on Sheriff 258, *Lucas* vs. *Nockels* 6 *Bing.* 182.) But in the present instance the Sheriff swears that *the seizure was made by him after the day of election.* The defendant was beyond doubt a stockholder in the Kingston Gas Light Company, and one of the directors, at the time of the election now under consideration. And it is equally clear on the evidence laid before me, that the Company had at the time of the elections a contract with the mayor, aldermen and commonalty of the City of Kingston to supply the city with gas for £300 a year. The simple question, then, is, Was the defendant, under these circumstances, qualified, on the 2nd January last, to be elected alderman for Victoria Ward? If not, his election to the office of mayor falls to the ground, as a matter of course. Sec. 24 of 16 Vic. ch. 181 enacts "That no person, having by himself or partner any interest or share in any contract with or on behalf of the Township, County, Village, Town or City, in which he shall reside, shall be qualified to be or be elected Alderman or Councillor, for the same or any Ward thereof." If the contract had been made by the defendant with the Corporation of Kingston, he would clearly be disqualified, but the contract is made by an incorporated company, of which the defendant is a member. I find that the Imperial Act 5 & 6 Wm. IV. ch. 76, s. 28, contains the same provisions as to the qualification of aldermen and councillors of municipal boroughs in England and Wales as our own Act with the following important proviso: "That no person shall be disqualified from being a councillor or alderman of any borough, by reason of his being a proprietor or shareholder in any company which shall contract with the Council of such borough, for lighting or supplying with water, or insuring against fire any part of such borough." It is evident from the above proviso that the British Parliament considered that stockholders in companies contracting with the municipality would be disqualified from being an alderman or councillor under the general enacting words of the statute in reference to contracts. I cannot understand how our Provincial Parliament should have omitted so important and useful an exception. By 12 Vic. ch. 10, s. 4, known as the "Interpretation Act," the word "person" used in any statute in this Province includes any body, corporate or politic. Then does not the word "person" in the 24th section of 16 Vic. ch. 181 extend to corporations such as the City of Kingston Gas Light Company, and thus to the persons who compose that Company? If so, the defendant was disqualified at the time of his election. An incorporated company, such as the City of Kingston Gas Light Company, may be defined to be an assembly of persons, or a joining together of many persons into one fellowship for the promoting certain purposes in a joint or corporate capacity. The Company is composed of several persons, and each person has an interest in all the contracts of the Company to the extent of his stock therein. The defendant, at the time he was elected alderman for Victoria Ward, and at the time he was elected Mayor of Kingston, had an interest in a contract with the Corporation of Kingston. In the case of the *Queen* v. *Cummings*, Mayor of Hamilton,* C. J. Macaulay decided that stockholders in the Hamilton Gas Light Comp'y, which had a contract for furnishing gas light to the city of Hamilton, were disqualified from holding office in the Corporation of Hamilton, and that the election of Mr. Cummings was void,—and ordered a new election. That decision has not been reversed, so far as I know. It is binding on me, and is in accordance with the existing law. The circumstances attending the election of Mr. Cummings were the same as those at the election of the defendant. Therefore I do adjudge and determine that the defendant was not duly elected to the office of alderman for Victoria Ward or to the office of Mayor of the City of Kingston, and that he the defendant do not in any manner concern himself in or about the said offices; but that he be absolutely forejudged and excluded from further using or exercising the same under pretence of the said elections, and that a proper writ of mandamus do issue to the aldermen and commonalty of the city of Kingston, commanding them to hold another election for Victoria Ward for the purpose of electing another alderman, and to elect another mayor for the city of Kingston, in place of the defendant, removed, and that the defendant pay the relator his proper costs.

*This judgment was given in February, 1854, but is not reported.

MUNICIPAL CASES.

(Digested from U. C. Reports.)

From 12 Victoria, chap. 81, inclusive.

(Continued from page 51.)

ELECTIONS.

XIII. *Election for Township Councillors—Qualification of Voters—Power of Returning Officer.* 12 Vic. c. 81; 14 & 15 Vic. c. 109.

A returning officer had received and entered in the poll book a vote, which was at the time objected to. At the close of the poll, the returning officer having then learned that he had received the vote erroneously, struck it out, which produced an equality of votes for the candidates, and the returning officer gave the casting vote. It appeared that other votes had been improperly received, which being struck out, the candidates would still be equal.

BURNS, J. *Held.*—The returning officer erroneously exercised his judgment in receiving the vote. Though he discovered afterwards that his judgment was wrong, he had no right to alter or change the poll book; and it was his duty to have proceeded with the election till the electors themselves might have made a change in the numbers by their votes. The irregular conduct of the returning officer (as appeared from affidavits) both in receiving votes and exercising a control over the poll book, requires that his vote under those circumstances should not be allowed to decide the election. A new election ordered;—and the conduct of the returning officer being illegal and improper, and he having clearly struck off the vote for the express purpose of himself deciding the election, he was ordered to pay the costs of relator. No costs allowed to the unseated councillor.

Reg. ex rel. Mitchell *v.* Rankin & al., 2 Cham. Rep. 161.

XIV. *Service of summons in the nature of a quo warranto—Costs.* 12 Vic. c. 81, s. 148; 13 & 14 Vic. c. 64, sched. A. No. 23.

BURNS, J.—*Held*—Personal service of a writ of summons in the nature of a quo warranto cannot be dispensed with, except in the case provided for by the Act 12 Vic. ch. 81, sec. 148.

The power of a judge, under 13 and 14 Vic. ch. 64, sched. A. No. 23,(a) to award costs for or against the relator, or defendant or returning officer, "in disposing" of every case, extends only, and has reference to the *final* determination of each case. A case might happen in which it would be proper not only to give the relator his costs against the returning officer, but also to make the returning officer pay the costs of the other defendant; and if a preliminary inquiry could be gone into before the principal defendant is in court, for the purpose of determining the costs *quoad* the proceedings as far as they have gone, it might lead to great difficulty, and at times to injustice.

Reg. ex rel. Arnott *v.* Marchant & al. 2 Cham. Rep. 167.

(a) The substituted section, 16 Vic. c. 181, s. 27, contains similar provision to the repealed section in this respect.