
1884 FLAVIEN CHOLETTE APPELLANT ;
 *Oct. 28, 29
 & 30. AND
 1885 JAMES W. BAIN RESPONDENT.
 *Jan'y 12.

ON APPEAL FROM JOHNSON, J., SITTING FOR THE TRIAL OF
 THE SOULANGES CONTROVERTED ELECTION CASE.

Dominion Elections Act, 1874, Sec. 95—Intimidation—Undue influence—Conspiracy between Deputy Returning Officer and respondent's agent to interfere with franchise by marking ballots—Effect of—Election void.

In an election petition it was charged that the respondent personally, as well as acting by *C. A. C., D. P.* and others, his agents, did undertake and conspire to impede, prevent, and otherwise interfere with the free exercise of the franchise of certain voters, and that, in furtherance of a premeditated scheme which the respondent and his agents well knew to be illegal, they did, in fact, so impede, prevent, and interfere with the exercise of the franchise of certain voters, by getting their ballots marked, rendered identifiable, and consequently void, whereby the franchise of these voters was unjustifiably interfered with.

At a previous election the respondent had been defeated by a majority of three votes, and the election having been contested was set aside, and certain voters were reported by the judge as having been guilty of corrupt practices, but had not been found

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

guilty of such corrupt practices under section 104 of the Dominion Elections Act, 1874.

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At a public meeting before the election *C. A. C.*, the respondent's agent, to intimidate these persons and prevent them from voting, in a speech made by him, threatened them with punishment if they voted; and subsequently printed notices to the same effect were sent to these voters.

On the polling day *D. P.*, who had been appointed deputy returning officer, on the distinct understanding with, and promise made to, the returning officer that he would not mark the ballots of these voters, consulted with *C. A. C.*, and on his advice and in collusion with him marked the ballots of certain of these voters.

Held,—That the election was void by reason of the attempted intimidation practiced by *C. A. C.*, the respondent's agent; and by reason also of the conspiracy, between the said agent and the deputy returning officer, to interfere with the free exercise of the franchise of voters, violations of sec. 95 of the Dominion Elections Act, 1874, and corrupt practices under section 98 of the said Act.

APPEAL from the judgment of *Johnson, J.*, rendered on the 2nd of July, 1884, maintaining the respondent as the duly elected member of the House of Commons for the electoral district of *Soulanges*, and dismissing the petition of the appellant, with costs.

The respondent, *James W. Bain*, was returned for the electoral district of *Soulanges*, at an election for the Dominion House of Commons, held on the 20th and 27th December, 1883.

His election was contested by the appellant on the 8th February last by a petition in the usual form, as to corrupt practices, without claiming the seat. The respondent met the petition, 1st, by a denial of the petitioner's right to petition; 2nd, by a denial that any corrupt practices had been committed by himself, his agents and partisans.

On the 20th March, 1884, respondent's plea of want of quality on the part of the petitioner was rejected, and on the 2nd July, 1884, *Johnson, J.*, after the hear-

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ing of witnesses, rendered judgment, maintaining the election and dismissing the petition with costs.

On appeal to the Supreme Court of *Canada*, the question decided by the court was whether the facts upon which charge No. 96 of the petition was rested, constituted violations of section 95 of the Dominion Election Act, 1874.

The charge is as follows :

“ On or about the 26th December, 1883, before polling
 “ day and during said election, defendant personally and
 “ by his agents, specially by *Charles A. Cornellier*, advo-
 “ cate, of *Montreal*, and *Damien Prieur*, clerk, of *St.*
 “ *Zotique*, did contrive, frame and conclude a design to
 “ intimidate, stop and hinder in the free exercise of their
 “ electoral franchise the following persons, to wit :
 “ *Jean Baptiste Elie*, *Théodore Duval*, *Gabriel Leroux*,
 “ *Charles Châles*, *Isaie Fournier*, *Damase Fournier*, *Joseph*
 “ *A. Legris*, *Elie Baptiste Prieur*, *Joseph Pilon*, *Méné-*
 “ *zippe Cusson*, *Séraphin Bissonette*, *Théophile Sureau*,
 “ *dit Blondin*, and, by executing said design through the
 “ agency of defendant’s agent at the poll of *St. Zotique*,
 “ held by said *Damien Prieur*, did intimidate, stop and
 “ hinder in the free exercise of their electoral franchise
 “ the said above mentioned persons voting at said poll,
 “ to wit : *J. B. Elie*, *Gabriel Leroux*, *Théodore Duval*,
 “ *Charles Châles*, *Isaie Fournier*, and *Damase Fournier*,
 “ all of them electors of *St. Zotique*, against the instruc-
 “ tions and notifications of the returning officer, *A. M.*
 “ *Pharand*.”

The documentary and oral evidence relied on as proving the said charge, are reviewed at length in the judgments hereinafter given.

Mr. *Geoffrion*, Q. C., and Mr. *DeB. Monk*, for appellant.

The following authorities were cited and relied on as applicable to the facts of the case.

The *Kamouraska* case (1); the *Laval* case (2); the *Jacques Cartier* case (3); *Rouville* Election case (4); *Cunningham on Elections* (5); *Rogers on Elections* (6); *Gloucester* case (7); *Bothwell* Election case (8); Journals House of Commons (9).

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Mr. *Alderic Ouimet*, Q. C., and Mr. *Cornellier*, for respondent, relied on the following authorities :

North Durham (10); *Windsor* case (11); *Bradford* case (12); *Stafford* case (13); *Bolton* case (14); *Hackney* case (15); *Drogheda* case (16).

The remarks of Justice *Blackburn* in the *North Norfolk* case (17): "But, in order to bring a case within this section, it must be shown that the loss or damage inflicted or threatened is of a substantial nature. What may be called a mere precarious loss would not necessarily be sufficient." The *Verchères* Election case decided by Judge *Jetté* (18).

RITCHIE, C. J.:—

It was charged by particular 96 that the respondent personally as well as acting by Mr. *Cornellier*, by *Damein Prieur* and other persons unknown to the petitioner, did undertake and conspire to impede, prevent and otherwise interfere with the free exercise of the franchise of the following voters, to wit: *Joseph A. Legris*, *Joseph Pilon*, and *Elie B. Prieur*, of *Coteau Landing*, *Charles Châles*, *John Elie*, *Gabriel Leroux*, *Théodore Duval*, *Damase Fournier*, *Baptiste Fournier*, *Zotique Lalonde*, and others of *St. Zotique, Ménéssippe*

(1) 3 Q. L. R. 308.

