

ting magistrate still to transmit a certified copy close under his hand and seal.

Order accordingly.*

ELECTION CASES.

(Reported by R. A. HARRISON, Esq., Barrister-at-Law.)

REG. EX REL. GRAYSON V. BELL.

Municipal Institutions Act, ss. 70, 175, 183—Qualification—Declaration of qualification—Mistatement therein—How election affected thereby.

The power of a judge under s. 128 of the Municipal Institutions Act as to the issue of a *quo warranto* summons is to be exercised upon a reitor shewing reasonable grounds for supposing that the election was not legal, or was not conducted according to law, or that the person elected thereat was not duly elected; but where the relator admitted a qualification in fact, and made no complaint as to the legality of the election or the conduct of it, contenting himself with attacking the declaration of qualification subsequently made by the candidate, the writ was refused.

[Common Law Chambers, February 13, 1865.]

The relator complained that Robert Bell, of the city of Toronto, painter, had not been duly elected to, and had unjustly usurped the office of councilman for the ward of St. Andrew, in the said city of Toronto, under the pretence of an election, held on Monday and Tuesday the second and third days of January, 1865, at the said ward of St. Andrew, in the said city, and declaring that he the said relator had an interest in the said election, as an elector in the said ward, who gave his vote at the said election, shewed the following causes why the said election of the said Robert Bell to the said office should be declared invalid and void—

1st. That the said Robert Bell has not, and at the time of the said election had not the necessary property qualification as a freeholder for election as councilman, for the reasons following, namely: that at the time of the said election, and the making and subscribing the declaration required by the 175th section of the 54th chapter of the Consolidated Statutes of Upper Canada, the said Bell was not the proprietor in fee simple of the lands and premises mentioned and described by the said Bell in the said declaration.

2nd. That the said lands and tenements mentioned in the said declaration are the lands and tenements of the trustees of the Toronto General Hospital, and the said Bell is the lessee of the said trustees, and never was the proprietor of the said lands and tenements, or interested therein, except as tenant.

3rd. That before the election for councilman for the said city of Toronto for the year of our Lord one thousand eight hundred and sixty-five, the said Bell mortgaged his interest in the said leasehold premises for four hundred dollars or thereabouts, as appears by the records in the registry office in and for the said city of Toronto, and the said mortgage, as appears by the said records is still unpaid and undischarged.

4th. That at the time of the taking of the last assessment for the city of Toronto, he was not the owner of the property on which he claims to qualify as freeholder, and that he falsely and fraudulently represented in his said declaration

of office that he was the owner in fee of the said lands and tenements.

5th. That inasmuch as the said Bell has not made and subscribed the declaration as required by the 175th section of the 54th chapter of the Consolidated Statutes of Upper Canada, and within the time required by the 183rd section of the said chapter of the said Statutes of Upper Canada, he, the said Bell, is therefore disqualified from holding said office of councilman for the said ward of St. Andrew for the said city of Toronto.

The relator made oath that he was at the time of the municipal elections held in the said city of Toronto, on the second and third days of January last past, a freeholder in the ward of St. Andrew, in the said city, and had been for upwards of one month next before the said election, and was at the time of said election, and still is, a resident in the said ward and a freeholder therein.

At the said election he gave his vote in the said ward for David Kennedy and William Moulds, candidates for election as councilmen for the said ward: that Robert Bell was a candidate for election at the said election as councilman for the said ward, and received votes thereat as such candidate, and at the close of the said poll on the second day of the said election was declared by the returning officer duly elected to the said office of councilman, and has since taken his seat as such councilman in the council of the corporation of the said city: that the said Robert Bell in his declaration in that behalf made and subscribed by him after the said election states, as his property qualification for the said office, an estate in freehold, to wit—three dwelling houses and premises in Camden street, in St. Andrew's ward, in the said city of Toronto: that the deponent examined the last revised assessment rolls for the said city of Toronto, for the year of our Lord one thousand eight hundred and sixty-four, and found that the name of the said Robert Bell appears thereon as stated for the said premises on Camden street as a leaseholder for \$186, and that he is not rated for any other property in the said city: that the said premises on Camden street aforesaid on which the said dwelling houses are erected is leased by said Bell from the trustees of the Toronto General Hospital, being lot number three on the north side of Camden street aforesaid, with a frontage of fifty-two feet, and about eighty-six feet deep: that the deponent examined the records in the registry office of the said city, and it thereby appears that at the time of the taking of the assessment for the said city for the year of our Lord one thousand eight hundred and sixty-four, the leasehold interest of the said Bell in said premises on Camden street aforesaid was mortgaged by the said Bell for the sum of one hundred pounds, and the said mortgage does not appear from the said records to be discharged: that at the time the said Bell made and subscribed the declaration of office, as required by the 175th section of the 54th chapter of the Consolidated Statutes of Upper Canada, the said Bell falsely and fraudulently represented that he was the owner in fee simple of the said land and premises mentioned in the said declaration, as appears by the said declaration, when in fact he only held the said premises as tenant: that the