

have the cause tried before a judge of one of the superior courts, and swear that difficult questions of law and fact are likely to arise.

Under these circumstances, without expressly refusing to grant the order because the case can be more satisfactorily tried before a judge of one of the superior courts, I shall refuse to amend the declaration by changing the venue to Northumberland and Durham; and in the view I take of the statute and the rule of law as to trying a cause in the county where the venue is laid, I must refuse to make the order.

As the point is new the summons will be discharged without costs.

Where a defence is one not merely for time, it may be doubtful, particularly if the amount is large, if a judge would direct the trial of the issue before the county judge against the consent of the defendant.

Summons discharged without costs.

ELECTION CASES.

(Reported by ROBERT A. HARRISON, Esq., Barrister-at-Law.)

(Before His Honor A. LOGIE, County Judge of the County of Westworth.)

THE QUEEN ON THE RELATION OF HENRY LUTZ AGAINST JOHN W. HOPKINS.

Municipal Election—Duty of Returning Officer—Alteration of Vote—Qualification of Voters—Court of Revision—Power to alter Roll—Close of Poll—Duty of Returning Officer—Scrutiny.

If a Returning Officer upon discovering an error in the entry of a vote has the power to make the necessary correction he must make it promptly, and only in a case where the mistake in making the entry is beyond a doubt.

It is the duty of the Returning Officer at the close of the poll to add up the number of votes given for each candidate, and publicly to declare the state of the poll, and if there is a tie or equality of votes to declare his intention to vote, and the name of the candidate for whom he gives his vote.

Quære did the Returning Officer under the circumstances stated in this case properly discharge that duty?

Where the watch of the Returning Officer was used on the first day to open and close the poll, and again to open it on the second day without objection as to its correctness, the time marked by his watch may be properly taken as the correct time at the close of the poll.

If a voter goes and time prevent himself at the poll for the purpose of voting he has a right to have his vote recorded, though by the delay of the opposite party in obstructing his purpose it may be a minute after the hour appointed for the close of the poll when the vote is recorded.

Where a voter had parted with the property in respect to which he voted before the time of the election, held that he had no legal vote.

A Court of Revision has no power by mere motion at the instance of a member of the court, to order any names that they think are omitted or wrongly inserted, to be added or struck out. In order to give them jurisdiction a complaint must be made, and that complaint they are required to try.

Names improperly added to an assessment roll by a Court of Revision will, in the event of a re-uniform at an election be struck off.

A person otherwise duly qualified to vote at a municipal election is not disqualified by the simple fact of a change of residence from one ward to another in the same Township.

Quære, as to the distinction between mere "householders" and "tenants," for the purpose of voting at a Municipal election?

[23rd February, 1861.]

The relator in his statement set forth, that defendant had not been duly elected, and unjustly usurped the office of Township Councillor for ward number four of the Township of Saltfleet, in the County of Westworth, under the pretence of an election held on the seventh day of January, one thousand eight hundred and sixty one, and following days, at Burlington Beach, in the said ward number four, in the Township of Saltfleet, in the said County of Westworth; and that the relator was duly elected thereto, and ought to have been returned at such election, and declaring that the said relator had an interest in the said election as a candidate, stated the following causes why the election of defendant to the office should be declared invalid and void, and relator only elected thereto.

First. That said election was not completed according to law in this:

1. That the returning officer for the said ward (Wilber W. Waterbury) at the close of the poll for the election of councillor for the said ward number four, did not add up the number of votes set down for the relator and defendant, the respective candidates for councillor for the ward, and publicly declare the same, and in case of an equal number of votes give the casting vote for one of the said candidates so as to decide the election; but on the

contrary entered his own name as an elector, and then declared defendant councillor for the said ward, without first adding up the number of votes set down for relator and defendant or either of them.

2. That the last vote, other than that of the said returning officer as set down for the defendant, was so set down after the hour of four of the clock in the afternoon of the eighth day of January last, being the second and last day of the said election.

3. That the said returning officer in his certificate attached to his return of the said election to the clerk of the Municipality of Saltfleet, did not state for what ward or for what year the said John W. Hopkins was elected.

Second. That the defendant was not duly or legally elected or returned as councillor for the said ward in this:

1. That at the instance of the defendant there was illegally and fraudulently entered upon what purports to be the last revised assessment roll for the said ward number four, as electors, the names of seven unqualified persons, namely, Chas. Bates, Robert Fletcher, Ashman P. Coombs, Samuel Bateman, Philip Beal, Geo. Snook, and John Forbes; and that three of the unqualified persons, namely, Robert Fletcher, Ashman Coombs, and Thomas Bateman, tendered their votes at the election for the said ward number four, and that the returning officer set down their names and votes for the defendant, although the votes were duly objected to previous to the same having been entered or given.

2. That the list of qualified electors furnished by the clerk of the said Township to the returning officer contained the names of several persons who were not rated for ratable real property upon the last revised assessment roll as the same was passed by the Court of Revision, and three of the said parties, namely, the parties last aforesaid, gave their votes for the defendant, and the same were so set down by the returning officer, although duly objected to previous to the same having been entered.

3. That the said returning officer, upon the application of the defendant, erased the vote of one Thomas Armstrong which had been set down in the poll book for the said Henry Lutz, and entered the same for the defendant, although the vote had been so entered for the relator the day previous to the same having been erased, and without application having first been made by the elector to have the same so altered as aforesaid.

4. That the defendant did pay, or caused to be paid, or promised to pay, to one or more of the electors who voted for him at the said election, a consideration or reward for the vote he or they tendered and gave at the said election.

5. That the defendant was appointed by the Municipal Council of the said Township of Saltfleet, an officer or commissioner for expending and paying certain monies belonging to the said Municipality, and that a portion of the monies was still retained by the defendant, and that he was at the time of the said election, and still is liable to the said Municipality, for the payment of the monies.

6. That the defendant can and may claim a remuneration from the said Municipality for his services as such commissioner or officer as last aforesaid.

Third. That the relator should be declared duly elected to the said office of township councillor for the said ward number four in the said Township of Saltfleet, because he had a majority of the legal votes set down for the respective candidates at the said election.

The evidence given was oral, and briefly as follows:

FOR RELATOR.

1. *George Lotteridge.*—Was present at the close of the election on the second day, and was near the returning officer; did not hear him declare there was a tie before he, the returning officer, voted; heard parties say before one Declos voted that it was four o'clock, and that the poll should be closed.

2. *Robert R. Waddell.*—Saw the name of Thomas Armstrong entered as a voter for relator; by the clock in the house it was after four o'clock when Declos voted; immediately afterwards the returning officer, without making any declaration of the state of the poll, wrote his own name and declared defendant elected; on the second day heard the returning officer had changed the vote of Thomas Armstrong; his father died intestate as to lands in