whereupon Mr. Ferguson voted for himself. The clerk then declared Thomas R. Ferguson, Esq., reeve of Innisfil, duly elected warden of the County of Simcoe, for the current year. Mr. George McManus requested the clerk to enter his protest against the election of Mr. Ferguson."

D. McCarthy, jun., shewed cause. He objected, that there is no such office known to the law as "warden of the County Council of Simcoe." Subject to this objection, he argued that Mathewson's vote was not improperly rejected; the clerk of the County Council is the proper and only judge of such a matter and has decided against it; it was not shown that Mathewson, had his vote been received, would have voted for relator; and in the absence of fraud, the acts of the clerk and of the council were binding at law. *The Queen ex rel Hyde* v. *Barnhart*, 7 U. C. L. J., 126. If an appeal lay from the decision of the clerk, the several certificates objected to were sufficient as against the objections taken. *Rex* v. *Swyer*, 10 B. & C. 486; *In re Hawk and Ballard*, 3 U. C. C. P. 241; *Reg. ex rel Helliwell* v. *Stevenson*, 1 U. C. Cham. R. 270; *Reg. ex rel McGregor* v. *Kerr*, 7 U. C. L. J. 67, 69. But if not so, similar objections existed against the certificates of Robert Murphy, the reeve of Tosorontio, John E. Steele, the reeve of Oro, Michael Scott, the deputy reeve of Oro, Thomas Saunders, the deputy reeve of Tecumseth, John McManus, the reeve of Tecumseth, Roderick Stewart, the reeve of Morrison and Muskoka, James Aberdeen, the reeve of the township of Mulmur, John Kean, the reeve of Orillia and Matchedash, George McManus, the relator, reeve of the township of Mono, and Thomas Elder, the deputy reeve of the township of Mono.

He filed several affidavits, to which it is unnecessary to refer.

Robert A. Harrison and *W. Boys*, in support of the application, argued that the warden of a county is not a corporation sole having a corporate name; that the only question is one of identity; and that there being no dispute as to identity, the description contained in the statement and writ is sufficient.—*Johnston* v. *Reesor et al*, 10 U. C. Q. B. 101; *Fisher* v. *The Council of Vaughan*, 10 U. C. Q. B. 492; *In re Barclay and the Township of Darlington*, 11 U. C. Q. B. 470; *In re Hawkins and Huron and Bruce*, 2 U. C. C. P. 72. Effect should not, after appearance by defendant, be given to objections of a technical character, rule No. 18; *Reg ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44, 45. Mathewson's vote had either been improperly rejected, or if properly rejected, several who voted for the defendant ought equally to have been rejected. The clerk of the council is not the sole judge on such matters; his decision is subject to review in this case, Con. Stat. U. C. cap. 54, ss. 127, 133. Notwithstanding his receiving and filing the certificates of the several persons to whom objection is now made, inquiry can now be had as to their legal sufficiency, and for that purpose the court may go behind the act of the clerk, and is not bound by his receipt or rejection of a certificate *Harding* v. *Carry*, 10 Ir. C. L. Rep. 140; *Re Jennings*, 8 Ir. Ch. R. 421; *McDowell* v. *Wheaty*, 7 Ir. Com. L. Rep. N.S. 562.

(*To be continued.*)

DIVISION COURTS.

In the First Division Court of the County of Wentworth, before His Honor JUDGE LOGIE.

MURRAY v. McNAIR.

Distress for taxes—Collectors fees—Poundage.

A collector of taxes, or his bailiff, distraining for arrears of taxes, is entitled only to $2 for distress and sale. He is not entitled to collect from the debtor poundage on the amount of taxes levied.

The defendant, a constable, received a warrant from the collector of taxes for the city of Hamilton to levy by distress of plaintiff's goods the sum of $57 for arrears of taxes due the city. As soon as the distress was made the plaintiff paid the amount, and also $560 which the defendant claimed for his costs of the distress.

The costs were paid under protest and by force of the distress, and the plaintiff brought this action to recover back the amount overpaid.

The amount of costs claimed by the bailiff included possession money and poundage on the amount of the taxes.

Adams for plaintiff, *Bruce* for defendant.

LOGIE, Co. J.—The 96th section of the Assessment Act provides that "in case any person neglects to pay his taxes for fourteen days after demand made, the collector shall levy the same, *with costs*, by distress of the goods and chattels of the person who ought to pay the same." And section 98 points out what notice of sale shall be given, and authorizes the collector to sell the goods at the time named in the notice. Although the collector is thus authorized to levy for costs as well as for arrears of taxes, there is nothing in the statute fixing the amount which he may charge for fees. After the collector's roll has been returned the collection of arrears of taxes belongs to the treasurer of the county (or in the case of cities to the chamberlain of the city). If there is a distress on the lands of non-residents, the treasurer is authorized to issue a distress warrant to the sheriff of the county, under which he must levy the arrears of taxes by distress and sale of the goods found upon the premises *in the same manner, and subject to the same provisions as in the case of distresses made by collectors* (see sec. 122). And after the warrant to sell the lands is in the hands of the sheriff it is his duty, if it comes to his knowledge that there is a distress to be found upon the premises, to levy the arrears of taxes *and costs of distress* by sale of the goods and chattels found upon the premises (secs. 134 and 135). The duties of the sheriff, therefore, in levying the arrears of taxes by distress and sale, are identical with those of the collector, and the remuneration allowed to the sheriff should be sufficient to satisfy the collector, and I think such was the intention of the Legislature. And as the Act provides (sec. 135) that the sheriff may charge $2 for each *distress and sale*, the collector would be entitled to collect a similar sum. The act apparently contemplates the personal action of the collector in distraining, but his office being merely ministerial he could no doubt act by his bailiff; but the bailiff would be entitled only to the same fee which the collector himself could receive if he acted in person, in the same way as a sheriff's bailiff can only collect such fees as the sheriff is authorized by law to collect. It must be remembered that while the sheriff is allowed for his trouble in