

of qualification, and informed defendant that it was, as he believed it in fact to be, taken correctly and sufficiently from the assessment books; and he stated that he did not include the leasehold property, because he believed, as he still believes, that defendant's qualification in Beverley street was sufficient.

James J. Dickey, a brother and partner in business of the defendant, swore: that defendant and one John Neil and himself, for some years past, and at the present time, have been and are co-owners in fee of the land on which the foundry is erected, and assessed in the roll at \$195; that the lands are subject to a mortgage to the Scottish Amicable Society for £500 sterling, principal money, and no arrears of interest. He stated that last June he and his partners were prepared to pay it off, and applied to do so, but that the company's agents refused, unless upon a six months' notice, and subsequently an agreement to extend the time for four years was made, giving additional security for the payment of the mortgage money upon certain shares in another society, worth in cost at present at least \$2,150, and payable in 1868, with a high rate of interest, compounded half-yearly, and which in 1868 will amount to a sum much larger than the mortgage on the premises; which shares were to be transferred to the solicitor and agent of the mortgagee, and to Edward Blake, Esq., their solicitor, as trustees for both parties: and he further swore, that independent of that security, the mortgaged premises are worth \$6,000, and that they would not accept any less sum therefor; that on the 1st May, 1864, Mr. Brough agreed with defendant for the sale to him of the second lot on Beverley-street, and that Brough signed and delivered to defendant an agreement for the sale, which agreement was verified and produced, and by it Mr. Brough agrees to sell the premises, letting them out to the defendant for £400, payable in ten years, with interest half-yearly, to be secured by mortgage on the lot; conveyance to defendant and mortgage back to be prepared and executed as soon as conveniently may be; defendant to pay the taxes for the then current year, 1864. Mr. J. Dickey further stated, that he was present at a conversation between defendant and Mr. Brough on the subject of the purchase; that there being some incumbrance on the lot, which Mr. Brough was to pay off or have the time for payment extended, the defendant assuming the same, it was agreed that Mr. Brough should make arrangements in respect of the incumbrance, and the contract should then be completed by conveyance. In the meantime defendant should enter into possession, which he did, and has since continued in possession; and he stated that defendant is the owner in equity of the fee of the premises.

The defendant himself, in his own affidavit, stated, that J. J. Dickey was the person who managed the transactions with the Scottish Amicable Insurance Society, and he incorporated the several matters stated in J. J. Dickey's affidavit, and stated that they were true. And as to his declaration of qualification, he stated that he supposed and believed that it included the other properties mentioned in the affidavits; that as it was prepared by the clerk of the Council, he did not closely examine it, as the clerk knew the properties he was assessed for, and who informed

him at the time that it included property more than sufficient for his qualification.

A. McNab for the relator.

MORRISON, J.—As to the first objection, after a careful examination of the affidavits filed on the part of the defendant, in connection with the fact that the last revised assessment roll shows that the defendant, besides being rated with his partners for the foundry premises, and as sole owner for the vacant lot, that he was also rated as sole owner for two other properties rated at the annual value of \$156, and also a leasehold property to the value of \$100, and holding the views I have expressed in the previous case of *Regina ex rel. Blakely v. Canavan*, respecting equitable estates and incumbrances, I am of opinion that defendant, at the time of his election, was duly qualified for the office of alderman.

The relator having suppressed the fact of the defendant being rated for the property valued at \$156, and not negating the defendant being possessed of them at the time of his election, I do not think it necessary to call on the defendant for further affidavits relating to those properties.

As to the second and third objections, they are directed specifically against the validity of the defendant's declaration of office, not against the validity of the election, or the defendant's qualification at the time of his election.

The authority for the issuing of the summons herein is founded upon the 128th section of the Municipal Act, which enacts, that if the relator shows, by affidavit to a judge, reasonable grounds for supposing that the election was not legal, or was not conducted according to law, or that the person declared elected thereat was not duly elected, the judge shall direct a writ of summons in the nature of a *quo warranto* to be issued to try the matter contested. The clause and the subsequent sections are all directed to the trial of the validity of the election and the due election of the relator or some other person. The declaration of office referred to in the relator's statement is required to be made by the 175th section, but I see nothing in the act declaring that if the person elected omits making such declaration, or makes a defective one, or that he is not seised or possessed of the estate therein mentioned, that his election shall be void, or that it should be held that he was not duly elected. The statute, on the other hand, provides, by the 183rd clause, that if the person duly elected does not make the declaration of office within twenty days after his election, he is subject to a penalty, and by the 15th clause of the Interpretation Act, the wilful and corrupt making of any false statement in any declaration required or authorized by any of the consolidated statutes of Upper Canada, shall be a misdemeanor, punishable as wilful and corrupt perjury.

But even if the objections were open to the relator, it is quite clear from the affidavit of the clerk of the City Council, that having the custody of the assessment rolls, he drew up the declaration for the defendant, and inserted in it, as he thought, sufficient property for the purpose, and that it was a mere omission on his part to insert the other property for which the defendant was rated as proprietor.

As to the merits of the whole case, the defendant has fully met the objections attempted to be set up by the relator.