CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF RICHELIEU.

1913

*Oct. 14.
*Nov. 10.

FRANÇOIS X. A. PARADIS (PETITIONER) ..... APPELLANT;

AND

PIERRE J. A. CARDIN (RESPONDENT..... RESPONDENT.

ON APPEAL FROM THE DECISION OF BRUNEAU J.

Election law—Preliminary objections—Rules of practice—Repeal—Inconsistency with statutory provision—Judgment on preliminary objections—Final determination of stage of cause—Objections—Irregularity by returning officer—Appeal—Jurisdiction—Issues in question—Construction of statute—(D.) 37 *V. c.* 10, *ss.* 44, 45—*R.S.C.*, 1906, *c.* 7, *ss.* 16, 19, 20, 85—*R.S.C.*, 1906, *c.* 1, *s.* 20.

Under the provisions of the "Dominion Controverted Elections Act, 1874," the judges of the Superior Court for the Province of Quebec made general rules and orders for the regulation of the practice and procedure with respect to election petitions whereby the returning officer was required to publish notice of such petitions once in the Quebec Official *Gazette* and twice in English and French newspapers published or circulating in the electoral division affected by the controversy. By section 16 of chapter 7, R.S.C., 1906, provision is made for the publishing of a similar notice by the returning officer once in a newspaper published in the electoral district.

Held, that the rule of practice is inconsistent with the provision as to the notice required by section 16, chapter 7, R.S.C., 1906, and consequently, has ceased to be in force.

Per Duff and Brodeur JJ.—Even if such rule were still in force,

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.

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failure on the part of the returning officer to comply with it would not be sufficient ground for the dismissal of the election petition.

Per Davies, Duff, and Anglin JJ.—Under the provisions of the "Dominion Controverted Elections Act," R.S.C., 1906, ch. 7, secs. 19 and 20, preliminary objections are required to be decided in a summary manner; consequently, a decision by an election court judge on any of the preliminary objections disposes of all the issues raised in that stage of the proceedings. Where an election petition is disposed of by the judge upon one of several objections, without consideration of the others, the Supreme Court of Canada has jurisdiction to hear and determine questions arising upon all the preliminary objections in issue before the election court judge; its jurisdiction is not confined to the objection upon which the judgment appealed from was solely based. Idington J. *contra*. Fitzpatrick C.J. and Brodeur J. expressing no opinion.

APPEAL from the judgment of Mr. Justice Bruneau, in the Controverted Elections Court, in the matter of the controverted election of a member for the Electoral District of Richelieu in the House of Commons of Canada, rendered on the 2nd of June, 1913, maintaining one of several preliminary objections to the election petition and, on that ground alone, dismissing the petition with costs.

The circumstances of the case are stated in the judgments now reported.

The judgment of Mr. Justice Bruneau, from which the appeal was taken, is as follows:—

"La cour, après avoir entendu les témoins et les avocats des parties, sur les objections préliminaires, lors de leur instruction et audition, aux sept moyens suivants:—

"1. L'affidavit qui accompagne la pétition d'élection est irrégulier, parce que le protonotaire de cette cour qui l'a reçu ne l'a pas signé du nom que lui donne sa commission;

"2. Les conclusions de la pétition sont également

irrégulières, parce qu'elles demandent des choses étrangères au véritable litige entre les parties, et notamment, la déqualification de personnes qui ne sont pas en cause;

"3. Les allégations, de la pétition ne sont pas conformes à la 3ième Règle de Pratique des elections contestées qui exige que chaque paragraphe ne contienne qu'un seul chef d'accusation;

"4. Les dites allégations sont également trop vagues;

"5. La publication de la dite pétition est illégale et nulle, parce qu'elle est incomplète et insuffisante;

"6. Le pétitionnaire n'a pas établi sa qualité d'électeur, parce qu'il n'a pas prouvé qu'il était sujet britannique;

"7. La Preuve en incombait au pétitionnaire qui allègue spécialement qu'il était habile à voter à la dite élection;

Vu l'article 85 du ch. 7 des Statuts Revisés du Canada, 1906;

"Considérant que la 7ième Règle de Pratique de cette cour relative aux elections contestées, decrète:—

"The returning officer shall publish any petition sent to him under section 8 of the Act, and also any other document sent to him for publication, in accordance with the provisions of the Act, or of these rules, by delivering a copy of such petition or document to the registrar of the registry office in such electoral division, and if there be more than one such registry office in such electoral division, then to each such registrar, and if there be no such registry office within such electoral division, to the municipal secretary-treasurer having his office in the said electoral division, nearest to the place where the said election was

