

The Legal News.

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PEREMPTORY CHALLENGE.

In my note on Mr. McCarthy's proposed amendments to the criminal law, (*ante* p. 65) I was under the impression that it was the "stand aside" he desired to abolish, and I overlooked for the moment the Statute allowing the Crown four peremptory challenges on any trial. I have since seen the Bill, from which I learn that his object is only to repeal this enactment. There can be no objection in principle to its repeal, but one cannot help asking why the law should be again changed in this minute particular.

R.

OATHS.

In the charge delivered by Mr. Justice Ramsay to the Grand Jury, at the opening of the Court of Queen's Bench, Crown Side, his Honor made the following observations:—
"Among the intellectual projects of the day who do not believe in the binding sanctity of an oath the subterfuge of an affirmation. As an oath necessarily includes an affirmation, it is somewhat difficult, for ordinary people, to understand how a man is to be bound by the one and not by the other. It will be observed that this proposed change is not intended to meet a difficulty analogous to that formerly raised by the Quakers and some other sects as to the use of God's name, which, from a narrow reading of the words of Scripture, they believe is prohibited. Their objection is not then the result of the disregard of a solemn undertaking; it arises from an over-scrupulousness, which to some may appear ridiculous, but which in no way menaces the basis of social order. The failure to observe this distinction and the love of change—a mania of small-minded people—have, probably, contributed more to encourage this proposed alteration than the repetition of the disturbances which suggested it."

These remarks were probably elicited by the measure which is to be submitted to the English Parliament; but since this charge was delivered, we have received a copy of a bill introduced by Mr. Robertson at Ottawa, to which the criticism of Mr. Justice Ramsay seems to be equally applicable. The preamble of the bill is "Whereas the discovery of truth in Courts of Justice has been signally promoted by the removal of restrictions on the admissibility of witnesses, and it is expedient to amend the law of evidence with the object of still further promoting such discovery;" and the first Section reads as follows:—"If any person called to give evidence in any criminal proceeding, or in any civil proceeding, in respect of which the Parliament of Canada has jurisdiction in this behalf, objects to take an oath or is objected to as incompetent to take an oath, such person shall, if the presiding Judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following promise and declaration: "I solemnly promise, affirm and declare that the evidence to be given by me shall be the truth, the whole truth, and nothing but the truth."

FEEES ON LETTERS.

We have reported a number of decisions *pro et con* as to the right of an attorney to collect from the debtor by legal process a charge for writing a letter for his client, notifying the debtor that legal proceedings will be instituted in default of payment of the debt. Where the debt is not paid, and suit is entered, no fee for this service is ever taxed in favor of the plaintiff's attorney, for none is provided by the tariff. In the Circuit Court, however, some of the judges have been disposed to allow such a charge, on equitable considerations, where the claim is paid before entry of action. We do not see why any distinction should be made; the service is performed in each case alike, and the charge therefor should be allowed or rejected irrespective of subsequent proceedings.

The proper way to meet the difficulty is by amending the tariff, and making the fee taxable. It might be provided that a docket should be opened at the Court House, in which notice of suit should be entered, and the letter written (or printed) on paper bearing a stamp, say five cents for Circuit Court and ten cents for Superior Court cases. The amount of the fee should bear some proportion to the amount of the claim. A dollar and a half is too much for notice of suit for petty debts sometimes not exceeding that sum. We would suggest a mere commission of 20 per cent. on amounts less than five dollars, and a fee of one dollar with five per cent commission on amounts from \$5 to \$25: on claims over that sum the fee to be \$2.50. Of course the entry of the notice of suit would be compulsory only where the attorney desired to have the benefit of taxation.

NOTES OF CASES.

SUPERIOR COURT.

BERTHIER, Feb. 21, 1883.

Before DOHERTY, J.

GENEREUX et al. v. CUTHBERT.

Dominion Controverted Election Act, 1874 — The Berthier Election Case — Evidence — Bill of Particulars — Corrupt Act — Passes — Limited Agency — Money paid by candidate to canvasser.

