

CONTROVERTED ELECTION OF THE
COUNTY OF CHARLEVOIX.

1880
Nov. 9, 10, 11.

1881

Feb'y. 11.

SIMON XAVIER CIMON.....APPELLANT ;

AND

JOSEPH STANISLAS PERRAULTRESPONDENT.

The Dominion Elections Act, 1874, secs. 82, 83 and 84—Public peace—Colorable employment—Liability of candidate for the acts of persons employed by agent—Bribery.

On a charge of bribery against one *T.* and one *A.*, upon which this appeal was decided, the Judge who tried the petition found as a fact that *A.* had been directed by *T.*, an admitted agent of the respondent, to employ a number of persons to act as policemen at one of the polling places in the parish of *Bay St. Paul* on the polling day, and had bribed four voters previously known to be supporters of the appellant, by giving them \$2 each, but held that *A.* was not agent of the respondent, and, therefore his acts could not avoid the election. The facts of this case are fully set out below.

Held, on appeal, that as there was no excuse or justification for employing these voters, their employment was merely colorable, and these voters having changed their votes in consequence of the money so paid to them, and the sitting member being responsible alike for the acts of *A.*, the sub agent, as for the acts of *T.*, the agent, and they having been guilty of corrupt practices, the election was void. (*Taschereau and Gwynne, J. J.*, holding that *A.*, the sub-agent alone, had been guilty of bribery.)

THIS was an appeal from the decision of Mr. Justice *Routhier*, of the Superior Court of the Province of *Quebec*, District of *Saguenay*, delivered the 15th day of September, 1880, dismissing the petition against the return of *Joseph*

*PRESENT:—Ritchie, C. J., and Fournier, Henry, Taschereau and Gwynne, J. J.

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*Stanislas Perrault*, as member of the House of Commons for the Electoral District of the County of *Charlevoix*, in the Province of *Quebec*.

The appellants limited their appeal to four charges of corruption by the candidate and sixteen charges of corruption by agents.

This appeal was determined upon the fifth charge known as the *Tarte* and *Allard* case.

One *P. Allard* was charged with having, under the authority of one *Tarte*, bribed four voters, viz: *A. Bouchard*, *E. Martin*, *S. Boivin* and *J. Gagnon*—previously petitioner's supporters—by the payment of \$2 to each of them. *Tarte*, who was the brother-in-law of the respondent, and admitted to be his general agent in the western part of the county, on the receipt of certain letters and telegrams, informing him that roughs were coming down from *Quebec* to interrupt the peaceable voting of the electors, did not enquire to ascertain whether the reports in these telegrams and letters were well founded or not, nor take the proper steps to secure by legal means the public peace, but stated that he had applied to Hon. Mr. *Langevin* or Hon. Mr. *Masson* for a detachment of "B" Battery, and, receiving no reply, asked the captain of the volunteer company at *Baie St. Paul* if he could keep order with his men, and that the latter replied he did not consider himself authorized to do so. *Tarte* thereupon gave *Allard* money, and asked him to employ persons to act as policemen, and further induced him to advance money for the same purpose, promising to return it. No roughs came, and there was no disturbance. *Allard* employed the above named four voters who were known to be appellant's supporters, and they all swore that, in consequence of the money they received from *Allard*, they changed their vote, and voted for respondent. This expenditure was not included in the official return of respondent's legal expenses, made by his agent.

Mr. *C. P. Davidson*, Q. C., and Mr. *Mackay* with him,  
for appellant :

Mr. Justice *Routhier* regarded the payments as direct acts of bribery, but refused to make the respondent liable for them, on the ground that *Allard* was not a general agent, and that his authority was limited to the hiring of a number of men for the pretended purpose of preventing violence at the polls. As a matter of fact, these men performed no such duty, and did nothing in return for the money thus received. *Allard* was active in the election. Some witnesses speak of his having been known as a vigorous partisan. He attended committee and other meetings. Mr. *Tarte*, the brother-in-law of respondent, his chief manager and recognized agent, was heard to have specifically requested *Allard* to take charge of the very concession where the men so bribed resided. Mr. *Tarte* also furnished the larger part of the money thus illegally used. That is a fact upon which no dispute exists. But Mr. *Tarte* claims that *Allard's* instructions were limited to the employment of men, and that there was no question of buying voters. The hiring was a flimsy pretext for their purchase. I contend the candidate is responsible for the acts of persons specially employed by his agent. The case seems irresistible, as well in respect of the deliberate and flagrant act of bribery which it involves, as of the direct connection with it of persons for whose acts respondent must be held responsible.

Mr. *Angers*, Q.C., for respondent :

*P. Allard* is a peaceful citizen of *Bate St. Paul*, who is little accustomed to mix himself up in election contests. Some days before the voting, Mr. *Tarte* requested him to hire some men to keep the peace, without naming any one. This request is not, in law, an offence, and Mr. *Tarte*, who had already gone through several elections in the county, had good reasons for

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doing as he did. *Allard* had no other mission to perform ; if he went beyond his instructions, his so doing cannot do any harm.

*Abraham Bouchard, Jean Gagnon, Samuel Boivin, Israel Gagnon*, admit that they sold themselves for two dollars. But this avowal establishes nothing. It must be proved that there was really bribery. The cynicism displayed by these four witnesses is far from giving any weight to their evidence.

