EDWARD HACKETT.....APPELLANT; 1887

AND

STANISLAUS FRANCIS PERRY.....RESPONDENT. *Oct. 23. *Dec. 14.

ON APPEAL FROM THE DECISION OF MR. JUSTICE HENSLEY SITTING FOR THE TRIAL OF THE PRINCE COUNTY, P.E. I., CONTROVERTED ELECTION CASE.

Legislative Assembly—Disqualification—Enjoying and holding an interest under a contract with the Crown—What constitutes—39 *Vic. ch.* 3 *secs.* 4 *and* 8 *P. E. I.*

By commission or instrument under the hand and seal of the Lieutenant Governor of P. E. I., one E. C. was constituted and appointed ferryman at and for a certain ferry for the term of three years, pursuant to the acts relating to ferries, and it was by the commission provided that E. C. should be paid a subsidy of $95.00 for each year of said term. E. C. had given to the government a bond with two sureties for the performance of his contract. By articles of agreement between E. C. and S. F. P. (the respondent) E. C. for valuable consideration assigned to S. F. P. one-fourth part or interest in the ferry contract, and it was agreed that one-fourth part of the net proceeds or profits of said contract should be paid over by the said E. C. to the said S. F. P. or his assigns. At the time the agreement was entered into S. F.

* PRESENT—Sir W. J. Ritchie C.J., and Strong, Fournier, Henry and Taschereau JJ.

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P. was a member of the House of Assembly of P. E. I. having been elected at the general election held on the 30th June, 1886. Subsequently S. F. P. was returned as a member elect for the House of Commons for the electoral district of Prince County, P. E. I., and upon his return being contested;

Held, affirming the judgment of the court below, Taschereau J. dissenting, that, by the agreement with E. C., F. S. P. became a person holding and enjoying, within the meaning of section 4 of 39 Vic. ch. 3, P. E. I., a contract or agreement with her Majesty, which disqualified him and rendered him ineligible for election to the House of Assembly or to sit or vote in the same, and by section 8 of the said act, to be read with section 4, his seat in the assembly became vacated; and he was therefore eligible for election as a member of the House of Commons (1).

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(1) 39 Vic. ch. 3 P. E. I.: 4. No person whosoever holding or enjoying, undertaking or executing directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, any contract or agreement with Her Majesty, or with any public officer or department, with respect to the public service of the Province of Prince Edward Island or under which any public money of the Province of Prince Edward Island is to be paid for any service or work, or who shall become surety for the same shall be eligible as a member either of the Legislative Council or of the House of Assembly, nor shall he sit or vote in the same, respectively; provided that nothing herein contained shall be construed to apply to any person holding a share in any incorporated Company.

5. If any person hereby disqualified or declared incapable of being elected a member, either of the Legislative Council or of the House of Assembly, is nevertheless elected and returned as a member, his election and return shall be null and void.

6. No person disqualified by the next preceding sections, or by any other law, to be elected a member of the Legislative Council or of the House of Assembly, shall sit or vote in the same respectively, while he remains under such disqualification.

7. If any person who is made by this act ineligible as a member of the Legislative Council or of the House of Assembly, or incapable of sitting or voting therein, respectively, does nevertheless so sit or vote, he shall forfeit the sum of two hundred dollars for every day he sits or votes, and such sum may be recovered from him by any person who will sue for the same by action of debt, bill, plaint or information in the Supreme Court of Judicature of the Province of Prince Edward Island.

8. If any member of the House of Assembly, or of the Legislative Council, by accepting any office, or becoming a party to any contract or agreement, becomes disqualified by law to continue to sit or vote in the same respectively, his election shall thereby become void and the seat of such member shall be vacated, and a writ shall

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APPEAL from the decision of Mr. Justice Hensley dismissing the petition against the return of Stanislaus F. Perry, as a member of the House of Commons, for the electoral district of Prince County, in the Province of Prince Edward Island.

At the general election for the Dominion House of Commons held in the month of February last, the respondent and James Yeo, Esq., were returned as members duly elected to represent Prince County, Prince Edward Island, the respondent having a majority of 225 votes over appellant.

The petition was filed by the appellant, Edward Hackett, a candidate at the said election, claiming the seat now held by the respondent for the petitioner, on the ground that on nomination day and on election day, the respondent was not eligible to be elected, he being as it was alleged, a member of the Local House of Assembly for Prince Edward Island, and that under the Revised Statutes ch 13 secs. 1 and 2, the votes given for respondent are absolutely thrown away.

