HENDERSON *et al*.....APPELLANTS; 1885

AND *Feb'y. 19.
*Mar. 16.

GEORGE GUILLET.....RESPONDENT.

ON APPEAL FROM THE JUDGMENT OF CAMERON, C.J., SITTING FOR THE TRIAL OF THE WEST NORTHUMBERLAND CONTROVERTED ELECTION CASE.

Wager by agent with voter—Bribery—Corrupt practice—Treating on polling day—Agency.

One *Pringle*, an acknowledged agent of the respondent, and the President of the Conservative Association whose candidate the respondent was, made a bet of $5 with one *Parker*, a Liberal, that he would vote against the Conservative party, and deposited with a stakeholder the $5, which, after the election, was paid over to *Parker*. At the trial, *Pringle* denied that he was actuated by any intention to influence the conduct of the voter, and alleged that the bet was made as a sporting bet, on the spur of the moment, and with the expectation that, as he said, *Parker* would warm up and vote; but he also admitted in evidence that it passed through his mind that some one on the voter's side would make the money good if he voted. *Parker* said he had formed the resolution not to vote before he made his bet,

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

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but the evidence showed that he did not think lightly of the sum which he was to receive for his not voting, his answer to one question put to him being: "Oh! I don't know that $5 would be an insult to any one not to vote."

Held (reversing the judgment of the Court below), That the bet in question was colorable bribery within the enactments of sub-sec. 1 of sec. 92 of the Dominion Elections Act, 1874, and a corrupt practice which avoided the election.

The acts complained of in the *Heenan-Beauvais* charge were also relied on as sufficient to have the election set aside. The facts of this charge were that *H.*, a Conservative, prior to the election, canvassed, in company with the respondent, one *B.* On election day *H.* was selected by the assistant secretary of the association (an acknowledged agent of the respondent) to represent the respondent at the *Burnley* poll, and obtained from him a certificate under s. 42 of the Dominion Elections Act, entitling him to vote at the *Burnley* poll. *H.* there met *B.* and treated him by giving him a glass of whiskey, and after *B.* had voted he gave him $2 and subsequently sent him $50. The treating, according to *B's.* evidence, was nothing more than an act of good fellowship; and according to *H's.* account, that *B.* was not feeling well, and the whiskey was given in consequence. *B.* negatived that the $2 were paid him for his vote, and *H.* said that he supposed it was a dollar bill and told *B.* to go and treat the boys with it, and that it was not given on account of any previous promise or for his having voted.

The Court *a quo* held that none of these acts constituted corrupt acts so as to avoid the election.

On appeal to the Supreme Court of *Canada*,

Held, per *Ritchie*, C.J. and *Henry* and *Taschereau*, JJ.—There was sufficient evidence of *H s.* agency, but it was not necessary to decide this point.

Per *Strong*, J.—There was no proof of *H's.* agency. Agency is not to be presumed from the fact that the respondent permitted *H.* to canvass *B.* in his presence, and there is an entire absence of proof of any sufficient authority to *H.* to bind the respondent by his acts at the polling place in the matters of the treating and the payment of the $2.

Per *Fournier*, J.—That the treating of *B.* on polling day, both before and after he had voted, by *H.*, an agent, and the giving of the sum of $2 immediately after he had voted, were corrupt acts sufficient to avoid the election.

APPEAL from the decision of the Hon. Chief Justice *Cameron* (1), dismissing with costs the petition against the election of respondent.

The petition contained the usual allegations, but at the close of the case petitioner's counsel relied upon two charges, which are contained in items 1, 2, 8 and 9 of the Bill of Particulars, viz. :—

"1. *Raphael Beauvais* was, on the 20th day of June, 1882, at the township of *Haldimand*, by *Thomas Heenan*, an agent of the respondent, treated, contrary to section 94 of the Dominion Elections Act of 1874, and promised the sum of $50, or other valuable consideration, to induce the said *Raphael Beauvais* to vote for the said respondent at the said election.

"2. The said *Raphael Beauvais*, at the time and place aforesaid, was, by the said *Thomas Heenan*, treated, contrary to section 94 of the Dominion Elections Act, 1874, and paid the sum of $2, on account of the said *Raphael Beauvais* having voted for the respondent at the said election.

