taken out by them. Prisoner saw them off from Toronto, but did not go himself.

Held, that as those actually engaged were guilty of the attempt to steal, the prisoner, under 27–28 Vic. ch. 19, sec. 9, was properly convicted.

[M. T., 1866.]

CRIMINAL CASE RESERVED.

The prisoner was indicted, for that he, on, &c., at, &c., together with three other persons named, did unlawfully attempt the money, goods and chattels of one J. G., then in the store of the said J. G., feloniously to steal, take, and carry away.

At the trial at Toronto, before John Wilson, J., evidence was given by an accomplice that the prisoner went with him to Cooksville to see a store: that the prisoner went in to buy something, to see how it could be got into; after he came out he told witness there would be no trouble in getting in, and that it would pay, that all the tools required were a bit and a jemmy, and told witness where they could be procured: that they discussed the matter several times, and arranged for a day to go from Toronto to Cooksville, and the means of conveyance, &c: that the witness and three companions started from Toronto in a buggy some days after; prisoner saw them off, but did not accompany them. The others went out, and at night made the attempt, taking out a panel of the door; one got in and took down the bars. It seemed the attack was expected, and as witness was striking a light a shot was fired from the inside, and they all ran off, and were arrested next day in Toronto. The subject of robbing a store in Cooksville was discussed between them before this night.

Witnesses were called for the defence, who admitted being concerned in and having been convicted of this attempt.

E. A. Harrison, for the prisoner, objected that an indictment would not lie for counselling a felony unless a felony was committed: that there was no evidence to connect the prisoner with the attempt; he was an accessory only, and was not so charged here; that the 27–28 Vic., ch. 19, sec. 9, was not applicable.

The prisoner was convicted, and the learned judge reserved the question whether the conviction could be sustained.

J. H. Cameron, Q. C., for the Crown.

Robert A. Harrison for the prisoner.

HAGARTY, J., delivered the judgment of the court.

The act referred to at the trial and relied on by the Crown, 27–27 Vic., ch. 19, sec. 9, reads thus:

"Whosoever shall aid, abet, counsel or procure the commission of any misdemeanor, whether the same be a misdemeanor at common law, or by virtue of any act, passed or to be passed, shall be liable to be tried, indicted and punished as a principal offender."

The evidence, believed as it was by the jury, would, we think, warrant the charge that the prisoner "aided, counselled, and procured," the doing of the act of attempting to steal the goods of J. G. in the store. Had the felony been completed, sec. 2 of the same act would have rendered the prisoner, as an accessory before the fact, liable to have been indicted as a principal felon

We have no doubt that there was evidence on which the jury could properly convict those actually engaged in effecting the entrance into the store with having done so with intent to steal; and that such attempt, with such intent, is a misdemeanor. The statute seems clear, that if the prisoner was accessory before the fact he could be indicted, as he has been, as if personally present.

No objection is taken to the sufficiency of the indictment, as charging an attempt to commit a felony.

Conviction affirmed.

ELECTION CASES.

(*Reported by* HENRY O'BRIEN, ESQ., *Barrister-at-Law and Reporter in Practice Court and Chambers.*)

THE QUEEN EX REL. MACK VS. MANNING.

Municipal Act of 1867, *sec* 73—*Disqualification—Lessee of Corporation—Defendant having claim against Corporation assigned before election.*

Section 73 of 29, 30 Vic., cap. 51, came into force on the 1st January, 1867.

"Disqualification" is not included in this act in "Qualification."

Where a lease, which was for twenty-one years, was originally made to a third person for the benefit of the beneficial lessee, and afterwards, during the term, it was surrendered, and a new lease made directly to the beneficial lessee for the remainder of the term, which was for less than twenty-one years, it was held that, looking at the real nature of the transaction, the lessee was not disqualified from being a member of the Corporation.

A claim by the defendant against the Corporation, *bonâ fide* assigned to a third party, before the election, does not disqualify.

[Com. Law Chambers, March 16, 1867.]

J. A. Boyd obtained a writ in the nature of a *quo warranto* on the 1st February last, on the relation of William Mack, calling upon the defendant, Alexander Manning, to shew by what authority he claimed to exercise and enjoy the office of alderman of the ward of St. Lawrence, in the city of Toronto; the relator complaining that the defendant was disqualified to be elected at the election held in January last.

The grounds alleged against Mr. Manning were: 1st. That at the time of the said election he was a lessee of the Corporation of the city of Toronto for a term of 17 years, and for another term of 21 years, in certain leases of premises belonging to the said city. 2. That said Manning, at such time, had a claim against such Corporation for services rendered by him as arbitrator or valuator in their behalf.

It appeared from the affidavits filed, that the defendant was lessee of certain premises in the city of Toronto, of property belonging to the city, under a lease dated 26th January, 1864, made by the Corporation to the defendant for a term of 21 years, at a rental of $216 17, payable half-yearly.

It further appeared, that the defendant was also lessee of certain other property of the city, under a lease dated the 2nd April, 1861, made by the Corporation to the defendant. This lease was for a term of 17 years, from the 1st of October then last past (1860). This latter lease recited that by an indenture of lease, bearing date the 30th of January, 1857, the Corporation leased unto Ezekiel F. Whittemore, then deceased, the premises for the term of 21 years, at a rental of £75; that although the lease was made to Whittemore, the defendant was the beneficial lessee, and took possession of the premises, and