1934 *Present :* **Poyser J.**

SAMYNATHAN *v.* WHITEHORN.

APPLICATION FOR A WRIT OF MANDAMUS ON THE TEA EXPORT CONTROLLER.

Writ of mandamus—Application to register name as proprietor of tea estate—Controller's decision to register person in possession—Applicant's right to question decision by writ—Remedy open by way of appeal—Ordinance No. 11 of 1933.

The decision of the Tea Export Controller given in a *quasi*-judicial character cannot be questioned by a Writ of Mandamus.

The proper person to be registered as the proprietor of a tea estate under section 12 (2) of the Tea (Control of Export) Ordinance, No. 11 of 1933, is the person in possession of the estate.

When the Ordinance provides a remedy by way of appeal from the decision of the Tea Export Controller, a writ of mandamus will not lie to reverse the decision.

THIS was an application for a writ of mandamus on the Tea Export Controller directing him to inquire into the title of the applicant to a tea estate and to register his name as the lawful owner and proprietor of the estate.

L. M. D. de Silva, K.C. (with him *Basnayake, C.C.*), for Tea Controller, respondent, objected to the application on three grounds :—

(i) The Controller is justified in concentrating on the question of possession to decide proprietorship.

(ii) Even if the Controller is not so justified, the decision was given by him while acting in a *quasi*-judicial capacity, and he has therefore exercised his discretion in the matter.

(iii) The applicant has a statutory remedy by way of appeal. Therefore a writ of mandamus should not be granted.

The definition of proprietor in Ordinance No. 11 of 1933 is practically identical with the definition of proprietor in the Rubber Control Ordinance, No. 24 of 1922. In *In re S. E. Fernando*[1] it was held that the Rubber Controller was right in issuing coupons, under almost similar circumstances to this, to the person in possession. Adjudications on complicated questions of title are essentially matters for a court of law, and it is impossible for the Controller to decide such questions. The person in possession is the only person who can make use of the coupons.

A writ of mandamus does not lie to reverse an erroneous decision at law. (Shortt on *Mandamus* at p. 265.) A different view was taken by Avory J. in *R. v. Registrar of Companies*[2]. But this view is not followed in the later case of *R. v. Port of London Authority*[3].

It is a clear principle of law that where other remedies are open a mandamus will not be granted. Counsel cited *R. v. Commissioners of Inland Revenue*[4], *Passmore v. Oswaldtwistle Urban Council*[5], *R. v. Assessment Committee of the City of London*[6], and Application for a Writ of mandamus on the Principal Collector of Customs.[7]

[1] *26 N. L. R. 211.*
[2] *(1912) 3 K. B. 23.*
[3] *(1884) 12 Q. B. D. 461.*
[4] *(1907) 2 K. B. 764.*
[5] *(1898) A. C. 307.*
[6] *(1883-84) 12 Q. B. D. 461.*
[7] *2 C. L. W. 330.*

M. T. de S. Amarasekere (with him *T. S. Fernando*), for applicant.—There is a difference between rubber coupons and tea coupons in that the latter are by statute (section 26 (4) of Ordinance No. 11 of 1933), expressely made saleable without the production of tea. Therefore it is not necessarily the person in possession who can make use of the tea coupons.

The Ordinance contemplates the giving of coupons only to the proprietor. The definition of "proprietor" in the Ordinance is extended only to include those in possession through the owner. In this case the registered proprietor who claims to be in possession has not a vestige of rightful title. However difficult it may be, there should be an adjudication on the question of title. Otherwise there is no discretion exercised by the Controller. Here our documentary title was not even looked at. Such refusal to investigate raises a matter of law, and a writ of mandamus should issue ordering the Controller to make such investigation. See *R. v. Justices of Kesteven*[1]. We have a right to expect the Controller to investigate.

The dictum of Avory J. in *R. v. Registrar of Companies* (*supra*) has been followed in *In re S. E. Fernando* (*supra*), which is later in date than *R. v. Port of London Authority* (*supra*).

The grounds of refusal to register our name have not been stated by the Controller, in spite of several requests. Therefore it is impossible for us to shape our appeal. In such a case a mandamus ought to be granted (*R. v. Thomas*[2]).

That we have also appealed should be no bar to a mandamus—see *R. v. Howard.*[3]

Mandamus is a more complete remedy than appeal. A mandamus lies to compel officers to take the facts of a case into consideration, and to exercise a discretion in the matter—see *R. v. Stepney Corporation.*[4] Counsel also cited *R. v. Dodson.*[5]

De Silva, K.C., in reply.

February 15, 1934. POYSER J.—

This is an application for a writ of mandamus on the Tea Export Controller directing him to inquire into the title of the applicant to the tea estate known as Panewanne estate and thereafter to register the applicant's name as the lawful owner and proprietor of the said estate.

