CONTROVERTED ELECTION OF THE ELECTORAL DISTRICT OF THE SOUTH RIDING OF THE COUNTY OF ONTARIO.

1879
*Nov. 10, 11.
1880
*Feb'y. 9.

DANIEL McKAY.....APPELLANT;

AND

FRANCIS WAYLAND GLEN.....RESPONDENT.

Controverted Elections Act, 1874—*Gifts and subscriptions for charitable purposes—Payment of a just debt without reference to Election, not bribery.*

Held—1. That if gifts and subscriptions for charitable purposes, made by a candidate who is in the habit of subscribing liberally to charitable purposes, are not proved to have been offered or made as an inducement to, or on any condition that, any body of men, or any individual, should vote or act in any way at an election, or on any express or implied promise or undertaking that such body of men, or individual, would, in consequence of such gift or subscription, vote or act in respect to any future election, then such gifts or subscriptions are not a corrupt practice, within the meaning of that expression as defined by the Election and Controverted Elections Acts, 1874.

2. That the settlement by payment of a just debt by a candidate to an elector without any reference to the election is not a corrupt act of bribery, and especially so when the candidate distinctly swears he never asked the elector's support, and the elector says he never promised it and never gave it.

[*Gwynne* and *Taschereau*, J. J., doubting whether the transactions proved were not within the prohibitory provisions of the Act.]

THIS was an appeal from a judgment delivered by Mr. Justice *Galt* on the 14th January, 1870, dismissing the election petition filed against the return of the re-

*PRESENT.—Ritchie, C. J., and Strong, Fournier, Henry, Taschereau and Gwynne J. J.

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spondent as member of the House of Commons for the electoral district of the south riding of the county of *Ontario*.

The petition was in the ordinary form, and charged that the respondent, by himself and his agents, was guilty of corrupt practices within the meaning of that expression, as defined by the Election and Controverted Elections Acts, and by the common law of Parliament. There were in all 53 charges mentioned in the particulars, to which several others were allowed to be added during the trial.

The judgment appealed from declared none of these charges were sustained, either against the respondent or his agents.

The appellant, by notice, limited his appeal to the amended particulars delivered before the trial as Nos. 7. 31, 37, 47, 50, 51 and 53, and to those added at the trial numbered 6 and 7.

They were given as follows in the amended particulars:

Number.	Name of Person Bribing.	Name and Address of Person Bribed	Time.	Place.	Nature.
7	John Spink..	Louis O'Leary, Pickering...	Between 15th August and Sept. 10, '78.	Frenchmen's Bay..	Promise to procure office.
31	F. W. Glen...	G. H. Pedlar, Oshawa.....	During Contest.....	Oshawa.....	Settlement of claim of money.
37	F. W. Glen...	Thos. Dingle, Oshawa....	During Contest.	Oshawa.....	Promise of office for son.

47. The said respondent, in the month of May, 1878, at *Oshawa*, corruptly made a gift of trees to a cemetery of the Roman Catholic Church, to induce Roman Catholic voters and others generally, to vote or refrain from voting at said election.

50. The said respondent, on the first July, 1878, at

Oshawa, gave money and other valuable considerations to members of the Roman Catholic Church, at a pic-nic then being held, to induce the members of such Church, and others generally, to vote or refrain from voting.

51. Also, the respondent, at *Duffin's Creek*, during the canvass at said election, corruptly made gifts of money, and other valuable considerations, to the members of the Roman Catholic Church, to induce the members of the said Church, and others generally, to vote or refrain from voting at said election.

53. The respondent, during the canvass for the said election, at divers other times and places, corruptly made gifts of money, and other valuable considerations, to other religious and charitable associations, and to other laudable and popular undertakings, to induce electors in general to vote or refrain from voting at said election.

And in the particulars added at trial, by leave of the Judge:

6. *Dingle.—Glen* promised *Thomas Dingle* a contract if he would support *Glen*. This was promised in June last.

7. *James Wallace*, bribed by *Higgins* at *Whitby*, by promise of office.

These charges and the material parts of the evidence bearing upon them are reviewed at length in the judgment of the Chief Justice hereinafter given.

Mr. *H. Cameron*, Q C., for appellant:—

The appellant, by his notice, has limited his appeal to the charges numbered in the particulars delivered before the trial as Nos. 7, 31, 37, 47, 50, 51 and 53, and to those added at the trial, numbered 6 and 7.

The first case I will take up is No. 7, the *Spink-O'Leary* case. This is a charge of bribery. The bribe was the procurement for *O'Leary* of the office of Land-

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ing Waiter at *Frenchman's Bay*, through the exertions of one *Spink*, whose agency cannot be seriously disputed. [The learned Counsel then reviewed the evidence on this case.]

It sufficiently appears that *O'Leary*, whatever his secret determination may have been—and it is one of the suggestive features of the case that, although *Spink* deposes that *O'Leary*, having informed him that he had made up his mind never to vote with the Conservatives again after the Orange riots at *Montreal*, *O'Leary* never alludes to this change of sentiment on his part—could not induce Mr. *Spink* to move on his behalf, or to make him any promise until he distinctly announced his determination to vote, if he voted at all, for the Respondent; that thereupon Mr. *Spink* did promise to procure the office, and the pretence set up is a palpable absurdity. It would not be easy to make out from the mouths of unwilling witnesses more damning evidence of a corrupt bargain.

The next case is what I call the *Glen-Pedlar* case, No. 31 of the particulars. This is a personal charge against the Respondent. It is that, in consideration of obtaining the vote of one *George H. Pedlar*, or to prevail on him to keep quiet and not to vote, he (the respondent) paid a claim of *Pedlar's* against him.

[The CHIEF JUSTICE:—Have any cases gone so far as to hold the payment of a legal debt to be a corrupt act?]

If done with the corrupt purpose of influencing the voter. The evidence clearly shows that the settlement took place for the purpose of obtaining *Pedlar's* neutrality. This, I contend, is a corrupt act within the meaning of the section. There is a case *Re North Ontario* (not reported) in which the Court of Appeal for *Ontario* declared that the payment of even a just debt, never disputed by the debtor, if for the purpose

of inducing an elector to vote, or to refrain from voting, is bribery, and, as the exercise of a perfectly lawful right, if done for the purpose of influencing an elector, is undue influence and unlawful. *Norfolk* case (1); *Blackburn* case (2); *NorthAllerton* case (3); so may the doing of a perfectly lawful act be bribery—See *Cooper* v. *Slade* (4).

The charges No. 37 and No. 6 of added particulars, *Dingle's* cases, may be treated together. [The learned counsel argued that the result of the evidence in these charges was that they had been fully sustained.]

As to the charges of colorable charity, the respondent is charged with giving with more than his usual liberality to churches and charities, with a corrupt motive. The respondent himself admitted that he had never before been so liberal in his charitable expenditure, and he further admitted when asked his object in thus spending money liberally on behalf of the Roman Catholic body, that he "did not know that he could say any particular object; to have their goodwill in the first place;" and he admits that it was to make himself popular with the Catholic people of the riding. Again, the respondent admits that the Catholic electors of the riding, of whom he estimates there are about one in every eighteen or twenty usually supported his opponent, Mr. *Gibbs*, were of great importance in the contest. To break the force of these admissions, the respondent, in his examination by his own counsel, stated very broadly, that "for the past ten years my average to all charitable purposes would be one thousand dollars a year." But this was qualified, and in effect done away with, by the admissions already extracted, and by what he was compelled on re-examination to concede.

(1) 1 O'M. & H. 240.
(2) 1 O'M. & H. 204.
(3) 1 O'M. & H. 168.
(4) 27 L. J. Q. B. 451.

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The question on these facts is, as put by Mr. Justice *Grove* in the *Boston* Case (1), whether these distributions were made with the intention of, in legal language, "corrupting" the electors. It is urged that these donations were in view of the impending dissolution of Parliament—so much is in terms almost admitted by the respondent; that no reasonable motive or object is pretended for them; that they were excessive, judged by the respondent's former practices; that they were mainly to one denomination, whose influence it was desirable to secure, and the vote of the electors belonging to which decided the contest in the respondent's favour. Can it be said, in view of the warnings that have been given (see *Boston* Case, already cited, and *South Huron* Case (2),) that these donations were not corrupt in the sense in which the word is used? See the *Launceston* Case (3); *Drinkwater & Deakin* (4).

[As to the *Wallace* case, the learned counsel argued that the evidence of Mr. *Wallace* was very clear and that there were many of the surrounding circumstances which go far to support his veracity, and concluded by stating:]

It is a remark that is applicable to this as well as other charges in appeal, that the evidence of no witness, on whose testimony reliance is placed by the appellant, has been discredited by the learned Judge who tried the petition. The Supreme Court is, therefore, in as good a position to determine on which side the truth lies as was the learned Judge. And the Controverted Election Act, expressly allowing an appeal on questions of fact, the appellant is entitled to the judgment of the Court on them, irrespective of the views entertained by the learned Judge who heard the evidence.