(2) 7 Leg. News 186.

(3) 2 Can. S. C. R. 216.

(4) 2 Leg. News, 193, 194.

(5) Ed. 1880, p. 199, 494, 496, 603

(6) Ed. 1880, p. 404.

(7) 2 O'M. & H. 60.

(8) 8 Can. S. C. R. 676.

(9) (1884) Vol. 18, pp. 8, 12, 210.

(10) 2 O'M. & H. 156.

(11) 1 O'M. & H. 6.

(12) 1 O'M. & H. 40.

(13) 1 O'M. & H. 229, p. 234.

(14) 2 O'M. & H. 150.

(15) 2 O'M. & H. 85.

(16) 2 O'M. & H. 204.

(17) 1 O'M. & H. 241.

(18) Not reported.

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Cusson of St. Clot, and that, in furtherance of a premeditated scheme which they, respondent and his agents, well knew to be illegal, they did, in fact, so impede, prevent and interfere with the exercise of the franchise of certain electors, *Charles Châles, John Elie, Gabriel Lecoux, Théodore Duval, Damase Fournier, Baptiste Fournier, Zotique Lalonde*, all electors of the Parish of *St. Zotique*, by getting their ballots marked, rendered identifiable and consequently void, whereby the franchise of these voters was unjustifiably interfered with.

This is the only charge I think it necessary to discuss.

There is no controversy as to the facts upon which this charge was rested; the question submitted to this court is therefore not one of the interpretation to be given the evidence, as to which there is no conflict. It is a question of law, as to whether the facts constitute a violation of section 95 of our Dominion Elections Act.

There can be no doubt that *Cornellier* was not only the agent of the respondent, but the organizer of respondent's whole election. He gives this account of himself:

Q. Dès l'émanation du bref dont il est question en cette cause, vous vous êtes mis en rapport avec le défendeur, n'est-ce pas? R. Oui, monsieur.

Q. Ici ou à *Montréal*? R. Ici, à *Montréal*, partout où je l'ai rencontré, je me suis chargé de l'organisation et je l'ai faite.

Q. C'est vous qui vous êtes chargé de l'organisation, et c'est vous qui l'avez faite? R. Oui.

Q. Par conséquent, il s'est reposé sur vous par rapport à cette organisation-là? R. Je crois que oui.

Q. Vous avez agi en conséquence? R. Oui, monsieur.

Q. Etes-vous allé chez lui pendant l'élection? R. Très-souvent.

Q. Qu'entendez-vous par très-souvent? R. Plusieurs fois par semaine.

Q. Avez-vous séjourné chez lui? R. J'ai séjourné chez lui, j'ai couché chez lui, j'ai mangé, je me suis retiré chez lui en différents temps, lorsque j'étais dans la paroisse de *St. Polycarpe*, je me suis retiré chez monsieur *Bain*.

Q. Et il était entendu que vous deviez conduire l'élection? R. Il était entendu que je devais prendre une part active à l'élection.

It is equally clear that up to the time of his appointment as deputy returning officer, *Damien Prieur* had taken an active part in the election.

In his evidence he answers as follows :

Q. Avez-vous pris une part active à la dernière élection? R. Oui, monsieur, j'ai pris une part active à l'élection, jusqu'à ma nomination comme sous-officier rapporteur.

Q. En faveur du défendeur? R. Oui, monsieur.

Q. Vous avez toujours travaillé pour monsieur *Bain*, n'est-ce pas? R. Dans ses deux élections.

Q. Monsieur *Bain* le savait? R. Oui, il devait le savoir.

And he knew that at the previous election between the same parties in which he had worked for Mr. *Bain* which had been set aside, that the majority was only three votes :

Q. Etes-vous allé chez lui pendant l'élection? R. Non, monsieur.

Q. Est-il venu chez vous? R. Il est venu chez moi, c'est-à-dire, pas chez moi, mais chez mon père.

Q. Vous saviez que sa minorité à l'élection précédente avait été de trois voix? R. Oui, monsieur, il a eu d'abord deux voix et ensuite, après le décompte, il a eu trois voix.

His appointment, he being so unquestionably a partizan, was most imprudent on the part of the returning officer, if he was aware of it, (which I am happy to say does not appear to have been the case, but on the contrary he seems to have acted with great discretion and propriety,) and *Prieur's* acceptance most reprehensible, for judged by his previous partizanship, and communications with *Cornellier* in reference to these votes, and his subsequent conduct, it could only have been to enable him to use his office in conjunction with Mr. *Cornellier* in violating the law in the interest of the respondent.

Here is what he says :

Q. Avez-vous vu monsieur *Cornellier* pendant la dernière élection? R. Oui, monsieur, très souvent.

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Q. Très souvent ? R. Bien, c'est-à-dire très souvent, plusieurs fois.

Q. Chez vous ? R. Une couple de fois chez nous, deux ou trois fois, je n'ai pas remarqué toutes les fois que je l'ai vu ; chaque fois que je l'ai vu ; chaque fois qu'il est venu à *St. Zotique*, il est venu chez nous.

Q. Vous l'avez vu ailleurs, aussi ? R. Je l'ai vu chez mon beau-père.

Q. Qui cela ? R. Monsieur *Filiatrault*.

Q. Monsieur *Stanislas* ? R. Oui, monsieur.

Q. Vous a-t-il parlé avant l'élection de certains voteurs de *St. Zotique* qui ne devaient pas voter ? R. Personnellement, il ne m'en a pas parlé, mais il a dit chez monsieur *Filiatrault*, et partout où il a été, que certains voteurs n'avaient pas droit de vote, il a dit cela devant moi.

Q. Seul vous en a-t-il parlé à vous ? R. A moi personnellement, tout seul, non.

Q. Vous en a-t-il parlé à vous, soit seul ou avec d'autres ? R. Avec d'autres il m'a dit que ces gens-là n'avaient pas droit de vote, qu'ils étaient déqualifiés.

Q. Vous a-t-il parlé de la manière dont vous deviez prendre les objections aux votes de ces gens-là ? R. Il m'a dit qu'une objection serait filée.

Q. Bien, voulez-vous dire si monsieur *Cornellier* vous a parlé de certaines objections qu'il devait faire aux votes des électeurs qu'il prétendait être déqualifiés ? R. Je crois qu'il m'a parlé à propos de cela ; il m'a dit qu'il avait certaines objections à faire sur certains votes qui étaient connus comme déqualifiés dans le comté.

