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*Feb'y. 19.
*April 1st.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF BERTHIER, IN THE PROVINCE OF QUEBEC.

NARCISSE GENEREUX *et al*.....APPELLANTS;

AND

E. O. CUTHBERT.....RESPONDENT.

ON APPEAL FROM DOHERTY, J., SITTING FOR THE TRIAL OF THE ABOVE NAMED ELECTION CASE.

Dominion Controverted Election—Railway Pass—37 Vict., ch. 9, secs. 92, 96, 98 and 100—Questions of fact in appeal—Agent, limited powers of.

In appeal, four charges of bribery were relied upon, three of which were dismissed in the court below, because there was not sufficient evidence that the electors had been bribed by an agent of the candidate; and the fourth charge was known as the

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

Lamarche case. The facts were as follows:—One *L.*, the agent of *C.*, the respondent, gave to certain electors employed on certain steamboats, tickets over the North Shore Railroad, to enable them to go without paying any fare from *Montreal* to *Berthier*, to vote at the *Berthier* election, the voters having accepted the tickets without any promise being exacted from or given by them. The tickets showed on their face that they had been paid for, but there was evidence *L.* had received them gratuitously from one of the officers of the company.

The learned judge who tried the case found as a fact that the tickets had not been paid for, and were given unconditionally, and therefore held it was not a corrupt act.

Held—1. (*Fournier* and *Henry*, JJ., dissenting) that the taking unconditionally and gratuitously of a voter to the poll by a railway company or an individual, whatever his occupation may be, or giving a voter a free pass over a railway, or by boat, or other conveyance, if unaccompanied by any conditions or stipulations that shall affect the voter's action in reference to the vote to be given, is not prohibited by 39 *Vict.*, ch. 9 (D).

2. That if a ticket, although given unconditionally to a voter by an agent of the candidate, has been paid for, then such a practice would be unlawful under section 96, and by virtue of section 98 a corrupt practice, and would avoid the election.

3. That an agent who is not a general agent but an agent with powers expressly limited, cannot bind the candidate by anything done beyond the scope of his authority.

As to the remaining three charges the Court was of opinion that, on the facts the judgment of the Court below was not clearly wrong and should therefore not be reversed. (*Fournier* and *Henry*, JJ., dissenting on the charge known as the *Maxwell* case.)

APPEAL from a judgment delivered on the 21st of February, 1883, by Mr. Justice *Doherty*, dismissing the election petition against the return of the respondent, at the election which took place in June, 1882, for the electoral district of *Berthier*, to the House of Commons.

The petition in this cause was presented, in the usual form as to corrupt practices, without claiming the seat.

This petition was supplemented by a list of particulars consisting of twenty-six charges.

Petitioners called and examined a large number of

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witnesses, and at the hearing, they abandoned all but five of the charges, persisting only in the 1st, 2nd, 8th and 20th, and in the additional particular A.

On appeal four charges of bribery were relied upon, 1st, the *Lamarche* case; 2nd, the *Chalut* case; 3rd, the *Rithier & Cote's* case; and 4th, the *Maxwell* case. The particulars of these charges are stated in the judgments hereinafter given.

Mr. *Doutre*, Q. C., and Mr. *Mercier*, Q. C., for appellants:

As to the *Lamarche* case.

The only question to decide on this question is whether the grant of free passes, some 20 in number, amounts to a corrupt practice, according to the Dominion election Act, 1874.

We submit that it is a corrupt practice according to sections 92, 96 and 98 of said Act.

The respondent was the conservative candidate, the railway was a governmeut railway under the control and management of the *Quebec* conservative government. The passes were delivered by the officials of the road to convey electors to the poll, at the special request of respondent's agents. These passes were delivered the day before the polling day, and all these men were paid at the end of the week their full salary, although they lost a day and a half. Then it is established by the evidence that the value of these passes was $1 50cts. each. There is no doubt that these men would not have gone to *Berthier* that day, if they had been obliged to pay their travelling expenses and lose their salary during their absence.

This is a payment of a carriage to convey voters in violation of sec. 96. There is no actual payment proved, for *Lamarche* says he did not pay for these passes. But it comes to the same thing, and we fail to see the

necessity of an actual payment of money, under the circumstances, to constitute a corrupt practice.

To maintain such a system would be simply to give to a government, holding railways, the means of controlling, in a very extraordinary way, the elections of the whole country.

But suppose there is any doubt that this act falls under sec. 98, it seems that it can be brought under sec. 92, which constitutes a corrupt practice with the giving of any valuable consideration to an elector in order to induce him to vote or to favor the election of a candidate.

This point was specially raised in the celebrated case of *Cooper* and *Slade*, before the House of Lords in 1858 (1). *Hickson* v. *Abbott* (2). See also *Leigh* and *Lamarchand* (3).

In the *North Simcoe* election case (4) it was decided in 1871 by Vice-Chancellor *Strong* that the hiring by an agent of the respondent of a railway train to convey voters was a payment of the travelling expenses of voters within the meaning of section 71 of 32 *Vict.*, ch. 21, and was a corrupt practice.

According to the ruling in the *Selkirk* case (5), the 96th section of the Dominion Elections Act, 1874, is included in the 98th section of the same Act (6).

The gift to electors of passes on railways, for the purpose of allowing those voters to go at all to the polls was declared in 1881 to be a corrupt practice in *Hickson* v. *Abbott* (7).

It seems to us very clear that under the circumstances of this case the election ought to be voided on account of the delivery of these passes. They were a valuable

(1) 27 L. J. N. S. 449.
(2) 25 L. C. Jur. 313.
(3) P. 5.
(4) 1 Hodgins' Elec. Cases 50.
(5) 4 Can. S. C. R. 494.
(6) 3 Legal News, p. 335.
(7) 25 L. C. Jur., p. 313.

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consideration given to electors to induce them to vote. They were practical payment of travelling expenses, and it is quite indifferent whether this payment of travelling expenses was made with money or with a valuable consideration of any kind.

To uphold such a system would be to encourage the worst kind of bribery; for it would be to allow a candidate to convey any amount of voters to the polls by way of passes granted by a friendly railway company.

The *Bolton* (1) case cited by Mr. Justice *Doherty* has no authority here; and the principles laid down by Judge *Mellor* are entirely opposed to our own jurisprudence.

[As to the three other charges, the argument of counsel sufficiently appear in the judgments.]

Mr. *Lacoste*, Q. C., and Mr. *Bisaillon* with him for respondent.

As *Lamarche* is admitted to have been an agent, the only question which arises is whether *Lamarche* has violated the 96th section of the Act by "having promised to pay, or paying for any horse, team, carriage, cab or other vehicle, by any candidate or by any person on his behalf, to convey any voter or voters to or from the poll, or to or from the neighbourhood thereof at the election."

The passes were given gratis; they were never paid for, and were given unconditionally. *Lamarche* or *Labelle* acted merely as would have acted any person voluntarily and gratuitously conveying voters at the poll with his own carriage, and the judge in the court below so found.

The appellant's proof entirely fails to bring the charge under the provisions of the said 96th section of the Act, but the petitioners contend that the passes given to the voters by *Lamarche* were things of value, and

(1) 2 O'M. & H. 147.

that they were given as a " valuable consideration," to induce said voters to vote for respondent at the election. This question has been already fully discussed in the *Bolton* case (1), where it was decided that the giving of a pass was not a valuable consideration under the Act. See also *Rogers* on Elections (2), where all the cases on this point are collected.

Then as to whether *Lamarche* has violated section 92. We submit that there has been no violation of that section, because no payment was made. There is nothing in the law to prevent a railway company any more than a private company from granting a free conveyance to the voter. *Cooper* v. *Slade* is distinguishable on this point. *Hickson* v. *Abbott* (3), and the *Simcoe* case (4), relied on by appellants, are not applicable, because in those cases the tickets were paid for, and the election was avoided, not under section 92, but under section 96.

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

RITCHIE, C. J. :—

There are in this case four charges which the petitioners rely on, viz. :—

1st. The *Lamarche* case.

The charge in this case is in these words :—

" Que pendant la dite élection, le dit *Edouard Octa-*
" *vien Cuthbert*, directement et indirectement, par lui-
" même, par le moyen d'autres personnes, et de ses
" agents autorisés, et entr'autres par *Olivier Lamarche*,
" marchand de *Berthierville*, district électoral de *Ber-*
" *thier*, de la part et du consentement et à la connais-
" sance réelle du dit Intimé, a payé les dépenses de
" voyage et autres dépenses d'un grand nombre d'élec-
" teurs du dit district électoral de *Berthier*, pour les
" aider à se rendre à l'élection, et à s'en retourner, à se

(1) 2 O'M. & H. 147-8-9.
(2) P. 362.
(3) 25 L. C. Jur. 313.
(4) 1 Hodgins p. 50.

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"rendre aux, ou aux environs des bureaux de votation, "et entr'autres à *Octave Boucher, Jean Baptiste Godin,* "*Alexandre Godin, Narcisse Boucher, Louis Valois,* "*Pierre Latour*, tous navigateurs de l'Ile *Dupas*, dans "le district électoral de *Berthier; Joseph Plouffe, Alfred* "*Bruno, Dolphis Rocrais, Dolphis Massé, Servius Massé,* "*Joseph Pagé, Octave Parent*, tous navigateurs de "*Berthier*, dans le dit district; *Lafontaine* de *Québec*, "employé civil; *Narcisse Boucher*, navigateur de *Trois* "*Rivières*, district de *Trois-Rivières*; *Pierre Arpin*, "navigateur de *Lanoraie*, dit district de *Berthier*; "*Dolphis Buron*, navigateur de *Berthier*, district élec- "toral de *Berthier; Charles Rocrais*, navigateur du "même lieu; *Alfred Chiquette*, maître de pension de "*Montréal*, district de *Montréal*; toutes ces personnes "étant électeurs de la division électorale de *Berthier*, et "dûment qualifiés à voter à la dite élection, et ayant "voté à la dite élection, donnant à chacune des dites "personnes, un billet de passage sur le chemin de fer "*Quebec, Montréal, Ottawa et Occidental*, et autres "valeurs et d'autres manières, pour les conduire dans le "dit district électoral de *Berthier*, aux, ou aux environs "des bureaux de votation, où chacune des dites personnes "avait respectivement droit de voter, et que les dites "personnes ont ensuite revendu les dits billets de "passage, qu'ils avaient ainsi obtenus gratis et dans un "but frauduleux, illégal et de corruption, et pour les "engager à voter pour le dit Intimé, et ont retiré de ces "ventes des sommes d'argent ou autres valeurs qu'ils "ont gardées pour leur usage personnel exclusif."

Lamarche, the agent of *Cuthbert*, gave to certain parties employed on certain steamboats, being persons qualified to vote at the *Berthier* election, tickets or passes over the *Quebec, Montreal, Ottawa & Occidental Railway*, to enable them to go, without paying any fare, from *Montreal* to *Berthier* to vote at such election.

It is very clear, indeed, not denied, that these voters travelled free on these tickets from *Montreal* to *Berthier* to vote, and voted there, but it is denied that they were given with any corrupt intent, or that the giving of these tickets or passes amounted to bribery or corrupt practices within the meaning of the Dominion Elections Act, 1874, and it is alleged that nothing was said or done by *Lamarche* corruptly to induce these persons to vote for or aid the respondent in his election, but that the passes were given unconditionally, and, therefore, there was no violation of the Dominion Elections Act, 1874. The judgment of the learned judge in the court below would seem to proceed on the authority and applicability of the cases of *Cooper* and *Slade* (1), and the *Bolton* case (2). In the case of *Cooper* and *Slade* a conditional promise to pay travelling expenses was held to be bribery.

In the *Bolton* case, it was submitted that the sending of the letters and railway passes was either an act of bribery according to the doctrine laid down by the House of Lords in the case of *Cooper* and *Slade* (1), or a simple act of bribery within the meaning of the Corrupt Practices Act, 1854, sec. 2; and secondly, that if it was not an act of bribery still that it was an illegal act which had been systematically and wilfully done for the purpose of influencing the election, and that as such it ought to be held to have avoided the election.

The court held in the *Bolton* case that there was not a conditional promise, but had it been: "If you come and vote for the respondent the expense of obtaining a railway ticket will be paid," Mr. Justice *Mellor* says: "This would, no doubt, have brought it within the case of *Cooper* and *Slade*." I think neither the case of *Cooper* and *Slade* nor the *Bolton* case are at all applicable to the present, because I cannot satisfy my mind

(1) 2 O. M. & H. 147. (2) 6 H. L. Cases 746.

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that the tickets were in this case given on any such condition as would legally constitute the act a case of bribery under the 92nd section. In the English acts there are no such enactments, as sections 96 and 101 of the Dominion Act of 1874, and it is under these sections that this case must, in my opinion, be determined. Under these sections the charge is not that of bribery, but of a corrupt practice by virtue of the prohibition of section 96 and the declaration of what offences shall be corrupt practices, as quite distinct from acts of bribery as provided against in section 92. Those provisions which are not to be found in the English Act of 1854 are as follows:

37 *Vic.* ch. 9, section 96:

And whereas doubts may arise as to whether the hiring of teams and vehicles to convey voters to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law, it is declared and enacted, that the hiring or promising to pay or paying for any horse, team, carriage, cab or other vehicle, by any candidate or by any person on his behalf, to convey any voter or voters to or from the poll, or to or from the neighbourhood thereof, at any election, or the payment by any candidate, or by any person on his behalf, of the travelling and other expenses of any voter, in going to or returning from any election, are and shall be unlawful acts; and the person so offending shall forfeit the sum of one hundred dollars to any person who shall sue for the same; and any voter hiring any horse, cab, cart, waggon, sleigh, carriage or other conveyance for any candidate, or for any agent of a candidate, for the purpose of conveying any voter or voters to or from the polling place or places, shall, *ipso facto*, be disqualified from voting at such election, and for every such offence shall forfeit the sum of one hundred dollars to any person suing for the same.

Section 98:

The offences of bribing, treating or undue influence, or any of such offences, as defined by this or any other Act of the Parliament of *Canada*, personation or the inducing any person to commit personation, or any wilful offence against any one of the six next preceding sections of this Act, shall be corrupt practices, within the meaning of the provisions of this Act.

Section 101:

If it is found by the report of any court, judge or other tribunal for the trial of election petitions, that any corrupt practice has been committed by any candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void.

In my opinion this offence or corrupt practice may be complete without the slighest intent to bribe, as where a candidate or his agent knowing a voter intended to vote for the candidate and therefore required no inducement to do so, chooses to pay such a voter's railway fares or travelling expenses. In such a case, notwithstanding the voters may have accepted the free passage without any condition or promise being exacted from or given by them, the offence provided against by sec. 96 would be complete, though no offence of bribery could be thereby established, while on the other hand, if the voting for the candidate was made by the voter to depend on the condition that he should be paid his railway fare and travelling expenses, then the offence of bribery would be made out, and parties so offending would be guilty of a misdemeanor under section 92, to which persons offending against the 96th section are not made liable.

The question here being, whether what is complained of was a corrupt practice under the 96 and 98 sections, let us see how the case stands.

It is established that *Lamarche* was the respondent's agent. The learned judge says "the proof summarized shows that he was a strong partizan and supporter of respondent, was a member of his committee, canvassed some, and was engaged and interested in favor of respondent," and the judge further says that "*Lamarche* gave passes for 17 to 20, and that he gave them to the voters referred to, and that they did travel free on them from *Montreal* to *Berthier* to vote and voted; this,"

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he says, "is not and cannot be disputed." It is difficult to believe that those tickets or passes were not placed in *Lamarche's* hands to enable him to convey voters to the polls who would vote for the respondent, or that when he delivered such tickets he did not well understand and believe that the voters to whom tickets were so supplied would proceed to *Berthier* and record their votes for the respondent, and that they did so.

Then, were these tickets paid for? The fair inference, in the absence of evidence to the contrary, would seem to be that these tickets or passes were purchased from the government to be used for the conveyance of voters to vote for the respondent, and so in point of law the railway fares of these voters were paid for by the agent of the respondent who used these tickets and supplied them to the voters; or if not actually paid for by him were so used by him, knowing them to have been paid for.

Then there is the evidence of *Parent*, one of those voters, and he produces the ticket supplied to him, which certainly goes far to show that these tickets were purchased and paid for, the ticket on its face stating that it was paid for though issued at a reduced rate. He says:

Q.—Avez-vous vu M. *Olivier Lamarche* ce jour-là? R.—Oui monsieur.

Q.—Eh bien, dans quelle occasion et à quel propos, l'avez-vous vu? R.—Je l'ai vu au *gang-way* de l'arrière qui s'informait des gens qui avaient droit de vote, et il appelait leurs noms.

Q.—Il avait une liste? R.—Celui qui était là, il avait un petit morceau de papier et celui qui se trouvait présent, il disait: il est ici.

