

THE CENTRE DEMOCRAT is published every Thursday morning, at Bellefonte, Centre county, Pa.

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THE OPINION OF HON. WILLIAM ELWELL, President Judge of the 26th Judicial District, filed March 29, 1881.

Re Contested Election for Justice of the Peace in the Borough of Millheim, Centre county, Pa., at the election in February, 1881.

This case arises out of the election held in the borough of Millheim, in February, 1881, for the office of Justice of the Peace. The return of the officers of the election gives to F. P. Musser sixty-nine votes, and to J. H. Reifsnnyder sixty-eight votes, and declared the former to be duly elected.

In due time and in the manner required by law, this election was contested, upon the ground that votes were received and counted for the respondent from persons who were not qualified to vote, and that the officers of the election refused and neglected to count a vote cast for the contestant by a qualified voter.

On that question a large amount of testimony has been taken by an examiner, but by the agreement of counsel the questions to be considered by the court have reference to the qualifications of five persons named, who voted for the respondent, and also as to the qualifications of one person whose vote for the contestant was not counted by the election officers.

I proceed to consider first the five votes cast for the respondent which are alleged to have been illegal. John H. Kreamer was permitted to vote upon a registry which is as follows: "John Kreamer, Inn keeper." There was no evidence in reference to this man except that he was twenty-three years old, and a son of Jonathan Kreamer, proprietor of the National Hotel. There was no evidence that John H. Kreamer was not an Inn keeper, nor that Jonathan Kreamer resides in the borough of Millheim.

of but fifty-nine days. And so it is in regard to statutes: When a statute requires a "months notice," a notice of thirty days given during a month which contains but thirty days is a compliance with the law.

The English courts have established a rule upon this subject which is simple, uniform and easily understood. It is this, "In calculating a calendar month, if the computation commences during the course of a month, the right method is to proceed from a given day in one month to the day with a corresponding number in the ensuing month, Freeman vs. Reed 10th Jurist, N. S. 149—8th, Law Times N. S. 458, and the same is the rule in this State, Commonwealth vs. Makneil, 3 Case, 444.

In construing a constitution the words used are not to be stretched beyond their fair sense, but within that range the rule of interpretation must be taken which best follows out the apparent intention. D. Warris on Stat. 659.

That intention is to be gathered from the words used and the purposes intended to be accomplished. In fixing the time of residence required by months instead of by days, the framers of the constitution manifestly intended that the words should be understood in respect to that matter, as they are understood in respect to contracts and all other matters, and as they are held by the courts to mean. As a part of the history connected with the changes introduced by the constitutional convention of 1873, from a number of days residence to that of residence of months, I quote from the debates all that relates to the subject.

Mr. McCallister, chairman of the committee on suffrage, reported the article above quoted requiring two months residence. Mr. Collins moved to strike out two months and insert sixty days, saying there is no telling what is meant by two months but put it sixty days, and every man can understand it.

Mr. Buckalew replied, that the committee on suffrage on all occasions of computing time have used the word "month or months," and for the reason that the length of time or number of days in months vary, and will be simpler and more convenient to election officers to compute time from the same day in any month to the same day in succeeding months, without stopping to calculate how many days it will take for the same space of time. We have to carry these computations over different periods of the year, and we have uniformly used the term months as more simple and convenient for election boards and for the people.

The amendment was rejected. 1st Debates of Convention 628. It is argued by counsel for respondent that by the registration act of 1874, it is implied that a residence of sixty-one days is sufficient to entitle one to vote. No doubt that is so at the general election, because the sixty-first day preceding the election in November is two months back from that day.

The day in September to which the sixty-one days reaches back, will be of the corresponding number of the day of election. But a similar correspondence of dates can not occur counting back sixty-one days from any day in February. It is not two months from the 16th day of December to the 15th day of February. I conclude, therefore, that the votes cast by Solomon Confer and John A. Confer and counted for the respondent, ought to be deducted from the number of votes returned for him, thus reducing his count to 67 votes.

It is objected against the vote of Michael Lamey counted for the contestant, that he was not a qualified voter. He was duly registered and resided in the district in the years 1878 and 80, and was assessed each year but did not pay his tax. It is now contended that he may have paid within two years some old unpaid tax of former years. It is possible that this may have been so, but when it is shown that one offering to vote has paid no tax assessed in the three preceding years the burden of proof is thrown upon him to show affirmatively, that he had paid a tax. The presumption is that he had not.

