retained possession from the execution of the lease to Whittemore, and was then in possession, and that the defendant paid the rents and taxes, and expended very large sums in the erection and completion of several brick buildings thereon. That in the month of December, 1858, he, Whittemore, gave notice to the Corporation that the defendant, Manning, was the real and beneficial owner of the premises, and that he, Whittemore, held the lease from the first, for and on account of the defendant, and that he was desirous of assigning the lease to defendant, and that he, Whittemore, instructed the solicitor for the city to prepare an assignment of the lease to the defendant; that the assignment was endorsed on the lease and ready for execution, but that Whittemore suddenly died without executing it. It further recited, that the defendant requested the city to execute to him a new lease of the premises, as the beneficial owner thereof, which the Corporation were willing to do, provided they did not incur any liability to the defendant as against the estate of Whittemore, and that defendant covenanted and agreed to indemnify the Corporation against any claim of Whittemore's estate, in consequence of their executing the lease to defendant. The lease, as already stated, was for 17 years, from the 1st October, 1860, being the unexpired term of the 21 years granted by the recited lease to Whittemore; it contained the same covenants for renewals for further terms of 21 years, and the other usual covenants in leases of that nature.

It further appeared from the affidavit of Mr. Gamble, the solicitor of the city at the time these leases were made, that Whittemore was merely a trustee for Manning. and he corroborated the recitals mentioned in the second lease, that after the death of Whittemore, he drew the lease for 17 years, which he stated was only intended to confirm to Manning the term of 21 years, and rights of renewals.

Mr. Manning swore that the lease to Whittemore was made to Whittemore for his, the defendant's benefit, and that he was, from the first, the beneficial lessee for the term of 21 years, and that the lease to himself was made under the circumstances therein recited.

Robt. A. Harrison shewed cause.

The relator is not qualified as such. He qualifies on an Orange hall, of which he is merely care-taker and not a tenant, having such interest as would entitle him to vote, and the *locus standi* of the relator may be questioned in *quo warranto* proceedings: *Regina ex rel. Shaw* v. *McKenzie*, 2 U. C. Cham. Rep. 36, 44; Con. Stat. U. C., ch. 54, ss. 75, 76.

As to the first objection. The lease for 17 years is in substance and effect a lease for 21 years, and therefore within the spirit and intention of the act.

Under the late act the Corporation lessees were disqualified, but under the act of last session this disqualification, so far as relates to leases for 21 years and upwards, is removed.

Sec. 73 is in force. "Qualification" and "Disqualification" are under separate and distinct heads, and the clause of the act postponing the clause as to qualification does not affect that as to disqualification.

As to the third objection, Manning before the election assigned the amount due to him from the Corporation, and the Corporation accepted it, he had not therefore any interest in the amount, and this objection must fail.

If the construction of the statute be doubtful, the sitting member should not be unseated: *Regina ex rel. Chambers* v. *Allison*, 1 U. C. L. J. N. S. 244; *Regina ex rel. Ford* v. *Cottingham*, *Ib*, 214.

J. A. Boyd, for the relator.

Sec. 73 of the Municipal Act of last session will not come into force until the 1st day of September, 1867. That clause is headed, "Disqualification," and enacts, that certain persons holding certain official positions, &c., and that no person having by himself or his partner an interest in any contract, with or on behalf of the Corporation, shall be qualified to be a member of the Council of any Municipal Corporation; "*Provided always, that no person shall be held to be disqualified, &c., by having a lease of 21 years or upwards, of any property from the Corporation, but any such lease holder shall not vote in the Corporation on any question affecting any lease from the Corporation*"

This latter proviso is not found in the 73 sec. of the Municipal Act, 22 Vic., cap. 54, and before the passing of the act of last session, the defendant would no doubt have been disqualified, and if sec. 73 was not in force since the 1st of January last, he was ineligible as a candidate at the last election.

"Disqualification" is included in "qualification," and sec. 73 does not therefore, by sec. 427, come into force till next September.

If that section is in force, it only applies to leases for 21 years and upwards, and the lease for 17 years is not within the proviso, and that being the case, the defendant is within the disqualifying portion of the clause.

MORRISON, J.—The first point to be determined is, whether the 73rd section of the act of 1866 is in force, and I am of opinion it is. The 427th section of that act (as amended by ch. 52 of the same session) enacts, "That this act shall take effect on the 1st of January, 1867, save and except so much thereof as relates to the nominating of candidates for municipal offices, and the passing of by-laws for dividing a municipality, or any ward thereof into electoral divisions, and appointing returning officers therefor, which shall come into effect on the first day of November next; and *also, so much thereof as relates to the qualification of electors and candidates shall not take effect till the first day of September*, 1867. Sections 70, 71 & 72 are headed "Qualification of Mayors and Aldermen," &c. Section 73, the one in question, is headed, "Disqualification." I can well understand upon an examination of the old and new municipal acts why the coming into force of the 70, 71 & 72 secs. was postponed until the 1st September next, as it appears that in many cases the qualification of candidates are changed, partly arising from the new system of rating, established by the new assessment act of last session, to the provisions of which act the new municipal act conforms, and that consequently the Legislature, being aware that the assessment rolls in existence on the 1st of January last, and by which the qualification of candidates would be determined were made up in 1866: that they could not properly apply to the last elections, were the whole of the act to take effect