Q.—Ensuite? R.—Il m'a demandé: Vas-tu voter? J'ai dit oui. Il a dit: si tu veux aller voter, je vais aller te chercher une passe. Je lui ai dit: C'est bien correct. Dans l'après-midi, il est venu avec une passe, ou un ticket; c'était pareil à celui qui est exhibé; je puis vous la montrer.

Q.—Montrez-le donc? R.—Je produis cette passe comme exhibit "C" des pétitionnaires à l'enquête.

Q.—Etes-vous parti plusieurs ensemble? R.—Oui monsieur, on a parti, je vais vous les nommer tous: *Delphis Massé*, le *Steward*, son frère, *Zéphirin Massé*, *Joseph Plouffe*, moi, *Alexandre Godin*, *Octave Boucher*, *Louis Valois*, à bord du *Chambly*.

Q.—Tous ceux que vous venez de nommer, à part de *Valois*, étaient employés à bord du *Trois-Rivières*? R.—Oui, monsieur; *Alfred Bruneau* et *Delphis Rocrais*.

Q.—A bord du *Trois-Rivières*? R.—Oui monsieur.

Q.—Avaient-ils tous des passes, comme vous? R.—Oui, ils avaient tous des passes.

Q.—Aller et retour? R.—Oui monsieur.

Q.—Combien coûte le passage de *Montréal* à *Berthier*, aller et retour? R.—Sept chelins et demi, je suppose; c'est trois trente sous pour descendre.

Q.—En première classe? R.—Je ne sais pas, je ne connais pas le prix de la première classe.

Q.—C'est une piastre et demie dans la première classe? R.—Oui monsieur.

Q.—Naturellement, vous avez été dans la première classe cette fois-là? R.—Oui.

EXHIBIT C.

Quebec, Montreal, Ottawa and Occidental Railway.

One first-class passage.

From *Hochelaga* to *Berthierville* and return.

Special. In consideration of the reduced rate at which this ticket is sold it will only be valid until 22nd June, 1882.

FORM 2 R. 5708

L. A. Sénecal,
General Superintendent.

The witness *Massé* received, from the captain of the boat, a ticket left by *Lamarche* for distribution similar or nearly so to Exhibit C, under these circumstances:—

Q.—La veille de la votation vous étiez à bord de votre steamboat, dans le port de *Montreal*? R.—Oui monsieur.

Q.—Comment êtes-vous venu à *Berthier*? R.—Je suis venu dans les chars du Nord.

Q.—Du chemin de fer du Nord? R.—Oui.

Q.—Avez-vous payé votre passage? R.—Pardon, j'ai eu une passe.

Q.—De qui avez-vous eu une passe? R.—J'ai eu une passe du capitaine *Duval*.

Q.—Le capitaine de votre steamboat? R.—Oui, le capitaine de mon steamboat.

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Q.—Est-ce une passe comme celle-ci: exhibit "C" produite à l'enquête des pétitionnaires?

Objecté à cette question comme illégale.

Objection réservée.

R.—C'est à peu près semblable. Je ne puis pas sermenter qu'elle est parceille, mais c'est une passe mince.

Q.—De cette couleur-là à peu près? R.—Oui, à peu près.

Q.—C'était une passe pour la première classe du train de chemin de fer du Nord? R.—Oui monsieur.

Q.—Vous savez lire? R.—Oui.

Q.—C'était signé: "*L. A. Sénécal?*" R.—La signature, je ne l'ai pas examinée parfaitement.

Q.—Qu'est-ce que vous a dit le capitaine *Duval* quand il vous a donné cette passe-là? R.—Premièrement, M. *Lamarche* est venu à bord demander quels étaient les voteurs qu'il y avait dans le *steamboat*, moi-même, je lui ai nommé des gens que je connaissais qui avaient droit de vote; il a marqué les noms, et il a monté en haut au salon; il a demandé au capitaine *Duval* la permission d'avoir les voteurs; le capitaine a dit: avec plaisir, je ne puis pas refuser cela; ils sont maîtres d'aller pour qui bon leur semblera; de sorte que monsieur *Lamarche* a parti; il est allé à terre, et je n'ai pas vu rien de plus.

Q.—Il a vu les électeurs? R.—Pardon; il a eu la permission du capitaine, et il est venu à bord dans l'aprés-midi; il a monté au salon; il est venu trouver le capitaine; il a vu plusienrs des gens qui sont ici présents et qui ont été entendus comme témoins. Je n'ai pas vu donner les passes moi-même, mais au moins il a monté en haut, et il a donné des passes au capitaine. J'en ai eu une qui venait du capitaine. Je ne peux pas dire si elle venait de monsieur *Lamarche* ou de d'autres, mais je l'ai eue du capitaine.

It is suggestive that the witness, on cross-examination, says the captain did not, when giving him the ticket, tell him for whom he was to vote, but when the question is put to him: "Q. Vous a-t-il demandé pour qui vous alliez voter?" we find no answer given.

And this likewise negatives, if it does not dispose of, the hypothesis that these voters being employées of the *Richelieu Navigation Co.* were travelling by the railway free under an alleged usage whereby the employées of the railway company and the *Richelieu* Navigation Co. were permitted to travel free, a usage by no means

clearly proved to have existed, and which, had it existed, there is no evidence it was acted on in this case; on the contrary, had it been acted on, there would have been no need for the interference or instrumentality of *Lamarche*, who was in no way connected with either company.

Inasmuch then as the statute has specially mentioned the paying of railway fares, and section 96 was expressly passed to put an end to any doubts that might arise in reference thereto, considering the great, dangerous and corrupt influence that can be exercised in favour of particular candidates through the instrumentality of railway tickets, I think when such means are resorted to for bringing voters to the polls (by the candidate or his agents) the operation should be very narrowly watched and very strictly scrutinized, and as the fair and natural inference *primâ facie* is that passengers travelling on railways, do so by paying the regular fares, a certain presumption is raised that when voters travel on a railway to the polling place on tickets supplied by the candidate, or his agent, that such tickets have been paid for by such candidate, or his agent, in accordance with the usual course of the business of the railway, and this, in the absence of evidence to the contrary, appears to me to be much strengthened when the ticket shows on its face that it had been paid for, and it does seem to me to be a thin and flimsy cover indeed, under which to allow the candidate or his agents supplying voters with such paid tickets, for what the law designates a corrupt practice, to screen the transaction by simply alleging that these tickets came to his or their hands enclosed in an envelope, and leave the matter there. If there were any exceptional circumstances to withdraw the transaction from the operation of the statute, the burthen of disclosing such circumstances would, in my opinion, rather be on the

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candidate or his agents than on the petitioner, as the former have the knowledge within themselves, and were the persons who can best explain the matter, while on the other hand, in almost, if not quite every case, the means of exposing the details of the illegality of the transaction (by the petitioner) would be a matter of impossibility, establishing that a candidate or his agent has supplied voters with paid tickets, by the instrumentality of which they have gone to and returned from the polls, clearly, to my mind, establishes a *primâ facie* case. I cannot for a moment suppose that this strong partizan and supporter of the respondent obtained these passes with the patriotic, philanthropic or charitable view of enabling all these men to vote free of expense at the election, wholly irrespective of whom they would vote for. I cannot believe that he did not know that if he got them to *Berthier*, they would vote for the respondent, and that he obtained the tickets and distributed them so that he might in the interest of the respondent secure their attendance and their votes at the polls for the respondent. No one can believe that *Lamarche*, who says he knew all these seafaring men, and who adds, "Je connais nos ennemis et nos amis," would furnish a ticket to any voter whom he thought would be an enemy at the poll? nor doubt that he had a full reliance as to how the votes would be given. Giving these tickets to the voters was not as *Willes*, J., in *Cooper* v. *Slade* suggests:—

> Merely to induce the voters to come to the place of polling, and not to vote at all, or come there and vote for the rival candidates. Such suppositions, he says, are possible, but, speaking mildly, improbably in a high degree, because plainly inconsistent with the object for which the party was striving, namely, to get votes for his side.

Mr. *Cuthbert*, though examined, says nothing of this transaction, and neither Mr. *Labelle* nor Mr. *Senecal*, in

whose name the tickets were issued, nor any other person connected with the railway, have been examined to explain at whose instance, or on what consideration, these passes were issued, if they were not issued in the interest of the candidate to be used by his agents as tickets duly paid for, or otherwise than as expressed on their face. It is not suggested that *Labelle* did anything wrong, and in the absence of any evidence to show that the tickets were not regularly issued on being duly paid for, or that the tickets expressed on their face what was not literally true, I have very great difficulty in seeing how they can be treated as issued gratuitously. This was then a Government railway run in the interest of the Province at large, and not in the interest of any individual election candidate. It is not, therefore, to be presumed that the Government allowed it to be so used, or that it was so used by the employées of the Government of their own mere motion.

I have, therefore, the greatest difficulty in arriving at any other conclusion than that these tickets were paid for, and that their distribution and user in the manner detailed in the evidence should be regarded in no other light than as amounting to a payment by the agent of the candidate on his behalf of the travelling expenses or railway fares of voters going to and returning from the election at *Berthier*, which, if so, would be an unlawful act under section 96, and by virtue of section 98 a corrupt practice, that section enacting that any wilful offence of section 96 shall be a corrupt practice, which simply means purposely doing that which the section forbids, and which by virtue of section 100 avoids the election, that section declaring that any corrupt practice committed by a candidate or his agent shall render the election of such candidate, if he has been elected, void.

Though I am strongly impressed with these considerations I cannot lose sight of the principle which governs

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courts of appeal in dealing with the decisions of courts of first instance on questions of fact.

The learned judge of the first instance has found against this view of the evidence which has so strongly impressed me—his decision on the evidence being, that these tickets were not paid for, in which conclusion I understand my brothers *Strong* and *Gwynne* entirely concur. As this is a question of fact, pure and simple, the finding of the judge who tried the case should not be lightly disturbed, nor should an election be lightly set aside. When this finding is thus supported by two of the five judges sitting in this court, making three of the six judges who have heard this case, I cannot but distrust my own judgment, and such doubts are thereby raised in my mind as to the correctness of the conclusion I should have been disposed to arrive at if the decision rested with myself alone, without any conflict of opinion that, considering an Appellate Court should not reverse on a question of fact without its being made apparent that the court below was clearly wrong, and the so often expressed opinions of judges that before a judge should upset an election, he should be satisfied beyond reasonable doubt that the election was void, under such circumstances I think I am bound to give the respondent the benefit of the doubt thus created.

I am unable to say that I feel such confidence in my own impressions, strong though they be to the contrary, as would justify me in saying that I am entirely satisfied that the Judge was clearly wrong in the conclusion at which he arrived, and therefore I do not feel that I should be justified in reversing his decree.

I think taking, unconditionally and gratuitously, a voter to the poll by a Railway Company, or an individual of whatever his occupation may be, or giving a voter a free pass over a railway, or by boat or other conveyance, if unaccompanied by any conditions or

stipulations that shall affect the voter's action in reference to the vote to be given, is not prohibited by the statute. If it is against public policy, as I may think it is, that railway companies or others, having control of public conveyances, should be permitted to do this, its prohibition not being provided for by the statute, it is a *casus omissus*, which can only be remedied by Parliament. The courts cannot declare any Act illegal and corrupt, though one candidate may be thereby much benefitted, to the injury of the other, which has not been made so by the law.

Objectionable, as unquestionably in my opinion such a proceeding is, as unfairly and unduly affecting the election, and possibly illegal as it may be as against the public interest and public policy, that officers or employées having the management of government railways, in which the public at large are individually and collectively equally interested, should issue free tickets to be distributed gratuitously, though unconditionally, in the interest of a particular candidate or party, yet, as the statute has not prohibited such a proceeding, and has not declared such an Act to be illegal, and a corrupt practice, or provided that it should invalidate the election, I do not think this court has, without statutory authority, any power to avoid an election for this cause.

The second charge is the *Coté* and *Rithier* case. The learned judge says: "I see no proof at all sufficient to establish the agency of *Coté*"—a conclusion from which I do not feel myself justified in differing.

As to the case of *Maxwell*, of *St. Damien*, I have no doubt the money was sent to bribe *Maxwell*, and if it can be established that it was done by an agent of the respondent, must annul the election. The evidence is full of suspicions, but whatever suspicions there may

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be, there is no evidence of the agency of *Daveluy* that I can put my hand on.

The case of *Hénault* is not quite so clear. *Daveluy* gives the letter containing this money to *St. Cyr*, who was not proved to be defendant's agent, at *Hochelaga*, to be forwarded to *Maxwell* at *Berthier*, he meets *Lamarche*, the acknowledged agent of the respondents, and asks him who was going to *St. Damien*, and was informed by him that it was *Hénault*. The inference is clearly that in asking who was going to *St. Damien* he was seeking to discover who was going there in the interest of the respondent. He seeks *Hénault* and gives him the money, telling him he was told there was money in it. *Hénault* was going to speak for respondent, as the judge says, evidently with his knowledge and consent. Though the money passed through the hands of *Hénault*, and however suspicious the transaction is throughout, I cannot say the evidence sufficiently establishes that he was anything more than the bearer of the letter, ignorant of the nature of the transaction, and therefore not a participator as the agent of the candidate in the act of bribery.

This case, surrounded as it undoubtedly is by the gravest suspicions, is not, however, so clearly made out as to justify me in reversing the judgment of the learned judge.

As to the *Chalut* case, I think this was nothing more than a *bonâ fide* payment of the expenses of *Chalut*, and was neither colorable nor corrupt, and therefore I agree with the learned judge that in this case petitioners have also failed to establish a charge of personal bribery against the respondent. The appeal will therefore be dismissed, but I think without costs, following the course of the judge below, as I think the case a most proper one for the fullest investigation.

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STRONG, J.:—

The appeal was confined to four distinct cases of alleged corrupt practices, which I will consider separately.

The first case is that of *Olivier Lamarche*, the facts of which may be concisely stated as follows:—*Lamarche* had his home at *Berthier*, where his family resided, but carried on business at *Montreal*. He was constantly passing between the two places on board the steamers of the *Richelieu Navigation Company*, and thus came to know the men comprising the crews of their vessels. He was, undoubtedly, as the learned judge has found on most ample evidence, an agent of the respondent, being an active member of his committee at *Berthier*. On the day before the polling day, *Lamarche* went on board the steamer "*Three Rivers*," having a list of the names of those men of the crew who were voters in this County, and asked some of them if they would go to *Berthier* to vote. He says he knew all these men, the friends as well as the enemies of the political party with which he was allied. Some of the men thus appealed to, said that they would not go to *Berthier* unless they were furnished with free passes over the railway. It appears that *Lamarche* then went to Mr. *Labelle*, the ticket agent of the Northern Railway, and applied for free passes for 17 or 20 men. These passes were furnished to him, being handed to him the same day enclosed in an envelope, by Mr. *Goodeve*, a clerk employed in the railway office. In my view of the evidence it appears very clearly established that these tickets were granted freely by the railway authorities; that they were not paid for by *Lamarche*, or by any one else, nor was it intended they should be paid for. *Lamarche* took these passes on board the steamer "*Three Rivers*" and left some of them with the captain, and gave others to men

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who were voters—and some 8 or 10 men went by the railway, travelling on these passes the same day to *Berthier*, and voted there the next day. It does not appear that *Lamarche* imposed any conditions upon those to whom he delivered passes, as to how they were to vote, or that he requested them to vote for the respondent, or made any enquiry of them as to their intentions with regard to the candidate for whom they were to vote. Upon this state of facts, two questions of law arise—1st. Was the furnishing of these railway passes or tickets to the voters in question a payment of travelling expenses within the 96th section of the Dominion Elections Act, 1874? 2nd. Did it constitute bribery or a corrupt practice, within the 92nd section of the same Act?

On both these questions I concur in the conclusions arrived at by the learned judge before whom this petition was originally heard, that *Lamarche*, in delivering these railway passes to the voters named, did not commit a corrupt act under either of these sections.

As regards section 96, by which "the payment by any candidate, or by any person on his behalf, of the travelling and other expenses of any voter in going to or returning from any election" is declared to be an unlawful act, and which, by section 98, is further declared to be a corrupt practice, and consequently an act avoiding the election by the express provision of sec. 102, it cannot apply for the plain reason that there was no payment of expenses. The tickets or passes are proved to have been granted gratuitously by the railway authorities and consequently all that was done amounted to just this, and no more—that the railway, at the request of an agent of the respondents, carried certain voters from *Montreal* to *Berthier* free of charge, and it cannot be contended that this is equivalent to a payment of

travelling expenses any more than the carrying of a voter to the poll by a third person in his own carriage, at the request of a candidate or his agent, could be said to come within this provision of the statute (1).

In order to bring a case within this 96th section, there must be a payment of money for the expenses. If money is paid by a candidate or his agent for the travelling expenses of a voter, I should not consider it material, in order to avoid the election within this 96th section, as distinguished from the case of section 92, that any condition was imposed upon the voter that he should vote for any particular candidate. The case would be within the words and spirit of the enactment if it could be shown that there was an actual disbursement made by the candidate, or his agent, for the purpose of paying any voter's expenses, regardless altogether of any stipulation or promise that his vote should be cast for a specified candidate. I repeat, however, that here there was no disbursement of money, and consequently there has not been, in this respect, the commission of any such corrupt act as involves an avoidance of the election under section 96. If, as in the *Bolton* case (2), the tickets had been paid for, or even agreed to be paid for by *Lamarche*, I should have considered that that would have amounted to a payment of travelling expenses and that consequently the election ought to be set aside.

