and Jacob Paul Clark as the candidates for the said office (the relator being present and making no objection), and I adjourned the meeting to 2nd day of January, stating at the time that the candidates for the said office who remained on the list after the said withdrawals, were the defendant and said Clark.

3. "That there was no show of hands called for said candidates; but the said John Haggart, in his address to the electors, stated that if he was to be opposed, he would not contest the election; and in order to see what opposition he would be subjected to, he called on those who were in his favor as against Mr. Clark (who was thought to be the only person who would contest the election with him), to hold up their hands; but only a small proportion of the electors did so, and the majority of those who did, were in favor of said Haggart; and he then asked Clark if he intended to contest the election with him, and Clark said he did; whereupon the said John Haggart announced that he withdrew from the contest, and desired me to strike his name from the list of candidates, and I did so.

4. "All the proceedings aforesaid took place at said meeting, and were part of the proceedings thereof, before I announced that the only candidates standing were the defendant and said Clark; and no one made any objection to said proceedings or to any of the said withdrawals; and the relator was present during the whole time."

R. A. Harrison, Q. C., and *J. K. Kerr*, showed cause.

1. Though at first a candidate, yet, under the authorities and the circumstances of this case, Haggart was not, at the close of the nomination, a candidate.

2. The relator acquiesced in the withdrawal, and cannot now be heard: *Reg. ex rel. Rosebush* v. *Parker*, 2 U. C. C. P. 15; *In re Kelly* v. *Macarow*, 14 U. C. C. P. 457; *Reg. ex rel. Bugg* v. *Bell*, 4 Prac. Rep. 226.

3. Where there is no probability shown that a new election would make a change in the person elected, mere irregularity is no ground for setting aside the election. See *Morris* v. *Burdett*, 2 M. & S. 212; *Reg. ex rel. Charles* v. *Lewis*, 2 Ch. R. 171; *Reg ex rel. Walker* v. *Mitchell*, 4 Prac. Rep. 218.

J. H. Cameron, Q. C., and *Dr. McMichael*, supported the summons, citing *The Queen* v. *Mayor of Leeds*, 11 A. & E. 512; *Reg.* v. *Bower*, 1 B. & C. 585; *Reg.* v. *England*, 2 Leach, C. C. 767; *Reg.* v. *Woodrow*, 2 T. R. 731; *The King* v. *Burder*, 4 T. R. 778; Comyn's Digest, Title Indictment, D.; Municipal Act of 1866, sec. 186; Har. Mun. Man. p. 91; *Reg.* v. *Mooney*, 20 L. T. Q. B. 265; *The Queen* v. *Preece*, 5 Q. B. 94.

Mr. Dalton.—Upon the objection, which has been urged, to the defendant's election as reeve of Brampton, I will read the affidavit of Mr. McCulla, the returning officer, as containing a statement of the facts upon which I act. Mr. McCulla is in an official position, independent of both parties, and gives a very clear statement of what occurred, which I have no doubt is quite correct. Indeed I do not know that there is any dispute at all as to what took place at the nomination. He says: [Mr. Dalton here read the extract from the affidavit of the returning officer, which is given above.]

It seems to me to be very clear, whatever may be the derivation of the word, that a "candidate," in the sense of the statute, is one put forward for election, no matter whether with or against his own will; from which it would seem to follow that he cannot, without the assent of others, resign. His assent is not necessary to his candidature, but he must have a proposer and seconder. He need not be present at the meeting, and his dissent from the proceeding is unavailing.

But the question is, can a candidate, once nominated, be withdrawn? It is difficult to comprehend why this cannot be done before the close of the meeting, with the assent of all concerned; for every one then acts of his own free will, with a full knowledge of the facts. Contracts can be dissolved by the will of those who made them. There are exceptions, but it is *generally* true; and it is the *general* rule that the legal effect of all action may be annulled or reversed by the common agreement of *all* who are concerned. Why then, before being acted on, cannot a nomination be withdrawn, as here, by the candidate himself, his proposer and seconder, and the electors present? It is true that the clause of the Act does not speak of any power of resignation or withdrawal, but directs that the poll-book shall contain the names of the candidates "proposed and seconded," which no doubt means the names of *all candidates* proposed and seconded. But the answer to this seems to be, that when the nomination is withdrawn at the meeting by the agreement of every one affected by the nomination or withdrawal, it is as though that candidate had never been proposed and seconded at all; for he does not continue to be to the close of the meeting, and is not then, a "person proposed" for the office. That this is the construction put upon the statute in practice, is very clear; for nothing is more common than for a number of candidates to be proposed, where there is no intention on the part of any one that they should contest the election; and upon their withdrawal, it has never, that I know of, been suggested until now, that it may be demanded, after the meeting, that their names shall be entered in the poll-books.

From the nature of the proceeding, the electors and the returning officer are entitled to know, at the close of the meeting, who are the candidates; for in case there is but one candidate, the returning officer is to declare him elected; and in case there are more candidates than one, the returning officer, on the day following the nomination, is to post up the names of the candidates. So that I do not understand how Mr. Haggart's or Mr. Coyne's communications with the returning officer after the nomination day can affect this proceeding. But suppose the first case had happened, and Mr. Chisholm had been the only candidate remaining; then the returning officer, with the assent of all the other candidates, their proposers and seconders, and of the electors present at the meeting, would on the spot have returned Mr. Chisholm as reeve. If it is asserted that an election so conducted would be void, I must say that only judicial decision could make me assent to it. I have been speaking of the statute as though the relator here were an elector, not present at the meeting, who had afterwards voted at the election for Mr.