1. Evidence of corrupt acts and bribery is not admissible under a bill of particulars in which the names and descriptions of the alleged bribers are not given.
2. Passes, which were not paid for by the giver, presented to electors to take them to the polling place, do not constitute a "valuable consideration" within the meaning of the Act.
3. Telling a carter who was asked to bring a voter to the poll, "tu feras ton compte, et tu iras te faire payer," even if the words were used by an agent of the candidate, is insufficient to avoid an election.
4. Where the agency of a person is limited to a particular act, e.g. making a speech for a candidate, and subsequently that person is guilty of an act of a doubtful character, he will not be deemed an agent of the candidate merely because he had been employed for a special purpose.
5. The advance of a sum of money by a candidate for the travelling expenses of a canvasser, who was also an agent and a voter, will not be held to avoid the election, where the Court is of opinion that the advance was made in good faith, though the item was subsequently omitted in the candidate's statement of personal expenses.

DOHERTY, J. Early in the course of this trial, counsel for respondent raised an objection to any evidence of alleged corrupt acts and bribery, under particulars in which the names and description of the alleged bribers were not given.

The question being debateable and important, I ordered, in some cases, the evidence to be taken under reserve.

My first duty now is to decide that objection, and after examination of the authorities on this point, I maintain the objection. The authorities and the practice are decidedly in favor of this decision.

Fortunately, the question arose only in the cases which were abandoned by petitioners at

the hearing, and the decision is now in this case immaterial.

A petition is presented, in the usual form, as to corrupt practices, without claiming the seat. This petition is supplemented by a Bill of Particulars, consisting of twenty-six specific heads or charges.

Respondent answers these charges by a general denegation, alleging at the same time petitioner's want of quality or right to petition against the validity of the election, which right was afterwards admitted, thus bringing the case to a direct issue on the merits.

Petitioners have called witnesses, in moderation as to number, and respondent has examined but few in rebuttal.

At the hearing, petitioners very properly abandoned as unproved, all but five of their charges, persisting in the 1st, 2nd, 8th, and 20th, and in the additional particular, A, which among others, they were permitted to produce.

The grounds of the petition, as articulated, are fully sufficient in law, and if petitioners have proved them, or any one of them, the election must be avoided.

The first charge, which may be designated as the "Lamarche case," so persisted in, is in the following terms :

"Que pendant la dite élection, le dit Edouard Octavien Cuthbert, directement et indirectement, par lui-même, par le moyen d'autres personnes, et de ses agents autorisés, et entr'autres par Olivier Lamarche, marchand de Berthierville, district électoral de Berthier, de la part et le consentement et à la connaissance réelles du dit Intimé, a payé les dépenses de voyage et autres dépenses, d'un grand nombre d'électeurs du dit district électoral de Berthier, pour les aider à se rendre à l'élection, et à s'en retourner, à se rendre aux, ou aux environs des bureaux de votation, et entr'autres à Octave Boucher, Jean Baptiste Godin, Alexandre Godin, Narcisse Boucher, Louis Valois, Pierre Latour, tous navigateurs de l'île Dupas, dans le district électoral de Berthier; Joseph Plouffe, Alfred Bruno, Dolphis Rocrais, Dolphis Massé, Servius Massé, Joseph Pagé, Octave Parent, tous navigateurs de Berthier, dans le dit district; Lafontaine, de Québec, employé civil; Narcisse Boucher, navigateur de Trois-Rivières, district de Trois-Rivières; Pierre Arpin, navigateur de Lanoraie, dit district de Berthier; Dolphis Buron, navigateur de Berthier, district électoral de Berthier; Charles Rocrais, navigateur du même lieu; Alfred Chignette, maître de pension de Montréal, district de Montréal; toutes ces personnes étant électeurs de la division électorale de

"Berthier, et dument qualifiés à voter à la dite élection, et ayant voté à la dite élection, donnent à chacune des dites personnes, un billet de passage sur le chemin de fer Québec, Montréal, Ottawa et Occidental, et autres valeurs et d'autres manières, pour les conduire dans le dit district électoral de Berthier, aux, ou aux environs des bureaux de votation, où chacune des dites personnes avait respectivement droit de voter, et que les dites personnes ont ensuite revendu les dits billets de passage, qu'ils avaient ainsi obtenu gratis, et dans un but frauduleux, illégal et de corruption, et pour les engager à voter pour le dit Intimé, et ont retiré de ces ventes des sommes d'argent ou autres valeurs qu'ils ont gardés pour leur usage personnel exclusif."

