

[Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

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to vote at the election to which the petition relates, or

2. Some person claiming to have a right to be returned or elected at such election, or

3. Some person alleging himself to have been a candidate at such election.

Under the Dominion Act of 1873, cap. 28, sec. 10, a petition complaining of an undue return, or undue election of a member, or of no return, or a double return, may be presented to the election court

1. By some person who was *duly qualified* to vote at the election to which the petition relates, or

2 & 3. Are in the very words of the Imperial Act.

Now, here the petitioner was a candidate, and claims to have a right to be elected and returned at the said election.

We have been referred to the *Honiton Case*, 3 Lud. 163, 165, (1782,) where it was decided that M's. election, having been declared void, by a committee, on the ground of bribery, and he stood on the vacancy, and being unsuccessful, petitioned against the return of his opponent, it was objected that as he could not legally be a candidate, he could not petition. The committee resolved that the said M. was not eligible to fill the vacancy occasioned by the said resolution. He was, therefore, not permitted to proceed. It is not very clear if a new election was prayed for, or that the return of the sitting member might be declared void. There were electors who were petitioners, and their petition was tried as to the charges of bribery, which were decided in favor of the sitting member.

In the *Taunton Case*, Feb., 1831, (referred to in Wolfenstan's Law of Elections, at p. 8, and Perry and Knapp's Election Cases, 169, note), the objection that petitioner could not proceed, because the sitting member was prepared to prove bribery against him, was over-ruled.

In the *Penryn Case*, P. & K., 169 n, the petitioner had refused to take the qualification oath, when called upon. The committee held that, not having complied with the necessary provisions to give him the character of a candidate, he had no title to petition: *Sandwich v Great Grimsby*, ib.; Roe on Elections 2 ed., 2 vol., 123; Rogers on Elections, 10 ed., 410.

But a person alleging himself to be a candidate is entitled *prima facie* to petition, unless his disqualification is obvious and incontestable: *Londonderry Case*, W. & B., 214, (1860.)

It is no objection to the petition of electors being proceeded with, that their candidate is

disqualified: *Colchester*, 3 Lud., 166, unless, *semble*, the petition *only* claims the seat for the candidate on the ground that he had the majority of legal votes.

In Wolfenstan's book at p. 5, referring to the petitioner under the English Act, as to a person who voted, or had a right to vote at the election to which the petition relates, the author says, that this means those who rightfully voted, or whose qualification on the register, whether they voted or not, was unimpeachable at the time of the election: *Lisburn Case*, W. & Br., 222, decided under secs. 11 & 12 Vict., cap. 98. The words of 31, 32 Vict., cap. 125, are identical: *Cheltenham Case*, W. & B., 63.

Under the statutes previous to 11 & 12 Vict. cap. 98, any one claiming in his petition to have had a right to vote at the election might petition. But under that state of the law committees allowed the sitting members to show that the petitioners had not the right they claimed: *North Cheshire Case*, 1 P. R. & D., 214; *Berwick Case*, 30th June, 1820; *Contra*, *Harwich Case* 1 P. R. & D., 73, and *Aylesbury Case*, *ibid.* 81.

In the second edition of the Law of Elections, by Leigh & LeMarchant, at p. 108, it is stated, "Although the words of the Act say one or more, it is prudent, provided the petition be presented by electors, to include some larger number as petitioners, in case an objection should be taken that though they had voted they had no right to vote at the election. Care should also be taken that all the petitioners should as far as possible be voters whose votes could not be impeached. If the petition is presented by a candidate, it means by any person elected to serve in Parliament at an election, or any person who has been nominated as, or declared himself a candidate at an election."

These proceedings on election petitions are not now considered as matters in which the parties to them are alone interested. To use the language of Bovill, C. J., in *Waygood v. James*, (*Taunton Case*) L. R. 4 C. P. 365: "The enquiry is one not as between party and party, but one affecting the rights of the electors, the persons who are or may be members or candidates, and the House of Commons itself." And in the *Brecon Case*, 2 O'M. & H. 34, Mr. Justice Byles said, "the petitioner being a trustee for the whole body of the voters for the borough, and for the public generally, cannot withdraw unless he complies with the provision of the statute." Under the statute, the proceedings are not simply served on the sitting