[BOVILL, C.J. AND SMITH, J.]

AHMET BEKJET *Plaintiff,*

v.

ACHILLEA LIASSIDES *Defendant.*

MUNICIPAL COUNCIL—QUALIFICATION OF MEMBERS—ELECTION ORDERED BY THE HIGH COMMISSIONER UNDER LAW OF 1885—DECLARATION REQUIRED TO BE MADE BY MEMBERS—CUMULATIVE PENALTIES.

Section 31 of the Municipal Councils' Law, 1885, enacts that where an election of a Municipal Council is ordered by the High Commissioner under the provisions of that Law, such election shall be held "as far as possible in accordance with the provisions of the Municipal Councils' Ordinance, 1882."

HELD (reversing the decision of the Court below): That where an election is so ordered and held, any person elected as a member of the Council must possess the qualifications required by Section 23 of the Ordinance of 1882, even though no valuation list had ever been made and no rate ever levied and that the defendant, who did not possess these qualifications and, consequently, could not make the declaration provided by Article 38 of the Ordinance, was liable to pay penalties in respect of acts done by him as President of the Council.

HELD: Also that penalties were payable in respect of each separate act performed by him in his capacity of President of the Council.

Quaere whether the levying of a rate is essential or whether the defendant would be qualified if a valuation list showed that he was liable to be rated in respect of premises of the annual value of £20.

APPEAL from the District Court of Nicosia.

The action was brought to recover the sum of £100 being the amount of five penalties of £20 each which the plaintiff alleged that the defendant had rendered himself liable to pay under Section 43 of the Municipal Councils' Ordinance, 1882, by reason of his having acted as President of the Municipal Council of Nicosia without having made the declaration required by that Ordinance, and without being duly qualified at the time of making the declaration.

It appeared that in the year 1888, the Municipal affairs of the town of Nicosia were administered by a Municipal Commission appointed by the High Commissioner under the Municipal Councils' Law, 1885.

In July, 1888, the High Commissioner, under Section 31 of that law, directed an election of a Municipal Council to be held. The defendant was elected as a member of the Council and was subsequently elected President.

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Section 31 enacts that "such election shall be held as far as possible in accordance with the provisions of the Municipal Councils' Ordinance, 1882, and the persons to be elected shall take office subject to such modifications of the provisions of the said Ordinance, relative to the tenure of office by Councillors, and the order of their retirement therefrom, as may appear to the High Commissioner in Council to be necessary for making such provisions applicable under the present circumstances of the case, etc.

Under Section 23 of the Municipal Councils' Ordinance, 1882, no person shall be qualified to be elected or to be President, Vice-President or Councillor of any Municipal Council, who shall not be entitled to be on the list of voters for the place for which the Council is to be elected, nor unless he shall be rated upon property of such annual value as is hereafter specified, that is to say, in a town of 5,000 inhabitants or upwards of an annual value of not less than £20.

Section 38 of the Municipal Councils' Ordinance requires every person elected to make a declaration in the words or to the effect of the words contained in that article, and amongst other things that he "was rated for the year ending the day of in respect of property of the annual value of £20."

The defendant, after his election to the Council, made a declaration that he "was possessed of property of the annual value of £20."

The District Court found that the defendant was on a voters' list and that he was not rated in respect of property of the annual value of £20, but held that as he was elected under a special order of the High Commissioner he was not required to have the qualifications laid down by the Ordinance of 1882. With regard to the declaration, the Court held that there was no rate list and that "the declaration was not one outside the intention of Ordinance VI. of 1882 (the Municipal Councils' Ordinance) and directly in accordance with Article 31 of Ordinance VIII. of 1885."

The District Court gave judgment for the defendant.

The plaintiff appealed.

Lascelles for the appellant: I am entitled to judgment in this case. The Court find that the defendant did not make the declaration required by the law, and that he was not rated in respect of premises of the annual value of £20. The Court below treated this as an election under Section 8 of the Municipal Councils' Ordinance, 1882, but it is quite clear that that section cannot apply. It only refers to elections to be held in the year 1882.

Collyer, Q.A., for the respondent: I cannot contend that this election was one held under Section 8 of the Ordinance of 1882, but the election was to be held as far as possible in accordance with the provisions of that Ordinance, and as there was no rate list and no rate had ever been levied it was impossible that any member of the Council could be qualified under the Ordinance of 1882.

