1880.
August 13.
" 18.
McLoughlin vs. Delahunt.

DE VILLIERS, C. J.:—The Court has sufficient reasons before it for making the rule absolute, with costs. If Mr. Delahunt thinks he has any claim against Mr. McLoughlin let him bring his action. For the present Mr. McLoughlin must be reinstated in the possession in which he lawfully was under the agreement. Irreparable injury might be done to him if he were suddenly debarred from printing and publishing a newspaper.

DWYER and SMITH, JJ., concurred.

Rule made absolute, with costs.

[Applicants' Attorneys, FAIRBRIDGE, ARDERNE & SCANLEN.
Respondent's Attorneys, VAN ZYL, BUISSINNÉ & LEONARD.]

BRINK AND HOLM *vs.* CHALMERS, RESIDENT MAGISTRATE OF STELLENBOSCH, AND OTHERS.

Ordinance 9 *of* 1836, § 48.—*Act* 13 *of* 1864, §§ 7 *and* 8.—*Meaning of term "Resident Householder."—Taxation of Costs.*

A person who occupies a room in a boarding-house situate within a town or village, for which he does not pay a rent distinct from the board and lodging charges which he pays to the landlord, is not a resident householder within the meaning of Ordinance 9 *of* 1836, § 48, *and Act* 13 *of* 1864, §§ 7 *and* 8.

Where applicants had been successful as against one of several respondents (all of whom employed the same attorney) and unsuccessful as to the rest, whose costs they were ordered to pay, THE COURT, *on application, ordered that the respondents' combined bill of costs should be taxed, and the applicants then called upon to pay an aliquot part of such taxed bill of costs.*

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Brink & Holm vs. Chalmers, R. M. of Stellenbosch, & Others.

This was an application to have an election of the commissioners of the municipality of Stellenbosch declared null and void on the ground that many of those who voted were not householders within the meaning of *Ordinance* 9 *of* 1836, and *Act* 13 *of* 1864, or were disqualified by being under the

age of majority. It appeared that certain students living at Stellenbosch, and occupying rooms in boarding houses for which they did not pay a rent distinct from board and lodging charges, had voted as resident householders. Applicants maintained that they were not entitled so to vote.

Upington, A.-G. (with him *Maasdorp*), for respondents, took objection to the form of the application on the ground that it did not appear from it that the election would not have taken place if the alleged disqualified voters had not voted.

After some discussion applicant's counsel was allowed to amend the notice of motion. He withdrew it as against four of the sitting members, since it was clear that they would have been elected even if the votes objected to had not been given, and proceeded against the respondent Krige alone, who, if the thirty-three votes objected to by the applicants had not been counted, would have received fewer votes than the applicant Holm.

Leonard, for applicants. The rights of householders were set forth in *Ordinance* 9 *of* 1836, § 48. It was there provided that every person who was an occupier of any dwelling-house of the annual rental of not less than £10 sterling should be taken to be a resident householder. A similar provision was made in *Act* 13 *of* 1864. The students to whom the objections were raised were mere boarders, and were therefore not qualified to vote.

Upington, A.-G. (with him *Maasdorp*), for respondents. Applicant has not proved sufficiently clearly that the whole of the students who are said to have affected the election were disqualified.

Cur. adv. vult.

Posteà (June 1st),—

De Villiers, C.J.:—In this case, the applicants, Brink and Holm, seek to set aside the election of all the commissioners who were elected at the last election of members of the municipality at Stellenbosch. During the course of the argument, it was shown that the objections which had been raised applied only to one of the members, namely, Mr.

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Krige, and if he had not been elected, one only of the applicants, Holm, would have been declared to have been elected, and the issue now between the parties is practically between Holm and Krige. The question which has been raised in this case is whether certain persons who voted at this election were qualified to vote or not. The Magistrate, in his affidavit, states that proof to his satisfaction was produced that all the persons who voted were entitled to vote, and some other witnesses for the respondents give evidence to a similar effect. Now, I have looked at the evidence very carefully, and I find in the affidavit of Mr. P. A. Brink the following allegation:—"That among those who voted there were thirty-three who had no right to vote, on the ground that they were either not of the age of majority or not resident householders in terms of the Act. Some of these thirty-three were students at the Theological Seminary, whilst the remainder were boys attending the various schools in the place, and, as such, most of them do not belong to the district, but are there only temporarily to be educated, and are only boarders but not resident householders. Further, the alleged certificates handed in by these students and schoolboys were given, as I verily believe, by the different boarding-house keepers for the purpose of influencing the election, and that, though they certified that their boarders pay room rent, as a matter of fact the room rent was never separated, and never is separated, from board and lodging charges." The respondents, in their affidavit, deny part of this statement, but not the whole of it. The affidavit of the respondents relating to this part of the case is as follows:—"That it is not correct, as sworn to in the affidavit of P. A. M. Brink, that thirty-three of the persons whose votes were recorded had no right to vote, on the ground, as therein alleged, that they were either not of the age of majority, or that some of these thirty-three were students of the Theological Seminary, whilst the remaining were boys attending the various schools in the place; but, on the contrary, that all of the thirty-three alleged to have voted are resident householders, paying a rent of £10 sterling and upwards, and that at the voting they produced to the Resident Magistrate certificates to that effect." Now, the respondents who made the affidavit carefully avoided answering the statement in Brink's affidavit, that, as a matter of fact, the room rent is

