

are inferentially approved of, for in effect it is said, that which is a benefit you do not maintain as a benefit. Hence the Referee never had jurisdiction in these actions under s. 93, and I cannot see how, when he never had jurisdiction to hear and determine, his having proceeded is to prevent the Court or Judge making an order of reference under s. 94 which but for this he could do. Then it said that the rules framed under the Judicature Act do not confer power upon me as a Local Judge of the High Court of Justice in regard to another Act (the Drainage Act). I cannot agree with this contention. The words in the rule "In all other motions, matters and applications" give me as Local Judge full power to make the order. But I am embarrassed by the section itself; by the words "the Court or Judge" in the 12th line of the section (94). Am I the Court or Judge there mentioned—clearly not, because I have no power to try the action. "The Court or Judge" there mentioned is the Court or Judge who, should no order be made, has jurisdiction to try these actions. Now, I have no jurisdiction to try these actions. Then is not "the Court or Judge" mentioned in the 12th line the Court or Judge mentioned in the 5th line, or rather vice versa? I think so. If I am not the one, I am not the other. I am clearly not the Court or Judge mentioned in the 12th line, for the Court or Judge there mentioned is the Court or Judge to try the case, and this I cannot do. I must therefore refuse to grant the order, but only on this last ground.

*Maybee*, for plaintiff. *G. G. McPherson*, for defendants.

Falconbridge, J.] HASTINGS v. SUMMERFELDT. [March 25.  
*Election—Provincial Legislature—Deputy returning officer—Spoiled ballot paper—Showing ballot paper and refusing to give new one—Breach of duty—Damages.*

The plaintiff, a Conservative, to the knowledge of the defendant, a deputy returning officer and Reformer, in marking his ballot inadvertently marked it for the Reform candidate, against whom, however, he intended to vote. He immediately and before he had left the apartment set apart for marking ballots, informed the defendant of his mistake, and asked for another ballot paper, but the defendant said he must first see the ballot paper, which the plaintiff at first refused to do, but, on the Conservative scrutineer recommending him to do so, he handed it to the defendant, without creasing or folding it so that it might be placed in the ballot box, but so that those present could not see how it was marked. The defendant looked at it, and then either showed or placed it in such a manner that it could be seen, and was seen, by all present except one person, and contending that it was not a spoiled ballot, and, contrary to the plaintiff's protest, placed it in the ballot box, and it was counted for the person against whom the plaintiff intended to vote.

*Held*, that the defendant by his acts in disclosing how the plaintiff