1878
Jan. 21, 22.
*April 15.

CONTROVERTED ELECTION OF THE COUNTY OF JACQUES CARTIER.

JAMES SOMERVILLE *et al*.....APPELLANTS;

AND

HON. R. LAFLAMME .....RESPONDENT.

ON APPEAL FROM THE SUPERIOR COURT OF LOWER CANADA FOR THE DISTRICT OF MONTREAL.

Admissibility of Respondent's evidence (P. Q.)—Multiplicity of charges—Bribery and undue influence—Agency—Drinking on Nomination and Polling days.

The petition was in the usual form, charging bribery and corruption on behalf of Respondent and of his agents; and treating by Respondent's agents on the nomination and polling days. In the bill of particulars, the petitioners formulated ninety-eight different charges, but, in appeal, they only insisted upon seventeen charges, seven of which attached personally to the Defendant, and ten to his agents. The Respondent was examined on his own behalf, and there were, in all, 280 witnesses heard.

The judgment of the Superior Court of the District of *Montreal*, dismissing the petition on all the charges, was unanimously affirmed, except as to the charge of bribery and undue influence by one *Robert*, hereafter more particularly referred to; and it was

Held: 1st. That the evidence of a candidate on his own behalf, in the Province of *Quebec*, is admissible.

2nd. That when a multiplicity of charges of corrupt practices are brought against a candidate, or his agents, each charge should be treated as a separate charge, and, if proved by one witness only and rebutted by another, the united weight of their testimony, without accompanying or collateral circumstances to aid the Court in its appreciation of the contradictory

*PRESENT:—Sir William Buell Richards, Knt., C.J., and Ritchie, Strong, Taschereau, Fournier and Henry, J.J.

statements, cannot overcome the effect of the evidence in rebuttal, and that, in such a case, the candidate is entitled to the presumption of innocence to turn the scale in his favor.

3rd. That drinking on the nomination or polling day is not a corrupt practice sufficient to avoid an election, unless the drink is given by an agent on account of the voter having voted or being about to vote.

(39 Vic., ch. 9, sec. 94 D., compared with 17 & 18 Vic., ch. 102, ss. 4, 23 & 36 Imp.)

4th. That a candidate, charged by his opponent with having no influence, is not guilty of a corrupt practice, if, in a public speech, in reply to the attack, he states "that he had had influence to procure more appointments for the electors of the County than any member."

The evidence on the *Robert* charge was to the following effect: *Robert*, long before the election was thought of, together with members of his family (the *Paré* family), exhibited a strong desire to obtain an employment for his brother-in-law, one *Edouard Honoré Ouellette*. *Robert*, being a political supporter, a client and a personal friend of Mr. *Laflamme*, asked him on different occasions if he could procure his brother-in-law (*Ouellette*) a place. The first time he spoke to him with reference to it was about a year previous to the election; but he did not say anything to him on that occasion about his father-in-law (*Paré*). *Robert's* evidence on this part of the case then goes on as follows. "Q. On what occasion did you speak to him (Mr. *Laflamme*) about it? A. It was when the question of an election arose that I spoke to him about it. Q. Last fall? A. Yes. Q. What was the date at which you spoke to him regarding the *Paré* family? A. I cannot positively say, but it was four or five weeks before there was question of the election. It was then spoken of in the County and out of the County. Q. That was during the election? A. Yes. Q. At all events, it was at the time the election was spoken of? A. Yes. Q. What did you say to him regarding your brother-in-law and your father-in-law? A. I went to see Mr *Laflamme* on different occasions, when I had some accounts to give him to collect, and I said to him 'It would greatly please the *Paré* family if you could procure a place for my brother-in-law.' Q. Did you say to Mr. *Laflamme* in what way it would please the *Paré* family? A. I said this to him: 'It might, perhaps, prevent them from voting at the coming election.' Q. When you told Mr. *Laflamme* that the *Paré* family could be useful to him by not voting, what

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did Mr. *Laflamme* say? A. He simply told me 'that he would think of me, and that if a vacancy occurred, he would do his best for me." Mr. *Laflammé*, on the other hand, states. "He (*Robert*) had asked me, not during the election, but many months before, I believe, so far as my memory goes, a year before there was any talk of an election, to try and secure some office or occupation, with a slight remuneration, for his brother-in-law (Mr. *Ouellette.*) I told him that I would consider his claims; that he was one of my best supporters; and, if I saw any occasion where it would be possible for me to support his claim, I would do so. The thing remained in that way; and previous to the election particularly, there was never one word said or breathed on that subject between Mr. *Robert* and myself. I never asked him to use this promise, and never intended to do so; it was merely because he was a personal friend of mine and a man of respectability and importance that I promised to consider his claim, as I was justified as the Representative of the County in doing."

Evidence was given that *Robert* attended three or four meetings of Respondent's Committee, organized at *Lachine*; that he checked lists and reported his acts to some of the members of the Committee.

Before the election, *Robert* repeated to the *Paré* family what had taken place between him and Mr *Laflamme.* At the time of the election, *Robert*, while conversing with the *Parés* in the family circle, was informed by one of them "they would vote for *Girouard* (the defeated candidate), but that they would not make use of their influence." He then told them "Do as you please; they will use your votes as an objection to giving Mr. *Ouellette* a place." This conversation was not reported by *Robert* to any member of the Respondent's Committee.

Held. 1. That the Respondent, having a perfectly legitimate motive in promising *Robert* to try and get an office for his brother-in-law —his desire to please a political friend and supporter—was not guilty of a corrupt act in making such promise; and further, that the act of *Robert*, in relation to the votes of the *Paré* family, even if a corrupt one, was not committed with the knowledge and consent of the Respondent.

2. That whether *Robert* was Respondent's agent or not, the conversations which took place between him and the *Paré* family do not sufficiently show a corrupt intent on his part to influence their vote, and that he is not guilty of bribery or undue influence within the meaning of the Statute. [*Richards*, C.J., and *Strong*, J., dissenting.]

Per *Richards*, C. J. and *Strong*, J., that there was sufficient evidence to declare *Robert* to be one of Respondent's agents. [*Henry*, J., dissenting.]

APPEAL from the judgment of Mr. Justice *Dorion*, of the Superior Court for *Lower Canada*, district of *Montreal*, dismissing the election petition against the return of the Honorable *R. Laflamme* as the member elect representing the County of *Jacques Cartier*, in the House of Commons of the Dominion of *Canada*.

The election took place on the 28th November, 1876, and the petition against the return of the Respondent was fyled on the 8th day of January following; and on the 8th of July the judgment of the learned Judge in the Court below dismissing the petition was delivered.

The petition was in the usual form, charging bribery, corruption and undue influence on behalf of Respondent and of his agents.

In their bill of particulars, and the additions which they made to them during the trial, the Petitioners brought ninety-eight special charges against the Respondent or his agents.

Evidence in support of these charges was given by one hundred and eighty witnesses on behalf of the Petitioners, and over one hundred were heard on behalf of the Respondent. On the argument the Petitioners abandoned 77 of their accusations, and insisted upon 21 charges, eight of which attached personally to the Defendant, and thirteen to his agents.

Before the Supreme Court the Appellants confined themselves to seventeen charges, which are more fully set out in the judgment of the Chief Justice, and were known as:—1st. *Paquin's* case. *Paquin* was a ferryman and conductor of the mails between *Isle Bizard* and *Ste. Geneviève*, upon whom Respondent was alleged to have exercised undue influence in a conversation with reference to the mail; 2nd. *Foley's*

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case—a day laborer employed by the Public Works Department on the *Lachine* Canal, whom the Respondent is accused of having sought to intimidate for having answered him "it is all right," when informed by *Foley* that he did not intend to work for or against him, or to vote for him; 3rd. *Chaurette's* case—a charge of personal corruption against the Respondent for having had *Chaurette* appointed returning officer; 4th. *Lafleur's* case—a voter, who was advised by Respondent to vote if his name was still upon the voter's list, although actually possessing no other qualification to be a voter, accused of personation; 5th. The *Ouellette* case—the only charge on which the Court was not unanimous in affirming the finding of the Court below. In the bill of particulars the charge is in these words:—"Pending the said election at *Lachine*, the said *Placide Robert*, grocer of the same place, and agent of the Respondent, acting with his special knowledge and instruction, promised a situation to *Francois Paré* and *Alphonse Paré*, both electors at *Lachine*, for the said *Edouard Honoré Ouellette*, son-in-law of the said *Francois Paré*, and also to the latter personally, if the said *Francois* and *Alphonse Paré* would refrain from voting at the said election, and if the said *Edouard Honoré Ouellette* would use his influence in favor of the Respondent; and that, in fact, the said *Francois* and *Alphonse Paré* refrained from voting at the said election." 6th. Corrupt treating by Respondent and his agents, under which charge arose the question if treating by agents on the nomination or polling day is a corrupt practice when the drink has not been given on account of the voter having voted or being about to vote; 7th. Speeches by Respondent, 1st at *Pointe Claire*, 2nd at *Ste. Geneviève*, 3rd at *Isle Bizard*, 4th at *Ste. Anne*, 5th at *St. Laurent*, and 6th at *Lachine*; 9th. Speeches by

agents; 10th. Cases of *Deschamps* and *Clement*—charge of bribery and intimidation by one *John O'Neil*, collector of tolls of the *Lachine* Canal as agent of the Respondent; 11th. *Hurtubise* case. *Justinien Bélanger*, as agent of Respondent, is accused by one *Augustin Hurtubise*, of having offered him the keeping of lighthouses, if he would be in favor of Respondent's party; 12th. *Boudrias* case—an alleged offer of money by one *Latour* at the lock in *St. Anns;* 13th. *Cooke's* case—*Cardinal*, as Respondent's agent, is charged with bribery for an alleged offer to help *Cooke* in a contract he had with the Government; 14th. *Cousineau's* case—Defendant's agents are charged with having promised to pay this person money and with having paid him money, given him goods and other effects, and offered him other advantages to induce him to vote or prevent him from voting; 15th. *Gravel's* case—*Mr. Gohier*, as Respondent's agent, is charged with having corruptly given drink to one *Jean Baptiste Gravel*, to such an extent as to render him entirely insensible, with a view to prevent him from voting; 16th. *Brunet's* case—agents of Respondent, charged with having taken electors from *Montreal* to *Ste. Geneviève* in their vehicle, and treated and paid money to induce them to vote for Respondent; and lastly, 17th. The *Ste. Geneviève* quarry case. The charges of this case are as follows: "1st. Conspiracy between Defendant's agents and Mr. *Rodgers*, proprietor and workers of the quarry, to threaten the quarrymen employed there with immediate dismissal if they voted against the Defendant, and to send to *Pointe Claire* on voting day those who persisted in voting against the Defendant; 2nd. Employment given to *François Meloche* in the quarry to influence his vote; 3rd. *W. S. Hemming*, *Antoine St. Denis* and *Edouard St. Jean*, Defendant's agents, threatened to turn out from their work in the quarry the voters who worked under their

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control, with the object of aiding the Defendant's election; 4th. The same agents, on the eve of voting, tried to send to *Pointe Claire* those men who persisted in desiring to vote against the Defendant, or in not abstaining from it.

The material facts of the charges above set out fully appear hereafter in the judgment of the learned Chief Justice; and as the evidence given in support and against these charges is reviewed at length in the judgments of the Court a separate statement is unnecessary

Mr. Dalton McCarthy, Q.C., and *Mr. C. P. Davidson, Q.C*, for the Appellants, argued that the Respondent's evidence in his own behalf was inadmissible under the laws of the Province of *Quebec*, citing and commenting on 38 *Vic.*, cap. 8, s. 56, Q.; 37 *Vic.*, cap. 1, ss. 45, 49, D.; Art. 251, C. C. P.; *Taylor* on evidence (1); *Gilbert sur Sirey* (2); *Soulanges, Shefford* and *Jacques Cartier* election cases (3); and that treating by agents on the nomination or polling day, is a corrupt act sufficient to avoid an election, and referred to the *Bodmin* case (4); *Carrickfergus* case (5); The *North Wentworth* case (6); The *North Grey* case (7); The *South Essex* case (8); The *Montreal West* case (9); Mr. Justice *Caron's* opinion in the *Portneuf* case (10); and The *Bonaventure* case (11). They also contended upon the facts that the Respondent was guilty of corruption, undue influence and bribery through his agents, and cited the following authorities:—1st. With reference to *Foley's*

(1) s. 1241, p. 1194.
(2) Codes Annotés, on Art. 268.
(3) Not reported.
(4) 1 O. & H. 122; 20 L. T. (N.S.) 989.
(5) 1 O. & H. 265; 21 L. T. (N.S.) 352.
(6) 11 C. L. J. 198 & 298.
(7) 11 C. L. J. 242.
(8) 11 C. L. J. 247.
(9) 20 L. C. Jur. 22.
(10) 2 Q. L. R. 268.
(11) 3 Q. L. R. 75.

case: *Bradford* case (1); *Coventry* case (2); *Westbury* case (3); *Blackburn* case (4); *North Norfolk* case (5); *Galway* case (6); *Northallerton* case (7).

2nd. *Lafleur's* case: The *Coventry* case (8); *Oldham* case (9); *Gloucester* case (10); *Dominion Elections Act* (11).

3rd. *Ouellette's* case: *Sligo* case (12); *Blackburn* case (13); *Westbury* case (14); *Halton* case (15).

4th. *Ste. Geneviève* Quarry case: *Staleybridge* case (16); *Blackburn* case (17); *North Norfolk* case (18); *Cox & Grady* (19); *Parsons* on Contracts (20); C. C. L. C. Art. 995; 1 Demolombe No. 158.

5th. Speeches by the Respondent and his agents: *Launceston* case (21); *Deakin* v. *Drinkwater* (22); *Simpson* v. *Yeend* (23); *Dublin* case (24); *Worcester* case (25); *Hertford* case (26); *Dover* case (27); *Reg.* v. *Gamble* (28); *Petersfield* case (29).

6th. On the question of agency: *Staleybridge* case (30);

(1) 1 O. & H. 32, 40; 19 L. T. (N.S.) 278, 721.
(2) 1 O. & H. 97; 20 L. T. (N.S.) 405.
(3) 1 O. & H. 50; 20 L. T. (N. S.) 22.
(4) 1 O. & H. 203, 204; 20 L. T. (N.S.) 823.
(5) 1 O. & H. 241; 21 L. T. (N.S.) 264.
(6) 1 O. & H. 305; 22 L. T. (N.S.) 75.
(7) 1 O. & H. 167.
(8) 1 O & H. 105; 20 L. T. (N.S.) 405.
(9) 1 O. & H. 152.
(10) 2 O. & H. 63.
(11) Sec. 74, 75, 76, 92, 98.
(12) 1 O. & H. 302.
(13) 1 O. & H. 205; 20 L. T. (N.S.) 264.
(14) 20 L. T. (N.S.) 16—23.
(15) 11 C. L. J. (N.S.) 273.
(16) 1 O. & H. 70; 20 L. T. (N.S.) 75.
(17) 1 O. & H. 205; 20 L. T. (N.S.) 823.
(18) 1 O. & H. 241; 21 L. T. (N. S.) 264.
(19) Pp. 324, 325. See 1 O. & H. 173.
(20) P. 395.
(21) 2 O. & H. 130.
(22) L. R. 9 C. P. 626.
(23) L. R. 4 Q. B. 628.
(24) Com. Journals, vol. 86, part 2, Pp. 30, 33; Chambers Dict., Vo. Ministers.
(25) 3 Doug. 239.
(26) Perry & Knapp, 541.
(27) Wolferstan & Bristow, 128.
(28) 9 U. C. Q. B. 536.
(29) 2 O. &. H. 94.
(30) 1 O. & H. 70; 20 L. T. (N.S.) 75.

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Bewdley case (1); *Blackburn* case (2); *Taunton* case (3); *Taunton* case (4); *Wakefield* case (5); *Durham* case (6); *Bolton* case (7); *Dublin* case (8); *Barnstaple* case (9); *Lichfield* case (10); *Cox & Grady* (11).

7th. As to appeal on questions of fact: 38 *Vic.*, ch. 11, ss. 48, 22; *Symington* v. *Symington* (12); The *Glannibanta* (13); *Bigsby* v. *Dickson* (14).

Mr. *E. C. Monk*, *contra*, contended that all members of the House of Commons were to be tried by the same law; and that if the evidence of a Member was admissible in the Province of Ontario when his seat was contested, the evidence of a Member representing a County in the Province of *Quebec* was also admissible. He referred to and commented on *The Dominion Controverted Elections Act*, 1874 (15); C. C. L. C. (16); C. C. P. L. C. (17).

The learned counsel then commented at length on the facts, and maintained that the judgment appealed from was based upon the most reliable appreciation of the evidence adduced, and that the numerous authorities cited by the Appellant's counsel were not applicable. The following, among many other statutory provisions and authorities, were also cited and relied on:

1st. As to the *Ste. Geneviève* Quarry case—*St. Denis'* Agency: *Windsor* case (18); *Londonderry* case (19); *Taunton* case (20); *Shrewsbury* case (21); *Staleybridge*

(1) 1 O. & H. 18; 19 L. T. (N.S.) 676.
(2) 1 O. & H. 200; 20 L. T. (N.S.) 823.
(3) 1 O. & H. 185; 21 L. T. (N.S.) 169.
(4) 2 O. & H. 73.
(5) 2 O. & H. 102; H. of C. returns, 1874.
(6) 2 O. & H. 136.
(7) 2 O. & H. 141.
(8) 1 O. & H. 273.
(9) 2 O. & H. 105.
(10) 1 O. & H. 25.
(11) P. 221.
(12) L. R. 2 S. App. 424.
(13) L. R. 1 P. C. 283.
(14) L. R. 4 C. P. D. 35.
(15) S. 45.
(16) Art. 1254.
(17) Art. 448.
(18) 2 O. & H. 1.
(19) 1 O. & H. 274.
(20) 30 L. T. 125.
(21) 2 O. & H. 36.

case (1); *Bolton* case (2); *Westminster* case (3); *Wigan* case (4).

Intimidation must be continuing at time of election: *Windsor* case (5); *Bushby's* Election Manual (6).

2nd. *Ouellette's* case: *Sligo* case (7).

3rd. *Lafleur's* case: *Oldham* case (8); *Gloucester* case (9); *Westminster* case (10).

4th. As to treating by Respondent and his agents: *Leigh & LeMarchant* Elec. Man. (11); *Portneuf* case (12); *Dominion Election Act*, 1874, Sec. 94.

5th. Speeches by the Respondent and his agents; *Phillips* on Evidence (13); *Greenleaf* on Evidence (14); *Taylor* on Evidence (15); *Launceston* case (16); *Muskoka* case (17).

6th. As to accumulation of charges and appeals upon questions of fact: *Muskoka* case (18); *Gray* v. *Turnbull* (19); *Gray* v. *Turnbull* (20).

Mr. *Dalton McCarthy*, Q. C., replied.

THE CHIEF JUSTICE:—

This is an appeal from the judgment of the Honorable Mr. Justice *Dorion*, of the Superior Court of the Province of *Quebec*, dismissing the petition of *James Somerville* and others complaining of the undue election and return of the Hon. *Rodolphe Laflamme* to the House of Commons of the Dominion of *Canada*, for the electoral district of *Jacques Cartier*, in the Province of *Quebec*.

(1) 1 O. & H. 70.
(2) 2 O. & H. 141.
(3) 1 O. & H. 92.
(4) 2 O. & H. 91.
(5) 2 O. & H. 91.
(6) Last ed. 145.
(7) O. & H. 302.
(8) 1 O. & H. 152.
(9) 2 O. & H. 63.
(10) 1 O. & H. 91.
(11) P. 37.
(12) 2 Q. L. R. 262.
(13) Vol. I, 730.
(14) Vol. I, 282.
(15) Pp. 649, 655.
(16) 2 O. & H. 129.
(17) 12 C. L. J. Pp. 200, 203.
(18) 12 C. L. J. 200, 203.
(19) 1 L. R. 2, S. App. 54.
(20) L. R. 2 S. C. App. 55.

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Before this Court, the charges were formulated under seventeen different heads; and, I have no doubt, in bringing the case before us, the parties have endeavored, as well as they could, to arrange and distribute the large mass of evidence in the best manner to facilitate the consideration of it by us. And I think they are entitled to the further credit of eliminating and discarding a large mass of evidence given in the Court below, which has relieved this Court from plodding through lengthy depositions (made longer and less intelligible by being taken down in the form of question and answer) the contents of which, when understood and mastered, would have been entirely useless.

After the experience of nearly a quarter of a century in the judicial office, I may be permitted to say, that no cases have come before me which have caused the amount of labour, care and perplexity that election cases have. No doubt one great cause of the difficulty to the Judge arises from the circumstances under which the witnesses give their evidence in these cases.

An election has been held, the passions and feelings of the electors of, perhaps, a large section of country have been excited to an extent which rarely prevails in this country, except during election contests. The supporters of either party have exerted their energies to the utmost for the success of their candidate, and the result is the return of a candidate as a member by a small majority. The friends of the unsuccessful candidate are at once impressed with the idea that they have been defeated by illegal and disreputable means, and they immediately endeavor to have the decision against them, obtained by such means, reversed as speedily as possible. They file their petition, and then proceed before the election court to have the case tried. The heat and the excitement which prevailed in the electoral division is then transferred to the election court.

