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SHORTHAND WRITERS' NOTES.

It appears that the difficulty of securing with expedition an authentic transcript of what the witnesses have said, which is here found to be so formidable, has not been altogether overcome in England. There is often conflict between the shorthand writers' version and the notes taken by the judge. The question then arises, which should be accepted? In a recent case the Court ruled that a preference should be given to the full transcript made by the shorthand writer. Mr. Justice Field, however, emphatically dissents from this opinion, and protests against another Court setting aside his notes in favor of a shorthand writer's, and overruling him on the strength of that proceeding. His lordship insists that his notes are a truer record of the evidence than the shorthand report, for the simple reason that they contain nothing but what is in the strictest sense admissible evidence, and that in its most highly concentrated and pertinent form.

This is a matter determined very much by the circumstances. An inexpert shorthand writer will give his whole attention to the mechanical work of writing, which he will do imperfectly, and hence the sad jumble of words so often found in depositions, and in the factums in appeal. A practised and intelligent shorthand writer is more likely to be correct than a judge who strives to write in long hand with any degree of fulness what the witness is saying, and who will usually be a considerable way behind the witness. But if a judge restricts himself to the salient points of testimony, his record on one of these points should, it seems to us, be preferred to the record of an unprofessional writer; though even in such a case, we admit, it is quite possible that the judge may be wrong and the reporter right. There are a dozen circumstances which are not without importance: the keenness of hearing of one and the other; their position with reference to the witness; facility with the pen, etc.

NECESSARIES FOR INFANTS.

The *Law Journal* (London) notes a curious case, *Lang* v. *Guthrie*, tried on the 23rd of May, before Mr. Justice Manisty and a special jury. It was an action by a gunmaker to recover the price of a pistol and two air-guns sold to the defendant. The plea was that the defendant was an infant. It appeared that the defendant ordered the goods while a minor, but the plaintiff having received an intimation that the purchaser was not yet of age, refused to deliver them until the defendant came of age, and then delivery was made upon his written order. The plaintiff, it would seem, was clearly entitled to recover under the circumstances, the fact that an order had been given previously during minority and not acted upon, having no bearing on the case; but the curious feature of the trial is that the jury found that the pistol was a necessary for an infant, and the learned judge is reported as saying that he agreed with the jury! If we had found this case in our contemporary, the *American Law Review*, it would seem quite in the ordinary course of affairs—the juries of Missouri would doubtless cling to so reasonable a doctrine, but for an English jury it is a little strange, and we are inclined to suspect that his lordship at least was not fully understood.

THE MODERN LEGISLATOR.

The modern Quebec legislator is a remarkable person. Discovering a deficiency in the chest he institutes a commission to find out how to economize. The three commissioners immediately run up bills amounting to several thousands of dollars each, besides liberal drafts for travelling expenses; and the two secretaries do the same. This is only an inquiry as to civil service expenditure —a matter with which the heads of departments might be supposed somewhat conversant. Then grants to charities and similar objects are cut down 20 per cent. But the modern legislator ends by discovering that he is a more distressed creature than hospital patients, and he votes himself as extra pay for the session $200, or $17,800, for there are 89 of them—a sum considerably larger than was economized from the hospitals. Herbert Spencer has been studying and writing upon "the sins of legislators." It is evident that he made a great mistake when he passed by Quebec in the course of his investigations.

NOTES OF CASES.

COURT OF REVIEW.

MONTREAL, May 31, 1884.

Before JOHNSON, PAPINEAU and BUCHANAN, JJ.

LAVOIE, Petitioner, and GABOURY, Respondent, and LEBLANC, put in by answer to the petition, and ALDERIC OUIMET, recipient of notice.

Laval Election Case—Quebec Election Act of 1875—Corrupt practice—Grounds for personal disqualification of candidate—Counter petition—Election—Notice to person charged with corrupt practice.

