

Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

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every such candidate, when *personally* required as aforesaid to make the declaration, shall, before he shall be elected, give and insert at the foot of the declaration required of him a correct description of the lands or tenements on which he claims to be qualified according to law to be elected, and their local situation, by adding immediately after the word "Canada," which is the last word in the said declaration, the words "And I further declare the lands or tenements aforesaid consist of," &c.

Under both the Union Act and the consolidated statute, wilfully false statements in relation to the qualification make the party guilty of a misdemeanor, and liable to the pains and punishment incurred by persons guilty of wilful and corrupt perjury.

Sec. 37 of Con. Stat. enables a candidate to make the declaration voluntarily before as well as after the date of the writ of election.

Sub-sec. 2. "No such declaration, when any candidate is required to make the same by any other candidate, or by any elector, or by the returning officer, above provided, need be so made by such candidate unless the same has been personally required of him on or before the day of nomination of candidates at such election, *and before a poll has been granted*, and unless he has not already made the same voluntarily, as he is hereinabove allowed to do, *and not in any other case*; and when any such declaration has been so required according to law, the candidate called upon to make the same may do so at any time during such election; provided it be made before the proclamation to be made by the returning officer at the close of the election of the person or persons elected at such election."

Sub-sec. 3, allows the declaration to be made before the returning officer, or a J. P., who shall attest the same by writing at the foot the words "taken and acknowledged before me," etc., or words to the like effect, and by dating and signing the attestation.

Sub-sec. 4. When a candidate delivers or causes to be delivered such declaration so made and attested to the returning officer at any time before the proclamation made by him at the close of the election, he shall be deemed to have complied with the law to all intents and purposes.

The intention of the Imperial Legislature seems to have been to make the same qualification as to property necessary to qualify a candidate for the House of Commons, here in Ontario (Upper Canada), as was necessary to qualify him to be elected a member of the House

of Assembly of the then Province of Canada. Of course the latter part of the declaration, where it alleged that the qualification was not colorably obtained to qualify him to be returned a member of the "Legislative Assembly of the Province of Canada," could not apply in the same words; the intention being that he should declare that he had not obtained the qualification colorably to qualify him to be elected "a member of the House of Commons of the Dominion of Canada." The intention seems plain and undoubted. There is also another difficulty in literally complying with the terms of the Con. Stat. cap. 6, as to the declaration being delivered to the returning officer at any time *before the proclamation* made by him at the closing of the election, no such proclamation being required under the election law as it then stood. By 29 & 30 Vict. cap. 13, sec. 10, no day was to be fixed for the closing the election, nor any proclamation of the candidate elected. Nevertheless, if the candidate made the declaration and delivered it to the returning officer before the polling was closed, and probably before the returning officer had made his return to the Clerk of the Crown in Chancery, of the total number of votes taken for each candidate, it would have been in time. Though the terms of the Consolidated Act could not be literally complied with, it could in substance. We are not, therefore, prepared to say that by the alteration in the law referred to there has been such a change effected that no property qualification was required by a candidate to be elected for the House of Commons at the time the election was held.

If the candidate who now seeks the seat was not qualified under the statute to be elected, I take it for granted that the respondent will show that, under the 54th section of the Controverted Elections Act of 1873. It does not follow from this, however, that he may not be a good petitioner. Before the Grenville Act, 10 Geo. 3, cap. 16, there was a difficulty as to the person who could be a petitioner, and his qualification as an elector was often attacked, but that statute provided that any person claiming to vote, or who claimed to be returned, might present a petition complaining of an undue election, under the Imp. Statute, 31 & 32 Vict. cap. 125 (from which our Acts are copied). It is provided by sec. 5, that a petition complaining of an undue return, or undue election of a member to serve in Parliament, may be presented to the court by any one or more of the following persons:—

1. Some person who voted, or who had a right