

LOUIS ISRAEL COTE *alias* FRE- } APPELLANT ; 1884
 CHETTE..... } *Mar. 15, 16.
 AND *April 1st.

J. F. GOULET *et al*..... RESPONDENTS.

ON APPEAL FROM PLAMONDON, J., SITTING FOR THE TRIAL OF THE MEGANTIC CONTROVERTED ELECTION CASE.

At the trial of the petition, the returning officer, who was also the registrar of the county of *Megantic*, and secretary of the municipality of *Inverness*, was called as a witness, and produced in court in his official capacity the original list of electors for the township of *Inverness*, and proved that the name *L. McM.*, one of the petitioners whom he personally knew, was on the list. The original document was retained by the witness, and, as neither of the parties requested that the list should be filed, the judge made no order to that effect. The status of the other petitioners was proved in the same way.

Held, that there was sufficient evidence that the petitioners were persons who had a right to vote at the election to which the petition related under 37 *Vic.*, ch. 10, sec. 7 (D).

The shorthand notes of the shorthand writer employed by the court to take down the evidence were not extended in his handwriting, but were signed by him.

Held, that the notes of evidence could not be objected to.

Before setting out on a canvassing tour, the appellant, the sitting member, placed in the hands of one *B.*, who was not his financial agent, \$100 to be used for the purposes of the election. While visiting a part of the county with which the appellant was not much acquainted, but with which *B.* was well acquainted, they paid an electioneering visit to one *K.*, a leading man in that locality, who indicated to *B.* his dissatisfaction with the candidate of his party, and stated that, although he would vote for the liberal party, he would not exert himself as much as in the former elections. The appellant then went outside, and *B.* asked his host, "Do you want any money for your church?" And having received a negative reply, added, "Do you want any

*PRESENT.—Sir Wm. J. Ritchie, C.J., and Strong, Fournier, Henry and Gwynne, JJ.

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money for anything?" *K.* then answered, "If you have any money to spare there is plenty of things we want it for. We are building a town hall, and we are scarce of money." *B.* then said, "Will \$25 do?" *K.* answered, "Whatever you like, it is nothing to me." The money was left on the table. Then, when bidding the appellant *B.* good-bye, *K.* said, "Gentlemen, remember that this money has no influence as far as I am concerned with regard to the election." The appellant did not at the time, nor at any subsequent time, repudiate the act of *B.* This amount of \$25 was not included in any account rendered by the appellant or his financial agent, and large sums were admittedly corruptly expended in the election by the agent of the appellant.

*Held*, affirming the judgment of the court below, that the giving of the \$25 by *B.* to *K.* was not an act of liberality or charity, but a gift out of the appellant's money, with a view to influence a voter favourably to the appellant's candidature, and that, although the money was not given in the appellant's presence, yet it was given with his knowledge, and therefore that the appellant had been personally guilty of a corrupt practice.

**APPEAL** from the judgment of *Plamondon, J.*, in the Controverted Election for the county of *Megantic*.

The petition of the said respondents contained the usual charges of bribery, corrupt practices, &c., by the appellant personally, and by his agents.

By the judgment of *Plamondon, J.*, the appellant was found guilty on both sets of charges.

On the present appeal, the Supreme Court of *Canada* affirmed the judgment of the court below on the charge of personal corruption, known as the *James Kinnear* case.

The facts of this case, and the evidence relied on, appear in the judgments hereinafter given.

*Mr. Crepeau, Q. C.*, and *Mr. Gormully*, for appellant.

*Mr. Irvine, Q. C.*, for respondent.

**RITCHIE, C. J.**

The first objection is that petitioners were not candi-

dates and have not legally proved that they were electors having the right to vote at the election to which the petition herein relates, nor have they proved that those persons are electors, whom the defendant and his pretended agents were accused of having bribed. The Controverted Elections Act (37 *Vic.*, cap. 10, sec. 7) prescribed that the election of a member may be contested by "a person who had a right to vote at the "election to which the petition relates."

Of this and other objections not touching the merits of the case, the learned Judge thus disposes in his judgment:—

*M. William H. Lambly*, régistrateur du comté de *Mégantic* et secrétaire de la municipalité d'*Inverness*, et qui avait agi comme officier-rapporteur à la dite élection, a comparu en ces dites qualités. Il a prouvé le bref d'élection en vertu duquel il a agi, aussi la nomination de candidats et le rapport par lui de l'élection du défendeur.

Il a exhibé en ses susdites qualités officielles, 1<sup>o</sup> la liste électorale originale pour le canton d'*Inverness* et il a prouvé que le nom de *Laughlan McCurdy* était sur cette liste, en ouvrant la dite liste et montrant que ce nom y était inséré avec ses qualifications comme électeur. Il a déclaré, de plus, connaître personnellement *McCurdy*, l'un des requérants, depuis vingt ans. Ces listes sont faites en duplicata; les deux sont également des originaux; c'est sur le duplicata original du secrétaire qu'il a donné sa déposition relativement à *McCurdy*. Il hésitait à produire cette liste au dossier, mais il est prêt à le faire si la cour l'ordonne. Nie l'un ni l'autre des parties ne l'ayant exigé, la cour n'a pas été appelée à donner et n'a pas donné cet ordre. *M. Lambly* a exhibé en deuxième lieu la liste électorale de *Somerset-Nord*. C'est un original, dit-il, et on l'appelle un double duplicata. Au moyen de cette liste, ainsi exhibée en cour, il prouve les qualifications d'électeur des deux autres requérants *Jacques Goulet*, ferblantier et locataire, 8e lot, 8e rang, et *Louis Richard*, charron et locataire, 8e lot, 6e rang. Il connaît personnellement *Louis Richard*.

Les deux listes qu'il vient d'exhiber sont celles-là mêmes qui ont servi lors de l'élection dont il s'agit. Elles sont soumises à l'inspection de la cour et des parties. Le témoin est prêt à placer au dossier la deuxième s'il en reçoit ordre de la cour.

Pour la même raison que ci-dessus, cet ordre n'a pas été donné.

