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 •March 22.
 •June 10.

CONTROVERTED ELECTION OF THE
 NORTH RIDING OF THE COUNTY
 OF ONTARIO.

GEORGE WHEELER APPELLANT ;

AND

WILLIAM HENRY GIBBS RESPONDENT.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
 ONTARIO.

Bribery—Promise to pay legal expenses of a voter, who is a professional public speaker—The Dominion Elections Act, 1874, sub-sec. 3, sec. 92.

Appeal from a judgment of *Armour, J.*, holding that appellant had employed and promised to pay the expenses of one *H.*, a voter, who was a lawyer and a professional public speaker, and therefore was guilty of bribery within the meaning of sub-sec. 3 of sec. 92 of *The Dominion Elections Act, 1874* (1). The evidence as to agreement entered into between *H.* and appellant was contradictory, and is reviewed at length in the judgment. It was admitted, however, that *H.* addressed the meetings in the interest of the appellant, and during the time of the election made no demand for expenses, except on one occasion, when attending a

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

(1) For the sec. of the statute see p. 444.

meeting and finding himself without money he asked for and received the sum of \$1.50 for the purpose of paying the livery bill of his horse.

Held: That the weight of evidence showed that the appellant only promised to pay *H's* travelling expenses, if it were legal to do so, and such promise was not a breach of sub-sec. 3 of sec. 92 of *The Dominion Elections Act, 1874.* (*Taschereau* and *Gwynne, J. J.*, dissenting.)

Per *Fournier, J.:*—Candidates may legally employ and pay for the expenses and services of canvassers and speakers, provided the agreement be not a colorable one intended to evade the bribery clauses of the Act.

Per *Taschereau* and *Gwynne, J. J.:* Such a payment would be illegal.

APPEAL from the judgment of Hon. Mr. Justice *Armour*, of the Court of Queen's Bench for *Ontario*, the Judge trying the election petition under the Act of *Canada, 37 Vic., ch. 70.*

The petition was filed by the respondent against the appellant under the *Dominion Controverted Elections Act, 1874*, in the matter of an election of a member of the House of Commons for the electoral district of the north riding of the county of *Ontario*, holden on the 10th and 17th of September, 1878, setting forth that the petitioner and *George Wheeler* were candidates, and that the returning officer returned *George Wheeler* as being duly elected, and that *Wheeler* before, during and after the election was, by himself and his agents, guilty of corrupt practices within the meaning of that expression as defined by section 4 of the *Dominion Controverted Elections Act, 1874*, and the common law of parliament, whereby the election and return of *George Wheeler* was null and void, whereupon petitioner prayed that it might be determined that *Wheeler* was not duly elected or duly returned, and that the election was null and void.

To this respondent, *Wheeler*, answered *inter alia* that he was not guilty of the charges in the petition set

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forth. This is the only issue material to the present inquiry.

The petition was tried before Mr. Justice *Armour*, who found that corrupt practices had been committed by the respondent *Wheler* and his agents at the said election.

The appellant only appeals from the judgment of the learned Judge as to charges Nos. 4 and 5, which allege that appellant had been personally guilty of bribery, and by notice, the appeal is in respect to corrupt practices so limited.

The charge involved in Nos. 4 and 5 is that appellant made a corrupt agreement to secure the vote and influence of one *Prosper A. Hurd*.

The evidence as to the agreement between the appellant and *Hurd* is contradictory.

Hurd's contention is that, appellant having had a conversation with one *McClelland* in reference to his supporting *Wheler*, he wrote a letter dated the 5th of August, 1878, to Mr. *McClelland*, as to the terms on which he would support *Wheler*, by attending meetings, speaking, canvassing and generally using his influence to secure *Wheler's* return; he then says that *Wheler* called on him, and, professing to be cognizant of the contents of this letter, entered into the agreement with him for his support, influence and services. The letter is as follows:—

Addressed to Mr. McClelland.

PORT PERRY, August 5th, 1878.

“DEAR FRIEND,—I have not written the letter spoken of the day you were here, but have thought best to allow this matter to remain a matter of confidence between you and myself at present, and I write this letter under the seal of secrecy between you and myself. As you have extended to me your confidence, I feel safe in saying what I please to you; and what-

ever may be the final result of this letter, I desire to keep good faith with you.

“I almost regret that I consented to talk about this matter, but as I have gone as far with you as I have, I propose in this letter to be frank and speak out to you my mind.

“Until after you left I did not fully consider the responsibility I had assumed, and more than that, I felt I was placing you in a false position, for if this should go back on you I would be compelled to bear the loss or cause you to bear it yourself. I have learned something by the past thirty years as to how men will act when victory is theirs and they are no longer in want of assistance. Now in this matter I am disposed to be plain and explicit.

“If I should assume the position required, I at once sacrifice a large business awarded to me by strong party men, who would withdraw it at once. It would necessitate my leaving my office and business for at least one month, and entail on me the most constant application to prepare for the platform, and tax my energies to the utmost.

“The first thing that requires to be done is to organize the whole riding by having a central committee in every township and village, and sub-committees in every school section, and to do that requires a personal canvass of the most thorough character. The leading men require to be seen all over the riding, not saying about the numerous meetings that are to be called and attended to in the riding during the contest. Then there are also local difficulties to encounter, and above all, the party requires to be raised up to the utmost enthusiasm if victory is to attend the effort.

“I know what the riding is, for I have gone through election contests here for the last thirty-five years, and I never, with the exception of one or two cases, lost the

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election of the candidate I supported ; but I know how difficult it is to create an excitement under the present circumstances, the party having been so frequently beaten here that they look upon defeat as certain and do not half work. The truth is, that not one for *the party* here talk as if there was any prospect of success, and I would not enter upon this contest and be cleaned out by the other party for any sum that could be offered, and I would not touch the thing unless I felt sure of success ; but I do not intend to injure my own business and give others the benefit of thirty years' study and hard work without some consideration. I do not feel there is much that divides the two political parties, for "*John A.*" will never in practice adopt protection. As to the second man, my choice would be the man in the riding, all other things being equal, but unless my services on the platform and in the contest are considered worth the estimate I put upon them, I shall remain mute as far as this riding is concerned.

"I have had liberal offers from two other ridings since you were here, but have so far declined them.

"*Now, as to what I shall expect.* I will enter upon the personal canvass any time after the twenty-fifth of this month, and continue in the contest till the matter is over, deliver two addresses a day, when required, anywhere in the county of *Ontario*, and give an article every week in some of the local papers touching the issues under discussion, if necessary ; in fact, the public press requires as much attention as almost anything else in order to ensure success, for which services I shall expect my expenses to be paid liberally ; and for my professional services on the platform and my contributions to the local press, I shall expect to be paid four hundred dollars, thusly : One hundred dollars on entering upon my duties, and the balance during the contest, and if the candidate I support comes out triumphant, I

shall expect to be paid six hundred dollars more within ten days after the election is over.

"In the first place, out of the four hundred dollars I shall save very little, if anything at all, for it will take all of that to secure the others.

"If those who are the most interested in the result consider it an object to comply with these terms, and will place you in a position so that you will be financially safe in promising them to me, I am satisfied to arrange with you alone; but if they consider the terms too steep, the matter can drop just where it is; for I would not be willing to assume the responsibility, suffer the loss to my business, and tax my brain for the next six weeks for anything less. Should I be unable to continue the fight through illness or other causes, the money advanced would be returned and no further demands made. I have suffered loss myself several times rather than ask a friend to carry out what he had agreed to when his endorser went back on him.

"Unless a man has been through a contest he knows nothing about it; and if any man expects to secure a seat in parliament without an effort at the present state of affairs, he will be mistaken. Now *Mac*, if you can satisfy yourself that the parties interested are willing to come to time, I will meet you at your own place the first of next week and definitely arrange matters. If they think they are paying too dear for the whistle, there is no harm done, and I will be at liberty to make other arrangements; but whatever is the result, I depend upon you as a man of *honor*. I shall mail this letter in *Toronto* while on my way to *Rochester*, and shall not return till Saturday. If you can write me Saturday to *Port Perry*, I will see it on Monday. If things are favorable, you can let me know what day I can see you at your place.

"Yours, &c.,

"P. A. HURD."

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Mr. *McClelland* says that he never replied to this letter or took any notice of it whatever, and never communicated its contents to *Wheler* or any body else, and *Wheler* swears that he never heard of the letter until after the election had taken place. and protesting it was spoken of, and that he never entered into any such agreement with *Hurd*. *Hurd* says he had a copy of the letter, but did not show it to *Wheler*, but that he dealt with *Wheler* on the assumption that *Wheler* knew all about it, as one *Paxton* had so informed him.

*Wheler's* contention is that it having been communicated to him that *Hurd* was going to vote on account of the National Policy, of which he did not approve, against his (*Wheler's*) opponent, and it was proposed to him that *Hurd* should hold and address meetings in favor of *Wheler's* candidature, he (*Wheler*) paying *Hurd's* expenses, that, believing he would be successful, he was afraid of doing anything that might jeopardize the election; that being assured that he could legally pay *Hurd's* expenses without interfering in any way with the election, and *Hurd* assuring him that it was quite legal and proper for him to pay his (*Hurd's*) legal expenses, he agreed he would pay whatever was legal and proper toward *Hurd's* legal expenses, they being understood to be his travelling expenses; and that there was not a word said about paying him for speaking; and that this was the only agreement or arrangement he ever had with *Hurd*. He swears that from the beginning to the end he made every effort to secure a pure election as far as he was able to do it; that he was not aware whether it was legal to pay *Hurd* for his expenses as a speaker; that he gave *McClelland* no instructions, because he was not at all clear on that point, and he says "I told him I would do nothing, nor make any arrangements that would affect the election in any way;" that there was

no talk between him and *Hurd* about a third party to make an agreement between them; "there was nothing said about his expenses but his legitimate expenses and the printing."

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He said :

"I know Mr. *Hurd*; he is a pretty prominent man in his profession in his part of the Riding.

"Q. A man who has in former years taken a pretty active part in elections? A. He has addressed meetings. I was nominated against Mr. *Paxton*; I did not run against him. Mr. *McClelland* spoke to me about Mr. *Hurd*, the first intimation I had of *Hurd's* supporting me; he and others from *Port Perry* stated that they believed Mr. *Hurd* was going to support me in this election. Mr. *McClelland* stated that he had seen Mr. *Hurd*, and that Mr. *Hurd* was going to oppose Mr. *Gibbs*—that he would not under any circumstances support Mr. *Gibbs*; that he was opposed to the National Policy; and that he might be got to support me. I think *McClelland* said he met him at some public gathering; that was told me at *Uxbridge* about the latter end of July or the beginning of August. I had heard before that from several parties in *Port Perry* that Mr. *Hurd's* support could probably be obtained; I think Mr. *Mark Currie* was one.

"Q. Who else? A. Mr. *William Jones*, and I think Mr. *Edward Munday*. I do not recollect positively whether there were any more. These parties told me he intended to support the Reform candidate, no matter who was before the Convention. \* \* \*

"Q. Did he (*McClelland*) come to see you about election matters at *Uxbridge*? A. No; I think not.

