

A preliminary objection was taken by Mr. McDonald, that a Judge had no power to set aside his own proceedings, but the rule of the 27th March, having been made absolute in the first instance, and having been granted *ex parte*, I consider that the Respondent was at liberty to move to discharge it, provided he could show sufficient reasons why the rule should not have been granted in the first instance. The principal ground relied upon by the Respondent was that the petition was not filed, delivered and presented according to law—and if that objection is substantiated it must be fatal.

The 11th Section of the Controverted Elections' Act, Cap. 28, 1873, 2nd clause, declares that the petition must be presented not later than thirty days after the publication of the receipt of the return in the "Canada Gazette," and it was admitted by both parties that the 23rd of March was the last day for presentation of any petition against the return of the Respondent. On the 11th March the Court made an order that all petitions against the return of members be filed within the time required by the "Controverted Elections' Act, 1873," and in order to prevent surprise this order was directed to be published in three newspapers for one week. The petitioner in his affidavit, on which he obtained the extension of time, swore positively that the petition was filed on the 23rd day of March instant, in the office of the Clerk, and on the faith of this allegation and also that the Respondent had left the city before personal service could be effected on him, I granted the rule for the extension of time. On the part of the Respondent an affidavit was produced from Benjamin Russell, Esq., the Clerk of the Court, in which he swears positively that the petition was not filed with him, nor as he believes with any person in his office, on the 23rd day of March. He further states, that about 11 in the forenoon on the 24th March, he discovered in a drawer in his office, the petition folded up in another petition, and that he had no knowledge in what manner this petition came to his drawer or office.

Two affidavits in reply were read on the argument, on the part of the petitioner, one from John S. D. Thompson, in which he states that he called on the 23rd day of March at or near six o'clock at the office of the Clerk, and stated to him his desire, that