1938 *Present :* **Keuneman A.J.**

MARIKAR *v.* PUNCHIHEWA.

In re APPLICATION FOR A WRIT OF *Quo Warranto.*

Urban District Council—Election of Chairman—No quorum—Question not put to the vote—Election invalid—By-law 1 (f).

Where the Chairman of an Urban District Council was elected at a meeting of the Council at which the number of members present was not sufficient to form a quorum, and where the question was not duly put to the meeting and a vote taken,—

Held, that the election of the Chairman was invalid.

The language of by-law 1 (f), "no business shall be transacted at any meeting unless a quorum of at least six Councillors is present", is imperative.

THIS was an application for a writ of *quo warranto* on the Chairman of the U. D. C., Nawalapitiya.

N. E. Weerasooria (with him *H. A. Wijeymanne*), for petitioner.

H. V. Perera, K. C. (with him *G. P. J. Kurukulasuriya*), for respondent.

Cur. adv. vult.

January 31, 1938. KEUNEMAN A.J.—

The petitioner applied for a writ of *quo warranto* declaring the election of the respondent as Chairman of the Nawalapitiya Urban District Council null and void, and that the respondent is not entitled to function as Chairman.

The respondent was elected Chairman on January 7, 1936, and under the terms of Ordinance No. 11 of 1920, his term of office expired on January 6, 1938, but he was eligible for re-election. The Council consisted of nine members, and under the by-laws 6 members were necessary to form a quorum at a meeting. A meeting of the Council was held on December 21, 1937, and the eleventh item on the agenda was the election of a Chairman for 1938.

When the eleventh item was reached, according to the minutes which have been produced, there was a certain amount of discussion, and the names of the respondent and of Mr. Rajakulendram were duly propposed and seconded. There was further discussion as to whether the respondent should vacate the chair *pro tem*, but the respondent refused to do so. Mr. Rajakulendram proposed that the matter be postponed for January 7, and this was seconded by the petitioner. The respondent as Chairman ruled that this proposal was out of order. It was not stated on what ground this ruling was made, nor did any explanation of this ruling emerge at the inquiry before me.

Mr. Rajakulendram, the petitioner, and two other members then withdrew from the meeting. Admittedly, thereafter only five members were present at the meeting, and that number was insufficient for a quorum. The Chairman thereafter suspended the session at that point. The reason given was disorderly conduct. At the inquiry before me, counsel for the respondent argued the case on the footing that the session was suspended for want of a quorum.

According to the affidavits submitted for the petitioner, the meeting on that occasion was adjourned for January 7, and that is borne out by the affidavit of the respondent himself.

On the morning of January 5, the petitioner was served with a notice dated January 4 to the effect that the adjourned meeting would be held on January 6. The petitioner and three other members informed the Secretary in writing that they were unable to attend the meeting.

On January 6, five members including the respondent met. According to the minutes, the Chairman addressed the members, and ruled that " in the absence of the members who walked out, this constituted the suspended sitting of the session as it stood at item 11 ". The respondent said " he would like to confirm the indications."

Thereafter the minutes run as follows :—" The Chairman asked whether any amongst those present were against Mr. Punchihewa's candidature. There being none, he inquired whether there were any for Mr. Rajakulendram. There being none, he said the position was now very clear. Thereupon the Chairman declared Mr. Punchihewa re-elected Chairman ".

The Medical Officer of Health who was present then stated that to his mind it appeared to be an imporperly constituted council and dissociated himself from the proceedings. The District Engineer concurred with the Medical Officer of Health.

I have followed the official minutes, but I may add that the petitioner did not accept those minutes as correct. For example, the petitioner maintained that the protests of the Medical Officer of Health and the District Engineer were made before and not after the respondent had declared himself elected Chairman for 1938.

Several objections have been taken to these proceedings—

(1) that in the absence of a quorum of at least 6 members, no matter could have been decided at the meeting of January 6.

(2) that the matter was not duly put to the vote, nor was any vote taken.

(3) that the meeting was held one day too late.

The first objection is in my opinion a serious one. The by-laws for this Council appear in *Government Gazette* No. 7,994 of July 28, 1933. Under by-law 1 (*f*) "No business shall be transacted at any meeting unless a quorum of at least six Councillors is present". Under by-law 1 (*g*) where the number of Councillors is not sufficient to form a quorum, "the Chairman shall adjourn the meeting to such date not more than fifteen days after the date of the meeting so adjourned as he thinks fit, and the business which would have been brought before the meeting so adjourned, if there had been a quorum present shall be brought before and disposed of at such adjourned meeting".

