Municipal Elections Act (Re)

In re Municipal Elections Act

[1912] B.C.J. No. 11

2 D.L.R. 349

British Columbia Supreme Court Victoria, British Columbia

Gregory J.

January 5, 1912.

1 GREGORY J.:-- This is an application under the provisions of the Municipal Elections Act, section 17, chapter 14, British Columbia statutes, 1908, by a number of householders, to have their names placed on the voters' list for the City of Victoria.

2 The names were originally placed on the list by the clerk of the Municipality under section 6 of the Act, but were struck off by the court of revision, acting under the authority of subsection (c) of section 14 of the Act, on the ground that the applicants had not made the statutory declaration required by section 6 before a commissioner for taking affidavits in the Supreme Court, but before a special commissioner for taking affidavits appointed under the Provincial Elections Act (section 13, chapter 17, British Columbia statutes, 1903-04).

3 Mr. Maclean, for the applicants, raises two points, viz.: First: The court of revision had no jurisdiction to review the finding of the clerk as to the authority or qualification of the commissioner before whom the declaration was taken. Second: That a commissioner appointed under the Provincial Elections Act is qualified to take the declaration, inasmuch as be is a commissioner for taking affidavits, and the Court will ignore the qualification in the statute that he is appointed "for the purpose of acting under the Act," or will treat the words merely as a declaration of the reasons for making the appointment.

4 It is undisputed that the applicants have the necessary qualifications, and are entitled to go on if the declarations are properly made.

5 Mr. Maclean lays great stress upon his first point, and he frankly admits that his argument goes the length of holding that if the clerk put names on the list without any declaration at all, the court of revision would have no jurisdiction to remove them on that ground, citing Registration Appeals, Davies v. Hopkins (1857), 3 C.B.N.S. 376 [17 BCR Page34], where, although a very similar contention was successfully maintained, I do not think it assists him, because that decision turned upon

the wording of the statute (6 & 7 Vict., c. 18) then under consideration, and, Cockburn, C.J. and Williams, J. expressly drew attention to the peculiar wording of that statute, Williams, J. stating, at p. 387, that, if the application before the Court had been one to insert a mine omitted by the overseer, the decision of the Court would have to be different, as in such case it had to be proved before the revising barrister that the proper notice had been given, and that the applicant possessed the qualification named in that statute; but as the case before the Court was one to strike out a name on the list, the revising barrister could only inquire into such matters as the statute permitted him to inquire into in such cases, and the sufficiency of the notice was not one of them. Now, our statute makes no distinction. The duties of the court of revision are the same whether a name has been improperly placed on the list or improperly omitted from it. Sub-section 2 of section 14 of the Municipal Elections Act provides that the court of revision shall correct and revise the list, and shall have power "to determine any application to strike out the name of any person which has been improperly placed thereon, or to place on such list the name of any person improperly omitted," etc.

6 If there has been no declaration, or a declaration made before an unauthorized person, and yet the name of the declarant appears on the list, it is beyond dispute that the requirements of section 6 of the Act have not been complied with, and the name has been improperly placed there; that is the exact situation which the court of revision is empowered to deal with under our statute.

7 It seems to me, therefore, clear that Mr. Maclean's first contention is unsound.

8 As to the second point, there may be some doubt. My attention has been called to the case of In re Provincial Elections Act (1903), 10 B.C.R. 114, and particularly to the remarks of WALKEM, J. at the bottom of p. 120, to the effect that franchise Acts are to be liberally construed, as their object is to [17 BCR Page35] enfranchise and not disfranchise persons possessing the necessary qualifications. In that case the language of the Act itself was broad, and the Court held that it could not be cut down by implication from the form of the jurat given in a specimen affidavit set out in a schedule to the Act. No one will be inclined to question the soundness of that decision, or Mr. Justice WALKEM'S remarks; but neither seems to justify me in ignoring the plain qualification of the powers of a commissioner appointed under section 13 of the Provincial Elections Act. That section is as follows:

"The Lieutenant-Governor in Council may appoint any person who is a British subject as a commissioner for taking affidavits in the Supreme Court for a limited period without payment of any fee, for the purpose of acting under this Act in the Electoral District in which he resides."

9 The commissioners before whom the declarations in question were made were appointed under that section, and the order in council appointing them, and their official notification of appointment expressly state that the appointment is "for the purpose of acting" under that Act. The applicants argue that the words of qualification in the Act, the order in council, and the notification mean nothing, are merely a declaration of the reason why the appointments are made, and that once made, the appointees have, as Mr. Maclean puts it, "the full appointment," and have full power and authority to take any declarations made in any cause or matter pending in the Supreme Court. I cannot agree with that; to me the language appears perfectly plain, and in addition, the temporary nature of the appointments, the limitation of the appointees' activities to the electoral district in which they reside; the fact that there is no fee payable and that they are not appointed by a judge of the Supreme Court under the Oaths Act (changed in 1911), and under which appointment on payment of a fee they re-

ceive a formal commission under the seal of the Supreme Court, and were entered on the roll of commissioners in the registry of that Court, all indicate, I think, that the Legislature intended expressly to restrict the powers of such appointees to the purposes of that Act. To accept the applicants' contention would be to treat these qualifying words as surplusage.

10 It is a well known rule of interpretation of statutes that such [17 BCR Page36] a sense is to be made upon the whole as that no clause, sentence or word shall prove superfluous, void or insignificant, if by any other construction they may all be made useful and pertinent: Craies Statute Law, 2nd Ed., 112.

