

lot No. 52, in the second concession O.S.; that he was rated with rateable real property, held in his own right, in said ward, at £125, and for personal property at £50, in all £175; and that relator was placed on the assessment roll of the township for that amount; that there are not more than twenty persons on the assessment roll qualified according thereto, to vote for councilman for said ward; that he was present at the last election for councilman for the said ward; that Peter Cleland, of the township of Medonte, son-in-law of the returning officer, not being a resident of the ward or township, proposed dit. as a candidate for the office, and John Dunn seconded him; that he, deponent, proposed relator, who was seconded by John Oswald Swan; that relator then *formally demanded a poll*, when the returning officer, without replying to him, said "I object to William Swan, and declare James Rowat duly elected." He distinctly heard relator object to the whole proceedings as illegal, and protest against the election of the dit.

On reading these affidavits the Court considered that the returning officer was a necessary party to the proceedings, and ordered him to be summoned.

On the 2nd March the dit. appears by Mr. Cosens, who takes the preliminary objection that the papers and affidavits on which the summons was obtained were wrongly entitled, being "In the matter of the Queen on the relation of William Swan v. James Rowat," whereas they should only have been entitled in the Court,—referring to *The King q. t. v. Cole*, 6 T. R. 640; *The King v. Almon* in note to same case; In re the Municipality of Augusta v. Municipality of Leeds, &c., 1 Prac. Rep. No. 2, p. 121.

That the affidavit of D'Alton McCarthy, proving the acknowledgment of the recognizance of bail, was taken before Mr. Carroll, the partner of Mr. Eccles, the agent of the relator's attorneys.

That the relator does not now shew he is qualified—he merely states that his name appears on the assessment roll; whereas the statute requires that he should be rated in his own name in the collector's roll for £100 real property and upwards, and that, at the time of the assessment and of the election, he should be seised of such property, in his own right, or that of his wife, as proprietor.

That he did not shew the returning officer that he was qualified, and that he acquiesced in the objection taken to him, and cannot now move against dit's election.—*The Queen v. Greene*, 2 G. & D. 24; Reg. ex rel. Mitchell v. Adams, 1 Cham. Rep. 203; *The Queen v. Hiorn*, 7 A. & E. 962. Mr. Cosens, in addition, objects as to McKay, the returning officer, that the summons is not directed to him,—*Tomsom v. Browne*, Andrews, 16; *Hinton v. Stevens*, 4 Dow. 286,—and wishes me to decide on the preliminary objection, before he enters appearance for him. I decline deciding now, and state he must act on his own suggestion as to whether it is advisable for him to appear or not. I understand he appears. when Mr. Eccles contends his appearance is a waiver of the irregularity as to the summons not being directed to the returning officer.

Mr. Cosens proposes filing the affidavits referred to hereafter, and in addition to the grounds mentioned, contends that under the facts disclosed, relator really concurred in the election of dit., and by his conduct led him and all others there present to suppose that he withdrew from the contest on the ground of disqualification, and did not demand a poll, and that no one offered to vote for him; and that it clearly appears that the application is not made with the view of unseating dit., but to influence in some way an action at law relator contemplates bringing against some other person.

Mr. Eccles, contra, objects that the affidavits handed in on behalf of dit. are wrongly entitled, viz.: "The Queen on the relation of William Swan against James Rowat and George McKay," whereas the proceedings are not against these parties jointly, but a separate proceeding is taken against each.

He further contended that relator's qualification is shewn by the affidavits filed, that the collector's roll is a copy of the assessment roll, and when that was handed to the returning officer, that would shew that relator was rated as a freeholder to a greater amount than £100, and that was all he had to look to, and that his business was to have taken the votes and let the other party who objected to relator's qualification move to set aside the election, if they felt disposed to do so; that the affidavits shew a poll was demanded, and if the Judge required the original collector's roll, it could be sent for. The affidavit of dit., sworn to on 22nd July, states that he went to the place of election, intending to vote for the relator; that he found that he had been proposed himself; that almost immediately after entering the place of election he heard the returning officer ask relator if he had his deed; he did not hear the previous conversation. Relator pushed a paper towards the returning officer, and remarked that was his title. Dit. did not know the contents of the paper, and took no further notice of the conversation between them, and within a quarter of an hour after the demand of the deed by the returning officer, he declared dit. duly elected; that he has since taken his seat as such councillor, and continues in the office simply because he was informed, and believes it was, and still is, his duty to do so.

On the 19th February inst., he asked relator why he was contesting his election, and had had him served with a writ for that purpose. Relator replied he had no wish or idea of contesting the election, no desire to remove deponent from his said office, and no wish to be returned as councillor himself; that he desired to punish Peter Cleland for observations he said Cleland had made concerning his character, as dit. understood, at the time of the election; and that relator's attorney had told him he must go on with the opposition to dit's election, as it would tend to strengthen the other action, either brought or to be brought, against Cleland, for observations on relator's character; that he, dit., never took any steps to be elected to the office; that his election was unlooked for and unexpected; but having been, as he believes, returned to the said office *bond fide* by the returning officer, he considers he is justified in retaining the same.

The affidavit of Peter Cleland, sworn to the 23rd Feb'y, states that he is a freeholder in the township of Flos, that he was rated on the collector's roll of the said township for 1855, in respect of rateable real property, to £112 10s.; and besides that he is, and was at the time of the election, the owner of the S. ½ of No. 47, in the first concession O. S. of Flos, and that all the property is under cultivation. That he was reeve of the said township for the year 1854, and held that office at the time of the township election; that he was present at the election and proposed dit.; and when relator was proposed, and the returning officer was about to put down his name as a candidate, he Cleland objected that relator was not qualified to be elected, believing, as he still believes, that he was not seised of real property as required by the statute, though since the election he has heard that relator has acquired the requisite legal title to qualify him, but that he has acquired it only since such election—that on the objection being made to relator's qualification, the returning officer did demand of him if he had any proof of such his qualification, thereupon he handed a paper which he Cleland understood was a lawyer's letter, although he was ignorant of its contents, but objected to the returning officer receiving it as evidence of relator's qualification; that the returning officer did not consider such letter evidence of relator's qualification; that no remonstrance was made by relator, or any person for him, or on his behalf, against the said objection by Cleland, no attempt made by or for relator of any kind to overcome the objection; nothing further was done by him or on his behalf to prove his qualification, or to press, or proceed with his election; there was no demand of a poll made by the relator, or for him; and he, deponent, seeing no further step of any kind taken by or on behalf of relator to proceed with, or effect his election, con-