

This appears to indicate that the more speedy and much less expensive appeal to the Supreme Court at Ottawa is coming into favour among Quebec lawyers. It may be remarked, however, that January is not the season usually selected by them for a trip to London.

#### COURT OF QUEEN'S BENCH.

MONTREAL, January 30, 1889.

*Coram* DORION, C.J., CROSS, CHURCH, DOHERTY, J.J.\*

**BRISON v. GOYETTE, and JAMES McSHANE, *mis en cause*; and JAMES McSHANE, applicant for writ of appeal.**

*Quebec Controverted Elections Act—Judgment finding mis en cause guilty of corrupt act—Jurisdiction of Superior Court sitting in Review.*

On a petition under the Quebec Controverted Elections Act. 38 Vict. ch. 8, McShane was brought into the cause (under s. 272, of 38 Vict. ch. 7), for corrupt practices during the election. The evidence against him was taken before the judge trying the election petition, and when judgment was given on the election petition by the Superior Court sitting in Review, that Court also pronounced upon the issue between the petitioner and the *mis en cause*, finding the latter guilty of corrupt practices. McShane applied for a writ of appeal, which was refused by the Clerk of the Court, and application that he be ordered to issue a writ was then made to the Court. The Court, under all reserves, ordered that the writ issue, in order that the parties interested might be heard upon the question whether the Court of Review had jurisdiction as respects the *mis en cause*.

DORION, Ch. J.—An important question is involved in this application. McShane alleges that he is aggrieved by a judgment of the Court of Review sitting in an election case, and he applied to the clerk of this court for a writ of appeal. The clerk of the court, acting in accordance with instructions which have been given for his guidance in election matters generally, refused to issue a writ. Thereupon McShane has moved for an order

to the clerk to issue the writ. The question is whether the judgment of which McShane complains is a judgment on a matter arising out of the election petition or requiring the determination of the Court of Review.

An election petition was presented by Brisson complaining of the undue return of Goyette for the county of Laprairie. This Court has not all the facts before it, but it has the petition and the judgment. In the course of the proceedings the judge presiding at the trial found that there was some evidence of corrupt practices by McShane and by one Bourassa. McShane was then summoned to appear before the court to answer the charge. When the final judgment was given by the Court of Review, McShane was declared by the judgment to be guilty of two corrupt acts, one of bribery and one of intimidation, and he was condemned to pay two penalties of \$200 each. It is from this judgment that he wishes to appeal. His ground of appeal is that the Court of Review had no jurisdiction whatever to give the judgment in question.

The law applicable to the case is found in chapters 7 and 8 of 38 Victoria. Chap. 7 relates to elections and to the punishment of corrupt practices. Chap. 8 refers to controverted elections and the proceedings relating thereto. Section 9 of chap. 8 says: "The Superior Court of this province shall have jurisdiction over election petitions and over all proceedings to be had in relation thereto, subject nevertheless to the provisions of this Act." So the whole matter is left to Superior Court, subject to certain provisions of this Act. Section 45 says: "Every election petition shall be tried before a judge." Section 4 says who is a judge: "The word 'judge' means any one of the judges of the Superior Court of the province, or such Superior Court held by any one judge thereof." It is clear, therefore, that jurisdiction in matters of contested elections is given to a judge of the Superior Court, unless where otherwise provided. We find in sections 6 and 19 who may be parties to an election petition. The petition may be presented by one or more electors, or by a candidate. The respondent may be the member elected, or any candidate against whom an unlawful

\* Tessier and Bossé, J.J., were also present at the hearing.