*P. Allard* possesses the confidence of the petitioner, who twice brings him forward under oath to explain. Now, this witness, whose reputation is blameless, flatly contradicts these four electors who were ready to sell themselves for two dollars. He hired these people to keep the peace on the eve of the polling day, and that was all. No one proves that *Allard* canvassed them ; on the contrary, all declared themselves supporters of the respondent. But, supposing they were really bought, as they say, what would be the consequences of *P. Allard's* conduct ? We have already seen that the mission confided to him by Mr. *Tarte* could not make him an election agent. But, of his own accord, by his actions and his relations with him, can he have become the agent of the respondent to the extent of being able to compromise him ? When there is no general system of bribery proved, it is necessary that the isolated cases and the mandate be clearly proved.

There are no precise rules for determining agency ; each case rests upon the evidence ; but it must be borne in mind that an election is a serious matter, and should only be set aside for the weightiest reasons. This question of agency has already been discussed at length before our Courts ; we will but refer to a few decisions already given on this point : The *Portneuf* case (1), and the *Jacques Cartier* case (2).

(1) 2 Q. L. R. 283.

(2) 2 Can. Sup. C. R. 307-311, 1 Q. L. R. 295.

*Allard* did not canvass ; he made no speeches ; in a word, he took no part in this election.

What is *Allard's* position, compared to that of *Belle-rive* and *Terreau* in the *Quebec* East case, to that of *Conway*, *Cardinal St. Denis*, *St. Jean*, *Dufour* in the *Jacques Cartier* election ? and yet all these men, who mixed in these elections, who were in a position to use their influence, and who, in fact, did so, have not been considered as agents.

The learned Counsel also referred to the *Tamworth* case (1) ; *Salford* case (2) ; *Longford* case (3) ; *Gloucester* case (4) ; *Durham* case (5) ; *Windsor* case (6) ; *London-derry* case (7).

RITCHIE, C. J. :—

This was a petition against the return of the respondent as the member of the House of Commons for the County of *Charlevoix*. The learned judge, whose judgment is appealed from, dismissed the petition, holding that the charges against the respondent had not been sustained.

With reference to the personal charges against the respondent, the principles enunciated by my learned predecessor, and to which I have referred in the case of *Larue v. Deslauriers* (8), are very applicable to this case, because there was considerable weight given by the judge who tried the case, to the manner in which some of the witnesses brought to prove the personal charges gave their evidence.

But there is a charge against the respondent's agent which, in my opinion, must avoid the election.

It is the fifth case treated in the appellant's factum, by which *Pamphile Allard* is charged with having, under

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(1) 1 O'M. & H. 78.

(2) 1 O'M. & H. 140.

(3) 2 O'M. & H. 13.

(4) 2 O'M. & H. 62.

(5) 2 O'M. & H. 135.

(6) 1 O'M. & H. 3.

7) 1 O'M. & H. 278.

(8) 5 Can. Sup. C. R. 91.

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the authority of Mr. *Tarte*, bribed *Abraham Bouchard*, *Samuel Boivin*, *Israel Gagnon* and *Jean Gagnon*, previously petitioner's supporters, by the payment of \$2.00 to each of them.

Mr. *Tarte* was the brother-in-law of the respondent, his agency is admitted, and, indeed, it could not be denied, for he was obviously entrusted with and had, it may be said, the entire management and conducting of the election on respondent's behalf in that part of the county. He states that he received letters and telegrams from certain parties in *Quebec*, informing him that certain roughs were coming down to interfere with the peaceable voting of the electors, but he does not appear to have made any enquiries, or taken any steps to ascertain whether the reports in these telegrams and letters were well founded or not; thereupon he gives *Allard* money and asks him to employ persons to act as policemen, and he further induces him to advance money for the same purpose, promising to return it. With this money the judge below finds *Allard* bribed certain voters. There is no satisfactory evidence to show that any extraordinary measures whatever were necessary to be taken with a view to the preservation of the peace; and if such a course had seemed necessary no proper steps were taken to secure by legal means the public peace, nor do the proper authorities appear to have had the slightest intimation from *Tarte* or *Allard*, or indeed from any source whatever, that trouble was anticipated.

The personal application of Mr. *Tarte* to Hon. Mr. *Langevin* and Capt. *Gauthier*, unsupported by affidavit or evidence of any kind, were perfectly futile, because neither of the parties applied to had any authority in the matter, and if they had authority, no verified facts were laid before them to justify their acting.

The law makes ample provision in such a case, and points out how and to whom the application should be

made, and the steps that should be taken in such an emergency, and provides upon whom the duty and responsibility in such a case is cast of preserving the peace, and the means by which this shall be accomplished. Thus by sec. 81 of the *Dominion Elections Act*, 1874 "every returning officer and every deputy returning officer, from the time of the taking of the oath of office until the day after the closing of the election, shall be a conservator of the peace invested with all the powers appertaining to a justice of the peace," and by sec. 82, such officers "may require the assistance of justices of the peace, constables or other persons present to aid him in maintaining peace and good order at such election, and may also, on a requisition made in writing by any candidate, or by his agent, or by any two electors, swear in such special constables as he deems necessary"; and by sec. 83, "such returning officer or deputy returning officer may arrest or cause to be arrested by verbal order, and place in the custody of any constable or other persons any person disturbing the peace and good order at the election, and may cause such person to be imprisoned under an order signed by him until any period not later than the close of the poll"; and by sec. 84, such returning or deputy returning officers may require any person within one half mile of the place of nomination or of polling station to deliver to him any fire-arm, &c., and any person refusing to deliver such weapon shall be liable to a fine, &c.