1. *Where the evidence of a corrupt promise by the candidate is contradicted in important particulars, and the candidate wholly denies it on oath, the Court will not base thereon a judgment of personal disqualification.*
2. *The payment of money by an agent to a canvasser will not be held ground for personal disqualification, unless it be shown that the candidate was aware of such payment.*
3. *The payment by the candidate himself of a sum of money for election purposes to a person concerned in his election, is a matter to be judged by the circumstances attending such payment, and where the payment in question was made to a person strongly in favour of the candidate, and who required no inducement to support him, it was held no ground for personal disqualification.*
4. *Until the exigency of the original writ of election is satisfied there is no election, and the several elections are considered one and the same election, even though the seat is not claimed for any one.*
5. *Under sections* 272, 273 *and* 274 *of the Quebec Election Act of* 1875, *a regular summons to a person charged with a corrupt practice to appear at a place, day and hour fixed, must be issued. If the party fails to appear, he may be condemned on evidence already adduced on the trial of the election petition, but if he does appear, the case is to go on as an ordinary case, and the judgment is to be given on evidence then to be adduced.*

JOHNSON, J. In this case the Court is called upon to give effect to statutes of the Parliament of this Province, that is to say, the Quebec Election Act of 1875, and the Controverted Elections Act, with their amendments of the same year; and we are called upon to do this, not only on the main issue between the petitioner and the respondent, but upon the recriminatory charges brought by the respondent in his turn against Mr. Leblanc, who had been a candidate at the previous election and was also a candidate at this one, which for the purposes of the present case has been assumed to form part of the election of 1883—the first having failed to return a candidate who could hold the seat, and the two, therefore, being taken together as constituting one and the same election; and we are also called upon to apply the law with reference to the proceedings incidentally taken by the respondent against Mr. Ouimet professedly under sec. 270 of the Election Act.

Mr. Felix Lavoie, the petitioner, asked by his petition that the election of the respondent for the county of Laval should be set aside on all the grounds that could be alleged under the law; and it further prayed for the personal disqualification of the respondent for acts of corruption committed with his personal knowledge and participation.

This petition was filed on the 19th of July, and served on the respondent upon the 21st July, and he appeared by his attorneys on the 26th; and on the 27th July he filed his answer, which he intituled, *Réponse, contre-pétition et mise en cause.*

A question was raised as to whether the answer was in time; but that question has no importance with reference to the main issue on the petition itself—and obviously so—because the law says that if the answer is not filed in proper time, the issue is to be considered joined without an answer. Therefore, the motions made to get rid of this answer as filed too late will be considered by-and-by with reference to other interests, viz.: with reference to the interests of Mr. Leblanc and Mr. Ouimet whom, by this answer, or by means of the demands accompanying the answer and produced and filed with the answer, it was sought to put into the case; and that part of the case need not be further noticed now. It will suffice to say the answer to the petition was a general denial of its allegations—the rest of it, or of

what was produced along with it, related to what was alleged against Mr. Leblanc and Mr. Ouimet, and will be noticed at the proper time, when we get to that part of the case.

Admissions were made by the parties, which considering their importance, both as to the general facts of the case, and particularly as to the connection between the election of 1882, and that of 1883, it is well to refer to. They were as follows:

"Pour éviter à frais, les parties admettent :

"Qu'une élection d'un membre à l'Assemblée Législative de la Province de Québec, pour le district électoral de Laval, dans le district judiciaire de Montréal, a eu lieu, en vertu de la loi dans le dit district électoral, dans le courant du mois de juin 1883, et que la présentation des candidats ayant été fixée au six de juin 1883, a eu lieu ce jour-là à Ste. Rose, dans le dit district électoral de Laval, dans le district judiciaire de Montréal, et que la votation ayant été fixée au treizième jour de juin 1883, a eu lieu ce jour-là, dans le dit district électoral de Laval ;

"Que le défendeur, et Pierre Evariste Leblanc, avocat, de la cité et du district de Montréal, se sont portés candidats et ont été mis en nomination à la dite élection et sont demeurés tels candidats durant la dite élection ;

"Que d'après le compte des votes fait par les sous-officiers-rapporteurs, et d'après la vérification des états par eux préparés, faite par l'officier-rapporteur, le dit Amédée Gaboury se trouvant à avoir la majorité des votes donnés à cette élection, a en conséquence été proclamé élu député, pour représenter le dit district électoral de Laval ;

