

Elec. Case.]

REG. EX REL. FERRIL V. ILER.

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to test the validity of the election of Mr. Iler here, I would have to declare that the defendant was not duly and legally elected, for the reasons assigned by the relator, unless there is some enactment of the legislature since those decisions that would warrant or justify the court in upholding the election. But this is what the defendant contends is the case, and that the statute now no longer works a disqualification where a councillor or reeve is paid for his services as a commissioner, and refers to sec. 454, R. S. O., by which it is declared that nothing in that act shall prevent any member of a corporation from acting as a commissioner, superintendent or overseer, over any road or work undertaken and carried on in part or in whole at the expense of the municipality, and it shall be lawful for said municipality to pay any such member of the corporation acting as such commissioner, superintendent or overseer. By the Municipal Act of 1866, it was expressly declared that no member of a corporation shall be eligible to act as commissioner, superintendent or overseer, over any work undertaken at the expense of the municipality. See section 246. This was, however, repealed the following session, and the provisions of section 454 have been the law since then, or at all events since 1873.

When my attention was first called to this section, and while the case was in progress, there was a strong impression on my mind that defendant's contention was good, and that under that section a reeve or councillor would no longer be disqualified to be re-elected by acting as a commissioner, whether the work was complete or not, or whether he had received his pay in full or not at the time of his election; but, on reflection, and considering the several sections of the acts singly and collectively, I have come to a different conclusion.

Consider for a moment the language of section 454. It does not expressly or by implication repeal the disqualification clause. It leaves that section untouched. It simply declares that nothing in the act shall prevent any member of a corporation from acting as a commissioner, &c., and that it shall be lawful to pay any such mem-

ber of the corporation acting as such commissioner, &c. It does not go on to declare and enact that a reeve or councillor who undertakes to act as a commissioner, &c., for a fee or reward in the shape of a commission on moneys expended, shall not be disqualified as a candidate for re-election. In the note to this section in Harrison's Manual, the author refers to section 410 as apparently the only section annulled or abrogated by the former clause. When a councillor or reeve seeks re-election, though nominally filling the office till his successor is sworn in, or till after the election, he goes, or should go to the electors as free and untrammelled from contracts with the corporation as he was when first elected. Can this be said of the defendant in this instance? Though the defendant's term of office was virtually ended by lapse of time, he did not or had not divested himself of his undertaking with the corporation to supervise the construction of those ditches, or his office of commissioner for the expenditure of money thereon, which he might have done by resigning, or by repealing that part of the by-law or resolution by which he was appointed.

If the principle contended for by the defendant were admitted, there would be no objection to the Reeves and councillors of any municipality at the end of the year devising some grand scheme to dig drains, build bridges or construct roads, making provision for raising money to pay for the work, and appointing themselves commissioners, and then go to the country for re-election with the by-law in their pockets, and use it as a lever to induce influential persons in the municipality to vote and work for them, with the view or under the promise to them of participating in the contracts to be given, giving them an advantage over their opponents in the contest which the law never contemplated that they should possess or acquire.

If the construction put upon section 454 by the defendant was conceded, it would be but the entering of the thin edge of the wedge, which, when driven home, would rend to pieces the fabric built up by the legislature and the courts to protect the in-