To hold that the day of polling is the day of election would enable a candidate to offer himself who was disqualified, and who, if the only one, might be declared elected, contrary to the letter and spirit of the Act.

I think therefore that the day appointed for the nominaton is the day of election, and the disqualification of a candidate has reference to that day, in analogy to the holding of the learned judge in *Reg. ex rel. Rollo* v. *Beard*, and I think to hold otherwise would be at variance with the spirit of the Act.

The relator, in the first instance, claimed to be entitled to his seat; but this is not seriously urged, for he gave no notice on the day of nomination that the defendant was not qualified, or that he claimed to be elected as the sole candidate by reason of the non-qualification of Boyd. In *Reg. ex rel. Forward* v. *Detlor* (ante p.), I lately held that a candidate who claims to be elected by reason of the disqualification of his opponent must distinctly so claim it at the nomination, and at the poll give notice that the electors are throwing away their votes; and he cannot be declared entitled to the seat if his conduct be equivocal, so as to mislead the electors. He cannot go to the polls, taking his chance of election, after deterring voters, and then fall back and claim his seat on grounds which by his going to the polls he has waived.

I therefore adjudge the election of John Boyd, as one of the Aldermen of St. David's Ward, in the City of Toronto, to be invalid; and I direct a writ to be issued according to the statute, to remove the said John Boyd from such office; and I further direct that a writ be issued for the purpose of a new election being held for the election of an Alderman for St. David's Ward, in the room of the said John Boyd.

I also direct that Mr. Boyd shall pay the costs of these proceedings, so far as they relate to the invalidity of his election for want of a property qualification.

Reg. ex rel. Bugg and Moulds v. Bell.

Contested Election—Election by acclamation—29 & 30 *Vic. cap.* 51, *sec.* 130.

Where a candidate is declared elected on the nomination day, as being the only candidate proposed, his election cannot be questioned on a *quo warranto* summons under above act, there being no other "candidate at the election or any elector who gave or tendered his vote thereat" who could by law be a relator.

[Common Law Chambers, March 14, 1868.]

This was a writ of summons in the nature of a *quo warranto* to set aside the election of the defendant, who was elected as one of the aldermen for St. Andrew's Ward, in the city of Toronto, at the municipal election on 23rd December, 1867.

The defendant was the only candidate proposed and seconded at the nomination; and was declared duly elected, pursuant to sec. 101, ss. 3, of the Municipal Act.

The statement of the relator complained of the usurpation of the office by defendant, and stated, in effect:—That the said Robert Bell was not duly elected, and usurped the office of Alderman of St. Andrew's Ward on pretence of an election held on Monday, 23rd December, 1867; that relators had an interest in said election, as electors of said ward and of other wards, the relator, John Bugg, being an elector who gave his vote at the last annual election for aldermen in said city; when the said Robert Bell was declared elected as such alderman, and the relator, W. Moulds, being a duly qualified elector, present at and who in so far as his vote could be tendered or taken, voted or tendered his vote at the nomination or election of said Robert Bell; and they shewed the following causes why the election should be declared invalid:

1. That the election was not conducted according to law, in this, that at the annual meeting for nomination, &c., held in Ward of St. Andrew, at noon (or thereabouts) on Monday, the 23rd December last, the Returning Officer having called upon the electors there present to nominate a fit and proper person, &c., the said Robert Bell was proposed and seconded; but that the Returning Officer, without waiting the time required by law to allow other nominations to be made, closed the said meeting of electors before the expiration of one hour from the opening, &c., and declared said Bell duly elected.

2. That said Bell, neither when he was so elected or when he accepted office, had the necessary property qualification as a freeholder or leaseholder.

3. That said Bell had not at the time of election and acceptance of office, in his own right or right of his wife, &c., a legal or equitable freehold or leasehold, rated in his own name on the last revised assessment roll, to the amount of at least $4,000 freehold or $8,000 leasehold, as required, &c.

4. That said Bell had mortgaged his interest in the property on which he qualified for the sum of $3,179, to the Canada Permanent Building Society, as appeared in the registry office, and that said mortgage was not discharged.

5. That said Bell qualified on property partly freehold and partly leasehold, rated as follows: leasehold $7,466, freehold $800, while the incumbrances amounted to $3,179.

J. H. Cameron, Q. C. (*Harman* with him) showed cause.

1. The election cannot be inquired into under the 130th section of the Municipal Act. The act requires that the relator should be a person who was either a candidate, or an elector who voted or tendered his vote at the election of the alderman complained against; and as the party here sought to be unseated had been elected by acclamation and without a contest, the relators could not be, and in fact were not, entitled to the writ, they being neither candidates nor electors who voted or tendered their votes. This point has, however, been already settled in favor of this contention by *Reg. ex rel. Smith* v. *Roach*, 18 U. C. Q. B. 226, and *In re Kelly* v. *Macarow*, 14 U. C. C. P. 457.

2. The statement that the poll was not kept open for the hour, required by the act, was based upon the affidavit of the relator Moulds, uncorroborated by other evidence. But this was met by positive affidavits by the Returning Officers, contradicting his assertion, who swore that the proceedings commenced at noon precisely, and were not closed until after one o'clock, and by other persons in corroboration.

3. The relators are not in any event qualified as such to be heard, not having paid the taxes due by them on the 16th day of December, as required by section 73, in support of which sun-