1905
*June 27.
*Oct. 3.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF CUMBERLAND.

HANCE J. LOGAN (RESPONDENT) ....APPELLANT;

AND

WILLIAM RIPLEY (PETITIONER) ....RESPONDENT.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF PICTOU.

EDWARD M. McDONALD (RESPONDENT) ..... } APPELLANT;

AND

ADAM C. BELL (PETITIONER) .....RESPONDENT.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF NORTH CAPE BRETON AND VICTORIA.

DANIEL D. McKENZIE (RESPONDENT) ..... } APPELLANT;

AND

JOHN GANNON (PETITIONER) .....RESPONDENT.

ON APPEAL FROM THE JUDGMENTS OF MR. JUSTICE GRAHAM.

Controverted election—Preliminary objection—Status of petitioner—Corrupt acts—Evidence—Dominion Elections Act, 1900, *sec.* 113.

Section 113 of the Dominion Election Act, 1900, provides that any person hiring a conveyance for a candidate at an election, or his

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*PRESENT:—Sir Elzéar Taschereau C.J. and Girouard, Davies, Nesbitt and Idington JJ.

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agent, for the purpose of conveying any voter to or from a polling place shall, *ipso facto*, be disqualified from voting at such election.

Held, that the right of an elector to present a petition against the return of a candidate at an election may be questioned, by preliminary objection, on the ground that he is disqualified under the above section and that on the hearing of the preliminary objection evidence may be given of the corrupt act which caused such disqualification. *Beauharnois Election Case*, [31 Can. S.C.R. 447] distinguished.

Held, also, that though, unless the commission of the corrupt act charged is admitted, it must be judicially established, such admission or judicial determination does not take effect merely from the time at which it is made but relates back to the commission of the act.

APPEAL from the judgment in each case of Mr. Justice Graham, who dismissed the preliminary objections filed by the respective respondents to the election petitions.

To each of the three election petitions the respondent filed preliminary objections, one of which, No. 10, alleged that the petitioner had been guilty during the election of the offence mentioned in section 113 of the Dominion Elections Act, 1900, and was therefore disqualified from voting at said election, and consequently from petitioning against the return of the candidate elected thereat. The trial judge dismissed all the preliminary objections, holding that he had no power to receive evidence of the corrupt acts charged by the tenth. The respondents to the petition appealed from such decision.

On the hearing of the appeal an objection was taken to the jurisdiction of the court, but it was ruled that if the evidence had been received and the charges sustained, that would have put an end to the petitions, thus giving the court jurisdiction.

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Roscoe K.C. and *Mellish K.C.* for the appellants referred to the *North Victoria Election Case*(1); *North Simcoe Election Case*(2); *Dufferin Election Case*(3).

Lovett and *R. V. Sinclair* for the respondents cited the *West Assiniboia Election Case*(4); *Marquette Election Case*(5).

THE CHIEF JUSTICE.—I am of opinion that these appeals from the judgment in each case dismissing the tenth preliminary objection should be allowed with costs.

GIROUARD J.—The principal, and, in fact, the only question involved in this appeal is whether or not evidence should be received of alleged corrupt practices by the petitioner at the election in question. The trial judge decided that such evidence could not be received. If the Dominion Controverted Elections Act, ch. 9, sec. 5, of the Revised Statutes of Canada, had not been altered by subsequent legislation, it seems to me that we would be almost bound to adopt the conclusion Mr. Justice Graham arrived at, supported as it is by eminent judicial authorities in this country. The point came before this court in *The Beauharnois Election Case*(9) but was not decided, the majority of the court holding simply that there was no evidence to support the charge of corrupt practices made against the petitioner. Now we have to face the difficulty which presents itself almost in the form of a demurrer to the preliminary objections of the respondent.

(1) Hodg. El. Cas. 584.
(2) Hodg. El. Cas. 617.
(3) 4 Ont. App. R. 420.
(4) 27 Can. S.C.R. 215.
(5) 27 Can. S.C.R. 219.
(6) 31 Can. S.C.R. 447.