"Que le dit officier-rapporteur a fait son rapport en conséquence au greffier de la Couronne en Chancellerie pour la Province de Québec, lequel a publié le nom du dit Amédée Gaboury, comme candidat élu député pour le dit district électoral de Laval, dans l'édition ordinaire de la *Gazette Officielle* de Québec, le vingt-troisième jour de juin 1883, conformément à la section 213 de l'acte électoral de Québec ;

"Que le pétitionnaire était et est électeur habile à voter, et ayant droit de vote à la dite élection à laquelle la présente pétition se rapporte, et que son nom était inscrit sur les listes électorales qui ont servi à la dite élection, et qu'il était encore, lors de la présentation, habile à voter à l'élection d'un membre de l'Assemblée Législative de la Province de Québec, et que de fait le dit pétitionnaire a voté ;

"Qu'une élection eut lieu dans la dite division électorale de Laval pour l'Assemblée Législative de Québec, le vingt-trois et le trentième jour d'octobre 1882, étant respectivement les jours de la nomination et de la votation ;

"Qu'en la dite élection le mis-en-cause, Pierre Evariste Leblanc, écuyer, avocat, de Montréal, fut un des candidats et Benoit Bastien, écuyer, entrepreneur, de St. Vincent de Paul, l'autre candidat, le dit Leblanc, ayant été rapporté comme dûment élu ;

"Que le retour du dit monsieur Leblanc fut contesté, son élection déclarée nulle et irrégulière, à raison des manœuvres frauduleuses de ses agents, sur admission du dit Leblanc, par la Cour Supérieure du district de Montréal, siégeant en révision, le vingt-cinq mai dernier, et que l'élection contestée en la présente cause a eu lieu pour remplir la vacance créée par le dit jugement ;

"Que le dit Evariste Leblanc, écuyer, avocat, de Montréal, et mis en cause, est la même personne qui a été candidat dans les deux dites élections."

Soon after going into evidence, it was admitted that the facts proved by petitioner were sufficient to avoid the election; after that, the evidence on the main issue was directed to establish the personal acts and knowledge of the respondent which might have the effect of disqualifying him. This latter question, then, is the first to which we shall have to direct our attention.

If we looked only at the printed *factums* of the petitioner and the respondent we should find the case of Charette was the only one relied upon. That charge, shortly stated, was that Dr. Gaboury met Charette at Ste. Rose one Sunday afternoon, between the day of nomination and the day of voting; Charette asked him if he had seen Dr. Ouimet, and Dr. Gaboury while answering in the negative, enquired why Charette wanted to know; that Charette answered it was for a case of child-birth; whereupon the respondent said: "I will go, if you will vote for me." Charette swears that he understood the attendance of Dr. Gaboury was to be given gratis, and that the respondent used the words "*Je m'en vais y aller; moyennant que vous votiez pour moi, je ne chargerai rien.*" Dr. Gaboury denies all this *in toto* upon his oath; but besides this, we are all of opinion that the evidence shows conclusively that Charette is mistaken, to say the least; the time of the arrival of Dr. Gaboury at Ste. Rose, and the time when Charette went to get Dr. Ouimet, making it perfectly impossible that the meeting between him and Dr. Gaboury should have occurred as he says it did, and without going further, therefore, into the discussion of this particular charge, we all think it would be impossible, in the face of the respondent's sworn denial, and of the contradiction of his statement in some most important particulars, to base a judgment of personal disqualification upon his evidence, even if there were no further testimony as to his credibility at all.

We therefore find that this charge is not proved.

