

tend as returning officer at the polling booth, but the deputy mayor attended for him, except that during an hour and a half in the middle of the day the mayor himself attended, when finding he was too unwell to continue he withdrew, and left the deputy mayor as his deputy. The return of himself and the three others was made as being duly elected, and he subsequently, and before the 9th November, made the declaration required by sect. 50. Mr. Moore had attended to qualify, but was refused. Upon the 9th Nov. Mr. Blizard, finding that as returning officer he was disqualified from being elected, resigned his office of town councillor, paying £10, the amount provided in such cases by the by-laws, which resignation was unanimously accepted by the council. This rule was moved for on the 12th November.

Powell, Q. C., now showed cause, and argued that, as Mr. Blizard had resigned his office before this rule was moved for, the rule was useless, as he no longer held the office from which it was the object of these proceedings to remove him. He was stopped by the court.

Cook, Q. C. (*Dowdeswell* with him), in support of the rule, argued that, as the relator himself claimed the seat, inasmuch as the votes given for Mr. Blizard, who was returning officer, were thrown away (*Reg. v. Owen*, 28 L. J. 316, Q. B.), it was necessary that Mr. Blizard should disclaim the office, which he could only do upon a *quo warranto* information; that it is necessary for the relator's purpose, as he claims the seat, that it should appear upon record that Mr. Blizard had intruded into it, and that a mere resignation was no admission that he was not lawfully elected; that a writ of *mandamus* would not do, as a return might be made to it that Mr. Blizard was elected, *Reg. v. Wardlow*, 2 M. & S. 75; *Reg. v. Morton*, 4 Q. B. 146; *Reg. v. Hartley*, 2 Ell. & Bla. 143; *Reg. v. Earnshaw*, 3 Ell. & Bla. 143, n. c.; *Reg. v. Sidney*, 2 Low, Max. & Pol. 149.

Powell, Q. C., was heard in reply.

COCKBURN, C. J.—I am of opinion that this rule should be made absolute. At first I certainly entertained a strong opinion that the rule was unnecessary and should therefore be discharged; but I am bound to admit that Mr. Dowdeswell's argument has convinced me that it should be made absolute. In an ordinary case, if a man is elected and discovers that he is not qualified, I am far from saying that a proceeding by *quo warranto* is necessary in order to divest him of his office. The cases cited have mostly been where the party elected has resigned his office after proceedings have been commenced against him. I do not decide with reference to those cases. In this case the facts are very different. If the purpose of this application were merely to procure a vacancy in the office, I should be of opinion that a resignation would accomplish that object as effectually as a *quo warranto* information. But here the proceedings are instituted by a relator, who not merely questions the qualification of the party, but claims the office himself. He gives notice of his design, and says that the votes given for his opponent are thrown away, and that the effect is to place him in his position. Now, to enable Mr. Moore to obtain that position and be admitted, it must necessarily be assumed that there never was an election of Mr. Blizard at all. A resignation implies that

he has been elected, for a man cannot be said to resign an office to which he has not been elected, and to receive a resignation is also to assume that the party has been elected. To refuse this rule, therefore, would be to deprive Mr. Moore of the advantage to which he is entitled, and be merely to drive him to a new election. I admit, therefore, that Mr. Dowdeswell is right in saying that it is an act of justice to Mr. Moore to make this rule absolute. He has a right to a judgment which shows that Mr. Blizard was an intruder into the office, whereupon he can come to this court for a *mandamus* to be himself admitted. The rule will be made absolute accordingly, unless Mr. Blizard undertakes at once to disclaim. As regards the costs, it seems that Mr. Blizard, as soon as he became aware that he really was disqualified, did all in his power to divest himself of his office; it is hardly fair, therefore, that he should be saddled with the costs of this rule. I think the only costs he should be called upon to pay, are those incident to the disclaimer.

LUSH, J.—I entirely agree with my Lord. I certainly at first thought that this rule was useless, but I am convinced that it is otherwise. As Mr. Moore himself claims the office, a mere resignation is not sufficient, and he is entitled to a disclaimer from Mr. Blizard.

Rule absolute.

CORRESPONDENCE.

Thorold Division Court—Dismissal of the Clerk.

TO THE EDITORS OF THE LOCAL COURTS' GAZETTE.

Gentlemen,—Your insertion of the following will confer a favor upon the subscriber.

At the sittings of the court, held here on 25 Nov., 1865 the Judge imposed a fine of \$10 upon a suitor for an assault committed in the Court, which he says he ordered to be paid in 24 hours. Suffice for the present to say, that three months passed away and the fine was not paid. On the 10th of April last, the Judge enquired whether the fine had been paid. I replied that it had not; and, amongst other things, told him I had been advised that I had no authority to issue process, as the matter then stood. The Judge said I needed no further authority, and the fine must be collected. I went to work to see how I could meet the Judge's views, and on the 13th April, sent him a note as follows:—"The imposition of the fine upon—is the first instance within my fifteen years experience as a Clerk of this Division court, and being anxious to acquaint myself with the method of proceeding, I find in 22nd Vic., Cap. Consolidated Statutes, Sec., 182, what, to me, seems to mean that the warrant should be issued by the Judge—I would be glad therefore to receive further instructions from you in this matter."

My note was returned by the Judge endorsed as follows:—

"Mr. Keefer will, in form 62, Division Court Rules, find the warrant, as soon as it is prepared it will be signed by Mr. Price."