At the trial it was proved by the petitioner that a general election for the local house was held in the

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forthwith issue for a new election as if he were naturally dead; but he may be re-elected if he be eligible under the first section of this act.

Canada Revised Statutes ch. 13 Sec. 1. No person who on the day of the nomination at any election to the House of Commons, is a member of any Legislative Council, or of any Legislative Assembly of any Province now included or which is hereafter to be included within the Dominion of Canada, shall be eligible as a member of the House of Commons, or shall be capable of being nominated or voted for at such election, or of being elected to or of sitting or voting in the House of Commons, and if any one so declared ineligible is nevertheless elected and returned as a member of the House of Commons, his election shall be null and void.

Sec. 2. If any member of a Provincial Legislature, notwithstanding his disqualification as in the next preceding section hereof mentioned, receives a majority of votes at any such election, such majority of votes shall be thrown away and the returning officer shall return the person having the next greatest number of votes, provided he is otherwise eligible.

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month of June, A.D. 1886, and that at that election Mr. Perry was returned to represent a constituency for the local house; it was also proved that there had been no meeting of the local house up to the date of the general election for the Dominion House of Commons.

In answer to this case the respondent contended that before his nomination for the Dominion election he had removed his disqualification; first, by resigning his seat in the local house in the manner pointed out by the island statute, 39 Vic. ch. 3, and in support of this contention it was proved that the respondent gave to two members of the House of Assembly, under seal and properly executed, a resignation of his seat, and that these two members forthwith delivered to the Lieutenant Governor a notice of such resignation The judge at the trial held that respondent had not properly resigned his seat, as the Island Statute 39 Vic. ch. 3 had not provided for the resignation of a member in the interval between the dissolution of one general assembly, and the first session of the general assembly. This point, however, has since been settled by 50 Vic. ch. 1 sec. 1, P. E. I.

The respondent secondly contended that at the date of nomination his seat in the local house was vacated by reason of his holding and enjoying a share in a contract with the local government. In support of this contention the respondent proved that in the month of February, A.D. 1886, the Commissioner of Public Works for Prince Edward Island advertised for tenders for running of a ferry across Grand or Ellis River, which is a small river in the body of Prince County; that one Edward Crossman duly tendered, and his tender was accepted by the commissioner in writing on the face of the tender, (which was adduced in evidence). It was further shown that Crossman had obtained from the proper government officer a license

authorizing him to carry on the ferry; by the terms of this license (which was given in evidence) Crossman was bound to supply certain boats and assistance, also to run the ferry at certain hours, and only to take certain rates of ferriage stated in the license, and he was to receive in addition to the fees earned a sum of ninety-five dollars per annum from the government; the license was to last for three years, from the year A.D. 1886. It was shown that Crossman was actually carrying on the ferry. It was also shown that Crossman had given to the government a bond with two sureties, for the performance of his contract, (this bond was also put in evidence). Before nomination day the respondent purchased a one-fourth share of this contract and the profits of it; for this he paid $75, and Crossman gave him an assignment (also in evidence). The evidence showed that the purchase was actually a *bonâ fide* transaction, and, in fact, it was not attempted to be attacked on this ground.

The following are the material dates:—

Crossman's tender accepted 23rd March, 1886.

License to Crossman dated 4th August, 1886.

Bond for due performance, dated 1st April, 1886.

Assignment to Perry, dated 12th of February, 1887.

Local election held 30th June, 1886.

Perry's resignation, dated 11th February, 1887.

Notice to Lieutenant Governor, dated 11th February, 1887.

Nomination day for Dominion house, 15th February, 1887.

Election day for Dominion house, 22nd February, 1887.

The statute under which respondent's second contention arose is 39 Vic. ch. 3 P. E. I. (1).

Hodgson Q.C. for appellant, on the point upon which

(1) Ubi supra.

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this appeal was decided.

The words of the fourth section are that the contract —that is the contract which is to disqualify—must be entered into "with Her Majesty or with any public officer," and the person who is disqualified must have entered into such contract. He may do it directly or indirectly, or by the intervention of a third party, but he must:—

(*a.*) Enter into a contract.

(*b.*) Enter into such contract with the Queen or a public officer.

Here Perry has entered into no contract with the Queen. He has not entered into any contract at all.

