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*Oct. 27, 29.
*Nov. 17.

CONTROVERTED ELECTIONS FOR THE ELECTORAL DISTRICTS OF QUEEN'S COUNTY AND PRINCE COUNTY, P. E. I.

LOUIS H. DAVIES AND WILLIAM WELSH (RESPONDENTS)..... } APPELLANTS;

AND

WILLIAM HENNESSY (PETITIONER)...RESPONDENT.

STANISLAUS F. PERRY AND JOHN YEO (RESPONDENTS)..... ..... } APPELLANTS;

AND

SAMUEL J. CAMERON (PETITIONER)..RESPONDENT.

ON APPEAL FROM ORDERS OF CHIEF JUSTICE SULLIVAN OF THE SUPREME COURT OF PRINCE EDWARD ISLAND.

Election petition—Preliminary objections—Personal service at Ottawa—Security—Receipt—R.S.C. ch. 9, ss. 8 & 9, sub-ss. e and g, and s. 10.

In Prince Edward Island two members are returned for the Electoral District of Queen's County. With an election petition against the return of the two sitting members the petitioner deposited the sum of $2,000 with the deputy prothonotary of the court, and in the notice of presentation of petition and deposit of security he stated that he had given security to the amount of one thousand dollars for each respondent "in all two thousand dollars" duly deposited with the prothonotary as required by statute. The receipt was signed by W. A. Weeks, the deputy prothonotary appointed by the judges, and acknowledged the receipt of $2,000, without stating that $1,000 was deposited as security for each respondent. The petition was served personally on the respondents at Ottawa.

Held, 1st. That personal service of an election petition at Ottawa with-

*PRESENT:—Sir W. J. Ritchie C.J., and Strong, Fournier, Taschereau, Gwynne and Patterson JJ.

out an order of the court is a good service under section 10 of the Controverted Elections Act.

2nd. That there being at the time of the presentation of the petition security to the amount of $1,000 for the costs for each respondent the security given was sufficient. Sec. 8 and sec. 9, sub-sec. "*e*" ch. 9 R. S. C.

3rd. That the payment of the money to the deputy prothonotary of the court at Charlottetown was a valid payment. Sec. 9 sub-sec. "*g*" ch. 9 R. S. C.

APPEALS from orders of Chief Justice Sullivan of the Supreme Court of Prince Edward Island, made on the twentieth day of July, A.D. 1891, dismissing certain preliminary objections filed by the appellants to the election petitions against them filed by the respondent.

[It was agreed that the appeal in the case of Prince County should follow the result of the decision in the Queen's County case.]

In the Queen's County case the petition was filed by the respondent, Hennessy, and copies of petition, notice of the presentation of same and of the security were served personally upon the appellants in the city of Ottawa, Ontario.

No order for service outside of the jurisdiction of the Supreme Court of P. E. Island was obtained in the matter of the petition.

The appellants filed preliminary objections to the petition and service which practically resolved themselves into two.

First, that the service of the petition, &c., at Ottawa, and out of the jurisdiction of the Supreme Court of P. E. Island, was illegal and void, having been made without any statutory authority or rule of the court, or special order of the judge permitting it.

Secondly, that no security was deposited pursuant to the statute, as each defendant was entitled to have $1,000 deposited as security for the costs that may be

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incurred by him, whereas, as a fact, the security was given by depositing $2,000 in one lump sum for the costs of the petition generally; and further, that the money constituting the deposit was not made with the proper officer, it being paid to a deputy of the Prothonotary, who gave the receipt, this deputy not being one of the officers named in sub-section *e* of section 9 of the Controverted Elections Act, as defined by sub-section *i* of section 2 of the said act, and the amending act of 1887, ch. 7 section 1.

Peters, Attorney-General for Prince Edward Island, for appellants.

With respect to the illegality of the service out of the jurisdiction, I submit as a general proposition that the power to serve process out of the jurisdiction of the court is not inherent in the court, and that apart from statute the court has no power to exercise jurisdiction with respect to any person beyond its limits.

