1943 *Present :* **Wijeyewardene J.**

FERNANDO *v.* PEIRIS.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF *quo warranto* AGAINST THE CHAIRMAN, V. C., KAMMAL PATTU.

Writ of quo warranto—Rule will not issue when the office is vacated—Appointment as Acting Chairman to Village Committee.

The Supreme Court will not grant a writ of *quo warranto* to question the title of a respondent to an office after he has actually ceased to hold it.

This rule is subject to two exceptions :—

(*a*) Where the resignation has taken place only after the issue of the rule *nisi*.

(b) Where the applicant's purpose is to substitute another candidate in the office.

[1] *S. A. L. R. (1911) A. D. 568.*
[2] *S. A. L. R. (1915) A. D. p. 647.*
[3] *(1926) 28 N. L. R. 140.*
[4] *(1908) 1 S. C. D. 70.*
[5] *(1913) 2 Bal. N. C. 19.*
[6] *(1926) 28 N. L. R. 283 at 285.*

THIS was an application for a writ of *quo warranto.*

H. V. Perera, K.C. (with him *S. W. Jayasuriya*), in support.

L. A. Rajapakse (with him *V. Wijeytunge*), for respondent.

Cur. adv. vult.

August 6, 1943. WIJEYEWARDENE J.—

This is an information in the nature of a *quo warranto.* The petitioner asks for a declaration that the election of the respondent as "Chairman and Chief Executive Officer" of the Village Committee of Kammal pattu on March 8, 1943, is invalid and moves that such election be set aside.

The petitioner is a qualified voter of a certain ward in the village area of Kammal pattu and the respondent, one of the sixteen members of the Village Committee, of which the duly elected Chairman and Vice-Chairman were W. B. Fernando and D. P. Andrado respectively. D. P. Andrado acted for the Chairman for some time before March 3, 1943, owing to the illness of W. B. Fernando.

On March 3, Andrado wrote the following letter R 1 to Fernando :—

"I am suffering from fever from last night, therefore I might not be able to continue to act for you if I did not recover soon."

On receipt of that letter, Fernando addressed letter R 2 of March 7 to the members of the Village Committee informing them that both he and Andrado would be "absent from duty owing to illness" and requesting them to "select a member to perform the duties of the President" until he resumed work. This letter was considered at a meeting of the Village Committee on March 8, and the respondent was elected without any opposition to preside over that meeting. The committee passed also a resolution appointing the respondent "to act as Chairman till the Chairman resumed duties as the Chairman and the Vice-Chairman was ill". This was confirmed by the Chairman by his writing R 6 of March 9. The respondent forwarded a copy of that resolution on March 8 to the Assistant Government Agent and asked for his "approval". The Assistant Government Agent sent a reply R 5 the next day stating that the resolution passed by the Committee did not require his approval and calling for a specimen signature of the respondent for official purposes and this was duly forwarded. The respondent continued to act as Chairman till May 24, when Fernando returned to his duties.

The above statement of facts shows that no bad faith could be imputed either to the respondent or the other members with regard to the appointment of an acting Chairman. The illness of the Chairman and the Vice-Chairman created a situation which the members of the Committee attempted to meet as best as they could. Under section 30 (2) of the Village Communities Ordinance (Chapter 198) the Chairman may generally do and discharge the various acts and functions which have to be done and discharged by the Village Committee. Under section 31 (2) of the Ordinance, the Chairman may delegate his functions to the Vice-Chairman or the Government Agent may direct the Vice-Chairman to perform such functions when the Chairman is absent from duty owing to

illness. The Ordinance has made no express provision, however, for a case where both the Chairman and the Vice-Chairman are unable to attend to their duties owing to illness. There is, however, some provision made in section 32 that in the absence of both the Chairman and the Vice-Chairman the members present at any meeting of the Committee may elect a member to preside over the meeting.

Whether the appointment of the respondent to officiate as chief executive authority is strictly legal or not it is certainly not strange that the Committee which is empowered by the Ordinance to perform various executive functions should have believed in good faith that it was necessary for the due administration of the business of the Village Committee to make such an appointment in the special circumstances of this case and that it had the power to appoint one of its members.

The respondent and the other members must have been confirmed in that belief when they received the letter R 5 which had been written by the Assistant Government Agent with a full knowledge of the relevant facts. That letter would have been interpreted by them naturally as a recognition of the validity of the appointment.

There has been a considerable delay in making this application. The respondent's appointment was made on March 8, the applicant's affidavit is dated May 18, while the papers have been filed on May 31. There has been no satisfactory explanation of this delay and that is a matter which this Court is entitled to take into consideration. Moreover this delay has resulted in the application being made to this Court a week after the respondent has ceased to function as Acting Chairman. As a general rule a Court will not grant an information to question the title of a respondent to an office after he has actually ceased to hold it (*Shortt on Mandamus, p. 146*). No doubt, this general rule is subject to certain well known exceptions, *e.g.*, where the resignation has taken place only after the issue of the rule *nisi* (*Rex v. Wharlow* [1]) or where the applicant's purpose is to substitute another candidate *at once* in the office as explained in *Regina v. Blizard* [2]. In that case, the defendant as Mayor officiated as the Returning Officer at an election on November 1, when four Councillors had to be elected for the borough. There were five candidates including the relator and the defendant. The relator served a notice on the defendant at the opening of the poll stating that he was ineligible for nomination or election as a Councillor during the term of his Mayoralty. In spite of that notice the defendant was declared duly elected as Councillor at the close of the poll and the relator who was placed last on the list could not secure his election. On November 9, the defendant explained to the Council that he was misled by the notice served on him and that he did not understand at the time that the objection to him was on the ground that he was the Returning Officer. He then resigned his office on November 9 before the rule was moved for. On an objection taken against the rule being made absolute Cockburn C.J. said in the course of his judgment—

"In the cases, which have been cited, and in which it has been held that a *quo warranto* was necessary notwithstanding the resignation of the person against whom the proceeding was directed, the resignation

[1] *105 E. R. 310.* [2] *2 Queen's Bench 55.*

had taken place after the rule *nisi* had been obtained. I do not, therefore, proceed on the authority of those cases. Here we have something more than a proceeding for the mere purpose of ousting the party from the office which he has been holding. If the purpose of these proceedings were merely to vacate the office, so that a fresh election might take place, it is obvious that the resignation of the office would effect that purpose just as well as the removal of the person from the office by *quo warranto*. In this case, however, the relator not only denies the validity of the defendant's election, but he claims to have been himself elected into the office . . . . The effect of a resignation would be simply to send the parties to a new election, while the effect of a disclaimer or judgment for the Crown upon the final issue of the *quo warranto* would be to displace the defendant from the first, leaving it open—which otherwise it would not be—to the relator to claim the office to which he says he has been elected, and if he can establish that claim upon a *mandamus*, to be admitted into the office ".

It is clear that the present case does not fall under any of those exceptions.

I order the rule issued on the respondent to be discharged with costs.

Rule discharged.