Mr. *Robinson*, Q. C., and Mr. *J. D. Edgar* for respondent:

(1) 2 O'M. & H. 161, at 163.
(2) 24 U. C. C. P. 488, at 497.
(3) 2 O'M. & H. 129, at 132.
(4) L. R. 9 C. P. 626.

There are some general considerations entitled to weight in deciding upon the various charges.

The Court below remarked that the enquiry into the circumstances of the election had not been rendered incomplete by the action of any of the parties to the petition, and that there was no evidence of illegal expenditure. The respondent is therefore entitled to contend that the character of the evidence shows that the election was conducted in accordance with the Dominion Elections Act, and that the sense of the constituency having been obtained, it would not be judicious to set aside the election on suspicious evidence, especially when the learned Judge who has seen and heard the witnesses declared in favour of the respondent. Moreover, the respondent showed by his words and conduct that up to the 19 May, 1878, he sought to bring others forward as candidates, and did not seek or desire the position himself. This must materially weaken inferences of corrupt intent sought to be drawn from his conduct prior to that date.

[The learned counsel then reviewed in detail the following charges: Charge 1. *Louis O'Leary* bribed by *John Spink*, by promise to procure office; Charge 31. The bribery by respondent of *Geo. H. Pedlar*, by the settlement of claim and money; Charge 37 and Charge 6, amended particulars, as to bribery of *Thomas Dingle*, by promise of office for his son and a contract for himself; Charge 7, of added particulars, *James Wallace* bribed by *Higgins* by promise of office; and contended that the alleged attempts of bribery had not been proved, that the testimony of the appellant's witnesses, was contradicted by respondent's witnesses, that the payment of a just debt, without any reference to the election before the respondent was nominated, cannot be said to be a corrupt act, and referred to: The

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Windsor case (1); The *Mallow* case (2); The *Boston* case (3).]

The next cases are those of colorable charity.

The respondent was, during 16 or 17 years before the election, very liberal to Roman Catholic objects; the Roman Catholics often spoke of his generosity, and he had a general reputation for that quality for years. Indeed, respondent is uncontradicted in his statement that he had given as much away, on an average, during the previous ten years as he did the year of the election. His was no suddenly developed zeal for charitable, or public, or religious objects. If he had any corrupt intentions he would not have allowed his political opponents to be aware of his gifts and charities; while the fact is, that at the Dominion Day picnics he went to Mr. *Dingle*, an active opponent, to have his cheques cashed for the money he is accused of spending corruptly.

It is contended by the Appellant that these corrupt charities influenced the Roman Catholic vote, and thereby decided the contest in Respondent's favor. To prove this, the Respondent's opponent, Mr. *Gibbs*, was called, and he attributed his defeat partly to the defection of the Catholic vote. This is pure speculation, under the ballot, and it seems to have been founded upon curious reasoning, because Mr. *Gibbs* was defeated once before by 150 when he thinks he received the Catholic vote. From Mr. *Gibbs*' own evidence, another inference may be fairly drawn. In the year 1872 his expenditure was four or five thousand dollars and his majority but 93; whereas in 1873 he spent ten or eleven thousand dollars and raised his majority to 242. It is therefore more fair to assume that election expenditure affected the results than that the Catholic electors swayed the elections in that riding.

(1) 2 O'M. & H. 89. (2) 2 O'M. & H. 18.
(3) 2 O'M. & H. 161.

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The authorities applicable to this case are: *Drinkwater* v. *Deakin* (1); The *Stafford* case (2); The *Youghal* case (3); The *Windsor* case (4); *Somerville* v. *Laflamme* (5).

Mr. *Cameron*, Q. C., in reply.

THE CHIEF JUSTICE:—

This is an appeal from the judgment of Mr. Justice *Galt*, dismissing the Election Petition filed against the respondent, charging him and his agents with corrupt practices, as defined by section 49 of the Dominion Controverted Elections Act of 1874, and by the Dominion Elections Act, 1874, and by the common law of Parliament, whereby the election and return of the respondent are void.

In the original particulars 39 cases of bribery were charged; 3 cases of undue influence, threatening and intimidation; 1 of treating; and 10 of corrupt practices. Amended particulars were filed in which there were 39 cases of bribery; 3 cases of undue influence, intimidation and threatening; 1 case of treating; and on the trial 7 more were added by leave of the Judge, making in all 103 cases. Of these, 43 were charges against the respondent personally. In the opinion of the learned Judge, none of these charges were sustained, either against the respondent or the other persons charged.

The appellant has taken no exception to the disposal of 96 of the cases, but has limited, by notice, his appeal to 9, viz:—Nos. 7, 31, 37, 47, 50, 51 and 53 in the particulars delivered before the trial, and Nos. 6 and 7 of those added at the trial.

It is a notable fact, that there is no allegation or indication in the evidence of any general bribery, or corrupt practices, or improper conduct in connection

(1) L. R. 9 C. P. 626.
(2) 1 O'M. & H. 230.
(3) 1 O'M. & H. 294.
(4) 2 O'M. & H. 89.
(5) 2 Can. S. C. R. pp. 248, 260, 277, 273, 317, 318, 306.

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with the election itself, which would seem to have been conducted, so far as appears before us, apart from the cases now to be considered, in the most correct and unimpeachable manner; and the respondent testifies that, with regard to the election, he took special means to prevent bribery; that he asked his friends to offer a reward; and he says 60 of the leading Reformers signed a paper offering a reward of $50; it was offering a reward for the conviction of bribery on either side. Five hundred of these bills were printed and distributed. "I warned my friends in every meeting I had, but especially at my committee meetings, to be careful and to crush out anything like bribery."

Of the nine cases we have to deal with, No. 7 is a charge of bribing one *O'Leary* with a promise of office by *J. Spink*. No. 31 is a charge of bribing one *Pedlar* by settlement of claim and money by respondent. 37 and 6 of added particulars, bribing one *Dingle* by promise of office for son and of contracts for himself by respondent. 47, corrupt practices towards a number of R. Catholic voters by gift of trees to R. C. Cemetery by respondent. 50 and 51, similar charge towards same by gifts of large sums of money at pic-nic by respondent. 53, similar charge as to whole constituency by subscriptions to charitable and other objects by respondent.

In considering Nos. 47, 50, 51, 53, which are cases of alleged profuse liberality by which the whole community or certain denominations were bribed by subscriptions to charitable and other objects, it must be borne in mind that the respondent was not a non-resident, or comparative stranger coming to the locality, seeking election as its representative. He was and had been for years, not only a resident, but largely and personally interested in its welfare and progress, and in its industrial, social and religious institutions, and had been for years a uniform,

consistent and liberal contributor, especially to charitable and religious objects

The first, No. 47, is the gift of trees to the Roman Catholic Cemetery.

I can discover nothing whatever in this transaction of a corrupt or illegal character. The Catholics, about two years before, had established a cemetery a short distance from *Oshawa*; it is described as being a bare looking place. We all, I suppose, know that of late years a very great change has taken place with reference to the character and adornment of the places where the dead are interred, and which is strikingly evidenced in the picturesque rural cemeteries now substituted in many places for the old-fashioned grave yards, as they were not inappropriately designated. As to the cemetery in question, the respondent thus details his connection with it:

Q—You are not a Roman Catholic, I believe; that is not your religious persuasion? A—No, sir.

Q—Did you at any time last year make any contribution towards laying out the grounds of the cemetery in connection with the Roman Catholic denomination? A—I gave some trees.

Q—When was that? A—In January or February I promised to give them. I offered them.

Q—Who did you offer them to? A—To Father *McIntee.*

Q—Where is the cemetery? A—Two miles and a-half about from *Oshawa.*

Q—Does it belong to *Oshawa* parish? A—I so understand.

Q—And you reside in *Oshawa?* A—Yes.

Q—In January or February, what was the offer made? A—To give him some trees if he would plant them in the cemetery.

Q—Were you in the tree business? A—My brother was.

Q—Where does your brother reside? A—*Rochester, U. S.*

Q—Was that a purely voluntary offer on your part? A—It was.

Q—What was the size of the cemetery? A—From five to eight acres.

Q—How long has there been a cemetery there. How long has this place been a cemetery? A—About two years I should say, perhaps three years.

Q—Was this your first donation towards beautifying the cemetery? A—Yes.

Q—Had you taken any interest in it before this? A—I don't know that I had.

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Q—Can you tell how it was, in January or February, you happened to think of the cemetery—the Roman Catholic cemetery? A—Father *McIntee* and I were very good friends; and I had a very good old friend—Mr. *Welch*—buried there. On driving past it, it looked to me very bare. I took an interest in tree growing and planting. I remember the offer I made very well.