The witnesses are too apt to shew, by their conduct and their manner of giving evidence, that they are actuated by the same partizan feelings as witnesses that influenced them as voters ; and some of them act as if they thought they ought to support their party by their oaths as zealously as they did by their votes. The audience is often numerous and composed of partizans, whose feelings enter more or less into the legal contest as they did into the political one. All this adds much to the perplexity and difficulty of the Judge in evolving the truth from the testimony given by the excited witnesses. This difficulty is expressed in the language used by an election judge in *Ontario*, which I extract from a case now lying before me :

> The difficulty which I have experienced in evolving truth from the greater part of this mass of evidence has been great beyond what can be conceived, arising from the fact that the manner in which many of the witnesses gave their evidence—who, from the intimate connections with the Respondent in his business relations, and in connection with the canvass on his behalf, should reasonably be expected to be able to place matters in a clear light—has left an impression on my mind that their whole object was to suppress the truth (1).

But the Judge who tries the cause in the first instance has many advantages over those who are called upon to review his decision. He sees the witnesses, hears their answers, sees whether they are prompt, natural, and given without feeling or prejudice, with an honest desire to tell the truth ; or whether they are studied, evasive and reckless, or intended to deceive. As the case goes on the Judge is able to form a conclusion (oftentimes difficult to arrive at) which is more satisfactory to him than if he had been deprived of the opportunity of seeing or hearing the witnesses. Then again, if any misunderstanding arises as to what the

(1) *Lincoln* case, 12 C. L. J. 166.

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witness has said, it can be put right at once. The object for which a witness is called, and the point to which his evidence is directed, is understood. If any doubt arises in the mind of the Judge as to what particular part of the case the testimony of the particular witness is to be directed, on application to the counsel, that doubt can at once be solved. The views and opinions of the Judge in disposing of a case, who has these advantages in considering the evidence, are more likely to be correct than those of an Appellate Court who have not those advantages. I have endeavored to point out how profitable it is to have the living rather than the dead testimony, as to which I shall presently give the language of the late Sir *J. Coleridge*. As I have already observed, these election cases impose great trouble and perplexity on the Judge, even under the most favorable circumstances. But when Courts are called upon, on appeal in these cases, to reverse the decisions of the Judge who tried the case on matters of fact, their labour and perplexities are, as far as my experience goes, very much increased. After the testimony has been taken down, it may be submitted to the consideration of parties not engaged in the first trial, who may see points and discrepancies in the evidence not suggested at the trial; matters omitted, or rather not proven by evidence, which were taken for granted, and as to which, if attention had been drawn to them, the difficulty could have been removed at once, these are brought forward, and the Appellate Court must consider them, and also the conflicting evidence, without the advantage possessed by the Judge below. His views as to the proper decision arising from the effect of the whole of the evidence on his mind, the manner of giving that evidence by the witnesses being an important element in leading his mind to the proper conclusion; and yet, perhaps, he could not say he

believed one particular witness more than another; and when the testimony is read, one witness would appear as much entitled to credence as the other. The difficulty of understanding and rightly appreciating a large mass of evidence, when it is only read, is thus referred to by the late Sir *John T. Coleridge*, in giving the judgment of the Judicial Committee of the Privy Council, in *The Queen* v. *Bertrand* (1).

> Those of their Lordships who have been used, on motions for new trials, to hear the Judge's notes of evidence read, probably know well by experence how difficult it is to sustain the attention, or collect the value of particular parts, when that evidence is long. *** But this is far from all. The most careful notes must often fail to convey the evidence fully in some of its most important elements, those for which the open oral examination of the witness in presence of prisoner, Judge and Jury, is so justly prized. It cannot give the look or manner of the witness, his hesitation, his doubts, *** his confidence or precipitancy, his calmness or consideration; ***** nor could the Judge properly take on him to supply any of these defects. *** It is, in short, or it may be, the dead body of the evidence, without its spirit which is supplied, when given openly and orally, by the ear and eye of those who receive it.

In addition to this, when the evidence is taken down, as it has been in this case, in the form of question and answer, it swells to an enormous bulk, and the labour and perplexity of the Judge in understanding it is enormously increased. I think I can truly say, that I have spent more time in endeavouring to master the details of the evidence in this case than in any that has ever come before me, and I have been compelled in doing so to transcribe nearly the whole of what is really the evidence that pertains to the case.

At the same time, as I have already intimated, it is but justice to the parties to say, that they have really endeavored to place the case before us relieved, as much as they could relieve it, from a mass of matter which

(1) L. R. 1. P. C. 550.

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would have further increased our labours; and by the arrangement of the evidence under the different heads they have very much facilitated the reference to it, as applicable to each particular case.

The first question for consideration is, whether the Respondent could, on the trial of the petition, give evidence for himself. As I understand the matter, after the evidence in the cause was given, the Respondent appeared before the Court on the second day of June, and, being duly sworn, made the following declaration, which is set out in the case as filed in this Court. After referring to many of the circumstances detailed in the evidence, and denying the statements made by some of the witnesses and explaining others, he concludes:

> These are the only facts upon which I intend to offer any explanations, but I am ready to answer any questions that may be put to me.

Respondent's own counsel put a question. It was objected to by petitioners, on the ground of Respondent not being examined as a witness, but merely tendering his own declaration. The objection was over-ruled and the question answered. The Petitioners declined to put any question to Mr. *Laflamme*, he not being a witness in the case. The statement of his evidence then concludes, as that of all the other witnesses; "And further, deponent saith not."

Under sub. sec. 7 of the 3rd section of "*The Dominion Controverted Elections Act of* 1874," it is provided that, subject to the provisions of that act, the Courts shall have the same powers, jurisdiction and authority, with reference to an election petition and the proceedings thereon, as if such petition were an ordinary cause within its jurisdiction. In any election case in the Superior Court of the Province of *Quebec*, I apprehend that the usual practice in suits in that Court would be

pursued, except when the provisions of the Controverted Elections Act may make a difference. In relation to the examination of the parties to the suit in an ordinary case, they cannot, as I understand, in the Province of *Quebec*, offer themselves as witnesses; and if that practice is to be followed in election cases in that Province, the Petitioners may properly urge that the evidence of the Respondent should be excluded.

No one at all familiar with these cases can doubt, that it is of the greatest importance that the Respondent should be able to give testimony on his own behalf on the trial of an election petition. Many circumstances during the progress of an election contest arise which can only be satisfactorily explained by the Respondent; and it is certainly desirable that his testimony should be heard as well on his own behalf as against himself. The history of the legislation on the subject is a brief one. The statute for trying election petitions before judges was passed in *England* in 1868. The Dominion Statute for the same purpose was passed in 1873, adapting the English Statute to the state of things existing in the Dominion. The Legislature of *Ontario* adapted the English Act to the circumstances of that Province, and passed their Statute in 1871, in February; and the general election for that Province was held in the month of March of the same year. A number of cases arose out of that election, and were tried before the Judges of the Superior Courts of Law and Equity in *Ontario*. So that at the time of the passing of the Dominion Statutes in 1873 and 1874, the course of procedure in the trying of these petitions in *England*, and which was followed in *Ontario*, must have been known to the framers of those statutes; and it seems to me that they intended that the same course should be followed here that prevailed in *England*, so far as could be consistently with the Act and the rules to be made

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under it. Now, the practice which prevailed in *England* at that time on these trials before the Judges was to hear the parties as witnesses; and the reading of the cases there decided shows how desirable it was that they should be witnesses. I think the reference in the Statutes to the manner in which these election petitions, touching the election of the members of the House of Commons, are dealt with in *England*, shows that it was intended the same course should be followed here. Under the 44th section of the Dominion Statute of 1874, power is given to the Courts to make general rules and orders for the effectual execution of the Act and the intention and object thereof, and the *regulation of the practice and procedure* and costs with respect to election petitions, and the certifying and reporting thereon. And the 45th section provides, that until the rules have been made by the Judges of the several Courts in pursuance of the Act,

> *And as 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*, are at the time of the passing of this Act *dealt with*, shall be observed by the Courts and Judges thereof.

It will be observed that the authority to make rules refers to the regulation of the practice, procedure and costs. But the 45th section refers to the principles as well as the practice, and I think contemplates something beyond the new rules that were intended to be made.

There has been some discussion as to the effect of this word *principles* in the section of the English Statutes which refer to the decisions of election committees, but I cannot say that it throws much light on the subject we have now to consider. I think we will not be going beyond what the legislature had in view, by requiring the Courts to observe the practice and

principles on which election petitions were *dealt with* in *England*, in holding that the parties to an election petition, touching the election of a member of the House of Commons of the Dominion of *Canada*, can be witnesses on the trial of the petition and examined on their own behalf. I believe that practice has prevailed in the cases tried throughout the Dominion, and, as far as I understand the question, has never been raised, either in the Province of *Quebec*, or any other Province, until it was brought up in this case.

The Local Act, (1) for the trial of controverted elections in the Province of *Quebec*, provides that the rules of evidence in the local election cases shall follow the English Law.

I do not think the provisions of the Dominion Statute, relative to preliminary examination of parties, and the production of documents, afford any argument against a party being called as a witness or examined on his own behalf. It merely enables a party to be examined before the trial, and the information so obtained may induce the petitioner to abandon his petition, or the facts elicited may be of such a character that the Respondent will be advised to abandon the seat. It is similar to proceedings which may be adopted in Chancery and under the Common Law Procedure Act, but these proceedings do not in any way interfere with the party so being examined becoming a witness on the trial. I, therefore, think we may consider the Respondent's declaration under oath properly receivable in this case.

The first case referred to in the factum is *Paquin's case*.

The evidence is to the effect, that

Mr. *Laflamme* asked him (*Paquin*) what he intended to do about the election. He answered: "I cannot do anything, for I have already

(1) 38 Vic., Cap. 8, Sec. 56.

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had troubles about that." Whereupon Mr. *Laflamme* said, "I have already been the means of establishing a post office at *Isle Bizard*, and you have been appointed mail carrier; if you do not sign for me, do not sign against me." "He then asked me," says *Paquin*, "if I was going to sign at all. I answered I was not, and that is all that was said."

Mr. *Trepannier*, a witness, said:

Mr. *Laflamme* asked him, *Paquin*, "what are you going to do this year?" He answered: "I have already had troubles; I don't vote this year." Mr. *Laflamme* said, "if you do not vote for me, you will not hurt me by not voting at all." Mr. *Paquin* said, "I will not vote at all." Mr. *Laflamme* said to him: "it was through me that you got the mail."

I do not consider these words, used by Respondent, were calculated or intended to intimidate; at most, they seem to me to be addressed to the man to convince him he ought not to vote against him (Mr. *Laflamme*), because he, as representing the County, had got the mail established at that place, and that it was through him that he got the mail. I have seen no case going so far as to say, that this is intimidation or undue influence. I, therefore, think in this matter the decision of the learned Judge was corret.

Foley's case.

Foley's evidence is to the following effect: *Michael Conway*, the Superintendent of the *Lachine* Canal, came to his (*Foley's*) house in *Lachine* on Saturday afternoon, and informed him that he understood that a party had made a complaint in Mr. *Laflamme's* office about his (*Foley's*) working for the government, and not supporting the government candidate. *Conway* said he must come in and make it all right with Mr. *Laflamme*, or he would have to discharge him. *Foley* said he was not going to take any part in the election. He had always worked on the Conservative side. He did not take any part in the election.

On re-examination, *Foley* repeated:

He told me he heard I was going to be discharged, and that I had better go and see Mr. *Laflamme*. I said, I did not know where Mr. *Laflamme's* office was. He said he would meet me at the station, which he did on Monday morning, and we both went down to *Laflamme's* together, and he (*Conway*) introduced me to Mr. *Laflamme*.

Conway sat down and remained during the interview. He (*Foley*) said he went to Mr. *Laflamme's* office to tell Mr. *Laflamme* he need not thank him for coming there, as he was not going to vote for or against him. In reply to a question, he said:

I told him, of course, that I was working for the government, and did not want to take any part in the election, and that I was not going to vote for him. I said if that would do, it would be all right, but if it was not they could do as they pleased about discharging me. He said that would do.

In answer to another question, he said:

I did not tell him how I was going to vote. I told him I was not going to vote for him; that I would not work on either side. I think he said it was all right if I did not work on either side, but remained quiet.

He thought Mr. *Laflamme* knew he was a Conservative, and that he had voted against him at a former election.

He added:

What *Conway* said to me was told as a friend.

Michael Conway said:

I heard it reported that *Foley* was going to take an active part against the Government candidate, and as he was employed under the Government, I thought it my duty, as a friend of *Foley*, and as a Superintendent of the Canal, to tell him, that, as he was making his living there, I did not think it was wise for him to take an active part against Mr. *Laflamme*, and that if he took my advice he would vote for whom he pleased, and not take an active part in it at all. I make it a point to make my men attend to their business, and not take active parts in elections. I made no objection to his working in the election whatever; I simply gave him my advice. It was rumored around he was going to take an active part in the election. I swear I did not advise him not to vote. The promise I got from *Foley* was, that he was going to

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see Mr. *Laflamme*, and see what he was going to do. He suggested it himself, and I went with him to introduce him to Mr. *Laflamme*, and to show him that the man did not intend to interest himself in the election, but attend to his work.

No person, to the knowledge of the witness *Conway*, made any complaint against *Foley*. It was rumored. He said:

I introduced him to Mr. *Laflamme*, and he told Mr. *Laflamme* he was employed by the Government, and that he heard he was going to lose his place. He told Mr. *L.* he did not intend to work for or against him; or to vote for him. I think Mr. *Laflamme* said he was perfectly satisfied.

In answer to a question, he said:

When I first saw him (*Foley*) I went to his house, and told him there was a great deal of noise about his going to take an active part in opposition to the Government candidate; and, as he was employed by the Government, I thought it would not be advisable for him to take an active part in the matter more than to vote for whom he pleased. *Foley* said: I will go and tell Mr. *Laflamme* that I am not going to work for or against him; or vote for him.

On cross-examination, he said:

I did not tell *Foley* that I heard he was going to be turned off. I told him, I heard it rumored he was going to take a very active part on the other side; and, he being employed by the Government, I told him, as a friend, not to interfere, but to attend to his work, and vote for whom he pleased. It was not the purport of what I said to him—that it was reported in the office that he was going to be discharged if he took any part in the election. I did not say so, nor did I mean it.

Foley states he voted at the election.

In relation to this case, we must confine ourselves strictly to what took place in Mr. *Laflamme's* presence. If *Foley* had said to Mr. *Laflamme*, "Mr. *Conway* informs me a complaint has been made against me in your office about my working for the Government and not supporting the Government candidate, and that I must come and make it all right with you, or he will discharge me;" and had further said, "he did not want to take any active part in the election, but he was not

going to vote for him ; and, if that would do, it would be all right; but if it did not, they could do as they pleased about discharging him." If Mr. *Laflamme* had, after that, boldly said "that would do," I think that would afford strong grounds for assuming that he knew and approved of the threat that *Foley* would be discharged if he exercised his franchise. I doubt if what he did say ought fairly to lead to the same conclusion. Mr. *Laflamme* might have thought this man had some idea that if he did not support the Government candidate he would be dismissed, and came to him to tell him what he intended to do, and to see what Mr. *Laflamme* would say to that. The answer "that would do," I do not think necessarily implies if he did vote he would be dismissed.

Conway's account of what took place in Mr. *Laflamme's* office does not differ much from that of *Foley*.

If Mr. *Laflamme* had been made aware that direct threats had been made to discharge *Foley*, if he did not satisfy him, it would have been his duty to have informed *Foley* that he had not authorised any such threats to be made, and that he entirely disapproved of them. Whilst the law would not require him to tell an elector, situated as *Foley* was, to do all he could against him, it required that he should not approve of threats being used to deter the elector from the exercise of his franchise.

I think it would not have been out of place for him to have told Mr. *Conway* it was not his duty to bring the workmen on the canal to his office to explain what they intended to do, to see if that would be satisfactory. If, as a friend of *Foley*—the latter having been represented as an active partizan against Mr. *Laflamme*—he thought it was unseemly for him in the position he occupied to take an active part in politics, and as his friend advised with him, *not threatening him*, not to

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make himself conspicuous; if, on such friendly advice, *Foley* had assured him he did not intend to take a part in politics, he might, as such friend, have assured Mr. *Laflamme* that the representation that *Foley* was active against him was untrue. But bringing *Foley* to Mr. *Laflamme's* office to answer, as it were, a charge against him, certainly looks as if it was intended he should be impressed by the interview. *Conway* denies having told *Foley* that, if he did not make it all right with Mr. *Laflamme*, he would discharge him. If the case were to turn on what *Conway* told *Foley*, I would hesitate before giving credence to *Conway's* rather than *Foley's* account of it. *Foley* did go to Mr. *Laflamme's* office. *Conway* did accompany him, and he did explain to Mr. *Laflamme* that he did not intend to take any part in the election, and he did allude to the circumstance that his course as to the election might lead to his discharge, "to losing his place." The demeanor of the two men would, of course, assist in determining which of the two statements should be most relied on. *Conway*, according to his account of the transaction, was a high toned public officer, who, whilst allowing every man to exercise his right of voting freely, thought it unseemly for persons in the employ of the government to take an active part in politics; and having heard that *Foley* was taking an active part against the government candidate, as his friend, went to *advise* him not to render himself obnoxious by such a course; and, as his friend, and at *Foley's* request, went with him to show him where Mr. *Laflamme's* office was, to enable him to explain to that gentleman the course he intended to pursue; and that he did not threaten to discharge him if he did not make it all right with Mr. *Laflamme*. I must confess, on reading the whole of the evidence given by *Foley* and *Conway*, that this view of the case did not seem to me the most correct one to take.

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I do not see, however, that I can, on the evidence, consider *Conway* Mr. *Laflamme's* agent. It is true he was in favor of Mr. *Laflamme*, and probably brought some voters to the poll for him, and asked others if they were going to vote for him. I do not consider *Conway* bringing *Foley* to Mr. *Laflamme's* office so made him aware that *Conway* was acting for him, as to constitute him an agent for whose acts he was responsible.

I therefore, as to this charge, think we should decide in favor of Respondent.

Chaurette's case.

In his evidence *Chaurette* says he met Mr. *Laflamme* at *Pointe Claire* on the nomination day, and he said to him:

I have heard that you would not put your name to propose me. I answered, "it is true." He then said to me: "I have appointed you Deputy Returning Officer.

Further on he said, in answer to the question:

Did you tell him that you could not vote for him? Answer—"You know that I have always been for you."

The next question was:

Was it upon that that he told you he had appointed you Deputy Returning Officer? Answer—Mr. *Laflamme* and Mr. *Anthime St. Denis* coming on one side of the side walk and I on the other, on nomination day, in passing Mr. *Laflamme* stopped and told me "I have heard that you would not put your name to propose me," and I said to him: "*Yes*, I do not like my name to appear." Upon that he told me "I have appointed you Deputy Returning Officer," and I answered him, "that will be the way to keep me quiet;" because I was appointed Deputy Returning Officer, and being appointed as such I remained quiet, but I did not lose my right of voting. Nevertheless, one may get excited during elections and be glad to find friends.

On cross examination he stated:

Before the nomination day I did tell some of Mr. *Laflamme's* friends that I would vote for him, but that I would not sign his nomination ticket. I did not like to come forward. Mr. *Laflamme* might have known before the nomination day that I was for him. I told him to leave me alone, and that I would always be the same

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man, but that I would not work. My appointment as Returning Officer did not change my opinion.

It does not strike me that this evidence shews that *Chaurette* was bribed to support Mr. *Laflamme* by his being appointed Deputy Returning Officer. The difficulty has arisen from Mr. *Laflamme* saying he had appointed *Chaurette* Deputy Returning Officer. I should have thought it was the duty of the Returning Officer to appoint his deputies, under the 28th section of *The Dominion Elections Act of* 1874, and that it was a matter in which the candidates would not interfere. The law casts the duty on the Returning Officer, and he ought to make the selection of proper, qualified persons, without reference to the candidates. It is of great importance that these officers should be men who would not be influenced in the discharge of their duties by political feeling or prejudice; and if it is understood they are to be the nominees of a candidate, the public will not have the same confidence in them as if selected by the Returning Officer himself from those he consider qualified by intelligence and honesty to discharge the duties properly. It seems to me the Returning Officers ought to make their own selections of their deputies, and be held responsible for their selections.

Lafleur's case.