The vote of Michael Lamey must be deducted from the count returned in favor of the contestant. David Miller cast ballot No. 109, which contained the name of the candidates for the several municipal officers of the borough. He was a duly registered and qualified voter. His ballot was received by the officers of the election, and counted for all the officers except Justice of the Peace. The vote for that office was rejected and not counted, because no christian name nor any initials were prefixed to the sur name of the person voted for. The facts in respect to that ticket, as clearly shown by the evidence are, that when presented to Mr. Miller the ticket contained the words "For Justice of the Peace," immediately under which were printed or written the name "F. P. Musser," when the ticket was received from Miller by the board, the name of F. P. Musser had been erased and "Reifsnnyder" written immediately below. When the ticket was offered to Mr. Miller he stated that he wanted to vote for Reifsnnyder instead of Musser, for Justice of the Peace, and thereupon George W. Cummings in his presence, erased the name of "F. P. Musser" and wrote "Reifsnnyder" in its place. The evidence also shows that at the time of the election there were other persons having the surname of "Reifsnnyder" residing in the borough, one or two of whom were candidates for some other municipal office than that of Justice of the Peace.

There were no other persons canvassing for that office but F. P. Musser and J. H. Reifsnnyder, and no votes were cast for any persons bearing any other sur name than that of Musser or Reifsnnyder. In addition to these facts Mr. Miller testifies that he intended to vote for J. H. Reifsnnyder. The question presented by these facts is whether when a ticket does not contain the whole name, extrinsic evidence may be resorted to for the purpose of showing directly the intention of the voter, or of raising a reasonable presumption in favor of the candidate whose name is incorrectly or only in part contained in the ballot. That such evidence is admissible and competent, is clearly, and I think, authoritatively decided in the case of Carpenter vs. Ely 4th Wis. 420, Brightly's contested election cases 258.

It was there held that "when there is a doubt as to the person intended to be voted for, by reason of a misspelling of the surname or of the addition of a different or erroneous christian name, facts and circumstances of public notoriety dehors the ballots connected with the election, and the different candidates, are competent evidence to ascertain for whom the ballots were intended to be cast." The facts to which this doctrine was applied by an able court, were these: Matthew H. Carpenter and George B. Ely were candidates for the office of District Attorney. In a contest it appeared that votes were cast for D. M. Carpenter, M. D. Carpenter, M. T. Carpenter, and for "Carpenter," and for Mr. Ely by several erroneous initials and by the surname "Ely." It was shown that these candidates were the only persons by those surnames in the county competent to hold the office, and from that fact it was held that it might be inferred that the votes having on them only the surname Carpenter or Ely, were intended to be cast for Matthew H. Carpenter and George B. Ely, and the votes were so counted.

In the contested election of Simon Marburger 5th Weekly Notes of Cases 399, evidence was held to be admissible to show that Simon Marburger was well known by the name of Samuel. On such proof votes cast for Samuel were credited to Simon Marburger. The evidence in each of these cases raised a reasonable presumption in respect to the intention of the voter.

It is not necessary to bring another case within the principle enunciated in these, that the facts should be the same or similar, each case must depend upon its own surrounding circumstances. If from those circumstances the intention of the voter can be arrived at without violating any rules of evidence, or endangering the purity of the ballot box, it is the duty of the court in disposing of the case on its merits to do so.

It is not assuming too much to conclude that every one of the one hundred and forty-four persons who cast a vote in the borough of Millheim, on the 15th day of February, 1881, knew that the contest for the office of Justice of the Peace was between F. P. Musser and J. H. Reifsnnyder. In the absence of any evidence tending to show that any vote cast for Musser or Reifsnnyder was intended for any other person having the same surname, the inference is reasonable, that votes for either of those surnames was intended for the candidate of that name, and when that inference is backed by the testimony of the person who cast the vote, there is no room for doubt that it is correctly drawn.

The rule now is, that where intent is material, a party under the statute may himself testify to such intent. 2d Whart. Ev. Sec. 482, 954, 11th Mass. Reg. 526. This rule of evidence would not permit a voter to contradict his ballot cast for one person, by testifying that he intended it for another; but where there is ambiguity by reason of the name of the candidate not being correctly written, or the full name not given, or by reason of there being other persons of the same name in whole or in part, there ought not to be, and I hold there is not any rule or policy of law which forbids explanation and proof of intention by the testimony of the voter who cast the ballot. His identity can always be ascertained by the number endorsed thereon. Holding these views as to the law, after careful consideration of the facts, I conclude that the vote of David Miller should be counted for the contestant, which being added to the vote returned for him by the board, makes 69 votes, from which is to be deducted the votes cast by Solomon Confer and John A. Confer two votes, leaving for him 67 legal votes. Thus giving to John H. Reifsnnyder one majority.

