plaintiff and Victor Bélanger was defendant, to wit the judgment rendered on the 9th day of July, 1883, and having deliberated;

"Considering that the note which formed the basis of the said action, to wit, a note purporting to be drawn at Lotbinière on the 3rd January, 1883, payable 12 months after date to the order of C. B Mahan & Co., and signed by the said defendant now appellant, was obtained from the said appellant by the said Mahan & Co. by misrepresentation and fraud;

"Considering that it appears that the holder of the said note, to wit, the said James Baxter, was aware of the said fraud, and that he has failed to prove that he gave value for the said note;

"Considering further that it appears that the said plaintiff got possession of the said note, after the departure of the said Mahan from Montreal, from one Walters, who held the said note with others of a similar kind, as collateral security for advances to Mahan, on the order of Mahan and on the payment of what was due by Mahan to Walters;

"And considering that this transaction gives rise to the presumption that Baxter got these notes as agent of Mahan, and that he holds them for Mahan, which presumption is not repelled in any way;

"Considering that Mahan could not recover on the said note;

"And considering there is error, etc.;

"Doth reverse, etc., and doth condemn the said Baxter to pay the costs incurred in the Superior Court as well as the costs of this appeal."

Judgment reversed.

COURT OF QUEEN'S BENCH.

QUEBEC, December 7, 1883.

DORION, C.J., RAMSAY, TESSIER, CROSS & BABY, JJ.

HÉBERT, Appellant, and CHOQUETTE, Respondent.

Election Act, 38 *Vic.* (*Que.*) *c.* 7—*Proof of Election—Inducement to vote.*

The holding of an election is matter of record, and in an action for a penalty, must be proved by the written certificate of the returning officer.

Suspicions are not to take the place of proof in prosecutions for electoral frauds: the corrupt inducement to vote or to refrain from voting must be clearly proved.

RAMSAY, J. This is an action for a penalty under the Quebec election law, 38 Vic. cap. 7, for bribery. The appellant was found guilty and was condemned to pay $200, and in default of payment to be imprisoned for six months. The appellant contends that there is no proof to support the action:—

1st. That there is no evidence of any election.
2nd. No evidence of bribery.

Respondent answers that this is a Circuit Court case; that there is no declaration in writing requiring the notes of evidence to be taken down in writing (1074, C. C. P.), and that consequently there is no appeal except on law.

It seems to us that the respondent cannot fairly take up this ground, for the notes were taken and a stenographer was sworn to take them correctly, and these notes are filed.

With regard to the appellant's pretention, it appears that the article does not require, in an action for a penalty any mention of the writ of election or the return thereto. (Sect. 293.) Again, sect. 295 enacts that "it shall not be necessary at the trial of such suit, to produce the writ of election, or the return thereto, nor the authority of the returning officer, but parol evidence of these facts shall be sufficient proof of the same."

"The certificate of the returning officer *to that effect* shall constitute sufficient proof *of the election having been held*, and of the fact of any person therein stated to have been a candidate having been such candidate."

It is easily understood that the object of the legislature was to avoid the inconvenience of depriving the Assembly of its officers, and of its archives to make a formal proof of a fact of public notoriety; but it was not intended to substitute parol for written evidence where there was no inconvenience in producing a written certificate. At any rate the legislature has not gone so far. It seems that parol evidence of the writ, of its return, and of the authority of the returning officer will suffice, but that it requires the certificate of the returning officer to establish that the election was held and who were the candidates.

If this be the requirement of the law then the evidence is incomplete, for no one has established who was returning officer, and consequently there can be no valid certificate. Without a certificate of this kind, we don't know that there was an election. Again, we have no more verbal evidence that there was a writ, or that there was a return thereto, than as to who was returning officer. All we have is general evidence that there was an election, but on what authority it was held, no one seems to have thought it necessary to enquire.

It is needless to say that the holding of an