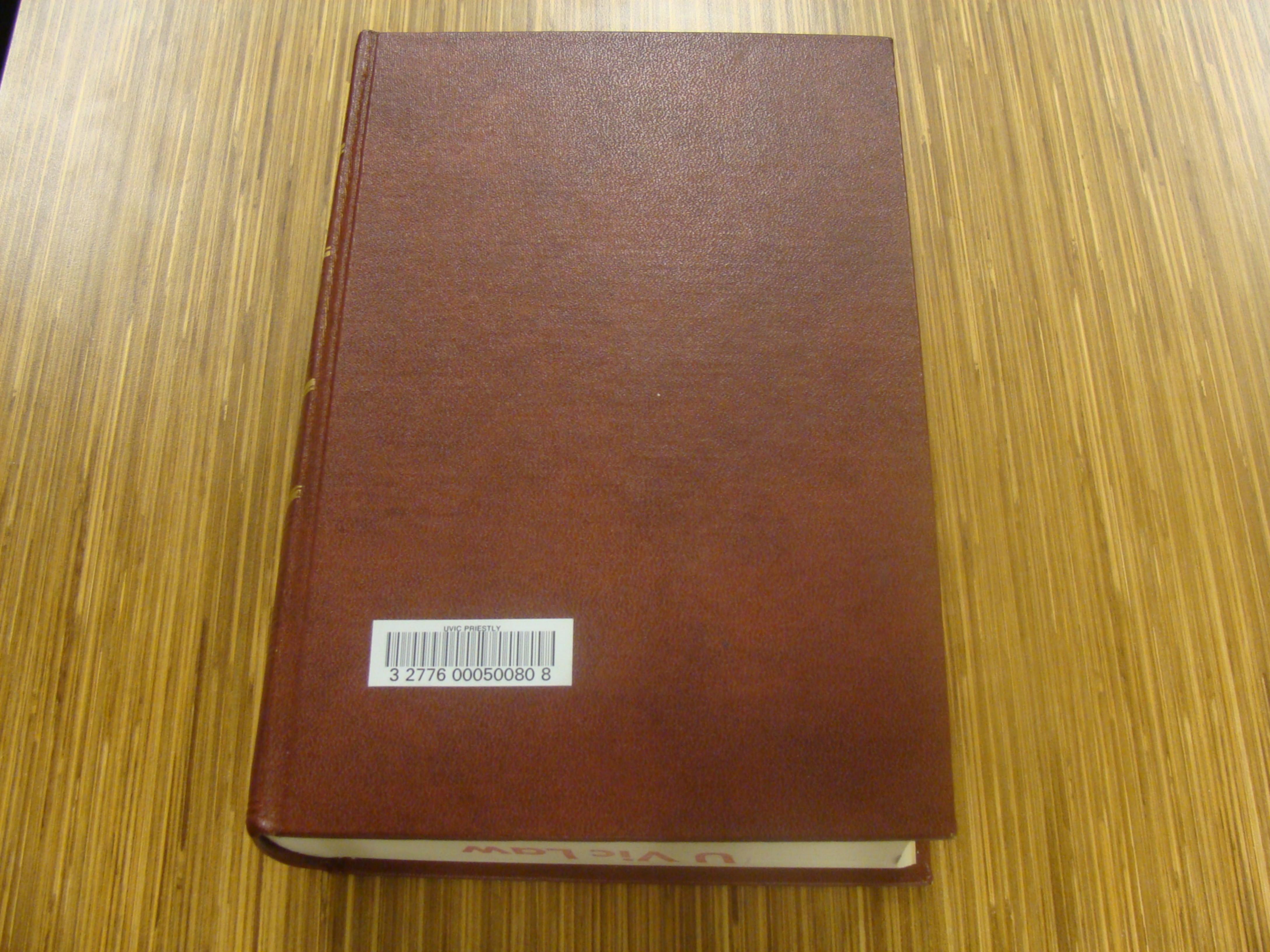
11 If the persons taking the declarations had no authority to do so, then they cannot be looked at - they are not declarations under the Act: see Reynolds v. Williamson et al. (1875), 25 U.C.C.P. 49, and other cases referred to by Mr. McDiarmid.

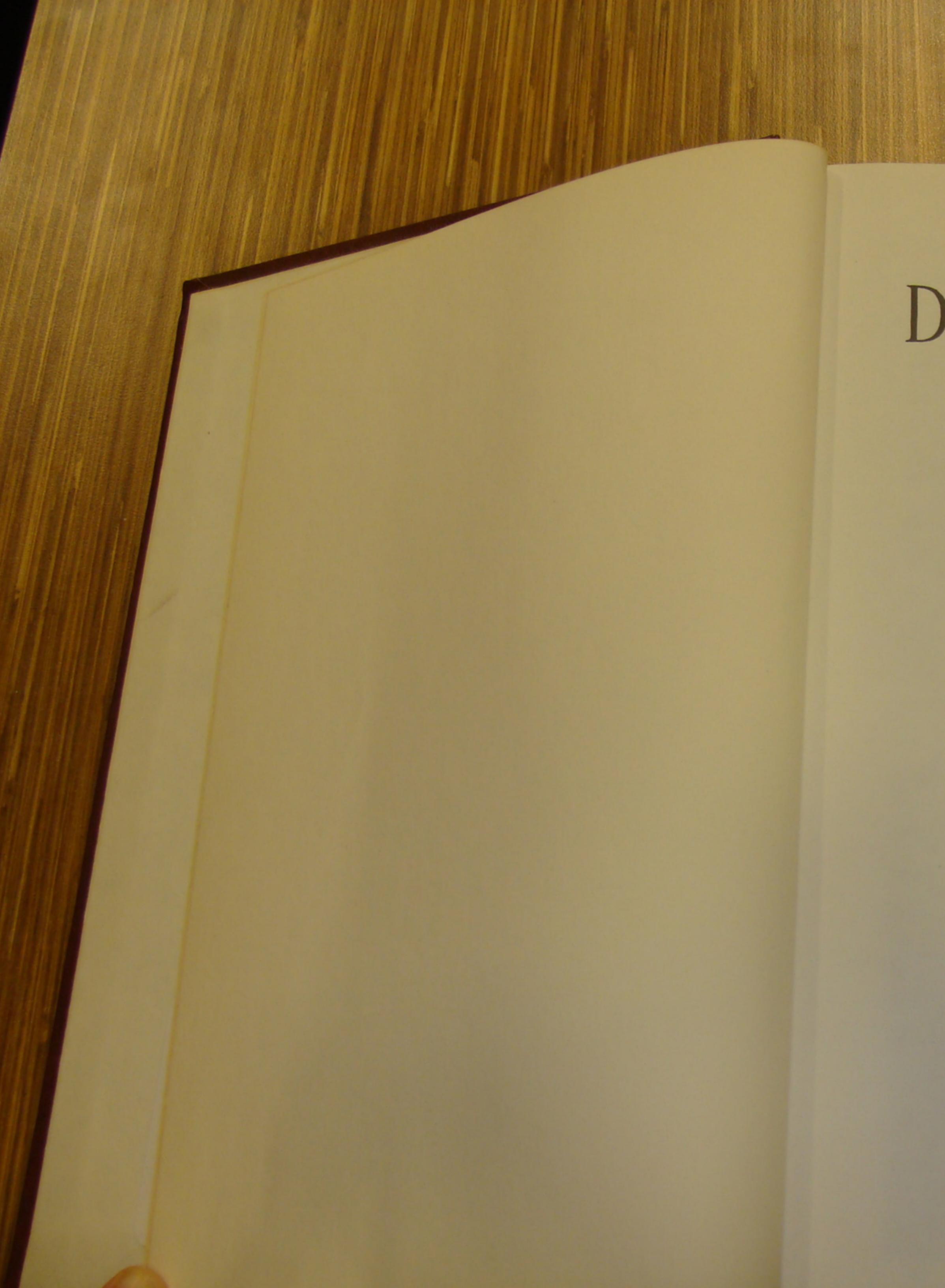
12 Although the declarants are possessed of the qualifications entitling them to be placed on the list on making the proper declaration, the making of that declaration is a condition precedent which must be complied with. The Municipal Elections Act, sections 6 and 7, provides not only that the declaration shall be made, but also the form of it, the particular month in which it shall be made, and that it must be filed with the clerk within 24 hours after it is made. That these provisions cannot be ignored will not be disputed; then, surely, neither can the provision directing before whom the declaration is to be made.

