1936 *Present :* **Macdonell C.J. and Poyser J.**

SARAVANAMUTTU *v.* CHAIRMAN, MUNICIPAL COUNCIL, COLOMBO.

S. C. (Inty.) 4 of 1936.

Municipal Councils Ordinance—Order by Chairman erasing name of councillor from list of those qualified to be elected as councillors—Opportunity to councillor to show cause—Assessment of rateable property—Finality of the provisions of section 117 (8)—Municipal Councils Ordinance, No. 6 of 1910, s. 31.

The Chairman of a Municipal Council, before he makes an order under section 31 of the Municipal Councils Ordinance erasing from the list of persons qualified to be elected the name of a councillor upon the ground that he is disqualified, is bound to give the party affected an opportunity to show cause against the order.

Section 117 (8) of the Municipal Councils Ordinance which makes an assessment final for the purpose of the rate to be paid on a particular piece of rateable property is not necessarily final for the purpose of section 31.

THIS was an appeal from an order of the Chairman of the Municipal Council, Colombo, under section 31 of Ordinance No. 6 of 1910, erasing the name of the appellant from the list of persons entitled to be elected to the Municipal Council.

The ground assigned for erasing his name from the list was that at the date of election the appellant was not possessed of all the qualifications required, in that his qualifying property was not of the annual value of Rs. 500 (section 10 (3) (*j*)).

H. V. Perera, for appellant.—Annual value is defined in section 3. A distinction must be made between an assessment for the purpose of rating and the annual value for the purpose of qualification under section 10 (3) (*j*). (*Cooke v. Butler* [1].) The assessment for the purpose of rating may be arbitrary. It is in the landlord's interest to see that it is as low as possible. The tenant is no party to it. For the purpose of section 10 (3) (*j*) it should be open to the tenant to prove the actual rent paid. The Chairman has treated the assessment book as conclusive. It is not even evidence against the tenant. What is evidence, *prima facie* at least, is the revised list under section 42. The section itself makes the list final and conclusive. The appellant should at least have been given an opportunity of showing cause against the order. The affidavits which are not challenged show that the actual rent paid is Rs. 50 per month.

A. E. Keuneman, for respondent.—Section 117 of the Ordinance makes the assessment final for all purposes, not merely for the purposes of rating. The occupier is at liberty to inspect the assessment book and take objections. As a matter of fact the notice of assessment is under 117 (3) to be served on the occupier although the Council as a matter of courtesy sends a copy to the landlord. If no objection is taken the assessment is made final for the year. Under section 31 the appellant need not have been given an opportunity of showing cause. It has been proved to the satisfaction of the Chairman by an inspection of the assessment book that the appellant was disqualified and he has given the necessary notice.

H. V. Perera, in reply.—Section 117 (8) merely enacts that if no objection is taken to the assessment within a month it will thereafter not be possible to take objections. It is final only in that sense and to that extent.

Cur. adv. vult.

March 18, 1936. MACDONELL C.J.—

This was an appeal against an order of January 6, 1936, of the Chairman of the Municipal Council of Colombo, under section 31 of Ordinance No. 6 of 1910, erasing the name of the appellant from the list of persons entitled to be elected to the Municipal Council.

The facts were that the appellant had on November 7, 1935, been elected unopposed a councillor for the Ward of St. Paul's, Colombo, for a period of three years, January 1, 1936, to December 31, 1938. The ground assigned for erasing his name from the list of persons entitled to be elected to the Council is given in the letter of January 3, 1936, written by the Chairman of the Municipal Council, the respondent, to the appellant, as follows :—

> "I have the honour to refer to the list of persons qualified to be Municipal Councillors published in *Gazette* No. 8,142 of Friday, August 30, 1935, in which your name appears as qualified by reason of the fact

[1] *L. R. 8 C. P. 256.*

that you are the occupier of premises No. 344, Wolfendahl street, and to inform you that it has now been brought to my notice that the annual value of these premises is, and was on July 1, 1935, and during the preceding 6 months, Rs. 400 only, *i.e.*, less than the minimum required by section 10 (3) (*j*) of Ordinance No. 6 of 1910, viz., Rs. 500.

