The first is a Mrs. Zagabria. She describes that some two or three days before the election Ozanne and his canvasser or agent, Dorgan, came to her house at Portarlington, and

H. C. OF A. 1910.

CROUCH v. OZANNE.

O'Connor J.

after having asked her to vote for him at the election—the conversation on that point is immaterial—he and Dorgan were going away when Miss Connors met them at the gate. I shall read from the evidence what took place according to Mrs. Zagabria.

"Mr. Dorgan introduced Maggie Connors to Mr. Ozanne, and Mr. Ozanne said 'Miss Connors, if you vote for me, when I get in I will give you a new silk dress.' There was no more said in my presence by either Mr. Dorgan or Mr. Ozanne. Maggie Connors laughed and said 'You're the one,' or something like that. (To His Honor). He did not promise me a silk dress. Mr. Ozanne passed no remark to me. (To Mr. McArthur). All that I heard was about the silk dress. They went away together. (To His Honor). I really thought he meant it at the time. I thought he was serious."

Maggie Connors is called and she admits there was such a conversation, but she says it did not take place in Mrs. Zagabria's presence at all. She gives very much the same account of it, except, she says, it was understood by her, and intended by Ozanne, as a joke. When one considers the circumstances under which this supposed bribe was offered it seems to me to be almost shocking to common sense to suppose anyone could take the incident seriously. I have no doubt whatever it was merely a joke, and was understood by both parties to be so, and it is to be regretted that a serious charge of bribery should be brought before this Court to be solemnly tried upon such an exceedingly flimsy ground.

I pass now to the other charges, and in regard to all of them I must be satisfied of two things before I can find them established. I must be satisfied in the first place that the illegal practice or irregularity took place, and in the next place I must be satisfied that each irregularity complained of was, or the whole of them together were, such as to be likely to affect the result of the election. The first important fact is that in this election the respondent Ozanne had a majority of 1,645. It must be shown therefore that these irregularities or illegal practices were likely to affect that majority. There is no doubt that in some cases the irregularities were proved; in some cases the proof failed. I do not think it necessary to go into the details. Assuming every

irregularity charged to have been proved to the hilt, and assuming them to have affected all the votes which the evidence states were affected, it could not possibly have affected the election to the extent of more than 20 votes. If I come to that conclusion, it becomes obviously unnecessary to further inquire whether in fact the irregularities took place. I may assume that all the irregularities were established. If I determine that all of them together did not affect the election to the extent of more than 20 votes, it is impossible that I can find in the petitioner's favour. The irregularities may be generally classed under several headings, and I propose to refer to them in that way, because I do not think any good purpose can be served by dealing with them otherwise than generally.

It is charged that at the Bellarine booth there was insufficient accommodation for the electors—that in a small room the electors were so crowded together that it was impossible for them to vote, the result being that persons went away without voting. The room does seem to have been very small, but the petitioner has entirely failed to satisfy me that there was any deprivation of the right of any voter on account of those conditions. It is true that some few persons apparently went away at one time, but there is nothing to show that they did not come back again to vote. There is nothing to show their votes were not recorded, and, when one looks at the proportion of votes recorded at that particular place, it certainly amounts to a very fair average of the votes given throughout the electorate generally—that is to say, taking the proportion between the number of electors on the roll and the number of votes recorded. I find that at Bellarine there were 1,487 electors enrolled and there were 1,003 voting papers issued. Making allowances for any few irregularities or informalities that may have taken place in the marking of the voting papers, the proportion of votes may be taken generally to be indicated by the ballot papers issued. When I find that out of 1,487 voters on the roll 1,003 voted, it certainly does not indicate to me that there could have been any substantial number of persons prevented from voting by reason of the condition of the polling booth. It was a necessary part of the petitioner's case to show that this condition of the polling booth

H. C. OF A. 1910.

CROUCH v. OZANNE.

O'Connor J.

which he complained of did affect the result, or was likely to have affected the result, of the election. In my opinion there is nothing whatever to indicate to me that the result of the voting at that particular place was in any way substantially influenced by the condition of things which is complained of.

There is another objection of the same kind, that is, that at some of the polling booths the arrangements of the box in which the voter marked his vote were such as not to allow the voter to make his marking without being liable to be overlooked or observed—in other words, a violation of sec. 128. In my opinion the apparatus which has been shown in Court was sufficient to screen the voters from observation while they were marking their ballot papers. Certainly the provision is rather skimpy; the boxes might be higher, but, unless the person marking his vote deliberately stands up and looks over the partition, I do not think it is possible to see what another elector is doing while marking his paper. However that may be, there is no evidence to show that any vote was affected by that irregularity. There seems to be a difference of opinion between Mr. Crouch and Mr. Williams as to what the construction of these booths was. I do not attribute anything else than some mistake to Mr. Crouch in supposing there was some kind of a desk or sloping board fixed up inside these places which made it more likely than not that an elector voting would look over and see what his neighbour was doing on the other side of the partition, but on that I take Mr. Williams' statement to be true. He was the responsible officer; it was his duty to see what the construction of these boxes was, and he swears very positively to the condition of them. There is no other evidence which seems to me to be worth consideration which contradicts him. Mr. Crouch's evidence, given really from what must have been necessarily a more or less casual observation, I do not think can weigh against it. If, however, any irregularity of that kind were shown there is no evidence that it could have affected the result of the election.

