

course clear law, the only question being whether the city solicitor is a public officer within the meaning of the rule.

Part V. of the Municipal Act deals with officers of municipal corporation. Division I. deals with The Head; II., The Clerk; III., The Treasurer; IV., The Assessors and Collectors; V., Auditors and Audit; VI., Valuator. In each of these cases provision is made for the election or appointment of the officer, and his duties are defined. Division VII. deals with the "Duties of Officers respecting oaths and declarations," and Division VIII. with "Salaries, tenure of office, and security." This last division, in sub-sec. 3 of sec. 320, contains the only reference to a solicitor to be found in the Act. It is to the effect that where a municipality employs a solicitor whose remuneration is wholly or partly by salary they may nevertheless in certain cases recover costs. The by-laws of the defendant municipality relating to the subject have been put in. They define the duties of the city solicitor and fix the salary to be paid to him. The defendant McVeity was however appointed, not by by-law, but by a resolution of the council. The office of city solicitor is not therefore a statutory office, but one established solely by by-law; and the relations of the city solicitor to the municipality are purely contractual.

[Reference to Am. & Eng. Encyc. of Law, 2nd ed., vol. 23, p. 322, under the head of "Public Officers;" p. 324, under the caption "Distinction between office and employment;" Meechem's "Law of Public Offices and Officers," secs. 1, 5; Henly v. Mayor of Lyme, 5 Bing, 107; White & Tudor's Leading Cases, vol. 2, p. 894, notes to Ryall v. Rowles; Flarity v. Odlum, 3 T. R. 681.

It cannot, I think, be said that the salary or retainer paid by the city to the solicitor it chooses for the time being to employ (and who, it must be remembered, is in no way precluded from carrying on a general practice at the same time) is either "paid to him for the purpose of keeping up the dignity of his office or to assure the due discharge of its duties," or is "granted for the dignity of the state and for the decent support of those persons who are engaged in the service of it." It is paid in return for the legal services rendered and for no other purpose. It, to my mind, differs in no essential particular from a fee paid to an independent counsel for appearing for the city in a specific action. . . . In *In re Mirams*, [1891] 1 Q. B. 594, a decision of Cave, J., the chaplain to the Birmingham workhouse and to the Birmingham workhouse infirmary, made an assignment of his