

his application to proceed further at any time within three months of his filing the action. If he makes the application within three months the District Judge is bound to consider it under section 14 (2). Section 14 (2) does not specify the grounds on which the District Judge would be entitled to refuse the application. In enacting the sub-section the legislature, perhaps, intended that before allowing summons the District Judge should satisfy himself that a prior action for the recovery of the same penalty was not pending before him. However that may be, it is clear to us that in refusing the appellant's application the learned District Judge has acted on a misconception of the law that the penalties vested in the informer not when he instituted the action but when he applied for leave to proceed further under section 14 (2).

We would accordingly set aside the order appealed against and send the case back for inquiry on the second objection taken by the second respondent. The appellant will be entitled to the costs of appeal and of the inquiry in the Court below.

BASNAYAKE J.—I agree.

Order set aside

1949

Present: Jayatileke S.P.J.

MARK, Petitioner, and A. G. A., MANNAR, *et al.*, Respondents

S. C. 448—Application for Writs of Certiorari and Mandamus against the A. G. A., Mannar

Writs of Certiorari and Mandamus—Statutory requirements relating to performance of a public duty—Circumstances when they will be construed as merely directory—Village Communities Ordinance (Cap. 198)—Object of Section 15 (3).

When the provisions in a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, the Court would hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

The object of the provisions of Section 15 (3) of the Village Communities Ordinance as amended by Section 4 of Ordinance No. 11 of 1940 is to give the candidates who are duly nominated sufficient time to get ready for the election. Where, therefore, only one candidate is nominated the failure to observe the time limit imposed by the enactment is not a fatal irregularity.

THIS was an application for a writ of *certiorari* to quash an order made by the Assistant Government Agent, Mannar, and for a writ of *mandamus* to compel the holding of a poll for the election of a member for ward No. 1 of the Vankalai Village Committee.

Section 15 (3) of the Village Communities Ordinance provides : " The nomination paper or papers delivered by or on behalf of the candidate or candidates for election shall be scrutinised forthwith by the Government Agent ; and all objections raised against any candidate, on the ground that he is not qualified to be elected or that he is not a candidate duly nominated, shall be disposed of by the Government Agent, after such inquiry as he may deem sufficient, either forthwith or at any convenient time not less than seven days prior to the date of the meeting of voters summoned under section 14 " .

The main question for consideration in this application was whether the failure of the Government Agent to give his decision within the period fixed in Section 15 (3) of the Village Communities Ordinance could be regarded as a fatal irregularity in all cases.

S. Mahudevan, for the petitioner.

M. Tiruchelvam, *Crown Counsel*, for the 1st respondent.

Cur. adv. vult.

August 26, 1949. JAYETILEKE S.P.J.—

This is an application for a writ of Certiorari to quash the order made by the 1st respondent that the petitioner was not a duly nominated candidate for ward No. 1 of the Vankalai Village Committee and declaring the 2nd respondent the duly elected member for that ward, and for a writ of Mandamus to compel the 1st respondent to hold a poll for the election of a member for that ward.

The 1st respondent issued a notice under section 14 (4) of the Village Communities Ordinance (Cap. 198) that he would receive on June 4, 1948, nominations for the election of a member for ward No. 1 of the Vankalai Village Committee. On that day one nomination paper was tendered to him by the petitioner and another by the 2nd respondent. Immediately after the nomination papers were tendered to him the petitioner objected to the nomination of the 2nd respondent on the ground that the proposer and the seconder were not qualified to vote as they had not resided for a continuous period of six months in ward No. 1 during the 18 months immediately preceding June 4, 1948, and the 2nd respondent objected to the nomination of the petitioner on the ground that the seconder was not qualified to vote for a similar reason. The petitioner states in his affidavit that the 1st respondent did not hold an inquiry into the objections and that 1st respondent failed to give his decision on the objections within the time prescribed in section 15 (3) of the Ordinance. The 1st respondent states in his affidavit that when the petitioner raised the objection he questioned the Village Headman, who was present, and informed the candidates that he would make his order in a week's time. Thereupon he inquired from the Divisional Revenue Officer whether the petitioner's seconder was a resident of Vankalai and was satisfied that he was not, and he accordingly upheld the 2nd respondent's objection on June 12, 1948. He states further

that he inquired into the objection raised by the petitioner and overruled it. The main point taken on behalf of the petitioner was that the 1st respondent failed to give his decision within the period fixed in section 15 (3) of the Ordinance. The section provides that all objections raised against any candidate shall be disposed of by the Government Agent either forthwith or at any convenient time not less than seven days prior to the meeting of voters summoned under section 14. The date fixed for the meeting was June 18, 1948, and it is clear that the order made by the 1st respondent was out of time. The Ordinance contains no enactment as to what is to be the consequence as to the non-observance of the provision in section 15 (3). It is contended for the petitioner that the consequence is that the election of the 2nd respondent must be treated as a nullity.

The question that arises for decision is whether the enactment that all objections shall be disposed of by the Government Agent at any convenient time not less than seven days prior to the meeting of voters summoned under section 14 is absolute or merely directory.

In *Liverpool Bank v. Turner*¹ Lord Campbell said :—,

“No universal rule can be laid down as to whether a mandatory enactment shall be considered directory only or obligatory with an implied nullification for disobedience. It is the duty of the Courts of Justice to try to get at the real intention of the legislature by carefully attending to the whole scope of the statute to be construed”.

Maxwell² says that when the provisions in a Statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

Section 15 (3) of the Village Communities Ordinance was amended by section 4 of Ordinance No. 11 of 1940 by the substitution for the words “at any convenient time” of the words “at any convenient time not less than seven days”. Section 15 (3) of the principal Ordinance enabled the Government Agent to dispose of objections even a day before the polling date whereas the amending Ordinance set a time limit to the disposal of such objections. I think it is reasonable to presume that the object of the legislature in amending the section was to give the candidates who were duly nominated sufficient time to get ready for the election. The neglect of the 1st respondent may have been fatal if the 2nd respondent was not the only candidate who was duly nominated. But as the 2nd respondent was the only candidate it seems to me to be immaterial. I would accordingly dismiss the application with costs.

Application dismissed.

¹ (1861) 30 L. J. Ch. 370.

² Maxwell on Interpretation of Statutes 8th Ed. pp. 322, 326.