CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF TWO MOUNTAINS.

SAMUEL FAUTEUX (PETITIONER) . . . APPELLANT; 1912

*Oct. 1.
*Oct. 29.

AND

JOSEPH ARTHUR CALIXTE ETHIER *et al.* (RESPONDENTS) . . . . } RESPONDENTS.

ON APPEAL FROM THE DECISION OF ROBIDOUX AND LAUDENDEAU JJ.

Election law—Nomination—Irregularities—Omission of additions—Identification of candidate—Technical objections—Receipt for deposit—Validating effect—Evidence—Construction of statute—R.S.C., 1906, *c.* 6, *"Dominion Elections Act"—R.S.C.*, 1906, *c.* 7, *"Dominion Controverted Elections Act."*

Per Fitzpatrick C.J. and Davies, Anglin and Brodeur JJ.—Technical objections to the form of nomination papers filed with the returning officer at an election of a member of the House of Commons, under the provisions of the "Dominion Elections Act," R.S.C., 1906, ch. 6, should not be permitted to defeat the manifest purpose of the statute. The omission in nomination papers to mention the residence, addition or description of the candidate proposed in such a manner as sufficiently to identify him constitutes a patent and substantial failure to comply with the essential requirements of section 94 of the Act; on the objection in this respect taken by the only opposing candidate it is the duty of he returning officer to reject a nomination so irregularly made and to declare such opposing candidate elected by acclamation. Such rejection and declaration of election by acclamation may properly be made by the returning officer after the expiration of the time limited for the nomination of candidates by section 100 of the Act.

Per Fitzpatrick C.J., and Davies, Anglin and Brodeur JJ. (Idington and Duff JJ. contra).—The receipt for the required deposit of $200, accompanying the nomination papers, given by the return-

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

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ing officer under the provisions of section 97 of the "Dominion Elections Act," is evidence merely of the production of the papers and payment of the deposit and not of the validity of the nomination.

Per Idington and Duff JJ. (dissenting).—The receipt so given for the required deposit constitutes a legal assurance that the candidate has been duly and properly nominated; it cannot be revoked nor the nomination papers rejected by the returning officer after the expiration of the time limited by section 100 of the Act for the nomination of candidates; when that time has passed all questions touching the statutory sufficiency of the papers are concluded in so far as it is within the province of the returning officer to deal with such matters.

Per Duff J. (dissenting).—Where the returning officer has received papers professing to nominate a proposed candidate with the consent of the candidate to such nomination and given his receipt for the required deposit pursuant to section 97 of the Act, and the time limited for the nomination of candidates at the election has expired, the status of such candidate becomes finally determined *quoad* proceedings under the control of the returning officer and it is then the duty of that official to grant a poll for taking the votes of the electors.

Per Duff J. (dissenting).—In view of the limited jurisdiction conferred upon judges in respect to election trials under the "Dominion Controverted Elections Act," R.S.C., 1906, ch. 7, where the returning officer has exceeded his legal powers by improperly returning a candidate as having been elected by acclamation the judgment should declare that the election was not according to law.

The judgment appealed from (Q.R. 42 S.C. 235) was affirmed, Idington and Duff JJ. dissenting.

APPEAL from the judgment by Robidoux and Laurendeau JJ. in the Controverted Elections Court (1) in the matter of the controverted election of a member for the Electoral District of Two Mountains in the House of Commons of Canada, dismissing the petition with costs.

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

Hon. A. W. Atwater K.C. and *Mignault K.C.* for the appellant, cited *Ex parte Baird*(2); *In re Ellis*

(1) Q.R. 42 S.C. 235. (2) 29 N.B. Rep. 162.

(1); *Bannerman* v. *McDougall*(2); *Gledhill* v. *Crowther*(3); *Marton* v. *Gorrill*(4); *Northcote* v. *Pulsford*(5); *Queen's Co. Election Case; Queen's (P.E.I.) Election; Jenkins* v. *Brecken*(6); *Bothwell Election Case; Hawkins* v. *Smith*(7); and Fraser's Parliamentary Elections, p. 20.