All which was entirely disregarded by Mr. *Tarte*, and not the slightest excuse, still less justification, is offered for his thus ignoring the law, and taking upon himself, an active partizan, the duty and responsibility of preserving the public peace; no evidence whatever was offered to show that the slightest grounds existed justifying the sending of the telegrams or letters, nor does there appear to have been any persons sent from

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*Quebec*, nor does there appear to have been any disturbance whatever at the election.

I can, therefore, come to no other conclusion than that there were no reasonable grounds for any extraordinary measures being taken for preserving the public peace, and, if there had been, that there were no reasonable grounds whatever for Mr. *Tarte* taking upon himself the employment of 30 unauthorized persons, and that there was no excuse or justification for employing and paying voters, as was done by *Allard*, by the direction of Mr. *Tarte*.

If trouble was really anticipated, I feel it quite impossible to believe that Mr. *Tarte* would have employed 30 men on his own account, and at his own expense, without calling on the proper legal authorities whose especial duty it was to preserve the peace, or without even hinting to them that trouble was feared, so that proper, unobjectionable and legal precautions might be taken to provide against any unlawful disturbance.

I may here say that I find that on the trial a question was put to Mr. *Tarte* which was objected to by the respondent, viz., whether the 30 men, which he alleged he had employed were paid? This objection was sustained. And again, whether these men were voters? Also objected to, and objection sustained. These were, in my opinion, most pertinent and proper questions, and I cannot conceive on what valid grounds they were rejected, for, if the transaction had been an honest one, it is to be presumed the agent would have been only too glad to give such an answer as would dispel any unfavorable inference.

The questions having been objected to and not answered, the only reasonable inference is that the questions were objected to and not answered because the answers would militate against the witness and the respondent.

Then, how do these men, who are charged with

having been bribed, state the case as to *Allard's* dealing with them ?

We have first :

*Jean Gagnon :*

Q. Vous rappelez-vous de l'élection qui a eu lieu entre M. *Simon Xavier Cimon* et M. *Joseph Stanislas Perrault*, dans l'année (1879) mil huit cent soixante-dix-neuf, dans le mois de février?—R. Oui.

Q. Étiez-vous électeur à cette élection-là ? R. Oui.

Q. Avez-vous eu de l'argent de *Pamphile Allard* ? R. Oui, j'en ai eu.

Q. Combien ? R. Dix chelins, je ne peux pas dire autrement, j'ai eu dix chelins.

Q. Avez-vous fait quelqu'ouvrage pour cet argent-là ? R. Non, je n'en ai pas fait.

Q. Avez-vous voté ? R. Oui j'ai voté.

Q. Avez-vous objection de dire pour qui vous avez voté ? R. J'étais pour M. *Cimon* auparavant que j'ai eu les dix chelins ; ça n'a fait voter pour M. *Perrault*, c'est cela.

Q. Avez-vous vu M. *Tarte* dans l'élection ? R. Oui.

Q. Avez-vous eu connaissance s'il s'est mêlé généralement de cette élection-là ? R. Je l'ai vu passer quelquefois. Je ne reste pas dans le village, je reste dans *St. Joseph* à une lieue et demie de l'église, je l'ai vu passer plusieurs fois par exemple.

Q. Il marchait pour l'élection ? R. Dans le temps de l'élection il marchait pour l'élection.

Q. L'avez-vous vu, M. *Tarte*, vous ? R. Oui, je l'ai vu, j'ai été moi même chez lui, lorsque mon frère a voté.

*Abraham Bouchard :*

Q. Vous rappelez-vous de l'élection qui a eu lieu entre M. *Joseph Stanislas Perrault* et M. *Simon Xavier Cimon*, dans le mois de février mil huit cent soixante-dix-neuf ? R. Oui.

Q. Avez-vous reçu de l'argent dans cette élection ? R. Oui.

Q. Combien avez-vous reçu ? R. Deux piastres.

Q. De qui avez-vous reçu cet argent-là ? R. De *Pamphile Allard*, marchand.

Q. Pour qui étiez-vous avant d'avoir reçu cet argent ? R. Pour M. *Cimon*.

Q. Avez-vous fait quelqu'ouvrage pour cet argent-là ? R. Non, monsieur.

Q. Voulez-vous dire pour qui vous avez voté ? R. Pour M. *Perrault*.

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Q. Auriez-vous voté pour M. *Perrault* sans cet argent-là? R. Non, monsieur.

*Transquestionné.*—Q. Vous vous êtes vendu, vous avez vendu votre voix pour deux piastres? R. Oui, monsieur.

Ritchie, C.J. *Samuel Boivin* :

Q. Vous vous rappelez de l'élection qui a eu lieu entre M. *Simon Xavier Cimon* et M. *Joseph Stanislas Perrault*, dans le mois de février (1879) mil huit cent soixante-dix-neuf? R. Oui.

Q. Veuillez dire si vous avez reçu de l'argent et de qui dans ce temps-là.

(Objecté par le défendeur à cette question parce qu'elle est trop vague. Question retirée.)

