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*June 9.

*Nov. 10.

CONTROVERTED ELECTION OF THE COUNTY OF MONTMORENCY.

P. V. VALIN.....APPELLANT ;

AND

J. LANGLOISRESPONDENT.

*The Dominion Controverted Elections Act, 1874—Sec. 8, sub-sec. 2—
Cross-petition, delay for presenting.*

V. (the appellant), the sitting member, against whom an election petition had been fyled by L. (the respondent), an unsuccessful candidate, presented a cross-petition under the 8th sec., sub-sec. 2, of the *Dominion Controverted Election Act, 1874*, alleging that L. was guilty, as well by himself as by his agents, with his knowledge and consent, of corrupt practices at the said election. This cross-petition was not fyled within thirty days after the publication in the *Canada Gazette* of the return to the writ of election by the Clerk of the Crown in Chancery, but within the delay mentioned in the last part of said sub-sec. 2, sec. 8, viz.: fifteen days after the service of the petition upon V., complaining of his election and return.

The cross-petition was met by a preliminary objection, maintained by *Meredith, C. J.*, alleging that it was fyled too late.

Held, on appeal, that the sitting member cannot file a cross-petition, within the delay of fifteen days mentioned in the last part of said sub-sec. 2 of sec. 8, against a person who was a candidate and is a petitioner.

Per *Fournier, Taschereau and Gwynne, J.J.*, that the said extra delay of fifteen days is given only when a petition has been filed against the sitting member, alleging corrupt practices after the return. (*Henry, J.*, dissenting.)

APPEAL from the judgment of *Meredith, C. J.*, of the Superior Court for the Province of *Quebec*, main-

*PRESENT: — *Ritchie, C. J.*, and *Strong, Fournier, Henry, Taschereau and Gwynne, J.J.*

taining the preliminary objections to the cross-petition of the appellant. The appellant (the sitting member), in his cross-petition, alleged that the respondent, the petitioner against him, was a candidate at the same election, and was guilty, as well by himself as by his agents, with his knowledge and consent, of corrupt practices at the said election.

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The cross-petition was not served within the thirty days mentioned at the beginning of sub-sec. 2 of sec. 8 of the *Dominion Controverted Elections Act*, 1874, hereinafter given at length in the judgment of his Lordship the Chief Justice, but was served within the fifteen days mentioned towards the end of the same sub-section.

Mr. *Pelletier*, Q. C., for appellant, contended that the delay of fifteen days for presenting a cross petition expired only fifteen days after the day of the service of the petition on the sitting member.

Mr. *Langlois*, Q. C., *contra*, contended that the fifteen days allowed by sub. sec. 2 of sec. 8, was an extra delay allowed only when the petition alleged corrupt practices *after the return*, and the cross-petition in this case was "an election petition" coming within the general rule in sec. 8, as to the delay of 30 days.

THE CHIEF JUSTICE:—

This was an appeal from the decision of Chief Justice *Meredith*, on the preliminary objections, rejecting the cross-petition of sitting member.

By the *Dominion Controverted Elections Act*, 1874, 37 *Vic.*, c. 10, sub. sec. 2 of sec. 8, it is provided that:

The petition must be presented not later than thirty days after the day of publication in the *Canada Gazette* of the receipt of the return to the writ of election by the Clerk of the Crown in Chancery; unless it questions the return or election upon an allegation of corrupt practices, and specifically alleges a payment of money or other

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act of bribery to have been committed by any member, or on his account, or with his privity, since the time of such return, in pursuance, or in furtherance of such corrupt practice, in which case the petition may be presented at any time within thirty days after the date of such payment or act so committed; and in case any such petition is presented, the sitting member, whose election and return is petitioned against may, not later than fifteen days after service of such petition against his election and return, file a petition complaining of any unlawful and corrupt act by any candidate at the same election, who was not returned and *who is not a petitioner*, and on whose behalf the seat is not claimed.

The sitting member seeks to file a cross-petition within these fifteen days against a person who was a candidate, but who is a petitioner, complaining of unlawful and corrupt acts by such candidate. This is in direct opposition to the statute, which provides that the sitting member can only file *such* a petition against a candidate "who," *inter alia*, "is not a petitioner." I think, therefore, on this ground alone, without expressing any opinion on the other point raised, that the learned Chief Justice was right in allowing the preliminary objection; and that this appeal should be quashed, with costs.

