

Government Agent adjourned the meeting to the premises of the Resthouse for 3.30 P.M., after notice to those present.

Weerasooria (with *Nadarajah*), for applicant.—The election is void. The notice convening the meeting fixed a certain time and place; the meeting was in fact held at a different time and place; the provisions of sections 8, 9, and 10 (1) are imperative; the Presiding Officer purported to act under section 10 (2). The word "adjourn" in sub-section (2) must be taken as used in the popular sense of deferring or postponing the meeting to a future day. *Stroud's Judicial Dictionary*, p. 40 (2nd ed.); *Fitzgerald's Case*¹; *Wood-Renton's Encyclopaedia*, p. 168; derivation in *Imperial Dictionary*. The non-observance of an imperative provision makes the election void (*Writ of Mandamus on Government Agent, Northern Province*,² also *Miller & Co. v. Government Agent, Province of Uva*³). There were also a number of irregularities which vitiated the election; the principles of conducting an election have been ignored. There is no provision in the Ordinance *re* details, if so the ordinary principles would apply (*Rambukwelle v. De Silva*⁴). The decision in *Kartigesu v. Government Agent, Northern Province*,⁵ is in conflict with *Writ of Mandamus on Government Agent, Northern Province (supra)*.

Crossette Thanbiah, C.C., for first respondent.—The remedy sought is inappropriate. The office is *de facto* full and the application, if any, should have been by way of an information in the nature of *quo warranto*.⁶ The first respondent having carried out the statutory duty imposed on him, no *mandamus* can lie.⁷ In any event, the writ is discretionary and will not issue where the officer concerned has acted *bona fide* and in the best exercise of his discretion, even though upon an erroneous construction of the law or in one way rather than in another.⁸

1930

Present : Maariensz A.J.

In the Matter of an Application for a Writ of *Mandamus* on the Assistant Government Agent, Kalutara.

DAVIT PERERA v. ASSISTANT GOVERNMENT AGENT, KALUTARA.

Village Committee—Meeting of inhabitants—Power of Government Agent to adjourn meeting—Another time and place on the same day—Village Communities Ordinance, No. 9 of 1924, s. 10 (2).

The power given to a Government Agent, under section 10, sub-section (2), of the Village Communities Ordinance to adjourn a meeting held for the purpose of electing a Village Committee, entitles him to adjourn the meeting to another time and place on the same day.

THIS was an application for a declaration that the election of the second to twenty-eighth respondents as members of the Village Committee for the subdivision of Gangaboda was void and for a *mandamus* on the Assistant Government Agent of Kalutara, directing him to hold a fresh election. The principal ground on which the election of the committee was attacked was that the meeting was held at a place other than that fixed in the notice given of the meeting. It appears that the meeting commenced at the Gansabhawa Court, the appointed place. When the first resolution was passed, the

¹ *L. R. Q. B.* 10. ⁶ *31 N. L. R.* 141; *7 T. L. R.*

² *28 N. L. R.* 323. ⁹⁴ *5 T. L. R.* 46.

³ *30 N. L. R.* 6. ⁷ *28 N. L. R.* 417.

⁴ *26 N. L. R.* 231. ⁸ *7 T. L. R.* 94; *29 N. L. R.*

⁵ *31 N. L. R.* 141. ³⁸⁹; *30 N. L. R.* 81;

²⁶ *N. L. R.* 211.

The procedure adopted by the first respondent in regard to the conduct of this meeting was not *ultra vires*. The plain words of section 10 (2) suffice. The Chairman of a meeting has *prima facie* authority to decide all emergent questions (Blackwell on *The Law of Meetings*, pp. 14, 35 *et seq.*; *In re Indian Zoedone Co.*¹). The adjournment was the act of the Chairman and not of the meeting. The popular meaning of the word "adjourn" need not govern the discretion vested in a Chairman. Even popularly, Courts of law and meetings of legislative assemblies are known to "adjourn" for half an hour for tea. The adjourned meeting was but a continuation of the first meeting; it was the same meeting (*The King v. Archdeacon of Chester*²; *Rex v. Church Wardens of St. Mary's*³; *Salisbury Gold Mining Co. Ltd. v. Hathon and others*⁴). Counsel also cited (1869) 5 L. R. (Q. B.) 1; 3 *House of Lords Reports* 418; 6 *Jurist (H. L.)* 383.

Francis de Zoysa, K.C. (with *Kottegoda*), for eighth respondent.

E. F. N. Gratiaen, for ninth respondent.

Athulathmudali, for twenty-fourth, third, fourth, fifth, seventh, and nineteenth respondents.

