

GEORGE HIBBARD, Petitioner.

vs.

CHARLES TUPPER, Respondent.

Recriminatory Charges struck out of the answer.

In this case a rule nisi was taken out on August 27th, by R. L. Weatherbe, Esq., to strike out the first paragraph of the answer on the ground that it contained recriminatory charges against the Petitioner, who had not claimed the seat. The rule was argued before the full Court on August 29th, by R. L. Weatherbe, Esq., in support of the rule and J. S. D. Thompson, Esq., *contra*.

Hon. W. A. HENRY, Q. C., on the same day, delivered the judgment of the Court as follows:—

We have considered the question arising on the rule to strike out the answer in this cause, and we are now prepared to deliver judgment. The 14th Section of "The Controverted Elections Act, 1873," provides that within five days after the expiration of the time limited for objecting to the security, or after the security has been established, the Respondent may present in writing any preliminary objections or grounds of insufficiency which he may have to urge against the petition or any further proceedings thereon, and shall in such case at the same time file a copy thereof for the Petitioner. The Election Court or any Judge thereof shall thereupon hear the parties upon : objections and grounds, and shall decide the same in a summary manner. Before this Act was passed there was no mode in England or in Canada for inquiring into preliminary questions except on the trial. The Legislature, then, has expressly given the power to this Court to inquire into preliminary objections. The Court, however, is authorized by the 32nd Section of the Act to make general rules and orders for the effectual execution of the Act, and the 33rd Section provides further that "until rules of Court have been made * * * and so far as such rules do not extend, the principles, practice and rules on which election petitions, touching the election of members of the House of Commons in England, are at the time of the passing of this Act dealt with, shall be observed so far as consistently with this Act they may be observed by such Election Court or any Judge thereof." This provision does not fully meet the case before the Court, and we cannot find any case in the English practice where a Judge is called upon to act in the manner in which we are called upon