R.S.O. 1887 ch. 184, secs. 188, 208; Rules of 1888; 51 Vict. ch. 2, sec. 4; 55 Vict. ch. 42, sec. 188; Consolidated Rules of 1888, Rules 1038-1044.]

It is necessary to shew somewhere in the material before the Judge on granting a fiat that the relator has the right to interpose.

The statute, sec. 161(2), as amended by 4 Geo. V. ch. 33, sec. 5, gives the right to interpose to (1) candidates and (2) electors who gave or tendered their votes. An elector as such has no right to interpose, and "an elector" is all that this relator claims to be. While it may not be necessary to establish the status by affidavit (Regina ex rel Bartliffe v. O'Reilly, 8 U.C.R. 617), it must appear somewhere in the material. I think, therefore, the fiat was improperly granted.

The next question is as to the jurisdiction of the County Court Judge to set aside his order. I entertain no doubt that he has such jurisdiction. There was, under the former practice, much difference of opinion on this matter. . . .

[Reference to Regina ex rel. Grant v. Coleman (1881), 8 P.R. 497, 46 U.C.R. 175; Regina ex rel. O'Dwyer v. Lewis (1881), 32 U.C.C.P. 104; Regina ex rel. Grant v. Coleman (1882), 7 A.R. 619; Regina ex rel. Chauncey v. Billings, 12 P.R. 404; Regina ex rel. McFarlane v. Coulter (1902), 4 O.L.R. 520.]

The Rule introduced in 1888 (Con. Rule 536), which is now (substantially) Rule 217, gets rid of all difficulty when it is remembered that now "the practice and procedure of the Supreme Court" is applicable in every case not provided for by the statute or Rules of Court. . . .

There is no limitation in the Rule to any particular form of order, and the value of this Rule should not be diminished by judicial construction. . . .

[Reference to Barisino v. Curtis & Harvey (Canada) Limited (1915), ante 195.]

Then, while the proposed relator may in his new material establish a right to interpose, the omission is not an irregularity, and, as is shewn by Regina ex rel. Chauncey v. Billings, supra, and Regina v. Thirlwin, supra, it cannot be supplied. We are not considering whether the Judge could have made an order then for a fiat, but whether he could support the order he had made. . . .

I think, therefore, the County Court Judge should have set aside the fiat and all proceedings based upon it.

The more difficult question now arises as to our right to entertain the appeal.