

pondent's presence or if the court or judge hold it is not necessary at the trial; why should not delays run under these circumstances during such session? If a trial should be commenced and should be proceeding during a session of Parliament (there being no question raised as to the respondent's presence at it), would not "any time or delay allowed for any step or proceeding in respect of such trial" run as if the trial was going on outside the time of the session? Suppose the court or judge gave some order upon the parties, either before or during such trial, to do something within a delay which expired while the trial was proceeding, would this not be a "delay allowed for a step or proceeding in respect of such trial," and could the party so ordered come and say, there is a session of Parliament now going on, and all delays are suspended? It seems to me he might say this if we are to hold that this clause in question is entirely independent and distinct from the preceding clause under which the trial is only postponed when respondent's presence is necessary; and if such an answer could be made to an order of the court it would come to this, that while the Act allows the trial to be commenced during a session of Parliament if respondent's presence is not necessary at the trial, yet the court could not enforce its own orders during the trial, because in the delays allowed for any proceeding in respect of such trial the time occupied by the session is not to be included.

I do not think it is any hardship upon the petitioner or upon those interested on his side, that this petition should be dismissed. Sub-section 2 of section 32 allows any elector to come in after the expiration of three months from the presentation of the petition to carry it on if a day for the trial has not been fixed, and section 33 gives the court or judge jurisdiction to enlarge the time for the commencement of the trial if the requirements of justice render such enlargement necessary. The statute enacted in the public interest required petitioner to proceed with the trial within six months. If a longer delay was necessary to him in the interest of justice, he had the means at hand to obtain it. He has not done so, and from the view I

take of the law, the motion must be granted and the election petition in this matter must be dismissed with costs. \*

*O'Halloran & Duff*, for the petitioner.

*G. B. Baker, Q. C.*, for the respondent.

### CIRCUIT COURT.

PORTAGE-DU-FORT, (County of Pontiac),  
October 22, 1887.

*Before WURTELE, J.*

SMITH V. BROWNLEE.

*Animals impounded—Damages—Right of retention, M.C. 447.*

**Held:**—*That the owner of a farm, who, under the authority of article 447 of the Municipal Code, has impounded animals found straying or trespassing on his premises, has no right to retain them for the payment of damages which he pretends to have been done by such animals on previous occasions.*

**PER CURIAM.**—The defendant found the plaintiff's two horses straying on his farm, and he took and impounded them on his own premises, as he was authorized to do by article 447 of the Municipal Code. The plaintiff immediately reclaimed his horses, and offered the fine of twenty-five cents for each horse imposed by article 440; but the defendant refused to deliver them up until he was paid the sum of \$5.00, which he claimed for damages done on his farm by the horses on that and on other previous occasions.

The plaintiff contended that the horses had only been a few minutes on his neighbour's farm, and that they had done no damage whatever; but as he then wanted his horses for ploughing, he paid the \$5.00 exacted, under protest, and he now sues to recover back the amount.

The evidence adduced shows that no damage had been done on the occasion in question, but that there had been previous trespasses, when some damage had been done,

\* A similar judgment was given in the *Missisquoi* case, in which *Charles Short et al.* were petitioners and *George Claves* respondent, the only difference between the two cases being that the preliminary examination of the respondent in the *Missisquoi* case had not taken place.