

1906.
February 12.

Present : Mr. Justice Wendt.

In the matter of a *Mandamus* on the CHAIRMAN OF THE
MUNICIPAL COUNCIL, GALLE.

Municipal election—Mandamus—Refusal to accept nomination of a duly qualified candidate—Conclusive nature of certified list—Default in payment of taxes—Disqualification.—Municipal Councils' Ordinance (No. 7 of 1887), ss. 9 (e), 13-19, 22, 40-43, 128, 145, and 146.

Held, by WENDT, J.—

- (1) That if the officer presiding at an election refuses to accept the nomination of a duly qualified candidate, so that the voters present are precluded from recording their votes in his favour, the election of any other candidate is necessarily void.
- (2) That section 43 of Ordinance No. 7 of 1887, which enacts that "the new list so prepared as aforesaid, subject to such insertions and erasures as shall have been ordered and made therein as aforesaid, shall be certified under the hand of the chairman during the last week of October following, and when so certified shall be final and conclusive evidence of the qualification of the persons named therein to be elected or to vote respectively. And such new lists, until the same are in turn superseded, shall supersede and take the place of the lists previously in force," is conclusive of the qualifications of the persons mentioned in the lists, and that no objection to such qualification could thereafter be entertained.
- (3) That the said section, while it makes the list conclusive evidence in favour of persons named in it, does not render that list the sole evidence of qualification.

(4) That section 22 of Ordinance No. 7 of 1887, which enacts that "if at any such election any question shall arise as to the identity or right of any person claiming to be qualified to be elected or to vote, the president shall have power to inquire into the same, and, if it appears expedient to him, to administer an oath or affirmation to any person present at such meeting whom he shall think fit to examine with reference to such claim. Any persons giving false evidence on oath or affirmation at such inquiry shall be liable to be prosecuted under the provisions of the Ceylon Penal Code. The decision of the president on any such claim shall, for the purpose of the said meeting, and no further, be final,"—refers only to persons whose names do not appear in the settled list, and is intended to permit of a person taking part in the election who has acquired his qualification subsequent to the certifying of the list.

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Where one of the objections to a candidate's qualification to be elected a Councillor was that he was in arrears for more than two quarters in respect of taxes due on certain horses and vehicles owned by him; and where it appeared that such candidate's name was not in the list of persons liable to the tax in question, and that he had not been served with Form I under section 146 or with Form J under section 145 of Ordinance No. 7 of 1887,—

Held, that the non-payment of taxes under the circumstances above-mentioned did not amount to a disqualification under section 9 (e).

WENDT, J.—Considering the serious consequences under section 9 (e) of the non-payment of taxes, there must be some distinct and definite default in the payment of some ascertained sum of money. A person cannot be said to be in default in paying a tax until he has been fixed with notice of the sum which he has to pay and been called upon to pay it within some definite time fixed by the Chairman.

A PPLICATION for a writ of *mandamus* on the Chairman of the Municipal Council directing him to call and hold a meeting for a new election.

The facts are fully set out in the judgment.

W. Pereira, K.C., for the petitioner.

Dornhorst, K.C., for the elected member.

A. St. V. Jāyewardene, for the Chairman.

Cur. adv. vult.

12th February, 1906. WENDT J.—

In this matter the petitioner, who was the sitting Member of the Municipality of Galle for Ward No. 5, obtained a notice upon the first respondent, the Chairman of the Municipal Council, and the second respondent, Mr. Abeyawardena (who had at an election held on the 4th December, 1905, been declared duly elected for that ward

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for the three years beginning with 1906), to show cause why a writ of *mandamus* should not issue directing the first respondent to call and hold a meeting for a new election. A number of grounds were put forward to show that the meeting had been irregularly held, but in the view which I take of the matter it is unnecessary to go into them.

The application is based on the ground that the petitioner was duly qualified to be elected a Councillor for the Ward No. 5, and that his rejection by the Chairman at the meeting after he had been duly nominated on the ground that he was disqualified, rendered the election null and void. It seems to me clear that if the officer presiding at an election refused to accept the nomination of a duly qualified candidate, so that the voters present were precluded from recording their votes in his favour, the election of any other candidate must necessarily be void.

The facts bearing upon the petitioner's qualifications as disclosed in materials before me are as follows. He has sat as Councillor for Ward No. 5 since 1st January, 1900, and his name appears in the list of persons qualified to be elected as Councillors, made and published in October last under the hand of the Chairman, as required by section 43 of the Ordinance. Section 13 provides for the preparation of this list, section 14 for its publication, sections 15 to 18 for its revision subject to appeal to the Supreme Court; section 19 makes the list certified under the hand of the Chairman conclusive evidence of the due qualification of the persons named in it. These sections primarily apply to the first election held after the Ordinance came into operation. For the purpose of subsequent elections section 41 requires the Chairman in the first quarter of every year to revise the list by removing therefrom the name of any person not entitled to be entered therein and by adding the name of any qualified person, and further requires him every third year, in the month of September, to prepare a new list, and directs that such list when prepared shall be published and open to inspection in the same manner as provided in section 14. Section 42 applies the provisions of sections 15 and 16 to the new list, but substitutes an application to the Magistrate for the appeal to the Supreme Court. Then follows section 43, which requires the new list to be certified under the hand of the Chairman during the last week of October, and which declares that the list when so certified shall be final and conclusive evidence of the qualification of persons named therein to be elected. In view of the fact that section 40 fixes the first week in December for the election, I think the mention of the last week of October indicates the desire, in view of the final character of the

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certified list, to keep that list open to as late a date as practicable. There is in my opinion nothing in section 22 which detracts from the conclusive effect given to the list by section 43. Section 22 gives to the President at the election the power to inquire into and decide any question arising as to the right of any person claiming to be qualified to be elected. This section in my opinion refers only to persons whose names do not appear in the settled list, and is designed to permit of a person taking part in the election who has perhaps acquired his qualification subsequent to the certifying of the list. Section 43, while it makes the list conclusive evidence in favour of persons named in it, does not render that list the sole evidence of qualification. I think therefore that the Chairman was wrong in entertaining any objection to the petitioner's qualification to be elected.

