

The respondent has contended that these amounts cannot be recovered because the promoter did not pay them. It was so held by Dr. Lushington: (The *Chieftain*, Br. & Lush. 104 H.; the *Edwin*, 281); but the rule was relaxed by Sir Robert Phillimore, in the case of the *Feronia*, 2 Ad. & E. p. 65, in which he said: "I cannot but think that in this and other cases, referring to Dr. Lushington's decisions, an attempt has been made to strain those judgments beyond what the learned judge intended. My reasons for that opinion were fully stated by me in a recent case, that of the *Red Rose*. I shall allow the items, but I shall accompany them with a recommendation that no order for the payment thereof be made until the master has deposited in the Registry, vouchers for the payment, or given satisfactory evidence that the accounts have been paid. I would readily so decree in this case, if it were not for several obstacles. The evidence establishes that the promoter did not assume a direct liability to pay the accounts, and it was conditional upon the agent of the tug not paying them; and until such time as the respondent, or her agent, was placed *in mora* upon the presentment of the draft and the accounts, and a refusal or neglect to pay established, liability by the promoter could not attach to him. These precautions were not taken, and I think they should have been. But there is another impediment in the way of a judgment in favour of the promoter. In the case of the *Fleur de Lis* it was held that a master suing for wages and disbursements, is bound to furnish accounts before beginning his suit; if he do not, he will not be entitled to his costs. The language of Dr. Lushington in the case is: "The master was bound by practice and justice to furnish accounts before bringing his suit; he might have had the amount claimed without suit; he is therefore not entitled to his costs:" (1 A. & E. 49.) If the accounts sued upon, with the proper vouchers, that is, the accounts which have been referred to, had been presented to the respondent or her agent, Burns, before this suit was brought, and a default to pay the three accounts established, I should have rendered a judgment in favour of the promoter for the amount if not paid, and if paid after action was brought, for the costs. The promoter quarreled with Burns when discharged. He seems to have acted without due premeditation in bringing this suit, a step taken in haste, most unfortu-

nately, to be repented of at leisure, as I find myself compelled to dismiss the case with costs.

Andrews, Caron, Andrews and Pentland, for promoter.

M. A. Hearn, for respondent.

NOTES OF CANADIAN CASES.

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SUPREME COURT OF CANADA.

ELECTION APPEALS.

QUEEN'S COUNTY P. E. I. ELECTION PETITION.

[March Session, 1883.]

JENKINS V. BRECKEN.

Election Petition—Ballots—Secreting—37 Vict. ch. 9, ss. 43, 45, 55 and 80—41 Vict. ch. 6, ss. 5, 6 and 10—Effect of neglect of duty by a deputy returning officer—37 Vict. ch. 10, ss. 64 and 65—Recriminatory case.

In ballot papers containing the names of four candidates, the following ballots were held valid:—

(1) Ballots containing two crosses, one on the line above the first name, and one on the line above second name, valid for the first two named candidates.

(2) Ballots containing two crosses, one on the line above the first name, and one on the line dividing the second and third compartments, valid for the first named candidate.

(3) Ballots containing properly made crosses in two of the compartments of the ballot paper, with a slight lead pencil stroke in another compartment.

(4) Ballots marked in the proper compartment, thus: Y

The following ballots were held invalid:—

(1) Ballots with a cross in the right place on the back of the ballot paper, instead of on the printed side.

(2) Ballots marked with an x instead of a cross.