

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF L'ASSOMPTION.

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• Feb. 27.

JOSEPH GAUTHIER.....APPELLANT;

AND

JOSEPH E. B. NORMANDEAU.....RESPONDENT.

ON APPEAL FROM THE DECISION OF THE SUPERIOR COURT
FOR LOWER CANADA (TASCHEREAU J.)

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF QUEBEC COUNTY.

ED. O'BRIEN *et al.*.....APPELLANTS;

AND

SIR A. P. CARON.....RESPONDENT.

ON APPEAL FROM THE DECISION OF THE SUPERIOR COURT
FOR LOWER CANADA (CARON J.)

*Dominion Controverted Elections Act—R. S. C. ch. 9 secs. 32, 33 &
50—Petition—Time, extension of—Appeal—Jurisdiction.*

An order in a controverted election case made by the court below or a judge thereof not sitting at the time for the trial of the petition, and granting or rejecting an application to dismiss the petition on the ground that the trial had not been commenced within six months from the time of its presentation, is not an order from which an appeal will lie to the Supreme Court of Canada under sec. 50 of the Dominion Controverted Elections Act (R. S. C. ch. 9). Fournier and Henry JJ. dissenting.

L'ASSOMPTION ELECTION CASE.

APPEAL from the judgment of the Superior Court of the Province of Quebec, presided over by Mr. Justice H. Taschereau, rejecting appellant's motion presented on the 20th of December to have an election petition declared out of court and abandoned,

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

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by reason of the respondent not having proceeded with the trial of the petition within six months of the presentation thereof.

Respondent contested the election of appellant who was elected at the last federal elections for the electoral district of L'Assomption.

The petition was presented on the 23rd of April, last past.

Appellant filed preliminary objections on the 30th of April, and on the same day moved that all proceedings in the case be suspended during the session of Parliament then pending.

On the 11th of May Taschereau J. granted that motion.

Parliament opened on the 13th of April, 1887, and was prorogued on the 23rd June.

Long vacation began one week after on the 1st of July and ended on the 1st of September during which time the judges of the Superior Court formally declined to try any controverted election case.

On the 2nd of September respondent moved that a day be fixed for the hearing of the preliminary objections.

On the 6th of September the case was heard on the preliminary objections, and they were dismissed.

On the 17th of September, respondent moved that an order be made and a day fixed for the examination of appellant; that motion was granted on the 4th of October, the day was fixed, and appellant was examined on that day. On the same day, respondent applied to have a day fixed for the trial of the petition.

On the 10th of October, Mr. Justice Taschereau fixed the 20th December as the day for the trial. On that same day, immediately after the judgment fixing the day for trial appellant moved that respondent file a bill of particulars before the trial. The court made an

order that respondent file his bill of particulars on or before the 13th December. 1888

On the 20th December, the day fixed for the trial, appellant moved that the trial be not proceeded with, that the right of respondent to proceed with the trial be declared forfeited, and that the petition be declared abandoned and out of court because the trial of the petition had not been commenced within six months from the presentation thereof.

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That motion was rejected by the court and the trial proceeded. The appellant's election was voided by reason of corrupt practices on the part of his agents.

On appeal to the Supreme Court of Canada the counsel for the appellant stated that although by his factum it appeared that the present appeal was only from the judgment of Mr. Justice Taschereau, dismissing the motion to set aside the election petition on the ground that the trial had not been commenced within six months from the date of the presentation of the petition, was an error, as the appeal was from the final judgment as well, and asked permission to complete the record by adding such final judgment and the notice of appeal.

The respondent's counsel objected to any indulgence being granted, on the ground that as the final judgment avoided the election petition for admitted acts of corruption by agents, and that the appeal now before the court was solely from the interlocutory judgment of Mr. Justice Taschereau, on a motion which was not appealable, and contended that the appeal should be quashed for want of jurisdiction.

Prefontaine for appellant.

Bisaillon Q.C. for respondent.

Sir W. J. RITCHIE C.J.—This is not an appeal from a decision by the judge at the trial, but from an

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order of the Superior Court, dismissing a motion to set aside the election petition on the ground that the trial had not been commenced within six months from the date of the presentation thereof.

I think that where a party has gone before a judge and admitted bribery by agents, that we should not strain the law to allow him to appeal. There is no provision in the law allowing an appeal from the decision of the Superior Court on a preliminary objection which is not final and conclusive and does not put an end to the petition, and such is the appeal which is now before us. I am clearly of opinion that we have no jurisdiction in the case, and therefore the appeal should be quashed.

STRONG J---Nothing can be clearer than that appeals in Controverted Elections are limited to two matters only, viz: first, an appeal from any decision, rule or order on preliminary objections to an election petition the allowance of which is final and conclusive and puts an end to the petition or which objection, if it had been allowed, would have been final and conclusive and have put an end to the petition; and, secondly, an appeal from the judgment or decision on any question of law or of fact of the judge who has tried the petition. As the appeal is now presented it is quite clear that it does not fall under either of these heads, and consequently this court has no jurisdiction. The appellant after admitting that his election should be set aside for corruption by agents, wishes us to assist him and convert a judgment which on the material now before us is clearly not appealable into a judgment on the merits from which an appeal lies. I am of opinion that this cannot be done and therefore the appeal must be quashed.

FOURNIER J—I am of opinion that we have jurisdic-

tion in this case. Moreover, I think the decision in this case should be postponed until we are ready to decide the case which was argued at length before this court some days ago, and in which the learned counsel for the appellants contended that a similar judgment was appealable either as coming within the first part of sec. 50, R.S.C., ch. 9, being a judgment on a preliminary objection to an election petition, or as coming within the second part of sec. 50, being a final judgment upon a question of law by the judge who has charge of the trial of the petition. However, if the majority of the court have decided to go on, I will only enter my dissent, and later on in the Quebec County case I will give at length my reasons for my opinion in favor of the jurisdiction.

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 Fournier J.

HENRY J.—The motion which is now made and under consideration is to allow the appellant to complete his case and without that the court has no material to pronounce upon. In another case this court gave permission to allow the appeal to stand over until another session in order to have the judgment appealed from printed, and I think if we do not wish to be taxed with inconsistency we should be prepared to allow appellant's counsel forty-eight hours to produce his notice of appeal and ascertain whether he has or has not limited his appeal to the question of the six months.

TASCHEREAU J.—I am also of opinion that we have no jurisdiction.

GWYNNE J.—Upon the facts presented it is apparent the court has no jurisdiction.

Appeal quashed with costs.

Solicitors for appellant: *Godin, Champagne & Dugas.*

Solicitors for respondent: *Lacoste, Bisailon, Brousseau & Lajoie.*