13 The only possible doubt appears to me to arise from the fact pointed out by Mr. McDiarmid that both the Provincial and Municipal Elections Acts use the same expression, viz.: "Commissioner for taking affidavits in the Supreme Court," and strictly speaking, there is no such officer known outside of those Acts, the Oaths Act, section 1, stating that commissioners appointed under it "shall be styled commissioners for taking affidavits within British Columbia." But that Act goes on to provide that the acts of such commissioners are valid in all Courts of the Province, and it is common knowledge that they are always spoken of as commissioners for taking affidavits in the Supreme Court, which they in fact are. Neither of the Election Acts states that the commissioners therein named shall be styled in any particular way; and to hold that because of the mere similarity of the expression in those Acts, commissioners under the Provincial Elections Act are the persons named to take declarations under the Municipal Act, would not only greatly enlarge the powers of the former commissioners as generally understood from taking them. I cannot [17 BCR Page37] think that the Legislature intended to do any such thing in so indirect a way, and by such uncertain language.

14 The application will be dismissed, but by agreement between the parties, the City will pay the costs, fixed at \$100.

Application, dismissed.

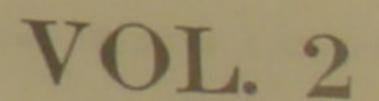




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CONSULTING EDITOR E. DOUGLAS ARMOUR, K.C.

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B.C.

of there being no chancery division in British Columbia, its of there being no chancery that namely, that, subject to its scope and intention is the same, namely, that, subject to its scope and intention is the Judge is given discretion, the mode to cer. tain cases where the Judge is before the rules were passed, of tain is to remain as it was before a special issue was order, viz, C.A. tain cases the main as it where a special issue was order of 1912 trial is to remain as it where a special issue was order, MCARTHUB when equity cases, except where a Judge without a jury, without a jury, were tried by a Judge without a jury, and to be tried by a jury, were tried with a jury where the cause dury, and ROGERS. common law cases were tried with a party making an addition of the cause dury. MCARTHUE when equilibrium a jury, were tried with a jury where the jury, and to be tried by a jury, were tried with a jury where the cause does to be tried by a jury, were tried with a jury where the cause does common law cases were tried with a jury where the cause does common law cases were tried as a matter of right, to an order does not come within rules 3, 4, or 5, a party making application statement not come within rules 3, 4, or 5, a matter of right, to an order of within due time is entitled as a matter of right, to an order of common number rules o, i, and an atter of right, to an order for not come time is entitled as a matter of right, to an order for within due time is under rule 6. trial with a jury, under rule 6. thin due al with a jury, under that the equitable jurisdiction of the is brought to recover day the It cannot be said here that is brought to recover damages

giving notice within four days from the time of the service of notice of giving notice within such extended time as the Court or a Judge may allo of giving notice within four days from as the Court or a Judge may allow of trial or within such extended time as the Court or a Judge may allow allow or in the notice of trial to be given by him as hereinafter provided, signify or in the notice of the issues of fact tried by a Judge with a jury, and his desire to have the issues relating to the following shell thereupon the same shall be so tried. s desire to have shall be so that ing to the following shall be tried ereupon the same and matters relating to the following shall be tried 427. All causes and jury, viz.:by a Judge without a jury, viz .:--The administration of partnerships or the taking of a Judge instruction of the cost of the taking of partnership or other The dissolution of partnerships of mortgages;

lien or charge;

The execution of trusts, charitable or private; The execution of trusts, cancellation of deed or other written The rectification, setting aside, or cancellation of deed or other written instruments;

instruments; The specific performance of contracts between vendors and purchasers The specific performance, including contracts for leases; of real estates, including contracts for leases; The partition or sale of real estates; The wardship of infants and the care of infants' estates. Probate:

Probate: All causes or matters other than those specified in this Rule, in which All causes or matters diction of the Court is invoked, unless the which causes or matters other of the Court is invoked, unless the Which the equitable jurisdiction of the Court is invoked, unless the Court or Judge shall otherwise order.

or Judge shall other may, if it shall appear desirable direct a 428. The Court or a Judge may, if it shall appear desirable direct a 428. The Court of a ny question or issue of fact, or partly of fact a trial without a jury of any question or matter which previously is and trial without a jury of any cause or matter which previously of fact and partly of law, arising in any cause or matter which previously to the partly of law, arising in Act, 1879, could without any consent of parties passing of the Judicature Act, 1879, could without any consent of parties have been tried without a jury.

ve been tried without a judge may direct the trial without a jury of any 429. The Court or a Judge may any prolonged examination of any 429. The Court of a requiring any prolonged examination of any cause, matter, or issue requiring or local investigation which docu. cause, matter, or any scientific or local investigation which docu. ments or accounts, or any sciently be made with a jury. Or which cannot ments or accounts, or conveniently be made with a jury, or where cannot in their or his opinion conveniently be made with a jury, or where the issues are of an intricate and complex character.