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held. And if there be no such registrar or secretary-treasurer in the said electoral division then to some other public officer in the said electoral division, to be selected by the said returning officer, and by causing without delay a succinct notice of such publication to be given in one number of the Quebec Official *Gazette*, and also in two numbers of a newspaper in the English language and two numbers of a newspaper in the French language, published in or circulating in such electoral division, if such papers there be, and it shall be the duty of each, such registrar, secretary-treasurer or other public officer, to allow all persons to take communication of any such petition or other document without exacting any fee therefor, and any such document sent to the sheriff for publication shall be published in the same manner.

"Considérant que la dite Règle de Pratique n'a jamais été révoquée par les juges de cette cour, qu'elle n'est pas incompatible avec l'article 16 du ch. 7 des Statuts Révisés du Canada, dont elle n'est qu'un complément ou ajouté; qu'elle est absolument conforme à l'économie des règles établies par le Code de Procédure de cette province, exigeant la publication dans deux journaux publiés l'un en français l'autre en anglais, afin que ces avis parviennent plus sûrement aux deux éléments qui constituent la population;

"Considérant que la dite Règle de Pratique a été constamment suivie dans cette province et spécialement dans ce district judiciaire, ce que le pétitionnaire lui-même reconnaît par les qu'il a donnés;

"Considérant que pour se conformer en effet aux exigences des dispositions de la règle précité, l'officier rapporteur à la dite élection, Elie Aurez Laperrière, a donné deux avis en français dans le journal 'Le

Sorelois' et deux en anglais dans le journal *The Sorel News;*

"Considérant que le dit officier rapporteur admet qu'il n'a donné aucun avis dans la Gazette Officielle de Québec;

"Considérant que le défendeur prétend, de plus, que la publication *The Sorel News,* n'est pas et ne peut être le journal (newspaper) contemplé par la susdite Règle de Pratique;

"Considérant que la preuve, à ce sujet, démontre que ce prétendu journal n'est tiré qu'à 20 ou 25 exemplaires, qu'il n'a aucun abonné, aucune circulation dans le public, vu qu'il n'est pas mis en vente, que les matières en sont toujours les mêmes, ce qui appert à la face même des exemplaires produits, qu'on y change que la date de sa publication et les annonçes judiciaires pour lesquelles il est spécialement imprimé, qu'il n'est donné qu'aux annonceurs qui en font la demande;

"Considérant qu'une semblable publication n'est pas et ne peut être, au point de vue juridique, aux termes mêmes de la Règle de Pratique ci-dessus citée, le journal (newspaper) dans lequel l'avis en question doit être publiée puisqu'il lui manque le caractère essentiel de circulation dans le public; (Stroud Jud. Dict.: vo. 'Newspaper,' art. 2, par. 26; ch. 146, S.R.C., 1906, Code Criminel);

"Considérant qu'une semblable publication ne peut non plus être considérée, pour le même motif, comme un journal purement judiciaire (legal newspaper);

"Considérant que la publication de la dite pétition d'élection n'a pas été, en conséquence, donnée, ni dans un journal anglais, ni dans la Gazette Officielle de Québec;

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"Considérant que la Règle de Pratique impose à l'officier rapporteur, dans la publication de la dite pétition d'élection un devoir impératif et non discrétionnaire, dans l'intérêt de tous les électeurs, et que le défaut d'accomplissement des formalités qu'elle prescrit à cet égard, entraine nécessairement la nullité de la dite pétition d'élection;

"Considérant que le cinquième moyen ci-dessus invoqué par le défendeur, comme objection préliminaire, étant bien fondé, tant en fait qu'en droit, et suffisant par lui-même pour faire rejeter la pétition d'élection en cette cause, il est dès lors inutile pour cette cour, d'examiner et de décider les autres prétentions du dit défendeur;

"Considérant, néanmoins, que le défendeur a tenté vainement de prouveur que le dépot de $1,000 fait avec la présente pétition, avait été obtenu illégalement, à raison de promesses et de faveurs faites à ceux qui en ont souscrit le montant, par le procureur du pétitionnaire, et qu'il y a lieu de lui faire supporter entièrement le coût de l'enquête inutile à ce sujet;

"Pour ces motifs:—Renvoie la dite pétition d'élection avec frais et dépens contre le pétitionnaire, moins ceux de la taxe et du coût des dépositions des témoins suivants du défendeur et qui demeurent entièrement à sa charge, savoir: * * * .