When the *Bolton* case was decided the state of the law in *England* was such that the payment of travelling expenses did not avoid the election but was merely an illegal act, subjecting the person committing it to a penalty, and Mr. Justice *Mellor* in that case, although he decided that sending a railway pass which had been paid for and which entitled the holder of the pass to

(1) See per Alderson, B., *Cooper v. Slade*, 25 Jur., N.S., 330.

(2) 2 O'M. & H. 147.

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exchange it for a ticket, did not, having regard to the statutory provisions which then existed, avoid the election, was still of opinion that it was an illegal act within the statute; and this opinion, as I understand that case, was founded upon the fact of the pass having been paid for.

Then as regards section 92, it seems to me that the conclusion of Mr. Justice *Doherty*, and the reasons upon which that conclusion was founded, was upon the authorities also entirely correct. This 92nd section is as follows:—

> Every person who directly or indirectly, by himself, or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or endeavour to procure, any money or valuable consideration, to or for any voters, or to or for any person on behalf of any voters, or to or for any person, in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

Shall be deemed guilty of bribery and punishable accordingly.

This provision is a literal transcript of sub-sec. 1 of sec. 2 of the Imperial Act, 17 and 18 *Vic.*, c. 102, and consequently the English decisions upon this latter enactment are express authorities to guide us in applying this 92nd section of our own act. Then the question we have to decide here is narrowed to this: Did the giving of these railway passes or tickets to the voters named constitute a giving of valuable consideration to such voters to induce them to vote? That the giving of these passes or tickets by *Lamarche* was the giving of a "valuable consideration" within the meaning of the statute, I entertain no doubt. That a railway ticket is a token of value is plain, since it enables the holder of it to procure an advantage which, without it, he could only obtain by the payment of money. So far, there-

fore, the case is brought within the statute, and it is shown that a valuable consideration was given to voters by the respondents' agent, *Lamarche*. Is it, however, shewn that the case is brought within the other condition of the statute, which requires that the valuable consideration shall have been given "to induce such voter to vote?" Upon the construction to be placed upon these words, the decision must depend. Whatever doubt we might have felt in placing an interpretation upon this expression, if we had been called upon now to do so for the first time, we are relieved from any difficulty on this score by the decisions upon the corresponding Imperial enactment, which, being many in number and emanating from courts and judges of the highest authority, are conclusive of the present case, if any question of statutory construction can be concluded by authority. It is to be observed that there is nothing in the evidence to establish that *Lamarche* imposed any condition upon the voters to whom he gave the passes, that they were to vote for the respondent, or that he even invited or requested them so to vote, or to vote at all. It may indeed well be presumed that, from his constant and familiar intercourse with these men, he knew their political bias so well that he considered it superfluous to attach any such condition, or make any such request. Indeed, I gather from his expression, "*Je connais nos ennemis et nos amis*," that he admits this was the case. It does not not appear, however, that he witheld any tickets from any voters amongst the crews because he supposed they were adverse to his party, but that the tickets were given to all the men who had votes. These being the well established facts, the case of *Cooper* v. *Slade*, decided in 1856 in the Exchequer Chamber, is an authority conclusively showing that the conduct of *Lamarche*, in the present case, did not amount to an act

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of bribery within this 92nd section of the Act of 1874. It was there held that in order to make out a promise to pay, or the payment of travelling expenses, to be a promise, or giving of a valuable consideration, to induce a voter to vote within the words of the claim under consideration, it must be shown that such a payment or promise was conditional upon the voter voting for a particular candidate. This decision was approved of as regards the law by the House of Lords in an action brought to recover a penalty, and, the judgment of the House having been delivered by Law Lords of great eminence, it must be deemed conclusive of the law upon this point. In the judgment delivered in the Exchequer Chamber in this case of *Cooper* v. *Slade*, with which the House of Lords agreed, so far as the law and the construction of the statute and the meaning to be attached to the words, "induce a voter to vote," were involved, though it differed as to the application of the principles of law to the facts there proved in evidence, *Alderson*, B., lays down the law in the following words:—

> An unconditional promise of travelling expenses to a voter to go to the place of polling, with leave to him to vote or not, as and how he likes, seems to us certainly not a promise of money to induce the voter to vote, being neither a promise with that view nor directly calculated to cause it.

And *Williams*, J., who differed from the rest of the court, did so expressly upon the ground that the letter which had been written to the voter by the agents of the candidate was to be construed, not as an absolute, but as a conditional promise to pay the expenses—an opinion which was also that of the House of Lords. This case of *Cooper* v. *Slade* was followed in the case upon which the decision of the learned judge in the case now under appeal was founded, that of the petition

(1) 2 O'M. & H. 146.

for the Borough of *Bolton*, decided in 1874 by Mr. Justice *Mellor* (1), where it was held, upon state of facts undistinguishable from those before this court in the present case (with the single exception that there the ticket or pass sent to the voter had been paid for, whilst here it was granted by the railway company gratuitously), that the delivery of a railway pass to a voter to enable him to go to the poll free of expense, accompanied with a request to him to vote for the candidate by whose agent the pass was sent, was not, in the absence of any expressed condition that the pass was only to be used for the purpose of enabling him to vote for the candidate in whose interest it was furnished, bribery or a corrupt act, either at common law or within the statute. The principle of the decision in these cases is very clearly defined in the opinion of Baron *Channel* in *Cooper* v. *Slade*, in the House of Lords, and in that of Mr. Justice *Mellor* in the *Bolton* case, where he points out that a pass or ticket being given unconditionally, as the facts establish beyond dispute that the passes or tickets furnished by *Lamarche* were given in the present case, that there is no bargain or agreement at all that the voter shall vote in a particular manner, or that he should vote at all, that he may go to the poll and there refuse to vote, or vote against the candidate from whose agent he has received the ticket or pass, without being guilty of the breach of any obligation. I will quote a short passage from the judgment in the *Bolton* case, which appears to me to have a direct application here. The learned Judge says:—

> The voter was not bound by any other consideration than an honorable one, that is to say, this is sent to me that I may go to the poll. If I were to take advantage of the opportunity afforded by this ticket, not to vote, but to go to *Bolton* on my own business, or to

(1) 2 O'M. & H. 147.

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vote for the other side, I should be doing a shabby thing. That appears to me to be the only sort of obligation, something arising from the idea of honor or good faith, by which a voter receiving such a pass might be affected. But it is entirely free from that question which was the turning point in *Cooper* v. *Slade*. If he had voted for the other candidates, could they have recovered back the value of this pass from him? They could not. He was under no other obligation by accepting that pass than that which his own sense of honor might dictate; he was under no legal obligation whatever, and therefore it is not, in my opinion, within the case of *Cooper* v. *Slade*.

Every word of this is applicable to the facts in evidence here, and I am of opinion that the learned judge who heard this petition was entirely right in adopting the law as thus expounded by Mr. Justice *Mellor*, and dismissing the charge accordingly.

For the sake of distinctness, and in order that there may be no misapprehension of the grounds on which this opinion is founded, I think it right to add, though it may involve repetition, that had the tickets been purchased by *Lamarche*, and either paid for or agreed to be paid for, I should have considered the case as coming within the 96th section, which prohibits the payment of travelling expenses; and had the tickets been given to the voters upon the express condition or stipulation that they were to vote for the respondent, or had they promised so to vote, I should have thought the case within the principle of the actual decision in *Cooper* v. *Slade*, and so a corrupt act, avoiding the election under sec. 92.

It was forcibly argued by the learned counsel for the appellants, that although the railway authorities were not in any sense agents of the respondent, yet the granting free tickets by the managing officer of a government railway, or a railway company, was a practice so liable to abuse, and one which would open the door to such an overwhelming amount of undue influence, that we ought, on grounds of public policy, and irres-

pective of any identification of the railway authorities with the candidate, and in the absence of all proof of agency, to mark it with disapproval by setting aside the election upon that ground alone. To this argument I can only repeat the answer already given by the Chief Justice, that if we were to accede to this argument we should be making, not administering, the law, and that whatever grounds such considerations may afford for alteration of the law, that is a matter for the appreciation of the Legislature and not one which can influence the decision of the courts.

Chalut's Case.

The conduct of the respondent and his agents in this case seems to me entirely free from any taint of illegality. Mr. *Chalut* was a warm supporter of the respondent, and the chairman of his principal committee. He was asked to go to a parish at some distance to canvass and make arrangements for the election, and $20 were sent him by the respondent for his expenses, and $5 by Mr. *Tranchemontagne*, a member of the committee. I can see no objection to this. The money was not an unreasonable indemnity for the ex-expenses and the loss of time of a professional man—a notary—for some four days. It is not and could not have been pretended that it was a colourable payment, cloaking a bribe, and I know of no law which prohibits the *bonâ fide* employment of electors for lawful purposes incidental to the election. The case was rightly dismissed by the court below.

Coté-Rithier's Case.

It is sufficient to say, as the learned judge held, that there was no evidence of any agency to identify the respondent with any act of Mr. *Coté*, and it is matter of surprise that this case, decided on grounds so very plain and satisfactory as those on which it has been

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placed by Mr. Justice *Doherty*, should have been made the subject of appeal.

Maxwell's Case.

It cannot be denied that the contents of the letter sent by *Daveluy* to *Maxwell* create a strong presumption that the money enclosed in it was intended, under color of paying for the entertainment of voters at a preceding provincial election, for the purpose of unduly influencing *Maxwell* and inducing him to support the respondent; in plain words, for the purpose of bribing him, and this presumption is not removed or weakened, but rather strengthened, by the extremely unsatisfactorily account which *Maxwell* gave of the transaction between *Daveluy* himself, and especially by his story about the account for butter and shingles, which is only put forward after the adjournment of the court has given him an opportunity of conversing with others. But the evidence wholly fails, in my opinion, to connect the respondent with the corrupt act of *Daveluy*, if we are to assume such an act as established. There is no proof of the agency of *Daveluy* himself. *St. Cyr*, though an agent of the respondent, as being a member of the committee, is not shown to have been privy in any manner to the purpose of *Daveluy*, or to have been cognizant of the contents of the letter in which the money was enclosed, or of the purpose for which it was designed. As to *Hénault*, his agency was a limited agency—that of a public speaker—and for his acts beyond those performed in that character the respondent cannot be made liable. No proposition in election law is better established than that an agent, who is not a general agent, but an agent with powers expressly limited, cannot bind the candidate by anything done beyond the scope of his authority. *Windsor* (1); *Dur-*

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

ham (1); *Bodmin* (2); *Westbury* (3); *Blackburn* (4); *North Norfolk* (5); *Harwich* (6).

Hénault was a paid agent, not a voter, having no connection with the election or with the respondent beyond this, that he was brought from *Montreal* and employed to make a speech on the Sunday after mass at the church door at *St. Damien.* Anything he did in the course of this special agency would have bound the respondent, but everything done out of the line of his special employment as an orator can, on the authorities referred to, have no such effect. I therefore concur with Mr. Justice *Doherty* in the conclusion at which he arrived, in this as well as in the other cases, and I am of opinion that the appeal must be dismissed with costs. It is satisfactory to be able to come to this conclusion, as upon a consideration of the whole evidence, I am convinced that the respondent desired and did his best to ensure a pure election, and I cannot help adding that I think the learned judge who tried the petition should have dismissed it with costs, which is the only respect, either as regards the results arrived at in the court below, or the reasons given for those results, in which I find any ground for differing from the judgment appealed against.

FOURNIER, J. :

La pétition attaque l'élection de l'Intimé pour menées corruptrices pratiquées par lui-même et par ses agents. Le siège n'est pas demandé pour son adversaire. Aux accusations portées contre lui, l'Intimé a répondu par une dénégation générale.

Lors de l'audition de la cause, plusieurs de ces accusations ont été abandonnées comme n'étant pas suppor-

(1) 2 O'M. & H. 137.
(2) 1 O'M. & H. 119.
(3) 1 O'M. & H. 47.
(4) 1 O'M. & H. 199.
(5) 1 O'M. & H. 236.
(6) 3 O'M. & H. 69.

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tées par la preuve. Les pétitionnaires n'ont insisté que sur cinq cas de corruption comme légalement prouvés, mais l'honorable juge *Doherty* qui présidait au procès étant d'un avis contraire, a renvoyé la pétition avec dépens, par son jugement du 21 fevrier 1883. C'est de ce jugement qu'il y a appel à cette cour.

Le premier de ces cas est celui de *Lamarche*, accusé comme agent de l'Intimé d'avoir payé les dépenses de voyage de dix-neuf électeurs pour se rendre de *Montréal* à *Berthier*, à leurs polls respectifs. L'honorable juge en parlant du fait reproché à *Lamarche*, le qualifie de la manière suivante :

That *Lamarche* gave passes from seventeen to twenty, and that he gave them to the voters referred to and that they travelled free on them from *Montreal* to *Berthier* to vote, and voted there is not and cannot be disputed.

L'honorable juge ayant reconnu que l'agence de *Lamarche* était prouvée, il est inutile d'analyser les témoignages pour faire voir que ce fait a été légalement constaté, d'autant plus que le conseil de l'Intimé a positivement admis devant cette cour que cette agence était prouvée.

D'ailleurs la preuve ne laisse aucun doute sur ce sujet.

Afin d'apprécier le véritable caractère de l'acte reproché à *Lamarche*, il est important de faire connaître le détail de ses entrevues avec les électeurs auxquels il a fourni des billets de passage.

Lamarche est conservateur et bien connu comme tel par la part active qu'il prend aux élections de son comté. Il demeure à *Berthier*, mais tient un bureau d'affaires à *Montréal* où il se rend tous les jours. Ayant été navigateur, il dit qu'il connaît tous les navigateurs. " Je connais *nos ennemis et nos amis.*" La veille de l'élection il se rendit à bord des bateaux à vapeur *Trois-Rivières*, *Chambly*, *Terrebonne* et *Québec* pour y voir les électeurs

de *Berthier* qui étaient employés à bord de ces bateaux. Il ajoute qu'il a toujours fait cette besogne dans les élections qui ont eu lieu l'été.

Il fit ce jour-là deux visites à bord de ces bateaux, la première entre neuf et dix heures du matin, pour s'assurer de la présence et des dispositions des électeurs qui se trouvaient à bord de ces bateaux, et la seconde vers une heure de l'après-midi pour leur donner les billets de passage qu'ils avaient exigés de lui lors de sa première visite pour aller voter.

D'après le témoin *Joly*, c'est entre 8½ et 9 heures du matin que *Lamarche* s'est rendu à bord du *Trois-Rivières.*

En arrivant, dit ce témoin, il a hâlé un papier ; il a nommé tous les voteurs à bord ; après qu'il a eu fini, il y a une couple de voteurs qui ont dit: "on aimerait à partir aujourd'hui ; si on ne part pas " aujourd'hui, on n'y va pas et on aimerait à avoir notre passage " pour aller et revenir, et on aimerait à aller chacun chez nous " avant d'aller voter." C'est tout ce que j'ai vu.

Q—Il avait une liste des électeurs qui travaillaient à bord, il les a appelés ?

R—Oui, monsieur ; il avait leurs noms sur un petit papier.

Q—Et tous les électeurs appelés sont-ils venus ?

R—Il manquait peut-être bien quelques-uns.

Q—Combien y en avait-il à peu près ?

R—Six à sept.

Q—Voulez-vous nous en nommer quelques-uns ?

R—Oui, monsieur: *Alfred Bruneau,* il y avait : *Dolphis Rocrais*

* * * *

Q—Ensuite ?

R—Il y en avait d'autres, je ne me rappelle pas de leurs noms là, mais je sais qu'il y en avait d'autres.

Q—Ils ont dit qu'ils voulaient avoir leur passage pour aller et revenir.

R—Oui, monsieur.

Q—Qu'est-ce que *Lamarche* a dit, là ?

R—Il a dit : " J'ai affaire à aller à bord d'un autre *steamboat,* je viendrai tous vous les apporter." Je n'ai pas connaissance quand il est revenu.

Q—Savez-vous si ces gens-là sont partis, toujours, pour aller voter.

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R—Oui monsieur.

Q—Vous dites que vous n'avez pas connaissance quand il est revenu ?

R—Non, monsieur.

Q—Quelle heure pouvait-il être quand il est venu dans ce temps-là ?

R—Entre huit heures et demie et neuf heures.

Q—Du matin ?

R—Oui, monsieur.

Q—Pour qui *Lamarche* cabalait-il ?

R—Il cabalait pour M. *Cuthbert.*

Q—Etait-il bien connu comme un partisan du Défendeur ?

R—Je pense que oui.

Q—Le saviez-vous vous-même que c'était un partisan de M. *Cuthbert ?*

R—Il avait l'air joliment chaud.

