

BOVILL,
C.J.
&
TEMPLER,
ACTING J.
NICOLA L.
GEORGHIA-
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OTHERS
v.
YOUSSEUF
ZIA.

and in the same clause in which it is used directions are given as to the application of the sum recovered similar to those which we find in Section 99. We do not therefore think that the informer is entitled to take the full penalty ; he is, in our opinion, entitled only to such part of it (not exceeding a half) as the Court may direct. We are of opinion that this is not the intention with which Section 43 was framed, and we think it unfortunate that the law does not absolutely provide for the application of the penalty. In this case the defendant has, through mere carelessness, rendered himself liable to this penalty. He has not in any way acted in bad faith, with wrongful purpose, but he has acted with culpable carelessness, and it is perhaps no bad thing that persons taking upon themselves the responsibilities of the office of Municipal Councillor should understand that they are taking upon themselves responsibilities and not merely powers. Our decision in this case proceeds on a bare statement of facts. Whatever motives may have prompted them to institute this action, and that is a matter we are not concerned to enquire into and which does not come under our notice in this action, we are of opinion that the plaintiffs have done no bad thing from the point of view of the public in manifesting the fact that the assumption of office is an assumption of responsibility. We shall therefore award half the penalty to the plaintiffs ; the other half will go to the Municipal chest, and the defendants must pay the costs of the action.

Judgment varied.

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NICOLA L. GEORGHIADES AND
OTHERS

Plaintiffs,

v.

NICOLA ROSSOS

Defendant.

MUNICIPAL COUNCIL—ELECTION OF COUNCILLOR—DECLARATION MADE ON GOOD FRIDAY—MUNICIPAL COUNCILS' ORDINANCE, 1882, SECTIONS 38, 43 AND 107.

The defendant, who was duly elected as a member of a Municipal Council, made the declaration required by Section 38 of the Municipal Councils' Ordinance, 1882, on Good Friday.

HELD : That the defendant's declaration so made was valid.

APPEAL from the District Court of Larnaca.

Action to restrain defendant from acting as a member or as President of the Municipal Council of Larnaca, and to recover penalties for having acted as President of the Council without having made the declarations required by Sections 38 and 39 of the Municipal Councils' Ordinance, 1882.

The defendant was elected a member of the Municipal Council of Larnaca and made the declaration required by Section 38 of the Municipal Councils' Ordinance, 1882, on Good Friday.

On the 2nd of April there was a meeting of the Council at which the defendant was elected President. There was no quorum of the Council present at that meeting. The defendant made the declaration required by Section 39, but it was not clear on the evidence whether this declaration was made on the 2nd or the 4th April. Subsequently to his election as a member of the Council the defendant signed two building permits, but he alleged that he did this in his capacity as a member and not as President of the Council.

The defendant pleaded that the declaration he made on Good Friday was valid, and alleged that he had never been elected and had never acted as President of the Council.

The District Court dismissed the action on the ground that the declaration, though made on Good Friday, was valid, and that there was no evidence that the defendant had acted as President of the Council.

The plaintiffs appealed.

Diran Augustin, for the appellants: The defendant admits that his declaration was made on Good Friday and I contend that the declaration so made was invalid under Section 107 of the Ordinance.

Respondent in person: Section 107 is permissive and does not render invalid the acts done on holidays. I am a member of the Eastern church and the 30th March was not Good Friday for me. Good Friday for members of the Eastern church fell on May 4th. The proceedings of the meeting at which I was elected President were a nullity and I have never acted as President.

Judgment: In this action the plaintiffs claim that the defendant may be restrained from acting as President or as a member of the Municipal Council of Larnaca, and that he may forfeit sums of £20 under Section 43 of the Municipal Councils' Ordinance of 1882.

The plaintiffs have stated the facts on which they rely in support of the claim as follows:

1. That defendant, after his election as a Councillor, made the declaration required by law to be made by members of the Council on Good Friday. Hence it is argued that the declaration was made on a public holiday and is for that reason a nullity.

2. That defendant, having been elected President of the Council, did not make the declaration required by law

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to be made by him on his appointment at the time and in manner by law appointed.

3. That defendant was not elected at a meeting duly qualified to dispose of business.

4. That notwithstanding these facts he has acted in the capacity of President by issuing two permits for building.

In reply to these allegations the defendant admits:

1. That he made his declaration as a Councillor on Good Friday and contends that his declaration made on that day is perfectly good.

2. Admits that he was never lawfully elected President of the Council and contends that his declaration made in consequence of that informal election (whether that declaration was in itself formal or informal) is also a nullity, and

3. Admits signing the building permits, but contends that his signing them was not a presidential act.

It would appear therefore that there were no material facts in dispute except whether the building permits were signed by the defendant as President of the Council, and on that point no issue was settled.

There is one issue stated for the consideration of the Court ; which is, whether the defendant made his declaration as President on the 2nd or the 4th of April.

This does not appear to be a matter worth considering for, on whatever date it was made, it was plainly not made at the time when defendant was appointed President, in the presence of the members then present. Besides which, it is alleged by plaintiffs and admitted by defendant that the election was invalid, so that for the purposes of this action there can be no question on that subject, and we do not think that the defendant's declaration made in consequence of that admittedly invalid election could be of any effect. If it could in any case operate as an estoppel to any contention on his part that he was never President, it certainly could not do so as between the defendant and the plaintiffs, who have not been in any way induced by that act of the defendant to incur any responsibilities which they would not otherwise have incurred.

On the facts alleged by the one party and admitted by the other there is therefore one legal question arising, viz. : whether the defendant by making his declaration as a Councillor on Good Friday, in point of law failed to make an operative declaration.

The parties were evidently also at issue as to the effect of the issue by defendant of the two building permits, but they did not technically go to trial on this question.

As to the solution of the question of law above stated we have no doubt. The making of a declaration is not one of those acts for the doing of which a specific day is named by the law, as is the case with the publication and revision of the voters' lists, and Section 107 of the Ordinance has nothing to do with the matter.

As to the question of fact which, as we have mentioned, is distinctly raised by the parties but not put in issue, we cannot say that it is or ever has been properly before the Court for decision, but assuming that it has been put in issue and is submitted for the decision of the Court, as appears to have been the opinion of the Court below, then we cannot say that the plaintiffs have furnished any such evidence as would justify us in adopting their view of the matter.

This disposes of all the questions of fact and of law properly submitted for the decision of the Court. In saying this we do not overlook the fact that the plaintiffs have, both at the trial in the Court below and here, attempted to set up against the defendant other acts done by him as President besides the issuing of the two building permits. There has been mention of a letter written by him as President on the 2nd of April, 1888, and it is now said that his declaration of acceptance of office after his admittedly invalid election as President was a presidential act. Neither of these acts was originally alleged in this action against the defendant as an act in consequence of which he had rendered himself liable to the payment of any penalty. Defendant asked for information as to the acts relied on as rendering him liable to penalties, and was told they were the issue of two building permits. No other act was alleged and, so far as this action is concerned, no other can be made use of. Whatever might be the case in another action, this is not an action of such a nature as would incline us to allow the plaintiffs any opportunity of making good defects in their proceedings. As to that part of plaintiffs' claim which asks for an injunction, we do not see that any ground for relief is established.

We are of opinion that defendant is a member of the Council so that he should not be restrained from acting in that capacity.

As to his acting as President, there is no suggestion that the defendant either threatens or intends to act as President, indeed he entirely disowns any such intention, nor have we any evidence that he ever so acted.

We must therefore confirm the decision of the Court below and dismiss the plaintiffs' appeal with costs,

Appeal dismissed.

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