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*May 9.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF PONTIAC.

THOMAS MURRAY (RESPONDENT)..... APPELLANT;

AND

ARTHUR LYON AND EDWARD DAVIES (PETITIONERS)..... } RESPONDENTS.

ON APPEAL FROM THE JUDGMENT OF BOURGEOIS AND MALHIOT JJ.

Election petition—Judgment—R.S.C. c. 9 s. 43—Enlargement of time for commencement of trial—R.S.C. c. 9 s. 33—Notice of trial—Shorthand writer's notes—Appeal—R.S.C. c. 9 s. 50 (b).

In the Pontiac election case the judgment appealed from did not contain any special findings of fact or any statement that any of the charges mentioned in the particulars were found proved, but stated generally that corrupt acts had been committed by the respondent's agents without his knowledge and declared that he had not been duly elected and that the election was void. On an appeal to the Supreme Court on the ground that the judgment was too general and vague,

Held, that the general finding that corrupt acts had been proved was a sufficient compliance with the terms of the statute R. S. C. c. 9 s. 43.

On the 10th October, 1891, the judge in this case within six months after the filing of the election petition by order enlarged the time for the commencement of the trial to the 4th November, the six months expiring on the 18th October. On the 19th October another order was made by the judge fixing the date of the trial for the 4th November, 1891, and fourteen clear days notice of trial was given and the respondent objected to the jurisdiction of the court.

Held, that the orders made were valid. Secs. 31, 33 ch. 9 R.S.C.

Held, also, 1. That the objection to the sufficiency of the notice of trial given in this case under sec. 31 of ch. 9 R. S. C. was not an objection which could be relied on in an appeal under sec. 50 (*b*) of ch. 9 R.S.C.

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

2. That evidence taken by a shorthand writer not an official stenographer of the court, but who has been sworn and appointed by the judge, need not be read over to the witnesses when extended.

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APPEAL from the judgment of the Honourable Justices Bourgeois and Malhiot, setting aside the appellant's election as a member of the House of Commons for the electoral district of Pontiac, by reason of corrupt acts committed by the appellant's agents without his knowledge.

The election petition was in the usual form. It was filed on the 18th April, 1891, and on the 10th October, 1891, within six months of the filing of the petition an order was made by Mr. Justice Malhiot enlarging the time for the commencement of the trial until the 4th November, 1891, and the preliminary objections to the petition having been disposed of, another order was made on the 19th of October by Mr. Justice Malhiot fixing the date of the trial for the 4th November, 1891, and fourteen clear days notice of trial was given to the appellant.

The particulars filed contained a large number of charges, and after hearing the evidence in support of them, and the witnesses for the defence, the court found as follows that the corrupt practices had been committed and voided the election:

"Considérant qu'il est en preuve que des manœuvres frauduleuses ont été pratiquées à et pendant la dite élection par des agents du dit Thomas Murray hors la connaissance du dit Thomas Murray."

On an appeal to the Supreme Court of Canada the appellant limited the subject of the appeal to the following special and defined questions on which he claimed that the said alleged judgment, orders and decisions and each of them is illegal and void:—

"1. That the said Superior Court of the province of Quebec for the district of Ottawa had no jurisdiction

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to render the said judgment, as the said alleged trial was before the said judges and not before the said court, and there were no findings of fact before the said court on which such judgment could issue, and the said judgment does not contain or refer to any special findings by the said court or by the said judges, and the same does not adjudge the appellant or any named agent of his guilty of any specific corrupt practice or of any practice referred to in the petition or bill of particulars, and the same is otherwise too general, illegal and void."

"2. That the said judgment is not signed by the said judges as trial judges or otherwise."

"3. That the said election petition was filed and presented on the eighteenth of April, 1891, and the said trial thereof was not commenced within six months thereafter, by reason whereof and of the statutes in that behalf the said petition was out of court and at an end, and the said judges, or the said court, had no jurisdiction to commence or hold the trial of the said petition on the fourth day of November, 1891, as they in fact did, or to render on the said day, or afterwards, any judgment upon said election petition, other than to declare that it was at an end, and that they had no jurisdiction to try the same."

"4. That the order of Mr. Justice Malhiot, dated on or about the tenth day of October, 1891, pretending to extend the time for the trial of the said election petition until the fourth day of November, 1891, did not include the said fourth day of November, but was exclusive of that day, and the said alleged order was otherwise illegal and void in this, that when the said order was made the preliminary objections filed to the said petition were not then disposed of and the said petition was not then at issue or ready for trial, and there was not then or when the said petition was at issue suffi-

cient time to give, as required by the statute or by the rules of the said court in that behalf, the proper notice of trial before the expiry of the said six months; and that the order of the said Honourable Mr. Justice Malhiot, of date the 19th day of October, 1891, fixing a day for the commencement of such trial, was and is illegal, *ultra vires*, null and void for the reasons above stated, and especially for the reason that on the 19th day of October, 1891, the six months within which the said trial should have been fixed and commenced had then expired, and that the day so fixed was beyond the period of the said alleged extension."

"5. That the appellant did not receive nor was there given the fifteen days notice of trial required by the rules of the said court, but the notice as of trial in fact given was only notice for fourteen days."

