
 CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF
 YAMASKA
 AIME BOUCHER (DEFENDANT) APPELLANT;
 AND
 NAPOLEON VEILLEUX (PETITIONER) RESPONDENT.

1932
 *Nov. 10.
 *Dec. 23.

Election law—Petition by qualified elector—Claim to the seat on behalf of defeated candidate and claim for the voiding of the election, not incompatible—Computation of votes—Voiding of election for corruption or illegality—Dominion Controverted Elections Act, R.S.C., 1927, c. 50, ss. 9, 10 (5), 47, 48, 49, 57.

In an election petition, a claim to the seat on behalf of a candidate defeated according to the return and a claim for the voiding of the election are not so incompatible as to render the petition illegal and void.

On the hearing of the petition, the trial judges, after having proceeded to the computation of votes under section 48 of the Act and having eliminated all the votes of each candidate tainted with illegality, are not bound to award the seat to the candidate having a majority of votes after such computation and elimination.—The trial judges have still jurisdiction to declare the election void owing to acts of corruption or illegality practised by one or both of the candidates.

Judgment of the trial judges (Q.R. 70 S.C. 339) affirmed.

*PRESENT:—Rinfret, Lamont, Smith, Cannon and Crockett JJ.

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APPEAL from the judgment of Coderre and Denis JJ. (1) sitting as trial judges under the provisions of the "Dominion Controverted Elections Act," R.S.C. (1927), c. 50, in the matter of the controverted election of a member for the Electoral District of Yamaska in the House of Commons of Canada, rendered on the 23rd of June, 1932, maintaining the respondent's petition as to the claim for the voiding of the election and dismissing it as to the other claims, without costs, and declaring the appellant's election void.

The material facts of the case and the questions at issue are stated in the judgment now reported.

Aimé Geoffrion K.C. for the appellant.

Edouard Masson and Aimé Chassé for the respondent.

The judgment of the court was delivered by

SMITH J.—At a Dominion election held on the 28th day of July, 1930, the appellant and one Paul François Comtois were the candidates in the Electoral District of Yamaska and the appellant was returned as elected.

A petition against the appellant was presented under the *Dominion Controverted Elections Act* (R.S.C., 1927, c. 50) by the respondent, a duly qualified elector of the said electoral district.

This petition, after numerous allegations of corrupt and illegal acts, committed on behalf of the appellant, concludes as follows:

Pourquoi le pétitionnaire conclut à ce que l'élection du défendeur Aimé Boucher, notaire, comme député à la Chambre des Communes, pour la division électorale d'Yamaska, soit déclarée nulle à toutes fins que de droit; et à ce que le dit défendeur soit frappé de toutes les pénalités, sanctions et incapacités que prescrit la loi; et à ce qu'il soit retranché du nombre de suffrages qui paraissent avoir été donnés en faveur du défendeur, un vote pour chaque personne qui a voté à la dite élection, et qui a été subornée, régagée, illégitimement influencée et qui a été engagée et employée moyennant rétribution, tel que ci-haut mentionné; et à ce que le candidat Paul François Comtois, agriculteur, domicilié et résidant dans la paroisse de St. Thomas de Pierreville, district judiciaire de Richelieu, soit déclaré élu député à la Chambre des Communes du district électoral d'Yamaska; le tout avec dépens contre le dit défendeur, y compris les dépens incidents et autres occasionnés par la présente contestation.

Sections 48 and 49 of the Act are as follows:

48. If, on the trial of an election petition, claiming the seat for any person, a candidate is proved to have been guilty, by himself or by any person on his behalf of bribery, treating, or undue influence with respect to any person who voted at such election, or if any person retained or employed for reward by or on behalf of such candidate, for all or any of the purposes of such election, as agent, clerk or messenger, or in any other employment, is proved on such trial to have voted at such election, there shall, on the trial of such election petition, be struck off from the number of votes appearing to have been given to such candidate, one vote for every person who voted at such election, and who is proved to have been so bribed, treated or unduly influenced, or so retained or employed for reward as aforesaid.