Perron K.C. and *Geuest,* for the respondent, cited *The Queen* v. *Deighton*(8); *Mather* v. *Brown*(9); *Gothard* v. *Clarke*(10); *The Queen* v. *Coward*(11); *Woollett* v. *Davis*(12); *The Queen* v. *Tugwell*(13); *Harmon* v. *Park*(14).

THE CHIEF JUSTICE concurred in the opinion stated by Davies J.

DAVIES J.—This is an appeal from the judgment of the Superior Court for the District of Terrebonne dismissing with costs the appellant's contestation of the election of the respondent Ethier.

On the nomination day two persons put in nomination papers, the respondent, Mr. Ethier, and Mr. Guillaume André Fauteux. Fauteux's nomination paper consisted of two large double-sheets of paper, the first page of each double-sheet containing a printed form of the nomination of some person as a candidate,

(1) 27 N.B. Rep. 99.
(2) 11 Can. L.J. 47.
(3) 23 Q.B.D. 136.
(4) 23 Q.B.D. 139.
(5) L.R. 10 C.P. 476.
(6) 7 Can. S.C.R. 247.
(7) 8 Can. S.C.R. 676.
(8) 5 Q.B. 896; 13 L.J.Q.B. 241.
(9) 1 C.P.D. 596.
(10) 5 C.P.D. 253.
(11) 20 L.J.Q.B. 359.
(12) 4 C.B. 115.
(13) L.R. 3 Q.B. 704.
(14) 7 Q.B.D. 369.

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with blank spaces to fill in the nominee's name, residence and occupation, and with spaces below for the nominating electors to sign their names, professions and residences. At the foot of the page, below where the electors' signatures are to be placed, was a clause also printed with blanks to be signed by a witness to the electors' signatures, and also a printed form of acceptance, by the person nominated, of the nomination, with an attesting clause by a witness.

On the inside of each of these double-sheets was printed the form of "oath of attestation of the nomination paper."

These forms were in accordance with those required by the statute (Forms H and I).

One of these large double-sheets, with the form of nomination at the top not filled in, containing thirteen names of electors had a witness's name attached at the foot of the names, with residence and addition certifying that the paper had been signed by *the said electors* in his presence and also had, at the foot of the same page, the form of acceptance by the person nominated filled up and signed. On this double-sheet the form "I" of the oath of attestation of the nomination paper was filled up by a witness and contained the names not only of the thirteen electors whose names appeared on the front page of that large double-sheet, but also the names of nineteen electors whose names appeared on another double-sheet of the same kind and character as that containing the thirteen names.

On this latter double-sheet the form of the oath of attestation was printed in blank and was not filled up and the form at the foot of the nominating electors' names providing for the witness to their signatures

and also that for the acceptance by the candidate of his nomination, were both struck out.

On the other hand, this double-sheet containing the nineteen names had the blank at the top of the first page filled up nominating Mr. Guillaume André Fauteux as a candidate, *but without any residence or addition or description of him.*

These two double-sheets were not in any way attached or fastened together though they were handed in together and, some of the witnesses at the trial said, folded together.

A written objection was fyled by Mr. Ethier, the respondent, who had also been nominated as a candidate, to the reception of these papers as a valid nomination of Mr. Fauteux on the grounds: 1st. That they did not mention his domicile or his occupation; and 2ndly. That they were not signed by 25 electors conformably to the law. He demanded in consequence that he should be declared elected by acclamation.

The returning officer, after taking time to consider and consult counsel, acceded to Mr. Ethier's objection and demand, and returned him by acclamation accordingly.

It was against this return that the election petition was fyled. The learned judges upheld both objections.

In the view I take of this case, it is unnecessary for us to express any opinion whether the two double-sheets, unattached to each other, but delivered to the returning officer on the nomination day in the manner I have described, should have been accepted by him as a valid nomination paper.

Assuming, therefore, without deciding, that the returning officer should have treated both sheets as

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really one nominating paper and that the candidate's acceptance and the witnesses' attestation were all right and should have been treated as applying to both double-sheets, the question still remains, did they together contain the essential requisites of a valid nomination ?

