

Co. Ct.]

GARRETT V. ROBERTS.

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settled, that when a ministerial duty is imposed an action will lie for the breach of it. That and similar cases, which give damages to parties who are injured by the wrong done, throw no light on the reason for directing the defendant in this case to pay \$200 to the plaintiff, who has not been injured. The reason is to be found in the positive language of the Election Act already quoted.

It is not for me to decide whether the legislature ought to enact that an officer of the law acting in a ministerial capacity, and conscientiously believing he was doing right, shall be made to pay a penalty or be imprisoned because he did not know he was doing wrong, and irrespective of the question whether the plaintiff or any one else suffered by his mistake. I have only to say whether such a law has been made, and I think it has.

I construe section 180 as meaning what it says, and to interpret it as relating only to wilful refusal or neglect, would, in my judgment, be undertaking to make the law instead of expounding what is already made. In taking this view I do not overlook the rule which requires the words of each portion to be given that meaning which will best accord with the general intent of the whole Act. But as far as I am able to judge there is nothing in the language of this section contrary to the tenor and object of the whole law of which it forms a part.

There is a *dictum* in a practice case which fortifies me in my opinion. *Cameron v. Lucas*, 9 Prac. R. 405, was an action for the penalty mentioned in section 108 of the Dominion Election Act of 1874, the language of which is almost identical with that of section 180 in question here. The statement of defence alleged "that if he, the defendant, neglected to perform such of the obligations or formalities required of him by the Dominion Election Act of 1874, as are set forth in the plaintiff's statement of claim, such non-performance was unknown by and unintentional on the part of the defendant, and was not the result of a guilty mind with respect to such non-performance." An application was made to strike out this paragraph on several grounds, amongst others, because it was no answer. The pleadings were ordered to be amended without deciding on its sufficiency; but, in disposing of the matter *Cameron, J.*, made this remark:—"I may say I have very little

doubt the paragraph shows no valid grounds of defence."

I have still to say whether the facts proved amount to a refusal or neglect to perform any of the obligations or formalities required of a deputy returning officer by the Ontario Election Act. Section 91 is as follows:—"The deputy returning officer shall receive the vote of any person whose name he finds in the proper list of voters furnished to him, provided that such person, if required by any candidate or by the deputy returning officer himself, takes the oath or affirmation hereinafter mentioned, which such deputy returning officer is hereby empowered to administer. Such oath shall be according to form 18 in Schedule A to this Act, where the person claims to be entitled to vote in respect of real estate . . . No other oath or affirmation shall be required of any person whose name is entered on any list of voters as aforesaid."

The facts established by the verdict show that the defendant was a deputy returning officer, that he found the name of Skinner in the proper list of voters, that Skinner attended the polling place and claimed to vote in respect of real estate, that he was a tenant of land in the polling sub-division of the defendant, that the defendant refused to allow Skinner to vote unless he would swear amongst other things that he was a resident of the electoral district.

Now the form alluded to in sub-section 2 does not require a tenant to swear that he is still a resident of the electoral district, but the defendant took upon himself to decide, and did decide, that this tenant should not vote unless he would so swear, and he acted on that decision. The explanation given of this conduct is that when Skinner went up to vote some one present asserted that Skinner's tenancy had ended, and without further enquiry the defendant assumed it to be true.

The main fact of the case was proved beyond question; the defendant, in his evidence, did not prevaricate or attempt to deny it. He said, "I refused to allow him to vote unless he took the oath with the words 'and still are' left out, and the other clause substituted to the effect that he was still a resident of this electoral district, after that he went out without voting."