49. If it is found by the report of the trial judges that any corrupt practice has been committed by a candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, or that any illegal practice has been committed by a candidate or by his official agent or by any other agent of the candidate with the actual knowledge and consent of the candidate, the election of such candidate, if he has been elected, shall be void.

Section 9 provides that the petition may be in form "B" in the schedule to the Act; and the concluding clause of that form reads as follows:

Wherefore your petitioner prays that it may be determined (that * * * was duly elected *or returned or that * * * ought to have been returned or that the election is void, as the case may be*) (the words "as the case may be" are in italics).

The trial judges found that the claim to the seat on behalf of the candidate Comtois should be rejected because the proof on this point does not justify this part of the conclusions of the petition and also because of the admission of the petitioner himself in the record.

They further found the appellant guilty by agents of corrupt practices sufficient to void the election and declared same void accordingly. From this decision voiding the election the appeal is taken.

The ground of appeal is that because the seat is claimed for the defeated candidate the function of the trial judges was limited to striking off votes from the number given for each candidate as provided by s. 48 and to finding by this means who "had" the majority of lawful votes and of declaring the candidate, so found to have the majority, elected.

It is argued that a claim to the seat on behalf of a candidate defeated according to the return and a claim for the

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voiding of the election are incompatible claims that cannot be set up side by side; or, in the alternative, because, if the election of Boucher is first declared either valid or void, it is not then possible to reverse this on a computation of votes under s. 48; and, on the other hand, that if such computation under s. 48 is first made, the Court must award the seat to the candidate having the majority by such computation, and cannot then proceed to void the election because, the judges having eliminated all the votes of each candidate tainted with illegality, there are left only the good or untainted votes, and the party having the majority of these is entitled to be declared elected; and all the illegal votes cast for him having been disallowed, these and the means by which they were procured cannot be made a ground for unseating him.

I am of opinion that this reason is not tenable. It means that if the seat is claimed by or on behalf of a candidate who has been defeated according to the return, the trial judges, quite regardless of any large amount of corruption and illegality practised on behalf of both candidates, must declare one of them elected.

To confirm the successful candidate according to the return in the seat under such circumstances would be directly contrary to the provisions of s. 49.

Section 10 (5) of the Act provides that the sitting member, whose election and return is petitioned against, may file a petition, complaining of any unlawful and corrupt act by any candidate at the same election who was not returned or by his agent with his privity, and s. 47 provides as follows:

On the trial of a petition under this Act complaining of an undue return and claiming the seat for any person, the respondent may give evidence to show that the election of such person was undue in the same manner as if he had presented a petition complaining of such election. The language of this section is peculiar, inasmuch as it treats or speaks of any person for whom the petition claims the seat as an elected person whose "election" may be attacked in the prescribed manner. It seems a misnomer to speak of the "election" of a candidate who by the return is not elected. I am of opinion, however, that the section means that a candidate who has not been declared elected, on whose behalf a petition against the candidate returned as elected claims the seat, may be proceeded

against in the same manner as if a counter petition had been filed against him under s. 10 (5) referred to.

It follows that a defeated candidate for whom the petition claims the seat is in the same position, so far as corrupt or illegal practices are concerned, as the successful candidate against whom the petition has been filed. Where, therefore, the evidence establishes against the candidate declared elected, and also against the candidate for whom the seat is claimed, corrupt and illegal acts sufficient to void an election, the trial judges are not bound to declare one of them elected on a computation of votes pursuant to s. 48, but may declare the election void.

Section 57 provides that at the conclusion of the trial, the trial judges shall determine whether the member whose election or return is complained of or any and what other person was duly returned or elected, or whether the election was void.

The trial judges here, as expressly empowered by this section, have declared that neither the appellant nor Comtois, for whom the seat was claimed, was duly returned or elected, and that the election is void.

I am of opinion that there was jurisdiction so to declare, and, this being the only question submitted to us, the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Adolphe Allard, Elie Salvas.*

Solicitors for the respondent: *Chassé & Duguay.*

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