1932 *Present :* **Jayewardene A.J.**

INASITAMBY *v.* GOVERNMENT AGENT, NORTHERN PROVINCE.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *Mandamus.*

Mandamus—*Election to Village Committee—Method of voting—Candidate acquiescing in method of election—Discretion of Court—Consequences of issue of writ.*

A candidate at an election to a Village Committee who has acquiesced in the method of voting adopted at the meeting is estopped from applying for a writ of *mandamus* on the ground that the procedure was irregular.

Where a candidate is proposed for election it is not necessary to record the number of votes cast against him.

A Court before issuing a writ of *mandamus,* is entitled to take into consideration the consequences which the issue of the writ will entail.

APPLICATION for a writ of *mandamus* on the Government Agent of Northern Province.

H. V. Perera (with him *S. Alles*), for petitioner.—This is an application based on section 12 (2) of the Village Communities Ordinance, No. 9 of 1924. The question of the election of members to a Village Committee is a question or resolution under this section and therefore has to be determined by a majority of the votes of those present. This procedure suggests that those against a particular member are entitled to have their votes recorded. Section 12 (3) gives the presiding officer a casting vote and therefore we must suppose that the votes for and against a particular individual have been taken. Section 13 (1) distinctly states that " at any meeting all questions and resolutions proposed thereat and the number of votes given for and against the same " shall be entered in the minutes. It does not necessarily follow that all those who do not vote for a particular candidate are against his election, because there may be many who may refrain from voting. This method presupposes the fact that the presiding officer knew the exact number of voters present, and in his own statement he says the number was between 600 to 700. A voter does not exercise his privilege by merely sitting in the hall, but by putting up his hand for or against the election of a particular candidate.

M. W. H. de Silva, Acting Deputy S.-G. (with him *H. Basnayake, C.C.*), for respondent.—This election was really under section 22 of Ordinance No. 9 of 1924. The Government Agent adopted the most practical method for the election of committee members. As the number of committee members is fixed, it is not possible to elect them one by one according to the majority of votes cast for or against each, as then the number elected may be less or more than the number required. As the petitioner acquiesced in the procedure adopted by the presiding officer, he is now estopped from impeaching the validity of the election.

Counsel cited *R. v. Slythe*[1]; *R. v. Parry*[2]; *Madanayake v. Schrader et al.*[3]; *Wijeratne v. Obeyesekere*[4]; *Kartigesu v. Government Agent, Northern Province.*[5]

S. Alles, in reply.

June 6, 1932. JAYEWARDENE A.J.—

The Government Agent, Northern Province, issued a notice dated April 1, 1932, convening a meeting of the inhabitants of the subdivision of Pandaterippu comprising six villages to be held at St. Anthony's Church premises, Mathakal, on Thursday, May 5, 1932, at 3.30 P.M., for the purpose—

(a) of deciding the number of members (not less than six) to serve on the Village Committee to be elected for the subdivision and of electing such a Village Committee to hold office for three years from July 1, 1932, and

(b) of deciding whether the power of making rules should be delegated to such committee.

A meeting was accordingly held, and it was duly decided that a committee of forty be elected. Thereafter the election of the committee of forty took place. The petitioner states that the Government Agent proceeded to read out the names mentioned in two lists handed up to him by two of the persons present at the meeting and he took the votes of those *in favour* of the election of each of the persons whose name appeared in the lists handed to him, but did not ascertain the number of votes *against* the election of any of the said persons. Having ascertained the number of votes in favour of the election of any of the said persons, the Government Agent declared that the candidates who had secured the largest number of votes in their favour ranging from 649 to 289 were duly elected. The Government Agent gives a slightly different version in his affidavit, and the difference to my mind is not of much importance for the decision of the point raised at the argument. According to him three lists, marked A, B, and C, were handed to him for the purpose of being put up for election. Five names from each list were put to the vote alternately. The Mudaliyar announced the name of each candidate as it was put to the vote, and the candidate took up a position from which he could be seen by the voters. The name of the petitioner, who is the Chairman of the outgoing Village Committee, was announced first and the votes for him taken. He secured only 291 votes out of about 700 present. No protest was made against the procedure that was adopted and followed in the election of the committee, although according to the petitioner about two and a half hours elapsed in the election of the committee.

