

Mun. Elec. Case.] IN RE EDWARDSBURGH, ETC.—DIGEST OF ENGLISH LAW REPORTS. [Digest.

MUNICIPAL ELECTION CASE.

IN THE MATTER OF THE ELECTION FOR THE
OFFICE OF REEVE FOR THE TOWNSHIP OF
EDWARDSBURGH FOR THE YEAR 1877.

Upon an application for a judge's order for the inspection and production of ballot papers used in the election of a Reeve, such application being made under the provisions of section 28 of the Act 38 Vict., cap. 28, O., and neither a prosecution for an offence in relation to ballot papers, nor proceedings for the purpose of questioning the election on return having been instituted, *held*, that the order could not be granted.

[Brockville, McDONALD, J. J.]

A summons was obtained from the Junior Judge of the County Court of the United Counties of Leeds and Grenville on behalf of James Millar the unsuccessful candidate for the Reeveship of the Township of Edwardsburgh, calling upon one Joseph Craw Irvine, the successful candidate, and Gideon Fairbairn, clerk of the said Township, to show cause why an order should not be made directing the inspection and production of the ballot papers used in this election.

The summons was granted upon an affidavit of Mr. Millar, showing that he was a candidate for the Reeveship; that the only other candidate was Joseph Craw Irvine, and that, as appeared the return of the Clerk of the Township, Mr. Irvine was elected to the office by a majority of three votes; that deponent believed that such return was not the true and correct return of the vote of the electors polled, and that he believed an inspection and a count of the ballot papers would show that the return of the clerk should have been in his (Millar's) favor, rather than his opponent's; that he was informed and believed that at certain polling sub-divisions in said Township to wit, at sub-division No. 6, certain ballot papers were rejected which should have been counted in his favor, and the votes which they represented added to his count; and that he was advised, and believed that the inspection and production of the said ballot papers were material for the purpose of questioning the election and return.

J. Reynolds, on behalf of Mr. Irvine, showed cause, and, amongst other objections, urged that the order asked for could not be granted until a petition had been filed.

M. E. O'Brien supported his summons.

McDONALD, J. J.—The 28th Section of the Act, 38 Vict. cap. 28, O., provides that no person shall be allowed to inspect any ballot papers in the custody of the Clerk of the

municipality, except under the order of a Court or Judge of competent jurisdiction, to be granted by the Court or Judge on being satisfied by evidence on oath that the inspection or production of such ballot papers is required for the purpose of maintaining a prosecution for an offence in relation to ballot papers, or for the purpose of a petition as to an election or return.

Mr. Reynolds, for Mr. Irvine, the Reeve elect, admits that I am a "Judge of competent jurisdiction," but contends that the order asked for cannot be made, unless a petition questioning the election or return shall first have been filed, and which has not in this case been done. After considering the matter very fully, I have been unable to arrive at any other conclusion than that this contention is correct. I do not think that the Legislature can have intended that a production and inspection of ballot papers should be permitted merely for the purpose of allowing a party to inform himself whether there exist grounds for contesting an election. I have doubts whether a Court or Judge is clothed with power to make an order under the above mentioned 28th section, unless and until a prosecution has been instituted for an offence in relation to ballot papers, or the proper proceedings for the purpose of questioning an election or return have been commenced under the Municipal Institutions Act, although possibly in the former case he may have such power, (see 37 Vict. cap. 5, sec. 23, O.) And it is questionable whether the evidence on oath required under the 28th section to satisfy the Court or Judge could, in many cases be obtained, or be compelled to be given before one or other of the above steps be taken.

I must therefore decline to grant the order for inspection and production of ballot papers asked for in this matter.

Summons discharged.

DIGEST.

DIGEST OF THE ENGLISH LAW REPORTS
FOR AUGUST, SEPT., AND OCT., 1876.

From the American Law Review.

ACTION AGAINST PUBLIC OFFICER.—*See FRIVOLOUS SUIT.*

ANNUITY.—*See RESIDUARY LEGATEE.*

ARBITRATION CLAUSE.—*See COVENANT.*

BAILMENT.

1. Plaintiff left two parcels worth £60 with a servant of the defendant railway company,