STRONG, J., gave an oral judgment, stating his reasons for holding that the judgment of the Court below should be affirmed.

FOURNIER, J.:—

For the reasons given by the learned Chief Justice *Meredith* of the Court below, I am of opinion that the preliminary objections should be maintained, and this appeal dismissed with costs.

HENRY, J.:—

The petitioner in this case is the sitting member for the County of *Montmorency*, in the Province of *Quebec*, and against his return a petition had been presented by

the respondent, and was in process of trial when the appellant's petition was served and filed. In the respondent's petition the seat was not claimed.

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The latter clause of sub-section 2 of sec. 8 of the *Controverted Election Act*, 1874, in reference to the filing of a counter petition, is as follows: "And in case any such petition" (meaning the petition against the return of the sitting member) "is presented, the sitting member, whose election and return is petitioned against, may, not later than fifteen days after the service of such petition against his election and return, file a petition complaining of any unlawful and corrupt act by any candidate at the same election who was not returned, and who is not a petitioner, and on whose behalf the seat is not claimed."

Without that provision no such petition could be legally filed; and, as by the provision of the clause, the right to file it is contingent and conditional on its being done not later than fifteen days after the service of the petition against the return, the right to file it ceases by the effluxion of that time. The appellant's petition was filed before the expiration of the fifteen days; and an objection to it is taken, on the ground that it should have been filed within thirty days, as prescribed by the opening clause of that section.

A right to present a petition against a candidate who has not been returned for any unlawful act, "by which he is alleged to have become disqualified to sit in the House of Commons, at any election held after the passing of this Act," is given by section seven; but the time at which, and under what circumstances, is not there given or stated. The time for presenting a petition against the return of a member is limited in sub-section two to thirty days.

No evidence of corrupt practices at an election can be received on the trial of a petition complaining of an

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undue election and return, unless the seat be claimed by or on behalf of another candidate—either by statute or common law; but when the seat is claimed, recriminatory evidence may, under both, be given to prevent a candidate guilty of corrupt practices from obtaining the seat, and to disqualify him subsequently. Section 66 makes the statutable provision for such evidence.

Parliament has, however, gone further, and in subsection 2, after limiting the time for the presentation of the election petition to 30 days after the publication of the receipt of the return to the election writ, and providing for an allegation of corrupt practices, specifically alleging payment by a member after the return in pursuance of such corrupt practices, and limiting the time for the presentation of a petition in such a case to 30 days after the date of such payment, is found a provision as follows:—

And in case any such petition is presented, the sitting member, whose election and return is petitioned against, may, not later than fifteen days after service of such petition against his election and return, file a petition complaining of any unlawful and corrupt act by any candidate at the same election who was not returned, and who is not a petitioner, and on whose behalf the seat is not claimed.

It is necessary, in view of the decision appealed against, which dismissed the petition that we should construe this latter clause; for it is upon that construction the parties rely, and upon which our judgment should be based. I differ with the learned Chief Justice of the Superior Court of *Quebec*, who limited the operation of this clause to the case of bribery by a payment after the return. I am of opinion that the true construction of the section can be obtained only by reading that clause parenthetically as a provision for a petition in a case not otherwise provided for, and allowing merely a further time for the presentation of it. The section first limits the time for the presentation of an ordinary election petition, but to meet a specific offence extends that

time. The petition in both cases is against the election and return; but the provision for the specific offence allows a further time for its presentation.

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The concluding clause of the section must, in my opinion, include both cases, that in the case of an ordinary election as well as that in the case specially provided for. The latter clause of the section commences thus: "And in case *any* such petition is presented, the sitting member, whose election and return is petitioned against, may, &c."

We must construe any doubtful words in a clause, not only by the section in which they are found, but by the whole Act, and its obvious scope and meaning. What do, then, the words "*any* such petition against a sitting member" mean? Clearly, to my mind, *any* petition against the election and return of a sitting member. Why should a sitting member, petitioned against for the specific offence, have the right to initiate a proceeding to disqualify another candidate that a party petitioned against independently of it should not have or exercise? Or why should a candidate guilty of corrupt practices escape merely because the petition against the sitting member is not for bribery by payment after the return? The object of the legislation was to disqualify an unsuccessful candidate guilty of corrupt practices at an election, and that object would fail to be carried out in any but an exceptional and rare case, if I am wrong in my construction of the provision. I think the object of the legislation is patent on the face of the provision, and that the meaning and application of the terms used are abundantly plain and pointed to support my contention.