Q. Qu'est-ce qu'il vous a dit ? R. Il m'a dit que ces gens-là n'avaient pas droit de vote, qu'il prétendait que ces gens-la n'avaient pas droit de vote, qu'ils étaient disqualifiés par la loi.

Q. Est-ce tout ? R. Je crois que c'est tout..... Bien, le matin, il est venu chez nous.....

Q. Quel matin ? R. Le matin de la votation.

Q. Qu'est-ce qu'il vous a dit ? Qu'est-ce qu'il est allé faire chez vous ? R. Il m'a dit que j'avais parfaitement le droit de marquer les bulletins des gens qui étaient disqualifiés par la loi.

Q. Étiez-vous sous-officier-rapporteur ? R. Oui, monsieur.

Q. Au poll numéro huit ? R. Oui, monsieur.

Q. Et monsieur *Cornellier* est venu chez vous le matin même de la votation ? R. Monsieur *Cornellier* est venu chez nous le matin de la votation et il m'a dit que j'avais parfaitement le droit de marquer le bulletin des gens qui étaient déqualifiés par la loi, qu'il prétendait qu'ils étaient déqualifiés par la loi.

Q. Monsieur *Prieur*, que lui avez-vous dit alors ? R. Je lui ai dit :
 "C'est correct, si j'ai droit de le faire, je le ferai."

Q. Vous a-t-il montré ses objections ? R. Je les ai vues avant.

Q. Vous les avez vues avant la votation ? R. J'ai lu la nature des objections.

Q. Il vous les a montrées ? R. Oui.

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We find the returning officer distinctly and formally instructing his deputy as to his duty in respect to not marking the ballots, and intimating to him his unwillingness to appoint him if he was not satisfied to act as instructed. Here is what the returning officer says :

Q. Y avait-il de ces électeurs qui se trouvaient dans cette situation particulière à *St. Zotique* ? R. Oui, monsieur.

Q. Pouvez-vous dire qui ils étaient ? R. *Charles Châles, Gabriel Leroux, John Eliz*, je crois, et peut-être quelques autres ; je me rappelle que de ces trois-là.

Q. *Isaïe et Damase Fournier* ? R. Je ne pourrais pas jurer.

Q. Qui a agi comme votre député-officier-rapporteur au poll de *St. Zotique* ? R. *Olivier Damien Prieur*.

Q. Il était nommé par vous, n'est-ce pas ? R. Oui, monsieur, sa commission est du vingt-deux décembre dernier.

Q. Vous reconnaissez ici la commission en vertu de laquelle *Damien Prieur* agissait à ce poll-là ? R. Oui, monsieur.

Q. Cette commission est signée par vous ? R. Oui.

Q. Lui avez-vous donné des instructions requises par la loi ? R. Je lui ai donné des instructions imprimées et des instructions verbales.

Q. Il avait déjà agi comme sous-officier-rapporteur ? R. Deux fois.

Q. A-t-il eu la loi entre ses mains ? R. Oui, monsieur.

Q. Il est revenu vous trouver pendant l'élection, M. Pharand ? R. Il est venu chercher sa boîte le vingt-quatre décembre.

Q. Qui était présent ? R. Monsieur *Juaire*.

Q. C'est ce M. *Juaire* qui a agi comme votre sous-officier-rapporteur à la rivière *Beaudette*, n'est-ce pas ? R. Oui, monsieur.

Q. Voulez-vous dire ce qui s'est passé dans cette circonstance-là, quand il est venu chercher la boîte ? R. Quand il est venu chercher sa boîte, il est arrivé avec son livre ouvert, me disant qu'il avait des objections.

Q. Quel livre ouvert ? R. L'acte de la loi fédérale de mil huit cent soixante-quatorze, me disant qu'il y avait des objections filées contre les voteurs déqualifiés, et qu'il était décidé d'agir en vertu de l'article cinquante-six. Là, je lui ai fait comprendre que ceci ne se rapportait

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que lors du des bulletins du scrutin à la fin de la votation et je lui ai défendu formellement d'employer ce moyen-là, lui disant que les objections qui seraient faites, de les entrer au cahier de votation avec un numéro correspondant à celui de l'objection, et que par ce moyen, on verrait si ces électeurs-là avaient voté ou non, et que ce serait aux tribunaux à décider plus tard sur la légalité de leurs votes.

Q. Lui avez-vous dit qu'il fallait assermenter les voteurs et entrer les objections au cahier de votation? R. Je lui ai dit que le cahier de votation contenait la profession, la résidence, la qualité de propriétaire ou locataire enfin la qualification, et que s'il y avait des objections, d'entrer le mot "objecté" avec le numéro correspondant à celui des objections, et que si on demandait d'assermenter les voteurs, de les assermenter, et que s'ils refusaient de voter ou de jurer, qu'il devait entrer la question et la réponse, et que s'ils voulaient, qu'il devait tout consigner au cahier de votation.

Q. Lui avez-vous dit qu'il ne devait pas assermenter les bulletins de cette nature-là? R. Oui, monsieur.

Q. Le lui avez-vous dit formellement? R. Oui, monsieur.

Q. N'est-il pas vrai M. *Pharand*, que vous avez déclaré, là, que si *Damien Prieur* ne suivait pas vos instructions, que vous ne le nommeriez pas votre député? R. J'ai fait remarquer à M. *Prieur* que s'il ne voulait pas se conformer aux instructions que j'avais reçues, et que s'il ne voulait pas me dire qu'il était réellement convaincu que les instructions que je lui donnais étaient légales, que je préférerais ne pas lui donner la boîte, ne pas lui donner sa commission, et il est parti en disant qu'il était parfaitement convaincu que j'avais droit.

Q. Que vous aviez raison? R. Oui, monsieur.

Then we have the obtaining the appointment on the assurance to the returning officer that he was perfectly satisfied that the returning officer was right.

Notwithstanding all of which we find him immediately after, consulting with Mr. *Cornellier*, acting on his advice or instructions, and in direct opposition to and defiance of those of the returning officer, and marking and destroying the ballots, and complaint is made to the returning officer who writes a letter, (though strange to say under the circumstances he was prevented from giving the contents,) which evidently was forbidding his continuing the practice.