This voter, who is accused of personation, is an advocate and resides in *Montreal.* His father, of the same name, is a farmer and resides at *Ste. Geneviève.* In 1875, the son was the owner of property in the parish, and voted at the election for the Local Parliament. The father had property in the village of *St. Geneviève*, and in the parish, and his name was on the *two* lists of voters. The son sold his property which was in the parish in the fall of 1875, and the question arose, whether, having sold his property, he could vote supposing his name to be on the list, and whether his

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name was really on the list, though the person whose name was mentioned on the list was described as a *farmer*, the voter being an advocate. It appeared from the evidence that the land which the younger *Lafleur* had owned was on *Main Street*, and that of the elder *Lafleur* was described "Property on the *Main Street*;" and the property formerly owned by the younger *Lafleur* would be described in the same manner, but the name would not be the same. I suppose this means the father would be "farmer." The property was sold to Mr. *Gauthier*. His name was not on the list. The Secretary-Treasurer of the Corporation, in reply to a question, said this property, which did belong to Mr. *Lafleur*, advocate, was not mentioned on the list. I think by this is meant, unless coming within the description put opposite the elder *Lafleur's* name. One of the questions referred to was, whether the younger *Lafleur's* name, having been on the list for 1875, it could properly be removed without giving him notice. It is not contended that the young man pretended to be the father, but that he pretended to be the man whose name was on the list, and he was not that man. The man named on this list was either his father or himself; he, in fact, contended it was himself. If there had been a mistake in putting *farmer* as the matter of description of the person, then young *Lafleur* might honestly have supposed he had a right to vote; and if the name was not intended for him, then the land he had owned was not assessed at all, as I understand it. I do not think it appears in a manner at all satisfactory that these parties did not believe young *Lafleur* had a right to vote. He thought so himself, and swore in his vote; and I do not think, under the head of *personation*, the legislature intended to deter a man from voting who claimed the right to vote on his own behalf, and believed he had that right. If this young man had never owned

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this property, had never had a right to vote, and merely, because the name of his father being the same as his own, would insist on voting, though he was an advocate and his father a farmer and the *Lafleur* named was described as farmer, then it might be said in one sense he had been guilty of personation; or if the property were assessed to the man to whom he had sold it, and the entries had been all properly made, and the description of the land could only apply to his father, there would then be more ground for imputing wilful fraud. But I do not feel warranted in deciding against the Respondent as to personal complicity in the matter, or that the election should be avoided on account of anything done by his alleged agents in respect of this vote.

As to treating on election and nomination days.

Section 94 of *The Dominion Elections Act of* 1874, 37 Vic., cap. 9, substantially re-enacts sections 4 and 23 of the Imperial Statute of 17 and 18 Vic., cap. 102. Section 4 is similar to the first paragraph of sec. 94 of the Dominion Act, and the last paragraph of that act is similar to sec. 23 of the Imperial Statute. Under sec. 36 of the Imperial Statute, corrupt treating avoided the election; and though under that act the candidate was not eligible for re-election for the same constituency during the existing parliament, and is still punishable in the same way for corrupt treating, yet he is not declared incapable of voting and holding certain civil offices, as he is by the subsequent act of the Imperial Parliament (1), for seven years when found guilty of bribery. But under, sec. 23 of the Imperial Statute of 1854, the persons giving refreshments to voters on polling days are only liable to the penalty of 40 shillings for each offence. Sec. 98 of the Dominion Statute declares any

(1) 31 & 32 Vic., cap. 125, sec. 43, 1868.

wilful offence against, amongst others, sec. 94, shall be a corrupt practice within the meaning of that act. Sec. 101 declares the election void when it is found on the trial of an election that any corrupt practice has been committed by any candidate or his agent at an election, and sec. 102 further punishes the candidate when such practices have been committed by or with the actual knowledge and consent of any candidate at such election. The fact that a corrnpt act has been committed must, of course, be proved at the trial of the election petition or of an indictment.

Mr. Justice *Willes* in the *Bodmin* case (1) refers to what he supposes was the reason of the 23rd section being introduced into the English Statute, when the 4th section referred to corrupt treating and punished it under the 36 section. The learned judge said:

It would seem to have been usual in former times, and no doubt was the practice, at least up to the year 1854, when the Corrupt Practices Act was passed, without any improper design upon the voters, and with a view to profusion, which some might dignify by the name of hospitality, to give every voter who came up pledged for a candidate, at the election, or who voted for candidate, refreshment, either by opening a common table at some inn, where the voters breakfasted before they went to the poll, or where they had refreshments before they left the town after polling, and before they returned to their homes.

The learned Judge then referred to *Bodmin's* case (2), where it was reported to the House that a system was pursued (which the learned Judge had no doubt was general) as soon as a voter had polled his vote of giving him a ticket for 5*s*. worth of refreshments. He then proceeds:

I cannot help thinking that that was the sort of corrupt practice with which—whether corrupt or not—the Legislature was dealing in the 23rd section of the Statute; and, also, I am inclined to believe, though I cannot precisely cite my warrant for believing it, that where

(1) 1 O. & H. 122; 20 L. T. (N. S.) 990.

(2) 1 Power, Rodwell & Drew, 129.

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a farmer, for instance, came from a distance to vote at a County election, it was not uncommon to have such an open table as that to which I have referred, not for the purpose of catching people's vote by the attraction of the meal, but simply, as it was then thought, reasonable, and was not uncommon. If to give a voter something to eat on the day of polling had been in itself treating, the 23rd section would have been unnecessary—the 4th section, dealing with corrupt-treating, would have been sufficient to dispose of the case. Moreover, if it had been intended by the Legislature in making that sort of practice which prevailed here and elsewhere illegal, as no doubt it is now, by the 23rd section, to make it also amount to corrupt treating within the meaning of the 4th section, the Legislature would have so declared itself in the 23rd section.

This seems to me to explain the origin of the 23rd section of the English Statute, and the reason why it was passed. It is substantially re-enacted under the last paragraph of the 94th section of the Dominion Statute, and made a corrupt practice, but to make it a corrupt act the meal, drink, or refreshment, must be given on the day of nomination, or on the polling day, and *on account of the voter having voted, or being about to vote.* This, perhaps, would make the illegal act a corrupt practice, though the refreshment was not given with a corrupt intent. The observations of Mr. Justice *Willes* shew clearly that it was not enacted for the purpose of preventing drinking on the nomination or polling days. The provisions in the *Ontario* Statute compelling the closing of taverns and shops where liquors are sold on election and nomination days, and the furnishing and selling or giving away of liquors to any person within the municipality during the period mentioned, were evidently framed for a different purpose from the paragraph under discussion in the Dominion Statute.

The drinking on the nomination or polling day not being a corrupt practice, unless the drink was given on account of the voter having voted, or being about to vote, and the evidence not shewing that the alleged

drinking on those days was for any such reason, the question raised on that ground must be decided in favor of the Respondent. This view, I think, accords with the opinion expressed by Chief Justice *Meredith* in the *Portneuf* case (1), to which we were referred, and does not conflict with the decision of Mr. Justice *Torrance* in the case tried before him—as I understand, the drink given in that case was on account of the voters having voted or being about to vote.

Corrupt treating by Respondent and his agents.

I have gone over the evidence carefully as to the treating by Respondent, and I do not think there is any case made out against him.

The first case referred to is treating on the nomination day at *Charlebois'* tavern, *Lachine.* I have already expressed my opinion that the last paragraph of sec. 94 of the Statute refers only to furnishing refreshments to electors, *on account* of the electors *being about to vote or having voted.* There several electors being present treated each other in turn. There is nothing to show it was done on account of their being about to vote within the meaning of the Statute. It is not pretended that Respondent treated, but that the treat was with his consent and approbation. The law applicable to the *North Wentworth* case was different. I don't think it appears that the drinking was with his consent or approbation, and if he had attempted to interfere he might have been properly told it was a matter which did not concern him; that is, if these gentlemen chose to ask each other to drink, because they are friends and neighbours, and it was considered as a mere act of courtesy, which seems to have been the case.

I fail to see that the Respondent drinking at *Bellair's*

(1) 2 Q. L. R. 268.

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on the evening of the 22nd (if he did drink, which is not shewn with positive certainty,) was corrupt treating. Mr. *Rodgers*, who was a contractor, choose to treat *all round*, as he says, and it does not appear that his doing so would in any way corrupt the electors as to voting, or that it was intended for that purpose. I should not infer from reading the evidence of what occurred on that occasion, that there was any corrupt intent on the part of *Rodgers*, who was particularly referred to, nor any thing to show that in accepting the treat Mr. *Laflamme*, if he did drink with the rest, *corrupted* anybody or intended so to do.

As to corrupt treating by persons alleged to be Respondent's agents, though there appears to have been more or less drinking during the canvass and about the time of the election, much of it appears to be of the character which prevails through the country when a number of people meet for purposes other than elections, such as horse races, and other meetings where there is a good deal of talking and discussion going on, and in the interludes between conversations some man calls for liquor, a short time after another does the same, and, if the number of persons assembled is not too great, the habit, I apprehend, is to ask all who are near to join in drinking. If there are a great many people present they are apt to form into small knots, and so join in drinking. I do not think drinking under such circumstances can be called corrupt treating. There was not during this election, as far as I can understand, that profuse expenditure for drink that used to prevail to the great injury of all concerned in it. From the perusal of the whole of the evidence, I do not think there can be any pretence that what would be called *general treating* prevailed at the election or during the canvass, and certainly none to the extent which would justify the setting aside the election on that ground. The

amounts charged by *Belair*, the hotel-keeper at *Ste. Geneviève*, and *Sauvé*, at *Pointe Claire*, for board of parties acting on behalf of Mr. *Laflamme*, seems rather extravagant, and some money may have been spent there for drink during the election day. Mr. *Doyon*, whose expenses were paid by Respondent, and was one whose board he paid, speaks of treating, taking a couple of glasses of wine with whom he did not know on nomination day, it may have been that he treated when *Perry* and *Howard* were at *Ste. Geneviève*, and treated a few friends at *Sauvé's* on nomination day. He does say he never treated an elector during the whole time of the contest. He says he took some of the election money to pay those expenses (that is for treating). He, I assume, may have treated electors without knowing it. Without being quite satisfied with the explanations given by the witnesses as to this treating, particularly by persons who were strangers in the county and were there to act on behalf of Mr. *Laflamme*, yet, considering the custom of the county to which I have referred, I do not feel warranted in holding that the treating proved to have taken place was *corrupt* within the meaning of the Statute. Nevertheless, it cannot be too seriously impressed on all those who may be in any way acting to further the election of a candidate, and who can properly be considered agents, the absolute necessity of avoiding the furnishing of refreshments to electors during the contest, whatever may be their motive in doing so. When a course of conduct, which, in view of surrounding circumstances, *may* bear a favorable construction, but is considered open to serious objection, is followed after repeated warnings, Courts and Judges will feel less inclined to put the favorable construction on such conduct, and will have less hesitation in deciding that parties who will persist

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in acting recklessly after repeated warnings intend to act illegally.

I do not, therefore, think the charge of corrupt treating by Respondent or by his agents is made out.

I understand the view I take as to corrupt treating is similar to that cited by Mr. Justice *Patterson* in the *Lincoln* election case, which has been so long pending in *Ontario*, and that I expressed in the *Kingston* case.

Speeches by Respondent :—

As to the speeches by Mr. *Laflamme*, I have gone over the evidence very carefully more than once, and am not prepared to say, taking it as a whole, that we would be warranted in setting aside the election, in consequence of what he said in addressing the electors on various occasions, after the finding of the learned Judge who tried the case.

I have considered the powerful arguments of Mr. Justice *Wilson* in the *Muskoka* case, and others that were addressed to us by Mr. *McCarthy* in the discussion of the matter before this Court, and must say that speeches, pressing on the consideration of the electors that a particular candidate ought to be supported, because he has the power to distribute patronage, and because, as a Minister of the Crown, he has the power of conferring material benefits upon a constituency, he ought, therefore, to be preferred and supported rather than a candidate not possessing such advantages, are calculated to influence the electors in the choice of their members, and in that way interfere with the freedom of election. At the same time, the fact exists, when the candidate before the people has that power; and to say that he has it can hardly be said to be more than recalling to mind any other fact. When done openly, can it be said to be done corruptly? Besides, it is one of the features of our representative system that as to some matters, those of a local charac-

ter, a representative is bound to attend to the interests of his constituents; and, when he can do so consistently with his duty to the whole country, his constituents may expect him, and, perhaps, demand of him to do so. I do not know that the candidate would be going much beyond the proper line, if he were to say that if occasion offered he would exercise his influence in favor of his constituents, whether in the bestowal of offices or in other matters in which they were interested. If in his speeches he were to limit his favors to those only who would support him, it might then be said he left the proper path and held out direct inducements to each to vote for him, and in that way was endeavoring to corrupt the constituency; and yet, promising to do what he could for his constituents in general terms, would, to most minds, imply quite as much as the more direct offer to give offices to those who helped him.

One difficulty in the case of speeches is, that you have not the exact words uttered by the candidate, and each listener puts his own peculiar construction on the language used, and, when the lines of permissible speech and self-laudation and of corrupting appeals approach each other so nearly, it is not always safe to rely on the impressions parties have as to the effect of a speech.

I take it for granted, Mr. *Laflamme* might have said, without incuring legal censure, "you ought to support me; I am a member of the Government—a Minister of the Crown—and have more influence than my opponent. I can do more good for the county—more good for you—than the gentleman opposed to me. As your member, it is peculiarly my duty to look after your interests, and I will do so." Would not this language, in fact, have the same tendency to prevent the freedom of choice by the electors between the two candidates, as the more pointed and objectionable language referred to?

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I understand the matter is put in this way on behalf of Mr. *Laflamme*. He was charged with being a man without influence, that he had failed as a member to take the position he ought to have taken, that he had done no good for the county, that all he had done was to get his friends a few offices. In reply to this attack, he said his opponents had charged him with doing no good to the county, with being *without influence*, and yet he had influence to procure more appointments for the electors of the county than any member who had preceded him, and if he had been able to do this for his constituents as a private member, as a minister of the crown he would be able to do more. Several of the witnesses on his behalf stated he in no way promised to give offices, that he was merely repelling the attack made on him, and shewing the people that as a minister he would possess more power to serve them than his opponent and more than he had as a private member. This is the view, as I understand, that the learned Judge takes of the effect of the evidence, and I cannot say he is not justified in doing so. If I entertained a stronger opinion than I do of the legal view to take of these election speeches, I should hesitate to declare the Respondent guilty of corrupt practices against the views of the Judge who tried the case as to the facts, and against the view the Court of Appeals in *Ontario* have expressed as to the law. I do not wish it to be understood from what I have said on this subject that candidates may, with impunity, make all kinds of appeals of a corrupting tendency to their constituents, and I think a careful perusal of the evidence will show that Mr. *Laflamme*, in taking the course he did, was, to use the words of one of his own witnesses, "travelling on delicate ground." As I have had occasion to say in most of the election cases which I have unfortunately been compelled to consider when corrupt practices were

charged against a candidate, when there is a reasonable doubt if a party has brought himself within the clear terms of the law, you ought not, when the effect of the finding is so grave and serious, to decide against him.

I am not prepared to reverse the decision of the learned Judge as to the speeches made by Respondent.

As to Speeches by Agents:—

After what I have said about the Respondent's speeches, I have but to say that the only speech by an agent, which would call for further remark, was that made by Mr. *Duhamel* at *St. Anne*, to the effect, that if they elected Mr. *Laflamme* he would have at his disposal as many places as they would want. They would be greatly in the wrong to prefer any other, for he had already obtained places for some, and would be able to obtain some more. He also referred to the canal passing in front of the village, and said, if he was elected, he might tell them as a sure fact he would cause a few millions to be spent in deepening and widening it.

The speech of Mr. *Duhamel* was made in the presence of other gentlemen who had spoken, or who were about to make speeches; the latter could, of course, reply to any statement he made, and if he said anything questionable or improper, could have replied to it. Putting improper motives before the people to influence them would naturally draw down censure and remark, and ought rather to injure than benefit the party on whose behalf they were put forward. Mr. *Duhamel* did not, as appears by the evidence, promise these places to any particular class of the inhabitants—say those who supported Mr. *Laflamme*. What he said was to the effect, that if elected he (Mr. *Laflamme*) would be able to obtain more places for them, that is, for the people. As to the reference

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to the expenditure of money to improve and widen the canal, that was a matter which, of course, could be responded to, as the improvements had been provided for before Mr. *Laflamme's* time—as one of the gentlemen who was present when this speech was made mentions in his evidence.

Though by no means free from doubt, I do not feel warranted in setting aside the election in consequence of the speeches made, either by Respondent or his agents.

The question how far a candidate and his friends may go in this kind of speaking is a very perplexing one, and if it is found that great evils result from such speeches the Legislature may interpose. Judges may also feel warranted, if it is found that these addresses of candidates and their agents go further in the objectionable direction, in declaring the same a violation of the law relating to the freedom of elections, though up to the present time they have not been able, satisfactorily, to come to such a conclusion.

There was little or no *direct* evidence that these speeches had a corrupt influence. One man speaks of being inclined to act from the corrupt motives placed before him, but, on further reflection, concluded not to do so. Several of the witnesses mentioned that it was spoken of amongst the people that Respondent and his friends had promised offices; but it seemed as if this was done more to express disapproval of such conduct than to show they were influenced by it.

The enquiry before the learned Judge did not take the direction of showing the corrupt effect on individuals, but rather left it to be inferred that such must have been the case.

I do not feel that we would be warranted in finding such general corruption resulting from the speeches complained of as to set aside the election on that ground.

The learned Judge, in the Court below, when discussing the question as to speeches by Respondent, refers to the *Montmagny* case, and shows, I think, satisfactorily, how that case differs from this as to the matter under discussion, and concludes:

Here we have a serious conflict of testimony as to the effect of the expressions of which the Respondent made use, and we have his declaration upon oath, in which he says he only spoke about places in reply to the attacks made upon him by his adversaries, and in no way with a view to exercise any influence over the electors.

Clement and Deschamps cases.

The witness *O'Neill*, collector of canal tolls, said:

My sympathies were with Mr. *Laflamme*, on account of being under a personal obligation to him for a year and a-half before the election, of which fact Mr. *Girouard* was well aware for a year previous to the election. The only work I did on behalf of Mr. *Laflamme*, after the writ of election was issued, was to send a message to *Deschamps* that I wished to see him to ascertain if it was true that he had gone out to *St. Laurent* to propose a candidate to oppose Mr. *Laflamme*, after he had promised Mr. *Laflamme* that he would not work in the election.

I myself, after Mr. *Geoffrion* resigned, was satisfied Mr. *Laflamme* would succeed him, and I wrote a note to a friend in *Lachine* to ask *Clement Deschamps* and *Israel Clement* to see me at my office in town when they came in. I had conversations with them a year and a-half previous to the election with reference to Mr. *Laflamme*. My friends thought Mr. *Laflamme* was an enemy of mine, I was satisfied he was not, and I considered it my duty to tell my *Lachine* friends, of *whom I have many*, that Mr. *Laflamme* was not my enemy.

When *Clement* and *Deschamps* came into town (after the issuing of the writ of election) I asked them if they had made up their minds not to interfere against Mr. *Laflamme*, which I was satisfied they would not, from conversation I had with them previously, one of them a year before that, before Mr. *Geoffrion* got sick at all. They told me they would not interfere against Mr. *Laflamme*. I asked them to come and tell Mr. *Laflamme* so in his office. They came up and told Mr. *Laflamme* in my presence that they would not interfere against him. My object was that I knew they were politically opposed to him, and if they thought he was an enemy of mine, they would still be. I am satisfied my having told *Clement* and *Deschamps* that Mr. *Laflamme* was not an enemy of mine, tended to induce them

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not to oppose him. During the local election in 1875 I met *Deschamps*, who said there was a vacancy in the canal office, at *Lachine*, in consequence of the death of a sub-collector; that he had applied for the position on behalf of his son. Mr. *Laflamme* had refused it to him, he said, for the reason that he had not been a political supporter of his. I did not promise then to get a situation for his son. I did get a situation for him eight years ago. *Deschamps* appeared to feel bad against Mr. *Laflamme*. I told him I would ask Mr. *Laflamme* why he did not give his son the position, and if he would call in a few days I would give the answer. He called afterwards. I told him Mr. *Laflamme*'s reply was he could not give situations to opponents, whilst his friends wanted them. I was anxious to know if they would carry out their promise not to oppose Mr. *Laflamme*, as they were influential men. I thought it would tend to let him in without opposition. At the same time Mr. *Laflamme* never asked me to support him in any manner or form. I did this voluntarily, in consequence of a favor he did me in 1875. In the conversation with Mr. *Deschamps*, when he told me he would not interfere in the election against Mr. *Laflamme*, I took the precaution to tell him I did not wish him to have any misunderstanding relative to any conversation we might have had regarding his son *Clement*. He said it is not on account of any promise that we came here, " for you have not made any. I came here of my own accord; and if they ask me the reason I did not interfere in it, I will show an insulting letter, in my pocket, I received from one of the Local Ministers."

It strikes me that in May, 1875, or sometime in 1875, I told him there might be changes in the Department which would create a vacancy. I may have used language, when speaking to him in a friendly way, which would lead him to believe I would interest myself on behalf of his son, but not in the sense the question suggests—of making a direct promise to his son with reference to the situation. When at Mr. *Laflamme* office, I said, "this is Mr. *Deschamps* of *Lachine*." He said he knew Mr. *D.* very well. I said, " Mr. *D.* has come up with me, as I told him there was a possible election contest shortly in the county, and he did not intend to interfere in the election. Mr. *Laflamme* said he was thankful to him, and they got into a general conversation about a previous contested election.

I asked Mr. *D.* if his son *Jean Baptiste* intended to interfere in the election. He said *Jean Baptiste* could do as he pleased; he would not interfere.