"8. *John Parker* was, on or about the 17th day of June, 1882, paid the sum of $5, and treated, contrary to section 94 of the Dominion Elections Act of 1874, by *Robert Roderick Pringle*, an agent of the respondent, to induce the said *John Parker* to refrain from voting at the said election.

"9. *John Parker* was, on or about the 30th day of June, 1882, paid the sum of $5, or some other valuable consideration, by *Robert Roderick Pringle*, an agent of the respondent, on account of the said *John Parker* having refrained from voting at the said election."

The evidence relied on in support of the charges contained in paragraphs 8 and 9, known as the *Pringle-Parker* case, is reviewed in the judgments hereinafter given.

(1) 2 Rep. Elec. Cases, Ont., 82.

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As to the charges contained in paragraphs 1 and 2, known as the *Heenan Beauvais* case, it was proved that on polling day, before voting, one *Beauvais* was treated twice by one *Heenan*, and immediately after voting he was taken behind the school house, where the poll was held, and treated again and given $2, and a few weeks later *Heenan* gave him $50, but under the following circumstances:—*Heenan* was a strong conservative, and the respondent and *Heenan* together, had seen and canvassed *Beauvais* a few days previous to the polling, at *Donohoe's* hotel, on the morning after a meeting held there by respondent. On this occasion, one *Polkinghorne*, who acted as assistant-secretary of the association to which respondent entrusted the management of his election, obtained from the returning officer a certificate under section 42 of the Act, entitling *Heenan*, as an agent of respondent, to vote at the *Burnley* poll. *Heenan* went to *Burnley* the evening before the polling, and passed the night at *Donohoe's* hotel. He left early in the morning, and, when passing *Beauvais'* house, stopped to speak to him, and gave *Beauvais* a drink of whiskey from a flask or bottle. *Beauvais* in his evidence stated that *Heenan* asked him if he was going to the poll; he answered, he was. *Heenan* replied: "All right, I will see you there." They met at the poll, and *Heenan* "coaxed, and coaxed" him to vote on his side. *Beauvais* said it was not his side. *Heenan* then went into the polling booth and coming out again told *Beauvais* once in a while: "Vote with us, you won't be sorry for it; you won't be sorry for it." During this time he treated *Beauvais* again from his bottle. *Beauvais* at last said he would vote for respondent on two conditions: first, that he should get money for his vote, and second, that *Heenan* should keep the fact of how he voted a secret. *Heenan* agreed to the latter condition, and, as

to the first, he said, as *Beauvais* relates: "he could not do it, and he darsen't do it; because, he said, if he gave me something before I would go into the poll when the people was looking at me with him, he says, when you come to vote they might swear you, and it would not work." *Beauvais* then went in and voted. As he was coming out *Heenan* asked him how he had voted; he said, for respondent. *Heenan* replied that he was glad, and asked him to go around behind the school house, where he gave *Beauvais* another drink, and gave him a $2 bill, saying, "that will buy you whiskey coming home." *Beauvais* said the money was not given for his vote, and asked when he would see *Heenan* again. The latter answered that he would meet him in *Cobourg* in four or five weeks. He went to *Cobourg*, but was told there that *Heenan* had gone to his place. On going home he found that his wife had received a message from *Heenan* to meet him at *Warkworth* the next morning. He went there and met *Heenan*, who suggested his going to see his friends below *Montreal*, in order to get him out of the way. He said he could not afford it, and *Heenan* said, "we will lend you the money if you go away." They were at *McGraw's* tavern, and as *Beauvais* was leaving the table after dinner, the waitress, *Mary Ann Donohoe*, handed him an envelope with his name on the outside, and $50 inside. This, she stated, was handed to her by *Heenan* while *Beauvais* was at his dinner.

