

election is matter of record, and that as record it must be proved, except in so far as the stringency of this rule is set aside by positive enactment. Nowhere has the law pretended to say that general evidence of an election would suffice, and I fancy the Legislature will pause before making such a dangerous innovation.

Although this action is called an action of debt, it is so-called only to avoid technical difficulties, but for what is of importance, as the evidence of the offence, it is to be considered as a penal action. Without going further we are to reverse.

But coming to the merits, it seems to me the action is not proved. It is quite evident that, according to no ordinary principle will suspicions do to establish such a case, and that with regard to presumptions, which generally come to aid in the proof of offences, they are inconclusive in these cases. In another case, *Lapierre & Laviolette*,* I have endeavoured to draw attention to the phraseology of section 249 of this act. It seems to me that the offence sought to be brought home to the appellant is a violation of sub-section 1, that is, it is a gift to Bouchard's wife to induce this man to vote for one of the candidates. This is a specific charge, and the statute requires that it should be specific.

Now what is the evidence in support of it? I take the evidence of Bouchard, his wife and the girl Isabelle, for I think the attempt to break down their credibility is totally unsuccessful. They are poor people living to some extent, on charity, and very naturally, and I may add, not improperly under Mr. Bernatchez's influence. Now what they tell us is this, that the appellant called and asked Bouchard if he would vote; that Bouchard told them he would, but that he would not say for whom; and all agree that the appellant said he was right in this, and that he did not ask him to vote for Mr. Fortin, nor make any bargain with him that he should. After that appellant gave Bouchard's wife \$5 without any further stipulation or understanding.

I can fancy that Hebert may have thought that giving \$5 to this semi-mendicant, who had not a cent in the house, was likely to produce a friendly feeling to appellant, but I deny that any one has the right to say it was

* The case of *Lapierre & Laviolette*, referred to by Mr. Justice Ramsay, turned entirely on evidence, and has not been reported. By way of completing the above report, we give a note of it as an appendix to the present case.

given as an inducement to vote, when all the parties swear that there was no understanding of the sort between them.

To say that charity must cease because an election is going on appears to me as ridiculous as it is infamous. The sincerity of the advocates of such views may be judged by their practice. They denounce giving a few dollars to a beggar woman for fear it may bias her husband in favor of the donor, and they set forth the pecuniary advantages to be derived by manufacturers or farmers from free trade or protective tariffs as the most unanswerable reason for voting for this or that candidate. Acts of Parliament will not, I fear, be found to be very efficient means of making people patriotic. If parliamentary elections have the effect of inducing even spasmodic fits of charity, it is not a totally despicable gain. But whatever may be the abstract view upon these matters, the legislature has not yet laid down the rule that suspicions are to take the place of proof in all prosecutions for electoral frauds.

I am to reverse, not only on the absence of proof of the election having been held, but also on the absence of proof that the \$5 was given to the mendicant woman to induce her husband to vote or to refrain from voting.

The Court is unanimous in reversing the judgment.

Sir A. A. DORION, C.J., was to reverse on the first point, but he thought there was evidence to justify the Court in presuming that the \$5 was given to induce the husband to vote.

Judgment reversed.

COURT OF QUEEN'S BENCH.

MONTREAL, Sept. 27, 1882.

DORION, C.J., RAMSAY, TESSIER, CROSS & BABY, JJ.
LAPIERRE (def. below) appellant, & LAVIOLETTE
(plff. below), respondent.

Quebec Election Act—Inducement to refrain from voting—Evidence.

The appellant complained of a judgment rendered in the District of Richelieu, condemning him to pay a penalty of \$200 for having committed an act of corruption within section 249 of the Quebec Election act.

It appears that an election for the Quebec Legislature was in progress in the County of Berthier, and the 29th December, 1880, was