

void the election of the two respondents as reeve and councillor respectively of the village of Mimico.

THE MASTER:—The respondents relied on the construction of s. 225 of the Municipal Act, 1903 (9 Edw. VII. c. 19), given by Street, J., in *Reg. ex rel. Burnham v. Hagerman and Beamish*, 31 O.R. 636. It is there laid down that it is only where a joint offence or ground of disqualification is alleged that there can be a joinder of respondents. While holding that the respondents were both duly qualified, the learned Judge is careful to add at the close: "The motion must therefore, upon all grounds, be dismissed with costs."

It cannot, therefore, be said that the decision on the point in question was merely obiter. Even if it were, such a considered and definite expression of opinion could not properly be disregarded by me. To do so would be a violation of the principle laid down in *Cruso v. Bond*, 9 P.R. 111 (at a later stage see report in 1 O.R. 384).

It was also said that in the earlier case of *Reg. ex rel. St. Louis v. Reaume*, 26 O.R. 462, it had been decided that s. 225 did not bear this interpretation, and that this case was not cited in the *Burnham* case. But it is not to be supposed that this latter case was unknown to the late Mr. Justice Street, and it is clear that this decision does not conflict with his. All that was decided by the St. Louis case was that where different respondents are attacked in the same proceeding and on the same ground, the section in question does not require that the same judgment must be given as to all. There, as in all the other cases that I can recall, where there was more than one respondent, there has been one main ground of attack against all. When separate grounds have been considered, the present objection was not taken, or, if taken, was not pressed, nor was it ever necessary to decide it.

It is also to be observed that in the present case the recognizance provides only for "such costs as may be adjudged and awarded to the said defendants against the relator." This may be held to mean jointly only, and not to be enforceable in favour of one only. It follows the form given in Biggar's Municipal Manual (1900), p. 240. In some cases the recognizance is made in favour of the defendants "or any of them;" but it is not clear that there is any authority for this change.

However that may be, it seems better to follow the decision in the *Beamish* case, and leave it to the relator, if dissatisfied,