

one involving a charge of fraud, and generally speaking it is not satisfactory that a charge of fraud should be disposed of by a single judge. The person against whom so serious a charge is made ought to have the benefit of that concourse of minds, which in England is secured by a trial by jury and in this country by a trial before the full Court. It is true that he has an appeal to the full Court, but this again is not wholly satisfactory. He starts with a presumption against him, and is liable to be told that the question is a question of fact; that the learned judge heard his evidence, formed his own impression and decided against him; and that such a decision of fact is not one that his colleagues feel justified in reversing. Under the circumstances, though I do not say that the learned judge was necessarily wrong in the course he took, yet as the Rules of Court gave us power to direct that the case should be reheard by the full District Court, I think that this is the most appropriate way of dealing with the appeal.

*Appeal allowed.*

TYSER, C.J.  
&  
BERTRAM,  
J.  
GEORGE TH.  
ROSSIDES  
v.  
EMETULLAH  
HAJI  
TOSSOUN

[TYSER, C.J. AND BERTRAM, J.]

THE COMMITTEE OF THE BELLAPAIS SCHOOL CONSISTING OF COSTI SAVA HAJI DIMITRI AND OTHERS,  
*Plaintiffs,*

v.

HARALAMBO HAJI LOIZO AND OTHERS, *Defendants.*

TYSER, C.J.  
&  
BERTRAM,  
J.  
1908  
May 23

EDUCATION—EDUCATION LAW, 1905, SECS. 2, 19, 22, 23, 34—RIGHT TO VOTE AT ELECTION OF SCHOOL COMMITTEE—"TAX-PAYING INHABITANTS"—ASSESSMENTS FOR SCHOOL FEES—ELECTION—REPORT OF PRESIDING OFFICER.

JURISDICTION—RIGHT OF COURTS TO TRY TITLE TO PUBLIC OFFICE—RIGHT OF ACTION OF PERSONS VESTED WITH PUBLIC AUTHORITY TO RESTRAIN USURPATION BY OTHERS.

At an election for the School Committee of the village of Bellapais, a number of persons who were male inhabitants residing in the village but were not assessed for school fees, claimed the right to vote. The presiding officer took the votes of these persons but in his report to the Commissioner declared that they were not qualified to vote. It appeared from the report of the presiding officer that, assuming the votes of these persons to be valid, the Plaintiffs had the majority of votes; assuming them to be invalid the Defendants had the majority. The Defendants entered upon the office of School Committee and administered the schools.

HELD: (1) That the persons in question were qualified to vote. Sec. 23, Sub-sec. 4 of the Education Law, 1905, does not make assessment to school fees a condition precedent to the right to vote.

(2) That inasmuch as it appeared from the report of the presiding officer, that the Plaintiffs had a majority of the votes, the Plaintiffs were the elected School Committee of the village.

It is not sufficient that the persons claiming to be elected should have received the majority of votes. It is essential that it should appear by the report of the Presiding Officer that they received this majority.

(3) That the Plaintiffs, as the School Committee, were entitled to sue to restrain the Defendants from exercising an authority vested in themselves.

SEMBLE: As tax-paying inhabitants they would not be entitled to sue to restrain the Defendants from exercising the authority of School Committee.

TYSER, C.J. This was an appeal from the judgment of the District Court of  
& Kyrenia.  
BERTRAM,

J. The five Plaintiffs claimed under the syle of " The Committee of  
COSTI SAVA the public schools of Bellapais," and also personally as tax-paying  
HAJI inhabitants.  
DIMITRI

AND The claim was to restrain the Defendants from interfering with  
OTHERS the schools of Bellapais in the character of members of the  
v. Committee of the schools by appointing masters and otherwise  
HARALAMBO taking upon themselves authority which rightly belonged to the  
HAJI LOIZO Plaintiffs.  
AND

OTHERS The facts were that an election for the Village School Committee  
of Bellapais was held in July, 1907, under the provisions of  
Sec. 19 of the Education Law, 1905 (No. 5 of 1905) under the  
presidency of an officer appointed by the Commissioner of the  
District in accordance with that section.

The presiding officer made a report to the Commissioner in the following terms:—

" Commissioner,

" I have the honour to submit the result of the election of the Village Committee of Education, which took place at Bellapais on the 14th instant together with the number of the tax-paying inhabitants who voted for each candidate.

" There were two combinations or parties and both had their representatives present at the voting.

" Forty-seven persons who have paid the school fees assessed upon them, voted for the following candidates:—

Haralambo Haji Loizo.  
Christofi Haji Costa.  
Yeorghi Haji Togleia.  
Haji Yanni Haji Constanti.  
Nicola Yannaki Adamou.

" Thirty-nine persons included in the school fees assessment list for the current year, have voted for the following candidates:—

Yannis Haji Dimitri.  
Costi Kypri.  
Yeorghi Athanassi.  
Yeorghi Haji Nicola.  
Costi Sava Haji Dimitri.

