

Div. Ct.]

McMONAGLE V. COONS.

[Div. Ct

to be entered for the recovery of the statutory penalty; that he believed an inspection and production of such ballot papers and particularly of the several packets marked G. containing the voters' lists used at said election was required for the purpose of maintaining the prosecution of this suit, etc.; that he believed there were several other electors other than defendant who voted at more than one polling place for mayor.

*M. E. O'Brien*, for defendant. This is not a prosecution for an offence in relation to ballot papers or a petition questioning an election or return. All papers mentioned in sub-secs. to sec. 150 are "ballot papers," and can only be inspected for the purposes mentioned in sec. 158, and not for any other purpose.

This application is of a fishing nature.

*French*, contra. This is a prosecution for an offence in relation to ballot papers. The cause of action is called an "offence" in sec. 136. It is an offence in relation to ballot papers inasmuch as the defendant was guilty of an offence if he took a ballot paper from the deputy returning officer for the purpose of voting for mayor after having already voted for mayor at another polling place. Even if the plaintiff is not entitled to an order to inspect the ballot papers he is entitled to one to inspect the voters' list and other papers mentioned in subsec. (g) to sec. 150 of the Act, and the plaintiff is entitled to an order for inspection under the general jurisdiction of this Court. See sec. 175 C. L. P. Act. and sec. 244 of Div. Court Act.

McDONALD, Co. J.—Upon the argument I was inclined to think that the production and inspection of ballot papers asked for could not be ordered, as I took much the same view of the 158th section as Mr. O'Brien contended for. I differed from him as to all the papers mentioned in the sub-sections to section 150 being "ballot papers." I thought then, and think now, that the voters' list and other papers mentioned in sub-section (g) are not referred to in, or covered by, the 157th or 158th sections of the Act, and I agree with Mr. French in his contention that under the 244th section of the Division Courts Act I could make an order for their production and inspection so long as the same was not prohibited in the Municipal Act. But upon a full consideration of the 158th section I have decided that this action is "a prosecution for an offence in relation to ballot papers."

The learned Judge then referred to the following sections of the Municipal Act: Secs. 118, (ss. 3,) 128, 139, 140, 141, 143, 150, 157, 133, 135.

Now, if the defendant did vote more than once for mayor at the election referred to, he has certainly committed an "offence," for so it is characterized in the 136th section. Is such "offence" an "offence in relation to ballot papers?"

If the requirements of the Act were complied with, and the defendant was permitted to vote for mayor three times, he must have received from the deputy returning officer, on each occasion, a ballot paper containing the names of the candidates for mayor, (Prescott has not any Reeve or Deputy), and not containing the names of the candidates for councillors. Pursuant to the 139th section, the deputy returning officer, at each polling sub-division, must have signed his name or initials upon the back of the ballot paper, and have delivered the same to defendant, and have placed in the column of the Voters' list headed "Mayor," or "Mayor and Reeve" a mark opposite defendant's name to denote that he had received a ballot paper for mayor. If the provisions of the 143rd section were complied with, the defendant did not take the ballot paper so received out of the polling place. If he declined to vote, the deputy returning officer would have written "Declined" upon the ballot paper and preserved it. If the defendant deposited the ballot paper in the ballot box, it must at the close of the poll have been allowed or rejected, and in either case must have been sealed up and returned to the clerk of the municipality. In my judgment, the defendant, if he obtained from a deputy returning officer more than one ballot paper for mayor, with the intention of using same to vote, and did vote; or if he obtained from each one of three deputy returning officers such a ballot paper with such intention, and did vote, was guilty of "an offence in relation to ballot papers."

I next come to the question of whether the production and inspection asked for can be ordered and if so, should such order be made. I think under secs. 136 and 158 that the order can be made. Then ought it to be made? I think it ought in so far as concerns this present action. The 158th sec. provides for the order being made upon the court or judge "being satisfied by evidence on oath that the inspection or production