

Court Rules

(Continued from Page 1)

to leave the matter to the discretion of the Court. Mr. MacDonald was not separately represented, nor did the Attorney-General appear.

Facts and Circumstances

The facts and circumstances of the case are as follows:

On 28th April 1951, B. Earle MacDonald, then Mayor of the City of Charlottetown, contested a Provincial election as a candidate for the Fifth Electoral District of Queen's County. He was elected and returned in the list of elected members by the Returning Officer. The official declaration was made on or about May 4th, and the return was published in the Royal Gazette on May 26th.

Mr. MacDonald did not take the oath of allegiance as a member of the Legislature until the opening of a special session held on October 23rd instant. On October 22nd, Mr. MacDonald tendered his resignation as Mayor, to take effect on October 23rd and an acting Mayor has been appointed by the City Councilors from among their number.

The City of Charlottetown Incorporation Act, as consolidated by 1948, Cap. 43, provides regarding the Mayor: "Any person holding the office of Mayor or Councilor shall immediately become disqualified and shall cease to hold such office if: (a) he shall become a member of the Legislature."

The Legislative Assembly Act, 1940, Cap. 37 makes no reference to the taking of an oath of office by the members. It is customary for members of the Legislature to take the oath of allegiance before assuming their seats in the Assembly. S.28 provides that "A member of the Assembly may voluntarily resign and vacate his seat in the manner hereinafter provided."

The subsections which follow outline the procedure to be followed according to the circumstances prevailing at the time of the proposed resignation.

For instance, if the Assembly is sitting, a member may resign by giving notice in his place, or a member may resign by delivering to the Speaker, either during a session or in the interval to a written resignation, a declaration of his intention to resign; or, if a member wishes to resign between two sessions, and there is then no Speaker, he may address his declaration to any two members of the House.

In Case of Resignation

Sub-s. (3) provides that if any person who is returned as elected to the Assembly "wishes to resign his seat subsequently to the first meeting of the Legislature, he may address his declaration to any two members elect of the Assembly." This subsection would

at first sight, appear to indicate a distinction between a "member" on the one hand, and a "person returned as elected", or a "member elect" on the other hand. If, however, that distinction were followed throughout s.28, the result would be that no provision would be available for a member elect, who had been returned in a by-election after the first meeting of the Legislature, but who had not himself taken his seat, to resign, particularly if a Speaker of the Legislature were then in office.

The rather anomalous situation would prevail, that any member or any member elect could resign at any time, except a member returned as elected at a by-election held after the first session of the Assembly. The only alternative conclusion is that a member elect in the latter situation may address his declaration to any two members under sub-s. (4) in either of which cases he would come under the general description of a "member."

It is also to be noted that the opening principal clause of s.28 refers only to "a member of the Assembly", although the contents of its subsections clearly include persons returned as elected, or members elect. And, if there could be any ambiguity to be found in s.28, I think it would be fully clarified by the terms of s.29, which provides: "Any member tendering his resignation as mentioned in the next preceding Section is mentioned, shall be held to have vacated his seat, and shall cease to be a member of the Assembly."

S.29 is obviously intended to include all persons who may resign under the provisions of s.28, including members elect. If one of the latter did not have a seat, he could not be held to have vacated it, and if he were not already a member of the Assembly, he could not cease to be a member of the Assembly.

Disqualified Since May 4

I therefore have no hesitation in holding that, on his return as a member of the Legislative Assembly on May 4th last, B. Earle MacDonald became a member of the Legislative Assembly, and immediately thereupon became disqualified, and ceased to hold the office of Mayor of the City of Charlottetown.

S.10 of the Charlottetown Incorporation Act provides that if any extraordinary vacancy shall occur in the office of Mayor, the vacancy shall be filled by election not later than thirty days after it arises, on a day to be fixed by a majority of the Councilors.

S.10 was amended in 1950 (Cap. 36, s.1) by the addition of a proviso that if a vacancy occurs within six months next before the statutory date for the next general civic election, then a by-election to fill such vacancy need not, but may be called, but shall be called if the same be ordered by the Supreme Court or any Judge on Mandamus proceedings instituted by any qualified elector.

