

Mar. 15, 1911

Present : Lascelles A.C.J. and Van Langenberg A.J.

RATWATTE v. NUGAWELA *et al.*

16—*D. C. Kandy*, 20,598.

*Buddhist Temporalities Ordinance, ss. 9 and 11—Certificate of appointment of committee members—Is certificate conclusive of the validity of election ?*

The certificate of appointment of the committee members given by the President under section 9 of the Buddhist Temporalities Ordinance of 1905 is not conclusive of the validity of their election.

LASCELLES A.C.J.—I cannot construe the words of section 9 as meaning anything more than that the President's declaration as evidenced by his certificate is *prima facie* evidence that the person has been elected in due course. There is nothing in the words themselves or in the context from which any intention on the part of the Legislature can be implied that the validity of the election cannot be questioned in any way which the law allows.

**T**HE facts are set out in the judgment of the Chief Justice.

*H. A. Jayewardene* (with him *J. W. de Silva*), for the appellant.

*Bawa, A. S.-G.* (with him *H. J. C. Pereira*), for the respondents.

*Cur. adv. vult.*

March 15, 1911. LASCELLES A.C.J.—

This is an appeal from an interlocutory order of the District Judge of Kandy. The plaintiff in the action was the Basnaika Nilame of the Kataragama Dewale in Kandy, and the defendants are the Committee of the District of Kandy appointed under the provisions of the Buddhist Temporalities Ordinance of 1905. The plaintiff, who has been suspended from his office by the defendants, claims in his plaint (1) that this so-called District Committee, of which the defendants are members, may be declared to have no legal existence ; that the proceedings taken by the defendants as forming such District Committee against the plaintiff, including his suspension from his said office, may be declared null and void ; and that the plaintiff may be declared the rightful Basnaika Nilame and trustee of the temple and of all its property. The defendants put in their answer, and the issues Nos. (5) and (6) are material. They are as follows : (5) Whether the certificate of appointment issued to the defendants is conclusive of their rights to membership of the District Committee ? (6) Whether the defendants were legally constituted Committee for the District of Kandy ?

The case then proceeded to hearing, and the learned District Judge confined the case for the present to issues (5) and (6), and then called on the defendants to begin. Mr. Jayewardene called a witness, and there was some discussion on the issues, and then the learned District Judge made the order appealed from, which is in the following terms : " On the 5th and 6th issues I rule that the certificate of appointment of the committee members is not conclusive of the validity of their elections, and that it is competent for the plaintiff to contest their validity. "

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During the argument we were referred to certain provisions of the Companies Act of 1862, which present some analogy with sections 9 and 11 of the Buddhist Temporalities Ordinance of 1905, namely, section 18, which declares that the registrar's certificate of registration shall be conclusive evidence that all the requisites of the Act in respect of registration have been complied with ; and section 51, which enacts that in any meeting held under the section a declaration of the Chairman that the resolution has been carried shall be deemed conclusive evidence of the fact. The current of authority is certainly very strong, that the word " conclusive " in these sections means " absolutely conclusive, " and not " *prima facie* conclusive. " But certain special cases have arisen in which a less absolute meaning has been attributed to the word ; but these are special cases, which it is not necessary to discuss, where a less conclusive effect has been given to these words.

But in the question under consideration the decisions under these sections of the Companies Act are scarcely in point, as their language differs essentially from that of section 9 of the Buddhist Temporalities Ordinance. In the former case section 18 of the Act declares that the registrar's certificate " shall be conclusive evidence " of compliance with the requisitions of the Act, and section 51 enacts that the Chairman's declaration shall be deemed to be " conclusive evidence " that the resolution has been carried. Section 9 of the Buddhist Temporalities Ordinance contains no such language. It merely enacts that the President shall publicly declare the name of the candidate for whom the greatest number of votes shall have been received, " who shall thereupon be deemed to be duly elected, and shall grant to such candidate a certificate under his hand of such his election. "

I cannot construe these words as meaning anything more than that the President's declaration, as evidenced by his certificate, is *prima facie* evidence that the person has been elected in due course. There is nothing in the words themselves or in the context from which any intention on the part of the Legislature can be implied that the validity of the election cannot be questioned in any way which the law allows.

I am strengthened in this view by a comparison between section 9 and section 11 of the Ordinance. In the latter section the intention

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of the Legislature is clear that the President should dispose finally of any question arising in the course of the election, and appropriate language is used to give effect to this intention. The President's decision is declared to be "final and conclusive." If it was intended that the President's declaration under section 9 should have the same finality, it is difficult to discover why the same or similar language should not have been employed.

For these reasons I am of opinion that the plaintiff is not precluded by the certificate given under section 9 from questioning the validity of the election of defendants, except on grounds with regard to which the President's declaration is declared by section 11 to be final and conclusive. For these reasons I would dismiss the appeal with costs.

**VAN LANGENBERG A.J.—**

I am of the same opinion, and have nothing to add.

*Appeal dismissed.*

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