

the company. By the terms of the engagement he was to be paid, not a fixed salary or wages, but a commission on the amount of his sales. The contention is that the character of his services and the mode of payment adopted took him out of the class entitled under the statute to a preference. The only circumstances which might be argued as against the claimant's right is the payment by commission instead of by straight salary, but the adoption of that means of payment does not in my judgment affect the relationship of the parties towards each other or take the claim out of the class intended to be benefitted by the section referred to.

Nor do I think the right of the appellant to succeed can be established on the other ground. The sales for making which the claim has been allowed were made in the months of March and April, 1913—perhaps some trifling sales later. The agreement was that payment should be made after July 1st. The winding-up order, I am informed—it is not before me—was made on August 28th, 1913. The Master had sufficient evidence before him to find that the amount allowed was due under the terms of sec. 70 so as to give the preference, and he so found. I see no reason for disturbing that finding.

The appeal is dismissed with costs.

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HON. MR. JUSTICE BRITTON.

MAY 22ND, 1914.

REX EX REL. BAND v. McVEITTY.

6 O. W. N. 369.

*Elections—Municipal—Mayor—Disqualification — Owing Arrears of Taxes—R. S. O. (1914) c. 192, s. 53 (s)—Collecting Cheque from City for Client.*

Previous to his election as Mayor a solicitor owed the city taxes and the city owed him for professional services. He gave the city treasurer instructions to deduct any amount due the city and pay him the balance which he did, but it afterwards turned out that a mistake had been made and the solicitor still owed the city for taxes.

BRITTON, J., *held*, that, that was not owing the city arrears of taxes within the meaning of R. S. O. (1914), c. 192, s. 53 (s.).

That collecting a cheque from the city in favour of a client is not an act or thing in the client's proceedings against the city which would disqualify him from holding his office as Mayor.

Motion for an order declaring that Taylor McVeitty has not been duly elected and has unjustly usurped the office of Mayor of the city of Ottawa.

Tried at Ottawa Single Court, May 15th, 1914.