I have said that this charge of a corrupt promise made to Charette was the only one contained in the printed *factums*; but at the argument of the case there were other cases also that were argued to have the effect of disqualifying the respondent; and the next charge that was urged before the court was the case of Tremblay, to whom Mr. Mercier paid $61.26 for copying lists and for travelling expenses. No doubt, under s. 278 of the Quebec Election Act,

this payment was prohibited unless it were made through an agent whose name and address had been declared in writing to the returning officer; but it shouldbe observed that Tremblay was not an elector; and there is nothing to reach the candidate, as to knowledge of that payment. There is evidence enough to show that the candidate paid money to Mr. Mercier, and that the latter paid to Tremblay; but none to show that the candidate knew that Mercier so paid the money; and if it had been made by Papineau himself, who was a duly appointed agent, and appears indeed to have been the only duly appointed agent of the candidate, it could not have been considered an unlawful payment. This payment was included in the account of legal expenses which Mr. Papineau, the agent, afterwards approved; and if, instead of the money having been paid by Mercier and approved by Papineau, it had been paid by Papineau himself, the proceeding would have been an unobjectionable one. It was said that under the amendment of the law (39 Vict., sec. 19) a payment to a canvasser was made a corrupt practice. So it was; but it is not clear that Tremblay was a canvasser; and if it were, the payment by Mercier without Gaboury's knowledge would not reach to disqualify the latter, but merely to avoid the election which was already done by the admission of the candidate.

The next case in respect of the disqualification of respondent was the case of Beaubien. All that was urged against Mr. Beaubien was that he had received money from Gaboury to influence the election. The fact is that Papineau the agent sent him $50, and being a cautious man he returned it, considering rightly that the agent was the proper person to pay lawful expenses. Therefore, there is nothing in this particular charge at all.

The remaining charge, although not mentioned in the factums, was put very clearly by Mr. Boisvert, for the petitioner, at the argument, and it consisted in the payment by Mr. Gaboury himself to Mr. Mercier, of a sum of $100, to premote his election. Section 249 of the Quebec Election Act (c. 7,) defines corrupt practices. It says among others in sub-section 3, of 249, "every person who directly or indirectly by himself, or any other "person on his behalf, makes any gift, loan, "offer, promise, procurement or agreement, "as aforesaid to or for any person, in order "to induce such person to procure, or endea- "vour to procure, the return of any person to "serve in the Legislative Assembly, or the "vote of any elector at any election," is a corrupt practice. What is charged against Mr. Gaboury on this head is that he paid this money, (call it gift, loan, advance, or anything else,) to induce Mr. Mercier to procure his, (Gaboury's,) return. I think we cannot be too careful to distinguish what this charge is from what it is not. It is *not* that, in contravention of section 278, the money was paid otherwise than through an agent declared to the returning officer. That would be unlawful, no doubt, and subject by that section to a penalty; but the charge is that the money was paid, as I have said, to *induce Mr. Mercier* to procure the candidate's return. That, of course, is a matter of fact to be judged of from the evidence of the circumstances. Now, if there is one thing conspicuously certain throughout this whole lamentable, and I must say most abusively long contestation, it is that Mr. Mercier was neither in a condition to require any inducements of the sort — nor Mr. Gaboury to attempt any such inducement. Mr. Gaboury, if I am not using too plain terms, as I hope I am not—and I certainly do not mean to do—Mr. Gaboury was Mr. Mercier's candidate. How wide from the fact, then, the notion must be that the money was paid to get what Gaboury had got already! What inducement could be required? Why, Mr. Mercier came there for no other purpose than to support him. P. 259, see Mercier's evidence: "C'est moi qui est allé me mettre à son service." Again, if this man is to be disqualified it is for having knowingly committed some *corrupt practice*. Now the payment denounced under s. 278 is certainly not a *corrupt practice* under the act. Sec. 248 says "any act or offence punish- "able under any of the provisions of sections "249, 251, 252, 253, 254, 255, 256, 257, 258, 259, "260, 261 and 262 shall be a corrupt practice "within the meaning of the present act and "of the Quebec controverted elections act, "1875." And sec. 267 gives us *the consequence* (viz., disqualification) *of the commission*