430. In any other cause or matter, upon the application within four 430. In any other trial has been given of any party thereto for a trial days after notice of trial has been given of any issue of fact, an order a trial with a jury of the cause of matter or any issue of fact, an order shall be made for a trial with a jury.

431. (a) In every cause or matter, unless under the provisions of Rule 6 of this Order a trial with a jury is ordered, or under Rule 2 of Rule 6 of this Order either party has signified a desire to have a trial with a jury this Order either party has by a Judge without a jury provide a jury this Order critical shall be by a Judge without a jury; provided that in any such case the Court or a Judge may at any time order any cause, matter, or issue to be tried by a Judge with a jury, or by a Judge sitting with an assessor or assessors. And in the event of such trial being ordered to be held by a Judge sitting with an assessor or assessors, then

DOMINION LAW REPORTS.

[2 D.L.R

The redemption of foreclosure of mortgages; The raising of portions, or other charges on land; The raising of portions, of the proceeder of land;

The raising of portions, of the proceeds of property subject to any The sale and distribution of the proceeds of property subject to any

g p.L.B.) g p.L.B.) for breach of contract and an injunction is claimed only as an for breach of contract and an injunction is claimed only as an stance breach of contract and an injunction is claimed only as an stance a common law or an equity action: see Coles v. Civil sneillary common law or an equity action: see Coles v. Civil stance a supply Association (1884), 32 W.R. 407; Gardner for illary common law of (1884), 32 W.R. 407; Gardner v. Civil O.A. sneilar a common law of (1884), 32 W.R. 407; Gardner v. 1912 stance Supply Association (1884), 32 W.R. 407; Gardner v. 1912 stance Supply Ch. D. 50; Clairmonte v. Prince (1897), 30 MCARTHUR Service 1885), 29 Ch. D. 50; respondent, not called J_{ay} (100 J_{ay} R. 258. N.S.R. E. McCrossan, for respondent, not called upon. N.S.R. E. McCrossan, The appeal should be different to the second state of the s

N.G. E. The appeal should be dismissed. It does not P^{ER} to be a case for a jury, but in any event, seeing that not PER CURIAM: PER for a jury, but in any event, seeing that the appear Judge below has exercised his discretion, and has -Statement Per to be a case for a second of the any event, seeing that the appear Judge below has exercised his discretion, and has come learned Judge on not to grant a jury, we ought not to interfere. to the conclusion not to grant a jury are in any event, seeing that the Appeal discretion are and the second of the

fiel and assessor of assessors as may seem meet, and the amount so of such assessor of the costs of the action; tion, shall form part of the costs or matter in which here. And defendent, in any cause or matter in which here is not assisted as a second defendent, in any cause or matter in which here is a second defendent at the time when he gives notice in the issues tried by a special jury, upon giving notice in the issues that effect to the defendent at the time when he gives notice is not trial; of trial; of the issues tried by a special provide the issues tried by a special issues tried by a special provide the gives notice is not the defendent at the time when he gives notice is not trial; of trial; of the issues tried by a special provide the provide the issues tried by a special provide the gives not be issues tried by a special provide the gives not be issues tried by a special provide the gives not be issues tried by a special provide the gives not be issues tried by a special provide the gives not be issues tried by a special provide the gives not be issues tried by a special provide the gives not be given by the provide the given the given by a special provide the

(c) The defendant, in any cause or matter in which he is entitled to a form have the issues tried by a special jury, on giving notion (c) The have the issues tried by a special jury, on giving notice in may that effect at any time after the close of the pleading that the form notice in the pleading that effect at any time notice in the pleading that effect at any time notice is a special jury. (c) have the interact at any time after the close of the pleadings or jury, to that effect at any time after the close of the pleadings or writing to the issues and before notice of trial, or if notice of trial. jury, to that enece and before notice of trial, or if notice of trial has writing of the issues and before notice of trial, or if notice of trial has settlement of then not less than six clear days before the day for other

writing of the issues and before notice of trial, or if notice of trial has settlement, then not less than six clear days before the day for which notice of trial has been given; potice of provided that a Judge may at any time been of true in that a Judge may at any time make an order for a $\binom{d}{d}$ intry upon such terms, if any, as to costs and otherwise (d) provided that the provisions of the provisions of the

^{spectr} just. We just. Subject to the provisions of the preceding Rules of this Order, 432. st or a Judge may, in any cause or matter, at any time 432. Subject to may, in any cause or matter, at any time or from the Court or a Judge may, in any cause or matter, at any time or from the to time, order that different questions of fact arising thereit the court or a order that different questions of fact arising therein be time to time, order modes of trial, or that one or more questions time to time, onder modes of trial, or that one or more questions of fact time by different modes, and may appoint the places for such that tried by difference others, and may appoint the places for such trials, be tried before the others that one or more issues of fact be tried trials, be tried before that one or more issues of fact be tried before and in all cases may others. any other or others.

PLACED ON SAME-MUNICIPAL ELECTIONS ACT (B.C.). Where an applicant to have his name placed upon the municipal voters' list, properly qualified in every respect, made the necessary declaration before a special commissioner for taking affidavits appointed under the provisions of the Provincial Elections Act (B.C.) pointed of making the same before a Commissioner for taking affidavits in the Supreme Court, as required by the Municipal Elections Act (B.C.), such non-compliance with provisions of the last-mentioned Act is fatal, and the placing of his name on the municipal voters' list by the clerk of the municipality was improper and the Court of Revision

rightfully struck his name from the list. [Davies v. Hopkins (1857), 3 C.B.N.S. 376, distinguished.]

MCARTHUR V. ROGERS.

