

CHAMBERS.

THE QUEEN ON THE RELATION OF WM. WALKER V. WM. HALL.

Election—Misconduct of Returning Officer—Costs.

The Courts will presume that a Returning Officer acts properly and honestly until the contrary is shown, and where it is intended to charge that officer with unfairness and impartiality the case should be plainly stated and clearly made out.

In this case it was held that the charges made, which were general, were met as broadly as they were made.

The Master on taxing costs to the successful party on a *quo warranto* summons should consider whether the successful party produced an unnecessary number of affidavits, or affidavits unnecessarily diffuse, and act accordingly.

(Chambers, May 16, 1860.)

This was an application to set aside the election of Defendant as Councillor for Ward No 5 in the Township of Brant (election held on 10th and 11th February, 1860), on the following grounds:

1. That Relator's voters were not allowed by the Returning Officer, George D. Lamont, or the Constables in his employ, freedom of voting.

2. That votes were recorded for the Defendant by Returning Officer, although polled for Relator.

3. That the Returning Officer conducted himself about the election in an arbitrary and illegal manner, and with the full determination of returning none other than the said Defendant.

4. That several of Relator's voters, seeing the partiality of the Returning Officer and his determination to have Defendant returned, deemed it useless to vote for Relator at the risk of exposing themselves to insult from said Returning Officer.

5. That before the close of the election, the friends and supporters of Relator protested against the legality of the said proceedings, and desisted voting.

6. That there were many votes in the ward, in consequence of the premises, unpolled at the said election.

Relator stated in his affidavit, that from motives of spite, malice, or some other motives to him unknown, the Returning Officer unlawfully exerted himself to defeat his election by securing the election of his opponent, and that the Constables under his control acted in like manner: That persons supposed to be friendly to him, though having undoubted votes, were insultingly questioned by the Returning Officer: That others, whom it was well known were his supporters, voted for him, but their votes against their will were recorded by the Returning Officer in favor of Defendant: That votes were refused, if friendly to him, on the most whimsical and groundless reasons, such as the temporary absence of a householder from his dwelling house on any night or nights during the month next preceding the election, although the family of the said householder always continued in his said dwelling during his temporary absence: That every thing was done by the Returning Officer and his employees to intimidate, insult and otherwise baffle persons who either voted or intended to vote for him or were supposed to be friendly to him: That 33 votes were polled for him, and 39 for defendant: That on the second day of the election, before the close of the poll, his supporters finding it almost useless to bear up against the many obstructions thrown in their way by the said Returning Officer and employees, after having entered a solemn protest against the illegality of his and their conduct, desisted further exertions on his behalf, under the full conviction that the election could not stand, but would be declared illegal by the courts: That at the close of the election he had good reason to believe there were as many as nine votes unpolled, the whole of whom were his supporters.

Nicholas Willoughby swore that he saw David Long, a duly qualified voter, take the oath of qualification: That the Returning Officer asked him if he understood the nature of an oath, when he replied he did; and the Returning Officer refused to record his vote, as he came up as he believes to vote for Relator.

David Long swore that he is a duly qualified voter in said ward and came to record his vote: That when he took the oath of qualification, the Returning Officer turned away his head and refused to record his vote: That he told the Returning Officer, if he was going to vote for defendant his vote would not be refused: That it was his belief the Returning Officer kept back all the votes he could for Relator, as did one of the Constables, Geo. Simpson.

Thomas Armstrong swore that when asked who he voted for, he said "Bill," meaning Relator: That his vote, as he believes, was recorded for Defendant: That after hearing of this and before he left the polling booth he declared that Relator was the man he intended to vote for, and that he never mentioned Defendant's name on the occasion, except to say that he would not vote for him (Hall): That he offered to make affidavit before he left the polling place that he had voted for Relator: That the Returning Officer positively refused to accept such affidavit or to enter his vote for Relator.

Thomas Riley swore that when he came up to record his vote, the Returning Officer refused to take his vote until he would take the oath of qualification, which he considered was done through spite or some other improper motive, as he well knew his vote was good: That he told him he never had taken an oath and did not think it was necessary to do so in that case, and he was thereby prevented from voting for Relator; and he told the Returning Officer, when he asked him who he was going to vote for, that he would vote for Relator, and it was then he (the Returning Officer) demanded he should be sworn.

William Burgess swore that in his opinion the conduct of the Returning Officer was such as to prevent Relator's votes being polled, and if he had acted impartially Relator would have been in the majority: That Thomas Armstrong voted for Relator, and his vote was recorded for Defendant, which Armstrong disclaimed on the spot, and offered to make affidavit that he voted for Walker: That before the close of the election, Relator's friends, including himself (Deponent), seeing there was no fair play, protested against the proceedings of the Returning Officer, and refused to take any further part in the election.

Thomas Cosgrove swore that the conduct of the Returning Officer was so partial that he, with others, protested in consequence of the Returning Officer's misconduct and that of the Constables: That he is a voter in the ward, and is aware that there were several voters of Relator who could not get voting at the said election.

Thomas Nelson swore that he observed a designed and determined partiality on the part of the Returning Officer in favor of Defendant, in preference to Relator.

Thomas Couch swore that he saw several voters similarly situated in regard to residence and qualification refused by the Returning Officer when they were supposed to be Relator's friends, but admitted when supposed to be Defendant's friends: That had the Returning Officer and his Constables acted fairly and impartially, Relator would have been elected and not Hall.

George Cosgrove swore that when the Returning Officer put the question, who do you vote for, to a voter present and about to vote, added the word "Hall;" this was in the case of Thomas Armstrong: That he told Relator he would vote for him if it came to a tie, but in consequence of the majority and the absence of votes which were not polled, he did not vote.

There were in all ten affidavits filed on behalf of the Relator.

For Defendant the following affidavits were filed. The Returning Officer was also made a party.

George D. Lamot, the Returning Officer, swore that the election was conducted by him according to law, the utmost freedom of voting being given to voters and the strictest impartiality shown to both the candidates, as well as their supporters: That as Returning Officer, he took no part to secure the election of either of the candidates in preference to the other: That Thomas Wilson voted for Relator, and was afterwards sworn in and acted as special constable during part of the election, and shewed a partial feeling towards Relator: That two other county constables were present and acted as constables in the most impartial manner: That no votes polled for Relator were put down for Defendant: That the friends and supporters of Relator, as well as Relator himself, after the protest on the second day, did solicit support for Relator, and polled one vote (Archibald Muir) for him, and presented in two instances other parties to vote for him, urging them to take the oath, and others of Relator's followers urged them to take the oath, but they, Thomas Riley and William Muir, refused to take the oath; Thomas Wilson and William Burgess, supporters of Relator, urged them to take the oath after the protest was given: That he offered no insulting language to any one