If Con. Rule 522 applies to the proceedings in an election petition, it does not help the respondent, as it extends only to affidavits sworn before the solicitor of a party to the cause or his clerk or partner.

The Rules of Court touching controverted elections make no provision on the subject, and s. 113 of the Ontario Controverted Elections Act, R. S. O. 1897 c. 11, provides that so far as these Rules do not extend, the principles, practice, and Rules on which petitions touching the election of members to the House of Commons of England, were on the 15th February, 1871, dealt with, shall be observed.

I am referred to nothing under this head which touches the point.

Then it is said that, in the absence of any Rule or decision, the principle of certain decisions in equity ought to be applied, and the agent of the solicitor in the cause who prepared the papers ought to be held to be within the mischief which is struck at. Foster v. Harvey, 11 W. R. 699, S.C., in appeal, 9 L. T. N. S. 404, Duke of Northumberland v. Todd, 7 Ch. D. 777, and In re Gregg, L. R. 9 Eq. 137, 143, were cited.

It is not suggested that any actual impropriety has occurred or that any wrong or injustice has been done. The objection is, therefore, a strictly technical one, and, if we are to look for analogy or principle, I see not why we should go beyond our own Rule of Court above referred to, which does not include an agent.

Further reason for holding that the objection fails, even had the affidavits been sworn before one of the members of the firm who now appear to be the petitioners' solicitors, is, that when the affidavits were sworn there was no cause or matter in Court, and therefore no solicitor on the record.

In this respect the case is more like Regina ex rel. Blaisdell v. Rochester, 12 U. C. R. 630, than any which has been cited. There, the relator's attorney took the recognizance and affidavit on which the County Judge acted in granting the fiat for a municipal summons. The Court said, per Draper, C.J., that no rule or practice governed the point, and, even if they doubted the strict regularity of the proceeding on the ground of the commissioner being also the attorney, they would be slow to interfere unless a very strong necessity for so doing was made out. The case was compared to that of the suing out of a capias on an affidavit taken before a commissioner who afterwards acted as plaintiff's attorney in suing out the writ.

On every ground the objection fails, and the motion is dismissed, with costs to be taxed and added to the petitioners' general costs of the cause or paid to the petitioners in any event.