

several departments with which it shall not be lawful for any person “directly or indirectly himself, or by any person whatsoever in trust for him or on his account, to undertake, execute, hold, or enjoy in the whole or in part, or to make or enter into, any contract, agreement, or commission,” but extend the disqualification to contracts with any person or persons whatsoever on account of the Public Service, or who shall furnish or provide money to be sent abroad, or any wares or merchandize to be used or employed in the service of the public. The second section vacates the seat of any member who shall continue to hold a contract after the then next session.

In a recent case—*Royse v. Birley* (Law Reports, C.P. vol. 4, p. 296)—which was heard before the Court established under “The Parliamentary Elections Act, 1868” (31^o and 32^o Vict. c. 125), most of the previous cases under the Act of Geo. III. were referred to. The head-note to that case states, “A contract was entered into in June, 1868, for the supply of goods for the Public Service of India. The contract was completely executed by the contractors by the delivery and acceptance of the goods by the 23rd October, 1868, but the contractors did not receive payment from the India Office until the 18th of January, 1869. In the interval, viz. on the 18th of November, 1868, one of the contractors was elected a member of the House of Commons. Held, that assuming the contract to be within 22 Geo. III. c. 45, § 1, it did not avoid the election.” There were other phases of the same case, and a question with regard to the supply of goods on behalf of the Public Service after the election, which turned chiefly on the meaning to be given to the words “knowingly and willingly” in the first section of the Act. It appeared that goods had been supplied to the superintendent of a lunatic asylum in ignorance that the contractors were dealing with a Government institution, and the sitting member was held not disqualified. The case was argued at great length before Bovill, C. J., and Willes, Montague Smith, and Brett, J’s. The Chief Justice did not give judgment, but Willes, J., stated that he concurred in the judgment of the Court, which was unanimously in favour of the sitting member.

Willes, J., said,—“Reading the 1st section by itself, with the light of the preamble, that this was an Act for securing the freedom and independence of Parliament, and finding that the specific provisions in the section seem to point to the execution of a contract with the Government, and finding also that the provision for disqualification is limited to the time during which the person contracting should ‘execute, hold, or enjoy any such contract, agreement, or commission,’ I think the enactment refers to the case of a man having a contract under which he is to derive some future benefit from dealing with the Government, in respect of which they might control him; as, for instance, by directing their officers not to look too closely to the sort of goods he sent in, or the like. I should be strongly disposed to come to the conclusion that a person cannot be said to execute, hold, or enjoy a contract, when the only thing he can be said to enjoy is, the not being paid money in respect of something which he has completely done at some former time, and for which he would have been entitled to be paid on the spot, and at the instant, if that were the course of business.” (pp. 311, 312.)

Montague Smith, J.: After referring to the fact that it was not necessary to decide whether the contract with the Secretary of State for India was a contract within the meaning of the Imperial Statute, said, “I decide this case, so far as regards that contract, upon the ground that at the time of the election the contract was no longer executory, and nothing remained to be done upon it but for the Government to pay the price of the goods. Looking at this Act of Parliament and the general tenor of it, I certainly am strongly of opinion that the Legislature intended it to apply only to contracts of a continuing nature, such as contracts for the building of works, and contracts for a recurring supply of goods, though I do not say that a contract for a single supply of goods is not within the terms which are used. But to my mind it very plainly appears that the Statute did not mean to disqualify a contractor, unless the contract was in an executory state on his part, that is to say, that something remained to be done by him; and that in no other way can the Act of Parliament be properly construed.” * * * And he continues: “But when the contract is no longer executory on the contractor’s part, and he is only a creditor of the Government, I do not think he can be said to ‘execute, hold, or enjoy,’ within the meaning of this Act of Parliament. The consequence of holding otherwise would be, that a man might be disqualified from entering Parliament by the misfeasance of the Government; and more, it would be twisting the Act so as to produce the very consequence it was sought to avoid, viz. giving the Government a control over a man, and leaving it to their discretion, by paying him or not, whether they would allow him to enter Parliament or not. I think we ought not to put a construction upon the clause which would lead to such a consequence, unless we are compelled by plain and direct words so to do. On these grounds, therefore, I come to the conclusion that Mr. Birley was not disqualified by reason of Messrs. Mackintosh and Co. being unpaid at the time of the election for the goods they had previously supplied.” (pp. 316, 317, 318.)

In the Dartmouth case (reported in Barron and Arnold’s Election Cases, p. 460) the sitting member was the owner of several ships engaged under contracts in the service of the Admiralty. A few days before the election he made an assignment of the contracts to his nephews, and was released by the Admiralty therefrom. It was held that the member was not disqualified, although the bills of sale transferring his ships to his nephews were not registered at the Custom House till after the election, and circumstances appeared tending to show that the assignment of the ships and contracts was not complete at the time of the election.