Q—You say Father *McIntee*, a very old friend; friendship of long standing? A—Not very long.

* * * * *

Q—Then as to this tree planting; what was the first thing induced you to think of planting trees? A—I spent ten years of my life in the horticultural business in *Rochester*; I had a great deal of taste for tree planting; I would like to see every cemetery in the land beautified by trees; I have often urged that between *Oshawa* and the township they ought to buy a lot of land and make a beautiful cemetery; I think it very desirable for any community to have a handsome cemetery; ever since I came to *Oshawa* I have urged that.

The respondent could procure these trees from his brother at wholesale prices. It is not, to my mind, difficult to understand, if Mr. *Glen* had any taste for the business he had been engaged in, how much a cemetery bare of trees would suggest so appropriate a contribution, and induce a man, ordinarily free in his gifts, to be at the expense of the trees, if the proprietors of the cemetery would be at the expense of setting them out, as they undertook to do in this case.

This gift, in itself, exhibits, to my mind, only good taste and good feeling, and not by any means, I am happy to think, of an extraordinary or unusual character. What then makes this a corrupt act of bribery? The offer was made in January or February. Mr. *Glen* was not spoken of as a probable candidate till March; he appears not to have desired to be a candidate, and endeavored, though unsuccessfully, to induce others to accept a nomination, and was not himself nominated till 31st May, 1878. Parliament was not dissolved till two or three weeks before the 17th September, and the elections did not take place till that date. Who was to

be bribed? It is not pretended that this gift was offered, or made as an inducement to, or on any condition that, any body of men or any individual, should vote or act in any way at any election, nor is there the slighest evidence that there was, on the part of any body of men, or any individual, any promise or undertaking express or implied, that they or he would, in consequence of such gift, vote or act in respect to any future elections, otherwise than they should or would do if no such gift had been made. The utmost that can be said of this transaction in reference to election matters is, that it might possibly, and probably would, commend the donor generally to the good or favourable opinion of the denomination to whose church the cemetery belonged. In my opinion, it ought to commend him favorably to every person of good taste who might have occasion to pass the cemetery, as a general benefactor. We may as well here see what the cases say with reference to matters of this kind.

In the *Westbury* case (1), it was proved (as part of the recriminatory case) that the petitioner had sent a check for £10 as a subscription to a dissenting congregation almost at the same time as he issued his address as candidate. Mr. Justice *Willes* :—

I wish I could be spared the theological part of the case unless it is a very clear case.

Mr. *Cole* :—

If your Lordship thinks nothing of it I will not press it?

Mr. Justice *Willes* :—

No, I do not say I think nothing of it. I have myself often observed that people who mean to become candidates often subscribe to things they would otherwise not have subscribed to, but I think that is a step off corrupt practices, it is charity stimulated by gratitude or hope of favors to come.

In the *Hastings* case (2), it was proved that previous

(1) 1 O'M. & H. 47. (2) 1 O'M. & H. 217.

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to the election a lavish household expenditure had gone on in the establishment of the Respondent, and this was said to have been done for the purpose of influencing the election generally, but not of influencing any vote in particular.

Mr. Justice *Blackburn* says :—

There is no law which says that any lavish expenditure in a neighborhood with a view of gaining influence in the neighborhood and influencing an elector is illegal at all. In order to constitute anything which would be a corrupt practice in respect of expenditure of that sort, it must be made with a view of influencing a particular vote. If such an expenditure is made at a place with a tacit understanding of this kind: "I will incur bills and spend my money with you, if you will vote for me," that being not the side on which you intended to vote; if it is intended to produce that effect upon the voter it amounts to bribery.

In the *Belfast* case (1), it was proved that the respondent gave a subscription towards an Orange Lodge although he was not an Orangeman properly so called, nor were his opinions identical with those of the Lodge. It was contended on the part of the petitioners, that this was a corrupt payment within the meaning of the Corrupt Practices Act 1834.

Baron *Fitzgerald*, in his judgment, said as to this:

The profession of a candidate of holding certain opinions is a legitimate mode of influencing voters, and if the respondent thought that it would be for his benefit with reference to his election to inform orangemen and others that he did entertain opinions in favor of institutions of this kind, I can see nothing illegitimate in that. The case appears to me identically the same as if he had written a pamphlet in support of such institutions as Orange halls and had paid the printer for publishing it.

In the *Boston* case (2), in which the respondent was unseated by reason of the manner in which the agent distributed the gifts, Mr. Justice *Grove* thus treated of charitable gifts. He says:

We know, for instance, that persons, looking forward to be candidates for Parliament, are generally pretty liberal to the charities in

(1) 1 O'M. & H. 282. (2) 2 O'M. & H. 161.

the district, and such liberality, so far as I am aware, has never been held to vitiate the election; I suppose on the ground that such persons do not select voters as contradistinguished from non-voters as the objects of their charity, that the object itself is good and that, although the donors may, in so bestowing their charity, look to their personal interests and personal ambition, still a man is not to be injured in an object of personal ambition merely because he does good, which, perhaps, without that stimulus, he might not have been induced to do.

In the *Stroud* case (1), *Bramwell*, J., says:

The Act does not say that liberal conduct towards your men, or such a thing as I suggested—for instance, the putting up of a drinking fountain, or what not—although it may be done very much to influence voters, is an act of bribery. I do not think that it was the intention of the Legislature to prevent the doing of any act, liberal and good in itself. * * * The Legislature intended to prohibit acts done with the specific object of influencing the mind of the individual voter to whom they had relation by the particular temptation held out to him, but it did not intend to prevent an act being done to a person, kind and good in itself, merely because it had a tendency to make the person favorable to the persons doing it.

The grievance appears to be that this was a Catholic cemetery, and the object was to secure Catholic influence at the election, and so the contributions to the Sisters of Charity are likewise brought forward.

Respondent is asked:

Q—Is this the first time you had done any in this way to the Roman Catholic denomination? A—By trees, you mean?

Q—Or in any other way? A—No, sir. I had always subscribed every time I was asked for charitable purposes. I do not think I ever refused.

Q—What would be the extent of subscription? A—I think in the fall of 1877 I gave about sixty dollars, about Christmas time; previous to Christmas.

Q—That would be the Christmas of 1876, you mean? A—The Christmas of 1877.

Q—What was that for? A—I sent it to the Sisters. Some turkeys and some flour and other things to distribute among the poor.

Q—Did you do that voluntarily, without being requested? A—I did, sir. I do not think I was invited to assist.

(1) 2 O'M. & H. 184.

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Q—Were you seized at that time with a universal fit of benevolence? A—I gave a great many turkeys away.

Q—To any other religious denomination? A—That is the only denomination, the Roman Catholics; not to any other religious denomination.

Q—Then the only denomination were the Roman Catholics? A—I sent these to the Sisters. I sent none to any other denomination then.

Q—Then this you did without being solicited at all, to the value of sixty dollars? A—Yes; about that.

Q—Had you ever done anything of that nature before? A—Not of that nature; but I did in money whenever I was asked to.

Q—But it was at Christmas, 1877, you first voluntarily contributed in that form? A—I gave some money before that when I was not solicited.

Q—When was that? A—I think probably in October, 1877.

Q—For what purpose? A—To pay their taxes.

Q—You were not solicited in 1877, and you gave the money. Whom did you send it to? A—I sent it to the Sisters.

Q—We hear a good deal about exemption in these days. Were they not exempt? A—They were taxed. It was brought up before the council. The half of the tax was remitted; the other half was not. I brought the matter up in the council, and the half the council did not remit I voluntarily paid myself.

Q.—How much was that? A—Ten or fifteen dollars—whatever the deficiency was.

The contribution to the Sisters of Charity, to enable them to furnish the poor with a Christmas dinner, and the contribution towards their taxes, is, I think, not very generously brought up against the respondent. The respondent was a large manufacturer in the town in which he lived, and must have been the employer of much labor, and would naturally feel a peculiar interest in looking after those in whom he must necessarily be more or less interested, and who, on their part, would be more or less dependent on him as a large employer. The giving of turkeys and providing otherwise for securing a good dinner on Christmas day to those unable to procure it for themselves is, I am happy to think, by no means a rare occurrence; and, in view of the respondent's character and position in *Oshawa*, it would

have been remarkable, if at Christmas time he had forgotten the poor. The circumstance of selecting the Sisters of Charity to dipense his liberality and the nature of the gift, a Christmas dinner, which we may fairly assume would be distributed only among those not able to procure one for themselves and family, and therefore a class of the community least likely to be voters or to have political influence, ought to disarm the act of a corrupt intent.

With respect to the expenditure of money at pic-nics and bazaars.

