against two members the security should be for $2,000 and not for $1,000, I think shortly that *Pease* v. *Norwood* L. R. 4 C. P. 235, is conclusive against the objection.

The difficult and important question in the case is, whether a magistrate for the county of Wentworth can take the recognizance, under the Rules of the Election Court, in the city of Hamilton—there being a police magistrate in Hamilton?

The words of sec. 308 of the Municipal Act of 1873 are as follows:—"No other justice of the peace shall admit to bail, or discharge a prisoner, or adjudicate upon or otherwise act, in any case for any town or city where there is a police magistrate, except in the case of the illness, absence, or at the request, of the police magistrate."

This seems to be the only section now which takes away the power of the county justice to act in a town or city, within the boundaries of his county; and it is manifest from the terms of the section itself that the county justice continues to be a justice of the peace for the town or city which is within the county for all purposes, and to exercise all jurisdiction given by his commission, except in those matters forbidden by the words of the section. The commission in the city does not cease, and there is no prohibition of the exercise of authority under it in case of the illness or absence of the police magistrate, or when the police magistrate requests its exercise; and therefore the magistrate of the county of Wentworth here was commissioned as a justice of the peace for the city of Hamilton, in all matters within his commission, in which his authority is not expressly taken away by the 308th section.

It is important to observe this, because the authorities show that in such cases a very strict construction must be put upon words which restrain the powers of the commission.

It is said, in Paley on Convictions, pp. 30, 31, "The words of the commission, however, as well within liberties as without, are held to give the justices of the county jurisdiction in such boroughs and towns as are not counties of themselves, though they have a magistracy of their own, unless the charter by which they are constituted imports an express exclusion of the county magistrates, by a clause of *ne intromittant*." And again, "But the exclusion of the county magistrates has always been jealously regarded, and nothing but express words are deemed capable of having that effect. Therefore, where a borough had possessed an exclusive jurisdiction under two successive charters containing *non intromittant* clauses, and a third charter vested the authority of justices of the peace in the mayor, bailiffs and burgesses *in tam amplis modis et consimilibus modo et forma pro ut praeantea in eodem burgo insitatum et consuetum fuit*, it was held, that notwithstanding such reference to the former charters, the county magistrates could not be excluded, inasmuch as their jurisdiction was not taken away by express terms." This is very distinct as to the manner in which the statute now in question must be looked at.

The exclusion, therefore, by the 308th section, can only be by the express words of the section, and cannot be carried further by intendment. The words are not general, but are applied to particular acts—they are not that no other justice than the police magistrate shall act in his capacity as justice for the town or city, unless in the excepted cases of illness, etc. This, had it been desired, it would have been easy to enact—It is not so said; but certain specified exercises of jurisdiction are forbidden, viz: admitting to bail, or discharging a prisoner, or adjudicating upon, or otherwise acting in any case, for any town or city, etc. What these words mean, and whether or not they extend to taking a recognizance under the Election Rules, may perhaps be made plainer by a history of this section.

In the Consolidated Municipal Act there are two clauses, which were the forerunners of the present. By section 365, it was enacted that justices for the county in which a city lies, should have no jurisdiction *over offences committed in the city*, and the warrants of county justices were required to be indorsed before being executed in a city, in the same manner as required by law, when to be executed in a separate county. Observe "*over offences committed in the city*," are the words, and by section 366, the power of the government was preserved to appoint any number of justices of the peace for a town, and to continue the jurisdiction of the justices of the county in which a town was situated, over offences committed in the town, except as to offences against the by-laws of the town, and penalties for refusing to accept office, or to make the declarations of office in the town, as to which jurisdiction should be exercised exclusively by the police magistrate, or mayor, or justice of the peace for the town.

These are the only clauses of this nature that are in the Consolidated Act, and it will be seen that so far, the exclusion was entirely of a local