

Elec. Case.]

REG. EX REL. FERRIS V. ILER.

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terests of the public against venality and corruption in the administration of municipal affairs. It is the duty of courts so to construe statutes as to meet the mischief, to advance the remedy, and not to violate fundamental principles. Another rule of interpretation is that one part of the statute must be so construed by another, that the whole may, if possible, stand. Accordingly, it is a rule that such exposition of the statute is to be favoured as hinders the statute from being evaded.

The contract with the corporation in which the candidate has an interest at the time of the election need not be a contract binding upon the corporation to disqualify him, *a fortiori*, would it therefore be a disqualification where the contract was valid and binding. It would not be either wise or politic to give a wider construction to the section in question here, than the words themselves imply, which is, it is conceived, that it is lawful for the reeve or councillor to act as a commissioner for the expenditure of money, and to receive pay therefor, that is, to receive a fixed sum for his services as such, during the current term of his office, or if he is given a percentage or commission, as the defendant receives in this instance, as the work progresses, then the work must be completed, or he must have received all his commission or pay before his election. If otherwise—if the work is not finished, and the councillor has not been paid in full, but still has a claim already due or accruing due on the uncompleted work, he has such an interest in the corporation at the time of the election, as would disqualify him under the statute.

It might be contended here, perhaps, as in *Reg. ex rel. Davis v. Carruthers*, 1 Prac. R. 114, that the amount coming to the defendant, for his commission on these different contracts was ascertained and liquidated, and no possible dispute with reference to defendant's claim against the corporation could arise, and therefore the statute could not apply, but Chief Justice Robinson said in his judgment in that case, "No person can pronounce that a dispute might not arise at any time before the money is actually paid. I could," says he, "suggest several

grounds of contention that might possibly be yet advanced, and the intention of the enactment is that in case of any dispute of any kind, the council should be composed of disinterested parties." I am therefore constrained to hold, I think, that the defendant was disqualified, and was not duly or legally elected for the reasons set forth in the latter part of the relator's statement.

Having come to this conclusion, it will not be necessary for me to express any opinion as to the first grounds for voiding the election in the statement of the relator. It is clear that the proceedings of the returning officer on the nomination day were irregular, but whether the irregularities were of such a vital character as to make the subsequent proceedings void, it is not necessary for me now to determine. See note (a) to section 112, Harrison's Municipal Manual.

As in *Reg. ex rel. Rollo v. Beard*, 3 Prac. R., 357, we may possibly regret the result, from the belief that the defendant was sincere in his conviction that he was not violating any provision of the Municipal Act when he went to the polls for re-election, and to use the very words of Hagarty, J., in that case, "I unwillingly feel compelled to make defendant pay costs, but I think I cannot weaken the effect of this wholesome provision by discouraging parties from bringing a case of disqualification under notice at the peril of having to lose the costs necessarily incurred." Defendant must be unseated with costs.

In the case of *The Queen ex rel. Ferris v. Iler*, the defendant must be unseated for the reasons assigned in the second part of the relator's statement. Costs are in the discretion of the court or a judge. As the relator here may have contributed towards placing the defendant in the position he was as to qualification at the time of the election, by failing to give the necessary security promptly when the contract was given to him, and to prosecute and complete the work, which, I assume, might have been done before the end of the year, if the contract had not, in consequence of the relator's neglect, to be re-let, I will award him no costs in this case.