It would be absurd for us to affect not to know that all sorts of devices are resorted to at these gatherings to induce the parties who attend to spend their money, and that many who so attend are induced to expend more than they contemplated, and that not a few are debarred on that very account from attending at all. And among the novelties modern ingenuity has invented for extracting money is the procuring a comparatively trifling present, and the putting up the names of rival politicians, or others, to be voted for by their respective friends, the present so provided to be presented to the successful candidate. The more tickets sold the more successful the scheme. No doubt on such occasions a very considerable amount of excitement or enthusiasm (though very absurd in the eyes of some) is got up, as appears to have been the case in the instance complained of, where the present was a biscuit basket, and the candidates were the wives of the respective candidates before the community for election to Parliament. Respondent appears to have bought tickets largely and distributed them among his friends to vote for his wife, and a strong supporter of the rival candidate bought and distributed largely among his friends to vote for the opposite side. Mrs. *Glen* appears to have had the most votes and got the biscuit basket, but who

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was bribed by this operation? To the minds of many this would be considered perhaps a very foolish affair, but to the demonstration it answered the purpose for which it was intended; but where was the bribery? The friends of both these ladies, or possibly the friends of their husbands, respectively, bought the tickets, but I fail to see in this any connection with the Dominion Election; in fact *Dingle*, the supporter of Mr. *Gibbs*, the treasurer of the day for the Sons of *England*, I think, conclusively shows this transaction to have been without any corrupt intent in connection with the election. He says:

I was treaasurer of the day for the Sons of *England*. I was endeavoring to promote the interests of the society and get as much money as I could.

To Mr. Robinson—I am sure that he told me he had been to the Roman Catholic meeting, and had returned. I think between one and two o'clock I cashed the cheque for fifty dollars; then between three and four o'clock he wanted me to cash the other cheque to patronize the Sons of *England*. I did cast a thousand votes at that pic-nic. I was doing it to patronize the Sons of *England;* we wanted to get all the money we could for them. I knew if I cast the votes for Mr. *Gibbs*, that Mr. *Glen* had borrowed money for the purpose, and he would use that money in return; he was bound to win the pitcher, and I did not care how much money he spent so long as we got a good day. My object was to make him spend as much money as I could; it was no part of my duty particularly to make Mr. *Gibbs* popular; I do not think I had done anything for Mr. *Gibbs* in the canvass; I did not know as I was doing anything improper for Mr. *Gibbs* at the time.

And the respondent gives this account of the affair:

A—I was at the Sons of *England* pic-nic most of the time.

Q—What was going on there? A—A baby show, horse races, a game of cricket or lacrosse with the Indians, and a competition among the bands, an exhibition of carriage horses, and all that sort of thing, to draw.

Q—A kind of English entertainment, including a baby show? A—Yes. Then there was an election between *John A.* and *Mackenzie*, for a cake basket, to be presented to the wife of the candidate who got the largest number of votes. Then there was a competition in the same way for a pitcher and two goblets between my opponent

and myself, to be presented to the wife of the candidate who got the most votes. These were got up to draw a crowd there.

Q—Did that cost you a trifle? A—Yes.

Q—How much did you spend? A—About one hundred and seventy-five dollars.

Q—At the baby show? A—Principally over the pitcher and the cake basket.

Q—I hope Mrs. *Glen* got the pitcher? A—She did.

Q—And Mrs. *Mckenzie* the cake basket? A—She did.

Q—What was the total vote polled? A—I think 5,600, to the best of my recollection, at ten cents a vote.

Q—On the two, or on the one? A—Between my opponent and myself.

Q—How much of the five hundred and sixty dollars did you contribute? A—From one hundred and seventy-five to two hundred dollars.

Q—How much did the cake basket draw? A—I do not remember. A good deal smaller than that.

Q—Did you contribute towards winning the cake basket? A—Some.

Q—Altogether there must have been about two hundred and fifty dollars contributed by you? A—I mean my own altogether from one hundred and seventy-five to two hundred dollars.

Q—Where are the Sons of *England* head-quarters? A—I do not know.

Q—Is there any branch about the riding? A—A branch in *Oshawa.*

Q—Has the branch been in existence long? A—I think two or three years. I am not certain.

Q—Was this the first demonstration they had? A—As far as I know.

Q—The first time that you spent two hundred dollars at all events? A—The first thing of any extent they had.

Q—What was the object—surely you were not desirous of winning the pitcher? A—Well, the affair was done in the excitement of the election between *Gibbs* and I who should get the pitcher.

Q—Was it done to secure the good will of the Sons of *England?* A—I had not the least idea of that. If I had thought of it in the morning that I would have spent so much that day, I would have deemed myself crazy.

Q—It was not a profitable investment? A—No.

Q—It did not make much difference how you spent it. You were desirous of winning the election? A—It was done in a state of excitement to win the pitcher.

Q—Are you an excitable individual? A—Sometimes. The pitcher

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contest got very warm. It was all done in about an hour, I suppose. Nine-tenths of the money was spent in the course of an hour.

The respondent appears to have attended another pic-nic.

Q—Was there any other Catholic pic-nic attended during the canvass? A—Yes; at *Duffin's* Creek.

Q.—That is in the constituency? A—Yes.

Q—When was that held? A—I think in June.

Q—Before the First of July, or after? A—Before the First of July, I think.

Q—How much did you contribute there? A—I took tickets on a pipe between Mr. *Spink* and Mr. *Moodie*; I think to the amount of ten or twelve dollars on the outside.

Q—Speak positive on that? A—I gave two ladies four or five dollars each to vote for me; and I think I gave one or two dollars more; and I think part I had to borrow.

Q—Who were the ladies? A—Mrs. *Higgins* and Mrs. *Donovan*; she lives in *Whitby*; Mrs. *Higgins*, she is the wife of *W. H. Higgins*.

Q—*Duffin's* Creek; what parish is that in? A—It is in the Township of *Pickering*.

Q—Who is the Priest? A—Father *Beausang*.

Q—I suppose the result of all the liberality on your part was that you grew in favour with the Catholic body? A—I cannot say whether that was the result or not.

Q—You cannot say that was the result? A—I cannot say.

Q—Then, you would not swear to it as a fact? A—No: I would not.

Q.—Will you tell what was your motive or object in thus spending money liberally on behalf of the Roman Catholic body at that time?

A—I do not know that I can say any particular object: to have their good-will in the first place.

As with the trees, so with these pic-nics, I can discover neither bribery or corruption.

So with reference to the subscription to a small church at *Frenchman's* Bay, (at the Bible Christians' meeting,) not a Catholic body, when they wanted to raise a sum of money to pay off a debt on the church. The respondent had been asked to preside at the supper; the subscriptions, he says, went a little slow, two or three appeals were made not very successfully, when, the respondent says, "I

finally started with $25 and Mr. *Bunting* from *Duffin's* Creek with $15." He is then asked this question:

Q—He, *Bunting*, was contributing to his own denomination and you were contributing to make thing go a little quicker? A—The crowd began to disperse, I doubled my subscription on condition that Mr. *Bunting* would double his, then finally we gave a little more—I gave $54 altogether—the amount required was $150.

He is asked:

Q—I am told only eighty-six dollars were wanted at the time? A—I think one hundred and fifty is the amount stated to me at the time.

Q—That was the first time you ever contributed to the Bible Christians? A—I think when they built their church in *Oshawa* I gave something.

Q—How much? A—May be twenty-five or fifty dollars; I cannot say the sum; I am not positive; it is a good many years ago; perhaps ten years ago.

Q—Within the last ten years did you contribute anything? A—If I had been asked I would have, no doubt.

Q—Have you been asked? A—Not that I recollect of.

With respect to these charges of bribing the whole constituency or any portion of it by subscriptions, &c., to charitable objects, Mr. *Glen* swears that for the last 10 years his charitable gifts, including his own church, would average $1000 a year, and being asked, "Have your charities been confined to your own church at all?" He answers, "I never thought of my own church, except that I had more frequent applications from my own church. I never thought of confining my gifts to any one church." And being asked, "You had given to the Roman Catholics before that?" answered, "I had. I do not think I ever refused applications from the Sisters. I think I have assisted at pic-nics or anything that has happened in the Catholic body for the past 8 or 10 years. I first began when Father *Shea* came to *Oshawa*. He and I were warm friends." And this is confirmed by *Higgins*, a Roman Catholic, who says he has known *Glen* since he came to *Oshawa* 16 or 17 years ago intimately.

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During all that time he has been very liberal to Roman Catholic objects, that was his habit; to my knowledge he has year after year given to them liberally. I know at the Catholic bazaar four years ago he contributed very liberally.

