a new election is ordered the same lists must be used.

The persons whose names appeared on the roll were accepted by both candidates as qualified voters so far as payment of taxes was concerned, and though an elector might not perhaps be bound by such an agreement, the candidate would: *Reg. ex rel. Charles* v. *Lewis*, 2 Cham. R. 171.

The roll is conclusive.—Sec. 101, ss. 5; *Dundas* v. *Niles*, 1 Cham. R. 198; *Reg. ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N.S. 244.

More votes are however attacked by the defendant than by the relator on this ground, and a scrutiny must be had as to that.

4. The defendant should not be visited with costs if the election is simply set aside and a new election ordered, as the relator would then only succeed as to part. — *Reg. ex rel. Clark* v. *McMullen*, 9 U. C. Q. B. 467; *Essex Election Case*, 9 U. C. L. J. 247; *Reg. ex rel. Swan* v. *Rowat*, 13 U. C. Q. B. 340; *Reg. ex rel. Gordanier* v. *Perry*, 3 U. C. L. J. 90; *Queen* v. *Hiorns*, 7 Ad. & El., 960.

J. H. Cameron, Q. C., *Harman* with him, *contra*.

1. As to the question of the surrender, the same was completed in law, from the absolute abandonment of the premises by Boyd, and his removal to new premises with his new partner, any question of liability between Todd, the landlord, and himself as to a yearly or any other tenancy being absolutely concluded when Todd granted a new lease to Smith & Arthurs as the successors of Boyd & Arthurs. One test was, could Todd maintain an action for rent against Boyd after the granting such new lease, and could not Boyd set up such new lease as a conclusive answer and defence? Undoubtedly he could. *Nickels* v. *Atherstone*, 10 A. & E., N. S. 944, is a direct case on the point. Lord Denman, C. J., in this case says, "If the expression 'surrender by operation of law,' be properly 'applied to cases where the owner of a particular estate has been party to some act, the validity of which he is by law afterwards estopped from disputing and which would not be valid if his particular estate had continued,' it appears to us to be properly applied to the present. As far as the plaintiff the landlord is concerned, he has created an estate in the new tenant which he is estopped from disputing with him and which is inconsistent with the continuance of the defendant's (the former lessees) term. As far as the new tenant is concerned the same is true. As far as the defendant, the owner of the partnership estate in question, is concerned, he has been an active party in the transaction, not merely by consenting to the creation of the said relation between the landlord and the new tenant, but by giving up possession, and so enabling the new tenant to enter."

2. *Reg. ex rel. Rollo* v. *Beard*, *ante*, is conclusive that the candidate must be qualified as a member at the time of the election, which it is clear commences with the nomination.

3. As to costs, *Reg. ex rel. Tinning* v. *Edgar*, *ante*, is almost exactly parrallel with this case as entitling the relator to costs.

The other grounds taken in moving the writ were also enlarged on.

John Wilson, J.—Assuming that there was a tenancy from year to year, was it not surrendered before the election, and on the 1st of August last, by operation of law and the acts of the defendant, on his own showing.

Boyd & Arthurs dissolved their partnership, when does not appear, but certainly before the 1st day of August last. Arthurs is left with the business and business premises. Boyd retires, pays no further rent, retains no further possession, and is so much a stranger that he swears he was no party to the lease to Smith & Arthurs, or ever heard of it till after the election. Is he, after all that has taken place, co-tenant with Arthurs in these premises? Can he now go to Arthurs and claim possession as his joint tenant? If he cannot, he is not *bona fide* possessed as tenant. so as to qualify him as Alderman under this Municipal Act.

On the reasoning in the case of *Nickells* v. *Atherstone*, 10 Q. B. N.S. 944, is the defendant not precluded from saying he is still co-tenant with Arthurs? Have not all parties estopped themselves from setting up the yearly tenancy now contended for? Todd cannot be allowed to say this yearly tenancy between Boyd & Arthurs exists, for he has made a lease under seal to Smith & Arthurs. Arthurs cannot say it subsists, for he is a party with Smith to the new lease. By operation of law as to these parties the tenancy from year to year has merged. Can Mr. Boyd claim that it is still existing? Can he go to his late partner and say I am joint-tenant with you? I think not; for on his own showing he left his partner Arthurs, and formed a co-partnership with Mr. Munroe in another place, as wholesale grocers. He left his partner to do as he pleased with the business and the warehouses in which it was carried on, and without doubt knew at least that Arthurs was carrying on the same business which he had left, with his new partner Smith. Has Boyd any more right to assert an interest in the warehouses than he has in the goods, which before his retirement had been the goods of Boyd & Arthurs?—See *Matthews* v. *Sawell*, 8 Taunt. 270; *Thomas* v. *Cook*, 2 B. & Al. 119; *Walker* v. *Richardson*, 2 M. & W. 882.

I think therefore the defendant was not at the time of the election the co-tenant of Arthurs, and without this he had not the property qualification to be chosen Alderman.

As to the second ground, that the defendant had not paid all his taxes before the election, it is admitted the defendant paid his taxes after the nomination and before the polling day; and the question is, when is the election?

The relator contends that it is the day of nomination; the defendant says it is the polling day.

That the day of nomination is the day of election seems clear. The polling day is but an adjournment of the election. The words of the act seem to put it beyond a doubt, for it declares that the proceedings at elections shall be—a nomination on the last Monday but one in December, when, if only one candidate, or one candidate for each office, be nominated, after an hour, he shall be declared elected; but if more, and a poll be demanded, then the Returning Officer shall adjourn the proceedings until the first Monday in January; but, by sec. 73, a candidate is disqualified who has not paid all taxes due by him.