

[Mr. DALTON.—He has, however, a very strong interest to keep up the bridge, and it is this interest which the statute was intended to guard against.] There is nothing obligatory on Clarke, nor could any contract be enforced against him at law; there can be no legal difficulty between him and the corporation. Neither is there any equitable or even moral obligation on Clarke to repair the bridge: it is simply a question for his discretion as to whether best for himself to do so or not.

2. If, however, it should be held that there is a contract, it is in the nature of a lease for forty years, and the defendant is not disqualified.

*Beynon*, contra, cited *Regina v. Francis*, 13 U. C. R. 116; *Regina ex rel. Mack v. Manning*, 4 Prac. Rep. 73.

Mr. DALTON.—Upon the facts above set forth, it was objected that the defendant could not be a councillor for the municipality, as he is a person having an interest in this contract with the corporation. There was no other objection to his election, and he seems to have been elected by a large majority.

The defendant's counsel has strenuously argued that defendant has *not* an interest in a contract with the corporation within the meaning of the statute. It seems to me to be quite beyond question that he has.

But the defendant also contended that he is within the exception to section 73, which provides that no person shall be held to be disqualified from being elected a member of the council by reason of his having a lease of twenty-one years or upwards, of any property from the corporation; and I agree with him that he is.

The question is, whether the defendant's interest, under the above by-law, comes within that definition.

Under the by-law the defendant has the right to maintain his dam upon the property of the corporation for forty years from 1st January, 1864, upon his keeping always in repair, during that time, the road over it. Upon his failure in this, the right is to cease.

Upon examining the authorities, I think this is a lease.

First, then (Shep. Touch. 266), "A lease doth properly signify a demise or letting of lands, rent, common, or any hereditament, unto another, for a lesser time than he that doth let it hath in it." And as to the manner of making a lease, I think this by-law, accepted and acted on by defendant, is a sufficient and proper way for granting this interest, and that it binds the corporation.

Secondly, as to the nature of the interest granted. It is said in *Platt on Leases*, p. 24: "The subjects of demise are various, and, generally speaking, comprehend incorporeal as well as corporeal hereditaments. Thus, not only land, but advowsons, corodies, estovers, ferries, fisheries, franchises, rights of common, rights of herbage, rights of way, titles, tolls, and other things of a similar kind, may be leased for lives or years;" and in *Sheppard's Touchstone*, p. 268, the law is thus stated: "Leases for life, or years, or at will, may be made of anything, corporeal or incorporeal, that lieth in livery or grant; and also leases for years may be made of any goods or chattels."

This is a valuable right, granted upon the pro-

perty of the corporation, and it lies in grant, being incorporeal.

Then, as to the formal words of a lease, I cite again *Sheppard's Touchstone*, p. 272: "Albeit the most usual and proper making of a lease is by the words, demise, grant, and to farm let, and with an *habendum* for life or years, yet a lease may be made by other words; for whatsoever word will amount to a grant will amount to a lease, and therefore a lease may be made by the word give, betake, or the like."

But there is here no rent reserved, nor any duty, unless it be the duty to repair. Upon this (*Id.* p. 268) it is said: "Whether any rent be reserved on a lease for life, years, or at will, is not material, except only in the cases of leases made by tenant in tail, so as to bind the issue under the statute of 32 Henry VIII. cap. 28; husband and wife, so as to bind the wife and her heirs; and ecclesiastical persons and infants."

Thus, there is a valuable right in the land of this corporation granted to the defendant, by competent means, for a period of years having a determinate beginning and ending, the reversion being in the corporation. Then, if this is not a lease, under the authorities cited, what is it? It is surely a grant, but a grant of an incorporeal hereditament with all these conditions is a lease.

I am glad that the authorities warrant me in saying that the case is within the words of the exception, for it is completely within its spirit. I see that the grant is made to the defendant, his heirs and assigns; but it is a chattel interest, and would go to the executors.

The position of the defendant in this matter, having been created by by-law several years ago, was perfectly well known. The relator had no fact to discover by means of this application, and I think, therefore, should take the ordinary consequences to an unsuccessful party, of payment of costs.

*Judgment for defendant, with costs.*

REGINA EX REL. PHILBRICK V. SMART.

*Municipal law—Qualification of candidate—Incumbrances.* The amount of real property rated to a candidate on the assessment roll is so far conclusive as to his qualification, that incumbrances cannot be taken into consideration to reduce it.

The distinction between the assessment of real and personal property discussed.

[Chambers, February 24, 1881.—Mr. Dalton.]

The relator complained that the defendant was not qualified to sit as a councillor for the municipality of the village of Yorkville, in this, that he did not possess the necessary property qualification. The real property rated to the defendant on the roll was sufficient in amount, but it was shewn that there was a mortgage on the property for a sum which would reduce the interest of the defendant in the property to an amount below that required by the statute: and it was contended that the defendant had not, therefore, the required qualification.

M. C. Cameron, Q.C., shewed cause, citing *Reg. ex rel. Flater v. Van Velsor*, 6 C. L. J. N. S. 151.

*Anderson (Tilt with him)* shewed cause.

MR. DALTON.—The question in this case as to the property qualification of the defendant depends upon the construction of the 70th section of the Municipal Act. But, for the understand-