

Elec. Court.]

NIAGARA ELECTION PETITION.

[Ch. Cham.]

mentioned refers to an "Act of the Dominion of Canada." But the clause will not be struck out, as the hiring might amount to bribery, and the petitioner should have the right to give evidence under it for that purpose.

SPRAGGE, C., and HAGARTY, C.J., concurred.

NIAGARA ELECTION PETITION.

BLACK ET AL, *Petitioners*, v. J. B. PLUMB,
Respondent.

Form of recognizance—Signature of Sureties not requisite.

The recognizance filed in this case was in the usual form, but was not signed as directed by Rule 24 of the General Rules of the Election Court.

Held, that the recognizance was nevertheless valid.

[Election Court—June 26, 1874.]

A summons was obtained from the Clerk of the Election Court to set aside the recognizance filed herein, and to stay proceedings on the petition, on the ground (amongst others) that the alleged recognizance was void and insufficient, because it was not signed by the persons purporting to enter into it, pursuant to Rule 24 of the Election Court.

Hodgins, Q.C., for the petitioner, showed cause. The security to be given is a recognizance, and is so called in the Act and Rules. The requirements of a recognizance are well understood, and it is not one of them that the persons to be bound by it should sign it, the acknowledgment and taking being sufficient: Burns' Justice, Vol. 5, p. 71; *The Queen v. St. Albans*, 8 A. & E. 932.

O'Brien, for the respondent, supported the summons. Sec. 11, ss. 4, 5 of 36 Vict. cap. 28,

C directs that "Security * * shall be given in the prescribed manner, if any;" and Rule 24 prescribes the manner, which is by a document styled a recognizance, which, in the form given, is directed to be signed, thus: "Signed (signature of securities)." True that Rule 24 says the form "may be as follows," but it does not follow from this expression that the plain direction of the Rule should be ignored. The same word, "may," is used in several cases in an imperative sense. Our Election Rules are the same as the English Rules, and the Judges who framed them appear to have required the signature of the sureties in addition to their acknowledgment, which would have been sufficient for a recognizance at common law. Probably the signature was required as a greater precaution in these cases, for purposes of identification, &c., not being taken in open court, and the words of the rule should not be thrown aside as devoid of meaning. If there is any doubt as to the

validity of the document it should be set aside, so that the respondent may not be deprived of security for his costs. The petitioner is not shut out, as he can pay money into court in lieu of the security.

MR. DALTON, Clerk of Election Court. Rule 24 says that "the recognizance shall contain the name and usual place of abode of each surety, &c., and may be as follows." The form, therefore, is not material, except as to certain particulars, and a recognizance is good without the signature of those entering into it. I must therefore disallow this objection to the security.

A summons by way of appeal was thereupon obtained from the Chancellor, which was heard before the Election Court, and was argued by the same Counsel. O'Brien, for the respondent, referring in addition to the case of *Cousins v. Heley*, 34 U.C. Q.B. 74, where, under similar words in Con. Stat. U.C., cap. 29, sec. 8, "the bond and assignment may be in the form B," and the form saying, "signed &c., in presence of," it was held that a subscribing witness was necessary.

RICHARDS, C.J. We think the security is sufficient. The document required is a "recognizance," and a recognizance does not require a signature for its validity.

Summons discharged with costs.

CHANCERY CHAMBERS.

NOTES OF CASES.

RE HALLETTE.

Administration order.

[June 8, 1874.—BLAKE, V. C.]

An administrator is entitled *ex parte* to an administration order, where the liabilities of the estate exceed the assets.

CAMPBELL V. EDWARDS.

Staying proceedings pending rehearing.

[June 15, 1874.—THE CHANCELLOR.]

On motion to stay proceedings pending rehearing, the Court will follow the practice laid down in Con. Stat. U.C. H. 18., with reference to staying proceedings pending an appeal to the Court of Appeal.

Where, therefore, a decree had been made, directing the defendant to pay to the plaintiff a large sum of money and costs, an order was made, on the application of the defendant, who intended to rehear, staying proceedings in the meanwhile, upon the defendant's giving security for the due payment of the said money and costs, in case the decree should be wholly or in part affirmed upon the rehearing.