

LEGAL DEPARTMENT.

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**Is Personation an Offence Under the
Municipal Act?**

John G. Farmer in Canada Law Journal.

By the repeal of sub-section 1 of section 210 of the Consolidated Municipal Act of 1892, by section 4 of the Municipal Amendment Act of 1896 (59 Vic. chap 51) a nice question arises as to the real effect of the repealing statute.

Does it revive that portion of section 167 of the first mentioned act relating to personation and penalties therefor, (e), which was held in *Reg. vs. Rose*, 27 D. R. 195, and followed by *Snider County Judge of Wentworth*, in *Reg. vs. Carter*, 32 C. L. J. 337 to be repealed by the above mentioned sub section 2 of section 210, of the act of 1892?

The Chancellor in his judgment in the former case, at page 197, cites and follows *Martin, B.* in *Robinson vs. Emerson*, 4 H and C, 352. "When a statute prohibits a certain act and imposes a penalty for doing it, and a subsequent statute imposes a different penalty for the same offence, the latter statute operates as a repeal of the former."

It will be noticed that the act of 1896 does not expressly revive any portion of section 167 of the act of 1892, and according to the Imperial Act 13 and 14 Vic., chap. 21, sec. 5, commonly called Lord Brougham's Act, where an act repealing in whole or in part a former act, is itself repealed, the last repeal does not revive the act or provision before repealed, unless the words be added reviving them. Does this rule apply to a repeal by application? *Mirfin vs. Atwood*, L.R. 4, Q.B. 333, is an authority that it does. It was there held that the Statute of Gloucester had been repealed by the restrictive sections in the former County Courts Act, and that 13 and 14 Vic. section 5, above referred to, prevented the Statute of Gloucester reviving on the repeal of those enactments by 30 and 31 Vic. chap. 142. Again in *Mount vs. Taylor*, L.R. 3 C. P. 645, the judges in effect held that the above rule applied in such cases by holding that it does not apply when the first act is only modified by the second by the addition of conditions, and the enactment which imposes these was itself afterward repealed, and that in such a case the original enactment would revive. *Smith, J.*, in his judgment says, "Assuming Lord Brougham's Act to apply to cases of implied repeal, it brings us back to the question whether the 13 and 14 Vic. chap. 61, did repeal the Statutes of Gloucester as regards class of cases within which the present one falls."

It would appear, therefor, that neither that portion of section 167, relating to personation, nor section 210 is now in

force. No doubt the Legislature intended to revive the repealed portion of section 167, but it is doubtful if it has done so, and it is therefore doubtful if a conviction could now be made, or sustained if made under this section for the offence of personation.

LEGAL DECISIONS.

**Reg. ex rel. Waterworth vs. Buchanan and
Cuthbert.**

Municipal Elections—Deputy-Returning Officer—Absence
During Part of Polling Day—Irregularity—Saving
Clause—Consolidated Municipal Act, 1892, Section 175.

At an election of county councillors one of the deputy-returning officers for a town in the county was absent from his booth on three separate occasions during polling day. There was no suggestions of bad faith. The first and second absences were on account of illness; on a third occasion he went out to dinner and voted in another place. The first absence was for about ten minutes, during which the booth was locked up, with the poll-clerk and constable inside in charge. The deputy swore that no voter came in until he returned. In the second and third absences the town clerk took his place. During the second no votes were cast, but during the third there were several. The town clerk placed the deputy's initials on the back of the ballots given to such voters, and the consequence was that these ballots were upon a judicial investigation identified and separated, and it appeared that during the third absence nine votes were cast for the relator and nine for the respondent. Upon the whole the respondent had two more votes than the relator, and by sec. 13 of the County Councils Act, 1896, there being two county councillors to be elected, a voter could give both his votes to one candidate.

Held, that the absences and what was done during the absences did not affect the result of the election, and applying the saving provisions of sec. 175 of the Consolidated Municipal Act, 1892, that it should not be declared invalid.

Re Hay and the Corporation of Listowel.

Municipal Institutions—Debentures for Electric Light
Works—Limitation to Twenty Years—Consolidated
Municipal Act, 1892, Section 340.

A by-law passed for the construction of waterworks and gas or electric light works made the debentures to be issued thereunder payable in thirty years from the date on which the by-law took effect.

Held, that the by-law was bad for under section 34 (o) of the Consolidated Municipal Act, 1792, 55 Vic., Chap. 42, the time for the payment of debentures for electric light works, is limited to twenty years.

Piper vs. London Street Railway Company.

Evidence—Negligence—By-Law.

Action for damages for personal injury to plaintiff through being struck by a street car, the alleged negligence of defendants being that the car was being run at an excessive rate of speed.

Held, that an agreement, ratified by municipal by-law between the municipal corporation and defendants, limiting the rate of speed, was inadmissible as evidence that a higher rate of speed was negligence.

Publications Received.

Report of J. B. Laing, Commissioner, re inquiry into the financial affairs of the County of Dufferin, for sixteen years, commencing 1880:

The total defalcations of the late Treasurer, Mr. Haun, were before his death admitted to be \$10,208.75. This was afterwards increased by \$1,272.72. The treasurer was manager of the bank in which the county account was kept and used the county's money as it had been his own. He was in a position to deceive the auditors as to the balance at credit of county accounts and the deficit was not discovered until he lost his position with the bank. The commissioner states that "what the county may have lost through paying interest on the one hand, and loss of interest on the other can never be accurately ascertained, owing to the peculiar position the treasurer occupied as both treasurer and banker." The report concludes by stating that the county has in Mr. C. R. Wheelock an efficient and faithful treasurer and that it would be in the public interest to double the remuneration of the auditors.

Proceedings County Council of Dufferin.
January session, 1887, and Auditors' report, 1896.

Proceedings County Council of Norfolk.
January session, 1897, and Auditors' report, 1886.

The total expenditure for House of Industry was \$2,508.73, the number of inmates averaged 50 during the year, making the annual cost of maintenance \$50.17 each. In addition to this the County Council maintains a number of poor in different parts of the county and during 1896 expended \$1,860.36 for this purpose.

Auditors' Report Township of Burford.

Minutes, By-laws and Accounts Township of Trafalgar for 1896.

Statement prepared by S. E. Mitchell, Esq., County Clerk of Renfrew, showing salaries of the various County Council officials in Ontario. The salaries for county clerks vary from \$250 to \$1,200, treasurers, from \$350 to \$1,600, and goalers from \$450 to \$920.

By-Laws and Auditors Report Township of Raleigh. J. G. Stewart, Clerk.