

list may stand elected. It follows, therefore, that by relation back a nullity in the election is created, and it uses the words "If the seat of any member *becomes vacant*," as in section 130. So that here is another case—subject to the declaration of the Court—where the Act uses the expression, "If the seat of any member becomes vacant," where the vacancy clearly operates as from the date of the election. Therefore, that weakens the force of the argument on the other side in reference to a later part of section 130. Again, in subsection (7) of section 130 the statute contemplates a vacancy which operates as from the date of the election. A corrupt practice when declared by the Election Court, renders the election void as from the date of election, and therefore I say that my friends cannot plead an interval of time as being essential between the election and vacation of the seat under the words of section 130. The real position is this, that the words used in subsection (4) in their ordinary sense mean that the status of bankruptcy *ipso facto* vacates the seat. I submit this puts an end to the question. I submit there is a continuous status indicated as avoiding an election under various subsections. Under subsection 4 there is this continuous status, and then if the election takes place thereupon the seat becomes vacant. There is no reason why the Legislature should not say it will not disqualify the elector or member, but under certain circumstances the seat shall become vacant; and if the electors in the face of the statutory provision choose to give their votes, as they did in Mitchell's case, they are supposed to take the consequences. That is the result of the well-known case of Mitchell quoted in the Irish Reports, Common Law, page 217.

*Mr. Justice Edwards* : Do you say that if two candidates put up, one a bankrupt and the other not, that one can be elected and the other cannot?

*Mr. Gully* : I suggest that if the voters voted for a person knowing him to be disqualified, their votes would not have any effect.

*Mr. Justice Denniston* : How do you mean?

*Mr. Gully* : I mean virtually—as it was in Mitchell's case.

*Mr. Justice Denniston* : I do not want to know about virtually. What is your opinion? When they elect him is the effect to disfranchise the district?

*Mr. Gully* : I do not know the result to the person second on the list. It is not provided for.

*Mr. Justice Denniston* : If your argument is correct, if the man is not disqualified and is nominated and elected, then the effect must be to disfranchise the district.

*Mr. Gully* : Whether the effect would be to entitle the man second on the list to hold the seat I do not know. Upon petition by him, I should hold it would.

*Mr. Justice Edwards* : That will not hold with your argument. You say the seat becomes vacant.

*Mr. Gully* : My argument is intended to show the fallacy of the argument on the other side, which depends upon the mere use of the word *vacancy*. I say the effect is to make the election a nullity.

*Mr. Justice Denniston* : You cannot vacate a nullity. You must have something to vacate.

*Mr. Gully* : Practically that is what it comes to. The same word is used in sections 132 and 133. Under subsection (3) there is some peculiar wording—"If he is a public defaulter, or is attainted of treason, or is convicted of felony, or is convicted of a corrupt practice." It does not say only in his own election, but in any election. Does that mean before or after?

*Mr. Justice Edwards* : It says conviction afterwards.

*Mr. Gully* : Conviction afterwards of a corrupt practice, before or after?

*Mr. Justice Denniston* : If there is a conviction there is an end of it.

*Mr. Gully* : Then you get to the somewhat absurd position that, although in no other case in these sections can the member create a vacancy by an act done before the election; in this case the act comes before, though the conviction is afterwards.

*Mr. Justice Edwards* : If you commit a felony before and get convicted afterwards it is just the same.

*Mr. Gully* : The commission of the felony creates the disability—not the conviction. Next, your Honours, it is suggested that the reason why there is a distinction made between bankruptcy and the other disqualifications after election and not taking effect before election is that the bankrupt if he becomes bankrupt after election should be relegated back to his constituents. If that is a reason affecting the status of an election, it must affect the whole of these sections, and it would lead to this: that a person guilty of a corrupt practice would have to be relegated back to his constituents. However, my friends are driven logically to the contention that in each one of the eight subsections, section 130 has no effect unless the act done or omitted takes place after the election of a member. For instance, first of all you have in section 8 the word "alien." Then subsections (2) and (3) clearly, I submit, are not coincident disqualifications. What would the effect of the claimant's contention be? It must be that if a person took the oath of allegiance to a foreign Power the day before his election he would be qualified to be elected. That, I submit, is the best illustration of the absurdity of the interpretation contended for by the other side, and in every other instance it leads to the same incongruity. This cannot be lessened by the idea that the candidate could be relegated to his constituency. These principles of disability are founded upon public policy, and not for the protection of the electorate. With reference to the change of language in the Act departing from the Constitution Act, I submit we are entitled to use the argument that the change was intentional, so as to do away with the anomaly of a person having a continuous status capable of being elected if he fails the day before and incapable of sitting if he fails the day after election. It is not suggested on the other side that there was any reason for the change except, as Mr. Cooper put it, to make the language look more graceful. But it has not that effect; it has exactly the opposite effect. The words "*shall become vacant*" carry the meaning clearly. There must have been a reason especially applicable to bankrupts having a continuous status. There, I submit, it is appropriate to say