

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Sup. Ct.]

On a recount before the County Court Judge, the appellant, who had a minority of votes according to the return of the Returning Officer, was declared elected, all the ballots cast at three polling districts (in which the appellant had polled 331 votes, and the respondent 345), having been struck out, on the ground that the Deputy Returning Officer had neglected to place his initials upon the back of the ballot.

On appeal to the Supreme Court of P. E. Island, it was proved that the Deputy Returning Officer had placed his initials on the counterfoil before giving the ballot paper to the voter, and afterwards, previous to his putting the ballots in the ballot box, had detached and destroyed the counterfoil, and that the ballots used were the same as those he had supplied to the voters, and Mr. Justice PETERS held that the ballots of the said three polls ought to be counted, and did count them.

Thereupon J., appealed to the Supreme Court of Canada, and it was

Held [affirming the judgment of Mr. Justice PETERS], that in the present case the Deputy Returning Officers having had the means of identifying the ballot papers as being those supplied by them to the voters, and the neglect of the Deputy Returning Officer to put their initials on the back of these ballot papers, not having affected the result of the election, or caused substantial injustice, did not invalidate the election. The decision in the *Monck* election case (Hodgins Elec. Cases, p. 725), commented on and approved of.

In this case, the appellant, claimed under sec. 66 of 37 Vict., ch. 10, that if he was not entitled to the seat, the election should be declared void, on the ground of irregularities in the conduct of the election generally, and filed no counter-petition, and did not otherwise comply with the provisions of 37 Vict. ch. 10, the Dominion Controverted Elections Act.

Held, that section 66 of 37 Vict. ch. 10, only applies to cases of recriminatory charges, and not to a case where neither of the parties or their agents are charged with doing any wrongful act.

Quare, whether the County Judge can object to the validity of a ballot paper, when no objection had been made to the same by the candidate or his agent, or an elector, in accordance with the provisions of sect. 56, 37 Vict. ch. 10, at

the time of the counting of the votes by the Deputy Returning Officer.

Appeal dismissed with costs.

Hector Cameron, Q.C., for appellant.

Lash, Q.C., for respondent.

DICKIE V. WOODWORTH.

Election petition—Rule or order under 37 Vict. ch. 10, sec. 9, non appealable—42 Vict. ch. 39, sec. 10.

On August 16th, 1882, upon the *ex parte* application of the solicitor for petitioner, RIGBY, J., granted an order extending for twenty days the time for the service of the petition, and of the notice of presentation thereof, and of the security having been deposited, and the copy of the receipt for said security.

On the 25th August, 1882, the respondent obtained from RIGBY, J., a rule *nisi* to set aside the order of the 16th August.

On the 27th September, 1882, this rule *nisi* was made absolute, with costs, on the ground that the order of the 16th August was improvidently granted, and without sufficient cause shown.

On the 30th September, 1882, on the application of the petitioner, supported by affidavits, RIGBY, J., made another order extending to the 15th October then next, the time for service of notice of presentation of petition, and of security, with a copy of petition.

On the 16th of October, 1882, RIGBY, J., granted a rule *nisi* (returnable before the Supreme Court at Halifax), to set aside the petition, the presentation thereof, the order made on the 30th September, preceding the service of petition, etc., and all further proceedings.

On the 15th January, 1883, this rule *nisi* was made absolute, without costs, by the Supreme Court of Nova Scotia, on the principal ground that the affidavits on which the *ex parte* order of the 30th September was granted, disclosed no facts unknown to petitioner, when the order of 16th August was obtained. The petitioner thereupon appealed to the Supreme Court of Canada.

Held, [FOURNIER and HENRY, JJ., dissenting], that the rule appealed from was not a judgment, rule or order, or decision from which