The election was justified by the language of Section 31 of the law of 1885. If the Court should be against me, I submit that the defendant is only liable to pay one penalty. The offence is acting as President, and his having acted may be evidenced by a series of acts, but the law did not intend that he should be liable to pay a penalty in respect of each separate act.

He cited Crepps *v.* Durden, 1 Smith's L.C., p. 691; Milnes *v.* Bale, 10 L.R.C.P., 591; Garrett *v.* Messenger, 2 L.R.C.P., 583.

Lascelles replied: Milnes *v.* Bale is in my favour. A person who had been found guilty of several acts of bribery was declared to be liable to a penalty in respect of each act. In Crepps *v.* Durden the offence was exercising a wordly calling, and the acts proved were only evidence of the defendant having done so.

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Judgment: This is an appeal from the District Court of Nicosia. The plaintiff claims that the defendant may be ordered to pay five penalties of £20 each, which he alleges defendant has made himself liable to pay under Section 43 of the Municipal Councils' Ordinance, 1882.

The facts of the case appear to be as follows:

For some time the affairs of the Municipality of Nicosia have been administered by a Commission appointed by the High Commissioner under the provisions of the Municipal Councils' Law, 1885, and in June last His Excellency under the powers conferred on him by that law directed that an election of a Municipal Council should be held on the 26th of July last. At the election then held the defendant was elected a Councillor. Under the provisions of Clause 38 of the Ordinance of 1882 he was under the necessity of making a declaration that, or to the effect that, he was rated in respect of property of the annual value of £20 situate within the Municipal limits. The defendant, within the requisite time for making such declaration, made a declaration in which he declared that he was possessed for the year ending the 31st of December, 1887, of property having a yearly value of £20 and situate within Nicosia. He was subsequently elected President of the Council.

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It is not disputed that he voted for the election of the President, that he presided at meetings of the Council on the 10th and 30th of August and on the 4th of October, or that he signed a document which for Municipal purposes was posted on the house of Mehmet Ali Effendi, and by reason of these acts the plaintiff claims that he has incurred five penalties under the 43rd section of the Ordinance of 1882.

The plaintiff contends that defendant has acted as President or Councillor on five occasions, that although he has done so he was never qualified to hold office, that whereas the law requires that a person in order to be qualified for election as a Councillor at Nicosia shall be entitled to be on the list of voters and shall be rated upon property of an annual value of not less than £20, the defendant, even if he be entitled to be on the list of voters, is not rated upon any property whatsoever and that therefore he was never qualified for election. Plaintiff further contends that assuming that defendant was qualified, in making the declaration he did make, he altogether failed to make the declaration required by the Ordinance and for that reason ceased to hold office as a Councillor and cannot therefore lawfully hold office as President.

The District Court has swept aside all these contentions of the plaintiff and has given judgment for the defendant. On what grounds will appear from the following extract from the note of the judgment contained in the file of proceedings. This is as follows: "the election of the defendant was made under a special order of His Excellency in Council and that because of such order the defendant was not required to have the qualifications laid down by Ordinance of 1882" and "as to the fact that the declaration of defendant as proved by the evidence not being in the exact words of the declaration ordered by Article 38 . . . . . that as no rate list existed, this declaration could not have been made in the terms of the article unless it was falsely made . . . that it could not be expected that the Court should hold that the defendant acted wrongly in not making a false declaration . . . that it was clear that the law never contemplated such a state" (of affairs) "for the words which precede the declaration are these 'a declaration in the words or to the effect following' and that consequently the Court adjudges that the declaration as given in evidence as made by the defendant on his election as Councillor was not a declaration outside the intention of Ordinance VI. of 1882 and directly in accordance with Article 31 of Ordinance VIII. of 1885."

Against their judgment this appeal is made.

On behalf of the appellant it is contended that the views of the District Court as to the attendant circumstances of an election held in pursuance of an order of the High Commissioner under the law of 1885 are wrong, and that on the facts admitted or proved in this action, plaintiff is entitled to judgment for the amount claimed.

For the respondent it is contended:

1st. That there is no sufficient evidence that defendant is not on a rating list; that although plaintiff may have proved that defendant's name is not on a particular list which has been talked about in this action, it does not therefore follow that there is no rating list and that defendant's name does not appear on such list if it exists; that the burden of proof rests on plaintiff, and that in an action of the nature which this action is, the Court must require the strictest evidence.

2nd. That the declaration made by the defendant after his election as Councillor was to the effect required by the Ordinance.