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Les objections faites par le défendeur à cette preuve à l'enquête, et réservées pour adjudication au mérite, ne sont pas fondées et elles sont renvoyées.

La preuve de la qualité des requérants est complétée par le témoignage du docteur *Larose*.

Les requérants ont prouvé légalement, de même, la qualité d'électeurs des personnes qu'ils ont prouvé avoir été corrompues à la dite élection. La motion du défendeur présentée le 5 septembre dernier, à l'effet de faire rejeter du dossier toute la preuve ci-dessus, n'est pas fondée et elle est renvoyée.

La cour rejette également une autre motion des défendeurs, présentée à l'audition, demandant le rejet de l'enquête des requérants, prise avant le 22 janvier 1883, alors que le dossier était hors de cour. La cour a déjà affirmé, par un jugement interlocutoire, la légalité de cette enquête.

Le défendeur a présenté à l'audition une troisième motion, demandant le rejet de toute l'enquête des requérants, parce que les sténographes n'auraient pas, eux-mêmes, copié les dépositions prises par eux, et parce que ces dépositions fourmillent de faussetés.

La cour rejette cette motion, 1<sup>o</sup> parce qu'il n'y a pas de preuve à l'appui, 2<sup>o</sup> parce que ces dépositions sont certifiées par qui de droit et dans la forme ordinaire et voulue.

I think the learned Judge was entirely right in the manner he thus treated these objections.

It is freely and fully admitted that the Judge was right in deciding that the election must be avoided for corrupt practices by the agents of the defendants, and the only questions submitted for our consideration are the corrupt acts attributed to the defendant personally, and which the learned Judge found the evidence established against the appellant.

The first case is that of the alleged bribery of one *James Kinnear*. The learned Judge thus states his view of this case :—

“1er Cas personnel de corruption.—Pendant le cours de la cabale électorale, un jour ou deux avant le jour de la nomination, le défendeur est parti en voiture, de *Somerset*, avec *Jean Charles Beaudette*, pour aller travailler ensemble à l'élection. Ce monsieur *Beaudette* est l'ami intime, le partisan zélé du défendeur, et il est difficile à prétendre qu'il n'était pas autorisé par le défendeur à agir pour lui.

Avant le départ de *Somerset* le défendeur mit entre les mains de *Beaudette* une somme de \$100.00, pour les besoins de l'élection. Ils se rendaient à *Saint-Pierre* de *Broughton*. L'objet de leur voyage était d'aller voir les personnes influentes sur leur route, pour les intéresser en faveur de la candidature du défendeur.

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Chemin faisant ils s'arrêtent à *Leeds*, chez un homme très influent de la localité, *M. James Kinnear* ; *M. Kinnear* est un libéral. Le défendeur ne l'avait jamais ni vu ni connu ; mais *Beaudette* avait eu quelquefois l'occasion de le visiter en qualité de commis voyageur. Une fois entrés, tout naturellement il est question de l'élection. *Kinnear* dit au défendeur : 'Je n'aime pas le Docteur *Olivier* ; si vous étiez libéral je voterais pour vous au lieu d'*Olivier* ; mais s'il n'en vient pas d'autres je voterai pour *Olivier*.'

Le défendeur admet, dans son témoignage, qu'il est entré chez *Kinnear* parce qu'il savait que ce dernier n'aimait pas le Docteur *Olivier*.

On prend des rafraîchissements poliment offerts par *Kinnear* et tout en causant le défendeur s'informe de l'état de l'opinion relativement à l'élection. *Kinnear* lui répond que les gens là sont en presque totalité des libéraux, mais que le Dr *Olivier* n'est pas aimé dans *Leeds* et que, quant à lui, il est disposé à ne pas faire grand-chose pour lui, qu'il voterait pour son parti mais qu'il ne travaillerait pas beaucoup.

La dessus le défendeur sort, sous le prétexte d'aller voir à son cheval. Resté seul avec *Kinnear*, *Beaudette* lui dit. "Avez-vous besoin de quelq'argent pour votre église?" "Non, répond *Kinnear*, Dieu merci, notre chapelle n'est pas en dette, et je n'ai pas besoin d'argent pour elle."

Refusé mais non rebuté, *Beaudette* revient à la charge. "Mais, dit-il, vous devez avoir tout de même besoin d'argent pour une chose ou pour une autre." *Kinnear* lui répond : "Si vous avez de l'argent de trop, nous pouvons l'appliquer à bien des choses ici, par exemple, nous voulons bâtir un *town-hall* et nous sommes à court d'argent pour le faire."

*Beaudette* répond : "Vingt-cinq piastres ça fera-t-il ?" *Kinnear* dit : "N'importe ce que vous voudrez, c'est pareil pour moi."

Là-dessus *Beaudette* dépose \$25.00 sur la table du salon. Le défendeur, sur cette entrefaite, rentre au salon ; l'on se dit bonjour et l'on part.

Dans son examen, le défendeur prétend que *Beaudette* ne lui a fait part de ce don d'argent que deux ou trois jours après, et qu'il n'en a pas entendu parler auparavant. Mais, outre l'in vraisemblance de cette prétention, comment la concilier avec le fait qu'avant leur

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départ et pendant qu'on échangeait des bonjours, *Kinnear* leur dit à tous deux : "Gentlemen, remember that this money has no influence as far as I am concerned, with regard to the election. I vote for Dr. *Olivier*, he has got my support, but I am not going to exert myself canvassing among people, as I formerly did."

Le défendeur savait donc alors et là qu'une somme d'argent avait été déposée par *Beaudette*, et cet argent était celui du défendeur. Il n'a ni alors ni subséquemment répudié cet acte; au contraire, il a continué, avec *Beaudette*, sa tournée électorale, et *Beaudette* a à sa connaissance travaillé pour lui jusqu'à la fin de la lutte. Il a donc sanctionné l'acte de corruption de *Beaudette*.

Ce cas si clairement prouvé de corruption et tentative de corruption serait suffisant à lui seul pour faire annuler l'élection et pour faire déclarer que le défendeur s'est personnellement rendu coupable de manœuvres frauduleuses au cours de sa dite élection.