Beauvais was examined on the 7th of January, and, on account of *Heenan's* absence the trial was adjourned to the 2nd of May, when *Heenan* was examined. He stated that *Beauvais*, in the morning, complained that he "had a bad stomach," and that he gave him the first drink on that account, and told *Beauvais* that any farmer who would vote for the National Policy would not be sorry for it, and swore that he did not put forward

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any such excuse for the second drink he gave *Beauvais*, just before he got him to vote; but says, that as *Beauvais* was coming out of the poll after voting, he asked him if he felt better now, and *Beauvais* said his stomach was bad yet. He added that he neither directly or indirectly had any intention of influencing *Beauvais*.

The learned judge at the trial found that *Heenan* was an agent, but that the treating was not done with the object of corruptly influencing *Beauvais*, and that the money was not corruptly given, and also held that the bet in the *Pringle-Parker* case was not made with a corrupt intent.

Mr. *J. J. MacLaren*, Q.C., for appellants:

In addition to the authorities and cases reviewed in the judgments, the learned counsel referred to the following:—

Cooper v. *Slade* (1); the *Bradford* case (2); the *Carrickfergus* case (3); the *Jacques Cartier* case (4); *Montreal West* case (5); *Bellechasse* case (6); *North Ontario* case (charge 13) (7). Also to the *Bonaventure* case (8); under section 257 of the *Quebec* Election Act, which is identical with the second paragraph of sec. 94 of the Dominion Act.

As to the meaning of the word "wilful" in sec. 98 of the Dominion Elections Act, 1874. *Queen* v. *Prince* (9).

As to agency:—The *Harwick* case (10), and the *Westbury* case (11). As to the agency and extensive powers of the active and prominent members of such associations, and the responsibility of candidates for their acts, reference was made to the following cases: *Bewdley* case

(1) 25 L. J. Q. B. 329.
(2) 19 L. T. N. S. 724.
(3) 1 O'M. & H. 265.
(4) 2 Can. S. C. R. 262.
(5) 20 L. C. Jur. 23.
(6) 6 Q. L. Rep. 107.
(7) Hodgins, 792.
(8) 3 Q. L. Rep. 75.
(9) L. R. 2 C. C. 164.
(10) 3 O'M. & H. 70.
(11) 3 O'M. & H. 78.

(1); *Chester* case (2); *Gravesend* case (3); *Tewkesbury* case (4); *Wigan* case (5), where the substitution of the name of *Polkinghorne* for that of *Scott* would make almost every word said in that case equally applicable to the present one; the *Stroud* case (6); the *Durham* case (7); the 2nd *Taunton* case (8); the 1st *Taunton* case (9); the *Bewdley* case (10); the *Niagara* case (11); the *Cornwall* case (12); the *Charlevoix* case (13).

Mr. *Dalton McCarthy*, Q.C., for respondent:

On the betting charge, referred to the following cases and authorities:—*Cunningham* on Elections (14); *Mattinson* and *Macaskie* on Corrupt Practices at Elections (15); *Allen* v. *Hearn* (16); *Leigh and Le Marchant* (17); *Bushby's* Election Law (18); *Clerk's* Election Committees (19); the *Monmouth* case (20).

The *Youghall* case (21); the *Cashel* case (22).

See also the following cases:—*Salisbury* case (23); *South Norfolk* case (24); *Lincoln* case (25).

Agency—*Mattinson* (26); *Harwich* case (27).

Agency by working:—*Mattinson* (28); *Staleybridge* case (29).

But agent can only bind candidate within the scope of his authority:—*Mattinson* (30); *Westbury* case (31);

(1) 44 L. T. N. S. 283.
(2) 3 O'M. & H. 148.
(3) 44 L. T. N.S. 64.
(4) 44 L. T. N.S. 192.
(5) 4 O'M. & H. 7.
(6) 3 O'M. & H. 11.
(7) 2 O'M. & H. 136.
(8) 2 O'M. & H. 73-4.
(9) 1 O'M. & H. 184-85.
(10) 1 O'M. & H. 17-19.
(11) Hodgins, 574.
(12) Hodgins, 548.
(13) 5 Can. S. C. R. 146.
(14) 2nd ed. (1880) pp. 150-151.
(15) 1883, p. 34.
(16) 1. T. R. 56.
(17) 2nd ed. (1874), p. 19.
(18) 5th ed. p. 129.
(19) Pp. 81-82.
(20) Kn. & Omb. 416 (1835).
(21) Falc. & Fitz. 404, (1838.
(22) 1 O'M. & H. 289.
(23) 4 O'M. & H. 21.
(24) Hodgins, 666 & 667.
(25) Hodgins, 495.
(26) P. 108 L. J. Lush
(27) 3 O'M. & H. 69.
(28) P. 110.
(29) 20 L. T. N. S. 75.
(30) Pp. 106 & 107.
(31) 1 O'M. & H. 47; 20 L. T. N S. 17.

