

judge is to proceed to recount the ballots cast at an election of a member of the House of Commons, must be such as to make it appear to the judge that a deputy returning officer has done one or the other of the wrong things enumerated, and such requirement is not satisfied by the affidavit of an elector who merely states that he verily believes that such things had been done. All that was made to appear by the affidavit was the deponent's belief in certain facts, but the Act requires that the facts themselves must be made to appear by the affidavit. *Re North Cape Breton and Victoria Election*, 6 E.L.R. 37, 532, followed.

After the returning officer has made his return to the clerk of the Crown in Chancery, it is too late to apply, under s. 206 of the Act, to a judge of the King's Bench in Manitoba for an order compelling the County Court judge to proceed with the recount. *Bellechasse Election*, 17 Q.L.R. 294, and *Portneuf Election*, 1 Q.L.R. S.C. 268, followed.

Cooper, K.C., and *Meighen*, for applicant. *A. B. Hudson* and *Simpson*, contra.

Mathers, C.J.]

[Nov. 13.

FRASER v. CANADIAN PACIFIC RY. CO.

Assignment — Building contract — Assignment by contractor without consent or knowledge of proprietor — Priority as between successive assignments — Notice to debtor.

One Garson entered into a contract in writing with a railway company for the erection of a number of stations. The contract provided that Garson should not assign it or sublet the work or any part of it without the written consent of the engineer. He, nevertheless, shortly after entering into the contract, made an arrangement with the plaintiff to the effect that the latter should construct the stations in his place and that he would turn over to the plaintiff the payments for the work as and when received from the company. The plaintiff then proceeded to do the work and completed it according to the contract. He did not notify the company of the arrangement between him and Garson. The company's officers knew that the plaintiff was doing the work, but had no reason to suppose that he was not doing it as Garson's manager or agent and gave no consent to any assignment. While the work was in progress, Garson gave the Imperial Bank an assignment of all his claims against the company for moneys then due or to accrue due to him from the company