Q—Dans toutes les élections précédentes où M. *Cuthbert* s'était présenté avait-il l'habitude de travailler ?

R—Oui, monsieur.

Q—C'est un partisan zélé, n'est-ce pas ?

R—Oui, monsieur.

Dolphis Rocrais est un de ceux qui sont allés voter avec un billet de passage fourni par *Lamarche.* L'extrait suivant de son témoignage, confirme le fait important rapporté par *Joly* que ce sont les électeurs qui ont demandé des passes pour aller voter lorsque *Lamarche* s'est présenté à bord des bateaux la première fois le matin ; qu'il est ensuite revenu pour leur apporter les passes.

Il s'exprime comme suit à ce sujet :

Q—Qui vous avait donné cette passe ?

R—C'est M. *Lamarche.*

Q—M. *Olivier Lamarche* ?

R—Oui.

Q—Quand a-t-il été vous donner cette passe ?

R—Je ne puis dire le temps.

Q—Est-ce la veille ou l'avant-veille de la votation ?

R—C'est la veille.

Q—Le matin ?

R—Il est venu à bord le matin.

Q—Qu'est-ce qu'il est venu faire le matin ?

R—Il est venu voir comment il y avait de voteurs à bord.

Q—Lui avez-vous parlé ?

R—J'étais auprès.

Q—Qu'est-ce qu'il a dit ?

R—Il a dit qu'il avait affaire à aller à terre.

Q—Quand il est venu pour demander les noms, comment a-t-il demandé cela et à qui parlait-il ?

R—A M. *Pagé* et à plusieurs autres.

Q—Qu'est-ce qu'il a dit ?

R—Il a demandé le nom des voteurs.

Q—Avait-il une liste à la main ?

R—Je ne peux pas dire.

Q—A-t-il demandé : un tel, un tel est-il ici, comment a-t-il demandé ça ?

R—Je sais qu'il a demandé les noms des voteurs.

Q—Les voteurs d'où ? de Chicago, de Québec, de la Chine ?

R—De Berthier.

Q—Qu'est-ce qu'ils ont répondu ?

R—Ils ont dit qu'il y en avait et ils sont venus ; pas tous.

Q—Plusieurs sont venus ?

R—Oui, d'autres étaient en avant.

Q—Qu'est-ce qui s'est dit, ont-ils parlé de billets de passage ?

R—Ils ont demandé des passes ?

Q—Qui a demandé ces passes ?

R—Quelqu'un de nous.

Q—Pour aller et revenir ?

R—On a demandé des passes pour descendre.

Q—Qu'est-ce que M. *Lamarche* a dit ?

R—Il a dit : je vais aller à terre, j'ai d'autres affaires, et il nous a laissés comme ça. Ensuite il est revenu, il s'en allait midi, je crois, il nous a apporté des passes. Premièrement, il a été au salon et ensuite il nous a donné nos passes.

Dolphis Massé confirme les mêmes faits :

Q—Qu'est-ce que vous a dit le capitaine *Duval* quand il vous a donné cette passe-là ?

R—Premièrement, M. *Lamarche* est venu à bord demander quels étaient les voteurs qu'il y avait dans le *Steamboat*, moi-même, je lui ai nommé des gens que je connaissais qui avaient droit de vote ; il a marqué les noms, et il a monté en haut au salon ; il a demandé au capitaine *Duval* la permission d'avoir les voteurs ; le capitaine a dit : avec plaisir, je ne puis pas refuser cela ; ils sont maîtres d'aller pour qui bon leur semblera ; de sorte que M. *Lamarche* a parti ; il est allé à terre, et je n'ai pas vu rien de plus.

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Q—Il a vu les électeurs ?

R—Pardon ; il a eu la permission du capitaine, et il est venu à bord dans l'après-midi ; il a monté au salon ; il est venu trouver le capitaine ; il a vu plusieurs des gens qui sont ici présents et qui ont été entendus comme témoins. Je n'ai pas vu donner les passes moi-même, mais au moins il a monté en haut, et il a donné des passes au capitaine. J'en ai eu une qui venait du capitaine. Je ne peux pas dire si elle venait de M. *Lamarche* ou de d'autres ; mais je l'ai eue du capitaine.

Q—A-t-il été question de passes devant vous quand *Lamarche* est venu ?

R—La question des passes, je ne puis pas dire rien à l'égard des passes des autres. J'entendais dire que plusieurs désiraient en avoir, mais je ne peux pas dire rien de plus.

Octave Parent constate aussi le fait des deux visites de *Lamarche* de la manière suivante :

Q—Avez-vous vu M. *Olivier Lamarche* ce jour-là ?

R—Oui, monsieur.

Q—Eh bien, dans quelle occasion et à quel propos, l'avez-vous vu ?

R—Je l'ai vu au *gangway* de l'arrière qui s'informait des gens qui avaient droit de vote, et il appelait leurs noms.

Q—Il avait une liste ?

R—Celui qui était là, il avait un petit morceau de papier et celui qui se trouvait présent, il disait : il est ici.

Q—Ensuite ?

R—Il m'a demandé : Vas-tu voter ? J'ai dit oui. Il a dit : Si tu veux aller voter, je vais aller te chercher une passe. Je lui ai dit : C'est bien correct. Dans l'après-midi, il est venu avec une passe, ou un *ticket* ; c'était pareil à celui qui est exhibé ; je puis vous la montrer.

Joseph Pagé parle aussi de la visite du matin—mais il commet une erreur évidente en disant que c'est alors qu'il a eu sa passe :

Q.—Dites à la Cour dans quelles circonstances et où il vous a donné cette passe.

R.—Il est venu le matin à bord du steamboat le *Trois-Rivières*, il m'a demandé si je descendais ; j'ai dit : oui ; il a dit : " Voilà une passe si tu veux descendre, descends." J'ai descendu.

Q.—Aviez-vous besoin de cette passe-là pour descendre ?

R.—Eh bien ! je pense que oui.

.....

Q.—Vous connaissez bien M. *Lamarche* ?

R.—Oui, on a été élevés ensemble ici.

Q.—Il avait une liste, je suppose, avec le nom des électeurs ?

R.—Oui, je lui ai vu une liste.

Q.—A-t-il demandé des informations pour savoir si un tel et un tel étaient à bord ?

R.—Oui, je le lui ai dit.

Q.—Vous lui avez douné les noms des électeurs de *Berthier* qui étaient à bord ?

R.—Oui, de ceux que je pensais qui avaient droit de voter.

Q.—Il les a tous vus ces électeurs-là ?

R.—Oui.

Q.—Et il leur a donné une passe comme à vous ?

R.—Je pense bien que oui ; ils ont tous descendu.

Dans son témoignage, *Lamarche* dit qu'il est allé deux fois à bord des bateaux pour y voir les navigateurs qui étaient électeurs ; il y est d'abord allé le matin et y est ensuite retourné dans l'après-midi vers une heure ou deux. C'est après sa première visite aux bateaux qu'il a vu M. *Labelle*, l'agent des billets (*ticket agent*) du chemin de fer Q. M. O. & O., pour se procurer les billets qu'il a remis aux électeurs.

Tous ces témoignages établissent d'une manière certaine que *Lamarche* est d'abord allé aux *steamers* une première fois pour s'assurer du nombre de voteurs qu'il y avait et de leurs dispositions à aller voter. Les connaissant tous d'avance et depuis longtemps des conservateurs comme lui-même, il n'a pas eu, paraît-il, le trouble de les solliciter de voter pour son candidat, l'Intimé, car ils étaient eux-mêmes de ses partisans, bien disposés à voter, mais à une condition cependant, celle d'avoir leur passage pour aller et revenir. C'est la première chose dont on l'informe, comme le rapporte le témoin *Joly* : " On aimerait à partir aujourd'hui ; " si on ne part pas aujourd'hui on n'y va pas, et on " aimerait à avoir notre passage pour aller et revenir, " et on aimerait à aller chacun chez nous avant d'aller " voter." Ils ont demandé des passes, dit *Rocrais*.

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"J'avais besoin de cette passe-là pour descendre," dit *Pagé*.

Ainsi renseigné sur la disposition de ces électeurs de ne pas aller voter à moins d'avoir leur passage gratuitement, *Lamarche* se rend auprès de M. *Labelle*, le preposé à la vente des billets de passage (*ticket agent*) sur le chemin de fer Q. M. O. et O., alors la propriété du gouvernement de *Québec* qui l'exploitait pour son propre compte.

Lamarche rapporte comme suit son entrevue avec M. *Labelle*:

Q.—Vous n'avez pas eu besoin de demander d'autorisation, il vous les a accordés de suite?

R.—Oui, quand je suis allé au bureau de M. *Labelle* je lui ai dit que j'avais vu M. *Lamère* et que je lui avais demandé de laisser descendre les navigateurs. Je lui ai dit que M. *Lamère* leur donnait la permission de venir voter. Quand je lui (M. *Lamère*) ai demandé cela il ne m'a pas demandé si c'était pour M. *Cuthbert* ou M. *Sylvestre*. Je lui ai dit: Je voudrais les avoir pour venir voter. Il m'a dit: c'est malaisé, il faudra que vous vous arrangiez avec le capitaine, il faudra qu'il les remplace par les matelots du *Chambly*. Tâche de voir le capitaine *Lamoureux* et le capitaine *Duval* pour qu'ils s'arrangent. Je les ai vus et le capitaine *Lamoureux* du *Chambly* a promis des hommes au capitaine *Duval* du *Trois-Rivières* si ce dernier allait faire son voyage de plaisir le lundi soir.

Ensuite, c'est alors que je suis allé au bureau de M. *Labelle*. Je lui ai dit qu'il me fallait des passes et il m'a dit: "combien t'en faut-il? Je lui ai dit: dix-sept à vingt. Il m'a dit: "tu reviendras tantôt." Je suis repassé, j'allais voir M. *Wurtele* pour avoir deux hommes qui devaient venir voter; il y en avait un qui était employé sur le chemin à l'*Epiphanie*. Il m'a dit: tout ça sera arrangé. M *Grondines* m'a dit: vous avez une lettre ici pour vous.

Cettre lettre contenait les passes ou billets demandés. A l'argument l'Intimé a prétendu que ces passes avaient été données gratuitement. Il est vrai que *Lamarche* n'a rien payé pour les obtenir; mais en examinant les passes on voit de suite que ce sont des billets de passages ordinaires faits dans la forme suivante:

QUEBEC, MONTREAL AND OCCIDENTAL RAILWAY.

ONE FIRST CLASS PASSAGE.

Special.

From Hochelaga to Berthierville and Return.
In consideration of the *reduced rate* at which this ticket *is sold*, it will only be valid until 22nd June 1882.

L. A. SENECAL,
General Superintendent.

Form E.R.—5708.

A leur face il appert que les billets ont été vendus quoique à un taux réduit, et la preuve établit que la valeur de ces billets était de $1.50 chaque.

Ce fait constitue-t-il une violation de la section 96 de l'acte des élections de 1874 ? Cette section défend le louage de voitures pour le transport des électeurs aux polls, le paiement des passages de chemin de fer ou autres dépenses des voteurs, par un candidat ou ses agents et déclare tels actes illégaux et punissables d'une amende de $100. La section 98 met en outre ces actes au rang des menées corruptrices.

Dans le cas actuel il y a une preuve *primâ facie* du paiement des billets de passage en question. C'est celle qui résulte des billets eux-mêmes comportant la déclaration qu'ils ont été vendus à prix réduits. *Lamarche* dit bien qu'il n'a rien payé lui-même, mais comme ils ne lui sont parvenus qu'après avoir passé en diverses mains, il n'est pas en état de dire s'ils ont été donnés ou remis en échange du prix ordinaire. L'agent des billets, *Labelle*, n'ayant pas été appelé comme témoin, on ne doit point présumer contre la preuve faite par les billets, qu'il les a donnés sans en recevoir le prix. D'autres partisans que *Lamarche* ont pu en payer le prix. *Labelle* lui-même, s'il ne l'a pas reçu de quelqu'un a dû sans doute s'en charger puisqu'il les a vendus, ainsi que les billets le comportent. Il est donc certain que ces billets ont été vendus, bien qu'on ne sache pas par qui ils ont été payés. Toutefois, d'après la preuve il n'est pas possible de dire qu'ils ont été donnés. Pour

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en arriver à cette conclusion, il aurait au moins fallu faire entendre *Labelle* pour constater qu'il n'a reçu de personne le prix des passages en question, et qu'il était autorisé à faire de pareilles libéralités. En l'absence d'une telle preuve on doit présumer que *Labelle* n'a livré les billets qu'après en avoir reçu le prix, ainsi que les billets en font foi.

En conséquence je considère la preuve faite comme étant suffisante pour constater que le paiement des passages de chemins de fer de ces 17 ou 20 voteurs a été fait en contravention à l'acte des élections de 1874. Ce paiement étant, par la section 98, mis au rang des menées corruptrices, doit entraîner la nullité de l'élection.

Si *Labelle* a donné les billets et s'il avait le pouvoir de le faire, on n'aurait sans doute pas manqué d'en faire la preuve Aucune tentative à cet effet n'a été faite. Si les billets ont été donnés sans autorisation, ce serait un détournement frauduleux commis au détriment du gouvernement, propriétaire du chemin de fer, et le prix lui en serait dû par *Labelle* aussi bien que par ceux qui en ont profité. En admettant même qu'il n'ait rien été payé et qu'il ne soit rien dû pour ces billets, leur remise aux électeurs en question et dans les circonstances particulières ci-dessus rapportées, ne constitue-t-elle pas une violation de la section 92 de l'Acte des Elections de 1874 ?

Le premier paragraphe de cette section est ainsi conçu :

Every person who directly or indirectly, by himself, or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or endeavour to procure, any money or valuable consideration, to or for any voters, or to or for any person on behalf of any voter, or to or for any person, in order to induce any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

Sur ce point de la cause, en prenant pour vrai que les billets en question ont été remis gratuitement, l'honorable juge *Doherty* s'exprime ainsi :

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

Se fondant sur l'autorité du juge *Mellor* dans la cause de *Bolton* (1) l'honorable juge *Doherty* en vient à la conclusion que des billets donnés comme l'ont été ceux dont il s'agit ne constitue pas une valable consideration (*valuable consideration*) suivant l'intention de l'acte des elections.

Dans cette cause, il s'agissait de savoir si le paiement des dépenses de voyage des voteurs constituait un acte de corruption.

Une circulaire conçue dans les termes suivants avait été adressée à des électeurs :

CROSS AND KNOWLES', COMMITTEE ROOMS,

2nd February, 1884.

DEAR SIR,—Your name being on the list of Parliamentary voters for this borough, you are entitled to vote at the forthcoming election We inclose you a railway pass, on presenting which at the railway station named you will be furnished with a railway ticket to convey you to Bolton and back again. I trust you will be able to make it convenient to come over and record your vote in favor of Messrs. *Cross* and *Knowles*.

Les pétitionnaires prétendaient que l'envoi de cette lettre et des passes de chemin de fer constituait soit un acte de corruption, conformément à la doctrine consacrée par la Chambre des *Lords* dans la cause de *Cooper vs Slade*, soit encore un acte de corruption en contravention à la sec. 2 de l'acte des menées corruptrices de 1854 ; et 2° que si ce n'était pas un acte de cor-

(1) 2 O'M. et H., p. 147-8-9.

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ruption que c'était dans tous les cas un acte illégal qui, ayant été volontairement et systématiquement fait dans le but d'influencer l'élection, devait avoir l'effet de la faire déclarer nulle.

Il serait inutile de rapporter les arguments faits par l'honorable juge pour établir une distinction entre cette cause et celle de *Cooper* et *Slade* dont il admet la doctrine. Il suffit de dire que suivant son interprétation la circulaire dans cette cause ne faisait pas comme dans celle de *Cooper* et *Slade*, de la remise des passes une condition du vote, et que dans son opinion les passes ne pouvaient pas être considérées comme une considération valable (*valuable consideration*) suivant l'intention de la section 2 de l'acte des menées corruptrices. Ayant écarté ces deux objections, il lui restait à décider si le paiement des dépenses de voyage des électeurs qui n'était alors, d'après la loi impériale, que simplement traité comme un acte illégal, punissable par amende, pouvait avoir de plus l'effet d'entraîner la nullité de l'élection.

L'honorable juge, après avoir fait l'historique de la législation impériale au sujet du paiement des dépenses de transport des voteurs, et bien clairement constaté que la loi anglaise en déclarant ce paiement illégal n'en avait pas fait une menée corruptrice, qu'elle avait soigneusement évité d'en faire la déclaration (1), conclut en ces termes :

> I agree with the opinion of the late Mr Justice *Willes;* he was decidedly of opinion that a violation of an Act of Parliament which itself created the offense and provided the penalty could not avoid the election; all it did was to inflict penal consequences upon the persons who did the act.

