

Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

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members, but a copy of the petition is sent to the returning officer, and he is required to publish the same, so that when a petition is presented it is known who the petitioner is, and if he is a candidate that is known throughout the electoral district. If he represents himself as a voter duly qualified to vote at the said election, on looking at the rolls and voters' lists, it there appears, if he was duly qualified to vote as he claims. On turning to the statute, any person interested in the election sees it plainly stated that a candidate or voter, duly qualified to vote at the election, may petition. Under such circumstances, all persons interested in the matter would assume that the petition would go on. The special provisions in the Act to guard against a collusive withdrawal of the petition would all induce an interested elector to suppose when a petition was presented by a candidate, or a voter duly qualified to vote at the election, that nothing could be urged against the enquiry being proceeded with.

It is objected against the petition that the petitioner did not possess the necessary qualification to be a candidate. He was a candidate, in fact. His right to be such is only now questioned; and, unless there is some case (binding on us) which expressly holds that if the preliminary enquiry establishes the fact that the candidate was not qualified, therefore he has no *locus standi* to show that the sitting member is not duly elected, we think we ought not to stay the enquiry as to the respondent's right to hold the seat.

The decision of committees to which we have referred are not uniform, or we might be bound by them under section 33 of the Dominion Act. There has been no case cited on this point that has been decided since the new Act came in force in England, that holds that if the petitioner is disqualified as a candidate, that the enquiry cannot be pursued. In the last edition of Leigh & LeMarchant's Law of Elections, at page 76, referring to the practice, it is stated, "The general charges would usually be gone into first by the petitioner, and; at the close of his case, the respondent's counsel proceeds not only to answer the charges against the respondent, but to open counter charges against the petitioner, (that must be when he is a candidate). If the petitioner is disqualified, a scrutiny of votes may still take place for the purpose of showing that the respondent has not really a majority of legal votes, even though the respondent is declared not to have been guilty of corrupt practices; and the following lan-

guage of Baron Martin is quoted: The question in the scrutiny would be which of these gentlemen had the majority of legal votes, and assuming the petitioner to have been personally incapacitated, that would not have affected the votes of the persons who gave their votes for him, they being ignorant of it. They would be perfectly good votes, and the persons who were the supporters of the petitioner would have a right to have it determined whether or not the respondent was sent to Parliament by a legal majority." *York, West Riding, Southern Division*, 1 O'M. & H., 214

The language of Willes, J., as follows, is also cited, "Against any member, therefore, who is elected in the first instance, any one directly interested may petition. If the petitioner does not claim the seat, there is no recrimination allowed; but if the petitioner does claim it, the respondent is entitled to protect himself, and, before the scrutiny, prove a recriminatory case, and show that the election of the other candidate could not stand. It is true that even if he proves it the petitioner may still go into the scrutiny to turn out the sitting member." *Waygood v. James*, (*Taunton Case*), L. R. 4 C. P. 368.

In the *Norwich case*, as reported in 19 L. T. Rep. N. S. 620, it was urged that as the sitting member had been unseated for bribery by his agents, he had no further interest, and had no *locus standi*. Martin, B. said, "Is not the sitting member a respondent in respect of every matter that you charge in your petition and in respect of every claim you make in your petition, and has he not a right as *having been a candidate*, though he may be unable to protect his own seat, to show that you are not entitled to it?"

We think the weight of reason and authority is in favour of allowing a candidate to be a petitioner under the statute, though his property qualification may be defective, if it was not demanded of him at the time of his election. If he claims the seat, his want of qualification may be urged against his being seated; but he may still show that the respondent was not duly elected if he so charges in his petition.

By section 20 of the Dominion Act of the last session of Parliament, respecting the election of members of the House of Commons, it is provided that from and after the passing of this Act, no qualification in real estate shall be required of any candidate for a seat in the House of Commons of Canada, any statute or law to the contrary notwithstanding; but such