

Irish Rep.]

DROGHEDA ELECTION PETITION.

[Elec. Case.]

cation of the voters, for from 45 to 50 ballot papers had been received and counted by the returning officer, though objected to on behalf of Mr. Whitworth, which had a cross marked on them after and opposite the name of Dr. O'Leary, and in the same compartment, instead of being marked outside the vertical line at the right hand side of the name; that a petition had been duly presented against the return of the said respondent, and that deponent was advised that a scrutiny of the ballot papers was essential to justice and necessary in order to enable the petitioners to question the validity of said election.

Heron, Q. C. (with him *Nicholls*), for the petitioners, in support of the motion, cited *re Tyrone Election Petition*, Ir. R. 7 C. L. 190; *re Athlone Election Petition*, 8 Ir. L. T. Notanda, 88; 35 & 36 Vict., c. 33, sch. 1, p. 1, r. 40. They asked that the order should go for an inspection both of the rejected ballot papers, and the ballot papers objected to yet received, as, unless there was a scrutiny at the trial, it would be necessary to have a general inspection then, and time would be saved by having it now, while it would, also, enable them to be prepared if a scrutiny were entered upon at the trial.

Porter, Q. C. (with him *Killen*), for W. H. O'Leary, one of the respondents, *contra*.—The case of the *Athlone Election Petition* was the converse of the present, and the motion there made was not so extensive as this application, as now presented on the argument for the petitioners; and none so extensive has been granted here or in England. This is in effect an application for a preliminary scrutiny, but seeking to inquire into matters which would be outside a scrutiny. In the *Athlone* case the order was sought for the purpose of inspecting the rejected ballot papers.

[*LAWSON*.—There is no doubt that there would be a right to an inspection of rejected ballot papers in the proper case for it; and in principle I think there is, also, a right to have an inspection of ballot papers which were received by the returning officer contrary to objection. That the returning officer's decision is final does not take away any right to inspection.]

This is a mere fishing application, to assist the petitioners in spelling out a case. We do not deny that the Court has jurisdiction to make the order, but, before such an exercise of its power, an overwhelming case of convenience must be made out. Here, however, the appli-

cation is unnecessary, frivolous, and vexatious. Upon the showing of the affidavit of the petitioners' agent, they seem quite familiar with the papers for the scrutiny of which this motion is now made. There are charges in the petition of bribery, &c., and recriminating charges, and if these were proved the scrutiny would be wholly unnecessary. The decision of these matters of fact should be preliminary to a scrutiny. The secrecy of the ballot should be most jealously guarded. The scrutiny of the voters in the case of *Clare County Election*, 1853, 2 P. R. & D. 241, was not entered into until after allegations of treating, bribery, and intimidation were decided. So, in the *Lyme Regis* case, 1848, 1 P. R. & D. 26, and in the *District of Wighton Burghs* case, 1853, 2 P. R. & D. 134, the more convenient course was held to be, that the consideration of the other matters alleged in the petition should be preliminary to the scrutiny of the votes. In Leigh and Le Marchant's Election Law, p. 76, the usual procedure is stated:—"The inquiry by way of scrutiny is sometimes entered into before the other charges in the petition are disposed of, but this is not an expedient course, since it is possible that those defending the seat will, by the above section, be able to disqualify the candidate for whom the seat is claimed. The general charges should, therefore, usually be gone into first. . . . If the petitioner is disqualified, a scrutiny of votes may still take place, for the purpose of showing that the respondent has not really a majority of legal votes, even though the respondent is declared not to have been guilty of corrupt practices." Not only is the order sought at a stage in the proceedings when to grant it would be a novelty, unnecessary, contrary to the principles of the Ballot Act and to the course pointed out in Leigh and Le Marchant as usual, but it is, moreover, a fishing scrutiny, which the Court will not encourage. We would still be entitled to go on with a scrutiny at the trial.

[*LAWSON, J.*—I am not disposed to make an order so extensive as that contended for. I should be inclined to make an order following that made in the *Tyrone Election* case.]

If an order is to be made at all, we would prefer that there should be an inspection of the received ballot papers, as we also might be advantaged. [*Heron, Q. C.*—As regards the rejected papers, the Clerk of the Hanaper can attend at the trial with them in a separate packet, to be opened if necessary.]

J. B. Falconer, for the returning officer, R. B.