

ferred to vote for relator, and his vote had been rejected, then in the event of my deciding that he was entitled to vote, I could have put his vote down for the relator; but as it now appears, I can only say that he intended to vote for relator; but did not at the time disclose his intention. I do not feel at liberty to say that his vote can properly be considered as cast for the relator, even if I am satisfied that that he ought to have been allowed to vote. Under the circumstances, if I hold that he is entitled to vote, then this result follows:—That he was a person properly qualified to vote; that he has been wrongfully deprived of his right to vote; and that his vote *might* have influenced the result; and from what is before me, it is probable, would have influenced the result. In this view, I should feel bound to set aside the election, and order a new election to remedy the injustice that has been done.

The facts necessary to be referred to, seem to me to be as follows:—

On the 25th January last, the reeves and deputy reeves forming the County Council for the county of Simcoe, met at Barrie. R. T. Banting, Esq., the county clerk, examined the certificates of the different reeves and deputy reeves, and pronounced them regular, until he came to the reeve of Sunnidale, Duncan Mathewson, Esq., and the reeve of Bradford, Anson Warburton, Esq., when he objected to their certificates of election and qualification, and finally directed them to leave the Council, which they did without voting. The relator states that these persons, both before and since the election, stated that they had intended to vote for him as warden.

There seems to be very little said about Mr. Warburton's certificate being defective; but when Mr. Mathewson's was brought up, a good deal of discussion followed; some of the members of the Council contended that his certificate was as good as those of some others, which had been pronounced sufficient by the clerk, and the clerk took the opinion of a professional gentleman before finally deciding. It was also stated that it was suggested that the other certificates should be looked into; but the clerk declined doing so, and decided that all the certificates filed, except those of Mathewson and Warburton, were correct and sufficient. That particular attention was called to the defect in the certificate of John Hogg, reeve of Collingwood, but the clerk, nevertheless, ruled it was sufficient, and allowed him to vote as such reeve.

The votes stood, 13 for relator, and 13 for defendant. The clerk of the Council then requested defendant, as reeve of the municipality having the highest number of names on its last revised assessment roll, to give the casting vote, which he did, in his own favor, and was then declared duly elected warden. Relator protested against the election.

That portion of the statute necessary to be transcribed in order to understand the objections urged to the certificate of the reeves of Sunnidale and Collingwood, reads as follows:—

Sec. 67.—That no reeve shall take his seat in the County Council, until he has filed with the clerk of the County Council, a certificate under the hand and seal of the township or town clerk, that such reeve was duly elected, and made and subscribed the declarations of office and qualification as such reeve.

The certificate of the town clerk of Sunnidale, so far as is necessary to be considered, reads as follows:—

"I hereby certify that Duncan Mathewson, Esquire, was duly elected as councillor for this township, and that he has made and subscribed the declarations of office and qualifications of office as such; and that he has also been appointed reeve of said township, and has taken or made the declaration of office of reeve for the said township of Sunnidale."

The certificate varies from the statute in stating he was *appointed* instead of *elected* reeve; that he had taken or made the declaration of office of reeve, instead of "*made and subscribed the declarations of office, and qualification as such reeve.*"

That part of the certificate of the town clerk of Collingwood, necessary to be transcribed, is as follows:—

"I, Joseph Hill Lawrence, clerk of the Municipal Council of the town of Collingwood, do hereby certify that John Hogg, Esquire, has been duly elected reeve of the corporation of the said town of Collingwood, and that he hath made the declarations of qualification and of office prescribed by law as such."

This varies from the statute, in stating that he had made the declarations of qualification, instead of saying "*made and subscribed the declarations, &c.*"

The certificate produced by the reeve of Sunnidale uses the words of the statute in relation to the declarations made for the office of councillor of the township; but the latter and more important part, relating to the office of reeve, is erroneous; and the most important error is common to both the certificates of Sunnidale and of Collingwood, viz.: the omission to certify that they had *subscribed* the declarations.

It certainly does seem singular that the clerk should have held one of these certificates regular and declare the other bad. My attention has been particularly directed to the certificate allowed, and considered regular by the clerk, as produced by the reeve of Barrie. The part of that necessary to transcribe, is as follows:—

"This certifies that at the first meeting of the Municipal Council of the corporation of the Town of Barrie, held on the 16th January instant, Wm. D. Ardagh, Esq., was unanimously elected reeve of said corporation for the current year, A.D., 1865."

There has not been any suggestion offered how this certificate, far more defective than either of the other two, should have been received as regular, whilst that of the reeve of Sunnidale was pronounced bad.

This view was presented on the argument that the clerk having declared the certificates all regular until he came to those of Sunnidale and Bradford; and no objection having been made by any one up to that time, he could not recall his decision as to the prior ones, though they might be more defective than those he was rejecting; and the reeves and deputy reeves in the certificates allowed having *taken their seats*, he could not afterwards direct them to leave the council.

It certainly seems strange that he should not have been alive to the irregularities until the certificates of but two persons remained to be disposed of; and the votes of either of these two