In July, 1933, the applicant, through his proctor, informed the Tea Controller that he would forward his application for tea coupons in respect of Panewanne estate and also asked that he might be informed if any other person applied for coupons in respect of this estate in order that he might show cause against any such application. On September 11, the Tea Controller informed the applicant's proctor that, as Mr. P. K. Ratranhamy was in possession of this estate, he had decided to issue coupons to him. He also informed the applicant of his right of appeal under section 12 (4) of Ordinance No. 11 of 1933.

[1] (*1844*) *3 Q. B. 810.*
[2] (*1892*) *1 Q. B. 426.*
[3] *71 L. J. K. B. 754.*
[4] (*1902*) *1 K. B. 317.*
[5] *7 E. & B. 319.*

On September 22 the applicant forwarded to the Tea Controller the estate returns required by section 9 (1) of the Ordinance, and on September 28 the applicant's agents were informed that the issue of tea coupons had been suspended and were asked to produce the applicant's documents of title.

On November 14 the Tea Controller had an interview with the applicant and informed him that he would not inquire into or receive any evidence of title, but was only concerned with possession and was referring the application to Mr. Luddington, the Government Agent at Ratnapura.

On November 20 the applicant appeared before Mr. Luddington and the latter also informed the applicant that he would not go into the question of title, but would confine himself only as to possession on or about the material date.

On December 2 the Tea Controller informed the applicant by letter that he had decided under section 12 (2) of the Ordinance that the applicant was not entitled to be registered as the proprietor of the estate in question, and also informed the applicant of his right of appeal to the Board of Appeal if he was dissatisfied with the decision.

On December 5 the applicant asked the Tea Controller if he would inform him whether his decision was based on possession alone independent of title and whether this would be the same principle the Board of Appeal would act upon.

The Tea Controller replied on December 7 that discussion of the matter would have to await the argument of the appeal and that he would not offer any surmise of what view the Board of Appeal might take.

It was contended on behalf of the Tea Controller that (1) in deciding the question whether a person was entitled to be registered as the proprietor of an estate he was justified in concentrating on the question of possession, (2) even if the view he took was erroneous he was acting *quasi*-judicially and therefore the writ of mandamus will not lie, (3) that the Ordinance provides a definite remedy for any person dissatisfied with the decision of the Tea Controller and for that reason alone the writ will not lie.

In determining whether or not the writ of mandamus lies, the Court must be guided by English decisions. See the judgment of Wood Renton A.C.J. in *An application for a Writ of Mandamus on the Chairman of the Municipal Council*[1].

In that judgment the following passage occurs at page 102 :—

> " If the Legislature has invested the Chairman of the Municipal Council with jurisdiction of this character, that jurisdiction cannot be reviewed by the Supreme Court by mandamus, unless there has been an actual or a practical refusal to exercise it. The long series of authorities, ranging from *Reg. v. Harwich (Mayor of)*[2] to *Rex v. Board of Education*[3], place that proposition beyond the reach of controversy. In no case that I am aware of has it been held that an erroneous view of the law adopted by a

[1] *18 N. L. R. 97.*

[2] *(1853) 1 E. & B. 617.*

[3] *(1910) 2 K. B. 165.*

judicial tribunal having jurisdiction to deal with the matter to which that law relates is a good ground for a mandamus, unless the view so taken has led to a practical refusal to exercise jurisdiction at all."

In regard to the nature of the duties enforceable by Mandamus the following principles are stated in Short on *Mandamus and Prohibition* at page 256 :—

"In compelling the performance of a public duty by an inferior office or tribunal the Court will consider carefully whether the duty is of a judicial or of a merely ministerial character.

"If the duty be of a judicial character a mandamus will be granted only where there is a refusal to perform it in any way: not where it is done in one way rather than another, erroneously instead of properly. In other words, the Court will only insist that the person who is the judge shall act as such; but it will not dictate in any way what his judgment should be.

"If however the public act to be performed is of a purely ministerial kind, the Court will by mandamus compel the specific act to be done in the manner which to it seems lawful".

At page 263 this passage occurs :—

"The decision however erroneous of the proper office or tribunal on a matter within his or its jurisdiction cannot be called in question by mandamus."

The above principles would appear to some extent to be modified by the judgment of Avory J. in *The King v. The Registrar of Companies*[1].

The material part of that judgment is as follows :—

". . . . In order to displace the decision of the registrar and justify this Court in interfering by mandamus it would be necessary for the applicants to show one or more of three things : either that the registrar had not in fact exercised any discretion in the particular case, or that he had exercised it upon some wrong principle of law, or that he had been influenced by extraneous considerations which he ought not to have taken into account. I think that one of these three things at least must be made out to justify this Court in interfering by mandamus . . . . "

This judgment however does not appear to have been followed in a later case, viz., *The King v. Port of London Authority, Ex Parte Kynoch, Limited.*[2]

In that case Scrutton L.J. at page 186, in the course of his judgment, stated :—

"As the grounds on which a mandamus will be granted are difficult to state accurately, I prefer to adopt the words of Wills J. in *Regina v. Cotham.*[3] 'I take the governing principle to be that if the justices have applied themselves to the consideration of a section of an Act of Parliament, and have, no matter how

[1] *(1912) 3 K. B. 23.* [2] *(1919) 1 K. B. 176.*

[3] *(1898) 1 Q. B. 802, 806.*

erroneously, determined the question which arises upon it before them, their decision cannot be reviewed by process of mandamus. That is so whether there is an appeal from their decision or not. If there is an appeal, mandamus will not lie.'"