E. A. D. Morgan for the appellant.
Belcourt K.C. for the respondent.

THE CHIEF JUSTICE.—I am of opinion that this appeal must be allowed. Notice of the petition was inserted in a newspaper and published in the electoral district in accordance with the provisions of section

16 of the "Controverted Elections Act" (R.S.C., 1906, ch. 7), and that is all that was required. The rule of practice relied upon by the judge below, competently made, it is quite true, by the judges of the Superior Court in Quebec under the "Controverted Elections Act, 1874," is no longer in force.

DAVIES J.—To the election petition in this case several preliminary objections were presented. The learned judge who heard these objections sustained the one complaining that the petition had not been published as required by the "Rules of Court" of the Province of Quebec and dismissed the election petition on that ground. These "Rules of Court" had been passed some years ago under the then existing "Controverted Elections Act" and before the Act was remodelled and passed in its present form. It was admitted that the publication complained of complied with the statutory requirements of the existing Act, but that they did not comply with the requirements of the "Rules of Court" which it was contended were not inconsistent with the statute, and were consequently still in force. I think, however, they clearly are so inconsistent and that to the extent that they require other and further publications than those required by the statute they are necessarily repealed by it.

It was further contended, however, that even if the the ground of want of proper publication, upon which the judge dismissed the petition, was bad, still the judgment should be sustained on the ground that the petitioner had failed to prove his status and qualification as a petitioner. I think, however, there is nothing in this objection and that the proper inference

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from all the evidence is that the petitioner was a qualified voter entitled to present the petition.

As to the question of our jurisdiction on appeal, in my judgment, under the case as it came before us, all or any of the preliminary objections not abandoned in the court below and which counsel thought applicable could have been relied upon by the respondent to sustain the judgment dismissing the petition. He was not confined to the reasons given by the judge or to the particular objection which the judge sustained as fatal to the petition.

The appeal to this court is from the judgment dismissing the petition, and, while that judgment is based upon one of the preliminary objections only, we have jurisdiction to deal with all of the preliminary objections which were heard before the judge and which are in the record before us, and to finally dispose of them. Any construction of the Act limiting the jurisdiction of this court on appeal to deal with the particular objection allowed or disallowed by the judge below would, I think, be at variance with its true construction and the result in many cases would be to delay the trial of the petition unduly, and possibly to defeat it altogether. The duty of the judge who hears the preliminary objections is either to allow them, or some or one of them, and dismiss the petition; or to dismiss or disallow the objections so that the petition shall go to trial.

The section of the Act defining his duties is as follows: —

Sec. 19. Within five days after the service of the petition and the accompanying notice, the respondent may present in writing any preliminary objections or grounds of insufficiency which he has to urge against the petition or the petitioner, or against any further proceeding thereon, and shall, in such case, at the same time, file a

copy thereof for the petitioner, and the court shall hear the parties upon such objections and grounds, and shall decide the same in a summary manner.

In the case before us there were a great many preliminary objections and the issue joined upon them was that they were one and all bad in fact and in law.

That was the issue which came before the trial judge and which he had to dispose of. At the hearing below the defendant confined himself to seven of these objections and the judge rested his judgment upon one of them only, and dismissed the petition.

The section giving an appeal to this court from a decision on preliminary objections, reads as follows:—

An appeal by any party to an election petition who is dissatisfied with the decision shall lie to the Supreme Court of Canada from,—

(*a*) the judgment, rule, order or decision on any preliminary objection to an election petition, the allowance of which objection has been final and conclusive and has put an end to such petition, or which objection, if it had been allowed, would have been final and conclusive and have put an end to such petition: Provided that, unless it is otherwise ordered, an appeal in the last-mentioned case shall not operate as a stay of proceedings nor shall it delay the trial of the petition.

A technical reading of this section might seem to justify a conclusion limiting our jurisdiction on the appeal to the objections the judge below has expressly allowed or disallowed, as the case may be. But a careful reading of the Act satisfies me that such a limited construction of our powers is not correct and that where there are several preliminary objections to an election petition and the judgment of the judge who hears the issue joined on the objections allows one of the objections and dismisses the petition without reference to the others, this court, on appeal, has jurisdiction finally to dispose of all of the objections and of the issue as it came before the judge and give the

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judgment which under the facts and the law the judge should have given. Whether and in what cases such jurisdiction should be exercised depends, of course, upon the evidence in the record or case in appeal.

