

Assessment.]

APPEAL FROM COURT OF REVISION.

[Assessment.]

file and keep the roll in his office, and at all convenient times to keep it open to the inspection of all the householders, tenants, and freeholders, resident, owning or possessing property in the municipality.

A time is to be appointed for the court to meet and try complaints in regard to persons wrongfully placed upon or omitted from the roll, or assessed at too high or too low a sum. Within the time from the return of the roll at the office of the municipal clerk and the assembling of the court, all parties have the power of examining the roll at the clerk's office, and any person complaining of an error or omission in regard to his own or any other person's assessment, may, within fourteen days after the time fixed for the return of the roll, give notice to the clerk that he considers himself aggrieved, &c., and if a municipal elector thinks that any other person has been assessed too high or too low, or has been wrongfully inserted in or omitted from the roll, he may complain, and the matter is to be decided in the same manner as complaints by a person assessed; so that ordinarily the complaints cannot be made under the 1st and 2nd sub-section of the 60th section later than fourteen days after 15th April, which would be the 29th of April. But the court may sit for the hearing of such complaints at any time, and adjourn from time to time, within the limits of their existence, up to the 15th June, on which day, without any power of revival, they become defunct for all purposes of complaints under the 60th section. The 4th sub-section of the 60th section gives no power, no matter what palpable errors need correction, for the court to resume its functions. The court may, within the limit of its existence, but not afterwards, extend the time for making complaints ten days further, and may then meet and determine the additional matter complained of upon palpable errors being made to appear as needing correction. That cannot be done, however, after the 15th of June. The 62nd section, it is true, confers upon the court further powers after the 15th June for certain other purposes, but those powers are so expressly limited and specific that they cannot be held to apply to these appeals.

It was not objected that anything was done by the court on or after the 15th June, but that they once legally exercised, and once after that illegally affected to exercise the powers conferred upon them by the 4th sub-section of the 60th section. It very plainly appears that by the last words of the 3rd sub-section the court could do nothing upon its own motion with regard to altering or amending the roll, *except upon complaint*. If after a complaint either party failed to appear, the court might proceed *ex parte*, so that if there were no complaints the court had nothing to do, and its functions would cease from having discharged its duties, provided all the complaints were disposed of.

If, however, in the discharge of its functions, the court itself discovered, or if it was otherwise made to appear, that there were palpable errors which needed correction, the court might extend the time for making complaints *ten days further*, and might then meet and determine any additional matter complained of; and the assessor might for such purpose (supposing there were

no other person to make the complaint) be the complainant.

I think this function could only be discharged by the Court of Revision *once*, and they had no power to extend the time for making complaints *twenty* days, but only fourteen days, as limited and allowed by the 4th sub-section.

When Mr. McBride appeared, it was the 9th of May, the first day on which the Court of Revision sat. The assessor had been derelict in his duty in returning the roll, and was punishable. Still, the law, with regard to making complaints, is specific—they must be made within fourteen days after the 15th of April. The time had gone by for further complaints, for at least six days' notice is required by the 11th sub-section of the 60th section. So that I must hold that the application of Mr. McBride for, and the grant by the court of, an extension of time, could have only been legal under the 4th sub-section of the 60th section: that the court could only (legally) once grant such an extension. If they could assume the power of giving it twice—or two extensions—there would be no use in the limit fixed by the statute of confining complaints to ten days. The 4th sub-section does not say the court may extend the time for making complaints *from time to time* for ten days at a time, but *for ten days further*, and the court might then meet and determine the additional matter complained of. Beyond those ten days they could not adjourn, extend, or adjudicate.

I have no doubt, however, that in granting that extension it is general in its nature, and not confined to the person who might happen to make manifest the palpable errors which needed correction; but that it was open for any person to make whatever complaints he might think proper: that the court could not of its mere motion assume powers of extending the time for making complaints to any one in the absence of a complainant, no matter what the injustice might be, nor how illegally or negligently the assessor had acted in the discharge of his duties; that the only power they could invoke after the fourteen days had passed from the time fixed for the return of the roll, for the extension of the time for making complaints, was the provision of the 4th sub-section; and where there is a jurisdiction and power conferred by law, I suppose it will be proper to presume, in the exercise of it, that the principle *omnia rite esse acta* applies; there was certainly jurisdiction to support the proceeding once, that is, the first time it was exercised, but not twice. The second time, therefore, was illegal.

Having stated my view of the law of this case, I proceed now to dispose of the facts *upon the law*.

1st. I decide that the application made to the Court of Revision was, and could only have been, an application, and the extension of time for making complaints under that application could only have been exercised by the court under the 4th sub-section of the 60th section: that the record of the court is incomplete, but the evidence given outside of the record sufficiently shows facts from which I can presume the court acted in order to make their proceedings on the 9th of May legal.

2nd. I decide that all cases which were ap-