Before setting out on this Election expedition without the instrumentality of a financial agent, the appellant places in the hands of *Beaudet* \$100 to be used for the purposes of the election; of this there can be no doubt, *Côté's* evidence is clear and conclusive on this point, notwithstanding what *Beaudet* says:—*Côté's* language is as follows:—

Q. Je vous demande si à part de vos dépenses personnelles vous avez dépensé d'autre argent?—J'ai payé de l'argent à *Beaudet* et à *Jean Charles Beaudet*.

Q. *Beaudet* était-il un de vos agents?—Non.

Q. Combien d'argent avez-vous donné à *Jean Charles Beaudet*?—

R. A peu près cent soixante-quinze (\$175.90) à deux cent vingt-cinq (\$225) piastres pendant la lutte.

Q. Vous lui avez donné cela pour les fins de l'élection?—R. En différents temps; je ne me rappelle pas exactement le montant, c'est peut-être moins et peut-être plus.

Q. Étiez-vous avec *Beaudet* cette fois-là?—R. Oui, la première fois que je suis monté, j'y ai été rien qu'une fois.

Q. Vous étiez avec *Beaudet*?—R. Oui.

Q. Le même M. *Beaudet* auquel vous avez donné deux cent vingt-cinq piastres (\$225.00)?—R. Deux cent vingt-cinq (\$225.00), ou cent soixante et quinze (\$175.00) je ne me rappelle pas bien.

*Beaudet* was perfectly familiar with the part of the country they visited on this occasion, but with which appellant was not much acquainted; *Beaudet* was also

well acquainted with *Kinnear* while *Fréchette* was a perfect stranger to him at the time of the visit.

As to *Fréchette's* pretence that he called on *Kinnear* simply because he was a trader and not because of the election, he is expressly contradicted by himself and by *Beaudet*. He says :—

Q. Vous êtes entré la parceque vous saviez qu'il n'aimait pas le docteur *Olivier*? R. Oui je voulais le voir. Quand on fait le tour du comté ou va voir les principales gens de la place. C'était la première fois que j'allais à *Leeds*. \* \* \* \* \*

*Beaudet* says :

Quand je suis arrivé chez M. *Kinnear* j'ai introduit M. *Fréchette* à M. *Kinnear*, et M. *Fréchette* a dit à M. *Kinnear* vu qu'il se présentait comme candidat que c'était son devoir d'aller le voir comme citoyen.

Can any one doubt that this was an an electioneering and not a merely friendly social visit which *Fréchette*, though unacquainted with *Kinnear*, being a trader himself, considered he was owing *Kinnear*, he being also a trader. Had it been such a visit is it consistent with common sense within the ordinary experience of life, I may even say, with human nature, that on such a visit to an utter stranger as *Fréchette* was to *Kinnear*, that his companion, Mr. *Beaudet*, a commercial traveller, who, as such, it would seem, often called at *Kinnear's* place, should wholly apart from the election, or any influence it was to have on the election, exhibit such reckless anxiety to get rid of, not his own, but *Fréchette's* money, dispensing it without the consent and approval of *Fréchette* and contrary to the purpose for which the money was given him, and without the slightest solicitation for, or even intimation, direct or indirect, that there was any object whatever then present to his mind for which his liberality was needed or would be appreciated. Was it ever heard of that a business man, such as *Beaudet*, in a place with which he was unconnected, except to get money by the sale

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of goods, not to dispense it gratuitously, on a social visit, nothing in the conversation tending to such a question, should abruptly ask his host, "Do you want any money for your church?" and having received the reply, "No, thank God, our church is free from debt, I don't want any money for it," and not content with this rebuff should again ask "Do you not want any money for anything?" This, on the idea of its having innocently occurred on a social visit, would be incomprehensible. But viewed in the light of the candidature of his companion *Frechette*, and of his having \$100 of *Frechette's* money in his pocket to be used for election purposes, and of the conversation with *Kinnear* immediately preceding the offer in which *Kinnear* indicated so clearly his dissatisfaction with the candidature of Mr. *Olivier* and the fact that though he would vote for the Liberal party he would not exert himself as much as in former elections, it is entirely intelligible. Can any one doubt that knowing the state *Kinnear's* mind had been in, in reference to Mr. *Olivier*, *Frechette* and *Beaudet* called, and that, finding him still in the same state of mind, which *Kinnear* in no way disguised, these \$25 were left on *Kinnear's* table to influence, favorably to *Frechette*, *Kinnear's* conduct in regard to the election, and can it be doubted that *Kinnear* felt and knew that *Beaudet* intended it to have that effect? otherwise why should he, when bidding *Frechette* and *Beaudet* good-bye say, "Gentlemen, remember that this money has no influence as far as I am concerned with regard to the election." Of this extraordinary transaction *Beaudet*, though examined as a witness in the case, gives no explanation, in fact says not one word as to the giving; all he does say is indirectly at variance with the testimony of *Kinnear*.

I am wholly unable to look on this as an act of liberality or charity, but a gift with a view to influence

*Kinnear* pure and simple, and I am equally unable to bring my mind to the conclusion that *Frechette* was not a party to the transaction, or that he was not aware that the money he supplied *Beaudet* was thus applied. While we must not act on mere suspicions, however strong they may be, but must be satisfied that the corrupt practice has been affirmatively established beyond reasonable doubt, we cannot expect to find in a vast majority of cases direct evidence of the fact ; in this instance it would be unreasonable to suppose that *Frechette* would openly and before *Beaudet* take out this money and offer it to *Kinnear* as a bribe pure and simple ; equally unreasonable would it be to expect that *Beaudet*, having received money from *Frechette* to be used for election purposes, would in his presence in like manner offer the bribe to this man, or that he would offer it to him as a bribe ; but *Frechette* and he having set out with a common object, viz : to forward the election interests of *Frechette*, in which it is clear money was to be used by *Beaudet*, (otherwise it would not have been furnished him at the outset by *Frechette*.) and having found *Kinnear* an influential man of opposite politics in a dissatisfied state of mind as to the candidate of his party, where could be found a more desirable subject to operate on ? and, if to be operated on by *Beaudet*, the holder of the money, what more natural and significant than that *Frechette* should step out on pretence of looking after his horse and *Beaudet* thus be furnished with an opportunity ? And can there be a doubt that of the opportunity thus afforded, *Beaudet* availed himself, feeling no doubt that though *Kinnear's* vote might not be changed, such liberality so freely and generously bestowed could not fail to have its good effect ? In considering cases of this kind we must bring our common sense to bear, we must not ignore our knowledge of human nature, nor must we

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cast aside the experience of life, and while we must not presume guilt, we must from the facts and circumstances presented for our consideration arrive at the conclusions which our common sense, our knowledge of human nature and our experience of life naturally and without reasonable doubt fairly lead us. It is only necessary to read the evidence in this case to establish that the learned Judge could have come to no other conclusion than he did.