In support of this charge, Olivier Lamarche and several of the persons and voters therein referred to, have been examined and given testimony. The proof of this charge summarized, shows that Lamarche was a strong partisan and supporter of respondent, was a member of his committee, canvassed some and was engaged and interested in favor of respondent, and was therefore, as petitioners contend, his agent.

Lamarche's place of business was Montreal, his family residing in Berthier, and this led him to spend part of his time at home and part in Montreal. Having acted on the committee for some time previous to the election day, it appears by his evidence that he was as usual, for business, in Montreal the day before the voting, and that on the forenoon of that day, believing that there were voters employed on the steamboats "Three Rivers," "Chambly," "Terrebonne" and "Quebec," he went on board of these boats to see these employees, and to know if they wished to go to Berthier to vote on the following day.

In proof of what took place between him and these men, and all that passed between them and him, material in or relevant to this charge, he says in his deposition, and in his own words and language in answer to this question:

Question.—"Avez-vous été à Montréal, et à la demande de qui, pour vous informer où étaient certains électeurs de Berthier, employés sur les bateaux de la Compagnie de Richelieu?"

Réponse.—"J'ai été à Montréal comme d'habitude, parce que j'ai mon bureau là, mon bureau d'affaires. J'ai été navigateur moi-même, et je connais tous les navigateurs. Je connais nos ennemis et nos amis. J'ai été à Montréal à bord du bateau "Trois-Rivières," à bord du bateau "Chambly," du bateau

"Terrebonne," et à bord du bateau "Québec." "J'ai demandé à ceux que j'y connaissais si un tel et un tel y était, on me disait que oui. Je les voyais, je leur demandais s'ils voulaient descendre voter à Berthier, pour l'élection. Dans toutes les élections qui ont eu lieu, l'été, j'ai toujours fait cette besogne-là."

He is asked, "Où avez-vous pris les billets de passage que vous avez distribué à ces électeurs, pour venir voter?"

Answer.—"Ils m'ont été donnés sous enveloppe. Lorsque ces billets m'ont été donnés c'est par un homme que je ne connaissais pas dans le temps. Je le connais depuis trois ou quatre semaines. Son nom est Grondine, son nom de baptême, c'est plus que je peux vous dire. Je sais qu'il était engagé dans ce temps-là, dans le bureau du Q., M., O. & O. (Railroad.)"

Question.—"Dans quelles circonstances vous a-t-il remis ces billets?"

Answer.—"Il m'a dit, "Voici une lettre qui a été laissée pour vous," c'était dans le bureau du chemin de fer du nord."

The witness says he had spoken to J. B. Labelle, the ticket agent of the railroad before this, and that Labelle said he would give him passes as usual (comme d'habitude) to go to Berthier; witness telling him that he wanted 17 to 20, which he gave to the voters above referred to, giving one to each, seven or eight of them whose names he gives, and left some of them with Capt. Duval, of the "Trois-Rivières" to be given to the other voters.

It is proved by this witness as well as by the men who received from him the passes, that a number of them, 8 or 10, travelled on the railroad on these passes from Montreal to Berthier, and there and in that vicinity voted. These men, examined as witnesses for petitioners, state the nature of Lamarche's interview with them on the boats with regard to their coming to vote, substantially as he does, and state also that he gave them the free passes to Berthier on the railroad.

That Lamarche gave passes, from 17 to 20, and that he gave them to the voters referred to, and that they travelled free on them from Montreal to Berthier to vote, and voted there, is not and cannot be disputed, and the questions now to be answered are: Was Lamarche respondent's agent, and if so, does what took place between him and the voters referred to, and his giving them the passes amount to bribery and corrupt practice within the meaning of the Dominion Election Act, 1874? Has Lamarche, as such agent, done, promised, or

said anything *corruptly* to induce the above mentioned persons to vote for the respondent or to act in furtherance of his election, or to constitute a violation of the 96th section of the Act, and consequently to avoid the election under this section; and if not, was the giving of the passes in question a violation of section 92, sub-sections 1 and 3, and consequently a corrupt practice within the Act?

