

Held, 2. That the estate need not be free from incumbrances.
Held, 3. That if incumbered, and after deducting the gross amount of the incumbrances from the assessed value of the premises, there be still left a sufficient annual value in respect of which to qualify, that the qualification is sufficient.

[Common Law Chambers, February 27, 1865.]

On the 11th day of February last, an order was obtained for a writ of summons in the nature of a *quo warranto* directed to the defendant to show by what authority he exercised the office of alderman for St. Patrick's Ward, in the city of Toronto, and why he should not be removed from the said office.

The relator objected to the election of the defendant on the grounds—That the defendant was not at the time of the election possessed of the necessary property qualification for alderman; that at the time of the taking the last assessment for the city he was not then the owner of the property on which he claimed to qualify as freehold, and that he procured the said property to be rated in his name for the purpose of giving an appearance of qualification, being, in fact, not the owner or entitled to qualify therein, and never beneficially interested therein, and that if at any time he was beneficially interested therein, he was not at the time of his election beneficially interested to an amount sufficient to qualify him; that any estate which remained in him at the time of the election was not freehold, and insufficient as leasehold, both in value and estate; that the equity of redemption, if defendant was beneficially entitled thereto, was insufficient in value, and was not rated in respect thereof, and that the value of the leasehold in defendant's name was insufficient to complete his qualification.

In support of the statement and writ two affidavits were filed, that of the relator and of the assessor of St. Patrick's Ward.

It appeared from the affidavit of the relator that on the last revised assessment rolls for the city of Toronto the defendant was rated for premises on Strachan street, as owner of the annual value of \$240, and as occupant of certain leasehold premises rated at \$160 (regarding the latter no objection was taken); that the premises on Strachan street, on which ten dwelling-houses are erected, consists of lots 1, 2 and 8 on block B, west side of that street. That from memorials in the registry office it appears that at the taking of the assessment for 1864 the legal estate in these lots was vested in Captain Strachan. That he conveyed the same by deed, dated 18th August, 1864, to Mrs. Mary Ann Nixon, sister of the defendant, who mortgaged the same by deed dated 27th August, to the Western Canada Building Society, for \$500, and that she also by deed dated the 23rd August, but not registered until 10th December following, conveyed the premises to defendant, subject to the mortgage; and that the defendant, by deed dated 1st December, 1864, mortgaged the premises to one Hime for £275, payable in three years; both of which mortgages appear not to be discharged, and the relator stated his belief that the premises were not equal in value to the amount of the mortgages, and that he was informed that Capt. Strachan had contracted to sell the lots to one Baines, from whom Mrs. Nixon acquired her interest therein, but that the purchase money was not paid to Captain Strachan until after the

taking of the assessment, and about the date of the deed to Mrs. Nixon. He also swore that he was informed the defendant is in insolvent circumstances, and that defendant never was beneficially interested in the premises in question.

The affidavit of John Clarke, one of the assessors for St. Patrick's Ward for the years 1863 and 1864, verified extracts from the assessment rolls for these years, showing the manner and in whose names the property in question was assessed. In 1863 it appeared to have been assessed in the name of Ann Canavan and Thomas Barry and John Canavan, trustees. In 1864 it was assessed in the sole name of the defendant. Clarke swore that in 1863 it was assessed at the request of defendant in his defendant's name, for a Mr. Canavan; that in the month of March, 1864, the assessors assessed the premises in the same way, but that subsequently defendant told them that he wished his name inserted as owner, which was done in April, 1864, and before they had completed their assessment of the ward, and the same was so returned to the City Clerk on the 1st of May following, as required by law.

Robert A. Harrison shewed cause and read and filed several affidavits on the part of defendant. The defendant swore that in March, 1863, he purchased the premises on Strachan street, from Captain Strachan, getting a bond for a deed; that in August, 1864, Captain Strachan informed him that if he paid the balance then due he would allow him a discount; that in the same month he made an application in (his sister's) Mrs. Nixon's name to the Building Society for a loan of \$500, with a view of paying Captain Strachan; that upon the request of the defendant and with his sister's consent, Captain Strachan conveyed to her the lots in fee; that Mrs. Nixon executed the mortgage to the Society; that the sole reason of the deed being so made to Mrs. Nixon was in consequence of an arrangement between defendant and the Secretary of the Society, in which the mortgage was to be given in a third party's name, he (the defendant) executing a bond to the Society as additional security for the same. That on the 23rd August Mrs. Nixon, by deed, conveyed the premises to defendant in fee; that on the 1st December last, he (defendant) executed a mortgage on the premises to one Hime for £275. The defendant swore that this was solely executed as a security to Hime to take effect only on his (defendant) receiving from Hime two mortgages which Hime held as collateral security for advances made by Hime to the defendant and some of his clients; that he had not then, nor has he since withdrawn the two mortgages, and that they still remain in Hime's possession; and he further swore that at the time of his election Hime had not the slightest claims on the mortgage for £275, or on the premises contained therein; and he also swore that he did not cause himself to be assessed for the property for the purpose of giving himself a qualification, but solely on account and for the sole reason that at the time he was sole owner of the property, and that he is still owner.

James McGill Strachan swore that he being the owner in fee of the property in question in March, 1863, gave a bond for a deed for the same to defendant conditional on payment of £140, within three years, to execute a convey-