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Blackburn case (1); *North Norfolk* case (2); *Harwich* case (3); *Durham* case (4).

The mere fact of being in candidate's company does not make agency:—*Mattinson* (5); 1st *Salisbury* case (6); 2nd *Salisbury* case (7); *Harwich* case (8); *Shrewsbury* case (9).

Otherwise, if he is carrying it on:—1. In concert with the candidate's organization; or 2. If the candidate has full knowledge of his efforts, and approves and sanctions them.

Mere non-interference may or may not be sufficient:—1st *Taunton* case (10); 2nd *Taunton* case (11).

Agency ceases after election:—*Mattinson* (12); *Salford* case (13); *Southampton* case (14); *North Norfolk* case (15).

Then as to agency when there are other agents, or when candidate takes upon himself the canvass:—See *Harwich* case (16); *Mattinson* (17).

RITCHIE, C. J.:

This is an appeal from the decision of the Hon. Chief Justice *Cameron*, dismissing with costs the petition against the election of respondent.

The petition contained the usual allegations, but at the close of the case petitioner's counsel relied upon two charges, which are contained in items, 1, 2, 8 and 9 of the bill of particulars.

(1) 1 O'M. & H. 199; 20 L. T. N. S. 823.
(2) 1 O'M. & H. 236; 21 L. T. 264.
(3) 3 O'M. & H. 69; 44 L. T. N. S. 189.
(4) 2 O'M. & H. 134.
(5) Pp. 110 & 111.
(6) 3 O'M. & H. 130.
(7) 4 O'M. & H. 21.
(8) 3 O'M. & H. 69.
(9) 2 O'M. & H. 36.
(10) 1 O'M. & H. 181.
(11) 2 O'M. & H. 74.
(12) P. 123.
(13) 1 O'M. & H. 133; 19 L. T. N. S. 120.
(14) 1 O'M. & H. 222.
(15) 21 L. T. N. S. 270; 1 O'M. & H. 243.
(16) 3 O'M. & H. 69; 44 L. T. N. S. 189.
(17) P. 115.

Items 1 and 2 in effect charge that *Thomas Heenan*, an agent of respondent, on polling day, treated *Raphael Beauvais*, a voter, in order to induce him to vote, and on account of his being about to vote, and treated him, and gave him $2 on account of his having voted and promised him $50 or other valuable consideration.

The second charge under items 8 and 9 of the bill of particulars, relates to the bet of $5 made with *John Parker*, an elector, by *R. R. Pringle*, the President of the Conservative Association whose candidate respondent was. There is no question about *Pringle's* agency, and, as he himself says, for a month he did nothing else but look after the election, driving night and day throughout the riding, organizing committees, visiting them, getting reports, directing respondent where to hold meetings, where and whom to canvass, &c.

As to the charge against *Heenan*, in the view I take of the case, I do not think it necessary to refer to it, but were it important for the determination of the appeal, and it became necessary to decide the question of agency, I should hesitate before I differed from the learned judge, who, at the conclusion of his judgment, says :—

> If it were necessary in this case to decide whether *Heenan* was agent or not of the respondent, I should be inclined to hold that he was. I am quite sure from what appeared at the trial, the respondent would have been anxious to secure the influence and assistance of *Heenan*, and, I think, he was disposed to regard his presence with him in the neighborhood of *Burnley* as beneficial to his cause, and no direct request on his part to *Heenan* to canvass for him would have indicated to me that he accepted his services more distinctly than what did take place.