Cette dernière proposition est certainement correcte, et la conclusion à laquelle en vient l'honorable juge que le paiement des frais de transport des voteurs

(1) 2 O'M. et H. 149.

tout en étant illégal ne pouvait avoir l'effet d'entraîner la nullité de l'élection et qu'il ne constituait pas une menée corruptrice ayant cet effet, est en stricte conformité à la loi anglaise. Mais c'est faire une étrange confusion et méconnaitre complètement l'état de notre propre législation sur le même sujet que de vouloir faire application à la présente cause des principes de la décision rendue par l'honorable juge *Mellor*, en conformité de lois différentes.

Au contraire de la loi impériale notre acte d'élection, de 1874, déclare positivement que le paiement du transport des voteurs, est une menée corruptrice. La section 96 déclare comme suit:

And whereas doubts may arise as to whether the hiring of teams and vehicles to convey voters to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law, it is declared and enacted, that the hiring or promising to pay or paying for any horse, team, carriage, cab, or other vehicle by any candidate or by any person on his behalf to convey any voter or voters to or from the poll, or to or from the neighbourhood thereof, at any election, or the payment by any candidate, or by any person on his behalf of the travelling and other expenses of any voter, in going to or returning from any election, are and shall be unlawful acts.

Le reste de la section prononce une pénalité de $100 pour chacune de ces offenses, et la peine de déqualification contre tout voteur pour louage de voitures en contravention à cette section. La loi anglaise, comme notre section 96, a prononcé la peine d'amende contre ces offenses,—mais la nôtre est allée beaucoup plus loin ;—par la section 98, elle a déclaré que les offenses énumérées dans la sec. 96 constitueraient des menées corruptrices, suivant l'intention de l'acte desélections. La sec. 98 déclare que :

The offence of bribery, treating, or undue influence, or any of such offences, as defined by this or any other Act of the Parliament of Canada, personation, or the inducing of any person to commit personation, *or any wilful* offence against any one of the six next

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preceding sections of this, Act shall be corrupt practices within the meaning of the provisions of this Act.

Il est évident, d'après la dernière partie de cette section que la section 96 se trouve sujette à l'effet de la sec. 98—et que partant tous les actes mentionnés dans cette dernière section, sont déclarés être des menées corruptrices. C'est ce qu'a décidé cette Cour dans la cause de l'élection de Selkirk, (1)

Comme on le voit notre législation ne laisse aucun doute sur la question de savoir si le paiement du transport des voteurs constitue une menée corruptrice. L'honorable juge *Mellor*, s'il avait eu à décider cette question d'après nos lois, n'aurait sans doute pas eu un seul moment d'hésitation à déclarer le contraire de ce qu'il a décidé correctement d'après la loi anglaise.

L'appelant essaie encore de tirer avantage de l'argument fait par l'honorable juge *Mellor* pour établir que la remise des passes ne pouvait pas être considérée comme une *valable considération* suivant l'intention de la sec. 2, acte de 1854—menées corruptrices, acte imp. Essayant de démontrer qu'il n'y avait pas en cela un acte de corruption, l'honorable juge dit à ce sujet :

It is difficult to see in what it can be a valuable consideration to a voter. The coming to vote and voting may be so deemed by the sender; he may think he may get value, but it is difficult to see what value the voter gets by a free pass to the poll.

L'honorable juge ne fait aucun raisonnement pour démontrer que la remise d'une passe n'est pas en réalité une valable considération ; et il faut avouer qu'il est difficile, pour ne pas dire impossible, d'en faire pour démontrer une pareille proposition. Il se borne à dire qu'il est difficile de voir quelle valeur reçoit le voteur par la remise d'une passe pour aller au poll. Ceci serait assez vrai si l'on fait abstraction des devoirs du voteur, si l'on considère que son intérêt matériel du moment, et que pour lui c'est un dérangement de ses affaires

(1) 4 Can. S. C. R. 494.

ordinaires, que c'est une perte de temps d'aller au poll pour laquelle la promenade qu'on lui fait faire gratuitement n'est pas une compensation, on peut alors dire comme l'honorable juge qu'on ne serait pas où est l'avantage du voteur. Mais si on se place à un point de vue plus élevé, si on considère que le droit de franchise accordé au voteur est un devoir de la plus haute importance qu'il doit exercer librement et sans aucune considération dans l'intérêt public ; si on l'envisage au point de vue du principe énoncé par *Lord Mansfield :*

That one of the principal foundations of the constitution depends on the exercise of the franchise, that the elections of members of Parliament should be free, and particularly that every voter should be free from pecuniary influence ;

on comprendra alors bien facilement quel avantage, valeur ou considération reçoit le voteur qui au lieu d'aller de lui-même, à ses dépens, enregistrer son vote, reçoit ses frais de transport sous la forme d'une passe. Deux voteurs voisins partent ensemble pour aller voter disons, comme dans le cas actuel, de *Montréal* à *Berthier*, l'un paie son billet dont le prix est de $1.50, l'autre a reçu d'un *Lamarche* quelconque une passe avec laquelle il fait le même voyage sans rien débourser. Par quel étrange abus du raisonnement peut-on dire que le dernier n'a pas effectivement reçu sous la forme de cette passe une valable considération au montant de $1.50. Cette passe pour lui avoir été donnée n'a-t-elle pas autant de valeur que le billet, n'en coûte-t-il pas autant à la compagnie du chemin de fer pour les frais du transport de celui qui a une passe gratuite que pour celui qui a un billet dont il a payé le prix. Tous deux reçoivent par leur transport un service de même valeur, avec la différence que l'un le reçoit gratuitement et que l'autre en paie le prix. Pour appuyer cette prétention si contraire au plus simple bon sens, on fait encore une comparaison qui n'a de valeur que par son manque

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absolu de justesse. C'est celle de comparer une passe de chemin de fer au service que rendrait un particulier se rendant au poll qui dépassant en route un électeur qui s'y rend à pied, lui offre de monter dans sa voiture pour faire ce trajet. Mais on oublie qu'il y a plus de points de dissimilitude que de ressemblance entre les deux choses comparées. Le particulier est absolument libre dans l'emploi de sa voiture ; il n'est sujet au contrôle de personne ; il peut la louer s'il le veut, en donner l'usage gratuitement il n'a de compte à rendre à personne. Il n'en est pas de même des administrations de chemins de fer, elles ne sont que des fidéicommissaires administrant la propriété des actionnaires, spécialement dans le but d'en tirer du profit ; leur administration est réglementée dans ses plus petits détails. Elles ne pourraient pas comme un particulier user généreusement de leurs moyens de transport, les mettre gratuitement à la disposition des électeurs, sans une autorisation spéciale à cet effet, à moins de forfaire à leur mandat. On ne peut donc pas comparer le fait du particulier qui prend en route un voteur dans sa voiture, avec le fait d'émission gratuite de passes par les compagnies de chemins de fer.

Il est inutile de faire remarquer à quels abus extraordinaires donnerait lieu l'admission de la doctrine que la remise de passes aux électeurs pour les faire transporter au poll n'est pas une valable considération constituant un acte de corruption, suivant le parag. 1er de la sec. 92, en même temps qu'une violation de la sec. 96, déclarée une menée corruptrice par la sec. 98. La décision de la Chambre des Lords dans la cause de *Cooper* et *Slade* est tout à fait applicable à la présente cause. La condition d'avoir des passes pour aller voter, quoique imposée à *Lamarche* par les électeurs eux-mêmes et acceptée par lui, n'en constitue pas moins une considération sans laquelle, il est clair, comme le disent

ces électeurs, ils ne seraient pas allés voter. Cette condition fait rentrer exactement le cas actuel sous l'effet de la décision de *Cooper* et *Slade*.

La question du paiement des frais du transport des voteurs au poll est déjà venu devant nos cours et a été déclaré dans la cause de *Hickson vs Abbott* (1) constituer un acte de corruption. La question a été soulevée dans les circonstances suivantes :

A person had been furnished with a list of voters in *Montreal*, which he had given to one *Boswell* with instructions to see them. The respondent telegraphed him two names to be added to the list, and asked him to procure certain canvassers at *Montreal* and to send them to the county. This person sent to *Boswell* to obtain the canvassers, and gave him nine railway tickets to be furnished to them. *Boswell* seeing two persons on the platform whom he knew to be voters, *going up to vote*, gave to each of them one of the tickets. He returned two, but it was not proved what he did with the remainder.

Held : That under the circumstances *Boswell* was an agent of the respondent, and that the delivery of the tickets to the voters were corrupt and sufficient to avoid the election.

Dans cette cause de *Hickson vs Abbott* on voit que non-seulement les voteurs comme dans le cas de *Berthier* étaient disposés à voter, mais qu'ils s'y en allaient de fait, *he knew the voters were going up to vote.* Malgré cela, la remise des billets de passage dont les électeurs n'avaient pas fait une condition, comme l'avaient fait ceux dont il s'agit en cette cause, fut considérée comme un acte suffisant de corruption. A plus forte raison doit-on conclure de la même manière lorsque la remise du billet a été exigée par le voteur comme condition pour aller voter. Dans la cause de *North Simcoe*, il a été décidé par l'honorable vice-chancellier *Strong*, maintenant membre de cette cour, que le paiement des dépenses de voyage des électeurs pour aller au poll et en revenir, était une menée corruptrice entraînant la

(1) 25 L. C. Jurist 290.

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nullité de l'élection. La loi d'*Ontario* sur laquelle cette décision a été rendue contenait la même disposition à cet égard que la loi fédérale.

Dans les deux derniers cas cités, il est vrai que la preuve du paiement des billets dans un cas et celle du paiement du prix d'un train de chemin de fer dans l'autre a été faite, mais la position du voteur n'était pas différente de celle de celui qui reçoit une passe gratuite. L'avantage dans les deux cas est le même, et en réalité il y a toujours paiement des frais de transport C'est aux dépens du candidat ou de ses agents lorsque le prix des billets est acquitté par ceux-ci, et aux dépens de la compagnie de chemin de fer lorsque le voteur est transporté au moyen d'une passe donnée par celle-ci, et dans tous les cas il y a un acte de corruption suffisant pour faire déclarer l'élection nulle.

Il y a un autre cas bien flagrant de corruption, c'est celui de *Maxwell.* Ce voteur, ordinairement partisan zélé et actif, avait manifesté de la mauvaise humeur et de l'indifférence dans l'élection dont il s'agit à propos d'une prétendue dette qu'il réclamait pour une élection antérieure. Deux jours seulement avant la votation, il reçut une lettre sans signature, contenant $25.00, et les seuls mots "envoyez fort vous et vos garçons." La lettre ne contenait aucune autre explication. La lettre et l'argent furent remis à *Maxwell* par le témoin *Hénault*, envoyé par le comité central conservateur de *Montréal* pour prendre part à l'élection, etc.

Sur invitation, il changea sa première destination et s'arrêta à *Berthier.* Comme le comité local du défendeur avait besoin de quelqu'un pour aller porter la parole aux électeurs de *St-Damien*, le lendemain, dimanche, on demanda *Hénault* pour remplir cette fonction. Ce doit être le président du comité, dit-il, qui lui fit cette demande.

Je me rappelle qu'on m'a dit quand je suis arrivé ici le soir, le samedi soir, la veille de ce dimanche, je ne connaissais personne dans le comité. Mais on m'a dit, je sais que les autorités du comité, le président ou un autre m'a dit: vous allez à *St Gabriel* et ensuite on m'a dit: vous irez à *St Damien*.

Il ajoute que ce sont les gens du comité qui lui ont dit cela et qu'on l'y a fait conduire en voiture.

Dans cette entrevue au comité, il se rappelle avoir vu M. *Tellier*, M. *Chalut*, des membres importants de ce comité, et le défendeur lui-même qui savait que *Hénault* allait à *St-Damien*. C'est au comité qu'il dit avoir reçu ses instructions et qu'on lui a dit qu'il devait aller à *St-Damien* représenter le défendeur et rencontrer suivant toute probabilité le sénateur *Guévremont*. *Hénault* avait en outre, le même soir, reçu de *St. Cyr*, un autre membre du comité, la commission de remettre personnellement, au nommé *Maxwell* de *St-Damien* une lettre en lui disant: " fais-y attention, il y a de l'argent dedans." La lettre avant d'avoir été remise s'étant trouvée décachetée dans ses poches, il a vu qu'elle contenait la somme de $25 et les mots rapportés plus haut: " Envoyez fort, vous et vos garçons."

Après s'être acquitté de la première partie de ses fonctions en adressant la parole aux électeurs de *St-Damien*, après la messe, il se rendit chez *Maxwell* et lui remit la lettre et les $25.00. Ce dernier joua la surprise, et dit en recevant cet argent qu'il devait y avoir erreur.—" Cà doit être une trompe," dit-il. Il a ajouté qu'il n'attendait d'argent de personne dans le moment. Sur les instances de *Hénault*, il prit l'argent en disant: " C'est bon, si c'est pour moi, je le garderai, et si ce n'est pas pour moi, je le renverrai, et il l'a gardé."

Dans son témoignage il donne plusieurs versions contradictoires pour expliquer l'origine de cet argent. Dans ses réponses comme témoin il dit que c'est de l'argent que *Daveluy* lui devait et qu'il lui a envoyé

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pour les dépenses de l'élection de M. Robillard; aussi pour une promesse de donner la majorité dans la paroisse et pour des dépenses faites chez lui. Ce n'est pas vingt-une piastres qu'il lui avait promis, c'était une récompense. *Hénault* lui a dit que c'était l'argent pour l'élection; mais il ne savait pas si c'était pour celle-là ou bien pour l'autre. Questionné de nouveau sur ce que *Hénault* lui a dit en remettant l'argent, il fait le récit incohérent qui suit :

R.—Il ne m'a dit rien que cela : " Voilà de l'argent que j'apporte pour les élections " ..... J'ai dit : " de l'argent pour les élections, j'en porte pas pour personne..... M. *Cuthbert* ne m'a jamais mis ou donné d'argent en mains "..... J'ai dit : " l'argent laissez-le en dépôt "..... Il a dit : " Ils m'ont dit de le laisser ici, je le laisse." Il a mis l'argent dans les mains de ma femme et il y est encore. Je n'ai pas promis une *cent* dans l'élection de M. *Cuthbert*, ni je n'ai donné une *cent* à personne.

Q.—Dans ce temps-là, vous prétendez qu'il vous était dû vingt-cinq piastres pour l'élection de M. *Robillard* ?

R.—Je ne vous dis pas qu'il m'était promis vingt-cinq piastres ; je vous ai dit qu'il m'était promis une récompense.

Par la suite de son témoignage on voit qu'il prétend qu'une promesse de récompense lui avait été faite par *Daveluy* dans une élection précédente entre *Robillard* et *Sylvestre*, et que c'est en exécution de cette promesse que les $25 en question lui avaient été envoyées. Il confirme cette assertion dans plusieurs autres parties de son témoignage.

Comprenant le danger d'une telle preuve, le savant conseil du défendeur fait de grands efforts pour faire admettre à *Maxwell* que ce devait être en paiement d'un compte que *Daveluy* lui avait fait remettre la somme en question. Malgré cela, *Maxwell* persiste toujours à dire que c'est pour une récompense promise. Il dit positivement qu'il n'avait rien vendu à *Daveluy* ; que *Daveluy* ne lui devait rien en dehors de cette promesse, ni pour provisions ni autre chose qu'il

aurait eu de lui. Il répète encore une troisième fois, positivement, que *Daveluy* ne lui devait rien. Mais chose extraordinaire, la cour s'ajourne pendant quelques instants, et de suite, *Maxwell* est approché par *Lamarche*, l'homme aux billets de chemin de fer, et après quelques instants d'entretien avec lui, il revient reprendre la suite de son témoignage dans lequel il contredit, avec une audacieuse impudence, tout ce qu'il vient de dire au sujet des $25. Après son entretien avec *Lamarche*, il demande à ajouter ce qui suit à son témoignage:

Quand j'ai dit dans mon examen que *M. Daveluy* ne me devait rien en dehors de cette promesse, je me suis trompé. Depuis que j'ai rendu mon témoignage je me rappelle, en effet, que *M. Daveluy* me devait une tinette de beurre de trente-sept livres et cinq ou six caisses de bardeau. Le tout évalué à vingt-deux piastres. Quand j'ai rencontré *M. Daveluy* il m'a demandé si j'étais content; mais ne m'a pas dit que l'argent qu'il m'avait envoyé était à cause de la récompense; c'est moi qui l'ai compris comme cela.

Les transquestions qui lui ont été soumises font voir que ce récit n'est qu'un tissu de faussetés qui mériterait plus d'être discuté dans une poursuite pour parjure que dans une contestation comme celle-ci. Quoi qu'il en soit, dans tout cet amas de faussetés, de contradictions et de mensonges qui forment son témoignage, *Maxwell* en a dit beaucoup plus qu'il ne faut pour prouver l'acte de corruption dont il s'est rendu coupable. Sur ce point je ne crois pas que les opinions de la cour soient partagées.

Il ne reste donc qu'à savoir si l'on peut en faire remonter la conséquence jusqu'au membre siégeant et si la preuve de l'agence est suffisante pour produire cet effet.

