

COUNTY COURT OF PRINCE EDWARD.

REG. EX REL. HUDGIN v. ROSE

Municipal election—County Court jurisdiction—Municipal Act, 1892, s. 188.

County Courts have no jurisdiction to try election cases under Municipal Act, 1862, s. 188, and proceedings must be instituted in the High Court.

[PICTON, Feb. 15.—MERRILL, CO. J.]

Application was made before the Judge of the County Court of the County of Prince Edward, in Chambers, for an order or fiat under the above section, with a view of contesting the validity of the election of one George Neison Ross, as a county councillor for the said county for the year 1897.

The following preliminary objections were taken: (1) That the County Court in which the proceedings were instituted had no jurisdiction. (2) That the proceedings were wrongly entitled. (3) That the affidavits in support of the motion could not be read, as they had not been mentioned in the notice of motion.

Wright, for the application.

Widdifield, contra.

MERRILL, CO. J.: In view of the opinion I have formed as to the matter of the first objection, it will not be necessary to discuss the others.

As to jurisdiction, Mr. Wright relies upon the authority of certain statements in Holmsted & Langton's work on the Practice under the Judicature Act and Rules. At page 810 of that book, in the notes under R. 1038, the case of *Dougherty v. McClay*, 13 P.R. 56, is cited as an authority for the statement that "if the proceedings are taken before a Judge of the County Court they must be styled in County Court." A reference to the case itself, however, will show that that point was not considered. The proceedings there were in the High Court, and the decision was simply that a County Court Judge had not then any authority, as such, to give leave under R. 1038 to serve notice of motion to initiate quo warranto proceedings, etc., and that he had no authority at all to act in proceedings of that nature as a Local Judge of the High Court, that power being expressly excepted in R. 41.

Again, on the same page of the work referred to it is stated that "when the Junior Judge of the County Court is officiating it would seem that he is to grant the leave to serve the notice of motion in cases brought in the County Court." And the case of *Reg. ex rel. McDonald v. Anderson*, 8 P.R. 241 is cited. The decision in that case, however, appears merely to relate the power of a County Court Judge in Term time to grant a fiat, and has no reference to County Court jurisdiction. And the writ in that case was issued from the office of the Deputy Clerk of the Crown.

In a note at the foot of p. 817 of the work referred to, after speaking of the forms being entitled in the High Court, the authors say, "but where the Judge of the County Court gives leave under 52 Vict., c. 36, s. 46, to serve the notice of motion, this and all other proceedings must be entitled in the County Court," etc. But the statute quoted does not, I think, furnish any authority for such statement. S. 46 enacts that the Judge of the County Court shall