It was agreed by counsel, on the argument, that Mandamus is an extraordinary remedy, and will not be granted by the Court merely to settle an academic question of law, or unless it is reasonably capable of producing some practical or real benefit. On the other hand, as Martin, B., (for himself and the Lord Chief Baron Pollock) said in St. Nicholas v. The Queen (1858) 27 L.J. Q.B. 434: "Instead of being astute to discover reasons for not applying this great constitutional remedy for error and misgovernment, we think it our duty to be vigilant to apply it in every case to which, by any reasonable construction, it can be made applicable." (p. 427).

Amendment Not Applicable

The vacancy in this case did not occur within six months before the date of the next general election (13th February 1952) and therefore the 1950 amendment to s.10 has no application.

S.9 of the Charlottetown Act provides for the appointment of a Councilor to act temporarily in place of the Mayor, pending his recovery or return or the election of his successor. It would appear to me that the expression "pending the election of his successor" would mean (in a case such as the present) pending an election duly called under the provisions of s.10.

The authority and power of an acting Mayor appointed in the present circumstances without any steps taken for the calling of a by-election imperatively required by Statute, as well as the authority of the Council itself to conduct the administration of the City in such circumstances, would appear at least in grave doubt.

The delicacy of the statutory relationship between Mayor and Council is illustrated by the case of Cooper v. Croil, (1940) 1 D.L.R. 610, in which Gillanders, J. A. held invalid the proceedings of a special meeting of the City Council of Windsor, called by requisition of a majority of the Councilors while the Mayor was absent from his office, though not absent from the City. Without suggesting that complications might arise from the substantial converse situation in the present case, I am of the opinion that the risk should be minimized as far as possible.

New Vacant De Facto

If it had been necessary to decide this matter before October 23rd, it might have been arguable that Mandamus would not be granted until the title of a de facto Mayor had been tested by proceedings in the nature of Quo Warranto. But the Mayor-elect is now vacant de facto, as well as de jure, and since the question has not been raised by the parties I do not think it is incumbent on me to enquire whether, or not, Quo Warranto would have been necessary as of the date of the commencement of these proceedings. The issue was never substantially the outer of a de facto mayor, but the date at which the vacancy in the office arose.

It is, in a sense, unfortunate that the raising and determination of the issue was deferred until less than four months before the statutory date for the next general election, but that does not appear to affect the constitutional question to any degree. Martin, B., said, in the St. Nicholas case above cited, "The principle of those cases establishes the doctrine that the Court of Queen's Bench ought to compel the performance of a public duty by public officers, although the time prescribed by Statute for the performance of them has passed."

We think all Statutes are to be read with reference to this known, acknowledged, recognized, and established power of the Court of Queen's Bench, to superintend and control inferior jurisdictions and authorities of every kind. We, therefore, attach no importance to the circumstances that the Mayor came into office after the time when the municipal corporation directed the Court to be held.

Common sense requires that if the Burgess-list of a borough is not properly revised at the proper time, it should be done afterwards. The Court has power, by the prerogative Writ of Mandamus, to amend all errors which tend to the oppression of the subject or other misgovernment, and it ought to be used when the law has provided no specific remedy, and justice and good government require that there ought to be one for the execution of the common law or the provisions of a Statute.

In the very nature of the present case, it is to be expected that proceedings should begin after the expiry of the time prescribed for the calling of the election. Municipal administration should be conducted strictly in accordance with the enabling statutory constitution, and any deviation from it incurs the risk of invalidating some proceedings of the governing body. In order to minimize that risk, even at the present time, a by-election should be held without further delay to fill the vacancy in the office of Mayor, and the Court orders that a Writ of Mandamus do issue to command the City Councilors and City Clerk to take the necessary steps forthwith. More detailed directions will be given on the setting of the terms of the Writ.

Following the case of the Mandamus to the Mayor of Stratford-on-Avon (1886) 2 T.L.R. 431, which in turn followed Reg. v. Mayor of Cambridge (1845) 4 Q.B. 301; 9 Jur. 11—the Court orders that the City of Charlottetown pay the Applicant's costs.

(Counsel for the appellant in the case was Mr. M. A. Farmer, K. C., in person, and for the respondents, Mr. K. M. Martin, K.C.)