It has been argued by Counsel for the respondent that where a meeting has been adjourned for want of a quorum, on the date to which the meeting is adjourned, the particular business adjourned can be transacted, even though less than six members are present. I do not think the language of the by-laws leads me to that conclusion. In the matter of the quorum the language of by-law 1 (*f*) is imperative, and I do not think that by-law 1 (*g*) modifies it in any particular. I have been referred to certain Articles (vide *Blackwell's Public and Company Meetings (8th ed.), P. 185*) where it is expressly stated in the Articles that where a meeting is adjourned to another date for want of a quorum, on the adjourned date the members present shall form a quorum. This may be a desirable rule, but I think it must be a matter of contract or of legislative enactment and I am not inclined to import such a meaning into the language of by-law 1 (*g*).

In this case it is further not clear that the adjournment of the meeting was owing to the want of a quorum. The respondent purported to adjourn the meeting on the ground of grave disorder. This would be under the power given by by-law 26. Counsel for the respondent conceded that the argument which he addressed to me under by-law 1 (*g*) would not apply in the case of by-law 26. But even if I regard the action of the respondent on December 21, as having been taken on the by-law 1 (*g*), I have to take into account the fact that on December 21, the respondent adjourned the meeting for January 7. No meeting was held on that date, but another meeting was fixed by special notice for January 6. I am not satisfied that this meeting on January 6 can be regarded as "the adjourned meeting" under the term of by-law 1 (*g*).

I hold that the election of the respondent as Chairman is invalid for want of a sufficient quorum at the meeting of January 6. This is a vital matter, *vide* In the Matter of an Application for a Writ of *Quo Warranto* to set aside the election of the Chairman of the Village Committee, Kosgoda.[1] In this case the relevant Ordinance made no provision for a quorum, and Maartensz, J. held that an election made at a meeting where all the members were not present was not valid.

As regards the second objection, Counsel for the petitioner depended on by-law 9 (*i*) which requires that when the motion has been moved and seconded and the debate concluded the matter shall thereupon be put to the vote by the Chairman. At the adjourned meeting of January 6 the respondent said, "he would like to confirm the indications"—whatever that may mean. He then asked whether any one present was "against the election of Mr. Punchihewa". The minutes record that there was none. Respondent then inquired whether there were any "for Mr. Rajakulendram". I do not understand, nor was Counsel for respondent able to explain to me, the reason for the change in the formula in the two cases. At any rate it is sufficient to say that the respondent made no attempt to discover whether anyone present was in favour of his election at that stage. I think there has been no real attempt to put the matter to the vote, and that the subsequent declaration by respondent that he had been elected was invalid.

The third point taken was that the meeting of January 6, was in any event after the fifteen days had elapsed and that accordingly by-law 1 (*g*) had no application. It is admitted that the meeting was one day too late, and I think the respondent cannot take advantage of that by-law, if in point of fact that by-law can be interpreted in a manner favourable to his contention.

Counsel for the respondent further argued that the discretion given to the Court should not be exercised in favour of the petitioner. He cited to me the case of *Rex v. Parry*[2] in which certain principles laid down by Lord Mansfield as to the discretionary power of the Court were quoted. First, "the light in which the relators now informing the Court of this defect of title appear, from their behaviour and conduct relative to the subject matter of the information, previous to their making this motion. Secondly, the light in which the application itself manifestly shows their motives, and the purpose which it is calculated to serve. Thirdly, the consequences of granting this information."

As regards the third ground mentioned, the fact that there is no elected Chairman would no doubt result in considerable inconvenience, but Counsel was not able to show me that this could not be remedied by the holding of a fresh election, and far less that the dissolution of the corporation may reasonably be expected, as was held in Parry's case. Further it is far from certain that if all irregularities and illegalities had been avoided, no other result would have been obtained.

As regards the conduct of the petitioner and the other members who acted with him, it was suggested for the respondent that the motive for their action was obstruction. It is true that they left the meeting on December 21, and that in consequence there was no quorum, but as

[1] *29 N. L. R. 129.*

[2] *6 Adolphus & Ellis 810 at 821.*

regards the meeting on January 6, the notice although perhaps legal was very short, and it has not been shown that they were guilty of obstruction in absenting themselves from that meeting.

Further it has been alleged in this case that the respondent had an indirect motive. An early attempt had been made to induce the respondent to vacate the chair, on the ground apparently that as long as he acted as Chairman, he had a casting vote which he could exercise if necessary on his own behalf. It seems clear at any rate that the respondent was anxious to have the election completed, before his own term of office expired, and that he has acted in a manner which was illegal, in spite of the protests of disinterested members.

I do not think that the circumstances are such as to make me refuse to exercise my discretion in favour of the petitioner. I am of opinion that the rule must be made absolute and the election of the respondent set aside, and the respondent declared not entitled to the office of Chairman of the Urban District Council of Nawalapitiya.

The petitioner will be entitled to the costs of this application.

Rule made absolute.