It is contended on behalf of the petitioner that the method of election of the members of the committee is contrary to the provisions of section 12 (2) of Ordinance No. 9 of 1924. That section provides that all questions

[1] *6 B. & C. 240.*
[2] *6 Ad. & E. 810.*
[3] *29 N. L. R. 389.*
[4] *30 N. L. R. 153.*
[5] *31 N. L. R. 141.*

or resolutions shall be determined by a majority of the votes of those present and entitled to vote, and the next section say that the Government Agent shall enter or cause to be entered in the minutes of every such meeting the questions or resolutions proposed thereat and the number of votes given *for and against* the same. It is argued that the Government Agent was in error in not calling for the votes *against* each candidate for membership of the committee after recording the votes in his favour. In effect, that it was a question under section 12 (2) of the Ordinance, whether each candidate whose name was put to the meeting should be elected to the committee or not, and if, for example, in the case of the petitioner who secured only 291 votes, there were only 100 adverse votes, he still had a majority of 191 votes and the question must be answered in the affirmative and the petitioner should be declared elected.

In the election of committees, it is not customary to record the votes against a candidate whose name has been proposed, nor indeed are such votes recorded in any election. Counsel could not draw my attention to any instance or any case in which that had been done. Section 22 of the Ordinance No. 9 of 1924 provides for the election of committees and sub-section (2) enacts that the voting shall be by ballot if so provided for by rules made under section 29. Voting by ballot would do away with the necessity of the show of hands or of saying "aye" and would secure secrecy—but in voting by ballot, no adverse votes but only votes in favour of a candidate are recorded. I do not think that section 13 (1) when it provides that the Government Agent shall enter in the minutes the number of votes given for or against a question or resolution can be construed as affecting or altering the customary mode of electing the members of a committee. I am therefore unable to hold that there was any irregularity in this respect.

In his affidavit the Government Agent says that no rules for voting by ballot have been made under section 29, and in the absence of such rules he considered the method which he adopted to be the only practicable one of electing a fixed number of members. At the argument, other methods were discussed, but as far as I could understand no other method was feasible. The Government Agent has successfully adopted this method of election at 36 other elections held this year in the Northern Province, and probably this method has been followed at many other meetings in the other Provinces in the Island. The grant of a writ of *mandamus* is a matter for the discretion of the Court. It is not a writ of right and it is not issued as a matter of course. The writ may be refused not only upon the merits, but also by reason of the special circumstances of the case (*10 Halsbury 78*). The exercise of the discretion must of course be governed by certain principles. The Court has the power but in a particular case may think that it is not advisable to grant a writ (*Rex v. Leicester Union*[1]). In *Rex v. Garland*[2] the Court rested the refusal entirely on the special circumstances of the case, Cockburn C.J. explaining the circumstances to be that the effect of granting the *mandamus* would be most prejudicial. That principle was affirmed in

[1] (1899) 2 Q. B. 632, 637.

[2] (1870) L. R. 5 Q. B. 269.

Rex v. Churchwardens of All Saints, Wigan.[1] Lord Chelmsford said "The Court may refuse to grant the writ not only upon the merits, but upon some delay or other matter, personal to the party applying for it; in this the Court exercises a discretion which cannot be questioned".

It has been held, however, that the discretion must be exercised according to well-settled principles, and where the duty is purely ministerial, a writ of *mandamus* will be issued (*King v. Bishop of Sarum*[2]). These principles were adopted in the local case of *Madanayake v. Schrader*[3].

