1914.

Present: Pereira J.

In the Matter of an Application by JOHN SOLOMON FERNANDO for a Writ of Mandamus on the Government Agent of the Western Province.

Local Boards Ordinance, 1898—Nominating candidates before day appointed for election—Ordinance No. 13 of 1898, ss. 10 and 14—Quo warranto—*Jurisdiction of Supreme Court.*

In the case of elections of members of Local Boards constituted by the Local Boards Ordinance, 1898, it is not open to the Government Agent to require that candidates be "nominated" on a day before the day appointed for the meeting for the election. Section 10 of the Ordinance requires that every candidate should be proposed and seconded at the meeting itself, and that votes given to any person who has not been so proposed and seconded should not be taken into account, and should be deemed wholly void and ineffective. That being so, where the Chairman at a meeting held for an election put to the vote the names of candidates who had not been proposed and seconded at the meeting itself, but who had been "naminated" on some day prior thereto in terms of a procedure not warranted by the Ordinance but adopted by the Chairman, and further refused to put to the vote the name of a candidate who was duly proposed and seconded at the meeting,—

Held, that the proceeding was illegal, and the election null and void.

Held, further, that the words "any other cause whatever" in section 14 of the Ordinance meant a cause *ejusdem generis* with the causes expressly mentioned in the section, namely, "failure" and "neglect," and that in any case the section did not apply where the Chairman deliberately and in spite of protest acted in contravention of the Ordinance, but that it applied only to cases in which some matter invalidating the election of which the Chairman had no notice or cognizance at the time of the election was brought to his notice thereafter.

Held, further, that under section 46 of the Courts' Ordinance the Supreme Court had no power to issue a writ of *quo warranto*, and that it could only issue a mandate in the nature of any of the writs expressly mentioned in it.

THE facts are set out in the judgment.

Bawa, K.C. (with him *Morgan de Saram*), for second, third, and fourth respondents.—This Court has no power to issue a mandamus. A mandamus will only issue where there is no other remedy. Here the Ordinance itself provides a remedy. There is an appeal from the presiding officer's ruling to the Chairman. See section 14.

The words of the section, "neglect or any other cause," are wide enough to cover any case. The applicant himself sent in a list of objections to the Chairman.

[Pereira J.—Is the Government Agent to revise his own order?] There is nothing improper in that; the Supreme Court, when sitting in review under the old procedure, was doing almost the same thing.

There is no appeal from the Chairman's ruling. See *Regina v. Colins* [1], *In re the Local Board of Jaffna* [2].

H. J. C. Pereira (with him *Canekeratne*), for applicant.—The election in this case is illegal.

The Chairman has set at nought the provisions of the Ordinance. There is nothing about a nomination meeting in the Ordinance. A mandamus is the proper remedy, as this is merely a "colourable" election. See *R. v. Cambridge Corporation,*[3] *10 Halsbury 81.* That there is no appeal from the order of the Government Agent was only the argument of counsel in *1 A. C. R. 128.*

Section 14 of the Ordinance, whereby the Chairman can revise his order, applies only to cases where the Chairman himself finds that there is an irregularity. In any case, the word "other" shows that the Chairman can only exercise his authority when the irregularity is of the same kind as "neglect."

Cur. adv. vult.

January 5, 1914. Pereira J.—

I have already made my order in this matter, and, as I intimated to counsel at the close of the argument on the 29th instant, I now deliver my judgment setting forth the reasons for the order. The application is one for a writ of mandamus on the first respondent as Chairman at a meeting held on the 12 December, 1913, for the election of three unofficial members of the Local Board of Health and Improvement of Moratuwa, to compel him to declare that Messrs. G. M. Silva, J. G. Fernando, and E. F. Senaratne were duly elected at the meeting. The meeting referred to was duly proclaimed, and the proceedings thereat had to be conducted in terms of section 10 of the Local Boards Ordinance, 1898. On the 22 November, 1913, however, the first respondent notified by Proclamation in the *Government Gazette* that the election would be by ballot, and that nominations of candidates would be received by him on the 5 December. This notification—at any rate the latter part of it—was clearly a deviation from the procedure plainly and unequivocally laid down in the Ordinance. In the clearest possible terms, section 10 of the Ordinance provides that the Government Agent shall preside at the meetings for elections held under the Ordinance, and shall determine the mode of voting; that every candidate shall be proposed and

