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HALLADAY V. JOHNSON.

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declaring that the person who is afterwards charged in such action is really the father of the child, nor unless she deposited such affidavit within the time aforesaid in the office of the clerk of the peace of the county, or clerk of the council of the city as the case may be.

St. Catharines was incorporated a city by a special Act of the Province of Ontario, 39 Vict. cap. 46, the incorporation taking effect on the 1st May, 1876. Before that time it had been a town. St. Catharines is one of the cities named in R. S. O. cap. 5, s. 3, and which are thereby declared for judicial purposes to be respectively united to, and form part of, the counties within the limits of which they are respectively situate, but for municipal purposes the said cities, and all towns withdrawn from the jurisdiction of the county shall not (it is thereby enacted) form part of the counties in which they are respectively situate.

Mr. Holmes was appointed a Justice of the Peace for the county of Lincoln by the last general commission issued for the county in 1863. St. Catharines was then a town. No commission has ever been issued for the city. It is said that a commission was once issued for the town, containing a few names not including Mr. Holmes. It was not produced and I have not been able to find it. It is, however, a matter of no importance as upon the erection of the town into a city the commission issued for the town ceased under the Ontario Act 36 Vict. cap. 48, s. 313, now R. S. O. cap. 71, s. 3.

No argument can be advanced on the ground of convenience, based on the cessation of authority in the town justices, as the aldermen of the new city all became justices for the city under the same Act, 36 Vict. cap. 48, sec. 306, now R. S. O. cap. 174, s. 395.

Various enactments limiting the power of county justices to act in cities and towns were referred to by Mr. McClive in his argument. I think I have examined them all, but I need not now allude to any earlier than the Ontario Act (of 1873) 36 Vict. cap. 48, s. 308. The statutes on the subject prior to this with most of the decisions upon them are enumerated and reviewed in the able and careful judgment of Mr. Dalton in *The Hamilton Election Petition*, 10 C. L. J. N. S. 170, decided on 25th March, 1874, in which he shewed that the last mentioned section was the only one then

in force which took away the power of the county justices to act in a town or city within the boundaries of their county.

This section is now R. S. O. cap. 72, s. 6, and in *Longworth v. Dawson et al.*, 30 C. P. 375 it was held that this section and R. S. O. cap. 5, sec. 3 (already referred to in making certain cities for judicial purposes created, to and part of the counties in which they are respectively situate) contain the provision of the statute law on the subject, and that the meaning of these enactments is that county justices are, and shall be, justices over the whole area of the county, including the city, but that they shall not, when there is a police magistrate for the city, do any of the acts specified in the first named section, which are, that they shall not admit to bail or discharge a prisoner, nor adjudicate upon, nor otherwise act in any case for any town or city except at the general sessions.

The taking the affidavit in question is clearly not one of the acts specified, and if Mr. Holmes could take it at all he could clearly do it in the city.

I may also call attention to the words of this section not making any distinction between justices for the county and justices of the city; it precludes the latter from acting just as much as the former. If the effect of the prohibition to act were as general as claimed it would leave no one to do any magistrate's act in a city but the police magistrate. The object of the section was to prevent interference with the police magistrate in his official duties mentioned in it by any other justice, and was specially directed against such interference by the aldermen of cities.

As Mr. Holmes took the affidavit within the limits of the county it is not necessary to consider whether the taking such an affidavit is not one of the things which a justice of the peace could do anywhere (even out of his county), as being a mere magisterial act or an act of voluntary jurisdiction. From the authorities, and by Mr. Dalton in *The Hamilton Election Petition*, and those in Paley on Convictions, 6th Ed., p. 17-19, it would seem to be so.

The question however remains whether the statute does not require the affidavit to be made before a justice for the city.

As Mr. Holmes is a justice having the same