

## Election Case.]

## STORMONT ELECTION PETITION.

## [Election Case.]

him. I thought he would have been willing I should stay there if I would give him the deed. I would prefer to stay elsewhere. I did not have any control. I never wished to stay there from the time I made the verbal bargain. His own hand worked it. I gave him a team, span of horses, for stock farming in September. I promised that in January, and transferred it in September. I told him I would give him seed to sow the place. I promised him no help. I helped him some. He did not pay me for his board, nor did I pay him for the rent of the house. The teams pastured on the place. His lot and mine remained together, not separated by fences. I could not tell how many bushels of grain I gave him that year. He did not promise to work for me. We worked as before—beginning at one field and finishing that, and then at another, and so on, as before; but this was upon an understanding. In September I went to a lot I had in the 7th concession. He remained on the lot. I gave him the deed and property I promised him, and the cattle, and I went to the 7th concession. Until he got the deed it was understood he was to go and work the farm—the east half of 31—if he should think proper. I was to give him a span of horses, waggon, harrow, four cows, six sheep, four hogs, and two pigs, and he was to have one half of the house furniture. He was to have these at any time he wanted. This was to be done at the same time with the deed, and at the time of the deed I did give them to him. He went on then under these terms, and went to work. He never said he wanted them until September. He took possession of them in January—of the horses and cattle, and these things. We never drove them off. I pointed out the four cows and the horses, and he took possession of them then. He was to get six sheep out of the flock. He was to have four of the hogs in the fall. He attended to these horses himself, and my son to the other team. He groomed and fed them as his own. I said to him in the spring, if he would help us to put in a crop in the other land, we would help him. He agreed to do so, and we went and did it. There is only one barn on 31. It was on his part. There were no crops on mine. The stuff was put into the barn on the place as before. He took control of it after, and used it. I had nothing to do with it after. I did not take anything off the place since or before."

RICHARDS, C.J.—I think this vote good, according to the rule we have acted on.\*

William Place, (class 2 "Aliens"), called as to his own vote. It appeared from the evidence of the witness that he was informed by his mother he was born in Ogdensburgh, in the United States. Both father and mother were born in Canada. He left Ogdensburgh when he was nine months old, came to Canada, and had resided in Canada ever since.

F. H. Shaver called as to same vote.—Witness was a cousin of the voter. Knew him and his family. The voter's grandfather came originally from the United States. Drew land from Government, as did also voter's father as a U. E. Loyalist. Understand that the voter was born

in Ogdensburgh. The father of the voter moved to Ogdensburgh about three months before the voter was born.

RICHARDS, C.J., thinks the vote is good.

[The trial of this petition was adjourned until Monday, the 12th of September next.]

\* *The following points arising on Scrutiny, were also decided in Brockville Election Petition, tried by the Chief Justice of the Common Pleas, and may be conveniently referred to in this place.*

1. Any error in assessing as owner, tenant or occupant, is immaterial if the voter be qualified in any of these characters.

If a man be duly assessed for a named property on the roll, even though there was a clerical error in describing such property in the voter's list, or erroneously setting down another property on the voter's list, if no question or difficulty arose at the poll as to the taking the oath, the vote will not be struck off on a scrutiny.

When a voter, properly assessed, who was accidentally omitted from the voter's list for polling sub-division No. 1, where his property lay, and entered in the voter's list for sub-division No. 2, voted without question in No. 1, though not on the list—vote held good.

*Quære*, even if accidentally omitted from voters' list, should vote be received? of course if questioned at the poll, it could not have been received, not being on the voters list.

When it is proved that an agreement exists (verbal or otherwise), that the son should have one-third or one-half the crops as his own, and such agreement is *bona fide* acted on, son being duly assessed—vote held good—the ordinary test being, had the voter an actual existing interest in the crops growing and grown.

Where it is proved that for some time past the owner has given up the whole management of the farm to his son, retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use—the son's vote held good.

A clearly established course of dealing or conduct for years as to management and disposition of crops, and acts done by son in management of farm, held sufficient to establish an interest in the crops in the son, though the evidence of any original agreement or bargain not clear.

If the evidence would warrant a jury finding the crops (say in the year preceding the last assessment) to be the property of the voter—the vote is good.

No question of actual title is to be entertained. Occupancy to the use and benefit of the occupant being sufficient.

Where the owner died intestate, and the estate descended to several children, only the interest of the actual occupants is generally to be considered. *Quære* :—Unless the occupant be shewn to be receiving the rents and profits, and on account of a party interested, though not in actual possession, a mere liability to account is not to be considered.

The widow of an intestate owner continuing to live on the property with her children, who own the estate, and work and manage it, should not, till her dower be assigned, be assessed, nor should any interest of hers be deducted from the whole assessed value, she not having the management of the estate.