

THE INJUNCTION GRANTED.

Mr. Justice Walker Decides in Favor of Coughlin & Mayo as Against Alderman Baker.

The Peculiar Position Now Occupied By the North Ward Alderman—Text of the Judgment.

In the Supreme Court of British Columbia, between Coughlin & Mayo, plaintiffs, and the Corporation of the City of Victoria, defendants. Judgment of Hon. Mr. Justice Walker.

The plaintiffs are contractors of this city, and the defendants are the city corporation and three of its aldermen.

The plaintiffs' claim, as endorsed on their writ of summons, is for a declaration that the action of the Council, on the 9th and 14th days of August, instant, in awarding a contract for the construction of a surface drain at Spring Ridge to H. H. McDonald & Co., contractors, was illegal and void, and that the Council be restrained from executing or further carrying out the contract in question. It is further prayed that it be declared that Messrs. Henderson, Miller and Baker were, on the 9th, 10th, 11th, 12th, 13th and 14th days of August, disqualified to act, sit or vote as aldermen, and that they, therefore, be prohibited from continuing to do so.

Messrs. Henderson and Miller have, through their respective counsel, announced that they had resigned their office, and that the last day of their term of office was the 31st day of August, and had no intention of further contesting these proceedings, but that they do not relieve me from the duty of deciding whether they were disqualified or not, as the alleged illegality of their votes is involved in this question and has to be determined.

The present motion is for an injunction, until the hearing, in the terms which I have mentioned. Mr. Richards, who appeared for the defendants, has asked for an injunction, and for the fullest investigation, objects to the mode of procedure adopted on the plaintiffs' behalf, lest it should prove futile, and contends that as the object of the injunction is to restrain the defendants from continuing to act as aldermen, the proper and only legal method of doing so is by a writ of *quo warranto*. I have to deal with this objection as one, for it is, in my opinion, a plea of the question of merits. None of the authorities cited by counsel on either side are on all-fours with the present case, in view of the peculiar cause of action alleged, and, at the same time, of the peculiar relief sought and procedure adopted in aid of it. That relief, as will be seen, is of twofold nature, first, that the defendants be restrained from continuing to act as aldermen, and, secondly, that Mr. Baker be restrained from sitting and voting in the Council by reason of his alleged disqualification.

Admitting, for the sake of argument, that the plaintiffs are entitled to all they ask, would a writ of *quo warranto* give to them? If the object were solely to remove the defendant from his office, such a method of procedure would seem to be that which has been followed in the English courts and also of those of Ontario since the *Attorney General v. The Corporation of the City of Toronto* case reported in L. R. 4, Q. B. 549 and 2 Q. B. D. 30, and in late Ontario reports, show this. But there is no such case in Ontario, and it has been held that, where other relief besides a removal from office is sought, the court would refuse to entertain the question of removal simply on the ground that one mode of procedure as to one branch of the action had been departed from. On the contrary, from passages in the judgment of the late Master of the Rolls, in *Attorney General v. The Corporation of the City of London*, it would seem to be otherwise, and that a court should disregard form in favor of substance, and, if justice demanded it, grant the full relief sought, and thus give effect to the declared policy of the judiciary that chronicity of action and multiplicity of suits should be avoided. An amendment to the plaintiffs' claim praying for Mr. Baker's removal might meet this view of the practice and test it. It is not, however, necessary to decide thus far whether a writ of *quo warranto* is the proper and only remedy here, for the object of the plaintiffs, as explained by their counsel, and distinctly avowed by their counsel, is not to remove, but to prohibit Ald. Baker from further sitting or voting in the Council.

Now, before granting an order for an interim injunction of any kind a judge has to consider whether the court would be at the trial of the action perpetrate the error on the facts as presented. In the case before me I venture to think that when the trial takes place, if it ever does, the court would abstain from applying so drastic a measure as that now asked for. Such a so-called remedy would be worse than the disease it is intended to cure. To deprive the defendant of the power of representing his constituents for the remainder of his term of office, and at the same time, to declare his seat vacant, as that remedy is not asked for, would be a gross injustice to the ratepayers, who would, to all intents and purposes, be disfranchised; for no person could be elected in Mr. Baker's stead, as his office was full, owing to his not having been ousted. He would be placed by the action of the court in the absurd position of being an alderman, without power to act as such. This is the case to admit of doubt. The plaintiffs' counsel, in support of his contention, has cited the observations of the late Master of the Rolls in *Attorney General v. The Corporation of the City of London*, in which he said that "a man cannot be an alderman or an injunction may be granted or a receiver appointed by an interlocutory order of the court in all cases in which it shall appear to the court to be just or convenient that such order should be made."

