

Mun: Case.]

REGINA EX REL. HANER V. ROBERT—NOTES OF CASES.

[C. of A.]

## MUNICIPAL CASES.

REGINA *ex rel.* HANER V. ROBERT.  
REGINA *ex rel.* TAYLOR V. STEVENS.

*Municipal law—Disqualification—Contract with or on behalf of Corporation.*

*Held*, that a person who was surety for a corporation in a bond for security for costs had "an interest in a contract with or on behalf of the corporation" within the meaning of Rev. Stat. cap. 174, sec. 74.

[March 7-14—Mr. DALTON.

In these cases summonses in the nature of writs of *quo warranto* were issued, calling on the defendants to show by what authority they held respectively the office of Reeve of the Township of Chatham and Reeve of the Township of Dover.

One of the grounds upon which the summonses were issued was that the defendants, at the time of their election, were sureties in a bond given by their townships as security for costs of an appeal, and were therefore disqualified under Rev. Stat. cap. 174, sec. 74.

*M. C. Cameron, Q.C.*, shewed cause.

This is not a contract "with or on behalf of the Corporation" within the meaning of the Statute.

*Ferguson, Q.C.*, contra.

This is a contract with the corporation: *Hungerford v. Hungerford*, Gilbert's Equity Cases, 1742; *Pitman on Principal and Surety*, 125; *Burge on Suretyship*, 378. Each of the defendants is interested jointly with the corporation in a contract expressly on behalf of the corporation. The defendants are interested in the contract within the spirit and letter of the Act, and come within the mischief contemplated by it. Their interest, should the abandonment of the appeal or a resolution to indemnify the sureties be discussed in the Council, would not be identical with that of their constituents.

Mr. DALTON.—I think that this is a contract both with and on behalf of the Corporations within the meaning of the statute, and I think, further, that it comes within the mischief contemplated. The defendants are unseated, and there must be a new election. The defendants must pay the costs.

*Judgment accordingly.*

## NOTES OF CASES.

IN THE ONTARIO COURTS, PUBLISHED  
IN ADVANCE, BY ORDER OF THE  
LAW SOCIETY.

## COURT OF APPEAL.

From C. C. York.]

[April 11.

WERNER V. SIBBALD.

*Abandonment of excess—Effect of.*

The commencement of a suit for an amount less than the entire claim is not *per se* a release of the excess; but the part so abandoned cannot be sued for, after the recovery of judgment in such suit.

*Nugent* for the appellant.

*Monkman* for the respondent.

*Appeal allowed.*

From C. C. Renfrew.]

[April 11.

RE FAIR & BELL.

*Insolvent Act, 1875—Garnishment after assignment.*

Upon A's insolvency, T., a creditor residing in the County of Renfrew, proved his claim, and afterwards became insolvent. On the 7th of March, 1877, F. & A's assignee, not having heard of T's insolvency, collocated him on the dividend sheet for the amount due on his claim, and on the 22nd of the same month certain creditors of T. took proceedings in the Superior Court at Montreal to garnish this amount. Subsequently, in reply to a letter from one B., T's assignee, demanding payment of the dividend, F. informed him that some persons were endeavouring to get payment of this dividend from him in Montreal; but he neither mentioned who they were, nor specified the nature of their claim. He, however, asked for evidence of B's official character, which request was immediately complied with. In accordance with the practice of the Courts in Quebec, on the 30th of April, F. made an affidavit of the position he occupied towards the principal debtor, in which he recited the above facts, but took no further action in the matter. He neither advised B. that the declaration had been made, nor held any further communication with him. No opposition being offered, an order was made for the payment of the amount, debt and costs, by F., within fifteen days. Without waiting for the expiration of