

## Election Case.]

## STORMONT ELECTION PETITION.

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to be mine if I paid off the debts. I have paid off between four and five hundred dollars. There was a change in matters after that; I became the master there, and he consented to it. My father used to apply to me for money within the last two or three years. I am managing this business as my own, on my own account, and for my benefit, and that is the understanding between us. I presume it is so generally understood in the neighbourhood. It is assessed for four or five years last in the name of myself and my father; the cattle all assessed in his name.

*Re-examined*—I did this to clear off the place; to get it in the end for myself. That was the motive with which I made the agreement. My father and the family were to have their support in the meantime, and whatever I made was to go to pay off the debts; they are not wholly paid yet. I had confidence in my father that he would will it to me, and did not make any agreement as to what I would have in the event of his not willing it to me."

RICHARDS, C. J.—The arrangement is, in fact, such as shews the use and occupation for the benefit of the estate in paying off the debt. I consider that the real understanding is, that he works for the benefit of the estate, and beyond what is used in supporting the family is to go to that purpose. If he had had a right to it for his own benefit, it would be possessed for his own use and benefit. What he really works for and the profit of the estate goes to is his expected possession of his father's estate under his will. I think this vote bad.

*Duncan Cahey*, called by the petitioner as to his own vote.

I live in Roxborough, 1st Con., part of 17 and 18. My father's name is Edward. My father lives on the lot; has lived there 30 years; owns part of it. I own the south part of west half of 17. I have a deed for it; I have it with me: I got it last August, the day it was dated; its date is the 16 August, 1870. I did not own the lot until I got the deed. I had no claim to it before that. I voted at the election; I am called McCahey. I don't own any other property; the property has been assessed in my name for the last 5 or 6 years. My father is over 70. I have generally paid the taxes."

*Harrison, Q. C.*—This man is not a voter within the meaning of section 5 of the Election Act 1868-9. He is not rated for the lot—if he was, he is not a voter under the section. The true meaning of the section is, that he was so possessed at the time of assessment. See the form of oath to be administered to voter under section 41 of the Act.

*Cameron, Q. C., contra*—There is nothing to show, that the roll might not have been revised after he got his deed—nothing in the 5th section of the Act to declare that the person should have the title, and nothing in the section referred to, to call attention to the particular objection now raised, and it is only by referring to the oath that the point comes up.

*Harrison in reply*—The statute only permitted appeals to 15th July under the Assessment Act, 32 Vic. cap. 36, section 63, sub-section 6. The general form of objection was sufficient: if the parties thought it not sufficiently specified,

they should have demanded better or further particulars.

RICHARDS, C. J.—I think this vote bad, because he did not possess the qualification at the time he was assessed, or before the final revision of the roll. The respondent's counsel does not say that he is prejudiced by the way in which the objection is taken. If he had been, I should 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.

*Benjamin Gore*, called by the respondent as his own vote.

It appeared by the evidence of the witness, that he lived with his father, and had voted on his, the father's property. His father had made a will in his favor, but he had no title but a verbal agreement with the father. The agreement was made at the time the will was made, about 1865 or 1866. The son was to take the proceeds after supporting his father and himself; did not account to his father for the proceeds. Witness was assessed for 10 acres, value \$250. The assessment was made in his, the witness' name, before the arrangement with the father. It was done to give him a vote. The father paid the taxes before the agreement, the son pays them now.

*Cameron, Q. C.*, contended that the arrangement was a colorable one, merely to give the son a vote. The ten acres was not specially mentioned.

RICHARDS, C. J.—If the name had been put on originally (before 1866) merely for the purpose of giving a vote, and that was the vote questioned, I should probably hold it bad; but, being continued after he really became the occupant for his own benefit (since 1866), I cannot say that he is not now properly a voter, even though the name was continued there to enable him to vote. I think the vote good.

*James Blair*—called to attack the vote of Donald Blair:

"I live on the West  $\frac{1}{2}$  of Lot 26 in the 6th Con. of Roxborough. I am the father of Donald Blair. He lives with me. He has no written agreement, lease, or instrument. When it was purchased he sent me the money to pay for it, about four years ago, and I took the deed in my own name. He was then in the States, and came back a year after. He is living with me as the other son. He is the oldest. He is not married. By means of that lot he has bought another last spring. He paid only \$300 for the lot. We are all working the place. He has got a deed for 32 in same Concession. Bought it last spring. I own my own place. The N. W.  $\frac{1}{4}$  of 26 in the 6th Con. is the lot the boy voted on and which he sent me the money for. My sons and me are working and occupying it since about a year ago. He had not any interest in it beyond this, that his money bought it."

*Cross-examined*.—I bought lot 26 more than thirty years ago. I bought 25 for Donald. I wrote him I could buy the place for him cheap. I mentioned \$300, if he could send me the money.