

MUNICIPAL ENGINEERS, CONTRACTORS, AND MATERIALS.

that he was entitled to hold the seat upon the true construction of sec. 203 of the act. As to the first point, the learned judge holds that the relator should be allowed to amend his relation under rule 444. As to the second point, the learned judge remarked that the question turns upon the meaning to be placed upon the words, "person elected", in sec. 203 and "election" in sec. 200, and is of opinion that every person becoming entitled to the office of reeve, deputy reeve, etc., otherwise than under sec. 186 is to be regarded as "elected" to the office, and the process by which he becomes entitled to it as an election. As soon as it is conceded that the person becoming entitled to a seat by the resignation of the candidate who received the largest number of votes may be attacked under sec. 187 and may claim under sec. 200, then it follows from the words of sec. 204 that upon his disclaimer the candidate next to him becomes entitled to the seat, because sec. 204 applies not only to disclaimers under sec. 303, but also to those under sec. 200. The relator is in this dilemma. If the respondent holds or claims the seat by virtue of an election, and is a person elected to it, then the construction of secs. 203 and 204 necessarily entitles him to the seat and if he does not hold the seat by election, then the act does not authorize an attack upon him by notice of motion at all. Appeal allowed and motion of relator dismissed with costs.

TOWN OF BARRIE v. WYLMOUTH.
Judgment on appeal by the plaintiffs and their solicitors from an order of Galt, C. J., affirming an order of the local judge at Barrie striking out the name of the town of Barrie as a party plaintiff to the action and ordering the solicitors to pay costs of the application. Action to restrain the infringement of a livery by-law of the municipality. The proceedings were taken for the benefit of the plaintiff Cooke, who had complained of the breach of the by-law as a nuisance and executed a bond indemnifying the corporation against costs of the action. The mayor of the town did not give a certificate under seal authorizing the issue of the writ, though directed to do so by a resolution of the Municipal Council. The defendants took the objection that the solicitors for the plaintiffs had not been formally retained by the corporation and had no authority to act, and this connection was sustained by the local judge, and, on appeal, by Galt, C. J. Order varied by making the plaintiffs other than the town of Barrie liable for the costs. Appeal otherwise dismissed with costs.

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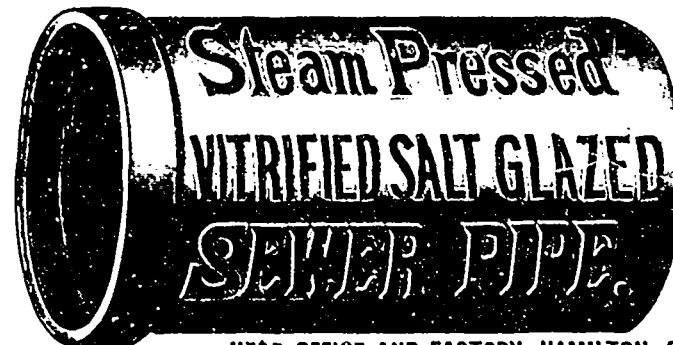


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