It is contended by him that both under the New Franchise Act of 1898, 61 Vict. ch. 14, secs. 4(*d*) and 5, and the Dominion Elections Act, 1900, 63 & 64 Vict. ch. 12, secs. 3(*a*) and (*d*), a person inscribed on the voters' list, guilty of corrupt practices, cannot vote and cannot maintain a petition against the return. Then section 64, sub-sec. 3, of the same Act provides:

> If the elector's name is found on the list of voters for the polling division of the polling station he shall, subject to the provisions hereinafter contained, be entitled to vote.

Further on come several sections providing for the disqualification of voters guilty of corrupt practices, especially section 113, about the hiring of teams for the conveyance of voters to the poll, which, *ipso facto,* disqualifies the voter from voting at such election. This section is in these words:

> 113. The hiring or promising to pay or paying for any horse, team, carriage, cab or other vehicle by any candidate or by any person on his behalf, to convey any voter or voters to or from the poll, or to or from the neighbourhood thereof, at any election, or the payment, by any candidate or by any person on his behalf, of the travelling or other expenses of any voter, in going to or returning from any election, are unlawful acts; and every candidate or other person so offending shall forfeit the sum of one hundred dollars to any person who sues therefor; and any voter hiring any horse, cab, cart, waggon, sleigh, carriage or other conveyance for any candidate, or for any agent of a candidate, for the purpose of conveying any voter or voters to or from the polling place or places, shall, *ipso facto,* be disqualified from voting at such election, and shall, for every such offence, forfeit the sum of one hundred dollars to any person who sues therefor.

I quite agree with Mr. Justice Graham, quoting with approbation the language of Baron Martin in the *Norwich Election Case*(1), that even in the case of hiring teams, a judgment declaring the voter guilty of the act is necessary, unless, perhaps, he confesses, but the judgment or confession will have a retroactive

(1) 19 L.T. 615, at p. 621.

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effect. The charge may be made in any proceeding relating to the trial of an election petition, by way of preliminary objection or petition for disqualification as well as by an independent action. The inquiry must, however, be limited to the hiring of teams under section 113, for no other clause uses the same language. We have nothing to do with the reason which induced Parliament to impose this exceptional severity, but it is obvious. The hiring of teams for polling day is, perhaps, the most common and effecting corrupt practice at elections, and, apparently, the least objectionable, morally, in so far as the voter is concerned.

The question, as put by the learned judge, is, perhaps, too general; it may be allowed as an introduction to the specific offence. In my humble opinion, the voter may have committed all the corrupt practices prohibited by the statute and yet be a qualified petitioner, if he has not been guilty of the offence defined in section 113.

Clause 129 provides for the punishment of all corrupt practices, and, undoubtedly, comprises the hiring of teams prohibited by section 113, which, by section 120, is declared to be a corrupt practice; but the effect of the various unlawful acts or corrupt practices is not the same. Under section 129 it is *in futuro* only, but under section 113 it goes back to the date of the commission of the act, at least to the polling day. The voter hiring any conveyance, whether his own or any other, for the purpose of conveying any voter to or from any polling place, is *ipso facto* disqualified from voting at such election, and, consequently, from being a petitioner in an election petition.

The result may not serve public interest. I quite

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agree with the late Chief Justice Richards that the importance to the public of determining whether the petitioner's hands are clean is insignificant compared to that of being satisfied that the respondent has not obtained the seat illegally. But the remedy rests, not with the courts, but with Parliament. In such a case as in the scandalous, so-called, "sawing-off," the intervention of a new petitioner ought to be provided for within a certain delay.

I believe the appeal in each case should be allowed with costs. Girouard J.

DAVIES J.—These three appeals from the judgments of Mr. Justice Graham dismissing preliminary objections to the election petitions filed against the several respondents involve practically the same points, and may be consequently disposed of together.

The objections were: (1) That the petitioners had been guilty of bribery at the elections as defined by the 108th section of the Dominion Elections Act, 1900, and, therefore, had no right to vote; and (2) That they had hired conveyances to carry voters to the polls in violation of section 113 of the said Act, and were, by such act, expressly disqualified.