Prieur, in his examination, says what the letter contained; viz. :

Elle disait à peu près ceci: qu'il m'avait défendu de marquer les bulletins, de faire ces choses-là, et que si je les faisais, c'était à mes risques et périls, si je les faisais, ou si je l'avais fait.

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The deputy returning officer exhibits his partizan character and his complicity with *Cornellier* in this, which I can only designate as a conspiracy to destroy ballots, by showing this letter to the agents of the respondent, but refusing to allow the agent of the opposite candidate to see it. His evidence on this point leaves no doubt in my mind as to the improper motives which prompted him throughout :

Q. A quatre heures et demie vous avez reçu une lettre de l'officier rapporteur, monsieur *Pharand*? R. Oui, monsieur,

Q. L'avez-vous cette lettre-là? R. Je ne l'ai pas sur moi, mais je dois l'avoir chez nous; l'autre jour en regardant des papiers, il me semble l'avoir vue.

Q. Que disait cette lettre? R. Elle disait à peu près ceci: qu'il m'avait défendu de marquer les bulletins, de faire ces choses-là et que, si je les faisais, c'était à mes risques et périls, si je le faisais ou si je l'avais fait.

Q. Qui vous a remis cette lettre? Q. C'est monsieur *Bissonnette*, je crois.

Q. Monsieur *François Bissonnette*? R. Oui.

Q. Le secrétaire d'élection de monsieur *Pharand*, l'officier-rapporteur? R. Je ne le sais pas.

Q. Vous a-t-il dit de mettre cette lettre-là dans les archives de votre bureau de votation? R. Après qu'il m'eut remis la lettre, il est resté dans le poll une escousse, et quand il est parti, il m'a dit de mettre la lettre dans les archives du poll.

Q. Il vous a dit de mettre la lettre dans les archives du poll? R. Oui, monsieur *Bissonnette* m'a dit de la mettre dans les archives, mais la lettre ne le dit pas.

Q. Avez-vous mis la lettre dans les archives du poll? R. Non, parce que je considérais que c'était une lettre privée.

Q. Avez-vous montré cette lettre au représentant de monsieur *Bain*, dans ce poll-là? R. Oui, monsieur, parce qu'il me l'a demandé.

Q. Le représentant de monsieur *Bain* vous a demandé la lettre?

R. Il m'a demandé si je voulais lui montrer la lettre et je la lui ai montrée.

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Q. Avez-vous reçu la même demande de la part du représentant de M. *de Beaujeu* ? R. Peut-être.....c'est possible.....je crois que oui.

Q. Lui avez-vous montré la lettre ? R. Non, je ne la lui ai pas montrée, monsieur *Cornellier* l'avait dans les mains quand il me l'a demandée et il me l'a donnée ensuite.

Q. Vous ne la lui avez pas montrée ? R. Non.

Q. Pourquoi n'avez-vous pas communiqué cette lettre-là aux deux représentants des deux candidats ? R. Parce que c'était une lettre privée et je suis bien le maître de montrer mes lettres à qui je voudrai.

Q. Vous ne l'avez pas mise dans les archives du poll, parce que vous considérez que c'était une lettre privée ? R. Oui.

I cannot conceive that an agent of a candidate, or a deputy returning officer, could act in a more flagrant manner in violation of the law, to defeat the right of voters and prevent a fair and honest election according to law than was done in this case by the respondent's agent and this unworthy deputy returning officer. Here is what another party says :

Q. Monsieur *Paréyre*, avez-vous durant la dernière élection rencontré monsieur *Charles Auguste Cornellier*, écuyer, avocat, quelque part ? R. Oui, monsieur, je l'ai rencontré chez *Stanislas Filiatrault*, la veille de la nomination.

Q. Etiez-vous allé spécialement pour le voir ? R. J'avais été demandé, c'est-à-dire, monsieur *Filiatrault* avait envoyé son petit garçon pour me chercher disant que M. *Cornellier* désirait me donner des instructions.

Q. A quel titre devait-il vous donner ces instructions ? R. Il me donnait ces instructions comme devant être nommé sous-officier-rapporteur.

Q. Aviez-vous raison de vous attendre à être nommé sous-officier-rapporteur. R. Je n'en savais rien, je n'avais pas eu de commission, seulement on m'avait dit que je devais l'être ; mais l'officier-rapporteur ne m'en avait jamais parlé.

Q. Veuillez donc raconter à la cour ce qui s'est passé entre M. *Cornellier* et vous ? R. Je suis arrivé le jour de la nomination, au soir, et M. *Cornellier* m'a dit qu'il désirait me parler. M. *Filiatrault* m'a introduit à M. *Cornellier*. M. *Cornellier* a dit : " Asseyez-vous ; je vous ai fait demander pour vous donner des instructions concernant l'élection ; on m'a dit que vous deviez être nommé officier-rapporteur, et j'ai des instructions à vous donner " : Et M. *Cornellier* a

commencé ses instructions, il a commencé à me dire qu'il y aurait des votes d'objectés, et que ces objections seraient présentées par l'agent de M. *Bain*.

Q. Vous a-t-il mentionné le fait que ces objections devaient être imprimées ou quelque chose ? R. Ces objections étaient imprimées dans le temps. Ensuite il m'a dit : "Lors que quel qu'un se présentera pour voter, vous mettrez la première objection qui vous sera présentée, objection No. 1, ainsi de suite pour les autres.

Q. Vous a-t-il mentionné quelques noms de personnes, à propos de ces objections dans le temps ? R. Il m'a mentionné *Séraphin Deschamps*, père. Il m'a dit : "Si *Seraphim Deschamps*, père, se présentait," et ainsi de suite.

Q. Si je comprends bien votre réponse, M. *Cornellier* vous aurait dit de marquer cela sur le dos des bulletins ? R. Sur le dos des bulletins, et ensuite au dépouillement, mettre les bulletins marqués avec les objections, les mettre sous enveloppe ; en ayant soin de mettre sous enveloppe les bulletins écartés. Et ensuite j'ai demandé pour quelle raison. "La raison, c'est celle-ci, a-t-il dit, c'est que les bulletins iront devant le juge, et le juge décidera si ces bulletins devront servir à M. *de Beaujeu* ou non," et alors il m'a lu quelque chose ; il m'a lu quelque chose comme quoi il avait raison de faire cela.

