to object to it. See also Regina ex rel. Bland v. Fogg, 6 U. C. L. J. 44, 45; Regina ex rel. Linton v. Jackson, 2 C. L. Ch. 26. . . . It is clear from the above cases that the affidavit in question is only irregular, and not invalid, as was contended. It was the duty of the respondent . . . to move to set aside the proceedings in consequence of such irregularity, and that within a reasonable time, under Rule 311. . . . A "fresh step" was taken by the respondent in making and serving his affidavits on the merits before taking the objection. I do not refer to the asking of an enlargement without mentioning the objection. The Rules of Court have been applied to proceedings to set aside a municipal election: Rex ex rel. Roberts v. Ponsford, 3 O. L. R. 410, 1 O. W. R. 223, 286. In any case I would, if necessary, give the relator the privilege of remedying the effect nunc pro tunc, but I do not think that is required under the circumstances.

With reference to the service of the notice of motion, the relator has filed an affidavit of personal service on the respondent. The respondent states that the clerk of the relator came into his office while he was engaged in some work and laid an envelope upon the counter in the office some distance from him, without calling his attention to the envelope or speaking to him in any way, and immediately thereafter left the office. In the course of about half an hour, seeing the envelope lying on the counter, the respondent picked it up without knowing its contents, and found that it contained the notice of this motion and fiat. This affidavit is corroborated by the affidavit of a clerk who was present. . . . These affidavits shew conclusively that the respondent personally received the papers in question on the date mentioned in the affidavit of service, and that has been held to be a sufficient service: Williams v. Pigott, 5 Dowl. 320; Woodside v. Toronto Street R. W. Co., 2 Ch. Ch. 24; Keachie v. Buchanan, ib. 42.

As to the merits, the affidavits of the relator and respondent both shew that the respondent was on the day of nomination for mayor a member of the school board of the town of Smith's Falls, for which he was elected mayor. He thus falls within the provision of 2 Edw. VII. ch. 29, sec. 5 (O., which amends sec. 80 of the Municipal Act by making it provide that "no member of a school board for which rates are levied" shall be qualified to be a member of the council of any municipal corporation. . . . It was argued that the saving clause in the amending Act, namely, "but this amendment shall not apply so as to disqualify any person