

RICHARDS, J.—I have read all the affidavits, considered them carefully, and have arrived at the following conclusions.

1. As to the first ground stated in the Relator's statement. It is not pretended that the Relator's supporters were prevented by physical force from coming forward to vote for him, or if it is so pretended there is no evidence brought forward to sustain that position. No voter is named who was hindered in going forward to vote; so that if the voters themselves were unwilling to come forward to offer their votes in consequence of the conduct of the Returning Officer, that would more properly come under the ground of complaint. As to the first ground, then, I think the Relator fails to make out a case.

2. That votes were recorded for Defendant, though polled for Relator.

This charge relates only to the case of Thomas Armstrong. He says, when asked who he voted for, he said "Bill," meaning Relator: that after hearing his vote had been recorded for Defendant, and before he left the polling booth, he declared Relator was the man he intended to vote for, and that he never mentioned Defendant's name on the occasion, except to say he would not vote for him: that he offered to make an affidavit before he left the polling place that he had voted for Relator; but the Returning Officer refused to accept such affidavit, and would not enter his vote for Relator. William Burgess also states that Thomas Armstrong voted for Relator, but his vote was entered for Defendant, which Armstrong disclaimed on the spot, and offered to make affidavit that he voted for Walker; and George Cosgrove states that when the Returning Officer put the question, "who do you vote for," to Thomas Armstrong, he (the Returning Officer) added the name "Hall."

In relation to this vote, the Returning Officer states that when Thomas Armstrong was asked "for whom do you vote," he answered "Hall," and then went away; and after Robert Armstrong, his brother, had voted for Defendant, came back with a number of Relator's supporters, and said he had voted for Relator and wanted his vote changed, which he (the Returning Officer) refused to do. The Defendant (Hall) states that Thomas Armstrong voted for him; that when Relator became aware of it he wanted the Returning Officer to change his vote, and offered to allow any votes that had been recorded for Relator by mistake to be given to Defendant. That three Germans voted for Relator, who intended voting for Defendant, but he (Defendant) advised the Returning Officer not to consent to any change after the votes were recorded. Joseph J. Lamont, the Poll Clerk, states that Thomas Armstrong, on being asked "who do you vote for," answered "William Hall," and that the Returning Officer did not prompt any voter during the time of the election. George B. Lamont, Acting Constable, states that Thomas Armstrong voted for William Hall. George Simpson, who acted as constable, states that Thomas Armstrong voted for William Hall: that George Cosgrove was not in the room when Armstrong voted, and the Returning Officer did not prompt him when he voted for Hall. James Brocklebank states that, since the last election, Thomas Armstrong told him he had voted for Hall, but intended to vote for Walker and did not, and admitted having been at the time he voted under the influence of whiskey.

Mr. Armstrong himself states that, when asked for whom he voted, he replied "Bill," meaning Relator. Now, if he used this as meaning William, it would apply equally well to Relator and Defendant, for they are both called William. If it be true that Armstrong was under the influence of liquor when he voted, that might account for the confusion. At all events, the Returning Officer, the Poll Clerk, the Defendant, and the Constables, understood he at first voted for Defendant. I am not therefore prepared to support the Relator's case on this ground.

3. The third ground is too vague, the charge too general, and the affidavits filed to support and repel the charge are equally vague and general. It is met quite conclusively as a general charge.

4. There is no affidavit from any elector that he omitted to vote for Relator on the ground suggested, nor is any elector named who declined voting for Relator for the cause suggested.

5. It is true that Relator protested, but it seems equally beyond all doubt that he solicited parties to vote for him after the protest, and that one voter voted for him thereafter at his request.

6. The Relator's own affidavit mentions that there were nine votes remaining in the ward unpolled. The Returning Officer thinks there were only seven votes that did not come forward. Relator does not give the name of a single voter that would have supported him who did not come forward from any of the causes assigned; whilst Defendant endeavours to show that four out of the seven or nine, as it may be, of unpolled votes, would have been cast for him. I do not think the facts stated in the affidavits would at all warrant setting aside the election on this ground.

The names of David Long and Thomas Riley are mentioned in the affidavits, and I will see what is said about them. First, as to David Long. He states in his affidavit that he is a duly qualified voter in the ward, and came to record his vote. That when he took the oath of qualification, the Returning Officer turned away his head and refused to record his vote; that he told the Returning Officer, if he was going to vote for Defendant his vote would not be refused. Nicholas Willoughby states that he saw David Long, a duly qualified voter, take the oath of qualification; that the Returning Officer asked him if he understood the nature of an oath. He replied, he did. The Returning Officer refused to record his vote. He came up as he believes to vote for Relator. The Returning Officer states that David Long offered to vote, but his name not appearing on the copy of the assessment roll furnished him, as a freeholder or householder, he refused to allow him to vote, and Long did not say for whom he intended to vote. George B. Lamont states that Long presented himself as a voter, but refused to take the oath, and left the poll. John Malcolm states that Long came to the poll to vote, as he thought. He refused to take the oath, saying he did not reside on his own place, but was hired with one Nelson. William Leggett states he saw Walker and others trying to induce David Long to take the oath. Benjamin Leggett states that Long was urged by a number of persons to take the oath, but he did not see him do so. When Long first came to the poll he appeared to decline taking the oath, and turned away from the poll and commenced talking with some of Walker's supporters. James Leggett says that Long came forward to vote, but went off without doing so. Relator's party strongly urged him to take the oath, the not taking of which appeared to be the reason why he had not voted when he first came to the poll. George Simpson states that David Long, Wm. Muir, and Thomas Riley, refused to take the necessary oaths. William McNally states that when David Long came forward to vote, as he supposed, William Hall (the Defendant) requested the Returning Officer to administer the oath to Long, which he refused to take, and turned away from the poll. David Keith states that he saw Long come forward to vote, but he refused to take the oath. The Returning Officer asked him if he had been a householder for a month preceding the election, he answered he had not. After which he declined taking the oath. Robert Carmon saw Long refuse to take the oath. David Carmon saw David Long refuse to take the oath and leave the poll and go and converse with Relator.

The Returning Officer himself does not say that Long refused to take the oath, but mentions that he was not returned on the list as rated on the assessment roll as a freeholder or householder, which of course would be such an objection as would justify the rejection of his vote. One of the Deponents states that the Defendant required Long to take the oath of qualification. It would indeed be singular if the Returning Officer had administered the oath to him when his name is omitted from the list handed to him, if he considered that a fatal objection to his vote, and still more singular that after administering the oath to him he should refuse to take the vote.

It is not stated by Relator, as a ground of complaint against the Returning Officer, that after having administered the oath to Long he refused to allow him to vote, and in that way shewing partiality and calling for an explicit answer. It is sworn in the affidavits, (and there are many affidavits,) that Long refused to take the oath. It is possible he may have refused at one time, and afterwards did take it. There is nothing to