

*Case, Hodgins, 187*, if the matters which constitute the offence charged consist of acts or language which are reasonably susceptible of two interpretations, one innocent and the other culpable, a very grave responsibility is imposed upon the Judge to take care that he shall not adopt the culpable interpretation unless after the most careful consideration he is able to give to the matter in hand, his mind is convinced that in view of all the circumstances it is the only one which the evidence warrants his adopting as the true one.

I am satisfied that the finding of Judge Johnston was reached only after great consideration, and that having regard to the circumstances and the ordinary course of business between Berthiaume and Lariviere, as related by the former, the finding was the only one that could be properly reached upon the evidence. It seems to me fully warranted by the evidence of Berthiaume himself.

It is objected that the evidence of Lariviere which places the fact of the hiring beyond any reasonable doubt was inadmissible because Lariviere was not named in the notice of motion as is required by sec. 222 of the Act when *viva voce* evidence is to be taken. The proceedings are statutory. The provisions of the statute that the relator shall name in his notice the witnesses whom he intends to examine is imperative, and must be as strictly complied with as the prior words of sec. 222, which were considered in *Reg. ex rel. Mangan v. Fleming* (1893), 14 P. R. 458, where it was held that the relator before serving his notice of motion was obliged to file the affidavits and material upon which he intended to move.

As bribery was alleged on the part of Berthiaume, affidavit evidence was prohibited by sec. 248 and evidence had to be taken *vive voce*. I do not read sec. 248 as unconnected with sec. 222. The two must in my opinion be read together and no witness can be examined whose name has not been mentioned in the notice of motion.

I therefore think the evidence of Lariviere was inadmissible. But rejecting it wholly there remains the evidence of Berthiaume himself—amply sufficient, as I have stated, to warrant the finding made.

There is no express finding that the relator was guilty of corrupt practices nor was that matter in issue. It appears, however, that, like Berthiaume, he had hired a team for