

Act to an absurdity. But it did not require a contract under seal to convey the lands to the Queen. A deed in New Zealand does not require a seal.

The Disqualification Act was passed to prevent persons concerned or interested in contracts affecting the Public Service of the colony from exercising undue influence with or over the Government of the colony. The Solicitor-General implies that this undue influence could only be exercised when the House was actually sitting. I fail to see this. A reference to the Act also, in my opinion, shows clearly that the Legislature contemplated "undue influence" being exercised at other times than during the sitting of the House. Undue influence, as said by Justice Willes, in the case cited by the Solicitor-General, might be exercised in the Government "directing their officers not to look too closely to the sort of goods" a contractor sent in, or, to apply it to this case, to the kind of land sold, or the price paid for it. That the Act contemplated such will be plain if it is remembered that a contractor is incapable of being elected (see sections 9 and 10), not merely incapable of sitting and voting. Now it does not follow that when a member is elected the House is sitting; and, therefore, the Act disqualifies persons without reference to the sitting of the House. For it states,—“No person, &c., \* \* \* shall be capable \* \* \* of being elected.” And then it adds,—“Nor shall such person sit or vote.” And in section 10, if a disqualified person is elected, his election and return shall be “null and void.” The position, then, that a contractor cannot be elected, even if the House is not sitting, will, I think, be conceded. And if that be conceded, it must follow that whenever he enters into a contract he becomes disqualified. The argument of the Solicitor-General would lead to this: that, I presume, he would grant that no contractor could be elected. Though a person were disqualified from being elected, yet he could, between the sittings of the House, do that which were he not a member would disqualify him from becoming one.

The case cited by him appears to me to strongly support my contention. I may state that I have not had the opportunity of looking for more recent cases. The case cited by him is the only one cited in Fisher's Dig., vol. v., tit. Election Law, that bears on the question; and it is instructive to note that such a case should have been submitted for the decision of the Court. In the case the contract was, so far as the contractor could do it, at an end. It is true the Government had not paid him the money to which he was entitled, but, as Mr. Justice Montague Smith pointed out, he was simply a creditor of the Government, and the consequence might be that through the misfeasance of the Government a man might be prevented from ever entering Parliament. But here the contract is made after the member has been elected. It is true the House is not sitting when the contract is made, nor when the money was paid. But this is, in my opinion, of no moment, and was not raised in any of the cases I have seen reported. In the other case cited by the Solicitor-General—the Dartmouth case—though the legal documents may not have been formally executed, in equity the interest of the contractor had been assigned. I may add that two other cases referred to in the argument in the Manchester case, viz. that of Sir Sydney Waterlow and the Leominster case, strengthens the view I take. And moreover, Mr. Justice Brett, in his judgment, states that the Court does not dissent from the decisions of the Election Committees in both these cases. In Sir Sydney Waterlow's case, the firm with which he was connected had a contract for the supply of stationery to the Government. He dissolved partnership, but the dissolution did not take effect until after his election, and it was held he was disqualified, as at the time of his election he had an interest in a Government contract. In the Leominster case, Mr. Bish, who was returned as one of the members, was a lottery contractor. The election took place on the 12th June, 1826. By the agreement entered into by Mr. Bish with the Lords of the Treasury, the day appointed for the final drawing of the lottery was the 17th May, 1826, and the day for the payment of the last instalment by Mr. Bish was the 29th April, 1826. Mr. Bish paid the last instalment on that date, and the list of the tickets was delivered. The final drawing was, however, postponed till after the day of the election, namely, to the 18th July. The Committee held that Mr. Bish was not duly elected, because something remained to be done to complete the contract. It is also instructive to notice that in none of these cases was any distinction attempted to be drawn between sitting and not sitting. If the person returned was a Government contractor at the time of his election, that was held to incapacitate him. But if the opinion of the Solicitor-General be correct, it is the sitting of the House that causes the disqualification to arise, not merely the entering into a contract with the Government.

From what I have already stated, it will be seen that, in my opinion, no such distinction as is drawn by the Solicitor-General can be accepted as the proper interpretation of the Act.

As to Mr. Buckland's particular case, I have not had time to deal with it on its merits—that is, as to its moral aspect; I have confined myself solely to the technical or legal question. If, however, the Committee should find that the contract was made in ignorance of the effect of the Act, and in the public interest, were I present at the Committee's deliberations I should urge that the course adopted in Mr. Forsyth's case—known as the Cambridge case—should be adopted by the New Zealand Legislature, viz. that an Act should be passed relieving Mr. Buckland from the penalties he has incurred.

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