

Eng. Rep.]

REG. v. RUSSELL.

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This letter was answered on the 26th January by Mr. Scudamore, on behalf of the chairman, in a letter which stated that the bill having been specially brought under the notice of the Court, and signed by three justices present, in the usual manner, the order for payment had been regularly made, and that he had been directed by the chairman to require that it might be recorded. To this letter Mr. Wildes replied on the 28th January, stating that for the reason mentioned in this previous letter he must decline to record the order.

At a Court of General Sessions held on the 13th March, 1865, Mr. Wildes read a report in which he stated his reasons for having declined to record the order, and it was then ordered that it be "referred to the finance committee to take such measures as they shall think right in respect of the refusal by the clerk of the peace to enter on the proceedings of the court an order made by the last court for the payment of the said bill, and that the said report of the clerk of the peace be handed by him to the finance committee."

A demand in writing was made on Mr. Wildes by the county treasurer for a certificate of the order of court which was declined by Mr. Wildes on the ground that the order was not a valid one, but illegal.

The finance committee, after having taken the opinion of counsel on the question, gave instructions to Mr. Scudamore to prepare charges against Mr. Wildes for having committed a misdemeanour in his office, under 1 W. & M. c. 21, s. o. These proceedings were instituted in the name of the county treasurer.

The charges were heard on the 23rd May, 1865, and evidence taken, and the case gone into on both sides. The evidence was set out in the special verdict, and consisted among other things of the examination of a shorthand writer, who deposed that on the 13th of March the clerk of the peace was asked by the chairman "I understand you still refuses to enter the order," and replied "yes." At the conclusion of the hearing, on the 23rd May, the order was made by the court, which is above set out, dismissing Mr. Wildes from the office of clerk of the peace.

*M. Chambers, Q.C. (Gates with him),* for the relator, contended that on the facts there had been no absolute refusal to comply with the order, that there had at least been no contumacious refusal, and that there was no evidence on which the finding of the Court of Quarter Sessions could be supported. He supported his argument by contending that as the complaint must, by the Act, be in writing, it is incumbent that the court, acting on that complaint, should have specific proof of the written allegation, and that when the Court of Queen's Bench found that there was not before the inferior tribunal any evidence directed to the specific charge, they would review the finding.

*Mellish, Q.C. (Pollock, Q.C. and Archibald with him),* for the defendant.—The questions are twofold, first whether the court can look into the evidence to see whether the finding of the court below was warranted, and next, if they can, whether it was in fact warranted. Now here the Court of Quarter Sessions were bound to hear the case. If they, in the course of it, did

anything contrary to natural justice, their jurisdiction would cease just as jurisdiction may cease in the case of justices when title to land comes in question. But nothing has happened to take away their jurisdiction. They are to determine both the law and the fact: first, that there is in point of law some evidence, and next, as jurymen, the sufficiency of that evidence. [COCKBURN, C. J.—You admit that the charge must be for a misdemeanour in his office; is it not within our jurisdiction to determine whether that has arisen?] Yes, but the moment the jurisdiction is found to exist they have full authority over the entire charge: *Flanigan v. The Overseers of Bishop Wearmouth*, 6 W. R. 38, 8 E. & B. 451; *Wildes v. Russell*, 14 W. R. 796, L. R. 1 C. P. 722, and *Kemp v. Neville*, 10 C. B. N. S. 523. A departure during the hearing from natural justice might be impeached by *certiorari* even if it did not at once oust the jurisdiction, for instance, not hearing the parties would be not hearing the case, and this court would interfere by *mandamus*: *Duchess of Kingston's case*, 2 Sm. Lead. Cases 679; but if the inferior tribunal has acted within their jurisdiction their decision cannot be impeached. They had jurisdiction here, there was evidence, and they heard the parties, and nothing having happened to oust their jurisdiction their decision is final. The replication has traversed the plea which alleges "due proof," that is, proof that the Court of Quarter Sessions considered due, and as on a special verdict the court gives judgment on the whole record, the defence is entitled to judgment.

The following cases were also referred to: *R. v. Bolton*, 1 Q. B. 66; *R. v. Grundon*, Cowp. 315; *R. v. J.J. Cheshire*, 8 Ad. & E. 398; *Ex parte Hopwood*, 19 L. J. M. C. 197; *Coster v. Wilson*, 3 M. & W. 411; *Aldridge v. Haines*, 2 B. & Ad. 395.

*Chambers, in reply.*

COCKBURN, L. J.—This is a proceeding by way of a *quo warranto* to try the defendant's title to the possession of the office of clerk of the peace for the county of Kent. The return to the writ makes the following statement of facts:—The relator was in possession of this office, and whilst so in possession, a charge was made against him of having been guilty of a misdemeanour in that office in refusing to record an order made by the Court of Quarter Sessions, which it was his duty as clerk of the peace to record, and that thereupon a written complaint having been preferred against him, the Court of Quarter Sessions having competent jurisdiction to inquire into the matter, found that he had misdeigned himself in his office, and dismissed him from it, and therefore the office being vacant, the defendant was appointed to it, and was entitled to retain it. The case comes before us as a special verdict, by which we are bound, and on the argument two grounds are taken by the defendant in support of his right to the office. The first is, that the Court of Quarter Sessions having competent authority to entertain the charge against the relator—a charge which if established was a sufficient cause for turning him out of the office—and having received a written charge, and having heard evidence thereon, and heard the parties, and delivered their judgment, it is not competent