

declaration of office made and subscribed by the said Bell pursuant to the statute in that behalf, s in the words following:—

I, Robert Bell, do solemnly declare that I am a natural born subject of Her Majesty: that I am truly and *bona fide* seized or possessed to my own use and benefit of such an estate in freehold, to wit three houses and premises on Camden street, in St. Andrew's ward, as doth qualify me to act in the office of councilman for the ward of St. Andrew, according to the true intent and meaning of the said municipal laws of Upper Canada.

(Signed) ROBERT BELL.

H. J. Bradbeer made oath that he made inquiry in the office of the Toronto General Hospital Trust, and found that the said Robert Bell is lessee of lot number three on the north side of Camden Street, in the said city of Toronto, having a frontage on said Camden street of fifty-two feet, and a depth of about eighty-six feet: that the said property is leased to the said Bell for the term of twenty-one years, and said term commenced on the eleventh day of July, in the year of our Lord 1855, and that the rent paid by said Bell to said Hospital Trust is \$36.40 per annum.

John Carr, the city clerk, certified that Mr. Robert Bell was assessed in the assessment roll for the ward of St. Andrew for the year 1864, upon which he qualified as councilman for St. Andrew's ward, for 1865, as follows—

Camden-street, N. S.

No. 718—Robert Bell, leasehold, Robert

Bell, painter, leasehold \$72 72

No. 719—Donald Grant, household, Robt.

Bell, painter, leasehold 42 42

No. 720—Robert Johnston, household, R.

Bell painter, leasehold 72 72

And that the above property was entered in the declaration of qualification book of the city of Toronto, as in "freehold," in place of, as property, in "leasehold."

A. McNab for the relator, referred to Con. Stat. U. C., cap. 54, ss. 72, 175 and 183.

HAGARTY, J.—The Municipal Institutions Act, section 175, requires that each person elected shall before taking office make a declaration of qualification. This was made by Mr. Bell, declaring that he was "seized or possessed to his own use and benefit of such an estate in freehold, to wit, three houses and premises on Camden-street, in St. Andrew's ward, as doth qualify him to act in the office of councilman, &c." It is now stated as a matter of fact that Bell is not the owner of an estate in freehold in the property mentioned.

On the assessment roll he appears as a leaseholder, rated for these premises at \$186 per annum, and it is admitted that he is correctly assessed therefor at that rate. Now, section 70 of the act declares that \$160 per annum is a sufficient qualification for a councilman. Mr. Bell therefore, as a matter of fact, was duly qualified when he was elected.

I am, however, asked to grant a *quo warranto* summons, on the ground that although true it is he was qualified, and made a declaration to that effect, yet as the declaration for some reason or other describes his estate as a freehold, instead of a leasehold for years, the election should be declared void.

The judge to whom application is made for a *quo warranto* summons under s. 128 of the act, may order the writ to issue, if there be reasonable grounds for supposing that the election was not legal, or was not conducted according to law, or that the person elected thereat was not duly elected. Nothing of this kind is here suggested. If Mr. Bell's declaration has been made in bad faith, there is ample redress provided therefor by s. 423 of the act, and I think I must leave all persons considering themselves aggrieved thereby to seek the remedy provided by the statute. The candidate being in fact fully qualified, it is difficult to understand what evil motive could have induced the misstatement in the declaration. I am very far from adopting the confident assertions of the relator charging that such misstatement was made falsely and fraudulently.

As Bell was properly qualified, and nothing is alleged against the manner of his election, I do not see how I can interfere by *quo warranto*, because no apparent mistake has been made in the description of the nature of an estate in property, amply sufficient in itself as a qualification. If it were more than a mistake the parties have another and different remedy.

I refuse the summons.

Summons refused.

COUNTY COURTS.

In the County Court of the County of Essex.

In re TIMOTHY O'CONNELL, AN OVERHOLDING TENANT.

Overholding tenants—27 & 28 Vic. cap. 30—Procedure.

Held, that a landlord proceeding under 27 & 28 Vic. cap. 30, against an alleged overholding tenant, must adduce some evidence to shew that the tenant refuses to give up the premises, and that his tenancy has expired.

Held also, that the affidavit of the landlord himself, filed under sec. 1, with a view to proceedings under the act, is not legal evidence against the tenant.

INSOLVENCY CASES.

Before the County Judge of the County of Lincoln.

McINNES v. BROOKS.

Insolvent Act of 1864, sec. 3, sub. sec. 2—Demand on Trader to make Assignment—Default—Attachment—Endorsing Writ—Computation of Time—Affidavits

A trader having ceased to meet his liabilities, a demand was served upon him on 31st January, requiring him to make an assignment. On February 6th (the 5th being on a Sunday) an order was granted for and an attachment issued. One of the affidavits filed on application for attachment was sworn to on February 4th. On an application to set aside the writ and all proceedings for irregularity, it was *held*,

1. That the order for the issuing of the writ was not made too soon.

2. That it was immaterial that one of the affidavits was made within the five days allowed for