

MARCH 17TH, 1905.

C. A.

RE NORTH YORK PROVINCIAL ELECTION.

KENNEDY v. DAVIS.

*Parliamentary Elections—Judgment Voiding Election—Dissolution of Legislature—Effect of on Pending Appeal—Costs.*

After an appeal by Davis, the member elect, from the judgment of the rota Judges at the trial voiding his election had been argued and was standing for judgment, the Legislative Assembly was dissolved.

S. B. Woods, for the petitioner, the respondent upon the appeal, contended that the effect of the dissolution was that the appeal could not be proceeded with, and the judgment of the trial Judges stood unaffected.

A. B. Aylesworth, K.C., for the appellant, contended that the appeal was but a step in the cause, and the whole proceeding dropped by force of the dissolution.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, J.J.A.), was delivered by

OSLER, J.A.—Upon the authorities it seems clear that no effective judgment could now be given upon the petition either by dismissing it or by unseating the respondent. The dissolution brought the whole of the proceedings to an end before any final judgment had been pronounced therein. Were we to allow the appeal, there is nothing which we could certify to the House to which the respondent had been elected, and the case is the same were we to dismiss it. I have considered whether the case is one in which we could or ought to give judgment *nunc pro tunc*, as of the day on which we reserved judgment, and thus pronounce a judgment in which we might dispose of the costs of the appeal; but, on reflection, this course is not open to us. To justify us in doing that, our judgment should be one in its nature effective for some purpose in relation to the relief sought by the petition. On the whole, therefore, I think we should simply make no order.