Apply this test to the case:—

If Perry sat and voted in the House of Assembly would he be liable to the penalties therefor under the 39 Vic. ch. 3 sec. 7?

I submit he would not be liable.

The two cases of *Miles* v. *McIlwraith* (1) and *Thompson* v. *Pearce* (2), (this latter case being relied on by Mr. Justice Hensley) establish that before a disqualification can exist, the parties, that is the member and the government, "must come immediately into contact," so "that the government could have held the" (disqualified member) "bound to them."

See also the case of *The Queen* v. *Franklin* (3).

In the present case, Perry does not come into contact with the government at all, nor can they hold him bound to them.

Moreover the appellant contends that section 4 (39 Vic. ch. 3) does not apply to a "member" of the legislature, but to the case of a "person" holding a contract at the time of his nomination, of whom it is declared, that he shall not be eligible as a member, that is, that

(1) 8 App. Cas. 120. (2) 1 B. & B. p. 25.
(3) L. R. Ir. 6 C. L. 239.

no person coming within the disqualification mentioned shall be eligible for election.

Section 8 mentions a "member" for the first time.

It (sec. 8) enacts that "any member of the House of Assembly by accepting any office or becoming a party to any contract or agreement, becomes disqualified," etc.

The respondent contends that section 8 must be read in connection with section 4. But even if this be so, then appellant submits that this is entirely in favor of appellant's contention, that section 4 only applies to a person becoming a party to a contract or agreement with the government; and the legislature, when enacting section 8, must have so considered it, for by section 8 it assumed a member to be disqualified upon these grounds only:—

1. "By accepting any office."

2. Or "becoming a party to any contract or agreement."

Has Perry, since he became a member of the House of Assembly, "accepted any office, or become a party to any contract?" He has certainly not accepted an office. It is not asserted by the respondent that he has. It is equally clear that he has not become a party to any contract with the government. Section 8 disqualifies by implication only, and outside of this section there is no other enactment in the statute by which a member vacates his seat by reason of entering into a contract. The learned judge also holds that a commission, appointing a ferryman, is of the same force and effect, and operates as a grant of the ferry itself. I submit that such a proposition is not law. The appointment of Crossman was, as the minute of the executive council expresses it, "one of personal trust and confidence." Upon Crossman's death, the right to ferry would not, as held by the learned judge, descend to his

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heirs, but would terminate. If Crossman misconducted in his office, he would be liable to indictment. Comyn's Digest, Piscary, (B.) Ferry. The learned judge has decided otherwise, but he cites no authority supporting such a proposition.

It is needless to cite authorities shewing that nothing will be held to pass in a grant from the crown, except by express words or necessary implication.

Woolley v. *The Attorney General of Victoria* (1).

It is urged that a bond was given by Crossman for the faithful performance of the duties of his office, but Perry was no party to that bond.

The fact of tenders having been invited, and Crossman's being the lowest does not affect the question. This could not enlarge Crossman's commission. He was not the less an appointee of the Lieutenant Governor.

Moreover, I must add that by order in council passed on the 28th February, 1887, the crown has refused to recognize him as a joint grantee of the ferry. How, then, can it be said he had a contract with the government? See *The Queen* v. *Smith* (2).

F. Peters for respondent:

The ferry license is in every sense a contract or agreement within the meaning of the statute; it was granted under the provisions of the Island statute 3 Will. 4, ch. 8, which by the second section authorizes the Lieutenant Governor "from time to time to let by tender * * * * the several ferries within this island," and by the third section authorizes the Lieutenant Governor to call for tenders for running said ferries, and to let any such ferry to the lowest tenderer, and to grant licenses for the same for three years, with a provision that the licensee shall enter into good and sufficient security for the fulfilment of his

(1) 2 App. Cas. 163. (2) 10 Can. S. C. R. 1.

duties.

I contend that the license in law amounted to a lease for three years; the words used in the statutes are "to let," words peculiarly applicable for the purpose of making a valid lease. Washburn on Real Property (1), shows that a right to run a ferry is an incorporeal hereditament and as such capable of being granted; if the license in this case amounts to a lease of an incorporeal hereditament it follows, we contend, that an assignment valid at law can be given.

The case of *Reg. ex rel. Patterson* v. *Clarke* (2), is a direct authority that a lease of a right to build a bridge (which is similar to the right to run a ferry) is a contract within the meaning of a disqualifying statute similar to the one now under consideration.