3rd. That the election being an election held in pursuance of the order of the High Commissioner, the law of 1885 did not require it to be, and it could not be, held precisely in the same way as elections held under the Ordinance of 1882, that it was in fact held as far as possible in accordance with the provisions of that Ordinance, and that if therefore the defendant was not actually rated that was no reason why he should incur a penalty for acting as a Councillor.

We have done our best to state accurately this part of the defendant's argument. When stated in writing it looks somewhat inconsequential, but we nevertheless believe that we have stated it correctly.

4th. That it must be proved that defendant knew he was acting contrary to the law.

5th. That if this Court should hold that the defendant had rendered himself liable to any penalty, the number of penalties claimed by plaintiff was excessive: that the acting as President must be taken to be one continuous act, and that only one penalty could be recoverable in respect of it, and that the various acts of office which he might perform were to be regarded only as evidence of the one offence of acting as President; and that the occurrence of the words for every such offence in Section 43 of the Ordinance of 1882 did not necessitate or justify a different conclusion as to the meaning of the law when speaking of "acting as President."

Besides these arguments it was suggested to us that the defendant had been led into error by the faulty nature

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of the Greek translation of the law. However this may be, we do not think we could lend any ear to such representations, much as we might sympathise with the defendant for mistakes he may have made owing to the shortcomings of the translator.

It will be convenient for us to consider first the view which has been taken by the District Court. We have already set out the contents of the note of their judgment which is attached to the file of proceedings.

The plaintiff contends that the view of the District Court is, that the election at which the defendant was elected a Councillor, was such an election as was referred to in Section 8 of the Ordinance of 1882, and he contends that the view is erroneous, and we understand counsel for the defendant to admit that it would be doing violence to the language of the section to place such a construction upon it.

Attached to the note of the judgment of the District Court is a long statement headed " consideration " which appears to be a more elaborate statement of the reason why the Court formed the opinion it did. It may be necessary for us to refer to that statement to show how, in our opinion, the grounds on which the judgment of the District Court is based are wrong, but although the conclusions formed by the Court as to the effect of the Ordinance of 1882 and the law of 1885 are in our opinion wrong in many particulars, we have failed to ascertain whether the Court considered that the election of defendant ought to have been conducted in accordance with the provisions of any law, whether it was necessary for candidates for election to have any qualifications to render their election valid, or, if so, what law it was, that the Court considered should govern the conduct of the election and define the qualifications of persons to be elected Councillors.

Our view of the law is as follows : the Municipal Councils' Ordinance of 1882 provides (Clause 2) that where a town had had a Council before the coming into force of that Ordinance, it should continue to have a Council, and (Section 7) that until the first election of a Council under the provisions of that Ordinance, the persons exercising the power and authority of a Council, should continue to exercise such power and authority, and that (Section 8) in every place which had a Municipal Council the first election of a Council after the passing of that Ordinance should be held at such time in the year 1882 as the High Commissioner in Council should direct and should, in regard to the persons entitled to vote and the persons entitled to be elected Councillors, be conducted in the same manner as Municipal elections had been conducted previously to the coming into force of the Ordinance, except as regarded

the respective numbers of Christians and Moslems. The Ordinance in subsequent clauses dealt with the qualification of Councillors, as to which it provided (Section 23) that no person should be qualified to be elected or to be a President or Councillor of any Municipal Council unless he should be entitled to be on the list of voters and unless he should be rated upon property (in towns of the size of Nicosia) of an annual value of not less than £20.

The Council is by the Ordinance required to make out a list of voters annually (Sections 13 to 22), and the Ordinance requires that after the first election of a Municipal Council under the Ordinance, the Council shall, as soon as conveniently may be, appoint a person to make a list of rateable property within the Municipal limits, and provision is made for revising and settling this list and for giving all persons who have a right to have their property entered on it, an opportunity of objecting to the valuation either of their own or of any other property on the list, or of claiming that their own or any other persons' property may be entered on or omitted from the list, and the Ordinance provides that if any President or Councillor shall neglect or refuse to comply with any of the provisions of the Ordinance in respect of the preparation or publishing of any list or lists, he shall be liable to a penalty, and it provides that if the Municipal Fund as defined by Section 49 shall be insufficient to satisfy the necessary Municipal expenses, then that a rate shall be made which is to be entirely based upon the valuation list. It appears to us that the law was intended to provide what should be the qualification of persons entitled to vote at Municipal elections, what should be the qualifications and manner of election of Councillors and to make other provision in connection therewith, and the intention of the Ordinance clearly was that, shortly after the passing of the Ordinance, elections were to be held in those towns where Councils had previously existed, and that the Councils then elected were to proceed to put the machinery of the Ordinance into force, by preparing the voters' list and the valuation list, which was to be a catalogue of the immoveable properties in the Municipal limits, with a statement of the value at which they were respectively assessed for Municipal purposes and the names of their respective occupants.

