

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF WEST PRINCE
(P.E.I.)

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*Feb. 18, 19.

*Mar. 24.

EDWARD HACKETT (RESPONDENT.).....APPELLANT;

AND

WILLIAM SHARP LARKIN (PE- }
TITIONER).... } RESPONDENT.

ON APPEAL FROM THE DECISION OF THE CHIEF JUSTICE
AND MR. JUSTICE FITZGERALD OF P. E. I.

Controverted Election—Corrupt treating—Agent of candidate—Limited agency—Trivial or unimportant corrupt act—54 & 55 V. c. 20, s. 19 (D)—Benefit of.

During an election liquor was given to an elector who at the same time was asked to vote for a particular candidate.

Held, that this was corrupt treating under section 86 of the Dominion Elections Act, R. S. C. c. 8.

If a political association is formed for a place within the electoral district, and it is not shown that there was any restriction on the members to work for their candidate within the limits of that place only, they are his agents throughout the whole district.

Though the only corrupt act proved against a sitting member was of a trivial and unimportant character, and he had at public meetings warned his supporters against the commission of illegal acts, yet as such act was committed by an agent whom he had taken with him to canvass a certain locality, and there were circumstances which should have aroused his suspicions, he should have given a like warning to this agent, and not having done so he was not entitled to the benefit of the amendment to The Controverted Elections Act in 54 & 55 V. c. 20 s. 19.

APPEAL from a decision of the Chief Justice of the Supreme Court of Prince Edward Island, and Mr. Justice Fitzgerald, unseating the appellant for corrupt treating by an agent.

PRESENT:—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

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The petition against the return of the appellant contained a number of charges, on all of which he was acquitted except one, which was as follows:

"That William P. Callaghan, of Miminigash, farmer, an agent of the respondent, on the twenty-second day of June last, treated Patrick O'Brien, of Miminigash, in the barn on the premises of the said Patrick O'Brien, to intoxicating liquor for the purpose of corruptly influencing the vote of the said Patrick O'Brien, and in order to secure the return of the said respondent at said election. That the said respondent had a knowledge thereof, and consented and was accessory thereto, and paid, or promised to pay or repay, the said William Callaghan therefor."

The evidence in support of this charge was that appellant took Callaghan with him when he went to canvass a particular locality. They stopped at O'Brien's, and Callaghan took a bottle of whisky out of the waggon, and after going into the woods with two of the O'Briens and remaining some five minutes, he took Patrick into his barn and gave him two or three drinks out of the bottle, at the same time asking him to vote for appellant. It did not appear that the latter saw Callaghan take the bottle out of the waggon, or knew it was there.

The appellant contended that this was not a corrupt treating under the Election Act. He also claimed that the agency of Callaghan was not proved. It appeared that he was a member of the Conservative Association for DeBlois, a place within the electoral district, but it was not shown that the members of the association were restricted, in their work at the election, to the limits of DeBlois, and appellant admitted at the trial that he expected them to do all they could for him.

It was also claimed on behalf of the appellant that if the charge was proved he was entitled to the benefit

of 54 & 55 Vict. ch. 20, sec. 19, amending the Controverted Elections Act, and providing that:

"Where, upon the trial of an election petition, the court decides that a candidate at such election was guilty, by his agent or agents, of any offence that would render his election void, and the court further finds—

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"(a) That no corrupt practice was committed at such election by the candidate personally, and that the offences mentioned were committed contrary to the order and without the sanction or connivance of such candidate; and—

(b) That such candidate took all reasonable means for preventing the commission of corrupt practices at such election; and—

(c) That the offences mentioned were of a trivial, unimportant, and limited character; and—

(d) That in all other respects, so far as disclosed by the evidence, the election was free from any corrupt practice on the part of such candidate and of his agents; then the election of such candidate shall not, by reason of the offences mentioned, be void, nor shall the candidate be subject to any incapacity therefor.

The election judges decided against the appellant on all these points and gave judgment voiding the election from which judgment he brought this appeal.

