

Crown, and respecting which it is not shewn how he stands in regard to his contract, whether he has fulfilled all or any of its conditions? I think not; he is not owner of the land or tenant.

By 13 & 14 Vic. ch. 67, sec. 1, the land of these persons, held as it is, would be liable to be rated, but that proves nothing to the point of this question, because the *occupants* of all lands have to pay taxes; but certainly being an *occupant* of land, a *freeholder* or *tenant*, would not qualify a candidate. The persons rated in this roll are not *tenants*—they have no landlord, and pay no rent; they are not *freeholders*, not *owners*, in which sense, as the clause itself explains, the term *freeholder* is used.

So, I think that the relator's case would fail upon the merits, if he had applied properly and in time. There were not, I think, two persons or more in the township qualified to be elected, and so no qualification was required for those who were elected; and consequently I think the judgment must be for the defendants, with the costs of the proceeding. (14 & 15 Vic., ch. 109, sec. 17.)

REGINA EX REL. ALLEMAING V. ZOEGER.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

Election of township councillors—Place of holding election—12 Vic., chap. 81, sections 6, 9.

A municipal council by by-law, under 12 Vic. ch. 81, sec. 6, appointed a place for holding the election of township councillors. The township council having by resolution appointed another place, an election held there was set aside, as the change could be made only by by-law.

[CHAMBERS.]

In this case the relator's objection to the election of the defendant was that the election was not held at a place legally appointed.

The defendant was elected township councillor for ward number 1, in the township of Wellesley, in the county of Waterloo, on the 3rd of January, 1853. The election was held at Smithville in the said township.

By the statute 12 Vic., chap. 81, sec. 5, it is enacted "that every such municipal council, whenever by such by-law they shall divide any such township into rural wards, as aforesaid shall in the same by-law appoint a convenient place in each of such wards for holding the election of township councillors for such ward."

And by the 9th section it is enacted, "that it shall and may be lawful for the unincorporation of each township, from time to time, by any by-law or by-laws to be passed for that purpose, to appoint a fit and convenient place in each of the several wards into which such township shall be divided, for holding the election of township councillors, every which appointment shall supersede that made by such district, county or municipal council, as well as any appointment previously made by such municipality."

It appeared that in the by-law whereby the township of Wellesley was divided into wards, a place called Kirtcher's school-house in the third concession was appointed as the place for holding the elections, and that accordingly they were there holden in January, 1851 and 1852: but that without any by-law to supersede the place so appointed, a resolution was prepared in the township council "that Joseph Lees be appointed returning officer for the next election, and be directed to hold the said election for such Ward at Smithsburg within the said ward;" and that, in accordance with instructions, the township clerk filled up a warrant, sealed with the corporate seal of the township, addressed to Joseph Lees, appointing him returning officer for the township of Wellesley, ward number 1, for the year 1853—meeting to be held first Monday in the year, at Smithsburg, as before.

The election appointed to have been held was held accordingly at Smithsburg, a place three miles from the school-house, and the defendant was returned without opposition.

SULLIVAN, J.—The relator was not shewn to have interfered with the election, or to have acted in any way to disable or disqualify him from making the present objection. I have no difficulty in adjudging that the place originally appointed for holding elections could not be superseded by any resolution or other mode short of the solemnity of a by-law. I therefore hold the objection well founded, and adjudge that the election of the defendant be set aside, and a new election ordered, with costs to be paid by the defendant, he having defended his seat, contrary, as I conceive, to the express words of the statute.

REGINA EX REL. RITSON V. PERRY ET AL.

(Reported by C. Robinson, Esq., Barrister-at-Law.)

Returning officer—His duty to have copy of collector's roll at election—Want or inaccuracy of such copy, how far an objection—Authority of J. P. for United Counties, how far by separation.

The 16 Vic. ch. 181, sec. 10, enacts, that it shall be the duty of the returning officer of each township or ward to procure a true copy of the collector's roll for the year preceding the election, which copy shall be verified by the affidavit of such collector, and also by that of the returning officer, to be taken before any justice of the peace for the county, &c.

It appeared that in this case the roll used by the returning officer was a true copy of, and taken from the assessor's roll, and not from that of the collector, but it was sworn that the collector's roll itself was a true copy of the assessor's roll.—*Held*, sufficient.

Held also, that an election could not be set aside because the returning officer had no copy, or an incorrect copy of the roll, unless it be shewn that the absence or inaccuracy of such roll has prejudiced the election; or that some candidate or voter refused on that ground to proceed, and relied upon the objection. It may, perhaps, also be necessary to shew that the candidates returned were not all eligible; or that they had not in fact a majority of legal votes.

Neither is it any objection that the copy of roll was not verified, as the statute requires, at least unless the objection be taken before or during the election, or some variance be shewn between the copy used and the original.

The affidavit of the returning officer verifying the roll was sworn, on the 2nd of January, before A., who held a commission as justice of the peace for the united counties of York, Ontario and Peel. Ontario had been separated from York and Peel by proclamation issued at Quebec on the 31st of December, but it was not shewn that any one in Ontario knew of this proclamation until after the election.

Held, that A. had authority to take the affidavit.

Quære, whether A., notwithstanding the separation, would not still continue J. P. for the three counties, and authorised to act for any one while he was in it, or at least for that in which he was resident.

CHAMBERS, 15th April, 1854.

The defendants were returned as duly elected, at the last election of councillors for the township of Whitby. The relator was a freeholder, who was entitled to vote at the said election.

The objections stated were, 1st, That the returning officer did not procure a correct copy of the collector's roll for the township for the year next before the election (1853), so far as such roll contained the names of all the male freeholders and householders rated upon such roll, in respect of the rateable real property lying in the township, with the amount of the assessed value of the real property for which they were respectively rated in such roll, or otherwise.

2ndly, That the roll, or copy of roll, used by the returning officer, was not verified by the oath of affirmation of the collector of the said township, or other person having the legal custody of the original roll; nor of the returning officer, taken before any justice of the peace of the county of Ontario, the county within which the said township was and is situated, or any other officer legally empowered to administer an oath or affirmation.

The summons was obtained upon an affidavit of one George D. McDonald, who swore that, at the close of the poll, on the 3rd of January last, these defendants were declared duly elected; that the defendant was present at the election on both days of polling, 2nd and 3rd of January, and saw the roll, or copy of a roll, used by the returning officer: that he examined it during the election and since, to ascertain who were duly qualified to vote: that the only copy of a roll used