

township clerk, that there was a contest for deputy-reeve, that the plaintiff was a duly qualified candidate, that he was not elected, that he was duly nominated, that the poll was opened, that there are no wards in the township, that the defendant acted as deputy-returning officer at poll No. 1, that he initialled a ballot and voted himself. Everything was conceded up to the point of the defendant having voted, at which point Mr. Nesbitt, for the defendant, objected and asked proof.

Proceeding further, Mr. Nesbitt admitted that the plaintiff was defeated at the election by 104.

The poll-book for division No. 1 was then produced and Pascal Pigeon was called to prove the book. He was present at the last election in No. 1 division and saw Mr. Pearson there acting as deputy-returning officer. Witness voted at this division, defendant giving him the ballot. Witness saw defendant take a ballot himself. Witness was fixing the fire at the time, and Mr. Pearson asked him to keep an eye on the table while he voted. Defendant then initialled the ballot paper, retired to the place provided for the purpose, came out again and deposited the ballot in the box. He remarked at the time that he might better vote then than afterwards when he might be busier. Witness said he saw Mr. Pearson write in the poll-book, and identified the name of Mr. Pearson ticked off as having voted. Proceeding, witness said the plaintiff and defendant had not been on good terms for a number of years, and that they usually made an exhibition of their ill-will toward each other on nomination day. Witness had heard Mr. Pearson say Mr. Armstrong was an enemy to the township, and call Armstrong a liar more than once at nomination meetings. Mr. Pearson had also said that Mr. Armstrong was a stumbling-block to the progress of the township in the matter of drainage, etc. Mr. Pearson had been township clerk as long as witness could remember. Besides being township clerk, Mr. Pearson was postmaster at Sebringville, the owner of a sawmill there, and was a conveyancer.

To Mr. Nesbitt Mr. Pigeon said that, as in other townships, people were divided in their opinions as to the merits of the candidates. The feeling between Mr. Armstrong and Mr. Pearson was one of politics—municipal and otherwise. Mr. Pearson was a highly respected man. Witness was quite sure Mr. Pearson had voted. Everything was done openly and above board. A vote was taken on the same day for the erection of a house of refuge. This was not the vote to which he referred, however. Witness saw Mr. Pearson vote on the poor house also. Witness did not think Mr. Pearson would do anything dishonest. Mr. Brickman was present in the polling booth at the same time, as was Mr. McCaffrey. These people would probably see what he had described.

The plaintiff himself, Robert Armstrong, was called, and swore that he had been elected councillor in 1883 and 1884, and that in 1894 and 1895 he was deputy-reeve. He was a candidate at the last election, and was defeated by 104 votes. He said that at every nomination he ever attended the defendant, although chairman, interrupted him. At the late nomination Mr. Pearson denounced him as a stumbling-block and a bull-dozer. Witness had objected to defendant getting paid for the drawing of four by-laws in connection with the Corcoran drain, contending that one would have answered the purpose, and this was the bone of contention between him and Mr. Pearson. Witness told Mr. Nesbitt that he had no personal spite against Mr. Pearson. Mr. Armstrong also said it was not because he was hard up that he had brought the action, and that there was no personal feeling on his part against Mr. Pearson.

This concluded the examination of witnesses, and Mr. Nesbitt proceeded to argue with his lordship the legal phases of the case. He quoted section 157, subsection 3, in support of contention that Mr. Pearson had a right to vote as deputy-returning officer, the clause cited being calculated only to prohibit a clerk from voting. As clerk he would have a right to vote only in case of a tie, but as deputy-returning officer he had a perfect right to vote. Mr. Nesbitt next contended that there was no evidence to show that the alleged wrongful act was wilfully done.

His lordship interrupted to say it was useless to discuss this phase of the case. Mr. Pearson was no ignoramus.

Mr. Nesbitt quoted voluminously to show that the wrongful act must be perverse and malicious. It had been shown that Mr. Pearson voted openly, assuming that he had a right to vote. Another point raised by Mr. Nesbitt was that the plaintiff, Mr. Armstrong, was not a person aggrieved, and the statutes provided that only a person aggrieved was entitled to claim the penalty imposed for wrongful voting. On these grounds, Mr. Nesbitt held that there was no reason why a defence should be put in. The plaintiff had made out no case.

Mr. Osler, in reply, quoted sections to support a contention that the act as committed by the defendant was wilful. The learned Queen's counsel also argued to show that Mr. Pearson had no right as returning officer to vote. In this case Mr. Osler denied that the defendant had a right to act as deputy-returning officer, because by the statute he was returning officer. He could not be both chief and deputy. Section 108 was quoted to show that the clerk shall be returning officer at the nomination meeting. The action of the defendant at the nomination meeting in opposing the plaintiff threw a flood of light on the subsequent action in the polling booth. Section 157 gives the returning officer the casting vote. But sub-section 3 shows who have the right to vote.

There was clearly, therefore, no vote in this defendant, and he should have known it. On the point as to whether the plaintiff was one aggrieved Mr. Osler argued that Mr. Armstrong was a candidate, that the defendant spoke against him and the vote was cast against him. The plaintiff was therefore an aggrieved person. Mr. Osler also quoted a section to show that a defeated candidate was a person aggrieved. Mr. Osler concluded there was nothing for the jury to decide, and again submitted to his lordship that the case should be taken from the jury.

Mr. Nesbitt pressed for a jury trial, and said his lordship would be called upon to say whether the plaintiff was aggrieved, and whether the defendant had a right to vote. The jury would be left to decide whether the act was malicious and perverse.

Mr. Osler contended this latter was a question of law, and his lordship assumed the same view and discharged the jury.

Mr. Nesbitt afterwards argued in rebuttal that Mr. Pearson was not returning officer by virtue of his position as clerk, as argued by Mr. Osler, but that he was appointed deputy-returning officer by by-law of the council. The section quoted by Mr. Osler did not apply where there were polling subdivisions. Among other things, Mr. Nesbitt argued on the point that the plaintiff was an aggrieved person, that it was not to be assumed by the plaintiff that defendant had voted against him. The plaintiff could have put the defendant in the box and made him tell for whom he voted. He had not done so. Aside from this, Mr. Nesbitt held the plaintiff had suffered no more legal grievance than any other ratepayer. Then there was no evidence that the ballot was marked.

His lordship interposed that on the evidence he would have to assume that the defendant had voted.

"Yes; but for whom?" asked Mr. Nesbitt. "He may have voted only for councillors," added the learned lawyer.

Mr. Osler closed the argument by stating that the appointment of a clerk as deputy-returning officer by by-law did not remove his disability to vote imposed by the statute.

In the course of his argument, Mr. Osler, acting for Mr. Armstrong, offered to withdraw the action provided the defence would pay the costs.

His lordship reserved judgment.

The common measure of road distance in France is the kilometer, or 1,000 meters, a little over three-quarters of a mile.

The first regular road in the northern half of Scotland—that is the portion north of the Firth of Forth—was in 1745.

The word "mile" comes from the Latin "mille" a thousand. A thousand paces of a marching soldier made a Roman mile.