CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF ST. ANN'S.

1906

*Oct. 2, 3.
*Oct. 11.

DANIEL GALLERY (RESPONDENT) . . . APPELLANT;

AND

WILLIAM DARLINGTON AND OTHERS (PETITIONERS) . . . . . } RESPONDENTS.

ON APPEAL FROM THE DECISION OF DAVIDSON AND ROBIDOUX JJ.

Controverted election — Personal corruption — Charge in petition —Judge's report—Adjudication—Amendment—Evidence.

On a charge of personal corruption by the respondent if the adjudication by the trial judges does not contain a formal finding of such corruption this court may insert it if the recitals and reasons given by the judges warrant it.

Respondent, the night before the election, took a sum of over $4,000 and divided it into several parcels of sums ranging from $250 to $1,500. He then, after midnight, visited all his committee rooms and gave to the chairman of each committee, personally and secretly, one of such parcels. His financial agent had no knowledge of this distribution and no evidence was produced of the application of the money to legitimate objects:—

Held, that the inference was irresistible, that the money was intended for corruption of the electors and respondent was properly held guilty of personal corruption.

Allegations in the petition that respondent had himself given and procured, undertaken to give and procure money and value to electors and others named, his agents, to induce them to favour his election and vote for him, for the purpose of having such monies and value employed in corrupt practices were sufficient to cover the offence of which the respondent was found guilty.

APPEAL from the judgment of Davidson and Robidoux JJ. sitting for the trial of a petition against the return of a member to the House of Commons for the

*PRESENT:—Girouard, Davies, Idington, Maclennan and Duff JJ.

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electoral district of St. Ann's in the City of Montreal which judgment found the respondent personally guilty of corrupt practices at said election.

The facts upon which the judgment appealed from was founded are stated in the above head-note and in the judgment of Mr. Justice Davies on this appeal.

E. F. B. Johnson K.C. and *Perron K.C.* for the appellant.

Bisaillon K.C. and *Carmichael* for the respondent.

GIROUARD J.—The appeal is dismissed with costs for the reasons stated by Mr. Justice Davies.

DAVIES J.—At the hearing of the argument on this appeal I was inclined to think that as there was no express finding or determination by the election judges of the personal disqualification of the successful candidate against whom the petition was fyled, but a formal determination only that he was not duly returned and that the election was void, and as the appeal was limited to the supposed finding of personal disqualification there was no jurisdiction on our part to hear the appeal at all. After a careful reading of the formal judgment of the election judges and also of their report to the Registrar of this court which, by the 14th section of 54 & 55 Vict. ch. 20, amending the Controverted Elections Act, is in cases of appeal substituted for the report which under the Act as originally passed was to be made to the Speaker of the House of Commons, and which substituted report is expressly declared together with the decision and findings (if any) to form part of the record, I have reached the conclusion that there is enough on the face of the record to enable us to amend it by insert-

ing the necessary formal finding and thus make the record conform not only to the recital in the formal adjudication that such a finding was arrived at, and to the statutory report to the Registrar to the same effect, but also to the reasons for judgment given by both the trial judges.

The 13th section of the amended Act above referred to gives this court express power to

> confirm, change or annul any decision, report or finding of the court that tried the petition appealed from upon the several questions of law as well as of fact *upon which the appeal was made.*

while the Controverted Elections Act enacts that this court

> shall pronounce such judgment upon questions of law and fact, or both, as in the opinion of such court ought to have been given by the court or judge whose decision is appealed from.

The omission of the personal condemnation of the appellant from the *dispositif* of the formal judgment therefore can, it seems to me, be rectified by this court, sufficient matter appearing upon the face of the record to justify such rectification.

The appeal then being properly before us it does seem to me that the questions for our determination are reduced to these: Do the particulars delivered cover the charges and offences for which the appellant has been personally disqualified, and, secondly, does the evidence given by the appellant (Gallery) and his chairmen of committees as to the personal payments by Gallery to them of sums of money amounting to about $6,000 between nomination day and election day, raise an irresistible inference that such money was paid for the corrupt purpose of inducing the voters in the several wards of which these committees had charge, to vote for Gallery or refrain from

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voting against him or for having so voted or refrained from voting? And was that money so used in whole or in part? I am of opinion that paragraph 10 of the particulars delivered, and especially sub-sections 5° and 6° of that paragraph, are sufficient to cover the charge and offence with which the appellant was personally charged and for which he was found guilty and disqualified.