When I saw *Israel Clement*, I asked if he would come up and tell Mr. *Laflamme* he would not interfere against him. I asked him in presence of Mr. *Laflamme* if he would be for him, and he said he

would not be against him. He told me afterwards he would be for him; this was between the time of Mr. *Geoffrion's* resignation and the issue of the writ for the new election. About a year before the election I sent word to *Israel Clement* to come in and I would try and get a situation for his son *Louis*. I saw him some weeks after. He said he did not want *Louis* to get a situation, as he wanted him to help him at *Lachine*. He said he had a very bad memory, but he kept the books very correctly.

I would have done the same thing in relation to *Clement*, if there was no election for two years. I took *Clement* to Mr. *Laflamme's* office, introduced him to Mr. *L.* Something occurred pretty much the same as in *Deschamps'* case. He said he would not interfere against him, only *Deschamps* was more positive he would not interfere in the election. I have never since the election told Mr. *Laflamme* that *Clement* or *Deschamps* wanted situations for their sons. I told Mr. *Laflamme*, when I brought them, that I was satisfied these two gentlemen would not oppose him, and I asked them to come up and tell him so. It was me that brought them up. Mr. *L.* never mentioned anybody's name to me. My object in having the personal interview was so that they would not interfere against him (Mr. *L.*) Question: To choke him? Answer: Unquestionably. These were the only two men whom I had canvassed for a year and a-half. I spoke to my friends in *Lachine* as occasion presented itself, telling them that Mr. *Laflamme* was not an enemy of mine. What I did I did of my own free will, and not prompted by Mr. *Laflamme*, to let him know that I could treat him honorably as he had treated me.

Clement Deschamps said:

He *voted* at the last election, but did not work. During the last local election, was the official agent of Mr. *Le Cavalier*. Before the last election, can't say how long, there was no mention of election at the time, Mr. *O'Neill* sent me a message to call at his office in *Montreal*. The first time I went to the city, I did so. I think he said to me he had heard that I did not intend to work in the coming election. Cannot swear positively I told him I would not work for one party or the other. He asked me to call at Mr. *Laflamme's* office. I said I had no business with him. He asked if I had any objection to go. I said not, and we went. He asked if my son was yet in the fur trade at *Labrador*. I think he asked me if I had applied for an appointment for my son. I answered him I had not. He asked if my son had applied himself. I answered yes, but he had not received an answer. I asked him if there were to be any changes in the government. He answered there was none, but if the Ministers thought proper to make changes in the spring,—they might do

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so. Mr. *O'Neill* told me, in case there would be a situation for my son, he would do his best as he had done in the past. This was said in the street in my carriage. We arrived at Mr. *Laflamme's* office. We waited there some time. Mr. *Laflamme* spoke for a time with Mr. *O'Neill* in my presence. He introduced me to Mr. *Laflamme;* said he had come to the office with me, knowing well I was not going to work during the contest. Mr. *Laflamme* asked me if it was certain I would not work neither for one side nor for the other. I answered him that I would not work. He asked me if I would vote. I said yes. I think Mr. *O'Neill* asked me if I would vote for the same party I always voted for, and I said yes. I don't remember that any mention was made at Mr. *Laflamme's* office of a situation for my son.

When it was decided that an election would take place, a meeting was called at *St. Laurent.* I went to that meeting of the Conservative party. A few days after that *O'Neill* sent me a telegram asking me to call at his office the next time I went to the city. I called at his office. He said he heard I was working, that I had been at the *St. Laurent* meeting. I said I was not going to deprive myself from going to any meeting, nor any where I pleased, and that I was only not to work at the election. (Don't think Mr. *O'Neill* or any one else would take the liberty of influencing me.) My son's name was not mentioned in the second conversation. Mr. *O'Neill* only wanted to find out if I was going to work in the contest.

I don't think this evidence sufficiently makes out a case of a corrupt offence, or intimidation, or of agency on behalf of *O'Neill.*

The impropriety of *O'Neill,* holding an important situation in connection with the canals, busying himself so far about election matters as to take electors to Mr. *Laflamme's* office has, in effect, been referred to when discussing the case of *Foley.* The fact that an active partizan at the recent local election had ceased to *work,* as the phrase is, was significant, and likely to cause grave suspicion; and, however imprudent it was on Mr. *Laflamme's* part to allow persons in the situation of *O'Neill* and *Conway* to bring parties to his office to be interrogated about election matters, I do not think what occurred sufficient to sustain a charge of an *illegal practice,* nor that there is sufficient evidence of agency if such charge had been sustained.

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Hurtubise's case—As to getting appointed keeper of a light house.

I have gone over the evidence in this matter and see no reason to disturb the finding of the learned judge as to it. The evidence is conflicting, and *Belanger's* agency not sufficiently shown.

Boudrias' case:

The alleged offer of money by *Latour* at the lock in *St. Anne* is not stated by *Boudrias* himself to be corrupt, or for the purpose of corrupting him. He said:

I did not understand that it was with the intention of buying me over, I had no thoughts of it. * * * It is very probable that he would give it to me in this manner. If I did not return it to him he would have charged it on accoupt of what he owed me. I think that he offered it to me with that intention.

The offer was to give him money to pay his passage to *Lachine*. *Latour*, who is said to have made the offer, contradicted him.

As to the threat by *Lebau* about the shop, I do not think the evidence as to the threat satisfactory, and I infer that the learned judge who saw the witnesses did not credit the statements of *Boudrias* or *Dunberry* about the matter.

Cooke's case:

Richard P. Cooke, contractor on the *Carrillon* Canal, in his evidence said:

Mr. *Regis Cardinal* brought me a letter from Mr. *Laflamme* three or four days before the polling day. It was handed me on board the *Prince of Wales*. I was going down at the time. *Cardinal* was paymaster; was on his official duty at the time. The letter was introducing Mr. *Cardinal* as his friend, asking me to assist him at the election. Mr. *Cardinal* said it would be better to give the letter back to him, and I destroyed part of it. I met him first at *Carrillon*. I said I was going to *Montreal*, but I did not know what I could do in any case, as the men I had employed in the county were all French, and I could not speak that language. He said he would call at the hotel with Mr. *Laflamme* and see me next day. Mr. *Cardinal* asked me to do what I could to help him. He said if I did Mr.

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Laflamme would be able and willing to help me in my contract if I wanted assistance. He said he would call at the hotel next day with Mr. *Laflamme* and see me. I don't think there was any further conversation. I don't think I said I would take any part in the election. I said I would not do it. I had men in my employ at *Isle Bizard* quarrying and cutting stone. The foreman was Mr. *McAdam*. I told him I wished to keep out of the thing altogether; those were my instructions to him, at the same time he need not show that I did not want him to have anything to do with it. I had this conversation with *McAdam* the day before the election I think. We had about fifty men at the quarry where the conversation took place. I was aware *McAdam* was on Mr. *Laflamme's* side of politics, but I was not aware he was working. I don't think the men were paid for their work on the polling day. I was told in *Montreal* that *Cardinal* had been looking for me, but I did not see him there. Mr. *Perry* told me in *Montreal* he would meet me at *Ste. Geneviève*. I saw him there.

I preserved a portion of the letter, because I thought it suspicious looking that he wanted to get it back again. It was simply a letter of introduction, introducing *Cardinal* as a friend. My contract is a large one. It is, of course, a matter of some moment to me as to the terms on which I am with the government of the day. An offer like *Cardinal's* would be of considerable moment if carried out.

The only thing I said to *McAdam* was that I did not wish to be mixed up in it as a contractor, and my own natural feelings were the other way, and I did not know either of the candidates. I said, of course, you will be civil to them. I introduced him to Mr. *Stewart* as my foreman. As far as I was concerned the men were at liberty to do as they pleased. I brought no undue influence to bear on them. The letter was a letter of introduction, asking what assistance I could give in the contest. I suppose the usual kind of letters sent out during elections, introducing this gentleman as his friend, and stating that any help I could give him in the contest he would be thankful for. It was the third day before the election. He paid me on the day he gave me the letter for some coals the engineer had got. The meaning of *Cardinal's* words was that one good turn would deserve another, and that if I would help him then he would help me in my contract. The meaning was that he would be ready and willing to help me in my contract if I wanted help. I am not prepared to say whether it was *might* help at some future time.

Regis Cardinal, Paymaster of the *St. Lawrence* canals, said:

I did all I could at the last election. It is probable Mr. *Laflamme*

must have known it. I think it probable Mr. *Leopold Laflamme* knew it, and it was publicly known at *Lachine*, and in the county that I was working for him. Mr. *Laflamme* gave me a letter to Mr. *Cooke*, because I asked it from him. I was going up to pay the men on the *Grenville* canal at *Carrillon*, and I asked Mr. *Laflamme* for a letter of introduction to Mr. *Cooke*. My object in asking for that letter was to request Mr. *Cooke* to come down and help us if he was one of Mr. *Laflamme's* partizans. It was unsealed—a letter of introduction, in which he said to Mr. *Cooke* that I was one of his political friends. He did not ask Mr. *Cooke* in that letter to help me. My object in going to Mr. *Cooke* was to ask him what party he belonged to, and if he had been of our party to ask him to come down in the county and help us, seeing that he had a quarry at *Isle Bizard*. When I gave him the letter he shook hands with me, and after reading the letter said: "I will do all in my power to help him; I have a contract from the Government. Mr. *Laflamme* is a Minister, and I do not see why I should work against the Government. I have not much influence. I do not know whether the men working in my quarry are voters or not; I will get a list to see those who have a right to vote, and those who have not. I will do all in my power for Mr. *Laflamme*." Seeing he was so much in favor of Mr. *Laflamme*, I did not make any proposition to him. Mr. *Cooke* said he would like to be introduced to Mr. *Laflamme*. I said I would take him to Mr. *L's* office and introduce him, or I would arrange to have Mr. *L.* call on him and introduce him at the St. Lawrence Hall. The hour was fixed between 12 and 1 o'clock. I called on Mr. *Laflamme*, reported the interview with Mr. *Cooke*, and told him Mr. *C.* wished to be introduced to him. Mr. *L.* said "we will go and see him." I told Mr. *L.* that Mr. *Cooke* seemed to be in his favor, and that he had said to me he would be happy and pleased to make his acquaintance. It is likely I told him Mr. *Cooke* would do all he could for him. The day Mr. *L.* was to call on Mr. *Cooke* was the day fixed for a meeting at *Lachine*. A great many people came to Mr. *Laflamme's* office and detained him until he was obliged to start for *Lachine*, and could not keep the appointment to meet Mr. *Cooke*. I had before that been to the St. Lawrence Hall to report to Mr. *Cooke* that Mr. *Laflamme* was leaving by the 12 o'clock train. I did not say to Mr. *Cooke* that Mr. *Laflamme* might be of some use to him in his contract with the Government. I never alluded to his contract with the Government.

Cross-examined: I asked the letter of introduction to Mr. *Cooke* from Mr. *Laflamme*. It was unsealed. I asked Mr. Cooke to tear it up, for this reason, that a letter of introduction in election times—supposing

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Mr. *C.* would have shown it to his friends—might have given them cause to suppose I had gone up to Mr. *Cooke's* with the view to bribe him. I asked him that in my own interest, in order that no remarks should be made about my visit to Mr. *Cooke*. Mr. *C.* did not destroy the letter in my presence; he put it in his pocket. When I saw that, I did not insist upon his destroying it. I knew Mr. *Cooke* well enough not to mention to him what he said here. I swear positively that I made no promise whatever to Mr. *Cooke*; it was himself who said that he would be pleased to see Mr. *Laflamme*; that he had a contract from the Government, and that he did not see why he should not work for him, considering that Mr. *Laflamme* would be a Minister.

Perry's evidence:

He (*Cooke*) said he did not speak French, and did not think it was his proper place to interfere in the election. All I asked him to do was to allow the men to vote, and when I got that promise it was all I wanted.

If the learned Judge, after hearing the evidence and his attention being drawn to the surrounding circumstances, had decided that he believed the statement of Mr. *Cooke*, that *Cardinal* had asked him to do what he could to support Mr. *Laflamme*, and if he did, Mr. *Laflamme* would be able and willing to help him in his contract if he wanted assistance; and the learned Judge had rejected *Cardinal's* statement as not truthful, I should not, I think, have felt warranted in disturbing that finding—because it was shown that *Cardinal* had denied that such a conversation had taken place---on the ground it was simply oath against oath. It might be that the manner in which the witnesses gave their evidence and a consideration of the other circumstances induced the learned Judge to decide in that way. I think so much is due to the opinion of the learned Judge that, before it can be set aside, we must be satisfied that he is wrong. In a matter of this kind, when the two witnesses appear to be equally respectable, and they positively contradict each other, and the surrounding circumstances do not lead the Judges in the Appellate Court clearly to the conclusion that the decision

in the Court of First Instance is wrong, the Appellate Court ought not to interfere, though they might have decided differently if they had seen the witnesses.

If he had a reasonable doubt about the matter—believed both men to be honest, but one or the other mistaken (and he could not say which); in that state of mind, as it was thrown on the Petitioners to prove the case to the satisfaction of the Judge, and as it was not proven to his satisfaction, the Judge was bound to find as to it for the Respondent; or, in other words, if the evidence was equally balanced, he ought to find for the Respondent, as the presumption of innocency would naturally arise.

It is true, in one sense *Cardinal* may be considered as the party accused, and *Cooke* as the witness sustaining the accusation; that the party accused would wish to purge himself, and therefore his evidence must be viewed with suspicion. The same may be said of a person charged with perjury, as the late learned Chief Justice of the Court of Appeals in *Ontario* gives the illustration in one of the cases referred to; then it is oath against oath, and it requires further evidence to sustain the charge. The circumstances referred to by the Petitioners' counsel and in the factum go more to *Cooke's* general truthfulness than to his statement in the particular matter which requires confirmation, namely, the promise that Mr. *Laflamme* would aid him (*Cooke*). It is not at all improbable that Mr. *Cooke* felt that as he had no personal knowledge of either candidate, though probably he might have a preference, yet the contest was not likely to cause him to feel so much interest as to take an active part; and being ignorant of the French language, he could personally accomplish very little. He said he would not take part in the contest, and he did not, in fact, inter-

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fere; his conduct does not appear to have been influenced by anything *Cardinal* said.

When there is no result from an improper attempt at influencing, say a promise to give or do something, and nothing was in reality given, and no corrupt influence exercised, the evidence of the corrupt act, it is said, should be satisfactory beyond a reasonable doubt. I do not feel that on this charge, after the opinion expressed by the learned judge as to the uncertainty which prevailed in his mind, that we can properly say that he should have given faith to *Cooke's* statement and disbelieved *Cardinal;* and, if not, then I do not think we should reverse his decision in this matter.

It seems to me to have been, in the most favourable view in which it can be put, a very imprudent act for a Minister of the Crown to write a letter to a contractor soliciting his aid in a pending election contest, and still more imprudent to select as the bearer of that letter a subordinate officer in the employ of the Crown, a paymaster connected with the canals, whose active employment as a political partizan would naturally excite attention and create feelings of annoyance on the part of those against whom he was acting. I may be permitted to hazard the opinion, that the sooner the subordinate officers of the government act on the principle that they are not to be active politicians for either party, the better it will be for all parties.

Cousineau's case—as to treating and getting him a place:

I do not think on the evidence that the charge is sustained. The judge, no doubt, believed (and was quite justified in doing so) the evidence offered on behalf of the Respondent, and I don't think we ought to interfere.

Gravel's case:

Gravel says one *Gohier* gave him 25 cents. He said to

him, "if you hinder your father-in-law from voting, here is some money for that purpose," and on the evening before the election he bought some liquor and got his father-in-law drunk. *Laframboise*, another witness, said he was present when *Gohier* paid *Gravel* his wages for his week's work, and gave him 25 cents extra. When he received the money, *Gravel* said he would use it in making his father-in-law drunk, because his right to vote had been taken from him. *Gohier* said he could do as he pleased about that. I am not prepared to say that the view taken of this case by the learned judge is wrong. I see no reason for interfering with the decision.

Brunet's case:

Messrs. *Venance* and *Eustache Lemay* are charged with having taken electors from *Montreal* to *Ste. Geneviève* in their vehicle, with having treated and paid money to induce them to vote for Respondent. There were several persons in Mr. *Lemay's* waggon. One of the number, the witness said a stranger in the county, but whom Petitioner alleged was *Toussaint Meloche*, treated before setting out and afterwards produced a bottle of liquor and treated on the way. It is said he was the driver. On their return, after the voters had voted, they stopped at *St. Laurent*, but did not get off. *Meloche* asked if they had any money, the answer was they had none; then he put a half dollar in the witness's hand and said, "here is a half dollar, you can take a mouthful as soon as you will be out of the county, do not stop in the county to take anything." They stopped at *Cote des Neiges*, at a tavern outside of the county and took a drink. It was very cold. *Meloche* is now in *California*. *Lemay* was not in the wagon on the return, when the driver gave *Brunet* the half-dollar. He was present at the treating on the road. Another witness stated it was

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not *Meloche* who paid for the drink before they started. It was a man whom he had never seen or known who drove in the wagon with them, and the treat out of the bottle was handed them by the same man who had paid for the treat at the hotel. It was not *Meloche*.

I do not see any evidence to connect Mr. *Laflamme* with this matter. If it be contended that *Meloche* (the driver) was in Mr. *Lemay's* employ, and being under his control, if he treated electors, then, as Mr. *Lemay* was an active friend and supporter of Mr. *Laflamme*, and might be considered his agent, as he did not prevent the driver from treating, he, in effect, treated himself, and therefore Mr. *Laflamme* is liable to the extent of having the election set aside. It is by no means certain that *Meloche* was the person who treated. The witness who says it was not *Meloche*, speaks more decidedly than the one who says he thought it was *Meloche*. The learned Judge evidently believes it was the stranger (the unknown man), and not *Meloche*; and I am not inclined to differ from him. When the money (the half-dollar) was given for the treat on the way home, *Lemay* was not present, and therefore could not be held to be in any way connected with that matter.

It is doubtful if the treating would be considered as contrary to the intention of the Statute already referred to and discussed.

Ste. Geneviève Quarry case:

As a matter of fact, it is not shown that any man who worked in the quarries was influenced by the alleged threats that they would be dismissed if they voted against Mr. *Laflamme*. Most of the voters to whom the language is said to have been addressed actually did vote, and those who did not state that they were not in any way influenced by what *St. Denis* is alleged to have said. Then there is the direct denial of *St. Denis* as to having used the language which some of the wit-

nesses say he used; and several of the parties who worked in the quarry, who were addressed at the same time by *St. Denis* as those who gave this evidence, confirm the statement of *St. Denis*, that he wanted to ascertain for whom they were there; that is, for whom they intended to vote, not for the purpose of influencing them (as they were told they could vote for whom they pleased), but with a view of ascertaining who were voters and for whom they intended to vote. Mr. *Lanthier*, who does not appear to have been a partizan, as well as several of the quarrymen, confirm *St. Denis*' statement as to what occurred in his and their presence.

All the witnesses seem to have known that *St. Denis* had no control of the men in the quarry; and all the workmen, as I understand, concur in the statement made by *St. Jean*, who was the man in charge, and who, it is contended, was also an agent of Respondent, that he told the workmen to vote as they pleased. "Go and vote for whom you like—you are not hindered." "Vote for him you think best." To one elector, who said he intended voting for Mr. *Girouard*, he said, "vote for whom you like; but you must vote." It is suggested that *St. Jean* in this matter was not acting in good faith; that though he used the language indicating that any man should vote as he thought right; yet, he really meant them to understand if they voted against Mr. *Laflamme*, they would be dismissed from the quarry. I cannot say that I am free from doubt, as to the fact that *St. Denis*, at some time after the election was spoken of, may have said or done something to intimate to the parties working at the quarry, that if they voted against Mr. *Laflamme* they would be dismissed. But, whatever he may have said or done, I do not think that any threat made by him operated on the minds of any voter, so as to influence him to vote or not to vote at the time of the election.

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The evidence of what took place at the house of *Legault*, when *St. Denis* was addressing *Rodin*, puts a different phase on the transaction from what *St. Denis* himself states it to be; but this conversation occurred some time before the polling, when an excited discussion was going on between them. It does not appear to have had any effect on *Rodin*, for he continued to work at the quarry, and left when the cold weather set in, probably after the election, and he voted at the election. I am not disposed to set aside an election on a threat made under such circumstances, which alarmed no one or produced no effect.

In setting aside an election, it is always more satisfactory to place the ground of your decision, if possible, on a basis more free from doubt than I think it would be on this latter charge, as to the conversation with *Rodin*.

But considering the whole evidence as to these threats, alleged to have been made as to dismissing the men from the quarry, and suppose it be admitted that *St. Denis* did threaten that the men should be dismissed unless they supported Respondent, he not at the time having power to dismiss, and his threat, in fact, known to be powerless and really causing no apprehension, and then Mr. *St. Jean*, who really possessed the power, and who, it is contended, was an agent of Respondent equally with *St. Denis*, assured the workers in the quarry that every man was at liberty to vote as he thought proper, and every man did so vote, would it not seem to be a straining of the law beyond all reasonable limits to set aside an election on that state of facts. I think I should hesitate in doing so; but when, in addition to that, it is by no means clearly shown from the evidence that either *St. Denis* or *St. Jean* was an agent of the Defendant of the kind necessary to justify us in holding the election void for *St. Denis'*

improper act, I should further hesitate as to setting aside the election.

I have gone over the evidence very minutely, and after giving it my best consideration, I can only say that I do not feel that I can properly set aside the election on this charge.

