

intendment, that in an act so worded it is compulsory to award imprisonment. As to the words "such further time," I do not think that they necessarily show that there must be a previous award of imprisonment as a substantial punishment.

I have examined the case of *In re Slater and Wells*, decided under Con. Stat. C., cap. 105, sec. 16, reported in 9 U. C. L. J. 21.

I am not wholly free from hesitation on this warrant, but on the whole I think it is sufficient, and that I am not bound to read such a document with the extreme severity of construction insisted on by the applicants.

I direct the prisoner to be remanded.

If dissatisfied with my view, he is not without a remedy by application elsewhere.*

ELECTION CASE.

(Reported by R. A. HARRISON, Esq., Barrister-at-law.)

THE QUEEN EX REL. FORD V. COTTINGHAM.

Assessment roll—Conclusive as to property—Franchise to be favored—Residence—Onus of proof—Con. Stat. U. C. cap. 64, s. 75 and 97, sub-sec. 9.

Held, that the revised assessment roll is as to property qualification binding and conclusive as to the several persons therein rated.

Held also, that the inclination of the courts is to favor the franchise.

Where the votes of householders were attacked as not being householders resident for one month next before the election, and the fact of non-residence was not clearly shown, the votes were sustained.

[Common Law Chambers, March 1, 1865.]

Hector Cameron, on the 6th of February, 1865, obtained a writ of summons in the nature of a *quo warranto*, directed to the defendant, to show by what authority he exercised the office of councillor for ward number one of the township of Emily, and why he should not be removed from the same, and the relator declared duly elected in his place.

The statement of the relator set forth that he had an interest in the election as a candidate for councilman, and the objections were—1st. That the election was not conducted according to law, the returning officer having refused to administer the oaths of qualifications required by the statute to certain persons who voted, although duly requested by the relator so to do. 2nd. That the defendant did not receive a majority of votes of persons duly and legally entitled to vote thereat. 3rd. That he, the relator, received a majority of legal votes polled, and was duly and legally elected.

The application was supported by the affidavit of the relator, which stated that the returning officer refused to administer the oaths required by law to John McNeily and Alexander Shannon, two electors, who voted for the defendant, and having refused to administer the oaths to these electors, he considered it useless to ask the returning officer to administer the oaths to others of the voters to whom he had objections. That

he was advised and believed that the votes of twelve persons whom he named, including the two above named, and all of whom voted for the defendant, were bad and ought to be struck off. 1st. John McNeily, who voted in place of his son, who in truth was the person assessed, and whose name was on the roll. 2nd. Wm. Clarke, who although assessed in ward number one, for a shop, resided in ward number four, using only the shop for his business during the day. 3rd. Thomas Baldwin, who was not assessed on the last assessment roll, in respect of real property, but only in respect of personal property, and only occupies a house as a squatter supposed to be on the road allowance. 4th. Robert White, a like objection. 5th and 6th. Wm. and James Anderson, who were jointly assessed as freeholders, but he had reason to believe that they are not freeholders. 7th. Jas. Balfour, also assessed as a freeholder, but he believed that he had no interest in the property assessed. 8th. David Balfour, same objection. 9th. Matthew Larmer, assessed as a householder, the defendant being landlord, but relator was informed that the premises are a school-house and belong to the trustees of the school section. 10th. Alex. Scott, assessed as a householder, and to the best of relator's knowledge had no interest in lot as tenant or proprietor, nor did he live on the lot; he being a miller in the employment of defendant, and the house for which Scott was assessed being occupied by another. 11th. Wm. Cottingham, assessed as a freeholder, but relator believed he had no deed for the lot and no interest in it. 12th. Alex. Shannon, assessed as a householder, objected to as not residing in Emily for two months next before the election, being then residing at Port Hope. The relator further stated that the returning officer, although he (the relator) required him to administer to Alex. Shannon each of the oaths required by law, the returning officer only administered that portion of the bribery oath whereby Shannon was made to declare that he had not been bribed directly or indirectly at the election.

The relator, in support of the application, filed affidavits of other parties referring to each of the votes objected to, and testifying to the grounds alleged by the relator against the legality of the votes.

C. S. Patterson shewed cause, reading and filing, on the part of the defendant, several affidavits.

Gabriel Balfour, the returning officer, testified to a list of votes attached to his affidavit as being the one used at the election, and which was sworn to by the clerk of the municipality as a correct list of the voters for the ward, taken from the last revised assessment roll of the township. That the said list was used by him at the election, and was seen and handled by both the candidates and other electors and referred to by them, and that no objection was made to it. As to the voter, John McNeily, when he tendered his vote the relator, or some one on his behalf, asked the returning-officer to swear him as being the person assessed, it being alleged that it was his son whose name was on the assessment roll, when the assessor being present explained that it was the voter who was assessed, and that the objection was then withdrawn and the demand to swear him waived. He stated that he was also

* Prisoner subsequently obtained from Practice Court, returnable in full Court of Queen's Bench, a rule nisi on the Attorney-General to show cause why a writ of *habeas corpus* should not be issued, with a view to the revision of the above decision of Mr. Justice Hagarty; but the court, holding that the judge in Practice Court had no jurisdiction to grant the rule nisi, declined to express an opinion on the several points decided by Mr. Justice Hagarty.—Eds. L. J.