

[Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

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By sec. 4, subject to the provisions thereafter made, the qualification of voters at elections in the Province of Ontario, for members of the House of Commons *shall be that established by the laws in force in that Province on 23rd January, 1869, as the qualification of voters at elections of members of the Legislative Assembly*; and the voters' lists to be used at the election of members of the House of Commons shall be the same as if such elections were of members of the Legislative Assembly, on the basis of the qualification aforesaid; and the polling subdivisions or wards shall be the same as if such elections were for members of the Legislative Assembly; and the returning officer shall provide a polling-place for each sub-division or ward in the most central or convenient place for such elections.

By sec. 5, the oath or affirmation to be required of voters in the said Province shall be that prescribed by the 54th section of cap. 6 of the Consolidated Statutes of Canada, and no other, except in Algoma and Muskoka, as there after provided.

Under sec. 41 of the British North America Act, all laws in force in the several Provinces at the time of the Union relative to the voters at elections of members of the Legislative Assembly, the oaths to be taken by voters, the proceedings at elections, &c., respectively, apply to elections of members to serve in the House of Commons. The qualification of voters in Ontario referred to by section 4, above cited, is regulated by Provincial statute, 32 Vict., cap. 21. By sec. 5, of that Act, the following persons, and no other persons, being of the full age of twenty-one years, and subjects of Her Majesty by birth or naturalization, and not being disqualified under the preceding sections (2, 3, 4,) or otherwise by law prevented from voting, if duly registered or entered on the last revised and certified list of voters according to the provisions of that Act, shall be entitled to vote at the elections of members to serve in the Legislative Assembly, viz:—

(1.) Every male person *being actually and bona fide the owner, tenant, or occupant of real property of the value hereinafter next mentioned, and being entered on the then last revised assessment roll for any city, town, village or township, as the owner, tenant or occupant of such real property of the actual value in cities of \$400, in towns of \$300, in incorporated villages of \$200, and in townships of \$200, shall be entitled to vote at elections of members of the Legislative Assembly.*

As to the fifth paragraph, we think the petitioner may show:—

1. That the voter was not twenty-one years of age.
2. That he was not a subject of Her Majesty by birth or naturalization.
3. That he was otherwise by law prevented from voting.
4. That he was not actually and *bona fide* the owner, tenant or occupant of the real property in respect of which he is assessed.

We think the roll conclusive as to the amount of the assessment. The fact that the name of a person is on the assessment roll or list of voters is not conclusive as to his right to vote. If his name is on the list and he takes the oath required by the statute, the returning officer may be bound to record his vote, but that does not seem conclusive under the words of the Ontario Act. It is not being registered that gives the qualification; but though he has the qualification in other respects he cannot vote unless his name is entered on the proper list. At one time, in England, though the name was on the register and the returning officer was bound to admit the vote, yet it might be attacked on a scrutiny, and even now for some causes may still be attacked.

Under the view we take of the qualification being regulated by the Ontario Act, we do not think we can properly pass over or disallow the part of the 5th paragraph of the petition objected to.

The objection to the 7th paragraph of the petition is, I think, abandoned. If not, I see no objection to the paragraph standing as it is.

Then, as to the objection to the latter part of the 8th paragraph, paying the travelling expenses of persons coming and returning from the election. By the Corrupt Practices Act of Canada of 1860, sec. 3, paying the expenses of voters is an illegal act, and any elector who shall hire his horse to any candidate or agent for the purpose of conveying electors to and from the polling places, shall be disqualified from voting at such election. Section 71 of the Ontario Act, 32 Vict., cap. 21, is similar in effect, and a penalty of \$100 is imposed, but the latter part provides that any elector who shall hire a horse, &c., for any candidate or for any agent of any candidate for the purpose of conveying any electors to and from the polling place, shall be disqualified from voting at such election, and under a penalty of \$100. *Cooper v. Slade*, 5 H. L. 772, seems to be to the effect that merely paying the expenses of an elector, as