"Of course," said that eminent judge, "the words 'just or convenient' did not mean what the court was to grant an injunction simply because the court thought it convenient; it meant that the court should grant an injunction for the protection of rights or for the prevention of injury according to the principles of the law. The law cuts both ways, for one is entitled to ask—'Is it just or convenient?' that I should be disfranchised a considerable portion of the community until this action can be tried? And would it be just or convenient for the court hereafter—for I am obliged to consider and am presumed to know what to be done—to continue that disfranchisement for several months, and until Mr. Baker's term of office should expire? Yet, as I have pointed out, that is precisely the relief, or the effect of the relief on this point now claimed in this action. Whatever wrong the plaintiffs, or ratepayers, may have already suffered, a greater wrong would, in my opinion, be done if I deprived, for weeks to come, a large body of innocent persons of the right which the English Constitution has given them to a voice in the government of the city, including, what is all important to them, the proper regulation of matters connected with their own ward and the provident appro-

pration of their personal contributions to the municipal revenue in the shape of taxes. The injunction in this respect is, therefore, refused.

I have now to consider another branch of the case, and that is the proposed prohibition of the council from executing the intended contract awarded to McDonald & Co. It stands on a different footing, so far as procedure is concerned. The corporation is made a defendant in this action, and as the act of 9 Anne, C. 25, which relates to proceedings *quo warranto*, regulates those proceedings only as against individuals, holding, for instance, positions as aldermen, and not proceedings as against the corporation itself, as decided by Lord Mansfield in *R. v. The Mayor of London*, 1 Burr. 407, *quo warranto* information would not be appropriate as against the present corporation.

That body was represented by counsel on the present motion. He took no part in the contest between the plaintiffs and the defendant Baker—and very properly so; nor did he object to the proceedings, but submitted to any order that might be made, consistent with the rights of the rights and privileges of his client, the council. If the council, as a body, has, as alleged, acted illegally, mainly through the instrumentality of the three defendants, then the council's natural desire is, as I must assume, that matters should be set right, and that as speedily as possible; for as it is now constituted its efficiency is impaired, and consequently its usefulness to the community partially crippled.

Was, therefore, its action in awarding the contract to McDonald & Co. illegal, as alleged, and unjust to the plaintiffs, in view of the evidence on both sides, which is before me? That evidence is that, prior to June last, a contract for the construction of drainage works on Cook street was awarded by the Council to one Frederick Adams, and that, early in the present month, bids were, severally, put in by the plaintiffs, McDonald & Co. and one W. A. Baker. The latter calls for tenders for the construction of similar works in the vicinity of Spring Ridge. The plaintiffs' bid was the lowest; but it was rejected for no ostensible reason, and the contract was given to McDonald & Co. (at all events for reasons not given in the affidavits) in favor of McDonald & Co.'s bid on a division vote which would not have been carried but for the votes, which are now impeached, of the three aldermen who are defendants. The grounds of impropriety are as follows:—That the defendant Miller was, at the time of the voting, disqualified by reason of his having lost his property qualification; that Henderson was, at the same time, disqualified owing to the *Attorney General v. The Corporation of the City of London* case, which he was the plaintiff's superintendent, having a current contract with the city to supply a team of horses for the purpose of watering the streets; and lastly that the defendant Baker was, at the time of the voting, disqualified by reason of his having lost his property qualification; that Henderson was, at the same time, disqualified owing to the *Attorney General v. The Corporation of the City of London* case, which he was the plaintiff's superintendent, having a current contract with the city to supply a team of horses for the purpose of watering the streets; and lastly that the defendant Baker was, at the time of the voting, disqualified by reason of his having lost his property qualification.

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He Gave His Experience Off and On With a Pneumatic Tire.

He Mows the Lawn and Acquires a Tired Feeling—Nye's Latest Poem.

[Copyright, 1893, by Edgar W. Nye.]

For a long time I would not be argued into getting a bicycle, for it is not suited to my mode of life. It is not dignified for a man who has talked with crowned heads to hump his back and claw into the air with both feet and scoot across the horizon with wild eyes and a distorted mouth like that of one who has tried to eat with a souvenir spoon to excess.

