

Elec. Case.]

REG. EX REL. CORBETT V. JULL—DONNELLY V. REID.

[C. L. Cham.]

him to be elected by acclamation, and declare him elected accordingly. If, after a reasonable pause no other nomination was made, the declaration of his election should have been announced. And so with the other nominations *seriatim*. They ought not to have been submitted together, for it would thus become a compound question and embarrass the electors.

By requiring an hour to elapse between the nomination and the proceeding to close the election, in case of no further nominations, the Legislature meant to protect the electors against haste and surprise, and in no case does the law require so strict an adherence to its letter as to defeat its object and spirit.

It is the duty of a returning officer to stand indifferent between contending parties; to have no interests to serve for either or for himself; to approach his duty with the simple desire to do strict justice, to be ready and willing to give reasonable information as to the state of his proceedings, to conceal nothing, to evade no proper enquiry, to mislead no one by his silence, or exhibit any thing calculated to deceive, and he ought not to make a pretence of strictly following the letter of the law to defeat it.

Leaving out of the question all disputed facts, and taking the returning officer's own account of his proceedings, and acquitting him and defendants of any conspiracy or pre-arrangement to preclude the other party, and carry the election as it was carried, (and I think they are all entitled to their full acquittal on that score), did the returning officer honestly and fairly do his duty? Was it fair to have opened the proceedings till it was beyond question whether it was really twelve o'clock? Was it fair to open the proceedings in presence of two or at most three electors and make no effort to let it be known outside that he was about to open his proceedings? Why were not his proceedings entered in his book as a deliberate act and as his duty required? His attention was called to the impression which his apparent blank book created, by several of the deponents. He passes this unnoticed, and I may fairly assume there was no entry made at the time. He took the trouble to tell Mr. Jull when he came in, that he, at least had been nominated. Why did he not tell some of the other party? Why speak to Mr. Jackson and say to him what he does not deny he did say? Why so much anxiety about his watch and the time? Why, when asked by Kelly if any nominations had been made, did he answer, "Yes, lots of them?" Why not say who had been nominated, and why did he give an answer that at least was evasive? He says he does not remember McCarthy asking him if any nominations had been made, nor does he believe he did so, but he remembers his asking, "Have proceedings commenced?" and his replying, proceedings had commenced at twelve, and that he would close the nomination one hour from the last nomination. Why did he not deign to tell him what he told Mr. Jull, that he Jull had been nominated reeve at the opening of the proceedings?

He denies what Fead asserts, but he says among other things that Fead said, he had closed the nomination on his account. To this the returning officer says, "I observed that it would

teach him a lesson, meaning that if ever he offered himself as a candidate, he would cause himself to be nominated within the proper time." How was it his duty to teach by his proceeding a candidate or the electors a lesson? Does not this answer imply the character in which Fead stood as an intended candidate whom the returning officer had taught a lesson by something he had done. Was it fair to make no announcement at any time as to how the proceedings stood until by his declaration he had precluded any further nominations? Can any one say that justice was done to the electors on this occasion? On reading all the affidavits and all the explanations, I confess I arrive at the conclusion, that the election was arrived at by conduct of the returning officer not in accordance with law and contrary to justice.

The defendants contention was, that this was not a case to which our statute applied, that it was one under the statute of Anne, because they say, the relator was not a candidate or voter, within the meaning of sec. 103 of the Municipal Act. I think he was. The relator was known to be a candidate, was there to be proposed, was in fact proposed, although after the declaration by which the returning officer assumed to preclude him. It cannot be permitted that a returning officer shall by his own illegal act divest a relator of his *status* as a candidate, nor can the defendants who adopt that act, strip him of the character which gives him right to maintain his *quo warranto* against them.*

But the other defendants with full knowledge of all he did, adopted his declaration as an election by acclamation, and, excepting McNabb, who disclaimed, they took their seats.

I feel compelled to declare the election void, and I award the relator costs against the returning officers, and the defendants who have maintained their right to the seats.

COMMON LAW CHAMBERS.

DONNELLY V. REID.

Plea in abatement—Affidavit of verification—Inferior Court of record—Pleading and demurring to plea in abatement.

Quere, whether the pendency of a prior action in a County Court can be pleaded in abatement to an action in a Superior; but the question was left to be decided on demurrer.

Where the only affidavit of verification of a plea in abatement was made by the attorney for the defendant (in both actions), an application to set aside the plea was refused.

Application for leave to reply and demur to a plea in abatement refused.

[Chambers, March 6, 10, 1869.]

To an action for work and labour the defendant pleaded in abatement, that an action was pending in a County Court between the same parties for the same cause of action. This plea was verified by the affidavit of the attorney for the defendant in both actions, who swore "that the plea hereunto annexed is, I am informed, and do verily believe, true in substance and in fact."

The plaintiff obtained a summons calling on the defendant to shew cause why this plea should not be set aside and struck off the files upon the following grounds: 1st That the pendency of an action in an inferior Court for the same cause