

could not be said to have been an election by acclamation.

4. That the returning officer had acted improperly and contrary to the spirit of the law, and was therefore ordered to pay the costs.

[Chambers, Feb. 26th, March 8th, 1869.]

This was a *quo warranto* summons on the relation of John Corbett against Thomas Jull, as reeve of the village of Orangeville, and Thomas Jackson, Peter McNabb and Joseph Pattullo, councillors of the same village, to have their elections respectively declared invalid and void, for the following causes:

1. That the said election was not conducted according to law, in this, that the said Thomas Jull, John Anderson, Thomas Jackson, Peter McNabb and Joseph Pattullo, or any or either of them were not duly proposed and seconded according to law, nor were the said parties duly proposed and seconded at the place appointed for such by the returning officer, nor were the said parties proposed and seconded within the time required by law.
2. That the said Thomas Jull, John Anderson, Thomas Jackson, Peter McNabb and Joseph Pattullo, were not duly or legally elected or returned in this, that the said parties were not duly proposed within the proper time or at the proper place, nor were they proposed according to law.
3. That the returning officer did not wait for one hour after the last candidate had been duly proposed and seconded as is required by law so to do, but improperly and illegally declared the said parties duly elected councillors for the year 1869.

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 for 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