IN MEMORIAM

T. W. HOWARD BALDERSTON

The community of North Wiltshire lost a worthy citizen and an aged good friend in the death of T. W. Howard Balderston when he passed away at his home on June 6th, 1951, after a brief illness.

His passing came as a shock to the family and loved ones for though, in his eighty-ninth year, he appeared to keep perpetually youthful.

It may indeed be said of him that he came to his reward full of years and honor, and was gathered as is a ripened sheaf in the harvest. Being a man of splendid physique, he possessed a body that never seemed to weary and a calm but indomitable spirit that suffered no defeat.

Even in his fatal illness when his strength was fast ebbing he uttered no word of complaint. A loving parent and husband, a friend to all who asked of his friendship, he has left behind a fine heritage of kindness, sympathy and honesty, to his children and loved ones, who follow and revere his memory.

He was born at North Wiltshire, November 27th, 1862, son of Hon. John Balderston and his wife the former Sarah Weeks. The deceased's wife, nee Emily Darke, predeceased him in March 1949.

There are left to cherish his memory three sons, Dawson, Baden and Harrison, and one daughter, Florence (Mrs. Bertram Lane) all residents at North Wiltshire. A daughter, Millie, (Mrs. Golden Frizzell) passed away some years ago.

There are also left to mourn his

passing eight grandchildren and five great grandchildren. His only sister, Clara (Mrs. Donald Caudie) lives in Vancouver Island, B. C. Six brothers who predeceased him were: Rev. Hedley, New Westminster, B. C.; Pope, Moosejaw, Sask.; Dr. Stephen, Evanston, Ill.; Heber, Los Angeles, Cal.; Dr. Egerton, Springfield, Mass., and Bright, Vancouver, B. C.

Mr. Balderston was an active member of the United Church at North Wiltshire. At the age of 18 he became superintendent of the Sunday School and held this office for the remaining years of his life.

It may well be said that in those seventy years of service for his Master he wrought a tremendous force for good in the Church. He was also a valued member of the choir from early youth, and was exceptionally endowed as a bass vocalist singing readily of his time and talents in giving the praises of God.

The funeral service which was largely attended, was held from his home on June 8th, followed by a service in the Church where he so loved to worship. It was conducted by his pastor, Rev. Howard Christie of Hunter River, assisted by Rev. Donald Nicholson of Clyde River who read the scripture lesson and led in prayer.

Mr. Christie in an impressive and comforting address paid a high tribute to the memory of the deceased. The following hymns were rendered by the choir: "The Lord's My Shepherd", "Unto the Hills Around", and closing with "Forever With the Lord."

During the service Mr. Murdoch MacLeod sang with much feeling the solo: "Will the Circle be Unbroken?" The floral tributes which were many and beautiful bore silent testimony to the esteem in which he was held.

The pallbearers were Walter Deacon, George Godfrey, William Coady, William Cullen, Morrison MacLean and Cecil Campbell.

His remains were laid to rest in the Cemetery adjoining the Church, beside those of his departed wife, and of his parents.

Till the day breaks and the shadows flee away.

Sick and Program Committees

reappointed. Mrs. Ambrose McCarville invited the members to her home for the annual meeting. A very fine program was put on by the committee in charge. A delicious lunch was served by the hostess assisted by the committee in charge. The singing of "God Save The King" brought the meeting to a close.

Makes Strong Plea

(Continued from Page 1) Mr. Kieckham said it had been brought to his attention that wages rates for these workers in Prince Edward Island are considerably lower than in a number of the other Provinces. "I trust this matter of a minimum scale of pay will be corrected without delay," he said. "I refer particularly to contracts let by the Department of Public Works in our Province, and to contracts let to the repair dock at Charlottetown."

"I submit that the minimum rates of pay on Government contract work should be made uniform for all Provinces. I can see no grounds for the present discrimination in our Province. Our costs for household furnishings, building supplies are in fact, higher than they are in the Central Provinces."

Mr. Kieckham cited wage rates paid skilled workers in P. E. I., which are only about two-thirds or three-quarters of rates paid for similar work in Ontario and Quebec.

He took strong exception to a suggestion made by Don F. Brown, Liberal M.P. for Essex West, that Canada be divided into zones to eliminate the competitive tender system for defence production department contracts. Such a practice he branded as "directly contrary to the declared policies of the Liberal party." He insisted on equality of opportunity and absence of discrimination in the award of these federal contracts.