All the acts charged were entirely consistent with the respondent's established character for charity, generosity and liberality, and with his previous acts; these were not gifts to individual voters, they were gifts to the poor, a gift to ornament the place where repose the dead; they were expenditures in aid of churches and expenditures at bazaars or pic-nics, by no means inconsistent with what usually takes place under similar circumstances wholly unconnected with bribery and corruption. Mr. *Glen* distinctly affirms that the amount expended by him in all did not exceed his usual annual expenditure, and was not in any way connected with the elections.

Glen says:

Q—In addition to everything you have been asked here to-day, do you know of any circumstance, any attempt at corruption, or any corrupt act committed on your behalf by any person? A—I do not.

Q—Do you believe or know of any bribery, or attempt at bribery, during the election? A—I asked my friends to warn all parties against anything of the kind; and I have not heard of a single case of bribery or attempt at bribery; and I myself carefully avoided it as as far I knew the law.

Q—Was the subject of the election ever mentioned in connection with any of your gifts? [This question asked by Mr. *Robinson.*] A—Never in the slighest degree whatever; in connection with the Rifle Association, or any of the others.

Q—Was it mentioned in connection with any of your charities? A—Never mentioned or alluded to in the slightest degree whatever.

I think, therefore, the conduct of the respondent, for years before this election, in respect to contributions to charitable and religious objects, justifies the conclusion that he was actuated by legitimate motives; rather than, that what he did was done in an illegitimate sense to influence his election. No doubt liberality of that kind would not operate unfavorably to him, but natur-

ally the reverse, still, the fact that what he did would gain him popularity would not make that corrupt which otherwise would not be corrupt.

In the *Windsor* case (1), it was proved that respondent some long time before the election gave away £100 among his tenants, some of whom were voters and some not, and who paid him altogether about £3,000 a year in rent. This money was spent in coals, beef and tea, and the respondent, on being asked, whether when he made those gifts he had in view the election for the Borough, admitted that to a certain extent he had. It was argued that the gift of this money was a corrupt act, on account of which the respondent should be unseated.

Baron *Bramwell*, in his judgment, said:

It is certain the coming elections must have been present to his mind when he gave away those things. But there is no harm in it, if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from doing that which he might legitimately have done, on account of the existence of this motive, which by itself would have been an illegitmate motive. If the respondent had not been an intending candidate for the *Borough*, and yet had done as he has done in respect to these gifts, there would have been nothing illegal in what he did, and the fact that he did intend to represent *Windsor*, and thought good would be done to him, and that he would gain popularity by this, does not make that corrupt which otherwise would not be corrupt at all.

The principle here enumerated is also applicable to the *Pedlar* case.

It is very clear there were unsettled accounts between *Glen* and *Pedlar*, in which I think it very clearly appears *Glen* was indebted to *Pedlar*, and which accounts ought to have been arranged long before. I cannot think *Glen's* doing what *Pedlar* wished, and claimed to have done wholly apart from political or election considerations, and which it was *Glen's* duty

(1) 2 O'M. & H. 88.

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to do, to settle his accounts and pay his just debts, can be construed into a corrupt act of bribery, and especially so as *Glen* distinctly swears he never asked *Pedlar's* support, *Pedlar* never promised it, and *Glen* never got it. He may have been anxious to secure *Pedlar's* neutrality, but both he and *Hawthorn*, who was instrumental in the bringing about of a settlement of the account, but who was not shewn to have been an agent of respondent as respects the election, say, that nothing was ever said to the respondent about the settlement of this account in relation to the election, and that the settlement was never hinted to him as referring to the election.

As regards the *O'Leary* case.

If *O'Leary* is to be believed, though he had been a conservative, he had made up his mind how he was going to vote before he thought of the office, and that *Spinks*, who it is alleged bribed him, appears to have distinctly stated to him he did not care how he voted, what he was doing for him, he was not doing it on that head at all; and being asked "what he was doing it for?" answered, "Because for services rendered to him previous to that personally."

Spinks says:

He told him he was not going to do anything that would in any way tend to affect the election. Mr. *O'Leary* told me then that he had never told me before that Mr. *Long* and him "had made up their minds long before, after the *Montreal* affair, never to vote for the conservative party again, and that he was going to vote for the reform party if he voted at all." I told him that I wished to be very careful and to avoid everything that would in any way tend to influence a voter to change his views by offer or otherwise, as on consulting my lawyer he had told me to be careful not to do anything that would in any way affect the election. I told *O'Leary* that I had taken the advice of a lawyer on the matter, and he told me not to have anything to do with it, if it was going to have the effect of changing a voter's mind. I told him he might vote for *Gibbs*, or work for *Gibbs*, or anything he had a mind to, I would sign the petition all the same. I said to him I would do all I could for him in any case.

He said the fact of the matter was this, that *Long* and he had both pledged their words to change after the Orange procession in *Montreal;* they would not support the conservative party hereafter. That being the case, I had no objection to sign the petition. I told him I would only do anything in the matter because I distinctly understood my doing so would have no effect on his action.

I can find nothing in his evidence to lead me to the conclusion that *Spinks* was not acting *bonâ fide* in thus separating the transaction from the election.

As to the *Wallace* case.

The office, with the promise of obtaining which respondent is alleged to have been bribed, was not in existence. *Wallace* was not bribed, but voted for and was an active supporter of Mr. *Gibbs* at the election. Respondent appears to have looked on his (*Wallace's*) attempt to get an office created, and to which he looked forward to being appointed, rather as a joke. I can discover no evidence whatever of bribery in this case. *Wallace* appears to have been an active and consistent supporter of the defeated candidate throughout, and to have voted for him.

With respect to this, in the *Windsor* case (1), *Bramwell*, J., says:

To my mind a threat must be an operative threat at the time of the election, and if it were a bribe it must be an operative bribe at the time of the election. An offence might be committed, although the bribe was not operative at that time. * * * Unless you can shew that the bribery or threat is one the force of which is in existence continuing till the time of the election, although the bribe or threat which has been given or made may have subjected the parties to penalties, it is not a bribe or threat which will avoid the election.

We had occasion not very long ago to point out the authorities in the Privy Council and in the House of Lords, which very clearly established the position that an appellate Court ought not to be called upon, on a mere balance of evidence, to decide which side preponderates, but to procure a reversal it should be shewn that the

(3) 2 O'M. & H. 91.

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judgment complained of in a matter of fact is entirely erroneous. It may be safely affirmed that where a Judge has had the advantage, which we have not had in this case, of hearing the evidence given, and of seeing the demeanor of the witnesses, his decision on any question of fact, as was said in *Ungley* v. *Ungley* (1), ought not to be over-ruled on slight grounds, but very strong grounds should be shown. At the same time in a proper case we must not shrink from acting upon our own view of the evidence, giving, of course, always great weight to the consideration that the demeanor and manner of the witnesses are very material elements in judging of their credibility, bearing also in mind that when the question of fact is as to the effect of the facts proved in raising inferences of fact the rule does not apply; and bearing in mind the principles laid down in the *Mallow* case (2), which commend themselves to my mind as just and reasonable, and which are thus stated by the learned Judge:

> I have desired to apply two rules to work out my judgment. They are shortly these:—First, that I should be sure, very sure, before I come to a decision adverse to any party where his character or credit is involved. Secondly, that offers or conversations unaccompanied by any acts should be much more strongly proved in evidence than where some definite act has followed the alleged offer or conversation.

Now, in reference to the *Dingle* case.

The learned Judge who tried the petition says as to No. 37, and the promise of procuring an office for his son, and No. 6, the promise of a contract for himself if he would support the respondent:

> These two charges may be considered together, and if the evidence given by *Dingle* himself be accepted as true, they might be considered as proved, but he is contradicted in every particular.

I have read with a great deal of care the evidence, and I find this party contradicted by no less than six

(1) L. R. 5 Ch. Div. 887. (2) 2 O'M. & H. 22.

witnesses, and on so many different and material statements, that I should think it presumptuous were I to overrule the finding of the learned Judge on the questions of fact to which these contradictions refer, he having had the opportunity of seeing and hearing the witnesses, and therefore so much better qualified to form a correct opinion as to their credibility.

As to the office for the son.

Though opposed in politics, the respondent appears to have been on very friendly terms with *Dingle*, and to have befriended him on previous occasions. Mr. *Garvin*, a brother-in-law of *Dingle*, who applied to respondent, as he says, at the request of *Dingle*, says:

Q—Mr. *Dingle* had requested you to interest yourself with Mr. *Glen;* to get him to use his influence to get a position for his son? A—I urged the appointment of Mr. *Dingle's* son to a position very strongly.

Q—What did Mr. *Glen* say? A—He said he had done everything in his power for *Dingle* in contracts and otherwise, and would continue to do so irrespective of politics; he said, I cannot make promises to *Dingle* in view of the election, because it would be used against me. In regard to the election, I said to Mr. *Glen*, that nothing I said to him must be taken with respect to the elections. He promised to interest himself on behalf of the young man; he declined to make a promise of getting him a situation; he said he would do what he could for him on personal grounds.

