

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF BELLECHASSE.

1892  
\*Feb. 16.

G. AMYOT (RESPONDENT).....APPELLANT;

AND

E. LABRECQUE, *et al.* (PETITIONERS)...RESPONDENTS.

ON APPEAL FROM THE SUPERIOR COURT FOR LOWER CANADA.

*Election petition—Status of petitioner—Onus probandi.*

The election petition was served upon the appellant on the 12th of May, 1891, and on the 16th of May the appellant filed preliminary objections, the first being as to the status of the petitioners. When the parties were heard upon the merits of the preliminary objections no evidence was given as to the status of the petitioners and the court dismissed the objections. On appeal to the Supreme Court :

*Held*, reversing the judgment of the court below (Gwynne J. dissenting), that the onus was on the petitioners to prove their status as voters. *The Stanstead Case* (20 Can. S.C.R. 12) followed.

APPEAL from a judgment of the Superior Court for Lower Canada (Pelletier J.) dismissing the preliminary objections to the election petition filed against the appellant by the respondents.

The first preliminary objection was as to the status of the petitioners and read as follows :—

“ Because the said petitioners and none of them are nor were at the time of the election in question in this cause electors qualified to vote at said election, and that their names were not inscribed on the electoral lists.”

At the hearing of the preliminary objections no evidence was tendered as to the status of the petitioners.

\*PRESENT :— Sir W. J. Ritchie C.J., and Strong, Taschereau, Gwynne and Patterson JJ.

1892

BELLE-  
CHASSE  
ELECTION  
CASE.

The appellant appeared in person and *Belleau* Q.C. appeared for respondent.

The appellant contended that this case ought to be governed by the judgment of the Supreme Court in the *Stanstead Case* (1).

SIR W. J. RITCHIE C.J.—The burden of proof was on the petitioner, and I am not prepared to reverse the judgment of this court in the *Stanstead Case* (1), and unless we do so this appeal should be allowed.

STRONG J.—Following the *Stanstead Case* (1), we are bound to hold that the objection taken on this appeal is good; that the onus was on the petitioner who was bound to prove his qualification; that not having done so the judge ought to have dismissed the petition and we must give the same judgment which he ought to have given. Therefore the appeal must be allowed and the petition dismissed with costs in all the courts.

TASCHEREAU J. concurred with Sir W. J. Ritchie C.J.

GWYNNE J.—I am not satisfied that this case comes within the *Stanstead Case* (1). Of course although I differed from the judgment of the court in the *Stanstead Case* (1), I am bound by it, but here as I understand the case the preliminary objection is that the petitioners were not entitled to vote and were not on the electoral list. This was not the form of the preliminary objection in the *Stanstead Case* (1), and I think the judgment in that case should be limited to cases identical. If the petitioners were not on the list, as the respondent alleged, that issue in my opinion was upon the person making the averment.

PATTERSON J.—I think, irrespective of what was done or omitted to be done by the learned judge, that under the statute it is perfectly clear that the status of the petitioner can only be contested by a preliminary objection, and can never form an issue at the trial. Looking at the statute I think that appears very distinctly. The operation of the statute runs in this way. It provides by one section that the person complaining of an undue election may present a petition setting forth certain things, enumerating things which the petitioner may allege as grounds for avoiding the election. It goes on to state that notice of the petition must be served on the respondent within a prescribed time, and then there is the further provision that certain preliminary objections may be taken including, in express terms, the status of the petitioner.

Those are preliminary objections. Preliminary to what? That appears by the following section :

13. Within five days after the decision upon the preliminary objections, if presented and not allowed, or on the expiration of the time for presenting the same if none are presented, the respondent may file a written answer to the petition ; but whether such answer is or is not filed, the petition shall be held to be at issue after the expiration of the said five days.

Then, what are the issues ? They are the matters of complaint mentioned in section 5 : An undue return, or undue election of a member ; or no return ; or a double return ; or any unlawful act by any candidate not returned, by which he is alleged to have become disqualified to sit in the House of Commons, at any election.

The preliminary objections are objections which are preliminary to the necessity for putting in an answer ; it is not until they are disposed of that the answer is to be put in.

1892

BELLE-  
CHASSE  
ELECTION  
CASE.

Patterson J.

1891

BELLE-  
CHASSE  
ELECTION  
CASE.

I take it that where section 12 allows the respondent to file a preliminary objection "to the petitioner," it must mean that such objection is the subject of preliminary objection only, and is not one of the matters to be put in issue and heard on the trial of the petition.

Patterson J.

*Appeal allowed with costs and petition dismissed.*

Solicitors for appellant: *Amyot & Pinault.*

Solicitors for respondents: *Belleau, Stafford & Belleau.*

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