election inn-keepers or saloon-keepers. Six others are non-residents of the County in which Clifton is situated. Three of the number have contracts with the Corporation, among which is the relator himself One was in 1860, and still is, collector of the taxes. Two persons are not British subjects. This makes 19 persons out of 35 who are disqualified. Thus leaving only 16 who might be elected, and of these one it is said is not rated in his own right for a sufficient property qualification, and this would seem to be so upon looking at the Roll, and another, it is said, is security for the collector.

To exclude the electors from resorting to their own body in filling up the Council there should appear to be at least twenty persons properly qualified, and not disqualified, from whom they might select their Council In the present instance the number from whom the electors might make a selection is below the standard. There is nothing in the Act to shew that the Legislature intended to put the seat or office of Mayor upon any different footing than that of Councillor, or to shew that the electors must exhaust the body of those qualified without being disqualified first, before going to their own body for members of the Council, and indeed it would have been unjust to have put matters upon such a footing, for in such a case some portion of the electors would be forced to elect, or suffer those to be elected, who might be distasteful to them. It is much better it should be thrown open.

The relator, it appears, was the candidate who opposed Mr Preston, and he, it is true, is properly qualified in respect of his property. He asks in his statement that he should be seated instead of Preston. I could not do that under any circumstances, for it appears that the relator, together with his partner, has a contract with the Corporation to supply the market with water, and that disqualifies him from being a member of the Council.

I, however, see no sufficient reason for ordering a new election of Mayor, and probably at the end of the year the inhabitants will be as well satisfied with Mr. Preston as they would have been with any other person seated in his place.

My judgment is, that the summons be quashed with costs to the respondent.

Judgment for Defendant with costs.

(Before Mr. Justice Burns.)

REG. EX REL THOMAS M. BLASDELL v. JOHN ROCHESTER.

Municipal election—Qualification of candidates—Residence—Writ of Summons, by whom to be issued.

Held, that a person rated on the assessment roll of a City for the necessary property qualification, but at the time of the election a resident in an adjoining Township of the County in which territorially the city is situate, is not qualified to be elected a member of the Municipal Council of the City.

Held also, that a writ of summons in the nature of a quo warranto, signed by the Clerk of the Process, and under the process seal, though in fact issued by the Clerk of the Crown in the Court of Queen's Bench, is sufficiently issued by the Clerk of the Process within the meaning of Consol. Stat. U. C, cap 54, sec. 128, sub. sec. 5.

[Feb. 24th, 1860.]

This writ of *quo warranto* was for the purpose of testing the right of John Rochester to be elected an Alderman for Victoria Ward, in the City of Ottawa, under the following circumstances:

John Rochester did not reside within the limits of the City but lived in the Township of Nepean, another Municipality adjoining Victoria Ward, of the City of Ottawa. He was assessed for property in the City of Ottawa, which was a sufficient property qualification, and he had a place of business within the City of Ottawa where he attended daily. His trade occupation was that of a tanner, which business was carried on where he resided in the Township of Nepean, and he was also assessed upon the roll of the Township for the property situated there.

The Relator was a candidate at the Municipal election for 1860, and complained that Rochester was not qualified by reason of his residence in another Municipality, to be elected a member of the Council of Ottawa.

McBride, for relator.

Jackson, for defendant.

Burns, J.—This proceeding brings up a very important question as to the meaning of the last Municipal Institutions' Act, and the proper construction to give to it.

The defendant contends that the effect of the 70 sect. of 22 Vic. ch 99, repeated in the Consolidated Acts, page 539, is to render persons who live in the County in which the Municipality is situated for which he may be elected eligible, provided he be rated on the assessment roll of that Municipality in respect of property sufficient to qualify

In this case there is no doubt that by the Territorial Divisions' Act the City of Ottawa is for some purposes part of the County of Carleton, and that defendant resides in the County of Carleton. If there were nothing else to be considered than simply these facts it might be contended, under the language of section 70, that the defendant is right, and that he may be an Alderman of the City of Ottawa though he does not reside within its limits, but resides in the same county within which it is situate. Section 73 enacts, who shall be disqualified to be elected, and non-residents are not there enumerated, so that section so far upholds defendant's views Then section 74 provides for those who may claim exemption from serving, and nothing is said about non-residents.

But it is a principle in the government of every municipal corporation that it has a right to the service of all its members in those offices to which they are capable of being elected, and from which they may not claim exemption In the present case the defendant sought the office, and the office was not forced upon him, but if he be qualified to ask for it he must be also qualified to perform the duties of it if elected against his will. I apprehend the principle in respect to qualification applies to the one case as well as the other, and I see nothing in the 70th sect which can imply that a person might be at liberty to elect whether he will consider himself qualified or disqualified on the ground of non-residence, as may suit either his convenience or his inclination. The 183rd sect. of the Statute enacts, that every qualified person duly elected who refuses the office shall be subject to be fined not more than $80 nor less than $8. I see nothing which would exempt the defendant from being subject to this penalty if he be qualified to be elected, as he contends, in case he were elected and refused to take the office. But the mere penalty would not be all. There is nothing in the Act to shew that the Legislature intended that the payment of the penalty would excuse the non-acceptance of office, or that it is to be in lieu of doing the duty. It is clearly laid down in *The King* v. *Bower*, 1 B. & C. 585, that it is an offence at Common Law to refuse to serve an office when duly elected. I refer also to *The King* v. *The Cor. of Bedford*, 1 East. 79, to shew, that if the defendant in this case was qualified to be elected he might on refusal to serve have been indicted for his refusal. *The King* v. *Woodrow*, 2 T. R. 731, also strongly supports this view. I cannot imagine the Legislature ever contemplated that a person appearing upon the assessment roll of one Municipality in respect of property which would qualify him yet if he lived in another Municipality twenty miles distant would be liable to be treated as qualified notwithstanding, and be subject to be fined and indicted because he did not accept the office to which he was elected.

There is nothing in my opinion from which to draw any inference that the Legislature intended that a person might be qualified to accept office and yet at the same time not be subject to the consequences in case of refusal. We must therefore come to the conclusion, that the meaning of the 70th section is something different from what the defendant contends in this case. I confess it is not easy to see what was meant. Possibly it may have been thought the expression would provide for cases of doubtful domicil, or such cases as it may be said that a man may have two domicils, though I do not suppose the Legislature meant that in this case the defendant could at the same time be a member of the Council of Ottawa and of the Township of Nepean. So far as I can see from the facts, there is nothing which would or could have prevented the defendant from being elected for the Township of Nepean, and of being subject to the penalties for not taking the office if he had been elected there.

The Court of Queen's Bench in *Reg ex. rel Taylor* v. *Caesar*, 11 U. C. Q. B. 461, determined that a person could not have two domicils for the purpose of voting, and I see nothing which warrants a person having two domicils for the purpose of qualification to be elected either seeking the office or having it forced upon him.