Pointe Claire case—As to the attempt to induce men to go to Pointe Claire to work, so that they might not be present to vote at Ste. Geneviève:

As a matter of fact no voters were sent to work there, and if they had gone there to work, it appears from the evidence, that it was so near the polling place, that if they had desired very much to work and to vote also, they could have gone and cast their votes and returned to their work within the hour allowed them at noon. As indicating the improper attempt to influence these men, it was suggested that there was no such necessity of proceeding in haste as pretended, that the work at *Pointe Claire* was not commenced until long after; but the evidence shows that that work was begun on the 6th December, and the election was on the 28th November—not very long before. It is not improbable that there was some intention of trying to do what was suggested, but there was nothing done; and if the men had actually been sent there, the reasonable inference is, that if they had really desired it they could have voted without losing any time. One of the men was not a voter; he declined going to *Pointe Claire*, because he wanted to be at the polling; he liked to be there. I am not prepared to avoid the election on what is said to have occurred about sending the voters to *Pointe Claire*, through the instrumentality of *St. Jean* and *St. Denis*.

Ouellette's case:—

From the evidence relating to this case, I understand that some time in April, 1876, Mr. *Caisse*

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the postmaster at *Lachine* resigned his office, and Mr. *Robert* was offered the situation. He was inclined to refuse it, but his father-in-law, Mr. *Paré*, wished him to accept it for the the purpose of giving employment to *Ouellette*, another son-in-law, who was in comparatively indigent circumstances. *Robert* agreed to do this; but for some cause *Caisse* withdrew his resignation, and Mr. *Laflamme* asked Mr. *Robert* to withdraw his acceptance, which he did, and it was said amongst his (*Ouellette's*) friends that a better place would be procured for him. After this, probably in the month of May, *Robert* asked Mr. *Laflamme* to do something for his brother-in-law *Ouellette*—to procure a place for him. Mr. *Laflamme* on that occasion, I presume, as well as all other occasions when he spoke on the subject, said, as *Robert* puts it:

> He would think of me, and if a vacancy occured, he would do his best for me.

At this time nothing was said of the *Paré* family. There is no doubt, that Mr. *Robert* was a warm political, if not personal, friend of Mr. *Laflamme*, as well as his client, and that it is more than probable he would feel inclined to carry out the wishes of Mr. *Robert* in a matter of this kind. There could be no objection to it on political grounds, for I infer that *Ouellette* was politically in accord with Mr. *Laflamme's* party, and there is no reason to suppose that in acceding to Mr. *Robert's* request there would be a corrupt motive. It has never yet been seriously contended, that a member of Parliament, who wishes to aid a warm political and personal friend in the procurement of an office for himself or a friend, must, in doing so, necessarily be considered as guilty of a corrupt act. In fact, if he refused to aid a political friend, when the request that was made to him to do so was reasonable, his refusal would suggest the idea that he was becoming false to his

friends and his party, and it might be charged against him that he was then acting from corrupt motives. Up to this time, I apprehend, what was said by Mr. *Laflamme* would not be considered improper. Afterwards, *Robert* says, that in again speaking to Mr. *Laflamme*, he suggested that if he got the appointment for *Ouellette* it would greatly please the *Paré* family ; that it might be useful to him later on; it might, perhaps, prevent their voting at the coming election. *Laflamme's* answer, as stated by *Robert*, was :

He would think of me ; and if a vacancy occurred, he would do his best for me.

It is not clear the exact time this particular conversation took place. At first, in reply to a question, *Robert* said it was during the election ; at all events, it was at the time the election was spoken of. Then immediately following, he says :

Mr. *Laflamme* did not tell me that it was probable there would be an election, nor did I say so myself.

Further on, when asked, " when you told Mr. *Laflamme* that the *Paré* family might be useful to him, did you say so at the time of the last election ?" he answered, " yes." The next question was :

When you had that conversation with Mr. *Laflamme*, did you understand he was a Minister, or was to become one; and that there was to be a new election ?

The answer was :

Yes; but there was then no question of the *Paré* family.

Then followed the question as to the date he spoke to him about the *Paré* family. The answer was :

I cannot say positively ; but it was four or five weeks before there was question of the election. *It* was a matter discussed in the County and out of the County.

"*It*," I suppose, means question of election.

He said :

During the election and during the public discussions had no conversation with Mr. *Laflamme* concerning the same subject.

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There seems some ambiguity about this. Now, turning to Mr. *Laflamme's* account of the matter, he says:

> Mr. *Placide Robert* is one of the most honorable men in the County. He had asked me, not during the election, but many months before —I believe, so far as my memory goes, a year before there was any talk of election—to try and secure some office, or position, or occupation, with a light remuneration, for his brother-in-law (*Ouellette*). I told him I would consider his claims; that he was one of my best supporters; and if I found any occasion when it could be possible for me to support his claim, I would do so. The thing remained in that way; *and previous to the election, particularly*, there was never one word said or breathed on that subject between Mr. *Robert* and myself. I never asked him to use this promise; and never intended to do so. It was merely because he was a personal friend of mine, and a man of respectability and importance in the County, that I promised to consider his claim, as I was justified, as the representative of the County, in doing. He was one of my best supporters; and, I think, I was in duty bound, when occasion offered itself, to give him a situation such as he desired for one of his relatives. During the contest, I carefully avoided even allowing myself to speak about any situation or office.

I suppose, by the expression "previous to the election," is meant immediately preceding the election which took place in November. An election might have been talked about, as no doubt it was, before that, but Mr. *Laflamme*, from what he says, does not seem to have anticipated, until October, that an election would take place from his acceptance of office.

The evidence does not show, nor is it contended before us, that the influence it would exercise on the *Paré* family to give *Ouellette* an office, was referred to in any way by Mr. *Laflamme*. It was a suggestion made by *Robert*, and may have been made to induce Mr. *Laflamme* to give the office. It was the procuring of the place that was to influence the *Paré* family—not the promise to do his best to procure it. Mr. *Laflamme* does not, in any way, appear to have desired *Robert* to tell the *Paré* family of his assurances as to what he would do. As he had given the same assurance before the *Paré*

family were mentioned, he might have supposed *Robert* had spoken of it, and that they had knowledge of it; and it might not, therefore, have occurred to him to have said to *Robert* that the pleasing of the *Paré* family was not the motive which induced him to promise to use his efforts to get a place for *Ouellette*.

I can well imagine a public man, having promised a political friend and supporter to endeavor to procure an office for another friend, meeting with him, and the matter being referred to and spoken of between them, the latter saying, in the course of conversation: "It will be a good thing if the applicant gets the office; he is a popular man, well liked, and his selection will please his friends and strengthen your influence." The fact that it is called to his attention: that the result of that which he has promised to try and do for the purpose of gratifying his political friend may bring him more influence, ought not to prevent him from doing that which he has promised to do, and which he promised to do from quite another motive. His carrying out his original promise could not fairly be charged against him as a corrupt act. The promise Mr. *Laflamme* made—at the time it was made—was unobjectionable. Can what occurred afterwards, on his saying in effect that he would do what he had promised to do before, (and which we have no reason to suppose he would not have done, if it had not been suggested it might please the *Paré* family) be a corrupt act, unless he intended it to corrupt them, and intended that they should be informed of his promise for that purpose. I think, to hold this against a man who, under oath, denies such intent, would be dealing harshly with him, and not according to the spirit in which the Statute has been interpreted.

Mr. *Laflamme's* statement, under oath, is that he never asked him to use the promise; never intended

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him to do so ; and if *Robert* used it, as he appears to have done, for corrupt purposes, Mr. *Laflamme* ought not to be found guilty of the corrupt act, if he did not intend that use to be made of it.

The matter then assumes this form: When Mr. *Laflamme* first made the promise it was unobjectionable, as a promise made to a political friend to oblige him, and was harmless and not improper. When referring to the matter again, a reason was suggested, for doing the act he promised to endeavor to have done, which might make the act a corrupt act, if done for the corrupt reason. Mr. *Laflamme*, in effect, swears it was not for the corrupt reason, but to gratify a political friend and supporter who had claims to his consideration.

Must we then necessarily assume the reason for making the promise was a corrupt one?

In an election case tried before me in *Ontario*, it appeared that meetings were frequently held in public houses with the knowledge of the Respondent, and it was contended that the holding of such meetings so often and in so many public houses was calculated and intended to make the proprietors of these houses give their support and influence to the Respondent; that these were corrupt acts to Respondent's knowledge, and that he should be declared guilty of them. The Respondent, in giving reasons for holding these meetings at public houses, and so frequently, said, amongst other things:

> The calling of meetings at public houses was to have people to talk to. Innkeepers are, of course, a power in these localities, and that may have been a reason amongst others for holding meetings there, and another to prevent the other side from getting them.

He was not aware of any meetings of his friends at any inn where the party was not a supporter of his. He said,

> Of course when you get a supporter, you want to keep him.

In another part of his testimony he added:

I did not consider holding meetings in the taverns and paying for the use of the rooms would be a violation of the law.

In disposing of the question being a corrupt act, I came to the conclusion that there was a legitimate motive for hiring the rooms, though there might have been other motives not so legitimate influencing Respondent and his friends, if they had stood alone.

Baron *Bramwell*, in his judgment in the *Windsor* election case (1), to which I referred in the case before me, laid down the doctrine: that there is no harm in it, if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. I am not aware that the view that I took in the case to which I have referred has been disapproved of in any way, or that the doctrine laid down in the *Windsor* case has been questioned in any subsequent case either in *England* or this country. It is mentioned and not disapproved of in one of the latest works on the subject of elections.

Now, here I think the Respondent had a perfectly legitimate motive in promising *Robert* to try and get an office for his brother-in-law,—his desire to please a political friend and supporter. He does not, as the Respondent in the case tried before me, suggest another motive which might be questionable, but, on the contrary, as I understand his evidence, he repels any such imputation.

I see no reason to change my opinion as to the doctrine I acted on in the case I have referred to, and I therefore think the charge that the corrupt act of *Robert*, in relation to the votes of the *Paré* family, was not a corrupt act committed with the knowledge and consent of the Respondent.

(1) 31 L. T. N. S. 135.

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The next question is, was it a corrupt act on the part of *Robert*? He says:

I reported to the *Paré* family simply what I had said to Mr. *Laflamme*, and what he had replied to me.

Keeping in mind that what he had said to Mr. *Laflamme* was "It would greatly please the *Paré* family if he could procure a place for *Ouellette*; that, possibly, it might be useful to him later on; it might, perhaps, prevent them voting at the coming election; and Mr. *Laflamme's* reply—"he would do his best for him";—afterwards, and during the election—during the time of the meetings of the candidates at the church doors—*Robert* asked the Messrs. *Paré* their opinion. They said they would vote for Mr. *Girouard*, but that they would not make use of their influence. *Robert* says:

I told them it would be better not to vote, as they wanted a place for *Honoré Ouellette.*

Q. Did Mr. *Robert* tell you anything relating to your vote? A. He told me it was best not to vote, in order to get a place for *Honoré Ouellette.*

Further on, he said, in answer to a question of how many days before the polling *Robert* told him it was best not to vote, to get a place for *Ouellette*, he answered:

I do not know that he spoke of that to me. I told my sons it was better not to vote, as we wanted to get a place from Mr. *Laflamme.* One of the three of us voted.

He is again pressed as to *Robert's* having told him it was better for him not to vote. His answer is:

I have no knowledge of that; it is myself who said so to my sons.

This does not seem to be the same matter or time referred to by *Robert*, who says he made the statement in reply to a suggestion made, that they would vote for Mr. *Girouard*, but not work against Mr. *Laflamme*. The fact that he (the elder *Paré*) also made the suggestion,

can make no difference, if it arose from the act of *Robert* putting it as an inducement to vote, or not to vote, that the place for *Ouellette* would be in jeopardy.

Alphonse Paré states he did not vote at the last election; and explains the reason why. After referring to Mr. *Robert's* conversation with Mr. *Laflamme* about the place for *Ouellette*, and his writing to Mr. *Laflamme* about it also, and stating they would not use their influence against him if he would give *Ouellette* a place, he adds: "But we did not say we would not vote." He then says:

At the time of the election Mr. *Robert* told us it would be better not to vote. We told him that we would vote. He told us: "Do as you please; they will use your votes as an objection to give Mr. *Ouellette* a place." That is the reason why we did not vote at the last election.

He then says, they were known at *Lachine* as Conservatives, and had great influence there. Further on in his examination, in reply to a question, if Mr. *Robert* at the time of the election spoke to him about his vote, the answer is: "He spoke of it to my brother, and my brother told me." He further says:

Some two or three weeks before the polling day—after what my brother had told me—I said to *Robert* I wanted to know if our *abstention* from voting was required. He told me to do as I thought fit; but that it was better for us not to vote. By those answers, I imagined that the fact of our voting would be an objection to Mr. *Ouellette* getting the place. The question came also before the family circle of which Mr. *Robert* was a member; and he told us about the same thing. It was referred to in the family circle a second time, a few days before the election.

There is no doubt two of the *Parés*, in consequence of what Mr. *Robert* said to them, abstained from voting, and the motive restraining them was the expected place for *Ouellette*.

The fact seems to have been presented to the minds of the *Paré* family from the beginning, from what

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Robert said to them, that their conduct in relation to the elections would have an effect in getting the place for *Ouellette*. Can there be any reasonable doubt that he intended it should have that effect? He was a strong friend and partizan of Mr. *Laflamme's*, anxious for his election, and he himself first suggested that their conduct as to election matters might be influenced by *Ouellette's* getting the office; and he seems not to have omitted presenting the fact to them whenever a convenient opportunity occured of doing so. The significant question put him, if their abstention from voting was required, shewed the impression that the language and conduct of *Robert* had produced on their minds, and it had the effect of preventing their voting. I do not doubt, therefore, the act was corrupt and within the meaning of the Statute.

Ouellette himself had the idea that his father might be influenced in his conduct by the expectation of his son getting a situation, and the son warned him against working for Mr. *Girouard*, as it might injure his prospects. Two of Mr. *Laflamme's* prominent supporters also stated they had heard the elder *Ouellette* was not to work very hard during the contest, shewing, for some cause, not unlikely the expectation of the office for *Ouellette's* son, they thought the elder *Ouellette* was not intending to exert himself against Mr. *Laflamme*.

I think *Robert's* assurance that Mr. *Laflamme* had promised would have probably satisfied the *Pares* without informing them that he had told Mr. *Laflamme* he thought it would have an effect on their voting. I think it not an unfair inference from the evidence that from the *first* his object in referring to their voting was to induce them not to vote. In any view in which the subject was presented to the *Parés*, it was with a corrupt intent. There was no other reasonable ground suggested to them to abstain from voting, but the in-

fluence it would have on *Ouellette's* getting the situation; it was many times pressed upon them with that object. If some other motive had been presented to them which was legitimate and proper, and in addition it had been said their doing so might also have a good effect as to *Ouellette* getting the office, then it might be urged that there was a legitimate motive presented to them. But that is not so now, but the corrupt motive was presented and it had the effect intended.

From beginning to end, as far as the *Parés* were concerned, the motive as presented by *Robert* was illegitimate and corrupting in its tendency, and I think he should be bound by it, and Mr. *Laflamme* also, if he was his agent.

If Mr. *Laflamme* had directed *Robert* to say to the *Paré* family: "if you will abstain from voting at the coming election, I will endeavour to procure a place for *Ouellette*," there can be no doubt but that would have been a corrupt act which would have set aside the election and disqualified Mr. *Laflamme*. Was what was done by Mr. *Robert* not, in effect, the same thing, though not authorized to say what he did by Mr. *Laflamme*.

As to Mr. *Robert's* agency—Mr. *Laflamme* in his evidence says:

> The moment I was called upon to come before my constituency, the different friends who offered their services were informed by me, in the most imperative manner, to avoid anything in the style of treating, or promises, because I was surrounded in every direction by people who wanted to secure the election by this means or that means. First, I selected an agent from outside of the County, Mr. *Adam*, knowing that he would be well surrounded by witnesses in my office, and I disclaimed to have any connection with any other party than him. Some friends, without my knowledge and concurrence, organized a committee of volunteers to assist me in the election. They formed themselves into a committee at the *National* office. I never set my foot inside of that committee room, only after the voting had taken place, after I had returned from *St. Laurent*, on the polling day, and when I waited the returns of the different

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polls. Whoever was employed in that election besides Mr. *Adam* was employed without my knowledge. The only person I asked to come with me into the County was Mr. *Eustache Lemay*, because I determined to have a witness with me wherever I went in order to avoid any false testimony being brought against me on any subsequent period. Mr. *Lemay* was the only man, except on one or two occasions, when I had to take some other gentlemen.

In another part of his evidence he speaks of leaving *Belaire* with Mr. *Doyon*. I do not know if the learned judge before whom this petition was tried entertained the opinion that Mr. *Laflamme* had no agents in this election, whose conduct, if corrupt, without his knowledge, would justify setting aside the election. From a careful perusal of his judgment I do not infer that he entertained that opinion. He speaks of *Cousineau* as a spy, who went to *Migneron's* to endeavor to compromise Mr. *Laflamme's agents*, who were there. These persons referred to as agents were Messrs. *Madon* and *Forget*. *Forget* says he was sent to *St. Laurent* to prepare the lists and helped to organize the *two* committees, and young *Madon* helped him. *Forget* speaks of *his instructions* as to compromising themselves as well as Mr. *Laflamme*, and appears to have represented Mr. *Laflamme* on the day of polling. The learned judge also speaks in respect to corrupt acts alleged to have been committed by agents; not that the parties could not be agents, because Mr. *Laflamme*, under the circumstances, could not have any agents but those named by himself; but the fact of a person being an agent is not clearly established. He refers in a part of his judgment to the full opportunity given to the petitioners to enquire into all the details of the election, and says: "They have entered the private apartments of the Respondent, into *his committees*. They have visited the offices of the telegraph company and brought hither its employees." It seems to me the learned judge must have had the impression that Mr. *Laflamme* must have had some committees,

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the members of which aided him in his election, and, if so, I think the doctrine is pretty firmly established — if he takes the assistance of the members of a committee, he must be responsible for their acts to the extent of having the election set aside if those acts are corrupt within the meaning of the law applicable to elections.

I think we may assume, as a fact, that a contested election in this county, extending, as I understand, from *Lachine* to *St. Annes*, containing some populous villages, could not be conducted by a candidate with any hope of success unless there was some kind of organization amongst his frends to ascertain who were the voters—the probability of the contest being a close one—to ascertain if their friends were likely to turn out on the day of election; to make efforts to give energy to the indifferent; to watch their opponents; to see that no improper efforts were used to induce their friends to absent themselves from the polls, or to vote against them; and to see that all reasonable and proper efforts were used to secure the attendance of their friends at the polls on the day of voting. Mr. *Laflamme*, personally, made no attempts at an organization of this kind. It does not appear that he had any committees in the different parishes to canvass votes, or in whose hands *he* placed lists; or, where the ordinary precautions were taken to detect bad votes, to ascertain who had votes, and to prevent fraudulent voting, unless the committees that were organized, as far as we can see, by persons sent from the Central Committee, were his committees for the purposes I have mentioned.

I do not understand Mr. *Laflamme*--when he uses the language: "Some friends, without my knowledge and concurrence, organized a committee of volunteers to assist me in the election; they formed themselves into a committee at the National office"—to mean that he did not know, before the polling, that such an

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organization existed; but rather, that they formed the organization "without his knowledge or concurrence," and that afterwards he did not visit it during the election and had not knowledge of those who were *employed* in the election.

Mr. *Doyon*, who was sent by the Central Committee in *Montreal* to *Ste. Geneviève* and *Isle Bizard* to organize the contest, communicated with Mr. *Laflamme* before going, and his expenses were paid by Mr. *Laflamme's* election agent. He also met Mr. *Doyon* there. It seems to me he must have known that Mr. *Doyon* was acting on his behalf there. He was not an inhabitant of the parish, and had been sent from *Montreal*. I think, therefore, that it is the proper inference to draw, that Mr. *Laflamme* must have known that there was some organization for the contest, and that it must have been made through his Central Committee.

If he did not intend to rely on the efforts of this committee to aid him in his election, why did he not have an organization of his own different from that? If he did not intend to avail himself of the assistance of these *volunteers*, as he calls them, why did he not provide other and more legitimate assistants to do the work? If he had, then he might possibly have held these volunteers at arms-length (as the phrase is sometimes used), and so not have been answerable for their acts. It seems to me, if we hold that a candidate may in this way do nothing to secure his own election, when he knows that *his friends* are organizing for the purpose of doing that which he has a direct interest in seeing properly done, with a view of his being elected, that he must be held as placing himself in their hands to the same extent as if he had himself been present at, and aided in, the organization.

If we hold that a candidate, elected through the efforts of a committee thus formed and acting, can retain

his seat, when the persons selected by them to organize the contest and conduct it to a close have been guilty of corrupt acts, I think the rule considered so essentially necessary to the purity of elections, that a candidate shall not avail himself of the services of those persons, (call them agents, or what you please) unless he is responsible for their corrupt acts, will be of little or no use in preserving the purity of elections.

In that state of the law, all that would be necessary for a candidate to do would be simply to appoint one agent to pay his bills, and let his friends do the rest—organize committees, name canvassers and others to assist in managing the election and bringing it to a close ; and then, if corrupt acts are done by these active and necessary conductors of the canvass for his benefit, he is not in any way to be put to inconvenience; and unless a sufficient number of corrupted votes can be discovered and struck off from his side, he will retain his seat. I think this would be a very undesirable state of things to exist.

