

Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

[Elec. Court.]

candidate shall be either a natural born subject of the Queen, or a subject of the Queen, naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of one of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, New Brunswick, Manitoba, British Columbia, or Prince Edward Island, or of this Parliament.

By section 134, it is enacted that the Act passed by the Parliament of Canada in the 36th year of Her Majesty's reign, intituled, "*An Act to make temporary provision for the election of members to serve in the House of Commons,*" is hereby repealed, except only as to elections held, rights acquired, or liabilities incurred before the coming into force of this Act; and no enactment or provision contained in any Act, of the Legislature of the late Province of Canada, or of any of the Provinces now composing the Dominion of Canada, respecting the election of members of the Elective House of the Legislature of any such Province shall apply to any election of a member or members of the House of Commons held *after the passing of this Act*, except only such enactments and provisions as may be in force in such Province at the time of such last mentioned election, relating to the qualification of electors and the formation of voters' lists, which will apply for like purposes to elections of members of the House of Commons as provided by this Act. By section 135, it is provided that this Act shall come into force on the first day of July next after the passing thereof.

Where proceedings have been taken before the passing of the Act referred to, to set aside the election of a member for want of the property qualification required by law at the time the election took place, can the 20th section of the Act above quoted be successfully invoked to aid the unqualified candidate, and destroy the rights of the petitioners?

If proceedings in the Election Court are to be analogous to suits in other Courts, then the rights of the parties ought to be decided according to the law as it stood before it was repealed. No doubt there may be cases where persons may be deprived of rights and remedies which they had when the actions were commenced, by the effect of some Act of Parliament. But then it ought to appear that such was the intention of the Legislature in passing the Act, or that such result was the natural and proper one to flow from the Act itself. The intention seems to be, by the 134th section,

that the Act in force at the time the elections took place should not be repealed as to elections held, rights acquired, or liabilities incurred before the coming into force of that Act. It also refers to certain enactments which should not apply to any election of a member of the House of Commons *held after the passing of the Act*. The obvious intention of the Legislature seems to have been that which would be considered reasonable, viz., that as to the elections held before the passage of the Act, the law then in force should prevail, whilst as to elections after the passing of the Act the new law should be acted on, and govern the rights of the parties.

Under the Dominion Stat., 31 Vict. cap. 1, the Interpretation Act, in relation to the construction of Acts of the Parliament of Canada, it is provided by sec. 7, sub-sec. 35, that "When any Act is repealed, wholly or in part, and other provisions substituted, all officers, persons, bodies politic or corporate acting under the old law shall continue to act as if appointed to act under the new law, until others are appointed in their stead; and all proceedings taken under the old law shall be taken up and continued under the new law, when not inconsistent therewith; and all penalties and forfeitures may be recovered, and *all proceedings had in relation to matters which have happened before the repeal, in the same manner as if the law were still in force*, pursuing the new provisions so far as they can be adapted to the old law."

Sub-sec. 36. "The repeal of an Act at any time shall not affect any act done, or any right or right of action existing, accruing, accrued or established, or any proceedings commenced in a civil cause before the time when such repeal shall take effect, but the proceedings in such case shall be conformable, when necessary, to the repealing Act."

Sub-sec. 37. "No offence committed, and no penalty or forfeiture incurred, and no proceedings pending under any Act at any time repealed, shall be affected by the repeal, except that the proceedings shall be conformable, when necessary, to the repealing Act; and that when any penalty, forfeiture or punishment shall have been mitigated by any of the provisions of the repealing Act, such provisions shall be extended and applied to any judgment to be pronounced after such repeal."

The section as to the property qualification does not come into force by repeal of the Act of 1873, under which this election was held, but by its own affirmative power, declaring that *after the passing of the Act* no qualification should