

payment, &c., and very many cases arise in which it is all-important to the public interest that perfectly unbiassed councillors should decide on the amount when the price is not fixed; on the acceptance or rejection of inferior goods or imperfect workmanship; or claims for services of doubtful existence or utility.

The word "contract" is of wide significance, and I think clearly embraces a case like the present. But Mr. Robinson, for the defendant, argues with much force and ingenuity, that even if defendant were disqualified for the above reason when elected, the objection was wholly removed before he took his seat in the new council, viz., on the 13th of January, a day prior to the earliest lawful assembling of the new council. He points out that, in the earlier Acts, the words are that "no disqualified person shall be elected," &c. The last Act governing this case is Con. Stat. U. C. cap. 54, sec. 73, which differs from the preceding Acts, that no disqualified person "shall be qualified to be a member of the council of the corporation;" and the argument is, that this points not to the time of election, but to becoming a member, or, in other words, taking a seat in the new council. And Mr. Robinson urges here, that Mr. Beard wholly ceased to be a contractor, or to have any claims, before the new council had any legal right to meet or act as such. But the last statute says, in sec. 70. "the persons qualified to be elected mayors, members. &c., are such residents of the county within which, &c., as are not disqualified under this Act, and have, at the time of their election, property." &c. Then, the disqualifying clause, sec. 73, declares, amongst other disqualifying clauses, "that no person having, by himself or his partners, any interest in any contract, &c., shall be qualified to be a member." First, we have a declaration that the persons qualified to be elected are those not disqualified under the Act. Next, we have a list of the disqualifications which prevent persons becoming members of the council. I feel no doubt whatever that it is at the time of the election that the disqualification or disqualifications of the candidate is to be considered. He is then either a qualified or a disqualified person for the suffrages of the electors. I should hold the same opinion if I had nothing but the 73rd section to guide me. To refer the qualification to the time when the person elected might actually take his seat at the council board, would be, in my judgment, wholly at variance with the spirit of the Act of Parliament, and fatal to the usefulness of this very wholesome provision as to disqualifications.

In the present case we may possibly regret the result from a conviction of the apparent good faith of the whole proceeding. We may be satisfied that the disqualification was wholly accidental, and that Mr. Beard might as readily have settled with the corporation and removed the objections before the election as after. But all rule must not be infringed; the election must be set aside, and a new election had.

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. The defendant

might have disclaimed, and saved further expenses. He must be unseated, with costs.

Order accordingly.*

THE QUEEN ON THE RELATION OF BUGG V. SMITH.

Con. Stat. U. C. cap. 54, sec. 73—Insurance agent—Not disqualified to be member of City Corporation.

An agent of an insurance company, paid by salary or commission, who both before and since the last municipal election in the City of Toronto had, on behalf of his company, effected insurances on several public buildings, the property of the Corporation of the City of Toronto, and on several common school buildings within the city, and who at the time of the election had himself rented two tenements of his own to the Board of School Trustees for common school purposes, held not to be "a person having by himself or his partner an interest in any contract with or on behalf of the Corporation," and so not disqualified under s. 73, of Con. Stat. U. C. cap. 54, to be and become an alderman for a ward within the city at the last municipal election.

[Common Law Chambers, Feb. 11, 1865.]

The relator complained that James E. Smith, of the City of Toronto, in the County of York aforesaid, one of the United Counties of York and Peel, merchant and insurance agent, had not been duly elected and had unjustly usurped the office of Alderman for the Ward of St. John, in the said City of Toronto, under the pretence of an election held on Monday and Tuesday, the second and third days of January, in the year of our Lord one thousand eight hundred and sixty-five, in and for the Ward of St. John in the said City of Toronto; and declaring that he the said relator had an interest in the said election as a candidate, shewed the following causes why the election of the said James E. Smith to the said office should be declared invalid and void.

1st. That the said James E. Smith at the time of the said election was disqualified in this, that he had at the time of the said election an interest in contracts with the corporation of the City of Toronto, effected with the said corporation by him, the said James E. Smith, as agent of the Imperial Insurance Company, for the insurance against loss by fire of certain buildings, houses and tenements, the property of the said corporation, all of which were subsisting at the time of the said election and still are subsisting contracts; and the said James E. Smith as such agent of said insurance company being paid by such company by commission or salary proportionate to the amount of risks for valuable consideration in that behalf, secured by him for the said insurance company or otherwise to the same effect.

2nd. That the said James E. Smith, since said election, had become disqualified to hold the said office in this, that he has an interest in contracts with the corporation of the City of Toronto, effected since said election with said corporation by him, the said James E. Smith, as agent of the Imperial Insurance Company, for the insurance against loss by fire of certain buildings, houses and tenements, the property of the said corporation, the said James E. Smith being paid by said company by commission or salary proportionate to the amount of risks for valuable consideration in that behalf, secured by him for the said insurance company or otherwise to the same effect.

* As to costs, see *Reg. ex rel. Charles v. Lewis*, 2 U. C. Cham. R. 177, Burns, J.; *Reg. ex rel. Hawke v. Hall*, 2 U. C. Cham. R. 187, Sullivan, J.; *Reg. ex rel. Dillon v. McNeill*, 5 U. C. C. P. 137, Macaulay, C. J.