

February preceding, when he was removed from office.

*Pagnuelo*, Q.C., for the appellant, submitted that the election of Sauvé could not be attacked by reason of defect in the title of the person who presided, when he was openly exercising his office. His title could not be attacked incidentally. It was also urged, among other reasons, that the respondent could not question the title of Raby, because he had acknowledged him as Secretary-Treasurer by paying taxes to him.

*Champagne*, for the respondent, contended that Leroux had not been legally removed from office, and even if his removal was legal, the appointment of C. Raby was illegal, not being made at a regular meeting. Further, even supposing the meeting held at C. Raby's had been lawfully convened, yet a poll was demanded by a sufficient number of electors, and was improperly refused. Three electors could demand a poll, and in this case a poll was demanded by five. The pretended election of Sauvé was therefore illegal, and the judgment maintaining the election of Ladouceur was correct.

RAMSAY, J. This case arises out of misunderstandings and difficulties of a Municipal Council. We have not to decide on the merits of the disagreement, but whether the appellant, Joseph Sauvé, was duly elected a School Commissioner of the Parish of St. Placide, or whether he has usurped the office to which one Antoine Ladouceur was duly elected.

The suit began by a proceeding in the nature of a *quo warranto* promoted by the respondent, who declares himself an elector, and qualified to vote for School Commissioners, and setting forth that Antoine Ladouceur was duly qualified to be elected, and was elected.

Both the quality or capacity of the Respondent and of Antoine Ladouceur—one as elector and the other as being eligible for election—were expressly denied, and it may be well to dispose of these questions at once. It is argued that Respondent is only the *prête-nom* of two persons, G. Raymond and Damase Leroux, who themselves participated in the proceedings attacked, and because he recognized the validity of the proceedings in paying the Secretary-Treasurer, whose nomination as Secretary-Treasurer he now impeaches; that Raymond and Leroux have not paid their taxes, that La-

douceur was ineligible because neither he nor his proposers had paid their taxes.

I see no evidence to disqualify these parties. Those whose names are on the voters' list are entitled to vote unless it can be shown positively that they are subject to a disability. The evidence of this is on the party alleging the incapacity.

Substantially there is little difference as to the facts of the case. On the 7th February, 1881, it seems that there was a special meeting of the School Commissioners called to decide as to whether the Board should resolve to settle the claim of the former Secretary-Treasurer, Mr. Barnard. At that meeting circumstances came to the knowledge of the Commissioners which induced them to concur in a resolution to dismiss the then Secretary-Treasurer on the spot.

The resolution to dismiss the Secretary-Treasurer was adopted unanimously. It is unnecessary for us to form, much less to express any opinion as to whether this act of rigour was justifiable or not. It is sufficient to say that the dismissal was accomplished, and that the former Secretary-Treasurer fully understood that he was dismissed. That the Commissioners had the power so to deal with their officer appears to be beyond all doubt, according to law. C.S.L.C. 15, 60, § 4. Before the dismissal one Anthime Pilon was appointed Secretary-Treasurer *pro tempore* Leroux, the former Secretary-Treasurer, then retired, and Pilon continued to take the minutes. Mr. St. Jacques, the Chairman of the School Commissioners, who did not approve of these proceedings, declared he would not sign the minutes, and withdrew, refusing to take any further part in the meeting. The remaining Commissioners then appointed one of themselves, Mr. H. Pilon, to act as Chairman in the absence of St. Jacques (sec. 58), and the meeting then adjourned till the 19th February. This would have been entirely within the powers derived from the common law, but it appears that the duty of the Commissioners was to proceed to the appointment of a Secretary-Treasurer, who should give security before acting. Another complication was created by the fact that the meeting of the 7th had taken place in the former Secretary, Leroux's house, and the Commissioners could not decently meet there again.