

REGINA *EX REL.* PACAUD v. DUBORD.*Mandamus.—Delivery of papers.*

Mandamus lies to compel the delivery of papers by a public officer to his successor.

Meetings of a municipal council are *prima facie* regular and valid, and a person acting as clerk at these meetings is, *de facto*, the clerk.

A by-law requiring the presence of the reeve as a condition of the transaction of business at a meeting, is invalid.

Unless the right of the relator to the papers is clear, a peremptory mandamus will not be ordered, but only an alternative writ.

*H. M. Howell, Q.C.*, and *J. S. Hough* for plaintiff.

*J. S. Ewart, Q.C.*, and *J. Fisher* for defendant.

[30th June, 1885.]

KILLAM, J.—The relator, claiming to be clerk or secretary-treasurer and assessor of the Municipality of St. Norbert has moved for a mandamus to the defendant, also claiming to be clerk or secretary-treasurer and assessor of the same municipality, to compel him to deliver to the relator the books, papers and documents in the defendant's possession belonging to the municipality. The defendant has occupied these offices for a considerable time, and claims still to hold and to be entitled to hold them.

The defendant objects, in the first place, that the remedy sought is not the proper one, as the relator has other remedies. The right of a public officer of this character to a mandamus to compel the former occupant of the office to hand over the books, &c., in his possession as such public officer, is clear. See case of *Sheriff of Nottingham*, 1 Keb. 79; case of *Viscount and Town Clerk of Nottingham*, 1 Sid. 31; *Rex v. Holford*, 2 Barn. 350; *Rex v. Wildman*, 2 Str. 879; *Rex v. Ingram*, 1 W. Bl. 49; *Rex v. Clapham*, 1 Wils. 305; *Anon*, 2 Barn. 326.

It is then contended that the defendant is clerk, &c., *de facto*, and that proceedings to contest his title and oust him must first be taken, and that the dispute as to title to the office cannot be tried upon mandamus.

On the hasty examination which I have been able to make of the authorities, I incline to the belief that this view of the law