

upon passed by-law No. 525, appointing a time and place for the nomination and election of mayor, reeve, deputy reeve, councillors, and public school trustees, etc. The election was duly held, and the appellant was elected deputy reeve by acclamation.

The relator now, under sec. 161, questions the validity of the election of the appellant as a member of the council. The grounds alleged are, that the town has not the names of more than 1,000 municipal electors upon its last revised list of voters for the said town, not counting the same names more than once; and, even if it had at the time the list was revised, it had not the required number at the time of the election complained of.

Upon the preliminary objection that the municipality is not a party to this proceeding, I have found considerable difficulty in satisfying myself that the objection should not prevail. If the law is that the action of the council in ascertaining whether or not it is entitled to a deputy reeve, and the by-law of the town providing for the election of a person to that office, can be set aside by proceeding against the person elected without any notice to the municipality or making the municipality a party, it is somewhat anomalous.

Under sec. 161, there may be tried or determined: (1) the validity of the election of a member of the council; (2) the right of a member of the council to hold his seat; or (3) the right of a local municipality to a deputy reeve.

I should suppose, but for the reasons I shall mention, that the right of a local municipality to a deputy reeve should be tried by proceeding against the corporation, or by giving notice allowing the corporation to come in and defend.

The deputy reeve, so-called, has done no wrong—both he and the council have acted in the most perfect good faith. The electors of the town—indeed, the inhabitants of the town—are all interested in the office. . . . In this proceeding—if the election of Church is set aside—he not only drops out, but the alleged right of the town is denied. To have the by-law of the municipality virtually quashed behind its back is not the usual way.

The argument of counsel for the relator is that, as under sec. 161, sub-sec. 1, the right of the municipality to a deputy reeve may be tried, and as sub-sec. 2 designates who may be relator, and as no conditions are imposed, it must be tried, even if the details applicable to trying the validity of an election are not prescribed or made applicable to a proceeding like the present.