possibly become a subject of discussion in the Council, is sufficient to disqualify any man from sitting in the Council; witness the very recent case of *The Queen on the relation of Bland* v. *Figg*, 6 U. C. Law Journal 44.

The manner in which the election in this case was closed, is not free from strong objections to its legality, and therefore leads me to doubt that any declaration made by Mr. Sparks on the occasion, could be considered as an acceptance, even if it were shown that the relator was present at the time, which is not stated in any of the affidavits before me, nor is it shown that the relator was aware of the fact of Mr. Sparks having even addressed the electors at the close of the election, or having in any way concurred in his election, for had he been a consenting party in any way to Mr. Sparks' election, or to the conduct of the returning officer on the occasion, I think he would be debarred from objecting to the election afterwards, unless under very peculiar circumstances; for where one recognizes the official character of another, by treating with him in such character or otherwise, this is at least *prima facie* evidence of his title against the party recognizing it. 10 East 104.

The defendant's affidavits all state that the returning officer on the day of the election, between the hours of ten a.m., and one p.m., immediately closed the poll upon Mr. McHenry's retiring from the contest, in favor of Mr. Sparks and Mr. Scott. The 97th section of the Municipal Act relates to and defines the duty of a returning officer. It says he may close the election in one hour after commencing it, if no more candidates are proposed than the number he is to return, but if polling takes place, he is to keep his poll open until four o'clock p.m., unless between three and four o'clock, free access, &c., to the poll being allowed, no elector gives or tenders his vote, in which case he may close the poll on the first day, and if he do not do so, he shall adjourn until ten o'clock next day, and may at any hour of such day, between ten and four o'clock, close the poll, but always provided no qualified elector gives or tenders his vote for one hour next before his closing. As before remarked, in this case the poll was closed immediately after Mr. Henry's retiring, without any evidence that no elector gave or tendered his vote for an hour before; *non constat*, that there were not many voters waiting to vote for Mr. Henry, and had time been allowed and a majority voted for him, he might have been forced to accept the office or pay the penalty for not doing so. The law declares that a returning officer has no right to take upon himself to close the poll, after a contest is once entered into, until an hour has elapsed without a voter presenting himself, and even if he be aware that all parties have full opportunity of coming to the poll, yet do not come, he cannot exercise any judgment in the matter, but must keep the poll open for the hour prescribed. See the judgment of Chief Justice Draper in *Lawrence* v. *Woodruff et al*, and also *Regina ex rel Smith* v. *Brouse et al*, 1 U. C. Prac. Rep. 180.

Had I, however, any conclusive authority, that such an act or statement as that made by the defendant at the close of his election, constituted the acceptance of office mentioned in the statute, I think I should be bound to consider the election properly closed, as the relator in his statement filed, makes no objection on this point. It is by the defendant's affidavits alone, that the manner in which the poll was closed appears.

May not the 128th section of the act contemplate different cases in which action may be taken by an elector? For instance, may he not object to an election on the ground that it was not held in the proper place, or on the proper days, or that the returning officer did not act legally in some part of his duty, and that for such cause, and without any charge being preferred against those elected, the election is vitiated. In such a case it is clear action must be taken within six weeks after such an election, because the relator has every means of knowing when and were the election took place, but if he proceed against an individual for usurping an office, he cannot know whether he does so or not until he has shown by some act of his, that he has accepted the office. The judgment in *Regina ex rel Roseburgh* v. *Parker* ubi supra, contemplates such cases.

As the only evidence I have of Mr. Sparks having accepted the office before the day of his formally taking the oath of office, is so unsatisfactory to my mind, and no evidence whatever being adduced, that the relator was aware of his having said or done any thing from which his acceptance of office could be inferred, until his oath of office became a public act, I am forced to the conclusion that the application was made in time, and that defendant is not entitled to hold his seat, and should be removed.

The spirit of the Municipal Act, and the solemn judgments of as many as four Judges, are so decidedly opposed to any person having a pecuniary interest in a matter which may become the subject of discussion in the Council, holding a seat in that Council, that I think I am bound to give the relator the benefit of any doubt I may entertain, as to the regularity of his proceedings.

My judgment, therefore, is that the defendant, Nicholas Sparks, is disqualified from holding the office of Alderman for the City of Ottawa; that he be removed from that office; that he pay the relator, Henry Horne, his costs; and that a new writ for the election of an Alderman instead of Mr. Sparks, be issued for Wellington Ward, in that City.

DIVISION COURTS.

In the First Division Court United Counties of Frontenac, Lennox & Addington.

PATRICK HYLAND v. JOHN WARREN.

The jurisdiction of the Division Courts is restricted to forty dollars in actions brought purely and simply to recover uncertain damages depending on matters of opinion, whether the cause of action arose out of tort or breach of agreement.

This action was founded upon the following particulars of claim:—"$100. Patrick Hyland claims from John Warren the sum of one hundred dollars for damages on a breach of contract."

The cause was tried before the Judge of the County Court at the sittings of the First Division Court at Kingston, in the month of January, 1860, when a judgment of non-suit was entered, on the ground that the Division Court had no jurisdiction to try the matter.

The plaintiff moved afterwards to set the non-suit aside and for a new trial, contending that the Division Court had jurisdiction.

MACKENZIE, JUDGE.—The jurisdiction of the Division Courts in Upper Canada is regulated by the 54th, 55th and 59th sections of 19th chapter of the consolidated statutes of Upper Canada By the 55th section it is enacted that the judge of every Division Court may hold a plea of, and may hear and determine in a summary way, for or against any person, bodies corporate or otherwise.

1st. "All personal actions where the debt or damages claimed do not exceed forty dollars, and

2nd. "All claims, demands of debt, account or breach of contract, or covenant, or money demand, whether payable in money or otherwise where the amount or balance claimed does not exceed 100 dollars.

"And by the 59th section it is enacted that a cause of action shall not be divided into two or more suits for the purpose of bringing the same within the jurisdiction of a Division Court, and no greater sum than one hundred dollars, shall be recovered in any action for the balance of an unsettled account, nor shall any action for any such balance be sustained where the unsettled account in the whole exceeds 200 dollars."

It does appear to me when an action is brought in the Division Court purely and simply to recover uncertain damages depending on a matter or matters of opinion that the jurisdiction of the Division Court is restricted to forty dollars, whether the subject matter of the action arouse out of tort or contract. The statute divides cases tryable in the Division Court into two classes. The first into personal actions of debts or damages not exceeding 40 dollars, whether the subject matter of the action arises out of contract or tort. The second into claims and demands of debt, account or breach of contract, covenant or money demand, where the amount or balance claimed does not exceed 100 dollars

The word Damages, which has in law a well understood and defined meaning, is not used at all in the Statute in reference to the second class of cases. It is confined in it to the first class of cases, namely, to personal actions brought for the recovery of debts or damages which do not exceed $40. Damages in reference to actions are, according to general acceptation, the estimated equivalent for detriment, injury, or breach of agreement, or in other words, a