ed on the roll at $750 ($50 less than the required amount) by adding thereto $400 of personal property.

The assessment roll is conclusive as to the rating, and there can be no enquiry behind this as to whether the candidate has more real property than that for which he was rated on the roll.

Reg. ex rel. Arnold v. Wilkinson.

Municipal election—Town of Sandwich—Interpretation of Statutes.

[February 25, 1869.]

The town of Sandwich was incorporated by 20 Vic. c. 94, which also provided for the election of mayor and councillors, &c. This enactment was not expressly repealed by the late Municipal Act, with which, however, it clashes.

This application was to unseat the mayor elect on the ground that he was not properly elected, in that he was elected by the people, and not from among the councillors.

Harrison, Q. C., for relator.

Warmoll contra.

John Wilson, J.—A special Act of Parliament cannot be repealed by a general enactment, except when there is express reference to it. The Statute 20 Vic. cap. 94, is not therefore repealed by 29, 30 Vic. cap. 51, sec. 428.

The late act amending the Municipal Act of 1866 (31 Vic. cap. 30, sec. 6, Ontario), must be read in connection with the act incorporating the Town of Sandwich (20 Vic. cap. 94, secs. 2, 3), and so reading them, the Town of Sandwich having only one ward is entitled only to three councillors, in addition to a mayor and a Reeve, elected by the people.

No costs were given, as the point was doubtful, owing to the loose way in which the repealing clause in the Municipal Act was drawn.

Reg. ex rel. Fluett v. Gauthier.

Municipal election—Disqualification—Interest in contract with corporation.

[February 26, 1869.]

This was a similar application to the last, the ground alleged being that the defendant was interested in a contract with the Corporation of Sandwich, to which he had been elected a councillor.

Harrison, Q. C., for relator.

Warmoll contra.

John Wilson, J.—I do not think that it is necessary that a valid contract should be shewn binding on the corporation. If there is no contract binding on the corporation the danger is the greater of the party improperly using his position to his own advantage and to the prejudice of the Municipality. The policy of the law is, that no man should be a member of a municipality who cannot give a disinterested vote on a matter of dispute that may arise. If his judgment is likely to be clouded by self-interest in a matter of contract or quasi contract he should not be a member of the council.

An order was made to unseat the defendant, but it was unnecessary, owing to the decision in the last case, to order a new election. No costs.

Purcell v. Walsh.

Assault—Several pleas.

[February 26, 1869.]

John Wilson, J.—The practice has been for years to allow pleas of not guilty and justification to be pleaded together to an action for assault. *Goldburgh* v. *Leeson*, 2 U. C. L. J. 209, overruled.

Quebec Bank v. Gray.

Law Reform Act, 1868—Notice for jury—Similiter.

[March 4, 1869.]

Action on promissory note. Special plea on equitable grounds. Issue taken thereon by plaintiff.

Rejoinder by defendant, who "joined issue," and gave notice for a jury under sec. 10 of Law Reform Act, 1868.

A summons was obtained to set aside rejoinder and notice for jury.

Harrison, Q. C., shewed cause.

Leith contra.

Hagarty, C. J.—The old similiter is not done away with by the Common Law Procedure Act, but is in fact preserved by section 108 of that Act. The only effect of that statute in this particular case is to give a short form of a pleading in denial. Summons discharged.

Cooper v. Watson.

Declaration not founded on writ of summons—Setting aside,

[March 4, 1869.]

Boswell obtained a summons to set aside a declaration on the ground that no writ of summons had been served on defendant whereon to ground it.

Harrison, Q. C.—1. The affidavit is defective in not shewing that the writ had not come to defendant's knowledge.

2. A declaration without a writ of summons is only an irregularity which can be waived, and has in this case been waived by defendant's laches.

Hagarty, C. J.—Held both objections good. Summons discharged.

Allan v. Andrews.

Commission to examine witnesses—Application before issue joined.

[March 6, 8, 1869.]

Scott, for plaintiff, asked for an order for a commission to take the evidence of a person in the United States. The application was made before issue joined, to expedite proceedings.

Osler shewed cause. There is no sufficient reason why the general rule that a commission will not be ordered until issue joined; and it makes no difference that the plaintiff undertakes not to execute it before issue joined.

Gwynne, J., refused the order.