Judge may call in the aid of one or more assessors specially quali-such judge the cause or matter wholly or partially with the assiste Judge may can in or matter wholly or partially with the assistance such and try the cause or matter wholly or Judge may fix such remune fiel uch assessor or assessors as may seem meet and uch remune such and try or assessors. The Court or Judge may fix such remunera-fied and assessor or assessors as may seem meet, and the amount of such the assessor of the costs of the action;

IN RE MUNICIPAL ELECTIONS ACT.

British Columbia Supreme Court, Gregory, J. January 5, 1912.

1. ELECTIONS (§ I B-12)-VOTERS' LISTS-CONDITIONS PRECEDENT TO BEING

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B.C. ROGERS.

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2. OATH (§ 1-3)-DECLARATION OF QUALIFICATION OF VOTERS MUNICIPAL ELECTIONS ACT (B.C.)-PROVINCIAL ELECTIONS ACT (B.C.) MUNICIPAL 2. OATH (§ 1-3)-pher (B.C.) PROVINCIAL ELECTIONS ACT (B.N.ICHAL ELECTIONS ACT (B.C.) PROVINCIAL ELECTIONS ACT (B.C.). (B.C.). Where by the terms of the Municipal Elections Act (B.C.). Where by the terms of voters is to be made before a "(B.C.). declaration of qualification of voters is to be made before a "(B.C.) the sioner for taking affidavits in the Supreme Court," a declaration the qualification made before a commissioner appointed under the sioner for taking affidavits in the Supreme Court, is of no legal effect under the powers of the commissioners last referred to being restricted of the powers of the commissioners last referred to being restricted to the powers of the commissioners last referred to being restricted to those conferred upon him by the Act under which he was appointed. [Boyd v. McNutt, 9 Ont. P.R. 493; Pollard v. Huntingdon, 16 CL.] 168, and Reynolds v. Williamson, 25 U.C.C.P. 49, referred to.]

168, and Reynord 168, and Reynord APPLICATION on the part of certain persons for an order that APPLICATION on the part of certain persons for an order that APPLICATION on the part of contain persons for an order that the names of such persons be added to the voters' list, as revised by the Court of Revision of the city of Victoria. Heard by Gregory, J., at Victoria, on the 2nd of January, 1911. At the Gregory, J., at method of the city of Victoria by the original of the Court of Revision for the city of Victoria. At the last meeting of a large number of persons otherwise entitled the Gregory, of the Counter of persons otherwise entitled to be last meeting of a large number of persons otherwise entitled to be the names of a large number for the municipality were strick the names of a large number for the municipality were stricken, entered upon the list of voters for the declarations made by the entered upon the list of the ground that the declarations made by then from such list on the ground that the declarations made by them from such met taken before a properly authorized officer. were not taken before in question were taken re not taken before a puestion were taken before a commis. The declarations in question were taken before a commis. The declarations in a fidavits under the provisions of a commis. sioner appointed to take affidavits under the provisions of the sioner appointed to that in the electoral district in which such Provincial Elections Act in the electoral district in which such Provincial Elections and All declarations were made and taken in good faith.

The application was refused.

H. A. Maclean, K.C., in support of the application :- These H. A. Macleun, in The set in the action of the Court of Rese persons were qualified to vote and the action of the Court of Repersons were qualities of Re. The Courts lean in the vision practically disfranchises them. The Courts lean in the vision practically data an act operating as a disfranchisement of strongest way against an act should be liberally control of strongest way agained for the should be liberally construed of a citizen. The Elections Act should be liberally construed: a citizen. The Encountry, 3 C.B.N.S. 376. Commissioners ap. Davies v. Hopkins (1857), 3 C.B.N.S. 376. Commissioners ap. Davies v. Hopkins for the Provincial Elections Act are competent ap. pointed under the Supreme Court, not especially for the pointed under the Supreme Court, not especially for the pur-take affidavits in the Supreme Court, not especially for the purtake affidavits in the pur-poses of that Act: see also Nuth v. Tamplin (1881), 8 Q.B.D. 247 at pp. 252 and 253.

Messrs. F. A. McDiarmid, and J. Y. Copeman, contra: Messrs. F. H. M. Montra: Davies v. Hopkins, 3 C.B.N.S. 376, is not applicable, because the Davies V. Hophing that case and this case are dissimilar. The statute governing that case and this case are dissimilar. The statute governing British Columbia statute definitely states before whom declarations can be made. The statute also provides for the only thing which the clerk has power to check, viz., the delivery of a statutory declaration to him within a prescribed time, and the statutory decomposition of the duties of the Court of Revision. A declaration is not valid if made before a person who has no authority to take the same. Such declaration is not an instrument upon which perjury could be assigned. A commissioner appointed under the Provincial Elections Act is appointed as a commissioner for taking affidavits for the purposes of that Act

DOMINION LAW REPORTS.

2 D.L.B

g **D.** g **D.** g **D.** under the strict in which he resides, and is restricted not in the electoral district, but to the purposes of that Act. Numerate in us to enstrate the strictness with which the G in the electoral district, but to the purposes of that Act. Numerous only to that district the strictness with which the Courts look in the that district, and the strictness with which the Courts look upon only demonstrate the strictness with which the Courts look upon cases demonstrate (1880), 16 C.L.J. 168. An afea (193; Pollow) only demonstrate the McNutt (1883), 9 Ont. P.R. 493; Pollard v. eases its: Boyd v. McNutt (1883), 9 Ont. P.R. 493; Pollard v. affidavits: (1880), 16 C.L.J. 168. An affidavit sworn be cases at Boya (1880), 16 C.L.J. 168. An affidavit sworn before affidavingdon (1880), 16 C.L.J. 168. An affidavit sworn before Huntingdon having no power to take a deposition is invalid. D affidavite (1800), affidavite (1800), *Huntingdon* (1800), *Hun* Hunting having no per all (1875), 25 U.C.C.P. 49; Ontario an official Williamson et al. (1875), 25 U.C.C.P. 49; Ontario nolds v. Act, R.S.O. 1887, ch. 61. The Court has power to Evidence Long such names of voters on the list as have been improve to nolds Act, index of voters on the list as have been improperly

