

HON. MR. JUSTICE MIDDLETON.

APRIL 14TH, 1913.

## REX EX REL. GARDHOUSE v. IRWIN.

4 O. W. N. 1043, 1097.

*Statute — Construction of Municipal Waterworks Act — R. S. O. 1897, c. 235, s. 41—To be Read and Construed as part of Municipal Act—Waterworks Commission—Grounds for Disqualification—Incumbent High School Trustee—Quo Warranto.*

MIDDLETON, J., *held*, that s. 54 of the Municipal Waterworks Act, R. S. O. 1897, c. 235, s. 41, as amended, providing that the Act should be read and construed as part of the Municipal Act does not make applicable to water commissioners appointed thereunder all the provisions of the Municipal Act as to disqualification of councillors, and, therefore, that a high school trustee is not precluded from holding office as a water commissioner.

Judgment of WINCHESTER, Co.C.J., reversed.

Appeal by the respondent from the following order of HIS HONOUR JUDGE WINCHESTER, senior Judge of the county of York, unseating the respondent upon *quo warranto* proceedings taken under the Municipal Act.

The respondent was elected to the office of commissioner of light and water in the village of Weston, and was unseated because at the time of his election he was a member of the high school board of that village.

C. W. Plaxton, for the relator.

James S. Fullerton, K.C., for the respondent.

HIS HONOUR JUDGE WINCHESTER:—Counsel admitted that Dr. E. F. Irwin was elected over Sydney Macklem as commissioner of water and light for the village of Weston at the election held on the 6th January, 1913. It was also admitted that Dr. Irwin was high school trustee for the village of Weston at that time, and still is, and that the relator was duly qualified to vote at such election and was a proper relator. Counsel for the relator contended that Dr. Irwin, being a high school trustee, was disqualified to become a commissioner of water and light under the statutes. He referred to the Municipal Waterworks Act, R. S. O. 1897 ch. 235, secs. 40 and 54, and the Municipal Act, 1903, secs. 80 and 207.

By sec. 54 of the Municipal Waterworks Act, it is provided that that Act shall be read and construed as part of the Municipal Act. Section 40 of the Waterworks Act pro-