In dismissing both objections the learned judge expressed himself as being concluded by the *Beauharnois Election Case*(1). The learned judge, however, entirely misapprehended that decision. The headnote of the report correctly states the decision, which was that

> as corrupt practices had not been proved the question as to the effect of the statutes did not arise.

It is true that Mr. Justice Gwynne expressed himself to the effect stated by Mr. Justice Graham, but

(1) 31 Can. S.C.R. 447.

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his statements were purely obiter and not necessary for the decision of the case while the remaining five members of the court studiously avoided expressing any opinion on the points raised by him, and the then, and also the present, Chief Justice, who delivered reasoned judgments, explicitly stated the grounds of their judgments to be the absence of any evidence of corrupt practices.

With respect to the other authorities cited by the learned judge, I have read them all with great care, but cannot say that they are of much assistance in determining the points in question on these appeals.

These points must be determined by the language of the Dominion Elections Act, 1900, and the Controverted Elections Act, the former of which was not in force, in its present form, when the decisions referred to by the learned judge were rendered.

The Controverted Elections Act gives the right to present an election petition exclusively to: (1) "A person who has a right to vote" at the elections to which the petition relates, or; (2) to a candidate at such election.

The questions raised by way of preliminary objections in this case were to the status of the petitioners, alleging that they were not persons entitled to vote at the respective elections because of their having been guilty of bribery and corruption within the 108th section of the Dominion Elections Act, or of unlawful acts within the 113th section.

The 12th section of the Controverted Elections Act provides for the presentation of preliminary objections to the petition and for their disposal in a "summary manner."

The proviso of the 5th section of that Act, defining who may be a petitioner, declares that nothing

in the Act should prevent objections under section 12

> to any further proceeding on the petition by reason of the ineligibility or the disqualification of the petitioner.

The proper time and way, therefore, to raise the objection to the petitioner's status was at and by the preliminary objections, and the sole questions to be determined are whether petitioners, if proved to have been guilty of bribery and corruption, within the meaning of the 108th section, or of unlawful acts within the 113th section, were still persons entitled to vote at the election, and, therefore, entitled to petition.

Turning to the Dominion Elections Act, 1900, I find in the 7th section three classes of persons declared disqualified and incompetent to vote: First, judges of the courts; 2ndly, persons disqualified for corrupt practices under sections 126 and 129 of that Act and; 3rdly, persons disfranchised for taking bribes under chapter 14 of the statutes of 1894. The next section, the 8th, then goes on to disqualify and declare incompetent to vote, certain officials and persons acting in connection with the election for pay or reward.

Then comes an entirely new section, 9, which reads:

> Every person guilty at an election of the unlawful act mentioned in section 113 is disqualified from voting at such election.

I am of the opinion that, without doing violence to the clear language of this section, I cannot hold either that a person so guilty is not disqualified from voting or that he is "a person who had the right to vote at the election," and so a person entitled, under the words of the Controverted Elections Act, to file a petition.

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Turning to the 113th section itself, I find the intention of Parliament emphasized by the repetition of the disqualification of the voter in the following language:

> Any voter hiring a horse, cab, cart, waggon, sleigh, carriage or other conveyance for any candidate for the purpose of conveying any voter or voters to or from the polling place or places shall, *ipso facto*, be disqualified from voting at such election.

No language could be clearer or more explicit than this, and, when coupled with the new clause 9, which Parliament added to the disqualifying clauses in the revision of the Elections Act, in 1900, places the question, for me, beyond any doubt.

An impression seemed to prevail at the argument that the official list of voters was conclusive of the right of a man to vote. If his name was found there, his right to vote existed. If it was not found such right did not exist. Any such impression is, obviously, inaccurate.

In one, at least, of the provinces, there are no voters' lists at all, and no such test is applicable there.

Many classes of persons whose names have been omitted from the lists in consequence of some provisions of the local law, are, nevertheless, entitled, under the 6th section of the Franchise Act, 1898, to vote at the place where, but for such omission, they would have been entitled to vote, on their taking the prescribed form of oath.

