

Elec. Case.]

REG. EX REL. FORD V. McRAE.

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am the only person duly qualified, who was nominated and seconded for that office, at the nomination of Reeve and Councillors for the Village of Colborne, for the year 1870. Mr. F. McRae, the only other person nominated for Reeve, being disqualified on the ground that he is surety for J. M. Merriman, Treasurer of this Municipality. I hereby protest against any votes being received by the Returning Officer for any candidate for Reeve, and notify the electors that any votes given by them for candidates for Reeve, will be thrown away,

(Signed) C. R. FORD."

The relation further stated that printed copies of such notice were posted up in conspicuous places, prior to the opening of the poll.

*Robt. A. Harrison, Q.C.*, supported the summons, and contended that it did not matter whether there was any liability on the bond, but the question was whether there was a contract with the Corporation, and it was admitted that there was, and no discharge was shown. The bond, too, was conditional, to the effect that the Treasurer should at all times, during which he held his office, do certain acts enumerated. The office is not an annual office. The re-appointment of the Treasurer from year to year was an unnecessary Act. He cited secs. 161 and 177 of the Act of 1866; *In re McPherson*, and *Beeman*, 17 U. C. Q. B. 99; *Reg. ex rel. Bland v. Figg*, 6 U. C. L. J. 44; *Reg. ex rel. Rollo v. Beard*, 1 U. C. L. J. N. S. 126. The notice being given before the day of voting was sufficient to entitle the relator to the seat if the defendant should be disqualified; for if the electors had the notice, they threw away their votes, which was all that was required.

*Armour, Q.C.*, shewed cause, and contended that the appointment of Treasurer was an annual one, and the bond was of no effect after the year was up: *Peppin v. Cooper*, 2 B. & Al. 431; *Liverpool Water Works Co. v. Atkinson*, 6 East, 507; *Angero v. Keen*, 1 M. & W. 390; *Bamford v. Iles*, 3 Exch. 380; *Mayor of Berwick v. Oswald* 1 E. & B. 295, 3 E. & B. 653, 5 H. L. Cases, 856; *Pybus v. Gibb*, 6 E. & B. 902; *Reg. v. Hall*, 1 U. C. C. P., 406; *Reg. ex rel. Hill v. Betts*, 4 Prac. Rep. 113. He also contended that the objection to the election was taken too late; it should have been taken at the nomination, and the notice was given just before the election: *Reg. ex rel. Tinning v. Edgar*, 4 Prac. Rep. 36; *Reg. ex rel. Adamson v. Boyd*, 4 Prac. Rep. 204; *Reg. v. Mayor of Tewksbury*, L. R. 3 Q. B. 629.

Affidavits were filed on both sides. The material facts are referred to in the judgment of

*MORRISON, J.*—In this case there are no disputed facts. It appears that on the 20th of December last, at the nomination of Reeve for the Village of Colborne, for the present year, the relator and defendant were duly nominated as candidates for the office—no objection at such nomination being made to the qualification of the defendant. A poll being demanded, the polling was fixed under the statute for the first Monday in January; on that day the relator publicly notified the electors, as stated in the notice set out in his statement, that he claimed to be elected Reeve, on the ground that the only other person nominated being the defendant, he the defendant was disqualified, on the ground

that he was surety for the Treasurer of the Municipality, and he notified the electors that any votes given by them for Reeve would be thrown away. The election nevertheless proceeded, and the defendant was declared elected—having a majority of votes.

On the 12th of January this application was made.

It appears from the affidavits filed that Mr. Merriman, for whom it is alleged the defendant was a surety, was first appointed Treasurer by a by-law for the year 1859, again by by-laws for the years 1860 and 1861, respectively. In the latter year the defendant became one of his sureties. The bond contains no recital, but the condition is—"That if Merriman do and shall from time to time and at all times during his said office as Treasurer of the said Municipality, to which he has been appointed, well and truly account for all monies which he may from time to time receive, &c., and pay over and deliver any sum or sums ordered to be paid by the said Municipal Council, their successors or assigns, and in all things duly execute and perform the duties of his said office, and if upon his discharge or at the expiration of his term of office, he shall render up quiet and peaceable possession of the books and accounts belonging to his said office as Treasurer, &c., unto the said Municipality, their successors or assigns, then the obligation to be utterly void, &c."

Now it appears that this Council annually appointed by by-law their Treasurer: that Mr. Merriman, as already stated, was so appointed in the years 1859, 1860 and 1861, and in the latter year the defendant became his surety. Mr. Merriman was afterwards re-appointed Treasurer by by-law in 1863, and also in 1864, in the previous years his appointment was, as to time, silent; in 1864 the by-law specifically limits his appointment to the year 1864; in the following years he was also re-appointed without specifying the period, until 1868, when his term of office was again limited to that year. At the end of all these years, including 1869, the Treasurer's accounts were duly audited and found correct. Attached to the Treasurer's affidavit is the bond in question, and it further appears by an indorsement on it, that by a resolution of the Council it has been cancelled. This was done since this application was made, and could have no effect on my decision, but I only note the fact as shewing that the Municipality consider they have no claim under it. I also may remark, that in the year 1863 this defendant was elected a member of the council.

Looking at the conditions of the bond, from which I must gather the contract between the parties, it refers to Merriman's then appointment as Treasurer, and the limit of the sureties in point of time is that of his discharge or the expiration of his term of office. Now, considering that this office of Treasurer was by the uniform rule and action of the Municipality an annual one and under the authority of an annual by-law, and the condition of the defendant's bond contemplated an expiration of the treasurer's term of office, it is, I think, only reasonable to assume, that the Municipality and the Treasurer acted upon the assumption that the term of office expired at the end of each municipal year, and