

OSLER, J.A.

AUGUST 22ND, 1902.

C. A.—CHAMBERS.

RE LINCOLN PROVINCIAL ELECTION.  
MCKINNON v. JESSOP.

*Parliamentary Election—Petition—Electoral District—Description of.*

Motion by the respondent to set aside the petition and all subsequent proceedings for defect or irregularity. The objection was that there was no such provincial electoral district as Lincoln and Niagara, and therefore no such election.

W. D. McPherson, for respondent, contended that the mistake was fatal to the petition.

R. A. Grant, for the petitioner, while not admitting this, moved for leave, on terms, to amend.

OSLER, J.A. :—I can take judicial notice of the fact that a general provincial election was held in the month of May last, and that a person named Elisha Jessop was returned as having been duly elected thereat to represent the electoral district of the county of Lincoln in the Legislative Assembly of the Province: Ontario Gazette. The affidavit of the respondent filed in support of the motion shews that he is that person.

There having been at the time mentioned in the petition an election for the electoral district of Lincoln at which the respondent was elected, and there being no electoral district of Lincoln and Niagara, I think the words "and Niagara" used in describing or stating the place or electoral district for which the election complained of was holden, and the respondent elected, ought to be regarded as being merely surplusage, or at most a harmless misdescription not fatal to the proceedings, even in the absence of an amendment.

I give the petitioner leave to amend accordingly. I do not think it necessary to say more about the cases of *Maude v. Lowby*, L. R. 10 C. P., or *Aldridge v. Hurst*, 1 C. P. D. 410, 417, or *Norwich Election*, 80 L. T. Jour. 253 (1886), which are always cited on applications of this kind and in which leave to amend was refused, than that they do not touch a case like this. They merely decide that an amendment which in effect seeks to make a new petition will not be allowed after the time for filing the petition has expired.

The petitioner takes an order to amend by striking out of the proceedings the words "and Niagara." I dismiss the application. The costs will be costs in the cause to the re-