

a ballot paper. When he gives his name, he is thereby in fact applying for a ballot paper; and if he gives some other person's name he is guilty of personation. The point I wish to stress is that by giving his name to a polling assistant at the polling station a person is thereby applying for a ballot paper in point of fact; and if he gives some other person's name he is guilty of personation.

Mr. Macaulay, in his adroit argument, has tried to benefit from the split in the procedure arising from the having of two tables; but what he cannot get over is the common sense of the matter—that a person coming into a polling station and giving his name and address to a polling assistant is in fact thereby applying for a ballot paper.

The appeal from the decision of the trial magistrate is dismissed and his order must stand; the appellant must now be committed to prison to serve her sentence.

*Appeal dismissed.*

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ATTORNEY-GENERAL *v.* HOLDEN

SUPREME COURT (Bairamian, C.J.): September 3rd, 1957  
(Mag. App. No. 19/57)

- [1] **Criminal Law—assault—assault in removing disorderly person from polling station—offender should be asked to behave properly—use of force after refusal not assault:** The effect of para. (1) of s.31 of the House of Representatives (Elections) Regulations, 1957 is to impose a duty upon a presiding officer to keep order in the polling station and para. (2) provides the means of carrying out that duty; the offender should first be asked to behave properly and if he refuses force may, if necessary, be used to remove him without constituting an assault (page 23, lines 16–19; page 23, lines 31–36).
- [2] **Criminal Law—assault—definition—offer or attempt to apply force in hostile manner—actual application of force is battery:** An assault is an offer or attempt to apply force or violence to the person of another in an angry or hostile manner; and if force is actually applied, directly or indirectly, either illegally or without the consent of the person assaulted, and in an angry, rude, revengeful or violent manner, the assault becomes a battery, however slight the force may be (page 21, lines 33–39).
- [3] **Elections—polling stations—duty of presiding officer to keep order—offender should be asked to behave properly before other measures taken—use of force after refusal not assault:** See [1] above.

[4] Statutes—interpretation—structure and parts of statute—statute to be construed as whole—sub-sections not to be considered as isolated enactments: The provision in s.11 of the Interpretation Ordinance (*cap.* 1) that sections of a statute are deemed to be substantive enactments does not affect the general rule of construction that a statute must be read and construed as a whole; and sub-sections should not be read as isolated enactments (page 22, line 41—page 23, line 5). 5

The respondent was charged in a magistrate's court with assault.

The respondent, who was presiding at a polling station, heard a commotion and found the complainant in a highly excited state. According to the respondent, he touched the complainant's face in order to control him; the complainant alleged that he had been slapped on the mouth. The respondent later apologised but the complainant prosecuted. The magistrate cautioned and discharged the respondent and the Attorney-General appealed. The court considered whether the respondent's action was lawful in view of reg. 31 of the House of Representatives (Elections) Regulations, 1957. 10 15

#### Legislation construed:

House of Representatives (Elections) Regulations, 1957 (P.N. No. 38 of 1957), reg. 31: 20

The relevant terms of this regulation are set out at page 22, lines 13–30.

*N.E. Browne-Marke, Crown Counsel*, for the appellant; 25  
*C.B. Rogers-Wright* for the respondent.

#### BAIRAMIAN, C.J.:

This is an appeal from the decision of a magistrate on July 4th, 1957, who cautioned and discharged the respondent Charles Leslie Holden in a prosecution by J.T. Reffell for assault. 30

It will be convenient here to quote from 10 *Halsbury's Laws of England*, 3rd ed., at 740, para. 1423:

“An assault is an offer or attempt to apply force or violence to the person of another in an angry or hostile manner; and if force is actually applied, directly or indirectly, either illegally or without the consent of the person assaulted, and in an angry, rude, revengeful, or violent manner, the assault becomes a battery, however slight the force may be. . . . Every battery includes an assault. . . .” 35

The learned author of the article on assault in *Halsbury* goes on to mention examples of force being used which are not assaults; but 40

there is no mention of a presiding officer at a polling station using force to restore order.

