THE CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF ST. JAMES.

JOSEPH BRUNET (RESPONDENT) .....APPELLANT;

AND

JOSEPH GEDEON HORACE BERGERON (PETITIONER) ..... RESPONDENT.

1903

*Feb. 17.
*Feb. 23.

*Mar. 3, 4.
*Mar 11,

ON APPEAL FROM THE JUDGMENT OF SIR MELBOURNE TAIT A.C.J., AND LORANGER J.

Controverted election—Stay of proceedings pending appeal on preliminary objections—Trial within six months—Extension of time—Disqualification.

Preliminary objections to an election petition filed on 22nd Feb. 1902, were dismissed by Loranger J. on April 24th, and an appeal was taken to the Supreme Court of Canada. On 31st May Mr. Justice Loranger ordered that the trial of the petition be adjourned to the thirtieth juridical day after the judgment of the Supreme Court was given, and the same was given dismissing the appeal on Oct. 10th, making Nov. 17th the day fixed for the trial under the order of 31st May. On Nov. 14th a motion was made before Loranger J. on behalf of the member elect to have the petition declared lapsed for non-commencement of the trial within six months from the time it was filed. This was refused on 17th Nov., but the judge held that the trial could not proceed on that day as the order for adjournment had not fixed a certain time and place, and on motion by the petitioner he ordered that it be commenced on Dec. 4th. The trial was begun on that day and resulted in the member elect being unseated and disqualified. On appeal from such judgment the objection to the jurisdiction of the trial judges was renewed.

Held, that the effect of the order of May 31st was to fix Nov. 17th as the date of commencement of the trial; that the time between May 31st and Oct. 10th when the judgment of the Supreme Court on the preliminary objections was given, should not be counted

*PRESENT:—Sir Elzéar Taschereau C. J. and Sedgewick, Girouard, Davies, Mills and Armour JJ.

1903

ST. JAMES ELECTION CASE.

as part of the six months within which the trial was to be begun, and that Dec. 4th on which it was begun was therefore within the said six months.

Held also, that if the order of 31st May could not be considered as fixing a day for the trial it operated as a stay of proceedings and the order of Mr. Justice Lavergne on Nov. 17th was proper.

As to the disqualification of the member elect by the judgment appealed from the members of the court were equally divided and the judgment stood affirmed.

APPEAL from the judgment of Sir Melbourne Tait A.C.J. and Loranger J. sitting for the trial of a petition against the return of the appellant as a member of the House of Commons for St. James Division, Montreal, at a bye-election on 15th January, 1902, by which judgment the appellant was unseated and disqualified for personal corruption.

The appeal was directed only against the disqualification, the voiding of the election being accepted subject, however, to an objection taken to the jurisdiction of the judges who tried the petition, namely, that the trial had not been commenced within six months from the date on which the petition was filed, which, if successful, would set aside the whole judgment.

The dates of proceedings on the petition and orders made on which the objection to the jurisdiction was founded are given in the above head-note and in the judgment overruling it.

The court ordered the question of jurisdiction to be first argued and the hearing on the merits, if necessary, to take place at a later date.

Belcourt K.C. and *Roy K.C.* for the appellant.

Bisaillon K.C. for the respondent.

The judgment of the court was delivered by:

THE CHIEF JUSTICE.—The appeal in this case is from a judgment of the Election Court at Montreal ren-

dered on the 22nd of December last by which the election of the appellant, as member of the House of Commons for the electoral district of St. James was annulled and he was disqualified by reason of corrupt practices committed by and with his knowledge and consent.

The appellant's contentions are, 1o. That because the trial had not been proceeded with within six months after the filing of the petition as enacted by sect. 32 of the Controverted Elections Act, the Election Court had no jurisdiction in the case on the 4th of December, when the trial began.

2o. That there is error in the judgment in finding him guilty of bribery, assuming that the Court had jurisdiction, and that the said judgment should be reversed so far as the finding on the personal charge is concerned.

3o. That the evidence did not even authorize the Election Court, assuming it had jurisdiction, to find against him on the charge of bribery by agents and that it should not have voided the election.

The first point is the only one upon which we have so far heard the parties, with the understanding that should it be determined against the appellant, the case will be heard later upon his other contentions.

The following are the material dates upon the question now to be determined as aforesaid.

The petition was filed on the 22nd of February 1902.

On the 27th of February the appellant filed preliminary objections which were dismissed by Mr. Justice Loranger on the 24th of April.

Appeal was taken from that judgment to the Supreme Court on the 2nd of May.

On the 22nd of May the respondent moved before Mr. Justice Robidoux that a day be fixed for the trial of the petition at the city of Montreal.

1903

ST. JAMES ELECTION CASE.

The Chief Justice.

The appellant opposed that motion on the ground that the record was before the Supreme Court at Ottawa. On the 28th of May Mr. Justice Robidoux refused to grant the respondent's said motion, and ordered that, considering that an appeal had been taken to the Supreme Court and that the record was then before that court, the trial be suspended until judgment on the said appeal. This order would seem not to have been authorized by the statute. As the court or judge who had rendered the judgment dismissing the preliminary objections had not then ordered, as provided for by sec. 50 of the Act, that the proceedings be stayed or the trial be delayed by the appeal from the judgment upon the preliminary objections, the learned judge should perhaps have granted the respondent's motion. It must be noticed, however, that it was upon the appellant's objection that the respondent's said motion was refused.

A few days afterwards. on the 31st of May, the respondent, seeing that Mr. Justice Robidoux had so refused his application for fixing a day for the trial, and aware of the fact that the learned judge's order postponing the trial until after the Supreme Court's judgment, was open to the objection that such an order could have been legally given but by the judge who had rendered the judgment upon the preliminary objections, presented a petition to Mr. Justice Loranger, who had, as aforesaid, rendered the judgment on the preliminary objections, asking him to order that the commencement of the trial be adjourned to the thirtieth of the juridical days to follow the judgment of the Supreme Court on the appellant's appeal.

