

*Judgement of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of the  
Attorney General of Queensland v. Gibbon,  
from a determination of the Legislative Council  
of Queensland; delivered 19th February 1887.*

---

Present:

LORD BRAMWELL.

LORD HOBHOUSE.

LORD HERSHELL.

SIR BARNES PEACOCK.

SIR RICHARD COUCH.

The difficulty in this case arises from the circumstance that Mr. Gibbon received permission to absent himself, not during any specified sessions of the Legislature, but for a definite period of time not coinciding with the sessions that have been held.

His leave of absence was for one twelve-month, viz., from the 23rd December 1882 to 23rd December 1883. He was actually absent, first, during the session which began in June and ended in July 1883; secondly, during the session that began in November 1883 and ended in March 1884; and, thirdly, during the session which began in July and ended in December 1884. In the course of the next session the question arose whether his seat had become vacant.

He had thus been absent during the whole of three sessions, but his leave of absence

covered the whole of the first and a portion of the second, so that it cannot be said that he was absent during two successive sessions without a permission extending to some portion of those sessions. The question is, whether such a permission prevents Mr. Gibbon's seat from becoming vacant. The question was referred by the Legislative Council to a Committee of five, who sifted it very carefully, and by a majority of three to two decided that the seat was not vacated, and reported in that sense. The Council adopted the report, which therefore comes to their Lordships with all the weight due to that decision.

The effective words of the statute are, that "If any Legislative Councillor shall for two successive sessions fail to give his attendance, without permission, his seat shall thereby become vacant." The word "fail" is not applicable only to cases of wilful or negligent failure. It would apply also to the case of failure wholly blameless, *e.g.*, from the illness of the Councillor. "Fail to give his attendance," then, is equivalent to "be absent from." And the section therefore is to be read, "If any Legislative Councillor shall, for two successive sessions, be absent from the said Legislative Council without permission." Without permission for what? Why, absence for two successive sessions. Mr. Gibbon has had no permission to be, and has been, absent for two successive sessions. To say that permission to be absent for one, or a period including one, prevents the application of the provision, is in effect to say that permission cannot be given to be absent for one session without its operating in effect for two sessions.

In their Lordships' opinion the statute treats the non-attendance which entails a penalty as

an entire thing, and they consider that the permission which is relied on to avoid the penalty must be for that entire thing.

They think the object of the enactment is attained by this construction. Absence, short of two sessions, even by one day, is attended with no consequences. But absence for two sessions vacates the seat unless leave is given for a period covering such absence as a whole. It is absence on the last day added to the prior absence that has to be justified by permission, and that permission must be for whole absence.

They must, therefore, humbly advise Her Majesty to allow the appeal, and declare that Mr. Gibbon's seat became vacant. No costs against him are asked for.

---