"I have therefore no alternative but to give you notice as required by section 31 of Ordinance No. 6 of 1910, that I propose to order that your name be erased from the list of persons entitled to be elected and that you will thereupon cease to be a Councillor".

The appellant replied in a letter of January 4, 1936, (R 2) :—

"In reply to your letter No. 1 of yesterday's date, I have the honour to state that I engaged house No. 344, Wolfendahl street, on a monthly rental of Rs. 50 from June 1, 1932. Owing to my spending Rs. 225 for installing electric lights and lighting, I was paying Rs. 7.50 less per month (*i.e.*, Rs. 42.50) by arrangement with the agent of the owner from whom I rented the house, until this of Rs. 225 was liquidated. From December, 1934, up to date I have been paying Rs. 50 per mensem as house rent.

"2. I applied to have my name inserted in the lists of those qualified to be Councillors in 1934. The Revenue Inspector told me that as my rent receipts at that time were only for Rs. 42.50 per mensem, my name could not be inserted. I then told the Revenue Inspector that I would be paying Rs. 50 a month very soon, and that he should insert my name at the next year's revision of the lists. In 1935 when the lists were revised, the Revenue Inspector called and verified the house rent receipts and questioned the agent of the landlord to whom I pay rent, and had my name inserted in the lists.

"3. Please be good enough to let me know whether you are holding an inquiry into this matter before taking any action to order the erasure of my name from the lists, to enable me immediately to prepare and present an appeal to the Supreme Court".

The Chairman of the Council, the respondent, further replied in a letter of January 6 (R 3) :—

"In reply to your letter of the 4th instant, I have the honour to point out that in so far as the qualification of a Councillor as distinct from a voter is concerned, it is the annual value and not the monthly rental of the premises occupied that is relevant in the absence of the alternative qualification of ownership.

"2. The erroneous inclusion of your name in the list of persons qualified to be Councillors is a matter that calls for inquiry and I have asked for a report from the Department charged with the duty of compiling the lists.

"3. As I am satisfied that you do not possess all the qualifications required in a Councillor I am unable to defer my order for the erasure of your name from the list of persons qualified to be elected and the order has accordingly been made to-day".

The appellant embodied his letter of January 4 in an affidavit which was before us, and supported it by an affidavit from his landlord.

The appeal before us involves an examination of certain sections of the Municipal Councils Ordinance, No. 6 of 1910. That Ordinance provides in section 40 that the Chairman shall in July of every year in which the triennial elections are to take place (1935 was such a year) prepare new lists of persons duly qualified to be elected and of persons duly qualified to vote for each division in the Municipality. The same section says that such lists, when prepared, shall be published in the *Gazette* as near as may be to the 31st of August. Section 41 provides the procedure by which names that have been omitted can be inserted, and names which have been inserted can be erased. Then comes section 42 which reads as follows :—

> " The new and revised lists so prepared shall be certified under the hand of the Chairman during the last week of the month of October of each year, and when so certified shall be final and conclusive, and the only evidence of the qualification of the persons and the companies whose names appear therein to be elected or to vote respectively. No person or company whose name does not appear in such lists shall be entitled either to be elected or to vote at any election, and such new and revised lists, until the same are in turn superseded, shall supersede and take the place of the lists previously in force ".

The wording of section 42 is peremptory ; the lists when certified are to be final and conclusive and the only evidence of the qualification of a person to be elected, the point in dispute here. As the appellant's name confessedly was in the new list, certified in October, 1935, then under section 42 it would appear that he was conclusively entitled to be elected. But we have to consider also the effect of section 31, which reads as follows :—

> " If at any time it is proved to the satisfaction of the Chairman that any Councillor was at the date of his election not possessed of all the qualifications required by this Ordinance in respect of persons entitled to have their names placed on the list of persons qualified to be elected, or at such date was under any of the disqualifications specified in this Ordinance, or that such Councillor has since his election ceased to possess such qualifications, or become subject to any one of such disqualifications, the Chairman is hereby required after notice to such Councillor to order the erasure of the name of such person from the list of persons entitled to be elected, and the Chairman shall erase such name from such list, and the Councillor whose name is erased shall thereupon cease to be a Councillor.
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> " Provided, however, that every order of erasure so made by the Chairman shall be subject to an appeal to the Supreme Court. . . . . The Supreme Court shall also make such order as to costs as it shall deem just ".

