CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF MONTCALM IN THE PROVINCE OF QUEBEC.

1883
Nov. 13.
1884
*Jan'y 16.

ODILON MAGNAN, *et al*.....APPELLANTS;

AND

FIRMAN DUGAS.....RESPONDENT.

ON APPEAL FROM MATHIEU, J., SITTING FOR THE TRIAL OF THE ABOVE NAMED ELECTION CASE.

Election petition—Bribery—Corrupt intent—Appeal on matters of fact.

Among other charges of bribery and treating which were decided on this appeal was the following:—One *Mireau*, a blacksmith, who was a neighbour of the respondent, had in his possession since two years, several pieces of broken saws which the respondent had left with him for the purpose of making scrapers out of them on shares. A few days prior to nomination the respondent went into *Mireau's* shop with a scraper he wanted to be sharpened, and in return for sharpening the scraper told him to keep the old pieces of saw which he might still have. *Mireau* in his evidence answered as follows:

Q. He did not speak of your vote? A. No.

Q. What has he said? A. He said that Mr. *Magnan* was coming like mustard after dinner?

Q. M. *Dugas* did not ask you for whom you were? A. No.

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Q. Do you swear on the oath that you have taken that M. *Dugas* left with you these two pieces of saw in question with the intention to buy (*bribe*) you? A. I think so, I cannot say that

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*PRESENT—Sir W. J. Ritchie, C.J., and Strong, Fournier, Henry and Gwynne, JJ.

1883

MONTCALM ELECTION CASE.

it is sure, I don't know his mind (*son idée.*) It is all I can swear.

Q. It has not changed your opinion? A. No.

Q. For whom were you in the last election? A. For M. *Magnan.*

The scrapers were worth in all about two dollars, and were of no use to the respondent, and no other conversation took place afterwards between the parties. The judge who tried the case found that there was no intention on the part of the respondent to corrupt *Mireau.*

Held,—That the Supreme Court on appeal will not reverse on mere matters of fact the judgment of the judge who tries an election petition, 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, and that the evidence in support of the charge of bribing *Mireau,* as well as of the other charges of bribery and treating, was not such as would justify an Appellate Court to draw the inference that the respondent intended to corrupt the voters.

APPEAL from the judgment of Hon. Mr. Justice *Mathieu,* of the Superior Court of the Province of *Quebec,* the judge trying the election petition, under the Act of *Canada,* 37 *Vic.,* ch. 70 (1).

The case upon which this appeal was decided was the personal charge against the respondent of having bribed one *Mireau.* The facts of this case, as well as the facts of the other charges, appear in the report of the case in the 12th volume of La Revue Légale (2), and in the judgments hereinafter given.

Mr. *J. Bethune,* Q. C., and Mr. *Pagnuelo,* Q. C., for appellants:

In the *Mireau* case, the respondent allowed the evidence to go uncontradicted, and his silence cannot but be taken as a confession of guilt.

Borough of *Eversham* case (3).

(1) 12 Rev. Leg. 226. (2) P. 226.
(3) 3 O'M & H. 192, 193.

As to the amount of the gift, it matters very little in the present circumstances.

Shrewsbury case (1); *Blackburn* case (2).

Bellechasse case in Superior Court (*McCord*) (3), and S. C. in Supreme Court (4).

Mr. *G. Irvine*, Q. C., and *C. Pelletier*, Q. C., for respondent.

The respondent was not bound to contradict evidence of this description. There was no corrupt intent.

Windsor case (5); *Staleybridge* case (6); *Jacques Cartier* case (7); *Kingston* case (8).

RITCHIE, C.J :—

The only case which has given me any difficulty is the personal charge in the case of *Mireau*, in which it is alleged defendant bribed *Mireau*, by giving him a piece of an old broken saw.

The abandonment of the pieces of the saw to *Mireau* was not in connection with any conversation relative to the election, either before or at the time or subsequently, the only reference to the election (but not in connection in any way with the saw,) was the casual observation to *Magnan*, which he thus details:

Q. Il ne vous a pas parlé de votre vote? R. Non.

Q. Qu'est-ce qu'il a dit? R. Il a dit que Monsieur *Magnan* arrivait comme de la moutarde après diner.

Q. Il ne vous a pas demandé, Monsieur *Dugas*, pour qui vous étiez? R. Non.

Nor are there any circumstances beyond the simple abandonment from which a corrupt intention can be inferred; on the contrary, *Mireau* would seem to have been a man in very poor circumstances, the

(1) 2 O'M. & H. 36.
(2) 1 O'M. & H. 202, 208. See also 3 O'M. & H. 107, 108.
(3) 6 Q. L. R. 100.
(4) 5 Can. S. C. R. 91.
(5) 2 O'M. & H. 88.
(6) 2 O'M. & H. 72.
(7) 2 Can. S. C. R. 306 & 307.
(8) 11 Can. L. Jour. 22 &24;

1884

MONTCALM ELECTION CASE.