Others, whose names are on the list, but who are at the time of the election, either persons in a gaol for a criminal offence, or confined in a lunatic asylum or a poorhouse or other similar institution, are disqualified and incompetent.

So the question, in all cases, comes back to that

of actual competency, and is one of fact to be determined on preliminary objection to the petition and by no means concluded by the production of the list of voters.

I cannot draw any distinction between any of the enumerated classes of disqualified persons I have mentioned and those offenders against the 113th section of the Act who, by the words of the statute are disqualified and rendered incompetent by the very commission of the offence.

Those voters who are charged with having committed generally the offences of bribery or corruption, within the definitions of those offences in the 108th section of the Act, seem to stand in a different position. Their case is governed by the 7th section of the Act which disqualifies

> persons disfranchised for corrupt practices under sections 126 and 129 of this Act.

These words, obviously, relate to those persons who, under the words of these two sections, have been "found guilty," and "after they have had an opportunity of being heard."

Their disqualification covers a long period of years, and is not confined to the election at which they have committed the offence.

They cannot, therefore, be said to be "disqualified" until they have been "found guilty after they have had an opportunity of being heard." The disfranchisement is not made to operate from the commission of the offence, but from their conviction, after trial.

I am not concerned with the distinction Parliament has drawn between the two classes of offenders, or for the reasons which prompted the distinction. I find it in the Act, and my duty is to give effect to it. If Parliament determines to put both classes of of-

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fenders upon the same footing, as regards election petitions, a very few will suffice to do so.

These appeals must, therefore, each and all, be allowed with costs so far as the judgment and rulings of the learned judge went, disallowing the 10th preliminary objections and excluding evidence of petitioners' guilt under the 113th section of the Dominion Elections Act, 1900.

On the other ground, of the exclusion of evidence tending to shew that the petitioners were guilty of bribery or corruption generally, as defined by the 108th section of the Act, I think the rulings of the learned judge were correct, and that the preliminary objections were properly disallowed.

With respect to the jurisdiction of the court to hear the appeal, we disposed of that upon the argument, being all of the opinion that we had jurisdiction, the preliminary objections being of a character which, if they had been allowed, "would have been final and conclusive, and have put an end to the petition."

NESBITT J.—I concur with the judgment of Mr. Justice Davies.

IDINGTON J.—The first-mentioned case was argued and the other two agreed by counsel to stand upon the same argument with attention being called to the slight variations that obtained in each that might in certain events differentiate it from the first case.

In the view I take they may be disposed of together. The question raised is whether or not the status of the petitioner can be attacked by reason of any breach of the Dominion Elections Act, 1900, committed by him, at or during or immediately preced-

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ing, the election, and, thus, if he be found guilty of such breach, the petition may be dismissed.

It has been held in the court below that the respondent cannot, in such a case, take any such objection to a petition, unless and until the petitioner had been adjudged guilty of the offence charged.

It has, undoubtedly, been held in courts in Ontario and other provinces that, upon somewhat similar legislation to that now presented for our consideration, the offences of a petitioner, under the circumstances arising here, cannot be set up for the purpose of impeaching his status as a petitioner.

I do not think that it is necessary to review in detail each one of these cases. To do so would involve a comparison of the statute or statutes upon which they were decided with the statutes we have now to consider in order that such a review might be of any value. Some of these cases, no doubt, were correctly decided upon the statutes that were then before the courts deciding them. Others would seem of doubtful authority.

The utmost, however, that can be said is that none of them seem to be the affirmation of any legal principal that must of necessity decide these cases now in hand.

I propose, therefore, considering the Dominion Controverted Elections Act, the amendments thereto and the other statutes that may bear upon the issue raised in these cases independently of these authorities, none of which are binding upon this court.

I think we must give such interpretation to section 5 of the Dominion Controverted Elections Act as it will bear upon consideration of the section itself and these other statutes that I have referred to.

This section five reads as follows:

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A petition complaining of an undue return, or undue election of a member, or of no return, or of a double return, or of any unlawful act by a candidate not returned, by which he is alleged to have become disqualified to sit in the House of Commons, at any election, may be presented to the court by any one or more of the following persons:

(a) A person who had a right to vote at the election to which the petition relates; or

(b) A candidate at such election.

