

1893
 Feb. 8.
 ALEXANDER LUCAS SUPPLIANT ;
 AND
 HER MAJESTY THE QUEEN RESPONDENT.

Election for the House of Commons—The North-West Territories' Representation Act (R.S.C. c. 7)—Returning officer—Claims for services of subordinate officers—Liability.

A person duly appointed and acting during an election as returning officer under the provisions of *The North-West Territories' Representation Act (R. S. C. c. 7)* cannot recover from the Crown for the services of the several enumerators, deputy returning officers or other persons employed in connection with such election.

PETITION OF RIGHT for the recovery of moneys alleged to be due by the Crown to a returning officer for services and disbursements in connection with an election in the North-West Territories of Canada.

The facts of the case are stated in the judgment.

The case was tried at Calgary, N. W. T., on the 22nd and 23rd of September, 1892.

Lougheed, Q.C. and *McCarter* for suppliant ;

Costigan, Q.C. for respondent.

BURBIDGE, J. now (February 8th, 1893) delivered judgment.

The suppliant, who was the returning officer at the election of a member to serve in the House of Commons of Canada, for the Electoral District of Alberta, held on the 6th of March, 1891, brings his petition to recover from the Crown a balance of \$7,195.76 which, he says, is due to him for his services and disbursements in performing his duty as such returning-officer. His claim as rendered amounted to \$12,106.56, of which he was allowed by the Auditor-General and paid the sum of \$4,910.80. The defence is that he has been paid

all that he is entitled to. By the 5th paragraph of the statement in defence it was alleged that the amount paid had been determined by an order of His Excellency the Governor-General in Council made under *The North-West Territories' Representation Act* (1) and that the suppliant could not recover anything beyond such amount. But that ground of defence was abandoned at the trial.

The claim consists for the most part of charges for the services of enumerators, deputy returning officers and other persons employed in connection with the election. There are besides some accounts for the hire of horses and for the cost of printing and advertising. For such charges the suppliant, as he was acting for the Crown, is not, it is clear, personally liable (2), except where he has expressly made himself so (3); and that happened but once in this case and then for a small sum only. Neither has he paid the several amounts claimed, although in one or two cases he has made advances in excess of what has been allowed. The objection that arises on this state of facts is one, that in this case, the Government does not wish to take advantage of. When, at the trial, attention was called to it, counsel for the Crown at once agreed that the case should be disposed of as if the suppliant had paid to the several persons interested the amounts which they should be found entitled to. On consideration, however, I have come to the conclusion that it would not be proper to adopt that course however convenient it might be for

1893
 LUCAS
 v.
 THE
 QUEEN.
 ———
 Reasons
 for
 Judgment.
 ———

(1) R. S. C. c. 7 s. 66.

(2) *Macbeath v. Haldimand*, 1 T. R. 172; *Unwin v. Wolseley*, 1 T. R. 674; *Myrtle v. Beaver*, 1 East. 135; *Hodgson v. Dexter*, 1 Cranch, 345; *Gidley v. Lord Palmerston*, 3 Br. & B. 275; *Autey v. Hutchison*, 17 L. J. N. S. C. P. 304; *Parks v. Ross*, 18 Curtis 652; *Twycross v.*

Dreyfus, L. R. 5, Ch. D. 605; *Summer v. Chandler*, 2 P.&B. 175; *Palmer v. Hutchison*, 6 App. Cas. 619; *McKay v. Moore*, 4 Rus. & G. 326.

(3) *Cunningham v. Collier*, 4 Doug. 233; *Gilbert v. Porter*, 2 Kerr 390.

1893
 LUCAS
 v.
 THE
 QUEEN.
 ———
 Reasons
 for
 Judgment.
 ———

this particular case. There are a good many persons directly interested in the result. Some of them were, it is true, before the court as witnesses and were examined and cross-examined upon their claims; but they are not parties to the action and could not, I think, be made parties thereto. None of them has either a *fiat* or a reference, and their claims are not before the court. Obviously, therefore, I have no right or authority to determine the several amounts to which they are entitled.

With respect to the suppliant's personal services and expenses as returning officer I shall allow him three hundred dollars in addition to what he has been paid, and I think he should have his costs.

I shall place the notes of evidence at the disposal of the Auditor-General if he cares to have them, and as an officer of his department was present at the trial, it is probable that a fair and satisfactory adjustment of the several accounts will be made without further litigation. But, if not, the suppliant may move to increase the judgment in his favour by the amount of the account for which he became personally liable, and of any advances properly made by him.

Judgment for suppliant with costs; leave reserved as above.

Solicitors for suppliant: *Lougheed, McCarthy & McCaul.*

Solicitors for respondent: *O'Connor, Hogg & Balderson.*