To determine this we must have recourse to the "Dominion Elections Act" (R.S.C., 1906, ch. 6), but before setting out the relevant and controlling sections of that Act I desire to point out that neither in the body of the nomination paper itself, in which section 94 and form "H" require "the name, residence and addition or description" of each person proposed, nor in the witnesses' "oath of attestation of the nomination paper," nor in the candidate's acceptance of the nomination, was there any attempt made to comply with the statute's requirements as to the nominee's residence, addition or description, and so make up as it were for the defect in the nomination paper itself. On the face of the nomination papers, including the candidate's acceptance and the attesting witnesses' oath, these requirements were entirely absent.

The sections of the Act which, on the particular point I am discussing, are controlling, are the 94th, 97th, 107th, and 314th. They are as follows:—

94. Any twenty-five electors, except in the Provinces of Saskatchewan and Alberta and the Yukon Territory, may nominate a candidate, or as many candidates as are required to be elected for the electoral district for which the election is held, by signing a nomination paper in form "H," stating therein the name, residence and addition or description of each person proposed, in such manner as sufficiently to identify such candidate and by causing such nomination paper to be produced to the returning officer at the time and place indicated in the proclamation, or to be filed with the returning officer at any other place, and at any time between the date of the proclamation and the day of nomination.

97. The returning officer shall give to the candidate or his agent a receipt for such deposit which shall, in every case, be sufficient evidence of the production of the nomination paper, of the consent of the candidate and of the payment therein mentioned.

107. On a poll being granted, the returning officer shall cause to be posted up notices of his having granted such poll, indicating the names, residences and occupations of the candidates nominated, in the order in which they are to be printed on the ballot papers.

2. Except in the Yukon Territory, such notices shall, as soon as possible after the nomination, be placarded at all the places where the proclamation for the election was posted up.

3. Such notices shall be in form "K," except in the Provinces of Saskatchewan and Alberta, where they shall be in form "L."

4. In Prince Edward Island, the returning officer shall, in addition to such notices, cause to be placarded at the same time and places such notice or advertisement regarding the qualification of voters as is required under the provincial law to be posted.

314. No election shall be declared invalid by reason of non-compliance with the provisions of this Act as to the taking of the poll or the counting of the votes, or by reason of any want of qualification in the persons signing a nomination paper received by the returning officer under the provisions of this Act, or of any mistake in the use of the forms contained in schedule one of this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance or mistake did not affect the result of the election.

The contentions on the part of the petitioner (appellant) are: 1st. That section 94 is directory only and not imperative in its requirements, that the identification called for was for the satisfaction of the returning officer only, and that he knew well who the M. Guillaume André Fauteux really was and, therefore, that the statute was satisfied. 2ndly. That the receipt given by the returning officer for the $200 was conclusive, and that in any event, section 314 prohibited the election from being declared invalid by reason of the alleged non-compliance with the Act.

In construing the sections of such an important public Act as the one under consideration, I think that while we should be careful on the one hand not

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to allow merely technical or formal objections to prevail so as to defeat the manifest purpose and intention of the Act, on the other we should not attempt to re-write the Act or to strain the clear, precise language of its sections so as to render them innocuous.

As Lord Chief Justice Coleridge said in the case of *Mather* v. *Brown* (1), at page 601:—

> It must be remembered that, in dealing with cases under these Acts, we are sitting as a final tribunal of appeal, in the exercise of a duty cast upon us under peculiar circumstances and as a sort of compromise between conflicting parties in the legislature, and, therefore, are more especially bound to keep ourselves strictly within the letter of the Acts, and to abstain from any attempt to strain the law. Therefore, although I yield reluctantly to the objection, conceiving it to be a fair one, I do so without hesitation.

In a later case, *Gothard* v. *Clarke* (2), at page 265, Lopes J. says, line 8:—

> I entirely agree with the Lord Chief Justice when he said in *Mather* v. *Brown* (1), that in construing these Acts it is a duty with which the court is entrusted to keep strictly to the Acts themselves.

Now, applying these rules and principles to the section 94 under consideration, how can this court say that any 25 electors may legally nominate a candidate for an electoral district by signing a nomination paper in form "H," while omitting to state the name, residence and addition or description of the person they nominate in such manner as sufficiently to identify such candidate.

The essential conditions of a legal nomination paper are the signatures of 25 electors as nominators, and the name, residence and addition or description of the person proposed "stated therein."