In this case I think the judge was wrong in dismissing the petition for want of due publication, and I also think that Mr. Belcourt failed to maintain the only other objection he thought it worth while to argue, namely, the want of qualification of the petitioner.

But, suppose we should have been of the opinion that the petitioner's status to file the petition had been disproved — should we have refused to confirm the judgment dismissing the petition because the judge below did not refer to that want of status as one of his reasons for his judgment ? With great respect I think such a refusal would do violence to the spirit and intention of Parliament as expressed in the statute under review.

The appeal should be allowed with costs and the preliminary objections disallowed and dismissed.

IDINGTON J.—The requirements of section 16 of the "Controverted Elections Act," which is as follows:—

> 16. On presentation of the petition the clerk of the court shall send a copy thereof by mail to the returning officer of the electoral district to which the petition relates, and such returning officer shall forthwith publish a notice thereof once in a newspaper published in the district or, if there is no newspaper published in the district, then in a newspaper published in an adjoining district,

having been complied with, I do not think failure to comply with rules framed under the earlier Act which are inconsistent therewith can support the dismissal of the petition herein.

The learned trial judge having determined only

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this one of the several preliminary objections presented, we have no power to consider any other.

Section 64 of the Act, which is as follows, so far as bearing upon our jurisdiction:—

64. An appeal by any party to an election petition who is dissatisfied with the decision shall lie to the Supreme Court of Canada from—

(*a*) the *judgment, rule, order or decision on any preliminary objection* to an election petition, the allowance of which objection has been final and conclusive and has put an end to such petition, or which objection, if it had been allowed, would have been final and conclusive and have put an end to such petition;

seems conclusive on this point.

The appeal should be allowed, but I doubt if costs should be given of what relates to so much of the case as is thus undecided, though appellant should be given the general costs of his appeal relative to the point in which he succeeds.

DUFF J.—This is an appeal from a judgment of the Honourable Mr. Justice Bruneau (2nd June, 1913) dismissing the petition given on the hearing on preliminary objections. The judgment was based upon the ground that the petition was not published in accordance with the seventh rule of practice made by the judges of the Superior Court of the Province of Quebec under the "Controverted Elections Act, 1874" (37 Vict. ch. 10, sec. 44), requiring notice of the petition to be published once in the Quebec Official *Gazette* and also in

two numbers of a newspaper in the English language and two numbers of a newspaper in the French language published in or circulating in the electoral division

to which the petition relates. It is not disputed that section 16 of the "Controverted Elections Act" (R.S.C.

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1906, ch. 7), was complied with, that is to say, that a notice of the petition appeared in a newspaper published in the district in accordance with the provisions of that section; and the two points for consideration under this head are: 1st, was the rule in question which, it is not disputed, was competently enacted, displaced by the legislation now embodied in the section just referred to? And 2ndly, if, notwithstanding the language of section 16, the rule is still in force, whether non-compliance with that rule by the returning officer is a sufficient ground for dismissing the petition? As to the first question the material statutory provisions are section 20 of the "Interpretation Act" (R.S.C. 1906, ch. 1), and sections 85 and 86 of the "Controverted Elections Act." For convenience of reference I quote these enactments in full:—

20. Whenever any Act or enactment is repealed, and other provisions are substituted by way of amendment, revision or consolidation—

(*a*) all regulations, orders, ordinances, rules and by-laws made under the repealed Act or enactment shall continue good and valid, in so far as they are not inconsistent with the substituted Act or enactment, until they are annulled and others made in their stead; and,

(*b*) any reference in any unrepealed Act, or in any rule, order or regulation made thereunder to such repealed Act or enactment, shall, as regards any subsequent transaction, matter or thing, be held and construed to be a reference to the provisions of the substituted Act or enactment relating to the same subject-matter as such repealed Act or enactment; and, if there is no provision in the substituted Act or enactment relating to the same subject-matter, the repealed Act or enactment shall stand good, and be read and construed as unrepealed in so far, and in so far only, as is necessary to support, maintain or give effect to such unrepealed Act, or such rule, order or regulation made thereunder.

Chapter 7, section 85:—

85. The judges of the court or a majority of them, may from time to time, make, revoke and alter general rules and orders, for the

effectual execution of this Act and of the intention and object thereof, and the regulation of the practice and procedure and costs with respect to election petitions and the trial thereof, and the certifying and reporting thereon.