Ritchie, C.J.

defendant much the reverse and having, it would seem, from his mills a great number of broken saws, which it may be readily supposed, from the circumstance of the pieces left with *Mireau* having been allowed to remain with him for two years without being called for or otherwise noticed, they could not have been considered of much, if any, value to *Dugas*, if not actually worthless. This conduct of defendant would seem to show that he attached to them very little, if any, value, and considering that *Mireau* was then performing a service for defendant in sharpening his scraper, though *Mireau* thinks the service trifling and the pieces of the saw more than an adequate payment, the defendant, having no use for the pieces, and having, as *Mireau* says, a great number of pieces of broken saws, may have esteemed the remuneration equally trifling; at any rate, it is very clear, that before a party can be declared guilty of a corrupt act entailing such serious consequences as would flow from declaring defendant guilty, the intention to corrupt must be established beyond a reasonable doubt. With reference to the trifling value of the article with which it is alleged *Mireau* was bribed, I can only say that when an intention to bribe is clearly established the extent or value of the bribe is of no importance, but in considering whether the intention to corrupt exists the trifling character of the bribe may, in connection with other circumstances, become most important to negative the corrupt intent.

I cannot think that simply leaving with *Mireau*, in return for sharpening his scraper without any reference being made to the election, the small pieces of a broken saw of comparatively little or no value, and which defendant had allowed to remain in *Mireau's* possession for two years without having been in any way inquired after or apparently esteemed of any value, is of itself,

sufficient to justify the conclusion that the defendant thereby necessarily intended corruptly to influence *Mireau* in voting or abstaining from voting at the election.

Still less do I think the case so clear as to justify me in over-ruling the decision of the judge who saw and heard the witnesses, who it cannot be denied was in a better position to deal with the questions of fact than I now am.

It is true that in his evidence, *Mireau*, in answer to this question:

Q. Jurez-vous sur le serment que vous avez prêté, que M. *Dugas* vous a laissé ces deux bouts de scies en question dans l'intention de vous acheter? R. Je le pense. Je ne puis pas dire que c'est certain. Je ne connais pas son idée. C'est tout ce que je puis jurer.

Q. Ça n'a pas changé votre opinion? R. Non.

The opinion of the voter has nothing to do with the question. What we have to deal with is the intention of defendant, and this we must discover, not from the opinion of the voter, but from the acts, facts and circumstances developed by the evidence in the case or the necessary inferences deducible therefrom; and even at most the impression made on *Mireau* does not really amount to more than a suspicion; and if only a suspicion was created in his mind, can I say the evidence is sufficient to establish a conclusion beyond a reasonable doubt in my mind.

2nd case, *Azarie Pauzé*. Case of an alleged bribing by an offer to buy a man.

I quite agree with the learned judge that there is nothing whatever in this case to justify the conclusion that there was any infraction whatever of the 92nd sec. of the Dominion Elections Act of 1874.

3rd case, as to the treating at *Thouin's*.

I have nothing to add to what the learned judge has said as to this case.

1884

MONTCALM ELECTION CASE.

Ritchie, C.J.

As to all the other cases the learned judge has very carefully and minutely discussed them all, and as I agree in the conclusions at which he has arrived, I do not think it worth while to take up time by again going over the same ground.

STRONG, J. :

At the conclusion of the argument in this case, I was convinced that the appeal was wholly unfounded. A subsequent careful consideration of the evidence has convinced me that, with the exception of *Mireau's* case, the appeal is not only unfounded, but may be characterized as frivolous. *Mireau's* was perhaps an arguable case, but when the facts are considered, as already stated by the learned Chief Justice, the only proof upon which the learned judge of the court below was asked to draw the inference that there was an intention to corrupt the voter was this, that a piece of old saw, worth less than $2, which about two years before had been left with *Mireau* by the respondent for the purpose of making hoes out of it, was in his possession at the time he paid this visit, whilst the canvass for the election was going on, and the respondent told *Mireau* that he might keep this. It was not handing him a present, or conferring any benefit on him, but he abandoned to him this piece of old iron, for which he had no use whatever, the respondent being in the saw mill business, and having a number of old saws lying by him. This the learned judge found was without corrupt intent. To say that a Court of Appeal should draw a different inference from that drawn by the judge of first instance, who has seen the witnesses and had them examined before him, would be not only reversing all the principles on which this court acts in cases of appeals on questions of fact, but would be directly to controvert the principle laid down

