is correct, but the difficulty in the present case is as much to determine who is clerk, &c., *de facto*, as who is so, *de jure*.

It is claimed for the relator that he has been duly appointed by by-law, and that he is acting as such under the authority of the council; while, on the other hand, the meetings of the council at which the defendant is alleged to have been dismissed, the relator attempted to be appointed, and at which the relator has acted are said to have been wholly irregular, to have been irregularly called, held without the presence of a quorum, and wholly ineffectual to accomplish anything.

Prima facie, I think that I must consider the meetings valid. The only objection that clearly appears is the absence of the reeve from the meetings, a by-law appearing to require his presence to form a quorum. In view of the provisions of sections 109, 174, 175, 176, 177 & 180 of the Municipal Act of 1884, I do not consider that such a by-law can be operative. It is hardly reasonable, either, to make it the *duty* of the reeve to summon a special meeting, as is done by section 108, if he is to be allowed to prevent the holding of the meeting by failing to attend. This being the case, it appears to me that the clerk who is acting under the present authority of the council at these meetings and in matters directed at these meetings is the clerk, &c,, *de facto*,, and probably also *de jure*, and, if this be correct, he is entitled to the writ.

The position is not, however, so clear that a peremptory mandamus can be issued. That could be done only in the clearest case, and one in which the matter is of the most extreme urgency. If, in this instance, the defendant can be the clerk *de facto*, while there is a question as to his being so *de jure*, and this disentitles the relator to proceed by mandamus before ousting the defendant, this point can still be raised on the return to the writ.

It is not correct to say that, while the defendant has a color of right, his title cannot be tested in this way. The title to office is often contested upon mandamus, but at present I think that this cannot be done in such a case as this, except at the instance of the clerk *de facto*.

Quod non fuit electus is now determined to be a good return upon which the validity of the election could, under the old practice, be determined by action for a false return. *Regina* v.