

Held, that the form of the resolution did not affect the validity of the decision that there should be an *ex officio* and not an elected chairman.

An irregularity in the method of counting the votes does not avoid an election so long as it did not affect the result.

A resolution which was put to the meeting, without being seconded, is not invalid.

APPPLICATION for a writ of *quo warranto* to have the election of the respondents to the Village Committee of the subdivision of Dandagamuwa declared null and void.

A meeting of the inhabitants of the subdivision of Dandagamuwa was called for the purpose of electing a Village Committee according to the provisions of the Village Communities Ordinance (No. 9 of 1924). The inhabitants had arranged themselves in two camps—one composed of those in favour of having an elected chairman and the other, of those in favour of having as chairman the Ratemahatmaya of the division of which the subdivision forms part. The first motion proposed was that Mr. Roland S. Tennekoon be elected chairman. This was overruled as being against the provisions of the Ordinance. A resolution was then proposed that the Ratemahatmaya of Katugampola Hatpattu be *ex officio* chairman and this was put to the meeting. Both sides represented to the presiding officer that there were many in both camps not entitled to vote, and the inhabitants were called up palata by palata and their votes taken in the presence of the headman of their respective villages. After the votes of a few villages had been taken the party in favour of an elected chairman withdrew. The method of voting by palatas was then abandoned, the resolution put afresh to those remaining and declared carried by a majority. The second to thirty-third respondents were then elected members of the Village Committee.

F. J. Soertsz (with him *Deraniyagala*), in support.—The resolution that the Ratemahatmaya be *ex officio* chairman

1930

Present : Maartensz A.J.

In the Matter of an Application for a Writ of *quo warranto*.

JAYAWARDENE, v. RATEMAHATMAYA OF KATUGAMPOLA.

Writ of quo warranto—Meeting under Village Communities Ordinance—Election of chairman—Procedure in counting votes—Resolution not seconded—Village Communities Ordinance, No. 9 of 1924.

Where, at a meeting of the inhabitants of a subdivision held under the Village Communities Ordinance, the resolution proposed in terms of section 16 of the Ordinance was that the Ratemahatmaya of the pattu should be the *ex officio* Chairman,—

¹ (1908) 11 N. L. R. 217.

² (1896) 2 N. L. R. 166.

should have been overruled as being against the provisions of the Village Communities Ordinance (No. 9 of 1924). If the inhabitants desire to have an elected chairman, a resolution to that effect should be first be duly proposed and carried (*ibid.* s. 16 (1)). If such a resolution be duly proposed and carried, the committee is given the right of electing one of their number to be chairman (s. 16 (1)). If such a resolution be not duly proposed and carried the chief headman of the division of which the subdivision forms part becomes *ex officio* chairman of the committee automatically (s. 16 (3)).

The grouping of the inhabitants according to their palatas and the counting of the voters under the eye of the headman of the village in which they reside was a novel and illegal procedure and prevented them from fearlessly voting against the resolution.

The presiding officer had forewarned the Ratemahatmaya's party of his intention to count the voters palata by palata. 19 voters of the unofficial party were rejected because they were late in joining their respective groups.

The presiding officer should have continued the counting by palatas even after the unofficial party had withdrawn and should not have abandoned a strictly accurate count.

The resolution put to the inhabitants was not duly proposed (s. 6, (1)) inasmuch as it was not seconded.

Crossette Thambiah, C.C., for first respondent.—Whether a resolution that the chairman be an elected chairman or a resolution that the chief headman of the division of which the subdivision forms part be *ex officio* chairman be put to the inhabitants does not affect the intention, inasmuch as in either case the inhabitants can declare their desire to have an elected chairman.

The presiding officer must be given a discretion as to the method to be adopted for accurately counting the voters. Both

parties had represented to him that there were persons present who were not entitled to vote and the grouping of the persons according to their palatas enabled him to take the votes only of those entitled to vote.

The presiding officer denies the allegation that he forewarned the Ratemahatmaya's party of the method of counting the votes which he intended to adopt. The rejection of 19 voters would not have affected the result as eventually the resolution was carried by a majority of about 4,000 to 40.

After the majority of the unofficial party had withdrawn it was not necessary to continue the counting by palatas as only about 40 remained in the unofficial camp as against about 4,000 in the other.

The resolution put to the meeting did not need to be seconded. The Ordinance speaks of a resolution duly proposed (s. 16 (1)), *i.e.*, proposed by a person qualified to vote.

De Zoysa, K.C. (with him *Nihal Gunasekere*) for other respondents.—The election of the committee is not affected by the objections to the main resolution regarding the chairman. The proceedings subsequent to the withdrawal of the unofficial party cannot be invalidated by reason of the withdrawal.

Soertsz, in reply.

October 8, 1930. MAARTENSZ A.J.—

At a meeting of the inhabitants of the subdivision of Dandagamuwa held on June 13, 1930, it was resolved that the Ratemahatmaya of Katugampola Hatpattu should be the *ex officio* chairman of the committee and the second to thirty-third respondents were elected members of the committee of the subdivision.

The first respondent is the Ratemahatmaya of Katugampola hatpattu.

The petitioner to these proceedings moves this Court to declare null and void the resolution passed at the meeting and the election of the committee.

The objections to the resolutions and the election are summarised in paragraph 26 of the petition.

The first objection is that there is no provision in the Village Communities Ordinance, No. 9 of 1924, for the adoption of a resolution electing the Ratemahatmaya as chairman of the Village Committee.

It appears from the minutes of the meeting that the first motion proposed was that Mr. Roland S. Tennekoon be elected chairman of the committee. This motion was overruled as being against the provisions of the Ordinance.

