reflection and consideration than from a design to favor any one. Still, as I have intimated, it does seem to me extraordinary if a warm contest were anticipated in a populous ward, why proper arrangements should not have been made not only to keep the poll free about the entrance or door, but to preserve free access to it from all quarters. Then why was not the list of voters alphabetically arranged either by the officer who had charge of the roll or by the Returning Officer himself? The Returning Officer may say it is not his business to make out this list, perhaps it is not; but if he desire to perform his duties creditably to himself and with advantage to the public, whose servant he is, he should see that what is necessary for that purpose is done.

The statement as to the obstruction of voters on the part of the Relators is clear and distinct—some of the witnesses stating they could not vote, and that others could not, and that they were restrained by fear from doing so. The answer to the statement is, that they had as good an opportunity for doing so as defendants friends if they had chosen to stay on the ground and take their turn.

I have not seen however any statement that any Elector who wished to vote for defendants was not able to do so, whilst it is manifest that there were many who wished to vote for Relators that were not permitted to do so.

The very first principle connected with all Electors is, that they should be free: if they are not how can there be any election or choice? If a minority of the Electors can take possession of the poll, or get forward and by force or fraud prevent the opinion of the majority from being expressed by their votes, I cannot see how that can be considered a fair election.

The law certainly contemplated that free access to the polls should be had by all electors. In the 159 sec. of the Municipal Corporations Act, the poll is not to be closed before the hour of four of the second day, unless the Returning Officer shall see that all the Electors intending to vote have *had a fair opportunity of being polled*, and one full hour at one time shall have elapsed, and no qualified Elector shall during such time give or tendered his vote, *free access being allowed to Electors for such purpose.*

This clearly shows that the Legislature contemplated that the electors should "have a fair opportunity of being polled," and that free access should be allowed to them to the polls for that purpose. The evidence in this case does not satisfy me that *all* the electors in this ward had that opportunity, and that free access. On the contrary, I think many of them had it not. Whether this arose from the slowness of the Returning Officer in taking the votes, or from the obstructions put in the way of voters coming forward to vote, or from any of the other causes suggested in the affidavits filed, I am of opinion that the fact that a large number of duly qualified electors could not cast their votes is a sufficient reason for setting aside an election, if the result were influenced by the unpolled votes.

The next question there is, can the result of the election be said to be affected by this want of free access. It is stated in one of the affidavits that the number of voters in the ward is estimated to be between five and six hundred, which is believed to be correct. On looking over the list of voters, from a rough estimate I should think the number would exceed seven hundred, but of course they might not all be voters in this ward.

If we take 500 as the number of voters in the ward, there were only 257 votes polled, leaving nearly 300 votes unpolled.

Had the 300 unpolled electors free access to the poll? If not, can I say that if those of them who had desired to vote had been allowed to do so, that it would not have influenced the result? I think not.

It may be contended that 500 votes could not be polled in the time permitted by law. I am not satified it cannot be done if all parties really desire it. Mr. Ambridge, in his affidavit, says he has been Returning Officer for the last five years in St. Mary's Ward in Hamilton, and that he has on several occasions taken from 250 to 400 votes during the two days on which the municipal elections have been held, and has no doubt 500 could be polled if free access could be had to the poll, and there were no obstructions. I have seen over 500 votes polled in two days at a Parliamentary election, and there were intervals of a considerable length during the two days wherein no votes were polled, but at these elections the Poll opens each day at 9 a.m. and closes at 5 p.m.

On the whole then, as to the defendant Lawrence Devaney, I am of opinion the election should be set aside and a new election had.

As the defendant Brown has not yet been heard, of course as to him I express no opinion.

As to the question of costs I have more difficulty. I think the tendency of modern decisions is not to compel a party to pay costs unless it can be shown that he participated in the improper conduct for which the election is set aside; the defendant Devany denies such participation expressly, and I do not in consequence feel warranted in directing him to pay costs. If, however, an election at some future period should be set aside because the electors had not had free access to the Polls, and a candidate, after proceedings had been instituted to avoid the election, should persist in his right to hold his seat, it would be a subject for consideration whether the rule ought not to be laid down that he should pay the costs. In this case I am not prepared to direct the defendant Devany to pay the costs.

In the event of a new election being ordered, it is to be hoped that the proper preliminary arrangements will be made to facilitate the approach of the electors to the polls, and to hasten the mode of ascertaining if a party offering is really entitled to vote.

As there seems to have been an understanding that the affidavits should apply equally to all the defendants, Mr. Read now appears for Brown and refers to these affidavits, and the same judgment will be given as to defendant Brown.

The election will be set aside, without costs, and a new election ordered.

In re J. R. Jones v. J. Ketchum, Jr.

Attorney's Bill—Taxation and Revision—Unprofessional Charges.

An Attorney's Bill settled for more than twelve months will not be ordered to be taxed, and, if taxed by mistake, taxation will be set aside as irregular.

Items charged in an Attorney's Bill not appertaining to the business of an Attorney cannot be taxed by the master, but must be determined as an ordinary business transaction.

A Revision of Taxation will be granted when the master, upon a reference to him under the order of a Judge directing taxation of an Attorney's Bill "for fees and disbursements in his professional business," has allowed charges in the Bill for business not appertaining to the office of an Attorney.

(June 22, 1857.)

The facts of the case sufficiently appear in the Judgment.

McLean, J.—This is an application for a Revision of Taxation. On the 6th of April, an order was made by the Chief Justice, directing Mr. Jones to render his Bills of Costs with dates for fees and disbursements in his professional business, for and on account of the said Jesse Ketchum, and that the same be referred to the master to moderate and tax.

The Bills being rendered in pursuance of this order an appointment was made by the master, on the 11th May, for taxation on the 12th, at 10 o'clock. On the 12th the time was enlarged by consent of parties till Thursday following, and on the 16th May the master proceeded with the taxation; and, as appears by the affidavits now filed, would not allow a further enlargement without the consent of Mr. Jones, though urged to do so with a view of procuring original documents, the charges for which was disputed on the part of Ketchum.

By the master's allocatur a sum of £57 4s. 4d. was found to be due to Mr. Jones on the Bills of Costs taxed, including in that amount, according to the Bills filed, charges for services not wholly of a professional character, such as receiving and keeping possession and taking care of a house, the examination of sundry accounts between Ketchum and other parties, and various other items not necessarily belonging to the business of an Attorney, and including also a sum taxed in a suit alleged to have been long since settled and satisfied by Ketchum with Mr. Jones. I am now asked to order a Revision of Taxation, and to direct the master to strike out all charges not strictly professional, as well as that which relates to the Bill of Costs alleged to have been rendered to