

Elec. Case.]

REGINA V. STURDY.

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candidates to represent the electors of the said electoral district, as aforesaid, to be duly held on the said thirteenth day of June in the year aforesaid, in the manner and form required by law; and thereupon one Robert Porter and one Malcolm Collin Cameron were duly nominated as the candidates to represent the said electors as aforesaid in the manner and form as required by law; and at such nomination a poll of the duly qualified elector as aforesaid was duly demanded in that behalf, and thereupon the said Benjamin Wilson, as such returning officer, granted the said poll, and fixed the twentieth day of June in the year aforesaid as the polling day for holding the polls at the several polling stations in the several polling districts within the said electoral district of the west riding of the county of Huron in the manner and form required by law, and thereupon the said Benjamin Wilson as such returning officer as aforesaid, by a commission under his hand, duly appointed one James Addison to be the deputy-returning officer for polling district number one, in the town of Goderich, being a polling district within the said electoral district, as aforesaid, there to take the votes of the electors of the said electoral district lawfully qualified to vote at the polling station of the said polling district number one, as aforesaid, according to law, on the twentieth day of June in the year aforesaid. And the said James Addison, being duly qualified as such deputy returning officer, as aforesaid, duly took and received the votes of the electors of the said electoral district at the polling station of the said polling district as aforesaid on the said twentieth day of June in the manner and in the form required by the statute in that behalf.

And the jurors aforesaid, upon their oath aforesaid, do further present that John L. Sturdy, afterwards, to wit, on the said twentieth day of June in the year aforesaid, at the polling station of the said polling district number one, in the said town of Goderich as aforesaid, unlawfully, wilfully, knowingly and deceitfully came before the said James Addison as such deputy returning officer as aforesaid, as a legally qualified elector of the said electoral district of the west riding of the county of Huron as aforesaid, and then and there unlawfully, wilfully, knowingly and deceitfully did vote at the said election as a legally qualified elector as aforesaid, to wit as the tenant of part of lot number one hundred and twenty four in the town of Goderich, in the said electoral district of the west riding of the county of Huron, and as being then at the date last aforesaid, a resident within the said electoral district as aforesaid. Whereas in truth and in fact he said John L. Sturdy, when he so unlawfully,

wilfully, knowingly and deceitfully came before the said James Addison as such deputy returning officer as aforesaid, and did vote at the said polling station in the said polling district as aforesaid, on the day and year last aforesaid, was not then in fact or in law the tenant of the said part of lot number one hundred and twenty four in the said town of Goderich, in the said electoral district. And whereas in truth and in fact the said John L. Sturdy, when he so unlawfully, wilfully, knowingly and deceitfully came as aforesaid, and did vote at the said polling station in the said polling district as aforesaid, on the said twentieth day of June, in the year of our Lord, one thousand eight hundred and eighty two, was not then a resident of the said electoral district of the west riding of the county of Huron as required by law. And, whereas in truth and in fact the said John L. Sturdy, at the time of his so voting as aforesaid, was not a qualified elector as aforesaid, and had no lawful right whatever to vote at the said election.

The demurrer was as follows:

And the said John L. Sturdy, in his proper person, cometh into court here, and having heard the said indictment read, saith that the said indictment and the matters therein contained in manner and form as the same, are above stated and set forth are not sufficient in law, and that he, the said John L. Sturdy, is not bound by the law of the land to answer the same, and this he is ready to verify. Wherefore, for want of sufficient indictment in this behalf, the said John L. Sturdy prays judgment, and that by the court he may be dismissed and discharged from the said premises in the said indictment specified.

Joinder.

*Hodgins*, Q.C., for the Crown.

*B. L. Doyle*, for the defendant, before pleading, asked to be allowed to raise some objections to the indictment.

*WILSON*, C.J.—I will allow you to demur to the charge in the indictment, with liberty afterwards to plead if necessary.

*Doyle*.—My ground is that the indictment shows no offence in law. The election statutes of the Dominion create no such offence as is covered by the indictment. The Dominion Elections Act, 1874, does not make unlawful voting an offence; nor does it forbid it. [*WILSON*, C.J., Does it allow it?] It does not expressly allow it; and there is nothing in the criminal statutes creating such an offence. There is, in the Ontario Elections Act, an express provision prohibiting such voting in Ontario elections. [*WILSON*, C.J., What is the general rule applicable to statutory enactments in such cases? Is it not that where a statute prohibits a thing, that