And such petition is, in this Act, called an election petition; provided always, that nothing herein contained shall prevent the sitting member from objecting, under section twelve of this Act, to any further proceeding on the petition by reason of the *ineligibility or disqualification of the petitioner* or from proving, under section forty-two hereof, that the petitioner was not duly elected.

If I had come to the consideration of what the words of sub-section (*a*) meant without having been embarrassed by the authorities I have referred to, I should have thought that there could be but one meaning to attach to such language.

The plain, ordinary meaning would certainly be that a person who had not the right at any time, during the election, to take the oath that any deputy returning officer, elector or agent had a right to tender him, could not be said to have had a right to vote at the election.

The language is so plain that it is hard to understand, without a review and full consideration of the cases, how it could have been interpreted otherwise. It is not now, as I have said, necessary to do so.

Whatever may have been the legislation to be considered in relation to these words elsewhere, I think it is our duty, not being fettered by authority, to declare, in accordance with the plain, obvious meaning of the words.

I am not oppressed with any question of convenience or inconvenience (which had weight in some of the cases), no matter how difficult the problem may

become of solution by reason of the want of facility for procuring evidence, and the want of legislative provision for making a proper issue, upon which the facts might be intelligibly tried, with due regard to the rights of any one and every one concerned. I think there is no insuperable difficulty in the way.

With due respect, I think there never has been any difficulty in the way. The courts of each province have had imposed upon them, by section 62 of this statute, the duty to make rules for *"the effectual execution of this Act and of the intention and object thereof,"* and, if the court has any difficulty in solving the question now raised by reason of any of the considerations I have just adverted to, then the fault must lie with the court not with the legislature or with the legislation in question.

The failure to have provided a proper means, a due course of procedure, for the trial of an issue that obviously lay at the threshold of the exercise of the jurisdiction of the court, or judge thereof, such as that of the status of a person professing as a petitioner to have had a right to vote at the election to which his petition relates, cannot affect in any way the proper interpretation to be given to this section, since the meaning has, otherwise, become clear. The issue that sub-section (*a*) of section 5 presents is as simple and as clearly presented for the consideration of the court, trying to find the facts, as language can make it. The facts in one case might be of the simplest possible character; in another case, although the cause for impeaching the petitioning voter's right might be of the simplest possible character, the facts to be dealt with might render it a most difficult matter to determine. Difficulties such as these might present themselves in carrying into effect any statute and any law. The difficulties disappear when properly grappled with.

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It became the duty of the court to furnish by general rules, applicable to this statute, the method for carrying it into execution, and, if the court failed in doing so, it must then, by section 63, proceed according to

> the principles, practice and rules on which election petitions, touching the election of members of the House of Commons in England were, on the 26th day of May, one thousand eight hundred and seventy-four, dealt with

so far as consistent with this Act.

By section 26 of 31 & 32 Vict. ch. 125 (Imp.), it was provided that

> Until rules of court have been made in pursuance of this Act, and, so far as such rules do not extend, the principles, practice and rules on which committees of the House of Commons have heretofore acted in dealing with election petitions shall be observed so far as may be by the court and judge in the case of election petitions under this Act.

Such, in the absence of suitable rules for the purpose of trying the question as to the status of a petitioner, would be the law by which the court must be governed. Before the adoption of the trial of election petitions by courts of law, numerous cases indicate that committees of the House of Commons had, from time to time, been able to try and adjudicate upon the question of the right of a petitioner to present a petition.

I am not concerned with the result of such cases. I am only concerned in pointing out that, however consistent or inconsistent the results of such trials may have been, it was recognized practice that the petitioner's right could be tried by the committee before proceeding to try the petition. The Dominion Controverted Elections Act, by the section I have quoted, plainly indicates that the sitting member might object, under section 12

to any further proceeding on the petition by *reason of the ineligibility or disqualification of the petitioner.*

Section 12 required as follows:

Within five days after the service of the petition and the accompanying notice, the respondent may present in writing any preliminary objections or grounds of insufficiency which he has to urge against the *petition or the petitioner* or against any further proceeding thereon and shall, in such case, at the same time, file a copy thereof for the petitioner and the court or judge shall *hear the parties upon such objections and grounds and shall decide the same in a summary manner.*

The courts have found means of trying very important questions arising out of preliminary objections, and, in relation to such trials, have not found it difficult to find herein power in the court or judge, by virtue of this legislation, to give effect to the trial of and adjudication upon the validity or invalidity of such preliminary objections.