On a motion for a *quo warranto* information it was held in *King v. Parry*[4] that it was discretionary in the Court to grant or withhold the application, even where a good objection is shown, and the Court refused a rule on the ground that no fraud was imputed, that no mischief appeared to have been done, and that the prosecution, if successful, would probably dissolve the corporation, and that the prosecutors appeared to have that intention. The principle governing both writs of *mandamus* and *quo warranto* are similar. It cannot be stated as a proposition of law, or a settled point of practice that leave to file an information will not be granted, merely because the effect may or even will be to dissolve the corporation. The Courts have in some cases permitted these informations to be filed, where the effect has been thereby to dissolve the corporation, but that has been where strong cases have been made out. Lord Mansfield treats the discretionary power of the Court not as a matter disputed or requiring proof, but as a settled principle to be applied (*Rex v. Dawes*[5] and *Rex v. Marten*[6]). He states the grounds on which the Court proceeded in their application of the principles. First, the light in which the relators, informing the Court of the defect of title, appear from their behaviour and conduct. Secondly, the light in which the application itself manifestly shows their motives, and the purpose which it is calculated to serve. Thirdly, the consequences of granting the information.

In *Rex v. Slythe*[7] Abbott C.J. observed "If this rule were made absolute, we might be called upon in the very next term to grant hundreds of the same description, to the disturbance of almost every corporation in the Kingdom. This consideration might suffice to make us discharge the rule even if some slight doubt existed".

Then it was contended for the respondent that the petitioner was present and acquiesced in the election of the members of the Village Committee. In fact, he was himself put forward, and he procured 291 votes. It is a general rule of corporation law that a corporator is estopped from coming forward as a relator to impeach a title conferred by an election in which he has concurred (*Rex v. Lane*[8] and *Rex v. Cobb*[9]). It is a valid objection to a relator that he was present and concurred at the time of the objectionable election even though he was then ignorant of the objection, for a corporator must be taken to be cognizant of the contents of his own charter and of the law arising therefrom (*Rex v. Trevanon*[10]). Where a corporator has attended and voted at a meeting, he will not be allowed

[1] (1876) 1 *A. C. 611, 620.*
[2] (1916) 1 *K. B. 466.*
[3] *29 N. L. R. 389.*
[4] *6 Ad. & E. 810, 112 E. R. 311.*
[5] *1 W. B. 634.*
[6] *4 Burr. 1962, 2022, 2120.*
[7] *6 B. & C. 240. 108 E. R. 441.*
[8] (1827) *9 Dow. Ry. K. B. 183.*
[9] *4 Dow. & Ry. M. C. 293.*
[10] *2 B. & Ald. 339 & 479. 106 E. R. 361.*

to become a relator, unless he shows that at the time of the election he was ignorant of the objection subsequently taken (*Rex v. Slythe (supra)*). A relator who has acquiesced in and himself adopted the mode of voting he now objects to, is disqualified from applying for a rule (*Rex v. Lofthouse* [1]), and a rule will not be granted to a relator who has participated in the alleged irregularities on which he based his application (*Rex v. Colclough* [2]). The petitioner took part in the election and was himself a candidate. I think that he cannot ask for a rule.

The observations of Lord Denman C.J. in *The King v. Parry (supra)* are worthy of note : "The difficulties that might attend the reconstruction of corporations once dissolved, and the important functions now vested in municipal bodies, would induce increased circumspection in our proceedings. The inferior officers ought, indeed, to conform with care to the provisions of the law : the wilful departure from them this Court will visit with severity; and even negligence may not always escape animadversion; but our discretion as to the issuing of *quo warranto* informations must be regulated by a regard to all the circumstances which attend the application and all the consequences likely to follow. Upon the whole, for the reasons stated, we think we act most in accordance with the current of authorities, with the Statute, and with the public interest, in refusing the permission."

The principles enunciated in these cases appear to me to be applicable to the present case. In my view this is not a case in which a writ of *mandamus* should issue. The application is therefore refused and the rule discharged with costs.

Application refused.