It is unnecessary to go further, but as the question of the petitioner's disqualification was argued I am prepared to express my opinion on it. The objection was that the petitioner was obnoxious to section 9 (e), which requires that a candidate must "not be in arrears for more than two quarters in respect of any municipal rates and taxes," inasmuch as he had not at the moment when he was nominated paid the taxes due by him for the half of the year 1905 in respect of certain vehicles and horses owned by him (although he paid them immediately after the objection was taken and before the voting began). It was admitted that the tax had not been paid, but it was contended that section 9 (e) contemplates taxes payable quarterly, whereas the tax in question was payable half-yearly. I am of a different opinion. The mention of two quarters, equivalent to a half-year, has to be considered in connection with taxes as well as rates which are payable quarterly. The section merely means that the default shall have continued for more than half a year. But it was next argued that the petitioner was not "in arrears" with this tax, and with that view I agree. Section 128, which empowered the Municipal Council to levy an annual tax on all carriages, horses, &c., directs that such tax "shall be payable at such times as the Chairman shall direct, and shall be assessed and levied in the manner hereinafter mentioned and, or by any by-law provided." Section 43 of the Ordinance makes the tax payable half-yearly in advance for each half of the year. Section 145 requires the Chairman to cause to be prepared a list of the persons liable to the payment of the taxes, which list is to be open to the inspection of any persons interested therein. For the purpose of preparing it section 146 authorizes the Chairman to serve persons with a schedule to be filled up with information respecting the vehicles and animals kept by them.

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Section 149 directs that if the amount of any tax shall not be paid into the Municipal Office " within such time as the Chairman shall direct " a warrant may issue for its recovery. The form of warrant provided, Form E, recites that the defaulter has been rated (or taxed as the case may be) at the sum stated and has made default in the payment of the said sum and the said sum is still due and owing, " although notice demanding payment of the same was served on the said person. " The Municipal Council of Galle, in pursuance of the powers conferred on it by the Municipal Councils' Ordinance, has made by-laws relating to this tax—such by-laws as section 128 contemplates. Chapter XI., by-law 2, prescribes a form of schedule (Form I) to be used under section 146. By-law 3 enacts that the Secretary shall from time to time whenever directed by the Chairman cause a copy of the said Form I to be served on every owner, resident or occupier, of all houses, buildings, and lands within the Municipality. By-law 4 provided that " after the completion of the list of taxpayers mentioned in section 145 of Ordinance No. 7 of 1887 the Secretary shall cause a notice in Form J thereunto annexed to be served on each of the persons therein mentioned in the manner provided by section 269 of the Ordinance, and such notice shall contain the list of vehicles and animals in respect of which the tax is payable and the amount of the tax, and shall also state the time and proportion in which the tax shall be paid. Any person desirous of objecting to the list shall be entitled to do so at any time in writing by letter delivered to the Secretary during the ten days following service of the notice, after which no objections shall be entertained against the same. " Form J informs the person liable that the Council " have ordered you to be assessed in respect of the under-mentioned vehicles and animals for the year 190—, and the following sums are due therein " (*sec*). Then follow detailed particulars and under the heading " Time of payment " is specified " on the 1st day of February, 190—, Rs.—on the 1st day of August, 190—, Rs.— " and the form winds up: " You are hereby required to pay the amount of the above taxes into this office on or before the dates before-mentioned, in failure whereof a warrant will be issued by the Chairman for the recovery thereof with costs. " By-law 5 enacts that a person who after having filled up and sent in the Form I acquires a carriage, &c., not mentioned in the form, shall send written notice thereof within two weeks to the Secretary. It was admitted that the petitioner's name did not appear in the list of persons liable to the tax in question; that he had not been served with the Form I, and of course had not returned it; and that he had not been served with the Form J demanding payment of the tax.

Now, considering the serious consequences entailed by the application of section 9 (e), amounting to a forfeiture of the right to be elected a Councillor owing to the non-payment of what may only be a trifling sum (petitioner could only owe Rs. 13.25 for the half-year) there must be some distinct and definite default in the payment of some ascertained sum of money.

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In view of the provisions of the Ordinance and of the by-laws which I have cited, I cannot hold that the appellant was in default of paying the tax (which is what is meant by being "in arrears"), or even that an action could have been maintained against him, until he had been fixed with notice of the sum which he was required to pay and been called upon to pay it within some definite time fixed by the Chairman. Petitioner was not therefore disqualified from being elected at the meeting in question. It follows for the reasons I have already given that the election held on the 4th December, 1905, was null and void. A writ of *mandamus* will issue directing the Chairman of the Municipal Council of Galle forthwith to give the notice required by the law and thereafter to hold an election of a Councillor for Ward No. 5.

