

Elec. Case.]

REG. EX REL. FERRIS V. ILER.

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CANADA REPORTS.

ONTARIO.

MUNICIPAL ELECTION CASE.

REG. EX REL. FERRIS V. ILER.

Contract with Corporation—Reeve employed as Road Commissioner.

The defendant was elected Reeve of the Township of Colchester. At such time he was a Road Commissioner for the Township under sec. 454 of the Municipal Act, and entitled to a balance for commission on the money spent by the Township on a certain ditch.

Held, That he was thereby disqualified as a candidate.

[Sandwich, May, 1879—Leggatt, Co. J.]

The second ground upon which the relator stated that defendant was not duly or legally elected was that the defendant was not qualified to be elected reeve of the said Township of Colchester, by reason of his having been employed on behalf of the said Township of Colchester, as commissioner for the expenditure of certain moneys in the making of the ditches known as Long Marsh tap ditch, the Holstend ditch and the Boyd tap ditch in said Township of Colchester, and for which the said John C. Iler, the defendant, was to receive and be paid certain percentages, commissions and allowances, whereby a contract was made and constituted between the said John C. Iler and the corporation of the Township of Colchester, which said contract was in force prior to, at the time of and since the said election.

The facts of the case were, as stated by the defendant, that he was appointed, by the corporation of Colchester, a commissioner to superintend the construction of the Long Marsh tap ditch and the Boyd ditch, for which contracts had been made with other parties, and that he was to receive for such service five per cent. commission upon the contract price to be paid by the said township for making the said ditches; that the Long Marsh ditch was to cost about \$2,300; that it was not yet finished; and that he had received \$50 on account of his commission; that the contract price for the Boyd special tap drain is \$642; and that he had received \$26 on account of his commis-

sion thereon; and that the work was incomplete; that the contract price for the Caya special tap drain was about \$300; that it had not been completed; and that he had received \$6 on account of it. It is apparent that the defendant had or would have a claim against the corporation when those works should be completed, of about \$30 for the balance of his commission thereon, or in other words had an interest to that extent in these contracts with the corporation.

LEGGATT, Co. J., the sections which have reference to disqualification of councillors, from the consolidation of the statutes in 1859 down to the present time, and which have been construed by legal decisions, are section 73 of Con. Stat. cap. 54, which enacts, after mentioning certain officials who shall be disqualified, that no tavern-keeper or saloon keeper nor person receiving any allowance from the corporation *except as mayor, warden, reeve, deputy-reeve, or township councillor*; and no person having by himself or his partner an interest in any contract with or on behalf of the corporation, shall be qualified to be a member of the council of the corporation. This clause was re-enacted in 1866, by 29-30 Vict., cap. 51, section 73, in which others besides those officials already named were declared ineligible, but the language as to parties having contracts with the corporations was the same. This section also contained a proviso that no person should be held to be disqualified from being elected a member of the council of any municipal corporation by reason of his being a shareholder in any incorporated company having dealings or contracts with the council of such municipal corporation, or by having a lease for twenty-one years or upwards of any property from the corporation. This section, all but the proviso, was repealed by 31 Vict., cap. 30, section 8, and in 1873 re-enacted again with some additions as to parties disqualified in the same terms and language as used by section 74, R. S. O.

In the year 1862, when the clause relating to disqualification was that contained in the Consolidated Statutes of Upper Canada, the language of which with reference to con-