

view. I fully agree with him and need not repeat what he has so well set out in his judgement.

For the above reasons I would hold that the suit for the enforcement of the two mortgages against the property near Taksal, which is in possession of Ram Dei, is not barred by twelve years' limitation.

KNOX, J.—On the former of the two questions raised in this appeal I never had any doubt. I quite agree with what my brother has said on the question.

The second question raised is of more difficulty, but after reading the various authorities and after giving full consideration to the question I agree with my brother in holding that limitation does not bar the claim.

The result is that the decree of the lower appellate court is so far modified that the plaintiff will get a decree for sale of the property situate at muhalla Taksal in the city of Benares, with costs in proportion to his success and failure.

BY THE COURT.—The decree of the lower appellate court is modified and the plaintiff will get a decree for sale of the property situate at muhalla Taksal in the city of Benares, with costs in proportion to his success and failure.

Decree modified.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Tudball.

NAWAB KHAN (PLAINTIFF) v. MUHAMMAD ZAMIN (DEPENDANT).*

Municipality—Election—Practice—Petition against elected member on ground of personation of voters—Limitation—Fresh instances of personation allowed to be pleaded after expiry of time for filing petition.

An elector on the roll of a municipality filed a petition under the rules framed in that behalf by the Local Government against a successful candidate in a municipal election alleging various instances of personation of voters for which the opposite party was stated to be legally responsible. The petition was filed within the time limited by law. *Held*, that it was competent to the court in which such petition was presented to allow the petition to be amended by the addition of fresh instances of personation.

This was a petition by an elector on the electoral roll of the municipality to set aside the election of the opposite party as a municipal commissioner of Allahabad under rule 42 of the

* Second Appeal No. 354 of 1912 from a decree of H. E. Holme, District Judge of Allahabad, dated the 26th of February, 1912, reversing a decree of Tufail Ahmad, Second Additional Munsif of Allahabad, dated the 22nd of December, 1911.

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Government Notification No. 2640, published in the Government Gazette, Part III, page 337, of the 30th of July, 1910. In paragraph 6 of the petition, the plaintiff said:—"The plaintiff has come to know from inquiry that (a) fraudulent proceedings were taken and threats were held out, and the defendant, his agents, or friends, made an unauthorized person vote in place of the rightful voter; (b) that, at the defendant's election, certain improper proceedings were taken on his behalf. The names of some of the voters are given at the foot of the plaint. Other names will be given later on after the inspection of the ballot paper." Below this, four instances or particulars of illegal votes were given. This petition was filed within fifteen days of the election as provided by the Government Notification; but after that period was over, the petitioner applied to add six more instances of illegal voting. The Munsif granted this application, and, after recording evidence, set aside the election of the defendant. The opposite party appealed to the District Judge, who held that the Munsif was not justified in allowing the plaint to be amended, and therefore he disregarded the instances of illegal votes subsequently added and decreed the appeal, dismissing the plaintiff's petition.

Mr. *B. E. O'Connor*, for the appellant, submitted that the lower appellate court had mixed up the grounds on which an election petition can be filed, with the instances of illegal votes. The petitioner was not entitled to add new grounds after the prescribed period, but he could add new instances. The cause of action was the malpractice and not the particular instance set up. Instances can be given after filing the petition and before trial: *Rogers on Elections*, Vol. III, pp. 219-220. In this case, particulars were given before the first hearing.

The Hon'ble Dr. *Sundar Lal*, for the respondent, submitted that the procedure in such cases in India was quite different from what it was in England. In England, there was special law on the subject. The Local Government was entitled to make rules under section 187 of the Municipalities Act. Those rules had the force of law. The law did not lay down any mode of trial. The Local Government could frame rules, which it had not done. The only rule on the subject was rule 42 and it laid down that no election could be set aside except on an application within a certain number

of days. The rules did not define what was corrupt practice. The present petition made a mention of corruption, undue influence and personation in a vague manner. If particulars could be supplied later on, those words could be safely used in every case. Here all possible charges were made. Four cases of personation were alleged and six more were proved in evidence. There was no evidence given of anything but personation. The amendment could only be made within the period in which the original plaint could have been filed. According to English practice, a petition was to be filed within a certain number of days of the election and within a certain time after that instances were to be alleged. Further charges, too, were to be made within a certain time. Here all charges and particulars were alleged in the petition. Otherwise, the result would be that we could go on adding fresh particulars every day, and in certain cases it may go on for several months. The petitioner ought to make all allegations within 15 days. Inspection could have been made within this time.