[1] *(1876) 2 Q. B. D. 30.*

[2] *1 A. C. R. 128.*

[3] *4 Burrows 2008.*

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seconded at the meeting; and that every vote which at the election is given to any person "who has not been so proposed and seconded" shall not be taken into account, but shall be "wholly void and ineffective." Judging from the sequence of events to be gathered from the manner in which the provision of the section is expressed, the Government Agent should determine the mode of voting at the meeting itself, but no reasonable objection could be taken to his doing so before the commencement of the meeting, and no objection on the score of the first respondent having so acted has been pressed in the course of the argument. The words of the section, however, requiring each candidate to be proposed and seconded at the meeting itself are too clear and too emphatic to be disregarded. I say too emphatic, because the section provides that every vote given to any person not so proposed and seconded "shall not be taken into account, but shall be wholly null and ineffective." At the meeting referred to above, the second, third, and fourth respondents were not, in fact, proposed for election, but the Government Agent put their names to the vote because they had been "nominated" some time before in terms of the novel procedure mentioned above adopted by the Government Agent. The votes given to these candidates were hence worthless, and their election was clearly null and void. No contention to the contrary was addressed to me by any counsel in the course of the argument. If, however, the irregularity, or more properly illegality, ended with the omission to propose and second the second, third, and fourth respondents for election, I should not have been disposed to allow a mandate in the nature of a mandamus, because, after all, the process of proposing and seconding a candidate is in its nature intended to show no more than that the candidate has sufficient support to justify his name being put to the vote, and the so-called "nomination," although it was wholly unsupported by law, had practically the same effect. But the refusal of the first respondent to put to the vote the name of Mr. G. M. Silva, who had been duly proposed and seconded, because he had not been "nominated" in terms of the illegal procedure introduced by the first respondent, made the proceedings at the meeting the reverse of a free and unfettered election, and there was, indeed, no contention before me that the so-called election of the second, third, and fourth respondents was valid and effectual. Their counsel pressed totally different grounds, which I shall deal with later.

Although it is not so expressly enacted in the Ordinance, it is clearly the duty of a Chairman at an election meeting to "cast up" the votes and declare the result. A recognition of this duty underlies the judicial pronouncements in most of the cases relating to the election of members of corporate bodies (see *Rex v. Gaborian* [1]). In *Wandsworth and Putney Gaslight and Coke Co. v. Wright* [2] it was held

[1] *11 East 77.*

[2] *22 L. J. 404; 18 W. R. 728.*

that the declaration by the Chairman of the result of an election of directors was *prima facie* evidence of the validity of such election, although there was no express provision anywhere requiring such declaration. Of course, in the case of a meetig not constituted by law, the duty here referred to is one that cannot legally be enforced; but in the present case the Ordinance constituted the meeting, and the provision that the Government Agent should preside at it included obviously the provision that he should, as Chairman, declare the result of the voting. In this case three candidates, Messrs. G. M. Silva, Fernando, and Senaratne, were duly proposed and seconded. The names of Fernando and Senaratne were put to the vote, but the Chairman, illegally, as I think, abstained from putting Mr. Silva's name to the vote, He (Mr. Silva), however, presumably had already the votes of the proposer and seconder, and the Chairman should have declared those three candidates elected; and the applicant was, strictly speaking, entitled to the prayer of his petition. Considering, however, that the second, third, and fourth respondents, and possibly others also, were misled by the procedure adopted by the Chairman, I thought that the best course was to direct a new election, and I have done so accordingly.