"Q. What did he come about? A. He informed me that he was gathering samples of barley for Mr. *Matthews*, of *Toronto*. I had not any samples of

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barley. I do not know that he came to see me. I met him in the hotel, talking about the *South Ontario* election and the *North Ontario* election—about elections generally; and he wished to see me particularly about meeting Mr. *Glen* in *Whitby* within the next week or two, with the object of getting the Hon. Messrs. *Mackenzie* and *Cartwright* to address meetings, one in *North Ontario* and one in *South Ontario*. He stated that he had met Mr. *Hurd* sometime previous to that, and he thought it likely Mr. *Hurd* would support me, from what he said. He stated that he was opposed to Mr. *Gibbs* anyway, and was opposed to the National Policy.

“Q. In consequence of that, did you ask Mr. *McClelland* to do anything? A. Nothing. He stated that he had spoken to Mr. *Hurd*, and he said he could do Mr. *Wheeler* some good, and that Mr. *Hurd* stated that he had not decided what course he would take, but that if he addressed meetings he would have to be paid his expenses. I replied that I was not prepared to give any answer; that I was not aware whether the law would allow me to pay any expenses; that I was looking for information on that point; and that until I got that information I would not give any answer whatever. I understood that Mr. *Hurd* would require his expenses paid; I did not understand he had sent a statement to me to that effect. I did not ask Mr. *McClelland* to do anything whatever. I cannot say whether Mr. *McClelland* left *Uxbridge* for the purpose of going to *Port Perry*; I do not know where he was going; he said he was going on gathering more samples; he did not tell me where he was going; he remained in *Uxbridge* all night. I did not ask him to go and see Mr. *Hurd*, nor make him any such request, because I was not exactly favorable to receiving Mr. *Hurd*. I know Mr. *Robson*.

I have never conversed with him on this subject that I know of. I remember meeting him in *Port Perry* some time since the election.

“Q. Did you tell Mr. *Robson*, at an interview, that Mr. *McClelland* came to your place and promised you to go over to *Port Perry* and make an arrangement with Mr. *Hurd*? A. I did not.

“Q. And that *McClelland* said to you *Hurd* would want money, or that some arrangement would have to be made with *Hurd* about money. Is it true that you told Mr. *Robson* that? A. It is not true.

“Q. Nothing of that kind? A. Nothing of that kind. I cannot say when I next said anything about this matter. I do not recollect hearing anything more particularly about it. I never heard from Mr. *McClelland* again about it. I never saw him again on that subject till the day of Mr. *Glen's* trial in *Whitby*. I never got a letter from Mr. *McClelland* on the subject or wrote him one.

“Q. Did Mr. *McClelland* send you any communication on the subject that he got from Mr. *Hurd*? A. Never. I did not hear of *McClelland* having got any letter from Mr. *Hurd* till about the time of this protest. I heard then for the first time about this letter. I never heard from Mr. *Paxton* about Mr. *Hurd*.

“Q. After you saw Mr. *McClelland*, did you ever hear of any further negotiations with Mr. *Hurd* by any other person? A. No; none except the conversation I had with Mr. *Hurd* myself. I had an interview with Mr. *Hurd*; I cannot tell exactly when it was; to the best of my recollection it was on the 10th of August. I saw him in his own office at *Port Perry*. I called on him to solicit his vote; I did solicit it.

“Q. Did you want him to work for you? A. Well, he said he was not decided what he was going to do.

“Q. Did you want him to work for you? A. I do

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not know that I did. I asked his support, and then he stated that he had not exactly decided what course he would take; would not do so for a week. He was going, the *States*; I think he said he would be away a week or two, and after he came back he would decide what he would do. He asked me my views. He said it depended much on my views of the National Policy—if I was in accord with him. He wanted me to give him my opinion on certain points. I did so, and he said, “Well, we are nearly in accord;” and he said, “I am determined not to support Mr. *Gibbs* after what he has done.” I asked him then, “Will you give me your support?” He said he would not decide then. He said he had some business matter to arrange before he would give any body to understand what he would do; he had some business to arrange with Conservative parties; I think he said parties who would give him trouble after he announced himself. He stated that he was going over to the *States* for some information respecting protection, and if he decided to take any action in the matter, he would require his personal expenses to be defrayed by me if he addressed meetings. He asked me what I would require him to do. I said, if he took hold of the matter it would be to address meetings only. I told him I would want him to address meetings if my Reform friends decided to engage him to do it or to accept him. Nothing more was said about terms—nothing about amount. He asked me whether I would want him to hold meetings generally throughout the Riding or in any locality. He said, “If I do take hold of the matter, I propose to hold a meeting at *Port Perry* in the first place, or at *Uxbridge Village* ;” and he said, “I wish to take control of the meeting.” He would not allow anybody to address the meeting but himself; and that he would take up about two or three hours, and not refer to Mr. *Gibbs* or anybody else. He

said he would not allow Mr. *Gibbs* or myself to address the meeting; and then he wanted his speech to be revised and printed in fly form, and five or six thousand distributed through the Riding, and he wanted to know if I would go to that expense. I said if he went on and addressed the meeting, and my friends considered his speech was worth it, we would consider whether it would be worth while going to that expense. There was nothing more said about expenses at that time. He stated it was quite correct and proper, and legal, for me to pay his legal expenses. I stated if it was, and if our people decided to accept him as speaker for us, I would pay whatever was legal and proper towards his legal expenses; that was not to cover his trip to the States; it was understood to be his travelling expenses. There was not a word said about paying him for speaking. Then we parted without any definite understanding. That interview lasted about twenty minutes; it took place in his office about six or seven o'clock in the evening; Saturday, I believe. Mr. *Foreman* came in, I suppose about five or ten minutes before we closed. I do not know whether he heard any part of our conversation; he was present at the latter part of our conversation. *Foreman* is a supporter of mine. I do not think *McClelland's* name was mentioned; it might have been mentioned.

“Q. Do you remember asking him whether he had seen *McClelland*? A. No. I think perhaps he asked me whether I had seen *McClelland*. He did not tell me he had written to *McClelland*. I did not tell him I had come to close up the matter with him.

“Q. Had you any other interview about this matter? A. No.

“Q. Never had any interview at which it was arranged that his expenses should be paid? A. No, never. The first thing I heard of him after that was that he wrote me that he had advertised a

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meeting at Port Perry ; that my friends had advised him to do so. I received the letter produced in *Uxbridge* (dated 20th August, 1878.) At our interview I told him I was prepared to pay his legitimate expenses for addressing meetings, if the party accepted him. I do not recollect when I next saw him. The first intimation I got that the meeting was called was that it was advertised in the Port Perry *Standard*. I do not recollect when I next saw him. I do not think I met him again until the meeting at *Scott*, in the Town Hall. That was my meeting and Mr. *Gibbs'* together. All our meetings were held jointly. Mr. *Hurd* did not address that in my behalf I had not any conversation about this matter with him again. My understanding was that my party had accepted him, and that I was willing to pay his personal expenses. I thought his personal expenses would cover his conveyance, the printing and his own personal expenses. He did not say anything about his time at the interview. He stated that he would have to leave his office and his son there, and he could not afford to do it unless his expenses were paid. He said he had a few Conservative clients he would have to settle with before he could come out in my favor, and that he wanted a little time for it. He was very much annoyed, I was informed, because he did not get his first speech in the *Globe* newspaper, and was near breaking off on account of it. He called meetings in the south portion of the riding. As near as I can understand, he held about five or six meetings, all within a radius of a few miles. He came to my house on the Sunday following the *Scott* meeting. I think it was on the next morning after the *Scott* meeting. We did not talk election matters over then. He wanted to know if I wanted him to go with me to attend any of the meetings that were regularly advertised, and I said no. Mr. *Hurd* spoke at *Cannington* on the following

Tuesday evening ; that was nomination day ; that meeting was a joint one of Mr. *Gibbs'* and mine. I am satisfied I was not elected through Mr. *Hurd's* agency. I am satisfied he was an injury to me ; I was satisfied of that before three days were over. Mr. *Hurd* spoke to me the next morning after the *Cannington* meeting, and said, "I did not expect to come to this meeting this evening, and I have not enough money ; I wish you would let me have enough money to pay the expenses of my horses at *Sunderland*." I think he said *Sunderland*, and I gave him a dollar or two dollars ; that was all the money I ever gave him. He has not sent me a statement of his personal expenses, and I have not settled up with him yet. On the 12th of October, I think it was, the day the fair was there, I called at his office, and was there while his son was looking around for his father for an hour or an hour and a half, to get his bill of expenses to see what his expenses were. I left word with the son to write to me and send the bill of expenses. It was the younger son that I saw. I said to him that I wanted to see his father ; he said his father was expecting to see me. This was at the fair, which was on that day. I afterwards went to his father's office, and the son went to try to find his father, but did not find him."

The Dominion Elections Act, 1874, sec. 92, provides that the following persons shall be deemed guilty of bribery, and shall be punishable accordingly :

"1. 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 endeavor 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

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such voter having voted or refrained from voting at any election."

"2. Every person who, directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers or promises any office, place, or employment, or promises to procure, or to endeavour to procure any office, place, or employment, to or for any voter, or to or for any other person in order to induce such voter to vote or refrain from voting, or corruptly does such act as aforesaid on account of any voter having voted or refrained from voting at any election."

"3. 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 endeavor to procure the return of any person to serve in the House of Commons or the vote of any voter at any election."

"And any person so offending shall be guilty of a misdemeanor, and shall also be liable to forfeit the sum of \$200 to any person who shall sue for it; provided always that the actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing and advertising, shall be held to be expenses lawfully incurred, and the payment thereof shall not be in contravention of this act."

Section 100 provides that:

"Every executory contract, or promise or undertaking in any way referring to, arising out of, or depending upon, any election under this Act, even for the payment of lawful expenses, or the doing of some lawful act, shall be void in law, but this provision shall not enable any person to recover back any money paid for lawful expenses connected with such election."

By section 101, corrupt practices by candidate or agent to void election.

By section 102, corrupt practices by candidate, or with his knowledge, renders him incapable during 7 years next (after found guilty) of being elected to or sitting in the House of Commons.

And section 125 provides that :

“The words personal expenses as used in this Act with respect to the expenditure of any candidate in relation to the election at which he is a candidate, shall include the reasonable travelling expenses of such candidate and the reasonable expenses of his living at hotels or elsewhere, for the purpose of and in relation to such election.”

Mr. *Hodgins*, Q.C., for appellant :

[In opening his argument, the learned counsel reviewed the evidence relating to the charge of bribery by appellant, alleging that appellant made a corrupt arrangement to secure the vote and influence of *Prosper A. Hurd*, and contended that the account given by the arrangement made with *Hurd* was the only one that the court could accept, as *Hurd's* testimony was contradictory, unreliable, and uncorroborated.]

As to the question of law, the rule adopted is that where there is no money paid, the court will not draw any inference unfavorable to the candidate. In the cases relied on by the judge of the court below, the promise to pay was executed and large sums of money expended, whilst the following cases show that courts of justice will refuse to assume that there has been an improper expenditure, or an intent of corruption, unless there is abundant evidence of the fact. The *Kingston* case (1); the *Quebec East* case (2); the *Middlesex* case (3); the *Jacques Cartier* case (4). Now, it was generally

(1) 11 C. L. J. 11.