In support of this proposition I rely on the following authorities:—*Re Maugham* (1); *Ex parte Bernard* (2); *In re Busfield* (3); *In re Anglo African SS. Co.* (4); sec. 10 ch. 9 R. S. C.; Day's Common Law Procedure Act (5); Annual Practice, 1891 (6).

Next, as to the objection of the illegality of deposit. The deputy prothonotary is not the officer to receive deposit or give receipt. Sub-section (*e*) of section 9 says the security shall be given by a deposit of money with the "Clerk of the Court."

The interpretation clause sub-sec. *i*, as amended by 50-51 Vic. cap. 7, 1887, defines what officers are included in the expression "Clerk of the Court."

The prothonotary is one of those officers. The deputy prothonotary is not.

(1) 22 W. R. 748.
(2) 6 Ir. Ch. R. 133.
(3) 32 Ch. D. 123.
(4) 32 Ch. D. 348.
(5) P. 46.
(6) P. 247.

The court has the right by rule to prescribe that the deputy shall be one, but it has not done so. Parliament has by statute chosen to name certain officers as the only ones authorized to do an act under the Controverted Elections Act. It gave power to the judges to name others. It did not give power to the local legislature, and the latter body cannot therefore, either directly or indirectly, by saying that the deputy shall have all the powers of the principal, confer on the deputy the specific powers the Dominion statute gives the prothonotary, and the prothonotary only.

Further, the deposit has not been legally made. It is, according to the receipt, a single deposit of $2,000 in the matter of the petition against both respondents.

There should have been separate deposits of $1,000 each as security for each respondent.

The 8th section of Controverted Elections Act allowing two or more candidates to be made respondents, and permitting their cases, for the sake of convenience, to be tried at the same time, explicitly enacts "as regards the security, and for all other purposes, such petition should be deemed to be a separate petition against each respondent." If, therefore, as regards security, the petition is a separate one against each respondent it follows that each respondent is entitled to have the security of $1,000 deposited as required by the 9th section "for the payment of all costs, charges and expenses that may become payable by the petitioner to member whose election is complained of." *Pease* v. *Norwood* (1).

This is a statutory right of the respondent and a statutory duty of the petitioner. It won't do to say that lumping the two sums together will do as well or be as good security. As a matter of fact it may not. One member may have his election voided and the

(1) L. R. 4 C. P. 247.

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other may retain his seat. Both elections may be voided, and on the other hand, after prolonged litigation, the petition may be dismissed as against both. One may appeal, the other may not. The first out of the fight might get an order for the payment of his costs, and so also might each and all of the witnesses summoned by petitioner, and eat the whole $2,000 up and nothing would be left for the other respondent. The two members elected may defend in common, and have a common interest, or they may be politically and otherwise opposed, and fight the petition on different grounds. Davies and Jenkins or Davies and Brecken were instances of one case; Davies and Welsh of the other. The court cannot take judicial notice whether they are united or opposed. Each member has his rights guaranteed by statute, and one of these rights is, that if his seat is attacked the person attacking shall deposit $1,000 "as security for all costs, charges and expenses that may become payable by the petitioner" (*inter alia*) to the member (not members) whose seat is complained of. It seems therefore that the deposit is illegal, and not in compliance with the act.

A. A. Morson for respondent: As to the payment of the $2,000. The main object of the statute was to have $1,000 deposited to answer any order that might be made as to costs or otherwise, as regards proceedings against each respondent petitioned against. In this case there are two respondents to the one petition, and the sum of $2,000 was deposited when such petition was presented; the receipt states that it was deposited as security in the matter of that petition, and the notice of the presentation of the petition, served on the appellants, with the copy of the deposit receipt, specifies particularly that $2,000 was deposited as security in the matter of the petition, viz., $1,000 for each respondent to the petition, and the respondent

submits that the deposit is to be appropriated to the objects designated by the depositor and not by the officer receiving it, and that in this case the notice was such an appropriation.

