

and care must be taken lest by too strict and technical adherence to the letter of the law, its spirit is defeated. In the matter under consideration, I see no reason to think that the returning officer did not sincerely endeavor to discharge his duties faithfully and impartially, but I think he was in some respects under a misapprehension as to them. He evidently thought that as soon as the hour from the time fixed for holding the nomination meeting had elapsed, he was powerless to receive nominations or to allow amendments to nominations which had been made. He says in his evidence that as soon as eleven o'clock came, he stated he would receive no more nominations; and from this the ratepayers present might well understand that the nomination was at an end, and that nothing more could be done.

Here the returning officer, in my opinion, unintentionally erred. I see nothing in the Act to prevent his receiving or allowing the correction of nominations, even after the lapse of one hour, up to the time when he makes his declaration of the candidates nominated and as to whether or not a poll is required. The requirement as to the hour is merely in order that time enough may be given, and that there may be no surprise. It is not stated that no longer delay shall be made. The language of sub-section 4 of section 128 of the Municipal Act, and of sub-section 4 of section 57 of the Public Schools Act, is very different. In these cases it is expressly enacted that the polls shall continue open until five o'clock in the afternoon, and no longer.

In my opinion the returning officer, before making any declaration, should have read the nomination papers aloud, and should have stated his objections to that of William Barr, and should have ascertained from the proposer and seconder whether they desired to amend it, or if they did not, whether any other ratepayers wished to make the nomination. This was not done, and I cannot help thinking that the ratepayers present were misled (unintentionally, as I have before said) by the returning officer's statement that the hour having elapsed he could not receive any more nominations. I cannot say that the ratepayers had as full an opportunity of giving expression to their wishes as they were entitled to; and I am of opinion that it cannot be said that they assented fully and freely to the election of Mr. McCaughey by acclamation. It sufficiently appeared, from the evidence, that if the representation was to be by wards, the nomination of Mr. Barr was intended to be for the East Ward.

In my judgment the election of Mr. McCaughey should be set aside and he should be removed from the office of Public School Trustee for the East Ward of the Town of Cobourg, and a new election should be held and I so order. I do not see that any power is given me as to costs; but in any event I do not think this is a case for costs. The judgment of Mr. Justice John Wilson in the case of *Reg. ex rel. C. v. Jull*, 5 P. R. 41 is instructive as to the duties of returning officers and as to what constitutes an election by acclamation.