To exercise a vote a person must be on the voters' list, and to be on the voters' list he must be the occupier of property included in the valuation list, and the greater portion of the Ordinance is devoted to a statement of the provisions for settling those voters' and valuation lists, and the Ordinance provides that at all elections (subsequent to the first, for which Section 8 makes special provision)

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the persons entitled to vote should be those only who were on the voters' list, and that the persons qualified for election as Councillors should be rated in respect of property of a yearly value of £20, which could not happen unless their names appeared in the valuation list as occupants of property rated at a yearly value of at least £20.

It was subsequently found to be necessary for the Executive Government to intervene in the management of Municipal affairs, and by the law of 1885, it was enacted that whenever in any town the affairs of which were entrusted to a Municipal Council, it should appear to the High Commissioner that there was no Municipal Council duly qualified to act according to law, it should be lawful for the High Commissioner to appoint a Commission to exercise and perform the powers and duties of a Municipal Council for such town, and that at any time after the appointment of such Commission the High Commissioner might, upon petition, order the election of a Municipal Council for the town, and the law provides that such election should be held, so far as possible, in accordance with the provisions of "The Municipal Councils' Ordinance, 1882," and the persons to be elected should take office subject to such modification of the provisions of that Ordinance relative to the tenure of office by Councillors and the order of their retirement therefrom as might appear to the High Commissioner to be necessary for making such provisions applicable under the special circumstances of the case.

We have looked into the observations which the President of the District Court has recorded as containing the grounds on which the judgment of that Court is based, and there it does appear to be stated (though it is not so stated in that part of the note headed "judgment") that an election of a Municipal Council held by order of the High Commissioner under the provisions of Article 31 of the law of 1885 is to be regarded as a first election within the meaning of Section 8 of the Ordinance of 1882. It does not however appear by what process of reasoning this conclusion is arrived at. That part of the note which is entitled "judgment" clearly decides that because the election of the defendant was made under a special order of the High Commissioner, therefore the defendant was not required to have the qualifications laid down by Ordinance VI. of 1882, and a general perusal of the note of the judgment, including that part of it headed "consideration," leads us to the conclusion that the District Court is of opinion that because the High Commissioner has the power to order the election of a Council to supersede a Commission, such order, unless it specifies what the qualifications of a Councillor are to be, is to render the persons elected duly qualified,

whether they possess the qualifications required by the Ordinance of 1882 or not, or indeed whether they have or have not any sort of qualification.

There appears to be no reason why an election of a Municipal Council which takes place under the order of the High Commissioner in Council made under the powers of Section 31 of the law of 1885 is to be regarded as a first election within the meaning of Section 8 of the Ordinance of 1882, unless it be that the law of 1885 directs that such an election is to be held so far as possible in accordance with the provisions of "The Municipal Councils' Ordinance, 1882," and if it be necessary that persons elected as Councillors should be possessed of any qualifications, those qualifications must, in our opinion, be defined by the law in force at the time the election takes place, unless there be some power to suspend or supersede the operation of that law which has been actually exercised. What then is the meaning of the enactment that an election which takes place under the authority of an order of the High Commissioner in Council, shall be held as far as possible in accordance with the provisions of the Ordinance of 1882? What are the provisions of that Ordinance as to the holding of elections?

Are they the scanty and temporary provision made by Section 8 for enabling Municipal affairs to be carried on for a brief period until the machinery of the Ordinance could be put into operation, so that the elaborate provisions it contains should supersede the old law, or are they those elaborate provisions which it is evident on a perusal of the Ordinance were intended to be the only operative provisions after the first election of a Council which the law declared was to take place in 1882?