I see no difficulty in the way of the use of such power even without the enactment of rules for the procedure thereof, so as to try any issue, such as is raised, in regard to the status of the petitioner in any one of the cases now before us.

The words "a summary manner" indicate a form of trial in which the ancient established course of legal proceedings may be so far disregarded as to enable an expeditious determination to be reached.

The rules that were formulated by the judges of the Supreme Court of Nova Scotia for the trial of controverted elections, which were made under and by virtue of the Act in question, and other powers vested in or inherent in such judges, by rule 52 thereof, provide:

In all cases not otherwise provided for, the rules of practice of the Supreme Court of Nova Scotia shall apply to all proceedings on election petitions.

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I think, therefore, with due respect, that there could be found within the various powers conferred by the Act in question directly upon the judges, the power, within the rules governing procedure in England in similar cases, (especially when establishing the introduction of the practice and power of election committees), and the inherent or expressed powers and practice of the Supreme Court of Nova Scotia in other matters, of trying according to law the question of whether or not the petitioner in this case had, at the time of the election, a right to vote at the election in question.

I think it should have been done.

Without such a trial, the proviso in section 5 and the preliminary objection against the petitioner in section 12 are, in a plain, obvious case, rendered null. And that it cannot be done in a difficult case is what should not be held in any court possessed of the ample powers that I think have been conferred by the legislation and rules I have just referred to.

I am unable to understand where the line is to be drawn. The numerous absurd results that would follow from adopting the voters' lists as conclusive forbid drawing the line there. And when once that is departed from to try the simple issue of the petitioner, admittedly an alien, admittedly disqualified by virtue of office or from the simpler cases of that kind, I see no reason to draw the line of distinction between such cases and the more complicated cases where the petitioner may refuse to admit that he is an alien, or that he holds a disqualifying office, or that he had, in any way, become disqualified to vote at the election.

To render the absurdity of drawing the line at

the certified voters' lists more manifest, what of the cases where there are no voters' lists?

This petition affirms, in words of the statute, by the petitioner, "that he had the right to vote." He then swears, when presenting the petition, to an affidavit that he has good reason to believe and verily does believe that the several allegations contained in the petition are true.

It is not pretended that although he may have, by virtue of his own acts, so disqualified himself from voting, that he dare not have ventured to take the oath, that the deputy returning officer may have tendered him, in asking for a ballot, yet that he can take this oath verifying the petition.

I am unable to comprehend the distinction. The plain, ordinary meaning of the words seem to indicate the same thing. The oath at the poll is of a searching character. The oath verifying the petition is not of that character. If the petitioner were disqualified, this is such a statement as he cannot properly be heard to say ought not to be tried on a preliminary investigation.

It would be, in fact, whatever the intention may have been, an imposition upon the court, and courts have always heretofore found ways to deal with offences of that character.

I see no reasons for drawing the line at election petitions.

Since writing the foregoing, I observe the following very apposite remark of Chief Justice Taylor in the *Marquette Election Case*(1):

> Unless that affidavit is so presented there is properly no petition before the court. And, as I have already said, it cannot be a matter of indifference whether the required affidavit is true or false. That

(1) 11 Man. Rep. 381, at pp. 389, *et seq.*

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no affidavit has ever been objected to in Ontario can be no reason why, as counsel seemed to argue, the court must accept without question an affidavit even although it may be a false one. From the language used by Patterson J.A., *In re West Simcoe*(1), it is plain that the court, there, expect a petitioner to make a careful study of the facts and of the provisions of the Act as to corrupt practices before swearing to such an affidavit as is required.

