

Election Case.]

STORMONT ELECTION PETITION.

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CANADA REPORTS.

ONTARIO.

ELECTION CASES.

(Reported for the LAW JOURNAL by RUSK HARRIS, Esq.,
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STORMONT ELECTION PETITION.

Petition—Practice—Writ of Election—Qualification—Mistake in entry of votes on the Roll—Recriminatory Charges—Scrutiny—Aliens.

- 1.—*Held*, that the writ of Election and Return need not be produced or proved before any evidence of the election is given.
 - 2.—On a scrutiny the practice in the English cases is for the person in a minority to first place himself in a majority, and then the person thus placed in a minority to stake off his opponent's votes, and the same practice followed in this case.
 - 3.—The name of a voter being on the poll-book is *prima facie* evidence of his right to vote. The party attacking the vote may either call the voter, or offer any other evidence he has on the subject.
 - 4.—A voter being duly qualified in other respects, and by mistake having his name on the roll and list, but entered as tenant instead of owner or occupant, or vice versa: *held*, not disfranchised merely because his name is entered under one head instead of another.
 - 5.—The only question as to the qualification of a voter settled by the Court of Revision under the Assessment Act, is the one of value.—*George N. Stewart's vote.*
 - 6.—Where father and son live together on the father's farm, and the father is in fact the principal to whom money is paid, and who distributes it, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, and the son merely receives what the father's sense of justice dictates: *held*, the son has no vote.—*Wm. P. Eumom's vote.*
 - 7.—In a milling business where the agreement between the father and the son was, that if the son would take charge of the mill, and manage the business, he should have a share of the profits, and the son, in fact, solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use: *held*, that the son had such an interest in the business, and, while the business lasted, such an interest in the land as entitled him to vote.—*Robert Bullock's vote.*
 - 1.—Where a certain occupancy was proved on the part of the son distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit: *held*, that although the son was not merely assessed for the real, but the personal property on the place (his title to the latter being on the same footing as the former), he was not entitled to vote.—*John Raney's vote.*
 - 9.—Where the objection taken was, that the voter was not at the time of the final revision of the Assessment Roll the *bona fide* owner, occupant or tenant of the property in respect of which he voted, and the evidence shewed a joint occupancy on the part of the voter and his father on land rated at \$240: *held*, that the notice given did not point to the objection that if the parties were joint occupants, they were insufficiently rated.—*Owen Baker's vote.*
- [The learned C. J. intimated that if the objection had been properly taken, or if the counsel for petitioner (whose interest it was to sustain the vote) had stated that he was not prejudiced by the form of the objection, he would have held the vote bad. See as to this judgment, the case of *Duncan Cahey*, post.]
- 10.—Where the father had made a will in his son's favor, and told the son if he would work the place and support the family, he would give it to him, and the entire management remained in the son's hands from that time, the property being assessed in both names—the profits to be applied to pay the debt due on the place: *held*, that as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, and that he did not hold imme-

diately to his own use and benefit, and was not entitled to vote.—*Joshua Weert's vote.*

- 11.—Where the voter had only received a deed of the property on which he voted on the 16th August, 1870, but previous to that date had been assessed for, and paid taxes on the place, but not owning it: *held*, that not possessing the qualification at the time he was assessed, or at the final revision of the roll, he was not entitled to vote.—*Duncan Cahey's vote.*

[A question being raised in this case as to the sufficiency of the notice of objection, that the voter was not actually and *bona fide* the owner, tenant or occupant of real property within the meaning of Sec. 5 of the Election Law of 1868, the learned C. J. remarked, "The respondent's counsel does not say that he is prejudiced by the way in which the objection is taken, if he had, I would postpone the consideration of the case. It is objected that the case of *Owen Baker* should be subject to the same rule, and if the question had been presented to me in that view, I think I should have felt at liberty to go into the case, giving time to the petitioner to make further inquiries, if he thought proper."]

- 12.—Where the voter had been originally, before 1865 or 1866, put upon the Assessment Roll merely to give him a vote, but by a subsequent arrangement with his father, made in 1865 or 1866, he was to support the father, and apply the rest of the proceeds to his own support: *held*, that if he had been put on originally merely for the purpose of giving a vote, and that was the vote questioned, it would have been bad, but being continued several years after he really became the occupant for his own benefit, he was entitled to vote, though originally the assessment began in his name merely to qualify him.—*Benjamin Gore's vote.*
 - 13.—Where the voter was the equitable owner, the deed being taken in the father's name, but the son furnishing the money, the father in occupation with the assent of his son, and the proceeds not divided: *held*, that being the equitable owner, notwithstanding the deed to the father, he had the right to vote. *Held*, also, that being rated as tenant instead of owner did not affect his vote.—*Donald Blair's vote.*
 - 14.—Where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only and voting on it: *held*, that although he was on the roll and had the necessary qualification, but not assessed for it, he was not entitled to vote.—*Samuel Hill's vote.*
 - 15.—Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy, the father-in-law, with the consent of the voter (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made on the 28th March, 1870: *held*, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant on the 28th of March, 1870, and that to entitle him to vote, he must have the qualification at the time of the final revision of the assessment roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division.—*Joshua Rupert's vote.*
 - 16.—Where a verbal agreement was made between the voter and his father in January, 1870, and on this agreement the voter from that time had exercised control, and took the proceeds to his own use, although the deed was not executed until September following: *held*, entitled to vote.—*Wm. J. Collinger's vote.*
 - 17.—Where the voter was born in the United States, both his parents being British-born subjects, his father and grandfather being U. E. Loyalists and the voter residing nearly all his life in Canada: *held*, entitled to vote.—*Wm. Place's vote.*
- [Richards, C. J., June 12, 13, 14, 15, 16, 17, 1871.]
- The following was the form of the petition in this case:—
- IN THE QUEEN'S BENCH.
- The "Controverted Elections Act of 1871."
- Election for the County of Stormont, holden on the fourteenth and twenty-first days of March, in the year of our Lord one thousand eight hundred and seventy-one.
- The Petition of James Bethune, of the Town of Cornwall, in the County of Stormont, at