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LIMERICK  
STEAMSHIP  
CO. LTD.

v.

COMMON-  
WEALTH  
OF  
AUSTRALIA.

Ferguson, J.

other documents arranged in chronological order, and was able to check in detail as it went on the process of constructing the elaborate mosaic of fact, suspicion and inference, which constituted the plaintiffs' case. After a most careful consideration of the whole of the evidence I have come to the conclusion that the verdict of the jury cannot be supported. Even if the plaintiffs had proved conclusively every charge of corruption and conspiracy made or suggested against the Prime Minister and Admiral Clarkson, in my opinion our judgment must still have been for the defendants on the ground that the Commonwealth was not liable for that misconduct of their servants. That is a question of law. On the facts I cannot too strongly express my opinion, not only that the evidence does not establish the wrongdoing charged against the Prime Minister and Admiral Clarkson, but that it does not justify even a suspicion of it.

JAMES, J. I concur in the judgment of *Ferguson, J.*

*Appeal allowed with costs. Verdict entered for the defendants.*

Solicitors for the appellants: *Gordon H. Castle* (Commonwealth Crown Solicitor); *Minter, Simpson & Co.*

Solicitors for the respondents: *Lambton & Milford.*

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BOWEN AND ORS. v. HINCHCLIFFE AND ANOR.

March 14, 21.

C.J. in Eq.

*Trade union—Election of officers—Ballot—Corruption—Spurious votes—Matter of internal regulation—Right of action—Jurisdiction of Court.*

A statement of claim alleged (*inter alia*) that an election by ballot of officers of the A.W.U. took place at the end of 1923. The rules of the Union provided that the branch returning officer should be responsible for the conduct of the ballot, but that his decision in all cases should be subject to appeal to the Convention by any candidate directly affected by it. The plaintiff J. was a candidate, and at a local ballot taken at T.

received a number of votes. The voting papers from T. were intercepted and tampered with in transit to the returning officer, and he had received spurious votes, purporting to come from non-existent places, which were included by him in the counting. It did not appear, however, what the proportion of false votes was to the total number of votes recorded, nor that the votes had yet been counted. The plaintiffs asked for orders to restrain the returning officer from declaring the result of the ballot and to compel the Union to take a fresh ballot.

On demurrer to the statement of claim.

*Held*, that the statement of claim disclosed no facts to justify the interference of the Court, but matters merely of internal regulation which the Union under its rules was capable of adjusting.

*Held*, further, that on the facts alleged it had not been established that the dishonest interference at the ballot had been so great as to deprive the election of its character as a real election, and that the application to the Court was therefore premature.

#### DEMURRER.

The facts are stated in his Honour's judgment.

*Dr. Brissenden*, K.C., and *Stacey*, for the defendants, in support of the demurrer.

The Court will not interfere as this is a matter relating to the internal management of an association whose rules provide for dealing therewith : *Taylor v. Smith* (23 S.R. 174). Further no right of property is involved and it is not alleged that the plaintiffs were deprived of any right : *Macqueen v. Frackelton* (8 C.L.R. 673, at p. 713) ; *Amos v. Brunton* (18 N.S.W. L.R. Eq. 184) ; *Forbes v Eden* (L.R. 1 Sc. & Div. 568, at p. 588). The Court always has regard to the question whether the corrupt part is so large as to vitiate the whole ballot. There is nothing to show that the result of the election will be affected or that the ballot will not represent the free choice of the electors : *Bridge v. Bowen* (21 C.L.R. 582 at pp. 587, 591). In fact there has been no completed election.

There is merely a general allegation of corruption, and that is insufficient : *Grenville-Murray v. Earl of Clarendon* (L.R. 9 Eq. 11, at p. 17).

*Collins*, for the plaintiffs.

On the facts of this case the question is not a mere matter of internal management. *Taylor v. Smith* (23 S.R. 174) is distinguishable. The cases cited in support of the proposition that the Court will not interfere if no right of property is in-

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volved, were all cases of expulsion of members from various associations. *Bridge v. Bowen* (21 C.L.R. at p. 588), indicates that the election was not properly held. There is definite evidence of tampering with votes cast. There is good reason to believe that the formal result when declared will not represent the free and deliberate choice of the electors. If the bogus votes are counted the election will not be an election under the subsisting law. In effect the plaintiffs were prevented from recording their votes. He referred to *Bridge v. Bowen* (*supra* at p. 623).

If the election is not a proper one then title is affected. Certain electors here who were entitled to vote have been disfranchised. This suit is not premature, as it is not necessary to wait until damage is occasioned. The Court will declare that a fresh ballot be taken.

*Dr. Brissenden, K.C., in reply.*

*Cur. adv. vult.*

March 21.

STREET, C.J. in Eq. The Australian Workers' Union is an association or union registered under the Trade Union Act and under the Industrial Arbitration Acts of the State and of the Commonwealth. It has branches in the different States of the Commonwealth, and an election was held at the latter end of last year for officers of the N.S.W. branch. Under its rules voting is by ballot, and the method of taking the ballot is this. Ballot papers are supplied to all district committees, local agents, secretaries, and representatives, and are distributed by them to members in their locality. The ballot papers have a distinguishing letter, and each member voting is required to attach to his ballot paper a voting slip containing a corresponding letter. Local ballots are taken and the result of each is announced locally, after which the ballot papers, and other particulars, are sent to the general returning officer for the branch. He counts the votes, and the general results are announced at the annual meeting of the branch. Under the rules he is responsible for the conduct of the ballot of his branch, but his decision is in all cases subject to appeal by any candidate directly affected by it to a body called the Convention.

