

whether that body should or should not proceed to enforce a claim considered to exist against that person, or whether it should refund or pay to that person a sum of money which he has paid just before his election under protest, and reserving his legal rights to recover it back.

The facts here are very simple: At the last meeting of the old council (it matters little, I think, in which of the two taverns it was pleased to assemble) it was resolved to take legal measures to recover back all the unpaid per centages from the defendant, who had been their treasurer for years, until dismissed three months before the election on disputes connected with this and other matters. The defendant, in the same month of December last, had paid a part of these per centages to the council, stating that he did so under protest, and (in his own words) "reserving to myself the right of recovering the same, subject to a competent Court of Law."

And further, to shew the state of this matter, he swears, in answer to an affidavit charging him with admitting liability and promising to pay, "the only effect of such conversation, and that intended by it, was, that if by law and by a resolution of the said council I was obliged to pay over the said per centage, I should not deny that I ever admitted any legal obligation in me to pay over, &c. &c. &c."

As a member of the new council he will be called upon, as one of the five, to decide whether an action is to be prosecuted against himself on the one hand, and whether the council shall or shall not refund to him the sum paid under protest on the other.

I do not pay much attention to the charge on one side or denial on the other, that defendant's motive, in becoming a member of the council, was to influence the decision of this very matter in his favor.

The defendant puts himself in this dilemma. He insists that the council have no claim whatever upon him as to these per centages, but he pays a portion of them under protest, insisting on his right to recover back.

The term used by the legislature: "having an interest in any contract by or on behalf of the corporation," is, although peculiar, wide enough, in my judgment, in the letter, and certainly in the spirit, to embrace such a case as the present. Under his bond as treasurer, or as treasurer without bond, he, of course, was a contractor with the council, and although he no longer holds the office, these disputes arise from matters connected with his administration of that office.

The whole dispute here is on a matter of contract, in the legal sense of the term—the remuneration for services, the retention by one party of money claimed by the other, the due performance of the office of treasurer by the defendant, &c., &c. It may be that the respective claims are quite apart from the bond given by the defendant.

I repeat that I do not form my conclusion from any strong view of the ultimate legal issue of this dispute. It is sufficient for me to see that there is a real money dispute in a matter of contract in which the parties appear to be at issue. I do not see how the defendant can legally sit in a council of five to determine how this dispute is to be decided. It may cease to be a dispute at any time by the joint action of the parties, but at the date of the election, as far as I can judge, it had a real existence.

The amount in dispute is not large, but the principle involved is one of high importance to the honest administration of our Municipal system, which has been justly termed the school in which our fellow subjects in all parts of the world are trained to the due understanding, practice, and appreciation, of the Representative Institutions of a broader range, and of a permanent authority.

I am of opinion that a writ should issue declaring that the defendant was disqualified, that there be a new election for the office, and that defendant do pay the relator's costs, as I do not think, under the circumstances, that he ought to have been a candidate.

No case is, I think, made out for seating the relator.

Order for a writ for a New Election with costs.

## MONTHLY REPERTORY.

### CHANCERY.

V. C. S. TOWNSEND v. TOWNSEND. May 10.

*Employment of trust monies in trade—Liability of trustees under a will—Entries in accounts—Articles of partnership—Account—Compound interest.*

A representation which admits of being made good by the maker of it will be binding upon him. Therefore, an entry in an account by trustees under a will crediting a legatee with the amount of her legacy is binding on them when it is made knowingly, and there is nothing to show that it is done in error. If trustees under a will use for the purpose of their own trade, trusts moneys which according to the will ought to have been otherwise invested, in a decree against them directing an account, compound interest will be charged.

In a case where, according to the deed of partnership, a date had been fixed for payment of the share of a deceased partner, an account was directed against the surviving partners, who were also executors and trustees of the deceased partner and had improperly retained in the partnership the share of the deceased partner, and accounts in accordance with the deed of partnership were directed up to the date fixed by the partnership deed.

V. C. K. FALCKE v. GRAY ET AL. May 2.

*Specific performance—Chattels—Inadequacy—Auction—Jurisdiction.*

A Court of Equity will decree specific performance of a contract to purchase a chattel which is of a peculiar and unique kind.

Where a purchaser of a chattel which is of a unique kind, with the worth of which he is well acquainted, stands by and permits it to be set down at one fifth of its real value, knowing the ignorance of the vendor and valuer, and after contract signed by the vendor, files a bill for specific performance of such contract, the Court will not decree specific performance.

Although in the case of a contract to purchase a peculiar chattel this Court will under peculiar circumstances, of fraudulent advantage taken by the purchaser, refuse specific performance, it will not set aside the contract on a bill filed with that object by the vendor.

Where a party sells by auction the Court will not relieve on the ground of inadequacy of price.

V. C. K. IN RE THE H. C. AND G. LIFE ASSURANCE COMPANY, EX PARTE DR. WOOLASTON.

*Misrepresentation—Forfeiture.*

Misrepresentations made by a director or secretary of a joint stock company, with reference to expected profits or the appointment to a particular office whereby a party is induced to take shares are not representations of the company.

Where by the deed of settlement of a joint stock company it is provided that upon non-payment of calls on a certain notice and after a certain time, the directors may declare shares forfeited, such shares are not forfeited by mere non-compliance with the notice, but there must be a declaration of the directors to that effect.

V. C. K. ROGERS v. ROGERS. June 8.

*Special case—Construction—Contingency.*

A testator gives all his real and personal estate and effects to his three daughters, H, J and S, share and share alike, and in case either of them dying, to be equally divided between the children of the deceased, if any; but in case there shall be no children to claim their mother's share, then that share to be divided equally between his two surviving daughters, their executors, administrators and assigns, absolutely for ever.

*Held*, that the daughters took a fee simple as tenants in common.