The court certainly could not declare valid a

(1) 1 C.P.D. 596. (2) 5 C.P.D. 253.

nomination paper with only 24 electors' names attached. If the name of the candidate was incorrectly spelled, or there was some inaccuracy in the residence and addition or description of the person nominated, there might be much room for argument that the language used was sufficient to identify the candidate. The result would depend altogether upon the extent of the inaccuracy of the language used.

But where there is no inaccuracy of language or spelling to construe or give effect to, but a total omission of any residence, addition or description, and this omission extends as well to the acceptance of the nomination and to the oath of attestation of the witness to the signature to the nomination paper, so that, on the face of the papers as delivered, there was absolutely nothing to identify the person nominated, I cannot see how the court can hold such paper a legal nomination paper. It does not "state therein" any of the statutory requisites, and it seems to me, with deference, that to construe such language as directory merely would be to do violence to the expressed intention of the legislature. As well might the court declare that less than 25 nominators' names would suffice or that a paper signed in blank with the name subsequently filled up was good. The "name" may not require the insertion of each and all of the nominee's Christian names in full, but at least there must be a surname and such Christian name or abbreviation as would sufficiently identify the party nominated.

Then as to the receipt. If the nomination is bad the receipt certainly cannot cure it. The nomination paper must stand on its intrinsic merits and the receipt is good just for what the statute says,

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sufficient evidence of the production of the nomination paper, of the consent of the candidate, and of the payment therein mentioned.

Evidence of the production of the nomination paper, not of its validity. If it was the latter, then it would cure the cardinal defect of want of the proper number of nominators.

The importance of the language requiring the name, residence and addition or description of the candidates is seen by the 107th section, which requires the returning officer on a poll being granted to post up notices

indicating the names, residences and occupations of the candidates.

If the nomination paper does not itself give him this essential information, where else can he acquire it? In many small constituencies it is said the candidates are well known. That may be true, but this Act relates to constituencies all over Canada and it is reasonablely certain that no such assumption could be made with respect to the returning officers in many of the larger thinly populated districts.

The returning officer is not authorized to hold any court of inquiry so as to ascertain the identity and the residence and occupation of the candidate. But he is bound to give that information to the electors in the notices he puts up of his having granted a poll. He must find the information on the face of the nomination paper, and to allow him to go outside of such paper and obtain information elsewhere might lead to much gross injustice and defeat the express purpose of the Act that the identical candidate proposed by the 25 electors and no one else shall be published as the candidate.

The defect in these nomination papers is one apparent on their face, and not one requiring any in-

quiry or investigation on the part of the returning officer to ascertain or determine. Being a patent and substantial defect in the omission of a specific statutory requirement it became the duty of the returning officer, when at the proper time his attention was called to it, to give effect to the objection and reject the nomination.

Then with reference to section 314, a most useful section to prevent mere technicalities defeating the expressed will of the electors, the only possible part of the section which could be invoked in this case is that referring to "a mistake in the use of the forms."

But those defects complained of in this nomination paper are in no possible sense mistakes in the use of the forms. The proper form was used. But the essentials necessary to make the form a living and valid nomination paper were wanting.

The decisions in the English courts which I have consulted are chiefly upon statutes relating to municipal elections. They are, nevertheless, of value because they cover analogous cases to the one we have now before us and outline principles which should control courts in deciding upon statutes relating to elections and the distinction between matters of form and those of substance. *Mather* v. *Brown*(1); *Gothard* v. *Clarke*(2); *Harmon* v. *Park*(3); *Marton* v. *Gorrill*(4); *The Queen* v. *Deighton*(5).

The appeal should be dismissed with costs.

(1) 1 C.P.D. 596.
(2) 5 C.P.D. 253.
(3) 7 Q.B.D. 369.
(4) 23 Q.B.D. 139.
(5) 5 Q.B. 896.