Now, the main objection urged by counsel for the second, third, and fourth respondents is that the applicant had a remedy specially provided by section 14 of the Ordinance, and that therefore his application for a mandamus could not succeed. I may here mention that certain authorities were cited which rather applied to the case of an application for a writ of *quo warranto*. As regards these authorities, I need only say that there is no analogy between the present case and an application for a writ of *quo warranto*, because here there is no pretence that the second, third, and fourth respondents are acting, or have claimed to act, as unofficial members of the Local Board of Moratuwa; and , moreover, I agree with the contention that this Court is not vested with the power of issuing writs of *quo warranto*. The words " mandates in the nature of " in section 46 of the Courts Ordinance do not, in my opinion, justify the inference that it was intended to give this Court the power to issue, not only the writs expressly mentioned in the section, but also others similar to them. These words have a specific meaning, and have been advisedly used. The High Court of Justice in England has, of course, the power to issue the old prerogative writ of mandamus, but (under a variety of Acts and Rules) it may also issue a Rule or Order " in the nature " of a mandamus (see *11 & 12 Vict., c. 44, s. 5; Rule 80 of the Crown Office Rules, 1886 ; 44 & 42 Vict., c. 26, s. 37 ; 50 & 51 Vict., c. 71, s. 6; 51, & 52 Vict., c. 43, s. 131)*; and the intention of our Legislature in the provision of section 46 of the Courts Ordinance clearly was to give this Court the power to issue, not quite the writs mentioned there, but (as in the case of the Acts cited above) mandates in the nature of those writs. The words " in the nature of " have, in

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my opinion, no other signification. Passing over the question as to the applicability of the authorities cited, the contention itself under section 14 of the Ordinance is that a remedy is provided thereby. Now, a mandamus might issue in cases where, although there is an alternative legal remedy, yet that mode of redress is less convenient, *beneficial*, and *effectual per* Bayley J. in *R. v. Bank of England* [1], *Re Barlow* [2], and see other authorities cited on page 77, vol. X., of the *Laws of England*), but at the same time it is true that as a rule—almost inflexible—a mandamus will not be allowed where there is an adequate alternative remedy. Where, for instance, in respect of an election a remedy was provided by way of an election petition to the High Court of Justice in England, a mandamus was not allowed. The question, however, is whether section 14 of our Ordinance provides any remedy at all. I do not think it is correct to say that it does. It provides no remedy for the refusal by a Government Agent to hold an election, or to declare any particular candidate elected at a meeting for an election. It merely makes an election under section 10 conditional, that is to say, subject to an order under it (section 14) by the Government Agent. The proper argument based on section 14, if the section applied to a case like the present, would be that it contained a provision which was part and parcel of the procedure provided by the Ordinance for the election of unofficial members of Local Boards, and as no appeal was provided for from an order of the Government Agent under the section, such an order was conclusive, and could not be interfered with by mandamus. This argument would, of course, be supported by the decision in the well-known case of *Regina v. Colins* [3]. But does section 14 apply to a case like the present? I think it is obvious that it applies only to a case where, owing to some failure or neglect or some like cause, a meeting has not been duly held or a member has not been duly elected. The words " any other cause whatever " should, I think, be taken to mean some cause *ejusdem generis* with " failure " or " neglect," in the sense in which these words are used in the section. It cannot for a moment be assumed that where a Government Agent deliberately and in spite of protest adopted an illegal course of procedure at an election meeting, the Legislature intended to give a party aggrieved only the remedy of appeal to the very officer responsible for the illegality. As stated by Maxwell, in his work on the *Interpretation of Statutes*, there are certain objects which the Legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. It is sometimes found in such cases necessary to limit the effect of the words (especially general words) used (p. 131). He cites as an illustration a case in which the words interpreted were

[1] *2 B. & Ald. 620. 622.*

[2] *20 L. I. Q. B. 271.*

[3] *(1876) 2 Q. B. D. 30.*

exactly similar to those with which we are now concerned. It is the case of *Crawley v. Phillyis* [1], in which it was held that *12 Car. II., c. 17*, which enacted that all persons presented to benefices, and who should confirm as directed by the Act, should be confirmed therein, "notwithstanding any act or thing whatsoever," was obviously not intended to apply to a person who had been simoniacally presented. Similarly, in the present case, in order to avoid the absurdity that I have referred to above, the words "any other cause whatever" in section 10 of the Ordinance under consideration should, I think, as I have already observed, be taken to mean a cause *ejusdem generis* with what precedes these words. But, perhaps, the stronger argument that the section does not include a case of a deliberate act of commission or omission on the part of the Chairman is in the use in the section of the words "after any such event shall have been notified to him." It is clear from these words that the event referred to is one of which he (the Chairman) had no cognizance already, and that it is some neglect, failure, or other incident of which he had no notice at the time of the election.

Application allowed.