

Election Case.]

WEST TORONTO ELECTION (ARMSTRONG v. CROOKS.)

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the former the word "holidays" includes, among other days, Good Friday and Easter Monday.

As to striking out the allegation of treating, see *Beal v. Smith*, L. R. 4 C. P. 145; Rogers on Elections, 8th edn.; Clarke on Elections.

Crooks, Q. C. (in person), and *Bethune*, supported the summons:

Rule 166, under the Common Law Procedure Act, should apply, and both days are included: *Morell v. Wilmot*, 20 U. C. C. P. 378; *Morris v. Barrett*, 7 C. B. N. S. 139. Proceedings on a petition are similar to suits, and the rules applying to the latter should apply to them. As to the rule of computation at common law, see *Regina v. Justices of Derbyshire*, 7 Q. B. 193; *Regina v. Justices of Middlesex*, 2 Dowl. N. S. 719; *Rex v. Justices of Middlesex*, 17 L. J. M. C. 111.

The returning officer was *functus officio* from the time he made his return, and had completed a perfect act as soon as he executed the return. The Clerk in Chancery was not a public officer, and was under no obligation to show his papers or to give any information; and the public and the candidates would not be injured by the returning officer failing to send the return to the clerk, as the returning officer had to file his returns also in the Registry office, and had to send a copy to each candidate.

As to the holidays, the statute is explicit, and our Interpretation Act should not be referred to except in case of doubt or the silence of the particular act. The act excepted public holidays "set apart" by the Legislature of Ontario. No such holidays, and in fact no holidays, had been so set apart; and these words, "set apart," mean *hereafter* to be set apart. What was meant was a non-working day—a day like Sunday. Coke, 2 Inst. 264, shows that there is a distinction between the kinds of holidays; and the Legislature had this in contemplation when in the one act they declared Good Friday and Easter Monday "holidays" merely, and in the other act they excepted "public holidays." And see Tomlin's Law Dictionary, "Holiday," Lush's Prac. 352.

HAGARTY, C. J., C. P.—It is first contended, for respondent, that the twenty-one days are to be reckoned from the time of the returning officer making or mailing his return, and not from the time of its being received by the Clerk in Chancery. This depends on the meaning of section 6 of the Controverted Elections Act of 1871. The words are: "The petition shall be presented within twenty-one days after the return has been made to the Clerk of the Crown in Chancery of the member to whose election the petition relates," &c. By section 52 of the 32 Vic. cap. 21, the returning officer, as soon as he receives all the poll-books, adds them up, &c., "and shall within ten days thereafter make and transmit his return by mail to the Clerk of the Crown in Chancery; and he shall also, upon application, deliver to each of the candidates or their agents, or if no application be made, he shall within the same period transmit by mail to each candidate a duplicate of such return, which duplicate shall stand in lieu of an indenture." Section 56 provides that "the returning officer shall forward to the Clerk of the Crown in Chancery, with his return to the writ of election, the original poll-books and lists of voters used at that election, duly certified as such by him."

The respondent contends that when the returning officer makes and mails his return, his duty is completed; that the return has then been made to the Clerk in Chancery, and that the twenty-one days then begin to run. I am of opinion that the time is to be reckoned from the return, *i. e.*, the actual return into the Clerk in Chancery's office or custody, and that the mere act of the returning officer in making his return and mailing it to the Clerk is not what is meant by the words used. It appears to me that the idea is, that the return under section 52, and the original poll-books and lists of voters, are to be finally placed on record, as it were, in the Clerk's office, where all such records are to be collected and kept; and when it is said "after the return has been made to the Clerk of the Crown in Chancery," it is the same as if the words were "after the writ of election and return thereto, &c., have been returned into Chancery," which latter words I think must clearly mean, then actually being in the Clerk's custody.

The respondent argues that there is no provision for inspecting the records in the Clerk's office, and the petitioners have no legal right to search there. Be that as it may, I do not think it can affect the decision. If the returning officer making and duly mailing the return commences the twenty-one days, then if by a post-office blunder the papers went astray and did not reach the Chancery till the lapse of twenty-two days, the time would have expired, and the return had never been actually made to the Clerk in Chancery in the sense of giving that officer custody of the record. If we were speaking of a writ of execution, and either by statute or rule of court a party to a suit had the right to take some further proceeding within twenty-one days after the return of such writ made by the sheriff to the court from which the writ issued, my strong impression is that the twenty-one days would certainly count from the actual receipt of the returned writ into the court, and not from some day when a sheriff in Ottawa or Sandwich wrote his return and put it into the post office properly addressed to the clerk of the court, even though, as here, he was by law directed to make and mail such return to the court. If the writ or return here had been lost or destroyed in transmission, and never reached its address, there would of course be a remedy, and another return must be made, as best could be done, and the twenty-one days would count from the actual receipt in Chancery of the substituted return. The provision in section 56 for the simultaneous return of the original poll-book, &c., to the Clerk in Chancery, affords another reason, I think, to show that the time should count from the actual depositing of all these records in the proper department, where any objection apparent on their face could be properly examined.

I notice in the Controverted Elections Act of Canada, Con. Stat. Can. cap. 7, sec. 3, a provision that "if the day on which the return upon such election is brought into the office of the Clerk of the Crown in Chancery is a day on which Parliament is not in session, or is one of the last fourteen days of any session, then the petition shall be presented within the first fourteen days of the session of Parliament commencing and held next