When discussing price control, Mr. Kieckham reminded the House that farm prices are always the first to drop and the last to advance. He supported the Government's stand against the introduction of price controls, remarking: "We do not want our free enterprise system destroyed by hundreds of bureaucrats directing the daily lives of the people. From past experience, I do not think it is too unfair to say they generally misdirect our affairs."

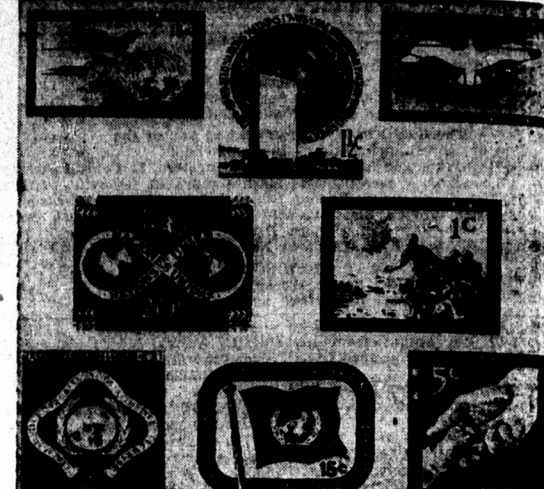
In a brief reference to the ruling on Prince Edward Island freight schedules, the King's member said: "Referring to the application of the Canadian National

Railways to the Board of Transport Commissioners requesting a reversal of their former ruling that the Province of Prince Edward Island become one zone rather than two as it has been in freight rates applications, I trust that the Chief Commissioner's ruling will be sustained.

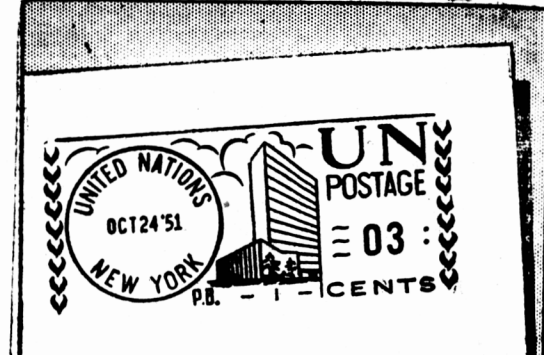
He expressed particular gratification that the legislation will be introduced at the present session to place war veterans' pensions on a more adequate basis. "Personally," he said, "I feel that even though in meeting the appeals of

veterans, we taxpayers may feel the pinch of increased taxation, our moral obligation to those brave men and women is such that we should meet this tax pinch with intense personal pride and satisfaction."

"I would urge the Government not only to grant to veterans already receiving pensions an increase in the basic rate thereof, but also to broaden our veteran legislation to establish veterans on pensions who are not eligible at the present time because of restrictions in the Act."



TO CARRY THE UN'S MAIL. — A whole series of new postage stamps is being issued by the United Nations. Created by artists of many nations, the first eight stamps being released in October and November are pictured above. They will range in denomination from one cent to one dollar. Below is the UN's newly designed meter postage stamp. The secretariat building in New York is depicted in the design. These stamps will be imprinted in any denomination from 1/2 cent to \$9.99 1/2.



UN POSTAGE—If you get a letter from the United Nations, New York, it may bear the new meter postage stamp above. The design shows a conventionalized outline of the UN secretariat building. Stamp can be imprinted in any denomination from 1/2-cent to \$9.99 1/2.

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Burgess Bedtime Stories

Continued from page 10

"Because I am glad," replied Peter.

"What are you so glad about? Is it something special?" Sammy Jay wanted to know.

"Do you see Farmer Brown's boy?" asked Peter.

"Of course I see him. Did you think there was anything the matter with my eyes?" retorted Sammy Jay.

"He's got one of the children of Thunderer the Grouse. He's taking him home," said Peter.

Sammy Jay's eyes opened a little wider. "You don't say," said he. "What is he doing that for? What happened?"

"Then Peter told him how the young Grouse had been shot and hurt and how Farmer Brown's boy had found him. 'Now he'll be all right,' said he, and kicked up his long heels again.

