

1942

\* July 9.  
\* July 16.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF  
STANSTEAD

ALBERT SIDELEAU (PETITIONER) . . . . . APPELLANT;

AND

ROBERT GREIG DAVIDSON (DE- }  
FENDANT) . . . . . } RESPONDENT.

*Practice and procedure—Election law—Judgment of Supreme Court of Canada annulling election of member for House of Commons—Report made to Speaker by Registrar—Motion subsequently made for stay of proceedings—Ruling also as to costs—Dominion Controverted Elections Act, R.S.C., 1927, c. 50, ss. 68, 69, 70, 75.*

When a judgment of this Court, holding that the election of the respondent to the House of Commons should be annulled, has been duly reported to the Speaker by the Registrar pursuant to section 68 of the Dominion Controverted Elections Act, a motion made subsequently by the appellant for a stay of proceedings pending an application to the Judicial Committee of the Privy Council for special leave to appeal from that judgment should be dismissed.

The Act clearly does not contemplate any proceedings in court after the report to the Speaker is made, except in the matter of costs (s. 75). This Court has then no power to delay or forbid any action which the House of Commons or Parliament may see fit to take following such report.

When the substantive portion of the judgment has passed beyond the control of this Court, a stay of proceedings in respect of costs would not be justified, especially in view of the fact that the Judicial Committee has consistently refused leave to appeal in respect of judgments in contested election cases.

MOTION by the appellant for a stay of proceedings pending an application to the Judicial Committee of the Privy Council for special leave to appeal from a judgment of this Court annulling the election of the respondent to the House of Commons (reported *supra* p. 306).

*Auguste Lemieux K.C.* for motion.

*Jean Genest K.C.* and *J. C. Samson* for the respondent.

\* PRESENT:—Hudson J. in chambers.

HUDSON J.—This is a motion for a stay of proceedings pending an application to the Judicial Committee of the Privy Council for special leave to appeal from a judgment of this Court.

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On the 26th of June, judgment was given by this Court reversing a judgment of the trial judges and holding that the election of the respondent to the House of Commons for Canada should be annulled (1). It also awarded to the petitioners the costs of their petition throughout.

On the 30th of June, 1942, the Registrar of this Court certified to the Speaker of the House of Commons the judgment and decision of this Court pursuant to the provisions of sec. 68 of the *Dominion Controverted Elections Act*, R.S.C., Cap. 50.

On the said 30th of June the Speaker of the House of Commons communicated to the House of Commons the report and certificate of this Court, as required by the provisions of sec. 70 of the *Dominion Controverted Elections Act*.

On the 3rd of July notice of this motion was served on the Speaker of the House of Commons and on the agent for the appellant's solicitors.

The judgment of this Court awarding the petitioners the costs of the petition and appeal has not yet been transmitted by the Registrar of this Court to the trial court for enforcement.

On the hearing of this motion before me counsel for the appellant and respondent appeared, but the Speaker of the House of Commons was not represented. Objection was made to the stay of proceedings on two grounds: first, that the Court was *functus*, inasmuch as its report had been made to the House of Commons pursuant to sec. 68 of the Act; and secondly, that in any event the matter was not one in which leave to appeal would be granted by the Judicial Committee of the Privy Council. On the first ground the provisions of the Act are as follows:

68. The Registrar shall certify to the Speaker the judgment and decision of the Supreme Court of Canada, confirming, changing or annulling any decision, report or finding of the trial judges upon the several questions of law as well as of fact upon which the appeal was made, and therein shall certify as to the matters and things as to which the

(1) [1942] S.C.R. 206.

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trial judges would have been required to report to the Speaker, whether they are confirmed, annulled or changed, or left unaffected by such decision of the Supreme Court of Canada; and such decision shall be final.

69. The Speaker shall, at the earliest practicable moment after the receives the certificate and report or reports, if any, of the trial judges or the Supreme Court of Canada, give the necessary directions, and adopt all the proceedings necessary for confirming or altering the return, or, except as hereinafter mentioned, for the issuing of a writ for a new election, for which purpose the Speaker may address his warrant, under his hand and seal, to the Chief Electoral Officer, or for otherwise carrying the determination into execution, as circumstances require.

70. The Speaker shall, without delay, communicate to the House of Commons the determination, report and certificate of the trial judges or of the Supreme Court of Canada and his own proceedings thereon; and, when the trial judges or the Supreme Court of Canada make a special report, the House of Commons may make such order in respect of such special report as they think proper.

The statute clearly does not contemplate any proceedings in court after the report to the Speaker is made except in the matter of costs, which is provided for by sec. 75 of the Act. The jurisdiction to hear election petitions is special and does not extend beyond what is specified in the statute.

This Court has no power to delay or forbid any action which the House of Commons or Parliament may see fit to take as a consequence of the judgment as reported to the Speaker.

When the substantive portion of the judgment has passed beyond the control of the Court a stay of proceedings in respect of costs would not be justified, especially in view of the fact that the Judicial Committee has consistently refused leave to appeal in respect of judgments in contested election cases. As early as 1876, in the case of *Théberge v. Landry* (1), an application was made to the Judicial Committee for leave to appeal from a decision of the Superior Court of the province of Quebec in respect of a contested provincial election and there, while not deciding directly that the prerogative right of appeal had been taken away, the Judicial Committee yet held that in matters of this kind leave to appeal should not be granted. At p. 108 it was stated:

In the opinion of their Lordships, advertng to these considerations, the 90th section, which says that the judgment shall not be susceptible of appeal, is an enactment which indicates clearly the intention of the

Legislature under this Act,—an Act which is assented to on the part of the Crown, and to which the Crown, therefore, is a party,—to create this tribunal for the purpose of trying election petitions in a manner which should make its decision final to all purposes, and should not annex to it the incident of its judgment being reviewed by the Crown under its prerogative.

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This decision was followed in the case of *Kennedy v. Purcell* (1). It was also cited with approval in the case of *Moses v. Parker* (2). The question has come up several times in Canadian courts in respect of provincial elections. An early case is that of *Re Gimli (No. 3)* (3). In this case an application was made to the Manitoba Court of Appeal for leave to appeal to the Judicial Committee in respect of a contested provincial election decision. The Manitoba court, after careful consideration and reviewing all of the relevant authorities, unanimously refused leave. Again in this Court, in the case of *Cross v. Carstairs* (4), this Court refused to hear an appeal from a provincial court in respect of a provincial election petition.

For these reasons I would dismiss the motion with costs.

*Motion dismissed with costs.*

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