

1891
 QUEEN-
 EMPRESS
 v.
 BABURAM
 KANSARI.

indeed, namely, the prisoner's own admission, to show that the goods were received from various persons. And not only is there no evidence on the record to show that the goods were received on different dates, but the Sub-Inspector of Police distinctly says in his evidence: "I could find no evidence as to when the accused became possessed of each of the stolen utensils."

We do not think that a man can be said to be habitually receiving stolen goods who may receive the proceeds of a dozen different robberies from a dozen different thieves on the same day, but in addition to the receipt from different persons there must be a receipt on different occasions and on different dates.

The prisoner was not charged, as he ought to have been, under section 411, and the jury could not have convicted him under that section. It is very much to be regretted that he was not charged under section 411. It seems to be a considerable oversight on the part of the Officiating Sessions Judge not to have framed a charge under section 411. But in the result the only course we can take is to confirm the verdict of the jury and to acquit the prisoner, and considering that he has been in peril twice upon this charge, we do not think there is any necessity for directing a re-trial.

Prisoner acquitted.

H. T. H.

ORIGINAL CIVIL.

Before Mr. Justice Trevelyan.

IN THE MATTER OF MUTTY LALL GHOSE.

1892
 March 14.

Specific Relief Act (I of 1877), s. 45—Election law—Municipal election—Bengal Act II of 1888, ss. 14, 24, 31—Joint-family representative for voting purposes—Franchise.

Section 31 of Bengal Act II of 1888 does not impose on the Chairman of the Municipality the duty of exercising any judicial discretion or taking any judicial action with regard to the list of candidates prepared under that section.

THIS was a rule obtained by one Pasupatinath Bose, calling upon the Chairman of the Calcutta Municipality to show cause why the name of one Mutty Lall Ghose should not be removed from the list of candidates for election as Commissioners, published under Bengal Act II of 1888.

1892

 IN THE
 MATTER OF
 MUTTY LALL
 GHOSE.

Pasupatinath Bose was one of eight candidates standing for election as a Municipal Commissioner for Ward No. 1 in the town of Calcutta, there being seven other persons (amongst whom was Mutty Lall Ghose) standing for election for that ward, the day fixed for the election being the 15th March 1892.

On the 8th March Pasupatinath Bose first became aware that Mutty Lall Ghose had sent in his name to the Chairman of the Municipality as a candidate for election, and he thereupon wrote to the Chairman objecting to the name of Mutty Lall Ghose being placed on the list of candidates on the following grounds:—

- (1) That Mutty Lall Ghose was only an agent of a joint Hindu family alleged to be authorized to vote on behalf of the joint family.
- (2) That he was not himself personally qualified as a voter under any of the sections preceding section 14 of Bengal Act II of 1882.
- (3) That he was not properly authorized by the joint family purporting to confer on him authority to vote, inasmuch as all the members of the family had not concurred in conferring such authority.
- (4) That the joint family, which was alleged to consist of four members, had only two votes, whereas the Act required that a person should at least have two votes on his own account to be entitled to election.

On the 10th March the Secretary of the Municipality, in reply to such letter containing the objections set out above, wrote, at the direction of the Chairman disallowing such objections, stating that, with regard to objections 1, 2, and 4, the Hindu joint family in question was qualified to vote, and therefore Mutty Lall Ghose was qualified to stand as a candidate, and that objection No. 3 at

1892

 IN THE
 MATTER OF
 MUTTY LALL
 GHOSE.

most would only affect any votes which might hereafter be recorded by Mutty Lall Ghose, but that such objection would be taken to be one made under section 16 of the Government rules.

On Monday, the 14th March, Pasupatinath Bose applied for the rule above mentioned under section 45 of the Specific Relief Act, and on such application Mr. Hill contended that Mutty Lall Ghose was not qualified to be elected as a Commissioner, inasmuch as he was not himself qualified to vote under any of the sections of the Act preceding section 14, he being merely the manager appointed to vote on behalf of a joint family under section 24; citing the cases of *Dr. Rajendra Lal Mitra* and *In the matter of the election of Municipal Commissioners for Ward No. 10*, both decided by Norris, J., and dated the 30th September 1882 and 30th March 1889, respectively,* as authorities for such or similar rules under section 45 of the Specific Relief Act, the latter being a case in which the rule asked to expunge votes already recorded. Mr. Justice Trevelyan granted the rule above mentioned, making it returnable forthwith.