And now March 29th, 1882, it is hereby declared and decreed that at the election held in and for the borough of Millheim, in the county of Centre, on the 15th day of February, 1881, John H. Reifsnnyder having received the highest number of votes, was duly elected to the office of Justice of the Peace, and it is further ordered and decreed that the costs in the case be paid by the borough of Millheim, in the county of Centre.

D. F. FORTNEY, ADAM HOY, J. L. SPANGLER, Attorneys for Contestant. ALEXANDER & BOWER, JAMES A. BEAVER, Attorneys for Respondent.

A Back-set for the Readjusters. ONE OF THEIR MOST IMPORTANT MEASURES BEATEN. RICHMOND, Va., March 30.—The Readjusters received a severe check to-day in the defeat in the Senate of one of their chief partisan measures, that is, the bill reducing the judicial circuits of the State from eighteen to twelve, which would have turned out all the present circuit judges and necessitated the election of new ones. The vote on the passage of the bill was seventeen yeas to twenty nays, three Readjusters voting with the Democrats. The bill had previously passed in the House by a large majority. The Democrats are greatly elated over their victory, and express the belief that the other extreme measures of the Readjusters will share the same fate in the Senate. The effects upon the Readjusters was to make them call a caucus. The caucus was in session but a short time, and took no action in relation to any of the important measures. They are greatly chagrined at their defeat this afternoon.

Gentlemen—Your Hop Bitters have been of great value to me. I was laid up with typhoid fever for over two months and could get no relief until I tried your Hop Bitters. To those suffering from debility or any one in feeble health, I cordially recommend them. J. C. SPOEYER, 683 Fulton St., Chicago, Ill.

At the faintest pain PRURIA should be thought of. Thomas Jefferson Jones and wife, of Pottsville, are each 82 years old, and have lived together for sixty-one years. Tax nearest infallible remedy is PERUNA.

LYDIA E. PINKHAM'S Vegetable Compound revives the drooping spirits; invigorates and harmonizes the organic function; gives elasticity and firmness to the step, restores the natural luster to the eye, and plants on the pale cheek of beauty the fresh roses of life's spring and early summer time.

New Advertisements.

S. D. RAY, ATTORNEY AT LAW. BELLEFONTE, PA. Special attention given to the collection of claims. Office adjoining Brokerhoff House, 4-15

THOMAS J. McCULLOUGH, ATTORNEY AT LAW. PHILIPSBURG, PA. Office in Albert Over's building, in the room formerly occupied by the Philadelphia Banking Company. 4-13.

Disolution of Partnership.

NOTICE is hereby given that the partnership heretofore existing between F. T. Shugert and R. H. Foster, in the publication of the CENTRE DEMOCRAT, under the firm name of Shugert & Foster, has been this day dissolved by mutual consent. All debts due and to be paid by the books and subscription list of the late firm will remain at the office of the CENTRE DEMOCRAT, where all accounts will be presented for settlement.

S. T. SHUGERT, R. H. FOSTER. Bellefonte, April 3, 1882.

NOTICE is hereby given, that the following named persons have filed their petitions for licenses in the office of the Clerk of Quarter Sessions of the Peace in and for Centre county, and that application will be made at the next Sessions of said Court to grant the same.

Table listing names of applicants for licenses and their respective addresses in Centre County, PA.

Treasurer's Sale

UNSEATED LANDS FOR TAXES FOR 1880 AND PREVIOUS YEARS.

NOTICE is hereby given that in pursuance of an Act of Assembly, passed the 23rd day of March, 1854, entitled "An Act to amend an Act directing the mode of selling unseated lands in Centre county," and the several supplements thereto, there will be exposed at public sale or outcry, at the following place, to-wit: In the Court House, for the taxes due and unpaid thereon, at the Court House, in the borough of Bellefonte, on MONDAY, APRIL 12, at one o'clock, P. M.

Table listing names of landowners and the amount of taxes due for 1880 and previous years.

WARDEN NAME. TAXES.

Large table listing names of landowners and the amount of taxes due for various townships including Haines, Harts, and others.