(2) 1 Q. L. R. 285.

(3) 12 C. L. J. 16.

(4) 2 Can. Sup. C. R. 317.

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known throughout the riding that *Wheeler* was lacking in talent as a public speaker, and he might without a violation of the spirit of the law employ one who was well known as a political speaker to represent his views.

But the learned judge at the trial held that the employment of a voter who was a lawyer and a professional public speaker, to make public speeches in favor of the political questions at issue in the election, was the "bribery of influence." This judgment overrules the judgments rendered from the earliest days to the present in *English* courts, as well as in *Ontario* and *Quebec* courts, on this point. In *Quebec* it has been held *orateurs* may be legally employed. Now there is no difference between the employment of a public canvasser and an *orator* as styled in the Province of *Quebec*. In *England* a landlord may canvass his tenants.

What is meant in *England* as the "bribery of influence" has never been extended to mean the public speeches of local politicians or lawyers, nor of prominent public men before the electors in favor of a particular candidate or of a particular policy of a political party. In the case cited by the learned judge (1), Mr. Justice *Willes* said: "But the candidate may pay his own expenses, and the candidate may, paying his own expenses, employ voters in a variety of ways; for instance, he may employ voters to take round advertising boards; to act as messengers as to the state of the poll; or to keep the polling booths clean. He may also adopt . . . committees . . . of selected persons who go about and canvass certain portions of the district, and for their services these persons are sometimes paid and sometimes not paid. Now, if the third clause was to be taken in its literal terms, the payment to canvassers under such circumstances, being as it is a payment to induce them

(1) Coventry case, 20 L. T. N. S., 405; 1 O.M. & H. 101.

to procure votes by means of their canvass, would come within the terms of this clause, and would avoid the election." But the learned judge in that case held that the employment and payment of such canvassers was legal.

There is more "influence" exerted in the private argument of the local canvasser, than in the public argument of the local professional speaker, and if the payment for such private arguments is not illegal, neither can it be held illegal to pay for the public argument of a professional speaker.

Will we bring down the law to say only a laborer can canvass a laborer; will we have to classify canvassers?

But we have also the *Ontario* Elections Act which contains a similar proviso to that contained in the Dominion Elections Act, and under that clause the late Chief Justice of the Supreme Court, Sir *William Buell Richards*, while Chief Justice of *Ontario*, held that "expenses for actual professional services performed," meant fees paid to lawyers. And lawyers, as professional public advocates, may be retained and paid for their arguments in courts of justice, arbitrations, meetings of creditors, meetings of public companies, such as banks, railway companies, &c., committees of parliament on private bills, and meetings for political, municipal or trade discussions.

The Elections Act, sec. 73, in effect allows a candidate to employ voters for the purposes of the election, and provides that "where any person retained or employed for reward, by or on behalf of such candidate, for all or any of the purposes of such election, as agent, clerk, messenger, or in any other employment," votes at the election, a vote shall be struck off from the poll of the candidate retaining or employing such voter.

The proviso in the Canadian Act is wider than the

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proviso in the English Act. The English Act excludes from the bribery clauses "money paid or agreed to be paid for or on account of any *legal expenses* (*i.e.*, expenses allowed by law) *bona fide* incurred at, or concerning the election. The Canadian Act sanctions "the actual personal expenses of any candidate, his expenses for *actual professional services performed*, and *bona fide* payments for the fair cost of printing and advertising," and declares that such shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act.

The use of the terms "person *retained* for reward," and "professional services performed," indicate the sanction which the law intended to give to the retainer by a candidate of professional advocates "for the purposes of the election."

In the *Cambridge* case (1), it was held that the payment of messengers and canvassers was not illegal. See also *Tamworth* case (2), and the *Chambly* case (3).

Mr. *Hector Cameron*, Q. C., and Mr. *Dalton McCarthy*, Q. C., for respondent :—

The statute only refers to professional services; and the Chief Justice in the *East Toronto* case said it means *fees* paid to lawyers as such. It certainly is not a part of a barrister's duty to take the stump. It may be within the Act to get a person to act as canvasser, but there is a manifest difference between a canvasser, as the word is generally understood, and a hired orator; for the former, besides speaking to voters, has to distribute bills and do a great deal of other work absolutely necessary in such a campaign, but of such a nature as cannot be performed by the candidate himself. Now, in this case, we have

(1) *Wolf & Dew* 41.

(2) 1 O'M. & H. 79.

(3) 19 L. C. Jur. 332.

a voter hired to use his political influence, and that for a pecuniary consideration. See *The Brantford* case (1); *The Coventry* case (2); and *The Preston* case (3). As to practice prevailing in *Quebec* as to the hiring of young lawyers, this court will have to decide whether it is valid. There can be no doubt that if Mr. *Hurd* had been known to have been hired, that would have destroyed his influence. As Mr. Justice *Armour* puts it: The bribery of influence is defined in our Act in the same way and by the very same words as the bribery of voters, and it follows that the application to the one is equally applicable to the other.

Now, what would have been necessary on an indictment to convict the appellant? That there was an agreement between *Hurd* and the appellant to work for some consideration, and if this agreement comes within the literal terms of the Act, then there has been an offence. The terms used in our Act are designedly intended not to cover what the English Act does, so that in order to give effect to the plain meaning of the words in the 3rd sub-sec. of sec. 92, if the expenditure is not for *professional* services, the case against the appellant is made out. Now, the definition of the word *professional* had received a judicial construction when *The Dominion Elections Act*, 1874, came into force, and it cannot now be successfully contended that the hiring of orators and of canvassers comes within the words: "expenses for actual professional services."

The learned counsel then referred to and commented upon the evidence, and contended that the respondent, having proved not merely a *prima facie* case, but a strong and clear case, having proved statements and correspondence by a prominent agent of the appellant, it lay on the appellant to call him as a witness to rebut

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(1) 1 O'M. & H. 32.

(2) 1 O'M. & H. 100.

(3) Wolf. & Bris. 56.

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the charges, and, failing to do so, the evidence given and the statements themselves must be accepted as true, or at least to the extent that would not have denied, but would have substantiated them. It was for the appellant to call his friends and agents, not, under the circumstances, the respondent.

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

RITCHIE, C. J., after stating the case, proceeded as follows :

In deciding this case the learned judge did not determine which was the true agreement with *Hurd*, viz. : that deposed to by the respondent, or that deposed to by *Hurd*, because, in his opinion, "they were both equally illegal ; and assuming that the true arrangement was that deposed to by the respondent, the respondent was thereby guilty of bribery within sub-sec. 3 of sec. 92, of the *Dominion Elections Act* of 1874." In the view I take of this case I am constrained to ascertain, as best I can, which was the true arrangement, for while under the arrangement as put forward by *Hurd* the question would arise as to whether the respondent had been guilty of bribery under the sub-sec. referred to, I am of the opinion that under the arrangement as detailed by the respondent he was not guilty ; and I am compelled to say, at the outset, that I cannot accept the witness *Hurd's* account of the transaction as correct ; it rests almost, if not entirely, on his unsupported testimony, or rather, I should say, on his unsupported testimony, directly contradicted by the appellant and by his own statements at different times, and the account he gives of himself, and his utter disregard for truthfulness in connection with the matters in controversy, would, if he were not contradicted, render it unsafe to treat him as a credible witness.

It is hardly possible to believe that any professional

man could have so little respect for himself and his duty as to have held the conversations, I can almost say the negotiations, which he details as having taken place between himself and Mr. *McClelland* and Mr. *Paxton*, with reference to selling himself and his influence to whomsoever would buy him, which may be summed up in the words he said *Paxton*, whom he describes as his personal friend, used to him: "*Hurd*, I will just say this to you as a friend, altho' I would like to have you support the party, I would not work for *Wheler* or anybody else unless he paid me; your circumstances won't warrant you. But if you get a good remuneration for it, work for *Wheler*, and if you do not and you get it from *Gibbs*, work for *Gibbs*."

If *Hurd's* testimony could be relied on, I think there, could be no doubt that Mr. *Wheler* agreed to purchase for a very large sum the support and influence of a most unscrupulous man. But I am constrained to say (and I say it with deep regret) that I am unable to place the least reliance on the testimony of Mr. *Hurd*, contradicted as he is so unequivocally by both *McClelland* and *Wheler*, and discredited as he is by himself. That Mr. *Wheler's* statement is true, that all he undertook to do was to pay Mr. *Hurd* his legal expenses is, I think, confirmed in the strongest manner by *Hurd's* own testimony as to his conversation with Mr. *Nott* and Mr. *Currie*, though he endeavors to escape from the effect of that conversation in a way most damaging to his reputation and to his credibility. He says:

I had communicated to a few other persons besides Mr. *Wright* that I had a claim against Mr. *Wheler*. My youngest son knew all about it, and my other son knew what I told about it. I told my wife about it. Before the thing came out at all, I told Mr. *Nott*; I spoke in some rather sharp terms against Mr. *Wheler*, and he asked me why, and I told him Mr. *Wheler* had never paid me my expenses yet. I told Mr. *George Currie*. My recollection is that I told Mr. *Nott* at

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the first conversation I had with him that Mr. *Wheler* was to pay my legal expenses, and that he had not done it. I do not think I went any farther with Mr. *Nott* before I put the matter in Mr. *Wright's* hands. It was perhaps a week or ten days before I put the matter in Mr. *Wright's* hands that I told Mr. *Nott* that. I told Mr. *Nott* that Mr. *Wheler* had agreed to pay me legal expenses. I think I told him and Mr. *Currie* too that the arrangement I had made with Mr. *Wheler* was that he was to pay me my legal expenses. I did not intend to give Mr. *Wheler* and Mr. *McClelland* away until I saw that they were not going to settle with me. There was never an agreement that Mr. *Wheler* was to pay my legal expenses.

Q. Then you stated to those two parties what was not true? A. Yes; when a man begins to sin he generally goes on.

Q. Then at that time, as a matter of fact, all you were complaining of was legal expenses? A. That is all I told them.

The ends of justice require that I should point out some of the contradictions, discrepancies, and self discrediting evidence of *Hurd*, to justify the position that his testimony is not of a character to be relied on.

In a letter from *Hurd* to *McClelland*, dated the 8th October, 1878, when pressing *McClelland* to interfere, he thus writes :

W. may think that it is only a question of veracity between him and me, but it so happened that I intentionally had my son hear every word that was said, when he said he accepted my proposal and requested me to go down and see you, as he said you were fully authorized to make the arrangement with me. *Paxton* says he told him he knew what the proposition was. But, as he has said nothing, and as some other matters within my knowledge, he don't intend to come to time unless he thinks you are legally bound.

The letter of the 8th October, 1878, shows two things : first, that he intentionally had his son to hear every word that was said when (as he alleges) he said "he accepted my proposal," but it also shews, that neither he nor *Wheler* could have considered that any agreement was then entered into, because he very clearly intimates that the arrangement into which *Hurd* was to enter, was to be, not with *Wheler*, but with *McClelland*, for he says : "he said you were fully authorized to make the arrangement with me;" and again, "he don't

intend to come to time unless he thinks *you are legally bound*;" strongly confirmatory of *Wheler's* contention that he made no such arrangement as *Hurd* at the trial sets up.