There can, in our opinion, be no doubt that the law of 1885 referred to the latter of these provisions. When that law was framed and passed, Clause 8 of the Ordinance of 1882 had long since ceased to have any effect, and it is impossible to suppose that the law, in referring to the provision of the Ordinance of 1882 can have intended to revive the temporary and transient provisions of that clause for an indefinite and unlimited period. If that had been intended much more direct and forcible words must have been employed. We see no justification for the conclusion that the election held under the order of the High Commissioner, made in pursuance of the powers conferred on him by the law of 1885, is to be regarded as a first election. The Ordinance of 1882 directed that in every place which then had a Municipal Council the first election after the passing of the Ordinance should be held in the year 1882 in the manner therein mentioned, and if such a first election was held, it was held, and no subsequent election could be

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regarded as a first election. The Ordinance contemplated that the Council thus elected would prepare the voters and valuation list, and that from that time as long as the law should remain unaltered, it should be the law which regulated all questions as to qualification of electors and Councillors, and as to the conduct of Municipal elections, and that at any subsequent election, all questions arising as to qualifications of voters or Councillors, or as to the manner of conducting the election, should be settled not by a reference to Section 8 but by a reference to those provisions for the establishment of which the Ordinance was introduced.

If the Council first elected did not do their duty as to preparing the voters and valuation list they rendered themselves liable to a penalty, and it is evident that it was supposed that the liability they would incur by neglecting to prepare the lists would be sufficient to deter them from neglecting their duty.

If the Council so first elected in spite of all penalties neglected their duty, or if no Council was so first elected, it is possible that no Council could subsequently have been validly elected, and that no person could have had the qualifications necessary to entitle him to vote, and it is possible that the inhabitants of any place in which such a state of things occurred might have laboured under the disadvantage of not being able to avail themselves of the benefit of managing their own affairs which the law had accorded to them. That might be a regrettable state of circumstances, but it would not and could not alter the law. The fact that the inhabitants of Nicosia, have possibly lost the means of exercising their Municipal privileges, does not render this election held by order of the High Commissioner a first election under Section 8 of the Ordinance of 1882, even if it be the fact that no other election of a Council has taken place since the passing of the Ordinance of 1882, a fact of which we have no evidence.

If then it be the case, as we feel bound to decide that it is, that the election we have to consider was not an election which was to be conducted in accordance with the provision of Section 8 of the Ordinance of 1882, is the judgment of the District Court right in deciding that because this election took place under a special order of the High Commissioner, therefore it was not necessary for the defendant to possess the qualifications required by the Ordinance of 1882?

We have already stated the provisions of the law which confer upon the High Commissioner the power to make such an order, and it hardly needs to be stated that, unless the High Commissioner is empowered, when making such an order, to supersede or modify the ordinary law, or to

suspend its operation in any particular, the law must remain in full force. Now, the High Commissioner is empowered to modify the law in two particulars, viz., as to the tenure of office by Councillors, and as to the order of their retirement from office. The fact that he is empowered to make these modifications and is not empowered to make any others, absolutely negatives the conclusion that he was intended to have any power to modify the law as to the qualification of Councillors, and in our opinion the High Commissioner's order cannot in any way have modified the law in that respect.

It is convenient here to consider one of the arguments which has been put forward on behalf of the defendant, viz., that the law of 1885, in enacting that this election should be held as far as possible in accordance with the provisions of the Ordinance of 1882, in some way affords a protection to the defendant against the claim of the plaintiff. We have already stated our view that the provisions here referred to must be, not the provisions of Section 8 of that Ordinance, but the subsequent permanent provisions which it enacts, and if the provisions here referred to are the provisions as to the qualification of Councillors, it appears to us that the words in question are a distinct enactment, that Councillors are to have the qualification required by the Ordinance of 1882. We do not, however, consider that they in any way bear upon that subject; they say only that the election is to be held in a certain manner: they are absolutely silent as to the qualification of Councillors, and their silence leaves the ordinary law in full operation. We cannot think that an enactment as to the holding of an election, is to be read as an enactment affecting the qualification of persons to be elected.

It remains for us to deal with that part of the decision of the Court which holds that the declaration made by the defendant on his election as a Councillor "was not a declaration outside the intention of Ordinance VI. of 1882, and directly in accordance with Article 31 of Ordinance VIII. of 1885." The view thus expressed is relied on by the defendant as correct, and forms one of the heads of argument addressed to us on the defendant's behalf.

The Ordinance says that no person shall be capable of acting in any capacity in the Council . . . until he shall have made and subscribed . . . a declaration, which, so far as it is material to the matter we have to consider, is to be in the words or to the effect following, viz.:—

I, . . . having been elected Councillor of the Municipal Council of . . . do hereby declare that I was rated for the year ending the day of in respect of property of the annual value of £20.

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The defendant has made a declaration that during the year ending 31st December, 1887, he was possessed of property having a yearly value of £20.

