

Dominion Controverted Elections Act, which gives, subject to the provisions of the Act, to the High Court the same powers, jurisdiction, and authority with reference to an election petition and the proceedings thereon as if the petition were in an ordinary cause.

Notwithstanding this provision, it has been held in England that the Court cannot amend a petition by introducing a substantially new charge after the time for presenting a petition has elapsed, as that would make it in effect a new petition and thus defeat the provisions of the Act requiring a petition to be presented within the prescribed time: Rogers on Elections, 18th ed., p. 212, and cases there cited; and the same conclusion has been reached by our Courts, though I have not been able to find any reported case on the point.

Section 87, of which there is no counterpart in the English Act, was relied on by Mr. Bicknell, but it has, in my opinion, no application. Whatever may be its scope, it clearly applies only where a petition has been presented in due time and is on the files of the Court. It formed sec. 37 of the Act 35 Vict. ch. 10, and is there found under the heading "Procedure." It is found in the Revised Statutes of 1886, at sec. 64, under the heading "General Provisions," and appears in the present revision under the heading "General."

These changes in its position have effected no change in the meaning of the section as it appeared in 37 Vict.: Farquharson v. Imperial Oil Co. (1899), 30 S. C. R. 188; and, reading it as it appears there, it is applicable only to procedure, and, in my opinion, to procedure after a petition has been duly presented.

The same reasoning which led to the decision in the Glengarry case (1888), 14 S. C. R. 453, is, I think, applicable here. There the Court held that after the expiration of the 6 months allowed for bringing a petition to trial, there was no petition in respect of which the power to extend the time could be exercised. Here there never has been a petition in Court, and therefore there is nothing in respect of which the power conferred by sec. 87 can be exercised.

The motion must be refused with costs.