

veyed their lands, taking mortgages for \$4,100 and \$4,500. The declarations omitted the word "and" between the words "have" and "had" in the third line of the form in section 311 of the Consolidated Municipal Act, 1903.

Held, 1. There are three pre-requisites to a de jure occupation of the office: (1) possession of property qualification; (2) election; (3) making the declaration prescribed. Because of the defect in the declaration neither respondent is de jure a member of the council, but the mere fact that a proper declaration was not made does not in itself compel the Court to declare the seat vacant.

2. There is nothing in principle or authority to prevent a mortgagee, who is assessed for the property, qualifying on his legal estate.

3. If the defendants make a proper declaration within ten days their appeal will be allowed without costs, otherwise it will be dismissed with costs; such permission to make a proper declaration being in the nature of an indulgence.

W. A. H. Duff, for the relator. *J. G. Farmer*, K.C., and *A. M. Lewis*, for the defendants.

DIVISION COURTS.

COUNTY OF MIDDLESEX.

Macbeth, Co.J.] HUNTER v. FITZGERALD. [April 24.

Negligence — P.O. delivery — Liability — Damages — Costs not paid, but payable.

The defendant, a postman, whose duty it was to deliver letters wrote "Dead" on a letter addressed to the plaintiff, without ascertaining if she were dead, and thereby caused the discontinuance of her pension from the United States Government. The plaintiff sued for damages for negligence. The defendant disputed the claim on the ground that there was no cause of action, and also disputed plaintiff's claim to recover as damages the costs incurred in engaging a solicitor to correspond with the pension authorities, on the ground that such costs had not as yet been paid.

Held, that the plaintiff was entitled to damages for the negligence, and also for her expenses incurred in having her pension restored, although not paid.

W. H. Bartram, for plaintiff. *R. K. Cowan*, for defendant.