*Côté's* account of the interview with *Kinnear* is as follows :—

Q. Vous avez été, comme vous avez dit, avec *M. Beaudet* en voiture, et vous avez visité plusieurs des électeurs en cabalant avec lui? R. Oui.

Q. Êtes-vous allé à *Leeds* avec lui?—R. Oui.

Q. Êtes-vous allé au moulin de *Kinnear*?—R. Oui.

Q. Êtes-vous entré chez *Kinnear* avec lui?—R. Oui.

Q. Avez-vous resté tout le temps dans la chambre avec lui quand il a parlé à *Kinnear*?—R. J'ai sorti pour voir à mon cheval, j'ai laissé *M. Kinnear* et *Beaudet* dans la salle.

Q. A-t-il été question avec *Kinnear* de vous supporter dans l'élection, quand vous avez parlé avec lui?—R. Non.

Q. Lui avez-vous parlé d'élection?—R. J'ai parlé par rapport à la lettre qu'il avait envoyée à *M. Piteau*. *M. Kinnear* m'a dit: Je n'aime pas le docteur *Olivier*, si vous étiez libéral je voterais pour vous au lieu d'*Olivier*; mais s'il n'en vient pas d'autre je voterai pour *Olivier*.

Q. Votre entrevue avec lui n'a pas été favorable?—R. Je savais bien que *Kinnear* est libéral; j'allais le voir comme confrère de magasin.

Q. Vous êtes entré là parce que vous saviez qu'il n'aimait pas le docteur *Olivier*?—R. Oui. Je voulais le voir. Quand on fait le tour du comté on va voir les principales gens de la place. C'était la première fois que j'allais à *Leeds*.

Q. A-t-il été question en votre présence de bâtir une halle, une salle publique dans la paroisse?—Non.

Q. Après que votre cheval a été prêt *Beaudet* vous a rejoint?—R. Je suis rentré chez *Kinnear*, il était après parler avec *Beaudet*.

Q. Et *Beaudet* est resté avec vous?—R. Oui.

Q. *Beaudet* vous a-t-il dit quelque chose par rapport à certaines vingt-cinq piastres (\$25.00)?—R. Il m'a dit cela quelques jours après.

Q. Quand ?—R. Je crois que c'est trois ou quatre jours après.

Q. Qu'est-ce qu'il vous a dit ?—R. Il m'a dit qu'il avait donné vingt-cinq piastres (\$25.00) à M. *Kinnear* pour lui aider à bâtir un townhall.

Q. A part des deux cent cinquante piastres que vous avez données au comité de *Somerset*, et des deux cent vingt-cinq piastres à *Beaudet*, cent soixante-quinze piastres à deux cent vingt-cinq piastres à *Beaudet* et à part de vos dépenses personnelles avez-vous donné d'autres sommes d'argent pendant l'élection et pour l'élection ?—R. Pas que je me rappelle. Oui, j'ai donné cinquante piastres (\$50.00) au comité de *Sainte-Julie* que j'ai envoyées pour les dépenses légales, les orateurs, etc.

Q. A part vos dépenses personnelles et de l'argent que vous avez donné à *Beaudet*, avez-vous donné d'autre argent pendant l'élection, ou depuis, pour l'élection ?—R. A part de ce que j'ai donné à *Beaudet*, j'en ai donné au comité de *Somerset*.

Q. Combien ?—R. Deux cent cinquante piastres (\$250.00) à peu près, je ne puis pas dire au juste, c'est pour payer les dépenses du comité, j'ai donné environ deux cent cinquante piastres, deux cents à deux cent cinquante piastres, j'ai donné en différents temps.

Q. Qu'avez-vous dit ?—R. Peut-être ce n'est pas bien. Il dit, j'ai donné ça, ce n'est pas du tout pour l'élection, c'est pour bâtir un townhall.

Q. Et vous étiez satisfait ?—R. Je n'étais pas pour les retirer. Ce n'est pas moi qui ai donné l'argent.

Q. C'était votre argent ?—R. Je ne sais pas.

Q. Vous avez donné quelle somme d'argent à *Beaudet* ?—R. J'ai donné neuf cents piastres (\$90.00) en partant de *Somerset* et la balance en différents temps jusqu'au montant de cent soixante-quinze piastres (\$175.00) à deux cent vingt-cinq piastres (\$225.00).

Q. A-t-il rendu compte de cela ?—R. Non.

Q. Vous ne lui avez pas demandé non plus ?—Non.

*Beaudet's account of what took place at Kinnear's is as follows :—*

Q. Vous êtes, si je ne me trompe pas, commis voyageur, c'est-à-dire que vous vendez à commission pour des marchands de gros de *Montréal*, et cela depuis de nombreuses années ?—R. Oui, depuis dix-sept (17) ans.

Q. Et durant ce temps-là avez-vous eu occasion de faire connaissance avec M. *James Kinnear* ?—R. Oui, je le connais depuis nombre d'années, et je suis allé le voir.

Q. Durant la dernière élection vous êtes entré chez lui avec le défendeur M. *Fréchette* ?—R. Oui.

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Q. Et vous dites que dans ce temps-là il y avait bien des années que vous faisiez des affaires comme commis voyageur et que vous en aviez fait beaucoup avec lui ?—R. Oui, beaucoup avec lui et avec son fils aussi.