of corrupt practices by a candidate, not the consequences of an unlawful act, subject as this may have been, to a penalty, and declared, by the express enumeration of the sections I have quoted as constituting corrupt practices, *not to be one* of them. If any serious discussion has been rendered necessary of this particular charge it is because the language of Mr. Mercier as a witness was inaccurate. He said he had borrowed this money from the candidate, and yet that he never intended to return it. This must have been said to cover the real transaction whatever it was. Now it was not a loan, no doubt. It was a payment or an advance of money for election purposes—prohibited certainly by sec. 278, and for that reason, therefore, spoken of as a loan, perhaps,—but unless it was made to induce Mr. Mercier to procure the candidate's return, even though it was employed by Mercier for that purpose, it could not have operated as any inducement *quoad* him. The plain words of sub-section 3 are directed against candidates buying the support of others by money, and it is quite plain from all the facts of the case that when Mr. Mercier went down to this county, no inducement was required to make him support Mr. Mr. Gaboury. On the contrary. The two condidates were both of the party opposed to him in provincial politics. He chose the one he preferred. Gaboury was his creature—(I don't mean it offensively); but certainly Mr. Mercier was not the creature of Mr. Gaboury. The money may have influenced others—but it did not influence Mr. Mercier—which is the gist of the offence charged.

We now come to another part of the case: The respondent, with his answer to the petition, made charges, as I have already observed, against Mr. Leblanc, a candidate at both elections, and also made charges against Mr. Ouimet, who had not been a candidate at all, but merely an agent for Mr. Leblanc at the first election. We will deal first of all with the charges against Mr. Leblanc; but before coming to the charges themselves, I must notice two objections that were made. The first was that this answer and its accompaniments came too late. Speaking for myself and for Mr. Justice Papineau, we both of us consider that the answer was too late. We think it ought to have been made within the five days, and that where there are no preliminary objections (and here there were none), there is the same time, and only the same time given to produce an answer to the petition. That, however, would not, in the opinion of any member of the Court, affect the counter demand produced at the same time. We, therefore, hold that Mr. Leblanc, as far as the time of filing the counter demand is concerned, is properly before the Court; and he appeared and answered the charges, and we have to consider them, as far as that objection goes. The second objection related to the question whether the two elections were to be considered as one. The general principle, and the one that was acted upon in the Argenteuil case, upon the authority of Lord Coleridge in the Launceston case, is that, until the exigency of the writ of election is satified, there is no election. It was contended for Mr. Leblanc and for the petitioner, that this principle only applies where the seat is claimed; and upon the authorities cited from the English books which are applicable to the English statute, that is so; but are those authorities applicable to our Statute? Sec. 55 of the Quebec Controverted Elections Act says: "On the "trial of a petition, the respondent may give "evidence to show that any other candidate "has been guilty of corrupt practice in the "same manner, and with the same effect as "if he had himself presented a petition com- "plaining of such election, or of the conduct "of such candidate. But before entering "into such proof, the respondent shall give "notice thereof to such candidate, if he "be not already in the case, who may "cross-examine the witnesses against him, "and produce others on his own behalf."

The English Statute, in Section 23, which relates to this point there, says: "On the "trial of a petition under this Act complain- "ing of an undue return, *and claiming the* "*seat* for some person, the respondent may "give evidence to prove that the election of "such person was undue in the same man- "ner as if he had presented a petition com- "plaining of such election." Besides the difference between the two statutes in this respect, we find that provision has been made in our statute for security for costs being given to the *candidate not elected* whose

conduct is complained of: vide sec. 26 of the Controverted Elections Act. By this section the petitioner must give security of four kinds. The 1st, 2nd and 3rd relate to other persons, but the 4th says the petitioner must give security to the *candidate not elected whose conduct is* complained of.

Now this must obviously apply to such a case as the present. The petitioner, Mr. Lavoie, complains of the conduct of Mr. Gaboury. Mr. Gaboury, in his turn, complains of the conduct of the candidate not elected. Call Mr. Gaboury petitioner or counter petitioner, the candidate not complained of by Lavoie could not ask security from *him*: Lavoie has nothing to say to the candidate not elected; it is the other who alone complains of his conduct and would appear to be required to give security, and Dr. Gabonry himself calls his answer 'Réponse, contre pétition, &c.' Therefore, whether he actually gave security or not, or whether he was called upon to give seeurity, has nothing to do with the point, which is whether provision has been made for security being given to a candidate not elected whose conduct is complained of. If such provision *has* been made it must apply to such a case as this, which must, therefore, be held to have been contemplated by this section as well as by the express words of sec. 55. But if any doubt could be entertained on this point it would be set at rest by sec. 6 of the Quebec Election Act. The words of that section are: "An election petition is a "petition complaining of the undue re-"turn or undue election of a mem-"ber, or of no return, or of a double return, "or of any unlawful act of any candidate not "returned." So that we have Mr. Leblanc before us under the very words of our Statute, and we must deal with the case charged against him.

