

IN RE RURAL AREA ORDINANCE, 1949 and IN RE DECISION OF
RETURNING OFFICERSUPREME COURT (Kingsley, J.): December 14th, 1950
(Civil Case No. 228/50)

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[1] **Local Government—elections—election petitions—security for costs—Rural Area Ordinance, 1949, s.37(1) imperative and absolute—failure to give security as required renders petition invalid:** Sub-section (1) of s.37 of the Rural Area Ordinance, 1949 is imperative and absolute in providing that a petitioner “shall give security for costs” at the time of presenting an election petition or within three days afterwards, and therefore non-compliance with this procedure renders the petition invalid (page 86, lines 27–31). 10

[2] **Statutes—operation—mandatory and directory enactments—Rural Area Ordinance, 1949, s.37(1) imperative and absolute:** See [1] above. 15

The petitioners petitioned against the validity of an election held under the Rural Area Ordinance, 1949.

The petitioners did not, at the time of filing the petition, give security for all costs, charges and expenses payable to any witnesses or respondents, as they were required to do by s.37(1) of the Rural Area Ordinance. At the hearing of the petition the petitioners asked for an adjournment to enable them to take out the necessary summons. The respondents objected on the ground that s.37(1) was imperative and absolute in the procedure it laid down, and therefore the petition should be struck off the file. 20
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Case referred to:

(1) *Everett v. Griffiths* (No. 2), [1923] 1 K.B. 130; (1922), 128 L.T. 350, applied. 30

Legislation construed:

Rural Area Ordinance, 1949 (No. 11 of 1949), s.37(1):

The relevant terms of this section are set out at page 86, lines 21–24.

J.B. Marcus-Jones and *Edmondson* for the petitioners; 35
Cole and *Wilson* for the respondents.

KINGSLEY, J.:

This is a petition against the validity of an election held on June 1st, 1950 in the village of Goderich under the Rural Area Ordinance, 1949, and was presented on July 6th, 1950. Its contents 40

are beside the immediate point. When the petition was called on for hearing, Mr. Edmondson for the petitioners called my attention to the fact that they had not complied with s.37(1) of the aforementioned Ordinance, and he asked for an adjournment to enable him to take out the necessary summons. Mr. Cole for the respondents submitted that the section is mandatory and could not be got round. For the information of counsel I would point out that strictly speaking the more correct procedure was for the petitioners' counsel to have taken out a summons in chambers. However, I granted Mr. Edmondson a further adjournment to enable him to fortify himself, if this were possible, with some authority whereby I might grant his application. I should say that I did so only out of sympathy with his unfortunate clients. Had they had the intelligence to go to a properly qualified person in the first place, their difficulty would never have arisen. Instead however they chose to go to one of the quack lawyers with whom this area seems at times to be infested, and they have suffered accordingly. They sought Mr. Edmondson's advice only when the mistake their quack adviser had made was, as I shall indicate, beyond repair.

The sub-section against which the petitioners have offended reads: "At the time of presenting an election petition or within three days afterwards, the petitioner shall give security for all costs, charges and expenses which may become payable by him to any witness summoned on his behalf or to any respondent." No such security has been given and the question I have now to answer is—"Can it be given now?" The answer must quite clearly be in the negative. Our sub-section is a precise replica of s.89(1) of the Municipal Corporations Act, 1889, which is the Act which deals with these matters in England; and in *Everett v. Griffiths* (No. 2) (1) it was held that the section was "imperative and absolute." In that case the petition was ordered to be struck off the file, and it is significant that not only had the petitioner been admitted as a poor person to take the proceedings, and not only had the respondents been duly informed of this fact, but in addition the respondents by their summons made in fact an alternative application. They applied that the judge should strike the petition off the file on the ground of the petitioner's failure to lodge a security for costs pursuant to the section I have quoted, or alternatively that he should order the petitioner forthwith to lodge a security pursuant to the section, and that until he did so all further proceedings should be stayed.

The granting of this alternative request would in this present case

have satisfied Mr. Edmondson. It is almost precisely what he was asking for the petitioners, namely, an opportunity to deal with the question of security. The trial judge however decided, as I have indicated, that the sub-section was, to quote his words, "imperative and absolute" and non-compliance with it was equally fatal even where the offender had been admitted to commence the proceedings as a poor person. His decision was subsequently confirmed on appeal. No question in this case before me arises of the petitioners' means, even if that were of relevance. It is purely and simply a question of some misguided citizens of Goderich having relied on somebody who was not as clever as he thought and who badly let them down. They have my sympathy for what it is worth, but in the circumstances I have no option but to order that the petition be struck off the file and that the petitioners pay the respondents' costs.

Petition struck off.

METZGER v. REGEM

WEST AFRICAN COURT OF APPEAL (Smith, C.J. (Sierra Leone)):
January 9th, 1951
(W.A.C.A. Cr. App. No. 5/51)

- [1] **Civil Procedure—appeals—appeals to Privy Council—West African (Appeal to Privy Council) Order in Council, 1949 only regulates civil appeals:** The West African (Appeal to Privy Council) Order in Council, 1949 only regulates civil appeals, and therefore leave to appeal to the Privy Council in criminal cases can only be granted by the Judicial Committee itself and not by the West African Court of Appeal (page 88, lines 4-9). 25
- [2] **Courts—Judicial Committee of Privy Council—leave to appeal—only Judicial Committee can grant leave in criminal cases:** See [1] above. 30
- [3] **Courts—West African Court of Appeal—appeals—leave to appeal to Privy Council—West African Court of Appeal cannot grant leave in criminal cases:** See [1] above. 35
- [4] **Criminal Procedure—appeals—appeals to Privy Council—leave to appeal—leave can only be granted by Privy Council:** See [1] above. 40

The applicant applied for leave to appeal to the Privy Council against the decision in the criminal proceedings against him.