Besides this, I do not consider the candidate the only party who is interested in the result of the election, independent of the broad ground that the public have an interest that no candidate should be returned by undue means. His friends, or his political party, are also interested; their zeal ought not to be encouraged to run into corrupt channels ; and considerations of public policy will be served in shewing the friends of a candidate, or a party, that they cannot insure success by improper means used by agents for their candidate, though such agents have been selected by them for him instead of being selected by himself.

Can Mr. *Placide Robert*, then, be considered a person for whose acts, if corrupt, Mr. *Laflamme* can properly be considered responsible, so far as to warrant the election being set aside?

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Let us first see what Mr. *Robert* says himself. As to agency, *Robert* says:

Q. Did you take much interest in the last election? A. *Pretty much*, spoke to voters about their votes in many instances. I made reports to Mr. *Gariepy*, to Mr. *Cardinal*, and, I believe, to Mr. *Prevost* also. I attended election committees. Not all, but some only. My name was put on one of the committees as one of the members, and I attended now and then. I attended three or four sittings of the committee. I met *Wilfred Prevost* and Mr. *Gariepy* also, Mr. *Cardinal* once. It was a private committee, but was attended by Conservatives as well as Liberals, the door was opened to all. We used to check the list of electors, which I helped to do. I *was at the organization of that committee*; was a member of it from the time of its organization, but only attended three or four times as I remember. To the best of his knowledge they had neither President or Secretary. We prepared lists; cannot say they were intended for canvassers, but they were for men who called on the electors and solicited for their vote. We had printed lists of electors at one time, and we checked the same at the committee. We got the list at the committee room—the list of the voters for the town and parish of *Lachine*.

Cross-examined:—Q. Were you requested to act as you did, or did you act from your own accord? A. I have acted from my own free will. Q. Were you considered an election agent? A. I think not. Q. You acted without being requested by any one? A. I was never asked by any agent to use my influence. Q. Amongst the persons who were there, did you see any political opponent? A. All those who were present were above suspicion. From what I saw, Dr. *Lefebre* worked a good deal during election. I *think he belonged* to the *committee*. I cannot say if he canvassed votes. I have myself driven a vehicle on the day of polling, and I brought in some voters for the party.

Dr. *Lefebre* stated he was Secretary-Treasurer of Mr. *Laflamme's* committee at *Lachine*. He speaks of receiving $30 or $40, as coming from the Central Committee at *Montreal*, through Mr. *Leopold Laflamme*.

Mr. *Gariepy* solicited votes for Mr. *Laflamme*, who must have been aware he was working for him. Mr. *Gariepy* said: "I must tell you it was an understood affair between us."

Mr. *Jetté* was president of Mr. *Laflamme's* General

Committee at *Montreal*. Amongst other subscribers to the fund to pay expenses of the election, Mr. *Wilfred Prevost* has subscribed $100. These subscriptions were made without the knowledge of the candidate. Of these monies received by him, he gave Mr. *Adam* $340 and paid $50 to deposit with the Returning Officer. $200 more were paid *Adam* of the funds subscribed as above, but not directly by Mr. *Jetté*. Mr. *Jetté* thinks from $500 to $600 were subscribed and paid through the committee to aid Mr. *Laflamme*. The committee corresponded in *Ste. Geneviève* with Mr. *Doyon*. *Rodrique* was considered a messenger not an agent at *Ste. Geneviève*.

I have already referred to *Doyon* having been sent to *Ste. Geneviève* and *Isle Bizard* by the Central Committee *to organize the contest*; and also to *Forget* and *Madon* helping to organize *two committees* in *St. Laurent*; and *Forget* was also paid his travelling expenses for representing Mr. *Laflamme* on the day of polling.

Mr. *Wilfred Prevost* took a very active part in the election; was not entrusted with the *general organization* of the election; had not special charge of the several parish lists; had *special charge* of the *town* and *parish* of *Lachine*. He said he did not recollect of seeing *Jashman Belanger at the committee rooms*, his absence was felt there. Mr. *Prevost*, it will not be forgotten, was a subscriber of $100 to the fund raised by the Central Committee, and, no doubt, was a member of it.

Mr. *Bienvenu* was Secretary of the *Central Committee* at *Montreal*. There were other parties who, it was probable, were sent by this committee to aid in some way in the election, and they were afterwards paid their expenses through the election agent.

I think we, from this evidence, must assume that Mr. *Laflamme* had a committee at *Lachine*, and it was organized through the means of the Central Committee,

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probably by Mr. *Prevost;* that Mr. *Robert* was one of the members of that committee from its organization, attended its meetings, assisted as much as he could as a committee man; list of voters were there made out for canvassers, or, as he says, for men who called on the electors and *solicited for their vote.* Mr. *Robert* was not a mere clerk there, he was a member of the committee. Mr. *Laflamme* speaks of him as being one of his best supporters. He (*Robert*) speaks of making reports to *Gariepy*, who was especially a friend of Mr. *Laflamme*, and who it was understood (between him and Mr. *Laflamme*) was to work for him; to Mr. *Cardinal*, no doubt equally in his interest with his knowledge, as Mr. *Laflamme* had given him a letter to Mr. *Cooke*; and Mr. *Wilfred Prevost*, who, I assume, was the organizer of the committee; and that *Robert* met him at the committee. It seems to me, that Mr. *Robert* was an active, energetic and *trusted* supporter of Mr. *Laflamme;* and if the Central Committee could give him authority to act, as I think they could, he must surely have had authority.

Mr. *Leopold Laflamme* says *Robert* took a part in the contest in the interest of Respondent, who could not well help knowing it; that he was certain he was a devoted partizan of his brother.

I shall refer to a few of the election cases decided in *England*, as shewing the general grounds on which the question of agency is discussed, and the conclusion which is arrived at; that no *certain* rule can be laid down as to what constitutes agency, and that the uncertainty arises from the different conclusions that may be drawn from the evidence when it is presented to different minds. The *common sense* of the Judge, so frequently referred to by Lord *Blackburn*, not being regulated by a fixed standard, does not conduce to uniformity of decision. The views of the Judges, in some

of the decided cases, as to the *sufficiency* of the evidence to establish agency, would justify a difference of opinion on the question whether the Petitioners have proved enough to establish *Robert's* agency in this case. To some minds, the facts necessary for that purpose may appear not to have been sufficiently brought out on the trial. I think differently, and that the weight of authority and of reason sustains my view.

As a Judge, I have no doubt if the matter were triable before a jury, that there is evidence as to *Robert's* agency, which it would be necessary to submit to the jury. Then, sitting in place of a jury, I must say the evidence to which I have referred satisfies me beyond a reasonable doubt that *Robert* was Mr. *Laflamme's* agent; and that the latter knew—or must, under the circumstances of this case, be presumed to have known—that he was acting in that capacity for him and on his behalf.

In referring to election matters, I think it may be stated as an axiom, that the law of bribery, and in relation to corrupt practices, is not framed so much with the object of punishing the briber as to secure purity of election.

The question as to agency in election matters was a good deal discussed in the case of *Duffy* v. *Ryan*, in the Supreme Court of *New Brunswick* (1); and my brother *Ritchie*, in giving the judgment of the Court in that case, refers to many of the cases where the question of agency arose.

In the following extracts, which I have made from the decided cases, I have had more thought of the general principles laid down than of particular circumstances of each case, as it is so manifest that as to this matter of agency each case must, as already intimated, be decided on its own peculiar circumstances.

In the *Norwich* case (2), heard before *Martin*, Baron,

(1) 3 Pugsley 110. (2) 1 O. & H. 10.

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this doctrine was laid down, which I think is now firmly established, that the law of agency which would vitiate an election, is utterly different from that which would subject a candidate to a penalty or indictment; and the question of his right to sit in Parliament has to be settled upon an entirely different principle. The relation is more on the principle of master and servant than of principal and agent.

In the *Hereford* case (1) Lord *Blackburn* uses this language:

> It would not be possible to unseat a person for corrupt practices, if he were permitted, by the means of persons who acted for him, or who brought him forward, either one or the other, to obtain the benefit of their aid, if he were not to be also responsible to the extent of losing his seat for the corrupt practices that were done by them for his benefit. That is one of the great reasons for which, as a matter of public policy, it was thought necessary in order to correct corrupt practices to establish that principle. * * * I apprehend that, in a case where corrupt practices are shewn which the candidates themselves are not cognizant of, you must bear these two principal reasons in mind; and then, exercising what may be called common sense, you must see does the particular corrupt act come within the rule as an act done by an agent. If it does not, then though the person may have been canvassing the town or speaking on one side or the other; still we could not say the candidate should be unseated on that account. Every bit of canvassing and acting for a candidate is evidence to show agency, but the result cannot depend upon any present rule that I could define. It comes to be a question of degree, of more or less, and of common sense. It happens that from the nature of things, when you come to a question of degree, of more or less and of common sense, and leave it in that way to a jury, if there were a jury, the jury would determine it sometimes in one way and sometimes in another. Unfortunately, when judges are obliged to be judges of that question of degree and common sense, there is this unavoidable uncertainty, because it is quite clear that the common sense of one judge will differ from the common sense of another. To use the old simile that was used by Mr. *Selden* many years ago, and which is none the worse for being old, the standard of common sense would be as

(1) 1 O. & H. 194; 21 L. T. N. S. 119, 120.

uncertain as a measure of length, the unit of which should be the judge's foot; because one judge's foot would be longer and another shorter. We cannot help that. I wish with all my heart that the Legislature would find out some test to relieve us from that uncertainty.

Lichfield case (1)—Mr. Justice *Willes* said:—

I think it may be taken that those who have hitherto had the decisions of election cases, have held that an agent to canvass would be an agent within the statute.

It having been stated on behalf of the Respondent that he employed no committee, but there were persons who acted in drawing up cards, &c., Mr. Justice *Willes* said:

That is the modern fashion apparently; *but persons who do what committeemen formerly did, and are seen taking an active part, are just as much committeemen* as if they were called so.

Windsor case (2)—Mr. Justice *Willes* said he did not think a mere card messenger could be said to have been an agent.

I have stated that authority to canvass—and I purposely used the word "authority" and not "employment" because I meant the observation to apply to persons authorized to canvass, whether paid or not for their services—would, in my opinion, constitute an agent; and that authority for the general management of an election would involve authority to canvass. I do not say that there may not be instances of agency on behalf of a candidate besides those of authority to canvass, and authority for the general management of an election.

He thought an agent for election expenses might be, but a mere messenger could not be, regarded as an agent.

In the *Taunton* case, 1869 (3), the question as to the effect the illegal act of a volunteer association may have on the status of a candidate, is a good deal discussed. One of the head notes of the case is:

The managers of the Conservative Association, having circulated

(1) O. & H. 25. (2) 1 O. & H. 3.
(3) 21 L. T. (N. S.) 169.

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addresses and papers issued by the candidate, will be presumed to have done so with his knowledge, or with that of his agents, so as to constitute the association an agent for such candidate, and to make him responsible for any illegal acts of its managers.

That case was also tried before Lord *Blackburn*, and he referred to the question of agency very much as he did in the *Hereford* case (1). He uses this language:

If there is evidence to show that the party is acting for the member who is returned, I think one should consider him to be an agent. If, taking the spirit and object of the rule, you think, bringing *your common sense* to bear upon it, that he was substantially an agent, I think it is all I could say to a jury; and then, as the Legislature have thought fit to make me both judge and jury, I must apply that guide as best I can myself. I at once see the great inconvenience of such a rule being laid down in this: if that be the proper guide to be taken, the law must be very *uncertain*.

In the concluding part of his judgment, he uses these words:

The candidate may show that the body acting in that way was acting officiously for him, as I may call it; that it was not with his consent, and was against his will; but the presumption does arise, I think, that it was done in his favor—done for him—unless there be something to show to the contrary. Then taking it, as I said before, as a matter of common sense, looking to the substantial degree to which they went, I think the degree goes very far. I think in this case such a degree of benefit would be derived from their assistance, that their assistance was so important to the candidate, that it fairly establishes this, that if he took their assistance, did not hold them off, or repudiate them, he must abide the consequences and be responsible for their malpractices.

The same learned judge tried the *Staleybridge* case (2). In one part of his judgment he said:

Each case must be considered with reference to the whole facts taken together and be delivered by the solution of the question, whether the relation between the person guilty of the corrupt practice and the member was such as to make the latter fairly responsible for it.

It was then held, as laid down in the head note of the case:

(1) 1 O. & H. 10.

(2) 1 O. & H., 70; 20 L. T. N. S. 75.

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If the services of a volunteer are accepted, the candidate will not invariably be responsible for his acts. Where the heads of a committee were *bonâ fide* voters, not chosen by the Respondent, but by *bonâ fide* voters amongst themselves in a business-like way, it was held, that a messenger sent by one of those heads was not so connected with the sitting member, as to make him responsible for his acts.

The corrupt act was in the person sent to buy up votes offering to pay them their day's wages if they would come and vote for Respondent. There the Respondent had a committee of his own. But the evidence showed that the sitting member's people did request the volunteer committees there to bring up votes, when they could. He thought many of the volunteer agents who were heads of committees might, or might not, be so far connected with the Respondent that he would be responsible for them. In this case he was convinced they were real *bonâ fide* volunteers, voters acting for themselves, not selected by the member, or chosen by him at all, but really *bonâ fide*, in a business like manner, the voters of the district choosing *Jobin*, and respectable men in whom they had confidence, to be the head of their own department, and acting together. A messenger who is sent by one of them is not so directly connected with the candidate, or any of his recognized agents, as to make him responsible for his misconduct in offering a bribe.

The same learned judge said in the *Bewdley* case (1):

No one can lay down a precise rule as to what would constitute evidence of being an agent. Every instance in which it is shown, that either with the knowledge of the member himself, or to the knowledge of his agents, who had employment from him, a person acts at all in furthering the election for him, in trying to get votes for him, is evidence tending to show that the person so acting was authorized to act as his agent. It is by no means essential that it should be shown that a person so employed, in order to be an agent for that purpose, is paid in the slightest degree, or is in the nature of being a paid person.

(1) 1 O. & H. 17.

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In the *Boston* case (1), Mr. Justice *Grove* says, on the subject of agency:

But with regard to the election law, the matter goes a great deal further, because a number of persons are employed for the purpose of promoting an election, who are not only not authorized to do corrupt acts, but who are expressly enjoined to abstain from doing them; nevertheless, the law says, that if a man chooses to allow a number of people to go about canvassing for him, generally to support his candidature; to issue placards; to form a committee for his election, and to do things of that sort, he must, to use a colloquial expression, take the bad with the good. He cannot avail himself of these people's acts for the purpose of promoting his election, and then turn his back, or sit quietly by and let them corrupt the constituency; therefore, the law carries the responsibility of a member of Parliament for the acts of the agents, who are instrumental—with his assent—in promoting his election, a good deal further than the mere common law of agency.

In the *Wakefield* case (2), decided in 1874, the same learned Judge refers to certain facts which *prima facie* would bring the case within the law of agency, and would be sufficient to satisfy a tribunal that the Respondent had put himself, or allowed himself to be, in the hands of certain persons, or had made common cause with them, so as to make himself liable, if they, for the purpose of promoting his election, committed acts of bribery. Further on, he says:

A candidate is responsible generally, you may say, for the deeds of those who, to his knowledge, for the purpose of promoting his election, canvass or do such other acts as may tend to promote his election, *provided that the candidate, or his authorized agents, have reasonable knowledge that those persons are so acting with that object.* * * *

He alludes to the impossibility of laying down such exact definitions and limits as should meet every case, and says:

It is well it should be understood, that it rests with the Judge, not misapplying or straining the law, but applying the principles of the law to the changed states of facts, to form his opinion as to

(1) 2 O. & H. 167. (2) 2 O. & H. 103.

whether there has, or has not, been what constitutes agency in these election matters.

Acting on the rule thus laid down by Mr. Justice *Grove*, I have arrived at the conclusion that *Robert* was Mr. *Laflamme's* agent, and that for the corrupt act done through him, the election should be set aside. I think Mr. *Laflamme* received most important and effective aid by and through the central committee. I think it is probable he would not have been elected if he had not had that aid. I think Mr. *Robert* was a member of the *Lachine* committee, which was organized through and acted in concert with the Central Committee, from whom they received material aid. That Mr. *Robert* was an active and effective member of that committee, and that Mr. *Laflamme* must have known, or must be presumed to have known, that Mr. *Robert* was actively engaged in furthering his election. I think he cannot be allowed to avail himself of all these important aids to his success, and then repudiate them, so far as to say he is not responsible for the illegal acts of those who have thus aided him.

STRONG, J., concurred.

TASCHEREAU, J. :—

L'exposé clair et précis que le Juge en chef de cette cour vient de faire de tous les faits de la cause et des prétentions des parties, me dispense complètement d'y référer.

Nous nous accordons tous à dire que de tous les reproches faits à l'Intimé sur sa conduite et celle de ses agents avant et pendant l'élection dont il s'agit en cette cause, il n'y en a qu'un seul qui puisse en ce moment attirer notre attention, c'est celui indiqué par le Juge en chef; et il s'agit en conséquence de savoir si le nommé *Placide Robert*, dont il est question comme agent de M. *Laflamme*,

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était véritablement tel agent ou non, et s'il a commis un acte de corruption tel que prévu par l'acte des élections de la Puissance du *Canada*.

Qu'a fait cet homme, *Placide Robert* ? Le voici en quelques mots. Voulant obtenir de M. *Laflamme* un emploi ou place pour son beau-frère *Edouard Honoré Ouellette*, il demande à l'Intimé, environ un an avant qu'il fût question de l'élection dont il s'agit en cette cause, de tâcher de procurer un emploi à son beau-frère *Ouellette*, en lui disant qu'il pensait que cela ferait plaisir à la famille de *Pierre Paré* dont *Ouellette* était le gendre. M. *Laflamme* lui dit qu'il y penserait et qu'il se rappellerait cet homme et tâcherait de le placer s'il se présentait une vacance. M. *Laflamme* répète cela plusieurs fois et même jusqu'à une époque de deux à trois semaines avant l'élection. Comme les juges en première instance, nous ne trouvons aucun reproche sérieux à faire à l'Intimé d'avoir tenu ce langage, bien naturel envers un de ses constituants, car il est indubitable qu'un représentant peut et doit voir au bien-être des habitants de son comté en général, et je dis que refuser à un représentant le patronage de sa position serait une absurdité. Notons que cette promesse est faite sans condition, sans promesse de son accomplissement. Nous sommes donc tous d'opinion que l'Intimé n'a encouru aucune responsabilité à cet égard ; mais plus tard, ce monsieur *Placide Robert*, agissant de son seul chef, a dit à plusieurs reprises à ses beaux-frères de la famille *Paré*, à l'approche de l'élection qu'ils feraient mieux de ne pas voter, et qu'en votant on pourrait s'en prévaloir pour refuser de placer *Ouellette*.

Voilà donc le reproche fait à M. *Laflamme* sous le prétexte que *Placide Robert;* 1. avait engagé quelques membres de sa famille à s'abstenir de voter ou de cabaler en faveur du candidat opposé. 2. Que *Placide Robert* était l'agent de M. *Laflamme* et pouvait le compromettre.

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Je suis d'opinion que *Placide Robert* n'a pas fait un acte de corruption en disant confidentiellement dans le cercle de sa famille "qu'il serait mieux pour eux de ne pas voter." Il n'exprimait qu'une idée, qu'une opinion plus ou moins rationelle ; il ne faisait aucune menace de la part de M. *Laflamme*, il ne faisait que ce que tout homme sensé ferait dans l'intimité de sa famille au bien-être de laquelle il voudrait contribuer comme bon fils et comme bon frère.

Je considère que pour sauvegarder la pureté des élections, il ne faut pas pénétrer dans le sein des familles et tâcher de trouver un crime dans l'expression bien naturelle du désir chez un homme de voir son frère recevoir un léger emploi. S'il fallait interpréter de telles observations, de tels conseils comme synonymes de corruption, je demanderai combien de nos élections seraient à l'abri de tels reproches.

Dans mon opinion, il manque à ces conseils de *Placide Robert* pour en constituer un acte de corruption, bien des éléments, savoir, les menaces, les reproches grossiers, l'expression exagérée des conséquences de la conduite de sa famille, et surtout l'information donnée à cette famille que M. *Laflamme* n'avait fait la promesse que sous la condition qu'elle s'abstiendrait de voter. Je ne vois rien de semblable dans le témoignage, je n'y vois que des conseils entre parents désireux de se protéger. Je remarque au dossier la preuve que ce M. *Edouard Honoré Ouellette* n'a jamais reçu de place. En conséquence je suis d'opinion que *Placide Robert* n'a pas commis un acte de corruption dans ses conversations ci-dessus rapportées et qu'il n'a fait encourir aucune responsabilité légale à l'Intimé en supposant même qu'il pût être considéré comme agent.

Etant d'opinion que *Placide Robert* n'a pas commis d'actes repréhensibles au point de vue légal, il est inutile pour moi de discuter la question d'agence, et en

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conséquence, je suis d'opinion de renvoyer l'appel avec dépens contre les appelants.