Mr. Pugh (with him Mr. Garth) to show cause.—The candidate should be represented. The Chairman has complied with section 31; he had no choice but to accept the candidate's name, and had no power to strike it off the list. Section 45 of the Specific Relief Act does not therefore apply.

Mr. Hill in support of the rule. The Chairman is not a mere polling officer; he is bound to see that persons are not put before the public as candidates for election who are ineligible, and the Court can compel him to do his duty. A person empowered to vote under section 24 is not qualified to be elected under section 14. In *Rajendra Lal Mitra's* case Mr. Justice Norris, on the 30th September 1882, granted a similar rule, but on a candidate and on the Chairman, and held that though the member of the joint family through whom the rates and taxes were paid was Dr. Rajendra Lal, yet he was not qualified to become a candidate, he being merely the trustee or manager on behalf of the joint family of certain debottar property dedicated to an idol, and not having paid on his own account any rates or taxes on account

* See foot-notes 1 and 2, pp. 195—198.

of the property, and having no beneficial interest therein; it being possible that it might prejudice the position of other candidates if he was allowed to go to the poll, an injury being done to a person who has the franchise by the introduction of an ineligible candidate, and as the applicant had no other remedy.

1892

 IN THE
 MATTER OF
 MUTTY LALL
 GHOSE.

TREVELYAN, J.—This is an application under section 45 of the Specific Relief Act. I granted a rule this morning calling upon Mr. Lee to show cause why the name of Mutty Lall Ghose should not be removed from the list of candidates for election as Commissioners, published under Bengal Act II of 1888. There are two possible defects in that rule which I need not now, however, take into consideration; first, the rule ought possibly to have gone to the Commissioners as a body instead of to the Chairman, and in the second place it might reasonably be objected that no effect could be given to the rule unless it were served upon the candidate also. To do the latter now would lead to delay, and it is very necessary that the question should be decided at once. There are of course, as Mr. Justice Norris pointed out in a case (1) in some respects similar to this, difficulties in the way of a Judge in deciding a question of this kind on such short notice.

(1) IN THE MATTER OF RAJENDRA LAL MITTRA.

In this matter a rule was obtained by one Gopal Lall Mitter, calling upon the Chairman of the Calcutta Municipality to show cause why the name of Dr. Rajendra Lal Mittra should not be expunged from the list of candidates eligible for election as Municipal Commissioners. It was argued on behalf of Gopal Lall Mitter that Dr. Rajendra Lal Mittra, who was merely the manager and trustee of certain debottar property, and who had no beneficial interest himself in such property, was ineligible as not falling within sections 11 or 12 of Bengal Act IV of 1876. It appeared that the property formerly belonged to Rajah Petumber Mitter; that the Rajah had dedicated such property to the worship of a family idol, appointing Dr. Rajendra Lal Mittra (who was one of his twelve grandsons) manager of this property; directing that any surplus, if any, after the expenses attending the worship had been provided for, should go over to other charities. The rates and taxes on this property were paid by Dr. Rajendra Lal Mittra as such manager. It did not appear that the 12 grandsons and their descendants lived together jointly as an undivided Hindu joint family, they being the sons of different brothers of the Rajah. It, however, appeared that under section 12 of the Act eight of the surviving grandsons

1892
 IN THE
 MATTER OF
 MUTTY LALL
 GHOSE.

The point in the case is this: Mutty Lall Ghose, who is also a candidate, is on the revised list of voters of Ward No. 1 for the Municipal elections to be held to-morrow for himself and other co-sharers. He is not in the list separately. . . . The portion of the Municipal Act which deals with persons qualified to be elected is to be found in section 14 of the Act. Now the right of a Hindu joint-family to empower a person to vote on their behalf is given by section 24, which does not precede section 14.

Therefore Mr. Hill contends that a person empowered to vote under section 24 is not a person qualified to be elected under section 14. I am bound to say there is great deal to be said with regard to that objection, but I do not think that it would be safe, unless it is absolutely necessary, for me to lay down, on such a short consideration, an absolute rule which might have a serious effect in the exercise of the franchise.

