1948 *Present :* **Basnayake J.**

GIVENDRASINGHA, Petitioner, *and* R. F. S. DE MEL, Respondent.

IN THE MATTER OF AN APPLICATION FOR A WRIT OF QUO WARRANTO.

Writ of Quo Warranto—*Municipal Council—Election of Mayor—Proposer disqualified but Councillor* de facto—*Validity of election—No. objection taken—Acquiescence—Discretion of Court—Municipal Councils Ordinance, No. 29 of 1947—Section 14 (3).*

The respondent was proposed for election as Mayor of Colombo by one G who at the time was disqualified from sitting or voting as a Councillor but did in fact sit and vote as such. On an application for a writ of *Quo Warranto*—

Held (i) that the provisions of section 14 (3) of the Municipal Councils Ordinance, No. 29 of 1947, were imperative and that the candidate had to be proposed and seconded ;

(ii) that the requirement is satisfied if the proposal is made by a Councillor *de facto* ;

(iii) that the writ being discretionary will not be granted where the petitioner had acquiesced in the election.

APPLICATION for a writ of *quo warranto* on the Mayor of the Colombo Municipal Council.

E. B. Wikramanayake, with *M. A. M. Hussain*, for the petitioner.—Section 14 (3) of the Municipal Councils Ordinance, No. 29 of 1947, provides that the name of any councillor may be proposed for election as Mayor by any other councillor present. This section imposes the condition precedent to the election of Mayor that the proposer should be a councillor. The proposer in the present case was not a councillor at the time he proposed the respondent for election as Mayor. At that time he had already been appointed Parliamentary Secretary to the Ministry of Labour. By his becoming a Parliamentary Secretary he became a holder of a public office under the Crown and therefore, by that very fact and without any declaration of any court, he vacated his seat in the Municipal Council and became disqualified to sit, vote and transact business in the Municipal Council under section 11 of the Local Authorities Elections Ordinance, No. 53 of 1946.

By all the tests applicable the proposer, as Parliamentary Secretary, holds a public office under the Crown. He is appointed by the Governor-General, paid out of public funds, and performs public duties. See *In re Mirams* [1] and *The King v. Whitaker* [2].

The condition precedent to the election of Mayor that the proposer should be a councillor failed and therefore the respondent has not been duly elected. Failure to obey imperative requirement of law in case of elections would make an election invalid. See *Kulatileke v. Rajakaruna et al.* [3].

H. V. Perera, K.C., with *Nihal Gunasekera* and *E. A. G. de Silva*, for the respondent.—In the first place it is submitted that the proposer is not disqualified to sit and vote in the Municipal Council by reason of being appointed Parliamentary Secretary. The public office contemplated by section 10 (1) of the Local Authorities Elections Ordinance is an office of a permanent nature and an office which exists independently of the person or persons filling the office. According to the scheme of the Orders in Council, 1946 and 1947, the office of Parliamentary Secretary does not seem to be either a permanent office or an office existing independently of the person who fills it. Under the Orders in Council it is not necessary to have any Parliamentary Secretaries at all nor is it necessary, once a Parliamentary Secretary vacates office, to appoint another as Parliamentary Secretary. If the proposer does not hold a public office the petitioner fails.

But assuming that the proposer was not duly qualified to sit and vote in the Municipal Council at the relevant time, it is submitted that the petition should fail for the following reasons :—

(1) Even though the proposer was not *de jure* councillor at the relevant time, he was a *de facto* councillor. He was sitting in the Council and was taking an active part in the business of the Council. So that the well

[1] *(1891) L. R. 1 Q. B. 594.* [2] *(1914 . R.3 K. B. 1283 at 1296.*
[3] *(1927) 5 Time*

known rule that in the case of an election by corporators, *i.e.*, members of a corporation, the title of the electors cannot be called in question when such title could have been called in question before the election and when the corporators had been *de facto* corporators, would be applicable. See *The King v. Hughes* [1].

(2) An irregularity which does not affect the result does not avoid an election. The election of the Mayor was an act *intra vires* of the Municipal Council. The Council elects the Mayor by a majority of votes. The respondent has secured 19 votes which represents a clear majority in any contest. Under such circumstances writ would not lie. See Shortt on Mandamus pp. 149–151. See also *In re Horbury Bridge, Coal, Iron, and Waggon Company* [2] and *Queen v. Ward* [3].

