

HON. MR. JUSTICE KELLY.

MARCH 17TH, 1914.

BAND v. McVEITY.

6 O. W. N. 105.

Elections—Municipal Elections—Quo Warranto—Office of Mayor—Inability to Serve Process—Extension of Time for—Municipal Act (1913)—s. 165—No Evasion Shewn—Illness of Defendant—Jurisdiction of Judge or Master-in-Chambers.

KELLY, J., *held*, that under Municipal Act, (1913), s. 165, the time can be extended for the service of notice of *quo warranto* proceedings, without any actual evasion of service by the party to be served being proven, e.g., where the latter is too ill to be approached by a process-server.

Appeal by the defendant from two orders of the Master-in-Chambers of the 6th March, the first refusing to set aside a previous order extending until the 6th of March, the time for service upon the defendant of a notice of motion in the nature of a *quo warranto* under the Municipal Act, and the second extending the time for ten days further.

The defendant also asked for an order dismissing the *quo warranto* proceeding on the ground that he was not served within the time prescribed by sec. 165 of the Municipal Act, 1913.

W. N. Tilley, for defendant (appellant).

J. A. MacIntosh, for plaintiff (respondent).

HON. MR. JUSTICE KELLY:—On a fiat issued on February 7th, 1914, proceedings were instituted to void the election of the defendant as Mayor of the City of Ottawa, and a notice of motion to that end, returnable on February 21st, was issued. On the same day (February 7th) the sheriff's officer was instructed to serve the notice on defendant, and attempts were made to personally serve him, but without effect, he being seriously ill and confined to the hospital; his medical attendant refusing to permit any person to have access to him. That continued to be the state of affairs until February 18th, when, on an application by plaintiff to the Master in Chambers for an order for substitutional service, an order was made extending the time for service until March 6th. On February 28th, defendant moved before the Master in Chambers for an order rescinding the order of February 18th, relying in part upon his sworn statement that he knew of no attempt to serve him personally with the