

There was also imposed upon the head of the council, who was one of the appellants, the statutory duty to "be vigilant and active in causing the laws for the government of the municipality to be duly executed and obeyed" and "to oversee the conduct of all subordinate officers in the government of it, and, as far as practicable, cause all negligence, carelessness, and violation of duty to be prosecuted and punished;" and he and each of his fellow-members of the council, his co-appellants, had made the statute-imposed declaration that he would truly, faithfully, and impartially, and to the best of his knowledge and ability, perform the duties of his office: Municipal Act, R.S.O. 1914 ch. 192, secs. 215, 242, and 193.

In the face of these duties and obligations, the appellants had endeavoured to thwart the law and evade their plain duty.

To the technical objection of want of demand and refusal, there were three plain answers: (1) that the course and conduct of the appellants shewed a settled purpose not to perform their duty—in such a case, a demand and refusal would be useless and need not be proved; (2) that an effective demand was duly made in August last, a demand that was still effective, because never effectually complied with or intended to be so complied with, the pretended compliance being in truth but further resistance of the duty, and prevention of the effect which an honest and impartial performance of it would have had—the result being still no board of trustees; and (3) that, upon the motion before Sutherland, J., that learned Judge considerably and properly gave to the appellants another opportunity to perform their duty, and at the same time test their good faith—they accepted the offered opportunity, but, instead of filling the offices of trustees honestly and impartially, they made another abortive appointment, though they might have made an effective one of ratepayers quite as competent as they and impartial.

The appeal must be dismissed; the appellants must pay all costs—those of the "township council," if it can have and has any, to be taxed as between solicitor and client.

RIDDELL, KELLY, and MASTEN, JJ., agreed in the result, each giving reasons in writing.

*Appeal dismissed.*