I think, however, that the second charge under items 8 and 9 of the bill of particulars, known as the *Pringle-Parker* case, must be fatal to this election. I think that whenever a wager is made in such a way as to influence a voter in determining for whom he will or will not vote, or in influencing him in refraining from voting, it

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is a corrupt practice, the necessary effect of the bet being to restrain the voter and influence him in determining whether he would vote or refrain from voting. The law requires the voter to be free till the last moment of giving or withholding his vote, which he cannot be, if he has laid such a wager as the present. The bet deprives the voter of free action, he becomes, as *Martin*, B., said in the *Bradford* case (1), a man incompetent to give a vote because he has not that freedom of will and of mind which the law contemplates a man ought to have for the purpose of voting.

In this very case the person who wagered with the voter puts forward as evidence that he made the bet under the idea that he would win it, because, though the voter had expressed an intention not to vote, knowing him to be a partizan of the opposite party, and who, if he did vote, would vote against the party for whom *Pringle* was acting as agent, though then at variance with his party, he would warm up and vote; but this shows, it seems to me, very strongly the impropriety of the bet, because the moment he warmed up and wished to vote he would find himself confronted with the loss of ten dollars before he could do so, and the voter very candidly admits that that amount might have an influence on his voting or refraining from voting, and I am by no means prepared to say it had not a direct influence on the voter in this case, and it is clear the wagerer, *Pringle*, thought it would influence him, for, though he says he thought he would vote and lose the wager, he thought he could be induced to do so by his party making up the money to him, so that there would be bribery on one side or the other.

The evidence of *Parker* is as follows:

Q. Now, did you make that bet with him so as to get this

(1) 19 L. T. N. S. 725.

money for not voting; had that anything to do with it? A. I did not intend to vote anyway.

Q. Had this bet anything at all to do with your not voting? A. I do not think it.

Q. And as far as you know, do you think Mr. *Pringle* had any notion that making this bet would prevent your voting? A. I don't know anything about that; you must judge that yourself.

Q. Did you think about it at the time? A. I did not think any thing about it at the time.

Q. You have just told us all that took place about it? A. I think so.

Q. You have kept your resolution and did not vote? A. Yes.

Q. And that is the story? A. Yes, sir.

Q. Would you have taken $5 to vote? A. No.

Q. Would you have taken $5 if you intended to vote to keep from voting? A. No.

Q. Would you have taken twice that? A. Oh? I don't know.

Q. What is your price? A. I have not got any price.

Q. At all events $5 is not your price? A. No.

Q. You would not have allowed a man to insult you by offering $5 not to vote? A. Oh; I don't know as $5 would be any insult to any person not to vote.

Q. You are not high strung? A. No; I am not.

I think in view of this evidence it is quite clear that this voter was not so high strung that a wager of money would not influence him, and it is also clear that Mr. *Pringle*, who made this bet, thought it would influence the voter, for though he says he thought the voter would vote and lose his money, he goes on to say this:

Q. You still thought he would vote notwithstanding what *Beatty* had said? A. Yes, and I thought it very likely he would not lose the $5.

Q. Why? A. I thought somebody else would make it good to him on his party side.

Q. You thought somebody on his side would very likely make good the $5? A. Yes.

Q. That passed through your mind? A. I don't know at that time it did; it was afterwards.

Q. When did it pass through your mind? A. I could not tell.

Q. But you remember that did pass through your mind some time, that somebody on his side would probably make it good if he voted? A. Yes.

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So that we find this man was placed in the position to either to lose his money, or the only terms upon which he could vote would be by his own side remunerating him for the loss he would be put to, and I think in view of the evident desire of the Legislature to secure the free and independent exercise of the elective franchise, to allow the candidates or their agents to engage in transactions such as these with voters with impunity would be to allow them to frustrate the spirit and letter of the law.

Even the decision of the learned judge who tried this case can hardly be said to be entirely opposed to the conclusion at which I have arrived for, he says:

> While I do not think I can properly hold the bet was made with the intention of inducing *Parker* to refrain from voting, it comes dangerously near leading to that conclusion. On the whole case, it seems to me that a decision for or against the validity of the election could not be said to be absolutely wrong.

I am of opinion to allow this appeal with costs.