In view of this case the dictum of Avory J. (*supra*) to the effect that the exercise of jurisdiction upon some wrong principle of law would justify the issue of a writ of mandamus would not appear to be a correct statement of the law now, and the principles enunciated by Shortt (*supra*) appear still to be the correct principles to guide this Court.

The case most in point in regard to the present application is *Application of S. E. Fernando for a Mandamus on the Rubber Controller.*[1] That was an application for a mandamus on the Rubber Controller directing him to restore the names of two lands to the register of rubber estates and to issue to the applicant monthly certificates of production.

The definition of proprietor in the Rubber Control Ordinance, No. 24 of 1922, and Ordinance No. 11 of 1933 is practically identical.

In that application Jayewardene A.J. stated:—

"The applicant admits that S. C. Fernando is in possession of the lands, but he says that the latter took forcible possession of them, and that he is prosecuting him before the Police Court of Kalutara. However that may be, the Controller has acted rightly in issuing the certificates to the man in possession. He alone can make any use of them. The question who has the better right to the possession of the land is in dispute between S. E. Fernando and S. C. Fernando, and that dispute should be settled by a regular action."

I entirely agree with the above judgment and, the facts in this case being very similar, I think the Tea Controller was correct in registering the person in possession of Panewanne estate as the proprietor. The object of the Tea Control Ordinance is to control the export of tea. The person in possession of the estate has the physical possession of the tea and he alone can make any use of the coupons issued in respect of such tea.

It was contended on behalf of the applicant that he had not been given a proper hearing and that the Tea Controller had made no proper investigations. In support of that contention the case of *The King v. The Mayor, Aldermen, and Councillors of Stepney,*[2] was cited. That case was referred to by Bankes L.J. at page 186 in *Rex v. Port of London Authority, Ex Parte Kynoch, Limited* (*supra*), in the following words:—"A case so dissimilar from this that the decision is of no practical help. There an appeal lay to the Treasury from a Public Authority who instead of deciding the case on their own view conceived themselves bound by some rule of the Treasury with which they might or might not have agreed. In these circumstances the Court might well think an appeal to the Treasury from its own decision was not so convenient or beneficial as an appeal from the decision of another tribunal especially where the question was of the amount due to a particular officer".

[1] *26 N. L. R. 211.* [2] *(1902) 1 K. B. 317*

I do not think this authority supports the applicant's contention for in this case it cannot be said that the Tea Controller made no investigations or that he did not decide the case on his own view. The facts, as previously set out, show that he not only investigated the case but came to a decision without being influenced by an extraneous consideration.

It was further contended on behalf of the applicant that the Tea Controller should have given reasons for his decision, that the grounds for the decision are not known and therefore it is impossible for the case to be presented to the Board of Appeal. In support of this contention the case of *The Queen v. Thomas and Others*[1], was cited.

I do not however agree that the Tea Controller gave no reason for his decision or that the grounds for such decision are not known. The applicant was informed on September 11 and November 14 and 20, 1933, that the Tea Controller would not go into questions of title but was only, as regards the issue of the coupons, concerned with possession. It is true that on December 2 and 7 the Tea Controller did not state the grounds for his decision, but in view of the previous correspondence and interviews there can be no doubt that the applicant was aware of the reasons for the Tea Controller's decision. Further, as regards the contention that it is impossible for the case to be presented to the Appeal Board, an appeal in fact has been lodged and is listed for hearing. (*Vide* paragraphs 4–5 of the Tea Controller's affidavit.)

Having considered the authorities previously referred to, I think the respondent must succeed on the first two points.

I consider the Tea Controller was correct in registering as the proprietor of a tea estate the person in possession. It is difficult to see what other course he could adopt for, assuming him to be competent to decide the question of title to an estate, which might very possibly be an extremely difficult question, such a decision in the present case, if it was in the applicant's favour, would be ineffective and would only have the effect of issuing tea coupons to a person who could at present make no use of them.

However, even if the Tea Controller's decision was erroneous, I do not consider, having regard to the judgment of Scrutton L.J. (*supra*) and the other authorities cited, that this Court could interfere with his decision.

As I consider the respondent is entitled to succeed on the first two points taken on his behalf, it is unnecessary to consider in detail the third point raised, viz., that as the Ordinance provides a definite remedy for anyone dissatisfied with the decision of the Tea Controller, the writ will not lie. I would only express my opinion, having regard to the authorities, that the respondent succeeds on this point also.

The application is dismissed with costs.

Application refused.

[1] (1892) *Law Rep. 1 Q. B. 426.*