On the other objection that the money was not paid to the proper officer, the learned counsel referred to and relied on 50–51 Vic. ch. 7, sec. 1, and R.S C. ch. 1, sec. 7 sub-sec. 40, and as to the service—R.S.C. ch. 9, secs. 10–11 ; 36 Vic. c. 22, ss. 20–21. See also *Yardley* v. *Jones* (1) ; *Ablett* v. *Basham* (2) ; *Blackwell* v. *England* (3) ; *Walcot* v. *Botfield* (4) ; *The King* v. *Sargent* (5) ; *The Shelburne Election Case* (6).

Sir W. J. RITCHIE C J.—The preliminary objections in this case resolve themselves into the payment of the money to the deputy prothonotary, the insufficiency of the receipt and the insufficiency of the service. I think the payment to the deputy prothonotary was sufficient ; the money is now in court subject to the order and disposition of the court under the terms of the statute.

As to the insufficiency of the receipt, the receipt is as follows :

PROTHONOTARY'S RECEIPT FOR DEPOSIT.

DOMINION OF CANADA,
Province of Prince Edward Island,
In the Supreme Court.

THE DOMINION CONTROVERTED ELECTIONS ACT.

Election of two members for the House of Commons, for the Electoral District of Queen's County, in province of Prince Edward Island, holden on the fifth day of March, A.D. 1891.

I hereby certify that I have this day received from Walter A. O. Morson, agent for William Hennessy, of Charlottetown, in said county, the sum of two thousand dollars in legal tender money of the Dominion of Canada as security in the matter of the petition of the said William Hennessy, this day filed with me against the return of Louis

(1) 4 Dowl. P.C. 45.
(2) 5 E. & B. 1019.
(3) 8 E. & B. 541.
(4) Kay 534.
(5) 5 T. R. 466.
(6) 14 Can. S. C. R. 256.

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Henry Davies and William Welsh at said election as members for the House of Commons for said electoral district.

Dated this 27th day of April, A.D. 1891.

(Signed) WILLIAM A. WEEKS,
Deputy Prothonotary.

The notice served with the copy of this petition and with the copy of this receipt was as follows:

Notice of presentation of petition and deposit of security.

Take notice that on Monday, the twenty-seventh day of April, A.D. 1891, the petition of William Hennessy, of Charlottetown, in Queen's County, was duly presented and filed with the prothonotary of the Supreme Court of the province against the return at said election of Louis Henry Davies and William Welsh as members for the House of Commons, in the electoral district of Queen's County, Prince Edward Island, for the reasons therein set forth. And further take notice that at the time of presenting said petition, security to the amount of one thousand dollars for each respondent, in all, two thousand dollars in legal tender money of the Dominion of Canada, was duly deposited with the said prothonotary as required by statute, and further take notice that the name and address of the agent of the petitioner is as follows:—

WALTER A. O. MORSON,
BARRISTER.

Office of MACLEOD, MORSON & MACQUARRIE,
Brown's Block, Charlottetown, P. E. Island.

Dated this 27th day of April, A.D. 1891.

(Signed) WILLIAM HENNESSY.

To Louis Henry Davies and William Welsh.

Reading the petition, the copy of the receipt and this notice together, I think there was a full and substantial compliance with the statute, and there was at the time of the presentation of the petition security to the amount of $1,000 for the payment of all costs, &c., for each respondent. And as to the service, Mr. Davies swears:

AFFIDAVIT OF LOUIS H. DAVIES.

I, Louis H. Davies, of Charlottetown, Prince Edward Island, one of the members elected for the House of Commons for the electoral district of Queen's County, in said province, make oath and say:

I. That on Friday the first day of May last past, A.D. 1891, I was

served in the City of Ottawa, Province of Ontario, in said Dominion, with the annexed copies (1) of the election petition of William Hennessy of Charlottetown, in Queen's County (2) ; the notice of the presentation of the said petition and of the deposit of the security ; and (3) the certificate of the receipt of the money deposited as security purporting to be signed by William A. Weeks, deputy prothonotary.