Q. Avez-vous reçu de l'argent de M. *Pamphile Allard*? R. Oui, monsieur.

Q. Combien avez-vous reçu? R. Deux piastres (\$2.)

Q. Pour qui étiez-vous avant d'avoir reçu cet argent-là? R. Pour M. *Cimon*.

Q. Avez-vous fait quelqu'ouvrage pour cela? R. Oui, j'ai fait une commission qui pouvait valoir environ trente sous.

Q. Avez-vous objection à dire pour qui vous avez voté? R. Oui, pour M. *Perrault*.

Q. Auriez-vous voté pour M. *Perrault* sans cet argent-là? R. Non, monsieur.

Q. Avez-vous eu connaissance si M. *Pamphile Allard* s'est bien occupé d'élections généralement? R. Cela, je ne connais rien la-dedans.

Q. L'avez-vous vu marcher pour l'élection? R. Non, monsieur.

Q. Lui avez-vous parlé?—R. Oui, je lui ai parlé à lui-même. Vous me demandez si je l'ai vu, je vous le dis.

Q. Veuillez dire ce que M. *Tarte* vous a dit par rapport à M. *Pamphile Allard*?—R. Oui. (Objecté par le défendeur à cette preuve comme tendant à faire une preuve de oui-dire, n'étant pas prouvé que M. *Tarte* soit un agent, ou que dans cette circonstance, il agisse en sa qualité d'agent du défendeur. Preuve prise sous réserve de l'objection.) R. Je vais vous le dire. Lorsque mon frère a eu voté devant *Pamphile Allard*, *Pamphile Allard* a sorti, il lui a donné (\$1.00) une piastre. Je lui ai vu donner la piastre. Il a dit: Tu as perdu une piastre (\$1.00). La veille de la votation, *Pamphile Allard* me l'avait dit auparavant. Il doutait qu'on était pour M. *Cimon*, c'est cela qui l'empêchait de nous donner de l'argent, il dit: Si tu étais pour nous on te donnerait de l'argent, si tu votes devant moi... j'ai dit: je suis capable de voter tout seul, je sais lire et écrire; le

jour de la votation, mon frère a voté, il a eu une piastre (\$1.00) lorsqu'il est sorti.

Q. On demande ce que M. *Tarte* a dit?—R. Lorsque j'ai vu cela j'ai parti, j'ai descendu dans le village, j'ai été voir M. *Tarte* qui restait chez M. *Bois*, j'ai rentré dans sa chambre; il m'a demandé ce que je venais faire, j'ai dit: je viens parler un peu; j'ai dit: j'ai su que tous ceux qui votaient au nom de *Pamphile Allard* avaient une piastre (\$1.00). J'ai dit: J'ai perdu ma piastre. Il dit: Si je peux vous avoir votre piastre, je l'aurai; mais je ne lui en ai pas parlé.

Q. Vous a-t-il dit que c'était vrai?—R. Il m'a dit que tous ceux qui votaient au nom de *Pamphile Allard* avaient une piastre (\$1.00.)

Q. Vous lui avez demandé ceci: tous ceux qui votent au nom de *Pamphile Allard* ont une piastre?—R. Oui, j'ai dit: j'ai perdu ma piastre, M. *Tarte* a dit: Si je peux vous la faire donner je vous la ferai donner. C'est tout ce qu'il a dit, je n'ai rien que cela à vous dire. La veille de la votation *Pamphile Allard* m'avait dit cela lui-même, ce que je vous ai dit, que si je votais devant lui que j'aurais.....

### *Israel Gagnon :*

Q. Vous rappelez-vous de l'élection qui a eu lieu entre M. *Simon Xavier Cimon* et M. *Joseph Stanislas Perrault* dans l'année (1879) mil huit cent soixante-dix-neuf, dans le mois de février? R. Oui.

Q. Étiez-vous électeur dans cette élection-là?—R. Oui.

Q. Veuillez dire si vous avez eu de l'argent de M. *Pamphile Allard* à cette élection?—R. Oui, Monsieur.

Q. Combien avez-vous reçu?—R. (\$2.00) Deux piastres.

Q. Pour qui étiez-vous avant d'avoir reçu cet argent-là?—R. J'étais pour M. *Cimon*.

Q. Avez-vous fait quelqu'ouvrage pour cet argent là?—R. Rien du tout. Je n'ai pas fait aucun ouvrage.

Q. Avez-vous voté?—R. Oui, monsieur.

Q. Auriez-vous objection à dire pour qui vous avez voté?—R. J'ai voté pour M. *Perrault*.

Q. Auriez-vous voté pour M. *Perrault* sans cet argent-là?—R. Non, pardonnez, j'aurais voté pour M. *Cimon* si je n'avais pas eu cet argent-là.

Q. Connaissez-vous M. *Pamphile Allard*?—R. Oui.

Q. Se mêlait-il d'élection dans ce temps-là?—R. Je ne peux pas dire bonnement; M. *Allard* ne m'a pas parlé beaucoup de cela, mais ce qu'il m'a dit avant de voter, il dit: vote devant moi, il dit: Si tu votes devant moi, tu auras ton argent. Après avoir voté il m'a fait donner (\$1.00) une piastre de suite. L'autre piastre il me l'a donnée après. Ça fait dix chelins que j'ai eus.

