

Elec. Case.]

REG. EX REL. CORBETT V. JULL.

[Elec. Case.

of an hour and that he received the nominations in good faith, and that the election was conducted strictly within the law so far as he was able to understand it. He says, "I neither omitted or exceeded any part of my duty as returning officer, and the said nominations and election were fairly and impartially conducted, and any person had ample time and opportunity, and the full allowance made by law to do so: that I was ready and willing to receive nominations from the time I opened the nomination until the declaration, and I did receive all that were offered, and if any intending candidate was not nominated he was himself to blame for not procuring his nomination within the time required by law."

The relator by his affidavits charges upon the defendants, that they conspired to carry the election by means of opening the proceedings before 12 o'clock, and making their nominations when none of the electors, excepting those necessary to make the nominations were present, and by concealing from the electors and other candidates that nominations had been made; and that this was done while the new candidates were waiting for the nomination of the old ones, as they supposed, that they might then make their nominations: that the returning officer by evasive and false answers to questions as to the state of proceedings, kept them off their guard for an hour, and then suddenly declared the defendants duly elected by acclamation without giving the electors an opportunity of nominating their candidates, and when they instantly rose to remonstrate and make them, he refused to hear them.

Maitland McCarthy says "I am a duly qualified elector of the village of Orangeville, and as such, went to Bell's Hall for the purpose of nominating candidates for reeve and councillors for the municipality of the said village; that I arrived there about twenty-five minutes after 12 noon, that on entering the hall I met the returning officer and Thomas Jull, who was afterwards declared reeve, in conversation close by the door of the hall. Jull soon after left the hall and the returning officer returned to his seat. I went to the returning officer's table and looked at the paper before him, and seeing it blank, asked him if he had received any nomination yet, to which he replied, 'I have not received any.' No nominations were made after I got to the hall. About fifteen minutes to one, Thomas Jackson came into the hall, and shortly after the returning officer left his seat and went to Jackson who was then close to me, and in my hearing asked Jackson, "are they not coming down?" remarking, "it is time," upon which Jackson left the hall, and about one or a little after, Jull, Anderson, Pattullo and some others entered, and almost immediately after the returning officer stood up and declared Jull duly elected reeve, and Anderson, Jackson, McNabb and Pattullo, councillors. I protested as strongly as possible against the extraordinary conduct of the returning officer, after being informed by him not half an hour before that he had received no nominations, and I then nominated a person as a candidate for councillor which was duly seconded, but the returning officer refused most positively to accept such nomination or any other, although several were made, stating he did not care for the electors or

the council. That on leaving the hall, I met Jackson who had just been declared elected; I told him if he wished to wash his hands of such a corrupt work, he had better go back and repudiate all connexion with it and decline to accept office in such a way. Jackson replied, that he had nothing to do with it, and did not know anything of it, and had told them he would much sooner remain at home.

Various other affidavits were filed on both sides, but they did not materially alter the complexion of the case.

The conducting of an election is analogous to any public meeting where the object sought is a fair expression of opinion on any question proposed. A resolution is said to be carried by acclamation, when, after it has been proposed and heard, it receives no opposition, but is carried by the consent of the meeting, expressed or implied from its silence, but in no case can it be correctly said to pass by acclamation, where it has not been proposed or not understood.

The law in regard to elections, assumes, that when the election of any officer is carried by acclamation, the electors are fully and fairly informed of what they are assenting to by acclamation. They cannot assent to what is not submitted to their choice or present in their minds. A nomination is a resolution submitted to the electors, that the party named is a candidate for their suffrage, for an office named, but the legislature to present surprise requires that not less than one hour shall elapse between the submission of the last nomination and the putting of the question with a view to its being passed by acclamation. In the mean time the vote is in abeyance. The statute does not mean that, the returning officer, if no other nominations are made, shall simply declare those who had been proposed duly elected, it means that these nominations shall be put *seriatim* to the electors and then votes taken upon them. The law prescribes no form of words, but it requires that the proposition should be explained so as to be understood by men of ordinary understanding. Now this election is said to have been carried by acclamation. When was the acclamation? Was it when the movers and seconders were present, and perhaps one or two more when the nomination was first submitted? Certainly not. Was it when the declaration was made? Certainly not, for no one heard then who had been nominated, nor was it at any other time submitted to the electors as a question to vote upon—no opportunity was given to say or not to say, if it was carried or not carried. They had then no knowledge of *what* was carried by acclamation. Did the electors generally know that the simple declaration of the returning officer was to imply their consent and bind them to the election? Certainly not, for some of them indignantly protested against its injustice, and commenced to make other nominations. When the hour had expired, it would have been proper for the returning officer to have called the attention of the electors then present to the fact of the expiration of the time, and to have announced that Thomas Jull had been nominated at twelve o'clock, or soon after as the fact was, by George Bell as reeve, seconded by Thomas Hunter, and that if no other nomination was made, he should assume