In the statement of facts, as he calls them, handed Mr. *Cameron*, dated 19th Oct., 1878, he heads it thus :

The following are facts which I am willing to put in the form of an affidavit :

I next met Mr. *Wheler*; he came to my office, said he had called to see me about election matters, and asked me if I had seen *McClelland*. I said I had, but that I had not heard from him since I had written him my definite proposals. He said he had seen *McClelland* and had instructed him to arrange with me, and that *Mac* had with him; said that he had come to close up the matter with me, and said he accepted my proposals, and wanted me to name some person in whom we both had confidence to act between us; I said I should prefer *McClelland* to any one else as I had full confidence in *McClelland*, and as he was not in the riding he would not be suspected. He asked me how far he could arrange with me himself; I told him he could pay my legal expenses liberally, but if he went beyond that himself, it might create difficulty if he was put under oath. He said he had authorized *Mac*. to act in the matter, and that they fully understood each other. My son *Ralph* was at the office door purposely to hear what passed, as I had some fears as to *Wheler's* acting in good faith. He then requested me to write *Mac*. at once and make an appointment with him. I did so at his request and got a reply by telegraph, which I mark No. 2, naming *Whitby* on next Saturday morning, but *Wheler* and I fully discussed the purport of the letter. He did not then say he had seen my letter to *Mac*, but I was satisfied that he then knew its contents, and Mr. *Paxton* had previously told me that *Wheler* knew what the proposal was and read the contents of my letter to *Mac*, and said he would accept it. I parted then with *Wheler* with the understanding that *McClelland* was to consummate the arrangement and act as our confidant both as to my proposition and the acceptance of it. I met *McClelland* up at *Whitby* at the time appointed, and he then accepted my proposition as made in my letter of the 4th of August, on behalf of Mr. *Wheler*.

And again in the same document he says :

I have seen *Paxton* since, and he told me that he had seen *McClelland* on that subject; that *McClelland* told him the arrangement was just what I said it was, and that *Wheler* authorized him to make the terms with me, and that his attempt to get out of the matter was an

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outrageous breach of faith, and that he would see *Wheler* at once, and if *Wheler* did not pay over the balance of the money, he would protest the election himself. I can prove all I have stated here by *Paxton*, *McClelland*, and my son *Ralph*, as to the bargain.

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Here again putting forward that he (*McClelland*) and not *Wheler* made the terms with him, and yet both *McClelland* and *Wheler* contradict this statement, and the son *Ralph* denies having overheard the bargain and his ability to prove it, and *Hurd* himself contradicts the fact of the arrangement having been made with *McClelland*, and contradicts the fact that his son was placed to overhear the conversation, or that he could prove the bargain as stated by *Hurd*; and *Paxton*, though present and summoned by petitioner, is not placed in the box to confirm *Hurd* or discredit *McClelland*. The burthen of establishing the affirmative was clearly on the petitioner. *Paxton*, to whom *Hurd* so often refers, and who, he said, told him *Wheler* knew the contents of *Hurd's* letter to *McClelland*, having been summoned by the petitioner but not called, I think when *Hurd's* evidence was strongly impeached, should have been called to corroborate *Hurd* if he could do so, and I cannot escape the conviction that if his evidence could have corroborated *Hurd* he would have been put on the stand; and after having thus written to *McClelland* and having forwarded a solemn document to Mr. *Cameron*, which he is willing to put in the form of an affidavit, we find him on his examination before Judge *Armour* deposing thus:

On the same day I wrote to Mr. *Wheler* I wrote to *McClelland* about it.

Q. Why was it you did not write to Mr. *Wheler* in the same way you wrote to Mr. *McClelland*? A. Simply because I never had anything to say to Mr. *Wheler* about the matter.

Q. I see in this letter of the 10th of October you say you intentionally had your son hear the arrangement that was made between you? A. Well, I do not think that is correct. My son was not present—the whole conversation, anyway; and the word “intentional,” if I

put it in there, I do not think I intended. There was no intention on my part of my son's being there. My son was in the office, as he is always in the office. I do not think he heard but very little of what passed between us. He knows the fact that Mr. *Wheler* was there, and he heard some part of the conversation. I spoke to my son about it afterwards, and he said, "I was not there purposely, and I did not go there to see what the case was."

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Ralph Hurd, who seems as regardless of the truth as his father, speaking of the interview between his father and *Wheler*, says :

I would not swear positively that the interview lasted more than an hour, but I think it did. I will swear positively it was over half an hour. I will swear now positively that they were in there over an hour. The interview was in the afternoon. While I was in the outside room I did not hear anything that passed. I did not go into the room intentionally to hear what they were saying. It had not been arranged between me and my father that I should go in. I have not seen or heard read the statement my father made in this matter. I told my father one night that I was listening to what was said when *Wheler* was there; that was a lie.

On the trial he (*Hurd*) swears, notwithstanding what he had before said and written, the arrangement as to the \$1,000 was made with *Wheler* thus :

Q. Whose promise was it you say exactly was made to you here?
A. Mr. *Wheler* was the person I made the arrangement with.

Q. Then the arrangement you made with Mr. *Wheler* is, in fact, the only arrangement you made? A. I made no arrangement with any other person any further than *McClelland* was connected with it. No person but *McClelland* and *Wheler* made me any promise of anything. *Paxton* never made me any promise; he had not any thing to promise.

And again he says :

I do not consider I ever had an arrangement with *McClelland*, any more than I looked upon it that the money was to come through *McClelland's* hands into mine. The arrangement was made between me and *Wheler*. It was simply this: Mr. *Wheler* said that he understood that I would support him on certain conditions, and that he was there for the purpose of closing it up. He referred to this letter I had written to *McClelland*. I stated to him the conversation that had taken place between me and *McClelland*, in the first place, and then referred him to the terms of this letter; and he told me he knew all about

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it; and Mr. *Paxton* had previously told me that he said he knew all about it. Then he said that he was there to close up the matter; and he asked if there was any third person there that the money could be paid to me by, and I said no; as *McClelland* had been engaged in the matter in the first place, and as I had confidence in him, he might act in the matter.

And he says :

I had a copy of the letter at the time but did not show it to Mr. *Wheler*.

If *McClelland's* evidence is correct that he never showed to, or told, any person about the letter, and *Hurd* says he never showed the letter to *Wheler*, or told him its contents, there appears to be no way that Mr. *Wheler* could have had any knowledge of its contents, and if *Paxton* did tell *Hurd*, as he swears, the inference to my mind is irresistible, that not having been called, he was not prepared to confirm *Hurd* or testify to the fact. But Mr. *Nott* swears that *Hurd* told him it was *McClelland* who promised him.

His evidence is this :

I live in *Port Perry*. I know Mr. *Hurd*.

Q. Have you had any conversations with him about this matter that has been in controversy, about the part he took in the election, and the circumstances in which he took part in it? A. I have. I understood him to say he was to be paid a thousand dollars for his services. I think it was about the 25th of November when he told me this.

Q. You had business at his office, I believe? A. He has been my lawyer. He told me from whom he was promised it.

Q. Who did he say? A. *McClelland*.

Q. Did he tell you that Mr. *Wheler* had ever assented to that, or promised to pay it? A. Never.

Q. What did he say about the question of the validity of the seat? A. I think it was something like this, that if he got paid for his services, he could either be the means of *Wheler* keeping his seat or losing it.

Q. Did he ever tell you anything definitely about his being paid the thousand dollars? A. I never understood him to state anything definitely; he said he had been at a great deal of expense, and he had got some money from some friends of

his ; and that he had used his own money, and he thought it ought to be paid back. I think he said that on two occasions. I did not understand that Mr. *Wheler* was to pay him anything at all. Mr. *Hurd* stuck for his thousand dollars ; and finally I understood him to state that if he could not get his thousand dollars he would be satisfied with less ; that if the matter could be settled before protest was entered, less money would be accepted than a thousand dollars.

Cross-Examination—I did not understand that anything had taken place between him and *Wheler*. He said he had an interview with Mr. *Wheler* and talked over election matters with him. I did not understand him to say that any figures had passed between him and *Wheler*.

Re-examination—I did not understand from *Hurd* that Mr. *Wheler* had ever agreed or assented in any way to any proposition that he should be paid.

Then *George Currie* swears :

I live at *Port Perry*. I know Mr. *Hurd* very well. On one occasion he mentioned to me that he had been disappointed in getting money from Mr. *Wheler* ; he said that he had been promised some money ; expected to get \$50 or \$60 from Mr. *Wheler*, and had not been able to get a dollar from him ; *Wheler* had not even recognized him, or recognized his letters or telegrams at all. He mentioned, I think, some \$50 or \$60 that he had expended. He did not say to me who had promised him that he should be paid anything ; he did not say what the promise was that had been made to him any more definitely than that he had been promised his expenses during the election, and that he had disbursed to the extent of some \$50 or \$60. In speaking of expenses, he spoke of them as his travelling expenses and telegraphing ; he might have mentioned horse hire, but I do not remember that. The conversation arose accidentally, and he just mentioned this as a reason why he had not repaid me a small sum of money he had borrowed of me. He spoke of the extreme difficulty he had in getting any recognition from Mr. *Wheler*, and the disappointment and vexation he had about it. I asked him if he had made any demand of *Wheler* for it, and he told me that he had repeatedly written and telegraphed, and got no response.

Q. Did he ask you to do anything in the matter? A. I think I suggested myself. I do not think he asked that. I think I expressed my surprise that *Wheler* should be so negligent about it ; that if *Wheler* had promised to pay his expenses, I thought *Wheler* was not the man to do what was wrong about it ; and I said, "If you like I will write to *Wheler* myself about it." I did not do

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so. This conversation took place in the early part of the afternoon, and I meant to write to *Wheler* that afternoon; I forgot to do so, and could not send the letter till the next day, and in the meantime I heard that *Hurd* had transferred his claim to the other party.

Ritchie, C.T. I think *Hurd* always contemplated making money out of the election, that he very highly estimated his powers and his influence, and, if he was to be believed, deemed his services almost if not quite indispensable to Mr. *Wheler's* success; and, I believe, he thought that after the election was over, if successful for *Wheler*, as it was, he would recognize and reward him accordingly, and this is to be inferred from his letter to Mr. *Wheler* after the election, dated October 8th, 1878, in which, after remarking on the surprise at the result of the elections generally and those of *N. and S. Ontario* particularly, he writes thus:

Strictly private and confidential.

PORT PERRY, October 8th, 1878.

* * * * * And while the contest has resulted satisfactorily to both you and your friends, so far as giving you a good majority, allow me to suggest that there is always after an election contest certain matters requiring the attention of the victorious candidate, and if neglected, produce great unpleasantness. What is to be done had better be done at once; neglect or indifference always leads to the supposition that it will never be done. I make these suggestions in all kindness, as the neglect of these little matters often leads to great dissatisfaction, and sometimes to an open rupture between the parties. Let me hear from you.

Yours, &c., P. A. HURD.

He puts forward here no agreement the fulfilment of which he claims on the basis of a legal or an honorable contract, but relies on some general understanding or practice as to what *always* takes place after an election and which requires the attention of the victorious candidate. I read this, put in plain English, as amounting to this:—I have been very instrumental, if not indispensable, in securing your election, and I expect you will do as other victorious candidates have done,

show your liberality and recognize my services. If you are neglectful or indifferent in this respect it will, *as it often does*, lead to great dissatisfaction, and *sometimes* to an open rupture.