The object of the declaration required by the Ordinance is clear. It is to prohibit persons not actually rated or liable, if a rate were made, to be rated on property of an annual value of £20, from holding office. It requires each person who is elected to declare that he has the qualifications required by Section 23 of the Ordinance, for if he is rated he is entitled to be on the list of voters. If he is unable to make that declaration he ceases to be a Councillor; if he makes it wrongfully he is criminally liable. The declaration made by the defendant, though it may be perfectly true, is admittedly not in the words of the declaration required by the Ordinance, nor is it in our opinion, to the same effect. The fact that defendant was possessed of property does not even show that he was the person who was entitled to be rated in respect of that property. The fact that he considers the property he possessed to be of the annual value of £20, is no guarantee that it would have been assessed at that value, and the form of his declaration is such as to make it quite clear, that, whatever may be his rights as to being rated, he was, as a matter of fact, not rated at all, nor in any way liable to be rated, if a rate were made, and that is the effect of the evidence which has been adduced. The declaration which he ought to have been in a position to make, on taking office as a Councillor, should be to the effect that he was actually rated, and the declaration he has made is to the effect that he is possessed of property which is not included in any valuation list, and in respect of which he cannot therefore possibly be rated, and this declaration is said to be to the effect required by law. The judgment says that it is not outside the intention of the Ordinance. It appears to us to be directly to the contrary effect of the declaration required by the Ordinance, and, so far outside its intention, that, if it were a sufficient declaration, it would absolutely nullify the intention with which the Ordinance was enacted. The judgment also says, as we understand it, that the declaration is directly in accordance with Article 31 of Ordinance VIII. of 1885. A careful consideration of Section 31 of the law of 1885, does not enable us to understand what this part of the judgment means.

This disposes of the judgment of the Court below and also of two of the contentions which were relied on on behalf of the defendant, and leaves for our consideration the other contentions on which defendant relied.

Before proceeding to discuss these, we think it may be well to explain why we have adopted a phraseology which will no doubt have been observed. We have spoken of

the defendant as not being rated nor liable to be rated if a rate were made, and we have done so for the following reasons.

The Ordinance of 1882, though it says that persons to be qualified to sit as Councillors must be *rated*, does not absolutely require a rate to be made. All the machinery for making a rate is to be constructed, but no rate need actually be made, unless the Municipal Fund mentioned in Section 49 shall not be sufficient to satisfy the necessary expenses of the Council. For the purposes of this action it is quite enough that no valuation list was made, because no person can possibly be rated until such list is compiled, but when a person's name appears in an existing valuation list as an occupant of property of the annual value of £20 but no rate has ever been made on the basis of that valuation list under Section 73, it may in that case be questioned whether such person would be making a declaration to the effect of the declaration required by Section 38 of the Ordinance, if he declared that he was entered in such list as an occupant of property of the yearly value of £20, and that no rate had actually been made.

These are questions we are not called upon to decide, but we mention them here to avoid the conclusion which might otherwise not unreasonably be formed, that we have considered that being entered in the valuation list as the occupant of property is the same thing as being rated.

Where revenue is habitually raised by rates it is practically the same thing, and the Ordinance of 1882 evidently contemplated that rates would be made under it, but where a rate is never resorted to and laws passed since 1882 have almost precluded the necessity of making a rate, it is not easy to say what would be the position of a person liable to be called upon to contribute to any rate. Is he for that reason to be regarded as rated within the meaning of the Ordinance, though no rate was ever made, or is the law to be construed strictly according to its words, so that even when the necessities of the community do not require that revenue shall be raised by the making of a rate, no person shall be held to be rated unless a rate has been actually made?

The question is an open one and we have acted on the assumption that if the defendant's name had been entered on the valuation list he could have been considered as rated though no rate had actually been made. Counsel on either side appear to have acted on the same assumption, and if we are to deal with the arguments submitted to us which we think it useful to do, we must act on it too. We have already set out the contentions on which defendant

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has relied and we have already dealt with two of them. One of those which remain to be considered, is that there is no sufficient evidence that defendant is not on a rating list. It is said that the burden of proof was on the plaintiff and that though he has furnished evidence that defendant's name does not appear on a list which was prepared for the purpose of making a valuation list, he has not proved that there is no rating list on which defendant's name does appear. Plaintiff says that he cannot prove a negative and that he has given reasonable evidence to show that defendant is not rated. He has called the defendant in evidence, and has elicited from him a statement that there is no document in the possession of the Council which shows that he was rated at £20 a year. No attempt was made on behalf of the defendant to shake the conviction which this evidence must lead to. We consider that it is prima facie evidence that defendant is not rated, nor liable to be rated if a rate were made, and we must uphold the finding of the District Court on this point. As to the contention that it must be proved that defendant knew that he was acting contrary to law, we do not think it necessary to enter into a discussion as to the correctness of this argument.