" Twenty-four other persons in addition to the 39 have voted for the candidates referred to above. It would appear, however, that they are not qualified or entitled to vote on the ground that their names are not shewn in the assessment list for school fees for this year (*vide* Sec. 33 sub-sec. 4 of Law 5 of 1905).

" On my enquiry whether they are assessed for any form of taxation they could not produce any receipt for payment of any tax. Besides that many of them looked less than 18 years of age (against the provisions of Sec. 2 of Law 5 of 1905, par. 3).

"One of those snatched the list on which I recorded the names of the persons with the intention to destroy it. The intervention of the police prevented him from tearing it up and thus upsetting the election.

"(Signed) G. Christofaki,  
"Presiding Officer."

TYSER, C.J.  
&  
BERTRAM,  
J.

COSTI SAVA  
HAJI  
DIMITRI  
AND  
OTHERS

D.  
HARALAMBO  
HAJI LOIZO  
AND  
OTHERS

The schedule attached to the report showed the names of the voters in the three categories mentioned.

Subsequently to this report the Defendants commenced to discharge their duties as the Village School Committee and were doing so up to the date of the commencement of the action.

The Plaintiffs asked for an injunction to prevent the Defendants from continuing to discharge those duties.

The evidence showed that more than 8 of the 24 persons whose qualifications were questioned by the presiding officer were male inhabitants residing in the village and of full age.

The District Court granted the injunction as prayed.

The Defendants appealed.

*Bucknill, K.A.*, and *Theodotou* for the Appellants.

*Paschales Constantinides* and *M. Chacalli* for the Respondents.

The Court dismissed the appeal.

*Judgment.* CHIEF JUSTICE: The first point to be considered is whether the Plaintiffs can sue in the form which they have adopted in respect of the matter of which they complain.

As to the rights of the Plaintiffs to sue as tax-paying inhabitants I have great doubt. If they could so sue then any tax-paying inhabitant could bring an action. Such a right would lead to an endless multiplicity of actions. For each tax-paying inhabitant might sue and any Committee whether elected rightly or not might be put to endless annoyance and expense.

But the Plaintiffs claim also as being themselves the Committee of the public schools of Bellapais.

If they are the Committee it seems clear that they can sue to restrain any one else from exercising an authority which is vested in themselves.

The question to be decided is are the Plaintiffs the Committee as alleged?

Now the first point seems clear that on the report of the presiding officer the Plaintiffs had a majority of votes.

I quite agree with the District Court that Sec. 33, Sub-section 4 does not make assessment to school fees a condition precedent to a right to vote. It only enacts that if a person is assessed for school fees and does not pay the amount assessed upon him he shall not be entitled to vote.

It seems clear from Secs. 19 and 2 that any male inhabitant who resides in the village can vote, whether he is assessed in any form of taxation or not.

The report says 47 voted for the now Defendants and 39 for the now Plaintiffs and that 24 others voted for the now Plaintiffs.

TYSER, C.J.  
&  
BERTRAM,  
J.

COSTI SAVA  
HAJI  
DIMITRI  
AND  
OTHERS  
v.

HARALAMBO  
HAJI LOIZO  
AND  
OTHERS  
—

The evidence given shews that more than 8 of these 24 were male inhabitants of full age residing in the village.

These votes consequently were good and the Plaintiffs had the majority.

The further question arises when do the persons who poll a majority of votes become the Committee if at all.

The law is somewhat difficult to interpret, and the meaning of Sec. 19 is not quite clear to me.

The presiding officer is not to declare the result of the election, but to make a report to the Commissioner within five days.

There the provisions of the law stop. Presumably the Commissioner is to notify their election to the successful candidates, but the law does not say so. Unless however the Commissioner does make some notification it is difficult to see how the result can be known, as there is no provision for publishing the report, or conferring a right on any one to inspect it.

It seems clear that the mere obtaining a majority of votes is not sufficient to ensure election because if no report is received by the Commissioner within five days, the persons who have received those votes will not form the Village Education Committee, but it will consist of the Village Commission and Mukhtar.

Moreover it would seem to be contemplated that the mere receipt of a report is not sufficient, but the report has to be considered by the Commissioner.

The Commissioner has to see whether it appears from the report that a Committee has been elected.

Suppose it appears from the report that the votes for the two parties were equal, or that votes were improperly disallowed which if they had been allowed would have made the votes on each side equal, it seems clear that the Commissioner must look into the matter before the election can be held to be abortive.

It would seem however that if it appears on the report that certain persons have been elected that in such a case no other persons can act as the Committee.

It must therefore be the intention of the law that the persons who receive the majority of votes, and are reported to have done so within the time limited by the law are to take upon themselves the duties of the Committee.

Therefore according to the true intention of the law the Plaintiffs are the Committee and are entitled to an injunction to restrain the Defendants from acting in that capacity.

The appeal must be dismissed with costs.

BERTRAM, J. concurred.  
*Appeal dismissed.*