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IDINGTON J. (dissenting).—The first duty of a returning officer, on receipt of a nomination paper, is to inspect it and ascertain if it appears to be conformable to law, and if found defective to point out wherein he finds it so; and then if duly rectified, or if originally in appearance correct, to require, pursuant to section 99 of the "Dominion Elections Act," (R.S.C., 1906, ch. 6,) the person or persons presenting it to take before him the oath or oaths of verification required by said section. When that has been duly done and deposit made, his next duty is to give, in obedience to section 97, a receipt for the deposit, which is the assurance the law gives the parties promoting the candidature of any person, that he has been duly and properly nominated.

This section is so comprehensive and complete in its terms that it is, for me, difficult to see how any one who has accepted the office of returning officer, desiring to discharge his duties with fairness to all concerned, could, after complying with its imperative direction, see his way to attempt a revocation of his act.

The section is as follows:—

> 97. The returning officer shall give to the candidate or his agent a receipt for such deposit which shall, in every case, be sufficient evidence of the production of the nomination paper, of the consent of the candidate and of the payment therein mentioned.

The officer in question herein did point out certain defects, had them rectified in his presence, and then administered the oath of verification to the agent who had presented the paper or papers.

The signatures of the alleged electors appear on two sheets of paper which, if joined together in an orderly way as the act of the officer in administering

the oath implies to have been done, and the contents of that oath naming the several parties who had signed, clearly demonstrates was intended to be the case, ought to have sufficed for the purpose then in hand. At its best the mode of joining was slovenly. A pin or fastening of some kind to keep these sheets together in their proper order of sequence would have saved a world of trouble.

When separated these papers were misleading.

The evidence of how this separation happened is conflicting, but the officer's acts and their consequence, I submit, must be passed upon in light of the transaction as it must have appeared to him when he administered the oath, and not by weighing this conflict of evidence arising later and elsewhere.

It is to be noted that the Act provides for the presentation of a nomination paper at any time between the date of proclamation and the day of nomination.

Unless the determination of the officer, as evidenced by the receipt for the deposit, is treated as irrevocable, so far as he is concerned, the door would be thrown open for frauds, and worse results than any I can conceive of as possible from holding such determination as irrevocable.

I am much more puzzled as to the proper disposition of the question of costs than I am by the merits of the case.

The appeal, I submit, should be allowed with costs thereof to the appellant against respondents, and the election be set aside; and, as at least a deterrent against such slovenly work hereafter, I think the several parties should be allowed to bear their respective costs of the proceedings in the court below.

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I confess I fear this division of costs may encourage the late taking of such objections as were taken here. The temptation appellant's slovenly work held out was no doubt great. But for the view taken by the learned judges in the court below, I should have been disposed to order the returning officer to pay all costs.

DUFF J. (dissenting).—I have come to the conclusion that the judgment under review cannot be sustained. For the purposes of this judgment I shall assume that the nomination paper is (on one or both of the grounds upon which the respondent's objections rest) defective in some essential requirement of the statute so that if a poll had been held and the appellant had been returned on account of receiving the larger number of votes (and the question had come before an election court in a proper proceeding under the "Controverted Elections Act") the respondent (the now sitting member) must on account of the invalidity of the appellant's nomination have been declared entitled to the seat. The very short ground on which I think the return of Mr. Ethier ought to be declared null is this: The returning officer having received the paper professing to nominate the appellant along with the appellant's consent and the sum required by law to be deposited, and having given his receipt for that sum pursuant to section 97 of the "Dominion Elections Act" (R.S.C., 1906, ch. 6) — and the time for nominating candidates having expired — the status of the appellant as a candidate (for the purpose of all proceedings under the control of the returning officer) was finally determined and it was the duty of that official to proceed with the poll.

For the sake of clearness and convenience of reference I set out here in full the enactments of the "Dominion Elections Act" which are comprised in the fasciculus bearing the title "Nomination Papers" (sections 94 to 103 inclusive).

94. Any twenty-five electors, except in the Provinces of Saskatchewan and Alberta and the Yukon Territory, may nominate a candidate, or as many candidates as are required to be elected for the electoral district for which the election is held, by signing a nomination paper in form "H," stating therein the name, residence and addition or description of each person proposed, in such manner as sufficiently to identify such candidate and by causing such nomination paper to be produced to the returning officer at the time and place indicated in the proclamation, or to be filed with the returning officer at any other place, and at any time between the date of the proclamation and the day of nomination.