Apart from all authority we contend that this license contains every ingredient necessary to constitute a contract. By its terms the ferryman binds himself to perform certain specified work in a certain specified manner, and the government binds itself to pay him a certain sum for this work; both sides are mutually bound for three years; neither party can revoke the contract except that the governor can do so for misbehavior. It was argued by the appellant that the license was not a contract at all but was only a license personal to Crossman himself, granted to him because the government were supposed to place trust and confidence in him personally; we contend that this argument cannot be supported; the nature of the work is not such as required any personal trust, nor was the license granted on any such ground; it was granted simply because Crossman was the lowest tenderer, and the government protect themselves against its non-performance by bonds. It matters not to the government by whose hand the contract is performed, and in case of

(1) Book 2 ch. 1 sec. 2. (2) 5 P. R. (Ont.) 337.

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non-performance the bond of course stood as a security to them.

Assuming that there existed a contract between Crossman and the government, Mr. Perry having purchased a share in this contract came within both the letter and the spirit of the fourth section above set forth, and his seat in the local house became vacated.

In construing this section it must be remembered that the object of the statute was to procure the independence of parliament by preventing members voting on matters in which they had any pecuniary interest. And this object could always be defeated if a member were allowed to enjoy the profits of a government contract held in the name of another person.

Sections 4 and 8 should be read together, and under these sections the respondent became disqualified to sit in the Local Assembly and therefore eligible to the House of Commons. *Royse* v. *Birley* (1); *Maidstone* Case (2); *Thompson* v. *Pearce* (3); *West* v. *Andrews* (4); *Davies* v. *Harvey* (5).

Hodgson Q.C. in reply contended that section 4 alone applies and that provides disqualification only for the person who becomes a party to a public contract.

Sir W. J. RITCHIE C.J.—I express no opinion on the question raised as to the construction of the provincial act with reference to the resignation of a member elect who resigns or seeks to resign between a general election and the first meeting of the legislature thereafter, it not being necessary to do so because I am of opinion that the ground on which the learned judge below dismissed the petition was correct, namely, that by purchasing a share in the ferry con-

(1) L. R. 4 C. P. 320.
(2) Rogers on Elections 13 ed. p. 744.
(3) 1 Brod. & Bing. 25.
(4) 5 B. & Ald. 328.
(5) L. R. 9 Q. B. 433.

tract Mr. Perry's seat in the Local Legislature became vacant by virtue of the fourth and eighth sections of 39 Vic. ch. 3 of the acts of Prince Edward Island. There can be no doubt that, as between himself and his assignee, Crossman had a right to assign a share or interest in the subject matter of this contract, and no question is raised as to the *bona fides* of the transaction in this case. By the assignment of a share in this contract, Perry, by the express terms of his agreement with Crossman, became entitled to participate in its profits and losses, and consequently to receive his share of the $95 of the public money annually to be paid for the performance of the contract. If any question arose in the legislature as to the proper performance of this contract, or as to the payment of the subsidy, what difference would there be in point of interest whether Crossman or Perry was called on to vote on either one or other of these questions, or any other question touching the contract, both being alike interested in any such vote? No authority is wanted, in my opinion, to show that Mr. Perry's case is within the terms of the statute. Larger words could not have been used to cover the case of persons interested in any way in any contract or agreement with Her Majesty, or with any public officer or department with respect to the public service of the Province of Prince Edward Island, or under which any public money of the province is to be paid for any services or work. I need only cite the language of Montague Smith and Brett JJ. in *Royse v. Birley* (1).

Montague Smith J. says:—

"The words "undertake and excute," in s. 1 clearly apply only while the contract is executory; and, though the other words "hold" and "enjoy" are more general, it seems to me they refer to holding a contract or enjoying a contract which is executory, that is, a contract under which something has to be done by the contractor,

(1) L. R. 4 C. P. 316.

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either one act or recurring acts, and that he is only disqualified "during the time that he shall execute, hold, or enjoy" any such contract. The words "hold and enjoy" may have been inserted to meet cases where a contractor holding a contract did not himself execute it."