This petition was granted on the same day.

On the 10th of October, 1902, the Supreme Court gave judgment dismissing the appeal.

The 17th of November, it is admitted by both parties, was the thirtieth juridical day after that judgment upon which the trial should have taken place according to the above order of Mr. Justice Loranger of the 31st of May.

On the 14th of November the appellant moved before Mr. Justice Lavergne to set aside that judgment of Mr. Justice Loranger, so fixing the trial for the 17th of November, and to have the petition declared lapsed because the respondent had not proceeded with the trial within the six months of the filing of the said petition.

On the 17th of November Mr. Justice Lavergne dismissed the appellant's motion to have the petition declared lapsed, but held that the trial could not take place on that day because Mr. Justice Loranger had adjourned the trial without fixing a day for it and without ordering the place at which such trial should take place.

On the same day, upon the respondent's motion, Mr. Justice Lavergne ordered that the trial of the petition be fixed for the 4th of December then next in the Court House at the city of Montreal, and on the said last mentioned day the trial was accordingly begun, the court dismissing the appellant's renewed contention that the petition had lapsed, and on the 22nd of December judgment was given unseating the appellant and declaring him personally guilty of corrupt practices. As I have mentioned before, the only point we have to determine upon the present appeal is whether or not the Election Court had jurisdiction to try the merits of the petition on the 4th of December last.

In my opinion the appeal should be dismissed. The case is a simple one.

1903

ST. JAMES ELECTION CASE.

The Chief Justice.

Reading out of the record Mr. Justice Robidoux's order of the 28th of May, as immaterial and of no possible bearing on the case, the petition having been filed on the 22nd of February, only three months and nine days had elapsed thereafter when, on the 31st of May, Mr. Justice Loranger adjourned the trial till the thirtieth juridical day after the judgment of the Supreme Court. Now, that order clearly fixed that thirtieth juridical day as the day upon which the trial was to take place. The appellant's contention that to adjourn a trial to a certain date was, under the circumstances, not to appoint a day for the trial, cannot be taken seriously. I would say the same of his contention that the order did not operate as a stay of the proceedings or did not delay the trial under sec. 50 of the Act, or that the order was illegal because it did not fix a place for the trial. The appellant had, under sec. 13 of the Act, himself the right to apply for an order to that effect. Now, it follows that on the 10th of October, when the Supreme Court rendered its judgment on the appeal from the judgment upon the preliminary objections, only three months and nine days could be counted out of the six months from the date of the filing of the petition, leaving two months and twenty-one days to complete the six months. And the trial began on the 4th of December, less than two months after the judgment of the Supreme Court.

If, as the appellant would contend, the order of Mr. Justice Loranger cannot be considered as fixing a day for the trial, it certainly operated as a stay of the proceedings until the 17th of November, or at least until the 10th of October, and Mr. Justice Lavergne could then, as he did, on the 17th of November, fix the date and place of trial for the 4th of December. Not counting the delay between Mr. Justice Loranger's order of the 31st of May, and the judgment of the Supreme

Court on the 10th of October, Mr. Justice Lavergne's order and the date fixed by him for the trial were clearly within six months from the filing of the petition.

The appellant's contentions are therefore clearly unfounded.

The only appeal before us, I may remark, is from the final judgment. That is the only one allowed by the statute.

The appellant principally relied upon the *Glengarry Election Case* (1). The law of that case can certainly not now be questioned. Their Lordships in the Privy Council, upon an application for leave to appeal (2), said, in refusing the application:

> There can be no other case till fresh elections take place; and if the decisions now given have really misinterpreted the mind of the legislature, and are calculated to establish rules of procedure less convenient than those intended, the legislature can at once set the matter right.

Now the fact that Parliament has not, during the fifteen years since our decision in that case was rendered, legislated on the points there in controversy, is equivalent to a declaration that we had not thereby misinterpreted the mind of the legislature. But that case has no application whatever where, as here, there is a stay of proceedings ordered upon an appeal to the Supreme Court, which was not the case there. None of the parties have it then in their power to have a day fixed for the trial; and the rule *contra non valentem agere non currit prescriptio* must be given full application. The case may be ten, twelve or more months before the Supreme Court, and it is impossible then to give to sec. 32 of the Act the strict construction that the appellant contends for. It was he who now would have the petition dismissed because

(1) 14 Can. S. C. R. 453. (2) 59 L. T. 279.

1903

ST. JAMES ELECTION CASE.

The Chief Justice.

the respondent did not proceed to trial within six months after the filing of the petition who objected to the respondent's first application to fix a day and actually succeeded in having the trial postponed. And he now asks that the petition against him be dismissed because the respondent did not proceed diligently enough for him. This does not affect directly the merit of this appeal, but I cannot help saying that, under these circumstances, I am not sorry to have to dismiss it.

On this branch of the case the appeal is dismissed with costs.

On a subsequent day the appeal was heard on the merits.

Aylesworth K.C. and *Belcourt K.C* for the appellant.

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

THE CHIEF JUSTICE.—Upon the appeal as to the personal charges the court is equally divided so that the appeal is dismissed with costs. The registrar will make the report required to the Honourable the Speaker of the House of Commons. Under the circumstances no opinion is possible as the opinion of the court, and individual opinions are inexpedient, especially in a case where there is no possibility of any further appeal.

Appeal dismissed with costs.

Solicitors for the appellant: *Roy, Roy & Sénécal.*

Solicitors for the respondent: *Bisaillon & Brossard.*