Now what does the statute say ? The petition must be served on the respondent within a certain time. Here we have a personal service on the respondent at the city of Ottawa, from whence the writ issued for holding this election, and the place to which the writ was returned, and at the place where the Parliament was being held, the right to sit in which Parliament was by the petition brought in question. We cannot ignore such a service and say that there was in fact no service at all on the respondent which he is called on to answer.

I am of opinion that these appeals should be dismissed.

STRONG J.—The only two objections which were much insisted upon by the Attorney General were the insufficiency of the deposit and the invalidity of the service. As to the deposit I quite agree with what has been said by the Chief Justice.

The officers mentioned in the statute are the clerk of the peace and the prothonotary. In Prince Edward Island, there is a deputy prothonotary not appointed by the principal prothonotary but by the judges. The money was paid to a person who was an officer of the court, who has authority to receive money ordered to be paid into court, and it is now subject to the control of the court. The objection is a purely technical one. and I see no reason why we should not say that the deputy prothonotary was a proper officer to receive it just as much as if he had been appointed by the principal prothonotary This objection therefore fails.

I also think, after consideration, although at the argu-

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ment I took a narrower view, that when the legislature speaks of the service of an election petition within the jurisdiction it means to authorise service anywhere within the jurisdiction of the Dominion Parliament. These petitions are not personal actions, but more properly actions *in rem*. Their object is to oust a party from office and therefore these proceedings although *sui generis* are still in the nature of proceedings *in rem*, and I cannot think after the view taken by this court and by the Privy Council in the case of *Valin* v. *Langlois* (1), that such a narrow construction should be given to these words.

In the 10th section it is provided that:

> The notice of the presentation of a petition under this act and of the security, accompanied with a copy of the petition shall, within five days after the day on which the petition was presented, or within the prescribed time, &c., &c., be served on the respondent or respondents.

I do not think that parliament ever intended that a member while attending to his duty in parliament should be considered as exempt from service. Without some extraordinary reason to limit the service to certain parts of Canada would be to split up the act, and I therefore agree with the Chief Justice in saying that we should read the words of the section as meaning personal service within any place in Canada, and not within the limited jurisdiction of the court or judge appointed to hear the petition. It would be going back to a practice much more narrow and technical than that which prevailed when election petitions were tried by committees of the House; and the transfer of the jurisdiction to the courts was certainly intended rather to amplify than to abridge the former remedy. The appeals must be dismissed.

FOURNIER J.—La validité de l'élection des appelants

(1) 3 Can. S. C. R. 1; 5 App. Cas. 115.

a été attaquée par une pétition, dans laquelle tous deux sont assignés comme défendeurs. Ce procédé est permis par la section 8 de l'acte des élections contestées déclarant que plusieurs candidats pourront subir leurs procès en même temps sur une seule pétition,—mais que pour le cautionnement et toutes les autres fins de l'acte, la pétition sera considérée comme une pétition distincte contre chacun des défendeurs.

La section 9 déclare qu'au temps de la présentation de la pétition, un cautionnement sera donné par le pétitionnaire, pour le paiement des frais qui seront payables au membre dont l'élection est contestée ; que ce cautionnement consistera dans le dépôt de mille piastres entre les mains du greffier de la cour qui en donnera un reçu qui sera une preuve suffisante de ce dépôt. Ce reçu est en la forme donnée ci-haut (1), et est signé William A. Weeks, Deputy Prothonotary, pour la somme de deux mille piastres en argent de la Puissance, (*in legal tender of the Dominion of Canada,*) comme cautionnement sur la pétition de William Hennessy, produite contre l'élection de Louis Henry Davies et William Welsh, comme membres de la Chambre des Communes pour le district électoral de Queen.

Les appelants font objection à ce dépôt d'une somme de $2,000 en bloc, et prétendent qu'il aurait dû être fait en une somme de $1,000, pour chacun d'eux pour leurs frais respectifs.

