

1909

\* May 5.

\* May 10.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT  
OF QUEBEC WEST.

WILLIAM PRICE (RESPONDENT) . . . . . APPELLANT;

AND

EDWARD NEVILLE, JUNIOR. . . . . }  
(PETITIONER) . . . . . } RESPONDENT.

WILLIAM POWER (RESPONDENT) . . . . . APPELLANT;

AND

WILLIAM PRICE (CROSS-PETITIONER) . RESPONDENT.

ON APPEAL FROM THE DECISIONS OF CHIEF JUSTICE  
LANGELIER AND McCORKILL J.

*Election law—Election petition—Preliminary objections—Cross-petition—Sufficiency of charge of corrupt acts—Particulars.*

By a preliminary objection to an election petition it was claimed that the petitioner was not a person entitled to vote at the election and the next following objection charged that he had disqualified himself from voting by treating on polling day.

*Held*, that the second objection was not merely explanatory of the first but the two were separate and independent; that the second objection was properly dismissed as treating only disqualifies a voter after conviction and not *ipso facto*; and that the first objection should not have been dismissed the respondent to the petition being entitled to give evidence as to the status of the petitioner.

The respondent, by cross-petition, alleged that the defeated candidate personally and by agents "committed acts and the offence of undue influence."

\*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Idington, Duff and Anglin JJ.

*Held*, that it would have been desirable to state the facts relied on to establish the charge of undue influence but as these facts could be obtained by a demand for particulars a preliminary objection was properly dismissed.

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**A**PPEAL from judgments rendered, respectively, by Langelier C.J. and McCorkill J. in the Controverted Elections Court, in the matter of the controverted election of a member for the Electoral District of Quebec-West in the House of Commons of Canada.

The member returned as elected, Price, the respondent to the petition to avoid his election, appealed from the judgment of Sir François Langelier C.J. maintaining a motion to quash his preliminary objections to the petition against his return and dismissing those objections with costs. On a counter-petition filed by Price, acts of corruption were charged against the defeated candidate, Power, and his disqualification was prayed for, and he appealed from the judgment of Mr. Justice McCorkill dismissing his preliminary objections to the counter-petition.

A statement of the case appears in the judgment now reported.

*Flynn K.C.* for the appellant and respondent, Price.

*C. E. Dorion K.C.* for the respondent Neville, and the appellant Power.

The judgment of the court was delivered by

ANGLIN J. :—The respondent to an election petition appeals from the judgment of Sir François Langelier C.J. allowing a motion to quash preliminary objections taken by him to the petition. Upon the argu-

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ment the court expressed its view that with the exception of the objections numbered 4 and 5, as to which judgment was reserved, the preliminary objections were properly quashed.

Objections numbers 4 and 5 are as follows:—

4. Because the said petitioner is not a person who had a right to vote at the election to which the petition relates, and respondent expressly denies the allegations of paragraph one of petition.

5. Because, moreover, the said petitioner had no right to vote at the said election, for the reason that he was then disqualified as such voter by the fact that, on the polling day, he being an hotel-keeper, gave and caused to be given to numerous voters of the said Electoral District of Quebec-West, on account of such voters having voted, and being about to vote, drink and refreshments, and became thereby guilty of a corrupt practice consisting of treating on polling day.

The learned Chief Justice treated objection number 5 as merely a statement of the particular ground upon which the respondent intended to challenge the right of the petitioner to vote at the election, put in issue by objection number 4. He says: "Le paragraphe 5 explique le paragraphe 4."

So treating it he held that if the allegation of fact made in the fifth objection were established, it would not prevent the petitioner from proceeding with his petition.

With great respect I am unable to agree in the view that paragraph 5 is merely an explanation or particularization of the lack of qualification to vote charged by paragraph 4. Paragraph 4 deals with an absence of qualification such as the omission of the voter's name from the voters' list. Paragraph 5 deals not with lack of qualification but with disqualification due to some act of the voter, which, although he otherwise possessed the requisite qualification of a voter, would invalidate any vote that he might cast. The introduction of the word "moreover," in paragraph 5, makes

it perfectly clear that by that paragraph the respondent intended to challenge the status of the petitioner upon a ground entirely distinct from that raised in paragraph 4.

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The motion before the learned Chief Justice was in the nature of a demurrer and was disposed of without any evidence being taken to establish the facts alleged by the preliminary objections. The objections could properly be so disposed of only upon the assumption that if the facts alleged in them were proved they would not constitute valid objections to the petition. As to the allegation in paragraph 4 that the said petitioner is not a person who had a right to vote at the election to which the petition relates,

it is manifest from the mere statement of the objection that, if established, it would be fatal to the petitioner's status. The respondent is clearly entitled to have this objection disposed of on the merits. The motion to quash it should not have prevailed. I venture to think that it succeeded only because the learned Chief Justice construed paragraph 5 as a specification of the objection to the petitioner's status taken generally by paragraph 4.

But when we come to consider paragraph 5, the same authority which establishes the right of the respondent to raise these questions as to the status of the petitioner by preliminary objections—*The Cumberland Election Case*(1)—also establishes that such an objection as that taken in paragraph 5 would not if established render the petitioner ineligible. The judgment of Mr. Justice Girouard and that of Mr. Justice Davies, in which Mr. Justice Nesbitt con-

(1) 36 Can. S.C.R. 542.

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curred, determine that a corrupt practice such as that charged in the 5th paragraph disqualifies only from the date of a conviction of the offender by a court of competent jurisdiction or of a finding of such a court that the offence has been committed, and that a petitioner, though guilty of such an offence, is not a person who had not a right to vote at the election within the meaning of the section declaring the requisite qualifications of a petitioner. This decision is of course binding upon us.

It follows that the judgment in appeal must be sustained as to the 5th objection, but that, as to the 4th objection, it must be vacated. In view of the very limited extent of the appellant's success, there should be no costs to either party.

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The respondent to a cross-petition appeals from the judgment of McCorkill J. dismissing his preliminary objections. The appeal is confined to the overruling of the 5th objection, which is in the following terms:—

5. The allegations contained in paragraph 11 of said petition do not disclose any actual act of undue influence and are in law insufficient to have the respondent declared guilty of such offence.

Paragraph 11 of the cross-petition is as follows:—

11. And your petitioner also says that the said William Power, during the said election, directly and indirectly, by himself and by his agents, with his actual knowledge, consent and privity, has committed acts and the offence of undue influence.

While this paragraph is objectionable on the ground that it states a conclusion of law, and although it is no doubt desirable that a petitioner preferring a charge of undue influence should state the facts upon which he relies to establish the charge, it is manifest

that these facts can readily be obtained by a demand for particulars, and where that is the case the taking of a preliminary objection upon such a ground should be discouraged. For this reason the learned judge overruled this objection. I think that in doing so he was well advised and that this appeal should therefore be dismissed with costs.

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*Appeal in Price v. Neville allowed  
 in part without costs. Appeal in  
 Power v. Price dismissed with costs.*

Solicitor for the appellant and respondent, Price:

*E. J. Flynn.*

Solicitors for the respondent, Neville: *Dorion &  
 Marchand.*

Solicitors for the appellant, Power: *Dorion &  
 Marchand.*

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