The conduct of both these parties deserves, in my opinion, the severest condemnation. The agent of the respondent, in the first place, trying privately to induce a person whom he supposed would be appointed deputy returning officer, in case he was so appointed, to violate the law in the interest of the party for whom he was acting ; and afterwards privately interfering with a public officer and inducing him to violate the law and his duty under it, and so to act in opposition to what I cannot doubt from his connection in this transaction with the deputy returning officer he must have known, (in fact *Prieur* swears he told him,) were the instructions of his superior, the returning officer ; and the deputy returning officer, in holding private conversations behind the back of his superior officer and advising with an agent of one of the candidates, and acting on such advice by marking ballots of voters with a view to their identification, and so to destroy them and

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prevent their being counted in the interest of such candidate, (and this, too, on an unfounded pretence that such voters had been judicially disqualified, when, in fact, there had been no such disqualification,) not only in defiance of the law, but in defiance of the officer appointing him, responsible for the appointment of proper persons under him, and in breach of the instructions of his superior and of his promise and undertaking to that officer, that he would act in conformity with the law and his instructions, and without the giving of which promise it is obvious he would never have been appointed.

I can hardly conceive a more fraudulent device or contrivance in the language of the 95th section of the Dominion Elections Act, "to impede, prevent, or interfere with the free exercise of the franchise of the voters." This being so, there clearly has been a violation of that section by the terms of which the party guilty of such violation is to be deemed to have committed the offence of undue influence, and which by sec. 98 is declared to be a corrupt practice, and by sec. 101 any corrupt practice committed by a candidate at an election, or by agent, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void. I cannot conceive a case which calls more imperatively for the marked condemnation of this court than this, for if tampering with returning officers by candidates or their agents is tolerated, or such combinations and conspiracies to act in direct opposition to the law can be entered into with impunity between candidates or their agents and returning officers, both the letter and spirit of the law is set at nought and an honest, free election becomes an impossibility, if unscrupulous parties choose so to combine, and returning officers can be found to lend themselves to such like

schemes and be permitted in their official capacity to carry them out with impunity.

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STRONG, J. :—

I am likewise of opinion that this election must be set aside, and that upon two distinct grounds : First, on the ground of threats to voters and attempts at intimidation ; and, secondly, upon the ground that the arrangement come to between Mr. *Cornellier* and the deputy returning officer to mark the ballots of certain voters, and what was done in pursuance that of arrangement, were acts of improper interference with the exercise of their franchises by those voters within the meaning of sec. 95 of the Dominion Elections Act, 1874.

The original attempt at intimidation was made at a meeting held at *St. Zotique* previous to the election, and is referred to in a passage of the judgment of the learned judge who tried the petition—Mr. Justice *Johnson*—who thus states his conclusion from the evidence :—

If there were any doubt as to the meaning of Mr. *Cornellier's* speech at *St. Zotique* (and making due allowance for party feeling, I really think that the witnesses on both sides agree pretty much as to what was said), there could be none as to what was really meant ; for, unless we assume they meant one thing on one day and another on another day, we have in writing in the notice just what was the position taken by the respondent and his agents in this matter ; and it is not pretended that the tenor of the speeches was different from that of the notices.

This is a rather more favorable construction than I should have been inclined, had I been dealing with this case in a court of first instance, to have placed on the evidence, but I am willing and, probably, I am bound, according to the principles of dealing with evidence in an appellate court, to accept this finding as conclusive.

In addition to this however it was proved that Mr. *Cornellier* told these electors that if they voted in violation of the law they should be prosecuted.

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Then, assuming that Mr *Cornellier*, in his speech at *St. Zotique*, stated neither more nor less, but just what was contained in the notices subsequently served on the voters in question at the poll, let us see what that statement was in point of fact, and then enquire what we must consider to be its legal effect.

The notice served is as follows :—

Je soussigné, agent dûment autorisé de *James William Bain*, écuyer, l'un des candidats à la présente élection, objecte au vote de *Charles Châles*, fils, de *St. Zotique*, électeur apparaissant à la liste électorale de l'arrondissement No. 8, et qui s'est présenté pour voter sous le numéro huit du cahier de votation du Poll No. 8.

Et pour raisons au soutien de cette objection, je déclare en ma qualité susdite, que je m'objecte à ce que le présent électeur ne donne son vote, attendu que par jugement prononcé le six octobre dernier (1883), à *Coteau Landing*, dans la cause de contestation d'élection, dans laquelle *Stanislas Filiatreault*, commerçant du *Coteau Landing*, était pétitionnaire, et *G. R. L. G. H. S. de Beaujeu*, était défendeur et inscrite sous le numéro trois des dossiers de la Cour Supérieure siégeant sous l'acte des élections fédérales contestées de 1874 et amendements, le dit jugement prononcé par son Honneur le juge *Loranger*—le dit *Charles Châles*, fils, après avis, dûment signifié sur lui et trouvé suffisant par le dit jugement, après contestation, a été trouvé coupable de manœuvres frauduleuses et menées corruptrices au sens du dit acte, et rapportées en conséquence à l'orateur de la Chambre des Communes du *Canada*, et que, partant, il est devenu électeur déqualifié (scheduled briber) au sens de la sec. 104 du dit acte des élections fédérales contestées de 1874 et amendements, et ce pour huit années à venir à dater du six octobre dernier 1883, et qu'il ne peut voter à la présente élection.

Je requiers également l'assermentation du dit *Charles Châles*, fils et demande que la présente objection soit notée au dos du bulletin qui sera délivré (si aucun ne l'est), en par le sous-officier rapporteur mettant au dos du dit bulletin, s'il en délivre un, le même numéro que celui de l'objection, pour que sa décision puisse être révisée par la cour, au cas de scrutiny.

A. CORNELLIER,

St. Zotique, 27 décembre 1883. Agent autorisé de *J. W. Bain*.

Therefore, adopting the conclusion of the learned judge, that the statement of Mr. *Cornellier* at the *St. Zotique* meeting was the equivalent of what was contained in

these notices subsequently served, we must take it to be proved that Mr. *Cornellier* then publicly stated to and of those electors whose names were mentioned in the report made to the Speaker by Mr. Justice *Loranger*, who tried a former controverted election for the county, that they had been found guilty of corrupt practices under sec. 104 of the Dominion Elections Act of 1874. That section is as follows :—

Any person, other than a candidate, found guilty of any corrupt practice, in which, after notice of the charge, he has had an opportunity of being heard, shall, during the eight years next after the time at which he is so found guilty, be incapable of being elected to and of sitting in the House of Commons, and of voting at any election of a member of the House of Commons, or of holding any office in the nomination of the Governor General of Canada.