Mr. Gallery is a politician of some experience, having run other elections before the one in question. He cannot and does not plead ignorance of the law. He had a regular agent, through whom he knew that all legitimate expenditure should be made in order to ensure that publicity which is a cardinal principle of the Election Act. He organized his committees after nomination day and there was consequently only a week within which to do such work as committees had ordinarily to do. He went around to these committees a few nights after their organization and paid to their several chairmen a small part of the $6,000. On the eve of the election day and before leaving his home he carefully made up into packages at his own house, and as he himself says in his own room and by himself, the remaining portion of the money amounting to over $4,000, in sums ranging from $250 to as high as $1,500; placed them on and about his person and distributed them to his various chairmen taking care to deliver the money personally and secretly, and so that even his own financial agent who accompanied him on his rounds is alleged to have known nothing about his acts.

The financial agent who by law was to have sole control over his disbursements, and through whom alone they could be legally made, had the transaction carefully screened from his knowledge, although he

accompanied his principal up to midnight before election day in the latter's visits to the committee rooms. We are asked to believe that this money was intended to be honestly paid to "locators" so called, for *bonâ fide* and necessary work to be done by them, while in the same breath we are told that at least one-half of those to whom the money was to be paid, and actually was paid, were electors whom the receipt of these moneys for alleged services in connection with the election would actually disfranchise.

The moneys paid to these chairmen of committees were not counted, no receipt was taken, no memorandum of payments made, no account kept by those to whom it was paid of those electors and others to whom they paid the money, and no evidence or the slightest possible that any actual *bonâ fide* work was done by those to whom it was paid, or if and where any work was done by any or by which of them. The moneys paid to Francis McCabe, a relatively small amount, do not appear to be open to these observations, and were not apparently used for corrupt purposes. His case appears to be an exception to the general rule. About one-half of the moneys paid to these chairmen was admitted in the argument to have been paid to electors on the ostensible ground that they were employed as locators. Some of the chairmen admitted that every one attending the committee room expected to be paid and Guilfoyle (one of the chairmen) says, he *thought* the persons to whom he paid out the money on election day had been acting personally and that he should pay them, and *he supposed* they had worked, and he paid them $10 or more according to his own judgment not having anything to determine the amounts they should severally receive.

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During the argument I asked repeatedly whether there was any evidence shewing that these locators actually did *bonâ fide* necessary work and reported the results, and where such evidence could be found if it existed at all. But such references as were given were to evidence of the flimsiest and most unsatisfactory kind.

I do not wish to be understood as saying that *bonâ fide* payments made through the proper agent to persons for the purpose of locating electors in the congested districts of large cities might not be defended as being within the Act, or that even if made improperly by the candidate they would necessarily under all circumstances, however necessary their work might be and however well it might prove to have been done, gave rise to an irresistible inference that the payment was a "corrupt practice."

But in the face of such evidence as we have here, to ask us to assume that the payments were *bonâ fide* and made for a *bonâ fide* purpose, is to ask us to abdicate our common sense. I think the only and the irresistible inference which can be drawn from the evidence is that these moneys were paid to the several chairmen of his committees by the appellant colourably for the purpose of paying locators so called for work done or to be done, but actually for the corrupt purpose of improperly influencing electors to whom they were to be paid and in order to induce them to vote or refrain from voting, or for having voted or refrained from voting, and that the moneys having in large part at any rate been paid over by these chairmen to electors and others on election eve and election day in pursuance of such corrupt purpose such payments constituted "corrupt practices" on appellant's part within the meaning of the statute.

Mr. Johnstone contended that the same particularity was required to make a legal finding of the personal guilt of a candidate for corrupt practices and so disqualify him as was necessary in ordinary penal actions.

I do not, however, concur in this view. The reason for the application to findings under the Controverted Elections Act (the penalty for which is personal disqualification) of the rule applicable to penal actions, does not exist. That rule is necessary in penal actions to prevent a party sued from being put in peril twice for the same offence and to enable him to plead his prior conviction or acquittal or discharge as the case may be to any second action. Certainty in the particulars of the offence must therefore appear on the conviction or judgment. But in trials under the Controverted Elections Act while the party incriminated and sought to be punished is entitled on every principle of justice to have full and clear particulars given him of the offence he is charged with and is also entitled to have the evidence confined to the charge so made, the same reason does not exist for the particular certainty in the statement of facts in the findings of the election court as does exist in a conviction or judgment in a penal action.