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I have no doubt many a victorious candidate has after an election been approached and pressed by unscrupulous persons who have made themselves busy in the election, and I have no doubt many such persons, when repelled and treated as they ought to be, have become dissatisfied, and the result an open rupture. He also addresses Mr. *McClelland* and *Wheler's* friends, and evidently seeks to impress on them that *Wheler* is in his power and he can upset the election, and puts forward a corrupt contract with *Wheler*, and that if *Wheler* should swear differently from him, and a question of credibility should arise between them, which he appears to have anticipated, he puts forward that he had, by placing his son in a certain position, secured a witness who would prove the contract. *Wheler* did not respond, and finding that his efforts were unsuccessful, we find him still determined to get money out of the election, and having failed on one side, he turns to the other, with obviously the same object, and seeks to make the defeated party believe that he possesses the necessary information to upset the election and disqualify *Wheler*, and with this view he prepares the materials for an affidavit, in which he again puts forward the same untruth as to his son, which he alleges he is prepared to put in an affidavit, and adds that *McClelland* and *Paxton* as well as his son could prove the corruption. I cannot on any other hypothesis reconcile his untruthfulness and conduct generally. But be this as it may, of a contract such as he alleges, there is, in my opinion, no reliable or trustworthy evidence.

In addition to all which contradictions, we find Mr.

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Hurd, when he can extract nothing from *Wheeler*, taking steps to get money from the other side, and I have no doubt, what he did led to the present petition being filed, and in this operation we find from his own evidence that he was as regardless of truth as he has shown himself to have been in the earlier part of the business. He admits that he told a good many Grits, as he calls them, that he would get his money, his words are "that I intended to get it from the other party, if I did not get it from him" (*Wheeler*), and in answer to this question: "Have you stated to any person that Mr. *Gibbs* was advised that it would not be safe, or that he could not be advised that it would be safe to pay you \$1000 till the trial was over?" we have this answer: "A. If I stated that, I have no recollection of it. I will not undertake to state that I did not state it. I may have stated a thing of the kind;" and then adds "It was not true if I stated it, because I have no authority for saying anything of the kind." And in reply to this question: "Q. Then the long and short of the matter is that you may have told a good many lies about this matter? A. That is very true, that I may have told a good many stories about it."

He then states what took place:

Q. When you put this matter in Mr. *Wright's* hands, and Mr. *Wright* gave these papers to Mr. *Cameron*, did he tell you that he had told any person about it? A. No. I do not think that he said at that time whether he had told any person or not; but he said that Mr. *Cameron* wanted to see me in *Lindsay*.

Q. Did Mr. *Wright* tell you at that time that he had told any person other than Mr. *Cameron* anything about this letter? A. I think he told me he had not. I won't swear positively that he did. He said to me, "Mr. *Hurd*, if you will allow me to mention this to anybody, I am satisfied that I can get your money." He mentioned a man's name to me.

Q. Then he knew how much it was you were claiming? A. Yes; we talked it over after he came back that evening. I authorized him to tell this person; the person was *Thomas Paxton*. He did not give me any assurance that I could get my money in any

way. Mr. *Wright* was a Conservative ; he was a personal friend of mine.

Q. Did he give you any assurance that you would get your money from the other side in any way, or any payment at all? A. No.

Q. Did he ever say to you that any person would give anything for that information? A. No. I do not think he ever did ; I am pretty sure he never did.

Q. Did you ever say he did? A. Yes ; I said I would get my money. I told a good many of the Grits that I would get my money ; that I intended to get it from the other party if I did not get it from him. I intended to get it from *Gibbs* ; and I let them suppose I would too. I had had no communication with Mr. *Gibbs*. I was not aware that any person had had any communication with Mr. *Gibbs* about it, or heard that any person had had any communication with him at the time I handed these papers to Mr. *Wright*. Since then I have heard that Mr. *Gibbs* had placed a thousand dollars somewhere for my benefit, to be given to me.

Q. In any event? A. Yes ; in the event of *Wheler* being unseated. But I did not believe a word of it. I was told by the Rev. Mr. *Young* in *Port Perry* that the thousand dollars was in cash. I was not told it by any other person. I did not have any talk with any person about getting a thousand dollars from Mr. *Gibbs*.

Q. Nor any sum of money at all? A. No ; nor any arrangement with Mr. *Gibbs* or anybody else. * * *

Q. Have you not stated that a note for a thousand dollars has been put up as security for you? A. I have stated that I have heard so ; I got that information. It was either a note or a thousand dollars put up by Mr. *Gibbs* ; but I did not believe there was one single word of truth in it.

Q. Did you discuss the question about getting this thousand dollars with any other person than the person from whom you heard that? A. I do not know that I have ; I have told them that I heard this thousand dollars was put up.

Q. Have you stated to any person that Mr. *Gibbs* was advised that it would not be safe, or that he could not be advised that it would be safe to pay you a thousand dollars till the trial was over? A. If I stated that I have no recollection of it. I will not undertake to state that I did not state it ; I may have stated a thing of that kind. It was not true if I stated it, because I have no authority for saying anything of the kind.

Q. Have you received any assurance from any person that they held any security for you of any kind? A. I have not.

Q. Or that a promise has been made to them? A. No ; I may have stated that it was so. I felt that I had been badly sold, and

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I knew that a good many of my enemies were chuckling over it, that they had secured my influence in this election, and that I had worked for the purpose of getting a thousand dollars, and they were getting my work for nothing and were laughing at me; and I wanted to make them believe I was not so badly sold as they thought I was. I do not recollect naming any person to whom this security was given.

Q. Will you swear that you have not stated that Mr. *M. C. Cameron* held a note as security for you? A. I do not think I ever said any such thing.

Q. Will you swear that you did not state that Mr. *Cameron* had promised that he would hold a note for you? A. I do not think I ever stated that; I won't swear that I did not. I will tell you the explanaton of that,

Q. Then you do recollect that you stated it? A. No, I do not, if there was anything stated about it. There was a person very much interested in this matter—I think it was my own brother; and he came to me to ask if I would be satisfied if I got my money in this matter, and if I would give up the papers; and I told him I had put the papers in Mr. *Cameron's* hands, and that they could do just as they pleased about the matter; I would get my money any way. And I may have said something of that kind to my eldest son. They thought I had been swindled from beginning to end; and I let it go out as a general report.

Q. Did you ever state to any person that Mr. *Gibbs* had been advised that he could not pay any money on it, but that a note could be deposited which would be security for you? A. I do not recollect saying anything of the kind.

Q. Then the long and short of the matter is, that you may have told a good many lies about this matter? A. That is very true, that I may have told a good many stories about it. I never had a promise from Mr. *Gibbs* himself in my life.

I will not pursue the very unpleasant enquiry further as to this branch of the case.

I have no doubt *Hurd* intended from the first to make money by the election, and having worked hard at the election, and the party he supported having been successful, he, no doubt, expected his services would be recognized and rewarded, but that there was any bargain or contract to that effect his evidence fails to convince me; and when he found he could not extract money from *Wheler*, which he evidently hoped to force

from him, by making him and his friends believe he could upset the election and implicate *Wheler*, he determined to get money from the other side by making them believe the same thing, and by selling to them his services to upset the election, and he appears in reference to this to have been no more truthful than he was when looking to the successful party for remuneration. It is to me painful to think that any professional man in the Dominion should present himself in such a scandalous light before any judicial tribunal.

If there ever was a self-discredited witness, I am sorry to be compelled to say that *Hurd* must be looked on as such.

Mr. Justice *Blackburn* in the *Stafford* case (1) says:

There is a peculiar class of evidence occurring upon these election petitions, I mean that of witnesses who, in a criminal court, one would call self-discrediting witnesses, spies, informers and persons guilty of crime, according to their own story, who come to seek the reward that is to be got by telling the truth the other way. In a criminal court a verdict of guilty would never be permitted upon the evidence of such witnesses without confirmation, - that has long ago been established. In a civil court, though they are looked upon with distrust, there is no absolute necessity that they should be confirmed. In such enquiries as these we must look upon it with considerable distrust, but still treat it as information which may be true. It calls upon the other side to give evidence of how it was. In that way these witnesses are valuable, but, as a general rule, they should not be made the staple of a case or be too much relied upon.

Upon such contradicted discredited testimony I can adjudge no man a *quasi* criminal, subject him to penalties, and take away his civil rights and disgrace him in the eyes of his fellow subjects.

It then becomes necessary to determine whether, adopting Mr. *Wheler's* view, he has been guilty of bribery. I shall not discuss whether or not, under the law as it now is, candidates may, or may not, legally

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(1) 1 O'M. & H. 233.

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employ and pay for the expenses and services of canvassers and orators to place their views and the views of their party before the electors individually or collectively at public meetings, with a view of influencing the constituency in favor of a particular candidate, or of inducing the public to look favorably on any particular policy either of the great parties in the country may be upholding, because, if illegal to do so, I think Mr. *Wheler* made no corrupt bargain with a view to the purchase of either *Hurd's* influence or services.

*Wheler's* arrangement amounted to no more, as I read the evidence, than this: I am anxious to have your vote and support, (as, of course, he would to have that of a majority of the electors, without which he could not succeed,) but I am determined to gain the election by legitimate means, and not to resort to any illegal practice which could affect the election. I do not know whether it will be legal or illegal to pay your travelling expenses, but if legal to do so I will do it. And he does not do it, surely then he made no corrupt bargain to pay, if he could not legally pay, and he made no payment. Where then was the breach of the law? Where a corrupt bargain? In what did the bribery consist? Surely the promise to do a thing, if it can be legally done, cannot amount to a corrupt or to a criminal act? And if the act is illegal, if it is not done, and if he never made a promise to do it, if illegal, it is beyond my comprehension to understand how a party who never promised to do an illegal or corrupt act, and never did the act alleged to be illegal and corrupt, can be adjudged guilty of a breach of sub-sec. 3 of sec 92, *Dominion Elections Act of 1874*. The arrangement contemplated was, I think, as the weight of evidence shows, entered into by *Wheler* with the *bonâ fide* object of securing services which might be legitimately rendered, and in connection therewith to pay only what

could be legally paid, and was not with a view of purchasing influence or corrupting, or unduly influencing the electors.

But it has been urged, that there was a corrupt payment made by *Wheeler* to *Hurd* of \$1.50. *Hurd* says :

After a meeting at which I was, I asked Mr. *Wheeler* for some money, I told him I was out of it, and he gave me a dollar and a half.

*Wheeler's* account of the transaction is this ; he says :

*Hurd* said I did not expect to come to this meeting this evening, and I have not enough money ; I wish you would let me have enough to pay the expenses of my horse at *Sunderland*. I think he said *Sunderland*, and I gave him a dollar or two, that was all the money I ever gave him.

