

special and peculiar damage from it, are entitled to maintain this action: 10 Am. & Eng. Ency. of Law, 2nd ed., p. 248; 21 ib. p. 442; Wood on Nuisances, 2nd ed., sec. 480; Original Hartlepool Collieries Co. v. Gibb, 5 Ch. D. 713; McDonald v. Lake Simcoe Ice Co., 26 A. R. 416, 31 S. C. R. 133; Ellis v. Clemens, 21 O. R. 227.

Appeal dismissed with costs.

OSLER, J.A.

FEBRUARY 14TH, 1903.

C.A.—CHAMBERS.

# RE ONTARIO CONTROVERTED ELECTIONS ACT.

## *Trial of Petitions—Charges and Expenses of Stenographers—Payment.*

Applications having been made for payment of the charges and expenses of stenographers attending the trials of Provincial election petitions out of the deposits of \$1,000 in each case made by the petitioners under secs. 13 and 14 of the Ontario Controverted Elections Act, the following memorandum was prepared by

OSLER, J.A.:—The Rota Judges, after full consideration, are all of opinion that such charges and expenses are not payable out of, or a charge upon, the deposit.

Section 13 expressly defines the purposes for which the security is given, viz., payment of all costs, charges, and expenses that may become payable by the petitioner: (a) to every person summoned as a witness on his behalf; or (b) to the member or candidate against whom the petition is presented. Section 102 refers to no other costs, charges, and expenses than these. The amendment introduced into it by 2 Edw. VII. ch. 12, sec. 4, does not in the least enlarge or extend its meaning, and confers upon the Judges no more power to order payment of the reporter's expenses out of the fund on deposit than those of the registrar. The reporters' attendance is not directed by the Judges, as in the case of a trial under the Dominion Act, or by the parties, but by the Attorney-General's department, and their expenses form, or, in the opinion of the Judges, should form, part of the expenses of the Court, and be defrayed just as are those of the registrar.

The practice under the Dominion Controverted Elections Act has been referred to as warranting the orders now applied for, but, besides that the reporters are not Dominion officers, the provisions of the Dominion Act on the subject are express