L'avis de présentation de la pétition, du dépôt, du cautionnement que l'on trouve au dossier ne peut laisser de doute sur la destination de ce dépôt ; il n'est pas fait pour l'usage commun des défendeurs, il est au contraire fait spécialement de la somme de $1,000 pour chacun des défendeurs en argent légal de la Puissance en la manière suivante :—

And, further, take notice that at the time of presenting said petition

(1) See p. 31.

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security to the amount of one thousand dollars for each respondent, in all two thousand dollars, in legal tender money of the Dominion of Canada, was duly deposited with the said prothonotary as required by statute, and further, take notice that the name and address of the agent of the petitioner is as follows.

Cet avis prouve clairement que le dépôt a été fait, suivant le statut, de mille piastres pour chacun des défendeurs, en tout $2,000, ce qui était suffisant pour le nombre des défendeurs. Ces derniers reconnaissent avoir reçu cet avis.

Une autre objection c'est que le dépôt n'a pas été fait entre les mains de l'officier indiqué par le statut, que le député protonotaire n'est pas le "Clerk of the Court" mentionné dans le statut, et qu'un dépôt entre ses mains n'est pas fait suivant la loi. Cette prétention n'est pas fondée. L'acte d'amendement à l'acte des élections contestées, ch. 7, 50-51 Vict., dit que l'expression "the Clerk of the Court," signifie entre autres choses "le protonotaire" et l'acte d'interprétation, Stat. Rev. Can., ch. 1, sec. 7, s.s. 40, déclare entre autres choses que :—

Words directing or empowering any other public officer or functionary to do any act or thing, or otherwise applying to him by his name of office, include his successors in such office and his or their lawful deputy.

Par les 4e et 5e objections les défendeurs se plaignent que l'avis de présentation de la pétition et de dépôt du cautionnement avec copie de la pétition ne leur ont pas été signifiés légalement, que la signification leur en a été faite à Ottawa, en dehors des limites de la juridiction de la Cour. Je ne crois pas qu'il soit nécessaire pour la décision de cette question d'entrer dans l'examen de la manière d'après laquelle la signification de ces documents aurait pu être faite d'après la loi de l'Ile du Prince-Edouard ou d'après les règles de pratique faite par la Cour Suprême de l'Ile à ce sujet en vertu de l'acte des élections contestées.

Pour que cette signification soit légale il suffit qu'elle ait été faite en la manière indiquée par l'acte d'élection. C'est sans doute pour obvier aux difficultés qui pourraient être causées par les différents modes de signification adoptés dans chaque province, que l'acte d'élections contestées en indique un qui peut être adopté sans difficulté dans toute la Puissance. C'est celui dont parle la section 10 de l'acte des élections contestées,— le service personnel ou au domicile. Il est dit dans la dernière partie de cette section que si le service ne peut être fait soit personnellement, soit à domicile, qu'alors la cour ou un juge peut ordonner qu'il soit fait d'une autre manière, à la demande du pétitionnaire. Cette disposition considère comme suffisante, la signification personnelle ou à domicile et ne décrète le recours à une autre manière que lorsque le service n'a pu être fait de l'une de ces deux manières. C'est donc un fait décrété que le service personnel ou à domicile sera légal, sans recours à l'autorité du juge ni à aucune autre formalité. Cette disposition devant avoir son effet dans toute la Puissance, il s'en suit que la signification personnelle faite aux défendeurs, en la cité d'Ottawa, est parfaitement légale.

Les autres objections concernant la juridiction et la forme de la pétition ne sont pas fondées non plus. Tous les faits qui, d'après le statut, doivent être allégués l'ont été et la pétition est dans la forme voulue. Toutes les objections sont renvoyées.

TASCHEREAU, GWYNNE and PATTERSON JJ., were also of opinion that the appeals should be dismissed.

Appeals dismissed with costs.

Solicitors for appellants: *Davies & Haszard.*

Solicitor for respondents: *W. A. O. Morson.*