(3) In this case the petitioner has no right to complain as he has acquiesced in the election from the beginning to the end.

E. B. Wikramanayake, in reply.—If the election is void the writ will lie. See *King v. Speyer and Cassels* [4]. *The King v. Hughes* (*supra*) does not apply as section 11 of Local Authorities Elections Ordinance makes the seat vacant by the very fact that the proposer was appointed Parliamentary Secretary. No declaration of court is necessary. Further, an express provision of law must be obeyed.

Cur. adv. vult.

May 21, 1948. BASNAYAKE J.—

This is an application by one Priyaseela Givendrasingha (hereinafter referred to as the petitioner) for a writ of *quo warranto* on one R. F. S. de Mel (hereinafter referred to as the respondent) who was on January 12, 1948, elected Mayor of the Colombo Municipal Council. At the meeting summoned under section 15 (1) of the Municipal Councils Ordinance, No. 29 of 1947 (hereinafter referred to as the Municipal Councils Ordinance), the respondent's name was proposed for election as Mayor by one A. E. Goonesinha (hereinafter referred to as the proposer). The petitioner proposed the name of one Dr. Kumaran Ratnam. In the secret ballot which was held the respondent secured 19 votes while his rival, Dr. Ratnam, received 11 votes, and the respondent was declared elected by the presiding officer.

It is alleged that the respondent's election is bad inasmuch as the proposer was at that date not qualified to sit or vote as a member of the Municipal Council as he was the holder of a public office under the Crown in Ceylon. His right to sit or vote in the Municipal Council is the matter of a separate application for a mandate in the nature of a writ of *quo warranto*. That application was heard on the same day as this and I have in a separate judgment given my reasons for holding that the proposer is not qualified to sit or vote as a member of the Municipal Council.

Section 14 (3) of the Municipal Councils Ordinance provides that the name of any Councillor may with his consent be proposed and seconded for

[1] *(1825) 4 B. & C. 368 ; 107 E.R. 1096*
[2] *(1873) L. R. 8 Q.B.D. 210.*
[3] *(1879) L. R. 11 Ch. 109 at 118.*
[4] *(1916) L. R. 1 K.B. 595 at 612.*

election as Mayor by any other Councillor present at such meeting and the Councillors present shall thereupon elect by secret ballot in each case and in accordance with the provisions of sub-section (4) a Mayor from among the Councillors proposed and seconded for election as Mayor.

It is submitted by the petitioner that the respondent has not been duly proposed by a Councillor, as the proposer was disqualified at the time from sitting or voting as a member of the Council. Learned counsel for the petitioner puts his case in this way. The statute requires that a candidate for the office of Mayor should be proposed by a councillor, *i.e.*, a person who is qualified to sit and vote as a member. As the respondent's proposer was not so qualified, he has not been duly proposed, and the requirements of section 14 (3) have not been satisfied. The failure to comply with the requirements of the statute has made the respondent's election void and he is not entitled to exercise the duties of the office of Mayor. The case of *Kulatileke v. Rajakaruna et al.* [1] has been cited in support of this proposition. That case deals with the election of a Village Committee. It was a requirement of section 22 [2] of the Village Communities Ordinance, No. 9 of 1924, as amended by the Village Communities (Amendment) Ordinances, No. 12 of 1929 and No. 10 of 1933, that the Government Agent should " within threee months before the date on which any term of office of a Committee shall expire" appoint a day for the election of a new Committee. The Government Agent failed to comply with this requirement of the statute and it was held that the election was not valid. Garvin J. observes at page 110 : " Where as in this instance the provisions of the Ordinance which regulated the holding of such elections have not been complied with it cannot be said that the election of the respondents to the offices they hold has been validly held ".

This part of learned counsel's argument depends on the question whether section 14 (3) is directory or imperative, apart from the question whether the word " Councillor " therein excludes a Councillor *de facto*. The general rule is that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or

[1] *(1927) 5 Times 109.*

[2] Section 22 of the Village Communities Ordinance, No. 9 of 1924, as amended by the Village Communities (Amendment) Ordinances, No. 12 of 1929 and No. 10 of 1933 :

" 22 (1) The Government Agent shall appoint a day, within three months before the date on which any term of office of a committee shall expire, for the holding of a meeting for the election of a committee for the three years next succeeding reckoned from the first day of July next following the day of such election

Provided that if, by reason of the inaccessibility of any subdivision, such meeting cannot conveniently be held, within the said period of three months, the Governor may, by notification in the *Government Gazette*, enlarge the said period, in the case of any such subdivision, from three months to six months.