Les faits rapportés plus haut au sujet d'*Hénault* constatent amplement son agence. C'est de *St-Cyr*, un des membres du comité et partisan actif du défendeur, qu'il reçoit la lettre qu'il doit remettre à *Maxwell*, et du comité qu'il prend ses instructions pour aller soutenir

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les intérêts de la candidature du défendeur, à *St-Damien*, et à la connaissance de ce dernier. C'est encore dans le comité que le lendemain il reçoit ses instructions et ses documents pour aller représenter le défendeur à un poll dans l'Isle *Dupas*.

Il n'est pas possible de ne pas considérer *Hénault* comme agent du défendeur en appliquant aux faits de cette cause la doctrine énoncée au sujet de l'agence par le juge *Blackburn* dans la cause de *Taunton*. Après avoir fait observer que les règles concernant l'agence en matières parlementaires sont bien différentes de celles de l'agence d'après la loi commune. Il ajoute :

But in parliamentary election law, it has long been established that where a person is employed for the purpose of procuring his election, he, the candidate is responsible for the act of that agent in committing corruption, though he himself did not intend it, but even *bonâ fide* did his best to prevent it.

Quoique les faits établissent suffisamment que *Hénault* était un agent, si cependant on le considérait que comme un sous-agent, ses actes auraient encore les mêmes conséquences sur la validité de l'élection. Sir *William Ritchie*, le président de cette cour, a énoncé ce principe de la manière suivante dans la cause de *Cimon* et *Perrault* (1).

The law would indeed be childishly weak were it not able to reach the corrupt acts of a sub-agent. The law as to the employment of sub-agents seems to me very clear. A candidate cannot take the benefit of the services of the individual and repudiate them at the same time (1).

Mellor, J., dans la cause de *Barnstable*.

Les principes en matière d'agence électorale sont trop bien connus pour qu'il soit nécessaire de citer beaucoup d'autorités sur ce point. Il suffit de référer à celles contenues dans le factum des Appelants et à celles mentionnées dans les causes citées.

Comme il est impossible d'ajouter foi à l'explication

(1) 5 Can. S. C. R. 146.

donnée en dernier lieu par *Maxwell* que les $25 étaient en paiement d'un compte, et que l'on ne peut faire autrement que d'adopter sa première version tant de fois répétée que c'était en paiement d'une dette d'une élection précédente, il n'est pas douteux qu'un semblable paiement est un acte de corruption. Cette question a déjà été décidée bien des fois, et entre autres dans la cause de *North Ontario* (2), dans celle de *Coventry* (1) et aussi dans la cause d'*Argenteuil* (3.)

Sil eût eté possible de donner une explication de ce paiement qui n'eût pas été aussi compromettante que celle de *Maxwell*, le Défendeur eût sans doute fait entendre *Daveluy*. L'omission de faire entendre ce témoin forme une forte présomption que le fait en question ne pouvait pas être contredit. Cette doctrine est adoptée dans la cause de *Bewdley* (4) et dans celle de *Tewkesbury* (5). Il doit donc rester établi d'après les autorités que les $25 étaient pour payer une ancienne dette d'élection. Ce paiement n'eût sans doute pas été fait pendant l'élection qui était à la veille de se terminer, si l'on n'eût pas senti la nécessité de réveiller le zèle de *Maxwell*. Aussi c'est avec une espèce de cri de guerre qu'on lui remet cet argent: " Envoyez fort, vous et vos garçons."

Je n'ai aucun doute sur les deux points soulevés par ce cas ; je suis d'opinion que le paiement des $25, constitue un acte de corruption et que l'agence de *Hénault* est amplement prouvée.

Il reste encore deux autres cas, ceux de *Rithier* et de *Chalut*.

Dans le premier il s'agit des frais de transport d'un électeur au poll, je suis d'opinion que l'agence de *Côté* qui a fait l'engagement n'est pas suffisamment prouvée.

(1) Hodgins Election Cases, 341.
(2) 1 O'M. et H., 98.
(3) 26 L. C. Jur. 94.
(4) 44 L. T. N. S. 283.
(5) Même vol., p. 192.

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Quant au notaire *Chalut*, il s'agit d'une somme qui lui a été payée pour l'envoyer dans la paroisse de *Saint-Gabriel* pour organiser les partisans du défendeur. C'est comme cabaleur payé (*paid canvasser*) qu'il a été envoyé là. Il n'est pas prouvé qu'il ait fait aucun acte de corruption ou autre acte illégal quelconque pendant les quelques jours qu'il a passés dans cette paroisse à soutenir les intérêts de la candidature du défendeur. La section 73 de l'acte des élections autorise l'emploi de cabaleurs salariés,—mais dans le cas où le cabaleur est voteur il est déqualifié. C'est la seule peine prononcée par la loi. Dans l'élection de *Québec-Est* (1), on a mis en question la légalité de cette faculté qui mène fatalement à l'abus. On y avait employé un nombre assez considérable pour faire voir que l'emploi des cabaleurs était un moyen indirect de s'assurer le vote par une considération pécuniaire. Toutefois l'honorable juge *Meredith* qui décida la cause, quoique d'opinion qu'il y avait eu de l'imprudence dans l'emploi d'un aussi grand nombre de cabaleurs, ne crut pas qu'on s'était rendu jusqu'à l'abus. Mais comme il était évident, que l'emploi de cabaleurs salariés ne pouvait avoir que de mauvais effets, la législature de *Québec* a fait disparaître cette disposition de ses lois électorales. La législature d'*Ontario* en a fait autant. Cette disposition ne fait plus tache que dans les lois électorales qui, il faut l'espérer, feront bientôt disparaître la faculté d'employer ces personnages de caractère le plus souvent plus que douteux —ignorants, absolument incapables de traiter des affaires publiques, n'ayant presque pas d'autres armes que la calomnie—faisant la plupart du temps leur vile besogne la nuit—toujours hors la présence d'un adversaire et qu'on devrait proscrire comme n'étant que des calomniateurs à gage. Cependant cette disposition existant encore dans la loi fédérale, il était loisible au défendeur

(1) 1 Q. L. R. 295.

d'en prendre avantage, et comme son cabaleur *Chalut*, que je ne veux pas du tout comparer à ceux auxquels j'ai fait allusion plus haut, n'a fait aucun acte illégal en s'acquittant de sa mission, l'élection du défendeur ne saurait être aucunement affectée en conséquence de ce fait.

En terminant je veux ajouter une observation sur le principe que l'on a essayé d'établir dans cette cour, viz. :—qu'une fois qu'un juge en première instance a prononcé sur les faits, qu'il a rendu, comme on dit, son *finding* sur ces faits, qu'une cour d'appel ne doit pas renverser ce *finding*. Je crois qu'admettre ce principe est une violation directe du statut qui a créé cette cour. Le droit d'appel est sans limite sur le droit comme sur les faits, et il est du devoir de tous les juges d'examiner la preuve comme le juge de première instance et de rendre le jugement qu'ils croient que ce juge de première instance aurait dû rendre. Les juges de cette cour ne sont aucunnement liés par le jugement de la cour inférieure C'est une grave erreur, suivant moi, et c'est une erreur qui priverait un grand nombre de plaideurs de leur droit d'appel. Ce principe n'a jamais été énoncé comme il l'a été dernièrement, et je crois devoir protester contre une pareille doctrine qui tend à faire disparaître le droit d'appel dans le neuf-dixièmes des causes. Je dois ajouter cependant que lorsque le juge en première instance prononce sur la crédibilité d'un témoin, son appréciation du témoignage doit indubitablement prévaloir, car il a l'avantage d'apprécier le témoignage par l'apparence du témoin, son hésitation ou sa promptitude à répondre, et si, dans un pareil cas, le juge déclare qu'il croit un témoin plus qu'un autre, alors une cour d'appel ne doit pas intervenir, mais autrement, je le répète, je proteste contre l'admission d'une pareille doctrine.

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Having come to a conclusion with regard to the matter of the railway tickets supplied by *Lamarche* to seventeen or eighteen voters to go from *Montreal* to *Berthier* to vote which, to my mind, is sufficient to avoid the election under consideration in this case, I think it unnecessary to refer to the other corrupt practices charged. The fact of the agency of *Lamarche* was satisfactorily proved and admitted on the trial. Is then the giving of the tickets in the way they are shown to have been given by *Lamarche*, a corrupt act under statutory provision so as to avoid the election ?

They were issued at a reduced rate for going and returning, and are on their face *primâ facie* evidence that they had, or were to have, been paid for. The railway was then owned by the Province of *Quebec* and operated by a general manager under its government. They were issued by the ticket agent at the request of *Lamarche*. The latter had been at a previous election a supporter and active canvasser for the respondent, and was well known as such at the late election. He asked for the tickets to be made good from the day he applied for them until the evening of polling day. No names were inserted in them as is done in the case of free passes. This took place at the railway office in *Montreal* before polling day.

From the testimony of *Lamarche*, it appears that he saw the several voters who were sailors working on board of four steamers and obtained their consent to go to *Berthier* to vote on certain conditions hereinafter referred to. He subsequently obtained the consent of the masters of the steamers to the sailors going to *Berthier* to vote. He then obtained the tickets, and the parties, or the most of them, went to that place and voted, as we may assume, for the respondent. The

same thing, it appears, had been done at a previous elections, but if it was illegal the repetition must also be illegal. The first, then, that is told us about obtaining the tickets is what took place between *Lamarche*, and *Labelle*, the ticket agent. Neither the latter nor *Grondine*, who gave them to *Lamarche*, were examined, nor did the respondent, in his evidence, refer to them, or in any way negative payment for them. *Lamarche* says he did not pay for them, but there is nothing to shew that they were not paid for. *Lamarche*, then, having given them, and they being worth to each voter that used them about a dollar and a half, we must conclude that they were of value to that extent to the parties that got them. Although *Lamarche* did not pay for them, it does not follow that they were not paid for. He says he got them as he had done before, but without any explanation as to how, or upon what terms, they had been previously obtained. If they were gratuitously given, that could easily have been shown by *Labelle* or some other in the ticket office. If they had not been purchased it was easy to have shown it. When it was in the power of the respondent to have shown it, and he fails to do so, the conclusion should be that they were purchased. The presumption in the absence of any explanation is that they were paid for by, or charged to, some one. I think the onus was upon the respondent, to show that a public officer situated as *Labelle* was had assumed the responsibility of giving away the revenue of his employers. I do not mean to say that it might not have been shown that that officer acted by direction from those above him, but as far as the evidence upon the point goes,—and by that alone are our conclusions to be arrived at—before we reach the point that the tickets were given gratuitously, we must assume that *Labelle* had done a wrong to those in whose interest he was engaged. I think under the

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evidence I am not warranted in arriving at that conclusion. That they were not paid for must be an exception to the general rule, and if such an exception was made, it was for the respondent to prove it. In election cases, where attempts are so common to avoid statutory prohibitions, proof of such circumstances are more imperatively required. I am not, however, compelled to decide whether the tickets were paid for or not, as I view the law. *Lamarche* first ascertained how many were willing to go, and then he got a sufficient number of tickets for them. The greater number of the recipients, if not the whole of them, went to *Berthier* and voted. Would all, or any of them, have gone if they had not got them? and had not other conditions insisted on by the voters also been complied with? To see the effects and trace the results of the means adopted by *Lamarche* to secure the votes of the electors in question, I will refer to one of many statements in evidence. It may be alleged that he, when giving the tickets, did not make any condition as to the party for whom the parties were expected to vote. We have, however, the fact that *Lamarche* was actively engaged as the respondent's supporter at previous elections, and no doubt knew how these men had voted previously. His residence was at *Berthier* (although he had an office in *Montreal*), and he personally knew them, and no doubt had good reason to believe that every one of them that could be induced to go to the election, would vote for the respondent. His object would be gained if they were induced to go. When on board one of the steamers, the *Trois-Rivières*, he asked a certain number of the employés of that steamer to go to vote at that election. One of the witnesses (*Joly*) referring to *Lamarche*, says :—

Il est arrivé à bord du "Trois Rivières," en arrivant il a hâlé un papier ; il a nommé tous les voteurs à bord ; après qu'il a eu fini,

il y a une couple de voteurs qui ont dit: "on aimerait à partir aujourd'hui; si on ne peut aujourd'hui, on n'y va pas, et on aimerait à avoir notre passage, pour aller et revenir et on aimerait aller chacun chez nous avant d'aller voter."

It is shown that *Lamarche* agreed to those conditions. It appears also from the testimony of other witnesses that at least some of the parties would not have gone to vote but for the inducements offered by *Lamarche*. In the first place, that their passage by rail going and returning should be provided for free; that they should go the day they were spoken to, and that they should be permitted to remain over a day or more with their families at *Berthier*. *Lamarche*, in order to secure their votes, had to obtain leave from the masters of the steamboats for the absence of the men from their employment and to provide for their passage by rail, going and returning, as before mentioned. Votes were thus, we may assume, secured for the respondent that otherwise, we must also assume, he would not have received. The law by which we are to be governed in this case is to be found in sub-sections 1 and 3 of section 92, and in sections 96 and 98. Sub-section 1 is as follows:

The following persons shall be deemed guilty of bribery and shall be punished accordingly. Every person who directly or indirectly by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers or promises any money or valuable consideration, or promises to procure, or to endeavour 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 any voter to vote or refrain from voting, or corruptly does any such act as aforesaid on account of such voter having voted or refrained from voting at any election.

Sub-section 3 is as follows:

Every person who directly or indirectly, by himself or by any other person on his behalf, makes any gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such person to procure, or endeavour to procure, the return of any person to serve in the House of Commons, or the vote of any voter at any election.

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Section 96 is as follows:

And whereas doubts may arise as to whether the hiring of teams and vehicles to convey voters to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law, it is declared and enacted that the hiring or promising to pay or paying for any horse, team, carriage, cab or other vehicle, by any candidate or by any person on his behalf, to convey any voter or voters to or from the poll, or to or from the neighborhood thereof, at any election, or the payment by any candidate, or by any person on his behalf, of the travelling and other expenses of any voter, in going to or returning from any election, are and shall be unlawful acts.

For the purpose of showing the applicability of the provisions of sub-section (1) to the circumstances in evidence in this case, it may be briefly read thus:

Every person who directly or indirectly, by himself or any other person on his behalf, gives * * * any money or valuable consideration * * * in order to induce any voter to vote or refrain from voting, shall be guilty of bribery.

It will be observed, and it is in the decision of this case necessary and of the utmost importance to observe, that in that provision there is no reference to any condition as to the party to be voted for. It is simply a provision against the doing of either of two things—first, the inducement to vote, and the other to refrain from voting. As I read the prohibition, it matters not whether the party offering the illegal inducement knew or cared how the influenced party would vote. It need not be done corruptly. The mere giving an inducement is the offence. The offence is consummated when a party is induced by any valuable consideration to vote, and the offer of the inducement is an offence, whether accepted or not. What, then, have we to try in this case? The fact of the inducement which caused the parties to go and vote, and the question as to their having done so through the means of a valuable consideration. I have already stated it as my opinion that we, under the evidence, should hold that the tickets in question were purchased at a reduced rate and paid, or

to be paid for, by some one in the interest of the respondent. Those tickets are as follows:

Special.

Quebec, Montreal, Ottawa & Occidental Railway.

One First-class Passage.

From *Hochelaga* to *Berthierville* and return.

In consideration of the reduced rate at which this ticket is sold, it will only be valid 22nd June, 1882.

(Signed), *L. A. Sénécal,*

General Superintendent.

Without some other evidence it might be alleged that although the tickets were issued in that form they were given by the ticket agent as *free* passes. We have, however, one of the free passes over that railway in evidence, which goes to show that the tickets were purchased. The specimen in evidence of the free passes issued is as follows:

Countersigned, *A. Davis.*

No. 19, *North Shore Railway* (which is another name for the same railway) *Aug.* 29, 1882.

Pass Mr. *A. Buron* from *Berthier* to *Montreal.* Why issued—on acc.of *Richelieu & Ont. Navig. Co.* Not transferable. Free passengers by the acceptance of this pass assume all the risk of accident to their person or property without claims for damages on the corporation. Void after Sept. 29, 1882. Good for one trip only.

Not transferable.

A. Davis,

Superintendent.

FORM C.

Any one looking at such a ticket would most irresistibly conclude it had been purchased, and there is nothing in the evidence to show that it was not. It is quite consistent with the statement of *Lamarche* that such tickets had been arranged about and paid for at the election in question, as well as at previous ones.