I think the evidence of Lamarche himself and of Louis Tranchemontagne, although not *very* strong, under all the circumstances sufficient to constitute him respondent's electoral agent and to hold him, respondent, responsible for his acts as such in relation to the election.

I need hardly say that I come to this conclusion after a careful reading of the authorities cited at the argument, and others not cited,—and here I wish to say that I do not propose to lengthen this judgment by incorporating citations of authority, with which the profession and more particularly the gentlemen engaged in this case are already familiar, whilst such citations would be but of doubtful value to the ordinary non-professional reader.

The next question to be answered under this first charge or head of objection is this: Has the respondent or his agent violated the 96th section of the Act by "Hiring or promising to pay, or paying for any horse, team, carriage, cab, or other vehicle, by any candidate or by any person on his behalf, to convey any voter or voters, to or from the poll, or to or from the neighbourhood thereof at the election."

Under the provisions of sec. 98, a violation of sec. 96 is a corrupt practice, is bribery, and consequently attaches, to both principal and agent, a highly penal breach of the law, and entails upon them both very severe punishment; hence, and by all the authorities the proof of such violation must be strong and conclusive. Have we proof of such violation in this case? I think not. There is no satisfactory or sufficient proof of the hiring or promising to pay, or paying for any horse, team, &c., as prohibited by the section, or of the payment of travelling and other expenses of any voter in going to or returning from the election in question, nor of any unlawful acts in respect thereof to affect either the respondent or the agent, and consequently no proof of

corruption under this charge within the meaning of the Act. On the contrary, I am satisfied from the proof and circumstances that the railroad ticket agent, with what degree of propriety it is not for me to decide here, gave the passes on which said voters went to the polls gratis, and that they were never paid for, nor promised to be paid for, and that the proof fails to bring the charge under this head of objection within the provisions of the said 96th section of the Act, and the respondent is entitled to a finding in his favour in this particular.

But the petitioners contended at the argument that the passes given to the voters by Lamarche were things of value, and that they were given as a "valuable consideration" to induce said voters to vote for respondent at the election; thus *arguendo*, contending that respondent by his agent had made himself amenable to the provisions of sec. 92, sub-sec. 1 of the Act, and thus that he was guilty of bribery through his agent within the meaning of said section.

This proposition raised the question which has not, so far as I know, been as yet extensively discussed in the trials of election cases; as to whether a Railroad pass given *gratis* and unconditionally to a voter to go to vote, is within the meaning of the Sec. 92 Sub-section 1, a "valuable consideration" or of any such value as would support a promise.

In disposing of this question I cannot do as well as to refer to the judgment of Mr. Justice Mellor in the Bolton case, 2nd O'Mally & Hardcastle, pp. 147, 8, 9.

Before seeing this authority (for I think it was not referred to at the hearing) I felt inclined to say after much anxious consideration, that tickets, given as those in question were, were not "valuable consideration" in the sense of, or within the meaning of the Act. In my uncertainty on this point, I need not say that I felt relief in finding authority so strong and in the direction of my own timid inclination.

I am of opinion that the passes so handed to these voters unpaid for, as Lamarche swears on cross-examination, and presented to the voters under the circumstances proved in this case, do not constitute the "valuable consideration" to them contemplated and prohibited by the statute, and that the passes in question are not such consideration within the meaning and in-

tent of Sec. 92 of the Act, and I find that Petitioners have failed to establish the said first charge of bribery and corrupt practices against the respondent or his agent.

Now as to the Côté & Rithier case. The second charge in the Particulars is made in the following words :

"Que pendant et depuis la dite élection le dit Edouard Octavien Cuthbert directement et indirectement par lui-même, par le moyen d'autres personnes et de ses agents, autorisés, et entr'autres par Adelime Côté, maire de St. Barthélémy, district électoral de Berthier, a loué, promis payer et payé pour l'usage de chevaux attelages, voitures, cabriolets, et autres véhicules pour transporter des électeurs aux et près des bureaux de votation, et nommément à Joseph Rithier, charretier du dit lieu de St. Barthelemy, promettant de lui même et lui ayant donné des sommes d'argent et autres valeurs pour aller chercher avec sa voiture Joseph Savoie de St. Ursule, Comté de Maskinongé, et électeur dument qualifié à voter à la dite élection, et l'amener voter au dit lieu de St. Barthélémy, ce que le dit Joseph Rithier a fait."

