

[Elec. Case.]

REG. EX REL. CORBETT V. JULL.

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4. That the returning officer acted unjustly and illegally in conducting the said election, in this, that he told several intending candidates and electors that he had an hour to come and go on—meaning thereby, that it would be an hour before he closed the proceedings, and about fifteen minutes afterwards declared the defendants duly elected reeve and councillors respectively.

5. That the returning officer conducted the said election unjustly and illegally.

6. That the proceedings made necessary by law to the validity of said election were not observed by the returning officer at said election to the prejudice of the electors of the village of Orangeville.

The relator claimed an interest in the election as a candidate for the office of councillor, and who tendered his vote at said election for both reeve and councillors.

The defendant, Peter McNabb, disclaimed on the 28th January, 1869.

The returning officer was made a party to the cause and answered with the other defendants.

A number of affidavits were filed on both sides, but the further facts will be sufficiently understood from the judgment.

*McMichael* for the defendants shewed cause.

1. This is not a case within the Act. The relator is not a candidate as he was not nominated; and is not an elector as he did not vote or tender his vote: sec. 130, Municipal Act; *Reg. ex rel. White v. Roach*, 18 U. C. Q. B. 226; *In re Kelly v. Macarow*, 14 U. C. C. P. 457; *Reg. ex rel. Bugg v. Bell*, 4 U. C. L. J. N.S. 93. There may be a remedy at common law by full court, but not under these proceedings. It was the fault of the relator and his friends that they did not make any nominations they chose, and they cannot now complain that they did not do so.

*Harrison, Q.C.*, for the relator. The new procedure is in place of the common law remedy: see *Roach's case ante*; and this proceeding is not touched by the cases cited, which speak of electors not taking the trouble to propose candidates, and evincing a carelessness as to their interests. But, here the relator's party were waiting and ready to make their nominations, but were deceived by the returning officer as to the position of affairs. If a returning officer can act thus, he can in effect abrogate the statute and destroy the rights of electors.

JOHN WILSON, J.—The preliminary and first question is whether under the circumstances disclosed, the relator was entitled to his seat under our statute, and secondly, whether there was such an election in fact, as can be sustained.

The clerk of the municipality of Orangeville is Francis Grant Dunbar. He is the clerk of Joseph Pattullo, attorney-at-law, one of these defendants. On the 3rd December, 1869, Mr. Dunbar, as clerk of the corporation, published the usual notice, that a public meeting of the electors of the village of Orangeville, would be held at Bell's Hall, the place where the then last election had been held, on Monday the 21st of December, 1868, at the hour of 12 o'clock noon, for the purpose of nominating a reeve and councillors or the said village.

It is stated by a number of deponents, and not denied by any of the defendants, that a contested election was anticipated, and the village had been canvassed with a view to an election. There are, as is usual, contradictory statements as to what occurred during the hours between the opening and close of the proceedings, and as to when the proceedings were opened and closed, but I think there is no fair ground for saying, that the proceedings commenced after, but sharply after 12 o'clock noon. Without discussing every controverted point in these proceedings, I shall be able to dispose of both points chiefly from the statements of the returning officer, and one of the affidavits in reply. The returning officer on oath says, "before leaving the office of Mr. Pattullo (for the purpose of holding the nomination), I borrowed Mr. Pattullo's watch for the occasion. At a few minutes before 12 o'clock noon, I left the law office of Joseph Pattullo, Esquire, and went to the hall named in the proclamation, and shortly after entering said hall, I looked at my watch, and waited until 12 o'clock, when rising to my feet, I formally opened the nomination by announcing to those then present that it was now 12 o'clock, and that I was prepared to receive nominations for reeve and councillors for the ensuing year, and that if no more than the necessary number of candidates for the several offices were nominated within an hour after the last nomination, I would close the nomination and declare those nominated duly elected by acclamation."

I may here refer to a fact, on which the returning officer offers no explanation. He had a book, but I hear of no entries in it of nominations. He was sitting, according to the sworn statement of McCarthy, between 12 and 1 o'clock, with a book before him, open, but blank. Blank, the relator contends, that the electors might be misled by the concealment, which he was practising upon them.

I now read the returning officer's further account of his own proceedings on oath. "I then took my seat at the table, and George Bell, a duly qualified elector ascended the witness box and nominated Thomas Jull for the office of reeve, which was seconded by Thomas Hunter. Bell then nominated Mr. John Anderson as councillor, and the said Hunter seconded the nomination. James Ferguson, another duly qualified elector, then nominated Thomas Jackson as councillor, seconded by Hunter; said Hunter then nominated Joseph Pattullo, seconded by Thomas Jackson; Thomas Jackson then nominated Peter McNabb, seconded by James Ferguson, all of which were made publicly, openly and audibly, and as required by law after and at the hour of 12 o'clock: that no other nomination or nominations for the offices of reeve and councillors was made within the hour, and I declared Thomas Jull, John Anderson, Thomas Jackson, Peter McNabb and Joseph Pattullo, duly elected reeve and councillors respectively for the village of Orangeville for the year 1869."

He says "I never spoke to any of said candidates or any other person or persons about the nominations before entering the hall," and he denies any conspiracy or arrangement to keep the nominations quiet and secret until the lapse