"No," said I, "I was born too far back to pick this up. I can never ride the wheel in public successfully." I tried one of the tall kind ones, because I looked so graceful, and it not only threw me in such a way as to drive my spectacles up my nose quite a long distance, but it followed me up and stepped on me and lay down on me and got one of its cold, hard wheels in the back of my neck, and my bicycling jacket, where my lunch was.

But with a pneumatic tire and a low wheel there is less danger of shortening the spine and finding vertebrae in your shoes when you dismount at night. The pneumatic tire is blown full of air, being a tight rubber tube entered into by such riding on air that way is great sport, especially to the witness. It is like running a lawn mower.

I have a large colored gent who exerts himself for me at a reasonable price, and I saw him from my study pushing the lawn mower one bright June morning till I could not stand it any longer. He pushed it from him as he would a watermelon, it was so easy. He kept singing something about like this:

Shall I be called when the great day come,
When I shall be called to the great day come,
Shall I be called to the great day come,
When I shall be called to the great day come,<

And the green grass rolled like a fragrant carpet over the machine. I couldn't write because the sputter and buzz of that lawn mower and the hum, or whatever it was, kept wooing me to the window, and I couldn't get two ideas together to save my reputation. Finally I gave up my job and went outside. I looked even easier out there than it did from the house.

"You may go down to the garden, Al-biade," I said, "and weed the succotash pines awhile. I will finish moving the lawn mower." I will finish moving the lawn mower.

I took off my rich dressing gown and hung it up on the doghouse; took off my reversible cuffs and put them on the tail of a beautiful, ornamental iron dog which stands on the lawn, and started in.

But why go on? Every man with a stout muscle or two has tried these things to get up a glow. I did not do anything more or less than other men have done who need exercise and gorge themselves with it in an hour so that they can't sleep the night of it any more forever.

I moved a place as big as this morning's paper, I think, a small rosebush and a rubber doll, when I began to see that the sun was rapidly removing the shade from the lawn and putting it over on the north side of the house. I moved down the old rusty arches of a forgotten croquet set and got mad eight times and started a tumor at the place where I rested the handle of the mower against my person. The hotter I got the less I knew. I aimed at first to just look at the tender as I have decided, but as I went on and overhauled my judgment I moved down a bed of mignonette and some tuberoses that were just beginning to bear.

I would have moved down a trainload of fresh air fund children if they had come my way, but that's nothing. Anybody would do that if they had ever met a fresh air fund child alone on the road.

Well, that's the same way I rode the bicycle, only I concealed myself while practicing. Then I went at it on rainy days. It was in the barn. I enjoyed it some, though at times I knocked the rafters a little to one side with my head. I soon learned, too, to carry in one hand a heavy club with which to knock over the machine whenever it hopped on me while I was down.

Next I learned how to repair my wheel if the pneumatic tire got punctured, and let the children see it. You carry a little kit of things, gum and things, also a plumber's furnace by a strap over your shoulder, with your vest pocket full of charcoal, and then when your pneumatic tire gets a hole in it and looks like a pink light in the back of your head, you get off the wheel at the roadside, and the children of the district school come and stand by your side while you fix it.

I am not of a mechanical turn of mind, and so I could not find the hole where the air had escaped when I broke down. When you puncture your tire, you blow into the valve, and then, if you look soon enough, you will deftly discover the air in the act of escaping. Then you heat a piece of pneumatic felt and solder it on as soon as possible.

I did not realize till I was 11 miles from home, at the bottom of a five mile hill in a bed of sand and "bit-a-raining," how hard it was to find a pinhole in a rubber tire by watching for the place where the mean temperature is escaping. As night came on and the children had to separate and go their several ways toward home I gave up the idea of repairs, carefully concealed the machine in a swamp and rode home on the running gear of a farmer's wagon, on which I sadly pinched myself several times, which hurt me exceedingly.

Did you ever ride on the "reach," or the "bolster," or the "hounds" of a lumber wagon seven or eight miles in the moonlight with your feet hanging down and gouging large holes in the road? It is equal to a straw ride among aquatic acrobats.

