

cipal and school taxes then due. In fact the very contrary is laid down in the charter itself; and it may happen (and I believe that in the present case it does happen), that the president of the election is not an elector of the ward in which an equality of votes occurs.

The president of the election, like the returning officer in a parliamentary election, does not give the casting vote in the exercise of a franchise, but gives it in the execution of a duty specially imposed upon him by statute. Whoever is qualified to act as the president of an election, is empowered without other qualifications to give a casting vote.

The ground that the president of the election had not paid the taxes due by him previously to the day of the voting is therefore insufficient in law to void the election, and must be rejected.

The judgment was drawn as follows:—

“Parties ouïes après examen de la requête en cette cause :

“Considérant que le président de l'élection dans une élection municipale, dans la cité de Hull, donne son vote prépondérant au cas de partage égal des voix en sa qualité de président de l'élection et non comme électeur, et que, partant, il n'y a pas lieu de s'enquérir s'il possède toutes les qualifications nécessaires pour autoriser un électeur à voter;

“Considérant que le fait que Charles Everett Graham, le président de l'élection dont il est question en cette cause, n'aurait pas payé ses taxes municipales ou scolaires lorsqu'il a donné son vote prépondérant en faveur de l'intimé, ne constitue pas une cause de nullité et ne saurait affecter le sort de l'élection;

“Considérant que les autres faits et moyens articulés dans la requête pourraient être suffisants en loi pour faire prononcer la nullité de l'élection de l'intimé dont le pétitionnaire se plaint;

“Nous, soussigné, juge de la Cour Supérieure, renvoyons comme insuffisante et non fondée en loi l'allégation que le vote prépondérant du président de l'élection est nul parce qu'il n'avait pas payé ses taxes et, partant, n'était pas qualifié comme électeur à voter, et nous ordonnons qu'il soit procédé à la

preuve des autres faits et moyens articulés dans la requête, jeudi, le dix mars courant, dans la salle d'audience de la Cour Supérieure, au palais de justice, à Aylmer, à onze heures de l'avant-midi, et que l'audition des parties ait lieu immédiatement après la clôture de l'enquête.”

*Rochon & Champagne* for petitioner.  
*J. M. McDougall*, for respondent.

### SUPERIOR COURT.

AYLMER, (district of Ottawa,) March 14, 1887.

(In Chambers.)

Before WÜRTELE, J.

MAJOR et vir v. McCLELLAND.

*Tariff of Advocates' Fees—Action dismissed on demurrer.*

HELD:—*That the attorney's fee, on an action dismissed on a demurrer, is the same as on an action dismissed on a preliminary plea.*

An application was made in this cause to the judge in chambers, for the revision of the taxation by the Prothonotary of the costs awarded to the defendant on the dismissal of the action. The point submitted was, what fee was a defendant's attorney entitled to when the action was dismissed on a demurrer. The ruling was as follows:—

“Having heard the parties by their counsel upon the application for revision of the taxation of the costs payable by the female plaintiff to the defendant, having examined the proceedings of record, and having deliberated thereon;

“Seeing that the action in this cause was dismissed, after the production of a peremptory exception and plea, but before any proof was made, on a demurrer pleaded by the defendant;

“Seeing that the Prothonotary, by his taxation, has allowed a fee on the action of \$50, as if the action had been dismissed after final hearing on a plea to the merits, and that the taxation of such fee is contested by the plaintiffs;

“Considering that by article 21 of the *Tariff of Advocates' fees* in the Superior Court, a demurrer, in respect of the taxation of fees, is assimilated to declinatory and dilatory exceptions and to exceptions to the