

prevail. If the law is that the action of the council in ascertaining whether or not it is entitled to a deputy reeve, and the by-law of the town providing for the election of a person to that office, can be set aside by proceeding against the person elected without any notice to the municipality or making the municipality a party, it is somewhat anomalous.

Under sec. 161, there may be tried or determined (1) the validity of the election of a member of the council; or (2) the right of a member of the council to hold his seat; or (3) the right of a local municipality to a deputy reeve.

I would suppose but for the reasons I will mention—that the right of a local municipality to a deputy reeve should be tried by proceeding against the corporation—or by giving notice—allowing the corporation to come in and defend.

The deputy reeve, so called, has done no wrong; both he and the council have acted in the most perfect good faith. The electors of the town, indeed the inhabitants of the town, are all interested in the office. Many may not care about the objection of the relator to the appellant, but they may care about the office and about some person being elected to it, in the event of another election.

In this proceeding, if the election of Church is set aside, he not only drops out, but the alleged right of the town is denied. To have the by-law of the municipality virtually quashed behind its back is not the usual way.

The argument of counsel for the relator is, that as under sec. 161, sub-sec. 1, the right of the municipality may be tried and as sub-sec. 2 designates who may be relator, and as no conditions are imposed, it must be tried; even if the details applicable to trying the validity of an election are not prescribed or made applicable to a proceeding like the present. This argument is strengthened by sec. 186. This section does not, in terms, apply to the right of a municipality to a deputy reeve, but refers to the right of a person to sit in the council, and provides that "proceedings to have the right of a person to sit in council determined, shall be had and taken under the provisions under this part" (of the Act) "and not by *quo warranto* proceedings, or by an action in any Court."

I reluctantly yield to the argument and hold that neither notice or adding the municipality as a party, was necessary.