May, 1842, lease from the corporation of the city certain premises situated in the said city for the term of 42 years from 1st January, 1842, and that under and by virtue of the said lease he entered into a contract with the city. He verifies this statement by his affidavit attached to the relation.

In his other affidavit he merely states he was shown the lease in the office of the city Chamberlain. There is nothing to show that the defendant ever entered into possession of the premises under the lease further than the relator's statement, verified by his oath as already quoted; and that the said lease and the contract thereby entered into by the defendant were at the time of the election in full force and effect. If a lease be executed by the grantor only and reserve a rent, I take it for granted that a covenant to pay would arise from the proviso, if the lessee went into possession under the lease and enjoyed, although he may not have signed the lease.

Taking the statement of the relator and the affidavit filed with it, they show, in the absence of anything to the contrary, that at the time of the election there was a subsisting lease.

Then as to the third point, it is stated the defendant did by an agreement in writing, dated 30th September, 1856, contract and agree to lease from the city certain lots on Colborne street, subject to certain conditions mentioned in the printed paper attached thereto. In the affidavit filed with the relation he states he was shown an agreement in writing dated 30th September, 1856, and *signed by the defendant*, purporting to be an agreement to lease from the corporation of the city premises on Colborne street, by which he agreed to lease the said lots, subject to certain conditions for building thereon, as more fully set forth in a printed paper attached to the agreement.

It was urged that it was not shown that this paper was sealed with the seal of the corporation, and therefore that it would not be a binding agreement on the defendant: whether the agreement shown to have been signed by the defendant was entered into under such circumstances as would make it binding on him, whether sealed with the seal of the corporation or not, is not shown,—but it appears to me sufficient to make out that the defendant actually entered into an agreement with the corporation. If he thinks it will be a sufficient answer in proceeding to show that the agreement is not binding, he should state the facts from which he wishes the Court or Judge to draw that inference. The first step to make a binding agreement relative to land was taken by him; he signed an agreement in writing binding himself to comply with certain conditions if he went into possession under this agreement: I apprehend the corporation could compel a specific performance of that agreement, even if they had not affixed their corporate seal to it; and if he complied with those conditions, would not the corporation be restrained from dispossessing him until he had at least been paid for the improvements made under stipulations contained probably in their own by-laws?

The mischief intended to be guarded against by the Legislature would not be prevented, if for the reason suggested persons in the position of the defendant in relation to this agreement, were not declared disqualified. Suppose the corporation were to have the question brought up whether the defendant's agreement was binding on them, how could the defendant give an unbiassed vote?

On this last point I have no doubt but that I ought to decide against the defendant.

The section stating the disqualification is the 25th of 16 Vic., cap. 181, being in substitution of the 132 sec. of 12 Vic., cap. 81; it provides, in relation to this matter, that no person having by himself or partner any interest or share in any contract with or on behalf of the city in which he shall reside, shall be qualified to be elected Alderman or Councillor for the same or for any ward therein. This provision is in effect the same as is made in the imperial statute 5 & 6 Wm. IV., cap. 76, sec. 28—and under that section it has been held that a lease from the corporation is a *contract* within the meaning of the act. The Queen v. York, 2 Q. B. 846, is in point, and is equally an authority to show that the term contract should be construed in its ordinary legal signification, and not be limited to such as partake of the nature of employments, as contracts for works, or the furnishing of supplies. In England, however, the Legislature declared that this provision shall not extend to leases by imperial statute 3 & 4 Vic., cap. 108. It is also provided there that when questions relative to matters in which members of the city council may be interested shall come up, that such members shall not vote. The Legislature here have not yet thought proper to alter the law on the subject in this country, and we must decide according to the law as it is.

On the whole I think there is enough shown to declare the defendant's seat vacant on all the grounds, particularly on the last one, but as the two first taken are not so clear. If the relator wishes I will order this matter to stand over until the first day of May next, with leave to him to file further affidavits on all the points, provided he serves the defendant's attorney one week before that day with copies of any affidavits he may wish to file and use. The matter stands over to Friday 1st May next—18th May. The relator does not wish to file further affidavits, and my judgment will be and is in his favour on the grounds already stated.

Stock v. Crawford.

Affidavit—Writ of Trial.

On applications for writs of Trial, the affidavit must either show what the pleas in the cause are, or applicant must produce a copy of the pleadings.

(June 23, 1857.)

This was an application for a summons for a writ of Trial on an affidavit by the plaintiff's attorney, to the following effect:

1st. That the action is brought on a promissory note.

2nd. That the amount is ascertained by the signature of the defendant.

3rd. That the venue is laid in the county of Wentworth.

4th. That issue has been joined, and that the trial of this cause will, in his opinion, involve no difficult question of fact or law.

Richards, J., refused the summons, on the ground that the affidavit should either have stated what the pleas are, or the applicant have produced a copy of the pleadings.

Summons refused.