In support of this charge Petitioners call and examine Rithier, assuming, Côté to have been Respondent's agent in this case.

Côté's evidence, beginning on page 205 of the proof, shows that he was, when the election took place, Mayor of St. Barthélémy, that he voted, that he took an active part as usual in elections, that he knew of no committee at St. Barthélémy. They met as friends from time to time, he says. They met indirectly all those who wished to come; it was not always the same persons who were present at the committee. We met ordinarily at Remi Désy's, many persons went there. I went there the evening of the day of the voting. I met a certain number of persons there, three or four strangers to the family . . . at St. Barthélémy. They did not call our meetings a committee. We met once a week &c.

In short, Côté gives no evidence that can lend any support whatever to this 2nd charge. Rithier's deposition is more pertinent, and carefully summarized, is in effect as follows :

He was a carter at St. Barthélémy and had the right to, and did vote at the election. I went, he says, to bring an elector before voting, one George Savoie, six leagues and a half. I went the day before the voting. Savoie is my cousin. It was M. Côté that asked me to go for him, Adelime Côté.

Question.—"Qu'est-ce qu'il vous a dit quand « il vous a demandé d'aller là ?

Réponse.—"M. Côté m'a vu le dimanche. Il m'a demandé si je voulais aller à Ste. Ursule chercher George Savoie. Il a dit, 'si tu allais il viendrait peut-être bien avec toi.' J'ai dit, 'c'est bon, je m'en vais y aller.' Je suis parti le lundi, je suis allé coucher là, et je l'ai mené voter. Je n'ai rien reçu ni il m'avait promis rien. Bien loin de là, il m'a dit qu'il ne m'en donnerait pas, qu'il n'avait jamais fourni un sou de sa poche pour les élections, qu'il ne me paierait pas, lui.

Question.—"Mais a-t-il été question que d'autres devaient vous payer ?

Réponse.—"Non, monsieur, seulement qu'il m'a dit, *ce que j'ai compris*, le dimanche que j'ai parlé, 'tu feras ton compte et tu iras te faire payer.' Je comprenais que je devais faire payer mon compte à Berthier. Il ne m'a pas dit à Berthier, je comprenais que c'était ici."

This witness says that Côté took part in elections like all the rest. "We were coming from the church after mass when I had this talk with Côté. When he asked me, I said I would go there, he said 'tu porteras ton compte et tu te feras payé,' mais il ne m'a pas dit qu'il me paierait. J'ai compris que ce serait payé."

The foregoing is the substance of Rithier's evidence on this charge, and I have quoted of it what materially bears on this single isolated case of alleged *hiring of teams*.

To avoid the election on this charge, there must be proof to the perfect satisfaction of the judge of two things ;

1st. It must be established beyond reasonable doubt that Côté was respondent's agent in this matter.

2nd. That he did, as such, hire or promise to pay, or pay Rithier for going to St. Ursule to bring Savoie to vote, or that he paid the travelling and other expenses of the voter Savoie in coming to or returning from the election.

I see no proof at all sufficient to establish such agency. I find no evidence to show directly or indirectly any connection or joint purpose, or action of respondent and Côté, nothing in fact to show that they had seen or spoken to each other on the subject of the elections, or any connections or relations whatever between the respondent's committee at Berthier and Côté or any other person or body with whom he was associated in furthering the election of respondent. In a word, I find nothing in the evidence given to in any way implicate respondent in anything Côté did or said with reference to the election.

Now if the conclusion thus arrived at be

correct, then it were useless to argue whether Rithier's horse and vehicle were hired by Côté, as alleged, or whether he paid or promised to pay travelling expenses. I may say, however here, that if the decision in this case depended on the interpretation to be put on the peculiarly vague expression, "Tu feras ton compte, et tu iras te faire payer," (and this is the only expression attributed to Côté, that at all looks like a promise to pay Rithier), taking his, Rithier's, deposition all together, the cross-examination included, I could not and would not avoid this election. I do not think this expression, even if made, would be a promise within the meaning of the Act.

I consider the respondent entitled to an acquittal on this charge.

It appears of record that Côté was subpoenaed to contradict Rithier. He sent a doctor's affidavit that he was too ill to come.

