The only remaining argument was that the respondent must be unseated because he has not been in actual occupation of his freehold since 1st November. It is not denied that the house has been vacant, and that Mr. Beck has been living elsewhere. It does not, however, seem necessary to give to these words such a strict interpretation in any proceeding of this nature.

In 29 Cyc. 1341 it is said that, as applied to land, actual occupation means no more than possession: "residence is not essential:" see note 25 and cases cited. It seems sufficient in this case that the respondent has control over the freehold. No one else is in occupation or can assert any right thereto.

Under these circumstances, I see no difficulty in holding that the provision in the Municipal Act of 1903, sec. 76 (f), was intended to require, in case of a mortgaged freehold, that no one else but the mortgagor should be in possession. As long as he has the exclusive unqualified right to possession (apart from the mortgage) he is in "actual occupation," within the meaning of the Act.

It should perhaps be noticed that the respondent has been living since October with his brother-in-law, Mr. Packham, who has filed an affidavit on this motion. From this it appears that Mr. Beck has borne half the expenses of every kind of the up-keep of the joint establishment. This was to support, if necessary, a claim of the respondent to be considered as a tenant in respect of this occupancy. But, as neither Mr. Packham nor Mr. Beck is assessed, no qualification could be acquired in this way. Nor do I think that Mr. Beck was really more than a boarder. To endeavour in this way to qualify reminds one of the saying that a drowning man clutches at a straw.

The motion must be dismissed with costs, excluding any that were incurred in setting up the alleged joint-tenancy with Mr. Packham.