

Elec. Case.] GLENGARRY ELECTION—TURNER V. NEILL—CITY BANK V. MACKAY. [C. L. Ch.

forbidden to try the petition "during any session of Parliament," "whenever it appears to the Court or judge that the respondent's presence at the trial is necessary;" and it is admitted by all parties that the respondent's presence at the trial will be necessary. That would delay the trial till probably about the middle of May. It is also forbidden to commence or proceed with the trial "during any term of the Court of which the judge trying it is a member, and at which he, by the law, is bound to sit;" and as the Easter term of the court of which I am a member will begin on the fifteenth of that month, and will continue until the third of June, and as for three weeks after that day each judge of the court will be engaged in preparing judgments in the cases which have been argued and remain *en deliberare*, there can be no time fixed for the trial of the petition at Alexandria, in the county of Glengarry, sooner than about the end of June or the beginning of July. Now the great delay which has already taken place in the trial of the petition, and which is attributable solely to the respondent, and the still greater delay which must follow if the trial be not now proceeded with at the time which has been specially appointed for it; and considering the nature of the question involved—the right to a seat in the House of Commons—are reasons which make it necessary and obligatory to go on with the trial unless there are very cogent and almost unanswerable grounds for granting the delay. Such grounds I do not think have been established in this case.

The reason for the postponement is that his Honour the Lieutenant-Governor of this province, who is a material and necessary witness in this cause, is unable during the session of the Legislative Assembly to leave the seat of Government, where it is said his presence is daily required. I have no doubt his Honour's presence at the seat of Government is of great importance, especially while the Legislative Assembly is in session; but considering the great delay which must take place if the trial be postponed, the subject which is in dispute in that trial, the short time which his Honour will be absent from the seat of Government while he is attending as a witness, and the almost paramount importance of all matters being laid aside by those who are called upon by courts of the land to aid in the administration of justice as witnesses or otherwise, which would stand in the way of their rendering obedience to the summons, I think it is better I should, fully

weighing the advantages and disadvantages which have been alluded to, leave the cause for trial at the time appointed, and not longer delay it; and I trust the injury which it is said the public service may sustain by the temporary absence of his Honour the Lieutenant-Governor for a few days, even while the House is in session, may not be so great as has been conjectured.

I shall therefore discharge the application, and direct that the costs of it shall be costs in the cause.

Summons discharged.

COMMON LAW CHAMBERS.

TURNER V. NEILL.

Examination of defendant.—Striking out false plea.

[January 25, 1876—MR. DALTON.]

In this case a summons was obtained to strike out the defendant's pleas, as proved to be false by his examination under the Administration of Justice Act.

MR. DALTON declined to strike out the plea, although he thought there could be little doubt that it was false. It involved a point which required evidence for its establishment in addition to defendant's admissions, and no matter how clear the case might be, he had not power to strike out the plea unless the defendant, in a proceeding of the Court, admitted it to be false. Costs to be costs in the cause.

CITY BANK V. MACKAY.

Service on principals.—Notice to plead.

It is not irregular, under C. L. P. Act, sec. 61, to serve, in Toronto, a country attorney; and ten days' notice is not necessary under such circumstances.

[Feb. 19, 1876—MR. DALTON.]

The defendant's attorney, who resided in Dundas, had been served with the declaration when he happened to be in Toronto. A summons was obtained to set aside the service, on the ground that the attorney's agent, and not the attorney himself, should have been served under C. L. P. Act, sec. 61, and that, supposing the service good in this particular, ten days' notice to plead should have been given instead of eight, under 34 Vict., c. 12, s. 12.

Monkman shewed cause. The C. L. P. Act, s. 84, provides that declarations and other pleadings may be served in any county. The