

*Held 4.* That after appearance by defendant in a *quo warranto* matter, the 18th Rule of court applicable to such proceedings, is against holding any proceeding irregular or void, which does not interfere with the just trial of the matter on the merits.

*Held 5.* That a reeve of a township who was duly elected and had made and subscribed the declarations of office and qualification, had not a right under sec. 67 of the Municipal Institutions Act to take his seat in the County Council, when the certificate of the township clerk did not state that he "had made and subscribed the declarations of office and qualification" but only that he had "taken or made the declaration of office."

*Held 6.* That where reeves and deputy reeves who had filed defective certificates were notwithstanding allowed by the clerk to take their seats in the County Council, their votes therein could not be challenged for such defective certificates, sec. 67 of the Municipal Institutions Act being only directory and not imperative.

*Held 7.* That the certificate is only evidence that what is contained in it was done—if it have not been done, or the reeve or deputy reeve have not been duly elected, the mere certificate would not give the party holding it, a right to sit and vote in the council.

*Held 8.* That where a vote is improperly rejected in a County Council on the election of warden, and it does not appear that the reeve or deputy reeve whose vote was rejected tendered it for the complaining candidate, though his vote if recorded might and probably would have influenced the result of the election, the proper course is to order a new election instead of seating the complaining candidate.

*Held 9.* That where the clerk properly refused to allow a reeve to take his seat, but allowed several reeves and deputy reeves whose certificates were equally if not more defective, to take their seats and vote, the proper course was to order a new election.

*Held 10.* That no costs should be given against the sitting member, although he accepted office and was sworn in and his seat was afterwards vacated on the ground of the improper decision of the County Clerk, unless shown that he in some manner directly interfered with the decision of the clerk or otherwise misconducted himself.

[Chambers, April 10th, 1865.]

This was a proceeding in the nature of a *quo warranto* to unseat Thomas R. Ferguson, warden of the corporation of the county of Simcoe for the year 1865, based on the statement and relation of George McManus, of the township of Mono, in the county of Simcoe and province of Canada, Esquire, reeve of the said township of Mono, who complained that Thomas R. Ferguson had not been duly elected, and had unjustly usurped the office of warden of the County Council of the county of Simcoe, and province of Canada, under pretence of an election held on Tuesday the 24th day of January, A.D. 1865, at the town of Barrie, in the said county of Simcoe, and had accepted and acted in the said office of warden; and that George McManus, the relator, was duly elected thereto, and ought to have been returned at such election, and declaring that the said relator had an interest in the said election as a candidate for the said office of warden, and also as a municipal voter at the said election. The relator stated and showed the following causes why the election of the said Thomas R. Ferguson to the said office should be declared invalid and void, and the said George McManus be declared duly elected thereto:—

First. That the said election was not conducted according to law, in this, that Duncan Mathewson, the reeve of the township of Sunnidale, in the said county of Simcoe, was not allowed by the clerk of the County Council of the said county of Simcoe to vote at the election of warden of the said County Council: but on the said Duncan Mathewson offering to take his seat at the said election for the purpose of giving his vote at the said election, Robert T. Banting, the clerk of the said County Council, who was then presiding as such clerk at the said election, told

him to withdraw from the Council, alleging that he the said Duncan Mathewson had no right to remain in the Council, in consequence of certain informalities in his certificate of election. The said Duncan Mathewson then withdrew from the Council and was prevented from voting at the said election of warden, which took place immediately after his withdrawal; and if the said Duncan Mathewson had been allowed to vote at the said election, he would have voted for the relator, who was a candidate for the office of warden at the said election, which election was at first a tie between the said Thos. R. Ferguson and the relator, and was only carried against the relator by the casting vote of the said Thos. R. Ferguson, who for the second time at said election voted for himself as the reeve of the municipality having the largest number of names on its last revised assessment roll.

Second. That the said election was not conducted according to law in this also, that John Craig, John Hogg, William D. Ardagh, Thomas R. Ferguson, William C. Little, and J. Rowatt were allowed by the said clerk to take their seats in the County Council of the said county of Simcoe at the said election as the reeve of the township of Medonte in the said county, the reeve of the town of Collingwood in the said county, the reeve of the town of Barrie in the said county, the reeve of the township of Innisfil in the said county, the deputy reeve of the said township of Innisfil, and the reeve of the township of Ffos, in the said county, respectively; and to vote at the said election when they had not, nor had either or any of them filed the necessary certificates from their respective township and town clerks certifying that they had respectively been duly elected reeves and deputy reeves of their townships and towns, and that they had made and subscribed the declarations of office and qualification as such reeves and deputy reeves respectively, as required by law, inasmuch as the said reeves and deputy reeves had all of them, without exception, filed certificates not in accordance with the requirements of the act respecting the municipal institutions of Upper Canada.

Third. That the said Thomas R. Ferguson was not duly or legally elected or returned in this, that by reason of his not having filed a proper certificate of his due election as reeve of the said Township of Innisfil, and of his having made and subscribed the declaration of office and qualification as such reeve, he was not entitled to a seat in the said County Council, and in consequence could not be legally elected warden thereof.

Fourth. That the said Thomas R. Ferguson was not duly or legally elected or returned in this also, that the aforesaid John Craig, John Hogg, William D. Ardagh, Thomas R. Ferguson, William C. Little, and James Rowatt, voted for the said Thomas R. Ferguson as such warden at such election when they were not nor was either of them entitled to vote thereat by reason of their not having filed proper certificates as aforesaid; and without the votes of the said John Craig, John Hogg, William D. Ardagh, Thomas R. Ferguson, William C. Little, and James Rowatt, or without the vote of either or votes of any of them, the said Thomas R. Ferguson would not have been declared elected warden of the said County Council, inasmuch as with the said votes