(2) In respect of an election occasioned by a committee going out of office otherwise than by effluxion of time, the Government Agent shall within three months of the said event hold a meeting for the election of a committee for the unexpired portion of such former committee's term of office.

(3) Such election shall be held at a place within the subdivision and shall proceed in such manner, and be subject, so far as the same are applicable, to such conditions as are in this Ordinance provided in the case of meetings of inhabitants. Except that voting shall be by ballot if so provided for by rules made under section 29 of this Ordinance."

fulfilled substantially (*Woodward v. Sarsons*[1] and *De Villiers v. Louw*[2]. The latter case lays down the principle that the breach of the Act governing elections will not always be a ground for avoiding an election. The departure from the prescribed method of election must be so great that the tribunal must be satisfied as a matter of fact, that the election was not an election under the existing law. It is not enough to say that great mistakes were made in carrying out the election under those laws: it is necessary to be able to say that, either wilfully or erroneously, the election was not carried out under those laws, but under some other method.

Curlewis J. A. states the proposition thus:

> "From this we may infer that the principle which the Legislature intended the Court to act upon in considering the validity or invalidity of individual votes based on a breach of a provision of the Act or of the Regulations, where the Legislature has not enacted what the effect of such breach shall be, is that such breach should not invalidate the vote unless the breach be of such a nature as to amount to a violation of a principle either in the Act or the Regulations on which an election shall take place or a vote be recorded."

In the case of *Reg. v. Ward*[3] the same principle was thus stated:

> "We think, therefore that seeing the mistake committed here has produced no result whatever, that the same persons would have been elected if the election had been conducted with the most scrupulous regularity, and that the defendant's title, if bad at all, is only bad, as I may say, on special demurrer, we ought in the exercise of our discretion, to refuse leave to disturb the peace of this district by filing this information."

This principle has been followed by this Court in a number of cases[4]. It was in 1935 made a part of our statute law relating to elections to Municipal Councils[5], and has since 1946 been extended to all elections governed by the Local Authorities Elections Ordinance[6].

It is also an accepted principle in election law that, although provisions as to procedure are regarded as important and their observance rigidly enforced, they are not generally regarded as imperative so as to invalidate an election once an election has been concluded and a candidate returned.

It is clear from the principles I have stated above that the disqualification of the proposer is not a ground sufficient in law for invalidating the respondent's election. The case of *Kulatileke v. Rajakaruna* (*supra*) has no application to the present question. It seems to proceed on the basis that no election as required by the Ordinance was at all held.

[1] *(1874-75) 10 L.R.C.P. 733 at 746.*
[2] *(1931) S. A. Law Reports A. D. 241.*
[3] *(1873) 42 L.J. Q.B. 126 at 131.*
[4] *Karunaratne v. Government Agent, Western Province, (1930) 32 N. L. R. 169; Jayasooria v. De Silva (1940) 41 N. L. R. 510; Ranesinghe v. Government Agent, Sabaragamuwa (1943) 44 N. L. R. 572.*
[5] *Section 52, Colombo Municipal Council (Constitution) Ordinance, No. 60 of 1935, now repealed.*
[6] *Section 69 of Ordinance No. 53 of 1946.*

Learned counsel for the respondent contends that the public office contemplated in section 10 (1) (*d*) of the Local Authorities Elections Ordinance, No. 53 of 1946 (hereinafter referred to as the Local Authorities Elections Ordinance) was an office which existed independently of the person filling it. The office of Parliamentary Secretary, he submits, does not exist apart from the holder and was therefore not the kind of office contemplated in the section. Although section 47 of the Ceylon (Constitution and Independence) Orders in Council, 1946 and 1947, (hereinafter referred to as the Order in Council), provides that the number should not exceed the number of Ministers, the number of Parliamentary Secretaries is not fixed by law. Their number is entirely at the discretion of the Governor-General. The argument now submitted by learned counsel was advanced in regard to the office of director of a company in the case of the *Great Western Ry. Co. v. Bater* [1], wherein Rowlatt J. states :