STRONG, J.:

Two cases of alleged bribery by agents have been relied on by the appellant as affording grounds for avoiding the election. The facts disclosed by the evidence in relation to one of them, the *Pringle-Parker* case, already stated by the Chief Justice, are, in my opinion, such as to require us to allow the appeal and to set aside the election.

The learned judge who tried the petition came to the conclusion that any *primâ facie* presumption of a corrupt intent by *Pringle* in making the bet with *Parker* that he would vote at the election was sufficiently rebutted by the denial of the former that he was actuated by any intention to influence the conduct of the voter, and by the statement of *Parker* that he formed the resolution not to vote, and that he adhered

to and carried out this resolution unaffected by the wager proposed by *Pringle*, and the learned judge thought that this direct evidence of the parties concerned was confirmed by the surrounding circumstances. With every disposition to acquiesce in the finding of a judge for whose ability and experience I have so high a respect as the present Chief Justice of the Common Pleas, I am unable to agree in this conclusion.

When an acknowledged agent, as *Pringle* was, makes a bet of this kind against the interest of his own party in the election, one or the other of two inferences must be made; it must be assumed, either that he was so indifferent to the success of his own side that he was willing to make money by wagering against it, or that the bet was not made for the purpose of winning but with the view of losing it, and so in order to confirm the voter in his declared resolve not to vote, and thus under the guise of a wager to bribe him. It appears to me impossible to say in the face of the evidence that the first was the object which Mr. *Pringle* had in view. He was the respondent's chief agent, and, as he himself states, most indefatigable in the prosecution of the canvass, spending a considerable sum of money in legitimate expenses to carry the election, and devoting much time and labour to it, and I cannot suppose in the face of his own testimony that he really wished that *Parker* should vote, as he must have done, if he in truth made the bet to win.

If the bet was not made with the hope and desire of winning it, it must have been made with the intent that its decision, depending as it did upon the mere volition of *Parker*, should have the effect of making him adhere to his first determination not to vote. Such, I say, would be the *primâ facie* presumption from the mere fact that such a bet was made. Then is it suf-

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ficient to do away with such a presumption, that the parties to the wager, when examined as witnesses, state that they were mentally unconscious of any intention to treat the bet as an inducement not to vote, and by *Parker* stating that it had not such an effect? I am of opinion that such a denial of criminal intent cannot for a moment be permitted to outweigh the natural and obvious conclusion to be drawn from the act itself; all the principles which courts proceed on in acting on circumstantial evidence forbid it. The policy of the law in cases of bribery at elections is against such a mode of escaping from the effect of evidence like that before us; were we once to countenance the notion that an agent could safely make a bet of this kind with a voter, relying on his own statement on oath being afterward sufficient to enable him and his candidate to escape from the consequences of it, as an act of bribery, we should, in my opinion, be suggesting a form of corruption which would be almost universally resorted to.

I must also differ with the learned Chief Justice, when he says that the surrounding circumstances go to show that the bet was not made in order to induce *Parker* to refrain from voting.

It appears to me not to be sufficient to warrant this conclusion that *Parker* swears that he had resolved not to vote and that he was not conscious of any influence being exerted on him by the circumstances of the bet inducing him to adhere to his original determination. As *Buller*, J., says in *Allen* v. *Hearn* (1):

> The law leaves it to the voter to exercise his franchise or not, but it also requires him to be free till the last moment of giving or withholding his vote, which he cannot be if he has laid such a wager as the present.

(1) 1 T. R. 60.

As to the argument that the amount of the bet—$5—was so small that it cannot be supposed that it exercised any influence on the conduct of the voter, there is one answer at least, amongst several which may be suggested, which must be conclusive. It is found in the evidence of *Parker* himself, for being asked by counsel for the respondent: "You would not have allowed a man to insult you by offering $5 not to vote?" he answers: "Oh I don't know as $5 would be any insult to any person not to vote"—thus showing that he did not think so lightly of the sum which he was to receive in the event of his not voting, and of that which he was to lose in the event of his exercising his franchise as to consider it a mere nominal sum.