2. Any general rules and orders made as aforesaid, and not inconsistent with this Act, shall be deemed to be within the powers conferred by this Act, and shall, while unrevoked, be of the same force as if they were herein enacted; and shall be laid before the House of Commons within three weeks after they are made, if Parliament is then sitting, and if Parliament is not then sitting, within three weeks after the beginning of the next session of Parliament.

86. Until rules of court have been made by the judges of the court in any province in pursuance of this Act, and so far as such rules do not extend, the principles, practice and rules on which election petitions touching the election of members of the House of Commons in England were on the 26th day of May, one thousand eight hundred and seventy-four, dealt with, shall be observed so far as consistently with this Act they can be observed by the court and the judges thereof.

The construction and effect of these provisions, in so far as relevant to the present point, is not open to dispute. The argument of Mr. Belcourt, who appeared for the respondent, proceeded upon the assumption that the real point at issue must be whether the rule relied upon is "inconsistent" with section 16. With great respect for the learned judge of first instance I do not think the point is doubtful. The rule requires publication in two newspapers, a newspaper in the English language and a newspaper in the French language. The Act requires publication once in a newspaper.

If, as is contended, the effect of the rule, which, of course, has the force of statute, is that non-compliance with it nullifies the petitioner's proceedings, then it appears to me that it must be a rule beyond the authority conferred by sec. 85; for I think it cannot fairly be taken to be within the intendment of that section that, where the Act itself lays down a specific procedure

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in relation to a given matter, the rule-making authority can prescribe additional proceedings with such a sanction. If the rule is one which could not be made under section 85, it would appear to follow that it is a rule which is not protected by the provisions of section 20 of the "Interpretation Act," because one cannot suppose the legislature to have contemplated that a rule made prior to the passing of section 16, which would be beyond the present powers of the rule-making authority under section 85, could remain in force notwithstanding the enactment of section 16. It is not to be supposed that the validity of the rules in force at a given time could be affected by the accident of the day when such rules were passed.

As to the second question, I think that on this ground also the ruling of the learned judge of first instance ought to be reversed. The publication prescribed by the legislature is, in my judgment, not a forensic proceeding. The duty to publish laid upon the returning officer, doubtless, has its own sanction. Non-compliance with it, in my judgment, cannot, where the petitioner himself is entirely without fault, have the result of causing the petition to lapse.

On the hearing of the appeal another point was argued. It was urged by the respondent that the judgment dismissing the petition ought to be sustained on the ground that the petitioner had failed to prove his status, according to the rules laid down in the previous decisions of this court. In dealing with this contention the first point to consider is whether we have jurisdiction to entertain it. That question depends upon the construction of section 64 of the "Controverted Elections Act." It is as follows:

64. An appeal by any party to an election petition who is dissatis-

fied with the decision shall lie to the Supreme Court of Canada from—

(*a*) the judgment, rule, order or decision on any preliminary objection to an election petition, the allowance of which objection has been final and conclusive and has put an end to such petition, or which objection, if it had been allowed, would have been final and conclusive and have put an end to such petition: Provided that, unless it is otherwise ordered, an appeal in the last-mentioned case shall not operate as a stay of proceedings, nor shall it delay the trial of the petition; and,

(*b*) the judgment or decision on any question of law or of fact of the judges who have tried such petition.

It is argued (and it appeared to me at first sight, that such must be the construction of this section) that an appeal is only given from a decision upon a specific preliminary objection or specific preliminary objections. Where the preliminary objections are disallowed there is, of course, necessarily a decision upon each one of them. Where, on the other hand, as in this case, the petition is dismissed upon the ground that a single specific objection is well taken and ought to be given effect to and the judge has refrained from considering or passing upon any of the other objections, the question whether, in such a case, this court has jurisdiction to consider any objection other than that passed upon may become a point of importance. I think the appeal given by section 64 is not only an appeal from any specific rule or decision, but from the "judgment rule or order" given by the judge of first instance before whom the hearing on preliminary objections is held.

It has been laid down in the judgment of this court more than once that the hearing upon preliminary objections is to be treated as one of the steps in the trial of the petition. Sections 19 and 20 indicate to my mind that it was not within the contemplation of the Act that there should be successive hearings on

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preliminary objections. The judgment, therefore, dismissing the petition given on the hearing must, I think, be taken to be the judgment concluding that stage of the trial and on appeal from that judgment I think it is not only open to us, but that it is our duty to consider every objection which was before the judge of first instance and which is presented by either party for consideration in this court.