Glen says:

I never asked or authorized Mr. *Garvin* to speak or write to Mr. *Dingle* about getting an office for his son. I told *Garvin* I had always been friendly towards Mr. *Dingle*; I had been friendly in a number of ways. I was instrumental in securing him the contract for building the *Oshawa* Stove Works; the wood-work for the Mason's Company's Works; I also gave him the contract for our own extension some time ago; I was his security in building the town hall; and I also offered to be his security for the building of the additions to the Agricultural College near *Guelph*. That is what I referred to when speaking to Mr. *Garvin*.

As to the contract.

Mr. *Glen* spoke no doubt to *Dingle* about estimating and contracting for the work of a factory *Glen*

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was about erecting, but I fail to discover a trace in the evidence, apart from the evidence of *Dingle*, of a bribe to *Dingle* by promise of a contract to vote or abstain from voting at the election. So far from *Dingle* being bribed, *Glen* gave the contract to another party, and *Dingle* not only voted, but used every exertion against *Glen* at the election, and when we have the statement of *Glen*: "I never spoke to *Dingle* about his support in connection with this contract at all. I may have asked him to support me. I never spoke of his support in reference to this contract," and the statement of a witness, apparently disinterested, that *Dingle* stated to one *Hurst* that "*Glen* never offered him or his son any office, either in a bank or any other place"; and when by another witness, it was remarked to him, "*Glen* wants you to vote for him, *Dingle* replied no; he never asked me to vote for him, he knows which way I go, only he does not want me to do anything against him"; and again to another, "if *Glen* had acted the gentleman with me, and done the work as he agreed to do, he could not have expected me but to vote against him, but I would not have done any more than that; he could not expect me but that I would vote against him, give my silent vote against him"; and the many other contradictions as to the contract ever having been promised him at all; all these circumstances, taken in connection with the proved and not contradicted statements as to the openly declared desire of respondent, that nothing should be done to jeopardize the election, and which I can discover nothing in the evidence to lead me to suppose was merely simulated, and not with the intention they should be acted on, I cannot conceive it possible that any Court would with propriety say the Judge who saw all the witnesses and heard the evidence from their own mouths did wrong in refusing to give credence to a witness so discredited,

or that we can say all these parties should be disbelieved, and the statements of this witness credited. Independent of this, taking the whole evidence together and considering all the surrounding circumstances, I think, so far from saying the Judge was wrong, we ought to arrive at a similar conclusion.

I note the following cases as bearing on the points raised:

In the *Lichfield* case (1), the alleged bribery was of one *Barlow*, whom petitioners alleged to have been bribed by a promise of a place in a hospital. *Willes*, J., says:

To prove a corrupt promise, as good evidence is required of the promise illegally made as would be required if the promise were a legal one to sustain an action by *Barlow* against the respondent upon *Barlow* voting for him for not procuring or trying to procure him a place in the hospital.

And in the same case, as to one *Baxter*, who had been in the employment of an agent of respondent and had left in consequence of a dispute and was anxious to get back, the Judge says:

An insensible influence existed in consequence of this upon the mind of *Baxter* at the time when *Baxter* voted for respondent. *Baxter* was taken into *Symonds'* employment very soon after the election, and it was proved that *Symonds* would not, or probably might not, have taken *Baxter* back unless he so voted. That does not prejudice the decision of the case. But it was not proved that *Symonds* made any express promise to *Baxter* to do so, it was left to inference amounting to suspicion only, and upon such inference and suspicion I must decline to act for the purpose of defeating the election.

In the *Wigan* case (2), Baron *Martin* says:

If I am satisfied that the candidates intended honestly to comply with the law and meant to obey it, and that they themselves did no act contrary to the law, their desire and object being that the proceedings in reference to the election should be pure and honest, I will not unseat such persons upon the supposed act of an agent unless the act is established to my entire satisfaction.

(1) 1 O'M. & H. 22. (2) 1 O. M. & H. 192.

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And in the *Westminster* case (1), he says :

I think I am justified, when I am about to apply such a law, in requiring to be satisfied beyond all reasonable doubt that the act of bribery was done, and that unless the proof is strong and cogent, I should say very strong and very cogent, it ought not to affect the seat of an honest and well intentioned man by the act of a third person * * * I should require to be satisfied and certain that there could be no mistake with reference to the alleged act.

In the *Penryn* case (2) it was submitted, that what was said to the voter, as to the respondent getting him employment, did amount to a promise to him conditional upon his voting for the respondent. As to this *Willes*, J., says he must not make the vote a condition of giving employment :

But the employment of persons to do work must go on in election times as well as others, the affairs of life cannot be brought to a standstill. If you have a sum of money or a benefit, for which nothing is returned, conferred upon a voter, you have a tangible case which cannot be explained away by saying "I did it, and I had no particular reason for it." You have then a case in which a member or his agent must be called upon to give an account of what they meant and to show satisfactorily that that which *prima facie* was giving a benefit to a person which might have the effect of inducing him to vote for the member was really done with some other and innocent motive. *I am clear that where an unfavorable inference is to be drawn from the fact that some person has been employed, one ought* to become *quite sure* that there is something more than merely getting the man's work for that which is the real equivalent for the man's work.

[The Chief Justice then referred orally to the case of the loan of a steam thresher to one *Farewell*, and stated that the loan of this machine had taken place in the ordinary course of Mr. *Glen's* business, as president of the Hall Manu'f Co., as an advertisement. The reasons which he had given for his decision in the other cases applied with equal force to the present case. He did not think the evidence on this charge of such a nature as to warrant a reversal of the judgment of the Court below.]

STRONG and FOURNIER, J. J., concurred.

(1) 1 O'M. & H. 96. (2) 1 O'M. & H. 128.

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HENRY J.:—

The respondent in this case was a successful candidate at the election to the House of Commons for the electoral district of the South Riding of the County of *Ontario*, holden on the 17th of September 1878, and the appellant was a petitioner against his election and return. The petition contained charges of bribery to the number of 53, as given in the particulars, and other corrupt practices, against the respondent and his agents, and several others were subsequently added. The petition was tried before Mr. Justice *Galt*, who gave judgment for the respondent, and from that judgment it has come by appeal to this Court. In all cases of doubt or uncertainty it is the province of the presiding judge, exercising at the time also the functions of a jury, to decide; and where there are doubts arising from conflict of testimony, or otherwise, we would be almost bound to uphold his decision. It is only in cases where the law is not administered, or the evidence misinterpreted, or insufficient effect manifestly given to the weight of it, that we should in any case interfere Bearing such in mind, we must reverse his finding only where misapprehension of the law or evidence has clearly existed. There is no charge of effective or consummated bribery alleged to have been proved either by the respondent or his agents. What, however, amounts to the same thing in law, attempts to influence voters by promises and payments of money, and otherwise, are charged. The rule with respect to such charges by Baron *Martin* in the *Cheltenham* case (1) having been adopted and acted upon by other judges in *England* and *Ireland*, is, I think, a safe one for our guidance. He said:

> Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that

(1). 1 O'M. & H. 64.

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with respect to bribery itself or where the alleged bribing is an offer of employment * * * it ought to be made out *beyond all doubt*, because where two people are talking of a thing which is not carried out, it may be that they honestly give their evidence; but one person understands what is said by another differently from what he intends it.

Mr. Justice *Willes* in the *Coventry* case (1) says substantially the same thing. Speaking of such an offer or proposal to bribe, he says:

It is a legal offence, although these cases have been spoken of as being an inferior class by reason of the difficulty of proof by the possibility of people being mistaken in their accounts of conversation in which offers were made, whereas there can be made no mistake as to the actual payment of money.

Mr. Justice *Morris* in the *Mallow* case (2) said:

I have desired to apply two rules to work out my judgment by. They are shortly these: First.—That I should be sure, very sure, before I come to a decision adverse to any party where his character or credit is involved. Secondly.—That offers or conversations unaccompanied by any acts should be much more strongly proved in evidence than where some clear definite act has followed the alleged offer or conversation.

These citations, copied from the judgment of Mr. Justice *Galt*, show, as I think, most properly, his adoption of the principles announced in them. They were applicable to the case, and I entirely approve of his decision which gave effect to them.

There is another important consideration which, in the case of a charge of individual bribery by offers or proposals, should not be lost sight of. Where there is no reasonable ground from the evidence to conclude there was anything like general bribery by the expenditure of large sums of money or otherwise at the election, the proof of individual bribery by promises should be stronger than where the opposite is the case. As regards the respondent, there is no evidence of such a character, and therefore not the same reason to suppose that in

(1) 1 O'M. & H. 107. (2). 2 O'M. & H. 22.

reference to some of the cases he was simulating innocence, when in reality he intended a violation of the law. If therefore the evidence rebuts the idea of general illegal or improper conduct of the election, and shows general propriety of conduct, the evidence of bribery by an offer or proposal should be proportionately clear and undoubted. The presiding judge finds specifically "that corrupt practices have not, nor is there reason to believe that corrupt practices have, extensively prevailed at the election."