by an eminent judge of high authority on questions of this kind—I refer to the late Chief Justice of this court—whose thorough experience in election cases, and his great practical knowledge of the law of elections make his opinion of the utmost value, and who, in his judgment in the *Kingston* case (1), lays it down as law that, wherever there is a doubt, the benefit of that doubt is to be given to the respondent. On that principle alone, in the present case, it would be out of the question to say, that the judge has given a wrong interpretation to this evidence, much less could we, sitting in appeal and reviewing the evidence, be asked to hold otherwise. I think, therefore, that *Mireau's* case, which is really the only substantial one which we could be asked to interfere upon, was properly decided by the learned judge, Mr. Justice *Mathieu*, in the court below, and, for the reasons which he gave there, as well as for the reasons given by the Chief Justice in the judgment which he has just read, I have come to the conclusion that we cannot disturb the judgment. I repeat, as to all the other cases, I consider them frivolous. The appeal should be dismissed with costs.

FOURNIER, J.:

The evidence is not sufficient to authorize an appellate court to reverse the judgment in favor of the member elected.

HENRY, J.:

The animus, of course, with which anything is done in an election by a candidate appealing to a voter is all important. The amount is of secondary importance, but the amount of gratuity has, of course, a great deal to do with determining the mind of the party who makes it. It is said that this man *Mireau* was a poor

(1) Hodgins' Elec. Cases 625.

1884

MONTCALM ELECTION CASE.

Henry, J.

man, and a couple of dollars to a poor man would be as important, or more so, than $20 to a wealthier individual. The circumstances here are in a nut-shell. The sitting member was engaged in canvassing in his election. He takes a hoe to this blacksmith to be sharpened. The blacksmith says it wanted very little. While he was proceeding to do it, he spoke of the election and made use of the term which has just been mentioned. The subject was in his mind, at all events, and whether he was canvassing this man or not, it was in the mind of the man who made the gratuity. After sharpening this hoe, which, he said, took very little time, for it wanted very little, he said—"These saw plates which I gave you to manufacture on our joint account you can have altogether. I will not exact what I required by our agreement." That was really giving him up something that was alleged to be worth some two or three dollars. I admit the principle laid down, not originally by our late learned Chief Justice, but by a judge in *England*, that if you can ascribe two motives to a party, one legal and the other illegal, we are not, at all events, bound to ascribe the illegal one, and it would be quite sufficient to exculpate a party charged with bribery in an election. If I were trying the case as the first judge, I should have had a good deal of difficulty in deciding as to the animus of the candidate in that election; but the judge, who tried the case, and who was better acquainted with the manner of dealing and the minds of the people than I can be, has given a judgment. I do not consider that is a case which we should review. The judge having given his decision, and being much better able to decide under the circumstances, than I can be, from his knowledge of the habits and mode of dealing of the parties in question, I would defer to his judgment. I would be totally unjustified, because of a doubt in my mind, in reversing his judgment.

Under the circumstances, I think this appeal should be dismissed with costs.

GWYNNE, J.:

The questions raised upon this appeal are all questions purely of matters of fact. In the case of *Cimon* v. *Perrault* (1) I have stated my opinion to be that—

> If there are any cases in which more than in others we should inflexibly adhere to the rule that we should not, on 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 of the witnesses, 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.

To this opinion, thus expressed, I still adhere. In the present case, all the parties whose acts are called in question, and all the witnesses who speak to those acts are French habitants of the Province of *Quebec*, and the judge himself of the same nationality as they. After a careful perusal of the judgment of the learned judge who tried the case, and heard all the witnesses give their evidence in his and their own language, and who possessed a peculiar knowledge—a knowledge which I have not and cannot have—of the habits and customs of the parties whose acts came in review before him in this contestation, I have no hesitation in saying, that if I should reverse his judgment upon these questions of fact, my judgment would be deservedly open to the imputation of presumption.

(1) 5 Can. S. C. Rep. 153.

1884

MONTCALM ELECTION CASE.

Gwynne, J.

In the principles of law by which the learned judge has, in his very able judgment and review of the reported cases, stated that he was governed in his consideration of the evidence, and in arriving at his conclusion upon it, I entirely concur.

In this view it is unnecessary to express an opinion upon the question as to the sufficiency of the evidence of the parties said to have been corruptly approached by the respondent or by his agents, being electors.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for appellant: *Pagnuelo & St. Jean.*

Solicitors for respondent: *Pelletier & Martel.*