that other bonds were executed or even accepted by the council would not involve the satisfaction of this, and the court cannot presume that a dispute may not arise on the bond given in 1858.

He cited *Reg. ex rel Davis* v. *Carruthers*, 1 U. C. Prac. Rep. 114; *Reg. ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60; *Reg. ex rel. Bland* v. *Figg*, 6 U. C. L. J. 44.

Shiel, for the defendant, contended,

1st. That the defendant was not keeper of the inn for more than a year previous to the fifth day of January last, but only attended for lessee; and it being positively sworn to by himself that he did not intend to keep the inn, it must be presumed that he was not the keeper of the inn.

2nd. That the lease made to Butler—though on the eve of the election, even if it was made for the purpose of enabling the defendant to become a candidate—removed the disqualification, if any there was.

3rd. That an actual and continual change of possession was not necessary.

4th. That the defendant remaining at the inn was only as the occupier of a particular part, and that only for a certain period under the lease; and also that the defendant was not an innkeeper when elected a township councillor. (*Reg. ex rel. Crozier* v. *Taylor*, 6 U. C. L. J. 60.

5th. That the re-appointment, by the council of 1859, of Mullins to the office of treasurer, was a discharge and termination of his appointment by the council of 1858, and consequently a discharge of his sureties for any time subsequent.

6th. That the annual appointment of treasurer, coupled with the fact of the acceptance of new sureties, shows that the council only considered the office an annual one, and that the treasurer's sureties were only liable for one year.

7th. That unless there is really existing between the council and the treasurer a claim or demand *bona fide* in dispute, for which the defendant is responsible, his being a surety on the bond is not a disqualification. (*Reg. ex rel. Bland* v. *Figg*, 6 U. C. L. J. page 44.

8th. That if defendant is disqualified, relator is not entitled to the seat; he (the relator) not having notified the defendant and also the electors, previous to the election, of his (the defendant's) disqualification and the grounds thereof. (*Reg. ex rel. Coleman* v. *O'Hare*, 2 U.C. Prac. R. 18; *Reg. ex rel. Clark* v. *McMullen*, 9 U C. Q B. 467.)

LEGGATT, Co. J.—The first point to be determined in this case is, whether or not the defendant John McMahon was an innkeeper on the seventh day of January last, the day upon which municipal elections were held for 1861. Innkeepers are specially disqualified as members of a municipal council by the 73rd clause of the act relating to municipal institutions; and it is not material, I presume, whether they are licensed innkeepers or not. If the Legislature intended that licensed innkeepers alone should be ineligible, there would have been no need of mentioning them by name among those who are disqualified, as the mere fact of their taking out a license would make them incompetent under the latter part of the same clause. The defendant contends that he has not been an innkeeper since the latter part of 1859, he having then leased the tavern stand to one Ellen Mullins.

The only evidence of this first lease that we have is that of McMahon himself, uncorroborated by the affidavit of any other person. Some evidence is required other than that of the party himself, where the truth of the case does not appear, as it frequently does, in the affidavits filed in answer by the opposite party.

Now, the fact of this lease having been made is contradicted, or rather, circumstances are shown in the affidavits of the relator which are incompatible with such a statement, viz., that Ellen Mullins, the person to whom McMahon alleges he leased the tavern stand, was away in Detroit, out at service as a hired servant, since the month of May last, and that the business of the tavern since it was first opened by McMahon to the present time has been conducted by McMahon personally. The facts in this case, so far as the lease to Mullins is concerned, are very similar to the case of *McKay* v. *Brown*, decided by Judge McKenzie, and reported in 5 U. C. Law Jour. 91. As, in that case, among other things, as in this, there was no actual change of possession, McMahon remained in possession the whole time. The learned judge's remarks, and the cases cited by him, in *McKay* v. *Brown*, relative to change of possession, apply forcibly to this case.

So far, then, as Mullins's lease is concerned, I am of opinion that it was not *bona fide*, and that up to the day of the election McMahon was an innkeeper within the meaning of the statute.

We have next to examine the effect of the lease to Butler. The lease is dated and was executed on the eighth day of January, 1861, and the term is to take effect and be computed from the seventh day of January, or the day before. From the affidavits of McMahon and Butler the tenant, it appears that they had had several conversations together in the month of December last, about leasing the tavern stand;—and here I must remark that McMahon treated his former tenant, if so she was, Ellen Mullins, rather cavalierly, for it does not appear that she was consulted in the matter, or that her former lease was terminated by a notice to quit or otherwise. On the seventh day of January, the day of the election, they, McMahon and Butler, came to an arrangement as to the terms of a lease, and agreed that a formal lease should be drawn up and executed the day after, viz, the eighth day of January, which was done. Although Butler swears that he took possession of the premises on the 7th January, I do not think it was of such a nature as to make the lease binding, because it was not an exclusive possession, the defendant McMahon still remaining to all intents and purposes with his family in the house; and I am of opinion that the lease or agreement was not consummated or perfected until the 8th January, when a written lease was executed.

The lease to Butler may be *bona fide;* but I think I can come to no other conclusion, from all the evidence in the case, than that McMahon had been, for some time previous to the execution of the lease to Butler, sole manager and proprietor of the inn known as the "Belle River Hotel," entertaining travellers and strangers; and that if he ceased to have any connection with the hotel as proprietor or manager, he did not so cease to be connected therewith until the execution of the lease in question to Butler; and that on the 7th January, 1861, the day of the election, he was an innkeeper within the meaning of the statute, and therefore disqualified as a councillor.

As to the second objection taken to the defendant McMahon, viz, that at the time of the election in January last he was security for the treasurer of the municipality of Rochester, having decided that the defendant is disqualified as an innkeeper, it is unnecessary to determine the second objection; nevertheless, since the question has been brought up, I do not hesitate to express an opinion upon it.

In 1858, one John Mullins was appointed treasurer of the municipality of Rochester, and the defendant and one Robinson became his securities, by entering into a bond with the corporation, conditioned that if (among other things) John Mullins should well and truly perform all and singular the duties of treasurer of said municipality for and during his official term, and until he should deliver all the property which he might receive as such treasurer to his successor in said office, and should keep just and true accounts of all property belonging to said municipality that might come into his hands, &c, then to be void; otherwise, to be and remain in full force and virtue, &c. The argument that at the time this bond was signed it was understood by all the parties executing it as sureties that they were only to be held responsible for the due discharge of the treasurer's duties during the year 1858, has no weight. The bond is a sealed instrument, and we must look to the wording of the document itself, and not to anything that may have been understood at the time, for a proper construction of its terms. The bond itself is not limited to 1858, but the parties are bound for the faithful discharge of the duties of the treasurer during the term of his office. He is still treasurer of the municipality, having been reappointed from year to year. The fact of the treasurer giving other securities in the two following years, does not, in my opinion, necessarily release his first sureties. I am inclined to think that the bond signed by McMahon is a continuing security

Assuming, however, that it was confined, in as many words, to the year 1858. At the end of that year the auditors found a balance of $685 85c. against the treasurer. This the defendant