"How do you know he will?" demanded Sammy Jay.

"Because he found me once when I was hurt and took me home. If he hadn't I probably wouldn't be here now. That young Grouse hasn't a thing to worry about. That's why I'm glad," declared Peter.

"I hope you are right," replied Sammy Jay.

"I know I am," retorted Peter. And once more he kicked up his heels.

Sammy Jay spread his blue wings and headed straight for Farmer Brown's house. He wanted to see for himself if Peter was right. Down in his heart he knew he was, but still he wanted to see.

IN MEMORIAM

In loving memory of our dear Mother,

MRS. JAMES W. COOK

who passed away

October 26th, 1945

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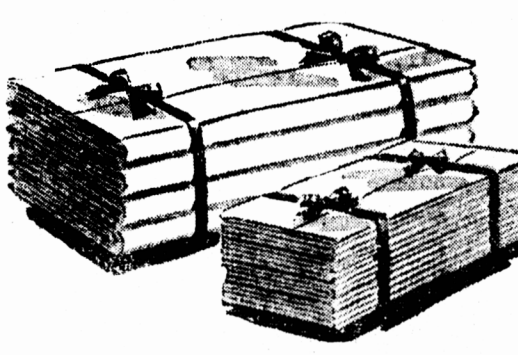
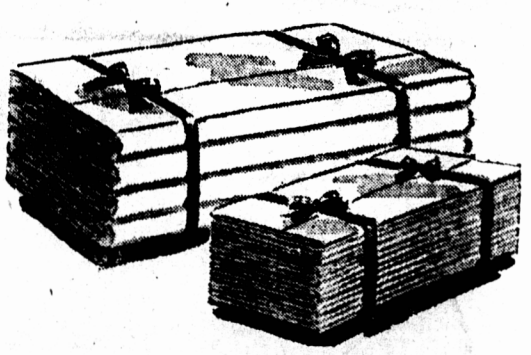
Agent at Summerside, D. O. Stewart

144 Richmond St. Charlottetown

Sheet Sale

Third Floor

THUR. - FRI. - SAT.



Hundreds of Sheets go on sale Thursday Morning — all are seconds but you can save as much as \$4.50 a pair — if first quality they would be worth up to \$11.50 a pair — also going during this sale is a tremendous selection of first quality Pillow Cases at greatly reduced prices. Other third floor specials are Cottage Sets at \$1.00 per set. Wool blankets, flannelette blankets and many other items at very special prices — SORRY NO PHONE ORDERS.

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Sheets 63" x 96"—Each \$2.49
Sheets 63" x 100"—Each \$2.69
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Sheets 72" x 96"—Each \$2.79
Sheets 81" x 100"—Each \$2.89
Sheets 72" x 100"—Each \$2.89
Sheets 72" x 105"—Each \$2.98
Sheets 81" x 100"—Each \$3.29
Sheets 81" x 100"—Each \$3.49
Sheets 81" x 104"—Each \$3.49
Sheets 90" x 104"—Each \$3.49

House Furnishings

- FILLED CURTAINS — special lot of marquisette frilled curtains — ivory color with medium size self dot — finished with good 3 inch ruffle.
Size 35" x 81"—Regular \$3.50. Special Sale Price — pair 2.25
Size 45" x 81"—Regular \$3.95. Special Sale Price — pair 2.95
COTTAGE SETS AND CURTAINS — ivory marquisette with multi-colored borders and tie backs. Come early — very low priced to clear at pair 1.00
FLANNELETTE BLANKETS — two good specials in first quality blankets — white with colored border and plaid design.
"IBEX" white with colored borders, 70" x 90" — pair 5.95
"FALCON" — plaid, blue or pink, 70" x 80" — pair 5.19
Repeat special on Kenwood Wool Blankets—heather shade, 60" x 84" — only a small quantity of these — Reg. \$9.95 value — Sale Price— each 6.95
Rayon Drapery — 40 inch width in red, gold, blue and light green—reg. \$1.19 yard—now specially sale priced at only — per yard 89c
Table Oilcloth Scarves — 18 inches wide and 45 inches long — blue, red and green — ideal for bureau scarves or table runners. Special sale price — 35c each or 3 for 1.00

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