Then it is the law that any voter who, having been legally disqualified by the judge trying an election petition, afterwards, in contravention of such sentence of disqualification, votes at a subsequent election, is in addition to a liability to an indictment at common law, subject to such penalties as might be imposed by an election judge pursuant to the provisions of sec 117 of the Dominion Elections Act of 1874.

So that it is proved by the clearest evidence, and according to the finding of the judge, that Mr. *Cornellier*, in his speech at *St. Zotique*, openly and publicly declared to the voters named in Mr. Judge *Loranger's* report that they were disqualified from voting, and that if they voted they would be liable to such penalties and punishments as might be imposed by law, which, he further declared, should be enforced by all processes of law which could be taken advantage of against them for those purposes. The assertion of disqualification and threat of punishment in the case of voting thus made, I hold to have been, under the real facts of the case, a practising of intimidation upon the voters named, with a view to induce them to

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refrain from voting, under the express words of the 95th sec. of the Dominion Elections Act, 1874. It matters not that this attempted intimidation did not succeed, but that all these voters afterwards, and after being advised by others, had the courage, in the face of the intimidation which had been practised and the threats which had been made, to present themselves at the poll and insist upon their votes being received. Nothing is better established in point of law than the proposition that the threat, if made by an agent of the candidate, though unsuccessful in deterring the voter, is sufficient to avoid the election. In the *Northallerton* case (1) Mr. Justice *Willes* says :

A mere attempt on the part of an agent to intimidate a voter, though it was unsuccessful, would avoid an election.

Then, when the voters came to the poll there was a repetition of the attempt at intimidation which had been practised at the *St. Zotique* meeting, in a more formal and deliberate way, by serving upon the deputy returning officer, openly and in the presence of the voters, the notice already referred to, calling upon the officer to reject the votes because the voters had been found guilty of corrupt practices and fraudulent devices by the judge who had tried the former petition. Now, it is no answer as a justification of these charges of intimidation to say that the statement of Mr. *Cornellier* at the meeting, and the assertion to the same effect in the notice, that these persons had been found guilty, as alleged, is literally true, and, that Mr. Justice *Loranger* had, as the fact was, stated in his report to the Speaker, that they were guilty of corrupt practices. The charge advanced by Mr. *Cornellier* was, that they had been found guilty of corrupt practices in such a way as to disqualify them from voting, and to make them liable to punishment and penalties if they

(1) 10.M. & H. 173.

did vote. The report to the Speaker does not establish anything of the kind. In order to disqualify an elector and make him liable to penalties if he should vote after disqualification, it is made by the 104th section, which I have already stated, an indispensable condition that "after notice of the charge he shall have had an opportunity of being heard." Now, in the present case, it is manifest that this most just, fair and reasonable provision of the law had not been observed. It is true that the electors in question had been served with a notice to appear before Mr. Justice *Loranger*, and to show cause why they should not be reported as guilty, and that they attempted to set aside this notice, but they never were confronted with the witnesses whose testimony was relied on to prove them guilty, and they never had an opportunity of making their defence, for they never had an opportunity of cross-examining the witnesses against them, which, as will be universally acknowledged, is the most valuable incident of the right of defence which an accused person possesses. The witnesses relied on to prove corrupt practices against these persons may, it is true, have been cross-examined in the principal trial on the main issue—the validity of the election; but it was one thing to cross-examine them on behalf and in the interest of the respondent to the petition, and another and a totally different thing to cross-examine them on behalf of these electors accused of corrupt practices. It is beyond all question that no opportunity was ever afforded for a cross examination of this latter kind, and in the absence of it, it is impossible to say that these persons were ever heard in their defence, or afforded an opportunity of being so heard, sufficient to bring them within the provision of the 104th section. They were, therefore, never legally disqualified, and had an unimpeachable right to vote.

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I am not prepared to say that Mr. *Cornellier* did not believe the law was as he stated it to be, or that he knew that the facts did not warrant his statement of the law. So far from imputing to Mr. *Cornellier* that he knowingly and wilfully misstated either facts or law, I now repeat what I said at the argument, that I believe he acted in perfect good faith, and considered himself justified in making the assertions he did to these persons. But what I hold is, that an agent of a candidate, whether advocate or layman, who undertakes to tell an elector he has no right to exercise his franchise, and will be subject to punishment or penalties if he does so, or who makes representations and assertions to an elector respecting his right to vote calculated to intimidate him and to induce him to refrain from voting, does so at his peril; and that it is incumbent on an agent so acting to be sure that his facts are correct and his law is sound, for in the event of his being in error in either respect his candidate must suffer the consequences. In the present case the right of these electors to vote was impugned on grounds which, on investigation, turn out to be without foundation in point of law and also in point of fact, and consequently the statement that they would be liable to prosecution, and would be prosecuted, if they exercised their franchises, must be regarded as the fulmination of an illegal threat, constituting a practising of intimidation within the meaning of the 95th section, which, by the same section, amounts to undue influence, and, being practised by an admitted agent, must make the election void.

I also agree with the Chief Justice that the election must be set aside upon the distinct ground mentioned by him, and for reasons in the main identical with those which his lordship has stated.

The returning officer only appointed Mr. *Prieur* to be

a deputy returning officer after taking proper and prudent precautions to assure himself that Mr. *Prieur*, though an open partizan of the respondent's, would act properly at the election. In the interview which the returning officer had with Mr. *Prieur*; preceding the appointment of the latter, reference was made to these voters mentioned in the report of the judge at the previous trial, and the returning officer exacted from Mr. *Prieur* a promise that he would not put any marks on the ballots, or do anything in any way to interfere with the votes of these men. Mr. *Prieur* accepted the office on that promise and understanding, and otherwise it would not have been conferred upon him. Then what does Mr. *Prieur* do? If nothin further had taken place than his reception of the notices when they were handed to him at the poll, his conduct would have been unobjectionable. Even if he had marked the ballots, there being no preconcerted arrangement that he should do so, his so marking them might, perhaps, have indulgently been attributed to ignorance or to misconception of the somewhat complicated law which regulates elections. But we are precluded by the evidence from making these suppositions, for it is proved beyond doubt or question that in face of the caution he had received from the returning officer, and the promise he gave to act upon it, Mr. *Prieur* had, before the polling, a private interview and conference with Mr. *Cornellier*, the agent of the respondent, in which, notwithstanding his promise to his superior officer who had appointed him, not to mark the ballots, he agreed and conspired with Mr. *Cornellier* to do so. This conduct of the deputy returning officers, pursued in privity with the agent of the respondent, and induced by the irregular and clandestine solicitation of that agent, constitutes a ground for setting aside this election, distinct altogether from

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that of intimidation and threatening, before disposed of, as being "a fraudulent device or contrivance impeding, preventing, or otherwise interfering with, the exercise of the franchise" of the voters in question within the meaning of the provision of sec. 95, expressed in the words just quoted. In my opinion, a stronger exemplification of the evil which sec. 95 was intended to prevent than that of an agent of a candidate agreeing and conspiring with a returning officer to put a mark on the ballot of a particular voter, by which that ballot might be afterwards identified, could not be suggested. My conclusion therefore is, that on both the grounds indicated the appeal must be allowed, and with costs.

