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Present: Mr. Justice Wendt and Mr. Justice Wood Renton.

In the matter of the Application for a writ of *quo warranto* declare the Election of DANISTER PERERA as Member of the Municipal Council of Galle null and void.

Writ of quo warranto—*Jurisdiction of the Supreme Court—Re-insertion of name of candidate after disqualification has ceased—Permanent disqualification—" Knowingly "—Contracts with the Municipal Council—Power of Chairman—Municipal Councils' Ordinance (Ordinance No. 7 of* 1887), *ss.* 22, 3, 30, 4, 43, 47, *and* 131—*Ordinance No.* 1 *of* 1889, *s.* 46—*Ordinance No.* 1 *of* 1896, *s.* 12.

The Supreme Court has power under section 46 of the Courts Ordinance (No. 1 of 1889) to issue a mandate in the nature of *quo warranto.*

A candidate whose name has been erased from the list of qualified Councillors on account of a disqualifying contract is entitled, on his getting rid of such contract, to have his name reinstated in the list.

Section 34 of Ordinance No. 7 of 1887 enacts that—" Any person who shall knowingly accept, and shall enter upon, and act in, the office of councillor without possessing the necessary qualifications or being disqualified as provided in this Ordinance, and any councillor who shall knowingly continue to act as such after he shall have ceased to possess the necessary qualifications, shall, notwithstanding that their names appear in the lists of persons entitled to be elected, be liable to a penalty not exceeding one thousand rupees, and shall for ever be disqualified from being elected a councillor or from voting at any election."

Held, that this section has no application where the statutory disqualification is not clear on the face of the facts, but has had to be established by elaborate argument in judicial proceedings.

APPLICATION for a writ of *quo warranto* declare the election of Danister Perera as Member of the Municipal Council Galle, null and void.

The facts are fully set out in the judgment of Wood Renton J.

W. Pereira, K.C. (*A. St. V. Jayewardene* with him), for applicant.

Dornhorst, K.C. (*Bawa* with him), for respondent.

Cur. adv. vult.

23rd March, 1906. WOOD RENTON J.—

This is a petition for a mandate in the nature of a *quo warranto* with a view to vacate the election of Mr. Edward Danister Perera, the respondent, as Member of the Galupiyadda Ward of the Municipality of Galle. Mr. Perera was elected Councillor for that ward on 4th December last by 24 votes as against 23 polled by

Mr. Thomas de Silva Amarasuriya, the present petitioner. Several legal questions of considerable interest and importance are involved in this case. (I.) Has the Supreme Court of the Colony power to issue mandates in the nature of a *quo warranto* ? In previous proceedings closely connected with this very election [*In the matter of the election of a Councillor for the Galupiyadda Ward of the Galle Municipality* (1)] I have myself already answered this question in the affirmative. But the respondent has now properly raised it again before a Bench of two Judges. After careful re-consideration I adhere to my former opinion. It is true that at—and long before —the time of the acquisition of this Colony by Great Britain the writ of *quo warranto* had fallen into disuse in England, and had been superseded in practice by an information in the nature of *quo warranto* which was and is regulated by legislative enactment. But *quo warranto* was undoubtedly a high prerogative writ at Common Law. The power to issue it has never even in England been taken away from the Crown by statute. Indeed the modern information itself is not the creature of statute, although it has been moulded by statute [see *Darley v. Rex* (2)]; and if the special statutory procedure now in use were set aside, the old writ would, I think, still be available. A high preorgative writ must surely, if it is to be abrogated at all, be abrogated in express terms; and this reasoning appears to me to apply with *a fortiori* force when, as in the case of Ceylon, there is no ground for saying that any inconsistent remedy has been recognized. But even if the Supreme Court does not inherit the old powers of the Court of King's Bench in regard to the writ of *quo warranto*, because that writ had been definitely superseded in England when this Colony was acquired by the Crown. I hold that section 46 of the Courts Ordinance gives it the necessary local habitation here. That section empowers the Supreme Court to grant " mandates in the nature of " certain named prerogative writs. Of these writs, the *quo warranto* was not one. But I think that the enumeration in the section is illustrative and not limitative; that its object was to invest, and that is language does invest, the Supreme Court with power to deal—by whatever modifications of the old remedies the circumstances may render necessary—with the whole class of cases covered by the prerogative writs. (II.) Practically all the remaining questions involved in the present petition turn on the construction of sections 22 and 43 of The Municipal Councils' Ordinance, 1887, (No. 7 of 1887). In an earlier petition in connection with the same election it was held by my brother Wendt [see *In the matter of a* mandamus *on the Chairman*

(1) (1905) 8 *N. L. R.* 300.

(2) (1845-1846) 12 *Cl. and Fin.* 237.

