CHAMBERS.

REX EX REL. McCALLUM v. McKIMM.

Municipal Elections—Controverted Election—Application in Nature of Quo Warranto—Practice—Affidavit—Irregularity—Waiver—Notice of Motion—Personal Service—Disqualification of Member of Council—Member of School Board—Statute—Construction—Costs.

Summary application in the nature of a quo warranto to set aside the election of George Frederick McKimm as mayor of the town of Smith's Falls, upon the ground that he, at the time of the election, was disqualified by reason of his being a member of the public school board of that town, being "a public school board for which rates are levied."

The motion was made returnable on the 16th February, but was on that day adjourned at respondent's request till the 20th February, no objections being specifically mentioned, but "reserving all objections, technical and otherwise—affidavits in answer to be served on 18th inst.—to-day being the last day for proceeding, the 20th instant to be treated as the last day as far as the objections above reserved are concerned." On the 18th February the respondent's solicitor served the relator's solicitor with copies of affidavits in answer.

Upon the application coming on for hearing on the 20th February, G. H. Watson, K.C., for the respondent, objected that no affidavit had been filed by the relator in support of the application for a fiat to serve the notice of motion, inasmuch as the paper filed purporting to be an affidavit did not contain the words "make oath and say;" also that the notice of motion had not been properly served. In support of the first objection he cited Allen v. Taylor, L. R. 10 Eq. 52; Phillips v. Prentice, 2 Hare 542; and Re Newton, 2 De G. F. & J. 3.

J. H. Moss, for the relator.

The motion was also argued upon the merits.

THE MASTER.—It is true that in the cases cited by Mr. Watson affidavits without the words "make oath and say" were not admitted until resworn after being altered. In the first mentioned case James, V.-C., held that the affidavit must be altered and resworn unless the other side waived the objection. It was, however, held in In re Torkington, L. R. 9 Ch. 298, that an affidavit, omitting by mistake the words "severally make oath and say," having been filed, it was too late