Q. Vous étiez sur un pied d'intimité, je présume, avec M. *Kinnear* ?—R. Oui.

Q. Avant d'entrer là, M. *Beaudette*, a-t-il été question entre vous et M. *Fréchette* de quelque chose au sujet de votre visite à M. *Kinnear* ?—R. Pas du tout. M. *Fréchette* m'a demandé d'aller avec lui, il m'a dit : " tu connais bien des gens." Je lui ai dit : " c'est bien," et nous sommes partis tous les deux, et nous avons été à plusieurs places. Quand je suis arrivé chez M. *Kinnear*, j'ai introduit M. *Fréchette* à M. *Kinnear*, et M. *Fréchette* a dit à M. *Kinnear*, vu qu'il se présentait comme candidat que c'était son devoir d'aller le voir comme citoyen.

Q. Si je vous comprends bien, avant d'aller voir M. *Kinnear*, vous n'aviez fait aucun complot entre vous et lui pour tendre des embûches à M. *Kinnear* ?—Non.

Q. Si je ne trompe pas, il s'est passé quelque chose entre vous et M. *Kinnear* au sujet d'une souscription pour un *Town Hall* ?—R. Oui.

Q. Voulez-vous dire si le défendeur *Fréchette* était présent et a eu connaissance de cette conversation entre vous et M. *Kinnear* à propos de cette souscription ?—R. Non, M. *Fréchette*, n'était pas dans la maison quand j'ai parlé avec M. *Kinnear*.

Q. Lorsque vous êtes embarqué avec M. *Fréchette*, M. *Kinnear* a-t-il dit quelque chose pouvant donner à comprendre à M. *Fréchette* qu'il avait reçu quelques libéralités pour lui ou sa municipalité ?—R. Non ; quand je suis sorti avec M. *Fréchette*, la voiture était attachée à peu près à une cinquantaine de pieds de la porte ; comme on revirait avec la voiture, M. *Kinnear* a sorti sur le perron et a dit : " Ne passez pas chez mon fils *James* sans arrêter le voir." C'est ce que nous avons fait.

Q. Pendant que cette affaire de souscription s'est passée, M. *Fréchette* était dans le jardin ?—R. Il était en dehors ; j'ai remarqué qu'il avait un jeu de croquet où il y avait des dames et M. *Fréchette* était avec elles à s'amuser ; c'était à côté de la maison, on les voyait par le châssis, mais ils ne pouvaient pas entendre la conversation.

Q. Quand M. *Fréchette* est venu vous rejoindre pour embarquer, M. *Kinnear*, tout ce qu'il vous a dit est ceci : N'oubliez pas d'aller chez mon fils *James* ?—R. C'est tout ce qu'il a dit.

And then we have the evidence of *Kinnear* :—

Q. Do you remember the member elect, Mr. *Fréchette*, in com-

pany with *Beaudet*, going to your house while the canvass for the election was going on?—A. Yes, they both came.

Q. Was that before or after the nomination day?—It was before.

Q. It was a day or two before?—A. I could not say exactly; it was a short time before. It was before the nomination.

Q. Would you relate, as nearly as you can remember, the conversation which took place with *Fréchette* in the first instance at your house?—A. *Fréchette* and *Beaudet* called upon me and said that he was in the neighborhood. I was well acquainted with *Beaudet*, being a commercial traveller, and calling at our place. They came in and sat down, and Mrs. *Kinnear* brought some little refreshments and chatted away, and asked *Fréchette* how he was getting along, if he was intending to run. He said yes, that he had great encouragement and intended to go through. After we talked. After this he went outside. and Mr. *Beaudet* was sitting on the sofa. I should say that before this occurred they asked me how the parties felt at the mill, regarding this election. I said that they felt rather cold, a good many of them in the main were so, that they did not like the member that was setting up to run, that the late Dr. *Olivier* was not very popular in *Leeds*, and I said if they—I said for my part I was not going to interfere a great deal in this election. I was cold about the thing, but at the same time that I would vote for my party, that I was always Liberal, and that I would vote for the Liberal party, but not exert myself as much as in former elections. Then *Fréchette* went out, and Mr. *Beaudet* asked me “Do you want any money for your church?” I said “No, thank goodness, our church is free from debt, I did not want any money for it.” We then continued talking, and he asked me again “Do you not want any money for anything?” And I said “If you have any money to spare there is plenty of things we want it for.” We were thinking about putting up a public hall here and we were scarce of money. Then *Beaudette* said, I think, “Will twenty-five dollars do?” I said “Whatever you like, it is nothing to me.” I think he took twenty-five dollars and left it on the parlor table. And after this happened Mr. *Fréchette* then came in, and when I was bidding them good-bye, I said “Gentlemen, remember that this money has no influence, as far as I am concerned, with regard to the election.” I said “I vote for *Olivier*, he has got my support, but I am not going to exert myself canvassing among people as I formerly did.”

Q. These last remarks you made in the presence of Mr. *Fréchette*?—A. Yes, they were both going away, and I was bidding them good-bye, and I said “Now, remember this has no influence with regard

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to my vote, alluding to the money. I think that is about all that happened."

Q. Did you inform the people that this . . . . had been given for the purpose of the *Town Hall*?—A. No, it still remains there, and I made an offer of it back again to Mr. *Beaudet*; the money will go for that purpose unless it goes back to those who gave it to me. It was left there, and I often felt sorry about having anything to do with it, and after that, I met *Beaudet*, shortly after the council here, he did not care about talking about it or anything. I said I think I had better pay you back this twenty-five dollars. It appears something as calling in conscience, I would rather not have it, but he walked on and went away, but it had no influence when the day of the election came. I felt just as anxious to get votes for the Liberal side as before.

Q. Is it not a fact, Mr. *Kinnear*, that when Mr. *Fréchette* called at your place that he said because being himself a trader that he considered he was owing you a visit, yourself being a trader?—A. I explained that, he said he was in the neighbourhood, and called upon me to see me.