FOURNIER, J. :—

La cour étant unanime à confirmer le jugement prononcé par l'honorable juge qui a décidé cette cause en première instance, à l'exception seulement de la partie renvoyant l'accusation de corruption personnelle contre le membre siégeant au sujet de la promesse faite à *Robert* de faire obtenir une situation à son beau-frère *Ouellette*, c'est à ce chef d'accusation que je limiterai mes observations sur cette cause, ainsi qu'aux témoignages sur lesquels les appelants s'appuient pour en faire la preuve.

Le témoignage de *Robert* étant le plus important de tous, je crois devoir en donner une analyse, afin de mieux faire comprendre le véritable caractère des faits reprochés à l'Intimé.

Ce témoignage peut se résumer comme suit :—

Robert est un client et un ami politique du membre siégeant. Dans bien des circonstances, il a parlé à des électeurs de leur vote, mais il n'est pas allé à leurs résidences pour connaître leur opinion. Plus d'un an avant l'élection se trouvant au bureau de ce dernier, il lui demanda une place pour son beau-frère. Le membre siégeant lui répondit que s'il se présentait une vacance il ferait son possible pour *lui*, *Robert*. Dans une autre entrevue (niée par l'Intimé), ayant renouvelé sa demande pour son beau-frère, il aurait ajouté : "ça ferait bien plaisir à la famille *Paré* si vous pouviez procurer une place pour mon beau-frère,—peut-être cela pourrait vous être utile plus tard ; cela pourrait peut-être les empêcher de voter à l'élection prochaine." Il ne fut pas parlé d'élection entre-eux, mais il en était question. La famille *Paré* avait voté contre le ministre de la Justice en 1872, et appartenait au parti Conservateur.

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Sans pouvoir en préciser l'époque, c'est trois ou quatre semaines avant qu'il fut question d'élection qu'il a parlé au membre siégeant, de la famille *Paré*. Celui-ci a répondu qu'il penserait à *lui*, (*Robert*), et que s'il se présentait quelque vacance, il ferait tout son possible pour *lui ;* il dit avoir compris par cette réponse, que c'était pour son beau-frère. Il n'a pas du tout parlé de ce sujet au membre siégeant durant l'élection.

Ayant demandé aux *Paré* leurs opinions, ils lui dirent qu'ils voteraient pour *Girouard*, mais qu'ils n'emploieraient pas leur influence,—ce à quoi il répondit que ce serait mieux de ne pas voter puisqu'il était question d'une place pour *Honoré Ouellette.*

Il n'a pas dit au membre siégeant ni à aucun de ses agents ou amis qu'il avait parlé à la famille *Paré* pendant l'élection. A communiqué à *Ouellette* ses entrevues avec le *M. S.*, mais ne se rappelle pas lui en avoir parlé pendant l'élection. A vu le *M. S.* à la *Pointe Claire* le jour de la nomination, l'a salué et lui a donné la main ; ne lui a pas parlé pendant l'élection, ne lui a jamais fait de rapport de ses chances à *Lachine.* A fait des rapports à MM. *Gariépy*, *Cardinal*, peut-être même à M. *Prévost.* Son nom ayant été mis sur la liste d'un comité, à *Lachine*, comme membre, il a assisté à trois ou quatre séances ; y a rencontré MM. *Prévost*, *Gariépy* et *Cardinal*, une fois. C'était un comité privé, mais il y assistait des libéraux comme des conservateurs ; la porte était ouverte pour tout le monde. On vérifiait les listes ; a participé à ce travail. Il n'y avait ni président, ni secrétaire, suivant lui. Des listes étaient préparées pour des gens qui allaient voir les électeurs pour les solliciter à venir voter. Il a eu une liste d'électeurs qu'il a vérifiée au comité. Deux mois environ après l'élection il a fait au M. S. la même demande à propos de *Ouellette* et en a reçu la même réponse.

Voici tout ce qu'il y a d'important dans ce témoignage

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concernant la promesse d'une place alléguée comme acte de corruption personnelle de la part du membre siégeant.

Si respectable que soit ce témoin, il ne serait cependant pas juste d'accepter comme exacts tous les faits dont il a déposé, sans les accompagner des correctifs que l'on trouve dans sa déposition, et sans non plus les comparer avec le témoignage de l'Intimé et ceux particulièrement des deux *Paré*, au moyen desquels les appelants prétendent compléter la preuve de l'accusation en question. Entre ces divers témoignages et celui de *Robert*, il se trouve des divergences sur plusieurs points importants qui méritent d'être signalées.

D'après sa propre version, *Robert* aurait eu avant l'élection plusieurs conversations avec l'Intimé au sujet d'une place pour *Ouellette;* la première, plus d'un an avant l'élection, les autres, dans l'automne de 1876, lorsqu'il s'agissait d'élection.

Sur ce point il est d'abord contredit par lui-même, et ensuite par l'Intimé. La question suivante lui ayant été faite : Q.—"Pendant l'élection, pendant les discus- "sions, aviez-vous eu une conversation avec M. *La-* "*flamme* à propos du même sujet ? (une place pour " *Ouellette*). R. Pas du tout." Il a eu avant cela, le soin de dire que par élection il entend la discussion publique qui se fait à ce sujet.

S'il est correcte dans cette partie de son témoignage, il ne peut pas l'être dans celle où il a dit qu'il a eu de ces conversations *pendant l'élection.* Ce qui rend encore plus certain le fait qu'il est tombé en erreur à cet égard, c'est que dans une autre partie de son témoignage où on lui demande " s'il a vu le membre siégeant pour lui parler," il répond seulement qu'il *l'a vu à la Pointe Claire, le jour de la nomination, l'a salué et lui a donné la main.* Ailleurs, il dit l'avoir vu à bord de l'*America*, mais ne lui a pas parlé non plus. A part de son propre

témoignage pour le contredire sur ce point, il y a encore celui de l'Intimé qui dit à ce sujet dans sa déclaration après avoir rapporté leur entrevue, concernant *Ouellette* :

The thing remained in that way, and previous to the election particularly there never was one word said or breathed on that subject between *Robert* and myself.

Cette assertion qui s'accorde avec les deux dernières de *Robert*, suffit pour démontrer qu'il a commis une erreur lorsqu'il a dit qu'il avait été question de ce sujet entre eux pendant l'élection. La chose est impossible puisqu'il ne se sont pas parlés du tout, et qu'ils n'ont fait qu'échanger une poignée de main, le jour de la nomination.

Quant aux différences importantes entre ce témoignage et ceux de *Paré*, il y sera fait allusion plus tard.

Le résultat de cette confrontation de *Robert* avec lui-même et avec l'Intimé prouve d'une manière satisfaisante qu'il n'y a eu entre lui et l'Intimé, avant l'élection, qu'une seule entrevue dans laquelle il a été question de cette promesse. Si les paroles de *Robert* au sujet de la famille *Paré* sont correctes elles doivent avoir été dites dans la seule entrevue dont parle l'Intimé—laquelle a eu lieu plus d'un an avant l'élection, et dans un temps où il n'en était nullement question.

En admettant même pour l'argument qu'il y ait eu deux entrevues, la première, dans laquelle il n'a été question que de *Ouellette*, la deuxième, trois ou quatre semaines avant l'élection, dans laquelle il aurait été question de la famille *Paré*, il est clair que dans la première, il ne s'est rien passé qui fût de nature à compromettre l'Intimé. La promesse alors faite ne peut pas être considérée comme entachée de corruption puisqu'elle n'a pu être faite en vue de l'élection dont il n'était alors nullement question. On ne peut certainement pas prétendre qu'un député ne peut faire honnêtement et légalement à un de ses constituants une

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promesse de ce genre. Une telle promesse ne peut devenir illégale que si elle est faite pour des motifs et sous des circonstances prohibées par la loi. Il ne se rencontrait aucune de ces circonstances lorsque celle dont il s'agit a été faite à un ami politique et personnel qui avait droit à la considération et à la protection de son représentant dans une demande parfaitement honnête et légitime.

En supposant que dans la deuxième entrevue, *Robert* ait dit à l'Intimé ce qui est rapporté ci-dessus concernant la famille *Paré*, l'Intimé a-t-il dit ou fait quelque chose dans cette circonstance qui puisse être considéré comme un acte de corruption.

Qu'a-t-il répondu à la considération que *Robert* faisait valoir en faveur de *Ouellette*, savoir : " que ça pourrait " peut-être lui être utile plus tard—que ça pourrait " peut-être empêcher les *Paré* de voter ; " a-t-il dit quelque chose qui puisse faire voir qu'il acceptait le raisonnement de *Robert* et que la promesse déjà faite, longtemps auparavant, a été alors renouvelée pour le motif suggéré ? Non, l'Intimé répond exactement dans cette circonstance comme il l'avait fait auparavant, " qu'il fera son possible pour lui (*Robert*) lorsqu'il se présentera une vacance." Il ne s'engage à rien ni envers *Ouellette*, ni envers les *Paré*. Il ne pouvait renier la promesse antérieurement faite ; il ne pouvait faire qu'elle n'existât point, il se borne à la répéter dans les mêmes termes et sans aucun égard au nouveau motif qui lui a été suggéré. Rien, absolument rien, ne fait voir non plus que l'Intimé en répondant ainsi, le faisait dans l'intention de gagner un avantage quelconque en vue d'une prochaine élection, puisque *Robert* admet que cette deuxième entrevue a eu lieu trois ou quatre semaines avant qu'il fût question d'élection.

Si la promesse faite dans la première entrevue (ce qui est admis de toutes parts) n'était pas illégale à son ori-

gine, peut-elle l'être devenue sans que l'Intimé y ait lui-même apporté quelque modification ? Peut-on, en donnant un effet rétroactif à des faits auxquels il est tout-à-fait étranger, changer la nature de cette promesse, d'abord tout-à-fait innocente, de manière à en faire une offense de la plus haute gravité ? C'est ce que les appelants prétendent pouvoir faire en prouvant que *Robert* était devenu pendant l'élection un des agents de l'Intimé, et, qu'en cette qualité, il aurait fait allusion à la promesse en question de manière à influencer la famille *Paré* dans le but de l'empêcher de voter.

Je ne puis, avant d'aller plus loin m'empêcher de faire observer à propos de cette accusation, ainsi que l'a fait l'honorable juge qui a décidé en première instance, que l'Intimé n'est pas accusé d'avoir fait cette promesse avec l'intention d'influencer qui que ce soit dans le but de les empêcher de voter. Malgré un examen minutieux des "particularités," je n'ai pu y trouver d'allégation à cet effet. Sans doute une telle omission ne pouvait empêcher l'investigation d'avoir lieu, mais elle n'aurait dû être faite qu'après avoir obtenu du juge une permission, qui n'a pas été demandée, d'amender les particularités afin d'offrir la preuve de ce fait.

Mr. Justice *Blackburn* said that all through these cases had gone upon this principle, namely, that he should not allow any inquiry to be stifled, as not being in the particulars; but at the same time he could not allow any respondent to be taken by surprise without having fair warning. If therefore the petitioners relied upon this evidence, and had not given notice, they must apply (1)

Bien que l'on ait irrégulièrement laissé faire cette preuve, je ne crois pas toutefois que cette irrégularité soit suffisante pour nous empêcher d'en prendre connaissance et de prononcer notre opinion sur sa valeur.

L'appréciation que je fais des rapports de *Robert* avec la famille *Paré*, me portant à conclure qu'il ne s'est

(1) *Staleybridge case* 1 *O. & H.* 72.

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rendu coupable d'aucune offense contre les lois électorales, il serait inutile à mon point de vue de prendre en considération la preuve qui a été faite pour établir sa qualité d'agent de l'Intimé. Je passerai donc de suite à l'examen de ces rapports.

On a vu par son témoignage que *Ouellette* est, comme lui, gendre de M. *F. Paré*, et que malgré la différence d'opinions qui existent entre eux, les membres de cette famille paraissent vivre en très bonne intelligence.

Il n'est pas douteux que *Robert* avait communiqué à la famille *Paré*, ses démarches auprès de l'Intimé dans l'intérêt de *Ouellette*. Quoique l'époque de la première communication ne soit pas bien établie, il est certain qu'elle a eu lieu au moins six mois avant l'élection, puisque à cette époque, *Alphonse Paré* écrivait lui-même à l'Intimé, sur le même sujet. Mais il est bien plus probable que cette communication a eu lieu immédiatement après la première entrevue de *Robert* avec l'Intimé. Mais il paraît certain qu'il en aurait aussi parlé pendant l'élection. Voici ce que lui-même rapporte à ce sujet :

Il croit avoir parlé pendant l'élection même, aux messieurs *Paré* du vote qu'ils devaient donner, leur a demandé leur opinion, et ils lui ont dit qu'ils voteraient pour M. *Girouard*, mais qu'ils n'emploieraient pas leur influence. A cela il a répondu que ce serait mieux de ne pas voter puisqu'il était question d'avoir une place pour *Honoré Ouellette*.

Sur ce fait important, *Robert* n'est pas d'accord avec *François Paré*, père, qui a été entendu comme témoin. Il est vrai qu'il dit d'une manière générale qu'il croit en avoir parlé aux messieurs *Paré*. A part des deux qui ont été examinés il y en a un troisième, *François Paré*, fils, auquel il en aurait aussi parlé, mais celui-là n'a pas été entendu comme témoin. Nous n'avons donc de cette conversation que les versions de *François Paré*, père, et d'*Alphonse Paré*. Voici ce que dit à ce sujet le père :

Q. How long before the voting day did Mr. *Placide Robert* tell you not to vote in order to get a place?

A. I cannot tell. I think it was a long time before the election. I know that the affair about the Post Office took place in the month of April of last year.

C'est en avril ou en mai qu'avait eu l'affaire du bureau de poste à laquelle il est fait allusion, plus de six mois avant l'élection.

Q. How many days before the polling day did Mr. *Placide Robert* make the remark that it was best for you not to vote in order to get a place for *Honoré Ouellette*?

A. *I do not know that he spoke of that to me.* I told my sons that *it was better not to vote*, as we wanted *to get a place from Mr. Laflamme.* One of the three of us voted. * * *

Q. While the Election was spoken of, did Mr. *Placide Robert* say that it was better for you not to vote?

A. *I have no knowledge of that; it is myself who said so to my sons, and one of them voted.* * * *

Q. *It was you who said it was better to abstain* from voting? A. *Yes.*

Il semble clair d'après ce témoignage que *Robert* n'a exercé aucune influence sur *Frs. Paré*, père, et que c'est plutôt ce dernier qui aurait recommandé à ses fils de ne pas voter.

Alphonse Paré dit sur le même sujet :

At the time of the Election, Mr. *Robert* told us that it would be better not to vote; we then told him that we would vote. He told us: "do as you please, they will use your votes as an objection to give Mr. *Ouellette* a place." That is the reason why he did not vote. * * *

Q. At the time of the Election, did Mr. *Robert* speak to you about your vote? A. He spoke of it to my brother, my brother told me.

Si cette réponse signifie quelque chose, elle veut dire que *Robert* ne lui a pas parlé à lui-même, mais à son frère qui le lui a répété.

Evidemment ce qu'il a dit auparavant n'est fondé que sur le rapport que lui a fait son frère *François* de sa conversation qu'il avait eue avec *Robert*. Ce rapport est-il correct? *François Paré*, fils, qui seul aurait pu le

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prouver, n'a pas été entendu comme témoin. Mais chose assez singulière après cette réponse qui ferait croire que c'est à son frère seulement que *Robert* a parlé, il fait mention, presque immédiatement d'une conversation dans laquelle il était le principal interlocuteur.

Some time before the polling day, two or three weeks before the election after what my brother had told me, I told *Robert* that I wanted to know if our abstention from voting was required.

Il parait clair par cette question que *Robert* n'avait fait aucune tentative pour l'empêcher de voter, et il est également clair par sa réponse qu'il n'entendait rien faire pour les y engager, puisqu'il leur dit de faire comme bon leur semblera.

He told me to do as I thought fit, but that it was better for us not to vote. By that answer I imagined that the fact of our voting would be an objection to M. Ouellette getting a place.

De ce témoignage il ressort deux faits principaux, le premier, que *Robert* aurait dit au temps de l'élection que c'était mieux de ne pas voter. Le deuxième qu'en réponse à la question au sujet de l'abstention, il aurait dit de faire comme on le jugerait à propos..

C'est à cela que se réduit toute l'intervention de *Robert* auprès de la famille *Paré*, c'est-à-dire à une simple expression d'une opinion sur une affaire à laquelle la famille s'intéresse depuis longtemps. *Robert* me paraît en cela avoir joué un rôle plutôt passif qu'actif. La première fois il se contente de faire l'observation qu'il serait mieux de ne pas voter ; la deuxième, il répond à son interrogateur de faire comme bon lui semblera. Sa conduite en ces deux circonstances ne constitue pas même le *canvassing*, tel que défini dans la cause de *Westbury* (1).

Canvassing may be either by asking a man to vote for the candidate for whom you are canvassing, or by begging him not to go to the poll, but to remain neutral and not to vote for the adversary.

(1) 1. O & H. 56.

Il ne demande pas le vote des *Paré*, il ne les sollicite pas non plus de s'abtenir de voter. Il ne fait aucune promesse de situation et ne s'engage pas non plus à en procurer. Ce qu'il dit alors paraît bien moins inspiré par l'idée du succès de l'élection que par celle de servir les intérêts de *Ouellette*, qui n'est pas même voteur et dont il s'occupe depuis plus d'un an avant l'élection. Il est certain qu'en faisant cette observation il n'avait aucune intention de corrompre les *Paré*. C'est évident, du moins quant au père, puisque celui-ci déclare formellement que ce n'est pas *Robert*, mais lui-même qui a dit à ses fils de ne pas voter. Il est vrai que *Alphonse Paré* ajoute que d'après les réponses de *Robert :*

I imagined that the fact of our voting would be an objection to Mr. *Ouellette* getting a place.

Robert lui-même n'a jamais fait cette observation qui, certainement, si elle eût été faite par lui serait grave et pourrait donner un tout autre caractère à sa conduite. Il faut remarquer de plus que *Alphonse Paré* ne dit pas avoir exprimé cette pensée à *Robert*, il dit seulement qu'il a fait en lui-même cette réflexion,—"I imagined, &c."

D'après la loi ce n'est pas ce qui peut s'être passé dans l'esprit des *Paré* qui pouvait constituer l'offense dont il s'agit, mais bien l'intention qu'avait *Robert* en leur parlant ainsi.

Baron Martin said in the *Westminster* case :—

The question is not what is the motive that operated upon the mind of the voter. The mind of the voter has nothing to do with it; the question is, the intention of the person who furnished the board. Probably there is no man who ever was bribed but would swear that the bribe had not influenced his vote. (1)

Quoique dans cette citation il s'agisse d'aliments fournis aux voteurs, le principe est le même et cette autorité est applicable au cas actuel.

Que la connaissance des démarches faites par *Robert*,

(1) 1 O. & H.

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que celles faites directement par *Alphonse Paré*, lui-même, six mois avant l'élection, en écrivant à l'Intimé pour obtenir une place pour *Ouellette*, aient eu l'effet d'engager les *Paré* à s'abstenir, c'est à peu près certain ; mais ce que la preuve n'établit pas, sans quoi il ne saurait y avoir d'offense, c'est que cette abstention est due à des démarches faites par *Robert* dans le but d'obtenir ce résultat. L'allusion que *Robert* a faite à cette promesse ne paraît pas plus que la promesse elle-même entachée de corruption. Un fait bien remarquable et qui fait voir que les conversations de *Robert* avec les *Parés* n'étaient pas en vue de l'élection, c'est qu'il n'en a jamais fait mention à l'Intimé ni à aucun de ses agents. Je ne puis donc voir dans ce fait un motif suffisant pour annuler une élection qui, sous tous les autres rapports, me parait avoir été conduite avec un désir évident de se conformer à la loi.

HENRY, J. :

I agree with the conclusions arrived at by the learned Chief Justice in regard to all the objections urged against the return of the Respondent and argued before us, except as to that of *Placide Robert* in regard to the alleged bribery by him of the two *Parés*, by means of which they were induced to refrain from voting for the Appellant. Although I may not coincide with the learned Chief Justice as to all he has thought proper to give as his reasons for arriving at the results he has intimated, I have, after the most anxious and laborious consideration, and the most exhaustive researches, arrived at the same conclusions he has in regard to all the cases, except the one referred to; but, after the same consideration and researches, in respect to the excepted case, I feel myself obliged to differ from him; and I shall, as briefly as I can, explain why I cannot coincide in his views. There is no evidence to charge

the Respondent individually with the alleged bribery of the *Parés*, for none was given that he either directed or counselled *Robert* to communicate what passed between them to the *Parés*, or even knew at the time of the election that he did so, or intended doing so. We are, therefore, to see if *Robert* was guilty of bribery or undue influence by what he said to the *Parés* in respect to their votes, and if so, was he the agent of the Respondent at the election, so that the Respondent should be held answerable for his corrupt acts, if committed. I have no doubt but the two *Parés* were restrained from voting by what *Robert* said to them, but, looking at all the facts and circumstances, the conclusion that he was guilty of corrupt bribery or undue influence, is not so easily arrived at.

