

Sup. Ct.]

NOTES OF CANADIAN CASES.

[Chan. Div]

said, "Will \$25 do?" K. answered, "Whatever you like, it is nothing to me." The money was left on the table. When bidding the appellant B., good-bye, K. said: "Gentlemen, remember that this money has no influence, as far as I am concerned, with regard to the election." The appellant did not at the time, nor at any subsequent time, repudiate the act of B. This amount of \$25 was not included in any account rendered by the appellant or his financial agent, and large sums were admittedly corruptly expended in the election by the agents of the appellant.

Held (affirming the judgment of the Court below), that the giving of the \$25 by B. to K. was not an act of liberality or charity but a gift out of the appellant's money, with a view to influence a voter favourably to the appellant's candidature, and that although the money was not given in appellant's presence, yet it was given with his knowledge, and therefore appellant had been personally guilty of a corrupt practice.

Appeal dismissed with costs.

Crepeau, Q.C., and Gormully, for appellant.
Irvine, Q.C., for respondent.

BERTHIER ELECTION CASE.

GENEREUX ET AL. V. CUTHBERT.

Railway Pass—37 Vict. ch. 9, secs. 92, 66, 98, and 100—*Questions of fact in appeal.*

In appeal four charges of bribery were relied upon, three of which were dismissed in the Court below, because there was not sufficient evidence that the electors had been bribed by an agent of the candidate.

The fourth charge was known as the Lamarche case.

The facts were as follows:—

One L., the agent of C., the respondent, gave to certain electors employed on certain steamboats, tickets or passes over the North Shore Railroad to enable them to go without paying any fare from Montreal to Berthier, to vote at the Berthier election, the voters having accepted the free passage without any promise being exacted from, or given by them. The tickets or passes showed on their face that they had been paid for, but there was evidence that L. had received them gratuitously from one of the officers of the N. S. R'y Co.

The learned judge, who tried the case, found as a fact that the tickets had not been paid for and were given unconditionally, and therefore held it was not a corrupt act.

On appeal to the Supreme Court—

Held, (1) (FOURNIER and HENRY, JJ., dissenting) that, taking unconditionally and gratuitously a voter to the poll by a railway company or an individual whatever his occupation may be—or giving a voter a free pass over a railway or by boat or other conveyance, if unaccompanied by any condition or stipulations that shall affect the voter's actions in reference to the vote to be given is not prohibited by 39 Vict. ch. 9.

(2) That if a ticket, although given unconditionally to a voter by an agent of the candidate, has been paid for, then such a practice would be unlawful under section 96, and by virtue of section 98, a corrupt practice, and by virtue of section 100 the election would be void.

(3) That an Appellate Court will not reverse the decision of the judge who tried the case on a question of fact without its being made apparent that his decision was clearly wrong.

Appeal dismissed.

Mercier, Q.C., for appellant.

Lacoste, Q.C., for respondent.

CHANCERY DIVISION.

Ferguson, J.]

[March 4]

EXCHANGE BANK V. SPRINGER.

EXCHANGE BANK V. BARNES.

Onus—Principal and surety—Guarantee—Negligence—Connivance.

It cannot be said that when the *onus* is upon a party to any litigation it is sufficient for him to say that he could furnish the necessary proof if he had certain papers. It is his duty to have those papers, or to have them produced, the means of causing their production being what the law deems ample. If the documents are his evidence, and they are lost, or cannot be produced, the misfortune is his, and he cannot be said to have proved his case, because he says he could prove it if he had certain papers—or rather says he cannot