

Elec. Case.]

REG. EX REL. FERRIS V. ILER.

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tracts with corporations is identical with that in section 74, R. S. O., but which contained an exception in favour of mayors, reeves, deputy-reeves or councillors receiving allowances from corporations, it was decided by Chief Justice Richards, in the case of *Reg. ex rel. Armour v. Coste*, 8 U. C. L. J. 291, that the proof of the mere fact of defendant being a road commissioner to expend moneys raised in and for 1861, did not necessarily imply that he was an officer of the corporation under Con. Stat., U. C., chap. 54, sec. 73, so as to make him ineligible to be elected in 1862, *unless clearly shown that his duties continued*. "By the terms of the by-law," says the judge, "the contracts were to be commenced by the commissioner on or before the 1st September, 1861, and from the nature of the work it is possible that all would be completed within the year. At all events the defendant seems to have received on the 12th December, 1861, all the money he was entitled to in respect of his services under the by-law, so that he would have no contract with or demand against the corporation in respect to such services at the time he was chosen reeve." And in the same year, 1862, by the same learned judge, it was determined in the case of *Reg. ex rel. McMahon v. DeLisle*, 8 U. C. L. J. 291, that when defendant had been appointed a commissioner for the expenditure of municipal funds, upon the roads of the municipality in which he resided, and the by-law appointing him fixed a certain commission to be paid to him for his services as such commissioner, and it was shown that some portion of his commission remained unpaid at the time of his election as a member of the municipal council, *he was disqualified as a person having an interest in a contract with the corporation*.

It was contended by the defendant in this case that as the statute and the law then stood it did not then work a disqualification when the allowance is to the person receiving it as reeve, deputy-reeve, &c., and that any compensation awarded to him under the by-law was in such capacity as reeve. The Chief Justice, however, in answer, said, "I am not prepared to give my assent to the proposition advanced in favour of the

defendant. In that view, large sums of money might be raised for the purpose of making alleged improvements to be expended by the members of the municipal corporation who would get a percentage on it, and who might vote for the raising of the money to make money out of their commissions on the expenditure. The reason of the rule that excludes any one having a contract with the municipality from being elected a reeve or councillor, usually extends to prevent the councillors from increasing their own emoluments. The exception as to reeves and deputy-reeves from receiving an allowance from the corporation, undoubtedly means the \$1.50 per diem which the council may allow them for their attendance in council. "It is not desirable," the Chief Justice continues, "that reeves or councillors should be mixing themselves up with the contracts given out on behalf of the corporations whose interests they are by law expected to look after. It is not desirable that they should be induced to vote for the raising of moneys to be expended under their own supervision in the hope of being able to make some petty percentage out of such expenditure, and thereby indirectly receive a profit out of their office, which the law does not contemplate."

It is apparent that the Chief Justice in these two cases observed a line of distinction between the case of a reeve who was appointed a commissioner to superintend the expenditure of money upon roads where the work was completed and the reeve paid for his services before his term of office had expired, and the case of a reeve acting in the same capacity where the work was not completed and when the commissioner had not been paid in full at the time of his re-election. In the former case, he declares the reeve not disqualified, but in the latter he adjudged him ineligible as a candidate for the office. It is also apparent that the Chief Justice regarded a reeve who filled the office of commissioner, and who was to be paid for his services, as a contractor with the corporation within the meaning of the statute relating to disqualification. It is also clear, I think, that if we are to apply the principle laid down in these two cases,