Before considering the only cases to which I think it is necessary specially to refer, I may say, that I can find nothing objectionable in the judgment, either as to the law or in respect of the evidence given on the trial. The onus of proof was on the appellant, and he was required to give such positive or circumstantial proof as would leave no reasonable doubt of the guilt of the respondent or his agents of one or other of the offences known to the law and charged against him or them. If reasonable doubts remain as the result of the whole evidence, the respondent is entitled to our judgment sustaining, as it will do, that of the learned judge at the trial. And we must arrive at our decision, after making proper allowance for the weight that should always be given to conclusions arrived at from the evidence by the presiding judge. The credibility of the witnesses is a matter solely, in the first place at all events, with him. If apparently he had reason to disbelieve a witness, it is not for us to correct an alleged error on his part, unless indeed it be a very gross one.

Keeping these views before me, I will briefly refer to the several cases urged upon our attention.

In the particulars, from number 44 to 52, the respondent is charged with corruptly giving personally, or by his agents, various sums to charitable or other institutions and societies, public and private, and to

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religious bodies and associations sums of money or other valuable considerations, to induce members of such institutions, societies, religious bodies and associations "and others, generally, to vote or to refrain from voting at the said election." Some of the sums are alleged and shown to have been given some months before the respondent was declared a candidate, the others afterwards, but the most of the latter over two months before the election, and two during the canvass. The offence, as charged in the alternative, constitutes in substance two distinct ones, and should not have been so charged. It is an offence to give money to induce a party to vote for a party, but it is a totally different one if the object was to induce the party to abstain from voting.

It is in the nature of a criminal charge; for the accused party is subject to be indicted and disqualified. It is contrary to every principle of pleading to include in that way the two offences. A count in an indictment or criminal information so framed would be bad in law, and no judgment could be rendered on it. The verdict in such cases is either to find the accused "guilty or not guilty" of the charge in one or more counts. With a verdict of guilty on a count charging two different offences the court could not deal, for it could not say he was guilty of the two offences by the one act of giving one sum of money which are inconsistent the one with the other. It could not be given to induce a man to vote and at the same time to abstain from voting. Taking then the petition with the particulars subsequently given, no one could say which offence was charged. The appellant had, however, on the trial the benefit of this improper way of stating the charges, which he would not have had if proper means had been taken to require the petitioner to have made his election, or at all events to have stated positively each

offence as a separate and distinct charge. The petition is general and merely alleges that the respondent "before, during, and after the election, was by himself and his agents guilty of corrupt practices within the meaning of that expression as defined by section of the Dominion Controverted Elections Act, 1874, and by the Dominion Elections Act, 1874, and the common law of parliament."

It therefore contains no specific charge. A man might as correctly be tried under an indictment charging him with "a malicious injury" under the statutes, naming them, without particularising any one of the numerous offences called malicious injuries created by the several sections of them. Looking then at the particulars we will see they are equally defective. There is in the heading of them. "Name of person bribing." "Name of person bribed," "Time," "Place" and "Nature." All the necessary information is given under each heading but the last; and when we look under the heading "Nature" we find only a statement of what was alleged to have been given or promised, but nothing to shew whether in any one case the money or promise was given or promised, so as to bring the case within any one of the numerous cases of accomplished bribery or offer, or proposal to bribe, or what the corrupt object was in giving the money or making the offer or proposal, The respondent is not informed, because no particular offence is charged, and he does not therefore know, whether he has to meet a case of bribery at common law or under the statutes, or whether he has to meet a charge of accomplished bribery, and if so, what the nature of it is, or in case of promises merely, to whom they were made or the object of them, whether to induce the party to whom or on whose behalf they were made to vote, or to abstain from voting, or whether he is charged with corruptly

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doing any of the alleged acts, on account of the voter having voted, or refrained from voting. To constitute an offence, the statute prescribes and requires that in the one case the object must be "in order to induce any voter to vote or refrain from voting," and in the other "on account of such voter having voted or refrained from voting." By the prohibition

> Every person who directly or indirectly gives, lends, or agrees to give, or lend, or offers, or promises any money or valuable consideration, or promises or endeavours to procure any money or valuable consideration, to or for any voter, or to or for any person on behalf of any voter, or to or for any person, in order to induce him, &c.

We have under the heading as to many of the cases simply and solely the word "money," to others the words "promise to procure office," to others the word "work," and besides others, not necessary to be stated, to one, the word "unknown." How then, having only the petition and particulars to direct him, could any one know which of the numerous offences he was charged with, and be prepared to meet, or how could any judge say what issue he was to try? The term "bribery" has a technical meaning, but that term is not used in the petition, and the term used "guilty of corrupt practice" is no more definite, sufficient, or intelligible, than the "guilty of a criminal act" would be in an indictment. As I have already shown, the "particulars" are no more explicit than the petition; which then of the numerous statutable or common law offences is the respondent notified to meet? To ascertain what an issue is we are to be informed and guided by the record. If that furnishes no evidence of one, there is nothing to try. The practice is not so technical in the election cases as in ordinary ones, but still, before a petitioner can expect a court to unseat a member *prima facie* legally returned, he should allege some one or more specific offences which under the statutes or common law would be

sufficient to unseat or disqualify him, or both, otherwise his complaint amounts to nothing tangible, and there would be no jurisdiction for inquiry. A judge is authorized by the statute to investigate a complaint of any one or more specific offences, either by statute or common law, but if none such is alleged, he has no power or jurisdiction. Here neither the petition, nor the particulars, separately or unitedly, have formulated a charge of the commission of any one of such specific offences. It may however be urged, that if the particulars were defective the respondent might have caused them to be amended. Admitting that he might, was he bound to do so? I think not. If a plaintiff serves a declaration so defective that no material issue can be taken thereon, with or without sufficient particulars, the defendent is not bound to demur, but may take advantage thereof at the trial; as it is only on material and proper issues that a judgment can be regularly founded.

A judge in an election case has a prescribed and special jurisdiction and can only try the specific offences created. I am therefore strongly inclined to the opinion, that for the reasons I have given there was strictly no jurisdiction in this case, and therefore that our judgment should be based on that conclusion. If the judgment appealed from had been against the respondent I think it would for that reason be liable to be reversed; but as it is in his favor, if I am correct as to the position taken, all that would be necessary would be to confirm it.

I will, however, refer to the cases relied upon by the appellant.

The charges as in the particulars, from number 44 to 52 inclusive, are for monies given to societies, associations and religious bodies. The record does not shew how the gifts were intended to operate, whether to

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induce the parties interested in the gifts to vote or to abstain from voting, and the evidence gives us no information on the point. I cannot therefore by my judgment convict the respondent in the alternative and disqualify him under the statute.

But, apart from that consideration, is the evidence such as to sustain either case? It is not contended that the gifts produced any improper results and there is no evidence to sustain such a position, if taken. It must therefore (if anything) be not for accomplished bribery, but for the attempt to commit it by gifts of money or otherwise. It is well settled, that an election may be illegal by general distributions of money at or shortly before an election, or indeed at any previous time, if made for any of the objects forbidden by law. Several elections have been set aside in *England* for such a corrupt practice. Improper influences which prevent unrestrained expression of the voters' wishes, if operating so largely that a free election cannot be said to have taken place, have been in many cases in *England* the grounds for avoiding an election. It has not, however, been decided, that a man, who entertains an idea that he may possibly be a candidate at an election subsequently to take place, shall immediately cease and desist from giving aid to public or charitable bodies or associations, as he had been in the habit previously of doing. Some of the charges refer to cases several months before the respondent had been decided upon as a candidate, and the donations made in those cases are not necessarily presumed to have been from corrupt motives. He was himself the only witness examined in proof of those charges. He gives the details as to them and positively negatives the charge of corrupt motive. He proves he had previously for some years expended annually in much the same way as large an amount.

He is a pretty extensive manufacturer, and such persons not unfrequently are found, from benevolent feelings or policy in regard to their business, to do as the respondent alleges he was in the habit of doing, irrespective of political results, and the law is not so unreasonable as to oblige a man, who intends to be a candidate at an election to stay his hand in such cases. He is not certainly to use money to secure or aid in his election, but he is not required to injure his prospects by withdrawing the usual support or aid to such benevolent or public objects he would be expected under ordinary circumstances to afford. I think the evidence shows little, if at all, beyond his accustomed gifts to the same and similar objects. The learned Judge who tried the case was of the opinion that the circumstances did not show general bribery or corruption, and I am of the opinion, that according to the current controlling authorities, it would be wrong for this Court to interfere with his decision.

