CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF HALIFAX.

1907

*Nov. 27.

WILLIAM ROCHE (RESPONDENT).....APPELLANT;

AND

FREDERIC W. HETHERINGTON (PETITIONER)..... } RESPONDENT.

MICHEAL CARNEY (RESPONDENT)....APPELLANT;

AND

FREDERIC W. HETHERINGTON (PETITIONER)..... } RESPONDENT.

ON APPEAL FROM THE DECISION OF TOWNSHEND AND RUSSELL JJ.

Controverted election—Appeal—Fixing time for trial.

No appeal lies to the Supreme Court of Canada from an order of the judges assigned to try an election petition fixing the date for such trial.

APPEALS from orders of the judges assigned to try the petitions against the return of members of the House of Commons for the County of Halifax fixing the date for the trial of such petitions.

In 1906 the time for commencing the trial of the petitions in these cases was extended to the 14th of July, and an order was made by the Supreme Court of Nova Scotia fixing the 17th of July as the date of

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

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trial. When it came before the trial judges they held that such order was void as fixing the time beyond the extended period which was a date at which the trial could not be entered upon. An appeal was taken to the Supreme Court of Canada from this decision and it was there reversed and the judges were directed to proceed with the trial(1). On application of the petitioners an order was made by the trial judges fixing September 3rd, 1907, as the time for commencing the trial from which order an appeal was taken to the Supreme Court of Canada by the respondents to the petition, who claimed that by the effect of the former order of the latter court the trial had been commenced on July 17th, 1906, and as it must proceed from day to day there was no machinery for continuing, also that the petitioners had been guilty of laches in delaying the proceedings so long.

On the appeals being called Mr. Justice Girouard, who presided over the court in the absence of the Chief Justice made an announcement as follows:

"I observe that these appeals have been placed at the foot of the Maritime List and understand from the registrar that it was done by consent of counsel. Since I have had the honour of a seat on this bench, election cases have invariably been placed by the registrar at the top of the list. In such cases the convenience of counsel alone is not to be considered. The electorate is also interested and this very case shews that counsel for the parties, even for the petitioner, care very little for the public. Speaking for the court, and with the sanction of the Chief Justice, I wish it understood that in the future, as in the

(1) 37 Can. S.C.R. 601.

past, no election appeal is to be placed anywhere except at the top of the whole list unless otherwise specially ordered by the court or a judge."

W. B. A. Ritchie K.C. for the respondents moved to quash the appeals.

Mellish K.C. for the appellants *contra.*

The judgment of the court was delivered by

DAVIES J.—These appeals are from interlocutory orders of the trial judges setting down the cases for trial on a particular day. There had been a previous appeal to this court in each of the cases from a judgment or decision of the trial judges, after the hearing had been begun in each case, to the effect that their jurisdiction had come to an end and that they had no power to proceed further with the trials. The result practically was to dismiss the petition. This court held that the jurisdiction of the trial judges had not come to an end and remitted the petitions back with instructions that the trials should be resumed at the stage where they had been stopped.

It is from the orders made setting down a day for so resuming the trials of these election petitions that these appeals are taken.

It seems to me perfectly plain that no such appeals lie.

The only appeals provided for to this court by the statute outside of those on preliminary objections, are appeals

from the judgment or decision on any question of law or of fact of the judges who have tried the petition.

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Davies J.

In the cases before us no such state of facts as required by the statute exists. The petition has not been tried. The former order of this court that the trial should be resumed and gone on with has not yet been complied with. I do not think it is open to serious argument that every decision given by the trial judges either before or during the progress of the trial is at once and before the end of the trial appealable. Such a conclusion would defeat the object of the statute absolutely, and make election trials a farce.

We are all of the opinion that we have no jurisdiction to hear these appeals and that they should both be quashed with costs.

I fully concur in the remarks of Girouard J. as to the necessity for the strict observance of the rule of this court that all appeals in election cases should be placed at the head of the docket or list of appeals and heard first and before other appeals, unless the court on satisfactory cause shewn, makes an order changing the place on the docket of such appeals.

The public is interested in the speedy hearing and disposition of these appeals and this court will not assent to any delay in such hearing unless for good cause shewn.

Appeals quashed with costs.

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

Solicitor for the respondents: *John A. McKinnon.*