

It is argued that this is a matter falling within the curative provisions of sec. 150; and that, it not appearing that the mistake affected the result of the election, the Court ought not to interfere.

It is not easy to define matters that come within the scope of sec. 150, nor do I think that it would be wise to attempt to do so. It is, however, I think, right to determine that sec. 150 does not entitle the Court to disregard the violation of an express provision of the statute. Its scope is rather to avoid the defeat of the popular will resulting from stupidity or inadvertence in an honest endeavour to comply with the numerous details incident to the conduct of an election. I lay great emphasis upon the proviso that the power conferred by this section is only to be exercised when the Court is satisfied that "the election was conducted in accordance with the principles laid down in this Act." When the definite statutory hour for nomination is departed from, deliberately and intentionally, the election cannot be said to have been conducted in accordance with the principles of the Act. If the clerk inadvertently opened the meeting five minutes late, or if he prolonged it beyond the stipulated time, this might well be a matter covered by the curative provision.

For this reason, as well as from the fact that it has been made to appear that the non-compliance may well have affected the result, the appeal must be dismissed; and I can see no reason why costs should not follow the event.

MIDDLETON, J.

FEBRUARY 19TH, 1915.

MACKENZIE v. CITY OF TORONTO.

Municipal Corporation — Regulation of Buildings—By-law — Permit for Building — Anticipated Use of Building in Breach of Police Commissioners' By-law—Nuisance—Risk of Owner—Action to Restrain Issue of Permit—Status of Plaintiff as Ratepayer and Adjoining Owner—Judgment—Reservation of Rights as to Future Proceedings.

Motion by the plaintiff, an adjoining owner and ratepayer, for an interim injunction restraining the defendant city corporation from granting a permit to the defendant the Masonic Temple Corporation for the erection of a building upon a street in the city of Toronto.