And I hereby publicly notify the electors that they will be throwing away their votes if they are recorded for Mr. Boyd, and I request that you will inform the electors of this my protest.

"Wm. Adamson.

"Toronto, 6th January, 1868."

"The above protest was read by me at commencement of election.

"John Burns,

"*Returning Officer 1st Division.*"

A similar protest was addressed, to and stated in the same terms to have been read by Robert H. Trotter, Returning Officer, 2nd Division.

Copies of this protest were also shown to have been affixed in and about the polling booths in conspicuous places, but no notice appeared to have been given at the time of nomination, nor did the relator at that time contend that the defendant was disqualified, and that he was the only qualified candidate.

Harman for the relator.

1. The defendant was not qualified. He could only attempt to qualify on the property in St. David's Ward, which was clearly insufficient, and he had not "*at the time of the election*" the necessary freehold or leasehold required by sec. 70 of 29 & 30 Vic. cap. 51, having parted with all interest in the property on Wellington Street, and the former tenancy having been surrendered by operation of law.

2. The defendant was disqualified by not having paid *all* taxes due by him, pursuant to 29 & 30 Vic. cap. 52, sec. 73. These taxes should have been paid *at the time of the election*: *Reg. ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N.S. 126; 1 L. C. G. 72.

And the election commences with the day of nomination, as is clear from the expressions used in the Act. Sec. 101 of 29 & 30 Vic. cap. 51, defines "the proceedings *at* such elections" (not *prior* to the election) to be, First, a day for nomination of candidates; Second, a declaration at such nomination, if no more candidates than offices are proposed, that such candidates have been "duly elected," and, Third, an adjournment, not another meeting, if there are more, and a poll is required. The case may be argued thus.—In one ward a candidate is elected on the first or nomination day by acclamation; in another ward a candidate is elected on the second or adjourned day by vote, both must have paid their taxes at the time of election, that is to say, at the time not only that they were, but could have been elected, and to decide otherwise would be to give two interpretations to the law, one to meet the case of the candidate elected by acclamation on the nomination day, and another to meet the case of the candidate who having opposition has to wait and stand a poll at the adjourned meeting when the same can be opened.*

3. The defendant had not a majority of qualified voters, inasmuch as the number already specified had not paid their taxes before 16th December preceding the election.

4. It is doubtful whether the relator can under all the circumstances claim the seat; but he is entitled to the costs of these proceedings.—*Reg. ex rel. Tinning* v. *Edgar*, 4 Prac. R. 36; 3 U. C. L. J. N.S. 39; *Reg. ex rel. Dexter* v. *Gowan*, 1 Prac. R. 104; *Reg. ex rel. Rollo* v. *Beard*, 1 U. C. L. J. N.S. 126; *Reg. ex rel. Blakely* v. *Canavan*, 1 U. C. L. J. N.S. 188; *Reg. ex rel. Hartrey* v. *Dickey*, 1 U. C. L. J. N.S. 190; *Reg. ex rel. Carroll* v. *Beckwith*, 1 Prac. R. 278.

Duggan, Q. C., and *Harrison*, Q. C., shewed cause.

1. The defendant claims to be qualified on a tenancy still subsisting as between him and the landlord. The dissolution between Boyd & Arthurs, as affecting their business transactions, would not divest Boyd of his rights as Todd's tenant. Whatever surrender there may have been of Arthur's moiety, there was none of Boyd's. There is no act of his from which an inference of a surrender by him could be shewn, except his leaving the occupation of the premises, and that really proves nothing; and no act of his former partner could bind him.—Woodfall L. & T. 272, *et seq.*; *Agard* v. *King*, Cro. Elis. 775; *Mackay* v. *Macreth*, 4 Dougl. 213; *Doe* v. *Ridout*, 5 Taunt. 519; *Mollett* v. *Brayne*, 2 Camp. 103; *Thomson* v. *Wilson*, 2 Starkie, 379; Shep. Touch 272; Arch. L. & T. 83; *Carpenter* v. *Hall*, 15 C.P. 90.

The roll is however conclusive as to property qualification (the language being even stronger in this respect with reference to candidates than voters, see secs. 70 and 75), and the Courts will as far as they can uphold the qualification in favor of the sitting member. — *Reg. ex rel. Blakely* v. *Cameron*, 1 U. C. L. J. N. S. 188; *Reg. ex rel. Chambers* v. *Allison*, *Ib.* 244; *Reg. ex rel. Ford* v. *Cottingham*, *Ib.* 214; *Reg. ex rel. Tilt* v. *Cheen*, 7 U. C. L. J. 99; *Reg. ex rel. Laughton* v. *Baby*, 2 U.C. Cham. R. 130.

2. There is no affirmative declaration that the candidate must have paid all his taxes before the election, only that non-payment disqualifies him from being a member, and he does not become a member of the Council until he takes the oath of office.

The defendant paid his taxes before the election, which commences not with the nomination but with the recording of the votes and the choice by the electors between two or more candidates.

It is sufficient in any case that he has paid his taxes in the ward in which he lived, otherwise it would follow that he must have paid his taxes in a different municipality, which the statute could not contemplate.

3. The names of the voters must be received as they appear on the lists, and there is no machinery to carry out the provision disqualifying voters who have not paid their taxes, and if a new election is ordered the same lists must be used.

The persons whose names appeared on the roll were accepted by both candidates as qualified voters so far as payment of taxes was concerned, and though an elector might not perhaps be bound by such an agreement, the candidate would: *Reg. ex rel. Charles* v. *Lewis*, 2 Cham. R. 171.

The roll is conclusive.—Sec. 101, ss. 5; *Dundas* v. *Niles*, 1 Cham. R. 198; *Reg. ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N.S. 244.

More votes are however attacked by the defendant than by the relator on this ground, and a scrutiny must be had as to that.

* *The Queen* v. *Cowan*, 24 U. C. C. B. 606.—Eds. L. J.