

Elec. Court.]

NORTH SIMCOE ELECTION PETITION.

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as such owner, tenant or occupant, because, as the fact was, one Farághar was assessed in respect of the said real property as tenant, and one Arnall as owner of the same, at the value of \$200, which was the full value thereof, and the said Faraghar, at the time of the making of the said assessment, was in actual possession of the said property as such tenant, and no appeal was had against the said assessment of the said Faraghar, and after the delivery of the assessment roll to the clerk of the municipality by the assessor, the said Faraghar ceased to be, and the petitioner became, tenant of the said property at a monthly rent of five dollars and fifty cents, and thereupon the said petitioner appeared before the Court of Revision for the said municipality, and fraudulently procured the name of the said Faraghar to be erased from the said roll and the name of the petitioner to be substituted therefor, and fraudulently procured the value of the said property to be inserted in the said roll at \$600, in order to give the petitioner an apparent qualification to vote, and no notice of the said application of the petitioner was given either to the said Arnall or Faraghar, or any other person, or by public notice of any kind, but the said Court of Revision, well knowing the object of the said petitioner in procuring the said alterations in the roll to be made, and fraudulently intending to carry out the said object, made the said alterations, without which the petitioner would not have been entitled to vote; and the respondent submits that by reason of the matters aforesaid the said alterations were and are void, and the said Court of Revision had no jurisdiction, under the circumstances aforesaid, to make the said alterations, and the petitioner was not entitled to vote at the said election, and was therefore incapable of being a petitioner.

3. That the petition should not be further proceeded with, on the ground that the petitioner was before, during, and after the said election, guilty of bribery, treating and undue influence, whereby his status as a voter and a petitioner was annihilated.

4. That the petition should not be further proceeded with, on the ground that before the filing of the petition a champertous bargain was made between the petitioner and certain other persons known as the Liberal-Conservative Association, whereby it was agreed that the costs of the said petition should be paid by the persons known as the Liberal-Conservative Association aforesaid, and whereby the name of the petitioner should be used.

5. That the petition should not be further proceeded with, on the ground that the petition was not signed by the petitioner *bona fide* with intent on the part of the petitioner to prosecute it, but that his name was being used *mala fide* by other persons, who were the real petitioners.

A summons having been obtained to strike out the preliminary objections,

McCarthy, Q. C., for the petitioner, moved the same absolute, whereupon the Court called upon

Bethune in support of the preliminary objection. The petitioner was not a good petitioner, because the Court of Revision fraudulently inserted his name on the assessment roll, in order to give him an apparent qualification to vote. This was done without notice to any person affected by it, and therefore the Court had no jurisdiction to insert his name; *Regina v. Court of Revision of Cornwall*, 25 U. C. Q. B. 286. The petitioner was guilty of bribery, and therefore cannot vote; and if so, cannot petition. Roe on Elections states that an elector who was on the list, but disqualified, could not petition. Here it is charged that the voter was guilty of bribery before and at the time of the election, by reason thereof he is not qualified to vote. The words of the Act are that the petition must be signed by a person duly qualified to vote. Here he was not duly qualified to vote. The petition was signed by the petitioner at the instance of the Conservative Association, who agreed to pay the expenses of it. This is champerty: *Wallis v. Duke of Portland*, 3 Ves. 494. Champerty and maintenance is still a good defence to an action at law: *Carr et al. v. Tannahill et al.* 30 U. C. Q. B. 217. The same reason applies to petitions. This proceeding resembles a suit by a shareholder on behalf of himself and all other shareholders. If so, they must sue by some person who is not disqualified: *In re National Ec. Association* 4 De G. F. & J., 78.

McCarthy, Q. C., in reply. Admitting that, technically, the Court of Revision were wrong in putting petitioner's name on the assessment roll, nevertheless, as it appeared from the statement in the preliminary objection that the petitioner would have been entitled to have his name on the roll, the jurisdiction of the Court of Revision had been properly invoked for the amount for which it was inserted, and as the levy for the year was based on the roll as altered (however irregularly), and no