Compare, also, the terms of the tickets and those of the free passes. The first were transferable and entitled the travellers under them to seek compensation in case of a negligent accident. The latter were not transferable, and, therefore, only valuable to the party named in them, and the holder was prevented by its provisions from seeking compensation in case of an accident. The tickets represented money, as they could have been sold

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by any one who held them, and the right to travel under one of them would pass to the purchaser. If nothing was paid or to be paid for them, we should expect to have seen that free passes would have been issued by which liability would be limited. My reason for drawing attention to this distinction will be more obvious when I hereafter refer to the judgment of *Mellor*, J., in the *Bolton* case (1), when referring to a free pass. It is, however, contended that if the tickets were given by the ticket officer gratuitously to *Lamarche*, the latter not having paid anything for them, could legally make use of them in the way he is shewn to have done. They were undoubtedly of value to those to whom *Lamarche* gave them, in two ways: first, as a saleable article; and next, they enabled each holder to do without cost what he could only have done by paying a dollar and a-half. If in place of the tickets given by the ticket officer (as for this argument we may assume gratuitously), he or some one else had given *Lamarche* a sum of money, and that he had employed it in a way made corrupt by statute or Common Law, are we to consider how he got the money? He was the acknowledged agent of the respondent, and the latter is as to this inquiry, answerable for his acts; and, regardless how he got the tickets if they were of value, as they undoubtedly were, the offence consisted in the illegal disposition of them. We may be properly told that a candidate or any of his agents might give a seat in his carriage to a voter and drive him to the poll, and I might not possibly decide that the voter had received a valuable consideration within the terms of the section in question, but that is not the case under consideration. The section forbids any one, by a valuable consideration, to induce a party to vote or refrain from voting.

(1) 2 O'M. & H. 138.

I am decidedly of opinion that under the evidence we should assume the tickets in question were paid for, and by the use shown to have been made of them an offence committed against the provisions of section 66.

If, however, our conclusion in that respect should be in the opposite direction, I still am of opinion that an offence was committed under sub-section 2 before cited.

In the leading case of *Cooper* v. *Slade* (1) decided by the House of Lords in 1858, the question turned upon the construction of section 2, ch. 102, of the Imperial Act 17 and 18 *Vic.*, and of a letter given in evidence. That section is, in its provisions and language, identical with sub-section 2 before referred to, but the former has a proviso, not in sub-section 2, that it "shall not extend, or be construed to extend, to any money paid or to be paid for or on account of any legal expenses *bonâ fide* incurred at or during the election."

The letter was as follows:

SIR,

The mayor having appointed Wednesday next for the nomination and Thursday for polling, you are earnestly requested to return to *Cambridge* and record your vote in favor of Lord *Maidstone* and *F. W. Slade*, Esq., Q.C.

Yours truly,

Charles Balls,

Chairman.

Your railway expenses will be paid.

Nine out of the ten learned judges decided that the offer to pay the railway expenses of the voter was bribery under section 2 of the Imperial Act before cited. The decision rested upon the promise contained in the letter. It was written by a party for whose acts the candidate was responsible, and although the decision turned on the construction of the letter as embodying only a conditional promise to pay the travelling ex-

(1) 27 L. T. (N. S.) Q. B. 449.

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penses, I can find little or nothing in the language of the learned judges to show that if the promise had not been conditional the judgment would have been the other way.

Baron *Channell* said:

It is, in my opinion, unnecessary to decide whether prior to 17th and 18th *Vic.*, ch. 102, the *bonâ fide* payment of travelling expenses was illegal. Nor is it, in the view that I take of this case, necessary to decide, whether, since the act, a promise to pay travelling expenses is void within that statute, if unaccompanied by a condition that the person to be paid is to vote for the party promising to pay.

Baron *Watson*, referring to section 2 of the same Act, said:

It is not necessary that the voter should vote or even promise to vote, to constitute an act of bribery under that provision. It has been suggest that to bring a promise within the provision it must be a conditional promise to pay the travelling expenses if the elector vote for the promiser. It appears to me that it would be equally within the meaning of the act if the promise was unconditional, simply to pay money on the elector voting at all, inasmuch as the candidate may have a full reliance (perhaps erroneously) how the vote would be given, and that such promise would be an inducement to vote, whether conditional or unconditional.

Mr. Justice *Wightman* was, however, of the opinion (and I must say, contrary to the plain meaning of the words used) that the promise must be to induce the person to whom the promise is made, to vote for a particular candidate.

Coleridge, J., said:

This then was a promise of money in order to induce a voter to vote, and whether the payment of travelling expenses *per se* be legal or not, I am clearly of opinion that to promise to do so, in order to induce a voter to vote, is within the second section of the statute.

No other of the judges remarked specifically on the difference between a conditional and unconditional promise. The 98th section of the Dominion Act before mentioned makes the offences created by sub-section 2 corrupt practices to avoid an election. There is no such

provision in the Imperial Act before referred to, and under which the decision in *Cooper* v. *Slade* was given. I am, however, of the opinion that the decision of all the judges together in that case does not fully decide the question before us, as it was unnecessary they should do so, but I adopt the views of Mr. Justice *Watson*, before cited. I am induced to believe that the Dominion Parliament in enacting the provisions of sub-sec. 2 intended to provide for cases then unprovided for. To promise a voter money or other valuable consideration, provided he voted for a particular candidate, would, if he so voted, be bribery at common law, and by previous statutes the promise alone would have been bribery, and if made by a candidate or his agent, would have been cause for avoiding the election. We must assume the legislature intended to go further in the direction of removing improper influences against the perfect freedom of the voters, either to vote or refrain from voting. The legislation was, as I think, intended to prevent cases such as the present one. The policy is evidenced by the statutory provisions against the hiring of conveyances and the paying of the travelling expenses of voters. What difference in principle can be found between the paying for an ordinary carriage and the providing of railway tickets? When, therefore, we find from the legislative declaration against the use of undue influence in one direction, the policy of the legislature in respect to freedom from such influences, we have the right and it is our duty to construe other provisions enacted by the same legislature in a way to give effect to that policy. The 2nd sub-section should then be read in the light of that policy. It says, in so many words, that the giving of a valuable consideration to induce a party to vote shall be considered bribery, and by section 98 the election wherein it is given is avoided. Surely if the legislature meant the provision

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only to apply to cases of conditional promises, we would find it so expressed. In the case of *Cooper* v. *Slade* the declaration did not charge the offence as a promise founded on any condition, but simply on the charge of inducing the voter to vote at the election; and no objection was taken to the count on that ground. If the count had been open to that objection we have every reason to conclude that the learned Attorney-General and other eminent counsel for the defendant in that case would have raised it.

It is alleged, however, that the decision of Mr. Justice *Mellor* in the *Bolton* case before referred to (1) modifies to some extent the law as laid down in *Cooper* v. *Slade*, but I cannot find it to be so. In that case it was proved that letters with a railway pass were sent by an agent of the respondent to a number of voters who lived at a distance from the borough. The letter was as follows:

Cross and Knowles' Committee Rooms,

February 2, 1874.

Dear Sir,—

Your name being upon the list of parliamentary voters for this borough, you are entitled to vote at the forthcoming election. We enclose you a railway pass, on presenting which at the station named, you will be furnished with a railway ticket to convey you to *Bolton* and back again. I trust you will be able to make it convenient to come over and record your vote in favour of Messrs. *Cross* and *Knowles*.

The learned judge fully admitted the correctness of the law as laid down in *Cooper* v. *Slade*, but undertook to distinguish the two cases. He had, however, to decide upon the gift of a railway pass which he pronounced of no intrinsic value. It was not a railway ticket but a pass, upon the production of which at the railway office the party would obtain a ticket. It might not in that case have amounted to a valuable consideration, as it really was nothing more than an authority

(1) 2 O'M. & H. 148.

to get what was valuable—a railway ticket. If the ticket was not issued the candidate was at no expense, and it appears to me that it was that consideration that induced the judgment in that case. There was no promise to pay anything as in the case of *Cooper* v. *Slade*. After the decision in the latter case the Act 21 and 22 *Vic.*, ch. 87 was passed, by which a candidate or his agent, "by him appointed in writing," might provide conveyance of any voter for the purpose of polling at an election. By a subsequent statute the provision was limited to county elections. The learned judge referred to sections 2 and 23 of 17 and 18 *Vic.*, the latter of which subjects a person who offends against either to a penalty only, but does not avoid an election. The learned judge referred also to section 36 of the Reform Act of 1867, which repeals the provision of the Act 21 and 22 *Vic.* ch. 87, as to boroughs, and decided that inasmuch as no legislative enactment provided for the avoidance of the seat, he declared the respondent duly elected.

The learned judge said:

I do not say that a judge could act upon historical evidence when he found the words clear. Yet, when I am asked to decide that the words of the statute which enact that this should be deemed an illegal payment, should have a more extensive meaning than that, I look to the words to see whether they compel me to say so, and I come to the conclusion that they do not. Do they convey an inference to the contrary? I think they do.

He then stated the fact that a member of Parliament proposed an amendment to the bill that the providing for such conveyance should be a corrupt practice within the meaning of the Corrupt Practices Act, but that that was negatived. He was, therefore, dealing with a matter totally different under statutory provisions from that now under consideration. His decision was founded on two propositions—first, that the pass sent to the voter was of no absolute intrinsic value; and second, that had it been so, it was

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by law no cause for avoiding the election. The case before us is essentially different on both points. I have shewn that the tickets were of intrinsic value, and section 98 supplies what the learned judge found absent in the English statutes.

Looking at the whole of the Dominion legislation respecting elections, we may safely conclude that freedom to exercise the elective franchise, unaffected by any improper influence, was intended. There are influences which exert themselves that may or may not be legitimate, but which no legislation can prevent, but those that are prohibited should not be allowed to prevail. As far as I have been able to discover the policy of the legislation, in this country at least, it is not to provide for the return of a member by a majority of the votes in an electoral district, who may by any means be induced to poll their votes, not by a majority made up by the votes of those who, but for improper inducements, would not have voted at all, not of those who go to the polls at the expense of some other person—a candidate or one of his friends—but by a majority of those who, uninfluenced by such means, and who, at their own cost, be it great or small, go to the polling places provided for the purpose, and declare their uninfluenced choice. That such is the true policy, will not be questioned, and as I construe the election statutes which prohibit the giving of any valuable consideration to induce a voter to go to the poll to vote, and which provide that doing so shall avoid an election, I consider that it would be in direct opposition to that policy if we decide, under the circumstances in uncontradicted proof here, that the respondent was duly elected. I am, therefore, of the opinion that the appeal herein should be allowed, and the respondent declared to have been unduly elected, with costs.

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I adhere to the opinion already expressed by me more than once, that in these election cases, upon the trial of the matters of facts raised in which so much depends upon the manner in which the witnesses give their evidence—their intelligence—and the degree of credibility to be attached to each, we, sitting in appeal from the judgment of a learned judge, who having had the advantage of seeing and hearing the witnesses give their evidence, has passed upon the matters of fact, should never overrule his finding, unless (a thing which, when the evidence is wholly oral—not contained in any written document—it is difficult to conceive to be possible) the evidence is of such a nature as to convey to our minds an irresistible conviction that the finding of the learned judge upon those mere matters of fact is clearly erroneous. It may be that in some cases, upon reading the evidence as taken down, and without the light thrown upon it by the demeanor of the witnesses, I might arrive at a different conclusion from that arrived at by the learned judge, but that would afford no justification for my overruling—upon mere matters of fact—his judgment formed under advantages, which, sitting in appeal, I have not, and cannot have; but when the appeal is, or in so far as it is, upon a point or points of law, it is a different matter. Then it becomes my duty to express my opinion upon the law involved in the points appealed, according to the best and utmost of my independent judgment.

The points involved in this appeal (all other charges having been abandoned at the trial of the election petition) are comprised in four charges of specific acts of bribery and corrupt practices, alleged to have been committed by duly authorized agents of the respondent, supplemented by a general charge that each and every of those fraudulent, illegal and corrupt practices spe-

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cifically charged, were committed with the knowledge and actual consent of the respondent. The first of these charges, which is called the *Lamarche* case, in short substance, is to the effect that one *Olivier Lamarche*, a duly authorized agent of the respondent, with the knowledge and actual consent of the respondent, paid the travelling expenses and other expenses of a great number of electors of the electoral division of *Berthier*, to enable them to go to and return from the polling places, and among others, to nineteen named qualified electors of the electoral division of *Berthier*, by giving to each of the said persons a railway passenger ticket of the *Quebec, Montreal, Ottawa & Occidental Railway*, and other valuable consideration to pass them into the said electoral division to the polling places where each of the said persons had a right to vote, and that the said persons afterwards sold again the said railway passenger tickets, which they had so gratuitously received, and with a fraudulent, illegal and corrupt motive, and to induce them to vote for the said respondent, and from those sales have derived sums of money and other valuable consideration, which they have kept for their own exclusive use.

What is comprised in this charge, eliminating from it all superfluous and irrelevant matter, which the allegations of the re-sale of the railway tickets by the persons to whom they were given appears to me to be, is, I think, beyond doubt an offence charged as having been committed against the provisions of the 96th section of the Dominion Election Act of 1874, and the charge in substance is, that *Lamarche* being an agent of the respondent did, with respondent's knowledge and consent, pay the travelling expenses of the persons named in going to and returning from the place where the election was held, by giving to them respectively railway passenger tickets to convey them to and from

the polling places where they respectively had votes at the election, free of charge for such conveyance. The charge, however, was treated at the trial as comprising also an offence charged to have been committed against the provisions of the 92nd section of the Act, namely, as an act of bribery, and not merely an illegal act, as an act within the contemplation of the 96th section only is, and which by the 98th section is made what is called a corrupt practice as distinct from bribery. This construction is put upon the charge by force of the words in the sentence relating to the alleged re-sale of the railway tickets by the persons to whom they were given, wherein the railway tickets, (which the persons to whom they were given are alleged to have re-sold, and so not to have used at all for the purpose for which they are alleged to have been given), are described as having been received by them gratis and with a fraudulent, illegal and corrupt motive, and to induce them to vote for the respondent. Now, charges of corruption of this nature should, as it appears to me, be stated in these election petitions with the same preciseness and certainty as would be required in an indictment or in an action for penalties, in neither of which should a defendant be compelled to go to trial, or have a judgment pronounced against him upon a count containing two charges so distinct from each other, as an offence against the provisions of the 92nd section is from one against the provisions of the 96th section of the Act. The respondent has, however, raised no objection upon this head, but the charge has been treated at the trial of the election petition, and in the argument before us as a *single one*, but as one which it is competent for the petitioners to sustain as an offence against the provisions of one or other of the above sections in one or other of the alternative cases following, that is to say:—either, 1st, as an act of

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bribery committed by *Lamarche*, as the agent of the respondent, and with the actual knowledge and consent of the respondent; or 2nd, as an act of bribery committed by *Lamarche* in his character as agent for the respondent, but without the latter's knowledge or consent; or 3rd, as an illegal and corrupt practice, though not an act of bribery committed by *Lamarche*, as respondent's agent, with the actual knowledge and consent of the respondent; or 4th, as a like act committed by *Lamarche*, in his character of agent of the respondent, without the latter's knowledge or consent. A charge of such a many-faced and ambidextrous character, is well calculated, if permissible, to take a respondent at great disadvantage, but as no objection upon that head was taken on the respondent's behalf in the court below, I propose to treat the case as it was treated there. By the 96th section of the Dominion Election Act, it is enacted as follows:—

[The learned judge then read the 96th section (1).]

By the 98th section any wilful offence against this 96th section is declared to be a corrupt practice, and by the 101st any corrupt practice committed by any candidate, or by his agent, whether with or without the actual knowledge and consent of such candidate, shall avoid his election if he has been elected, and by the 102 section it is enacted, that if any candidate himself personally commit any corrupt practice, or if any person on his behalf, with his actual knowledge and consent do so, the candidate, besides having his election declared void if he has been elected, shall be incapable of being elected and of sitting in the House of Commons and of voting at any election of a member of the House and of holding any office in nomination of the Crown or of the Governor in *Canada*. The learned judge before whom the election petition was tried, has found, as matter of

(1) *Ubi supra* P. 143.

fact, that there was no sufficient proof of hiring or promise to pay, or paying for any horse, team, &c., &c., as prohibited by the 96 section, or of the payment of travelling or other expenses of any voter in going to or returning from the election in question, nor of any unlawful act within the meaning of this section. "On the contrary," he says in his judgment:

I am satisfied from the proof and circumstances that the railroad ticket agent, with what degree of propriety it is not for me to decide here, gave the passes upon which the said voters went to the polls gratis, and that they were never paid for, nor promised to be paid for, and that the proof fails to bring the charge under this head of objection within the provisions of the said 96th section of the Act.

And he, therefore, found in favour of the respondent upon this charge, although he found, as matter of fact, also, that *Lamarche* was an agent of the respondent at the election. This finding of the learned judge upon a mere matter of fact, I cannot, sitting in appeal, venture to pronounce to be erroneous without violating the rule, by which, as I have said, I consider myself to be bound in cases of mere matter of fact. But, indeed, the finding of the learned judge is in strict accordance with the only evidence which was given upon the subject, which was that of *Lamarche* himself, who, if he is to be believed—and the learned judge has believed him—never paid or promised to pay for the tickets, but received them from the ticket agent by whom they were issued gratuitously, whether upon his own authority or upon the authority of a superior officer does not appear, and as the charge is that it was *Lamarche* who, as the respondent's agent, and on his behalf, paid the travelling expenses of the voters in question, *Lamarche's* evidence, if true, disproves the charge.

