COUNTY COURT CHAMBERS.

In Chambers, before the County Judge of the County of Elgin.

Regina v. Baynes.

Bail—Grounds for admitting criminal prisoners to bail—Probability of the prisoner appearing to take his trial—Arson.

The guilt or innocence of prisoner not the question to decide on application for bail on a criminal charge.

The seriousness of the charge, the nature of punishment and evidence, and probability of prisoner's appearing to take his trial are the important questions to be considered.

Held, when it is shewn prisoner attempted to bribe the constable to allow him to escape, the probability of his appearing to take his trial was too slight for the Judge to order bail. Bail refused, although it was some months before a criminal court competent to try the case would sit.

The charge in this case was for feloniously causing one Florence Stumpff to set fire to prisoner's dwelling house in order that he might recover from the Equitable Insurance Company a large amount assured to the prisoner by that Company in the event of its being destroyed by fire. Stumpff was the only witness to prove the fact examined before the committing Magistrate.

Paul, for prisoner, applied for bail upon copies of the depositions taken before the committing Magistrate and upon affidavits, and cited Taylor on Evidence, 177 and 179; Arch. Crim. Plead., 225, and urged that the only evidence against the prisoner was that of an accomplice and produced affidavits impeaching that witness's character.

Stanton, County Attorney, contra, produced the affidavit of the constable who executed the warrant to apprehend, which set forth that prisoner attempted to bribe him to let prisoner escape by offering him a deed of some land and money.

The alleged arson took place about the time of the Spring Assizes and prisoner was not arrested until they were over.

Hughes, Co. J.—Acting upon the authority of *Regina* v. *Scaife and wife*, 9 Dowl. P. C., 553, which was also acted upon in *Regina* v. *Gallaher*, by the Irish Court of Queen's Bench, reported in 30 L. T. Reports, page 221, and also upon the authority of *Barronet's Case*, 1 Ell. & Bl. 1, I must refuse to bail the prisoner for the following reasons:—

I conceive that the reason why parties are committed to prison by Magistrates before trial is for the purpose of ensuring or making certain their appearance to take their trial, and the same principle is to be adopted on an application for bailing a person committed to take his trial; and it is not a question as to the guilt or innocence of the prisoner—it is on that account necessary to see whether the offence is serious, whether the evidence is strong, and whether the punishment for the offence is heavy.

In this case the accusation is a very serious one, *i. e.*, procuring and hiring another person to set his house on fire and to burn it in order to recover from an Insurence Company a large sum of money which had been assured to him in the event of its being accidentally burned; the punishment is very considerable, imprisonment in the Penitentiary from two years upwards to the end of life; the evidence is strongly presumptive of guilt, and besides that, the prisoner appears to have endeavoured to purchase his escape from the custody of the constable who arrested him and had him in charge, which does away with any hope that he would, if ordered to be bailed, come forward to take his trial. I think therefore I would not be exercising my discretion properly by granting the order asked for.

Order for bail refused.

ELECTION CASE.

Before Kenneth McKenzie, Esq., Judge of the County Court of the United Counties of Frontenac, Lennox and Addington.

Qualification of voters—Effect of assessment rolls—Admissibility of parol evidence to contradict or vary same.

1. In the case of a municipality divided into wards, where a voter is entitled to vote in the ward in which he resides, he is not entitled to vote in any other ward.
2. In the case of a householder, residence for one month next before the election is an essential to qualification as a voter.
3. Where there was great noise and confusion at the polling place but no personal violence offered to the voter, the allegation of intimidation failed in the proof.
4. It is necessary that a voter, whether freeholder or householder, should not only be rated as such, but at the time of the election hold the property in respect of which he is rated.
5. Parol evidence cannot be received by a returning officer or Judge sitting as a scrutineer, to contradict or vary the contents of the assessment roll.

A writ of summons, in the nature of a *quo warranto*, was issued upon the fiat of Judge McKenzie, calling upon the defendant to show by what authority he used, enjoyed and exercised the office of municipal councilman for Rideau ward, in the city of Kingston, the relator claiming an interest in the election as a candidate.

The relator complained that six illegal votes had been recorded at the election for the defendant, and that he (relator) had a clear legal majority of three votes over the defendant, and should have been returned elected. The relator claimed the seat for himself.

The relator objected to the vote of one Thomas Campbell, on the ground that he was residing in Victoria ward at the time of the election, and entitled then to vote therein; to the vote of one Wm. McKee, on the ground that he was residing in Frontenac ward at the time of the election, and entitled then to vote therein; to the vote of one John Mills, on the ground that he was not rated for any property in Rideau ward, and that he voted on real property assessed against his father; to the vote of one Jacob Wilson, on the ground that one David Moore falsely personated Wilson at the election, and voted in his name; to the vote of one David Sewell, on the ground of non-residence, he being assessed as a householder; and to the vote of one John Hickey, on the ground that he was, through threats, violence and intimidation, induced to vote for the defendant.

The defendant, in his answer, denied the allegations of the relator generally, and objected to several votes recorded for the relator. The defendant objected to the vote of one John Waters, on the ground that he was not sufficiently assessed; to the votes of one John Redpath and one Benjamin Redpath, on the same ground; to the vote of one William Aubin, on the ground of non-residence. He claimed also the vote of one James Ovens, as having been recorded in a mistake by the returning officer for the relator, whereas the vote was intended for the defendant. Exceptions taken by the defendant to several other votes of the relator were of a clerical character, and unnecessary to be here noticed.

J. O'Reilly for the relator. *J. Agnew* for the defendant.

McKenzie, Co. J.—According to the poll-book returned to me, 118 votes had been polled at the election for the defendant, and 116 votes for the relator, so that the defendant was returned as elected by an apparent majority of two votes over the relator.

I am of opinion that the votes of Thomas Campbell, William McKee, John Mills, David Sewell and Jacob Wilson, were not legal votes, and must be struck out of the poll-book; and that the vote of John Hickey should not be disturbed.

The evidence showed conclusively that Thomas Campbell was residing at the time of the election, and a long time before it, in Victoria ward, and entitled to vote in that ward. William McKee was, at the time of the election, and for a long time before it, residing in Frontenac ward, and entitled to vote in that ward at the time of the election. It is clear that, under the 78th section of the Municipal Institutions Act, Campbell and McKee could not vote in Rideau ward. John Mills had no right whatever to vote. The real property in respect of which he voted, was not his property, or assessed against him. It was the property of his father, and assessed against his father. David Sewell had not been residing in the city of Kingston for one month before the election within the meaning of the act of Parliament; on the contrary, he had been residing in the township of Kingston for several months before the election. One David Moore falsely personated Jacob Wilson at the election, and voted for the defendant as Jacob Wilson. This was an unblushing piece of effrontery, involving a criminal violation of the law. As to the vote of John Hickey, I think it should not be disturbed. It is true that there was great noise and confusion at the polling place when Hickey went up to vote, and violent language passed, but no personal violence was offered to Hickey. I think Hickey, if he had a mind to, might have withheld his vote from the defendant. From the evidence, I am inclined to think that the persuasion of Loan had more influence over the mind of Hickey than the turbulence of the crowd.