August 8, 1930. MAARTENSZ A.J.—

This is an application to this Court to declare the election of the second to twenty-eighth respondents as members of the Village Committee for the subdivision of Gangaboda at a meeting of the inhabitants held on May 27, 1930, void and for a writ of *mandamus* on the first respondent, the Assistant Government Agent of Kalutara, directing him to hold a meeting for a fresh election.

The election is impeached on the various grounds set out in the petition. All but one of them are based on alleged irregularities in the mode of election. I do not

propose to examine them in detail as I have already held in *Karthigesu v. Government Agent, Northern Province*,¹ that a *mandamus* will not lie to compel the holding of a fresh meeting on the ground that there were irregularities in the mode of electing the members of the committee at a meeting held in accordance with the provisions of the Village Communities Ordinance, No. 9 of 1924.

The main ground on which the election of the committee is attacked is that they were elected at a meeting held at a place other than the place appointed in the notice given as required by the provisions of section 9 of the Village Communities Ordinance, No. 9 of 1924.

The notice convening the meeting stated that a meeting would be held "in the Gansabhawa Court at 2.30 P.M. on Tuesday, May 27, 1930, for the purpose of selecting a new committee for the said subdivision (Gangaboda Pattuwa in Pasdun korale east, in the District of Kalutara) in accordance with the said Ordinance, for a period of three years."

The meeting commenced at 2.30 P.M. in the Gansabhawa Court.

The notice convening the meeting was read, the purpose of the meeting explained to those present, and a resolution that the Chairman shall be elected was passed.

Then follows this note in the minutes:—

At this stage the crowds surged in such large numbers round the Village Tribunal that adjournment to the Resthouse premises was found absolutely necessary and the meeting accordingly was held in the Resthouse premises at 3.30 P.M., after due notice was given to the inhabitants.

It was contented that the Assistant Government Agent had no power under section 10, sub-section (2), of the Ordinance No. 9 of 1924 to adjourn the meeting to another place on the same day.

Section 10 (1) enacts that every meeting shall be held at the time and place appointed, and shall be presided over by the Government Agent.

¹(1929) 31 N. L. R. 141.

¹(1884) 26 L. R. c. 70.

²(1834) 1 Ad. & E. 342.

³1 Ad. & E. 346.

⁴(1897) L. R. A. C. 268.

Sub-section (2) that "such Government Agent (the expression Government Agent includes the Assistant Government Agent of a district) shall for reasons to be recorded in the minutes hereinafter referred to have power to adjourn any meeting, as often as need be, to a time and place to be mentioned by him at the time of directing such adjournment."

Petitioner's counsel contended that the words "have power to adjourn any meeting" empowered the Government Agent to adjourn the meeting for another day, but did not empower him to adjourn the meeting for a subsequent time on the same day.

The argument in support of this contention was that the word "adjourn" meant that the Government Agent could suspend the meeting for a future date.

The meaning given to this word in the Imperial Dictionary was referred to, where the general meaning is given as "To put off or defer to another day or till a later period". The meaning relied on was the specific meaning which is given as "To suspend the meeting of a public or private body to a future day".

In *Wood Renton's Encyclopaedia*, p. 168, it is said that "Adjournment properly signifies the act of continuing the session, or postponing the deliberations of an assembly or meeting to another time or place. Usually an adjournment is *ad diem*, to a day named, but it may also be indefinite, the Latin formula then being *Eat sine die*. Sometimes the term is employed to indicate the interval between a meeting, and its continuation on a subsequent day".

The words "Usually an adjournment is *ad diem* to a day named" were emphasized as supporting the argument that "adjourn" means to another day. I am not impressed by this argument. The passage read as a whole indicates clearly that adjournment signifies the act of continuing the session or postponing the meeting to another time or place. The passage emphasized merely states that a meeting is usually adjourned to a day named, not

sine die. There is nothing in the passage to show that the adjournment cannot be for another time on the same day.

I have read through the whole article, which at best lays down that an adjournment is usually for another day; it nowhere lays down that a meeting cannot be adjourned for another time on the same date.

The question before the Court in Fitzgerald's case (1869-1870) *L. R. 5 Q. B. p. 1*, was whether two out of three of the commissioners appointed under Act 15 & 16 Vic. c. 57 to inquire into the existence of corrupt practices had power under section 4 of the Act to adjourn a meeting to another day.

Mellor J. in the course of his judgment said that "the word 'adjourn' (in the section) must be taken as used in the popular sense of deferring or postponing the inquiry to a future date".

