

[Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

[Elec. Court.]

acts would not incapacitate him from serving in Parliament for the said electoral district, nor render the said election and return of the respondent null and void.

3. The respondent objects to the fourth paragraph of the said petition, on the ground that even if the fact were as stated, such fact is not sufficient to render the said votes null and void, or to entitle the petitioner to have the same struck off the poll.

4. The respondent objects to the fifth paragraph of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to entitle the petitioner to have such votes struck off the poll, or in any event would not prevent such persons voting at the said election.

5. The respondent objects to the seventh paragraph of the said petition, on the ground that even if the fact were as stated, such facts are not sufficient to render the election or return of the respondent null and void, or to entitle the petitioner to be declared duly elected and returned. [This objection was abandoned].

6. The respondent objects to the latter part of the eighth paragraph of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to render the election or return of the respondent null and void, or to entitle the petitioner to have the said votes declared null and void.

7. The respondent objects to the tenth paragraph of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to render the election or return of the respondent null and void, or to entitle the petitioner to be declared duly elected and returned.

8. The respondent objects to the twelfth paragraph of the said petition, on the ground that even if the facts were as stated, such facts are not sufficient to render the election or return of the respondent null and void, or to entitle the petitioner to be declared duly elected and returned."

A summons being taken out to set aside the preliminary objections,

The Attorney General, (*Bethune* with him), for the respondent, supported them.

*Osler*, for the petitioner, *contra*.

RICHARDS, C.J., delivered the judgment of the Court.

Section 41 of the British North America Act, 1867, enacts that, until the Parliament of Canada otherwise provides, all laws in force in the several Provinces of the Union, relative (amongst other matters) to the follow-

ing: The qualifications and disqualifications of persons to be elected or to sit or vote as members of the House of Assembly, or Legislative Assembly in the several Provinces, the voters at elections of such members, the oaths to be taken by voters, the returning officers and their duties, the proceedings at elections, etc., shall respectively apply to elections of members to serve in the House of Commons for the same several provinces. Then, by a proviso, special provision is made that in Algoma, in addition to persons qualified by the law of the Province of Canada to vote, every male British subject aged 21 years or upwards, being a householder, shall have a vote.

Under Imperial Statutes 3 & 4 Vict., cap. 35, sec. 28, it was provided that "No person shall be capable of being elected a member of the Legislative Assembly of the Province of Canada who shall not be legally or equitably seized as of freehold for his own use and benefit of lands or tenements held in free and common soccage, or seized or possessed for his own use and benefit of lands or tenements held in fief or in *roture*, within the said Province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, charges, mortgages, and incumbrances charged upon and due and payable out of or affecting the same; and every candidate, at such election, before he shall be capable of being elected, shall, if required by any other candidate, or by any elector, or by the returning officer, make the following declaration":

Sec. 36, Con. Stat. of Canada, cap. 6, recites that under the 28th section of the Union Act every candidate shall, if required, make the following declaration:

"I, A B, do declare and testify that I am duly seized at law or in equity as of freehold, for my own use and benefit, of lands or tenements held in free and common soccage (or duly seized or possessed for my own use and benefit of lands or tenements held in *fief* or in *roture* as the case may be), in the Province of Canada, of the value of five hundred pounds of sterling money of Great Britain, over and above all rents, mortgages, charges and incumbrances charged upon or due and payable out of or affecting the same, and that I have not collusively or colourably obtained a title to or become possessed of the said lands and tenements, or any part thereof, for the purpose of qualifying or enabling me to be returned a member of the Legislative Assembly of the Province of Canada."

The section then proceeds to enact that