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Q. Savez-vous si M. *Al'ard* a représenté quelque part M. .... ?—R. Il représentait M. *Perrault* à un poll, il était officier-rapporteur.Q. Avez-vous vu M. *Tarte* après ?—R. Non, monsieur, je ne l'ai pas

vu après.

Q. L'avez-vous vu avant ?—R. Non, je ne lui ai pas parlé.

*Transquestionné.*—Q. Avez-vous un cheval et une voiture ?—R. Pardonnez, je n'avais ni chevaux ni voitures dans ce temps-là, maintenant j'en ai une.

The coolness and frankness with which these men admit the bribery is somewhat astonishing. They do not pretend that they ever did anything for this money, they simply took the money and changed their vote; they do not appear to have had the least idea that they were acting as peace officers, or preservers of the peace, or were expected so to act, or had been employed for any such purpose; having voted as they agreed, no further notice appears to have been taken of them. Added to this we have the fact, that not one penny of this money and expenditure was accounted for, as the law required, if legal and proper; the inference from which, in connection with the other circumstances of the case, is irresistible. Therefore, I am forced to the conclusion that the employment of these men, if employment it can be called, was merely colorable; or as a cloak for bribery and undue influence; but from the testimony of those who were examined it would appear that the money can scarcely be said to have been given for colorable employment, but was a direct and open purchase of their votes; that the payments were not with any view to their acting as peace officers, but to induce them to vote for *Perrault* instead of *Cimon*, and therefore I think that the judge was right in deciding that they were actually bribed, as they swore they were, and that by reason of such bribery they changed their vote and instead of voting for *Cimon* voted for *Perrault*.

If the law would tolerate and treat as uncorrupt and legal what was done in this case by Messrs. *Tarte* and

*Allard*, and if parties disposed to resort to undue practices could hide their corrupt intentions and make innocent their expenditures under such a flimsy pretext as has been put forward in this case, all legislative efforts hitherto made to put down corrupt practices would be entirely futile. For if this can be done with reference to voters at one polling place, why not at all the other numerous polling places in the county? and if \$2 is paid, why not a larger sum? and if thirty men can be so paid, why not more? It is not easy to conceive how a much more general and effective system of corruption could be established. It may be as well to cite two or three cases on this point.

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As to the employment of watchers, Mr. Justice *Blackburn* said in the *Bewdley* case (1):

It comes within all the mischief of treating. In the first place it indirectly influences the men whether voters or not; if they are not voters, it indirectly influences all their friends and other voters. In the second place, when it is given to voters, it would, in all human probability, lead to an expenditure by them in public houses and elsewhere, which would indirectly influence voters. In that way it falls within all the mischief of treating, but no statute has yet been passed rendering it of the same effect as treating.

He subsequently said that he considered this to be a corrupt practice, and that as such he must report it to the Speaker.

*Martin*, B., in the *Nottingham* case (2), as to the hiring of persons on behalf of the candidates for the purpose of keeping the peace and protecting the voters, said:

I must protest against the employment of such persons at all. The proper course to pursue is to go to the Mayor and communicate to him that there is a probability of the peace of the town being disturbed, and to tell him that he must perform his duty and swear in a sufficient number of special constables to preserve the peace.

Then, also, in a very late case, arising out of the last

(1) 1 O'M. & H. 20.

(2) 1 O'M. & H. 246.

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general elections, with regard to the employment of watchers, Baron *Pollock* in the *Salisbury* case (1) said as follows :

In every borough the greatest caution should be used before any person employs others in a private character to preserve the quiet of the town, to prevent breaches of the peace, or to protect even the property of individuals. This is a matter of very serious importance, because it reflects, not merely upon the purity of the election, if such a thing is done to a great extent, but it reflects also upon the credit and reputation of the town. I should be very sorry to think that it could ever be necessary, even in an election time, to resort to anything like a private body for the purpose of protecting either persons or property. The proper course, whenever such an occasion should arise, and a reasonable fear exists, would be to apply to the mayor and magistrates and the police authorities, and if there are not a sufficient number of men already serving in the police, we well know by experience that the services of well conditioned honest persons can always be obtained as special constables, who are ready to protect property in their own town.

Now, independent of Mr. *Tarte's* personal direct connection with this transaction, the learned judge, in my opinion, though he correctly arrived at the conclusion that the parties named had been bribed, came to a conclusion of law entirely erroneous in respect to Mr. *Allard*, viz.: That although Mr. *Tarte* was unquestionably the agent of the respondent, Mr. *Allard* employed by him was not, and therefore respondent's seat could not be affected by Mr. *Allard's* acts.

This pretension cannot be, in my opinion, for one moment sustained. The law would, indeed, be childishly weak, were it not able to reach the corrupt acts of a sub-agent. The law as to employment of sub-agents seems to me to be very clear.

In the *Bewdly* case (2), *Blackburn*, J. says :

I can come to no other conclusion than that the respondent made *Pardoe* his agent for the election to almost the fullest extent to which agency can be given. A person proved to be an agent to this

(1) 3 O'M. & H. 134.

(2) 1 O'M. & H. 18.

extent is not only himself an agent of the candidate, but also makes those agents whom he employs. The extent to which a person is an agent differs according to what he is shown to have done. An agent employed so extensively as is shown here makes the candidate responsible, not only for his own acts, but also for the acts of those whom he, the agent, did so employ, even though they are persons whom the candidate might not know, or be brought in personal contact with. The analogy which I put in the course of the case is a strong one, I mean that of the liability of the sheriff for the under sheriff, when he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under sheriff employs, and not only responsible for the acts done by virtue of the mandate, but also for the acts done under colour of the mandate, matters which have been carried very far indeed in relation to the sheriff.

