

Eng. Rep.]

REG. v. RUSSELL.

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This was an information in the nature of a *quo warranto* on the relation of Mr. Henry Atkinson Wildes exhibited against Mr. Francis Russell, and calling on him to show by what authority he claimed to be clerk of the peace for the county of Kent.

The case now came before the Court on a special verdict found at the trial of the information.

The return to the information set out that H. J. Wildes, was clerk of the peace for the county of Kent, and that a complaint and charge in writing were duly exhibited against him of having misdeemeaned himself in the execution of his office, and at a Quarter Sessions of the Peace duly holden on the 23rd of May, 1865, upon examination and due proof of the said complaint and charges, and in his presence and hearing, and on hearing what was alleged and insisted upon by and on his behalf, an order was duly made by the last mentioned Court of Quarter Sessions, and entered on record, and still remained in full force and effect.

This order set out formally, the charges of misdeemeanour in his office against Mr. Wildes, which consisted in his refusal to record an order which it was his duty to record made by the Court of Quarter Sessions for payment of a sum of £169 16s. 6d. to Frederick Scudamore for professional services rendered as an attorney-at-law, and also to draw up, sign and deliver to the county treasurer, an order for payment of such sum to Mr. Scudamore. The order then stated the exhibiting of these charges in writing, and their delivery to Mr. Wildes: the holding of courts to adjudicate on the charges and the various adjournments until such 23rd day of May, 1865: the due hearing and proof of such charges and examination of witnesses, and the hearing of the defence.

The order then set out the finding of the court that the charges were duly proved and true, and that Mr. Wildes had been duly proved to be and was guilty of the several misdemeanours in the execution of his office in the complaint and charges alleged, and his discharge by the Court of Quarter Sessions from his office of the clerk of the peace for the said county, pursuant to the statute in such case made and provided. The return then set out the fact of the discharge of H. A. Wildes, under this order, and the due appointment of F. Russell to the vacant office of clerk of the peace.

The replication alleged that there was not before or at the said Court of Quarter Sessions holden on the 23rd May, 1865, any proof or evidence of the complaint and charges as in the plea alleged.

The case came on for trial before the Lord Chief Justice, and a special jury, when it was agreed that a special verdict should be found, from which the following statement of facts is taken, it having been agreed that no other objection was to be raised on the information except that specified in the rule *nisi* for the information, which was to the effect that there was no evidence before the justices who made the order for the discharge or dismissal of the said H. A. Wildes, that he had absolutely and contumaciously refused as alleged in the complaint and charges.

At the Quarter Sessions held on the 23rd May, 1865, certain documents were put in evidence, among others, a report of the finance committee, in the year 1863, asking for power to take proceedings in respect of certain transport fees received by the clerk of the peace, and an order thereon by the Court of Quarter Sessions. Also a subsequent report by the finance committee relating to these fees retained by the clerk of the peace, and recommending that the amount of such fees should be demanded of the clerk of the peace.

Other documents were also put in, from which it appeared that further proceedings were then had, and at a court held on the 12th of April, 1864, the court of Quarter Sessions refused to make an order for the payment of a quarter's salary alleged to be due to H. A. Wildes, together with certain other payments made by him amounting in the whole to £228 9s. 4d., on the ground that they were entitled to set-off against that amount the sum £229 10s. retained by him on account of the transport fees. H. A. Wildes who claimed these fees as his own right thereupon applied to the Court of Queen's Bench for a *mandamus* to compel the payment of his salary. Frederick Scudamore, above named, was employed as county solicitor in resisting this application, which resulted in a decision of the Court of Queen's Bench that the transport fees were included in the salary of the clerk of the peace, but that only a portion was recoverable and could be set-off. The rule was thereupon discharged upon terms. The bill of charges of Mr. Scudamore incurred in respect of these proceedings was as follows:—

“The Justices of Kent to Frederick Scudamore.

“Professional services rendered, and money paid on account of the general business of the country from the 23rd November, 1863, to 2nd December, 1864, the particulars of which have been delivered to the finance committee and approved by them, £169 16s. 6d.

“FREDERICK SCUDAMORE.”

This document was marked on the back with the initials of two justices, members of the finance committee, and with the words “seen and allowed” in the handwriting of a clerk of the said H. A. Wildes, and with the signatures of three justices of the peace who were present at the Court of Quarter Sessions on the 10th day of January, 1865, on which day it was with other bills sent in by the finance committee to the sessions and included in the finance report of the committee recommending the payment of bills. The chairman of the Court in the usual manner gave a verbal order for the payment of the bills, which were thereupon paid by the county treasurer, without any formal order being drawn up, and then sent to H. A. Wildes for the purpose of having such order made out. On the 24th of January, 1865, H. A. Wildes wrote a letter to the chairman of the Court of Quarter Sessions stating that the bill had not been presented in the usual manner by the finance committee, but that only a short note had been presented, and that he considered it his duty “not to enter in the proceedings of the Court an order for the payment of this bill, but to report to the next Court of General Sessions on the subject.”