tain premises on Colborne street in the said city, being lots numbers 9 and 10 on the said street; and he agreed to lease the said lots under the conditions mentioned in a certain printed paper attached thereto; and that the said agreement was in full force at the time of the election.

The relator by his affidavit states that he believes the grounds of objection to the election of the defendant mentioned in the relation are just and well founded at the time of moving for the summons. The relator filed another affidavit, in which, amongst other things, he stated that on the 30th January, 1857, he searched in the office of Charles Daly, Esq., clerk of the council for the said city, and was shown an *entry* in a book kept for that purpose in the said office, purporting to be the defendant's oath of qualification as councillor for St. Lawrence Ward, which was dated 19th January, 1847; that the only property mentioned therein as qualifying him for the said office, is a certain freehold estate, to wit, land, dwelling-house and premises, on Boulton street, in St. Andrew's Ward.

That he is informed and believes that Davis is not possessed of the said property and real estate, either in his own right or that of his wife, but that he holds the same as administrator of the estate and effects of one William Paquin, deceased, who at the time of his death was seized in fee of the said property, and that the said property is not now nor was ever the property of the said Davis.

That on the same day he searched in the office of the city Chamberlain and was shown a Lease from the corporation of the said city to the defendant of certain land and premises situate in East Market Square in the said city for the term of 42 years from 1st January, 1842, renewable for 21 years lease dated 1st May, 1842.

That he was also shown an agreement in writing dated 30th September, 1856, and signed by the defendant, and purporting to be an agreement on his part to lease from the corporation lots 9 and 10 on Colborne street in the said city, subject to certain conditions for building thereon, &c., more fully set forth in a printed paper attached to the said agreement, signed by defendant; that he was informed by the Chamberlain that the last mentioned Lease had not yet been executed, but that the corporation would look to the said defendant for the rent of the last mentioned premises under the agreement.

That he is advised and believes that neither the lease nor agreement have been annulled, released or discharged so as to affect the defendant's interest therein, or his liability to the corporation. That he is also advised and verily believes that the defendant is not qualified for the said office on account of his being a contractor with the corporation under the said lease and agreement.

*Mr. Cameron* on the hearing contended there was no sufficient evidence to sustain the allegations in the information; that as administrator Davis could not hold or claim to hold the real estate of Paquin—there is no evidence to show but that he may have bought it from deceased or from his heirs since; that as to the first objection there is no sufficient *prima facie* case made out.

2nd. That it does not appear from the affidavit that Davis ever *signed* any lease, or that under it he is to pay any rent, or that he thereby contracts to do anything.

3. That as to the third objection the terms of the written agreement are not shown; that it does not appear that the corporation ever sealed it, or are bound by it—nor that it is a binding agreement on the defendant, or that there is any rent payable under it, or a contract to do any thing.

*Mr. Crombie*, contra, contends a *prima facie* case is presented by the affidavits and the relation; that enough is there shown to call upon defendant to answer, and if he does not do so then it will be presumed against him; that he has the means peculiarly within his power of showing his qualification if he owns or leases the property, and that as to the lease or agreement with the corporation—if there is nothing in them to constitute a legal contract so as to disqualify him—he can show it. That if there is any doubt on the subject he suggests I should call for further affidavits. *Mr. Cameron* objects to this and contends that the Judge should only call for further affidavits when the matter is made doubtful by the defendant's affidavits. *Mr. Cameron* referred to Draper's Rule 135 and 136—to Rule No. 2, 2 Cham. Reports, 88.

*Mr. Crombie* referred to Draper's Rules, p. 157, Rule No. 18.

JUDGMENT:

There is no doubt the statement and affidavits accompanying the relation do not state the facts relied upon as particularly as they might and perhaps ought, but I am not prepared to say that every fact stated in a relation of this sort requires to be proved with the same kind of evidence as would be necessary at *Nisi Prius*.

It may often be impossible to produce original documents in applications for writs of *Quo Warranto*, and all that should be required is to make out a *prima facie* case, and if that is not denied on the other side it may be treated as a declaration or other pleading, the facts stated in which are not denied.

As to the first ground I think the evidence unanswered may warrant the conclusion that the defendant is not the owner in fee or tenant of the premises stated to have been owned by Paquin at the time of his decease—the affidavit shows that Paquin died seized, and the relator states that he is advised and believes he holds the property as administrator of Paquin; he concludes by stating that the property is not now nor ever was the property of Davis. It is true that as administrator he would not have any right to take possession of the real estate, but as it appears he had some connection with the personalty, he may have supposed he would be required to manage the real estate also, and if it was assessed in his name he perhaps considered that would qualify him for the office, although he held it in trust. The information and affidavit sufficiently inform him as to the points on which he is called upon to answer, and he declines to do so; I therefore think on this ground the relator may claim to have the election set aside.

As to the second ground, a lease for years is defined in Bacon's Abridgment to be "a contract made between lessor and lessee for the possession and profit of lands, &c., on the one side and a recompense for rent or income on the other." The terms of the lease are not mentioned in the relation or affidavit, and it was objected that it did not appear that the defendant had executed the lease. In the relation it is stated that the defendant "did by an indenture of lease dated 1st of