

UPPER CANADA REPORTS.

QUEEN'S BENCH.

HAMMOND v. McLAY.

Registrar—Tenure of office.

Defendant was appointed Registrar in 1859, under 9 V., c. 34, by which the Governor is authorized in general terms to appoint, and provision is made for removal on certain contingencies, to be proved in a specified manner. His commission conferred upon him the office, with all the rights, &c., thereto belonging, but expressed the appointment to be during pleasure. In 1864 he was removed, and defendant appointed, the admitted cause of such removal being alleged misconduct as returning officer at an election.

Held, that by the statute the plaintiff was subject to removal only for the reasons and by the means there provided; that the words "during pleasure," in his commission, could not deprive him of his statutory rights; that the 29 V., c. 24, passed after defendant's appointment, by which every Registrar then in office was continued therein, could not confirm such appointment if illegal; and that the Interpretation Act, providing that a power to appoint shall include power to remove, could not apply. The plaintiff therefore was held to be still Registrar, and entitled to the fees of such office received by defendant.

[E. T., 1866.]

The declaration contained two counts. The first for money payable by defendant to plaintiff for fees and emoluments received by defendant due and of right payable to the plaintiff as Registrar of the County of Bruce. The second, the common count for money had and received.

Pleas.—1st. Never indebted; 2nd. That the plaintiff was not Registrar of the county of Bruce at the time the fees and emoluments mentioned in the first count were received by defendant.

Issue thereon.

The case was entered for trial at the Autumn Assizes, at Goderich, before Hagarty J., when a verdict was entered for the plaintiff, with leave reserved to defendant to move to enter a nonsuit, or a verdict for himself, upon certain admissions then made.—

The following were the admissions made for the purposes of the trial:—

1. That by commission under the Great Seal of the Province, bearing date 13th June, 1859, the plaintiff was appointed Registrar for the County of Bruce "during our pleasure" and his residence in the county, together with all the rights, privileges, emoluments, fees and perquisites to the said office belonging or of right appertaining; and the town of Southampton was named as the place where the registry office was to be kept.

That on the 14th July, 1859, the plaintiff entered into the necessary recognizance with two sureties (approved by two Justices of the Peace) conditioned for the due performance of the duties of his office, and took the necessary oath of allegiance, all of which were duly filed of record with the Clerk of the Crown in the Court of Queen's Bench, on the 21st September, 1859.

3. That the plaintiff accepted the said office, and continued to discharge the duties of it until as hereinafter mentioned.

4. That by letters patent under the Great Seal of the Province, bearing date the 26th February, 1864—after reciting the letters patent of the 13th June, 1859, and that Her Majesty had been pleased to determine her Royal will and pleasure in relation to these letters patent—Her Majesty did cancel, revoke and make void the said letters patent, and did thereby discharge the plaintiff from the said office of Registrar.

5. That such discharge was grounded upon facts set forth in certain correspondence produced and put in as evidence, and not for any of the causes mentioned in secs. 66 or 67 of Consol. Stat. U. C., c. 89, or upon any presentment or conviction as in those sections mentioned.

6. By commission under the Great Seal of the Province, dated the 26th February, 1864, the defendant was appointed to be Registrar of the County of Bruce, in the room of the plaintiff, "removed," to hold "during our pleasure" and his residence in the county, together with the rights, &c., (as in the plaintiff's commission.)

7. Notwithstanding the foregoing facts, and disregarding a demand for the registry books which was made by defendant upon the plaintiff, the plaintiff kept possession of those books, and assumed to discharge the duties of Registrar until the 21st June, 1864, when defendant, against the will of the plaintiff, procured possession of the books, and thereafter exclusively continued to act as such registrar.

8. That during the period last aforesaid: viz, from the 26th February, 1864, till 21st June, 1864, defendant also assumed to act as Registrar.

And it was agreed that a verdict be entered for the plaintiff for six hundred dollars, with leave to defendant to move to set it aside and enter a nonsuit or a verdict for defendant, if on the foregoing facts and the documents put in, the Court should be of opinion that the plaintiff was legally dismissed from said office, and defendant legally appointed thereto, or if under the operation of the recent act, 29 Vic., ch. 24, sec. 9, the appointment of defendant was *ex post facto* legalized; either party to be at liberty to avail himself of any point of law fairly arising upon the evidence.

In Michaelmas term, S. Richards, Q.C. obtained a rule accordingly, on the following grounds:—That upon the facts admitted the plaintiff shows no right to recover; that the plaintiff was not Registrar of the County of Bruce during the time the said moneys or fees are alleged to have been received by defendant; that if there was any doubt as to the defendant being Registrar, his appointment is confirmed by the last Registry Act; that if the plaintiff were Registrar during the time the moneys were alleged to have been received, an action will not lie at the suit of the plaintiff for moneys which were paid for defendant's registration of deeds and instruments; that the plaintiff has not shewn any money to have been received by defendant for the use of the plaintiff.

Robert A. Harrison shewed cause, citing *Harcourt v. Fox*, 1 Show. 426; *Hunt v. Coffin*, Dy. 197 b; *Rez v. Toly*, Dy. 197 b; *Rez v. Blage Dy.* 197 b; Dy. 198 a, 198 b; *Sir Robert Chester's case*, Dy. 211 a; *Kent v. Mercer*, 12 C. P. 30; *Moon v. Durden*, 2 Ex. 22; *Midland R. W. Co. v. Ambergate, &c.*, R. W. Co., 10 Hare 369; *De Winton v. Mayor of Brecon*, 26 Beav. 533; *Pretty v. Solly*, 1b. 506; *Chitty Prerog.* 87.

S. Richards, Q.C., in support of the rule, cited *Chy Prerog.* 75; *Bac. Ab. Offices. A*; *Smyth v. Latham*, 9 Bing. 707.

The statutes cited are referred to in the judgments.

DRAPER, C. J.—The office of Registrar was first created in Upper Canada by the Stat. 35 Geo. III., ch. 5, which authorised the Governor