Brett J. :—

The next point is, whether it is necessary that, at the time when the person is elected, the contract, even supposing it is made with the government, should be executory. That depends upon the view to be taken of this first section. Now, the first part of that section applies to any person who shall "undertake, execute, hold or enjoy" any contract therein mentioned. To undertake a contract would seem to be to enter into it; the word "execute" would seem to refer to the case of a person who takes on himself the execution of a contract not originally made with him; the word "hold" to the case of a possible transfer of a contract which had been already made with some other person; and the word "enjoy" to the case of a person with whom the contract was not made, but who as *cestui que trust* is to enjoy the benefit of it. But then the second part of the section says that any such person shall be incapable of being elected "during the time he shall execute, hold, or enjoy any such contract." Now, for such person to be executing, it seems to me he should be in a position to be called upon to execute, and, if so, the words "hold" and "enjoy" would mean hold or enjoy in the same sense, *i.e.*, holding or enjoying a contract which the contractor may be called upon to execute, or under which there may be something still to be executed.

But then it is urged that section 4 does not apply to this case, but that section 8 read by itself alone governs it, and that the words of section 8 are not as large or comprehensive as those of section 4. I am very clearly of opinion that to give effect to section 8 the two sections must be read together. How are we to discover whose election shall become void and the seat vacated, (the language of one section being "by "becoming a party to any contract or agreement the "party becomes disqualified by law to continue to sit "or vote,") but by reference to the fourth section, which declares the disqualification and prohibits the sitting and voting? The whole act has but one object, namely, that of preventing undue influence and secur-

ing the freedom and independence of the legislature.

The case of the respondent is, in my opinion, not only within the express words, but also within the very spirit of the act. To hold otherwise than Mr. Justice Hensley did would simply be to ignore and frustrate the intention and object of the legislature, and, in fact, any other construction would, as the learned judge says, "let in the mischief which "it was intended to exclude." I am of opinion that it cannot be too strongly impressed on the courts of this Dominion, that all laws passed for securing the independence of the local legislatures as well as those for securing the independence of parliament should be "jealously maintained"; certainly not allowed to be frittered away so long as the respective legislatures or parliament deem it for the advantage of the public that persons who have any interest in any public contract should be absolutely disqualified from being elected, or sitting, or voting in the local assembly or in parliament.

I think the appeal should be dismissed with costs.

STRONG J.—This is an appeal from the decision of Mr. Justice Hensley dismissing the petition against the return of Stanislaus F. Perry as a member of the House of Commons, for the electoral district of Prince County, in the Province of Prince Edward Island.

The House of Assembly of Prince Edward Island was dissolved on the 5th of June, A.D. 1886, and a general election took place on the 30th June, following.

At that election the respondent, Perry, was elected a member for the first electoral district of Prince County.

The new House of Assembly met for the first time after the general election on the twenty-ninth day of March, 1887.

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A general election for the House of Commons took place on the 22nd of February, 1887, and the appellant, the respondent, John P. Lefurgy and James Yeo, were candidates to represent the electoral district of Prince County.

Prince County elects two members, and James Yeo and the respondent were returned as elected by the returning officer.

The appellant filed a petition against the respondent's return on the ground that, being a member of the Provincial House of Assembly, he was not eligible as a member of the House of Commons, or capable of being nominated or voted for, and that it was the duty of the returning officer to return the appellant under ch. 13 Revised Statutes of Canada sec. 2 p. 191, on the ground that Perry was disqualified, and that the appellant had received the next highest number of votes.

The petition came on for trial before Mr. Justice Hensley. It was admitted that the respondent had been elected to the Provincial House of Assembly at the general election in June, 1886, and that the first meeting of that assembly did not take place until 29th March, 1887; but it was contended on the part of the respondent :—

1st. That Perry was not a member of the House of Assembly, because he had not been sworn in.

2nd. That he had resigned his seat.

3rd. That his seat had become vacant under the provisions of the fourth section of the Provincial Act, 39 Vic. ch. 3, 1876.

Mr. Justice Hensley dismissed the appellant's petition, sustaining the third contention of the respondent, but deciding the first two grounds in favor of the appellant. From this decision the appellant now appeals to this court.

As I am of opinion that Mr. Justice Hensley rightly

held that the respondent's seat in the assembly was vacated on the third ground before mentioned—the acceptance of an interest in a ferry contract with the Provincial Government—I do not feel called upon to express any opinion upon the question which was raised and argued both here and in the court below as to the legal sufficiency of the resignation, and I shall therefore say nothing on that head.

