

1891

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF GLENGARRY.

*Oct. 30.

*Nov. 2.

*Nov. 17.

ROBERT R. McLENNAN (RESPONDENT).. APPELLANT ;

AND

ANGUS CHISHOLM (PETITIONER).....RESPONDENT
ON APPEAL FROM THE JUDGMENT OF MR. JUSTICE
MACLENNAN.

Election petition—Re-service of—Order granting extension of time—Preliminary objections—R.S.C. ch. 9, sec. 10—Description of petitioner.

On the 15th of April, 1891, the petitioner omitted to serve on the appellant with the election petition in this case a copy of the deposit receipt, but on the 20th of April applied to a judge to extend the time for service that he might cure the omission. An order extending the time, subsequently affirmed on appeal by the Court of Appeal for Ontario, was made and the petition was re-served accordingly with all the other papers prescribed by the statute. Before the order extending the time had been drawn up the respondent had filed preliminary objections, and by leave contained in the order he filed further preliminary objections after the re-service. The new list of objections included those made in the first instance, and also an objection to the power or jurisdiction the Court of Appeal, or a judge thereof, to extend the time for service of the petition beyond the five days prescribed by the act.

Held, that the order was a perfectly valid and good order, and that the re-service made thereunder was a proper and regular service. R. S. C. ch. 9, sec. 10.

The petition in this case simply stated that it was the petition of Angus Chisholm, of the Township of Lochiel, in the County of Glengarry, without describing his occupation, and it was shown by affidavit that there are two or three other persons of that name on the voters' list for that township.

Held, affirming the judgment of the court below, that the petition should not be dismissed for the want of a more particular description of the petitioner.

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

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.*

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APPEAL from the decision of the Honourable Mr. Justice Maclellan, dismissing the preliminary objections to the election petition in this case.

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The petition was presented on the 14th day of April, 1891, against the return of the appellant as a member of the House of Commons for the Electoral District of Glengarry at the elections held on the 5th day of March, 1891, and prayed that it be determined and adjudged that the appellant was not duly elected or returned and that the election and return should be declared void in consequence of corrupt practices having been committed by the appellant and his agents, and that the appellant should be disqualified by reason of having personally committed corrupt practices.

On the 15th April, 1891, the appellant was served with a copy of the said petition, and also with the notice of the presentation of a petition and the notice of agency.

On the 20th day of April, 1891, there having been no copy of the deposit receipt served, the petitioner obtained an order from Mr. Justice Maclellan, bearing date the 20th day of April, 1891, extending the time for service of the petition.

On the 20th day of April, 1891, being the last day for that purpose as provided by section 12 of said act, the appellant filed and presented to the court certain preliminary objections and grounds of insufficiency to the said petition and against any further proceeding thereon. These objections were dismissed.

On the 23rd of April another copy of the petition and the notice of the presentation of the petition and of the security and the deposit receipt were served on the appellant.

On the 27th day of April, 1891, an application was made by the present appellant to Hon. Mr. Justice

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Maclennan, on notice, to set aside the order granted by him on the 20th day of April, 1891.

On the 27th day of April, 1891, the application came on for argument before Mr. Justice Maclennan, and on the 28th day of April, 1891, an order was made by the learned judge dismissing the motion with costs.

The present appellants appealed from the decision of Mr. Justice Maclennan on the said motion to the Court of Appeal for Ontario. Such appeal came on for argument on the 19th of May, 1891, when the said court dismissed the said appeal with costs.

Thereupon, and after the determination of the appeal, the present appellant filed preliminary objections to the said petition which preliminary objections are the second set served, and are as follows :

1. "The address, occupation or calling of the petitioner are not set out in the said petition, nor is any other information or means furnished therein or thereby of identifying him, whereby the respondent is prevented from discovering whether there are or are not any objections to the status of the said petitioner, or to his being a person who had a right to vote at the election to which the said petitioner relates."

2. "There is no evidence, nor is it alleged in said petition or otherwise, that the said petitioner had a right to vote at the election to which said petitioner relates."

3. "There is no evidence, nor is it alleged in said petition or otherwise, that the petition was signed by the petitioner as required by said act."

4. "If the said petition was presented no notice of the presentation thereof, and of the security required to be given by the petitioner, was, within the time limited by the said acts and the rules of this honourable court, nor at any other time, served upon the respondent, in consequence whereof there is no jurisdiction in this

honourable court, or any judge thereof, to proceed further in the said matter of the said petition.”

5. “No copy of any deposit receipt for such security, if given by the registrar of the Court of Appeal for Ontario, was served upon the respondent within the time limited by the said acts and rules of this honourable court, or at any other time, in consequence whereof there is no jurisdiction in this honourable court, or any judge thereof, to proceed further in the matter of the said petition.”

6. “If the petition in this matter has been filed no security for the payment of all costs, charges and expenses that may become payable by the petitioner has been given by or on behalf of the petitioner, and no deposit of the sum of \$1,000 in gold coin or Dominion notes has been made by or on behalf of the petitioner with the Registrar of the Court of Appeal for Ontario, as required by said acts.”

7. “There was no power or jurisdiction in the Court of Appeal or judge thereof to extend the time for service of the petition beyond the five days prescribed by the act, as there was no difficulty in effecting service of said petition within the said five days, and there were no special circumstances of difficulty in effecting service to justify the order made by the Honourable Mr. Justice MacLennan on the 20th day of April, 1891.”

Mr. Justice MacLennan on the 26th September, 1891, disallowed the preliminary objections.

Dalton McCarthy Q.C. for appellant.

S. H. Blake Q.C. for respondent.

STRONG J.—I think the points relied on by the appellant's counsel are even more technical and trivial than in the preceding case. The service in this case was, no doubt, a perfect and regular service. The petitioner

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admitted that he had not originally served a copy of the deposit receipt, and having applied for an extension of time for service that he might cure the omission his application was granted, and he subsequently re-served the copy of the petition and other necessary documents. Now, the other party contends that he is debarred from doing what this perfectly valid order allowed him to do. It is sufficient to state the objection to show that it cannot prevail.

The Chief Justice and the others members of the court concurred in dismissing the appeal.

Appeal dismissed with costs.

Solicitors for appellant: *Tiffony & MacDonnell.*

Solicitors for respondent: *McDonald, McIntosh & McCrimmon.*
