CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF BEAUHARNOIS.

1902

*Feb. 18,20.

GEORGE M. LOY (RESPONDENT)..... APPELLANT;

AND

JOSEPH EMERY POIRIER (PETITIONER) ..... RESPONDENT.

ON APPEAL FROM THE JUDGMENT OF BELANGER AND PAGNUELO JJ.

Controverted election—Trial of petition—Extension of time—Appeal—Jurisdiction.

On 25th May, 1901, an order was made by Mr. Justice Belanger for the trial of the petitition against the appellant's return as a member of the House of Commons for Beauharnois thirty days after judgment should be given by the Supreme Court on an appeal then pending from the decision on preliminary objections to the petition. Such judgment was given on 29th October and on 19th November, on application of the petitioner for instructions, another order was made by the said judge which decided that juridical days only should be counted in computing the said thirty days, stating that such was the meaning of the order of 25th May, and that 6th December would be the date of trial. On the petition coming on for trial on 6th December appellant moved for peremption on the ground that the six months limit for hearing had expired. The motion was refused and on the merits the election was declared void. On appeal to the Supreme Court.

Held, Davies J. dissenting, that an appeal would not lie from the order of 19th November; that the judge had power to make such order, and its effect was to extend the time for trial to 6th December, and the order for peremption was, therefore, rightly refused.

APPEAL from the judgment of Mr. Justice Belanger and Mr. Justice Pagnuelo sitting for the trial of a

*PRESENT:—Sir Henry Strong C.J. and Sedgewick, Girouard, Davies and Mills JJ.

1902

BEAUHARNOIS ELECTION CASE.

petition against the return of the appellant as a member of the House of Commons for the electoral district of Beauharnois, who on admission by the appellant of the commission of corrupt acts by his agent set aside the return and declared the election void and the seat vacant.

The facts are sufficiently stated in the above headnote and in the judgments given in this appeal.

Béïque K.C. and *Brossoit K.C.* for the appellant.

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

THE CHIEF JUSTICE (oral).—The majority of the court are of opinion that this appeal should be dismissed. In so far as it is an appeal from the order of the 18th of November, 1901, we have no jurisdiction to entertain it. It appears that an order was made on May 25th last providing that the trial of this election petition should take place thirty days after judgment was given in an appeal then pending in this court from the decision on preliminary objections to the petition. Judgment was pronounced in such appeal on October 29. Application was then made to Mr. Justice Belanger, the judge of the Superior Court at Beauharnois, who had made the before mentioned order of May 25, asking him to explain whether or not non-juridical days should be taken into consideration, or whether the usual computation should be applied according to which, as provided by the Interpretation Act, first and last days of any delay if non-juridical are not counted but intervening non-juridical days are counted. Mr. Justice Belanger on November 18, made an order explaining his previous order of May 25, by which he directed that all non-juridical days should be rejected in computing the thirty days from October 29, when the judgment of this court

was given on the appeal from the decision on the preliminary objections. This order it appears to us Mr. Justice Belanger had power to make, and at all events his decision was not one from which the statute gives an appeal to this court. It is provided by the Controverted Elections Act that every election petition shall be brought to trial within six months from the date of the polling. December 6 was fixed by Mr. Justice Belanger as the day for the trial of this petition. That date was beyond the six months so fixed by the Act, but the effect of the order of November 18 was to enlarge the time of trial to the day on which the trial was actually proceeded with.

Therefore upon the ground that the order made by Mr. Justice Belanger of November 18 is not susceptible of appeal to this court as it is neither an appeal from a judgment on preliminary objections nor from a judgment on the trial of the merits of the petition; and on the ground that by the order of the 18th of November the trial was fixed for December 6 by the judge who had power to make such an order; and also for the reason that the motion for peremption made to the trial judges was properly dismissed, and that the judgment on the trial on the merits proceeding on an admission by the sitting member of corrupt acts by agents was right; the appeal is dismissed with costs.

SEDGEWICK, GIROUARD and MILLS JJ. concurred.

DAVIES J. (dissenting).—In my opinion this appeal should be allowed on the ground that the trial took place after the expiration of the six months within which the statute declares the trial of every election petition shall be commenced, and there had not been any enlargement of the time as provided for in its 33rd section.

1902

BEAUHARNOIS ELECTION CASE.

Davies J.

Objection was taken to our jurisdiction to hear the appeal, but I think the objection baseless. This court has already decided in the *Glengarry Election Case* (1), that the decision of a judge at the trial of an election petition overruling an objection taken by respondent to the jurisdiction of the judge to go on with the trial on the ground that more than six months had elapsed since the date of the presentation of the petition, is appealable to this court.

That determines the right of appeal here. At the opening of the election court on the 6th December, respondent's counsel moved for peremption of the election petition on the ground that the six months had elapsed and that there had been no enlargement of the time. The court dismissed the motion and proceeded with the trial. There is no dispute as to the fact that on the 6th day of December more than six months had elapsed from the time of the filing of the petition. The only question is whether there had been an enlargement of the time so as to embrace this date, 6th December.

The respondent had fyled preliminary objections to the election petition which were dismissed by the Superior Court in April, 1901. From this judgment he appealed to the Supreme Court of Canada which subsequently dismissed the appeal.

On 22nd May, 1901, after the taking of said appeal to the Supreme Court, the trial of the petition was fixed for the *10th of June*, 1901.