There is, therefore, no doubt in my mind that the court can inquire as to the truthfulness of an affidavit presented with a petition and whether it has been imposed upon in connection with the presentation of a petition.

Section 7 of the Dominion Elections Act, 1900, provides that:

The following persons shall be disqualified and incompetent to vote at any Dominion election, whether disqualified or incompetent or not to vote at a provincial election.

And of those, sub-section (*c*):

persons disqualified for taking bribes under section fifteen of the Act to disfranchise voters who have taken bribes, being chapter 14 of the statutes of 1894.

Section 8 declares that

the following persons shall be disqualified and incompetent to vote at an election, etc.

Of those are returning officers, election clerks, any person at any time employed at same election by by any person as counsel, attorney, solicitor, agent or clerk at any polling place at any such election, who has received or expects to receive any sum of money, etc., and, by section 9,

every person guilty at an election of the unlawful act mentioned in section 113, is disqualified from voting at such election.

Section 113 provides that

any voter hiring any horse * * for the purpose of conveying any voter to or from the polling place or places shall, *ipso facto*, be disqualified from voting at such election, etc., etc.

(1) 1 Ont. Elec. Cas. 137.

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To my mind, and I think the mind of every person conversant with the evil at which section 113 was intended to strike, this is what the section, as I have expressed it, was intended to meet.

I am not prepared to fritter away, by a refining of the words of section 113, what obviously was intended by the enactment of section 9.

It was the unlawful act, in any one of its several manifold manifestations, that section 113 presents that was intended to be reached.

We are asked to hold that all those who may thus be disqualified by such strong and emphatic language from voting at any election are yet within the meaning of the words in section 5, persons *having a right to vote.*

I have said, elsewhere, in relation to decisions upon Election Acts, that where there are so many considerations within the purview of any one of them, that, when these are added to in another or taken away by another, the general purview of the Act may not be or appear to the court to be the same and the decisions thereon should not necessarily be the same.

I am constrained to think that, if the eminent judges whose authority is appealed to on behalf of the decision in the court below, could have had presented to them, in its present condition, the Act now under consideration and the various considerations that are suggested by the legislation since these decisions were made, that they each and all would have adopted the course of refusing to be bound by such opinions as a proper interpretation of the Act as it now stands.

I was, at first, impressed with the review of the

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authorities and the decision of the late Chief Justice Moss in the *Dufferin Election Case*(1).

I think, if he had survived to the present day to witness the alleged growth of "saw-off," he would have been the first to realize the need of an untainted petitioner, and first, probably, to have discovered the need for and means of placing the power of petition in the hands of untainted promoters of petitions.

Since writing the foregoing I have had the pleasure of reading the judgment herein of my brother Sir Louis Davies, and regret that I cannot agree with the distinction he draws between the cases where the Dominion Elections Act and its amendments specially disqualify the voter and those others where voters may have been guilty of other corrupt acts.

The first class consist of a number of whom some have been, by way of emphasis, specially declared to be disqualified. It was, obviously, necessary, in framing the Election Act, to have a disqualification clause as to judges and others disqualified by reason of office. And, as the express disqualification for some specific acts and results of or incidental to judicial investigation had crept into the Act, it would have been unwise to omit in such a general disqualification clause a repetition of all such cases, lest unintentional and unwarranted inferences should be drawn from such omission.

I cannot think that, by reason of such special marking of disqualification in some cases, the legislation in which it is found is to be read as intending all others to be eligible to vote; for the oath the voter may have to take seems to bar him from such eligibility.

We are asked here to construe section 5 of the

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Dominion Controverted Elections Act, and that specially points by express words at "*ineligibility or* disqualification of the petitioner" as grounds that may be taken by way of preliminary objection.

I see no reason, therefore, for limiting this section 5 and also section 12 to the cases of express disqualification. The one voter is expressly and the other impliedly disqualified. And neither can, in my opinion, be held eligible to vote.

I agree in the result of reversing the ruling, but, with respect, I think it should be unlimited.

Appeals allowed with costs.

Solicitor for the appellants: *G. Fred. Pearson.*

Solicitor for the respondents: *T. B. Robertson.*