If this money was given for the purpose of bribing *Hurd*, though the amount may seem small, if the act of bribery was clearly established, I should not, as at present advised, go into the question of the comparative insignificance of the act of bribery. But I cannot think, when a man unexpectedly finds himself away from home, without money to pay for the care of his horse, and applies to a person with whom he is acting in concert in a common cause for a small sum, such as this, to enable him to pay for the expenses of his horse, this ought to be tortured into an unlawful act of bribery. I do not think it can be considered to be done with any corrupt intent to bribe the party to whom it was advanced, or to purchase his influence, or that it was given or received with any intention on either side of producing any effect on the election. I think if this could be held an act of bribery sufficient to upset an election and disqualify a candidate, I might say as *Martin*, B., said in the *Salford* case (1) " it seems to me the law would be brought into contempt and ridicule."

The following cases enunciate principles applicable to this case :

(1) 1 O'M. & H. 142.

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The *Lambeth* case (1) referred to by *Willes*, J., in the *Coventry* case (2) :

A payment to some person who has great influence in a place in order to purchase that influence, \* \* \* must be a payment or gift or loan of something valuable to him in consideration of his lending his influence or his assistance in the election \* \* \* You must show an intention to do that which is against the law before you bring the case within any of those highly penal clauses of the corrupt practices prevention Act, 1854.

In the *Westminster* case (3) Baron *Martin* says :

The first inquiry that I have made in every case is, whether it has been proved to my satisfaction that the candidate really and *bonâ fide* intended that the election should be conducted according to law.

In the *Lichfield* case (4) *Willes* J., says :

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

Sir *Wm. Richards*, C. J., in the *Kingston* case (5), citing the *Tamworth* case and *Willes*' J.'s observations (6), says :

That Act is to be construed as any other penal statute, and the respondent must be proved guilty by the same kind of evidence as applies to penal proceedings.

Petitioner should prove his allegations affirmatively by satisfactory evidence (7).

In the *Warrington* case (8) Baron *Martin* said :

I adhere to what Mr. Justice *Willes* said at *Lichfield*, that a Judge to upset an election ought to be satisfied beyond all doubt, that the election was altogether void, and that the return of a member is a serious matter and not to be lightly set aside.

In the *Londonderry* case (9), Mr. Justice *O'Brien* says :

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| (1) Wolf. & Dew 134.                      | (5) 11 C. L. J. 22.       |
| (2) 20 L. T. N. S. 411 ; 1 O'M. & H. 103. | (6) 1 O'M. & H. at p. 84. |
| (3) 1 O'M. & H. 95.                       | (7) 11 C. L. J. p. 26.    |
| (4) 1 O'M. & H. 27.                       | (8) 1 O'M. & H. 44.       |
|                                           | (9) 1 O'M. & H. 278.      |

The charge of bribery, whether by a candidate or his agent, is one which should be established by clear and satisfactory evidence, the consequences resulting from such a charge being established being very serious.

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After referring to what Baron *Martin* said in the *Ritchie*, C.J.
Coventry case and Justice *Willes* in the *Lichfield* case, and the severe penalties for the offence, he says :

Mere suspicion, therefore, will not be sufficient to establish a charge of bribery, and a Judge in discharging the duty imposed upon him by the statute, acting in the double capacity of Judge and Juror, should not hold that charge established upon evidence which, in his opinion, would not be sufficient to warrant a jury in finding the charge proved.

Therefore, I think, in this case the appeal should be allowed.

FOURNIER, J. :—

Sur les deux questions soulevées par le présent appel il ne reste plus à décider maintenant que celle de savoir si l'appelant s'est personnellement rendu coupable de menées corruptrices ; l'autre, au sujet de la constitutionnalité de l'acte des élections contestées de 1874 ayant été jugée dans la cause de *Valin v. Langlois*.

Afin de déterminer, non-seulement si l'appelant s'est rendu coupable des faits qui lui sont reprochés, mais pour décider la question plus importante encore de savoir si les faits en question constituent une offense prévue et définie par l'acte des élections de 1874, il est nécessaire de faire une courte exposition de ces faits. Il y en a deux versions tout-à-fait contradictoires—l'une donnée par l'appelant et l'autre par *P. A. Hurd*, qui aurait été l'objet de l'acte de corruption imputé au premier. L'hon. juge *Armour* n'a point décidé laquelle des deux il croyait la véritable, parce que cela n'était pas nécessaire à son point de vue. Prenant pour admis les faits tel que racontés par l'appelant lui-même, il en a conclu qu'ils étaient suffisants pour prouver que ce

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dernier s'était rendu coupable de l'offense que l'hon. juge désigne par les termes de *bribery of influence*.

L'appelant *Wheler*, après avoir été mis en nomination comme candidat du parti libéral aux élections de 1878, pour le comté de *North Ontario*, apprit par *Jos. McClelland* que *P. A. Hurd* de *Port Perry*, avocat et orateur politique d'une certaine importance, qui avait jusque-là donné son appui au parti conservateur, paraissait disposé à supporter sa candidature ; qu'il était dans tous les cas décidé à opposer celle de *M. Gibbs*, et qu'il était contre la "Politique Nationale" sur laquelle se faisait en grande partie la lutte électorale de cette époque. *McClelland* dit de plus :

Hurd told me he would support him (*Wheler*) if he had his expenses paid ; that he would support him, and go and speak for him if he was remunerated for doing so.

Wheler répondit à cette information en disant à *McClelland* qu'il pensait remporter l'élection et qu'il ne voulait rien faire qui pût la compromettre,—mais qu'il ferait avec *Hurd* ce qui était juste et légal.

C'est dans une rencontre fortuite sur le steamboat "*Empress of India*" que *Hurd* avait fait de lui-même ces déclarations à *McClelland* qui, à la demande de *Hurd*, les communiqua ensuite à l'appelant. Celui-ci déclare formellement n'avoir jamais autorisé *McClelland* à faire aucune démarche ni aucune offre dans le but de s'assurer les services de *Hurd*. Il déclare de plus n'avoir eu avec *M. McClelland* que ce seul entretien avant l'élection et n'avoir eu non plus avec lui aucune communication par lettres au sujet de l'élection.

Wheler, ainsi renseigné sur les dispositions de *Hurd*, a naturellement cherché à le rencontrer. Vers le 10 août, il se rendit à son bureau et eut avec lui un entretien dont il donne la substance comme suit :

I asked his support, and then he stated that he had not exactly decided what course he would take ; would not do so for a week.

He was going to the States; I think he said he would be away a week or two, and after he came back he would decide what he would do. *He asked me my views.* He said it depended much on my views on the National Policy—if I was in accord with him. He wanted me to give him my opinion on certain points. I did so, and he said, “Well, we are nearly in accord;” and he said, “I am determined not to support Mr. Gibbs after what he has done.” I asked him then, “Will you give me *your support?*” He said he *would not decide then.* He said he had some business matter to arrange before he would give anybody to understand what he would do; he had some business to arrange with Conservative parties; I think he said parties who would give him trouble after he announced himself. He stated that he was going over to the States for some information respecting Protection, and if he decided to take any action in the matter, he would *require his personal expenses* to be defrayed by me if he addressed meetings. He asked me what I would require him to do. I *said, if he took hold of the matter it would be to address meetings only.* I told him I would want him to address meetings if my Reform friends decided to engage him to do it or to accept him. Nothing more was said about terms—*nothing about amount.* He asked me whether I would want him to hold meetings generally throughout the riding or in any locality. He said, “If I do take hold of the matter, I propose to hold a meeting at *Port Perry* in the first place, or at *Uxbridge Village;*” and he said, “I wish to take control of the meeting.” He would not allow anybody to address the meeting but himself; and that he would take up about two or three hours, and not refer to Mr. Gibbs or anybody else.

* * * * *

There was nothing more said about expenses at that time. He stated it was *quite correct and proper, and legal, for me to pay his legal expenses.* I stated if it was, and if our people decided to accept him as speaker for us, I would pay whatever was legal and proper towards his legal expenses; that was not to cover his trip to the States; it was *understood to be his travelling expenses.* There was not a word said about paying him for speaking. Then we parted without any definite understanding.

* * * * *

I had not any conversation about this matter with him again. *My understanding was that my party had accepted him,* and that I was willing to pay his personal expenses. I thought his personal expenses would cover his conveyance, the printing, and his own personal expenses. He did not say anything about his time at the interview.

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Les faits qui ressortent de ce témoignage, sont que l'appellant est allé solliciter le vote de *Hurd* ; qu'après un échange de vues sur les principales questions du jour, ce dernier s'est déclaré satisfait des opinions de *Wheler*, mais en remettant toutefois à plus tard sa décision sur le parti qu'il prendrait dans l'élection. Il est vrai qu'il a fait connaître alors que dans le cas où il parlerait aux assemblées publiques, il exigerait le paiement de ses dépenses personnelles,—en faisant remarquer que *Wheler* pouvait le faire légalement—" He stated it was quite correct and proper and legal for me to pay his legal expenses." *Hurd* n'est pas encore prêt à se prononcer et ne s'engage à rien. De son côté l'appellant déclare que s'il peut *légalement* payer les dépenses *légales* de *Hurd*, et si ses amis acceptent son concours, il fera ce qui est légal et convenable au sujet des dépenses légales. Par les expressions *dépenses légales*, il entend les dépenses personnelles de *Hurd*.

Qu'est-ce qu'il y a dans tout ceci qui prouve une offre, une promesse, ou autre fait quelconque déclaré menée corruptrice par la sec. 92 de l'acte des élections de 1874 ? Rien ; à moins que la déclaration faite par *Wheler* de s'engager conditionnellement à ne payer que ce que la loi permettait de payer, ne soit considérée comme une offense. L'offre de *Wheler* ne va pas au-delà. Il est inutile d'argumenter pour prouver qu'une telle promesse, même si elle eût été acceptée, ne constitue pas une offense contre la loi électorale.

D'après la version de *Hurd*, l'appelant au lieu de se borner à promettre de lui payer ses dépenses personnelles, se serait au contraire engagé à lui faire avoir \$400 pendant l'élection, et dix jours après, une autre somme de \$600, dans le cas de succès. Il n'y a d'autre preuve de ce fait que son propre témoignage auquel, pour les raisons données par l'hon. juge en chef, il m'est impossible d'ajouter aucune foi. D'ailleurs, l'Hon. Juge *Armour*

ayant trouvé les faits tels que rapportés par *Wheler* suffisants pour constituer l'offense dont il l'a déclaré coupable, je crois qu'il est peu utile d'entrer dans une longue discussion sur ce témoignage. Il me suffira, je pense, d'examiner la question de savoir si les faits reconnus par *Wheler* constitue l'offense de *bribery of influence*.

Il faut d'abord remarquer que dans l'entrevue rapportée plus haut, bien que *Wheler* admette avoir sollicité le vote de *Hurd*, il n'y a absolument aucune preuve que cette demande a été accompagnée de promesse qui puisse en faire une offense contre la loi électorale. Le fait que *Hurd* était voteur n'est entré pour aucune considération dans l'offre conditionnelle de payer ses dépenses personnelles. Ce paiement devait être seulement de ses dépenses pour assister et parler aux assemblées publiques—et nullement pour son vote, ni pour les dépenses qu'il aurait pu faire pour se rendre au poll pour y donner son vote. Il n'en a été nullement question. Il n'a été non plus aucunement question de l'influence que *Hurd* pouvait avoir sur qui que ce soit, autrement que par la discussion publique comme orateur de *husting*. Il ne devait recevoir pour ses services comme tel aucun autre avantage que le paiement de ses dépenses personnelles de voyage. Il ne devait rien recevoir pour l'indemniser de la perte de son temps, du trouble et des fatigues que lui imposerait cette tâche. Il n'avait d'autre intérêt à l'accepter que celui de faire triompher ses vues particulières sur la "Politique Nationale," et sans doute aussi la satisfaction d'un ressentiment qu'il éprouvait contre M. *Gibbs* pour quelques griefs personnels. Dégagée des circonstances mentionnées plus haut, la question se réduit à savoir si l'offre conditionnellement faite de payer les dépenses personnelles de *Hurd* pour assister et parler aux assemblées publiques en faveur de la candidature de *Wheler*, (appelant) constituait l'offense de *bribery of influence*.

