

. . . Since the above was written I have received a written brief from plaintiff's salicitor, which I have carefully considered. He raised a point not taken on the trial, so far as I can remember, namely, that the clerk and treasurer of North Sydney, being a woman—Miss H. M. Holland—she is disqualified from exercising the functions of Town Clerk and Treasurer, and the warrant issued by her is void. I am unable to accept this view. The Towns Incorporation Act simply says that the Town Council shall appoint a clerk who shall be called Town Clerk, who shall hold office during good behaviour. (Section 111, c. 71.) Also section 112, "The Town Clerk shall, until the Council otherwise prescribes by by-law, perform the duties appertaining to the office of Treasurer." Miss Holland is performing these duties, and I shall assume no by-law has been passed prescribing otherwise. I am unable to think of any principle which prevents a woman from filling this office, the duties of which are, I think, altogether ministerial.

But it is also contended that in the warrant the treasurer signs "H. M. Holland, Act. Town Treasurer," and that the "Act." stands for "acting" Town Treasurer, which prevents her from issuing the warrant, since this function devolves upon the treasurer. Whether Miss Holland was the treasurer or only acting as deputy for the treasurer, I think her act is equally valid. The Interpretation Act, c. 1, R. S., clause 38, says: "Words directing or empowering a public officer of functionary to do any act or thing, or otherwise applying to him by his name of office, include his deputy in any case in which he is authorized to appoint a deputy, and also include his successors in office." Section 113, Towns Act, authorizes the appointment of a deputy. It is also claimed that sufficient proof of demand for payment of taxes upon William Hagarty was not submitted. The affidavit of the Town Clerk that the sum had been demanded, and her certificate under the seal of the town, were before me, in accordance with the practice for issuing warrants upon the authority of the Town Council.

In any case I do not think the plaintiff is in a position to profit by any irregularities, if any there were, because in my view, she has not established such an ownership in the horse as entitled her to claim its return under any circumstances. Such objections might be available to William Hagarty.

Judgment for defendants with costs.