Q. I want to know if there was any mention of your being traders and you older that he thought it was due he should call on you?—A. I believe it was a sort of a . . . . call, an electioneering call, it must have been, because I had no acquaintance with Mr. *Fréchette*, I had not known him before.

Q. I mean, you say that you were an old trader, and he Mr. *Fréchette* is also a trader, and being in your neighbourhood, and you being an old resident and trader, that he thought it was his duty, as an able man to call and see you?—A. Well, I do not know about — perhaps that might be his idea for that.

Q. Have you any doubt that if Mr. *Fréchette* had been in your village that he would not have called, if it had not been election time? Do you mean to say that if it had not been during the election time that *Fréchette* being in your village would not have called?—A. I could not say for that, the only thing is I have no acquaintance with *Fréchette*, but having acquaintance with *Beaudet* they might have called. *Beaudet* has often called.

Q. Do you undertake to swear, Mr. *Kinnear*, that when they left, and when you made the remark that you would not be influenced by that, as you said, do you undertake to swear that any mention in reference was made in the presence of *Fréchette*, of the twenty-five dollars that had been left by *Beaudet*?—A. No mention whatever, after what mention I made of it.

*Re-examined.*

Q. When *Fréchette* came back to the room, and you accompanied

them out of their vehicle, they were going away, you then made, if I understand you rightly, in the presence of *Fréchette*, a reference to the money that had been left, and said the money would not influence you?—A. I do not think I mentioned money, but I mentioned it would have no influence as far as . . . . . I referred to it, I do not know whether they understood it.

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Q. Could Mr. *Fréchette* have helped understanding that you were making reference to something which had been done, or offered you with the view to influence your vote at the election?—A. I have stated all that occurred.

Q. Mr. *Kinnear*, as a matter of fact, have you any doubt at all but that Mr. *Fréchette* called to see you because there was an election going on, have you any doubt in your mind about that at all?—A. They said that they called for another purpose, that it was merely to see me as they were in the neighborhood, but of course as he was running for the county, my impression was that he called to see me with reference to that.

Q. Is it not a fact that you are the most prominent and most influential person in the neighborhood of *Kinnear's Mills*?—A. I have got a certain amount of influence there, and there is some there that always vote whatever side I vote for, no matter whether it is Liberal or Conservative.

Thus we have it clearly established by *Fréchette* that \$100 was given by him to *Beaudet* for the purposes of the election directly, and not through the instrumentality of a financial agent. In opposition, the subterfuge of *Beaudet* that the money was not given for the purposes of the election, but on account of an indebtedness of *Fréchette* to him, *Beaudet*, and that the money was therefore his and not *Fréchette's*; and *Fréchette* and *Beaudet* having, in the course of the avowed election expedition, come to the house of *Kinnear*, we have the flimsy pretence of *Fréchette* that, because he was a fellow-trader, he thought he ought to call on him, and that that was the object of the visit, clearly overturned.

Then we have the introduction into the conversation of the subject of the election, very clearly showing the cause and object of the visit, for in answer to a question to *Coté*: “Lui avez-vous parlé d'élection?” R. “J'ai parlé par rapport à la lettre qu'il avoit envoyée à M.

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*Piteau*," clearly inferring thereby that he was acquainted with *Kinnear's* feelings.

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Then, so soon as *Kinnear* had made apparent his dislike, as still existing, to the candidateship of *Olivier*, and his unwillingness to work for him, or to take as active a part in the election as he usually did in elections, we have the disappearance of *Fréchette* from the room and leaving *Beaudet* there with *Kinnear* alone, under the flimsy pretence of *Fréchette* that he went to look after his horse, which, the evidence shows, was tied only about fifty feet from the door, and does not appear to have needed any looking after; and the equally flimsy, but different, reason assigned by *Beaudet* that *Fréchette* left the room to see some ladies playing croquet.

Then *Beaudet's* question to *Kinnear*, immediately on *Fréchette's* leaving, to know if he did not want money for his church, and on receiving a negative answer, *Beaudet's* extraordinary reply to *Kinnear* that he, *Kinnear*, should have need of money for one thing or another totally indifferent to *Beaudet*, so that he got *Kinnear* to take *Fréchette's* money, and then his leaving it on *Kinnear's* table.

Then we have the knowledge of the money having been given by *Beaudet* to *Kinnear* brought home to *Fréchette* on the spot by *Kinnear* as they were leaving, and *Kinnear's* evident intimation to *Beaudet* and *Fréchette* that he thought they would expect it would influence him in the election, and his statement to them that it would have no influence, as far as he was concerned in the election. Then there is the absence of any repudiation of the act of *Beaudet* at this time or at any subsequent time, though *Fréchette* admits that *Beaudet* informed him of the particulars of the transaction a day or two after: "Q. Et vous étiez satisfait. R. Je n'étais pas

pour les retirer; ce n'est pas moi qui ai donné l'argent," where he inferentially adopts the act. The attempt of *Beaudet* to make it appear that the money was not given him by *Frechette* for election purposes, but that it was his and not *Frechette's* money in all which he was directly contradicted by *Frechette*. The clearly established fact, notwithstanding what *Beaudet* says, that the \$100 was given by *Frechette* to him for the purposes of the election, that this \$25 was part of that sum, which it would have been a fraud on *Frechette* if *Beaudet*, instead of spending it for the purpose for which it was entrusted to him, viz., that of the election, had distributed it behind *Frechette's* back in acts of unsolicited liberality or charity having no bearing on the election; the absence of any explanation by *Beaudet* though examined respecting the transaction; the contradictions of *Beaudet* and *Frechette*. Then we have *Coté's* expenditures. He admits that the election cost him \$1,500. He thinks there are accounts still to come in. At pages 38 and 39 he says:—

Q. N'avez-vous pas dit à M. *D'Auteuil*, le curé d'*Ireland*, que votre élection vous coûtait quinze cents piastres (\$1,500.00)?—R. Je ne me rappelle pas de cela. J'ai dit que l'élection d'*Olivier* devait coûter à peu près quinze cents piastres (\$1,500.00). Je ne me rappelle pas d'avoir dit que la mienne coûtait quinze cents piastres (\$1,500.00). Je sais bien que j'ai parlé de \$1,500.00 (quinze cents piastres).

