

RECENT ENGLISH PRACTICE CASES.

Proudfoot, J.]

[Oct. 10.

DAYER V. ROBERTSON.

Time for appealing—O. F. A. Rule 427 (c).

Judgment on an application for security for costs was delivered on the 29th Sept., 1881. The order was issued on the 1st Oct. following.

The plaintiff appealed on Monday, October 10th, and the appeal came up.

Watson, for defendant (respondent), objected to the appeal being heard, on the ground that the terms of rule 427 (c) requiring the motion to be made within eight days from the making of the decision complained of (no further time having been obtained).

McPhillips, *contra*.

PROUDFOOT, J., dismissed the appeal without costs, without prejudice to plaintiff's right to make an application under Rule 462.

REPORTS.

RECENT ENGLISH PRACTICE CASES.

(Collected and prepared from the various Reports by
A. H. F. LEPROV, ESQ.)

HARMON V. PARK.

Imp. Jud. Act, 1873. s. 19—*Ont. Jud. Act*. s. 13, 14, 15.

Municipal election petition—Court of Appeal.

An appeal lies to the Court of Appeal from an order of the Common Pleas Division upon an interlocutory matter arising out of a municipal election petition.

[C. of A., Dec. 15, 1880—19 W. R. 750. C. P. D.]

This was a case of a petition against the election of one Park as Councillor of one of the wards in the borough of Sunderland. The petitioner, a rival candidate, made the Mayor respondent with Park.

* It is the purpose of the compiler of the above collection to give to the readers of this Journal a complete series of all the English practice cases which illustrate the present practice of our Superior Courts, reported subsequently to the annotated editions of the Ontario Judicature Act, that is to say since June, 1881.

STEPHEN, J., at Chambers, made an order to dismiss the Mayor from the petition, on the ground that, not being a returning officer, he was improperly joined. The order was reversed by the C. P. Div., and the Mayor thereupon appealed.

Counsel for the petitioner objected that the Court had no jurisdiction to hear the appeal, for that by the Imp. Corrupt Practices (Municipal elections) Act, 1872, s. 15, Subs. 4 and 7, (cf. R. S. Ont., c. 174., sec. 199), the decision of the Superior Court is made final.

Counsel for respondent urged that these sections do not apply to questions of procedure or interlocutory matters, and referred to rule 64 of the General Rules made under the Act.

LORD SELBORNE, C., after adverting to the fact that the Judicature Act was passed after the Municipal Act of 1872 and transfers to the High Court all jurisdiction vested in the Common Pleas, including that vested under any special act, (cf. Ont. Jud. Act, Sec. 9., Subs. 2), went on to observe:—

"This matter was brought before a Judge at Chambers, not sitting as an election Judge or as a Judge of the C. P. Div.; this was done under rule 44, drawn up under the Municipal Elections Act, 1872, by which rule all interlocutory matters arising out of proceedings under the Act may be heard and disposed of by any Judge at Chambers; and, although this is a special jurisdiction, the matters are to be dealt with by the Judge in the same manner, and therefore subject to the same rules as to appeal or otherwise as matters arising out of ordinary actions; therefore, I cannot say that such matters are excepted from the provisions of section 19 of the Judicature Act, 1873, especially as the Corrupt Practices Act expressly provides what decisions are to be final."

BAGGALLAY, L. J., concurred.

BRETT, L. J., If this were an appeal from a decision of the C. P. Div. upon a petition, it is clear we could not hear it. If it were an appeal upon any matter arising in a petition after it had been properly instituted, or upon any matters which could only have been brought before an election Judge, as such I should have doubted. But the question is whether the petition is properly instituted, and thus may be heard by any Judge of the High Court under the order referred to, and as the decision of the Judge