

Present: Maartensz A.J.

1927.

In the Matter of an Application for a Writ of *Quo Warranto*
to set aside the Election of the Chairman of the Village
Committee, Kosgoda.

*Writ of quo warranto—Village Committee—Election of Chairman—No
quorum—Validity—Ordinance No. 9 of 1924.*

Where no provision was made by the Village Communities Ordinance for the Village Committee elected thereunder acting through a quorum, the appointment of a Chairman at a meeting of the Committee, at which all its members were not present, is not valid.

A PPLICATION for a writ of *quo warranto* against the respondent, the Chairman of the Village Committee of Kosgoda.

The petitioner, the respondent, and eighteen others were elected members of the Village Committee of Kosgoda for a period of three years, commencing from July 1, 1927, under section 14 of the Village Communities Ordinance, 1924.

At the meeting at which the Committee was elected, it was resolved that the Chairman of the Committee should be elected by the Committee. As the Ordinance makes no provision for the convening of the Committee, three members, including the petitioner and the respondent, took upon themselves to call such a meeting, and notices were accordingly issued. It is admitted that only thirteen members were present when the meeting commenced, of whom only ten were present and voted when the election of the respondent was proposed and seconded.

Hayley, K.C. (with him *H. V. Perera*).—In the absence of any provision for a quorum, it is submitted that all the twenty members of the Committee should have been present at and participated in the meeting which purported to elect the respondent.

Counsel cited *Browne v. Andrew*¹ and *In re The Liverpool Household Stores Association Ltd.*²

Only ten members were present and ten votes recorded at the stage of the meeting when the respondent was elected; the respondent, therefore, has not been elected by a majority of the members forming the Committee.

Keuneman (with him *Ferdinands*).—*Browne v. Andrew* (*supra*), turns on the question of the authority of some of a number of co-agents to bind a principal; the principle of this case applies only as between principal and agent. No such relationship is disclosed here.

¹ (1849) 18 L. J. Q. B. 153.

² (1890) 59 L. J. Ch. D. 616.

1927.
*In the Matter
of Application
for Writ
of Quo
Warranto*

Quo warranto is a high prerogative writ, and should not be made available in the circumstances of this case, because the relator acquiesced in the respondent's election by being present at and participating at (a) another meeting held subsequently in almost identical circumstances for the election of another Chairman and (b) two business meetings held under the Chairmanship of the respondent.

Petitioner's contention, if upheld, will make the working of the Ordinance impracticable and impossible.

H. V. Perera, in reply.—The petitioner had to attend two meetings convened by the respondent. Otherwise he would, under section 24 (b) of the Ordinance, have had to vacate his office.

September 19, 1927. MAARTENSZ A.J.—

This is an application for a writ of *quo warranto* to have it declared that the person (Mr. C. M. Wickremasinghe) now officiating as Chairman of the Village Committee for the subdivision of Kosgoda has no title to the said office.

The petitioner, the respondent, and eighteen others were elected members of the Village Committee of Kosgoda for a period of three years, commencing from July 1, 1927, under the provisions of section 14 of the Village Communities Ordinance, 1924. But no provision was made for this Committee acting by a quorum.

At the meeting at which this Committee was elected it was resolved that the Chairman of the Committee should be elected by the Committee.

The Ordinance makes no provision, and I was informed that rules have not been framed for the convening of a meeting of the Committee to elect a Chairman.

The petitioner, the respondent, and another member of the Committee took it upon themselves to call such a meeting, and notices were issued to the members of the Committee that "a meeting composed of the members of the Kosgoda Village Committee will be held on July 2, 1927, at 2 P.M., at the Kosgoda Village Tribunal Hall, for the purpose of electing a Chairman from among the Committee Members of the Kosgoda Village Committee who have been elected for three years, commencing from July 1, 1927, for the Village Committee of Kosgoda in Bentota Wallawitti Korale of Galle District."

I need not refer to the conflicting statements as to the circumstances in which the notices issued, as petitioner rested his objections to the election of the respondent as Chairman on what took place at the meeting.

It is admitted that only thirteen members were present when the meeting commenced, of whom only ten were present and voted when the election of the respondent was proposed and seconded.

It was contended (1) that all the members of the Committee must be present for the transaction of business, as neither the rules nor the Ordinance makes provision for the transaction of business by a quorum, and (2) that, in any event, the election was bad as the respondent was not elected by a majority of the members forming the Committee.

In support of this contention I was referred to the cases of (1) *Browne v. Andrew*.¹ The plaintiff in this action sued the defendant, a member of the Provisional Committee of a Railway Company, to recover payment for work and labour done for the Committee. The Provisional Committee had appointed a Managing Committee of eight persons who were directed to take the most energetic measures for carrying out the projected line, but no authority was given to any number less than the whole to act as a quorum. The plaintiff was appointed to take an account of the traffic by a resolution passed by six out of the eight members of the Managing Committee. It was held that where an authority is expressly given to several persons, with no stipulation that any specified number shall form a quorum, they must all join in exercising the authority, and that the defendant was not bound by the order given by six only out of the whole Committee, and was therefore not liable.

(2) *in re The Liverpool Household Stores Association Ltd.*² where it was held that "where a Board of Directors delegate their powers to a Committee without any provision as to the Committee acting by a quorum, all acts of the Committee must be done in the presence of all the members of the Committee to make their acts valid." Kekwich J. also expressed the opinion that unanimity was not necessary to make the acts valid.

(3) *The Queen v. The Mayor, &c., of Bradford*,³ where it was held that the act of a minority of the members of a Town Council is not the act of the Town Council and that the Town Council did not proceed to an election.

In reply I was referred to the case of *Queen v. Ward*.⁴ In my opinion this case does not apply, as the irregularity complained of did not affect the result of the election. Nor do I see the applicability of the other cases cited on behalf of the respondent. In those cases the rule was discharged on grounds which do not arise in the present application.

I am of opinion, on the authority of the cases cited on behalf of the petitioner, that the rule must be made absolute and the election of the respondent set aside, and the respondent declared not entitled to the office of Chairman of the Village Committee of the subdivision of Kosgoda.

The petitioner will be entitled to the costs of this application.

Rule made absolute.

¹ (1849) 18 L. J. Q. B. 153.

² (1890) 59 L. J. Ch. D. 616.

³ (1851) 20 L. J. Q. B. 226.

⁴ (1872-3) 8 L. R. Q. B. 210.

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