The first case alleged against Mr. Leblanc is that of Champagne, for money paid to him on behalf of Leblanc by Mr. Ouimet in 1883 on account of the election of 1882. We ought to observe that in the election of 1882, between Bastien and Leblanc, the latter had no regularly appointed agent. Mr. Boisvert explains that he may been considered the agent, but in reality never was—there never had been any appointment made. Coming back to the case of Champagne, we will only say that whoever may have paid him the money, there is no knowledge proved on the part of Leblanc.

The next case is that of Cleroux. The charge here was that Leblanc personally paid him $123. Cleroux himself says that he took voters to the poll; but there is nothing to negative Leblanc's own account of the matter on his oath; and he says it was for his personal expenses, he having been in the county previously, and having always employed Cleroux to drive him about, and Cleroux also swearing that he had charged nothing for those he drove to the poll. No money can by law be paid otherwise than to the regular agent, except for personal expenses, and though Cleroux drove persons to the poll, there is nothing to show that he got the money for that purpose, and he denies it, and we think the money is fairly proved to have been paid for personal expenses.

The next charge is that Leblanc paid $2 for a treat to St. Amour, who kept an inn. Leblanc swears this is not true. He paid the money for personal expenses, having dined there. We consider that the circumstances do not show any corrupt intent.

The case of Charles and Ludger Therien is the next one that is urged against Mr. Leblanc for having treated at a committee meeting. In this case we consider that the evidence shows the money paid was not more than sufficient for the use made of the house; and in making arrangements for the use of the rooms, no liquor was ordered. One of the Theriens says also, that when the payment was made it was not made for liquor.

The cases of Leon Dugas and Pascal Ouimet come next. This is another case of alleged treating, and, applying the same principles, we consider that there is nothing in the nature of corruption proved. It was a committee meeting, and the treating, if it is to be so called, was a treat volunteered by the keeper of the house.

Seraphim Bastien's case comes next. He says Leblanc promised him money through Bellerose, if he would work for him. He is entirely unsupported; Mr. Leblanc denies it on oath, and Bastien's testimony is, besides, impeached by Benj. Dion, fils, and others.

The next case brought forward was the case of Pascal Ouimet. Besides the so-called treating there was a payment of $5 made to Pascal Ouimet through Boisvert for the use of the room used by the committee. He was asked to make his account. He said it was very little, they might give what they liked, and Boisvert gave him $5. Under the view we have taken of Dr. Gaboury's case, this was an unlawful payment, for Boisvert was not his regular agent for the election; but certainly it is not a corrupt practice. The consequence of this holding will be considered by-and-by, as to costs.

Then there was a case urged where Leblanc was charged with paying a treat to Jn. Be. Auclaire. This again occurred at a committee meeting. Auclaire was opposed to Leblanc, and tried to get him to treat those present, and himself began by treating, which Leblanc returned. Auclaire's account of the matter is very succinct. He says, speaking of Leblanc and St. Amour, "they did not try to influence me." We think there was no corrupt treating here.

The next case mentioned in the papers is that of Fleurant, but nothing was said about this case at the hearing.

The case to which the greatest importance seems to be attached is that of Eusebe Laurin. This was said to be undue influence exercised by paying Laurin money to engage men to go to the poll on nomination day to "keep order" as it was called. The money was paid by Mr. Ouimet; it was employed in part at least for some such purpose, and the balance was offered back to Mr. Ouimet, who said, "restez tranquille. On réglera plus tard." There is nothing to connect Leblanc with this proceeding. There was some misapprehension as to whether this money was offered to Mr. Ouimet or to Mr. Leblanc, but must have been to Mr. Ouimet. Laurin's evidence makes this certain. He says at page 98 that the language used was as I have mentioned, adding: "Comme je vous ai dit tantôt." Looking back to what he had said before, and to which he refers, we find (p. 74) that it was Mr. Ouimet who said this, and not Leblanc. We are not called upon to say whether this money was used corruptly or not as long as Mr. Leblanc is not shown to be connected with the payment of it.