> " It is argued, and to my mind argued most forcibly, that that shows that what those who used the language of the Act of 1842 meant when they spoke of an office or an employment of profit was an office or employment which was a subsisting, permanent, substantive position, which had an existence independent of the person who filled it, and which went on and was filled in succession by successive holders, and that if a man was engaged to do any duties which might be assigned to him, whatever the terms on which he was engaged, his employment to do those duties did not create an office to which those duties were attached; he was merely employed to do certain things, and the so-called office or employment was merely the aggregate of the activities of the particular man for the time being. I myself think that that contention is sound, but having regard to the state of the authorities I do not think I ought to give effect to that contention. My own view is that Parliament in using this language in 1842 meant by an office a substantive thing that existed apart from the holder of the office. If I thought I was at liberty to take that view I should decide this case in favour of the appellants, but I do not think I ought to give effect to that view, because I think it is contrary to what was proceeded upon in substance in *Attorney-General v. Lancashire and Yorkshire Ry. Co.*, 2 H. & C. 792 ; 10 L. T. 95, in 1864, and one ought not lightly to depart from a course of business proceeded upon in matters of this kind. "

This opinion of Rowlatt J. was considered in the case *McMillan v. Guest* [2]. Lord Wright observes, in regard to this expression of opinion as to the meaning of the word " office " which Lord Atkinson adopted when the case of *Great Western Ry. Co. v. Bater* went to the House of Lords (1922) 2 A. C. 1 : "I do not attempt what their Lordships did not attempt in *Bater's* case [1922] 2 A. C. 1, that is, an exact definition of these words. They are deliberately, I imagine, left vague. Though their true construction is a matter of law, they are to be applied in the facts of the particular case according to the ordinary use of language and the dictates of common sense with due regard to the requirement

[1] *(1920) L. R. 3 K. B. D. 266 at 274.* [2] *(1942) A. C. 561.*

that there must be some degree of permanence and publicity in the office." In the present instance the express provisions of the Order in Council which I have discussed in my judgment on a similar application * in respect of the proposer leave no room for the view that the office of Parliamentary Secretary is not an office which conforms to the standard laid down by Lord Wright. The offices enumerated in section 10 (7) of the Local Authorities Elections Ordinance I think sufficiently indicate that the public office contemplated here is not the type of office learned counsel for the respondent has in mind. There is no limit to the number of Justices of the Peace and Unofficial Magistrates that may be appointed. Nor is it necessary that on the resignation or death of a particular Justice of the Peace or Unofficial Magistrate another should be appointed to take his place. The position is the same in regard to Commissioners for Oaths and Inquirers. These considerations indicate that the words "public office" in section 10 (1) (*d*) of the Local Authorities Elections Ordinance have a wide connotation.

Learned counsel further submits on the authority of *The King v. Hughes*[1] that in an application for a *quo warranto* on the elected the petitioner is not entitled to put in issue the title of the Councillors. That is a case of an information in the nature of a *quo warranto* for usurping the office of Mayor of Monmouth. The plea was taken that he was duly elected according to the governing charter of the borough. In the replication it was urged that there were two candidates; that 50 good votes, tendered for the losing candidate, were improperly rejected; and that 38 persons, who had been unduly elected, and admitted as burgesses, were received as voters for the defendant, and that a majority of the legal votes tendered was in favour of the other candidate. On demurrer, it was held that the replication was bad, in that it was not a direct denial of the validity of the defendant's election, and also attempted to put in issue the title of the electors (*corporators de facto*), which cannot be done in an informaton against the elected.

The judgment of Holroyd J. at page 1100 states succinctly the principles on which that decision proceeds.

