

1920.

Present : Schneider A.J.

LUDOWYKE v. THE CHAIRMAN, MUNICIPAL COUNCIL,
COLOMBO.

770—M. C. Colombo, 30.

Municipal Councils Ordinance, ss. 11 and 15—Power of attorney by a widow in favour of appellant to vote at an election—Direction to vote for a particular candidate—Is power invalid?

A widow under the provisions of section 11 (1) (i) of the Municipal Councils Ordinance nominated the appellant to be her attorney for the purpose of voting for the election of a member "and to record the vote in favour of Dr. Rodrigo."

Held, that the words "to record the vote in favour of R" did not vitiate the power.

THE facts appear from the judgment.

E. W. Jayawardene, for applicant, appellant.

A. St. V. Jayawardene, heard *contra*, as *amicus curiæ*.

Cur. adv. vult.

October 22, 1920. SCHNEIDER A.J.—

Under the provisions of section 15 of the Municipal Councils Ordinance, 1910, the appellant applied to the Chairman to have his name inserted in the list of voters for one of the divisions of the Colombo Municipality claiming to be a person qualified to vote within that division. This application the Chairman referred to the Municipal Magistrate, who, by his order of September 29 last, disallowed the application. This is an appeal from that order under the provisions of section 16 of that Ordinance.

The appellant claimed to be qualified as the attorney of a widow within the provisions of section 11 (1) (i) of the Ordinance. The relevant portion of the power of attorney is as follows :—

“ Now know ye and these presents witness that I, the said . . . do hereby nominate, appoint, and constitute . . . of . . . to be my attorney for the purpose of voting for the election of a member for the Wellawatta Division of the Municipality of Colombo, and for that purpose to take all proper or necessary steps, to have his name placed on the voters' list for the said Wellawatta Ward for the year 1920, to vote at the election to be held in the month of December, 1920, for the election of a member, and to record the vote in favour of Dr. William Paul Rodrigo, of Bambalapitiya, Colombo, and generally to do every such act as is necessary for the said purpose of placing or causing his name to be placed in the said voters' list, and to record his vote at the said election.”

The learned Magistrate considered that the insertion of the words “ and to record the vote in favour of Dr. William Paul Rodrigo ” vitiated the power altogether and rendered it invalid for any of the purposes for which it was intended. The reasons given by him are :—

- (1) That the words in question “ fettered the grantor's discretion and tied her down ” two months before the election to vote for a particular candidate ; and
- (2) That they tend to make public the fact that the vote was so tied down and thus defeat the object of making the ballot a secret ballot.

In my opinion, not only are these reasons not sound, but they are good reasons for not upholding the Magistrate's order.

In the first place, it seems to me that the Magistrate had no jurisdiction to enter into the question of the validity of the power in so far as the words in question are concerned. Those words are a direction as to how the “ attorney ” shall vote ; that part of the power does not come within the scope of the summary inquiry which it is the duty of the Magistrate to hold when an application has been referred to him. His inquiry must be limited to ascertaining whether the applicant and the widow who has appointed him “ attorney ” has each of them the qualifications required by section 11 of the Ordinance. If he is satisfied that the applicant has the qualifications mentioned in section 11 (2) (a), (b), (e), and (f), and possibly (c) also, and the widow the qualifications mentioned in (c), (d), and (h) or (g), then the only other matter for him to decide is whether the applicant is “ attorney appointed for the purpose ” by the widow (section 11 (2) (i)). It is quite obvious from the opening words of section 11 (2) that the words “ the purpose ” mean “ to entitle the applicant to have his name placed on the list of voters.” Hence, the only part of the power which the Magistrate

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need have looked at or had power to consider was that part whereby the applicant was appointed attorney for the purpose of having his name placed in the list of voters. The language clearly indicates that the power does appoint the applicant attorney in express terms for that purpose.

Where a power authorizes an attorney to do several acts, and the power granted is invalid as regards some acts, it does not at all follow that it is invalid as regards some of the matters and valid as regards others with which it is concerned.

The learned Magistrate's reasoning is all based upon a wrong presumption. He thinks that it is the widow who has the right to vote. This is clearly not correct. The very first qualification required of a person to be a voter is that he should be of "the male sex." A widow therefore cannot be a voter. The intention behind the provision in section 11 (2) (i) is that where a widow has the necessary property qualifications, inasmuch as she is not qualified to be a voter herself, her eldest son may vote as if her property qualification was his own, or the widow may authorize some other person to use her property qualification in order to have his name placed on the list of voters. The word "attorney" in paragraph (i) of sub-section (2) of section 11 is inappropriate. The widow herself has no right to be a voter, how can she therefore attorn a right she does not possess? As the widow in this case did not herself possess the right to be a voter, she had no power to authorize or direct the applicant to vote for any particular person. The direction in the appointment that the applicant is to vote for Dr. Rodrigo is mere surplusage and should be disregarded.

There appears to be some misapprehension as to the object of a secret ballot. The main, if not the only, object of a secret ballot is to assure the voter that his vote would be kept secret, so that considerations arising from the misapprehension of his vote being known may not weigh with him in giving his vote. Therefore, the fact that a voter had agreed to give his vote in favour of any particular candidate or had publicly declared how his vote would be given cannot deprive him of his right to vote. The effect of the learned Magistrate's order is to deprive a person entitled to vote of his right to vote because he had tied himself down to vote for some particular candidate, or had publicly declared his intention of voting for that candidate.

I would, therefore, set aside the order appealed from and remit the record for proceedings in due course.

Mr. E. W. Jayawardene, who appeared for the appellant in this appeal, and who appears for the appellants in appeals Nos. 771-778, in which I understand the same point of law is raised, agreed that the decision of this appeal should conclude those appeals.

Let order be entered in those appeals accordingly.

Set aside.