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Applying the principle thus laid down to the case of one *Burmish*, a clerk to *Pardoe* (the agent), he said :

Every person employed in the election of *Pardoe* is an agent of the respondent. *Burmish* was so employed, and if he had ordered drink and treating without authority from anybody, and had paid for it out of his own pocket, that of itself would have been sufficient to avoid the election.

Again in the *Staleybridge* case (1), *Blackburn*, J., says :

I have already in the *Bewdley* case had occasion to decide this much. There it appeared that the sitting member had put a sum of money into the hands of his agent, and that he exercised no supervision over the way in which that agent was spending that money ; that he had given him directions, and I thought really intended, that none of that money should be improperly spent ; but that he had accredited and trusted his agent, and left him the power of spending the money ; and I came to the conclusion upon that, that there was such an agency established as that the sitting member was responsible to the fullest extent, not only for what that agent might do, but for what all the people whom that agent employed might do ; in short, making that agent, as far as that matter was concerned, himself, and being responsible for his acts. I see no reason to doubt at all that that is perfectly correct.

In the *Barnstaple* case (2) Mr. Justice *Mellor*, as to the law of agency, said :

I quite think the election law is a cruel and somewhat hard law,

(1) 1 O'M. & H. 69.

(2) 2 O'M. & H. 105.

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yet it is too well settled for an election judge to act contrary to it. I say that if an agent, although he may be no agent to the candidate, be employed by the agent of a candidate, he is a sort of subordinate agent, and if he is employed by persons who have authority to employ people to further the election of a particular individual, and in the course of canvassing makes use of a threat or a promise, such an act will make the candidate liable, however innocent the candidate may be, or however careful the candidate may have been to avoid such conduct. As Mr. *Harrison* very fairly puts it, he cannot take the benefit of the services of the individual and repudiate them at the same time.

In the *Plymouth* case (1), it was proved that one of the principal agents of the respondent authorized one *Stebbs*, who was an active member of the respondent's committee, to go to *Penzance* and bring up any *Plymouth* voter he could find. *Stebbs* found, among others, one *Willis*, a fisherman, and as *Willis* declined to come up and vote unless not only his travelling expenses were paid, but also a substitute found to do his share in the fishery during his absence at *Plymouth*, *Stebbs* paid a substitute for this purpose, and *Willis* came up and voted.

Mr. Justice *Lush*, after holding that the case was within the very words, as well as within the spirit of the Act, said :

The only remaining question is—was *Stebbs* authorized to make this engagement with *Willis*? I am clearly of opinion that he was. He was sent to *Penzance* for the purpose of getting those men to go to the poll, and that involved an authority to make such reasonable terms as *Willis* might require. It is clear law that if an agent of the candidate employed a sub-agent to negotiate with a voter going to the poll, and the sub-agent commits an act of bribery in carrying out his commission, the candidate is as responsible as if the act had been done by the agent himself; the sub-agent here is not in the position of a messenger sent upon a mere ministerial duty, he was to negotiate with *Willis* and arrange for his leaving his work and coming up to the polls; I am, therefore, constrained to hold that by this act *Stebbs* has rendered the seat untenable.

(1) 3 O.M. &amp; H. 108.

It is abundantly clear to my mind that the sitting member must be affected by the acts of both *Tarte* and *Allard*, and that for and by reason of the corrupt acts of the bribery of these four voters, the election must be declared void.

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FOURNIER, J., concurred.

HENRY, J. :—

After a very careful consideration of the evidence in this case, and of the law by which the several issues are to be decided, I think it unnecessary to refer to more than two of them ; they, in my opinion, being sufficient to decide the case before us.

The first is the case of the alleged bribery by *Pamphile Allard* and *Joseph Israel Tarte* by payments of money to *Abraham Bouchard*, *Samuel Boivin*, *Israel Gagnon* and *Jean Gagnon*, all of whom were electors. By the evidence it is shown that *Allard* and *Tarte* were active supporters of the respondent, and the latter is shown to have been his agent.

It also satisfactorily appears that the four persons alleged to have been bribed, up to the time of the payments of the money to them respectively by *Allard*, were known to be supporters of the appellant. *Tarte* and *Allard* both in their evidence admit the payment of the money, and that *Tarte* requested *Allard* to hire them as policemen for the polling day. *Allard* in hiring the men did no more than he was ordered to do by *Tarte*.

The learned judge who tried the petition in his judgment says :

I therefore believe *Allard* when he says he hired them as policemen, but I equally believe them when they declare that the two dollars they received caused them to vote for the respondent. I am also of the opinion that *Allard* in hiring them was guilty of an act of bribery under the circumstances proved by *Allard* himself.

The learned judge also says :

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In the present case Mr. *Tarte* was a general agent. out *Allard* was not.

I entirely agree with the conclusion as to both points drawn from the evidence by the learned judge.

