

Mun. Case.]

REG. EX REL. COYNE V. CHISHOLM.

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nevertheless an order, regularity and certainty that must be observed, for the very purpose of facilitating and expediting business.

On the whole, though with some doubt and hesitation, I think I should now amend this record by making it as it should have been, as the same assessment that was made will enure to the benefit of the plaintiff on the issues of law that have since been disposed of in his favour.

This defective record, which was and must have been passed and signed by the deputy clerk of the Crown, may be considered to have been the act of the officer of the court, just as the writ in *Reg. v. Conyers*, 8 Q. B. 981, was deemed to have been drawn by the officer of the court, and the defect to have been by his misfeasance, though he only sealed it, and it was drawn and settled in fact by a special pleader, whose mistake it really was. The plaintiff must however pay the costs of this application.

The rule will therefore be discharged on condition of the plaintiff amending the *nisi prius* record *nunc pro tunc* within two weeks, and upon paying to the defendant, Palmer, the costs of this application, or upon amending within two weeks after Palmer shall have filed his co-defendant's consent to the amendment being made; and, if Palmer shall not so file such consent within two weeks from this time, this rule will be discharged without costs, as Winstanley should properly have been called on by the rule to shew cause as well as the plaintiff.

Rule discharged as above.

MUNICIPAL CASE.

REG. EX REL. COYNE V. CHISHOLM.

Municipal Election—Right of candidate to resign—C. S. U. C. c. 54, sec. 97, sub-sec. 5—Municipal Act of 1866, sec. 110, sub-sec. 6, and sec. 113.

▲ candidate for the office of reeve, who is proposed and seconded at the nomination meeting, may, with the consent of his proposer and seconder and of the electors present, withdraw from his candidature.

▲ voter, who nominated another for a municipal office, having at the meeting permitted his candidate to retire from the contest, without expressing at the time any objection to his withdrawal, cannot afterwards insist upon having the name of his nominee published in the list of candidates, or entered as such upon the poll book.

[Chambers, Feb. 10, 1871.—*Mr. Dalton.*]

The statement of the relator complained that Kenneth Chisholm had not been duly elected, and usurped the office of reeve of the village of Brampton, under the pretence of an election held on the 2nd January, 1871.

The grounds stated were: that at the nomination the said Kenneth Chisholm, Jacob P. Clark, James Fleming, John Haggart, and the relator, were duly proposed and seconded as candidates for the said office of reeve, and that no other candidates were proposed within one hour after the meeting of the electors for the said nomination: that the said John Haggart was proposed for the said office by the said Kenneth Chisholm, and seconded by the said relator: that no one of the said persons so nominated retired or withdrew from the said nomination within one hour

from the time the said meeting was held and the said nominations were made: that no poll was demanded for the said office of reeve, but a poll was granted and allowed by the said returning officer: that a show of hands was called for on behalf of John Haggart, and a large majority of the electors present appeared to be in his favor: that the said John Haggart then said (but after a considerable number of the electors who had been present had left the meeting) that he would retire from and not contest the said election: that the relator, who was his seconder on his said nomination, never consented to the retirement of the said John Haggart, and on the day following the said nomination informed the said returning officer that he must post up the name of John Haggart as one of the persons proposed as reeve, as he, the relator, insisted that Haggart should be voted for at the election: that John Haggart himself notified the said returning officer, two days before the election, that he was a candidate for the said office, and requested the returning officer to enter his name on the poll-book as a candidate: that the returning officer did not post up in the office of the clerk of the said village, or anywhere else, the name of John Haggart as one of the persons proposed as reeve, but refused so to do, and his name was not at any time so posted up: that on January 2nd, the day of the said polling, John Haggart presented himself as a candidate to the returning officer: that the returning officer would not place the name of the said John Haggart in his poll-book as a candidate for reeve, and would not record any votes for him, although many (some eighty-two) were tendered for him; and that if the returning officer had received votes for John Haggart, he would have been elected reeve of the said village, instead of Kenneth Chisholm, who was declared duly elected.

The returning officer, in his affidavit, swore as follows:

1. "That I was chairman of the meeting of electors held in the village of Brampton, on the 19th December last, for the nomination of candidates for the office of reeve, and I took the chair thereat at noon of the said day; and in the course of an hour thereafter, five candidates, being the same as are mentioned in the statement of the relator herein were duly nominated for said office; and after such nominations they all addressed the electors present at the meeting; and John Coyne, the said relator, and James Fleming, and John Haggart, at the close of their respective addresses, declared that they were not candidates for the said office, and withdrew from the contest therefor; and as each of them did so, I struck his name off the list of candidates for said office; and no person present at said meeting made any objection to the withdrawal of the said candidates; and although the relator was present at said meeting, and knew of the withdrawal of said Haggart and the said other candidates, he did not object thereto; and I believe the said relator and the said John Haggart also believed at the time that all the said withdrawals were complete abandonments of their candidatures by said parties.

2. "After the said relator and the said John Haggart and James Fleming had withdrawn as afore-said, I read out the names of the defendant