

not knowing that his name was still on the voters' list for the township in which he had formerly resided. Afterwards he had agreed to act as agent at the poll for one of the candidates for the electoral district in which the township was situated, at a polling place other than that for the subdivision in which he had formerly resided, and received from the returning officer a certificate entitling him to vote at the place where he was to be stationed. He acted as agent there, took the oath of secrecy, and voted there. No other oath than that of secrecy was administered or tendered or discussed. He was not aware that a non-resident could not vote.

Held, 1. The defendant was not liable to the penalty imposed by s. 168 of the Ontario Election Act, R.S.O. 1897, c. 9, for voting knowing that he had no right to vote. *South Riding v. County of Perth*, 2 Ont. Elec. Cas. 30, followed.

2. The defendant was not liable to the penalty imposed by s. 181 of the Act for wilfully voting without having at the time all the qualifications required by law. "Wilfully voting" as in this section, and applying it to the facts of the case, was practically the same as voting knowing that he had no right to vote.

3. The defendant was liable to the penalty of \$400 imposed by s. 94, sub-s. 5, of the Act, for not having taken the oath of qualification required to be taken by agents voting under certificate; but, as the defendant was not asked to take the oath, the deputy returning officer not having been aware that it was necessary, and the plaintiff himself was present when the defendant voted, and did not object, the provisions of R.S.O. 1897, c. 108, should be applied, and the penalty reduced to \$40.

McIntyre, K.C., and *E. H. Smythe*, K.C., for the plaintiff. *Whiting* K.C., and *J. M. Mowat*, for the defendant.

Province of Nova Scotia.

SUPREME COURT.

Full Court.] *HARRISON v. WESTERN ASSURANCE CO.* [Jan. 17.

Fire insurance—Construction of policy—Representations—Materiality—Arbitration words "value of the property insured"—Burden of conditions in policy.

One of the conditions of a fire insurance policy issued by the defendant company provided that notwithstanding anything in the contract the question of materiality as to any representation in the application should be a question for the Court.