These two sections then, 42 and 31, are not, on their wording, easy to reconcile. Section 42 says that the certified list shall be final and conclusive, and as confessedly the appellant's name was on that list it would

seem conclusive that he had a right to be elected as has been said above, but section 31 at the same time gives the Chairman power to declare that a person elected ceases to be a Councillor on the ground that he was not at the time of his election possessed of all the qualifications required. These qualifications are to be found in section 10 of the Ordinance, and sub-section (3) (*j*) of that section gives as one of the qualifications that the person claiming to be elected "Is on the 1st of July in such year, and has been during the whole of the then last preceding six months, in occupation of any house, warehouse, counting-house, shop or other building (in this section referred to as qualifying property) of the annual value of not less than five hundred rupees, within the division for which he desires to be elected". The respondent filed an extract from the assessment book showing that the qualifying property of the appellant, namely, 344, Wolfendahl street, was only assessed at Rs. 400". This assessment had been made under the provisions of section 117 of the Ordinance which provides how property should be valued for the purpose of rates, and, says sub-section (8) "every assessment against which no objection is made shall be final for the year".

The first difficulty before us is to try and reconcile sections 42 and 31. As to this, there is the case *Jayawickreme v. Cassim*[1], which is binding upon us. In his judgment at page 355, Garvin J. says as follows: "Section 42 does undoubtedly make the lists final and conclusive and the only evidence of the qualifications of a person to be elected. Its effect and, I think, the only effect intended by the legislature was that any question as to the right of a person to be elected was to be determined by the simple test, is his name upon the lists or is it not. It definitely excludes evidence which is directed to show that notwithstanding the presence of his name on the lists he was a person who in fact had not the qualifications required by the Ordinance before a person is entitled to have his name placed upon such lists. It is not inconsistent either with the terms of that section or with its purpose and effect that a power should be vested in the Chairman to erase from the lists the name of a Councillor who after election was proved to his satisfaction to have been under a disqualification at the date of his election, whether that disqualification arose subsequent to the time his name was entered upon the lists or whether it existed at the time when the lists were being prepared. Section 42 does not say that the lists shall be final and conclusive and the only evidence in the case of a Councillor of the possession by him of the qualifications required to have his name entered in such lists or of the presence or absence of circumstances which the law declares to be a disqualification to his name being entered upon such lists. All it does say is that the lists shall be conclusive of his right to be elected. Indeed, section 31 assumes that he has been lawfully elected, for throughout the section a language is used which implies that the person concerned is a Councillor duly elected and hence it is that the section specially provides that 'the Councillor whose name is erased shall thereupon cease to be a Councilor'. No question of his right or 'qualification to be elected' arises, the question for determination being whether or not such a Councillor was at the date of his election possessed of all the qualifications

[1] *34 N. L. R. 352.*

required in respect of persons entitled to have their names placed upon the list of persons qualified to be elected or at such date was under any of the disqualifications specified in the Ordinance. The provision vesting in the Chairman the right to remove from the list of persons entitled to be elected the name of a Councillor who at the date of his election is shown to his satisfaction to have been a person who was not entitled to have his name upon such list is not in my opinion inconsistent with the other provision which makes the list the sole evidence of his qualification to be elected. His election remains a good election. The mere erasure of his name from the list of those entitled to be elected does not involve a declaration that his election was bad or unlawful. The consequence which the law attaches to the erasure is that he ceases to be a Councillor. It is impossible to give section 31 any other meaning than that which is implicit in the plain language employed by the legislature.