^{phi}omitted. omitted. GREGORY, J.:—This is an application under the provisions of GREGORY, J.:—This is an application under the provisions of the Municipal Elections Act, sec. 17, ch. 14, British Columbia the Municipal by a number of householders, to have their rethe Municipal Internation of householders, to have their names statutes, 1908, by a number of householders, to have their names statutes, 1900, unters' list for the city of Victoria. statut on the vote originally placed on the list by the clerk of laced names were originally placed on the list by the clerk of The inpality under sec. 6 of the Act, but were derived of

The names in under sec. 6 of the Act, but were struck of the municipality under sec. 6 of the Act, but were struck off the municipanto, Revision, acting under the authority of sub-sec. by the Court of the Act, on the ground that the applicant of sub-sec. the Court of the Act, on the ground that the applicants had (c) of sec. 14 of the Act, on the ground that the applicants had by of sec. If on the statutory declaration required by sec. 6 before a not made the statutory declaration required by sec. 6 before a not insigner for taking affidavits in the Supreme Content of the sec. ⁽⁶⁾ made the start taking affidavits in the Supreme Court, but commissioner for taking affidavits of taking affidavits commissioner for taking affidavits appointed before a special Elections Act (sec. 13, ch. 17) before a specific all Elections Act (sec. 13, ch. 17, British under big statutes, 1903-04). Columbia statutes, 1903-04). Mr. Maclean, for the applicants, raises two points, viz.:

Mr. Machener, with the Service of Revision had no jurisdiction to review the First: of the clerk as to the authority or qualification to review the First: The clerk as to the authority or qualification of the finding of the before whom the declaration was taken finding of the before whom the declaration was taken. Second: commissioner appointed under the Provincial Elections That a committee to take the declaration, inasmuch as he is a Act is gualified to taking affidavits, and the Count in the count is a Act is qualities for taking affidavits, and the Court will ignore commissioned will ignore the qualification in the statute that he is appointed "for the purthe qualification under the Act," or will treat the words merely as pose of action of the reasons for making the appointment. declaration It is undisputed that the applicants have the necessary quali-

perly made. Mr. Maclean lays great stress upon his first point, and he frankly admits that his argument goes the length of holding that frankly and names on the list without any declaration at if the Court of Revision would have no jurisdiction to remove them on that ground, citing Registration Appeals, Davies v. them on (1857), 3 C.B.N.S. 376, where, although a very similar contention was successfully maintained, I do not think it assists him, because that decision turned upon the wording of the statute (6 and 7 Vict., ch. 18) then under consideration, and Cockburn, C.J., and Williams, J., expressly drew attention to the peculiar wording of that statute, Williams, J., stating, at p. 387, that if the application before the Court had been one to insert a

IN RE MUNICIPAL ELECTIONS ACT.

B.C. -----S. C. 1912 MUNICIPAL

-----Argument

It is under are entitled to go on if the declarations are pro-

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----S. C. 1912 ACT. Gregory, J.

name omitted by the overseer, the decision of the Court would name omitted by the overseer, the decision of the Court would name omitted by the overseen, case it had to be proved would have to be different, as in such case it had to be proved beind have to be different, as the proper notice had been given before name omitted is in such one of the proved being would have to be different, as in such one proper notice had been given before the revising barrister that the proper notice had been given, and the revising barrister possessed the qualification named in that the applicant possessed the Court was one to strike on that that the applicant case before the Court was one to strike out statute; but as the case before the revising barrister could only inquire juic B.C. IN RE MUNICIPAL ELECTIONS Such matters as the statute permitted him to inquire into in the into such matters as the sufficiency of the notice was not on the into such matters as ufficiency of the not on the into statute; but the list, the revulue permitted him to inquire inquire out a name on the list, the statute permitted him to inquire into inquire into such matters as the statute permitted him to inquire into in such such matters as the sufficiency of the notice was not one of the a name of the statute per statute per statute into in the into in such such matters as the sufficiency of the notice was not one of such cases, and the sufficiency of distinction. The duties of the finen. such matter one sufficiency of distinction. The duties of the of them, cases, and the sufficiency of distinction. The duties of the Court Now, our statute makes no distinction and has been improved. cases, and Now, our statute makes no unstand a name has been improperly of Revision are the same whether a name has been improperly placed on the list or improperly omitted from it. Sub-sec. 2 of placed on the list or improperly Elections Act provides that the Court sec. 14 of the Municipal Elections the list, and shall have not sec. 14 of the Municipal and revise the list, and shall have Court of Revision shall correct and revise the strike out the name of of Revision shall correct under to strike out the name power "to determine any application to strike out the name of any "to determine any error improperly placed thereon, or to place of any person which has been improperly omitted, or to place on such list the name of any person improperly omitted, etc. h list the name of any feedback of a declaration made before If there has been no declaration, or a declaration made before If there has been no unade yet the name of the declarant before an unauthorized person, and yet the name of the declarant ap.

an unauthorized person, and dispute that the requirements appears on the list, it is beyond dispute that the requirements of pears on the list, it is been complied with, and the name has sec. 6 of the Act have not been complied with, and the name has sec. 6 of the Act have there; that is the exact situation which been improperly placed there; that is the exact situation which been improperly placed is empowered to deal with under our the Court of Revision is empowered to deal with under our

tute. It seems to me, therefore, clear that Mr. Maclean's first con. statute. tention is unsound.

As to the second point, there may be some doubt. My atten. As to the second p atten. tion has been called to the case of In re Provincial Elections Act tion has been cance to and particularly to the remarks Act (1903), 10 B.C.R. 114, and particularly to the remarks of (1903), 10 B.C.H. bottom of p. 120, to the effect that franchise Walkem, J., at the bottom of p. 120, to the effect that franchise Walkem, J., at the construed, as their object is to enfranchise Acts are to be liberally construed, as their object is to enfranchise Acts are to be motive persons possessing the necessary qualifica. and not disfranchise persons the language of the Act itself moulifica. and not distrance the language of the Act itself was broad. and the Court held that it could not be cut down by implication and the Court into a specimen affidavit set out from the form of the jurat given in a specimen affidavit set out in a schedule to the Act. No one will be inclined to question the in a schedule to find the formation or Mr. Justice Walkem's remarks; soundness of that decision, or Mr. Justice Walkem's remarks; but neither seems to justify me in ignoring the plain qualification of the powers of a commissioner appointed under sec. 13 of the Provincial Elections Act. That section is as follows :--

The Lieutenant-Governor in Council may appoint any person who is a British subject as a commissioner for taking affidavits in the Supreme Court for a limited period without payment of any fee, for the purpose of acting under this Act in the electoral district in which he resides.

