

at the election was a copy of the *assessment roll* for Whitby for 1853, so far as the same contained the names of all the male freeholders and householders rated upon such assessment roll, in respect of rateable real property lying in said township, and not of the collector's roll: that on the said copy of the assessor's roll was endorsed an affidavit (of which a copy was annexed by deponent) made by John Gordon, the returning officer, who was the township clerk of Whitby, that, *to the best of his knowledge*, the same was a correct list of the male freeholders and householders, with the amount of the assessed value of the real property for which they are respectively rated on the original assessment roll of the township of Whitby for 1853.

This affidavit was sworn on the 2nd of January, 1854, before W. Allison, who signed as a justice of the peace for the county of Ontario, or an officer having authority to administer an oath or affirmation for that purpose.

This copy of the assessor's roll, the only copy of a roll used at the election, was verified only by that affidavit.

On the part of the defendants, an affidavit of Gordon only was filed, who swore that, as town clerk, he had the legal custody of the assessment roll for 1853, as corrected by the court of revision, from which the collector's roll was prepared: that this collector's roll was a true copy of the *said original roll*, as corrected: that the roll which was prepared for the returning officer was a true copy of *said original roll*, and corresponded in every particular required by law with collector's roll: that at the time of the election the roll which had been prepared from the said original roll for the collector was in the collector's hands, and had not been returned to him, the town clerk, and therefore the copy of the roll furnished to the returning officer could not be compared with the collector's roll; but that both were and are true and correct copies of the same original roll, as required by law for the purposes of the election: that having the custody, as clerk, of the said original roll, he did, just before holding the election, make the affidavit of verification written on the roll, furnished for the purpose of the election: that W. Allison had been a justice of the peace for the united counties of York, Ontario and Peel, previous to and during the year 1853; that at the time the affidavit was taken by him the county of Ontario had been made a separate county, and that W. Allison was still empowered to administer the oath, unless such separation of the county deprived him of the authority to act as a justice for the county of Ontario, under his commission for the united counties: that Ontario was proclaimed a separate county on or before the 2nd of January last (1854), on which day the affidavit was taken, and that he, Gordon, was not then aware that the county of Ontario had been made a separate county: and that no objection to the returning officer's roll, the affidavit of the returning officer, or other objection to the mode of conducting the election, was made by any person at any time during the election or at the close.

The statutes and clauses bearing upon the question are 16 Vic. ch. 181, secs. 10, 27; 16 Vic. ch. 182, secs. 25, 39, 46; 12 Vic. ch. 78, secs. 18, 37.

ROBINSON, C. J.—The relator is not entitled, I think, to succeed upon either of his objections.

The first is, that the returning officer did not procure a correct copy of the collector's roll for the year preceding the election. It is true that the returning officer had not at the election a copy of the collector's roll, which had been actually transcribed from the collector's roll; and it was a plain omission of the returning officer's duty that he did not procure a copy to be taken. That the collector's roll is not yet returned by the collector is no excuse; that might very well be the case consistently with the fact, but there is no reason to suppose that there would have been any difficulty in obtaining access to the roll in the collector's hands, either for the pur-

pose of transcribing it, or in order to compare it with the copy which had been taken from the assessor's roll. It would not have signified from what paper the copy was taken, if after it was written out it had been compared, as it ought to have been, with the collector's roll.

Still it is here sworn, and not contradicted or attempted to be disproved, that the copy of the roll which the returning officer had was in fact a true and correct copy of the *collector's roll*. The deponent does not confine himself to swearing that it was a copy of the assessor's roll, or a copy of a copy, but that the collector's roll is itself a true and correct copy of the assessor's roll as corrected upon revision, and that the returning officer's copy was a true and correct copy of the same assessor's roll as corrected. Of course, if both are true copies of the same roll, they must be true copies of each other.

It does therefore appear that the returning officer had that copy of a roll which the law requires.

But at any rate, I do not consider that an election is liable to be held void upon an objection of this kind, where all proceeded without difficulty or question at the time. It is a direction of the legislature, that for facilitating the election, and giving information to all concerned as to those who are the qualified voters, there should be present at the election a true copy of the collector's roll: but if the candidates and voters are content to proceed without looking at it, or without enquiring whether there is such a roll present or not, then I am clear that the election cannot be held void because it has been afterwards discovered and brought to light that there was no copy of a roll in the possession of the returning officer, or that the copy which he had was incorrect.

It must be at least shewn that the absence of such a roll, or the incorrectness of it, has prejudiced the election, or that some candidate or voter on that ground refused to proceed, and relied upon the objection, not taking his chance of the result of the poll without objection, and silently reserving to himself a right to accept afterwards.

And I desire to guard myself against being understood to express an opinion that an election should at any rate be held void on an objection of this nature, when it is not even attempted to be shewn that the candidates returned were not themselves all in fact eligible, or that they had not in fact a majority of legal votes.

I do not think, either, that the election can be held void on the second objection, that the copy was not authenticated by such affidavit or affidavits as the law requires. I consider that provision to be merely directory, and at any rate that it is not competent to any party to object to the election on that ground after all is over, and when no such exception was taken before or during the election, and when no variance is shewn between the copy used and the collector's roll.

If I thought otherwise, it would be immaterial to consider the effect of the alleged want of authority in Mr. Allison to administer the oath, for it would be fatal that there was no affidavit of the collector, since, according to what is now shewn, the roll was at the time of the election in his legal custody.

But if there existed no ground for that objection, and if I was of the opinion that, whether the want of a copy of the roll duly authenticated was objected to during the election or not, the validity of the election must inevitably depend upon the question whether there was in fact a proper copy of the collector's roll, authenticated precisely as the statute directs, then I could not have held that the election here must fail on the sole ground of Mr. Allison's assumed want of authority to administer the oath.

I do not consider that he derived any continued authority to act under the statute 12 Vic. ch. 78, sec. 37, for that is a provision to meet the case of justices appointed for districts before