"The appellant has been clearly shown to have been suffering from a disqualification at the date of his election. The Chairman was therefore right in erasing his name from the list. The consequence which the law attaches to such erasure is that the appellant ceases to be a Councillor."

In this particular case then the claim of the respondent is that granted the name of the appellant was on the final and conclusive list certified in October, 1935, section 42, still the Chairman, having discovered that at the date of his election, November 7, 1935, the appellant was "not possessed of all the qualifications required" in that his qualifying property was not of the annual value of Rs. 500, section 10 (3) (*j*), was justified in erasing the appellant's name from the list of persons entitled to be elected. As has been said, the decision in 34 N. L. R. 352 is binding upon us, and the only remaining question is whether the Chairman (respondent) properly exercised the powers vested in him by section 31, which are the powers he purports to have used in this matter.

It was argued to us very strenuously that we must follow implicitly the words of section 31, and that that section requires only that it should be "proved to the satisfaction" of the Chairman that the person in question was not at the date of his election possessed of all the qualifications required, that the Chairman is under no obligation to hold an inquiry at which the person to be affected by his order would be present, and that all that is needed when it has been proved to the satisfaction of the Chairman, as above, is to give notice to the person affected and thereafter to make the erasure of his name. Admittedly the Chairman (respondent) has done this thing. He has declared that it is proved to his satisfaction that the appellant was not at the date of his election possessed of all the qualifications, he has given notice to the appellant and then made his order.

We cannot accede to this interpretation of section 31. That section vests in the Chairman powers which may fairly be called judicial powers. The fact has to be proved to his satisfaction, and proof means evidence, with an opportunity to the person to be affected himself to lead evidence, and we do not see anything in the words of the section which would take

away this right from the person affected or would give to the Chairman the confessedly arbitrary and unusual power of determining the whole matter without giving the person to be affected a chance of being heard. True, the section may not be very happily worded, but the requirements in it that a certain matter must be proved to the satisfaction of the Chairman and that he is required to give notice to the person to be affected, are best interpreted as meaning that whatever proof the Chairman may have received *ex parte*, still, after he has given notice to the person to be affected he should then give that person the opportunity to show cause against the *primâ facie* case that has been made against him. In this case the appellant did ask for an inquiry by the Chairman before taking action, though he somewhat precipitately said that he made that request to enable him to prepare and present an appeal to the Supreme Court. Still he did ask for an inquiry.

For the respondent it was strongly urged upon us that the provision in section 117 (8), "every assessment against which no objection is made shall be final for the year", deprived the appellant of any right to contest the assessment for St. Paul's Ward in which assessment his qualifying property appears as of the annual value of Rs. 400 only. We are doubtful of this argument and incline to the view that since section 117 is in that part of the Ordinance which deals with rates and taxes, and is itself a section dealing with the same subject, a section providing how the Chairman shall enter up each year the annual value of each piece of property to be rated, of how notice of that annual value is to be given to the party to be rated, of how objections to that annual value may be raised and decided upon, section 117 (8) makes the assessment final for the purpose of the rate to be paid on any particular piece of rateable property but not necessarily final for the purpose of section 31. As has been said above, the Chairman of the Municipal Council, acting under section 31, must, after notice to the person to be affected, give that person the opportunity to state his case.

We were invited by the appellant to declare that he had proved that the annual value of his premises was Rs. 500 and over. The materials before us are quite insufficient to justify us in making any pronouncement on that disputed fact. We prefer to make on this appeal the following order.

The order of the respondent, dated January 6, 1936, is set aside *pro forma*, and the matter is returned to the respondent for him to determine, after notice to the appellant, on the materials now before the Court and on any other materials that may be brought forward *pro* and *con*, as to the question whether at the time of his election the appellant was possessed of all the qualifications required. We would at the same time draw the attention of the respondent to the case *Cooke v. Butler*[1] where Bovill C. J., at page 257 draws a distinction between "rateable value of £ 12 or upwards" and "rated at £ 12".

The appellant, having substantially succeeded, must have the costs of this appeal.

POYSER J.—I agree.

Order set aside.

[1] *L. R. 8 C. P. 256.*

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