On the 25th day of May, 1901, the appellant presented a motion to the Superior Court alleging that the said appeal had been taken and that it was in the interest of justice that all proceedings in the case should be suspended till after the judgment of the Supreme Court thereon and praying that the com-

(1) 14 Can. S. C. R. 453.

mencement of the trial be continued from the 10th day of June, 1901, to the 30th day after the judgment to be rendered by the Supreme Court, etc.,

au 30e jour après le jugement à être rendu par la Cour Suprême, etc.

The court granted the motion in the following words:

Accorde la dite motion, dépens réservés, et en conséquence ajourne le commencement de l'instruction (trial) de la pétition d'élection en cette cause qui a été fixée au dixième jour de juin prochain, au trentième jour juridique après le jugement à être rendu par la Cour Suprême du Canada, sur l'appel interjeté du jugement rendu par cette Cour le 27 avril dernier, renvoyant les objections préliminaires du défendeur.

(Grants the said motion, costs reserved, and consequently adjourns the beginning of the trial of the election petition in this case which was fixed for the 10th day of June next to the 30th juridical day after the judgment to be rendered by the Supreme Court of Canada, on the appeal taken from the judgment rendered by this court on the 27th April last, dismissing the defendant's preliminary objections.)

The meaning of this order or judgment for the enlargement of the trial is perfectly clear and I understand this court is unanimous in holding that it extends the time till the 29th day of November, that being the 30th juridical day after the judgment of the Supreme Court dismissing the appeal on the preliminary objections was given.

The 30th juridical day meant and could only mean the 30th day after the judgment on which the trial court could legally sit. About this there is no difference of opinion in this court.

On 18th November, 1901, respondent (Poirier) moved the Superior Court suggesting that doubts had arisen as to whether the words, "30e jour juridique après le jugement à être rendu par la Cour Suprême" contained in the judgment of 25th May, 1901, meant the 29th day of November or the 6th day of December, and asking for an interpretation of said judgment on said point.

1902

BEAUHARNOIS ELECTION CASE.

Davies J.

The motion was disposed of as follows:

Considering that the court in rendering the said judgment of the 25th of May, 1901, meant that the twenty-nine intermediate days between the pronouncing of the judgment of the Supreme Court and the 30th juridical day fixed for beginning the trial in this cause should be juridical days, that is to say that to arrive at the 30th juridical day after the judgment of the Supreme Court, all the non-juridical days must be eliminated; that it results from this operation, that the 30th juridical day after the judgment of the Supreme Court falls upon and in fact is the 6th of December next; and the court declares that such was its intention in fixing as above the 30th juridical day for the commencement of said proceeding, grants the said motion, costs reserved.

Appellant fyled an exception to this judgment, and at the trial, on December 6, made a motion for peremption on the ground that the trial day, (the 29th November, 1901) having passed the proceedings lapsed, which was dismissed on the ground that the judgment of the 25th of May, 1901, was susceptible of the interpretation put upon it by the judgment of the 18th of November, 1901, and that said interpretation is final.

The substantive question of this appeal is whether this judgment of the trial court was correct or whether the Superior Court by its interpretation judgment of the 18th November, 1901, had further extended the time till the 6th December.

The first branch of the question I do not think open to argument. The order postponed the trial to a day which meant the 29th November and not the 6th December. As to the interpretation judgment, I think it is perfectly clear that it was not intended to enlarge and did not enlarge the time fixed by the previous order. It merely declared what was in the judge's mind when he gave the judgment, but which was something entirely different from what the order or judgment declared. This motion of the 18th November did not purport to be an application for an enlargement of the time under 33rd section of The Contro-

verted Elections Act. It was not made upon affidavit as the section requires. There was nothing in the language of the statute to make it appear to the court or judge that the requirements of justice rendered such enlargement necessary.

All that the judge did or pretended to do upon that occasion was to declare that in rendering the judgment of the 29th May, 1901, the court meant that, in counting the twenty-nine intermediate days;

all the non juridical days must be eliminated, and, that it results from this operation that the 30th juridical day fell on the 6th December, and that such was its intention when it made the first order.

But this interpretation judgment as I have said so far as it pretends to interpret the previous order is clearly wrong. The 30th juridical day did not fall on the 6th December but on the 29th November, and a wrong interpretation cannot alter its legal meaning.

By the express words of the statute the trial of every election petition must be commenced within six months from the presentation of the petition. Under certain defined conditions the time occupied by a session of Parliament intervening may not be counted. If the interests of justice require it a judge may enlarge the time for the commencement of the trial on an application supported by affidavit. But such an enlargement must be actually made and not simply exist in the judge's mind. Whether it has been made or not must be determined by the words and language of the order or judgment given on the application. If any proper application had been made in this case to enlarge the time to the 6th December, and any language had been used in the judgment or order which could possibly be construed so to enlarge it I should be glad under the circumstances to give them full effect, and think we should be astute to find them if possible. But as no such application was made and

1902

BEAU-HARNOIS ELECTION CASE.

Davies J.

no such enlargement was granted or as it seems to me intended to be granted, I feel myself bound to hold that all the trial proceedings were *ultra vires* and that the appeal should be allowed.

Appeal dismissed with cost.

Solicitor for the appellant: *Thos. Brossoit.*

Solicitor for the respondent: *J. G. Laurendeau.*