MUNICIPAL ELECTION CASE.

Reg. ex rel. Campbell v. O'Malley.

Quo Warranto Summons—Proof of Relator's status.

Held, That the proper proof of the right of an elector to be a relator is the production of the roll or an authenticated copy. His own statement on oath is insufficient.

[St. Thomas—April 17, 1874.]

On the hearing of this case the relator was called as a witness. He stated that he was an elector of the Township, but no other evidence of the fact was tendered, and the roll was not produced.

McMahon, for defendant. This evidence is not sufficient. The proper proof would have been the production of the roll. Proof of the relator's qualification was material to his case, and not having been given, the summons must be discharged.

McDougall for relator, *contra.*

Hughes, Co. J.—I can see nothing in this case to take it out of the general rule applicable in all such cases. The statute requires that the election complained of by this proceeding must be questioned by some person having an interest in the election, either as a candidate or an elector. In this case the statement sets forth that the relator claims interest as an elector. Under the previously existing statute, the practice was to have the parties before the Court by written statements and answers, supported by affidavit; and the decisions cited by the relator in this case refer to that practice; but they are now inapplicable. The law and the practice relating to such matters are now so changed that the respondent does not make his answer in writing, so that he cannot be now presumed to have waived his right to object to any defect in the relator's case.

I therefore think it was the duty of the relator to make good all his principal allegations, the first of which was (in the order of importance) that he himself had an interest in the election so as to give him the right to be heard in this Court and to object to the election. There were other necessary allegations in his statement that required proof; but a written admission on the part of the respondent had been secured by the relator which covered them all, except those referring to alleged acts of bribery and corruption. I am therefore led to infer that the relator came before me expecting to prove his interest as an elector as well as the acts of alleged bribery. The cases are numerous which go to show the kind of evidence that should have been offered to support the relator's interest—that he was an elector. For purposes of the election the voters' list would supply it, if at all, and I apprehend that that which the statute provides for on that occasion would be the best and proper proof of it here, although an examined copy, duly proved, would have answered the same purpose: *Reed* v. *Lamb*, Ex. R. N. S. 75. It has been held in the Court of Queen's Bench in England, in *Rex* v. *Parry*, 6 A. & E. 818, that an affidavit alone does not show, in a *quo warranto* proceeding, sufficient ground for the information, but the relator's interest should be shown by other and more competent proof. In *Rex* v. *Inhabitants of Coppull*, 2 East, 25, Lord Kenyon held that parol evidence could not be given of rates which were not produced nor excuse furnished for not producing—that the best evidence which the nature of the case would admit of should have been offered; and Grose, J., said that "it is in every day's experience to reject parol evidence of a writing which may and ought to be produced."

In the absence of any legal evidence of the contents of the voters' list or of the assessment roll, I think the relator was bound to produce it in this case, and that he could not be allowed to state whether his own name was inserted in it; or (putting it in another way) he could not be allowed to say whether or not he were *an elector*, when the law makes the insertion on the last revised assessment list the indisputable test of his right to vote, and *ergo* of his being legally an elector The case of *Justice* v. *Elstob*, 1 F. & F. 256, decided at Nisi Prius in England, was similar in principle. There Mr. Justice Hill said that in the absence of any evidence of the contents of a rate book, a collector could not be asked to say whether a particular person's name was on the rate. In "Taylor on Evidence," 6th ed. vol i., sec, 380, it is said: "Oral evidence cannot be substituted for any writing, the existence or contents of which are disputed, and which is material to the issue between the parties. * * * The fact of rating cannot be legally proved without the production of the rate books."

I therefore think, as the relator's case failed in one of the first essentials, the summons should be discharged, and that judgment should be given for the respondent with costs.

Summons discharged with costs.