

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT
OF HALIFAX.

1906
*Oct. 4.

FREDERICK W. HETHERING- } APPELLANT;
TON (PETITIONER)..... }

AND

WILLIAM ROCHE (RESPONDENT)....RESPONDENT.

FREDERICK W. HETHERING- } APPELLANT;
TON (PETITIONER)..... }

AND

MICHAEL CARNEY (RESPONDENT)...RESPONDENT.

WILLIAM ROCHE (PETITIONER).....APPELLANT;

AND

ROBERT L. BORDEN (RESPOND- } RESPONDENT.
ENT)..... }

MICHAEL CARNEY (PETITIONER)....APPELLANT;

AND

J. C. O'MULLIN (RESPONDENT).....RESPONDENT.

Controverted election—Commencement of trial—Extension of time.

An order fixing the time for the trial of an election petition at a date beyond the time prescribed under the Act operates as an enlargement of the time. *St. James Election Case* (33 Can. S. C.R. 137); *Beauharnots Election Case* (32 Can. S.C.R. 111), followed.

APPEALS from the judgments of Mr. Justice Townshend and Mr. Justice Russell, sitting for the trial of

*PRESENT:—Girouard, Davies, Idington, Maclellan and Duff JJ.

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petitions against the return of members for the County of Halifax, and counter-petitions against the defeated candidates dismissing said petitions for want of jurisdiction to try them.

Various enlargements of the time for commencing the trials of the petitions in these cases were made, the last extending it to July 14th, 1906. In May, 1906, the Supreme Court of Nova Scotia, by order fixed July 17th as the date of trials and on July 6th, Mr. Justice Russell made an order enlarging the time for 30 days.

On July 17th the Election Court met and heard argument on the question of their jurisdiction to proceed, the statutory time having expired on the 14th, and then held that they had no jurisdiction, as the court could not fix a date beyond the 14th for the trial, and the order fixing the date was therefore invalid. Also that the enlargement by Mr. Justice Russell could not be invoked, as it was only asked for on the ground that the order of the court was void, and not as an appeal to the judge's discretion and the requirements of justice did not render an enlargement necessary. The petitions were therefore dismissed and the petitioners appealed to the Supreme Court of Canada.

Lovett for the appellants.

Lafleur K.C. and *Drysdale K.C.* for the respondents.

The judgment of the court was delivered by

GIROUARD J.—We need not hear counsel in reply. We believe that it is not necessary to give lengthy reasons why we arrive at this conclusion. We all agree that this case is governed by the *St. James Elec-*

tion Case (1) and the *Beauharnois Election Case* (2), and previous decisions, more especially in view of the order made by Mr. Justice Russell extending the time for thirty days, which embraces the day on which the election trial was begun.

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We hold that there was a valid extension of time and that the trial was commenced within such extension. The appeal is, therefore, allowed with costs and in the other two cases without costs, and the trial is directed to be proceeded with.

NOTE BY REPORTERS.—In the case of *Hetherington v. Carney*, it was admitted that the facts and questions of law were the same as in *Hetherington v. Roche*, and the same judgment was pronounced.

In the two other cases the appeals were allowed without costs.

Appeals by Hetherington allowed with costs; appeals by Roche and Carney allowed without costs.

Solicitor for the appellant: *John A. MacKinnon*.

Solicitor for the respondent: *G. Fred. Pearson*.

(1) 33 Can. S.C.R. 137.

(2) 32 Can. S.C.R. 111.