The commissioners before whom the declarations in question were made were appointed under that section, and the order in council appointing them, and their official notification of appointment expressly state that the appointment is "for the purpose of acting" under that Act. The applicants argue that the

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g **D**. g **D**. under the set of qualification in the Act, the order in council, and the words of qualification mean nothing, are merely a declaration of the rewords of qualification mean nothing, are merely a declaration of the reason wotification mean nothing, are made, and that once made, the reason words tion mean mean mean made, and that once made, the reason notification appointments are made, and that once made, the reason why the have, as Mr. Maclean puts it, "the full appointment apwhy the have, as Mr. Maclean puts it, "the full appointment," why have have, as Mr. Maclean puts it, "the full appointment," why have have and authority to take any declarations made pointees full power and authority in the Supreme Court. I pointee full power pending in the Supreme Court. I cannot and any cause or matter pending in the language appears perfectly plant and in cause of more the language appears perfectly plain, in any with that; to me the language appears perfectly plain, agree addition, the temporary nature of the appointments in in any with that, the temporary nature of the appears perfectly plain, agree addition, the temporary nature of the appointments, the and in addition of the appointees' activities to the electoral distribution and itation of the fact that there is no f agree addition, the appointees' activities to the appointments, the and in of the appointees' activities to the electoral district in limitation of reside; the fact that there is no fee payable and and in of the app limitation of the app limitation of the fact that there is no fee payable and that which they reside; the fact that there is no fee payable and that which are not appointed by a Judge of the Supreme Count limitate they resule, they a Judge of the Supreme Court under which they are not appointed by a Judge of the Supreme Court under they are Act (changed in 1911), and under which appointment the Oaths Act (changed they receive a formal commission under the avment of a fee they receive a formal commission under the the Oaths Act (change they receive a formal commission under the the payment of a fee they receive a formal commission under the on payment Supreme Court, and were entered on the roll of the payment of a court, and were entered on the roll of com-on pay the Supreme Court, and were entered on the roll of com-seal of the in the registry of that Court, all indicate I does not be the seal ioners in between intended expression of the seal of th on point the Suprementative of that Court, all indicate, I think, missioners in the intended expressly to restrict the powers of that appointees to the purposes of that Act. To powers of that the Legisland to the purposes of that Act. To accept the such appointees to the would be to treat these qualifying such appointees a such appointees a such applicants' contention would be to treat these qualifying words applicants unknown rule of interpret surplusage. surplusage. It is a well-known rule of interpretation of statutes that such as surplusage. ^{gs} It is a well made upon the whole as that no clause, sentence a sense is to be made upon the whole as that no clause, sentence a sense is to be superfluous, void or insignificant, if by any or word shall prove superfluous and be made useful and or word shall p or construction they may all be made useful and pertinent: other Statute Law, 2nd ed., 112. other Statute Law, 2nd ed., 112. raies Statute raies Statute raies of the persons taking the declaration had no authority to do If the persons taking be looked at-they are not do If the performance of the performance of the second so, then the Act: see Reynolds v. Williamson et al. (1875), 25 under the Act: and other cases referred to by Mr. McDi under the first other cases referred to by Mr. McDiarmid. Although the declarants are possessed of the qualifications The only possible doubt appears to me to arise from the fact

Although to be placed on the list on making the proper entitling the making of that declaration is a condition precedeclaration, must be complied with. The Municipal Elections dent which must 7, provides not only that the declaration precedent which and 7, provides not only that the declaration shall Act, secs. 6 and 7, provides not only that the declaration shall Act, sees. but also the form of it, the particular month in which be made, but also that it must be filed with the other which be made, on and that it must be filed with the clerk within it shall be made, and that it made. That they it shall be hours after it is made. That these provisions cantwenty-round will not be disputed; then, surely, neither can the provision directing before whom the declaration is to be made. pointed out by Mr. McDiarmid that both the Provincial and Municipal Elections Acts use the same expression, viz., "Commissioner for taking affidavits in the Supreme Court," and strictly speaking, there is no such officer known outside of those Acts, the Oaths Act, sec. 1, stating that commissioners appointed under it "shall be styled commissioners for taking affidavits within British Columbia." But that Act goes on to provide that the acts of such commissioners are valid in all Courts of the Province, and it is common knowledge that they are always

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spoken of as commissioners for taking affidavits in the Supreme spoken of as commissioners therein named shall be spoken which they in fact are. spoken of as commissioners there in named shall be styled in Acts Court, which they in fact are. Neither of the Election Acts Court, which they in fact are. Neither in named shall be styled be styled in state that the commissioners therein named shall be styled in state that the commissioners Acts, commissioners Court, which commissioners hold that because of the styled in state that the commission in those Acts, commissioners under in any particular way; and to hold that because of the mere sim. state that way; and to those Acts, commissioners under in any particular way; and those Acts, commissioners under sim. ilarity of the expression in those Acts, mould not only growthe deal. IN RE IN RE MUNICIPAL ELECTIONS ELECTIONS Any purpose of the expression of the former commissioners, in direct when the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the former commissioners, in direct went, and the single states of the single st IN RE MUNICIPAL ELECTIONS ACT. Gregory, J. Hart, bit is in the powers of the former commissioners, in direct antagonism to the express words of that Act, but it would exclude commission to the express words of that Act, but it would exclude commission to the express words of that Act, but it would exclude commission to the express words of that Act, but it would exclude commission to the express words of that Act, but it would exclude commission to the express words of that Act, but it would exclude commission to the express words of the former to the balance of the former to the express words of the former to the balance of t tions under of the former det, but it would exclude antagonism the powers of the former det, but it would exclude commism to the express words of that Act, but it would exclude commism to the express words of the intended to do any such I commism the powers words of that he dismissed but by accelude comism to the express words of that and from taking them. I commiss sioners as generally understood from taking them. I commiss sioners as generally understood to do any such thing in commissed think that the Legislature intended to do any such thing in so think that the bog such uncertain language. lirect a way, and by but lirect a way, and by but irect a way, and by but lirect a way, and by b The application will pay the costs, fixed at \$100.