95. Each candidate shall be nominated by a separate nomination paper; but the same electors, or any of them, may subscribe as many nomination papers as there are members to be elected.

96. No nomination paper shall be valid or acted upon by the returning officer unless it is accompanied by,—

(*a*) The consent in writing of the person therein nominated, except where such person is absent from the province in which the election is to be held, when such absence shall be stated in the nomination paper; and

(*b*) a deposit of two hundred dollars in legal tender or in the bills of any chartered bank doing business in Canada; or a cheque for that amount drawn upon and accepted by such bank.

97. The returning officer shall give to the candidate or his agent a receipt for such deposit which shall, in every case, be sufficient evidence of the production of the nomination paper, of the consent of the candidate and of the payment therein mentioned.

98. The sum so deposited by any candidate shall be returned to him in the event of his being elected or of his obtaining a number of votes at least equal to one-half the number of votes polled in favour of the candidate elected; otherwise, except in the case hereinafter provided for, it shall belong to His Majesty for the public uses of Canada, and shall be applied by the returning officer towards the payment of the election expenses, and an account thereof shall be rendered by him to the Auditor-General of Canada.

2. The sum so deposited shall, in case of the death of any candidate after being nominated and before the closing of the poll, be returned to the personal representatives of such candidate.

99. The returning officer shall require the person, or one or more of the persons producing or filing as aforesaid any such nomination paper, to make oath before him that he knows or they know that,—

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(*a*) The several persons who have signed such nomination paper are electors duly entitled to vote;

(*b*) they have signed it in his or their presence; and

(*c*) the consent of the candidate was signed in his or their presence, or as the case may be, that the person named as candidate is absent from the province or territory.

2. Such oath may be in form "I," and the fact of its having been taken shall be stated on the back of the nomination paper.

100. At the close of the time for nominating the candidates, the returning officer shall deliver to every candidate or agent of a candidate applying therefor a duly certified list of the names of the several candidates who have been nominated.

101. Any votes given at the election for any other candidates than those nominated in the manner provided by this Act shall be null and void.

102. Whenever only one candidate, or only such a number of candidates as are required by law to be elected to represent the electoral district for which the election is held, have been nominated within the time fixed for that purpose, the returning officer shall forthwith make his return to the Clerk of the Crown in Chancery, in form "J," that such candidate or candidates, as the case may be, is or are duly elected for the said electoral district, of which return he shall send within forty-eight hours a duplicate or certified copy to the person or persons elected.

103. The returning officer shall accompany his return to the Clerk of the Crown in Chancery with a report of his proceedings and of any nomination proposed and rejected for non-compliance with the requirements of this Act.

The "Elections Act" does unquestionably contemplate the possibility of nominations being "*proposed and rejected* for non-compliance with the requirements" of the statute, since section 103 in express terms lays upon the returning officer the duty of making a report upon any such rejected nomination. But the Act does not seem to contemplate the rejection by the returning officer of a nomination paper (verified as required by section 99 and accompanied by the consent and the deposit provided for by section 96) which has been accepted by him and for which he has given a receipt in pursuance of section 97. Once that is done section 98 appears to come into play. The

sum deposited is by the provisions of that section to be returned to the candidate only in one of three specified events: 1st, his election; 2nd, his obtaining a specified proportion of the votes cast; 3rd, his death after being nominated and before the closing of the poll. Otherwise the money deposited is to belong to His Majesty as part of the public funds of Canada. There is nothing to authorize the return of the money in the case in which after having signified his acceptance of the nomination paper by giving the receipt under section 97 the returning officer discovers some defect in it, which had previously escaped his observation. The enactments of section 98 are explicit, the money once deposited is to be the property of His Majesty except in one of the three events enumerated above. From this the inference seems irresistible that the returning officer's authority to reject the nomination paper for non-conformity with the statute is at an end upon the giving of the receipt; for it is inconceivable that the legislature should have conferred upon the returning officer authority to reject the nomination after receiving the deposit and in circumstances in which he is prohibited from returning the deposit. Even if this view of the effect of these proceedings were doubtful and it could fairly be argued that the status of the nominee as candidate is not fixed by them, it still seems hardly open to doubt that his status as such is (as regards the duties of the returning officer) irrevocably fixed when (his nomination having been accepted) the time for nominating candidates has closed. That is made very clear by the provisions of sections 100 and 102. *"At the close of the time"* for nominating candidates the returning officer is, under the provisions of these