By the statute of Prince Edward Island 39 Vic. ch. 3 sec. 4 it is enacted as follows :—

No person whosoever holding or enjoying, undertaking or executing directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party any contract or agreement with Her Majesty, or with any public officer or department, with respect to the public service of the Province of Prince Edward Island, or under which any public money of the Province of Prince Edward Island is to be paid for any service or work, or who shall become surety for the same shall be eligible as a member either of the Legislative Council or the House of Assembly, nor shall he sit or vote in the same respectively: Provided that nothing herein contained shall be construed to apply to any person holding a share in any incorporated company.

Sect. 5 is as follows :—If any person hereby disqualified or declared incapable of being elected a member, either of the Legislative Council or of the House of Assemby, is nevertheless elected and returned as a member, his election and return shall be null and void.

Sect. 6 is as follows :—No person disqualified by the next preceding sections, or by any other law, to be elected a member of the Legislative Council or of the House of Assembly, shall sit or vote in the same respectively, while he remains under such disqualification.

Sect. 8 enacts that if any member of the House of Assembly, or of the Legislative Council, by accepting any office or becoming a party to any contract or agreement, becomes disqualified by law to continue to sit or vote in the same, respectively, his election shall thereby become void, and the seat of such member shall be vacated, and a writ shall forthwith issue for a new election as if he were naturally dead; but he may be re-elected if he be eligible under the first section of this act.

On the 4th of August, 1886, the Lieutenant Governor of Prince Edward Island in exercise of his lawful powers in that behalf by a commission or instrument under his hand and seal, constituted and appointed

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one Edward Crossman to be the ferry-man at and for the ferry known and called "Ellis River or Grand River Ferry" for the term of three years from the 1st day of April, 1886, pursuant to the acts relating to ferries, and it was by the commission provided that the said Crossman should be paid a subsidy of $95.00 for each year of the said term. By articles of agreement bearing date 12th of February, 1887, and entered into between Edward Crossman and Stanislaus F. Perry, the respondent, Crossman assigned to the respondent one-fourth part or interest in the ferry contract, and it was thereby agreed "that a statement of "the expense and receipts of the said contract shall "be made up on the 1st day of January in each year "and one-third part of the net proceeds or profits of "said contract shall be paid over by the said Edward "Crossman to the said Stanislaus F. Perry, or his "assign." There can be no doubt but that there was a contract between the crown and Crossman in respect of the payment of the annual subsidy. This requires no demonstration for it is apparent on the face of the instrument itself. Then, was the effect of the assignment to the respondent to place him in the position of a person holding or "enjoying" an interest in this contract? The judgment of Brett J. in the case of *Royse* v. *Birley* (1) shows very clearly that the case of a person taking an interest under a contract with the crown by virtue of a transfer from the original contractor was intended to be met by the word "hold", and that a *cestui que trust* with whom the contract was not made, but who is entitled to participate in the benefits received by it, is properly one who "enjoys" the contract. This case is directly in point, therefore, and the reasoning and good sense of the construction which it authorises, warrants us in applying it in the present

(1) L. R. 4 C. P. 320.

case. I have no hesitation, therefore, in holding as Mr. Justice Hensley did that so soon as the assignment was perfected the respondent became a person "holding" and "enjoying" a contract or agreement with Her Majesty which disqualified him and rendered him ineligible for election to the assembly under section 4 of the statute before set forth. The fourth section, however, only applies to the case of disqualification for election; the material sections here are the sixth section which provides that a person becoming disqualified to be elected a member under the fourth section shall not sit or vote in the assembly, thus providing for the case of a member who acquires an interest in a contract after his election, and the eighth section which provides that:—

> If any member of the House of Assembly * * * by accepting any office or becoming a party to any contract or agreement becomes disqualified by law to continue to sit or vote respectively his election shall become void and his seat vacated.

It will be observed that the words of this section are "becoming a party to any contract;" can it be said that the respondent became a party to the ferry contract by taking the assignment? It seems to me very plain that this question must be answered in the affirmative. I construe the words "becoming a party" as referring to the acquisition of an interest in a contract in the manner mentioned in the fourth section. There is no doubt that by force of the sixth section all persons disqualified from being elected under the fourth section, are, when the act of disqualification occurs after they have been elected, incapacitated from sitting and voting, and there could be no possible reason for discriminating as regards the avoidance of the seat between two classes of persons, viz., between those whose subsequent disqualification proceeds from an original contract with the crown and those whose disability proceeds from the acquisition of an interest in

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a contract already entered into by the crown with another person, the member thus becoming the holder or party enjoying a contract within the meaning of the fourth section. I am, therefore, of opinion that as the words becoming a party to a contract or agreement are large enough to comprehend all the classes of cases included in the fourth section, as well those where the interest in the contract is acquired derivatively as those in which it is an original agreement, the eighth section avoids the election and vacates the seat of members who subsequently to their election acquire such an interest in a contract or agreement with the crown as would, if they had held it at the time of election, have rendered their election illegal under section four.