About a year before the election *Robert*, who was not only a political supporter, but a client and personal friend of the Respondent, made use of those relations with him to try to obtain an appointment of some kind for his brother-in-law (*Edouard Honoré Ouellette*). He (*Robert*) says: "I asked him if he could do something for my brother-in-law? He, in reply, simply told me that he would think of me, and that if a vacancy occurred he would do his best for me." The substance of this conversation, he says, was repeated once, or oftener; but not, as he says, within four or five weeks before the time, when the election was first spoken of. During the election and during the public discussions, he says he had no conversation with Respondent on the subject. He sayshe communicated the conversation with the Respondent about *Ouellette* to the *Paré* family; but he does not say when; and, as there is no proof that he did so during the election, the reasonable conclusion is, that he did so shortly after the first conversation, as one of the *Parés* wrote the Respondent on the subject about six months before the election. It will thus be seen

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that long before the election was thought of, *Robert*, by his repeated intercessions with the Respondent, exhibited a strong desire to benefit his brother-in-law; that this motive continued operative at the time of the election may be fairly assumed; but, it is alleged, he had also the corrupt one, to influence the votes of the *Parés*. Upon these propositions we have no direct evidence, but we may assume the correctness of both. What then is the law in regard to them?

In the *Windsor* case (1), cited by the learned Chief Justice approvingly in the *Kingston* case (2), and in his judgment to-day, it was proved that the Respondent, some long time before the election, had distributed among his tenants (voters and others) £100; and, on being questioned

Whether, when he made these gifts, he had in view the election for the borough, admitted that, to a certain extent, he had. It was argued that this was a corrupt act, on account of which the Respondent should be unseated.

Baron *Bramwell*, in his judgment, said as to this:

It is certain that the coming election must have been present to his mind when he gave away these things; but there is no harm in it. If a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one, he is not to refrain from doing that which he might legitimately have done, on account of the existence of this motive, which, by itself, would have been an illegitimate motive. If the Respondent had not been an intending candidate for the borough, and yet had done as he has done in respect to these gifts, there would have been nothing illegal in what he did; and the fact that he did intend to represent *Windsor*, and thought good would be done to him, and that he would gain popularity by this, does not make that corrupt which otherwise would not be corrupt at all.

Apply, then, that doctrine, laid down as lately as 1874, to *Robert*, and he cannot be convicted of bribery or undue influence. In the case just cited, the Respondent admitted that he made the expenditure to a "certain

(1) 2 O. & H. 88. (2) 11 C. L. J. 19.

extent in view of the election." In the present, we only have that position by presumption, from the fact of his being an ardent supporter of the Respondent. Of the two, the former is the stronger case, because there can be no doubt of the feeling of the Respondent, who himself admits it. If, indeed, the Respondent in the case cited had but the one motive, and that the corrupt one mentioned, he would have been unseated ; and so, if *Robert* had but the motive of aiding the Respondent the latter should be unseated, if *Robert* were his agent. It is the *mind of the alleged briber* that is to control. See *Westminster* case (1), where Baron *Martin* says :

> The question is not what is the motive that operated upon the mind of the voter. The mind of the voter has nothing to do with it; the question is, the intention of the person who furnished the board.

And why, then, if *Robert* did what would be harmless, but for the assumption that he was also actuated by the motive to assist the Respondent in his election, should he not have the benefit of the same principle as the learned Baron, in the *Windsor* case (1), so unequivocally and unreservedly laid down. Every one must admit that if *Robert*, when suggesting the propriety of the *Parés* abstaining from voting, was actuated *solely* by the motive to benefit his brother-in-law, or, if he were wholly indifferent about the result of the election, there would be no harm in his making that suggestion. The case of *Robert* is, therefore, exactly that of the Respondent in the *Windsor* case. I have sought in vain for a dividing principle between them ; and I do not feel justified in setting up a decision of mine against that of the learned Baron which I have cited.

In the *Warrington* case (1), Baron *Martin* is reported as saying :

> I adhere to what Mr. Justice *Willes* said at *Lichfield*, that a Judge,

(1) 1 O. & H. 95.
(2) 1 O. & H. 44.
(3) 2 O. & H. 88.

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to upset the election, ought to be satisfied *beyond all doubt* that the election was void, and that the return of a member is a serious matter, and not lightly to be set aside.

Mr. Justice *O'Brien* in the *Londonderry* case (1), after quoting, approvingly, the above words of Baron *Martin*, says:

> Mere suspicion, therefore, will notbe sufficient to establisha charge of bribery; and a Judge, in discharging the duty imposed upon him by the Statute, acting in the double capacity of judge and juror, should not hold that charge established upon evidence, which, in his opinion, would not be sufficient to warrant a jury in finding the charge proved.

Adopting this decision, I think the evidence here would not warrant a jury in finding that *Robert* had not the motive of befriending his brother-in-law when telling the *Parés* "they might do as they liked, but he thought it better they should not vote." Independently of the principle mentioned, the case, to satisfy the requirements of law and evidence, is not by any means a strong one. It is not suggested that *Robert* made an attempt to exercise corrupt influence with any other party; and stronger evidence of a corrupt intention is therefore necessary.

I will now proceed to give briefly my views on the question of the agency of *Robert*.

Mr. Justice *Blackburn*, in the *Bridgewater* case (2), says:

> It has never yet been distinctly and precisely defined what degree of evidence is required to establish such a relation between the sitting member and the person guilty of corruption, as should constitute agency. I do not pretend to be able to define it certainly. No one has yet been able to go further than to say, as to some cases, enough has been established; as to others, enough has not been established to vacate the seat. This case i on the right side of the line, that is on the wrong, but the line itself has never been definitely drawn, and I profess myself unable accurately to draw it."

Grove, J., in the *Taunton* case (3), said:

(1) 1 O. & H. 279. (2) 1 O. & H. 115

(3) 2 O. & H. 74.

All agree, that the relation is not the common law one of principal and agent. * * * I am of opinion that to establish agency for which the candidate would be responsible he must be proved by himself or by his authorized agent to have employed the persons whose conduct is impugned, to act on his behalf; or to have, to some extent, put himself in their hands, or to have made common cause with them for the purpose of promoting his election. To what extent such relation may be sufficient to fix the candidate must, it seems to me, be a question of *degree* and of evidence to be adjudged of by the Election Petition tribunal. *Mere non-interference* with persons, who, feeling interested in the success of a candidate, may act in support of his canvass, is not sufficient, in my judgment, to saddle the candidate with any unlawful acts of theirs of which the tribunal is satisfied he or his authorized agent is ignorant.

In the *Windsor* case (1) it was proved that one *Pantling* wrote a letter to a voter named *Juniper*, who, at the time of the election, was away from the borough, offering to pay his travelling expenses, if he would come and vote; and it was admitted that this offer, if made by the Respondent, or an agent of his, would have unseated him. The only evidence of *Pantling* being an agent was that he was a member of a committee which had been formed for the purpose of promoting the Respondent's election. It was not proved *who put him on the committee, or how he got there; what his duties were, or what he did;* but his own statement as to this was that he "understood that his duties were *to do the best he could for the Respondent.*" Mr. Baron *Bramwell*, in his judgment, said as to this:

I am invited to believe that, in some way or other, a man *who has given no description of himself except that he was on a committee*, was an agent, so that his act, in writing this letter, should unseat the Respondent. It appears to me really impossible to hold that he was an agent. I think that according to the authorities (citing *Staleybridge*, vol. I, 67; *Westminster*, ib. 92; *Blackburn*, ib. 200; *Dublin*, ib. 272; *Taunton*, ib. 183; *Wigan*, ib. 189; *Galway*, vol. II. 53. See also *Newry*, P. &. K. 151; *Bristol*, P. & K. 574), and according to the good sense of the matter, he was not an agent. *He*

(1) 2 O. & H. 88.

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has given us no account of how he came to write this letter to *Juniper*, he having told him where he had gone to, and having told him to write upon the occasion of an election. I cannot help agreeing with Mr. *Giffard* that if we were to hold this man to be an agent it would make the law of agency, as applicable to candidates, positively hateful and ludicrous.

In the *Bolton* case (1), Mr. Justice *Mellor* said :

> Of course the production of the canvass-books proves nothing except that certain ticks appear on it. If you want to go further call the canvasser; because the mere fact of a man having a canvass-book and canvassing, cannot affect the principal unless I know by whom the man was employed. There is nothing more difficult or more delicate than the question of agency; but if there be evidence which might satisfy a Judge, and if he be conscientiously satisfied that the man *was employed* to canvass, then it must be held that his acts bind his principal. Again, I should not, as at present advised, hold that the acts of a man, who was known to be a volunteer canvasser without any authority from the candidate or any of his agents, bound the principal. You must show me various things. You must show me that he was in company with one of the principal agents, who saw him canvassing or was present when he was canvassing; or that, in the committee room, he was in the presence of some body or other acting as a man would act who was authorized to act. If putting all these things together, you satisfied me that the man was a canvasser *with the authority of the candidate's agents*, then I do not look with nicety at the precise steps, but there must be something of that character.

Where a sitting member is not acquainted with the illegality of the act for which he subsequently repays the person who originally made the payment, that is not sufficient to make such a person an agent by adoption. *Bewdly* (2).

If therefore the Respondent subsequently was informed of *Robert* having canvassed a voter and thanked him for obtaining a voter, he would not in regard thereof be answerable for *Robert's* illegal act, unless made acquainted therewith; but there is no evidence even of any such adoption. There is no evidence whatever that the Respondent *knew* he was canvassing or had canvassed. A

(1) 2 O. & H. 141. (2) 1 O. & H. 18.

member of a self constituted committee is not an agent (1).

Rogers on Elections (2) says :

The rules which apply to a committee being agents obviously apply with less force to clubs or associations which not unfrequently constitute themselves committees for the purpose of promoting an election, but the members of which are not thereby constituted agents, though the sitting member may contribute to their funds, *unless they are in fact his committee*, and have undertaken the practical conduct of the election. For similar reasons a mere volunteer is not an agent.

In the *Windsor* case (3), Mr. Justice *Willes* says :

I have stated that *authority* to canvass, and I purposely used the word *authority* and not *employment*, because I meant the observation to apply to persons authorized to canvass, whether paid or not for their services, would in my opinion constitute an agent.

After quoting this Mr. Justice *O'Brien* in the *Londonderry* case (4), adds :

I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes and to make speeches in his favor can force himself upon the candidate as an agent, or that a candidate should be held responsible for the acts of one from whom he actually endeavors to dissociate himself.

In the *Hastings* case (5) Mr. Justice *Blackburn* says :

But I cannot but feel where the case is a small isolated, solitary case it requires much more evidence to satisfy one of the agency than would otherwise be necessary. If a small thing is done by a person who is the head agent * * I think that would have upset the election. And if small things were done to a great extent by a subordinate person comparatively slight evidence of agency would probably have induced one to find that he was an agent. But when you come to a single case of one man telling another, whom he was inducing to go to the polls, that he would be paid afterwards for what he might spend in drink, to make that single case upset the election would require considerable evidence of agency.

I take, then, this single case of *Robert's*, and applying

(1) *Drogheda*, W. & D. 209 ; *Staleybridge*, 1 O. & H. 67 ; *Wareham*, W. & D. 95.
(2) 12th Ed. 1876, 437.
(3) 1 O. & H. 3.
(4) 1 O. & H. 278.
(5) 1 O. & H. 219.

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the principles of evidence just quoted, let us see what there is to make the Respondent answerable for *his* acts.

The Respondent says in his sworn declaration, received in evidence (and in regard to the reception of which I agree with the learned Chief Justice), that he only appointed one agent, Mr. *Adam;* that the committee in *Montreal* was formed without his knowledge, and therefore, necessarily, without his concurrence. That during the election he never was present at any committee meeting or entered the committee room, and that whoever was employed besides Mr. *Adam* and Mr. *Lemay* was employed without his knowledge. It may, however, be alleged, that although the Respondent did not attend a meeting of the committee or visit the committee room, he was aware nevertheless of all they did, and may have accepted their services. Such, indeed, may have been the case, but the Petitioners cannot ask us so to conclude without any proof whatever. The onus was on them. They might, if such were the case, have proved it by the Respondent himself, or by some of the committee. Mere non-interference is not sufficient, and so held. I am not aware of any law requiring a candidate to have a committee or committees; and a party, if he so please, can be quite clear of the assistance of and responsibilities for such; and no number of friends, forming themselves into a committee without his knowledge, can bind him in any way. If, however, a candidate is *shown* to be aware that any member of a committee so formed is, *as such*, performing acts of canvassing or otherwise, in such a way as an agent duly authorized would be alone supposed to do, and he, with full knowledge, ratifies such acts, it might possibly be sufficient to bind him, not only as to that one member, but as to the rest of the committee, so far as he was aware that such persons composed it. There is some

evidence that the *Respondent* received funds through the treasurer of the committee for the election expenses, but I can find no evidence that he was aware for what particular purpose, if any, the committee was formed, or the extent of aid they intended giving. There is no satisfactory evidence of any authority from the Respondent to any committee to canvass for him, or act for him in the election. He certainly may have known that gentlemen were acting in concert in his favor, but in what way is not stated; but I have already shown that mere negative authority is not binding. There is no evidence to contradict the Respondent's statements on that point, and I don't feel at liberty to question them. Were there good reason for the conclusion that any organized system existed to commit corrupt acts, successful or otherwise, through the means of partizans of the Respondent, banded together as a committee, and that it was understood the Respondent was to be kept in ignorance, so that he would be safe from the consequences of illegal acts; or there appeared to have existed a general intention to secure the return of the Respondent by illegal means, and it was satisfactorily shown that he knew of the existence of the committee, and had good reasons to believe in the existence of the combination for illegal purposes, it might, in such a case, require grave consideration before concluding that the ignorance in which the Respondent was ostensibly kept was not solely to avoid the consequences of the illegal acts of his friends. There is, however, nothing to shew anything of the kind on the part of any committee referred to in the evidence, and I cannot, therefore, draw any such conclusion. It is not improbable that the candidate was pleased to have the benefit arising from a combination of his friends, but unless there be *proof of authority* beforehand to act for him, or ratification, with full knowledge afterwards, I can

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discover no law to bind the candidate. There is no clear evidence as to how, or by whose means, the committee spoken of were appointed or formed. So far as the evidence goes, they were volunteers, and I can find no trace of any legal connexion between them and the Respondent. We are not told what their functions were, or to what extent, or in what particular way they were to aid the Respondent; and we cannot, therefore, ascertain how any apparent ratification of the acts of one or more of those composing a committee would be sufficient. The functions of the committee might have been limited, so as not to include or justify something done by one of its members. There is no allegation or suggestion of illegal conduct on the part of the *Montreal* committee themselves, and I can find no evidence to make them the agents of the Respondent; and none to connect them or any of them, directly or indirectly, with the acts of *Robert*. It is true we might *imagine* or *surmise* a great many things; we might draw conclusions, but we might be far from the facts if we did so. I submit, we are not called upon to do so, unless the result of evidence; we are to look for reasonable proof of all facts necessary to the chain of evidence to establish the necessary allegations and connections. In the late *Charlevoix* case I had little, if any, doubt of the complication of the Respondent in the illegal acts upon proof of which he was deprived of his seat; but, in the absence of *proof of the fact*, I could not certify that they were known to or sanctioned by him. I feel bound to apply the same rule in this case.

I have summarized the evidence bearing, as I think, upon the question of the agency of *Robert*, and I start with the assertion that in the whole of it there is not a scintilla to establish the position that the Respondent, at the time of the election, knew that *Robert* had canvassed or was about to canvass or do any other particu-

lar service towards his election. If he (the Respondent) did not ask him to act, and knew not of his acting, in any particular way, the mere general impression that he would aid him in some undefined way is surely not sufficient. If a candidate is to be held answerable, and not only him but the majority who returned him, because he simply knew, in a general and undefined way, that hundreds were active partizans of his and who without his authority or knowledge committed illegal acts, merely because he did not, as soon as he knew they were such active partizans, forbid their interference in any way, I cannot see how an election could be safely run. To decide so would be unprecedented so far as I have been able to discover.

Leopold Laflamme says, in substance: "I am a brother of the Respondent in this case. Mr. *Placide Robert* comes often to our office. He took part in the last contest in the interest of my brother. My brother could not help knowing it. I am certain he was a devoted partizan of my brother." I would ask, what is meant by "he took part in the contest." It would be straining evidence to say that it was *such a part* as must necessarily make him an agent; and it would be still more absurd to call *Robert* an agent, merely because, in the opinion of Respondent's brother, he was not an *active* but a *devoted* partizan of the Respondent. I may be a most *devoted* partizan, but it does not necessarily follow that I am an *active* one or did anything. This evidence, I take it, by itself, proves nothing; and it will be seen that if considered, even with all the other evidence, it is unassisting.

Placide Robert says, substantially:

I was one of Mr. *Laflamme's* supporters. I took pretty much interest in the last election. *I spoke in many instances to voters about their votes.* I did not go to the voters' houses to know their opinion. I saw Mr. *Laflamme* during the election and I spoke and shook hands

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with him. There might have been a few words said about the election at *Chvrlebois'* tavern when Mr. *Laflamme* was there, but I don't recollect what was said. I never reported to Mr. *Laflamme* during the election as to his chances at *Lachine*. I made a report to Mr. *Gariepy*, to Mr. *Cardinal*, and I believe, to Mr. *Prevost*. I attended three or four meetings of the election committee. My name was put on the committee as one of the members and I attended now and then. It was a private committee but it was attended by conservatives as well as liberals, the door was open to all. At this committee we used to check the lists of voters; I helped to do so. I was at the organization of it and was a member from that time. There was, I think, no President or Secretary. I cannot say the lists we prepared were intended for canvassers, but they were for men who called on the electors and solicited their votes. The committee met at the house of Mr. *Jean Baptiste Poirier*, and I can't say whether or not anything was paid for the room. I had at my service a printed list of the electors, and I checked the same at the committee room. The list was for the town and parish of *Lachine*.

On his cross-examination he says: (in answer to the question "were you requested to act as you did or did you act from your own accord?")

I have acted from my own free will. I think I was not considered as an election agent. I was never asked by any election agent to use any influence. I saw no political opponent at the committee room. Those I saw there were persons who could be trusted. I drove a vehicle on the polling day and brought in some voters for the party.

There may be some other portions of the evidence that have some reference to this question of agency; but it is too remote to have the slightest legal affect in regard to it.

The meeting of a number of respondent's friends to *check the lists* (and that is all it is shown was done), at what the witness (*Robert*) calls the committee meetings, and the having in his possession one of those lists, surely would not make him an agent. The authorities I have quoted show this. There is no evidence how this committee was appointed, who were present, or what its functions were. The Respondent was not shown to have authorized or ratified its appointment,

and even had such proof been given, it is not shown how far they were authorized to go, and no evidence was given to show a connection in action with the committee in *Montreal*. He (*Robert*) says he spoke in many instances to voters *about their votes*. Asking voters *about their votes* is not evidence of canvassing for either party; and if he really did canvass, in the legal sense of the term, he should not have been allowed to escape saying so. I certainly cannot say that "speaking to voters ABOUT THEIR VOTES" necessarily means canvassing. It is not shown that the Respondent knew he (*Robert*) was even speaking to voters *about their* votes, and I have yet to learn that the knowledge, by the Respondent, that he was merely speaking to voters ABOUT THEIR VOTES, would in the slightest degree have affected the question. *Robert* says he made reports to *Gariepy* and to *Cardinal*, and he believed to *Prevost*. I see no proof to establish the agency of any of the three, and I have yet to learn that a person, who is not shown to have been appointed by anyone, can make himself an agent of the candidate by merely reporting the prospects at a particular locality. *Robert* says substantially that he acted without authority from any one; for, when the question is put to him in the alternative, he replies: "I have acted from my own free will. I think I was not considered as an election agent"—(and if he had no more authority than we have seen, he had good reason to think so),—"and I was never asked by any agent to use my influence."

The presumptions of law are always in favor of innocence; and he who asserts the contrary necessarily assumes the onus of proving his allegations. It may be done by direct or circumstantial evidence; but, if by the latter, it should be so full and complete as to exclude any reasonable theory of innocence. Such evidence should leave no gaps to be filled either by doubtful de-

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ductions from other portions of the evidence or the still more dangerous expedient of drawing wholly upon imagination or speculation, which would require a judge or jury to violate the invariable rule of evidence I have mentioned. I can find no precedent for declining to apply this principle of evidence to election cases; and if the petitioner fail to give sufficient evidence, I am not justified in saying he has done so. We might, possibly, be correct in *assuming* the circumstances to be as the petitioner alleges, but I can find no justification for doing so. If his evidence is insufficient, our obvious duty is simply to say so. He has given us no evidence of facts incompatible with the absence of the slightest legal connection of the Respondent with *Robert*.

With, therefore, as I think, such insufficient evidence to raise necessarily even a presumption of the agency of *Robert*, and in the face of the positive statements last quoted from his evidence, coupled with the uncontradicted statement of the Respondent, that all who acted in his behalf in the election, with the exceptions named by him, had no authority from him, I feel bound, after the best application of my mind to the subject, and to the prevailing rules of law, to say that the allegation of the agency of *Robert* has not been established, and that upon the whole case the appeal should be dismissed, and the Respondent declared duly elected.

Appeal dismissed with costs.

Attorney for Appellants :—*D. Girouard.*

Attorney for Respondent:—*E. C. Monk.*