

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

(REPORTED BY HENRY O'BRIEN, ESQ., BARRISTER-AT-LAW.)

COURT OF ERROR AND APPEAL.

WEST ELGIN ELECTION PETITION.

CASCADEN V. MUNROE.

Controverted Elections (Ontario)—Particulars.

The petition in this case stated that Mr. Munroe was returned by a majority of ten votes: that persons not qualified to vote had voted for him: that good votes for his opponent (Mr. Hodgins) were tendered and rejected; that ballots improperly marked were received and counted for Munroe; and that Munroe and his agents were guilty of corrupt practices.

Held, on a summons asking for particulars (1) of the persons not qualified to vote, and the grounds of disqualification, (2) of the votes tendered for Hodgins, (3) of the counterfoils and ballots for Hodgins improperly rejected, (4) of the counterfoils and ballots for Munroe improperly received, and the names of the voters so rejected or received, (5) of the corrupt practices by respondent and his agents—that particulars should not be ordered as asked in the first, third and fourth clauses of the summons. As to the fifth clause, the order followed that in *Beal v. Smith*, L. R. 4 C. P. 145.

[April 17, 1875.—DRAPER, C. J., E. & A.]

Hodgins, Q.C., showed cause, and had no objection to the usual order as to corrupt practices, but as to information respecting the ballots the petitioner could not give any, and besides, the cases of *Stowe v. Jolliffe*, L. R. 9 C. P. 446, *Macartney v. Corry*, 21 W. R. 627, showed that ballots could only be inspected under a special order.

J. B. Read, *contra*. If the petitioner does not give the information asked as to the ballots, he should be precluded from relief on that branch of his case.

DRAPER, C. J., E. & A. I have in this case to dispose of a summons which asks for a variety of particulars, and, in order to dispose of the application, I shall take the subjects in the order in which they are raised in the petition and summons, premising that the petitioner (John Cascaden) seeks to avoid the election and return of Malcolm G. Munroe, and to have it declared that the unsuccessful candidate (Thomas Hodgins) was duly elected and ought to have been returned.

1. The case is clearly within the seventh general rule, which provides that the party complaining of and the party defending the election and the return shall, within a given

time, deliver to the Clerk of the Election Court, and also at the address, if any, given by the petitioner and the respondent (as the case may be), a list of the votes intended to be objected to, and of the heads of objection to each such vote. I see no reason for a special order in this case, or for varying from the terms of this rule. So far, I discharge the summons.

2. Particulars are asked for as to parties, alleged in the petition to have had good votes, who intended to vote for the unsuccessful candidate, whose votes were tendered and improperly rejected. I think the respondent is entitled to their names, address, abode, and addition; and I order accordingly.

3 & 4. Full particulars are asked of the number on the counterfoil of those ballots marked, or so marked as to indicate votes for the said Thomas Hodgins, improperly rejected and not counted for him at the said election; and the number on the counterfoil of those ballots which were void and should have been rejected by reason of their wanting the signature or initials of the deputy returning officers and the name of such returning officer; and of the number on the counterfoil of those parties voting for more candidates than one, and as having a writing or mark by which the voters could be identified; and as unmarked or void for uncertainty, or otherwise void under the provisions of the Ballot Act; and specific reasons for those otherwise void; and the names, address, abode and addition of the parties using such ballots, and which ballots were improperly accepted and counted for the said Malcolm G. Munroe, as mentioned in the fourth clause of the petition.

I am bound to assume that the returning officer has done his duty, and therefore has, under the 20th section of the Ballot Act, returned to the Clerk of the Crown in Chancery his return and all the documents and papers enumerated in that section, among which are the counterfoils. It would be useless to make an order on the petitioner to furnish information which I have no reason to suppose he possesses. The same reason appears to me to apply to every item, or nearly so, in this branch of the summons. A reference to *Stowe v. Jolliffe*, L. R. 9 C. P. 446, which was mentioned by Mr. Hodgins, would have probably prevented this part of the summons, which part I also discharge.

5. It is further asked that an order should issue for such particulars of (a) corrupt practices charged, (b) of bribery, (c) of treating, and (d) of the nature of the undue influence, and of the parties practising the same, all which are referred to in the sixth clause of the petition;