CANADA REPORTS.

ONTARIO.

MUNICIPAL CASES.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law.)*

Reg. ex rel. Lachford v. Frizell.

Municipal Law—Property Qualification—Occupant. —Construction of Statute.

A person having the mere possession of a lot vested in the Crown, determinable at any moment, has not such an estate in it as will qualify him under the Municipal Act; but he is nevertheless rightly assessed, under 32 Vict. cap. 36, sec. 9, ss. 2 (Ont.)

A lot was assessed thus:—"No 25, H. B., Yeoman, &c," under the head "name of taxable party," and then under the heading "name and address of the owner, where the party named in column 2 is not the owner," appeared the name of the respondent. His name was not bracketed with that of H. B., nor was it stated in any way to be a separate assessment. *Held*, that the roll shewed that the respondent was assessed for this lot and could qualify upon it.

[Chambers, 1872,—*Mr. Dalton.*]

The relator complained that the respondent, who claimed to be the Reeve of Tyendinaga, was not entitled to hold the office, on the ground that he had not the necessary property qualification. He was assessed on Lot 24, Con. A, Tyendinaga, as house-holder, and on Lot 40, in Con. 48, as a freeholder. Lot 24 was part of the Indian Reserve, and the respondent, being Indian agent, was allowed, in addition to his salary, to occupy this lot. The land was held by the Crown in trust for the Indians, and the respondent had possession determinable at any moment. As to Lot 40, he owned the fee, but had a tenant in possession. The assessment of this lot was as follows:—

Name of taxable party—

No. on Roll.	Name of Taxable Party.	Occupation.	H. or F.	Age.	Name of Owner, &c.	School Section.
25	Bowen, H'y	Yeoman		28	Well'gton Frizell	14

As to Lot 24, it was contended that the respondent was not the legal or equitable owner, proprietor or tenant.

As to Lot 40, it was urged that by the assessment as above set out, the names not having been bracketed, and there only being one number, the respondent was not rated in his own name on the last revised assessment roll, as required by 29, 30 Vict., cap. 51, section 21 and 32 Vict., cap. 36, shed. B. (Ont.)

C. S. Patterson, for the respondent.

R. A. Harrison, Q.C., for the relator.

Mr. Dalton.—As to Lot 24, Con. 4, Tyendinaga,—the defendant has in my opinion no property qualification in respect of it.

There is, I believe in this case, no one fact in dispute, and Mr. Frizell himself gives this account of his occupation of this land. It is Indian land vested in the Crown for the benefit of the Indians, and he, being Indian agent in that district, is allowed besides his income otherwise, to occupy this land, which he has accordingly occupied for nearly two years—not for any public use or purpose, but for his private advantage—the use of the land being given to him by the Indian Department, as a part of his salary in fact. I think the assessment against Mr. Frizell in respect of this lot was right, so as to bind him personally, but not the land, under sec. 9, sub-sec. 2, of the last Assessment Act, for he was in occupation for his own interest and advantage. But the assessment cannot qualify him, for he had not at the time of the election, as proprietor or tenant, a legal or equitable freehold or leasehold. He had no estate whatever, but a mere possession, which might be determined in an hour. See *White* v. *Bayley*, 10 C. B. N. S. 227 and *Mayhew* v. *Suttle*, 4 E. & B., 347, 357.

As to the other Lot, No. 40—The defendant is the owner in fee simple. It was in possession of a tenant at the time of the assessment. The amount of the assessment is sufficient, and the only question is, whether in point of form the assessment on the roll, if it be an assessment at all, is a sufficient rating under sec. 70 to qualify the defendant. Whether it is sufficient to render him liable for the taxes is, I suppose, the same question. It is singular that the form which is given in the Ontario Statute, 32 Vict., schedule B, is not followed—a thing so easy to be done. By the 26th sec. of 32 Vict. it is provided: "When land is assessed "against both the owner and occupant, or "owner and tenant (as is the case here), the "assessor shall place both names within brackets "on the roll, and shall write opposite the name "of the owner the letter F, and opposite the "name of the occupant or tenant the letter H "or T, and both names shall be numbered on "the Roll." This direction has not been followed here. It is in this way:—"No. 25, —Bowen, Henry—Yeoman—H.—(aged) 38"—then under the heading "Name and address of the owner where the party named in column 2 is not the owner," "William Frizell." The name of the defendant is not set down under that of Henry Bowen and bracketed with it, nor is the assessment against the defendant sepa-