On the merits, I think the objection fails. I think there is sufficient evidence and I think the proper inference from the evidence is that the petitioner was properly qualified as a petitioner under the Act.

ANGLIN J.—At the close of the argument I entertained no doubt that rule No. 7 of the "Rules of Practice" of the Quebec Superior Court for Dominion Controverted Elections, in so far as it requires publication different from and in excess of that prescribed by section 16 of the "Dominion Controverted Elections Act," was superseded and abrogated by that enactment, and that, publication in accordance with the requirements of section 16 having been shewn, the preliminary objection based on want of due publication fails. Had this been the sole question for determination, the appeal might well have been disposed of at the hearing.

But the respondent, failing to sustain the judgment in his favour upon this objection, seeks to support it on another, which was presented to the judge of first instance, but was not dealt with by him, namely, that the petitioner had not sufficiently established his status in that he had not proved himself to be a British subject. This objection was heard by the learned judge, but was not adjudicated upon by him,

no doubt because he held the objection on the ground of insufficient publication to be well taken and fatal to the petition. The appellant questions the jurisdiction of this court to entertain the objection based on want of status on the ground that the appeal given by section 64 of the "Controverted Elections Act" is confined to objections upon which judgment has been actually pronounced below. The respondent asserts on the other hand that the appeal is from the judgment dismissing the petition and that it is open to him to support that judgment in this court upon any ground taken before the judge of first instance and upon which he might have pronounced it. The question is important because upon its determination depends the right of respondent to a further hearing before the judge of the Superior Court in order to obtain an adjudication by him on the other preliminary objections taken but not dealt with at the former hearing. If, as counsel for petitioner contends, the respondent cannot support the dismissal of the petition on any objection not adjudicated upon in the Superior Court, he should be entitled to such further hearing, since otherwise he might lose the benefit of a good objection properly taken and pressed, merely because the judge of first instance failed to deal with it under the erroneous impression that it was not necessary for him to do so. On the other hand, if the position taken at bar by his own counsel is correct, the respondent will clearly not be entitled to any such further hearing on preliminary objections.

Section 64 of the Dominion "Controverted Elections Act," which gives the right to appeal, is as follows:

An appeal by any party to an election petition who is dissatisfied with the decision shall lie to the Supreme Court of Canada from—

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(a) the judgment, rule, order or decision on any preliminary objection to an election petition, the allowance of which objection has been final and conclusive and has put an end to such petition, or which objection, if it had been allowed, would have been final and conclusive and have put an end to such petition: Provided that, unless it is otherwise ordered, an appeal in the last-mentioned case shall not operate as a stay of proceedings, nor shall it delay the trial of the petition.

At first blush it would almost appear that it was intended to confine the appeal to the particular objection which has been allowed. But the appeal is from the judgment rendered on the objection, not from its allowance. That judgment is the dismissal of the petition. It is a well recognized principle of procedure in ordinary litigation that a party in whose favour judgment is pronounced upon one ground may support that judgment in appeal upon any other ground taken before the court which pronounced it and upon which that court might properly have acted. Unless the statute is conclusive against its application, the maxim *ut sit finis litium* and the undoubted policy of Parliament that there should be no undue or unnecessary delay in the bringing of election petitions to trial afford cogent arguments why the ordinary principle of curial procedure to which I have alluded should govern the present case.

Section 19 of the "Controverted Elections Act" makes it abundantly clear that preliminary objections should be speedily dealt with. It appears to contemplate that they should all be disposed of at one hearing. It would, I think, be contrary to the spirit if not to the letter of the Act, that there should be a series of hearings and of appeals on preliminary objections, as might well be the case if they may be disposed of one at a time. Though not as clearly expressed as it

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might have been, I find nothing in section 64 which constrains me to put upon it a construction which I should deem out of harmony with the other provisions of the statute, and probably contrary to the intention of Parliament. I, therefore, conclude that it is open to the respondent to ask this court on the present appeal to pass upon his objection to the sufficiency of the proof of the petitioner's status.