It is sufficient in our opinion to say that when the defendant intentionally altered the words of the declaration required by the Ordinance, he must have known that he had not the legal qualification to act as a Councillor.

For the foregoing reasons we are of opinion that the plaintiff's contention is right, that the defendant had not the qualifications required by law to enable him to fill the office of Councillor, and that the declaration which the defendant made on his election as Councillor was not to the effect of the declaration required to be made by Section 38 of the Ordinance of 1882, and that therefore on either of these grounds he has rendered himself liable to the penalty provided by Section 43 of the same Ordinance.

For the plaintiff it has been alleged that the defendant acted as President or Councillor on five separate occasions, and the acts so alleged against him are all admitted or proved, and it is therefore claimed that defendant is liable to pay five penalties of £20 each.

For the defendant it is said that this is not so, but that the acting as a Councillor, or as President, by an unqualified person is a continuing offence, that the separate acts which such a person does as a Councillor or as President are not separate offences, but are only evidence of the one offence of acting in a capacity for which such person is unqualified,

and we have been referred to a number of cases decided in the Courts in England, which, it is argued, will show that this is the construction which would be placed by the Courts in England on the enactment that "if any person shall act as President, Vice-President or Councillor of any Municipal Council without having made the declaration hereinbefore required in that behalf, or without being duly qualified at the time of making such declaration . . . he shall for every such offence forfeit the sum of £20."

We have considered the cases to which we have been referred, particularly the cases of Milnes *v.* Bale, and Crepps *v.* Durden.

We trust that any reference we may make to cases decided in England, will not lead to any erroneous impression that we are applying English law to the disposal of a case governed by the laws in force in Cyprus.

The cases to which we have been referred, and which we have consulted, are all of them cases involving a judicial decision on the meaning to be placed on some particular enactment, and the reports of the cases show what was the construction adopted in each particular case, and on what principles it was adopted. The decisions are decisions of learned lawyers, and their views on such subjects are views which would command universal respect, and which we should do wrong if we neglected to make ourselves acquainted with.

The case which appears to us most applicable to the case now before us is that of Crepps *v.* Durden, where a man was charged with "exercising his ordinary trade upon the Lord's day," and it was held that although the accused was proved to have sold to many persons on the same Lord's day, he had nevertheless only committed one offence. That decision was arrived at on a consideration of the words of the act of parliament. It was said that the offence was exercising trade on the Lord's day, and that the law made no division of the day, that therefore the offence was but one entire offence, whether longer or shorter in point of duration, whether it consisted of one or of a number of particular acts, that there was no idea conveyed by the act itself, that if a tailor sews on the Lord's day every stitch he takes is a separate offence, that there can be but one entire offence on one and the same day, and we would particularly call attention to the fact that it was also laid down in this decision, that repeated offences were not the object which legislature had in view in making the statute, but simply to punish a man for exercising his trade on a Sunday.

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It appears to us that to bring the case before us within the decision in the case of Crepps *v.* Durden it would be necessary that some words should have occurred in the Ordinance of 1882, to indicate that the acting as President or Councillor, against which a penalty was provided, was to be an acting throughout the whole period for which such Councillor or President was elected. If a person who had never been elected a Councillor purported to act in that capacity, and did any act which a Councillor only is authorised to do, would he not be liable to a penalty though his act was a single one?

It appears to us that the Ordinance was purposely enacted to prevent repeated offences, and not to enable an unqualified person to occupy the office of Councillor by payment of a penalty of £20. We should have felt this to be the meaning of the Ordinance, even if it did not contain the words "for every such offence," but when those words are inserted, it appears to us clear that the contention which has been raised cannot be a sound one.

As to the case of Milnes *v.* Bale it is in our opinion throughout an authority against the contention which has been raised. Counsel for defendant relied on what is reported to have been said by Mr. Justice Denman, that in all the cases the distinction is between cases where the penalty is imposed in respect of a complex and continuous act, and those where it is imposed in respect of a simple uncomplicated offence, which is complete and may be proved by evidence of one isolated act, and counsel argued that the present case was a case of a complex and continuous act.

In this view we do not agree. We consider that the offence of acting as President under the Ordinance of 1882, would be proved by evidence of one isolated act, and it seems to us that if Milnes *v.* Bale has any bearing on the case it is an authority against the defendant.