There is another set of grounds which refer to what I may call irregular canvassing at different polling places. As regards those grounds I am assuming, although there is no evidence of it,

that the canvassers, if they did act illegally, were authorized by Mr. Ozanne to do so, but it must not be taken for granted that, because a candidate has appointed a canvasser he is liable for every act the canvasser may do in the course of the election. There must be to support such a charge some evidence that the candidate either countenanced or directed the doing of the illegal things complained of. I am assuming for the purposes of this case that Mr. Ozanne authorized or approved of the irregularities committed. The irregularities consisted of the canvasser following up the elector, in some cases right to the steps of the hall door—or to the door of the polling place itself. In some cases the canvassing took place in the space between the street gate and the building. The only prohibition against canvassing is contained in sec. 182A. (His Honour read the section).

There are two cases in which it is alleged that illegal canvassing took place in the polling booth—that in which Mrs. Zagabria was said to have been canvassed and that of the three Martinis. I assume in the petitioner's favour that those cases were established. That amounts to three votes altogether, and if one takes all the rest of the cases established with regard to the same class of irregularity—canvassing in an improper place, at the entrance to, or within, a polling booth—the total number of votes affected would not be more than a dozen at the outside. It is not necessary for me to express any opinion as to whether what took place was illegal or not, but, as the question is raised, perhaps it may be as well for me to say that "entrance to a polling booth" must be interpreted in a reasonable way. If a canvasser chooses to go right up to the steps, and on the steps, of the building in which the polling is going on, to pursue his canvass, it seems to me he runs a very great risk of being prosecuted for committing the offence charged, the penalty for which is £25, besides running the risk of being guilty of an irregularity which may upset the election. As regards the canvassing which took place in the passage between the gate and the building, it does not seem to me that it comes within the prohibition.

I turn now to the other class of irregularity or illegality or illegal practice, however it may be described, and it is the most important of the charges brought before the Court on this

H. C. OF A. 1910.

CROUCH v. OZANNE.

O'Connor J.

petition. The charge is that the presiding officer at three booths refused to permit the scrutineers of the petitioner to go in and out of the booths in the discharge of their ordinary duties as scrutineers. It is well known that the duty of a scrutineer is to look after the interests of the candidate both inside and outside the building. It appears that at three of the polling booths—Barwon, Geelong and Geelong West—the presiding officers took it into their heads to prevent scrutineers from going in and out of the building. They took the view that a scrutineer must either remain outside the building altogether or inside the building altogether, that if he elected to stay inside the building he must stay there the whole time, and if he once went outside the building he must stay out. I need hardly say that such action on the part of these officers was an absolutely unwarrantable interference with the discharge of the duties of the scrutineer. Apparently the presiding officers acted upon a misinterpretation of No. 7 of the instructions issued by the Electoral Department on 15th January 1910. The last sentence of that particular instruction is somewhat ambiguously worded "The presiding officer will see that scrutineers do not communicate with persons other than officers inside the polling booth." The meaning of that to any person who understands scrutineers' duties is obviously that the scrutineer inside the polling booth will not be allowed to communicate with persons other than officials. But unfortunately the words used are open to the reading that the presiding officer will see that the scrutineers do not communicate with persons other than the officials inside the polling booth. No person who understood the duties of a scrutineer and read these rules with the most reasonable allowance of common sense could make any mistake about the meaning of them, but there was undoubtedly an opening for mistake to persons not in the habit of interpreting documents and disposed to take a narrow view. I think what has happened at this election ought to be a warning to those responsible for the issue of electoral rules to be exceedingly careful to see that they are clearly worded and to remember that they are intended to be read, not only by persons who are in the habit of interpreting documents and who know all the duties of presiding officers and