I cannot, under section 45 of the Specific Relief Act, make any order unless, amongst other things, it is shown that the doing or the forbearing to do an act by any person holding a public office, or by any corporation or inferior court, is clearly incumbent on

of the Rajah or their descendants wrote to the Chairman of the Municipality agreeing to select Dr. Rajendra Lal Mitra as eligible for election, and that three of these gentlemen subsequently wrote to the Chairman asking to have an error corrected, stating that the Doctor had been appointed manager by them of the whole estate by right of which he claimed to be elected, and that on the Chairman issuing a list of the names of the several candidates for election, an application was made to him by Gopal Lall Mitter, calling on him to expunge the name of Dr. Rajendra Lal from such list. The Chairman, after hearing both parties, refused to comply with the request, and that thereupon the rule above set out was obtained. Mr. Justice Norris, who heard the rule, held that Babu Gopal Lall Mitter had no remedy other than under section 45 of the Specific Relief Act, under which section the rule had been obtained; and after finding that Dr. Rajendra Lal had himself no beneficial interest in the property for which he paid rates and taxes, he being simply the manager and trustee of such property, and holding that he was not qualified under section 11 or 12 of the Act, directed that the Chairman should expunge the Doctor's name from the list of candidates eligible for election.

such person or court in his or its public character, or on such corporation in its corporate character.

1892

IN THE
MATTER OF
MUTTY LALL
GHOSE.

After a careful examination of the sections of the Municipal Act the counsel engaged in the case have failed, and I have also failed, to find out that there is anything approaching to a duty incumbent upon Mr. Lee to exercise any judicial discretion or judicial action with regard to the list of candidates. It is true that Mr. Lee has written a letter in answer to the applicant's letter, but this letter is written only by way of civility and courtesy and as expressing an opinion. I think that before I can make the rule absolute, I must see that it was clearly incumbent on Mr. Lee to exclude Mutty Lall Ghose's name from the list which is prepared under section 31 of the Municipal Act. There is an obligation upon the Chairman to publish a list of all persons who are candidates for election. If the Chairman declined to publish Mutty Lall Ghose's name, the latter might have come to Court and said that it was clearly incumbent upon the Chairman to publish his name. There is no more obligation upon the Chairman than upon any of the Municipal Commissioners to determine the right of a candidate. Looking carefully through the Act and the rules framed thereunder, I cannot find any trace of this obligation or duty anywhere, and no one engaged in the case has been able to show me that any such right or duty is given under the Act and rules. I must, therefore, discharge the rule with costs.

This order is, of course, without prejudice to any question which may be raised after the election.

Rule discharged.

T. A. P.

Attorney for applicant: Babu *M. M. Chowdhry*.

*Attorney for the Corporation: Messrs. *Sanderson & Co.*

1892

IN THE
MATTER OF
MUTTY LALL
GHOSH.

(2) IN THE MATTER OF THE ELECTION OF MUNICIPAL COMMISSIONERS FOR
WARD No. 10, CALCUTTA.

This rule was served upon the Chairman of the Municipality and upon one Rash Behari Dass, calling upon the Chairman to show cause why he should not forbear from counting certain votes given in favour of Rash Behari Dass by certain persons who were merely agents appointed to vote under sections 24 and 25 of Bengal Act II of 1888.

It appeared that in the election of Municipal Commissioners for Ward No. 10, Gonesh Chunder Chunder stood at the head of the poll, Rash Behari Dass second, with 207, and Surendra Nath Dass (the person who obtained the above rule) third, with 197 votes.

It appeared that certain persons who had voted for Rash Behari Dass had voted merely as agents appointed under sections 24 and 25 of the Act, and that such persons possessed none of the qualifications required by section 8 of the Act; and that such persons were neither members of the joint families or members of the firms for which they were appointed to vote, but were strangers to such joint families or firms; and it further appeared that if the votes recorded by such agents in favour of Rash Behari Dass were expunged, then the applicant Surendra Nath Dass would stand second on the poll. It was, therefore, contended on his behalf that it was not the intention of the Legislature that a stranger should be a person entitled to vote for either a joint family or a firm; and further, that no person could be returned as exercising the franchise on behalf of a joint family or firm, unless he came within the provisions of section 8. On the other side it was contended that there was no provision in section 24 or 25 making it obligatory on the family or firm to nominate a member of themselves to exercise the franchise on their behalf.

Mr. Justice Norris, in deciding the questions raised, stated that he could not help thinking that the Legislature intended to provide that a family, firm, company, or association should be represented by one of their own members on whom they could rely and who would vote as they desired; and that although the omission so to provide appeared to be a grave defect in the Act, which the Legislature might well take into consideration, still he could not introduce into sections 24 and 25 words which were not to be found in such sections, viz., "such persons being a member of such joint Hindu family, etc.;" and he therefore reluctantly came to the conclusion that he would not be justified in putting such an interpretation on the Act as would involve the addition in the Act of words which the Legislature had left out.

Rule discharged.