Held also, that the application to postpone a trial allowed by 38 Vict., cap. 10, sec. 2, is confined to that part of the enactment relating to the proceeding of the trial *de die in diem*, after it has commenced.

[January 19th, 1876—WILSON J.]

Osler moved absolute a summons to postpone the trial of this case on the ground that the Lieutenant-Governor of Ontario was a necessary and material witness, and that it was impossible for him to attend at Alexandria, where the case was to be tried on the 25th January, whilst the Ontario Legislature was in session. Several affidavits were put in showing the injury which the public interests would suffer if his Honour were to leave the seat of Government at this juncture.

Sir J. A. Macdonald, Q.C., shewed cause. It is not competent for a single judge to change a day which has been fixed for the trial by the full Court. The petition was filed in the beginning of August last, and the words of the statute, 38 Vict., cap. 10, sec. 2, rendered it absolutely necessary that the trial should be commenced within six months from that date. This statute enacts that "the trial of every election petition shall be commenced within six months from the time when such petition has been presented, and shall be proceeded with *de die in diem*, until the trial is over, unless on application, supported by affidavit, it be shewn that the requirements of justice render it necessary that a postponement of the case should take place." It is plain that the exception introduced by the word "unless" refers only to the proceeding with the trial *de die in diem*, and not to the provision made for the commencement of the trial within six months. The affidavits do not show a case on the merits. They merely state that inconvenience will result from the absence of the Lieutenant-Governor, but they do not show how or why. It is of the highest public importance that election trials should be disposed of at the earliest possible moment. If the trial were postponed it would have the effect of giving the respondent a seat for the next session, for his presence would certainly be required at the trial, and therefore, under the act, it could not take place during the session.

Osler, contra. There could be no question about a single judge having power to postpone the trial, for the Controverted Elections Act of 1874, 37 Vict., cap. 10, sec. 3, declares that the "Court" shall mean certain specified courts, "or any of the judges thereof." The object of the Act 38 Vict., c. 10, is to prevent unreasonable delay in the trial of election petitions, with which object six months from the presentation of the petition has been fixed as the ordinary limit for the commencement of the trial. But this rule is not absolute and unqualified. It is subject to the exception stated in the last clause of that portion of sec. 2 which has been cited. The words "unless on application," &c., must be taken to apply to the limitation of six months, as well as to the proceeding *de die in diem*. According to the construction contended for by the petitioner's counsel, it would be necessary for judge, counsel and witnesses to go to Alexandria, in order to commence the trial formally, before a postponement could be granted, however reasonable and necessary it might be. The affidavits read shewed good ground for the postponement asked. The relations existing between the Queen and her Cabinet are not of so intimate a nature as those between the Lieut.-Governor and his ministers. He understood that in England the sign manual was generally affixed to acts by a commission, while no such provision existed in this country.

WILSON, J. The language of the Act 38 Vict., c. 10, sec. 2, is imperative "that the trial shall be commenced within six months from the time when such petition has been presented," and I cannot, before the trial has commenced, postpone the trial until a day which will be after the six months have expired. The words "unless on application, supported by affidavit, it be shown that the requirements of justice render it necessary that a postponement of the case should take place," are confined apparently to that part of the enactment relating to the proceeding of the trial after it has begun *de die in diem*.

If the construction of the section, however, be even doubtful in that respect, I should not postpone the trial to a day beyond the six months, because that might render abortive the whole of these proceedings, and at any rate it would cast on the petitioner the necessity of maintaining the validity of the delay which had been granted adversely to his desire and interest, and solely at the instance and to meet the necessity or convenience of the respondent. That is quite sufficient to dispose of the application.

If I had possessed the power beyond all question to extend the time of trial as asked for beyond the period of six months before first entering upon the trial, it is very doubtful if I should have done it in this case. The earliest time which could have been fixed for it would be about the beginning of July next. It is