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C'est sur le parag. 3 de la sec. 92, de l'acte des élections de 1874, que l'hon. juge s'est appuyé pour arriver à la conclusion que le fait d'avoir offert de payer les dépenses personnelles de *Hurd*, comme orateur électoral constituait l'offense en question. Il est en ces termes :

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 endeavor to procure the return of any person to serve in the House of Commons, or the vote of any voter at any election.....

Cette disposition est textuellement la même que celle de l'acte Impérial 17 et 18 *Vict.*, ch. 102, sec. 2, clause 3. Le juge *Willes*, dont l'autorité a été invoquée par l'hon. juge *Armour*, en commentant cette section, dans la cause de *Coventry* (1), dit que toute chose donnée à quelqu'un pour acheter (*to purchase*) son influence à l'élection est indubitablement un acte de corruption. L'hon. juge *Armour* tire de cette autorité la conclusion suivante :

Nor does it make any difference under what name the promised money is to be paid, whether for speeches to be made or for influence to be exerted in any other way, and whether for loss of time and inconvenience, or for travelling or other expenses, the law is equally violated in one case as in the others.

Le principe énoncé par le juge *Willes* est sans doute correct, mais l'application qui en est faite est-elle justifiable d'après le fait ci-dessus qui me semblent les seuls établis d'une manière suffisante par la preuve.

L'influence de *Hurd* a-t-elle été achetée? comment? et pour quelle considération? A-t-il pour quelque motif intéressé changé ses opinions politiques? Non. On a bien la preuve que dans les élections antérieures il soutenait le parti conservateur. Mais dans celle dont il s'agit, il est évident qu'il n'a changé de parti politique que par suite du changement des circonstances politi-

(1) 20 L. T. N. S., 405; 1 O'M. & H. 97.

ques. Il cessait d'être d'accord avec son parti sur un point important, il déclare qu'il ne votera pas pour le candidat de son parti. Il fait cette déclaration à plusieurs reprises avant d'avoir avec *Wheler* l'entretien rapporté plus haut. Le changement d'opinion n'est le résultat d'aucune influence étrangère.

La question politique du jour est nouvelle—elle se présente pour la première fois devant les électeurs,—et en exerçant son libre jugement il se trouve divisé d'opinion d'avec son parti. Sa séparation est faite et avouée avant sa rencontre avec *McClelland* et avec *Wheler*, plus tard. Il est tout-à-fait impossible d'après la preuve d'attribuer cette modification de son opinion aux entretiens qu'il a eus avec ces derniers, puisque ce changement est antérieur à cette époque. Ce n'est donc par aucune des considérations que *Wheler* et *McClelland* ont pu faire valoir que ce changement a été amené.

Il est vrai que *Wheler* consentait à certaines conditions, dans le cas où *Hurd* parlerait aux assemblées publiques, à lui payer ses dépenses personnelles. Mais cette promesse n'étant faite qu'après le changement d'opinion avoué par *Hurd*, peut-on dire qu'elle est une de celles que la loi avait en vue d'atteindre par la sec. 92? *Hurd* doit-il recevoir un avantage personnel, est-il indemnisé pour l'exercice de son talent oratoire, pour la perte de son temps, les troubles et les fatigues inévitables d'une pareille tâche? Non. Il ne doit absolument rien recevoir pour cela. Il sera seulement indemnisé de ses dépenses de voyage. Peut-on dire que cette indemnité ait pu l'engager à donner à *Wheler* un appui qu'il ne lui aurait pas donné sans cela? Il est évident qu'il n'avait aucun intérêt à le faire.

Il est certain que si le 3e parag. de la sec. 92 devait être interprété à la lettre, et si la signification générale et étendue dont il paraît susceptible ne devait être modifiée par d'autre section de l'acte, le simple fait de

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payer les dépenses personnelles d'un orateur supportant une candidature, serait prohibé par cette section. Car il n'est pas douteux que le but d'un orateur dans ce cas est d'assurer ou du moins de s'efforcer d'assurer le retour du candidat qu'il supporte, *in order to induce such person to procure or endeavour to procure the return of any person to serve in the House of Commons.*

Mais est-il vrai que toutes dépenses quelconques sont prohibées? Le proviso qui termine cette même section autorise en ces termes le paiement de certaines dépenses.

Provided always that the actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair costs of printing and advertising shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention to this Act.

Dans la cause de *Coventry*, le juge *Willes*, commentant le même proviso de la 17^e et 18^e *Vic.*, ch. 102, autorisant comme notre acte d'élection le paiement de certaines dépenses d'élections reconnues comme légales, dit à propos de l'effet de ce proviso sur la 3^e sec :

We have here, therefore, a test supplied of the meaning of the third clause of the second section, by means of which we see that it was not intended by this section to do away with every payment made by the candidate in the course of an election. And to come more nearly to the present case, it affords a test of whether this third clause was intended to prevent every payment to persons for assisting the candidate in obtaining the election.

Ce raisonnement appliqué à l'interprétation de la sec. 3 et du proviso ci-dessus, qui sont de même nature que les dispositions du statut criminel commentées par l'hon. juge *Willes*, doivent nous conduire comme lui à une conclusion contraire à celle de l'hon. juge *Armour* en cette cause; en effet, dans la cause de *Coventry*, l'hon. juge *Willes* conclut ainsi :—

Therefore, forming the best judgment I can, I must pronounce my opinion as I entertain it, that to bring forward another candidate

under such circumstances, without a view to purchase his influence, with the *intention of serving a man's party*, and because he does not mind spending his money upon the legitimate expenses of the election of himself and of the other candidate, with the view only to serve his party, and not with the view to purchase influence for himself, does not fall within that third clause of the 17 and 18 *Vic.*, ch. 102, sec. 2. * * *

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Therefore, I come to the conclusion that the fair payments of the expenses of a member, if he will stand, does not of itself constitute an illegality under the provisions of this Act.

Il y a une grande similitude entre ce cas et celui dont il s'agit en cette cause ; dans le premier, c'est un candidat auquel on promettait de payer ses dépenses légales d'élection afin d'avoir son influence et son concours pour assurer, dans un intérêt de parti, l'élection de deux membres. Dans celui-ci, c'est un orateur d'élection possédant une certaine influence comme tel, auquel on promet de payer ses dépenses personnelles pour assister aux assemblées publiques et y discuter les questions politiques du jour. Il y a une si grande analogie entre ces deux cas que si le paiement a été légal dans l'un il est clair qu'il doit également l'être dans l'autre.

A part du proviso ci-dessus cité, il y a encore la sec. 73 qui admet le paiement de certains services rendus à propos d'élections, en déclarant seulement que ceux qui reçoivent une rémunération pour leurs services n'auront pas le droit de voter ; et que si leur vote a été enregistré il en sera retranché un au candidat qui les a employés. Elle est ainsi conçue :

73. Where a candidate on the trial of an election petition claiming the seat for any person, is proved to have been guilty by himself or by any person on his behalf, of bribery, treating, or undue influence in respect of any person who voted at such election, or where any person who voted at such election, or where any person retained or employed for reward by or on behalf of such candidate for all or any of the purposes of such election; as agent, clerk, messenger, or in any other employment, is proved on such trial to have voted at such election, there shall on the trial of such election petition be struck

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off from the number of votes appearing to have been given to such candidate, one vote for every person who voted at such election, and is proved to have been so bribed, treated, or unduly influenced, or so retained or employed for reward as aforesaid.

Fournier, J. Cette section introduite dans l'acte des élections de la Province de Québec, a été, dans la cause de *Gingras v. Sheyn* (1) l'objet de savants commentaires de la part de l'Hon. juge en chef de la Cour Supérieure de Québec, dont l'expérience égale le savoir. On avait soulevé dans cette cour la question de savoir si l'emploi et le paiement de bonne foi d'un cabaleur (*canvasser*) ne constituait pas une menée corruptrice. On se fondait pour établir cette proposition sur le parag. 3 de la sec. 249, qui est identiquement le même que celui de l'acte des élections de la Puissance. Dans une savante dissertation, trop longue pour être citée ici, mais à laquelle je réfère comme parfaitement applicable à la cause actuelle, l'hon. juge conclut ainsi :—

I necessarily come to the conclusion that we must reject the first proposition submitted by the petitioners, and hold, that the employment and payment *bona fide* of an elector as canvasser is not a corrupt practice so as to avoid the election, although an elector employed ought not to vote, and may be prevented from voting under sec. No. 167 of our Act.

Dans le cours de ses observations au sujet de la sec. 250, qui est la même que le proviso de la sec. 92, il s'exprime ainsi :—

It can hardly be contended that the object of this enactment was to render all payments illegal, excepting personal expenses, professional services and necessary printing; for, according to that interpretation, as pointed out by the learned counsel for the respondent, a candidate could not pay for a committee room, or for a secretary, or messenger for a committee, nor even the disbursements of the agent to be appointed under the law.

If, as I think, the section No. 250, was not intended to render illegal all payments excepting those which it expressly legalizes, then, I think, it must have the meaning contended for in the supplementary factum for the respondent.

(1) 1 Q. L. R. 205.

Cette décision a maintenu que le paiement fait à un cabaleur employé de bonne foi n'est pas contraire à la loi. Il est évident que ce n'est pas une contravention à la sec. 73 de l'acte des élections de la Puissance. Cependant l'hon. juge *Armour* dit :—

The hiring of orators and of canvassers, is, in my opinion, outside of what is permitted by the proviso, and is within the very words of sub-section 3, and is therefore bribery.

Son attention ne me semble pas avoir été attirée sur la sec. 73. Il est clair que d'après cette section il y a un grand nombre de services pour les fins d'une élection qui peuvent être légitimement payés. L'énumération qui en est faite dans le proviso de la sec. 92, n'est pas restrictive. Si, comme il a été jugé, en vertu de cette section un cabaleur peut être payé de ses services, pourvu qu'il ne vote pas, pourquoi un orateur qui fait publiquement ce que fait privément le cabaleur ne le serait-il pas aussi ?

