

fixed for the voting. The appellant was a supporter of Mr. Sylvestre, the Liberal candidate. The day before the voting he got a number of voters to go to Montreal on the pretence of getting various articles for him, but really, as was charged, to procure their absence from the polls. Among those who it was alleged were thus tampered with was Adrien Hétu. The appellant paid Hétu \$6 to go from Lavaltrie to Montreal for a load of 1,000 pounds, but the load turned out to be a packet of cotton of about ten pounds weight. Joseph Prud'homme got \$5 to go to town for a small package of whiskey. The Court below found that the engagement of Hétu was a sham, and that the money was paid to secure his absence from the poll, he being a Conservative. The penalty of \$200, or six months' imprisonment, was therefore inflicted.

RAMSAY, J. (*diss.*) This is an action for a penalty under the Quebec Election Act of 1875 (38 Vic. c. 7, sect. 249). This section contains five sub-sections, the first four of which are directed against corrupt agreements to induce people to vote or to refrain from voting at an election. The fifth and last sub section is legislation of a peculiar character. It makes it penal to give money to another with the intention of preventing an elector from voting, although there be no corrupt agreement, that is to say, without any corruption on the part of the recipient. I may at once say that this is not the action brought in the present case, and which without confession on the part of the defendant is not susceptible of proof; for I take it there can by no possibility be any presumption of a malicious intent arising out of the doing of an absolutely innocent act. The action is very loosely drawn, and if it can be sustained at all it must be as an action under sub-section 1, that is, as being the giving of money in order to induce one Adrien Hétu not to vote. There is no direct evidence of any such contract, nor indeed is it pretended that there is. But plaintiff says that there was a simulated bargain that Hétu should go to Montreal on the polling day, pretending to get a load of goods for appellant, that appellant had no load of goods to carry, that Hétu was to return empty-handed after the polling was over, so that he could not vote, and that for this pretended service he was to get from appellant \$6. I think I may safely say that of this contract so elaborated there is absolutely no direct evidence either. The appellant was not examined, and Hétu distinctly denies that there was any such agreement, and no witness testifies to having any knowledge of there being any such bargain between appellant and Hétu. But plaintiff says: "That is not necessary; I have a right to presume

that the appellant is guilty and that a contract did exist between them, because, 1. Lapierre did return without a load but only with a small bundle of little value. 2. Because Hétu was a supporter of the Conservative candidate, to whom the appellant was strongly opposed. 3. Because appellant did engage another person to go on an errand to prevent him from voting, if we are to believe the story of Mr. Joseph Prud'homme.

It appears to me that these presumptions are unfounded and inconclusive, and that the evidence of a different act of corruption is inadmissible. There is no doubt that a guilty intention may be inferred from other acts of a like nature. But this class of evidence is admitted with great care, and I take it there must be a wrongful, or at least an ambiguous act to qualify. An illustration will make my meaning clear. I find A without right in my house by night and I accuse him of being there with intent to commit a felony. In proof of this charge I can prove that he was there before and did commit a felony; but if I find a man walking on the road before my house where he has a right to be, I could not prove that he had any felonious intent in being there, by showing that he did walk there on a previous occasion when he did commit a felony.

I therefore say that all the evidence of Prud'homme is illegal. It is just as though you proved that a man had stolen because he had stolen on another occasion. In the same way, that Hétu brought no load proves nothing. I am to reverse.

DORION, C. J., also dissented on the ground of the insufficiency of the evidence. There was no sufficient evidence against Lapierre. He engaged a man named Hétu to go to Montreal and get a load. There was no time fixed for him to make the trip, except that he was to bring the load before New Year's Day. There was no mention of the election, nor any request as to not voting. He might have gone to Montreal and returned in time to vote, or he might have voted first and then brought the load. Colorable intention was not proved. His Honor considered the law in question a good one, but there was no evidence on which to rest a judgment against Lapierre. It was proved, moreover, that he did not meddle with the election.

The majority of the Court held that the judgment against Lapierre ought not to be disturbed. The circumstances connected with the engagement of Hétu were in the opinion of the majority such as to lead to the belief that the intention was to secure his absence from the poll.

Judgment confirmed, Dorion, C. J., and Ramsay, J., dissenting.

*Piché, Q. C.*, for the appellant.  
*Gagnon*, for the respondent.