1. ASSIGNMENT (§ III-28)-ASSIGNMENT OF LAND CONTRACT-EQUITIES.

RIGHTS AND LIABILITY of the sale of land has been cancelled by the Where a contract for the sale of land has been cancelled by the Where a contract for the non-payment by the vendee of all of the by the vendor because of the non-payment to call or the initial vendor because of the non page contract recited had been paid initial payment, which, however, the contract recited had been paid initial payment, which takes subject to all equities between the initial payment, which, however, including to all equities between paid in full, an assignee thereof takes subject to all equities between the vendor an assignee and can not, in the absence of allegation and provider an assignee thereof takes in the absence of allegation and the vendor and vendee, and can not, in the absence of allegation and proof of and vendee, as an innocent purchaser without notice, upon to of and vendee, and can not, and purchaser without notice, upon for and proof of equitable rights as an innocent purchaser without notice, upon tender balance due upon the contract, obtain specific perform equitable rights as an inner the contract, obtain specific performance thereof.

ereof. [Goddard v. Slingerland, 16 B.C.R. 329, distinguished; Rimmer v. [Goddard v. Lord Anson, 3 D. V. [Goddard v. Sungertund, Webster (1902), 71 L.J. Ch. 561, and Winter v. Lord Anson, 3 Russell 488, referred to.]

2. ESTOPPEL (§ III D-67) - EQUITABLE ESTOPPEL-RECITAL IN CONTRACT. Where the assignee of a contract desires to set up a claim against Where the assignee party which would not be available if set Where the assignce of a contracting party which would not be available if set up by the other contracting party which would not be available if set up by his assignor, ex. gr., his purchase without notice that a part of a sum his assignor, ex. gr., mis p have been paid, had not in fact of a sum recited in the contract to have been paid, had not in fact been paid recited in the contract to the cheque given therefor, and the been paid by reason of dishonour of the cheque given therefor, and the estoppel against the other contracting party by reason of the assignee's inno. against the other contraction, the onus of proving such claim of equit. [Halsbury's Laws of England, vol. 13, p. 371, par. 523, approved.]

AN appeal by the plaintiff from the judgment of Grant, Co. Ct. J., who dismissed the action.

The appeal was dismissed.

J. A. Findlay, for appellant. W. B. A. Ritchie, K.C., for respondent.

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Application dismissed.

MCKENZIE v. GODDARD.

British Columbia Court of Appeal, Macdonald, C.J.A., Irving and Galliher, JJ.A. April 2, 1912.

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GALLIBER, on (the case not then being reported) that under the impression (the case not then being reported) that under dv. Slingerland, 16 B.C.R. 329, decided by this C under the impression and, 16 B.C.R. 329, decided by this Court, Goddard v. Slingerland, 16 B.C.R. 329, decided by this Court, Goddard v. String at bar, and so decided. That case, however, concluded the data as the rights here are inter partes. The plaintiff claims under an agreement entered into between

The plainting the defendant and one Franks, for the sale to Franks of certain the defendant the agreement set out, and which agreement the defendance agreement set out, and which agreement was as-lands in the agreement the receipt of \$50 is a land. lands in the us. In the agreement the receipt of \$50 is acknowl-signed to him. In the agreement the balance \$200 is to be signed to min. signed as being paid, and the balance \$200 is to be paid in edged as instalments. As a matter of fact only \$26 of this edged as being instalments. As a matter of fact only \$26 of this \$50 monthly in cash, and a cheque for \$24 payable and this \$50 monthly instand, and a cheque for \$24 payable some months was paid in cash, and a cheque for \$24 payable some months was paid in which turned out to be worthless, given for the When the defendant discovered that the cheque was worth-

MCKENZLE V. GODDARD. g D.L.R.) MACDONALD, C.J.A., concurred in the judgment of GALLIHER, 355 B.C. J.A. J.A.:—It is said that the recital in the deed that IRVING, J.A.:—It is said that the recital in the deed that IRVING, been paid in full estops the defendant from setting the \$50 has been paid in Hals., par. 365. The this non-payment: 13 Hals., par. 365. IRVING, been part in the defendant from setting the \$50 has been part in Hals., par. 365. the this non-payment: 13 Hals., par. 365. "That we may assume to be so if the plaintiff innocently acts "That we may assume the representation. upon the faith of the representation. pon this case we have no evidence that the plaintiff innocently In this the representation. -----Irving, J.A. In the representation. In the representation of the representation of the information of the second sected upon the plaintiff must at least pledge his oath to that fact. acted upon the plaintiff must at least pledge his oath to that fact. I think the plaintiff must at least pledge his oath to that fact. In Rice v. Rice, 2 Drew. 73, evidence appears to have been given. In Rice v. Rice, 2 Drew. 73, evidence appears to have been given. In Rice Would dismiss the appeal. GALLIHER, J.A.:- The learned County Court Judge was GALLIHER, impression (the case not then being reported) was When the Whe less, he notification Franks had assigned to the plaintiff. The plaintiff some time afterwards tendered the balance due The planet of a conveyance, but the defendant refused, claiming and requested a conveyance. the agreement was cancelled. e agreement is for specific performance, the plaintiff paying the amount tendered into Court. Apart from the Land Registry Act, the defendant relies on the fact as he contends that the plaintiff stands in the shoes of the fact and that his rights are subject to any equities existing between the defendant and Franks. If the plaintiff is an innocent purchaser without notice, he does not stand in Franks' shoes, and the defendants are estopped from setting up that they did not receive the payment acknowledged in the agreement: Halsbury, vol. 13, p. 371, par. 523; Rimmer v. Webster (1902), 71 L.J. Ch. 561. In Winter v. Lord Anson, 3 Russell 488, cited by Mr. Ritchie, Lord Anson purchased with notice of the plaintiff's claim, and retained sufficient out of the purchase monies to indemnify him.