The dictum of Mellor J. is not an authority for the proposition that the word "adjourn" does not mean a deferring or postponing to another time on the same day, for that was not the question before the Court.

The reply to this contention was that section 10 gave the first respondent power to adjourn the meeting to another time on the same day and that in the absence of any words to that effect the popular meaning of the word "adjourn" did not govern the discretion vested in the first respondent.

The cases cited in reply were *The King v. Archdeacon of Chestor*¹ and *Rex v. Church Wardens of St. Mary's*.²

Neither of them are of assistance.

In the former case the notice convening the meeting at the Parish Church announced that if a poll was demanded the meeting would be immediately adjourned to the Town Hall. The legality of the meeting at the Town Hall was questioned, and it was held that it was competent for those who summoned the meeting to say that the meeting shall be held in one

¹ (1834) 1 *Ad. & E.* 342.

² 1 *Ad. & E.* 345.

place, and in a certain event which may require it, shall be removed to another. The legality of the meeting was determined by the terms of the notice and there was no decision as to the meaning of the term "adjourn".

In the latter case the facts are rather similar to the facts in this application, but the rule was discharged without any reasons being given for the decision.

The case of Fitzgerald (*ubi sup.*) was relied on as supporting the respondents' contention, and reliance was placed on the judgments of Lord Cockburn and Lush J.

I have already expressed my opinion that that case is not an authority as to the meaning of the word "adjourn".

I have examined the other authorities cited by the respondents, but I need not discuss them as they only deal with the discretion vested in the Chairman who presides at a meeting under a power similar to section 10 and to decide all emergent questions. (*Salisbury Gold Mining Company, Ltd. v. Hathorn and others*¹; *In re Indian Zoedone Company*.²)

In neither of them is there a determination of the question whether a Chairman has power to adjourn a meeting to another time on the same day in exercise of the power vested in him to adjourn a meeting to a time and place to be mentioned by him at the time of directing such adjournment.

The question in view of the absence of authority must be decided by first impression.

I think that the word "adjourn" as used in the section cannot be limited to a power to adjourn to another day.

A day in reference to civil transactions begins and ends at midnight. Thus a meeting held late in the evening may according to the petitioner be postponed from, to take an extreme case, 11.45 P.M. to 12.15 P.M., but may not be postponed for half an hour within the twenty-four hours.

Webster says that the word "adjourn" means, literally to put off or defer to another day, but adds that it is now used to denote a formal intermission of business.

¹(1897)*L.R.A.C.* 268. ²(1884)*L. R. Chancery* 70.

Chambers 20th Century Dictionary says that the word means "to put off to another day; to discontinue a meeting in order to reconstitute it at another time or place".

According to the New Oxford Dictionary it has several meanings:

It means, generally, "to defer or put off (a time, action or state) (prop.) to another day; also indefinitely to postpone, defer, put off".

To adjourn a meeting means "to put off or defer its further proceedings to another day, to discontinue or dissolve it in order to reconstitute it at another time or place".

As regards persons met for business it means "to suspend proceedings and disperse for a time agreed upon or *sine die*, that is, without specifying any day for reassembling. Also to separate to meet at another place, hence to remove the place of meeting without the intervention of any time save that occupied by the change of place.

I am of opinion in view of the several meanings attached to the word "adjourn" that the section cannot be construed as meaning that the meeting must be adjourned to another day.

It was argued that the meaning contended for must be given to the word "adjourn" as otherwise those who arrived after the meeting was adjourned might not have the time to reach the other place to which the meeting was adjourned. I am not prepared to uphold this argument. Those who are late for a meeting cannot be allowed to complain that they were deprived of the opportunity of attending the adjourned meeting. They cannot, as counsel for the respondent said, seek to take advantage of their own default.

The Chairman in this case complied with the provisions of the section by naming the time and place to which the meeting was adjourned, and in the absence of definite authority I am not prepared to hold that he was bound under the provisions of the section to adjourn the meeting to another day.

The objection that the ninth respondent, Dharmasena Muttukuda, was not qualified to be elected a member of the committee on the ground that he had been convicted of theft was not pressed.

The charge that the poll was not closed at the same time for both lists of members proposed for election to the committee is denied by the presiding officer. It is not suggested that the relator raised this objection at the meeting and I am not prepared to direct an inquiry regarding the charge.

The last charge, that the chief headman used undue influence in canvassing for votes is, even if it is a charge, on which an order for a *mandamus* would lie, too vaguely formulated to be worthy of consideration.

The application is dismissed. The petitioner will pay the costs of the respondents. The second to twenty-eighth respondents will be entitled to only one set of costs.

Rule discharged.

