Wainwright were James Allan the elder, then town reeve, James Allan the younger, John Allan, and John Fleming; and that the members thereof appointed town reeve and councillors for the current year were Andrew Walker, James Allan, senior, James Allan, junior, John Allan, and James Young.

On the return of the summons the defendant's counsel, Mr. *Dempsey*, objected—

1. That the the statement of objections was not signed either by the relator, or by any one as his attorney, or by any one —*i. e.*, the original statement.

2. That it was not in the form prescribed by the rules—charging that the defendant usurps the office "by virtue of an election," &c., instead of "under pretence of an election."

3. That it did not state whether the relator claimed the seat, or what relief he desired.

4. That the notice attached to the writ was not addressed to any one, and was insufficient.

5. That no copy of an affidavit verifying the statement was on the copy served.

6. That no motion paper was filed on applying for the summons.

7. That the summons did not issue within the time limited by law.

As to the preliminary exceptions:—There was no written motion paper attached to the statement, as the 2nd rule of M. T. 1850 requires (Draper's Rules, 135); and the statement was not dated, and had no signature of any person to it; but there was endorsed on the back of it an affidavit by William McKay, describing himself as "the relator in the within relation named," in which he swore that "he believes the grounds of the said within statement to be well founded in fact." This was dated in the jurat as of the 31st of January, 1853.

The required recognizance was shewn, executed, as appeared, on the 31st of January, with affidavit of justification of same date, but no affidavit of execution or due taking.

The summons issued on the 19th of February, 1853.

The facts were the same in the three cases in regard to the forms of papers, dates, &c., as well as the grounds of objection.

On the summons returned there was written a notice, not addressed to any one, stating that the writ of summons had been issued at the instance of the relator and on his relation, and that a statement, whereof a copy is annexed, was filed in the court, with affidavits supporting the objections, &c.—such a notice as the rules require.

In the case of James Allan the younger an affidavit of his was produced, to the effect that he had no knowledge at the time of the election that Cronk's name had been improperly inserted in the collector's roll—that he was in no manner privy to it; that Cardwell, the clerk, was dismissed from his office *some time* previous to the election, and that he had not acted in his office since his discharge.

Also an affidavit of James Allan, senior, that he was town reeve for Welland in 1852; that many of the persons designated as freeholders on the collector's roll had not patents, deeds, or leases, but only location tickets and rights of purchase from the government; that he believed there were only seven or eight persons who had deeds, and were liable to be assessed for real property to the amount of £100; that he himself had not obtained a patent for his land, but was nevertheless put down on the roll as a freeholder by Cardwell, the late township clerk.

It was sworn also by the assessor for 1852 that he had doubts whether he should return those as freeholders who told him that they had only tickets of purchase from the government, and had not their patents; and that he asked the clerk, Cardwell, and was told by him that they were freeholders, and to put them down as such.

On the copy of collector's roll John Allan was assessed for real property £151, and was marked H; the two James Allans were both assessed for real property under £100, and both marked H.

Robinson, C. J.—First. As to the want of a written motion-paper annexed to the statement, as the rule requires, and of the signature to the statement. The rule clearly and explicitly requires both. Then comes the statute, which provides that the summons "*shall be applied for within six weeks*" (13 & 14 Vic. ch. 64, schedule A. 23.)

That, I think, should be taken to mean applied for as the practice settled under authority of the statute directs—*i. e.* by *written motion*, supported by a statement of objections, *signed by the relator and his attorney*. An irregularity in the written motion, or in the statement, would be a different thing.

No doubt, if on the last day of the six weeks a party were to stand up in judge's chambers, and say that he applied for a summons, but had no statement to produce, because his client was at a distance, and had not sent him one; in one sense he would have *applied* for the summons—that is, he would have asked for it—but I think he should not be recognized as having applied within the meaning of the law.

So I think here, the relator, having not yet filed a written motion or put in a written statement, is too late—that is, he has not effectually applied within the time. I think I should not hold the signature to the statement dispensed with by the affidavit on the back of it.

As to the merits.—By statute 14 & 15 Vic. ch. 109, schedule A 4, the returning officer is to procure a *correct copy of the collector's roll* for the preceding year, *so far as it contains* the names of all male *freeholders* and *householders* rated in it in respect of rateable real property in the ward, with the amount of assessed value. This is to be verified by the affidavit or affirmation of the collector, or person having the legal custody of the original roll for the time being, and also by that of the returning officer, to be appended to or indorsed upon the copy. And no person shall be qualified to be elected a township councillor who shall not be a freeholder or householder of such township or ward, seized or possessed of real property, held in his own right or that of his wife, as *proprietor* or *tenant* thereof, which shall be rated in the collector's roll, in the case of a freeholder, to the amount of £100, or upwards, and in the case of a *householder* to £200, or upwards.

The rest of the clause shews the meaning to be, that a person must either have his qualification as freeholder, householder, owner, or tenant.

As regards persons *to be elected*, the provision in this clause is wholly negative—*i. e.* no one can be elected *who is not* on the roll as freeholder or householder. It does not make the fact of being on the roll as a freeholder, &c., to a certain amount a conclusive qualification, without regard to the truth of the case as to his actual position. (See also, 12 Vic. ch. 81, secs. 122, 129.)

So I think, that though more than two persons were rated on the copy of the collector's roll above £100, as freeholders, —*i. e.* if we disregard the alteration made by the collector, in the assessor's roll, or rather in the copy of it delivered to him, by substituting H. for F.; and if we should still read the copy of the roll, as if those above £100 marked now H. stood still on the roll marked freeholders—yet the question still remains, were they in fact freeholders. They are not rated at a sum sufficient to qualify them as householders. Then can a person elected councillor for any township in Upper Canada sit, if his only title really be that he lives on land rated at over £100, which he has contracted to buy from the