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of the Municipal Council, Galle (1)] that the former of these sections applied only to persons whose names do not appear in the settled list, and that the latter, while it makes the list conclusive in favour of persons named in it, does not render that list the sole evidence of qualification. I entirely agree with this construction of the statute, and would only add that while section 22 gives the President, who inquires into claims under it, a wide discretionary power, the exercise of that discretion is open to revision by the Supreme Court in any appropriate proceeding. This result seems to flow directly from the proviso in the last clause of the section making the decision of the President final for the purpose of "the said meeting and no further"—a clause which distinguishes the present case from *Reg. v. Collins* (2).

We may now proceed briefly to notice the various objections and counter objections on which the fate of the present petition depends: (*a*) The respondent has challenged the petitioner's status as a candidate on the ground that at the date of the election his name had been erased by the order of the Supreme Court from the list of qualified Councillors. On the construction, above adopted, of sections 22 and 43 of the Ordinance of 1887, that point is clearly bad. I may add that the English decisions in the cases of *Whally v. Bramwell* (3) and *Lewis v. Carr* (4) recognize the right of a Councillor who has got rid of a disqualifying contract to reinstatement in the list. In the present case the name of the petitioner had been erased on the ground of his being interested in such a contract. In the interval between the erasure and the election he was released from that contract. At the election he was proposed and seconded as a candidate. His status was objected to and the objections were considered and disposed of by the President. I think under these circumstances the case for the petitioner has been brought within section 22 of the Ordinance, and that he is entitled to the benefit of the decision in his favour under that section, unless the President can be shown to have gone clearly wrong.

Of the main objection to the petitioner's status I have spoken already. But various subsidiary points were urged against his qualification. It was said that the Chairman of the Municipal Council, who executed the indenture of release, had no authority to do so under Ordinance No. 7 of 1887, that there was no consideration for the release, that the petitioner had not been shown to possess the requisite property qualification, and that having acted as a Councillor while disqualified he was permanently disabled under section 34.

(1) (1906) 9 *N. L. R.* 156.
(2) (1876) 2 *Q. B. D.* 30.
(3) (1850) 15 *Q. B.* 775.
(4) (1876) 1 *Ex. Div.* 484.

In my opinion all these points are bad. "The entire executive power and responsibility of the Council" for the purposes of the Ordinance is vested in the Chairman (section 47 (1) as defined in Ordinance No. 1 of 1896, section 12). I do not think that the words "purposes of the Ordinance" are to be restricted to the borrowing purposes enumerated in section 46. They include, it seems to me, any object in regard to which the Council is empowered to contract. The establishment and maintenance of tolls is one of such objects (section 131). Any contract in pursuance of it comes within the Chairman's competence; and the power to enter into a contract carries with it the power of release. But there is more. It appears that the petitioner's formal application for release (document P3) was sanctioned by the Council (P5). In any event it would not lie in the mouth of the Council to impugn the sufficiency of the release. The last observation disposes also of the objection as to the absence of consideration for the deed discharging the petitioner from the contract. With regard to the question of the property qualification, the President had before him the fact that the petitioner's name had been duly on the list of qualified Councillors and that it was erased on the ground of a disqualifying contract alone. I think that these circumstances were sufficient *prima facie* evidence of property qualification. As to the alleged permanent disability, I do not think that the petitioner can be said to have "knowingly" acted while disqualified. Without going so far as to say, with the learned President, that section 34 applies only where there has been a successful prosecution under section 30, I do not think that the former section applies to cases in which the statutory disqualification is not clear on the face of the facts, but has had to be established by elaborate argument in judicial proceedings. (*b*) The petitioner complains that four graduate votes (see section 11 (*e*) of Ordinance No. 7 of 1887) were rejected, and the respondent complains that the vote of Mr. M. S. Pinto was accepted by the President improperly. As regards both sets of votes it seems to me that his ruling ought to stand. None of the names of these five voters appear, as they ought to have done, in the list for Ward No. 3; section 22 therefore applies. The President rejected the four graduate votes because no reason was shown why the names of the voters were not entered on the list in time. He accepted Mr. Pinto's name because that gentleman came to Galle after the list was settled. On both points I think the decision sound. (*c*) It is conceded by the respondent that the petitioner ought to have been credited with the votes of Mr. Leefe and Mr. Wytilingam. This brings his total poll up to 25. But the list for Ward No. 3 contains the names of three voters—Mr. S. G. J. de Silva, Mr. H. V. Fereira, and Mr. Cadirawel, the

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last-named with three votes, who the respondent alleges would have voted for him, but whose votes were rejected. This allegation is verified by affidavit. It has not been challenged by the petitioner. These five votes must be placed to the credit of the respondent, who has thus been elected by 29 votes as against 25 polled by the petitioner. In my opinion the rule for *quo warranto* should be discharged with costs.

WENDT J.—I agree both as to the jurisdiction of the Court to issue the writ asked for and as to the order proposed to be made in the matter.