

OSLER, J.A.

NOVEMBER 10TH, 1902.

C.A.—CHAMBERS.

RE LENNOX PROVINCIAL ELECTION.

PERRY v. CARSCALLEN.

Controverted Election Petition—Affidavit of Bona Fides—Commissioner—Agent for Solicitor.

Motion to set aside or dismiss the petition and to set aside the service thereof and of the affidavit of bona fides and of notice of presentation upon the respondent.

C. A. Masten, for respondent.

R. A. Grant, for petitioners.

OSLER, J.A.—From the affidavits filed, and the argument, the objection to the proceedings appears to be that the commissioner before whom the petitioners' affidavit of bona fides, etc., was sworn, was disqualified, he being the solicitor by whom the petition and affidavit were prepared or filled up, and by whom as agent for the petitioners' solicitors the petition, as appears by the indorsement thereon, was presented.

The affidavits filed shew that Messrs. Kerr, Davidson, Paterson, & Grant were instructed to present a petition against the election; that they sent one Sutherland, a clerk in their office, to Napanee with the necessary forms of petition and affidavit to be signed and sworn to by the petitioners, whoever these might turn out to be; that he went to the office of Mr. German, a local solicitor, who filled up the forms and as commissioner swore the petitioners to the affidavit; that Sutherland took the papers back with him to his principals, who, after indorsing the petition as follows, "This petition is presented by T. B. German, of the town of Napanee, in the county of Lennox and Addington, agents for Messrs. Kerr, Davidson, Paterson, & Grant, of the city of Toronto, solicitors for the petitioners," returned it to German, who filed it with the local registrar at Napanee on the 2nd August, 1902, together with the affidavit and notice of presentation, which latter appears to be filled up in German's handwriting. Copies of all these proceedings were afterwards served upon the respondent.

A solicitor was not, nor was his clerk, partner, or agent, under any disability at common law which disqualified either of them from swearing any one to an affidavit in a cause in which the former was the solicitor on the record. A clear rule or settled practice creating such disqualification in the case before me must be shewn to entitle the applicant to succeed.