The next case is that of Camille Leclaire. This was an alleged promise of a place to Leclaire to induce him to vote for Leblanc, and also the subsequent giving of a place to him to recompense him for his work in the election of 1882. All that is proved is that Mr. Ouimet was using influence on one occasion with Mr. Mousseau to get him to fulfil the promise of a place previously made by Mr. Loranger, who had represented the county; and Mr. Leblanc, who was not even a candidate at that time, happened to be present. We therefore consider that the recriminatory demand made against Mr. Leblanc in these particulars is unfounded.

Then there is a general pretension that there was an organization to supply money for this election, and that Mr. Leblanc must have known of it. We are of that opinion also; but to that extent merely; and no further. There is no evidence of his personal knowledge of the manner of using that money, except where some of it was used lawfully. For instance, he must have known that money was supplied by Mr. Hughes. He himself got some, and paid part of his deposit with the returning officer, as he might legally do, with money he got from Mr. Hughes and Mr. Ouimet; but he is not connected personally, as far as we can see, with any objectionable or corrupt expenditure of that money. We therefore acquit Mr. Leblanc of the charges in the counter-petition.

The next part of the case relates to the proceeding taken by Mr. Gaboury against Mr. Ouimet, This, too, was taken at the same time, and was produced with the answer and served upon Mr. Ouimet, who appeared under reserve, and moved to reject the demand made against him, and which prayed for his disqualification. That motion was granted by Judge Mathieu, and we all agree it was properly granted. Another notice, with a copy of the bill of particulars against Mr. Leblanc was afterwards served upon Mr. Ouimet, and that notice was allowed to remain in the record for whatever it might be worth. There appears to have been some misapprehension as to the ruling of Mr. Justice Papineau upon Mr. Ouimet's motion to reject this second notice. However that may be, we have now to consider whether the section 270 of the Quebec election act reaches Mr. Ouimet, who is not alleged to have been a candidate at the election of 1882; but merely to have acted in the interest of the candidate who was Mr. Leblanc. The sections of the act to be looked at are from 269 to 274 inclusive. Sec. 269 disqualifies any candidate who may employ any person as a canvasser or agent, knowing that such person has, within eight years, been found guilty of any corrupt practice by any competent legal tribunal, or by the report of a judge.

Sec. 270 disqualifies *any person* found guilty of any corrupt practice in any proceeding in which, after notice of the charge, he has had an opportunity of being heard.

Sec. 271 merely relates to the cessation of the incapacity *where* such person is disqualified upon the testimony of witnesses subsequently convicted of perjury.

Sections 272, 3 and 4 supply the means to be used and the proceedings to be taken before a party can be found guilty of corrupt practices, entailing both on himself as well as on the candidate who may employ him, consequences so serious and so penal. The majority of the court think that these sections must be taken together. We find that under 272, 273 and 274 a regular summons to appear at a place, day and hour fixed, must be issued. We find that if the party fails to appear, he may be condemned on evidence already adduced on the trial of the election petition; but that if he does appear, the case is to go on as an ordinary case, and judgment, after hearing, is to be given on evidence then to be adduced. We find it difficult to conceive that all these safeguards should be provided if the party could be found guilty after a mere ordinary notice. We think that the words "after notice" in this section are mere matters of course, signifying that no judgment finding a person guilty of corrupt practices could be rendered without notice. We are strengthened in this view by the fact that our sections 272-3 and 4 are not found in any of the provisions of the English Statute. The English statute, however, does contain very much the same provision as our section 270. The Parliamentary elections act of 1868, sec. 45, provides that "any person other than a can-

didate found guilty of bribery in any proceeding in which after notice of the charge he has had an opportunity of being heard (the same words as our English statute) shall be disqualified; and in the Bewdly case (1 O. & H. 176) Blackburn, J., held that the mere report of a judge did not disqualify an elector under sec. 45. He said: "The report of a judge is not a determination of the case, except incidentally. He has only to make a report, and it can hardly be said that that is the same as finding a man guilty.

