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93 Md. 208, 49 A. 4

Court of Appeals of Maryland.  
 ROBINSON

v.

**MAYOR, ETC., OF CITY OF BALTIMORE.**  
 March 8, 1901.

Appeal from Baltimore court of common pleas.

Action by Howell D. Robinson against the mayor and city council of Baltimore. From judgment in favor of defendant, plaintiff appeals. Affirmed.

West Headnotes

**Municipal Corporations 268** ↪ 115

[268k115 Most Cited Cases](#)

Acts 1898, c. 123, § 25 (new city charter of Baltimore) providing that all municipal officers in office at the passage of the act shall hold their offices under existing ordinances as if that article had not been passed, until their successors were appointed, did not prevent the repeal of ordinances relating to city offices, so that an official holding under a then existing ordinance was entitled to hold after the ordinance under which he claimed had been repealed, and his office abolished, but only continued such officials in office subject to the right of the mayor and council to abolish their offices; and hence an assessor appointed by the mayor under City Code 1893, art. 50, § 2a, was not entitled to receive compensation after this section was repealed by Ordinance No. 25 of Ordinances of 1899-1900.

**Municipal Corporations 268** ↪ 115

[268k115 Most Cited Cases](#)

Acts 1898, c. 123, § 3 (new city charter of Baltimore), declaring that "all ordinances now in force and not inconsistent with this act are hereby continued until changed or repealed," does not in any manner limit the power of the mayor and council to repeal any existing ordinance, whether

inconsistent with that act or not; and hence the mayor and council had power to pass Ordinance No. 25 of Ordinances of 1899-1900, which repealed City Code 1893, art. 50, § 2a, giving the mayor power to appoint assessors of taxes; so that an assessor so appointed was not entitled to receive compensation after Ordinances of 1899-1900, No. 25, took effect.

Argued before McSHERRY, C.J., and FOWLER, PAGE, PEARCE, and SCHMUCKER, JJ.

John V.L. Findlay and Thos. Mackenzie, for appellant.

Wm. Pinkney Whyte and Olin Bryan, for appellee.

FOWLER, J.

Howell D. Robinson was appointed by the mayor of Baltimore, and duly confirmed by the city council of that city, in February, 1898, as one of the assessors of taxes, under an ordinance which was approved March 28, 1893. His appointment was for two years dating from March 1, 1898. By ordinance passed December 29, 1899, the ordinance of March 28, 1893, under which Mr. Robinson was appointed, was repealed. Thereafter, on February 1st, and again on March 1st, the city refused to pay to Mr. Robinson the salary provided by the ordinance under which he was appointed. Mr. Robinson has brought this action of assumpsit against the city to recover his salary for January and February, 1900, and the defendant has demurred to the third count of the narr. The court below sustained this demurrer, and, judgment having been entered for the defendant, the plaintiff has appealed. The question presented by the demurrer is whether the ordinance under which the plaintiff was appointed and confirmed as one of the assessors of property for taxes was repealed by the ordinance of December 29, 1898, passed for that purpose, or by the provisions of the new city charter known as Acts 1898, c. 123.

We will first briefly consider the effect of the charter in this respect. By the third section of the act of 1898, c. 123 (Baltimore city charter), it is provided that "all ordinances of the mayor and city council of Baltimore now in force and not inconsistent with this act, shall be and they are hereby continued until changed or repealed, respectively, by the general assembly of Maryland or the mayor and city council of Baltimore." It is, of course, conceded that the ordinance of December\*5 29, 1899 (codified as section 2a, art. 50, of the City Code of 1893), was in force when the new charter went into effect. Hence, if it is not inconsistent with the new charter, it is continued under the very terms of section 3. But the provisions of the former ordinance (section 2a, art. 50, Code 1893) appear to be clearly inconsistent with the provisions of the new charter relating to the same subject. By the former the mayor biennially appointed assessors of taxes by and with the advice and consent of a convention of both branches of the city council, while by the latter no power is given to the mayor to appoint assessors; and it is provided by section 147 that the appeal tax court may appoint such number of assessors as they may deem necessary. But it is contended by the plaintiff that, in spite of the glaring inconsistency between the old charter and the new charter, the provisions of the former in this regard were still in force and full operation until the officers under the new charter were duly appointed and qualified; that is to say, until March 1, 1900. In support of this contention the plaintiff relies on the third and fourth sections of the act of 1898 (chapter 123) and section 25 of the new charter. Before, however, considering these provisions, we should recur to the fact that the ordinance on which the plaintiff bases his claim was in fact repealed by ordinance of December 29, 1899; so that the ordinance on which the plaintiff relies is not only inconsistent with the new charter (section 147), but it has been repealed. If it be conceded, therefore, that the ordinance in question was not inconsistent with

the new charter, nevertheless it has not been thereby continued, because it has been repealed. The contention of the plaintiff, however, is, as we have said, that the mayor and city council has no power under the new charter to repeal the ordinance of March 28, 1893. To sustain this position he relies upon sections 3 and 4 of the act of 1898 (chapter 123) and section 25 of new charter. Section 25 provides that "all municipal official boards and commissioners in office under the mayor and city council of Baltimore, upon the date of the passage of this article, unless otherwise provided in this article, shall hold their respective offices under existing laws and ordinances, the same as if this article had not been passed, until their successors are appointed, as provided in this section, in February, 1900." It seems to us too clear for controversy that the meaning of this section is that municipal officers holding under ordinances in existence and operation when the new charter was passed should continue to perform the duties of their respective offices until the appointment and qualification of their successors under the new charter, unless in the meantime such ordinance or ordinances should be repealed, and the offices abolished. By the very section 3 relied on by the plaintiff even the existing and consistent ordinances were to continue in force only until repealed by the mayor and city council. We do not understand the plaintiff to contend that, outside and independent of the provisions of the section of the new charter he relies on, the mayor and city council could not have repealed the ordinance under which he held, and thus abolish his office. But his contention is that this power to repeal is taken away by the new charter in the interim between the approval of the act adopting the new charter and the 1st of March, when the officers under the new charter were to enter upon their duties. But we find nothing in that instrument to justify this view. On the contrary, it is provided by section 2 that the new charter was not to be construed to make irrevocable or irrevocable any right which, before

its adoption, was repealable or revocable. And certainly it cannot be maintained that before the adoption of the new charter the ordinance in question was irrepealable.

Finally, the fourth section of the act adopting the charter is relied on, to the effect that nothing contained therein shall be construed "to interfere with the continuity of the terms or tenure of said officers"; that is, of such officers who, like the plaintiff, are alleged to hold under existing ordinances. It had already been provided by section 25 of the charter that these officers should hold "as if this article" (the new charter) had not been passed; that is to say, they would undoubtedly hold subject to the right of the mayor and city council to abolish their offices, and they so held before and after the new charter was adopted. Section 4 therefore was adopted, not to deprive the mayor and city council of the power of repealing ordinances in the interim mentioned,-that is to say, between the adoption of the new charter and March 1, 1900,-but to make it clear that it was not the legislative intention to interfere with the tenure of any municipal officers, leaving it in the power of the mayor and city council, where that power had always been reposed, to abolish the office held by the plaintiff, if it thought proper to do so. It follows, therefore, if we are correct in the conclusion that the mayor and city council had as well before as after the adoption of the new charter the power to abolish the office of assessor held by the plaintiff, the demurrer was properly sustained by the court below, and its judgment must be affirmed. Judgment affirmed, with costs.

Md. 1901.  
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