Referring to rides and vehicles, I am reminded of the chariot race in "Ben-Hur." Everybody remembers his wonderful picture and wishes that he had been there to write it. Everyone calls to mind the speech of Ben-Hur to his steeds as they flew around the course; how he kept his temper even when Messala gave the Jew's beautiful horses a cut as he passed them, with his "Down, Eros! Up, Mars!" But when the moment, the supreme moment, arrived, Ben-Hur, when all else was silent, addressed his horses:

"On, Antares! On, Rigal! What, Antares, dost thou linger now good horse? Oh, Aldebaran! I hear thee singing in the tents. I hear the children singing

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For a long time I would not be argued into getting a bicycle, for it is not suited to my mode of life. It is not dignified for a man who has talked with crowned heads to hump his back and claw into the air with both feet and scoot across the horizon with wild eyes and a distorted mouth like that of one who has tried to eat with a souvenir spoon to excess.

"No," said I, "I was born too far back to pick this up. I can never ride the wheel in public successfully." I tried one of the tall kind ones, because I looked so graceful, and it not only threw me in such a way as to drive my spectacles up my nose quite a long distance, but it followed me up and stepped on me and lay down on me and got one of its cold, hard wheels in the back of my neck, and my bicycling jacket, where my lunch was.

But with a pneumatic tire and a low wheel there is less danger of shortening the spine and finding vertebrae in your shoes when you dismount at night. The pneumatic tire is blown full of air, being a tight rubber tube entered into by such riding on air that way is great sport, especially to the witness. It is like running a lawn mower.

I have a large colored gent who exerts himself for me at a reasonable price, and I saw him from my study pushing the lawn mower one bright June morning till I could not stand it any longer. He pushed it from him as he would a watermelon, it was so easy. He kept singing something about like this:

Shall I be called when the great day come,
When I shall be called to the great day come,
Shall I be called to the great day come,
When I shall be called to the great day come,

And the green grass rolled like a fragrant carpet over the machine. I couldn't write because the sputter and buzz of that lawn mower and the hum, or whatever it was, kept wooing me to the window, and I couldn't get two ideas together to save my reputation. Finally I gave up my job and went outside. I looked even easier out there than it did from the house.

"You may go down to the garden, Al-biade," I said, "and weed the succotash pines awhile. I will finish moving the lawn mower." I will finish moving the lawn mower.

I took off my rich dressing gown and hung it up on the doghouse; took off my reversible cuffs and put them on the tail of a beautiful, ornamental iron dog which stands on the lawn, and started in.

But why go on? Every man with a stout muscle or two has tried these things to get up a glow. I did not do anything more or less than other men have done who need exercise and gorge themselves with it in an hour so that they can't sleep the night of it any more forever.

I moved a place as big as this morning's paper, I think, a small rosebush and a rubber doll, when I began to see that the sun was rapidly removing the shade from the lawn and putting it over on the north side of the house. I moved down the old rusty arches of a forgotten croquet set and got mad eight times and started a tumor at the place where I rested the handle of the mower against my person. The hotter I got the less I knew. I aimed at first to just look at the tender as I have decided, but as I went on and overhauled my judgment I moved down a bed of mignonette and some tuberoses that were just beginning to bear.

I would have moved down a trainload of fresh air fund children if they had come my way, but that's nothing. Anybody would do that if they had ever met a fresh air fund child alone on the road.

Well, that's the same way I rode the bicycle, only I concealed myself while practicing. Then I went at it on rainy days. It was in the barn. I enjoyed it some, though at times I knocked the rafters a little to one side with my head. I soon learned, too, to carry in one hand a heavy club with which to knock over the machine whenever it hopped on me while I was down.

Next I learned how to repair my wheel if the pneumatic tire got punctured, and let the children see it. You carry a little kit of things, gum and things, also a plumber's furnace by a strap over your shoulder, with your vest pocket full of charcoal, and then when your pneumatic tire gets a hole in it and looks like a pink light in the back of your head, you get off the wheel at the roadside, and the children of the district school come and stand by your side while you fix it.

I am not of a mechanical turn of mind, and so I could not find the hole where the air had escaped when I broke down. When you puncture your tire, you blow into the valve, and then, if you look soon enough, you will deftly discover the air in the act of escaping. Then you heat a piece of pneumatic felt and solder it on as soon as possible.

I did not realize till I was 11 miles from home, at the bottom of a five mile hill in a bed of sand and "bit-a-raining," how hard it was to find a pinhole in a rubber tire by watching for the place where the mean temperature is escaping. As night came on and the children had to separate and go their several ways toward home I gave up the idea of repairs, carefully concealed the machine in a swamp and rode home on the running gear of a farmer's wagon, on which I sadly pinched myself several times, which hurt me exceedingly.

Did you ever ride on the "reach," or the "bolster," or the "hounds