

[Co. Ct.]

GARRETT V. ROBERTS.

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ship of Alnwick, in said west riding of Northumberland.

3. One Robert Skinner had at that time his name upon the list of voters for said subdivision, as tenant of the east half of lot 22, in concession 5, in said township, and was at that time actually tenant of said land.

4. The said Richard Skinner, on said day, presented himself to vote at the polling place where the defendant was deputy returning officer as aforesaid, and the vote of the said Richard Skinner was then objected to by the agent of one of the candidates.

5. The said Richard Skinner was willing and offered to take the oath, form 18 of the Election Act of Ontario, and amending Acts, to "swear that he was still actually, truly, and in good faith, possessed to his own use and benefit, as either owner, tenant or occupant, and in such other words as the said Acts prescribe."

6. The defendant, as such deputy returning officer, refused to allow the said Skinner to take the said oath, form 18, without the addition of the words 'and that you are still a resident of the electoral district,' or without the substitution of the said words for the words 'and still are' in said form 18.

7. The defendant refused to allow the said Skinner to vote unless the said Skinner took the oath, form 18, with the addition or substitution before mentioned, and the said Skinner not being able or willing to take such additional or substitutional oath was refused a ballot by defendant, and did not vote. After which statement of facts the plaintiff claimed \$200.

At the trial the learned judge found the facts to be as alleged in paragraphs 1, 2, 3, 4 and 7 of the statement of claim. That Skinner did not offer to take the oath as alleged in paragraph 5, and that the defendant did not refuse to allow Skinner to take the oath mentioned in paragraph 6 as therein alleged.

Immediately after this finding the plaintiff, in open court, moved for judgment. The hearing of the motion was enlarged till the 20th July, when it was argued by

H. R. Riddell, for plaintiff, and

Hector Cameron, Q.C., for defendant.

CLARK, CO. J.—Since the trial there has been no application for a new trial or other substantive motion to disturb my finding of facts. If it were necessary to decide now whether that

finding was correct, my judgment would be that the evidence fully supports it.

Section 180 of the Election Act, R. S. O. cap. 10, is as follows:—"Any deputy returning officer or poll clerk who refuses or neglects to perform any of the obligations or formalities required of him by this Act, shall for each such refusal or neglect incur a penalty of two hundred dollars;" and by section 182, "All penalties imposed by this Act shall be recoverable with full costs of suit by any person who will sue for the same by action of debt or information in any of Her Majesty's courts in this province having competent jurisdiction..."

Though it was made apparent by the addresses and argument of counsel at the trial that the action is brought under section 180, it was not so mentioned in the statement of claim, and the first objection against a judgment in favour of the plaintiff was based on that omission—it was contended that suing in the character of an informer and for a penalty, it was not enough for him to describe the bare facts on which he relied—that (under sec. 182, ss. 2) he must at least allege that the facts stated amounted to an offence, and that the defendant acted contrary to that statute, and it was urged that a court should not aid the plaintiff by permitting an amendment in a case of this kind.

The Bank of Montreal v. Reynolds, 24 U. C. Q. B. 381, is an authority against this contention. There the defence was usury, and it was held that the amounts named as the loans by the plaintiff were material and ought to have been correctly stated, which they were not, but at the trial Wilson, J., refused to allow them to be amended, "he doubted if the power should be exercised when the consequences were so serious."

The question whether the amendment ought to have been permitted went to the full court, of which the judgment was delivered by Draper, C.J. He said:—"The legislature have relieved the court and judge from considering the character of the action or of the defence. They give a simple rule for the purpose of determining in the existing suit the real question in controversy," and the decision of the court was that the amendment ought to have been allowed as a matter of course. In his judgment he set out C. L. P. Act, sec. 222, the en-