It would seem that the facts as to the transfer of the property—and, I suppose, the form of the declaration—came to the knowledge of the relator within six weeks of the application; and, consequently, he is in time under the amendment of 1907, 7 Edw. VII. ch. 40, sec. 5. . . .

I think the notice of motion may be amended so that it may set up the omission to make the statutory declaration. . .

The mere fact that a proper declaration was not been made does not in itself compel the Court to declare the seat vacant. . . .

[Reference to the St. Jean and Conway cases, before cited, 46 U.C.R. 82, 85.]

The form of the declaration contemplates that the declarant shall have, at the time of making the declaration, the qualification. . . . The refusal to make the declaration is equivalent to a refusal of the office, even if the party is incapable of making it: Attorney-General v. Reed (1678), 2 Moo. 299; Starr v. Mayor, etc., of Exeter (1683), 2 Lev. 116, 2 Show. 158; Rex v. Larwood (1693), Carth. 306.

If the elected can now make the declaration required by sec. 311, then, under Regina ex rel. Clancy v. Conway, supra, they should be allowed to do so, and so make their occupancy of the office de jure, as it is now de facto.

The position of a mortgagee is well understood: he has the legal estate in the land, holding the legal estate and the land as security for his debt. Is this legal estate sufficient? . . .

[Reference to 4 & 5 Vict. ch. 10, sec. 10; 12 Vict. ch. 81, secs. 22, 57, 65, 83; 22 Vict. ch. 99, sec. 70; 29 & 30 Vict. ch. 51, sec. 70; 36 Vict. ch. 48, sec. 71; R.S.O. 1877 ch. 174, sec. 70; 46 Vict. ch. 18, sec. 73; 49 Vict. ch. 37, sec. 2; R.S.O. 1887 ch. 184, sec. 73; 55 Vict. ch. 42, sec. 73; R.S.O. 1897 ch. 223, sec. 76; 3 Edw. VII. ch. 19, sec. 76.]

I think that the Legislature must have had in view the difference between legal and equitable estates; and that the language now employed, differing as it does from that formerly used, must be given full effect to.

What estate, then, had Rymal at the time of the election, and what estate has he now? . . .

At the time of the election he had a legal estate worth 4,500 and more—no equitable estate had been carved out of it. Now he has the very same legal estate, but it is worth only $4,500, for an equitable estate has been created, cutting down the value.

I think that, employing the language of sec. 76, Rymal "has, as owner, a legal freehold which is assessed in his own name on