

C. L. Ch.]

THE QUEEN EX REL. HEENAN v. MURRAY.

[Election Case.]

also make it a condition of his discharge that he make such assignment. The matter may stand over until the first February next to learn if the plaintiffs desire such an assignment. If they do not, then the order can go for his discharge next June.

Order accordingly.

### ELECTION CASE.

(Reported by R. A. HARRISON, Esq., Barrister-at-law.)

#### THE QUEEN EX REL. HEENAN v. MURRAY.

##### *Election of Reeve—Procedure—Time—Efficiency of election.*

Where four members of a village council, being at least a majority of the whole number of the council when full, met, and at their first meeting a resolution naming one of them as reeve was put and seconded, and no dissent was expressed, whereupon the clerk, in the hearing of all, but while two of the members were retiring from the council chamber, declared the resolution carried, the reeve was held to be duly elected.

Though the statute declares that the members of every municipal council shall hold the first meeting at noon, and at such meeting organize themselves as a council by electing one of themselves as reeve, an election at six o'clock, p.m., on the same day, is a sufficient compliance with the statute.

[Common Law Chambers, March 12, 1864.]

The relator complained that Thomas Murray, of the village of Pembroke, merchant, had not been duly elected, and had unjustly usurped the office of reeve of the municipality of the said village of Pembroke, under the pretence of an election, held on Monday, the 18th January, 1864, at the town hall in the said village of Pembroke; and declaring that he the said relator had an interest in the said election as one of the municipal councillors for the said municipality of the village of Pembroke, and a candidate at the said election for the said office of reeve, showed the following causes why the election of the said Thomas Murray to the said office should be declared invalid and void, viz.: first, that there was only two members of the said council, viz., the said Thomas Murray and John Supple, present when the said alleged election took place; second, that no vote in favour of the motion to elect the said Thomas Murray was given by any of the said councillors; third, that the clerk of said council illegally declared the said Thomas Murray duly elected reeve, without taking the vote of the councillors upon the motion to elect him as reeve; fourth, that the said election did not take place at noon of the third Monday in January, as required by law, but about the hour of six o'clock in the evening of that day.

The relator made oath, that he was one of the councillors for the municipality of the village of Pembroke for the year 1864; that the council of the said village of Pembroke is composed of five members; that on Monday, the 18th day of January, instant, the following four members elect of the said village council, viz., John Supple, Michael O'Meara, the said Thomas Murray, and the relator, met at the town hall of the said village of Pembroke; that Alexander Moffatt, one of the councillors elect, was not present at said meeting; that Andrew Irving, the clerk of the said council, presided at said meeting; that after the said four members of council had made their declarations of office and of qualification, it was moved by the said John Supple, and seconded by the said Thomas Murray, that the said Thomas

Murray be reeve of said county; that upon the motion being put by the said clerk to the said council for their vote on the same, the relator objected to the election of the said Thomas Murray to the office of reeve, and made his objection known to the said clerk and members present of said council; that the said Michael O'Meara also objected to the election of said Thomas Murray as reeve, and made his objection known to the clerk and members present of said council, calling out in answer to the said question the words "No, no;" that thereupon, and before any vote was taken upon the said motion, the relator and the said Michael O'Meara were in the act of going out of the door of the said council room, having left their seats at the council for the purpose of leaving the same, and without any vote having been taken on the said motion, the said clerk, Andrew Irving, said that if no amendment was made to the said motion, he would have to declare the said Thos. Murray duly elected reeve of the said village of Pembroke; that no vote was taken or given by any member of the said council on or for the said motion; that the said Thomas Murray accepted the said office of reeve, and received from the said clerk, Andrew Irving, a certificate under his hand and the seal of the said corporation to enable him to take his seat as a member of the county council of the united counties of Lanark and Renfrew.

Michael O'Meara made oath, that he had heard read the statement and relation of Jas. Heenan in this matter, and that the same was true in every particular; that he also heard read the affidavit of the said James Heenan, and knew the statements therein contained to be true.

C. S. Patterson showed cause, and filed the affidavit of John Supple, wherein it was sworn, that he was one of the municipal councillors of the village of Pembroke; that on the 18th day of January, 1864, he attended, as such councillor, a meeting of the councillors of the said village, held in the town hall; that the following councillors were present, viz., Thomas Murray, Michael O'Meara, James Heenan, and deponent, at said meeting; that the said councillors then made the declaration of office required by law; that after the said councillors made the declaration of office, and whilst the four of them were still present, Andrew Irving, the clerk of the municipality, called the council to order and said, "Now is the time to elect your reeve," or words to that effect; that immediately after the clerk made the announcement, and whilst the four councillors were present, a resolution was placed in the clerk's hands, moved by deponent and seconded by Thomas Murray, to the effect that Thomas Murray be reeve; that the clerk read the resolution to the council, the four being still present, and said if there were no amendment offered he would have to declare it carried; that after a sufficient time had elapsed for an amendment to be put in, and there being none moved, and whilst the four councillors were still in the hall, Thomas Murray called "Question!" when the clerk again read the resolution, and, there being no dissenting voice, declared the motion carried, and that Thos. Murray was duly elected reeve of the village of Pembroke; that at the time the clerk declared the said Thomas Murry