

issue his warrant, and that, should the Onslow Borough construct and maintain the street mentioned, viz., the Hutt road, it cannot claim seven twenty-fourths of the cost from the defendants.

The verdict must therefore be for the defendants, with ten guineas costs.

Supreme Court, } { April 29 and June
Auckland. } { 10, 1903.
Conolly, J.

LAWSON v. KING.
CAMPBELL v. KING.

Electoral Act, 1902—Claims for enrolment—Duty of Registrar of Electors—Liability for rejecting claims without inquiry.

These were appeals from decisions of the Stipendiary Magistrate at Auckland, dismissing informations against the respondent, the Registrar of Electors for the City of Auckland, for failure to enrol the appellants on the electoral roll for the said city.

It was admitted that the several appellants were qualified to be enrolled as electors, and that the rejection of their claims was erroneous.

In Lawson's case the claims were made by "Amelia Lawson, "tailoress, Nelson street." The Registrar found upon the roll the name and description of an elector already enrolled, "Lawson, Amelia, Clarence street, tailoress." Being satisfied in his own mind, though without making any inquiry, that the person already on the roll was the same person as the appellant, he did not enrol the new claim.

In Campbell's case the appellant sent in three claims, namely, on the 17th October as "Edward Ross Campbell, "College street, seaman," on the 8th November as "Edward "Ross Campbell, College road, fireman," and later as "Edward Ross Campbell, College road, fireman." There was already on the main electoral roll the name and description, "Campbell, Edward Ross, Upper Queen street, engineer." The respondent, not unnaturally, assumed these all to refer to the same person; and again without inquiry rejected the three new claims. It was admitted that in rejecting these claims the Registrar was honestly attempting to perform his duty and was not actuated by an improper motive. The Magistrate held that more than this must be required; and that some evidence of an improper motive was necessary before there could be a conviction.

Held, that there should have been a conviction under Section 40, Sub-section 4 for failure to enrol a claim not objected to.

Mr. J. R. REID appeared for the Appellant, and Mr. J. A. TOLE for the Respondent.

REID for appellant cited:—*R. v. Hale* (O'B. and F. 73), *Badham v. Hill* (3 N.Z. Jurist, 84), *Cundy v. LeCocq* (53 L.J.M.C., 125), *Davies v. Harvey* (9 L.R.Q.B., 433).

TOLE for respondent cited—*R. v. Tolson* (23 Q.B.D., 168), *Nichols v. Hall* (8 L.R.C.P., 322), *Dickenson v. Fletcher and others* (9 L.R.C.P. 1).

Conolly, J. It is clear that in both of these cases

to make inquiries within five days; and if not then satisfied that the particulars stated in the claim were true, to give notice in writing to the claimant of the further proof required. In no case can a registrar reject a claim, even when the claimant takes no step to satisfy him by giving such proof—that can only be done by an order by a magistrate.

It appears to me that the Magistrate did not fully appreciate the difference between Section 40, sub-section 4 of "The Electoral Act, 1902," and Section 78 of the same Act. The latter section provides that "every Registrar who knowingly and wilfully does any matter or thing contrary to the provisions of this Act or who knowingly and wilfully omits to do any matter or thing required by this Act to be done by him, is liable to a fine not exceeding fifty pounds."

If these informations had been laid under this section of the Act it would have been incumbent upon the informant to prove the *mens rea*; but the informations themselves show that this was not the case since they are for failing to enrol, without any allegation that the omission was knowingly and wilfully. This shows that the informations were laid under Section 40, sub-section 4, of which the words are: "In every case where a Registrar fails to enrol any person making application for enrolment he shall, unless there is some valid objection to such application, be liable to a fine not exceeding ten pounds."

In these cases there was no valid objection to the applications; the only objection arose from an erroneous impression in the Registrar's mind. It

1903
LAWSON
v.
KING.

Conolly, J.

1903

IN RE
PRISK.

Full Court.

appears to me therefore, that there should have been a conviction in both cases ; but under the circumstances the fine should, I think, have been a nominal amount. Both appeals are therefore allowed ; but there is a substantial difference in the merits of the two cases. The appellant Lawson is allowed five guineas costs. No costs will be allowed to the appellant Campbell, since he to a considerable extent brought about the Registrar's error by sending in three claims contradictory to one another ; and that at a time when a very large number of claims for enrolment were coming in.
