

cation with costs, holding that the plaintiff when issuing the attachment had reasonable grounds for doing so, and that to enable the defendant to set aside an absent debtor process when the defendant was in fact absent from the province, he must show a clear case of abuse of the process of the Court.

Stewart, Q.C., for plaintiff.

McLean, Q.C., and *Morson*, Q.C., for defendant.

Province of Manitoba.

QUEEN'S BENCH.

KILLAM, J.]

[Oct. 19.]

IN RE MACDONALD ELECTION.

Dominion Election—Preliminary objections—Affidavit of petitioner—54 & 55 Vict., ch. 20, sec. 3—Examination of petitioner.

In this case, after preliminary objections had been presented and overruled, the petition being at issue, the petitioner was examined on his statement in the affidavit filed in accordance with the Act 54 & 55 Vict., ch. 20, sec. 3, "That he has good reason to believe, and verily does believe, that the several allegations contained in the said petition are true."

The petitioner's answers upon such examinations showing that this information was chiefly hearsay and that he had no certain knowledge as to the matters alleged in the petition, the respondent moved to stay all proceedings on the petition and to strike the same off the files of the Court on the ground that the affidavit filed was false, and was not such an affidavit as was required by the Act, and was no affidavit within the meaning of the Act, and that the presentation of the petition was therefore an abuse of the powers and process of the Court.

Held, that such objection could only be taken as a preliminary objection under sec. 12 of The Dominion Controverted Elections Act, and was therefore too late.

Quaere, whether the objection could be relied on, even if taken as a preliminary objection.

Application dismissed: costs to be costs in the cause to the petitioner in any event.

Howell, Q.C., for petitioner.

C. H. Campbell, Q.C., for respondent.

TAYLOR, C.J.]

BERGMAN v. SMITH.

[Oct. 29.]

Jury—Counter claim—Action for breach of warranty—Queen's Bench Act, 1895, section 49.

This was an application by defendant for an order to have the issues tried by a jury on the ground that his counter claim was for damages for breach of warranty.

He claimed that the case was within section 49 of the Queen's Bench Act, 1895, and if not strictly within that section, that the intention of the legislature