In our opinion it was the intention of the Ordinance to impose a penalty on a person for every act done by him as a Councillor or President, when he was not properly qualified to hold such office. The insertion in the Ordinance of the words "for every such offence," in our opinion, renders this beyond all doubt, and we think that to hold otherwise would be to shut our eyes to what the Ordinance obviously meant.

We must therefore direct that the defendant do pay £100 in respect of five penalties incurred by him in consequence of his acting as a Councillor and as President when not duly qualified so to act.

As to the disposal of this sum it has been recently decided in this Court, that any portion of a penalty so recovered not exceeding a half may be awarded to the informer, and that the remainder is to be paid to the Council, and it is our duty to direct what portion of the several penalties we have ordered to be paid, is to be paid to the plaintiff in this action.

We have no evidence before us, and it is not necessary that we should have evidence, to show why this action claiming five penalties was instituted. The object of the law in rendering persons liable to penalty who without the proper qualifications assume the functions of Municipal Officers, was in our opinion, a double one, viz.: to deter such persons from so acting, and to ensure that any person, who in protection of the rights of the community took upon himself to institute legal proceedings, should not be pecuniarily a sufferer in giving up his time and attention to a matter which only affected him as one of the public; and it may be that the law was designed to offer a moderate incitement to the cupidity natural to mankind, and thus stir up persons otherwise disinterested to see that the law is not violated. But we do not think that the law was intended to enable informers to grow rich at the expense of their neighbours, at all events not in any case where the amount of the reward which the informer is to receive is left to the discretion of the Court to determine, and we should be most reluctant to allow the law to have such an effect, when the persons who have assumed Municipal offices, appear to have done so at a time, when, owing to past neglect, they could not acquire the necessary qualifications for holding office. If this action had for its object to test the validity of the election, it would have been sufficient to sue for the recovery of one penalty in respect of any of the unauthorised acts which have been relied on, and though, under the circumstances, the defendant might have felt it a hardship that he should incur even a single penalty, it would have been impossible to say that the plaintiff was not acting in the interests of the public in instituting his action, and was not entitled to the full reward which the law allowed him. We cannot feel that that is the case where five penalties are claimed.

We think that we should award such a sum to the plaintiff as may reasonably be expected to indemnify him against all risk of pecuniary loss, beyond that which he will recover in the shape of costs, and such as he would have been entitled to if he had brought an action for the recovery of a single penalty, in which form we think that for all public purposes the benefit of the decision we give might have been obtained.

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We shall therefore direct that out of each penalty recovered a tenth part of it be paid to the plaintiff, so that he will, if the full penalty be recovered, obtain the sum of £10. The remainder of the several penalties will be paid into the Municipal chest.

The judgment of the Court below is therefore reversed.

Our judgment is that the plaintiff recover five penalties of £20 each, of each of which the plaintiff is to receive one-tenth part, that the remainder of the penalties be paid to the Municipal chest, and that the defendant pay the plaintiff's costs of the action.

Appeal allowed.

BOVILL, C.J. & SMITH, J. 1889. *Nov.* 26.

[BOVILL, C.J. AND SMITH, J.]

HJ. CHRISTODOULO HJ. YANAKI *Plaintiff*,

v.

MANOLI HARALAMBI SOLIATI AND THEODORI MICHAIL *Defendants.*

SALE OF MULK PROPERTY—NO REGISTRATION—LAW OF 28 REJEB, 1291.

The law requiring the registration of mulk properties came into force on the 12 Rejeb, 1291, (25 August, 1874).

The defendant M. sold to the plaintiff a vineyard in the year 1870. The plaintiff took possession of the vineyard, but it was never registered in his name.

HELD: That the sale to plaintiff was complete and that a registration which M. and the other defendant had subsequently caused to be made in the name of the latter must be set aside.

APPEAL from the District Court of Limassol.

Action to restrain the interference of the defendants with a vineyard and to set aside a registration of it in the name of the defendant Theodori.

The plaintiff purchased a vineyard from the defendant Manoli in the year 1870, for 5,600*p.* and had possession of it until the year 1886. The plaintiff was not registered as the possessor of the vineyard, and in the latter year the defendant Manoli sold the vineyard to the defendant Theodori, who procured the registration of it in his name. The plaintiff then brought an action against Manoli asking that he might be ordered to register the property in the plaintiff's name. Manoli paid 5,600*p.* into Court, and the