and took the oath of office on 21st January, 1903; (2) that on 26th December, 1904, he was nominated as councillor, and on the same day was nominated (with four others) as school trustee; but next day filed with the secretary of the school board a memorandum in these words: "I hereby tender my resignation as candidate for trustee for 1905;" (3) that the first meeting of the new school board was held on 18th January, 1905, when the same was organized; (4) and that Mr. Cook took the oath of qualification as councillor on 27th December, 1904, made his declaration of office as councillor on 9th January, 1905, and took his seat in the council.

On 7th February the relator caused a letter to be written by his solicitors to Mr. Cook, pointing out that he was disqualified by reason of 3 Edw. VII. ch. 19, sec. 80, sub-sec. 1, as having been a member of the school board at the time of his election, and inviting him to consult his solicitors as to the advisability of disclaiming so as to save costs of proceedings to have him unseated.

To this apparently no answer was given.

The case does not seem in any way distinguishable from Rex ex rel. Zimmerman v. Steele, 5 O. L. R. 565, 2 O. W. R. 242. Mr. Jones argued that the present case did not come within the mischief of the Act relied on. He pointed out that the effect would be that a school trustee would be prevented from seeking election as a councillor for 3 years if his co-trustees were unwilling to accept his resignation; . . . that the Act should not be held to apply unless it seemed quite impossible to distinguish this case from those already decided on this section. He suggested that this was a case which the legislature had never contemplated when sec. 80 (1) of the Municipal Act of 1903 was passed. The learned counsel may very likely be right in this view. I think it safer, however, to follow the observations of Mr. Justice Meredith in O'Connor v. City of Hamilton, 8 O. L. R. on pp. 409 and 410. . . . The motion must be granted, and with costs, as the respondent did not avail himself of the notice to disclaim.

Something was said at the argument as to the relator having voted for the respondent. It was stated that he would deny this on oath. If the respondent wishes to pursue this further, the matter can be spoken to again. But the order should not be delayed.