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*May 11.

*Nov. 21.

CONTROVERTED ELECTION FOR THE ELECTORAL DIVISION OF NICOLET.

NAPOLEON HAMEL (PETITIONER).....APPELLANT;

AND

JOSEPH HECTOR LEDUC (RESPONDENT)..... } RESPONDENT.

ON APPEAL FROM THE DECISION OF MR. JUSTICE BOURGEOIS AT THREE RIVERS.

Election petition—Preliminary objections—Filing of petition—Construction of statute—54 & 55 V. c. 20, s. 5 (D.)—R. S. C. c. 1, s. 7, s.s. 27—Interpretation of words and terms—Legal holiday.

When the time limited for presenting a petition against the return of a member of the House of Commons of Canada expires or falls upon a holiday, such petition may be effectively filed upon the day next following which is not a holiday.

APPEAL from the judgment of Mr Justice Bourgeois, one of the judges of the Superior Court for Lower Canada, in the District of Three Rivers, maintaining certain preliminary objections to the petition against the return of the respondent as a member of the House of Commons of Canada for the Electoral Division of Nicolet, at the election held on the 21st of December, 1897.

A statement of the circumstances of the case and of the matters at issue on this appeal will be found in the judgment reported.

Ferguson Q.C. and *Martel Q.C.* for the appellant.

Fitzpatrick Q.C., *Solicitor-General*, and *Choquette Q.C.* for the respondent.

The judgment of the court was delivered by:

*PRESENT:—Sir Henry Strong C.J., and Taschereau, Sedgewick, King and Girouard JJ.

THE CHIEF JUSTICE.—This is an appeal from a judgment of the Superior Court of Three Rivers dismissing the petition of the appellant against the return of the respondent as a member of the House of Commons for the electoral district of Nicolet.

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The polling at the election in question took place on the 21st of December, 1897. The appellant's petition was filed on Monday the 31st of January, 1898. Certain preliminary objections were filed by the respondent, all of which are now immaterial save that on which the judgment appealed from proceeded, namely, that the petition was not filed in due time as required by the Dominion Controverted Elections Act as amended by the Act 54 & 55 Vict. ch. 20.

Section nine, sub-section (b) of the original Act as amended by section five of the latter Act now reads as follows:

The petition must be presented not later than thirty days after the day fixed for the nomination, in case the candidate or candidates have been declared elected on that day, and in other cases forty days after the holding of the poll, * * *

The remainder of the section has no application here.

By the "Interpretation Act," Revised Statutes of Canada, chapter 1, section 7, sub-section 27, it is enacted as follows:

If the time limited by any Act for any proceeding, or the doing of anything under its provisions, expires or falls upon a holiday, the time so limited shall be extended to, and such thing may be done on the day next following which is not a holiday.

By the twenty-sixth section of the same Act it is declared that the expression "holiday" includes Sunday.

The second section of the same Act provides as follows:

This Act, and every provision thereof, shall extend and apply to every Act of the Parliament of Canada, now or hereafter passed except in so far as the provision is inconsistent with the intent and object

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of such Act, or the interpretation which such provision would give to any word, expression or clause is inconsistent with the context, and except in so far as any provision thereof is in any such Act declared not applicable thereto; and the omission in any Act of a declaration that the "Interpretation Act" applies thereto, shall not be construed to prevent it so applying, although such express declaration is inserted in some other Act or Acts of the same session.

At the election now in question the holding of the poll having taken place on the twenty-first of December, 1897, the fortieth day thereafter was the thirtieth of January, 1898, which was a Sunday. The petition in the case, as I have said, was not presented until Monday the thirty-first of January, 1898. The learned judge of the Superior Court has held that this presentment of the petition was too late.

We are all of opinion that the petition was presented in due time.

The provision embodied in sub-section 27 of the seventh section of the "Interpretation Act" must be read as if it had been expressly re-enacted in the "Controverted Elections Act" for we think the case cannot be brought within any of the exceptions contained in section two, and there is no declaration that the last mentioned Act shall not apply in the computation of time under the Controverted Elections Act or the Act amending it.

There is nothing to be found in the context requiring us to refuse to apply the prescribed interpretation to the clause in question, nor can it be said that it is inconsistent with the intent and object of the "Controverted Elections Act." If we were not to apply sub-section twenty-seven in the case before us we should be establishing a construction which would render this clause of the "Interpretation Act" useless and inapplicable in every case in which an Act of Parliament required some Act to be done within a prescribed number of days, and we should thus reduce this useful rule of statutory interpretation to a nullity.

The appeal must be allowed with costs, and judgment must be entered in the court below overruling the preliminary objection in question with costs.*

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Appeal allowed with costs.

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Solicitor for the appellant: *P. N. Martel.*

Solicitor for the respondent: *F. X. Choquette.*



*The Judicial Committee of the Privy Council refused leave to appeal from the judgment in this case.