

APPELLATE CIVIL.

Before Mr. Justice Jackson.

THE PRESIDENT, TALUK BOARD, HOSPET
(COUNTER-PETITIONER), PETITIONER,

1924,
September.

v.

CHANDRAPPA (PETITIONER), RESPONDENT.*

*Madras Local Boards Act (XIV of 1920), sec. 55 (2) (iv)—
Mere resignation of office by an honorary magistrate—Dis-
qualification for election or appointment as member of local
board until acceptance of resignation.*

An honorary magistrate ceases to hold his office not on his mere resignation but only when his resignation is accepted. Hence until his resignation is accepted by the Government he is disqualified under section 55 (2) (iv) of the Madras Local Boards Act to be elected or appointed as a member of the local board within whose local area he is an honorary magistrate; *Sudarasana Rao v. Christian Pillai*, (1923) 45 M.L.J., 798, referred to.

PETITION under section 107 of the Government of India Act praying the High Court to revise the order of R. A. JENKINS, District Judge of Bellary, in O.P. No. 47 of 1922.

The facts are given in the Judgment.

Section 55 (2) of the Madras Local Boards Act (XIV of 1920) is as follows:—

“A person shall be disqualified for election or appointment as a member of a local board if such person is at the date of nomination, election or appointment . . .

(iv) an officer or servant holding office under this Act, or an honorary magistrate for the local area over which the local board concerned has jurisdiction.”

K. Raja Ayyar for petitioner.

C. Sambasiva Rao for respondent.

JUDGMENT.

Petition to revise the order of the District Judge of Bellary on a reference made to him under section 57 of

* Civil Revision Petition No. 133 of 1923.

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Madras Act XIV of 1920. The point referred to by the Judge, which is the sole question for determination, is whether an honorary magistrate who is disqualified for election as a member of a local board under section 55 (2) (iv) of the above Act can relieve himself of that disqualification by submitting his resignation to Government, or whether, on the contrary, the disqualification subsists until Government have removed him from his office.

The point was also referred to the Local Self-Government Department by the President of the District Board, Bellary, and it replied in G.O. Mis. No. 1308, L. and M., dated 1st August 1922 :—

“An honorary magistrate is disqualified for election or appointment as a member of a local board before his resignation is accepted by the Government.”

This order was filed before the District Judge who held that it was in literal conformity with the law, and there, it would be thought, the matter might have ended. But the learned Judge proceeding upon what he describes as the spirit of the law, apparently meaning the intention of the legislature which it had failed to express in its statute, declared that a bare resignation is sufficient. A Judge has no dispensing power which allows him to go behind the plain import of a statute, and on this particular point the law is clear. Under section 14 (1) of the Code of Criminal Procedure the local Government may confer upon any person all or any of the powers conferrable on a magistrate. Under section 26 of the Code of Criminal Procedure all magistrates may be removed from office by the local Government. A person so appointed cannot remove himself by resignation. This is the doctrine of the English Common Law :

“After an office was conferred and assumed, it could not be laid down without the consent of the appointing power.”

(Paine's Law of Elections, 1890, page 201.) English Case Law is not of much assistance unless we know the exact terms on which the office sought to be renounced was held. But *Pease v. Lowden*(1) follows the above principle of Common Law. Two Scotch cases quoted in *Rogers on Elections*, Volume II, page 27, carry the matter no further, as shown in *Sударасана Rao v. Christian Pillai*(2), where they are discussed. In this Madras case it is remarked :

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“It may be that the need for acceptance does not apply to honorary appointments. But it is unnecessary to pursue this line of argument further”—page 779.

I do not know what line of argument was then advanced. It is suggested before me that the appointment of an honorary magistrate is analogous to a contract without consideration, but pursued to its logical conclusion, this became absurd, for such an appointment would be void *ab initio*. I see no distinction in law between a magistrate who receives and a magistrate who does not receive a salary for the performance of his duties. Therefore the head note to *Sударасана Rao v. Christian Pillai*(2), is correct.

“An honorary magistrate does not cease to hold his office on his resignation, but only when the resignation is accepted” although the actual judgment contains, *obiter*, a query in the contrary sense.

The Civil Revision Petition is allowed with costs.

N.B.

(1) [1899] 1 Q.B., 388.

(2) (1923) 45 M.L.J., 798.