

The
Annual McPherson Lecture
The Griffith Opinion Books

To be delivered by
John McKenna QC
22 August 2013
in the Banco Court



SUPREME COURT
LIBRARY QUEENSLAND

HISTORY. KNOWLEDGE. INSIGHT.

Ce parte Enstane

~~copy~~

Opinion

~~of~~
~~Mr. Griffith &c~~

5 Jan

Opinion of Sir Samuel Walter Griffith. Held by the Queensland State Archives
QSA 19034

The signature on this opinion is believed to be that of Griffith.

Maiphua

Ex parte Donobanc

Opinion

The Local Government Act of 1878 provides (section 120) that the first meeting of the council after the annual election of councillors or at some adjournment thereof the councillors shall elect a chairman and (s. 123) that if within one month of the time appointed no chairman shall have been elected the Governor in Council shall appoint a chairman. The period of a month is thus allowed for the election.

It has often been held that where the provisions of a statute relate to the appointment of a public officer or performance of a public duty its directions as to the time of appointment or performance are directory only and that if the appointment is made or the duty performed at a later date than that prescribed by the statute the delay does not invalidate the proceedings.

Thus it has been decided that under a statute requiring overseers of the poor to be appointed in Easter week their appointment at a later date was valid (*R. v. Sparrow* 2 Str. 1123) so where justices were required by statute to appoint a surveyor of highways at the first special sessions after the Michaelmas Quarter Sessions and failed to do so a mandamus was granted to compel them to make the appointment at a subsequent session (*R. v. Warrington* 4 East 142).

In another case where mandamus was required to be issued within three months before the 4th of May and no election was held a mandamus was granted to compel the election afterwards although the statute made provision as to what should happen in the event of a failure to elect. (Mayor of Norwich 1 B. & A. 310)

So when a court for the Revision of borough lists was required by statute to be held between the 1st and 15th of October and was not held the Court granted a mandamus to hold it in the following January. (R. v. Rochester 27 L.J. Q.B. 45, 47 H. 7 L. 291) This case was followed in the later case of R. v. ~~Monmouth~~ ^{Monmouth} (L.R. 5 Q.B. 251)

In a very old case (case of Lancaster Poll. R. v. M. 512) the corporation chose its officers 5 days after the appointed day and the appointment was held good and in R. v. Cook (2 Hydor Corp. 44 E. & W. 23) Lord Hardwicke C.J. answering to an objection that an election had not been held between the hours appointed by the statute said that the mention of hours in the statute was only directory and not restrictive and intended to prevent surprises by beginning at inconvenient times and there being no surprise the objection was not sustained.

I think that this rule of interpretation must be taken to have been

in the contemplation of the Legislature
and that it should be applied in
enforcing the 120th section of the Local
Government Act.

In the present case the councillors met
on the 10th of February and separated without
having elected a mayor or done any other
business and without any ^{formal} resolution
for adjournment being carried. On the
thirteenth all the councillors re-assembled
and ^{formally} ~~presently~~ adjourned the meeting till
the 17th.

Having regard to the provisions of
the statute allowing a month for the
election of a mayor and to the principle
of interpretation of similar statutes to
which I have advised I am of opinion
that the authority of the councillors to
elect a mayor was not at an end
when they separated on the 10th. I
am also of opinion that when they re-
assembled on the 13th that meeting
was upon ~~the~~ ^{this} construction of the
statute a first meeting at which they
could proceed to an election.

If however a more technical and
limited interpretation should be given to
the word "first" I think that in
applying the same ^{rule} ~~mode~~ of interpretation
the meeting of the thirteenth (not being
open to objection on the ground of
surprise) would be held to be a
resumption of an interrupted first
meeting or an informally adjourned

first-meeting. In either view it ~~was~~ the
meeting to be held on the 17th in
pursuance of the resolution for adjourn-
ment will be ^{an act of a first-meeting} ~~a first-meeting~~ within
the meaning of the Statute

I am therefore of opinion that
the commissioners are competent to proceed
to the election of a Mayor at the
adjourned meeting on the 17th and
that such election will be valid

T. W. Piggott.

John Hall Chambers
17th Feb 1883

Re Interest of Husband
in Wife's Lands.

Opinion

The first question that arises for consideration is as to the nature of the interest of a married woman in land of which she is the registered proprietor under the Real Property Act. That Act repeals (Section 1) all laws relating to freehold and interest in land so far as they may be inconsistent with the provisions of this Act and so far as regards their application to land under this Act.

At the time of the passing of this Act the principal rules of law affecting the freehold land of a married woman were these:

1. The husband was entitled to an estate of freehold in the land during the coverture and to the whole of the rents and profits during the same period.

2. The land could not be conveyed except by means of a conveyance by husband and wife acknowledged by the wife.

3. The wife could not convey her land to her husband except by means of the Statute of Uses.

4. The husband could not convey land to his wife except by the same means these

only to land of a married woman brought by her under the Act is a sufficient authority for such requirement). The principles thus established by the Statute seems to be quite inconsistent with the rules of law that previously existed as to the husband's right to the land during the coverture which must consequently be taken to be repealed and if I am correct in concluding that the wife can transfer without the husband's consent this right seems also to be inconsistent with the existence of a tenancy by courtesy.

I think therefore that the estate of a married woman in land of which she is the registered proprietor under the Real Property Act is not subject to the old Rules of law but is of the nature of separate estate.

S. W. Griffith

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Indec. 7.

Ex parte Taggart & ors.Opinion

The land contained in the Selection in question (420B.) was by proclamation dated 28th. Mch. 1874. set apart as from 27. Apl. following as an area containing licenses only under Sec. 33. of the Mineral Lands Act of 1872. This proclamation has never been revoked or altered unless a notice which appeared in the Gazette of 25th. Apl. signed by the Minister for Lands has that effect - at the time of the proclamation the land was not precluded by law from being so proclaimed - The facts being thus I am of opinion that the notification of the Minister is wholly inoperative and that the proclamation throwing the lands open is still in force and will remain in force until revoked by a like proclamation - Holders of mining licenses are therefore entitled under Sec. 35. of the act to occupy a mine upon the prescribed quantity of the area in question & no other persons can lawfully do so - But before any rights to any definite part of the land can accrue to the holders of mining licenses they must comply with the regulations by taking up occupying and working claims - If they are then interfered with by others under a claim of adverse title I think an injunction could be obtained but in the meantime no active steps can be taken by them in a Court of Law.

S. W. Griffith

Town Hall Chambers

23. July 1874

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