As part of the general ballot for the election of officers for

the N.S.W. branch last year a local ballot was taken at a place called Til Til. Thirty-nine votes in all were recorded there, and the result as announced showed that the plaintiff Bowen received a number of votes for different offices. The voting papers were duly sent to the branch returning officer, but they did not reach him. They were intercepted and tampered with on the way. What he received was a packet of voting papers purporting to come from a place called Bongo, but bearing a postmark showing that it had been posted in Sydney. Apparently no such place as Bongo exists, and the packet contained ballot papers to which were attached the voting slips of several of the persons who voted at Til Til. Not only were the returns from Til Til tampered with in this way, but, in addition, two other packets of spurious voting papers were received. One containing about 39 voting papers, purported to come from an apparently non-existent place called Bagadang, and the other purported to come from a place called Riverside. This also cannot be traced. The plaintiffs, who are members of the Union, allege that the ballot papers purporting to come from Bagadang are being included by the returning officer in the counting, and they say that not only have certain of the voters been disfranchised, but that the ballot has been generally corrupted, and would not, if declared, be a true reflection of the votes cast at the election. They ask that the returning officer may be restrained from declaring the result of the ballot, and that the Union may be ordered to take a fresh ballot for the offices to be filled.

The statement of claim is demurred to upon the ground that the facts alleged in it do not disclose anything which would justify the interference of the Court, and I think that this is so. It is a well settled rule of law that where, as in the present case, no right to property is involved the Court does not ordinarily interfere at the instance of individual members of a voluntary association in disputes relating to matters of internal regulation which the association is capable of adjusting for itself, and I think that this case comes within that principle. For the purposes of the demurrer the facts alleged in the statement of claim must be assumed to be true, and on that assumption it is apparent that there has been a dishonest attempt on the part

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of somebody to interfere with the proper conduct of the ballot. The rules of the Union show, however, that it is capable of dealing with the situation for itself, and if it is, it is the proper body to do so. The Court cannot interfere merely because in any given set of circumstances it may think that it would have acted differently. The general returning officer of a branch is responsible for the conduct of the ballot of his branch, and I do not think that under the responsibility cast upon him his power is limited, as suggested in argument, to the determination of the method by which a ballot shall be taken or to the mere supervision of details. His responsibility for the proper conduct of the ballot casts upon him the duty of seeing, so far as he can, that it is conducted in such a way that the result will be a true reflection of the deliberate votes of members, and I think that for this purpose he has power in a proper case to set aside any proceedings that may have been rendered abortive by improper interference and to begin *de novo*. It does not appear that the plaintiffs, other than Bowen, have any interest in the matter except as financial members of the Union, but Bowen was a candidate and if he can be said to be directly affected by the returning officer's decision he is not without remedy. He can appeal to the Convention.

Apart however from the fact that what has taken place is a matter of internal regulation which the Union is capable of adjusting for itself, I think that there is another ground upon which the suit as framed must fail. It does not appear from the statement of claim what the proportion of false votes is to the whole number of votes recorded, and in fact it does not appear that the votes have been actually counted yet. It may be that when this is done, they will show an actual majority in favour of some candidates so decisive that the result could not have been altered if the votes at Til Til had been properly recorded and if the alleged votes from Bagadang had not been taken into consideration. In these circumstances it cannot be said that, on the facts alleged, it has been established that the dishonest interference has been so great as to deprive the election of officers of its character as a real election, and the application to the Court is premature. It would not interfere in such circumstances in the case of a parliamentary or muni-

cipal election, and I do think that it should do so in the case of an election of office bearers in an association or union of this kind. Under the common law relating to parliamentary and municipal elections the Court will not interfere and declare an election void unless it is made to appear that something wrong or improper has taken place which has so affected the proceedings or which at least may probably have so affected them that the voters have not had a free and fair opportunity of electing the candidate whom the majority prefer: *Woodward v. Sarsons* (L.R. 10 C.P. 733); *Bridge v. Bowen* (21 C.L.R. 582). On the facts alleged and seeing that the result of the voting has not yet been announced, the Court cannot be satisfied that anything of this kind has taken place.

When the votes are counted it may appear that the results are so decisive that they could not have been affected by the improper acts complained of.

I think, therefore, that on this ground also the statement of claim discloses no case for relief, and the demurrer must therefore be allowed with costs.

Solicitors: *A. C. Roberts; H. E. Hoare.*

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HORDERN AND ORS. v. FEDERAL MUTUAL INSUR-  
ANCE CO. OF AUSTRALIA LTD.

1924.

Feb. 19, 20;  
May 15.

*Insurance—Policy in the name of the insured “as mortgagees”—*  
*Repayment of mortgage debt after fire and before action—*  
*Action by mortgagees on policy—Right to recover—14 Geo.*  
*III. c. 48—14 Geo. III. c. 78, s. 83.*

Ferguson, J.  
James, J.  
Campbell, J.

The plaintiffs were mortgagees under a mortgage from B. An insurance policy covering the property mortgaged was issued by the defendants in favour of the plaintiffs “as mortgagees, B. as owner.” This was afterwards altered to read in favour of the plaintiffs “as mortgagees of B.” The premises insured by the policy were burnt down. After the fire B. repaid to the plaintiffs the amount due under the mortgage, the plaintiffs agreeing at the time of such repayment to prosecute on be-