It is not, however, necessary, as assumed by him, that to make *Tarte* responsible for *Allard's* acts the latter should be an agent of the respondent. On the contrary, he may not have been a partizan at all. If he is guilty of a corrupt practice, it would be no justification for him to allege he acted by the command or at the suggestion of *Tarte*. He is, therefore, guilty of the corrupt practice charged, but how can his guilt be a justification for the man who engaged him to commit it? *Tarte* is, therefore, the principal, and *Allard* the agent—the conduit pipe between *Tarte* and the bribed parties. Under the law the respondent is answerable for *Tarte's* corrupt practices, and the case, as shown against *Tarte*, is as effectual as if the acts of which he has been shown to be guilty had been done by the respondent himself. If the latter had got *Allard* to do what is proven against him, no one would say for a moment that if *Allard* were guilty of a corrupt practice in carrying out directions he, the respondent, would not be responsible also. If a man engages another to commit a crime, he, as well as the active agent, is guilty.

The reason assigned by *Tarte* for hiring policemen is no justification, even if satisfactorily shown. It is in evidence that thirty men (I believe all electors) were hired as policemen, although the cases of but four of them have been investigated. If a candidate, or agent, for a real or imaginary cause, or fear of a riot, could be permitted to hire to the extent of the number just stated, he might hire and thereby bribe half a constituency. The law very properly is against such being done by the candidate or his agents. It has provided other means to secure the

peaceful conduct of an election by arming the presiding officers, when necessary, with power to employ and swear in constables and others to prevent force, violence or riot, and effectually, though impliedly, forbid such to be hired or engaged by any of the contesting parties or their agents. Besides, the evidence of the existence of any reason or necessity for employing those men is by no means satisfactory. It is all hearsay on the part of *Tarte*. The idea that violence was to be apprehended rests upon nothing in the shape of any threat or any overt act of the opposite party. No document was produced by *Tarte* to show that any such threat had been made in *Quebec*, or in any other place, to induce the belief that any body of men were going from there to commit violence. None went, and no riot or disturbance took place. How such defective and objectionable evidence as the record shows was admitted I cannot understand. I feel bound to declare that, under the law and evidence, *Allard* and *Tarte* were both guilty of corrupt practices in hiring the four men above named, and that as *Tarte* was the acknowledged agent of the respondent, his election is therefore void.

The other case is that preferred against the respondent himself in attempting to bribe *Thomas Lapointe* by an advantageous offer to him accompanied by a threat. It is shown that *Lapointe* intended to and did support the appellant, and the object alleged was to induce him to vote for the respondent. The respondent is alleged to have made the attempt charged at *Lapointe's* house. The charge was proved by *Lapointe* who says no one else was present. The respondent contradicted him, and says in addition that he was not at his (*Lapointe's*) house during that election, but during one some months previous. *Lapointe* is sustained by two witnesses as to the fact that the respondent was in his house during the election in question. *Ferdinand Desmeule* says he

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was with respondent at *Lapointe's* house at the previous election, but does not to my mind contradict *Lapointe* and the two other witnesses. There are, then, three witnesses who contradict the respondent, and sufficiently so in my mind to sustain the charge. The learned judge, however, decided in favor of the respondent, and I cannot, without some doubt, say he was so far wrong that I would be justified in reversing his decision. The respondent has contradicted the statement of *Lapointe* as to the offer, and, as the disqualification of a member or candidate for so long a period is a serious penalty which should not be inflicted when any reasonable doubt exists, I feel bound, under all circumstances, to confirm the finding, on this charge, of the learned judge. I think the evidence in such cases, as in criminal prosecutions, should leave no reasonable doubt of the guilt of the party charged, either as to his acts or the object of them.

I think it right to add that the evidence shows other pretty strong cases of bribery against *Tarte*, but I have not considered it necessary to make special references to them.

For the reasons given, I think the appeal should be allowed with costs.

GWYNNE, J. :—

If there are any cases in which more than in others we should inflexibly adhere to the rule that we should not in appeal reverse upon mere matters of fact the judgment of the judge who tries the cause, having himself heard all the evidence, unless the matter of the evidence is of such a nature as to convey an irresistible conviction that the judgment is not only wrong but is erroneous, they are these election cases, in which so much depends upon the manner in which the witnesses give their evidence, and upon the degree of credit to

be attached to them respectively. A judge sitting in appeal, not having before him the demeanor which the judge who tried the petition had, assumes a grave responsibility, and indeed, as it seems to me, exceeds the legitimate functions of an appellate tribunal when he pronounces the judgment of the judge of first instance in such cases to be erroneous upon anything short of the most unhesitating conviction.

Proceeding upon this principle, as I consider to be my duty, I am not prepared to differ with the findings, upon mere matters of fact, of the learned judge who tried the petition in this case. It is, however, the privilege and the duty of this court to question the conclusions, whether of fact or of law drawn by him from facts in evidence as to which there is no dispute, as to the agency of *Pamphile Allard*, upon the question arising whether or not the respondent is to be held responsible for certain acts of *Allard* which the learned judge has found to have been corrupt.

The learned judge has found, as matter of fact, that money was paid corruptly by *Allard* to one *Bouchard*, one *Boivin* and two persons named *Gagnon*, who were voters and who voted at the election. I confess that upon the evidence, unless we do violence to common sense, and close our eyes to the inferences which men of ordinary understanding would naturally, and which the persons to whom the money was paid did, draw, it appears to me to be impossible to come to any other conclusion than that these payments were bribes, thinly concealed under the pretence of the engagement of the persons to whom the money was paid as police.