A difficulty of a more serious nature is, however, found in arriving at the proper construction of the last clause of the section as affecting at all the position of the respondent in this case, as well as in reference to the

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time in which the petition against him should have been presented, or what, indeed, is of much more consequence, whether the provision in it is at all applicable to the case of the respondent. If it be, then it appears to me quite plain, that the time limited is fifteen days after service of the petition against the sitting member. The peculiar wording of the clause being somewhat involved, there is some difficulty in ascertaining what is intended by it. The petition must be against "any candidate at the same election *who has not been returned, and who is not a petitioner, and on whose behalf the seat is not claimed.*" What we have to consider is, whether the clause contains *two* or *three* propositions. The first is the condition that the party petitioned against under it was a candidate, and not returned. That proposition is affirmatively settled, and the uncertainty arises as to the remaining provision. Had the respondent in this case *claimed* the seat, no counter-petition would have been necessary or permitted. What, then, did the legislature mean by the words "and who is not a petitioner, and on whose behalf the seat is not claimed." In construing them we must consider that in the absence of any petition claiming the seat, no enquiry could otherwise be had as to charges of corrupt practices against an unsuccessful candidate, and the provision in the clause was for the institution of an enquiry in cases where the seat was not claimed either in a petition of an unsuccessful candidate, or of others, against the election and return of a sitting member. The main object and intention of the clause, I take it, was to disqualify a candidate found guilty of corrupt practices at the same election, and I think we should construe a clause like this one, so as to give effect to the obvious intentions of the Legislature and not so as to defeat them. If, then, the mere fact of his being a petitioner would prevent any inquiry as to cor-

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rupt practices by him, which would not be the case if the election and return of the sitting member were petitioned against by others, a great anomaly would appear in the legislation on the subject, and all the guilty unsuccessful candidate would have to do to prevent inquiry would be to present a petition in his own name against the sitting member. If such a petition were presented by others, no one could contend that an inquiry could not be had into charges of corrupt practices against any unsuccessful candidate at the same election, and in that case why should the mere presentation of a petition against a sitting member by any such unsuccessful candidate shield him from an inquiry, by not claiming the seat, which would be legitimate if such a petition were presented by others. I cannot conclude that any such anomaly was intended, nor do I think a reasonable construction of the words will necessarily establish it. I think the words "and on whose behalf the seat is not claimed" are copulative, and, therefore, apply as well to a petitioner who does not claim the seat himself as to other petitioners, who do not claim the seat on his behalf. I think, for the reasons given, the clause may, and should, be read as if in these words: "and who is not a petitioner claiming the seat, or one on whose behalf the seat is claimed by others." The object in view is clearly to permit the presentation of the petition in any case where the seat is not claimed, and, in my opinion, it applies as forcibly to a case where the seat is not claimed by the petitioner on his own behalf, as well as where the seat is claimed on his behalf by others. The words "on whose behalf" would include the one case as well as the other.

For these reasons, I think, the petition against the respondent was provided for and covered by the clause in question, and that the limitation of time for presenting it was fifteen days from the service of the petition

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on the sitting member. I, consequently, am of opinion the judgment appealed from should be reversed and the appeal allowed with costs.

TASCHEREAU, J.:—

It seems to me that the judgment appealed from in this case is right. *Valin's* petition is against *Langlois*, the petitioner in first instance against him, *Valin*. And on referring to the latter part of sect. 8, sub-sect. 2, of the *Controverted Elections Act of 1874*, I see that the petition therein allowed to be presented after the usual delay of thirty days is a petition against a candidate *who is not a petitioner*. *Langlois* is a petitioner, so that this part of the clause does not sustain *Valin's* contentions. Then, it seems to me, that this enactment, allowing a petition to be presented after the thirty days mentioned in the first part of the clause, applies only to petitions based upon corrupt practices, or upon an illegal payment made since the return to the writ of election. A reference to the French version of the statute clears any doubt which the English version leaves in my mind upon this point.

