

*CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF TWO MOUNTAINS,*  
(NO. 2.)

1902  
\*Feb. 18.

JOSEPH A. C. ETHIER (RESPONDENT)...APPELLANT;

AND

JOSEPH LEGAULT (PETITIONER).....RESPONDENT.  
ON APPEAL FROM THE JUDGMENT OF MR. JUSTICE H. T. TASCHEREAU.

*Controverted election—Lost record—Substituted copy—Judgment on preliminary objections—Discretion of court below—Jurisdiction.*

The record in the case of a controverted election was produced in the Supreme Court of Canada on an appeal against the judgment on preliminary objections and, in re-transmission to the court below, the record was lost. Under the procedure in similar cases in the province where the petition was pending, a record was reconstructed in substitution of the lost record, and upon verification as to its correctness, the court below ordered the substituted record to be filed. Thereupon, the respondent in the court below raised preliminary objections traversing the correctness of a clause in the substituted petition which was dismissed by the judgment appealed from.

*Held*, that, as the judgment appealed from was not one upon a question raised by preliminary objections, nor a judgment upon the merits at the trial, the Supreme Court of Canada had no jurisdiction to entertain the appeal, nor to revise the discretion of the court below in ordering the substituted record to be filed.

APPEAL from the judgment of the Superior Court, District of Terrebonne, rendered at Ste. Scholastique, Province of Quebec, by Mr. Justice H. T. Taschereau granting a motion by the respondent to dismiss objections filed by the appellant, entitled "Preliminary objections to the record as re-made under the authority of the court."

\*PRESENT:—Sir Henry Strong C. J. and Sedgewick, Girouard, Davies and Mills JJ.

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A former appeal in this case to the Supreme Court of Canada from a judgment dismissing preliminary objections was (on 29th October, 1901) dismissed (1), and, on the re-transmission of the original record from the office of the Supreme Court at Ottawa to the Prothonotary of the Superior Court at Ste. Scholastique, it was lost. Under the practice prevailing in the Superior Court in similar cases, a record was reconstructed from draft copies in the possession of the petitioner, verified as being substantially correct and was, (on 28th December, 1901), ordered by the court below to be filed in substitution of the lost record. This was done accordingly, and the respondent, within thirty days of the filing of the substituted record, took exception to the substituted petition, by way of preliminary objections to the effect following, viz.:—1. That a new petition could not be filed against the appellant more than a year after his election; 2. That the new petition was never verified with the original one or any certified copy thereof and could not be accepted by the court as the true original petition; 3. That the petition substituted of record was not a true copy of the original and contained allegations of facts which were not in the original petition, more specially certain words in one of the clauses; and, 4. That the new petition had not been sworn to by the respondent nor signed by him, and that he also neglected to establish his status as a petitioner.

On summary motion on behalf of the petitioner the objections so taken by the respondent were dismissed by the judgment from which the respondent now appeals.

*Belcourt K.C.* for the appellant.

*Beaudin K.C.* appeared for the respondent but was not called upon for any argument.

(1) 31 Can. S. C. R. 437.

The judgment of the court was delivered by :

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THE CHIEF JUSTICE (oral).—This appeal must be dismissed.

The Chief  
Justice.

The judgment appealed from is neither one upon a question raised by preliminary objections, nor is it a judgment pronounced upon the merits at the trial of the election petition. When the objections were raised in the present case, the time for filing preliminary objections was long gone by, for we can make no distinction between the petition which was originally filed and that which was before the court, reconstructed in substitution of the original petition which had been lost and thus restored under the methods of procedure in the province in similar cases. This was a matter left entirely to the discretion of the Superior Court and there has been no appeal provided in such a case by the statute.

Secondly, but speaking extra-judicially, even if the case had been heard and adjudicated upon the appeal must nevertheless have been dismissed. The affidavit of Mr. Beaudin, verifying the correctness of the substituted petition, merely states that, with reference to the clause written in at the foot of the thirteenth printed clause of the form of petition used, the words as they were so written into the original petition have been substantially reproduced in the substituted copy, so that, if it were open to us to revise the order of the learned judge authorising the filing of the substituted petition, we should entirely agree with his decision.

The appeal is dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant : *J. L. Perron.*

Solicitor for the respondent : *S. Beaudin.*