

Elec. Court.]

CARDWELL ELECTION PETITION.

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HEWITT ET AL., *Petitioners*, v. HON. J. H. CAMERON, *Respondent*.

Property qualification of Candidate—Declaration of qualification—Non-compliance with demand for.

Held, (1) As in the *North Victoria Case*, that the Dominion Election Act of 1874 not being retrospective, the question of property qualification of candidates, at elections for members of the House of Commons, held before the passing of the Dominion Election Act of last session, can still be raised in pending cases.

2. That it is not necessary for an elector, demanding the property qualification of a candidate, to tender the necessary declaration for the candidate to make. The intention of the statutes being that the candidate must himself prepare the declaration.
3. That if the property qualification of a candidate be properly demanded at the right time, the demand must be complied with; and it is not sufficient after the return of a candidate is contested, for him to show that, at the time of his election or return, he was duly qualified.

[Election Court—June 26, July 16, 1874.]

The petition, in this case, stated :

3. That at the time of the said election, the said the Hon. John Hillyard Cameron was not legally or equitably seized as of freehold, for his own use and benefit, of lands and tenements held in free and common soccage, within that part of the Dominion of Canada formerly known as the Province of Canada, and now constituting the provinces of Ontario and Quebec, of the value of £500 sterling money of Great Britain, over and above all rents, charges, mortgages, and incumbrances charged upon, due and payable out of, or affecting the same, nor was he seized or possessed for his own use and benefit of lands and tenements held in fief or in *roture*, within that part of the Dominion of Canada formerly known as the Province of Canada, and now constituting the Provinces of Ontario and Quebec, of the value of £500 sterling money of Great Britain, over and above all rents, charges, mortgages and incumbrances charged upon, due and payable out of, or affecting the same; by reason whereof the said the Honourable John Hillyard Cameron was incapable of being elected or returned as a member of the House of Commons for the said electoral division, and his election and return were and are void.

4. And your petitioners further say that at the nomination held on the said twenty-second of January, in the said electoral division, and before a poll was granted at the said election, it was personally demanded of the said the Hon.

John Hillyard Cameron by an elector entitled to vote at the said election, to wit, Robert Clarkson, of the township of Albion, in the said electoral division, farmer, that he, the said Hon. John Hillyard Cameron, should make, in the manner and to the effect mentioned in and required by the 28th section of the statutes of the Imperial Parliament of Great Britain and Ireland, passed in the third and fourth years of the reign of Her Majesty, Queen Victoria, chapter 35, entitled "An act to reunite the Provinces of Upper and Lower Canada, and for the government of Canada," and by the 36th section of chapter 6, of the Consolidated Statutes of Canada, a declaration of his qualification to be a member of the House of Commons, as required by the said statutes; but the said the Hon. John Hillyard Cameron did not then, nor did he up to the time of the making of the return aforesaid, by the returning officer, make the said declaration, nor did he at any time deliver the same to the said returning officer, by reason whereof the election of the said the Hon. John Hillyard Cameron, and his return, were and are void.

5. Wherefore your petitioners pray that it may be determined that the said the Hon. John Hillyard Cameron was not duly elected or returned, and that the said election was void.

The respondent presented the following preliminary objections to the petition :

1. That the said petition was not filed nor any application made to the Election Court, or any judge thereof, to postpone the service thereof, until more than five days had elapsed after the recognizance had been entered into and security given by the petitioners for the payment of all costs, charges and expenses in the matter of the said petition.

2. That the statement in the third clause of the petition of the want of property qualification by the said respondent, at the time of the said election, is insufficient, and that he is not, and was not required by any law or statute to have such a property qualification as is stated in the said third clause, at the time of the said election, and that the said petition is insufficient in that respect, and there is no ground therein to avoid the election of the said respondent.

3. That the statement in the said fourth clause of the said petition is insufficient, and there is no ground therein to avoid the election of the said respondent, for the following reasons: that it is not stated therein that he had not already voluntarily made the declaration required by the said statutes in the 4th clause mentioned.