

with your department during the present year, and we were advised, as we understood, that the unsuccessful party should pay the stenographer's per diem allowance and expenses, and that the charge for copying evidence would be defrayed by the Government out of the grant for legislation, and that the registrar of the court, on receiving the tariff allowance of 10 cents per folio should settle with the stenographer for copying the evidence, or if payment for this had been previously made out of the petitioner's deposit that the registrar should refund the amount received by him therefor.

Acting on this advice we caused an application to be made to Mr. H. H. Robertson to refund the sum of \$751.10 received by him as above, and when he paid no attention to this request, counsel for the petitioner and respondent made an application to Justices Ferguson and Robertson, the trial judges, for a direction that Mr. H. H. Robertson should bring the above mentioned sum into court. Then application was made on Monday, November 8th, but their Lordships positively refused to hear it, or even to allow it to be discussed.

We ought to mention that on the 19th of December, 1891, a number of the judges of the High Court of Justice for Ontario assumed to make a rule for payment of the stenographer's charges out of the petitioner's deposit. This rule appears to be contrary to the statute, but if it means that the judges pay the stenographer out of the deposit for copying the evidence, it must mean that they pay him for as many copies as they need, and especially for the copy which the judges have to forward to the Speaker of the House, and that the amount so drawn from the deposit should be subsequently made good by the amount paid by the Government for such copy. Considering the manner in which copies of evidence are prepared, and that in practice four or five copies cost no more than one copy, it is little short of an outrage that the judges should pay the stenographer \$796.10 from moneys in court for two copies of evidence for their own use, and expect the department to pay as much more for the third copy required by the statute.

We submit that the respondent and the petitioner have been treated unjustly and illegally by the judges and the registrar, and as the latter are accountable only to Parliament, we beg to lay the facts of the case before you, and we venture to ask that the moneys improperly taken should be made good by the Government from the parliamentary grant for legislation, or from such other moneys as may be voted by Parliament for the purpose.

We have the honour to be, sir,

Your obedient servants,

(Sgd.) MACBETH & MACPHERSON.

When the Department of Justice received this communication they immediately wrote to Mr. Robertson setting forth the facts of the case as presented in the communication from Macbeth & Macpherson, and Mr. Robertson answered Mr. Newcombe in this way :

Hamilton, November 24th, 1897.

To the Deputy Minister of Justice,  
Ottawa.

Re London Election Petition.

Sir,—I had the honour on the 20th instant to acknowledge the receipt of your favour of the 18th instant.

Mr. CALVERT.

You are correctly informed as to the payments to me, as registrar, at the above trial, of \$751.10 for one copy of the notes of evidence annexed by me to the report of the court to the Speaker, being at the rate of 10 cents per 100 words, payable under the Order in Council of the 22nd of December, 1875, but you have been misinformed in the representation that the court stenographer was paid for the same copy out of the petitioner's deposit, or for the copy in respect of which I, as registrar, received payment. The court stenographer has, in addition to his expenses and daily attendance, been paid for one copy only out of the deposit, at the rate of 10 cents per 100 words, which was required to file of record under rule 51 of the general rules made by the judges under the Controverted Elections Act (for which the Order in Council does not provide), and not for making three copies as has been represented to you.

I do not think it is necessary for me to read all the letter sent me by Mr. Robertson.

Sir CHARLES HIBBERT TUPPER.  
You had better read it all, in justice to him, as you are making a charge against him.

Mr. CALVERT—

Section 41 of the Controverted Elections Act provides that :

"The judge may, in his discretion, employ a shorthand writer to take down the oral evidence given by witnesses, at the trial of the petition, and the expense of employing such shorthand writers shall pay costs in the case."—27 Vic., chap. 10, sec. 51.

In furtherance of this provision, on the 19th of December, 1891, the judges of the Supreme Court then on the rota for the trial of election petitions passed the resolution, of which the following is a copy :—

"December 19th, 1891.

"Present :

"Osler, Ferguson, Rose, Robertson, Falconbridge, MacLennan, MacMahon and Street, J.J.

"As to the reporters' charges in the Dominion election cases :

"The judges who tried the petition will certify to the accuracy of the account of the reporter. The reporter will then apply to a judge of the court in which the petition was filed and the deposit made, who will, by his fiat, or order, direct payment of the account out of the deposit.

"The reporter's charges, in the opinion of the judges present, should be taxed to the successful party as part of his costs of the cause, and should be treated as actual disbursements in respect of evidence, taxable in ordinary action between party and party, within the meaning of subsection 4 of section 52 of the Controverted Elections Act, as amended by the Act of 1891."

And although I am in no way responsible or answerable for what the judges may order, yet as I know what the practise has been since that time, I may, for your information, point out that acting on this, all the judges assigned to try election petitions have since then given fiats authorizing payment of "the expense of employing a shorthand writer" out of the deposit, and "such employment being adjudged to include actual travelling expenses, board, and the usual rate per folio allowed by the tariff, for extending the notes, never in any case, however, exceeding the rate of 10 cents per 100 words, for one complete copy of the notes."