nothing in the act which required the property on which a civic qualification is based to be unincumbered, all that was required was that he should be assessed for and pay taxes for property worth $4,000 freehold or $8,000 leasehold.

Hodgins for the relators.

The words "elector who voted or tendered his vote at the election," should be interpreted as meaning, at the annual election of aldermen within the municipality.

The interpretation contended for by the defendant would leave no redress in cases where a candidate is elected by acclamation; and that part of the statute which requires a property qualification might in such case be evaded.

Hagarty, J.—This case seems to me to be governed by *In re Kelly* v. *Macarow*, and I shall decide it against the relators upon the authority of that case. If the electors do not think it worth while to contest an election in the ordinary way, it may properly be considered that the Legislature did not mean to give them a right to contest it by an application of this kind. As to the point raised, that the proceedings at the nomination were not kept open for a full hour, the objection is most loosely made and is amply contradicted.

Summons discharged with costs.

Reg. ex rel. Boyes v. Detlor.

29, 30 *Vic. cap.* 51, *sec.* 73—*Disqualification of candidate.*

Held, that a County Clerk is disqualified under sec. 73 of 29 & 30 Vic. ch. 51, from sitting as mayor of the same or any other municipality.

[Chambers, January 23, 1868.]

This was a *quo warranto* summons to set aside the election of the defendant, who claimed to have been duly elected mayor of the Town of Napanee.

The defendant was clerk of the municipality of the United Counties of Lennox and Addington at the time of his alleged election as mayor, and it was contended that being such clerk he could not legally take a seat as mayor of that or any other municipality, being disqualified under sec. 73 of 29 & 30 Vic. cap. 51.

C. W. Paterson shewed cause. The disqualification only applies where the same person attempts to fill both offices in the same municipality; and the former act (22 Vic. ch. 57, sec. 73), still in force in this particular by virtue of sec. 428 of 29 & 30 Vic. cap. 51, and the defendant would not have been disqualified under the former act.

Moss contra. The disqualification is general, and the statute is clear on the point, and differs from the former act, for here all the officers who are disqualified for election are particularised. The reason of the statute is obvious, for there might be disputes between the different municipalities which would render the holding of these offices by the same person incompatible. There was a mischief under the former act which this is intended to remedy.

John Wilson, J.—The question is, whether by the 73rd section of 29 & 30 Vic. cap. 51, the defendant is disqualified as a member of the municipal corporation of Napanee. The words of that section, as regards this defendant, are, "no clerk of any municipality shall be qualified to be a member of the council of any municipal corporation."

The words of the old statute, Con. Stat. U. C. cap. 54, sec. 73, are, "no officer of any municipality shall be qualified to be a member of the council of the corporation." The defendant contends that he was not disqualified under the former act, and the new act is to be construed as the old one.

If this case had occurred under the old act I should have held this defendant disqualified, for the language seemed very clear, that no officer of any municipality shall be qualified to be a member of the council of the particular corporation.

But under the last act no clerk of any municipality shall be qualfied to be a member of the council of *any* municipal corporation. The evident intention of the legislature was, among other things, to exclude persons who might be placed in a false position, by reason of holding two offices; and no man should, if it can be avoided, be placed in a false position.

It requires no great foresight to see that a man, being a subordinate in the municipal corporation of a county, and the head of the corporation of a town or city in that county, would have conflicting duties to perform, and would represent conflicting interests if he held these offices. To allow the defendant to be mayor while he held the office of clerk of the municipality of the county, would be contrary to the express words of the statute, and at variance with its spirit.

The office is adjudged vacant, and there will be a new election with costs to the relator.

Reg. ex rel. Forward v. Detlor.

Municipal election—Notice to electors of disqualification of a candidate.

Held, 1. When voters perversely throw away their votes the minority candidate has a right to the seat.

2. When a candidate claims the right to be elected at the nomination owing to his opponent's disqualification, his going to the polls waives such right.

3. A candidate should, under such circumstances, beside claiming the seat at the nomination, also notify the electors at the polls that they are throwing away their votes by voting for the disqualified candidate.

[Chambers, January 25, 1868.]

This was a *quo warranto* summons similar to the last, but it was further contended by the relator, who had been an opposing candidate, that he was entitled to the seat instead of the defendant. The question of his disqualification was admitted to have been established by the decision in the case above reported; and the arguments of counsel were directed to the question whether the relator was entitled to the seat.

Holmested for the relator. The objection was clear on the face of the statute, and as there was therefore no other qualified candidate than the relator before the electors, it was unnecessary for him to give any notice to electors at the polls,—electors could not then nominate another candidate.

There was collusion on the part of Boyes, the former relator, and the defendant, and therefore the judgment in his case was no bar to