

appointed. His purpose was further to enlarge the time till the lists should be completed, but this was changed pursuant to instructions received from the executive authorities, and he made a special return to the writ of election setting forth why the writ had not been duly executed. The executive government accepted and acted on his return by the issue of a new writ of election for the same electoral district, under which such proceedings were had that the present member was declared duly returned by acclamation. The seat has thus been filled, and the sitting member (Mr. Chas. McCool) is not a party to this petition, and cannot be affected by it. This statement of the actual position of affairs suffices to indicate how misconceived is the present application; no practical result can follow from the attack upon the returning officer as sole defendant, even if (which I doubt) there be jurisdiction to entertain the petition.

The two-fold relief sought is that the plaintiff be declared to have been duly nominated, and that he is entitled to the seat. But, upon the facts, I think there was no public nomination in any legal sense. There was a private transaction in the office of the deputy sheriff (who had no status or authority in these electoral matters) by which nomination papers for the plaintiff, and two hundred dollars in money, were placed upon the office desk, against the will and notwithstanding the remonstrances of that official. Had there been any opportunity of public nomination at the court house, another candidate was ready with papers and money, so that a poll must have followed. It would be unjust to the body of the electorate to declare that the issue of these irregular proceedings is the sole nomination of the plaintiff, and his consequent election by acclamation. That possibility has not been presented to the electors because the usual prosecution of the writ to nomination day has been frustrated by the deliberate action of the returning officer.

Apart from this difficulty, there is yet another to granting the second prayer of the petition. There is no vacancy in the representation of the riding. The seat is filled, and till that is vacated by proper proceedings the plaintiff can have no declaration in his favour. In other words, the special return to the writ is either legal or illegal. If the former, *cadit questio*; if the latter, our duty would go no further than to declare that it was an invalid return, upon which parliament might direct the issue of a new writ of election, but that is not the relief sought here. And that is the very thing which the executive government did order upon the former return, and it was then open for the plaintiff to contest the riding.

It does not form part of our duty under the statute to investigate or pronounce upon the constitutional right of the executive to direct the issue of a new writ in the circumstances of this case. That is a matter, not for the election Judges, but for the House of Commons, to whom the ministers are responsible, if there was not plenary power and prerogative in the Governor-General to act summarily upon the return to the first writ.

It appears unnecessary to prosecute the trial further with a view of