Rex ex Rel; Ivision vs. Irwin.

Judgment on appeal by respondent, William Irwin, from judgment of senior judge of county of Essex, declaring void and setting aside the election of respondent as a councillor of the town of Leamington. Held, that it was improper for the county court judge to admit evidence of voters to show how they voted, since to do so would be a direct violation of the act, which requires secrecy, but that the improper reception of such evidence cannot affect the judgment appealed against, as without such evidence there was the evidence of thirty-three voters to which credence was given by the county court judge, which, together with the scrutiny of the ballots made by him, was considered ample evidence that ballots were tampered with after the ballot papers had been deposited in the ballot.box at the close of p ll. Held, also, that it was discretionary with the county court judge in the present case, after the trial had commenced, to refuse leave to cross-examine, and that it is impossible to say that the irregularities shown to have been committed in this case did not affect the result of the election.

Minns v. Village of Omemee.

Judgment on appeal by plaintiffs from judgment of Boyd, C. (2 O. L. R. 579). The plaintiffs are husband and wife. The defendant Graham is a hotelkeeper in the Village of Omemee. The plaintiffs allege that the corporation permitted and allowed defendant Graham to make, keep and maintain an opening or hole in the sidewalk on George street, adjoining his hotel, for the purpose of an outside opening to his cellar, and that def ndants did keep and maintain the opening, and left a loose plank beside it, and did not guard the openi g in any way or place a light at it. On the 14th September, 1900, at 8 p. m., the plaintiff Margaret Ellen Minns struck her foot against the plank and fell forward into the opening and was injured. The question for decision was whether the limitation provision of sec. 606 of the municipal act, requiring that actions for damages for which a municipality is responsible, for its default in keeping its roads, streets, bridges and highway in repair, be brought within three months after the damages have been sustained, is applicable to the appellants' claim, and therefore a bar to their action, assuming the respondents' liability for the damages sustained to have been made out. The Chancellor was of opinion that the provision was applicable, the liability being for non-feasance. Semble, that the view of the Chancellor was right. But at all events held, assuming that in the absence of a statutory provision limiting its liability, a municipality which gives, under the authority of a statute, such a permission as was in this case given to defendant Graham is answerable for the negligence of its licensee, it is clear, looking at all the provisions of the municipal act having a bearing thereon, that the legislature did not intend that a municipality giving the permission which by sec. 639 it is empowered to give, should be under any liability for the acts or omissions of its licensees, except in so far as liability is declared or created by sec. 606, and if that be so it follows that, the action not having been brought within three months, the claim was barred. Appeal dismissed with costs.

Re Rex. vs. Meehan.

Judgment on motion by the prosecutor, A. D. Turner, to make absolute a rule calling on the police magistrate for the city of St. Thomas and the defendant to show cause why the magistrate should not be directed to receive the oath of Turner to an information against the defendant. The rule was granted under R S. O., ch. 88, section 6. The information sought to be laid against the defendant was for that he did, on January 6, last, at St. Thomas, after having voted once, and not being entitled to vote again at the election of aldermen, wilfully and corruptly apply for a ballot-paper, in his own name, and did wilfully and corruptly vote three times for aldermen, and did thereby commit an interference with an election. The magistrate held (see 1, O. W. R, 136,) that he had no jurisdiction to hear the case and dispose of it summarily, or to hold a preliminary investigation and determine whether the accused should be committed for trial if the evidence warranted him in so doing. By 1 Edw. VII., ch. 26, section 9, (O.,) it is provided that in towns and cities where aldermen are elected by general vote, every elector shall be limited to one vote. Section 193, of the Municipal Act, declares (f) that no person shall, having voted once, and not being entitled to vote again, apply for a ballot-paper in his own name, and by sub-section 3, a person guilty of any violation of this section shall be liable to imprisonment for a term not exceeding six months. By section 138, of the criminal code, every one is guilty of an indictable offence, and liable to one year's imprisonment who, without lawful excuse, disobeys any act of the Parliament of Canada, or of any legislature in Canada, by wilfully doing any act which it forbids, unless some penalty or other mode of punishment is expressly provided by law. Held, that, as the section of the act of 1 Edw. VII., above referred to, does not contain a particular mode of enforcing the prohibition, and the offence is new, the only remedy is by indictment, as provided by section 138, of the code. Therefore, the magistrate had jurisdiction to take the information in question, and to issue a summons to the defendant to hear and answer the charge, and to hear the case and determine whether the defendant should be committed for trial, and, moreover, that he was bound to do so. And, as the magistrate had not exercised any discretion, but had simply declined jurisdiction, it was the duty of the court to order him to exercise his jurisdiction. Rule absolute. Costs of applicant to be paid by defendant.

McClure v. Township of Brooke; Bryce v. Township of Brooke.

Judgment on appeals by plaintiff in each case from orders of Meredith, C. J., staying proceedings and refusing to direct references to J. B. Rankin, esquire, drainage referee, as a referee under sec. 29 of the arbitration act. There is pending a drainage matter commenced by notice served and filed pursuant to the municipal drainage act, and amendment I. Edw. VII., ch. 30, sec. 4, wherein the plaintiffs in these a tions are asking for damages and other relief, and they will be heard in due course before the drainage referee. The plaintiffs allege that the matters arising in this action, as well as those in the drainage matters, have each to do with the same lands and locality, which require local inspection and investigation and a specific or scientific knowledge, in order that a proper adjudication may be made, and they, therefore, applied to a Judge in Chambers for an order of reference. The Chief Justice refused the references on the ground that the drainage referee is not an official referee within sec. 29, and stayed proceedings until the conclusion of the drainage matters, so that thereafter, if necessary, the plaintiffs could proceed if in these actions as to questions raised outside the scope of sec. 4 of the act of 1901. Held, that before the passing of ch. 30, there would have been no difficulty, as R. S. O., ch. 226, sec. 94, gave the court or Judge power to refer, but that sec 1 has been repealed by sec. 4, and under the arbitration act, if the parties agree, the question may be referred to a special referee. Here they do not agree, but the court is of opinion that the drainage referee is a referee within sec. 29. There is no statutory definition of official referee, but sec. 141 of the judicature act names persons by their office who are official referees, and the drainage referee is not there named. The drainage act, R. S. O., ch. 226, secs. 88 and 89, makes the drainage referee (1) an officer of the High Court; (2) confers upon him all the powers of an official referee under the judicature and arbitration acts. Official referee is only "official" in the sense of being an officer of the High Court. The drainage referee, being such an officer, with all necessary powers, is an official referee for the purposes and within the meaning of the arbitration act. Rule 12 makes all officers auxiliary to one another. See also sub-sec. 22, sec. 8, of the interpretation act. For these reasons and the drainage referee being specially qualified by sec. 89 of the drainage act, with the powers of referee under the arbitration act, the appeal should be allowed and the case referred to him. Costs of appeal to plaintiff in any event.