I see that this enactment, allowing a sitting member to present in certain cases a petition after the usual 30 days against a candidate *not returned*, and *who is not a petitioner*, and *on whose behalf the seat is not claimed*, is not in the Imperial Statute, 31-32 *Vic.*, c. 125, sec. 6, sub-sc. 2. I fail to see why it has been introduced in our statute. It may lead to queer results. Now, in this case, for instance, even supposing that *Langlois* had petitioned after the usual 30 days against *Valin*, the sitting member, for acts committed by *Valin* since the return, *Valin*, as I read the statute, could not have petitioned within fifteen days after against *Langlois*; because *Langlois*

was a petitioner, and it is only against a candidate not returned, on whose behalf the seat is not claimed, and *who is not a petitioner*, that this counter petition is allowed. A counter petition, it seems to be, yet, it must not be against the first petitioner! Of course, I can understand that, if the seat is not claimed, the sitting member has no interest in contending that his adversary was guilty of corrupt practices, and that such contention could be no answer to the petition demanding the annulling of the election. But why allow to the sitting member a petition against his adversary, provided that such adversary is not a petitioner, is what I can't understand. Why, in this case, for instance, if the election was attacked for acts committed since the return, deny to *Valin* his right of petition against *Langlois*, because *Langlois* is the petitioner against him, and, if another person had been first petitioner instead of *Langlois*, grant to *Valin* the right to petition against *Langlois*? Why give it in one case and not in the other? *Langlois* does not claim the seat, and, in any case, when the seat is not claimed, this counter petition should not be allowed. It is not allowed in *England*, and, in my opinion, this new enactment in our statute might be advantageously stricken out. Any candidate, not returned, guilty of corrupt practices, may be sued for the penalties enacted by the Act, and if found guilty will be disqualified.

The respondent's motion to quash the appeal must, I think, be dismissed. The appeal, in this case, had been allowed and duly filed before the fifteenth of May last, when the *Supreme Court amendment Act* of last Session came into force, and, under the tenth section of the Act, the appeal lies.

GWYNNE, J. :—

I entirely concur in the judgment of the learned

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Chief Justice of the Superior Court in *Quebec* in this case. A petition, complaining of an undue return, may be presented within thirty days after the day of publication in the *Canada Gazette* of the receipt of the return of the writ of election. Such petition may be presented by a candidate, or by any person having had a right to vote at the election. So, likewise, within the same period, a petition complaining of any unlawful act by any candidate not returned, by which he is alleged to have become disqualified to sit in the House of Commons, may be presented by the returned candidate, or by any other candidate, or by any person having had the right to vote. If the petition is filed against the sitting member by another candidate, or by a person entitled to vote, and the seat is claimed for a candidate not returned, whether he be the petitioning candidate or not, then charges of corrupt acts, committed by the candidate for whom the seat is claimed, may be entered into upon the trial of the petition against the sitting member, without any cross-petition being filed by the sitting member ; but, if seat is not claimed for a candidate not returned, whether the petitioner be himself a candidate, or only a person entitled to have voted, no enquiry can take place as to any corrupt practices committed by a candidate not returned, unless a petition be filed charging corrupt practices against such candidate within the thirty days after the publication in the *Gazette* of the result of the election ; save only, that in case a petition be presented after the thirty days, as it may be, if it alleges a payment of money or other act of bribery to have been committed by any member or on his account, or with his privity, since the time of such return, in pursuance of corrupt practices, (in which case, the petition may be presented at any time within 30 days after the date of such payment, &c.) ; and, in that case, the

sitting member, whose return is petitioned against, may, within 15 days after service upon him of such petition, file a petition complaining of any corrupt practice committed by any candidate at the same election for whom the seat is not claimed, and who is not himself a petitioner.

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The object of this provision would seem to be to make provision that, when a friend of a candidate, who had been guilty of corrupt practices, should, under the circumstances stated, file a petition which might result in disqualifying the sitting member, the candidate, in whose interest the petition was filed, should, if guilty of corrupt practices, be himself also exposed to the same disqualification to become a candidate at the election to take place upon the removal of the sitting member. The petition of the sitting member here is against the person who is the petitioner against his return; and the present respondent was a defeated candidate, who filed his petition against the sitting member within the thirty days. He, therefore, is clearly not a person against whom, under this provision of the Act, a petition can be filed within fifteen days after service of the petition on the sitting member, unless it shall be also within the original thirty days after the publication in the Gazette.

Appeal dismissed with costs.

Solicitor for Appellant: *H. Cyrias Pelletier.*

Solicitor for Respondent: *Jean Langlois.*