There cannot be a doubt that these persons went to see *Allard* two or three days before the polling day, for the purpose of obtaining money from him for their

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votes for the respondent, having been informed that he was paying money to persons to vote for the respondent. *Allard's* own account is that they came to his shop and told him they had been at the house where the appellant lodged; that on their way from there they had stopped at the house of *Joseph Lavoie*, who sent them to *Allard*, saying that he (*Allard*) had money to give them; that *Allard* replied "We do not pay any one;" *Allard* asked them if there were many people at the appellant's boarding house, to which *Jean Gagnon*, one of the four replied, "There were scarcely any, that they were a party of children." "Stay," then said *Allard* "are you for Mr. *Perrault*?" To which *Jean Gagnon* again replied "Yes, it is true they do not like him much and *Cimon* is not much better, "but they are good enough to vote for *Perrault*;" and thereupon they asked *Allard* if he had anything to give them, and in reply he told them that Mr. *Tarte* had given him some money to maintain the peace the day of the polling, and that they could engage themselves that day, and he admits that he paid them \$2.00 each to keep order in case of a disturbance. He adds that Mr. *Tarte* had authorized him to engage men to keep order on the polling day, and that he gave to him (*Allard*) \$8 or \$10 for the purpose, saying at the time of giving it—"I know it is not sufficient, you will furnish the rest yourself and I will repay you." Besides the above four, *Allard* says he thinks he engaged two others, and although he says he has a bill against Mr. *Tarte* for something over \$30, he does not particularize the items. Now whether the idea of engaging men as police on polling day was or not a scheme devised by *Tarte* to cover bribes matters not, but that *Allard* was covering a bribe to these men under this thin pretext, cannot, I think, admit of a doubt in the minds of men who allow themselves to be governed by common

sense. I entirely agree, therefore, with the finding of the learned judge, that *Allard's* conduct in this matter was corrupt, but I am compelled to differ with him upon the point of *Allard's* agency and the responsibility of the respondent for his corrupt conduct. That Mr. *Tarte* was the confidential agent of the respondent, and the person managing the contest on his behalf in that part of the county is unquestionable; that *Allard* was seen in company with *Tarte* several times at his lodgings and elsewhere upon election matters; that he acted in such a manner as to be regarded by the people generally as an agent of the respondent; that he attended meetings held for respondent on several occasions, at which Mr. *Tarte* was also present, and that he had the appearance of being an agent and zealous partizan of the respondent at those meetings, and generally, is testified by Dr. *Clement* and others, and not denied; but there is no doubt that, and this appears to me to be sufficient for the purpose, Mr. *Tarte*, who was the respondent's confidential agent and manager of the contest for him, gave *Allard* \$8 or \$10, with instructions to engage men as police on the polling day, and authorized him to spend of his own moneys more money for the like purpose, promising to repay him what he should expend. Now, whether this engagement of police was, or not, a scheme devised by *Tarte* to cover bribes matters not, for it is plain upon the evidence that the manner of expending the money entrusted to *Allard*, and that which he was authorized to pay out of his own pocket upon the promise of repayment for the like purpose was left to his discretion, qualified only with the direction that it was to be expended in engaging men as police. *Allard*, as he himself says, expended the money given to him in the manner directed, and he exercised the discretion which was left to him in giving it to the four persons above named to secure their votes

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for the respondent, that is to say, in bribes in the respondent's interest. Now, for money so expended by the person who was so far an agent of the respondent as to be entrusted with the outlay of this sum entrusted to him by the confidential manager of the respondent's election contest, to be expended at the discretion of the agent so employed as to the persons to whom it should be given, the respondent must be held responsible for the indiscretion and corrupt conduct of the person so employed to lay out money on his behalf. It is the common case of a person to whom money is entrusted to be expended in the interest of a candidate and for the promotion of his election, and whose discretion is confided in as to the manner of the outlay. I am of opinion, therefore, that upon this point the judgment of the learned judge, who tried the petition, should be reversed, and that the election should be avoided for this conduct of *Allard*, who, in the particular matter, is sufficiently proved to have been respondent's agent, so as to make the respondent's election invalid, although the respondent be not personally affected with the criminality of the agent.

As to the costs, there are so many of the cases which appear to be so very suspicious that I think there was reasonable cause for investigating them. In such cases I think, in the interest of justice, that the party whose conduct, or the conduct of whose agents, gives cause for such suspicion, should, as a general rule, pay the costs attending the investigation, although the evidence when taken falls short of convincing proof; but in view of the fact that there were very many cases urged at the trial which were abandoned before us as wholly defective in proof, I am not prepared to say that the learned judge's mode of apportioning the costs is erroneous in directing each party to pay his own costs of the *enquête*, save only as to the costs of the cases in which

the appellant should succeed, that is to say: the four cases of payment made by *Allard* above mentioned, as to which the respondent should be ordered to pay the appellant's costs in the court below as well as the costs of the appeal.

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The report should, I think, be to the effect that the respondent's election is void for bribery committed by an agent of the respondent named *Pamphile Allard*, but that there is no evidence of the respondent having had knowledge of such bribery.

TASCHEREAU, J., concurred.

*Appeal allowed with costs of appeal and also with costs of court below to appellant, except one-half the costs of appellant's enquête.*

Solicitor for appellant: *P. Mackay*.

Solicitor for respondent: *H. Cyrias Pelletier*

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