McCarthy Q.C. and *Stewart* Q.C. for the appellant. In holding the act of Callaghan, under charge 8, a corrupt treating sufficient to avoid the election, the judges have strained the law beyond what has ever been done before. See *The Westbury Case* (1); *The Wallingford Case* (2); *The Montcalm Case* (3); *The South Ontario Case* (4).

(1) 1 O'M. & H. 47.

(3) 9 Can. S. C. R. 93.

(2) 1 O'M. & H. 59.

(4) *Hodg. El. Cas.* 755.

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Callaghan was not proved to be an agent outside of DeBlois. Agency may be limited both as to person and locality. *London Election Case* (1); *The Berthier Case* (2).

At all events the appellant is entitled to the benefit of 54 & 55 Vict. ch. 20, sec. 19.

Peters Q.C., attorney-general of Prince Edward Island, for the respondent. It has been found as a fact that Callaghan was guilty of corrupt treating, and this court will not disturb such finding unless satisfied that it was clearly wrong. *The Berthier Case* (2); *The North Perth Case* (3); *The Welland Case* (4).

As to agency, see Leigh & LeMarchant on Election Law (5).

The appellant is not entitled to the benefit of 54 & 55 Vict. ch. 20, sec. 19, unless he has brought himself strictly within its terms. *The Rochester Case* (6).

The judgment of the court was pronounced by :

THE CHIEF JUSTICE (*oral*).—This is an appeal upon the merits from the decision of two judges of the Supreme Court of Prince Edward Island, the Chief Justice and Fitzgerald J., appointed under the Controverted Elections Act to try the petition filed against the return of the appellant for the House of Commons at the election in June last. The learned judges held that the corrupt act alleged in the eighth charge of the bill of particulars was established, and the appellant was unseated. The decision of the appeal depends almost entirely on matters of fact, and we have thought it unnecessary to prepare a written judgment in disposing of it. I will therefore state, orally, the grounds upon which the judgment of the court is based.

(1) Hodg. El. Cas. 214.

(2) 9 Can. S. C. R. 102.

(3) 20 Can. S. C. R. 331.

(4) 20 Can. S. C. R. 376.

(5) 4 ed. p. 159.

(6) 4 O'M. & H. 160.

Charge no. 8 in the petitioner's bill of particulars is as follows :

That William P. Callaghan of Miminigash, farmer, an agent of the respondent, on the twenty-second day of June last, treated Patrick O'Brien of Miminigash, in the barn on the premises of the said Patrick O'Brien, to intoxicating liquor for the purpose of corruptly influencing the vote of the said Patrick O'Brien, and in order to secure the return of the said respondent at said election. That the said respondent had a knowledge thereof and consented and was accessory thereto, and paid or promised to pay or repay the said William Callaghan therefor.

There was no dispute as to the fact that Callaghan, who accompanied the appellant on the 22nd of June, had treated O'Brien, an elector, and at the same time had asked him to vote for the appellant. The questions which were raised, then, for our decision were: 1. Was the treating a corrupt act? 2. Was Callaghan an agent of the appellant? 3. Was the offence for which the appellant was unseated of a trivial or unimportant character and so within the provisions of 54 & 55 Vict. ch. 20, sec. 19, amending the Controverted Elections Act?

As regards the first question, whether or not there was a corrupt treating, I have no doubt whatever. Callaghan took the voter secretly into a barn and gave him drink out of a bottle of whiskey which he had brought with him. This was not treating of a kind which may very well take place without offence against the Election Act, namely, where an agent, in the course of ordinary hospitality, furnishes liquor or accommodation to an elector. In my opinion, the only object Callaghan could have had was to influence O'Brien's vote and induce him to promise his support to the appellant.

Corrupt treating having been established, it becomes material to consider the second question, namely, that as to agency. It appears that the treating did not take place in the district of DeBlois where there was a

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political association, of which Callaghan was a member (and where consequently, under the authority of *The Haldimand Case* (1) he would be an agent of the appellant) but in an adjoining district, and a very powerful argument, which made a great impression on myself, was addressed to the court by Mr. McCarthy, based on the contention that the agency of Callaghan was limited to the district of DeBlois, for which district only the association of which he was a member, and therefore an agent of the candidate, was constituted.

