land on which they live being government land, and as they have not paid any or agreed to pay any, and have no lease or license of occupation from the government, it was contended that they had no votes. As it is a matter of some doubt whether or not they have good votes, and I have some difficulty in arriving at a conclusion satisfactory to myself, and as without striking out their votes the relator has a majority of good votes, and is entitled to take his seat as councillor for the ward, I do not consider it necessary that I should decide the matter. I would merely state the view that I took of the matter when evidence was taken as to the nature of their occupation. In the case *Re Charles* v. *Lewis*, 2 U. C. Ch. Rep. 172, Mr. Justice Burns says that the words proprietors and tenants in the end of the clause are used synonymously with freeholder and householder, in the former part of the section, that case was decided upon the construction of 13 and 14 Vic., chap. 109, and although similar words are used in the late municipal act, it would perhaps be going further than the words would warrant were I to hold that in this case they are synonymous, and besides as was decided in the same case, the judge upon a scrutiny of votes is not concluded by the assessment roll, but may go behind it and try whether the votes were properly assessed in the character in which they appear on the roll. I hold then if the fishermen could shew any thing by which their occupation of the beach was with the assent of the Crown expressed or implied, though they had no lease, and did not agree to pay any rent, they might be considered tenants at will to the Crown, which would be sufficient to give them votes. As to what is sufficient to create a tenancy at will, see *Rex* v. *Fillongly*, 1 T. R., 458; *Rex* v. *Collett*, R. & R. C. C., 498; *Rex* v. *Joblin*, R. & R. C. C., 525; *Richardson* v. *Langridge*, 4 Taunt., 128, and *Doe Hall* v. *Waod*, 14 M. & W., 682. Nothing more could be proved with regard to these fishermen than that they had occupied the portion of the beach on which they lived, some of them for many years, without being disturbed in their occupation by the Crown. It is difficult to arrive at the conclusion that such a permissive occupation by the Crown, against whom time would not run and who cannot be charged with laches, would make the parties tenants to the Crown.

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(Before his Honor the Judge of the County Court of the County of Essex.)

### The Queen on the relation of William Flanagan v. John McMahon.

*Municipal Elections—Qualification of Candidate—Innkeeper—Contract with Corporation as Surety for Treasurer of Municipality.*

*Held*, that it is not necessary under the seventy-third clause Consolidated Statutes Upper Canada, chapter fifty-four, to constitute an innkeeper that he should be licensed.

*Held, also* that where a candidate for councillor was an innkeeper, but sold his interest as such the day on which the election took place, but there was no actual change of possession, he was still an innkeeper within the seventy-third clause, chapter fifty-four, Consolidated Statutes for Upper Canada, and as such disqualified.

Where the defendant was surety for the treasurer for the municipality for 1858, and the same treasurer was re-appointed from year to year during 1859 and 1860, the acceptance of fresh bonds by the municipal corporation for the latter years did not release the sureties as to the bond of 1858, and that it being a *continuing security* was not necessarily released by the acceptance of new bonds.

*Held*, that to entitle a relator (who was a candidate) to a seat declared vacant, he must have notified the electors that the defendant was disqualified, and the grounds of such disqualification.

(March 2nd, 1861)

The statement of the relator set forth the following causes why defendant's election should be declared void.

1st. That the defendant was an innkeeper at the time of his election.

2nd. That the defendant, at the time of his election, had a contract with the corporation of the township of Rochester, in this that he was one of the bondsmen or sureties for one John Mullins, treasurer of the said township, not discharged or released; and,

3rd. Claimed to have been duly elected, and ought to have been returned as councillor in place of the defendant.

The relator put in affidavits shewing that the defendant had for six years previously kept a tavern in the township of Rochester, and was keeping tavern at the time of the election: that there was no alteration in the conduct or management of the business of the tavern, from the time he commenced to keep a public house up to the time of and since the election; that defendant's family and himself continued to occupy the whole of the house and premises in which he and they had resided for the last six years, being the place where the inn was kept

It was also shewn that the defendant became surety for the treasurer of the municipality of the township of Rochester in the year 1858.

That upon the auditing the treasurer's accounts for the year 1858 there appeared a balance of $542 94 against the treasurer; that since that time the balance in the treasurer's hands has not been paid over or accounted for; that an application was made to the municipality of Rochester for the surrender of treasurer's bonds for 1858, but that the application had been refused, on the ground that the treasurer and his sureties were still liable on the bond, to the municipality; that at a meeting of the council of the township of Rochester on the 16th March instant, the bonds in question were ordered to be delivered up on motion of one of the councillors, seconded by the defendant, and that the reeve was only induced to give the casting vote in favor of the motion through the threats of the bystanders.

No objection was taken to the defendant until half an hour after the polling had commenced, and after eight or nine votes had been polled.

For the defence, the defendant filed an affidavit, stating that he leased the inn formerly kept by him, in the township of Rochester, to one Ellen Mullins, a spinster, in the year 1859, and that she continued to be the lessee of the premises till 5th January last; the agreement being that she was to pay $30 per month, and he was to attend to the business for her, and she was to receive all the profits; that this arrangement was in good faith and carried out; that the licence was issued to Ellen Mullins; that for some time previous to the seventh of January last, the day of the election, he (the defendant) had concluded to sever his connection altogether with the inn, and on that day leased the same to one Mathew Butler, for the period of two years, at the rate of $240 per annum, payable monthly, reserving to himself a room and the kitchen; and it was then also agreed that a proper lease should be drawn up between them; that on the eighth day of January a proper lease was drawn up and executed, (the lease was produced); that the lease was in good faith: that at the time he (the defendant) became security for the treasurer it was understood that he was only to be surety for one year; that new sureties were accepted by the council for the years 1859 and 1860; that he had never heard of any claim or demand having been made, or any dispute having arisen between the council and John Mullins.

Mathew Butler corroborated what the defendant stated as far as the lease to him was concerned. John Mullins, treasurer, swore that when his bonds were executed to the municipality, in 1858, it was understood that his sureties were only responsible for the fulfillment of his duties for the year 1858; that he was re-appointed in the years 1859 and 1860, and gave new sureties each year; that his accounts were audited and accepted.

In another affidavit he (Mullins) showed how the balances against him were accounted for.

In the affidavits filed on the part of the relator it was shewn that Ellen Mullins is a sister-in-law of the defendant (McMahon) and that she was since May last in Detroit, out at service as a house servant.

This fact has not been contradicted by the defendant, and there was no affidavit by Ellen Mullins as to the lease to her.

*Macdonell*, for relator, contended,

1st. That the restriction of the legislature in excluding the persons named in the seventy-third clause of the Municipal Act, was on grounds of public policy, in this that their vocation gave them considerable influence that might be unduly excited at elections.

2nd. That the disqualification clause must be taken in its most comprehensive sense; and to escape the effect of it, those exercising any calling mentioned in it must show the most absolute and complete abandonment of the calling previous to the election.

3rd. That the existence of the bond given by the treasurer to the municipality, in the year 1858, (of which the defendant was one of the sureties) and its non-annullation by the council previous to the election disqualified the defendant. For that the mere fact