Next as to the case of Hénault and Maxwell. The eighth articulation of the particulars charges :

"Que pendant la dite élection, le dit Edouard Octavien Cuthbert, directement et indirectement par lui-même, par le moyen d'autres personnes et de ses agents autorisés, et nommément par Joseph Hénault, graveur, de la cité et du district de Montréal, a donné, est convenu de donner, a offert et promis des deniers, a promis et s'est efforcé de procurer des deniers et autres valeurs à et pour un grand nombre d'électeurs habiles à voter à la dite élection et ayant voté à la dite élection, et particulièrement à Joseph Maxwell, cultivateur, de St. Maurice, dit district, électeur habile à voter à la dite élection, et ayant voté à la dite élection, afin de l'induire et de les induire à voter à la dite élection en faveur du dit Edouard Octavien Cuthbert."

On this head of objection to the election the petitioners have called three witnesses, Maxwell, St. Cyr, and Henault.

Maxwell is an old man, evidently enfeebled in body and consequently more or less so in memory. His deposition is therefore confused and unsatisfactory in the less pertinent parts thereof on cross-examination. He states, however, substantially, beginning on page 74 of the evidence, in French, that he was a voter entitled to vote, and that he voted at the election in question.

He says that he knows now Joseph Henault who came to St. Damien on the Sunday before the election, and gave or left with him \$25, he not knowing then from whom it came, and that

he at first refused to receive it for this reason, and that it was left by Henault until this fact should be ascertained. Who was this Henault, who gave him the money, and what was his relation to, or connection with respondent and the election ?

The witness St. Cyr throws some light on these questions. He says, on his way home from Montreal on the Saturday before the voting, George Daveluy of Montreal (who is not otherwise shown to have had anything to do with the election) gave him a sealed letter at Hochelaga to be forwarded to Maxwell, and that on arriving at Mile End station Daveluy told him there was money in the letter and to pay attention to it. On St. Cyr's arriving at Berthier the same forenoon, meeting Lamarche in the street he asked him who was going to St. Damien and that Lamarche told him it was a person named Henault. He asked for Henault and gave him the letter, telling him that it is "a letter which was given to me for Mr. Maxwell, I am told there is money in it." Henault was to go to St. Damien the following Sunday morning to speak for Respondent at the Church after mass, expecting to meet there as an adverse speaker Senator Guevremont. He went, made a speech for Respondent and delivered the letter and money to Maxwell.

This money, coming to Maxwell in this somewhat mysterious and roundabout manner, just before the polling day, was certainly calculated to arouse suspicion, and if it can be traced, directly or indirectly to Respondent or an agent of his, must disqualify or annul the election, or both. Now there is no proof of agency on the part of Daveluy and none at all on the part of St. Cyr sufficient to compromise Respondent or to affect the election. To do so, as to agency the proof ought to be strong, clear and conclusive, which it is not.

As to Henault this was his first visit to this division. He was a stranger there for aught that appears. There is no proof that he was asked to come by anybody authorized by Respondent or by any agent of his. Henault did not leave Montreal in order to come to this division, but to go elsewhere and was diverted from his purpose to come here. He arrived in Berthier on Saturday evening, the eve of his going to speak. He knew none of the Committee. The President or some other of the

Committee told him, you will go to St. Gabriel and then to St. Damien. He was sent there to speak at St. Damien after mass. He did so and left the money with Maxwell as stated, but did not in any way canvass or ask his vote. He returned to Berthier and represented the Respondent at one of the polls on the next Tuesday at the voting, under power of attorney to do so. He says on cross-examination in answer to the question :

Question.—“ Pourquoi étiez-vous venu dans le comté ? ”

Réponse.—“ J'étais venu * * * pour faire la discussion au nom de monsieur Cuthbert dans quelque paroisse où il voudrait m'envoyer. ”

Question.—“ Vous étiez venu pour parler à la porte de l'église, pour parler le dimanche ? ”

Réponse.—“ Oui. ”

Question.—“ Vous avez représenté le défendeur au poll de l'île St. Ignace ? ”

Réponse.—“ Oui. ”

Question.—“ A part cela vous n'aviez aucune autre mission ? ”

Réponse.—“ Aucune autre. ”

Of Daveluy's motives in sending the money to Maxwell, we have no proof. He was not respondent's agent, and Maxwell swears positively that it had nothing to do with this election, stating explicitly at the same time and showing another cause for its having been sent to him which looks reasonable enough, and which the fact that the election of Robillard of whom Maxwell was a zealous partisan took place as stated by him, corroborates.