No. 53 I think is of the same character.

Charge No. 9 of particulars is for bribery of *Louis O'Leary* by *John Spink* as agent of respondent.

The result of the evidence is, that shortly before the respondent became a candidate, and about five months before the election, a situation in the Custom House near the residence of *O'Leary*, became vacant. *O'Leary*, who had been a warm supporter of *Spink* when recently a candidate as a municipal officer, applied to the latter to aid him in getting the office, which he did. It is shown they were warm personal friends, and they both swear that the matter of the election had nothing to do with *Spink's* aid towards getting him the office, and that the election was not spoken of. *O'Leary*, however, volunteered to tell *Spink* he had made up his mind for other reasons to vote for the respondent. He swears such was the case, and I don't think we are

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required to say his statement was untrue. There is no evidence, in my opinion, of any corrupt practice in this case.

The gravamen of the charge is not in mere giving, but giving with the alleged corrupt intent. The corrupt intent is necessary to be sustained by proof either of a positive or of a necessarily inferential character. If nothing is said to base the act upon a promise in regard to the election (and none is shown in this case), it is only from all the surrounding circumstances a judgment is to be formed. The principle upheld in English cases and in this Court is, that if an act be done by a party, either a candidate or an agent, which from the evidence is capable of two constructions, one, that it was stimulated by a friendly feeling alone, and the other that it was corruptly done, the conclusion should be in favor of the former, and that the charge of corrupt motive is not necessarily inferred. There is nothing in the evidence before us to prove that what was done would not have been done were no election in prospect or taking place. The petitioner was bound to *prove* the corrupt motive, but he cannot do so by proving an act not necessarily improper.

These observations apply to all the remaining cases.

In respect to *Pedlar's* case, there is no evidence to prove an illegal or corrupt act. It is quite true that in the payment of a legal debt, bribery may be committed. If at one time disputed, but subsequently at an election, or in view of one, a party who is a candidate or agent makes an agreement which is carried out on condition that the party shall vote for the candidate or abstain from voting, I have no doubt it would be a corrupt practice, whether the party voted or refrained from voting as agreed upon. The party here was paid, but there is no proof of an illegal compact. He employed *Hawthorne* as his agent to collect the debt, and not then

feeling personally friendly to Mr. *Gibbs*, he told *Hawthorne*, that if the respondent settled the claim he might promise what he pleased about the election. *Hawthorne* and the respondent both positively swear this remark of *Pedlar* was not communicated to the respondent, and that the account was settled without any reference to the election. There is no law that I can find to justify us in saying a corrupt practice of any kind was proved. *Pedlar* never ceased to oppose the respondent and use his influence against him. If indeed he had changed, had left his political party and voted for the respondent, there might have been some reason to contend that, altho' not shown, there was some secret and implied agreement between the parties. Nothing of the kind could be contended here, for *Pedlar* would, I presume, have been quite willing to say so if he could have truthfully done so. Whatever motive actuated the respondent, we have only to deal with the charge of a corrupt one. It is sufficient to say that the proof of such is entirely insufficient. Every one is presumed to be innocent until he is proved guilty. Here, without proof, we are asked to assume guilt.

In the alleged charge of corrupt practices in respect of *Dingle*: 1st. By promise of office for his son, and 2nd. By promise of a contract.

These two charges were attempted to be sustained by the testimony principally of *Dingle* himself. In his important statements he is contradicted by several witnesses to such an extent that the learned Judge who heard the several witnesses places little reliance on his statements. He was evidently much incensed against the respondent, who gave the contract alleged to have been promised to him to another party before the election, and exhibited vindictive feelings against him. It was shown, that the respondent on several previous occasions had largely befriended him, although

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they were politically opposed to each other. The respondent, however denies the statements, made by *Dingle*, and the surrounding circumstances, and the testimony of others, go largely to sustain the statements of the respondent. Under the whole of the circumstances, I feel bound to sustain the finding of the learned Judge, that as to the alleged corrupt offer of the contract the case was not proved.

Then, as to the promise of office for his son, the particulars state the charge: "Promise of office for son."

The statutory provision for the "prevention of corrupt practices" at elections, under which this charge is made, is contained in sub-section two of section 92, of the Dominion Elections Act of 1874.

The 92 section, which relates to this charge, provides that "the following persons shall be guilty of bribery and shall be punished accordingly," and sub-section 2 is as follows:

> Every person who directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, or promises any office, place or employment, or promises to procure, or to endeavor to procure any office, place or employment, to or for any voter, or to or for any other person, in order to induce such voter to vote or refrain from voting, &c.

Of the several offences created by that section, the one charged against the respondent is, as before stated, "promise of office for son." It is not a charge that he gave or procured the office, but that he agreed, or promised, or offered to give the office. It is not that the respondent promised to procure or to endeavor to procure the office. Each is created a separate and distinct offence, and the charge must be proved as alleged. The interpretation of the provision I take to be, that the terms "gives," "agrees to give," "offers," or "promises" any office, refer to an office in the gift or at the disposal or under the control of the party himself, but the terms "agrees to procure," promises to procure," "or to endeavor to procure,"

refer to an office in the gift or at the disposal or under the control of some other person or persons. The statute, then, having made a plain and palpable distinction, the charge of a corrupt practice by the promise of an office for his son must be held to be some office in the gift or at the disposal of the party charged, and is not sustained by proof of a promise to procure or endeavor to procure an office in the gift or at the disposal of another. Taking, then, the evidence given by *Dingle* to the fullest extent, it makes out, not the case charged, but one essentially different, if an offence at all. The statute, in my view, points to some specific office, place, or employment to be stated and understood by the parties, or in the alternative to certain ones stated. I am therefore inclined to think, that some one or more specific office or offices, &c., should be stated and referred to, and that it should be so stated in the particulars if called for.

The evidence, however, does not reach the point in another aspect. The alternative in the provision is "in order to induce any voter to vote or to abstain from voting." Taking the whole evidence together, the conclusion I would draw from it amounts to this: *Dingle* was an active and energetic supporter of the party opposed to the respondent, and Mr. *Gibbs* ranks him amongst his leading supporters. There was a misunderstanding between him and *Dingle*, *Pedlar* and others of his leading supporters, at a recent municipal election, and it would appear that knowing this the respondent may be assumed to have hoped, not to get their support, or that they would not vote for Mr. *Gibbs*, but that *Dingle* might be induced to moderate his opposition to him and his exertions for Mr. *Gibbs*. That is, I think, the reasonable deduction from the evidence, and, if so, any thing said or done by the respondent was neither to induce *Dingle* to vote for him

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or to refrain from voting for his opponent. He has not therefore, in my opinion, been shown to be amenable to any provisions of the statute, and after diligent search I can find no other law under which his seat could be vacated or a charge for bribery or corruption successfully made against him.

I have applied the principles I have enunciated to the remaining cases, and I see no reason to differ from the learned Judge who tried the petition, in the conclusions at which he arrived in respect to them and the whole of the others to which I have particularly referred.

Mr. *Gibbs* in his evidence, so far from suggesting bribery or corrupt practices on the part of the respondent, uses this language:

> I attribute my defeat at the last election to two causes. First, a misunderstanding between myself and my leading supporters in my own town. This has been alluded to several times during the progress of this trial. *Pedlar, Dingle, Thomas* and others of my leading supporters, owing to some misunderstanding at the previous municipal election. This caused a considerable coolness towards me. This influenced the election to a considerable extent. The other cause to which I attributed my defeat is the defection of the Roman Catholic vote.

From that and other reliable evidence we may fairly assume, that there was nothing like general bribery or corruption. That the election was generally fairly conducted, and that position of affairs calls for stronger and more unequivocal proof of a corrupt motive in reference to the matters with which the respondent is specifically charged.

I think the conclusions of the learned Judge were right, and therefore that the appeal should be dismissed with costs.

GWYNNE, J.:—

When so many learned Judges have concurred in

acquitting the respondent of all conduct impeachable as corrupt within the meaning of the Act, I cannot but feel great distrust in my own judgment, which compels me to say that the matter has not struck my mind in the same light. In my mind, I confess it has appeared, that the Statute is less potent than I had taken it to be to prevent corrupt practices at elections, if some of the transactions complained of, and which the respondent himself admits, are to be regarded as unobjectionable and not within the prohibitory provisions of the Act. In a matter, however, attended with such penal consequences, I do not propose to support my view against the opinion of my learned brothers.

TASCHEREAU, J., concurred in Mr. Justice *Gwynne's* remarks.

Appeal dismissed with costs.

Solicitors for appellant: *Hodgins & Spragge.*

Solicitors for respondent: *Cameron & Appelbe*