There must, of course, be reasonable certainty in the finding of the statutory offence and the different elements necessary to constitute the offence must be found by the election court. But in the case of the "corrupt act" of bribery that fact may depend upon one proved case as well as upon one hundred, and the penalty of disqualification follows alike in the one case as the other. The offence may be proved and found even though the name or names of the elector or electors bribed may not be able to be given. Several

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acts of personal bribery do not for the purpose of personal disqualification constitute different offences.

Where large payments of money are made by a candidate to electors by the score either directly or through the hands of his chairmen of committees and the courts find they were so made corruptly and for the purpose of inducing those electors to vote or refrain from voting as in the case before us has been found, it surely would make the Act practically inoperative in this important point if the court, having clearly found the offence committed, had to stay its hand and not pronounce judgment because owing to the faulty memory of the candidate or his agents through whom he paid the money or from other causes the names of the electors could not be given. Nor is there any sufficient reason why the names must appear in the finding to make it a good one. It is quite sufficient if it is proved that the recipients of the bribe money were electors. The *mens rea* must be shewn, the fact of payment pursuant to the guilty intent to actual electors proved and that is sufficient. One court alone, the election court, can make the finding and that finding can only be made by it once after trial of the petition; one penalty alone, disqualification, flows from the finding. The candidate found guilty cannot before any other court or before the same court in any other proceeding or at any other time be put in peril for the same offence. It is true he may be indicted for the crime of bribery in each specific case where bribery can be proved against him. But the penalties under the Election Act and those for the crime for which he may be indicted are entirely different, and in no case could the proof of conviction under the Election Act with its penalty of disqualification avail to defeat any indictment which might be

brought against him for bribery or be received as evidence of his guilt.

In my opinion the appeal should be dismissed with costs and proceeding to give the judgment which in our opinion the court appealed from should have given with respect to the particular and limited part of their judgment appealed from to this court with which limited appeal we alone have the right to deal, we should adjudge and find the appellant to have been guilty at the election aforesaid of paying large sums of money to the several chairmen of his committees between the day of nomination and the day of election corruptly and with the intent that these moneys should be paid and disbursed by these chairmen or some of them in large part at least to electors of the said electoral district for the purpose of inducing such electors to vote for him (the appellant) or refrain from voting against him, or for having so voted or refrained from voting, and that such moneys or a large part thereof were by such chairmen or some of them so paid and disbursed to such electors for the corrupt purpose aforesaid, and that in so acting and doing the appellant had committed a corrupt act within the meaning of the Dominion Elections Act and was in consequence personally disqualified as prescribed by that Act.

IDINGTON J.—I agree in the result that appellant be or stand disqualified by reason of his having violated the Dominion Elections Act, 1900, sec. 108, subsec. (*e*).

I am unable to accede to some of the propositions of law and part of the procedure involved in the judgment of the majority of the court.

The learned trial judge failed in their order of

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2nd January, 1906, to comply with the provisions of section 43 of the Dominion Controverted Elections Act.

For the reasons set forth in the case of *Norwich Election Case; Stevens* v. *Tillett*(1), and followed in *South Oxford Election Case*(2), by the late Chief Justice Draper, I am clearly of the opinion that the subsequent report of the trial judges made on the 15th January in discharge of their duty under section 44 of the said Act, can give no assistance to the interpretation of the previous order, and that such previous order cannot receive any force or vitality from the report which is only made for the consideration of Parliament, and has no final or binding effect.

However anomalous the proceedings may be, to amend, on an appeal by the man to be convicted, if not already convicted, so that he of a certainty shall stand convicted, yet I think, under section 51, sub-section 3 of the Act it becomes our duty in a clear case, to amend.

I am of the opinion that the defects in form and in much of the procedure in the court below sprang from the respondents presenting a case of "general corruption" which is not known to the law, instead of adhering to the obvious course that they ought to have followed, of having regard to section 10, sub-section 5° of the particulars, and being as specific as possible in the trial of the accused. Any necessity for amendment, that has arisen in this case, is the result of the respondents failing to observe these requirements.