It is undoubtedly true that Hénault came to the division to speak as he says for respondent. As a general agent or canvasser, he would have been useless as being a stranger. He knows nothing of the letter and money referred to until after his arrival here. There is no proof that respondent or his committee knew of his having such a letter or of his coming, until after his arrival. He swears it was not spoken of to the committee and nothing appears to the contrary.

The charge here really in question is one of bribery by respondent through Hénault, and if he were his agent or sub-agent at the time, and this fact were not so positively denied or accounted for by Maxwell, it would undoubtedly avoid the election.

The only proof of his agency apart from his representing respondent at the polls on election day, is the fact that the committee sent Hénault, the Sunday before the polling, evidently with the knowledge and consent of respondent, to speak for him at the church door at St. Damien, after mass. This appears to be the only act done or part taken by him in connection with the election (except representing as stated) and after much consideration, I am of opinion that the committee by sending him for this special purpose did not make or intend to make him respondent's agent, to act as such generally

at his own discretion, and that this is the case of a special limited agency, and that what passed between Hénault and Maxwell was entirely out of and beyond the scope of his authority from the committee, expressed or implied.

He is told by the committee to go and make a speech at a certain fixed time and place, and having done so, his thus limited agency is at an end.

The mysterious manner in which this money was conveyed to Maxwell, I confess awakened suspicions at first sight and challenged a most careful scrutiny of all the facts, but I cannot disregard the evidence given by Maxwell, corroborated by the circumstances of the Robillard election, nor can I say that what passed between him and Hénault, can do aught to affect respondent or his election now in question.

The last and most serious charges relied on by petitioners, are the 20th and the supplementary particular marked A which may be taken together as one, under which it is more particularly sought to implicate and disqualify the respondent for acts, or more especially an act of personal bribery. They read thus, 20th, “ Et les dits pétitionnaires allèguent spécialement que toutes et chacune des manœuvres frauduleuses illégales et corruptrices ci-dessus mentionnées, ont été employées à la connaissance et du consentement réels du dit intimé, se réservant le droit de produire d'autres particularités si besoin est. ”

And charge A. “ Le dit défendeur par lui-même et ses agents dûment autorisés à cet effet, ont donné et avancé pendant la dite élection au dit lieu de Berthierville, à J. O. Chalut, écuyer, notaire de Berthierville, une somme d'argent, savoir : la somme de vingt-cinq piastres pour l'engager à favoriser l'élection du dit Cuthbert, et à voter pour lui. ”

The evidence under this particular is directed against respondent personally; and respondent himself, J. H. Chalut, and Louis Tranchemontagne are the principal witnesses called and examined in support of it.

Their evidence, summarized, is substantially as follows :

Chalut, who was a zealous supporter of respondent, and President of the committee, says, “ Je connais le défendeur très bien. J'ai travaillé pour son élection, ici dans la ville et à St. Gabriel de Brandon. Je me suis retiré dans un hotel, et là je faisais venir ceux que je voulais voir. Je faisais le travail qu'on fait ordinairement quand on travaille pour favoriser un candidat. J'ai reçu \$20, je ne sais pas de qui, je vais vous raconter sous quelles circonstances. ”

He says, the Monday or Saturday preceding the voting, at a meeting of friends at the committee, we discussed who would go here and there, as is customary; there was a question of some one going to St. Gabriel for eight days, I suppose before the voting. The name of Louis Tranchemontagne and

mine were mentioned. L. Tranchemontagne objected to go, and they decided I should go. I said I would go, if absolutely necessary, but that it was difficult for me to go unless somebody would give me money to pay my expenses. I returned to my house. In the afternoon of Tuesday, a carter came to my house, saying, "Here is a letter—they sent you to go to St. Gabriel." Another person was with the carter; one of them handed me the letter to start at once. I opened the letter and found \$20, and went off.

Witness says defendant knew he was president and working for him. He thinks it was Albert Cuthbert, son of the defendant, who did errands for the committee, that gave him the letter.