This order is strictly correct. By section 16 of the Ordinance the inhabitants of a subdivision may declare that the chairman of the committee shall be an elected chairman, but the right of electing the chairman is vested in the committee.

The resolution proposed and carried was that the Ratemahatmaya of Katugampola hatpattu be *ex officio* chairman.

The petitioner's contention is that even if the resolution was duly proposed and carried the inhabitants had no authority to pass such a resolution.

This contention is based on the provisions of section 16 of the Ordinance, which provides that the inhabitants of the subdivisions situated outside the administrative limits of any District Council constituted under "The Local Government Ordinance, 1920," may by resolution declare that the chairman of the committee elected by them shall be an elected chairman. By sub-section (3) if such a resolution is not passed the chief headman of the division of which such subdivisions form part becomes *ex officio* chairman of the committee elected by such subdivisions.

It was argued that according to the provisions of this section the chief headman was *ex officio* chairman of the committee unless a resolution was passed that the chairman should be elected and that the resolution which should have been put to the meeting was whether the chairman of the committee should be and elected chairman.

This argument is quite sound. But the objection does not appear to me to be a substantial one. It is, in my opinion, immaterial whether a decision is arrived at by the rejection of a resolution that the chairman of the committee should be elected by the committee or by the passing of a resolution that the chairman should be an *ex officio* chairman.

The second objection is that the method of counting votes adopted by the presiding officer when the resolution was put to the meeting was novel and illegal.

According to the minutes, when the resolution was put to the meeting those present voted for and against it. Owing to the large number present—the presiding officer states in affidavit that there were about 10,000 present—it was not possible to count the votes with any degree of accuracy and it was decided to record the votes of each Gan-Arachchi's division separately.

The minutes are amplified by the presiding officer's affidavit.

According to this affidavit, the voters were by arrangement assembled in separate "camps". When the resolution was put to the meeting the number of hands in support of an elected chairman appeared to be greater than the number for an *ex officio* chairman. But as it had already been represented to him by both sides that there were persons present not entitled to vote, the presiding officer, for the sake of accuracy in counting and that the voters may be identified, grouped the persons present according to the Gan-Arachchi's division in which they resided and proceeded to count the voters of each Gan-Arachchi's division separately.

There are no merits in this objection. It was the duty of the presiding officer to ascertain as accurately as possible the number of voters for and against the resolution and to prevent persons voting who were not entitled to vote, and I can see nothing illegal in the method adopted by the presiding officer for attaining those objects.

I accordingly decline to uphold the objection.

There is nothing to substantiate the suggestion that the voters were influenced by having to vote under the eye of the headman of the village in which they resided.

The third objection is that two of the voters of Pahalapotuwwewa palata and seventeen voters of Ihalapotuwewa palata were not allowed to vote because they were late in joining their respective groups. Their delay is attributed to their not being able to extricate themselves from the crowd as quickly as the voters for an official chairman. It is alleged that what may be described as the official party had been forewarned that this method of counting would be adopted and had arranged themselves beforehand.

The presiding officer denies the allegation that he forewarned the voters in favour of the *ex officio* chairman of the manner in which he proposed to count the votes and says he informed both parties of this arrangement at the same time.

I am bound to accept this statement.

He also denies the allegation that he rejected 19 voters for being late. He says 4 voters were rejected on their own admission that they resided outside the subdivision. By section 25 the Government Agent's decision with regard to these voters is final.

I am not prepared to order an inquiry into the disputed question whether 19 voters were rejected for being late in the absence of evidence that these votes would have affected the result.

The fourth objection is that the presiding officer had no right to abandon the counting of votes which he once started and to put the resolution again to the meeting.

It is alleged in support of this objection that at the stage at which the counting of votes was abandoned the votes already counted showed a majority of 26 in favour of an elected chairman.

According to the petitioner's affidavit the rejection of the 17 voters of Ihalapotuwewa palata annoyed the voters for an elected chairman and he asked his party to disperse as he was apprehensive of the consequences of more of his party being rejected unjustly, and he and his party left the meeting.

According to the minutes, after the votes of these Gan-Arachchi's divisions had been recorded the petitioner stated that his party objected to the voters being identified by the headman and he and his party walked away.

After a majority of the voters of the "camp" in favour of an elected chairman had left, the presiding officer thought there was no necessity to continue counting in the method adopted as there were about 4,000 voters left in the "camp" of those in favour of an *ex officio* chairman and 40 in the other, and put the resolution again to those present and it was carried by a majority of about 4,000 to 40.

The reason for the withdrawal of the party against the resolution is not a matter which affects the validity of the decision that the chairman of the committee should be the chief headman of the division.

In view of the withdrawal of the opposing party there was, as far as I can see, no necessity to continue the method of counting by Gan-Arachchi's divisions. Even if it should have been continued there was no more than an irregularity in procedure which did not affect the result.

Finally it was contended that the resolution should not have been put to the meeting as it was not seconded by anyone. Counsel was unable to refer me to any authority or rule in support of this contention. In the absence of any rule that motions should not be put to the meetings of the inhabitants of a subdivision unless they are seconded, I am not prepared to uphold the objection.

The objections to the resolution carried at the meeting do not affect the election of the committee unless the withdrawal of the unofficial party rendered the rest of the

proceedings illegal. This is not the case and I hold that the second to thirty-third respondents were duly elected.

For the reasons given by me the petitioner's motion is disallowed with the costs of the 1st respondent and the 2nd, 3rd, 6th, 7th, 9th, 11th, 15th, 17th, 19th, 21st, 25th, 28th, 30th, to 33rd respondents.

The latter respondents will be entitled to only one set of costs.
