

town of Copper Cliff, on the 27th December, 1914, beginning at 2 p.m., an election be had of seven directors; and out of these an election of a chairman, vice-chairman, and manager; also the members to elect an amusement committee, auditor, and other officials of the Copper Cliff Young People's Society: that David Marr Brodie, Police Magistrate for the Town of Sudbury, act as returning officer, and as such he shall preside at such election and determine who is entitled to vote; and he shall, forthwith after such election, certify to this Court the result of the election: also it is ordered the said hall shall not, nor shall any of its furnishings, equipment, or any funds or other assets of the society, be used for any purposes except those provided in the general rules of the society; that the costs of the returning officer, to be fixed by the Registrar of this Court, shall be paid out of the funds now to the credit of this cause; and that further directions as to disposition of the money in Court, and the costs of this appeal, and the costs below, be determined by Mr. Justice Riddell.

"If Mr. Brodie is unable to act, then Mr. Sheriff Irving of Sudbury is appointed in his place as such returning officer, with the same powers, duties, etc., as are conferred on Mr. Brodie.

"Each party shall deposit with the returning officer on or before the 15th December, 1914, any minutes, books, or papers, in their custody or control, having any entries therein as to the membership of the society; and the Registrar of this Court will also within such period deliver to him the copy of the constitution, exhibit 15, and a copy of this memorandum."

Mr. Brodie acted as returning officer, held an election, and reported: the plaintiffs move for further directions, and at the same time the defendants move to set aside the election. As I have no jurisdiction under the order to deal with the latter motion, both counsel requested that I should take jurisdiction and dispose of the whole matter—I do so.

As to the election, the parties selected the returning officer, and gave him power to "determine who is entitled to vote." I consider this as a selection of Mr. Brodie as *personam designatam*, and that (at least in the absence of fraud, all suggestion of which is earnestly repudiated by Mr. Clary) his decision is consequently final.

But, if it be open to me to consider the merits, I hold that his manner of selecting the properly-entitled voters is unexceptionable.

The judgment of an appellate Court in *Vick v. Toivonen*