On the merits I think that objection cannot be sustained. The evidence adduced by the petitioner that his name appeared on the voters' list furnished for use at the election and that he voted as a deputy returning officer on a certificate obtained after taking the prescribed oath, which was produced and filed, and the certificate of his baptism shewing that he was born at St. Judas, in the County of St. Hyacinthe, in the Province of Quebec, also produced and filed, established the fact that he is a British subject, at all events sufficiently to cast on the respondent the burden of proving the contrary.

The respondent did not seek at bar to maintain the judgment in his favour by invoking any other of the preliminary objections which he took below.

I would, therefore, allow the appeal with costs and dismiss the preliminary objections with costs.

BRODEUR J.—Il s'agit d'une contestation d'élection qui a été renvoyée sur l'objection préliminaire que l'officier-rapporteur n'avait pas publié la pétition suivant les dispositions d'une règle de pratique de la cour supérieure.

Plusieurs autres objections préliminaires avaient été soulevées par l'intimée; mais le juge n'a pris en considération que celle relative à la publication de

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la pétition et il a considéré inutile, vu la conclusion à laquelle il en est venu sur ce point, d'examiner et de décider ces autres objections.

La règle de pratique relative à la publication des pétitions d'élections a été faite par les juges de la cour supérieure de Québec, en 1875, et se lit comme suit:—

L'Officier-Rapporteur publiera toute pétition qui lui sera envoyée en conformité de la section 8 du dit Acte, ainsi que tout autre document qui lui sera envoyé pour publication en conformité des dispositions du dit Acte, ou des présentes règles, en délivrant copie de telle pétition ou de tel document au Régistrateur du Bureau d'Enregistrement dans telle Division Electorale; et, s'il y a plus d'un Bureau d'Enregistrement dans telle Division Electorale, il en délivrera une copie à chaque Régistrateur; et, s'il n'y a aucun Bureau d'Enregistrement dans la Division Electorale, alors copie sera transmise au Sécrétaire-trésorier Municipal, le bureau duquel se trouvant dans la dite Division Electorale, sera le plus proche du lieu où la dite élection aura eu lieu. Et dans le cas où il ne se trouvera pas, dans la dite Division Electorale, tel Régistrateur ou Sécrétaire-trésorier, alors la copie sera transmise à quelqu'autre officier public, au choix du dit Officier-rapporteur, qui se trouvera dans la dite Division Electorale, en donnant sans délai un avis précis de telle publication dans un numéro de la Gazette Officielle de Québec, ainsi que dans deux numéros d'un journal en langue anglaise, et dans deux numéros d'un journal en langue française, publiés ou ayant circulation dans telle Division Electorale, si tels journaux il y a, et il sera du devoir de tout tel Régistrateur, Sécrétaire-trésorier ou autre Officier public de permettre à toute personne de prendre communication de toute telle pétition ou de tout tel document sans exiger pour cela aucun honoraire, et tout document qui sera envoyé au Shérif pour publication sert publié de la manière ci-dessus décrite.

Le statut sur lequel cette règle de pratique était basée est la loi de 1874 (37 Vict. ch. 10, sec. 8), qui disait:—

Lors de la présentation d'une pétition, le greffier de la cour en transmettra copie par la malle à l'officier-rapporteur du district électoral auquel se rapporte la pétition d'élection, lequel lui donnera de suite publicité dans ce district électoral.

Cette disposition de la loi de 1874 a été rappelée en 1891 et remplacée par la section suivante:—

Lors de la présentation d'une pétition, le greffier de la cour en transmettra copie par la poste à l'officier-rapporteur du district électoral auquel se rapporte la pétition, et celui-ci *en donnera de suite avis une fois dans un journal publié dans le district*, ou, s'il n'est pas publié de journal dans ce district, en faisant insérer cet avis dans un journal publié dans un district voisin.

2. Cet avis pourra être dans la forme suivante: "Avis est par le présent donné qu'une pétition a été présentée en vertu de l'Acte des élection fédérales contestées contre l'élection de , écuier, comme membre du parlement du Canada, représentant le district électoral de et (si l'on réclame le siège) réclamant le siège pour

Daté à ce jour de 18 .

A. B.,
Officier-rapporteur.

Cette section de la loi de 1891 a été répétée *verbatim* dans les status refondus de 1906 à la section 16 du chapter 7.

L'appelant prétend que la règle et la nouvelle loi sont incompatibles et qu'en conséquence la règle est par le fait même sans effet.