RICHARDS, C. J. and TUDBALL, J.—This appeal arises out of an election petition. Nawab Khan was one of the electors at an election of the Municipal Board of Allahabad, which was held on the 8th of March, 1911. At that election the respondent, Muhammad Zamin, was declared duly elected. Within fifteen days the present petition questioning the validity of the election was presented in the court of the Additional Munsif. The grounds for questioning the election are set forth in paragraph 6 of the petition. In clause (a) it is asserted that fraudulent proceedings were taken and threats were held out, and the defendant, his agents or friends made unauthorized persons vote in place of rightful voters. Four instances of impersonation were then set forth, and it went on to assert that other names would be given later on after the inspection of the ballot papers. Before the petition was heard the petitioner was in a position to give further cases of personation and the petition was amended by adding the particulars of six additional cases of alleged personation. The learned Additional Munsif heard the case and found that a certain number of cases of personation were proved; and he accordingly set aside the election.

The respondent appealed to the District Judge. In that court and in this Court it was admitted that personation, to which the

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candidate or his agents were parties, was a good ground for setting aside an election. The learned District Judge held that the Munsif had jurisdiction to hear the petition, and in this Court it has not been contended—and, in our opinion, could not be contended—that the Munsif had not jurisdiction to hear the case. The learned District Judge, however, set aside the decree of the Munsif and dismissed the petition upon the ground that the court had no power to amend the petition by adding the further cases after the expiration of fifteen days from the date of the election. The learned District Judge held that those cases which were originally set forth in the petition were not proved and that therefore the petitioner's case failed.

The only question which we have to decide in the present appeal is whether or not the petitioner was entitled to give evidence of the additional cases which were mentioned for the first time after the expiration of 15 days of the election. Rules have been framed under the Municipalities Act, section 187, with regard to election petitions. Rule 42 is as follows:—

"The validity of an election made in accordance with these rules shall not be questioned except by a petition presented to a competent court within 15 days after the day on which the election was held by a person or persons enrolled in the Municipal electoral roll :

"Provided that no election shall be called in question on the ground that

"(a) the name of any person qualified to vote has been omitted from or the name of any person not qualified to vote has been inserted in, the electoral roll or rolls made and revised under rules 1 and 2 of these rules ; or

"(b) the name of any person qualified for election as a member of the Board has been omitted from, or the name of any person not qualified for election as a member of the Board has been inserted in, the candidate list as prescribed under rule 3 of these rules."

This is the only rule relating to election petitions. The learned District Judge says:—

"Reading rule 42 it seems to me perfectly plain that the intention of the Legislature is that specific and not general grounds for questioning an election shall be alleged and that those 'grounds shall all be put forward within 15 days of the election. The two provisos, and the words 'shall not be questioned except by petition presented within 15 days' seem to place this beyond doubt. It would stultify the section if a petitioner were allowed to allege general corruption and then add specific instances to his plaint at leisure as he gathered material."

In the present case the petitioner alleged that the respondent had been guilty of misconduct in the course of the election by procuring persons to personate dead or absent voters. That was the ground of the petition. The particular instances of personation are quite another matter, and in our judgement it was quite open to the petitioner to furnish those particulars after the expiration of the 15 days. What the court had to guard against was the respondent being taken by surprise by the petitioner keeping back the particulars until the last moment. It seems to us perfectly clear that there is nothing in the rule which requires that all the particulars should be specified in the petition. In many cases, and probably in the present case, it would have been impossible for the petitioner to have furnished all these particulars within 15 days. The practice in England with regard to elections is to allow particulars of the charges to be given after the petition is presented; and we see no reason whatever why the same practice should not prevail here in the absence of clear rules on the point. The court will always have it in its power to prevent any abuse of the process of the court by insisting that proper particulars shall be furnished to the respondent in ample time to enable him to meet the charges. The mere fact that the additional particulars were given by means of amending the plaint is in our opinion no reason why we should hold that the petitioner was not entitled to go into evidence and prove the additional cases.

We allow the appeal, set aside the decree of the learned District Judge and remand the case to his court with directions to re-admit the appeal under its original number on the file and to proceed to hear and determine the same according to law, having regard to what we have stated above. The appellant will have his costs in this Court. Other costs will be costs in the cause.

Appeal decreed—Cause remanded.

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