

the city of Hamilton on the 8th day after the day of service of this notice on you (excluding the day of service) at the hour of eleven o'clock in the forenoon or so soon thereafter as the motion can be heard for an order declaring that the said Frank E. Rymal, the above-named defendant hath lost his right to hold his seat as deputy reeve of the township of Barton and has become disqualified since his election to hold his said seat, he having since his said election sold and disposed of the property on which he qualified and not being otherwise qualified, or possessing the necessary property qualification required by the Consolidated Municipal Act 1903, and amendments thereto."

The statute provides, sec. 221 (2) that "The relator shall in his notice of motion . . . state specifically under distinct heads, all the grounds of objection to the validity of the election complained against and in favour of the validity of the election of the relator or other person or persons where the relator claims that he or they or any of them have been duly elected on the grounds of forfeiture or disqualification as the case may be." This is from 3 Edw. VII. ch. 19, sec. 221, and makes no reference to the case where the validity of the election is not complained of and no claim is made for the election of someone else—as in the present case. Accordingly I think the notice of motion may be amended setting up the omission to make the statutory declaration. Section 226 does not apply for the same reason—or if the first part be considered applicable on the *mutatis mutandis* principle, so does the second—and I think it eminently a case where "the Judge in his discretion "should" entertain any substantial ground of objection to" the right to hold the seat.

The mere fact that a proper declaration has not been made does not in itself compel the Court to declare the seat vacant. In *Reg. ex rel. Clancy v. Conway* (1881) 46 U. C. R. 85, Cameron, J., gave leave to the defendant to make the same within ten days if he could and he says in the other case, 46 U. C. R., at p. 82. "As the latter (i.e., the person elected), can at any time put himself in a position to exercise the franchise of office by making a proper declaration, his omission to make the declaration would not render the office vacant." This was a case of an imperfect declaration.

The form of the declaration contemplates that the declarant shall have at the time of making the declaration the