"6. That the said petition and particulars delivered thereunder contained 20,481 charges of bribery and of other corrupt practices against the appellant, and several other persons alleged to be his agents, and each charge formed a separate and distinct offence and should be separately tried and adjudicated upon, yet the said judges assumed to try and in fact did try and adjudicate upon all said charges together, against the will of the appellant and contrary to the rules of law and natural justice."

"7. That the evidence of the witnesses at the said trial was not properly taken in this, that the shorthand writer appointed by the said Honorable Mr. Justice Malhiot to take the evidence was not qualified in that behalf, or appointed by the Council of the Bar of the district of Ottawa, upon a report of a committee of examiners appointed by such council, or in any other manner whatsoever, to take evidence before the courts and trials of said district of Ottawa, or for any other purpose, or as an official stenographer or

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shorthand writer of said district of Ottawa, and when the evidence was taken it was not read over to the witnesses, nor was it read over to them when extended, and the said evidence is not accurate or reliable.

O'Gara Q. C. and *Aylen* for appellant cited *The Glengarry Case* (1); *The Charlevoix Case* (2); *South Ontario Case* (3).

Rule XXI. of the Election Court for the province of Quebec; Rule XI. of the Superior Court (4); and *Lavoie* v. *Gaboury* (5); *McQuillen* v. *Spencer* (6).

McDougall for the respondents was not called upon. The court proceeded to deliver judgment.

Sir W. J. RITCHIE C.J.—As the appellant has not printed the evidence this court is bound to hold that the learned judges have properly found as matter of fact that corrupt practices had been committed by the respondents' agents.

STRONG J.—(Oral). I have no doubt whatever that none of the objections relied on by the appellant in this case have any weight.

First, as to the enlargement of the time for fixing the date of the trial made by the order of Mr. Justice Malhoit on the 10th of October. I think it was quite competent for the learned judge to make the order although the case was not at issue. It may be that the judge was not at that time prepared to fix a day for the trial, but it was entirely within his power to enlarge the time without fixing the date of trial and the order made was perfectly good and valid.

(1) 14 Can. S.C.R. 453,
(2) 1 Can. S.C.R. 145.
(3) Hodg. El. Cas. 439.
(4) Art. 24 C.P.C.
(5) M.L.R. 1 S.C. 75.
(6) M.L.R. 3 S.C. 247.

Then, as regards the point taken by Mr. Aylen and discussed by Mr. O'Gara that there is no specific report on the charges mentioned in the petition and the particulars—there is nothing in that. We have in the printed case just such a finding by the judges who tried the case as it has been the universal practice to make. In fact we have just what is required by the statute, for the judges have determined that the election of the appellant is void by reason of corrupt practices.

Then as to the fifteen days notice. There is certainly something in this objection which might have been to the advantage of the appellant if it had been made at the proper time. If fifteen clear days notice of trial should be held necessary under the Quebec rules, though no doubt, if construed in accordance with art. 24 C.P.C., both days, the day of service and the terminal day, should be excluded, I am not at all satisfied that fourteen days would not be sufficient, one day being excluded and the other included. However there is no necessity for us to decide this point ; it is quite clear it is not an objection which can be invoked on an appeal to this court. It is neither a judgment or decision on a question of law or of fact of the judges who tried the petition and therefore it is not an appealable point.

The last point relied on is as to the shorthand reporter's notes not having been read over to the witnesses. It is out of the question that such an objection can be entertained. When the reporter was chosen he was duly sworn ; the judges were satisfied with the way in which the evidence was taken and no objection was taken by the counsel. The judge has entire control of the procedure, and in fact it would have been sufficient if mere notes of the evidence had been taken by the judge.

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The appeal must be dismissed with costs.

TASCHEREAU J. concurred.

Gwynne J.

GWYNNE J.—I entirely concur that this appeal must be dismissed.

The chief point of the argument of the learned counsel for the appellant was that the object of the statute was to obtain a speedy judicial decision on the merits of the election petition, and that therefore no trial was required to be commenced within six months from the filing of the petition. Granting speedy administration of justice to have been, as I agree it was, the object of the statute, I think it is a point worthy of consideration by the legislature whether appeals from the decision of the trial judges should not be altogether done away with, for if appeals like the present upon points of alleged irregularity not in any way affecting the merits and founded upon so frivolous grounds should be encouraged, the administration of justice would be almost indefinitely deferred instead of being speedily administered.

PATTERSON J.—I am also of opinion that this appeal fails on every point. A general finding on so many charges may be inconvenient for an appeal, but all that the statute makes necessary is a decision by the judges who have tried the petition, that the member whose election or return is complained of has been duly elected, or that the election is void, and the statute in this case seems to have been followed literally by the judges' report.

The other points taken are questions of alleged irregularity of one kind or another which are not appealable to this court. As to the question of the regularity of the notice for trial, although we are not bound to

pronounce upon it on this appeal I may say for myself that it strikes me that the notice given was sufficient. Sec. 31 enacts that notice of the time and place at which an election petition will be tried shall be given in the prescribed manner not less than fourteen days before that on which the trial is to take place. The court has thus the right to prescribe the manner of giving the notice, as for example by registered letter which was the mode adopted in this case, but the statute fixes the time, and I do not think the court has power to fix a different time. The notice here was a clear fourteen days' notice.

Appeal dismissed with costs.

Solicitor for appellant: *Henry Aylen.*

Solicitor for respondents: *J. M. McDougall.*