ance thereof to defendant; that in the month of August, 1864, he suggested to the defendant that he would allow him a discount if he would take out his deed for the lots; that in same month defendant applied for the loan referred to; that he (Strachan) executed a deed to Mrs. Nixon for the purpose as understood between defendant and himself of Mrs. Nixon executing the mortgage to the Society for the loan; and that he (Strachan) received the proceeds of the loan, and he further swore that he is satisfied that at the time of the last assessment and at the time of defendant's election defendant was possessed of the property in question to his own use and benefit.

Mrs. Nixon swore that she accepted the deed and executed the mortgage at the instance of the defendant, and afterwards conveyed the property to defendant, as stated above, all of which was done for the sole purpose of facilitating the loan, and that she had no interest whatever in the property.

H. L. Hime swore that in December last defendant requested him to hand over to him (defendant) two mortgages amounting to about £300, which defendant had deposited with him as collateral security for notes discounted, for the purpose, as he stated, of filing bills to compel payment of the amounts secured by them, and that the defendant proposed substituting in lieu thereof a mortgage on property of his own; that he (Hime) consented, and that defendant on the 10th Dec. last delivered to him a mortgage made by himself for £275 on the property in question; he swore that defendant did not take away the two mortgages, but merely took an indenture of assignment of the same, from which defendant said he could obtain the particulars of the two mortgages; and he further swore that at the time of defendant's election, and when he subscribed his declaration of office in January last, although the mortgage was in his office and registered, that he did not hold it other than as he (Hime) terms it, as an escrow, and that he had no claim whatsoever against the same, or the properties therein mentioned, and he stated that the defendant had not since taken away the mortgages.

Mrs. Ann Canavan swore that she never had any estate in the premises in question, and that she always understood it to be defendant's property.

Thomas Barry swore that he is a co-trustee with defendant by virtue of a power in a deed of trust made in 1856, between A. Burnham, of Cobourg, and the defendant; that he does not hold or ever held as trustee or otherwise for Ann Canavan, named in such trust deed any property on Strachan street, and verily believes that she has not or ever had any property there; that he was appointed a trustee in 1862, and is still acting as such.

William B. Canavan swore to Barry and defendant being the trustees aforesaid; that he had consulted from time to time with his mother, Ann Canavan, the *cestui que trust*, regarding securities held by the trustees for her benefit. That some time in 1863 defendant represented to Mrs. Canavan that he had purchased the property on Strachan street from Capt. Strachan, and requested her to allow it to be held as part of her trust property, and to allow him (defendant) an amount of money for the same; that Mrs. Canavan declined to accede to such proposal, or accept the same, and that she did not accept it, and that she has no interest in it, and stated that she had just reason to believe that the property is defendant's. He also conducted the making of the assignment to Mrs. Nixon for the person already mentioned, and that she executed the deed in his presence to defendant, and swore that the property from the time defendant purchased from Captain Strachan was his to the present time.

C. S. Patterson and *Lauder* for the relator.

MORRISON, J.—Under the 70th clause of the Municipal Act the persons qualified to be elected aldermen in cities are residents who have at the time of the election in their own right, &c., as proprietors or tenants freehold or leasehold property, rated in their own names on the last assessment roll to at least in freehold to the annual value of $160, or leasehold to $320, and so in the same proportion in case the property is partly freehold and partly leasehold, and the clause defines the term leasehold to include a tenancy for a year or from year to year, and that the qualifying estate may be either legal or equitable.

As it is admitted here that the property in question was assessed in the name of the defendant, and was rated on the last assessment roll at a sufficient amount to qualify him for the office, the only question to be determined is whether at the time of his being so assessed, and at the time of his election, the defendant was possessed of an equitable estate on the premises. Upon the argument Mr. Patterson pressed upon me that taking the mortgage of $500 and the mortgage for £275 into account, and assuming the latter to be a subsisting mortgage and a charge on the property, the defendant had not such an interest in the property as was sufficient to qualify him within the meaning of the act. With regard to the £275 mortgage—when I consider the circumstances sworn to by the defendant and the mortgagee, under which the mortgage was made and the sworn disavowal of all claim and interest therein mentioned, and that that disavowal is based upon the fact that the purpose for which the mortgage was made was never carried into effect: if it were necessary for me to determine the point, I would hold that it was no encumbrance on the property.

The 70th enacting clause is silent as to encumbrances. If the Legislature intended that the qualifying property should be encumbered, or if encumbered, to be reduced for qualification purposes proportionably, it is not unreasonable to suppose that it would have so enacted in express words. We find the Legislature so speaking in other statutes with reference to property qualification for members of the Legislature, justices of the peace and others, where the amount is stated to be over and above all incumbrances thereon. The concluding words of the clause, declaring the estate may be either legal or equitable, in my judgment points among other estates, to that which is subject to incumbrances.

But even if I held that the amounts of the two mortgages were both to be deducted from the assessed value of the premises with a view of