The appeal must be dismissed with costs.

FOURNIER J.—In this case I entirely concur with the views expressed by the learned Chief Justice.

HENRY J.—This is an appeal from the judgment of Mr. Justice Hensley on issues raised by a petition in the election court of Prince Edward Island signed by the appellant against the election and return of the respondent as a member of the House of Commons of Canada for the electoral district of Prince County in the said province in February, 1887.

The petition charges that at the time of his nomination the respondent was duly elected a member of the House of Assembly of the province aforesaid, and was therefore ineligible as a candidate to be nominated or elected as a member of the House of Commons, and that on the said election day he was still a member of the said House of Assembly of Prince Edward Island.

The respondent did not answer the petition, but the allegations in the petition were put in issue by the statute.

At the hearing it was contended for the respondent

that at the time of his said nomination he was not a member of the assembly of Prince Edward Island.

First. That although duly elected as such member he had resigned his seat before his nomination as a member of the House of Commons; and

Secondly. That after his election as a member of the House of Assembly of Prince Edward Island, and before his nomination at the election now in question, he had become a party to a contract with the government of the said province, and therefore became immediately disqualified and his election as member of the House of Assembly aforesaid became void and his seat therein as such member vacated.

I will deal with the two issues raised in the order I have referred to them.

The decision of the first is to be considered under the provisions of the act of Prince Edward Island, 39 Vic. ch. 3 sec. 15 in connection with the Dominion statutes, 35 Vic. ch. 15 and 36 Vic. ch. 2, Revised Statutes ch. 13.

The fifteenth section of 39 Vic. ch. 3 reads as follows:—

> If any member of the House of Assembly wishes to resign his seat in the interval between two sessions of the General Assembly, and there be then no speaker, or if such member be himself the speaker, he may address and cause to be delivered to any two members of the house the declaration before mentioned of his intention to resign, and such two members upon receiving such declaration shall forthwith notify the Lieutenant Governor thereof under their hand and seal, who is hereby empowered and required, within seven days after the receipt of such notification as aforesaid, to issue a writ for the election of a new member in the place of the member so notifying his intention to resign, and the member so tendering his resignation shall be held to have vacated his seat, and cease to be a member of the house.

The tender of resignation was made before the first meeting of the General Assembly of Prince Edward Island, after the respondent was returned as a member. The resignation bore date on the 11th February, and

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the first meeting of the Assembly did not take place until some weeks afterwards.

Revised Statutes of Canada ch. 13 secs. 1 and 2 read as follows:—

Sec. 1. No person who, on the day of the nomination at any election to the House of Commons, is a member of any Legislative Council, or of any Legislative Assembly of any Province now included or which is hereafter included within the Dominion of Canada, shall be eligible as a member of the House of Commons, or shall be capable of being nominated or voted for at such election, or of being elected to or of sitting or voting in the House of Commons, and if any one so declared ineligible is, nevertheless, elected and returned as a member of the House of Commons, his election shall be null and void; 35 Vic. ch. 15 sec. 1; 36 Vic. ch. 2 sec. 1.

Sec. 2. If any member of a Provincial Legislature, notwithstanding his disqualification as in the next preceding section hereof mentioned, receives a majority of votes at any such election, such majority of votes shall be thrown away and the returning officer shall return the person having the next greatest number of votes, provided he is otherwise eligible.—35 Vic. ch. 15 sec. 2.

We must in the first place decide whether or not the respondent having been elected and returned a member of the House of Assembly of Prince Edward Island, but who had not been sworn in before any meeting of that house, was a member subject to the operation of the two sections lastly quoted. Deciding that point in the negative would call for a dismissal of the petition. I am, however, of the opinion that a member elected and returned, as was the respondent, should be considered as affected by the provisions of the two sections mentioned. It is true a member so returned would be subject to the result of a petition against his election and return, and through which he might be unseated, but I do not think that objection should prevail.

