

inclined to think that this case would be held to apply to Ontario election petitions, although the wording of the Ontario Controverted Elections Act (R.S.O., c. 10) is not identical with that of the English Act (46 & 47 Vict., c. 51, s. 56); but as regards Dominion election petitions, we doubt whether it would be deemed in point.

None of the cases in the Probate Division call for any notice here.

SMALLPOX HOSPITAL.—ERECTION OF SMALLPOX HOSPITAL BY ONE MUNICIPALITY WITHIN THE LIMITS OF ANOTHER—NOXIOUS BUSINESS—NUISANCE—INJUNCTION.

*Withington v. Manchester*, (1893) 2 Ch. 19, was an action brought by one municipal body to restrain the defendants, another municipal body, from erecting a smallpox hospital on land of the defendants situate within the plaintiffs' district. The action was based on the proposition that a smallpox hospital was a noxious or offensive business within the meaning of the Public Health Act, 1875 (38 & 39 Vict., c. 55); but the Court of Appeal (Lindley, Lopes, and Kay, L.J.J.) agreed with Chitty, J., that the clause of the Act relied on, which enumerated the trades of blood-boiler, bone-boiler, fell-monger, soap-boiler, tallow-melter, or tripe-boiler, "or any other noxious or offensive trade, business, or manufacture," was to be construed as relating to other businesses *ejusdem generis* as those enumerated, and did not include hospitals for infectious diseases, which were specially dealt with by other clauses in the Act, which enabled municipal authorities to erect hospitals for the reception of the sick, and did not confine them to erecting such buildings within their own territorial limits.

In connection with this case, we may also refer to a subsequent case in this number, viz., *Attorney-General v. Manchester*, (1893) 2 Ch. 87, which was an action *quia timet*, brought by the Attorney-General on the relation of the same municipal body, and also of certain private owners of property in the neighbourhood where the defendants proposed to erect the hospital in question, to restrain them from so doing, on the ground that the proposed hospital would be a public nuisance; but this action also failed, Chitty, J., holding that a smallpox hospital was not *per se* a nuisance, and that the plaintiffs had failed to show that there was a probability that the danger apprehended by the plaintiff would,