

NEWTON L. MACKAY, Petitioner.

vs.

WILLIAM McDONALD, Respondent.

*Recriminatory charges against the Petitioner struck out of the answer.*

In this case R. L. Weatherbe, Esq., took out a rule nisi on August 31st, to strike out of the answer all the paragraphs except the first, as containing recriminatory charges, and on the ground that the allegation in said clauses raised an improper issue and were in no manner an answer to the matters contained in the petition; and that the same were irregular and contrary to law.

The rule was argued on September 1st, by R. L. Weatherbe, Esq., in support, and Hon. James McDonald, *contra*.

HON. W. A. HENRY, Q. C., now (September 1st), delivered the judgment of the Court as follows:—

We have already decided that where the seat is not claimed, no recriminatory charges can be gone into as such, even before a Judge on the trial, and that they can only be inquired into under the section already mentioned in our previous judgment, (Section 20). We are also of opinion that the Petitioner in this case being a member of the House of Commons is well qualified to petition, and we have come to the conclusion that inasmuch as the statute points out one mode, and only one of unseating a candidate, it is beyond the power of this Court to inquire into the propriety of his return for any reason unless in the manner prescribed by the statute. We think that the case does not differ materially from the cases already decided. The Legislature has already provided for the trial of the correctness of the returns of all members of the House of Commons, and if we were to adopt a different mode we would be going beyond the authority that the statute gives us. The fact that the petitioner is a member of the House of Commons does not alter the nature of the issues to be tried. Had a case been given to us showing that the course which we are asked by the Respondent to follow was a proper one, we should have felt bound to follow it, but in the absence of any such case we can only try the regularity of the election and return in the manner pointed out by the statute and in no other. I make these remarks without reflecting upon the fact which we may know not