

it now appears, would have decided who was to be warden for the year, and he rejected both of these.

I can not say, under the circumstances, that it is at all surprising that he should have been charged at the time with partiality in relation to these matters.

If this election is allowed to stand, this result will follow, that at any time a county clerk may, according to his own caprice or preferences of any kind, decide in favor of and allow certain persons with defective certificates to take their seats and vote in the council, whilst as to others whose certificates are quite as good, and in some cases even less defective, he may reject them and refuse to allow them to vote without any reasonable ground being assigned for such inconsistent decisions. I do not think it is desirable that any judicial decision should be arrived at that would furnish an excuse for such a course of conduct, and I shall therefore set aside the election of the defendant to the office of warden.

The question of costs is somewhat embarrassing.

There is nothing to show any direct interference with the decision of the County Clerk, on the part of the defendant, and he appears to have been called upon by that officer to give his casting vote, when the election was had. It is true he accepted the office, and was sworn in. There is nothing to show that he was aware of the defects in the certificates of the reeves who were allowed to vote by the clerk; and the plaintiff claimed on this application that he ought to be declared warden, which I do not think, on the facts disclosed, he was entitled to; so to that extent the defendant was justified in opposing this application. I do not therefore think I can properly direct the defendant to pay the costs. The learned judge who granted the summons in this matter did not think proper to direct the County Clerk to be made a party to these proceedings. If the County Clerk had been called upon, he might have been able to explain satisfactorily the seeming inconsistencies in his conduct in relation to the election; if he had not done so he would probably have been directed to pay the cost of this proceeding. As, however, he is not now before me, I cannot assume that he would not have been able, if he had been called upon, to show sufficient grounds to excuse him from the payment of costs.

Under these circumstances I must decline giving costs to any of the parties.

A writ will go to remove the defendant from the office of warden, and to hold a new election.

The relator may, if he deem it necessary, amend the style of the office, by omitting the words "of the County Council," after the word "Warden," and before the words "of the County of Simcoe," in the writs he may issue in pursuance of this judgment.

Judgment accordingly.

UNITED STATES REPORTS.

THE COMMONWEALTH V. ALBERT C. CASSIDY.

The publication of an advertisement calculated to alarm the public mind unnecessarily, is a public nuisance, and is indictable as such. [Quarter Sessions.]

Motion to quash the indictment.

Opinion by ALLISON, J.

This motion is based on several grounds, first that the facts laid in the bill do not constitute an indictable offence. In this we do not agree with the defendant. To do any act which is calculated to spread terror and alarm through the community, unless such act is right and proper in itself considered, or becomes necessary under the special circumstances surrounding the commission of that which is complained of as constituting an offence, renders the person so offending liable to indictment at common law.

For illustration, to circulate a report of an invasion, or the breaking out of an infectious or contagious disease, if the report be false, would be indictable, because such reports are calculated to excite unnecessary fear and terror in the minds of the people; whilst if the facts correspond with the report, no indictment would lie, because it would under ordinary circumstances be eminently proper that such information should be given to the public.

The general principle is that whatever is injurious to a large class of the community is a nuisance at common law. *Lansing W. Smith v. Cowen*, 146. The carrying on of a trade, which is in itself lawful, if it is injurious to the comfort of the community generally, or the immediate neighborhood, constitutes a nuisance. *People v. Cunningham*, 1 Denio, 524. Upon this principle, indictments have frequently been sustained in this court for maintaining a bone boiling or lampblack establishment. So also a swine yard in a city or thickly populated neighborhood is a nuisance. *Commonwealth v. Vansickle, Brightly, R.* 69.

These kind and kindred cases rest on the ground of their causing discomfort merely to the public. If indictments will lie for cause like to these named, it does not require authority for the doctrine that whatever injuriously affects the health or the morals of a large class of the community, is indictable as a common nuisance—such as the letting off of fire works in a public street, or the keeping of a disorderly house.

This indictment charges the unlawful circulation of a false report by handbills posted on the corners of the public streets, and other public places in the city, calling on the citizens to look out for a child stealer, describing her as a woman about twenty-four years of age, etc. The hope is suggested that she may be discovered and brought before the public, where she may be observed by both heads of families and their children, etc.

That this publication, given to the public in the manner above stated, constitutes, in whatever light it may be viewed, a common nuisance, cannot, we think, be well questioned; that it is injurious to both the comfort and health of a large number of persons in the community in which the report has been put in circulation, is self evident, because its tendency is to fill the mind with anxiety, fear and alarm, to the absolute destruction of the comfort and happiness of many, and by this means is to a greater or less extent, injurious to the health of persons brought under such influence.

Mental anxiety, and an imagination excited by terror, are fruitful sources of bodily disease and loss of life, and upon none of the instincts and susceptibilities of our nature do these influ-