FOURNIER, J. :—

I am also of opinion that the election should be set aside for the two reasons given by the learned Chief Justice, for the intimidation which is proved, and also for a fraudulent contrivance to interfere with the freedom of the election.

TASCHEREAU, J. :

At an election held for this county in 1882, to fill the vacancy caused by the death of the previous member, two candidates, *deBeaujeu* and *Bain* the present respondent, had contested the seat. The result was a majority of three for *deBeaujeu*. This election, however, was subsequently voided for corrupt practices by *de Beaujeu's* agents. A writ was then issued for a new election, which took place on December 27th, 1883, between the same candidates, *Bain* and *de Beaujeu*. *Bain*, the respondent, having been returned by a majority of three, the appellant contested his election by a petition in the usual form, without claiming the seat for *deBeaujeu*. After a long trial, the presiding judge

dismissed the petition, and maintained the election. The petitioner now appeals to this court from the said judgment, limiting his appeal to certain cases only.

Particular No. 96 is one of these cases. It is in the following terms. [The learned judge read the charge] (1).

It appears, by the evidence on this charge, that shortly before polling day, Mr. *Cornellier*, who is admitted to have been the respondent's conducting agent, had a document printed in the following form :

I, the undersigned, duly authorized agent of *James William Bain*, Esq., one of the candidates at the present election, object to the vote of _____ of _____ elector appearing on the electoral list of district No. _____ and who has come to vote under No. _____ of the voters' list of the electoral district No. _____ and for reasons in support of this objection, I declare, in my above quality, that I object to the present elector giving his vote, because, by judgment pronounced at *Coteau Landing* on the 6th October last, in the contested election case in which *Stanislas Filiatrault*, merchant, of *Coteau Landing* was petitioner, and *G. R. L. G. H. S. de Beaujeu* was defendant, and inscribed under No. 3 of the records of the Superior Court sitting under the federal contested Elections Act of 1874 and Acts amending the same, said judgment pronounced by his honor justice *Loranger*, the said _____ after notice duly served upon him and found sufficient by the said judgment after issue joined was found guilty of corrupt practices according to said act, and reported in consequence to the Speaker of the House of Commons of *Canada*, and consequently he has become a disqualified elector (scheduled briber) in the sense of the said federal contested Elections Act of 1874 and amendments, and for eight years, from the 6th October last, that he cannot vote at the present election. I demand also the administering of the oath to the said elector, and also that the present objection should be endorsed on the ballot, which will be given (if any should be given) by the deputy returning officer placing on the back of the ballot (should he deliver one to said voter) a number corresponding to that of the objection, in order that the court may be enabled to revise his decision on a scrutiny.

It must be remarked here that this document contains a false statement, and that it was not true that

(1) *Ubi supra.*

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the electors, against whom it was prepared, had been disqualified or deprived of their franchise.

This document was made known throughout the county, and a copy of it left by *Cornellier* with each of the respondent's agents at the different polls. Those of the electors of *St. Zotique*, mentioned in the charge, who have been examined, had all heard of it, or been told that they had no right to vote, and their ballots would be marked, as demanded by *Cornellier*.

Before the nomination, *Cornellier* sent for a man named *Prieur*, who, it was supposed, would be the deputy returning officer at the *Coteau Landing* poll. *Prieur's* evidence as to what then passed between him and *Cornellier*, is as follows :

Q. Veuillez donc raconter à la cour ce qui s'est passé entre M. *Cornellier* et vous? R. Je suis arrivé le jour de la nomination, au soir, et M. *Cornellier* m'a dit qu'il désirait me parler. M. *Filiatrault* m'a introduit à M. *Cornellier*. M. *Cornellier* a dit: "Asseyez-vous; je vous ai fait demander pour vous donner des instructions concernant l'élection; on m'a dit que vous deviez être nommé officier-rapporteur, et j'ai des instructions à vous donner": Et M. *Cornellier* a commencé ses instructions, il a commencé à me dire qu'il y aurait des votes d'objectés, et que ces objections seraient présentées par l'agent de M. *Bain*.

Q. Vous a-t-il mentionné le fait que ces objections devaient être imprimées ou quelque chose? R. Ces objections étaient imprimées dans le temps. Ensuite il m'a dit: "Lorsque quelqu'un se présentera pour voter, vous mettrez la première objection qui vous sera présentée, objection No. 1, ainsi de suite pour les autres."

Q. Vous a-t-il mentionné quelques noms de personnes, à propos de ces objections dans le temps? R. Il m'a mentionné *Séraphim Deschamps*, père. Il m'a dit: "Si *Séraphim Deschamps*, père, se présentait," et ainsi de suite.

Q. Si je comprends bien votre réponse, M. *Cornellier* vous aurait dit de marquer cela sur le dos des bulletins? R. Sur le dos des bulletins, et ensuite au dépouillement, mettre les bulletins marqués avec les objections, les mettre sous enveloppe; en ayant soin de mettre sous enveloppe les bulletins écartés. Et ensuite j'ai demandé pour quelle raison. "La raison, c'est celle-ci, a-t-il dit, c'est que les bulletins iront devant le juge, et le juge décidera si ces bulletins

devront servir à *M. de Beaujeu* ou non," et alors il m'a lu quelque chose ; il m'a lu quelque chose comme quoi il avait raison de faire cela.

Q. Après que *M. Cornellier* vous eut donné ces instructions, avez-vous, vous-même, regardé l'Acte Electoral, pour voir si les instructions étaient correctes ? R. Je l'ai regardé.