D'un autre côté, l'intimé dit que le rappel d'une disposition de la loi ne met pas nécessairement à néant les règles qui auraient été faites en vertu de cette loi si les dispositions sont semblables et ne sont pas incompatibles avec la nouvelle loi. If prétend que dans le cas actuel cette incompatibilité n'existe pas et que les dispositions de la règle sont, par conséquent, en force et doivent être observées.

Il est à remarquer que dans les statuts de 1874 on ne disait pas comment la publication d'une pétition d'élection devait se faire, et alors les juges de la province de Québec ont cru devoir déterminer qu'un avis de la présentation de la pétition devrait être publié une fois dans la Gazette Officielle et deux fois dans deux journaux.

Il est à présumer que la pratique était loin d'être la même dans toutes les provinces. Cette disposition de la loi de 1874 a dû donner lieu à des inconvénients et

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à des incertitudes et alors il a été jugé à propos en 1891 d'amender la loi de manière à déclarer d'une manière précise comment la publication devait se faire. Comme nous venons de le voir, la loi pourvoit à ce qu'un avis soit publié dans un journal une fois seulement.

Le droit pour les juges de faire des règlements concernant la procédure des pétitions d'élections est rédigé dans des termes bien généraux. Voici, en effet, ces dispositions:—

> Les juges des différentes cours, dans chaque province respectivement, ou la majorité d'entre eux, peuvent, de temps à autre, faire, révoquer et modifier les règles et ordres généraux mentionnés en la présente loi comme règles de cour pour l'exécution efficace de la présente loi, et de son intention et de son objet, et de toutes règles de pratique, procédures et frais se rattachant aux pétitions d'élection et à leur décision, et aux certificates et rapports à faire sur ces pétitions.
>
> 2. Toutes règles générales et tous ordres généraux faits de la manière ci-haut exprimée, qui ne sont pas incompatibles avec la présente loi, sont considérés comme faisant partie des pouvoirs conférés par la présente loi, et ont, jusqu'à ce qu'ils soient révoqués, la même force que s'ils faisaient partie des dispositions de la présente loi; et elles doivent être soumises à la Chambre des Communes dans l'espace de trois semaines après qu'elles ont été faites, si le Parlement est alors en session, et, si le Parlement n'est pas en session, dans les trois premières semaines de la session alors prochaine du Parlement. S.R., c. 9, art. 62.

D'après les dispositions de cette législation le rappel d'une loi ne met fin aux règles qui ont été faites en vertu de cette loi que si elles sont incompatibles avec la nouvelle loi. Y avait-il incompatibilité entre la règle de pratique de 1875 et la loi de 1891 ? Voilà la question que nous avons à décider.

J'en suis venu à la conclusion que l'ancienne règle de pratique a cessé d'avoir force et effet.

Elle déterminait, comme nous venons de le voir, la manière dont l'officier-rapporteur devait faire connaître au public la présentation des pétitions d'élec-

tions. Il fallait qu'un avis fût donné dans la Gazette Officielle de Québec et dans deux journaux du district électoral. Le législateur, par sa loi de 1891, a entrepris lui-même de déterminer comment et où cette publication devait se faire. Il a voulu, je suppose, mettre fin à l'incertitude où l'on devait être avec la disposition un peu vague de la loi de 1874 et il a déclaré qu'à l'avenir l'avis serait publié dans un seul journal du district. Cette législation formelle rend l'ancienne règle de pratique incompatible et y met fin, du moins en tant que cette publication est concernée.

Maintenant, en supposant que la publication serait irrégulière, serait-ce une raison suffisante pour renvoyer la pétition ? Je ne le crois pas. Ce serait là une informalité qui pourrait être purgée sur instruction du juge. Il n'y aurait pas lieu alors de renvoyer la pétition.

Il arrive bien souvent que des pétitions demandent l'annulation de l'élection pour irrégularités commises par l'officier-rapporteur. Serait-ce à dire que son défaut de publier cet avis devrait entraîner le renvoi de la pétition ? Poser la question, c'est la résoudre.

Les pétitions d'élections doivent être d'ailleurs considérées comme toute autre action ou procédure devant les tribunaux. Il n'y a pas de raison pour qu'on soit plus sévère au sujet des informalités qui s'y sont glissées que pour celles qui affectent les actions ordinaires.

Je suis d'opinion que le jugement *a quo* est mal fondé et qu'il doit être renversé avec dépens.

Appeal allowed with costs.

Solicitor for the appellant: *E. A. D. Morgan.*
Solicitor for the respondent: *P. J. A. Cardin.*