scrutineers, but also by persons in remote country places who are not used to interpreting documents, who may not know the duties of a scrutineer, and who may have no one at hand whom they can consult in a difficulty. I say this in justice to the presiding officers themselves. If their conduct had been absolutely wanton they would be subject to very severe censure. They made a mistake in interpreting the rule because the rule itself is unfortunately not as clear as it might be. However that may be, at those three polling places the presiding officers took up that position, and they practically put the scrutineers of the petitioner in the position of having to elect whether they would give up the discharge of their duties outside altogether and remain inside, or whether they would elect to go outside and neglect their duties inside the polling booth. Of that there is no doubt, and I come to the conclusion that two scrutineers at least at each of these places were prevented from exercising their duties in looking after Mr. Crouch's interests during the day in the polling booth, and also were prevented from taking the part which they ought to be allowed to take in the scrutiny. There is no doubt that this interference with his scrutineers must have affected Mr. Crouch's interests. To what extent? There is no evidence before me to indicate to what extent, if at all, the result of the election was affected by the irregularity, failure or error in the discharge of their duty by the returning officers. There are eighteen polling places and out of those it was only in the three places complained of that apparently this irregularity took place. Apparently Mr. Ozanne's scrutineers elected to remain in, but unfortunately at these three places scrutineers of the petitioner elected to remain out. The evidence of Mr. Williams is that as soon as he heard of the difficulty—he seems to have heard of it somewhere about ten o'clock in the morning—he set about remedying it by giving instructions to the presiding officers that they had no right whatever to prevent the mere ingress and egress of scrutineers. There is no evidence—one would not expect it in the petitioner's case—that that was communicated to both sides. All we know is that Mr. Crouch did not hear about it. Mr. Crouch says he endeavoured to find Mr. Williams, but was not able to see him. Apparently that was not com-

H. C. OF A. 1910.

CROUCH v. OZANNE.

O Connor J.

municated to Mr. Crouch or to the scrutineers who were put out. On the evidence I do not see any ground for blaming Mr. Crouch in any way for what has taken place, and the only question to my mind is whether he has shown that there is any likelihood of the election having been affected by these irregularities. These three polling booths were of course very important booths in this election, because they appear to have been what were known as labour strongholds. Mr. Crouch says he hoped to hold his own there, and the actual result of the election was that the majority against him in those three polling booths was 1,769. Is there any evidence to indicate to me that that majority would have been less by ten votes if this did not take place? It would be almost impossible to prove that any votes were lost thereby, and it is not reasonable to expect such evidence, but I cannot act upon the mere conjecture that the result of the election would have been different if the scrutineers had not been interfered with. If, for instance, it were shown that there was a great deal of irregularity at these particular booths or that there were a number of informal votes or persons voted there who ought not to have voted at all, there might be some grounds for supposing that the absence of scrutineers had affected the result of the election. But there is nothing put before me which goes beyond furnishing means for conjecture. The question for my determination is whether I would be justified in disturbing the choice of the electors by so large a majority on the mere supposition or conjecture that, if at these three polling places Mr. Crouch had had the full benefit of the presence of his scrutineers, the result would have been so different as to have affected the result of the election. I am obliged to come to the conclusion that there is no evidence before me upon which I can arrive at that finding, and therefore, although it is much to be regretted that this unfortunate mistake was made by these presiding officers, I cannot see any grounds upon which I can find that that mistake was likely to have affected the election. For these reasons I am obliged to find that the petition has not been supported by sufficient evidence, that the petitioner's own evidence has not established his case, and that therefore it has been unnecessary for me to call upon

H. C. OF A. 1910.

CROUCH v. OZANNE.

O'Connor J.

the respondent for an answer. That being so, I have come to the conclusion that I must dismiss the petition. I order the petitioner to pay the respondent's costs to the extent of £100, and the £50 deposit to be applied towards payment of the costs.

Petition dismissed with costs.

Solicitors, for the petitioner, *Strongman & Crouch.*
Solicitors, for the respondent, *McCay & Thwaites.*

B. L.

[HIGH COURT OF AUSTRALIA.]

STIGGANTS . . . . . APPELLANT;
DEFENDANT,

AND

JOSKE . . . . . RESPONDENT.
INFORMANT,

Dentist—Person "recorded" by the Dental Board—Use of word "Dentist"—Words implying that he is practising dentistry—Dentists Act 1898 (*Vict.*) (*No.* 1595), *sec.* 7 *—*Dentists Act* 1910 (*Vict.*) (*No.* 2257), *sec.* 13 †.

H. C. OF A. 1911.

MELBOURNE, *Oct.* 9, 10,

Griffith C.J., Barton and O'Connor JJ.

* Sec. 7 of the *Dentists Act* 1898 provides that:—No person other than a legally qualified medical practitioner or other than a person registered under the *Dentists Act* 1887 or under this or the Principal Act shall, nor shall any company (other than an association consisting wholly of registered dentists), take or use or by inference adopt the name title word letters addition or description, of "dentist" or "dental practitioner" or "dental surgeon" or "surgeon dentist," or use or have attached to or exhibited at his or its place of business or residence (either alone or in combinations with any other word or words or letters) the words "dental company" or "dental institute" or "dental hospital" or "dental college" or "college or school of dentistry" or "mechanical dentist" or any name title word letters addition or description implying or tending to the belief that he or such company is registered under the *Dentists Act* 1887 or under this or the Principal Act or that he or such company is qualified to practice dentistry or is carrying on the practice of dentistry or is entitled to or to use such name title word letters addition or description.

† Sec. 13 of the *Dentists Act* 1910 provides that:—