Q. Jurez-vous positivement que vous n'avez pas dit à M. *D'Auteuil* que votre élection vous coûtait à peu près cela?—R. Je ne puis pas jurer cela. Je puis avoir dit que ça avait coûté à peu près quinze cents piastres (\$1,500.00). Je puis peut-être avoir dit cela, que ç'avait coûté à peu près cela.

Q. N'est-il pas à votre connaissance qu'il y a une foule de comptes d'élection qui ne sont pas venus encore et qu'on attend que ce procès-ci soit fini pour régler?—Je ne sais pas.

Q. Pouvez-vous jurer que ce n'est pas à votre connaissance personnelle qu'il y a de ces comptes-là?—R. D'après moi je crois qu'il y a à quelque compte à venir, je ne sais pas.

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Q. Pourriez-vous m'en nommer quelques-uns?—R. Les comptes de *Saint-Pierre* et de *Prince*, je ne les ai pas eus. Les comptes, je ne puis point les nommer.

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The account of *Fréchette's* Election Agent is as follows :

Etat des dépenses légales d'élection de *Louis Israël Côté alias Louis Israël Fréchette*, candidat élu à l'élection, le 20 juin 1882, pour la Chambre des Communes, dans le district de *Mégantic*. Pour argent déboursé et payé comme suit :—

|                                                                          |          |
|--------------------------------------------------------------------------|----------|
| Pièce No 1—Compte de <i>B. Tippens</i> , orateur.....                    | \$75 00  |
| “ “ 2— “ <i>J. A. McDonald</i> , orateur... ..                           | 33 00    |
| “ “ 3— “ <i>Moffatt</i> , orateur.....                                   | 10 00    |
| “ “ 4— “ <i>J. B. Rousseau</i> .....                                     | 10 58    |
| “ “ 5— “ <i>J. Chassé</i> , orateur.....                                 | 75 00    |
| “ “ 6— “ <i>J. G. Prince</i> , orateur. . . .                            | 45 00    |
| “ “ 7— “ <i>P. C. Bourke</i> .....                                       | 15 00    |
| “ “ 8— “ <i>S. Larochelle</i> .....                                      | 31 55    |
| “ “ 9— “ <i>Edouard Fluet</i> .....                                      | 3 50     |
| “ “ 10— “ <i>L. J. Piteau</i> , orateur.....                             | 100 00   |
| “ “ 11—Dépenses personnelles de <i>L. I. Fré-</i><br><i>chette</i> ..... | 95 00    |
| “ “ 12—Compte de <i>V. A. Bérubé</i> .....                               | 1 10     |
|                                                                          | \$494 73 |

Daté à *Maple Grove*, ce 18 août 1882.

(Signé) SIMEON LAROCHELLE,

*Agent.*

The absence of any account being rendered by *Fréchette* or his financial agent of the payment of this and other monies to *Beaudet*, or of any account rendered by *Beaudet* to *Fréchette*, or of any request by *Fréchette* to *Beaudet* of an account of its expenditure; the large sums distributed by *Fréchette* to his committee and agents without the instrumentality or knowledge of his financial agent, the dispositions of which were entirely unaccounted for, either by *Fréchette* to his financial agent or by the parties to whom the expenditure was entrusted, to *Fréchette* himself; the absence of any inquiry by *Fréchette* as to such expenditure, and

the large sums admittedly corruptly expended in the election by the agents of *Frechette*, all show the entire reckless disregard of the law in the manner of conducting the election all prevent a favorable view being taken of *Frechette's* conduct in reference to this transaction, and so far from my being able to say that the learned Judge was clearly wrong in the decision at which he arrived, I am constrained to say that had the case come before me in the first instance I should have been compelled to come to the same conclusion.

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STRONG, J. :—

For the reasons assigned by Mr. Justice *Plamondon*, I am of opinion that the judgment of the court below must be affirmed and this appeal dismissed with costs.

FOURNIER, J. :

I also am of opinion that the judgment of the court below should be affirmed.

HENRY, J. :

I concur in the decision arrived at by my learned colleagues.

GWYNNE, J. :

The objection urged upon behalf of the appellant to the evidence of the quality of the petitioners to file the election petition in this case as duly qualified electors cannot be entertained. The voters' list prepared under the provisions of the *Quebec* statute, 38 *Vic.*, ch. 7, when finally completed and filed of record as directed by that statute, is, in my opinion, the sole evidence required to be produced for the purpose of establishing the right of a person inserted thereon as a qualified voter to vote at an election held thereunder, and to file an election petition as such qualified voter. Ample oppor-

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tunity is given to every one by the provisions of the statute to make objection to all persons inserted on the list as voters while it is in course of preparation, and the utmost precautions are provided to insure its accuracy, so that when it is finally completed and filed of record, as required by the statute, it becomes the title of record of every person inserted thereon to be an elector, entitled to vote at an election held under it, and as such entitled to maintain a petition calling in question the validity of the election. Neither is there anything in the other purely technical objections urged by the learned counsel for the appellant. The appeal must therefore be disposed of upon its merits.

The learned judge, before whom the election petition was tried, has avoided the election upon the grounds of bribery and corruption which he had found to have been committed by the appellant personally, and also by others, his duly authorized agents. The learned counsel for the appellant has, upon this appeal, submitted to the correctness of the judgment of the learned judge, in so far as it proceeds upon the acts of the agents of the appellant committed without his knowledge and consent, and has disputed the judgment only in so far as it finds that any bribery or corrupt practice was committed by the appellant personally, or by any agent of his, with his knowledge or consent, the object of the appeal being to get relief from the disqualification of the appellant incident upon the judgment of the learned judge.

The charges affecting the appellant personally upon which the judgment of the learned judge proceeds, are five in number.