not separated, and never is separated, from the board and lodging charges. This is a statement in the plaintiffs' affidavit, which alone would be sufficient to justify the Court in holding that these persons were not entitled to vote; and although, in the subsequent affidavit, parts of the affidavit of Brink are denied, this specific statement is avoided altogether, and not denied. We may, therefore, take it that the statement of Brink's affidavit is correct, that the thirty-three voters whose votes turned the scale did not, as a fact, pay room rent as distinct from a charge for board and lodgings. If this is a fact, the applicants ought to succeed in this case, because it is admitted on both sides that everything depends upon the votes of these thirty-three alleged voters. They produced a certificate to the satisfaction of the Magistrate that they paid room rent; but their names are given by Brink, and it is said that, whatever rent they pay, it is not distinct from the board and lodging charges which they pay to their landlord. Under these circumstances, I think that the terms of the 48th section of the Ordinance 9, of 1836, have not been complied with. This section provides "That every person who is the occupier of any dwelling-house, either as proprietor or renter, of the yearly value or rent of not less than £10 sterling, shall be and be deemed and taken to be a resident householder within the meaning of this Ordinance." This section of the Ordinance was amended by the Act of 1864. The 7th section of that Act says:—"Every person who is the occupier of any warehouse, counting house, shop, or office, either as proprietor or renter, of the yearly value or rent of not less than £10 sterling, shall be, and be deemed and taken to be a resident householder within the meaning of the Ordinance aforesaid, No. 9 of 1836." Now, if it be correct that these boarders did not pay any separate amount as room rent, it is clear that they are not householders in the meaning of the 7th section of this Act. Then comes the question whether the 8th section affects this question. The 8th section says:—"Where any premises shall be jointly occupied by more persons than one as proprietors or renters, each of such joint occupiers shall be entitled to be considered a resident householder within the meaning of the said Ordinance in respect of the premises so jointly occupied, in case the yearly value or rent of such premises shall

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be of an amount which, when divided by the number of such joint occupiers, shall give a sum of not less than £10 for each and every such joint occupier." Now, it is quite clear that this section is not intended to apply to cases where the persons who claim to vote are neither proprietors nor renters, but are mere lodgers or boarders. It follows that this election was illegal altogether, and I am bound to add that in my opinion it was a gross abuse of their rights and the provisions of the law for these people to attempt to vote at this election. Mr. Krige's election must be set aside, and he must also pay a portion of the costs; but an order for costs must be given against the applicants with reference to the remaining commissioners who had not lost their seats.

Posteà (August 19th),—

It appeared that the attorney who had acted for all the respondents had tendered a bill of costs, including the costs of all the respondents, to the Master for taxation. It was objected by the opposite side that the bill should not be taxed unless the special items due to the successful respondents were expressly set forth in it. The Master sustained the objection and refused to tax the bill. This was an application to have the bill taxed in the manner claimed by the respondents.

De Villiers, C.J. :—Strictly speaking, this ought to be a motion calling upon the Master to tax the bill of costs in the manner contended for by the respondents, but to any such motion the Master would have to be a party. But as the Master is now in court, as well as the parties, it would be a waste of time and money for an order to be made for a fresh motion to be served on the Master. The court is in a position to give a direction at once, and the direction is that the Master shall tax the costs in such a manner that the applicants in the original motion shall pay four-fifths of the costs of the respondents. As the applicants on the original motion have been parties to this application, they must pay the costs of this application. If the Court made any other order there would always be a temptation to employ attorneys for each respondent. In the present case all the respondents have employed one attorney, and now that the applicants have been ordered to pay the costs of

the successful respondents, the unsuccessful respondent cannot be called upon to pay those costs. The only way is to ascertain what those costs are, and take an aliquot part, and that would be four-fifths.

[Applicants' Attorney, C. H. VAN ZYL.
Respondents' Attorney, J. C. DE KORTE.]

MERRIMAN *vs.* WILLIAMS.

Status of Colonial bishops not appointed by Crown.—Power of Crown to appoint Bishops in Colonies enjoying representative government.—Status of Church of South Africa.—Endowment of Church of England in South Africa.—Construction of Articles of Constitution of Church of Province of South Africa.—Effects of Proviso repudiating Privy Counsel decisions.

By Letters Patent certain powers were given to the Bishop of G. and his successors nominated and appointed by the Crown, and canonically ordained and consecrated by the Archbishop of Canterbury. A Bishop not so nominated and appointed, and not so ordained, is not a successor of the first Bishop such as is meant by the Letters Patent, nor does it make any difference that the Crown has ceased to nominate Bishops to G., and to instruct the Archbishop of Canterbury to consecrate them.

Semble; *that the Crown has the power of appointing Bishops in colonies enjoying representative government, though it does not exercise that power.*

The church of the Province of South Africa has by the proviso in its articles of constitution to the effect that in the interpretation of its faith and doctrine it is not bound by the decisions of the tribunals of the Church of England, and by its determination to repudiate any alteration not specially accepted by it in the formularies of the Church of England other than the creeds, and any alteration in the creeds; as also by having excluded from its Synods the late Dr. Colenso, Bishop of the Church of England in Natal, practically declared that its connection with the Church of England is not maintained.

In a suit by the Bishop of G. (one of the dioceses of the Church