

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, June 18, 1879.

JOHNSON, TORRANCE and PAPINEAU, JJ.

BEAUDRY et al. v. BROUSSEAU.

Electoral lists—Property qualification—Value of Usufruct.

JOHNSON, J. This is a Provincial election petition by qualified electors against the return of Mr. Brousseau as member for Verchères, and it contains three separate grounds of objection to the return and election of this gentleman.

First, it sets up, as was done in the Chambly case, that the wrong lists were used. 2nd. The want of legal qualification as a member of the House of Assembly by the candidate returned; and 3rdly, certain irregularities in the voting by which the result of the election might have been affected. Under the first head, the question raised is precisely the same as that which was decided in the Chambly case, only the position of the parties is reversed. There the voting took place under the lists that had ceased to be in force, and the election was, on that ground, set aside. Here the voting was under the new lists actually in force at the time of voting, and therefore, unless we could set aside our own decision in the Chambly case, we must hold here, as we did there, that the votes of electors on the lists at the time of voting are legal votes. We may express our regret that it should have fallen to the lot of the same Judges who heard the Chambly case to hear this one—that is to say, regret if the petitioners should imagine they have lost any advantage; but we have done all that was in our power, by notifying the Judges in our district next on the rota, as the rules of practice require, and we were unable to get their attendance, and we mentioned this to the parties before the present case was heard, and no objection was made. Therefore, we desire merely to say, on that part of the case, that we see no reason to change the opinion we have already expressed, and all the less because the other party, to whose benefit it would inure in the present case, had a right to rely on that decision.

With respect to the second question raised, the want of qualification in the candidate, I must say that it is one that has given me some anxiety; because I have very little to guide me in the books, or in my experience, on the subject. At the same time, there are the plain words of a statute, and the common sense application of it; and I do not think there is any substantial difficulty in dealing with it. The point has been urged on behalf of the petitioners with great ability and fairness, and has been met by the other side with equal ability, and in a spirit of complete truthfulness and candor. Perhaps the best way of stating the pretensions of the parties will be to begin by citing the language of the law itself that requires this qualification. Sec. 124 of the 38th Vic., c. 7, enacts that "no person shall be elected a member of, or vote, or sit as such in the Legislative Assembly of this Province, who is not at least twenty-one years of age, of the male sex, a subject of Her Majesty, by birth or naturalization, free from all legal incapacity, and proprietor in possession of lands or tenements in the Province, of the value of \$2,000, over and above all rents, hypothecs, incumbrances and hypothecary claims thereon." Sec. 125 requires a declaration to be made by the candidate, if it is formally demanded in writing; and the declaration he is required in such case to make is as follows:—"I do declare and certify, that I am duly seized to my own proper use and benefit of lands or tenements in the Province of Quebec, of the value of at least two thousand dollars, over and above all rents, hypothecs, incumbrances and hypothecary claims charged upon, or due or payable out of, or affecting the same; and that I have not, collusively or colourably obtained a title to, or become possessor of, the said lands and tenements, or of any part thereof, for the purpose of qualifying myself to be returned a member of the Legislative Assembly of the Province." (Then follows a description of the property.)

I may state here that, as I understood the argument of the learned counsel of the petitioners, he contended that this law required of the candidate three things: 1st. The property and possession of the lands or tenements of the required value, and for his own use and benefit; 2nd. That he had not got his title to them collusively or colourably; and 3rd. That