There is an absence of authority so far as decisions go on the effect of wagers of this kind. The case of *Allen* v. *Hearn* and several cases before election committees were cases in which the bets were not by a candidate or an agent but by a voter or non-voter with a voter, and were wagers on the event of the election and not on the voting or non-voting of a particular voter, and the question invariably arose on a scrutiny and did not affect the election but was confined to the single vote. Some of the text writers on election law do however allude to this question, and all who have treated of it unhesitatingly pronounce such a wager to be nothing else than colorable bribery. Thus *Cunningham* (1) says:—

> Hitherto we have only adverted to the effect of betting on individual votes. There may be cases where the whole election may be rendered void in consequence of a bet or bets, as when a candidate or agent bets with voters that he will not be returned. He by this evidently makes it their interest that he should be returned, and such a bet would doubtless be held by a judge to avoid the election, for it would be a mere cloak to render the real nature of the transaction less repulsive or probably to hide it from detection.

(1) 2 Ed. p. 152.

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Bushby, in his manual (1), is even more to the point; he says, in discussing the question of indirect bribery:

> Again, the offence may be committed under various colorable pretexts, as for instance, when a man offers to bet against his own side with a voter. The intention of the person making the offer would in such a case be presumed to be corrupt, and the bet, if taken, would, as regards him, be a bribe. Moreover, if the vote were given in accordance with the corrupter's intention, the voter also would be guilty of bribery, provided that he was aware of that intention.

Again, *Rogers* (2), in his treatise, is to the same effect, for he says:

> Cases might arise where a briber might effect his corrupt purpose by means of a wager with a voter by betting against his own party.

These quotations, though not of course of the same weight or value as judicial decisions, are yet amply sufficient to confirm me in the opinion which without their concurrence I should have arrived at and which I have already stated, that this election ought to be avoided in consequence of the bet in question and the subsequent payment of the amount of the stakes, as being colorable bribery within the enactments of subsec. 1 of sec. 92 of the Dominion Elections Act of 1874.

As regards the *Heenan-Beauvais* case, I am of opinion that there is no proof of *Heenan's* agency. The authorities referred to by Mr. *McCarthy* show conclusively that agency is not to be presumed from the fact that the respondent permitted *Heenan* to canvass *Beauvais* in his presence, and there is an entire absence of proof of any sufficient authority to *Heenan* to bind the respondent by his acts at the polling place in the matters of the treating and the payment of the $2.00.

The appellant should, I think, have the general costs of the election and of this appeal, and also all costs incidental to the *Pringle-Parker* case in which he suc-

(1) 5 Ed. p. 129. (2) 13 Ed. p. 372.

ceeds, but I consider the respondent entitled to the costs as well of the *Heenan-Beauvais* case, as of the other cases which were dismissed by the judge at the trial.

FOURNIER, J.:—

I am also in favor of allowing this appeal, not only on the ground that I consider the wager made and paid by *Pringle* to a voter to be an indirect bribe, but also on the ground that I consider the treating of *Beauvais* on polling day, both before and after he had voted, by *Heenan*, an agent, and the giving of the sum of $2 immediately after he voted, to be corrupt acts sufficient to avoid the election.

HENRY, J.:—

I consider the bet made by *Pringle*, under the circumstances in this case, no matter what his own views were, sufficient to avoid the election. It is a direct inducement not to vote—it is true in the shape of a bet—but it amounted to the same thing as if he handed him five dollars; in fact it was more, for if he voted he would lose $5. When a party does that, he, in my opinion, takes away from the voter that freedom which the law requires he should have up to the last moment. The policy of our election law being that every man should go to the poll free and uncontrolled by any influence whatever, and that the vote should be secret, anything that may interfere with his franchise in the shape of a gift, office, or emolument is an interference with the freedom of the party; and if that is done by the candidate or his acknowledged agent, I think it is under the law sufficient for avoiding the return.

In respect to the other case I express no opinion. I cannot say the evidence is insufficient to prove *Heenan's* agency. However, I have not given attention to that point, because I did not consider it necessary in the

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view I take of the other questions I have already spoken of. I think the appeal should be allowed with costs and the election avoided.

TASCHEREAU, J., concurred with RITCHIE, C.J.

Appeal allowed with costs.

Solicitor for appellants: *J. W. Kerr.*

Solicitor for respondent: *Henry F. Holland.*