The rest of this witness' evidence bears less directly on the material question in this charge.

Respondent himself, examined, says he knows Chalut, the last witness, that he was present when there was question in the committee, though taking no part, about sending some one to St. Gabriel. Chalut was fixed upon to go. He reported that he would go but could not afford the expense. There was talk then of giving him the money to go. Some said we had the right. Others said they were not sure it was legal. I took the responsibility, and went to my agent, Col. Hanson, to ask him to send him the money for the expenses of the trip. My agent was absent, not to return for some time, and we were in a hurry. I then sent him \$20 in an envelope, for his expenses for his trip, and omitted to enter it in my account. I forgot altogether. I kept account of my personal expenses, and don't know how I omitted that. I forgot altogether.

Here, the giving of the money, on which this charge is based, is fully and frankly admitted by the defendant, and Tranchemontagne's evidence does not weaken the admission, and there now but remains the question of law: Will the giving of this sum of \$20, under the circumstances, and for the purpose of paying travelling expenses of a canvasser, who is at the same time a voter, by the sitting member, avoid the election and disqualify him? And is such a giving a corrupt practice, bribery, within the meaning of the Act?

By this charge, and the proof thereon made, it is sought to make the defendant personally guilty of the violation of the third sub-section of Section 92 of the Act.

The provisions of this section are severely penal, disgraceful and humiliating as against the guilty, and hence the evidence to establish guilt must be such as would justify the judge in charging the jury, if defendant were indicted under this sub-section, that there was, in his opinion, sufficient evidence to convict.

Now, apart from the authority of decided cases, bearing directly on this branch of the case, if the defendant were under trial on such an indictment, would the proof made of this

charge justify a judge in so charging, or a jury in so finding? Were the \$20, advanced to Chalut for expenses, as stated in the proof, given corruptly to induce him to endeavour to procure the return of defendant, or the vote of any elector at this election?

In view of the relations shown to have always subsisted politically and otherwise between him and Chalut; he, Chalut, being at the time in question, and before, actively engaged as president of the committee in endeavouring to procure such return, and doing all he could for defendant as he had formerly done, as one of his most zealous supporters, and in view of the authorities cited at the argument on the question of canvassers, being electors, paid or not, I am of opinion that in so giving the \$20, the respondent did not commit a corrupt act, nor make himself guilty of a corrupt practice within the intention and meaning of the section and sub-section referred to.

In support of this conclusion I cannot do as well as to refer to the remarkably able and exhaustive judgment of Chief Justice Meredith, in the Quebec East case; *Gingras et al. v. Shehyn*; Volume I. Q. L. Rep., p. 295 et seq. See also the *Tamworth Case*; Mr. Justice Willes; *O'Mally & Hardcastle*, vol. I. pp. 75, 78 and 79; *The Coventry Case*, same Judge, vol. I. pp. 97, 100 and 101; *The Lambeth Case*, *Wolferstan & Dew*, pages 132 and 133; *North Riding of the County of Ontario case*, *Wheeler, appellant v. Gibbs*, respondent, vol. 4, *Supreme C. of C. Reports* p. 430 and seq.; *Fournier and* (inferentially in this case) *Gwynne, JJ.*

From these authorities and others that might be cited, and the relations between respondent and Chalut referred to, the length of time—8 days—that it was intended he should be absent at St. Gabriel, and the moderate sum—\$20—for expenses during such time, I have no hesitation in saying that that sum was given Chalut *bona fide* and not colorably or corruptly, and that in advancing the same as respondent did under the circumstances, he neither intended to nor did commit an illegal or corrupt act, and that petitioners have failed to establish this charge of personal bribery against him. And after careful, and on some points anxious consideration of the evidence adduced, the application of the law, and of many of the leading decisions in election cases, I am of opinion that the respondent was duly elected and returned, and I will so certify.

As to costs: from the way in which some things were done in connection with the election, and others by omission or forgetfulness left undone by and on behalf of the respondent, I cannot say that the petition was frivolous or vexatious, and it is therefore ordered that each party bear their own costs.

Petition dismissed.

Mercier, Beausoleil & Martineau, for petitioner.
Lacoste, Globensky & Bisailon, for respondent.