The first is comprised in items No. 1 and 19, inserted in the bill of particulars annexed to the record, which are as follows :

1st. That the appellant gave from two hundred and fifty to three

hundred dollars to one *Jean Charles Beaudette*, with which to commit bribery during the election, and

19th. That *Jean Charles Beaudette*, with the knowledge and consent of the appellant, who had furnished him with money for such purposes, gave to one *James Kinnear* the sum of twenty-five dollars for the purpose of corruptly influencing the vote of the said *James Kinnear*.

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The learned judge, after a careful review of the evidence bearing upon this charge, came to the conclusion that it was clearly proved, and that in itself was not only sufficient to avoid the election, but to subject the appellant to be found guilty personally of corruption. The appellant and his agent, *Beaudette*, had the fullest opportunity of explaining their version of this transaction; indeed, they and *Kinnear* are the sole witnesses upon the charge. It is apparent, however, that the learned judge was very unfavorably impressed with the manner in which the appellant gave his evidence upon all the charges which were under investigation before him, for he premises his judgment with a passage which I transcribe in his own language :

Une observation trouve ici nécessairement sa place. C'est que le défendeur a étonnement varié dans les diverses dépositions et déclarations qu'il a données. La cour déclare sans hésitation qu'elle croit de son devoir d'attacher plus de poids aux admissions, affirmations et explications contenues dans les réponses du défendeur à l'interrogatoire en chef plutôt que dans ses dépositions subséquentes faites *ex parte* et qui décèlent le besoin et le desir d'amoindrir sinon d'anéantir complètement la preuve de faits compromettants, preuve, résultant d'un témoignage long et minutieux donné à plusieurs reprises, en pleine connaissance de cause, en toute liberté sans la moindre pression de précipitation, et sans le moindre prétexte de défaut de connaissance de cause, le défendeur bénéficie déjà suffisamment d'un défaut de mémoire bien remarquable dans son premier interrogatoire.

Now that *Beaudette* gave to *Kinnear* the \$25, and that the money so given was part of the \$100 which the appellant had that same morning placed in *Beaudette's* hands, there can be no doubt. That the money placed

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by the appellant in *Beaudette's* hands was so placed for purposes of corruption, and to be expended in a manner similar to the manner in which it was so soon after, and almost in the presence of the defendant applied, and that *Beaudette's* motive in giving the \$25, although expressed to be given towards the erection of a public hall at the place where *Kinnear* lives was, in fact, in order to induce *Kinnear* either to vote for the appellant or at least not to vote or work against him, and that the appellant had at the time knowledge of the manner in which the sum of \$25 was expended, of the source from which it came, and of *Beaudette's* motive in so expending it are all inferences which the evidence warranted, and it is sufficient for me to say, especially in view of the above extract from the judgment of the learned judge, that the learned counsel has failed to convince my mind that the finding of the learned judge is erroneous. On the contrary, I am of opinion that the above inferences flow very naturally from the facts detailed in the evidence, and however serious are the consequences to the appellant, I can see nothing to justify us in reversing the judgment of the learned judge upon this charge.

Another of the charges contained in the bill of particulars is that the appellant gave from \$30 to \$50 to one *Porter* to commit corrupt acts therewith, and that the money was employed by him for that purpose. The learned judge has found that the appellant enclosed in an envelope addressed to *Porter* the sum of \$20, a day or two before the polling day, and he was of opinion that the sending of this \$20 served to purchase the influence and services of *Porter*, who was to act as an agent of the appellant at one of the polling places.

On the back of a piece of paper covering the money were written the words: "for expenses at your poll." There was no signature to this, nor was there any writing save the name and address of *Porter*, which

were on the envelope. *Porter* could give no satisfactory account of his application of this money, and he professed to have been ignorant when he received it of the person from whom it came. Now that this money was sent with a corrupt intent was a very natural inference for the learned judge to draw from the facts in evidence, for there was no legal expenses to be incurred by *Porter* at the poll for which he would require any money; and if sent to him with an honest motive, there was no occasion for such a statement of the purpose for which the money was sent, nor for suppressing the name of the person sending it, nor for omitting to have the amount entered in the account of the appellant's expenses at the election. It was contended, however, by the learned counsel for the appellant, that the finding of the learned judge as to the purpose for which the money was sent was a different purpose from that alleged in the charge, the latter being "*pour faire de la corruption,*" and the finding of the learned judge being, that the payment of a sum of \$10 for a service which was worth only \$3 or \$4 "*et l'envoie de \$20 ont servi à acheter l'influence et les services de Porter.*"

I confess that it appears to me that in these charges of personal corruption, the same preciseness should be required as in an indictment. In this case the evidence, to my mind, rather proves the motive of the appellant in sending the money to have been the corrupt one charged than to influence the vote of *Porter*, which, as I understood the learned counsel for the appellant, is the construction put by him upon the language of the learned judge; but it may be that the words "*ont servi à acheter l'influence et les services de Porter*" are open to the construction that the money was given to purchase the good offices and services of *Porter* in freely treating the voters on the polling day at the poll where *Porter* was to represent the appellant, a practice which ap-

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pears to have been largely indulged in at some of the polling places by persons acting in the interest of the appellant, in which case the charge "*pour faire de la corruption*" would be established. However, as the first charge is sufficient to support the learned judge's judgment, it is unnecessary to dwell upon this one, or upon the others, which are charges of corrupt treating, as to which latter I think it not inopportune to observe that these charges of corrupt treating appear to me to afford a good illustration of the importance of our being very careful not to set aside the finding of the judge of first instance upon matters of fact, unless thoroughly convinced that the finding is erroneous. As to the mere fact of treating, there may not be, and frequently is not, any question raised—the criminality lies in the intent of the party in treating; and judging from the observations above quoted from the learned judge's judgment, I cannot but think that the very unsatisfactory character of the evidence given by the appellant, and his demeanor under examination mainly contributed to induce the learned judge to draw the inference that the intent in the cases adjudicated upon by him was corrupt, and as upon appeal we have not that evidence before us, as the learned judge had, we are not in a position that would justify us in pronouncing his judgment to be erroneous.

Appeal dismissed with costs.

Solicitor for appellant: *Eugène Crépeau.*

Solicitor for respondents: *Joseph Lavergne.*