This decision of Blackburn, J., was referred to with approval by the select committee appointed in April, 1870. In the opinion of the committee the distinction between 'found guilty' and reported guilty is substantial and not formal.

Again, the sec. 3 of the amendment of the Quebec Controverted Elections Act of 1875 provides for certain cases where agents may be condemned jointly and severally with the respondent to pay costs. Even in such cases as that, the judge is ordered to summon the agent, and if he does not appear he may be condemned on the evidence already adduced; but if he does he can only be condemned upon evidence and after hearing as in an ordinary case, and in the same way as provided in sections 272, 273 and 274. If such are the care and circumspection of the law with respect even to a condemnation for costs, we may well conclude that we do right in exacting at least the same, before we disqualify any man from sitting in Parliament or holding office under the crown.

The result, then, of our labours in this protracted case need now only to be shortly stated. We avoid this election, and to that extent grant the prayer of the petition, with costs against Dr. Gaboury up to the time of his admission of the sufficiency of the evidence to justify that decision. With respect to the proceeding of the petitioner to disqualify Dr. Gaboury, we dismiss that part of the prayer of the petition; but with respect to costs, exercising the powers conferred on us by sections 123 and 124 of the Election Act, we consider that although Dr. Gaboury is not disqualified, the proceedings against him for that object are far from being capable of being considered vexatious; but rest upon *prima facie* grounds. He made an illegal payment to a person other than his regularly appointed agent—a payment which has led to the principal difficulty in deciding this case; and we condemn each of the parties to that part of the case to pay his own costs. As regards the contest between Dr. Gaboury and Mr. Leblanc respecting the conduct of the latter—the recriminatory demand of Dr. Gaboury is dismissed, each of the parties also paying his own costs.

Finally, as respects the charges against Mr. Ouimet, a majority of the court holds that he is not before the court at all, and being in the position of a man who has been improperly brought here, we dismiss the charges against him, and he is entitled to his costs against the party who brought those charges. We hold, (that is, Mr. Justice Buchanan and myself hold,) that there is all the difference possible between saying that a man may be found guilty after notice, and saying that the notice alone can put him upon his trial, especially when we find the precise mode of proceeding presented in the next section but one. We think with Blackburn, J., that there is a substantial difference indeed between finding a man guilty, which would subject him to the penalties of guilt, and reporting what the evidence may *prima facie* prove against him—upon which report a prosecution might afterwards lie in which he could defend himself. But we can report without any notice; whereas we hold we cannot find guilty upon a notice alone, and set aside the prescribed mode of procedure in the statute. We say, therefore, that Mr. Ouimet has been proceeded against with a view to his disqualification illegally, and that having to appear and show the illegality of that proceeding, he is entitled to his costs against the party who took that proceeding, and we condemn Dr. Gaboury to pay those costs.

The Court desires to add one word—not of complaint, nor yet exactly of remonstrance—both of them words that are unpalatable; but we feel that some observation is called for on professional and on public grounds with respect to the useless and extraordinary complexity and confusion of these proceedings. Two heavy folio volumes of evidence, without division or classification of subjects, would seem to be too much to require as a general thing in order to reach the truth in a Provincial election petition. The hearing of this evidence, easily and advantageously reducible to one-third of its present bulk, took one judge of this court very nearly two months from the performance of his ordinary duties, while to say nothing of incidental motions and arguments requiring the services of three other judges at various times, the present members of this court have been sedulously intent, for one whole week, to the exclusion of all other business, upon the grounds of final investigation and decision of this case. If the exact measure of justice, under such circumstances, has not been awarded in every sub-detail of the endless intricacies of this case, the fault will not have been entirely ours.

Election annulled.

Boisvert for Petitioner.
Trudel & Co. for Respondent Gaboury.
Boisvert for *mis en cause* Leblanc.
Cornellier for Ald. Ouimet.

In the case of *Choquette & Hébert* (p. 178) Dorion, C.J., did not sit.