That was what happened on May 3rd. Holden, who was presiding at a polling station, heard a lot of shouting and found Reffell highly excited and (to quote from Holden's evidence)—“in order to restore quietness and order and to carry on with the business of the day I put my hand out and touched the complainant on his face. This was a deliberate act to control him and it succeeded.” Even if it was not a slap on the mouth, as stated by Reffell, it was an assault.

Regulation 31 of the House of Representatives (Elections) Regulations, 1957, was discussed in argument. It reads:

“(1) The Presiding Officer shall keep order in the Polling Station.

(2) If any person misconducts himself in a polling station, or fails to obey any lawful order of the Presiding Officer, he may, by order of the Presiding Officer, be removed from the polling station by any constable, or by any other person authorised in writing by the Presiding Officer in that behalf; and the person so removed shall not without the permission of the Presiding Officer, again enter the polling station during the day of the election; and any person so removed may, if charged with the commission of an offence in such station, be deemed to be a person taken into custody by a constable for an offence in respect of which he may be arrested without a warrant:

Provided that the provisions of this Regulation shall not be exercised so as to prevent any elector who is otherwise entitled to vote at any polling station from having an opportunity of so voting.”

Mr. Marke argued for the appellant that it was a mistake on the part of the learned magistrate to read paras. (1) and (2) of that regulation together and cited s.11 of the Interpretation Ordinance (*cap.* 1), which reads:

“All Ordinances shall be divided into sections, if there be more enactments than one, and such sections shall be deemed to be substantive enactments without any introductory words.”

It used to be the practice in England to repeat at the beginning of each section the words “Be it enacted,” as one may see by looking at an act passed before 1850 as originally printed. These introductory words are no longer needed. But the rule of construction that an

act must be read and construed as a whole remains unaffected: see the note below s.8 of the Interpretation Act, 1889, in 24 *Halsbury's Statutes of England*, 2nd ed., at 209-210. It is a novel proposition that, when a section is divided into parts, each part is to be treated as a water-tight compartment. 5

Paragraph (1) of reg. 31 imposes a duty on a presiding officer to keep order in the polling station; and para. (2) goes on to provide that—"if any person misconducts himself in a polling station or fails to obey any lawful order of the Presiding Officer, he may, by order of the Presiding Officer, be removed from the polling station by any constable, or by any other person authorised in writing by the Presiding Officer in that behalf. . . ." The process of removing a person may involve the use of force but it would not be an assault, as the removal in the circumstances stated in the regulation would be lawful. 10 15

In the present case, if Holden had asked Reffell to stop shouting and keep quiet and become orderly, and Reffell had disobeyed, Holden could have ordered his removal and force could have been used if necessary in order to remove him. There is no need to decide here whether the presiding officer could himself remove a disorderly person: for Holden makes it clear in his final answer in chief, which reads: "I could have ordered the accused's arrest" (meaning the complainant's arrest), that he was not minded to remove Reffell. 20

It appears that Holden, owing to Reffell's shouting, on the spur of the moment committed what was technically a battery and was called an assault. He realised later that he had made a mistake and apologised to Reffell, and Reffell ought not to have prosecuted him. The learned magistrate, however, took the circumstances into account and did no more than caution and discharge the respondent Holden. 25 30

It will be useful at this point if I indicate the right way of reading reg. 31. Paragraph (1) imposes a duty: "the Presiding Officer shall keep order in the Polling Station" and, by way of enabling him to carry out that duty, para. (2) goes on to empower him to order the removal of any person who misconducts himself or disobeys a lawful order of the presiding officer. 35

[The learned Chief Justice then considered a further ground of appeal and continued:]

I am sorry that Holden was prosecuted; and the appeal of the Attorney-General against the decision must be and is hereby dismissed. 40

*Appeal dismissed.*