

SUPERIOR COURT.

[In Chambers.]

Montreal, September 30, 1878.

RAINVILLE, J.

IN RE MONTREAL CENTRE ELECTION.

Election—Count—Ballots Opened by Returning Officer.

Held, where the returning officer opened the envelopes containing the ballots as transmitted by the deputy returning officers, that the Judge could not re-count the ballots under section 55 of the Dominion Election Act.

An election having been held for Montreal Centre, and an application having been made under section 55 of the Election Act for a count of the ballots by a Judge, it appeared that the returning officer had removed the ballots from the envelopes in which they had been transmitted to him by the deputy returning officers, and had made them into two packages.

RAINVILLE, J., said the law was very clear and precise, that the ballots as transmitted by the deputy returning officers should remain in the same state until opened by the judge, on a demand being made for a count. The returning officer in the present case had, therefore, exceeded his duty in opening the envelopes. Under the circumstances, his Honor said he could do nothing, and he would declare the impossibility of taking any action, and leave the returning officer to adopt such course as he might be advised. Each party to pay his own costs on this application.

Devlin, and Archambault, Q.C., for petitioner.
Lacoste, Q.C., and *Curran, Q.C.*, for respondent.

**THE LAW IN REGARD TO VESSELS
PROCEEDING TO SEA, AND THE
COMPULSORY EMPLOYMENT
OF PILOTS.**

There have recently been several noteworthy cases decided in regard to points connected directly with compulsory pilotage, which indirectly touch upon and make clearer the general law in regard to the employment of pilots, and especially as to their employment in vessels proceeding to or from sea. The most recent of these cases—which are of no little importance in maritime law—is *The Princeton*, 38 L. T.

Rep. N. S., 261, which gives yet a larger authority to the principles enunciated in the cases lately but previously decided. The first, and perhaps the most important point which has been raised, and more or less set at rest by these recent decisions, is the meaning of the term "proceeding to sea," or of the reverse one, "proceeding into port" or "into dock." It is true that these questions have been raised primarily on certain statutes, but as a matter of fact they have, in regard to this point, turned upon the meaning which is to be attached to these words. Nor is it indeed necessary to regard them as confined merely to such sentences as we have set out above; had they been so limited they would have had no more general importance than any case decided upon the construction of a particular statute. But they have a wider bearing than this, for, assuming that pilotage is compulsory on a vessel going out to sea, they have made it clear what time and what events are to be included in this process, and they must consequently have a bearing upon cases which may involve other points than those touching simply on compulsory pilotage. No actual principle in so many words has been laid down in regard to this matter; but, comparing the various decisions, we should formulate one somewhat in this form: A vessel is proceeding to sea from the moment she leaves the dock till the moment she reaches the open sea, except during such intervals as she is voluntarily stationary for purposes other than those connected with and necessary for the actual transit from dock to sea. And equally, of course, this definition will apply to the opposite movement, that is, from the open sea to the dock. We do not say that this definition might not be improved; but it is what may be termed a good working principle, and embodies in a reasonably concise form the result of the cases which serve as examples of it, and to which some reference must be made.

The first case of importance occurred in the Common Law Courts, and that is of *Rodrigues v. Melhuish*, 10 Ex. 110. The question arose out of an accident in the river Mersey. On the 2nd of December the ship went out of dock, and the pilot went on board on the 3rd; the master was not on board, the riggers were completing the rigging out of the ship, which lay