I quite agree with the principle laid down by Chancellor Spragge in *The London Case* (2) that agency may be limited both as to persons and as to locality, and if it had been proved that the association was confined to election work in the district of DeBlois it might well have been argued that Callaghan was not an agent except within that district. But when we come to look at the evidence we find nothing to show that the work of the association was so restricted. On the contrary, it appears from the distinct admission of the appellant himself, that the members were to work for him wherever they could. He says, on cross-examination by the Attorney General, that the associations organized for him were doing all they could. I take it, therefore, that as it was not shown that there was any restriction on the members of the association to work within the limits of DeBlois, they were agents of the appellants throughout the whole electoral district.

There remains to be considered the only question which raises any difficulty on this appeal, namely, whether or not section 19 of the Act of 1891 applies. I will read the section :

Where upon the trial of an election petition, the court decides that a candidate at such election was guilty, by his agent or agents, of any

(1) 17 Can. S. C. R. 170.

(2) Hodgins' Elec. Cas. 214.

offence that would render his election void, and the court further finds—

(a) That no corrupt practice was committed at such election by the candidate personally, and that the offences mentioned were committed contrary to the order and without the sanction or connivance of such candidate; and

(b) That such candidate took all reasonable means for preventing the commission of corrupt practices at such election; and

(c) That the offences mentioned were of a trivial, unimportant and limited character; and

(d) That in all other respects so far as disclosed by the evidence, the election was free from any corrupt practice on the part of such candidate and of his agents; then the election of such candidate shall not, by reason of the offences mentioned, be void, nor shall the candidate be subject to any incapacity therefor.

This is not an exact transcript of the corresponding clause of the Imperial Act (46 & 47 Vict. ch. 51, sec. 22), but it is to the same effect, the object of both being to relieve candidates from the consequences of corrupt acts, trivial or unimportant in character, of their agents. But, as Mr. Justice Vaughan Williams held in *The Rochester Case* (1), in order to obtain the benefit of this section a candidate must bring himself strictly within its terms. Now I admit that the offence proved in the present case was of a trivial and unimportant character, and the appellant was acquitted of all the other charges of which the particulars contained a great number. But, it appears to me, that he has failed to prove, in the first place, that Callaghan's corrupt act was contrary to his orders, and in the next place that he took all reasonable means to prevent the commission of corrupt practices at the election. He fails, I think, in this respect; although it is shown that he did announce at public meetings that he wished the election to be carried on properly, and warned his supporters against the commission of illegal acts, yet in my opinion he should have done more than he did

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(1) 4 O'M. & H. 160.

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in respect to this particular agent Callaghan whom he took with him to canvass a particular locality. He knew Callaghan was an agent, he knew that he talked with electors, and it must have been obvious to him that he was, to a certain extent, in his (Callaghan's) hands, but it does not appear that he administered any caution. The bottle of whisky was in the buggy, but it was not shown that appellant was aware of the fact. There were circumstances, however, that should have aroused his suspicion. On meeting certain persons who are proved to have been electors, Callaghan went with them into the woods and remained for some minutes, and O'Brien, the treating of whom constituted the corrupt act which unseated the appellant, was taken into his own barn. So without going further than the judges who tried the petition went I think we must say that the appellant must have known that something more than mere canvassing was going on, and should have cautioned Callaghan against the use of any unlawful means of influencing the electors. It is true he says he did not authorize him to canvass, but he knew that he was a member of the association which he expected to work for him, and that implies that he expected Callaghan to do the same. Under these circumstances, and following the English authorities, I do not consider the appellant entitled to the benefit of section 19 of the Act of 1891. The judgment appealed from is, I think, entirely free from error and must be affirmed.

The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *William S. Stewart.*

Solicitor for the respondent: *Arthur Peters.*
