the township. In the meantime, however, the four persons elected at the general election met again on the 19th of January, and filed their declarations of qualification, and organised themselves as the council of the township.

In connection with this application, a rule *nisi* was obtained for a mandamus to James Foley, who was the township clerk, and who had been chosen again by the councillors elected under the warrant issued by the reeve, to deliver up to the parties claiming under the first election the seal of the corporation, and all books and papers in his possession.

Read, Q. C., for those elected at the general election of the township, obtained a rule *nisi* calling upon the four persons thus elected under the warrant of the reeve, to shew cause why an information in the nature of a *quo warranto* should not be filed against them in the name of the corporation.

Eccles, Q. C., shewed cause.

The clauses of the statute bearing upon the case are referred to in the judgments.

McLEAN, J.—The affidavits filed do not shew an absolute refusal to make and subscribe the declaration of office required by the 176th section; on the contrary, they shew that they only declined for the time *until* they could see the judge of the county court relative to the objections raised against them, and that within the twenty days allowed to them they did make and subscribe the the declaration of office. The whole difficulty appears to have arisen from the reeve of 1858 having issued a warrant for the election of four members of the council when in fact there were no vacancies in that body. If indeed it could be shown that the four persons just elected had absolutely refused to qualify or to accept office, then the issuing of a warrant for a new election would be quite right under the 124th section of the act 22 Vic., ch. 99, which provides for the filling up of vacancies which may occur previous to the organisation of the council for the year. Whether there was such absolute refusal as to justify the issue of a warrant to fill up so many vacancies may be tried and decided on the information which is now applied for. It is therefore proper that the rule obtained to shew cause why an information should not issue should be made absolute.

In connection with the application in this case is one for a mandamus to the clerk of the township council, to deliver over to parties claiming to be the council under the election held on the first Monday in January, all books, papers, and records in his possession. From the affidavits filed, it certainly appears that the issuing of a warrrnt on the 19th of January for the election of four members of the council, as if there were so many vacancies, was wholly unnecessary, and that the elections held under such warrant cannot be upheld. If so, the council legally elected must be entitled to have possession of the records and books of the township, and the clerk has no right to withhold them. Upon the mandamus *nisi* this point may be contested and decided, should it not be sooner done on the information with respect to the election of members. A mandamus *nisi* will in the meantime issue as moved for.

BURNS, J.—The question presented for adjudication upon this motion is whether the election of the four newly elected persons is legal, or, in other words, whether the four persons who declined to qualify upon the 17th of January, but who did qualify themselves upon the 19th, had vacated their seats in the council of the corporation by such neglect or refusal.

We see, by the 183rd section of the Municipal Corporations Act, that twenty days are allowed to every person within which to make and complete his declaration of qualification before he is liable for the penalty imposed under that section. These twenty days within which the declaration shall be made are to be computed from the time of the person knowing of his election. When the four persons, or any or either of them, knew of their election as councillors at the general election is not shewn, so that we do not know whether they have or not incurred any penalty for not qualifying themselves. The 175th section declares that no one shall enter upon the duties of office until he makes and subscribes the declaration required. Nothing could therefore have been done in the discharge of township duties on the 17th of January, when the five councillors met, for only one qualified himself. It was under the 122nd and 124th sections of the act that the reeve of the former year acted, and issued his warrant for a new election, conceiving that what was done on the 17th of January completely vacated the seats of the four persons who declined to qualify. Whether the former reeve be right in that view must depend upon the construction to be put upon the 130th section. Now it is clear enough that the council is not bound to organize itself on the third Monday in January, for that statute says that in may be done on some day thereafter at noon. It might so happen that it would be impossible for a majority of the elected councillors to be present on that day. Nothing is said whether those present shall adjourn to another day, or that the clerk should give notice thereof. I suppose that might be regulated by the standing orders and rules of the council, as a matter of internal government. The question is therefore whether what the four persons did was equivalent to a positive refusal to take office. It does not appear that they did decline the office: they only declined making the declaration, and that, as stated, until they could have the opinion of others upon the point of objection raised against them. It is an important point to consider upon what evidence it shall be that the reeve of the former year shall act in ensuing a warrant for another election under the provisions of the 122nd or 124th sections of the act. In the case before us there is nothing to shew at what time these persons were aware of their elections; and if it were to happen that in any case the person elected did not become aware of his election until a day or two perhaps before the third Monday in January, we could not hold that he was bound, at the risk of losing his seat, to qualify himself on that day, when we see that he may do it within twenty days after knowledge of his election. If he would lose his seat by reason of not qualifying on that day, and that a new election must be the legal result of his doing so, then this absurdity would follow, either that he would be liable for not qualifying within the twenty days, or if he did qualify within that time then there was was no use in it, for that by reason of neglecting or delaying to do so on the third Monday in January his seat might be filled by another person to his exclusion.

It is impossible to lay down any rule as to what amount or what kind of evidence or information should be laid before the former reeve to enable or authorise him to issue his warrant to hold another election, but in this case it does not appear from the information laid before us that he could have had sufficient information or evidence before him. It was a mistake for him to suppose, because the four persons elected did not qualify on the 17th of January, that he had a right to consider the seats so vacated that he should issue his warrant. If the time had then expired within which they should make the declaration of qualification, and it appeared and was made known to him that these persons had unreservedly declined to qualify, of course he then would have been quite right in issuing his warrant. The statute, however, says that the council may organize upon another day desides the third Monday in January; and there appears to be nothing whatever unreasonable, when an objection was made upon the 17th of January to these persons taking their seats as councillors, that they should desire a day or two to consult whether they might not be liable to be unseated on account of disqualification. The reeve was premature in granting his warrant. The elected persons did again meet on the 19th of January, and took upon themselves the duties of councillors. We do not see any thing that should prevent them from doing so.

The rule should be made absolute for an information in the nature of *quo warranto*, and if the defendants desire to contest the matter they can plead to the information, and thus take the formal opinion of the court upon the subject.

In answer of the Clerk to the application for a mandamus we do not understand him to make any resistance to it, provided those under whom he acted do not legally constitute the council, and all he desires to do is to deliver the seal to the body which in law is entitled to have the control of it.

We need not further enter into the particulars than as contained in the judgment already given. The result of that application renders it necessary that the rule *nisi* for the mandamus should be made absolute. The defendant, if he contests the right, and contends further that the persons last elected were properly the council of the corporation, may plead to the mandamus, and thus formally take the opinion of the court Rule absolute.