

Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

[Elec. Court.

written evidence than what the immediate custody and possession of the party who was interested in the production of it, or the voluntary favour of those in whose custody the required instruments might happen to be, afforded." His Lordship then proceeded to say that a witness served with such a subpoena ought to attend with the documents, and the judge at Nisi Prius ought, upon the principles of reason and equity, to decide whether production should be required, and whether the party withholding it should be attached. Now, in *Crowther v. Appleby*, reported in the current number of our Reports (43 Law J. Rep. N. S. C. P. 7), the Court decided that it ought not to attach the secretary to a railway company, who attends in obedience to such a subpoena, but refuses to produce documents on the ground that the directors have ordered him as their servant not to do so. No doubt it is an absurd dilemma for a servant to be on the one hand sent to prison if he does not produce a document, and on the other to be turned out of his situation by his master if he does. But equally would it be unjust if a corporation could defeat a litigant by the simple device of withholding documents essential to the proof of a cause. A statute allowing service of such a subpoena on a company, in the same way as a writ of summons is now served, and visiting the company with fine for neglecting to send the documents by a proper agent, might be useful. Meanwhile the best device is to serve *subpoena duces tecum* on all the directors, and on all such officials as the manager and secretary, and leave it to them to satisfy the Court that they have prohibited each other all round from obeying the process.—*The Law Journal*.

An Injunction was granted in *Raggett v. Findlater*, L. R. 17 Eq. 29, to restrain the defendant from using upon their labels the words "nourishing stout," which had been used by the plaintiff on their labels as a trade-mark, refused, on the ground that "nourishing" was a mere English adjective denoting the quality of the stout.

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

(Before Hon. W. B. RICHARDS, Chief Justice of Ontario; Hon. J. G. SPRAGGE, Chancellor; and Hon. I. H. AGARTY, Chief Justice of the Common Pleas,

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law.)

NORTH VICTORIA ELECTION PETITION.

HECTOR CAMERON, Petitioner; v. JAMES MAC-LENNAN, Respondent.

Dominion Elections Act, 1874, not retrospective—When candidate disqualified as a petitioner—Assessment roll—Qualification of voters—Preliminary objections to bribery, treating, undue influence and travelling expenses—Bribery—Mistakes in voters' lists, &c.—Report of Judges, to Speaker.

Held. 1. That by the Dominion Election Act of 1873, the qualification of voters to the House of Commons was regulated by the Ontario Act.

2. That the Dominion Election Act of 1874 does not affect the rights of parties in pending proceedings, which must be decided according to the law as it existed before the passing of that Act; sec. 20 of that Act referring to candidates at some future election.

3. That a candidate may be a petitioner, although his property qualification be defective, if it was not demanded of him at the time of his election. If he claims the seat, his want of qualification may be urged against his being seated, but he may still show that the respondent was not duly elected. If he so charge in his petition.

4. The assessment roll is conclusive as to the amount of the assessment; but the mere fact of the name of a person being on the roll is not conclusive as to his right to vote. The returning officer is bound to record the vote if the person take the oath, but that is not conclusive.

5. The effect of sec. 20 of Controv. Election Act of 1873, as to the report of Election Judges to the Speaker considered.

6. On a petitioner claiming the seat on a scrutiny, the

*Consulted
Hibbard
& Tupper
v. E.R.
73.
Discussed
Hon. J. G. Spragg, Chancellor; and Hon. I. H. Agarty, Chief Justice of the Common Pleas,
R. M. S.
34 N. B.
Re Dufferin
in Election,
4 A. R.
420.
Referred to.
Port Arthur
and
Racing River
in Election,
14 O.
L. R.
345.*