Q. Vous saviez que *M. Cornellier* était avocat ? Q. Je le savais.

Q. Et avez-vous réellement cru que *M. Cornellier* vous donnait des instructions véritables et légales dans le temps ? R. Je n'avais pas de doute que *M. Cornellier* me donnait des instructions véritables.

Q. Est-ce que le numéro que vous deviez mettre sur le bulletin devait correspondre avec quelque autre numéro ? R. Devait correspondre avec l'objection.

Q. De sorte que, suivant vous, vous pouviez parfaitement identifier celui qui votait ? R. Parfaitement.

And this evidence is uncontradicted. Can one imagine conduct more reprehensible than this of a member of the bar, the respondent's chief election agent, so approaching a man whom he expects to be a deputy returning officer, in order to give him his instructions as to this officer's duties, and to tell him how he will have to perform his functions.

However, as to this *Coteau Landing* No. 1 poll, *Cornellier's* gratuitous instructions to *Prieur* were of no effect, as another man *Mr. Gladu* one who knew his duty, was appointed deputy returning officer.

In the *St. Zotique* poll, however, *Cornellier* was more successful. Here, *Damien Prieur*, an active partizan of the respondent, was named deputy returning officer. The returning officer, a man of integrity and against whose conduct nothing can be said, had made it a condition of this nomination that he, *Prieur*, would not mark any of the ballots as *Cornellier* desired them to be marked, telling him that such marking would be contrary to law. It was only on the promise by *Prieur* to follow those instructions of the returning officer, that he was appointed deputy returning officer. On the very morning of the polling day, however, he promised

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Cornellier that, as he, *Cornellier*, insisted that the ballots of those who were disqualified could be legally marked, he *Prieur* would mark them. And he did mark them. He did not hesitate to ignore the instructions of his superior officer, and the promise he had made to get his appointment in order to put himself into the hands of the respondent's agent and obey his desires and dictations. His oath of office had evidently not deprived the respondent of a partizan.

What actually took place at the poll is as follows:—*Prieur*, before delivering ballots, to any of the objected voters marked on the back of the ballot the words, "objected to by objection No. " placing upon the ballot a number which corresponded with the number of the objection. In this way, the eight ballots of the above named voters were marked with identifying numbers, and *Prieur* says he put them in his pocket.

This was done in spite of a written protest from the opposing candidate's agents.

Hearing of this proceeding, the returning officer, in the afternoon, wrote a letter to *Prieur*, severely reprimanding him and telling him he would have to answer for his conduct.

On receipt of this letter, which was coupled with an order by the election clerk, who delivered it, to place it of record among the documents of the poll, *Prieur* handed it to Mr. *Cornellier*, who perused it; the other representative asked permission to see it, but this *Prieur* refused, and put the letter in his pocket where it remained.

After the close of the poll *Prieur* getting nervous, probably, and afraid of the consequences of his illegal acts, took out the eight objections produced before him and endorsed them "objection dismissed." He then counted as good the marked ballots which he

had in his pocket and put them in this box. Mr. *Champagne* says they all identified the votes.

"*Put the ballots in his pocket.*" That is what this deputy returning officer has to confess he did under the guidance of the respondent's conducting agent. And this in face of an enactment in which no one has ever dreamt of an ambiguity, that the deputy returning officer "shall then immediately, and in the presence of the elector, place the ballot paper in the ballot box" (1).

As to the marking of these ballots, I need not say anything to prove its utter illegality. It had to be admitted before the court by the respondent's counsel.

Now, it seems to me, that it can hardly be possible to bring clearer evidence of fraudulent contrivances to prevent voters from exercising their franchise. That this agent's object was to prevent these voters from voting at all, if possible, is made abundantly clear by a number of witnesses examined in the case, who all testify that he did not cease repeating publicly and privately during the election the false statement that these men had no right to vote; that if they voted, legal measures would be taken against them; and that if they came to the polls, their votes would be objected to, and if received at all by the deputy returning officer, would be distinctly marked so as to be identified. These witnesses, however, on this only proved what the printed notice says in unequivocal terms.

This marking of the ballots at the instigation of the principal agent of the respondents, taken in connection with the notice issued by the said agent with the intention to prevent these voters from voting at all, or, if voting, from voting as their fellow citizens did, under the protection of secrecy guaranteed to them by the Ballot Act, was a fraudulent device or contrivance

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(1) 41 Vic., ch. 6, s. 45.

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to impede, prevent and interfere with the free exercise of the franchise of these voters, and a corrupt practice under section 95 of the Act. Whether or not this contrivance was successful, is immaterial.

A mere attempt on the part of an agent to intimidate a voter, even though it were unsuccessful, would avoid an election (1).

If there was a fraudulent device of any sort to prevent a voter voting a certain way, even though unsuccessful, it would amount to a fraudulent device to interfere with the free exercise of the franchise (2).

And whether these acts of the respondent's agent affected the result of the election or not, is also immaterial. A single act of corrupt practice by an agent avoids the election.

The contention that this election-agent acted in good faith and under the impression that these voters had really no right to vote, that he could legally ask from the deputy-returning officer the marking of their ballots, and the putting of these ballots in the deputy returning officer's pockets, and that consequently his acts should not avoid the election, cannot be admitted. When any one accepts for a candidate the responsibility of the complete organization and carrying out of an election, as this agent did in this county, he must be presumed to undertake that, as far as he himself and all those over whom he has any control are concerned, everything shall be conducted according to law. He undertakes to perform the duties, and all the duties, of an election agent, according to law, and he cannot later on be excused for any infraction of these duties, by saying that he ignored them; he is estopped from doing so. If he did ignore them, it is culpable negligence in him, of which he cannot take advantage; and to him with more force

(1) Per Willes, J., *North Allerton* case, 1 O'M. & H. 173. See also the *Devon* case, 3 O'M.

(2) Per Blackburn, J., in the *Gloucester* case, cited in *Leigh* & H. 122.

than to any one else in that election applies the maxim, *ignorantia juris non excusat*. (1). The election laws might as well be repealed, if such a defence could prevail.

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I am of opinion the appeal should be allowed with costs, and this election avoided with costs of the petition and trial thereof in the election court against the respondent.

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Had this charge of fraudulent contrivance under sec. 95 not been established, the election would still have had to be set aside on the charge of intimidation, as shown by Mr. Justice *Strong's* judgment, in which I entirely concur.

Appeal allowed with costs.

Solicitors for appellant: *Monk & Ryan*.

Solicitors for respondent: *Ouimet, Cornellier & Lajoie*.