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sections, to deliver to *"any candidate"* applying therefor, a list of the names of *"the candidates who have been nominated."* At that point of time — *"at the close of the time for nominations"* — if not before — the number and identity of the candidates are determined, a state of affairs obviously impossible if after that point of time is passed the returning officer has authority to reject a nomination already accepted. Section 102 again provides that when only *"one candidate"* has been *"nominated* within the time fixed for that purpose," the returning officer shall *"forthwith"* make his return to the Clerk of the Crown in Chancery that *"such candidate"* has been duly elected; and by section 103 this return is to be accompanied by a report upon nominations

proposed and rejected for non-compliance with the requirements of this Act.

This return and this report then are to be made *"forthwith"* on expiry of the time fixed for the purpose of nominating candidates; an enactment obviously proceeding upon the assumption that when that time has passed all questions touching the statutory sufficiency of nomination papers have been concluded in so far as it is within the province of the returning officer to deal with such questions.

The inference arising from the language of these sections receives support from that of section 124, which provides that if the number of candidates is greater than two the returning officer shall give effect to any agreement between them that their names shall be arranged on the ballot paper otherwise than in alphabetical order where such agreement is made *"within an hour after the time appointed for the nomination;"* a provision which presupposes all ques-

tions as to what persons are entitled to have their names placed upon the ballot papers to have been at the time mentioned finally determined.

It is argued, however, that the respondent must eventually have been returned since (the appellant's nomination being in point of law inoperative) the respondent was the only candidate for whom ballots could validly be cast; and consequently it is said the respondent has rightfully been elected. I assume, as I have already said, the appellant's nomination to have been invalid by reason of one or both of the objections raised by the respondent. On that hypothesis we are still, it seems to me, (if I am right in the view I have just expressed touching the powers of the returning officer,) under a necessity imposed upon us by law to declare that the respondent was not duly returned and that he is not under the law entitled to the seat. The jurisdiction conferred upon the courts by the "Controverted Elections Act" (R.S.C., 1906, ch. 7, is a very special one. At common law all questions touching the election and return of members to the House of Commons were questions exclusively within the cognizance of the House itself. By the "Controverted Elections Act" the duty of passing upon certain of such questions, when raised by a proceeding authorized by the Act, was imposed upon the courts. But the duties and jurisdiction of the courts are strictly prescribed by the Act; and the Act, as it appears to me, leaves no other course open to us (if the returning officer exceeded his legal powers in returning the respondent as the elected member) but to declare that the return was not according to law.

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Duff J.

The powers vested in the court in such circumstances are to be gathered from two of the sections of the "Controverted Elections Act." These sections are as follows:—

11. The petition presented under this Act may be in any prescribed form; but, if or in so far as no form is prescribed, it need not be in any particular form, but it must complain of the undue election or return of a member or that no return has been made, or that a double return has been made, or of matter contained in any special return made, or of some such unlawful act as aforesaid by a candidate not returned, and it must be signed by the petitioner, or all the petitioners if there are more than one.

58. At the conclusion of the trial, the trial judges shall determine whether the member whose election or return is complained of or any and what other person was duly returned or elected, or whether the election was void, and other matters arising out of the petition, and requiring their determination, and shall, except in the case of appeal hereinafter mentioned, within four days after the expiration of eight days from the day on which they shall so have given their decision, certify in writing such determination to the Speaker, appending thereto a copy of the notes of evidence.

2. The determination thus certified shall be final to all intents and purposes.

The petition in this case complains of the undue election of the respondent and asks to have the return made by the returning officer declared a nullity. Under section 58 it was the duty of the trial judges to pass upon these questions and report to the Speaker accordingly. In the view I have expressed these questions are, of course, susceptible of only one answer.

ANGLIN and BRODEUR JJ. concurred with Davies J.

Appeal dismissed with costs.

Solicitor for the appellant: *P. B. Mignault.*
Solicitor for the respondents: *J. L. Perron.*