

full, if the same can be ascertained, of all taxable parties resident in the municipality who have taxable property therein.

Sec. 60, sub-s. 1, enables any person complaining of an error or omission in regard to himself, as having been wrongfully inserted on or omitted from the roll, or as having been undercharged or overcharged by the assessor in the roll, to give notice in writing to the clerk of the municipality that he considers himself aggrieved for any or all of the causes aforesaid.

The Court of Revision, after hearing upon oath the complaint, shall determine the matter, and confirm or amend the roll accordingly, s. 60, sub-s. 12.

The roll, as finally passed by the Court and certified by the clerk, as so passed, shall be valid and bind all parties concerned, notwithstanding any defect or error committed in or with regard to such roll, except in so far as the same may be further amended on appeal to the judge of the County Court, s. 61.

Then the Con. Stat. U. C., cap. 54, sec. 97, sub-s. 2, requires the clerk of the municipality to deliver to the returning officer who is to preside at the election for the same or every ward thereof, a correct copy of so much of the last revised assessment roll as contains the names of all male freeholders or householders rated upon the roll in respect of real property, with the assessed value of the real property for which every such person is so rated.

By the 75th section the electors shall be those who among other things were rated on the last revised assessment roll for real property in the municipality.

Persons to be elected as members of a council are those who have freehold or leasehold property rated in their own names on the last assessment roll of such municipality, s. 70.

Sec. 97, sub-s. 9, declares that the only oaths to be required of any person claiming to vote, and appearing by the last revised assessment roll to have the necessary property qualification are, among others, that he is the person named in the last revised assessment roll.

Philip Chambers, the relator, and Samuel Allison, the defendant, were candidates at the last election for the office of councillor for Ward No. 2 in the Township of Caledon.

The list of votes furnished to the returning officer contained three names which gave rise to this contention—Thomas Anderson, Wilson Wilson, and Simond Faulkner, each in respect to qualification entitled to vote.

There were in fact no persons thus named resident in the ward; but Thomas Sanderson came and said he was named as Thomas Anderson in the list, and the returning officer allowed him to vote for Samuel Allison, and recorded his vote in his proper name, he having taken the oath at the election as directed in the statute. He now swears that he was the person rated as "Thomas Anderson." The relator's counsel argues that the two names when written are in no way alike, but I think they when pronounced are *idem sonans*, and are not distinguishable unless a pause is made between the name and surname. William Wilson came also and said he was named in the list as Wilson Wilson, and the returning officer allowed him to vote for Samuel Allison, and recorded his vote in the proper name, he too

having taken the prescribed oath at the election. He now swears that he was the person named and described in the assessment roll as "Wilson Wilson." Alexander Faulkner came in the same way and said he was the person named on the roll as Simond Faulkner, made the same statements, took the same oath, was allowed to vote for Samuel Allison, and had his vote recorded in his own name. He now swears he was the person intended under the name of Simond Faulkner.

It is not denied that these men were qualified to vote, but it is contended they are not on the last assessment roll or voters' list, as required by the statute, and that the returning officer ought not to have taken their votes. The defendant Allison had at the close of the poll 68 votes including these three, and Chambers, the relator, had 66 votes. Allison was declared elected, and took his seat as councillor. But if these three votes are struck off, Allison, for whom they voted, will have but 65 votes, while the votes for Chambers will be 66, who will thus be entitled to take his seat as councillor instead of Allison, who in this view has usurped the office.

I think the franchise ought not to be lost to any one really entitled to vote if his right to it can be sustained in a reasonable view of the requirements of the statute.

It was clearly intended that persons resident within the municipality, and properly qualified, should have the right to vote for municipal officers; but it is equally clear that it was intended that no one should vote whose name and qualification were omitted from the roll, for in these respects the Court of Review has express power to correct the roll, and impliedly, I suppose, has the right to correct an error in the name of any one who requests it.

The assessor is directed upon diligent inquiry to set down according to the best information the name and surname in full, if the same can be ascertained, and only those who have been rated on the last revised assessment roll are entitled to vote. There is a distinction in the words of the 70th section respecting those who are candidates for office and of the 75th section regarding who are voters only. In the former section those only who are rated "in their own names" on the last assessment roll can be candidates, but in the latter one those may vote who are rated on the last revised assessment roll.

Now were these men rated on the last assessment roll and returned in the list furnished to the returning officer? They swear they were; but this does not answer the question. Let us see what is to be done in rating them. The assessor is to make diligent enquiry. He asked we may assume of the first voter, What is your name? He answered, Thomas Sanderson; but if the whole name is pronounced without pause or peculiar emphasis it sounds as much like Thomas Anderson as Thomas Sanderson. It was written, I infer, Thomas Anderson, and the peculiarity of it is that if it had been repeated by the writer it afforded no means of correction. Questions of *idem sonans* have usually arisen in the spelling of names, but this is an instance of it in pronouncing them, and the duty of the officers was to set down the name on inquiry, and the duty of the person to be assessed to answer it if so asked *viva voce*, and he could not tell except by inspection whether it was right or wrong.