> "It is a fundamental principle of pleading, that you must confess and avoid or traverse some one material fact, and the same rule applies to replications as to pleas. The question to be tried in this case is, whether the election of Hughes was good or not. The prosecutor could only put that in issue by a direct and not by an argumentative denial of the validity of the election. These replications state a number of facts, from which a conclusion of, 'not duly elected', is to be drawn. Upon that short ground, it is clear that the replications are bad. As to the other points, it is obvious, that many nice questions may arise as to whether an officer is so *de facto* or not; sometimes that may be so combined with the question of title *de jure* that they cannot be served. But when a person is in possession of the office, his title cannot be thus questioned. Where there has been a judgment of ouster, he is no longer in possession of the office; that judgment, if without

* *Vide (1948) 49 N. L. R. 344—Ed.*

[1] *(1825) 4 B. & C. 368 : 107 E. R. 1096.*

fraud, is conclusive according to the case of *Rex v. Mayor of York* (5 T. R. 66). But without further entering into that, I am of opinion, that the first is a decisive objection to the replications."

Learned counsel also submits that no objection was taken at the time of the election to the proposer and that if objection was taken at the time there were other Councillors who were qualified, ready, and willing to propose the respondent's name. An affidavit to this effect signed by sixteen Councillors has been tendered to this Court. He also argues that once the question has been put and voted on, the want of qualification in the proposer or seconder does not vitiate the election. The case of *In re Horbury Bridge Coal, Iron, and Waggon Company*[1] is cited in support. Jessel M. R. observes at page 117 : " I think that the objection that the amendment was not seconded cannot prevail, it being admitted that it was put and voted upon." James L.J. observes at page 118 : " In my opinion if the chairman put the question without its having been either proposed or seconded by anybody, that would be perfectly good." A similar view was expressed by Maartensz A.J. in the case of *Jayawardene v. Ratemahatmaya of Katugampola*[2] where he says :

> " 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."

These cases cannot be regarded as applying to an election under section 14 of the Municipal Councils Ordinance, sub-section (3) of which expressly provides that the election shall take place upon a name being proposed and seconded. It reads :

> " (3) The name of any Councillor may with his consent be proposed and seconded for election as Mayor or Deputy Mayor by any other Councillor present at such meeting and the Councillors present shall thereupon elect, by secret ballot in each case and in accordance with the provisions of sub-section (4), a Mayor and a Deputy Mayor from among the Councillors proposed and seconded for election as Mayor and Deputy Mayor respectively."

The words " shall thereupon elect " and " from among the Councillor proposed and seconded for election as Mayor and Deputy Mayor respectively" leave no scope for the contention that the name of a candidate for either office need not be proposed and seconded as required by the Municipal Councils Ordinance. Sub-section (4), which provides for the situation " where more than two candidates are proposed and seconded for election as Mayor or Deputy Mayor ", puts the matter beyond doubt. The question then is : Are the requirements of sub-section (3) satisfied if the proposal is made by a Councillor *de facto ?*

No authority has been cited in support of the proposition that acts of a Councillor *de facto* are a nullity. Neither the Local Authorities

[1] *(1879) L. R. 11 Ch. Div. 109.* [2] *(1930) 32 N. L. R. 148 at 151.*

Elections Ordinance nor the Municipal Councils Ordinance declares them to be null and void. In the absence of such a provision it cannot be assumed that the acts of a *de facto* Councillor are void. Section 12 of the Local Authorities Elections Ordinance contemplates the case of a Councillor exercising the functions of his office even after his seat has become vacant. If he *knowingly* acts as a member after his seat has become vacant, he becomes liable to the penalty prescribed in that section. But nothing is said therein of the effect of the disqualification on the acts of the Councillor. Although from very early times similar legislation in England made express provision to the effect that the acts and proceedings of a person in possession of a corporate office, and acting therein, shall, notwithstanding his disqualification or want of qualification, be as valid and effectual as if he had been qualified, our Ordinances providing for the establishment of Municipal Councils have been silent on the point.

I was informed from the bar that the action contemplated in section 13 (3) of the Municipal Councils Ordinance, has not been taken in respect of the proposer, and that at the relevant date there was no other person claiming the right to exercise the duties of a Councillor in his place. The position seems to be that it was assumed that the proposer was not disqualified in law though the fact which ultimately resulted in his disqualification may have been known to all his fellow Councillors. It appears from the affidavit of the respondent that the proposer took a very active part in the business of the Municipal Council, and it is asserted therein that no objection was at any time taken by the petitioner or any one else to his right to act as a Councillor.