The accused in these election cases is entitled to have the charge made as specific as possible, and to

(1) L.R. 6 C.P. 147. (2) Hodgins' Elec. Cas. 238.

have due regard paid to such specification in the taking of evidence, and when that is concluded, to have the consideration thereof dealt with as a separate issue, and reported upon free from trammels of anything else. With due submission I think this was not adhered to in this case as closely as is desirable in a trial of this kind.

I think it is a matter of regret, if there was the extensive corrupt expenditure which the court below has found, that the trial was not so conducted with due regard to the necessities for the specific charges being adhered to, for in that event the report usually made to the Speaker, but in this case made to this court, as the result of the appeal, would have doubtless contained a very large number of names that are omitted therefrom.

I think a certain duty devolves upon petitioners in cases of this character to see that there is not such a failure in carrying out the provisions of the Act in regard to the reporting of people *primâ facie* guilty of corrupt practices as this case does plainly exhibit. I think that duty was neglected in this case, and that and the want of specification giving rise to the irregularities, and the mistake in the form of the judgment requiring it to be amended, were such that the respondents ought not to get their costs of this appeal.

I am the more impressed with this view that the petitioners specially prayed that all persons who might be found guilty might be dealt with, yet let the guilty escape, and in the case of one man at least, McCabe, permitted him to be reported without evidence justifying such report.

The reporting of Francis McCabe, who does not seem to have committed, according to any evidence I have been able to find, any offence save receiving from

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the appellant part of the money, which it is said was designed by him to be partly used for improper purposes, suggests that others of those reported may not, any more than he, have been guilty of any corrupt practice. The receiving of such money is not in itself made a corrupt practice by the Act. The receiver's transgression of the law begins only when he uses the money entrusted to him for a corrupt purpose. The acceptance and an express undertaking with the candidate to spend improperly might place such a receiver in a difficult position, morally, and in the eyes of the law, and yet he might not be guilty of corrupt practices within the meaning of this Act.

There was nothing expressly corrupt or improper in anything that passed from the appellant to McCabe, or indeed many others, that would place him or some of them in this light I have just adverted to. The money paid out was not all designed even by appellant for improper purposes.

It is said that we have nothing to do with that phase of this case, because the only questions we have to consider are those arising out of this appeal which has been limited to the question of the appellant's disqualification. Sub-section 4 of section 51 as it originally stood, and until amended by 54 & 55 Vict. ch. 20, sec. 13, would, if we were acting under it, amply justify this contention. All that the Registrar under the section as it originally stood certified as the judgment of this court was that which touched upon the decision on the appeal.

By the amending section I have just referred to, however, the following is what is now required:

> 4. The registrar shall certify to the Speaker of the House of Commons the judgment and decision of the Supreme Court, confirming, changing or annulling any decision, report or finding of the

court that tried the petition appealed from, upon the several questions of law as well as of fact upon which the appeal was made, and *therein shall certify as to the matters and things as to which, by section forty-four of this Act, the court would have been required to report to the Speaker, whether they are confirmed, annulled or changed, or left unaffected by such decision of the Supreme Court; and such decision shall be final.*

What is the meaning of the words at the end declaring *"such decision shall be final?"* I submit that it is possible to interpret this amended section so as to give to the report, going from this court to the Speaker, and dealing with persons guilty of corrupt practices, a meaning not found to exist in the report to the Speaker when made by the trial judges; in other words, a meaning it had not in law, as above cases shew, when it reached us. It may or may not be the true meaning to hold that it has the effect of making that report final and conclusive as to the status of the persons reported. It is to be observed, however, that it is upon the use of these words at the end of a section that enabled the courts in the cases I have cited to hold candidates' status affected finally and conclusively by virtue of a report under a section so worded. Lest such signification should be given to the report to the speaker from this court, I think we ought to guard ourselves and make clear that such is not our intention, and not our judgment.

I do not think that we escape responsibility by saying that it is something with which we have nothing to do. There being a duty cast upon us by this amended sub-section, I think, as to the whole report, in the case of any appeal whether specially directed to the terms of the report or not, leaves the matter in such a condition that I cannot think we are free from responsibility and ought to so amend the form of report as to remove a doubt. We ought at least to

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say, if we feel we are not responsible, that the report is not to be taken as our judgment.

MACLENNAN J.—I concur in the judgment of His Lordship Mr. Justice Davies, and am of opinion that the appeal should be dismissed with costs.

DUFF J.—I agree that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Archer, Perron & Taschereau.*

Solicitors for the respondent: *Bisaillon & Brossard.*