1949 *Present :* **Jayetileke S.P.J. and Basnayake J.**

GIVENDRASINGHE, Appellant, *and* DE MEL, Respondent

S. C. 58—D. C. (Inty) Colombo, 19,474

Constitution Order in Council, 1946—Penalty for sitting and voting in Parliament when disqualified—Vests in informer immediately he institutes action—Section 14.

The penalties referred to in section 14 (1) of the Ceylon (Constitution) Order in Council, 1946, become vested in an informer the moment he institutes his action and not when he applies for leave to proceed further under section 14 (2).

APPEAL from a judgment of the District Court, Colombo.

H. V. Perera, K.C., with *E. G. Wikramanayake* and *E. O. F. de Silva*, for plaintiff appellant.

C. S. B. Kumarakulasinghe, with *T. K. Curtis* and *A. I. Rajasingham*, for second respondent.

Cur. adv. vult.

October 26, 1949. JAYETILEKE S.P.J.—

On May 6, 1948, the appellant presented a plaint against the first respondent claiming from him a sum of Rs. 19,000 as penalties under section 14 of the Ceylon (Constitution) Order in Council, on the ground that he sat and voted on 38 days in the House of Representatives as the member for the Colombo South Electoral district, knowing or having reasonable grounds for knowing that he was not at the time of his election qualified to be elected by reason of his interest in a contract with the Government. The section reads :

14. (1) Any person who—

(*a*) having been appointed or elected a member of the Senate or House of Representatives, but not having been, at the time of such appointment or election, qualified to be so appointed or elected, shall sit or vote in the Senate or House of Representatives, or

(*b*) shall sit or vote in the Senate or House of Representatives after his seat therein has become vacant or he has become disqualified from sitting or voting therein,

knowing, or having reasonable grounds for knowing, that he was so disqualified, or that his seat has become vacant, as the case may be, shall be liable to a penalty of five hundred rupees for every day upon which he so sits or votes.

(2) The penalty imposed by the section shall be recoverable by action in the District Court of Colombo, instituted by any person who may sue for it :

Provided that no such action, having been instituted, shall proceed further unless the leave of the District Judge of the Court is obtained.

(3) Where, after the institution of any action in pursuance of the provisions of this section, no steps in pursuit of the action are taken by the person instituting the action for any period of three months the action shall be dismissed with costs.

The District Judge perused the plaint and returned it to the appellant for amendment as it did not specify the dates on which the first respondent was alleged to have sat and voted.

On May 27, 1948, the appellant presented a fresh plaint and moved for a summons on the first respondent. The District Judge accepted it and made an order that summons should not be issued until the appellant obtained leave under section 14 (2) to proceed further.

On July 23, 1948, the second respondent instituted action No. 19,474 against the first respondent claiming the same penalties. In the prayer of his plaint he prayed that he be granted leave to proceed with the action. The District Judge accepted the plaint and ordered notice on the appellant to show cause why his action should not be dismissed unless he proceeds further. On July 28, 1948, the appellant moved that he be granted leave to proceed with his action. The second respondent opposed the application on two grounds: (1) that his application was earlier in date, and (2) that the appellant's action was a collusive one. The appellant filed an affidavit explaining his delay in applying to the Court for leave to proceed further. He stated that after he instituted this action a duly registered voter for the Colombo South Constituency presented a petition to this Court under the Ceylon Parliamentary Elections Order in Council, 1946, against the return of the first respondent as member for the said constituency and he expected the inquiry into the said petition to be over before the period fixed in section 14 (3) for him to take steps expired. The District Judge took the view that the appellant's explanation of the delay could not be accepted, and, even if it could be accepted, the appellant had lost whatever rights he had to the penalties by failing to apply for leave to proceed further under section 14 (2) before the second respondent. He accordingly refused the appellant's application. The appeal is against that order.

The main question that arises for consideration is whether the penalties became vested in the appellant the moment he instituted his action. The law on the point is very clear. In *Grosset v. Ogilvie*[1] the House of Lords said that it is a known rule in law that on filing an information the informer has a right to the penalty vested in him. This principle was accepted in a number of cases which are referred to in the case of *Forbes v. Samuel*[2]. In view of the provisions of section 14 (2) the vesting would, of course, be subject to his obtaining the leave of the District Judge to proceed further. Section 14 (3) gives him the right to make

[1] *5 Bro. P. C. 527.* [2] *(1913) 3 K. B. 735.*

his application to proceed further at any time within three months of his filing the action. If he makes the application within three months the District Judge is bound to consider it under section 14 (2). Section 14 (2) does not specify the grounds on which the District Judge would be entitled to refuse the application. In enacting the sub-section the legislature, perhaps, intended that before allowing summons the District Judge should satisfy himself that a prior action for the recovery of the same penalty was not pending before him. However that may be, it is clear to us that in refusing the appellant's application the learned District Judge has acted on a misconception of the law that the penalties vested in the informer not when he instituted the action but when he applied for leave to proceed further under section 14 (2).

We would accordingly set aside the order appealed against and send the case back for inquiry on the second objection taken by the second respondent. The appellant will be entitled to the costs of appeal and of the inquiry in the Court below.

BASNAYAKE J.—I agree.

Order set aside

1949 *Present :* **Jayetileke S.P.J.**

MARK, Petitioner, *and* A. G. A., MANNAR, *et al.*, Respondents

S. C. 448—Application for Writs of Certiorari and Mandamus against the A. G. A., Mannar

Writs of Certiorari *and* Mandamus—*Statutory requirements relating to performance of a public duty—Circumstances when they will be construed as merely directory —Village Communities Ordinance (Cap. 198)—Object of Section 15 (3).*

When the provisions in a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, the Court would hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.

The object of the provisions of Section 15 (3) of the Village Communities Ordinance as amended by Section 4 of Ordinance No. 11 of 1940 is to give the candidates who are duly nominated sufficient time to get ready for the election. Where, therefore, only one candidate is nominated the failure to observe the time limit imposed by the enactment is not a fatal irregularity.

THIS was an application for a writ of *certiorari* to quash an order made by the Assistant Government Agent, Mannar, and for a writ of *mandamus* to compel the holding of a poll for the election of a member for ward No. 1 of the Vankalai Village Committee.