appear that the relator in the interim took any step with a view of having new notices served, but he attended the court on the 30th, when the court, being informed that no notices had been given, decided that it had no jurisdiction to try the matters; and the roll was finally revised under the 59th section.

We cannot say that the decision of the Court of Revision is erroneous. It was argued on the part of the relator that the neglect of the clerk, or a failure by him in the performance of his duty, ought not to have prevented the complaints being heard, and that all that was incumbent on the relator was to make a request, under sub-sec. 2, to the clerk. Upon an examination of sec. 60, and its subsections 2, 7, 8, and 10, which bear on this application, we find that they are all imperative by force of the Interpretation Act, and when we consider the object of the complaints made by the relator, we cannot overlook the plain words of the statute. The legislature clearly intended that in all cases of objection by third parties, a notice of complaint must be given to the party complained against at least six days before the sitting of the court at which it is to be heard, and that such notices should be prepared and given in due time by the clerk.

It was also argued that as the parties by their counsel appeared before the Court of Revision, they waived any objection to the notice, and that the court should have proceeded to hear and determine the complaints. At first we thought there was something in the argument, but after a good deal of consideration we do not think we are at liberty to decide, in the face of a plain enactment which declares that six days' notice at least shall be given, that because a party appears to state that he has not had the notice required by the statute, that in that case five or a less number of days is sufficient, and to hold that his protest of not having notice is a waiver of it, and that, in a proceeding the object of which is to deprive him of a franchise or right, or to make him liable to taxes or to increase them.

If the parties complained against did not appear on the 22nd May, it would have been the duty of the court, before proceeding *ex parte*, under the 13th sub-section, to have ascertained whether due notice had been given to the respective parties, and if it appeared that only five days' notice had been given it would hardly be contended that the court could have heard the appeals; and surely, if their counsel appeared to notify the court of the want of notice, they should not therefore be placed in a worse position. The language of the act is plain and unambiguous. If the mode of proceeding provided by the statute is insufficient or inconvenient or open to abuse, the remedy is with the legislature. For this court to say that five days' notice or any less number is sufficient, would be to assume a legislative authority.

By the 171st section of the Assessment Act, if the clerk refuses or neglects to perform any duty required of him by the act, for every offence he shall forfeit $100; and by the 173rd section if he wilfully omits any duty required of him by the act he shall be guilty of a misdemeanor, and liable to a fine of $200 and imprisonment. As Lord Denman said in *King* v. *Burrell* 12 A. & E. 467 these are "wise and prudent provisions to secure the due execution of the act, by officers whose duty it is to learn their duty, and to do it accordingly."

We are therefore of opinion that the rule should be discharged, as the defendants in our judgments properly decided that they could not hear and determine the matters of appeal and complaint.

If the relator had made out a case for our interference, and it appeared that the want of the remedy would be injurious to the municipality, we are not prepared to say that a mandamus to the Court of Revision would be the proper proceeding, for by the 59th section of the statute it is enacted that all the duties of the court which relate to the revising of the rolls shall be completed, and the roll finally revised by the court, before the 1st of June in every year. Here they were finally revised on the 30th of May. The proper course, we think, would be found to be a mandamus to the Mayor to summon the court to meet (under the authority given him by the 55th section) with a view to hear and determine the matters complained of, due notices being first given to the respective parties.

Rule discharged, with costs.

ELECTION CASE.

(*Reported by* HENRY O'BRIEN, Esq., *Barrister-at-Law.*)

REG. EX REL. ROSS v. RASTAL.

Statement of relator's interest—Disqualification—Costs.

The statement of a relator in a *quo warranto* matter alleged that he had "an interest in the said election as a voter," and his affidavit stated that he had voted "at said election, but not for said William Rastal."

Held, that the relator's statement and affidavit were sufficient, and that his interest sufficiently appeared.

The defendant granted a lease to the corporation for five years, which lease, together with the premises therein mentioned, and the benefit therefrom, he conveyed to R. S. Rastal a few days before the election. The assignment was, however, encumbered with a condition to refund the consideration money on certain contingencies, and no reversion was conveyed by the assignment.

Held, the defendant was disqualified, and a new election was ordered, with costs to be paid by the defendant and the relator.

[Common Law Chambers, February, 1866.]

This was a *quo warranto* summons calling upon the defendant to shew by what authority he exercised the office of one of the council for the village of Kincardine, and why he should not be removed therefrom.

The statement of the relator alleged that he had "an interest in the said election as a voter." In his affidavit annexed to the statement referring to himself as the relator, he deposed to a search for Rastal's declaration of qualification as councillor for said village of Kincardine for the year 1866; a copy of that declaration was annexed to the affidavit, dated 15th January, 1866, in which Rastal, the defendant, swore to being qualified for the office for 1866, "to which he has been elected." The relator's affidavit then proceeded to declare his interest in the said election as a duly qualified voter, and that he voted "at said election, but not for said William Rastal."

The affidavits shewed that Rastal did on 14th December, 1863, grant a lease to the corporation of certain property for five years from December 1863, at a yearly rental of $40, with the usual covenants, and that this lease is still in full force.