The charge, as framed, is somewhat peculiar. It is not merely that *Lamarche*, as respondent's agent and on his behalf, &c., paid the travelling expenses of the voters in question in going to or returning from the

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election, but that he did so by giving to each of the voters named a railway ticket to convey him to the polls. The giving of the railway ticket to the voters named is alleged as the mode by which *Lamarche* paid their travelling expenses, which tickets, as the charge alleges, the parties to whom they were given sold instead of using them for the purpose for which they were given. As, however, the learned judge who tried the case has found, as matter of fact, that *Lamarche* neither paid nor promised to pay anything for the tickets, and that they were given to him by the company's agent gratis, the conclusion of the learned judge upon the charge is well founded in law—that no offence within the provisions of the 96th section was proved. It was contended by Mr. *Mercier*, in his able argument before us, although no such point is made in the appellant's factum, that as the tickets upon their face purport to limit the time during which the tickets should be available, in consideration of the tickets having been issued at a reduced rate, a presumption is raised that the tickets were paid for by some one, which is not displaced by *Lamarche's* evidence. But the answer to this contention appears to me to be plain; that upon this charge the respondent is not concerned, whether the tickets were or were not paid for, if they were not paid for, or promised to be paid for, by the respondent's agent, *Lamarche*, whose conduct alone is involved in this charge. The respondent cannot be found guilty of corrupt practices committed by his agent *Lamarche*, nor can the election be avoided upon the suggestion of such a presumption. The presumption might arise in an action to which the company was a party; if in such action a question should be raised whether, in point of fact the tickets, were or were not paid for by some one other than *Lamarche*, but against this, respondent or his agent *Lamarche*, who is

charged with having paid for the tickets, the evidence of *Lamarche*, who swears that he did not pay for them but that they were issued to him gratis, if true, as the learned judge has found it to be, is conclusive. The law, as at present existing, does not prevent railway companies, if they please, gratuitously giving tickets which will pass passengers on their railway, even though they be given to voters going to vote at an election. If it be thought expedient to abridge the powers of railway companies in this particular, it is for the legislature to interfere, but there is nothing to prevent companies issuing tickets gratis nor in the form which they use for tickets which are sold at a reduced rate, and, in the presence of the testimony, upon oath, of the person to whom these very tickets were issued, that they were issued gratis, the presumption that they were not issued gratis, but were, in fact, paid for, if any such presumption be raised by the form of the tickets, is removed.

The finding of the learned judge upon the above charge, treating it as containing the allegation of an offence committed against the provisions of the 96th section of the Act, disposes, as it appears to me, of the whole charge. The learned judge, however, in his judgment, says as follows:

> But the petitioners contended at the argument that the passes given to the voters by *Lamarche* were things of value, and that they were given as a valuable consideration to induce the voters to vote for respondent at the election; thus *arguendo* contending that respondent, by his agent, had made himself amenable to the provisions of section 92, sub-section 1 of the Act, and thus that he was guilty of bribery through his agent within the meaning of said section. This proposition, (he proceeds to say,) raised the question which has not, so far as I know, been as yet extensively discussed in the trial of election cases: as to whether a railroad pass given gratis and unconditionally to a voter to go to vote is within the meaning of the section 92, sub-section 1, a valuable consideration, or of any such value as could support a promise.

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And after referring to the judgment of Mr. Justice *Mellor*, in the *Bolton* case (1), he says:

> I am of opinion that the passes handed to these voters, unpaid for as *Lamarche* swears on cross-examination, and presented to the voters under the circumstances proved in this case, do not constitute the valuable consideration to them contemplated and prohibited by the statute, and that the passes in question are not such considerations within the meaning and intention of section 92 of the Act, and I find that the petitioners have failed to establish the said first charge of bribery and corrupt practices against the respondent or his agent.

It is plain, to my mind, from this language of the learned judge, that he found, as matter of fact, upon a point as to which the most that can be said is that there was contradictory evidence, which however, it was for him to estimate, in the light of the value set by him upon the evidence of the respective witnesses, who gave evidence upon the point, that *Lamarche* gave the tickets to the several voters, without imposing upon them any condition, express or implied, to vote for respondent, and without requiring from them any promise that they would so vote. The question which, as the learned judge says, he had to decide was, whether a railroad pass given *gratis* and *unconditionally* to a voter to go to vote, is within the 92nd section. The manner in which he refers to the judgment of Mr. Justice *Mellor* in the *Bolton* case, which proceeded wholly upon the question whether the promise there relied upon was conditional or unconditional, confirms me in the view which I take of the judgment of the learned judge. He says:

> Before seeing this authority, I felt inclined to say after much anxious consideration, that tickets, given as these in question were, were not valuable consideration in the sense of, or within the meaning of the Act; in my uncertainty upon this point, I need not say that I felt relief in finding authority so strong, and in the direction of my own inclination.

I must therefore regard the judgment of the learned

(1) 2 O'M. & H. pp. 147-8-9.

judge as finding that as matter of fact the tickets given by *Lamarche* were not given upon or subject to any condition, express or implied, that the voters to whom they were given should go and vote for the respondent, and as adjudging as a point of law that the tickets having been unconditionally given, no offence against the provisions of the 92nd section was proved. So regarding his judgment, the point which in my opinion we have now to decide is whether, assuming the matter of fact to be well found, the law as applied to that matter by the learned judge is correct; for the reason already given I cannot undertake to pronounce the finding of the learned judge upon the matter of fact to be erroneous. That the giving a railway ticket, whether purchased for money or obtained from a railway company gratis, by a candidate or any agent of his on his behalf, to enable a voter to go to and return from the polling place, and by the production of which to the train conductors he could go to and return from the polling place free of charge to himself, if it be given in order to induce the voter to whom it is given to vote for a particular candidate, is the giving of valuable consideration and bribery within the meaning of the 92nd section of the Dominion Act, I cannot entertain a doubt; but the law as laid down by the House of Lords in *Cooper* v. *Slade* (1), and followed in the *Bolton* case (2), establishes that to make a promise to pay the travelling expenses of a voter, bribery within the provisions of the English Act 17 and 18 *Vic.*, ch. 102, sec. 2, which are identical with the provisions of 92nd section of the Dominion Act, the promise must be qualified by a condition express or implied that the voter to whom the promise is made should vote for a particular candidate. The same principle, as it seems to me, must apply when instead of a promise to pay the travelling expenses of

(1) 4 Jur. N. S. 791. (2) 2 O. M. & H. 183.

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the voter, there is given to him a railway ticket for the express and *bonâ fide* purpose of relieving the voter from payment of any thing for his conveyance to and from the polling place, and which is of a nature that it can only be used by way of payment of travelling expenses as the railway tickets in this case were. The effect of *Cooper* v. *Slade*, as it appears to me, is, that in order to constitute the gift of these railway tickets, given for the mere purpose of passing the voters on the railway to and from their respective polling places, to be consideration given in order to induce the persons to whom they were given to vote, within the meaning of the 92nd section, the gift of the tickets must have been qualified by a condition express or implied that the voter should go and vote for a particular candidate. The gift of a railway ticket by which a voter could pass on the railway free of charge to himself must be regarded in the same light and considered in the same manner as the promise to pay travelling expenses. Assuming, therefore, that upon the appellants failing to prove such facts as would establish an offence against the 96th section of the Act, which the particular charge in question clearly alleges, it is competent for them to insist that the charge also sufficiently alleges an offence against the 92nd section, I am of opinion, that as the learned judge who tried the case has found, as matter of fact (as I understand his judgment as already explained), that the railway tickets given to the voters by *Lamarche* were clogged with no such nor any condition express or implied, the learned judge was quite right in concluding that no offence against the 92nd section had been established.

As to *Coté's* case, the learned judge has found, as matter of fact, that *Coté* was not proved to be an agent of the respondent, so as to affect the respondent with his acts. Upon this case it is sufficient to say

that I do not see enough to justify me in reversing the judgment of the learned judge upon this pure question of fact. The learned judge was also of opinion that assuming *Coté* to have been the respondent's agent, the act alleged in the charge was not proved. I have not thought it necessary to enter upon this point, as I do not feel justified in reversing the judgment of the learned judge upon the point of agency. The onus in these appeals is cast upon the appellants to satisfy me beyond all doubt that the finding of the learned judge upon the matters of fact is clearly erroneous, and this they have failed to do.

The third charge, which is called the *Hénault-Maxwell* case, in short substance, is, that during the election the respondent, through and by one *Joseph Hénault*, his authorized agent, gave money to one *Joseph Maxwell*, a qualified elector, in order to induce him to vote in favor of the respondent.

This case is certainly one pregnant not merely with suspicion, but with the conviction that corrupt conduct was committed by one *Daveluy*, who, however, was not called as a witness, and who, as the respondent swore, was not directly or indirectly authorized by him to act in any way as his agent, and the question we have to decide is, whether the respondent is to be affected, and his election is to be avoided, by the conduct which appeared in evidence of *Hénault*, the person named in the charge as the person by whom the bribery therein charged is alleged to have been committed.

This *Hénault* was nominated by the respondent's committee to go to a place called *St. Damien*, on the Sunday before the election, for the sole purpose of speaking in favor of the respondent at the church door after mass, where Senator *Guevremont* was expected to speak, and, as it seems, did speak in favor of the opposing candidate.

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At this time *Hénault* had no other duty or agency whatever on behalf of the respondent entrusted to him. The learned judge premises his finding upon this charge by stating what the evidence adduced before him upon the point was. He states the evidence of a witness named *St. Cyr*, thus:

> On *St. Cyr's* way home from *Montreal* (to *Berthier* where he lived), on Saturday before the voting, *George Daveluy*, of *Montreal*, who is not otherwise shewn to have had anything to do with the election, gave him a sealed letter at *Hochelaga* to be forwarded to *Maxwell*, and on arriving at *Mile End* Station, *Daveluy* told him there was money in the letter and to pay attention to it. On *St. Cyr* arriving at *Berthier* the same forenoon, meeting *Lamarche* in the street, he asked him who was going to *St. Damien*, and that *Lamarche* told him it was a person named *Hénault*. He asked for *Hénault*, and gave him the letter, telling him that "it is a letter which was given to me for Mr. *Maxwell*. I am told there is money in it."

Again, the learned judge says:

> There is no proof of agency on the part of *Daveluy*, and none at all of the part of *St. Cyr*, sufficient to compromise the respondent or to affect the election.

And again:

> As to *Hénault*, this was his first visit to the division. He was a stranger there for aught that appears.

And again:

> He arrived in *Berthier* the Saturday evening, the eve of his going to speak. He knew none of the committee. The president or some other of the committee told him, "You will go to *St. Gabriel* and then to *St. Damien*. He was sent to *St. Damien* to speak after mass. He did so and left the money with *Maxwell*, as stated, but did not in any way canvass or ask his vote. He returned to *Berthier* and represented the respondent at one of the polls on the next Tuesday under power of attorney to do so.

And again:

> It is undoubtedly true that *Hénault* came to the division to speak, as he says, for the respondent. As a general agent or canvasser he would have been useless, as being a stranger. He knew nothing of the letter and money referred to until his arrival here (at *Berthier*).

There is no proof that the respondent or his committee knew anything of *Hénault* having such a letter.

And again:

The only proof of his agency, apart from his representing respondent at the poll on election day, is the fact that the committee sent *Hénault* the Sunday before the polling, evidently with the knowledge and consent of the respondent, to speak for him at the church doors at *St. Damien* after mass. This appears to be the only act done or part taken by him in connection with the election, except representing the respondent at the poll on the Tuesday as stated.

And the learned judge upon this evidence concludes thus:

After much consideration, I am of opinion that the committee, by sending him for this special purpose, did not make, or intend to make him respondent's agent to act as such generally at his own discretion; and that what passed between *Hénault* and *Maxwell* was entirely out of and beyond the scope of his authority from the committee, express or implied.

The letter handed to *Hénault* to be conveyed by him and delivered to *Maxwell* contained the sum of $25, and the sole words following, "*envoyez fort vous et vos garçons*," but was signed by no one.

That the money so sent by *Daveluy* to *Maxwell* constituted such corruption as to avoid the respondent's election if *Daveluy* had been an agent of the respondent, cannot, I think, admit of doubt, even if the money had been sent, as the learned judge seemed disposed to think, and as *Maxwell* swore, to pay for services corruptly rendered by *Maxwell* to Mr. *Robillard*, whose agent *Daveluy* was during an election which had taken place two years previously for the Local Legislature. It is impossible to disconnect the words "*envoyez fort vous et vos garçons*," from the respondent's election or from the payment of the money, although sent in payment of services rendered at Mr. *Robillard's* election for the Local Legislature. It may be that *Daveluy*, who was an agent of Mr. *Robillard*, as

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the candidate for the Local Legislature, of the party of which the respondent was the candidate for the Dominion Parliament, was himself a partizan of that party, although not an agent of the respondent, and that he had reason to know or suspect that the services of *Maxwell* and his boys would not be rendered for the respondent, if the old debt incurred by *Maxwell*, for like services rendered to Mr. *Robillard*, should not be paid, and that this was his motive for sending the money, but whatever his motive, the respondent could not be affected by his act, if he was not an agent of the respondent, and of his being such, as the learned judge has found, no evidence whatever was offered, and the charge against the respondent was rested wholly upon the contention that *Hénault* was guilty of bribery in delivering the letter with the money to *Maxwell*, and that the respondent is affected by this act of *Hénault*.

The learned judge has found as matter of fact, that neither the respondent or his committee knew anything of the sending of the letter. The act of sending it must, upon the finding of the learned judge, and the evidence, to be taken to have been the act of *Daveluy* alone, who was not attempted to be proved to have been an agent of the respondent. All persons made instrumental by *Daveluy*, in having the letter conveyed and delivered to *Maxwell*, must therefore be taken to have been *Daveluy's* agents. When he delivered the letter to *St. Cyr*, asking him to have it forwarded to *Maxwell*, and when *St. Cyr*, finding that *Hénault* was going to *St. Damien*, delivered it to him with directions to deliver it, he was acting in accordance with authority derived from *Daveluy*, from whom he had received the letter, and *Hénault*, by accepting the bailment, became the agent of, and his act in delivering it the act of, *Daveluy*. The fact that

Hénault was going to *St. Damien* upon a special limited agency on behalf of the respondent, could not make his receipt of the letter, addressed and sent by *Daveluy* to *Maxwell*, a receipt of it, in his, *Hénault's*, character of, and as, the agent of the respondent. If *Hénault*, when he delivered the letter to *Maxwell*, was wholly ignorant of its contents, such a proposition could not be entertained for a moment; so to hold would be contrary to every principle of justice, but his having become aware of its contents in the manner explained by him, whether such knowledge was acquired wrongfully or accidentally, cannot make any difference in this respect; for if upon receipt of the letter he became *quoad it*, the agent of *Daveluy*, for the purpose of conveying it and delivering it to *Maxwell*, he must have continued to be *Daveluy's* agent until that purpose should be fulfilled. His wrongful or accidental acquisition, before its delivery to *Maxwell*, of knowledge that *Daveluy* must have had a corrupt motive in sending it, could not constitute his act of delivering to *Maxwell* the letter which he had received upon a bailment so to deliver it, derived from *Daveluy*, to be an act done by *Hénault* in his character of special agent for the respondent, and by which, therefore, the respondent should be affected. *Quoad* the letter, *Hénault* must continue to hold it until he should deliver it in pursuance of the bailment upon which he received it, in the same character as that in which he had received it, namely, as the agent of *Daveluy*.

Neither the *Bewdley* case nor any of the other cases relied upon by the learned counsel for the appellants support the proposition contended for by them, that the respondent can be affected by an act of *Hénault* done by him in the character of agent of another person, and in pursuance of a bailment derived from that other

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with whom and whose conduct, as in this case, we must hold the respondent was in no wise connected.

The fourth and last case is the *Chalut* case. As to this case there does not appear to me to have been any foundation whatever for the charge that the money given to Mr. *Chalut* was given to induce him to support the election of the respondent, and to vote for him within the sense and meaning of the statute. There cannot be entertained a doubt that the money given to this gentleman, who was president of the respondents committee, and one of the most zealous of his supporters, was given by way of remuneration for his travelling expenses to an outer part of the electoral division, and his services as a lawyer in organizing a canvass upon behalf of the respondent in such part of the division; a purpose in itself quite legal and proper. There is no pretence of anything illegal having been done by Mr. *Chalut* in pursuance of the commission intrusted to him; if there had been, the charge would have been presented in a different shape, but that it was given, as charged, for the purpose of corrupting Mr. *Chalut* there does not appear to be any foundation whatever, nor, therefore, any for calling in question the finding of the learned judge upon this charge.

I think that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for appellants: *Mercier, Beausoleil & Martineau.*

Solicitors for respondent: *Lacoste, Globensky, Bisaillon & Brosseau.*