Apart from principles of election law, the question is one that may properly be examined in the light of our law of corporations. Section 3 of the Civil Law Ordinance enacts that in all questions or issues which may arise or which may have to be decided in this Island with respect to the law of corporations the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any Ordinance. There being no provision made in respect of acts of disqualified Councillors, the question may properly be decided according to the law of England. The words of section 3 of the Civil Law Ordinance " the law to be administered shall be the same as would be administered in England in the like case, at the corresponding period, if such question or issue had arisen or had to be decided in England" are extensive enough to permit of the application of the provisions of English statute law. I am fortified in my view by the decision of the Privy Council in the case of *Seng Djit Hin and Nagurdas Purshotumdas & Company* [1] wherein Lord Dunedin in construing the corresponding provision of the Straits Settlements Ordinance says :

> " The learned judges of the Court of Appeal based their judgments upon the view that the English statutes above cited were no part of the mercantile law which they thought was the law to be administered

[1] *(1923) A. C. 444.*

in terms of s. 5 of the Ordinance. Their Lordships are quite unable to agree with this view, which they think fails to appreciate that it is not the 'mercantile law' but 'the law' which is to be the same as the law which would be administered in England in the like case. The first thing to be settled is: Has a question or issue arisen in the Colony with respect to—here follow the enumerated departments of law and then come the general words 'and with respect to mercantile law generally'? Now the question here to be decided in the Colony is a question as to the law of sale. No one can doubt that the law of sale is part of the mercantile law. If any proof of the use of such words is required it would be found in the title of the Mercantile Law (Amendment) Act, in two statutes of 1856, both of which especially deal with sale. That being settled the section goes on to say not, as the learned judges seem to assume, that 'the mercantile law' (though indeed if it were so it would be doubtful if the result would be different) but that 'the law' to be administered shall be the same as would be administered in England in the like case at the corresponding period. Now if the same question as to sale had to be decided at the sametime in England it is clear beyond all doubt that the above cited statutes of 1915 and 1917 could be pleaded if the facts allowed of their application. That no other provision had been made by Colonial statute all the learned judges agreed, and the contrary has not been urged in this appeal."

The language of section 60 of the Local Government Act of 1933 which speaks of "any person elected to an office under the Local Government Act, 1933" leaves me in doubt as to whether it is permissible to resort to that section. I therefore refrain from expressing any definite opinion on this question as it is unnecessary to do so in this case, and prefer to rest my decision on the principles of law I have discussed earlier.

As the view I have formed is that the election of the respondent is not invalid, it is not necessary to discuss at length the submission made by learned counsel for the respondent that the petitioner, having acquiesced in the proceedings, cannot now be heard to say that the respondent's election is bad. It is sufficient to say that I agree with learned counsel. This court has always refused to exercise its discretion in favour of a person who having taken no objection at the proper time to the proceedings afterwards seeks to question them. In the case of *Jayasooria v. De Silva* [1] Soertsz J. dealing with a case almost similar observes:

"The result is that in effect and in substance, the majority of the members present were in favour of the respondent and although the letter of the law has not been fulfilled, its spirit has been satisfied. When in that state of things a voter such as the petitioner acting clearly on behalf of parties, who had acquiesced in the procedure adopted, comes forward insisting upon the letter of the law, straining at a gnat so to speak, a Court exercising a discretion vested in it, may well refuse to interfere in this extraordinary manner."

[1] *(1940) 41 N. L. R. 510 at 511.*

The position would be different in a case where the complaint is that a positive requirement of law regarding the qualification of the person elected has not been complied with (*Mendias Appu v. Hendrick Singho*[1]).

Learned counsel for the respondent made a final submission that if I came to the conclusion that the respondent's election was bad there was no machinery whereby a second election could be held. It is true that the Ordinance does not make provision for such a situation, but the Court has power to direct by mandamus the holding of such an election. The law on this subject is discussed in paragraph 1281 of Volume 9 of Halsbury's Laws of England (Hailsham Edition). This Court has given such directions in the case of *De Costa v. Assistant Government Agent, Colombo*[2].

For the above reasons the rule against the respondent is discharged with taxed costs. I direct that the costs be taxed in the highest class according to the scale provided for appeals from the District Court in Part IV of the Second Schedule to the Civil Procedure Code.

Rule discharged.

[1] *(1945) 46 N. L. R. 126.*

[2] *(1944) 45 N. L. R. 476.*