

The five illegal votes recorded at the election for the defendant—namely, the votes of Campbell, McKee, Mills, Sewell and Wilson, must be deducted from the 118 votes recorded in his favor in the poll-book. This will reduce the aggregate of legal votes received by the defendant to 113 votes, giving the relator an apparent majority of three votes over the defendant.

It is admitted on all sides that the vote of James Owens was intended for the defendant, and entered, by a mistake, in the poll-book for the relator. The evidence admits of no other conclusion, consequently the vote of James Owens must be deducted from the gross votes received by the relator, and added to the 118 legal votes entered for the defendant. This will reduce the number of aggregate votes received by the relator, according to the poll-book, to 115 votes, and increase the number received by the defendant to 114 votes.

I am clearly of opinion, under the law, that William Aubin was not entitled to vote in Rideau ward at the election. He left the city in the spring, in company with a young woman, leaving his wife and family behind him. Before he left, he sold his interest in the premises upon which he voted for \$100 to one Elmer, and has been out of the possession of them ever since. It is true that he returned to the city a few weeks before the election, but there was nothing to show that he had resumed possession of the assessed premises, or that any one held the possession of them for him. On the contrary, it was shown that Elmer had the possession of them through his tenant. The statute requires that the voter should be a freeholder or a householder, at the time of the election, within the municipality. It cannot be said on the evidence that William Aubin was the one or the other at the time of the election; it is very clear he was not. Several of the adjudicated cases show that when a person sells or disposes of the premises assessed against him, between the time of the assessment and the election, that he cannot vote on such premises, as he cannot be said in respect of them to be a freeholder or a householder at the time of the election.

The vote of John Waters requires to be considered carefully. The entries in the assessment rolls must be examined in connection with the law. By the 163rd section of the Municipal Institutions Act, it is enacted "that the assessors shall state in their assessment rolls whether the persons therein named are freeholders or householders, or both, and shall in separate columns for this purpose use the initial letters F. and H. to signify the same respectively," and the 23rd section of the assessment law that when land is assessed against the owner and occupant, the assessors shall on the roll add to the name of the owner the word "owner," and to the name of the occupant the word "occupant;" and by the 19th section, the assessors are required "to set down the names and surnames in full, if the same can be ascertained, of all taxable persons resident in the municipality, who have taxable property therein." The 75th section of the Municipal Institution Act defines who shall be municipal electors as follows:—"The electors of every municipality for which there is an assessment roll shall be the male freeholders thereof, and such of the householders thereof as have been resident therein for one month next before the election, who were severally rated on the last revised assessment roll for real property in the municipality, held in their own rights or that of their wives as proprietors or tenants;" and by the 79th section it is enacted that "in case both the owner and occupant of real property are rated therefor, both shall be deemed rated within this Act;" and by the 80th section, "that when any real property is owned or occupied jointly by two or more persons, and is rated at an amount sufficient, if equally divided among them, to give a qualification to each, then each shall be deemed rated within the act, otherwise none of them shall be deemed so rated;" and by the 97th section it is enacted "that the clerk of the municipality shall deliver to the Returning Officer, who is to preside at the election, a correct copy of so much of the last revised assessment roll for the municipality, ward, &c., as contains the names of all male freeholders and householders rated upon the roll in respect of real property lying therein, with the assessed value of the real property for which every such person is so rated."

On reading over those several enactments carefully, with the adjudicated cases, and in connection with the common sense of the of the thing, I am unable to arrive at any other conclusion than

that the right of municipal electors to vote rests upon the last revised assessment roll, and every Returning officer is bound in the reception or rejection of votes by what appears on such roll, and has no right to resort to extrinsic evidence to explain, vary, or contradict what appears on such roll. The law requires great care in preparing those rolls. The assessors make them up under the solemnity of an oath, in the first instance; then the Court of Revision reviews the proceedings of the assessors, and an appeal lies to the County Judge from the Court of Revision. And the statute declares that the roll as finally passed by the Court of Revision and County Judge shall be valid, and binding on all parties concerned. The assessment rolls, it appears, are records of great importance, and should be prepared with great care and intelligence. They fix the basis of taxation, and regulate and limit the right of voting at elections. The roll settles the value of the property assessed, and the character in which a party is assessed, whether as owner, occupant, or jointly with other persons. The returning officer is bound to receive or reject a vote, according to what appears on the roll or the copy sent to him. When a party appears on the roll as an owner, the returning officer cannot receive extrinsic evidence to show that he is an occupant only. Or when two parties appear on the roll as householders the returning officer cannot receive such evidence to show that the one is a freeholder and the other a householder. And that is what the learned counsel for the relator proposed in reference to the vote of John Waters. In a scrutiny of votes the Judge is bound by the same law, the same rules, and the same restrictions as the returning officer at the election. In the assessment roll produced at the hearing of this cause, I find the following entry in respect of John Waters:—"John Waters or Garrett Fitzgerald, with a figure 1 in the column headed Householders yearly value of real property, 42 dollars."—Now if this entry means anything at all, it means that John Waters and Garrett Fitzgerald some way or other are householders in respect of the assessed property. Mr. O'Reilly at the hearing, offered parol evidence to show that John Waters was the occupant, and Garrett Fitzgerald the owner of the assessed premises. I refused to receive this evidence, and justly so. The returning officer could not receive such evidence at the election, and I could not receive it at the scrutiny, as it would be admitting evidence to explain and contradict a written record made evidence in the matter by Act of Parliament. John Waters could not vote as a householder, as the roll shows that Garrett Fitzgerald has as much a right to vote as he has, and I cannot decide which of them has the right to vote, and both could not vote. He cannot vote under the 80th section as a joint occupant with Fitzgerald, as the rate is too low for that purpose, and if he could vote at all on the present assessment roll, it would be under that section. I think that the 78th and 80th section of the Act cut out the right of John Waters to vote on the real property, as rated and assessed on the last revised assessment roll. His vote is an illegal vote, and must be struck out. It would be a waste of time to discuss the fact that a John Waters appears rated on the roll together with Jane Webster, as it is not the same man; and if he were the same man it would do no good, as the rate is too low.

The names of Benjamin Redpath and John Redpath are entered on the roll in the same manner as the names of John Waters and Garrett Fitzgerald are, and the principles of law which are applicable to the vote of John Waters are applicable to the votes of Benjamin Redpath and John Redpath, consequently their votes must be disallowed.

Upon this view of the case, the votes of William Aubin, John Waters, Benjamin Redpath and John Redpath, four in all, must be deducted from the 115 votes standing in favor of the relator, which will reduce the actual number of legal votes received by him to 111 votes, which being deducted from the 114 legal votes adjudged to the defendant, will give to the defendant a clear legal majority of 3 votes over the relator, consequently the defendant is entitled to hold the office of councilman, to which he has been elected.

As the defendant is entitled to hold the seat, it becomes unnecessary to discuss the question raised at the hearing about the qualification of the relator.

A considerable portion of the difficulties I had to encounter in deciding this case, has been caused by the defective manner in