The next question is as to his resignation. If then the respondent at the time of his nomination and election was subject to the provisions of the two sections of the Dominion act was, his position such as to authorize his resignation? The words in the disquali-

fying section of the Dominion act are: "No person "who on the day of the nomination at any election to "the House of Commons is a member of any Legisla- "tive Council, or of any Legislative Assembly." The words in the local act are: "If any member of the "House of Assembly wishes to resign his seat, &c." They are, therefore, in effect the same. The same construction of them is therefore necessary. If, then, the respondent at the time of his nomination was affected by the disqualifying provisions of the two sections, I think he occupied the same position when his resignation was tendered and acted upon according to the provisions of section 15 of the local act before recited. If not affected by either he would have been duly elected and returned even if he had not resigned his seat in the local house.

Having arrived at the conclusion that the respondent was entitled to resign his seat for the local house, could he do so before the first sitting of the legislature? The words of the fifteenth section are: "If any member of "the House of Assemby wishes to resign his seat in "the interval between two sessions of the General "Assembly, and there be no speaker, &c." What then is meant by "two sessions of the legislature." The provision is general, and unless some good reason can be found for the limited construction contended for should be construed accordingly. The only reason offered is one given by the learned judge who presided at the trial of the petition. I think, however, that the fact that the eighteenth section of the act which provides for the filling of vacancies occasioned by death or acceptance of office subsequent to a general election, and before the first meeting of the General Assembly does not necessarily affect the construction of section 15. On perusal of the act it appears to me that the legislature intended to provide for vacancies in all cases, so that when they should occur no time should

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be lost in filling them; voluntary resignations might be made:—

First, by a member giving notice of it in his place in the house;

Second, by giving notice in writing to the speaker, either during the session or in the interval between two sessions, but in case of there being no speaker by giving notice to two members as was done in this case.

As a general rule there is always a speaker after the first meeting of the legislature—the exception some times but not very frequently is found. If it was intended to limit the operation of the fifteenth section to a case where a speaker had been elected, but the office had become vacant by death, or otherwise, apt words might have been used for that purpose; but those used are significant, "and there be then no speaker" would imply that the notice was intended to apply to every case where there was no speaker, either before one should be appointed or in case of a vacancy in the office after appointment.

Courts cannot of course add words to supply what may appear defective in an act, but that is not necessary. The words "in the interval between two sessions" are comprehensive enough; but being so, it is contended that the legislature intended the provision meant "in the interval between two sessions" of the same parliament. There is nothing in the act to suggest the limited construction, or rather to import into it words to produce that result. The section says in the interval between two sessions—that means, according to the words, between any two sessions whether of one parliament or two. If the legislature meant the provision to apply only in the limited sense it should and, no doubt, would have said so. It is enough for us to see that the provision covers the interval between one session and another and so apply it.

Having arrived at the conclusion that the respondent

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was a member within the terms of the Dominion and local statutes, I must hold that the notice of resignation given to the two other members was regular and that for the reasons given the respondent had duly resigned his seat, and was, therefore, eligible to be nominated and returned as a member of the House of Commons.

I agree with the views of the learned judge whose judgment is appealed from as to the other issue for the reasons given by him in his judgment to which reference may be had.

I am of opinion the appeal herein should be dismissed with costs.

TASCHEREAU J.—I would allow this appeal. I am of opinion, first, that Perry had not legally resigned his seat in the provincial house, when he was elected to the House of Commons in February, 1887. The words "in the inter-"val between two sessions of the General Assembly" in sec. 15, 39 Vic. ch. 3 (P. E. I.), do not mean "in the "interval between two parliaments." They mean "be-"tween two sessions of the same General Assembly."

Mr. Justice Hensley was with the petitioner, present appellant, on that point. The reasoning, in that same sense, *In re West Durham* (1) seems to me conclusive.

On the other point, whether by a contract with the government of Prince Edward Island Perry had ceased to be a member of the General Assembly, I am also with the appellant. There has been no contract or agreement between Perry and Her Majesty, so as to vacate his seat under sec. 8 of 39 Vic. ch. 3. There is no privity between him and the crown, and the crown cannot hold him bound to any agreement. *Miles* v. *McIlwraith* (1). Moreover the crown has repudiated any such agreement and refused to recognize him as grantee of this ferry.

Appeal dismissed with costs.

Solicitor for appellant: *Edward J. Hodgson.*

Solicitor for respondent: *Frederick Peters.*

(1) 31 U. C. Q. B. 404. (2) 8 App. Cas. 120.