Les services d'un avocat qui est en même temps orateur politique ne peuvent-ils pas être considérés comme des services professionnels dont le paiement serait légitime d'après le proviso de la sec. 92 ? Les fonctions de l'avocat sont-elles nécessairement limités aux plaidoiries devant les tribunaux ? Certainement non. Leurs services sont fréquemment requis devant des bureaux d'affaires, conseils municipaux, etc. De plus, les termes de la sec. 73 ne sont-ils pas assez étendus pour comprendre le cas dont il s'agit : "Any person retained or employed for reward by or on behalf of such candidate for all or any other purposes of such election, as agent, clerk, messenger, or in *any other employment.*"

La seule pénalité que prononce cette section contre ceux qui sont ainsi employés est la perte du vote, et contre celui qui les emploie, le retranchement de leur vote dans le cas où ils ont voté. Il n'y en pas d'autre. Le fait dont il s'agit en cette cause n'est donc pas une

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offense contre la loi d'élection ; déclarer qu'il en est une, ce serait aller contre la lettre et l'esprit de la loi, et imposer à la libre discussion des affaires publiques une restriction qui n'a pas été décrétée.

Il est vrai que depuis la décision de l'hon. juge en chef *Meredith*, l'acte d'élection de *Québec* a été amendé de manière à rendre illégal l'emploi de cabaleurs payés ; mais l'acte d'élection de la Puissance n'ayant pas été modifié l'argumentation de l'hon. le juge en chef n'en a pas moins d'application à la présente cause, la loi fédérale étant la même que celle sur laquelle il a rendu le jugement ci-dessus cité.

Cette question du paiement des dépenses des orateurs politiques en temps d'élection a déjà été soumise à la considération des tribunaux dans la province de *Québec*, dans la cause de *Benoit et al v. Jodoin* (1). La portée de cette décision est en faveur de la légalité du paiement des dépenses des *orateurs*, quoique dans le cas particulier il n'ait pas été considéré comme légitimement fait. La raison en est que sous prétexte d'être des *orateurs* soutenant la candidature de *Jodoin*, un grand nombre de personnes s'était fait héberger, par un hôtelier du nom de *Gibeau*, sans avoir rendu aucun service en cette qualité. *Gibeau* appelé à s'expliquer sur le compte de leurs dépenses qui se montait à la somme de \$362.30, déclare :

Qu'il n'a aucun détail même dans son livre de mémoire, dont il a fait disparaître les feuillets aussitôt qu'il eut donné son compte. Il prétend qu'il y avait huit ou dix de ces orateurs, qui venaient chez lui tous les jours. Cependant plus loin il reconnaît qu'il y en avait quelquefois moins, quelquefois plus ; mais il ne leur a jamais fait de questions, ni leur a demandé d'où ils venaient. Il suffisait qu'une personne se dit orateur de *Jodoin* pour être hébergée. De tous ces orateurs, il ne peut en nommer qu'un seul. Il est impossible de contrôler son compte et de dire que ces dépenses n'ont été faites que pour services professionnels en faveur du défendeur, *les seuls qui*

(1) 19 L. C. Jur. 185.

pourraient être tolérés et échapper à la prohibition de traiter, contenu dans le statut.

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Il est évident d'après cette dernière observation que si dans ce cas on s'était borné à payer la dépense personnelle de ceux qui auraient été employés de bonne fois comme *orateurs* pour faire valoir la candidature de *Jodoin*, l'hon. juge aurait déclaré que les services professionnels échappaient à la prohibition du statut.

Faisant application à la cause actuelle des principes exposés plus haut, j'en viens à la conclusion que la promesse faite par *Wheler* de payer à *Hurd* ses dépenses personnelles pour assister aux assemblées publiques, pendant l'élection, pour y discuter les questions publiques, comme orateur politique, n'est pas une dépense déclarée illégale par le statut.

Quant à la deuxième accusation portée contre *McClelland* comme agent de *Wheler*—je suis d'opinion qu'il n'existe aucune preuve de cette agence; *Wheler* n'a ni autorisé ni approuvé ni ratifié les démarches faites par *McClelland* auprès de *Hurd*. La suggestion de payer celui-ci \$10.00 par assemblée émane de *McClelland* seul, et n'a jamais eu la moindre approbation de *Wheler*.

Quant à la remise par *Wheler* à *Hurd* d'une somme de \$1.50 pour payer les dépenses de sa voiture, dans une circonstance où ils se sont fortuitement rencontrés, je partage entièrement l'opinion exprimée à ce sujet par l'hon. juge en chef, croyant comme lui que dans les circonstances où il a été fait cet acte n'a rien de blâmable.

Pour toutes ces raisons je suis d'avis que l'appel doit être alloué.

HENRY, J. :—

The charge against the appellant in this case is called by the learned judge, who tried the petition "bribery

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of influence," and it is necessary in the first place to ascertain what the law is as to that particular offence. It is alleged to be an offence under sub-sec. 3 of sec. 92 of *The Dominion Elections Act*, 1874, and under the provision of that section the learned judge found against him. The section commences with the declaration that—

The following persons shall be deemed guilty of bribery, and shall be punished accordingly.

Sub-section 3 :—

Every person who directly or indirectly by himself, or by any other person on his behalf, makes any gift, loan, 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.

Under the leading provision of the section, the offences enumerated are stated to be bribery; and by section 102 the election of a candidate found guilty of bribery or undue influence shall be void, and the candidate so found guilty be incapable of being again elected for seven years, or of voting at any election, or holding an office in the nomination of the Crown, or of the Governor in *Canada*.

The consequences of a conviction are therefore very serious and penal, and consequently the proof should leave no reasonable doubt before such should be adjudged. Where the offence charged is not a payment of money, or the giving of some other valuable consideration, but a mere offer or promise of such, the evidence by all well established authorities requires to be irresistibly strong and explicit, for the reason that misapprehensions often arise on the part of one person as to the meaning of what another may say.

The circumstances of this case are very peculiar. The candidate was not the moving party, but the witness

Hurd. He commenced by informing a friend of the appellant (Mr. *McClelland* of the South Riding) that he was opposed to what was known as the National Policy, which had been adopted by the respondent, and expressed his readiness to address meetings against him and it. He was apparently prepared to aid the appellant and give him ordinary support. Subsequently Mr. *McClelland* communicated what *Hurd* said to the appellant, but the latter alleges that he did not ask *McClelland* to say anything to *Hurd* on the subject. When *McClelland* told the appellant that *Hurd* would likely be willing to address meetings if his expenses were paid, he replied that he was not prepared to give any answer; that he was not aware whether the law would allow him to pay any expenses; that he was looking for information on that point, and that until he got that information he would not give any answer whatever. He says:

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I did not ask him to go and see Mr. *Hurd*, nor make him any such request, because I was not exactly favorable to receiving Mr. *Hurd*.

Again:

I never heard from *McClelland* again about it. I never saw him again on that subject till the day of Mr. *Glen's* trial in *Whitby*. I never got a letter from Mr. *McClelland* on the subject, or wrote one to him.

This evidence is uncontradicted and may be considered reliable, and, if so, the appellant never in any way authorized *McClelland* to negotiate with *Hurd*, and, as far as relates to the question before us, is in no way responsible for what took place between them. If he is responsible at all, it is for what he himself said or did.

I have considered the whole evidence very carefully, and feel bound to rest my judgment upon that of the appellant alone as to the main point in issue. In doing so I am following the course of the learned judge who

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tried the petition. He seems to have placed no reliance on the testimony of *Hurd* or his son, and I am not surprised that he should have done so.

The appellant detailed the conversation he had with *Hurd* before the election about the 10th of August. He says :

I called on him to solicit his vote. I did solicit it * * * I asked his support, and then he stated that he had not exactly decided what course he would take; would not do so for a week.

They then conversed about the "National Policy" and other points, after which *Hurd* said :

Well, we are nearly in accord. I am determined not to support Mr. *Gibbs* after what he has done. I asked him then, will you give me your support? He said he would not decide then. * * * He asked me what I would require him to do? I said if he took hold of the matter, it would be *to address meetings only*. I told him I would want him to address meetings *if my Reform friends decided to engage him to do it or to accept him*. * * * He stated it was quite correct and proper and legal for me to pay his legal expenses. I stated *if it was, and if our people decided to accept him* as speaker for us, I would pay *whatever was legal and proper* towards his legal expenses. * * * It was understood to be his travelling expenses. There was not a word said about paying him for speaking. Then we parted without any definite understanding. The interview lasted about twenty minutes.

The appellant further says that he never had any interview at which it was arranged that *Hurd's* expenses should be paid, but subsequently says :

At our interview, I told him I was prepared to pay his *legitimate expenses* for addressing meetings, if the party accepted him. * * * I had not any conversation about this matter with him again.

These extracts contain the substance of what the appellant said and did before and during the election, in regard to the matter which forms the charge under consideration. There is nothing to shew that *Hurd* was willing to accept at any time the repayment of his expenses, as the consideration for his holding and addressing meetings on behalf of the appellant. His

letter to *McClelland*, of the 5th of August, shews clearly he would not have agreed to do so at the subsequent meeting with the appellant, even had the latter unconditionally offered such terms. There was no promise actually made, or indeed any definite understanding arrived at. Looking at the petition in this case, and the answer, it is impossible to discover what the charge is, and the case contains no particulars. Under such circumstances we have to look only to the judgment of the learned judge who tried the petition to see what it is. The offence then adjudicated upon is for having *promised* money to *Hurd* to hold and address meetings in the interest of the appellant. Does the evidence justify that finding? The evidence of what the appellant was willing to do after the election is not of much consequence. Such willingness to re-imburse *Hurd* would constitute in itself no offence, and unless in pursuance of a corrupt promise made before or during the election, re-imburement by actual payment would be no offence. The subsequent circumstances would only be evidence to construe an ambiguous promise or understanding, but not to affect one where no such ambiguity exists. From the evidence, we see that the offer of *Hurd's* services was not induced in the first place, directly or indirectly, by the appellant. *Hurd* from the first was desirous of making money by means of his speaking qualifications at meetings. He commenced by a conversation with *McClelland*, who communicated with the appellant. The latter, from what he heard, expected *Hurd's* support, and called upon him and solicited it in the usual way, but the latter said he would not then decide, and would not until after he had visited the *United States* a week or two later. Then he asked the appellant what he would require him to do. He is the first to speak of his services. The appellant was not then prepared to make him any offer, but said he

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would want him to address meetings only. *Hurd* told him it was quite correct, and proper, and legal, for him to pay his legal expenses. If, then, the appellant engaged his services, and promised to pay his expenses, and that amounted in law to an offence, there would be sufficient evidence to sustain the charge, but what he said did not reach that point. There were two important qualifications and conditions contained in the reply "I stated if it was," (referring to the statement of *Hurd* that it was) "legal and proper to pay his expenses and if our people decided to accept him as a speaker for us, I would pay whatever *was legal and proper* towards his expenses." To recover on such a promise, proof would be necessary that the appellant could legally make the payment, and that his people had accepted the services. They must, therefore, have parted, as the appellant states, without any definite understanding, and how could, therefore, what passed be tortured into a promise, a definite and unconditional promise, which alone could militate against a candidate as being contrary to the statute; and when no subsequent interview or promise is shown, I feel myself unwarranted in finding that any corrupt practice is shown as the result of the interview in question.

Taking this view of the evidence it is unnecessary to give any opinion as to the legal bearing of the question, whether it would be against the provision of the subsection mentioned, if a candidate *bond fide* agreed to pay the travelling expenses of one of his supporters to address meetings on his behalf. If, however, it be done to procure the support or influence of a party or his friends, it would no doubt be within it.

The small sum of one or two dollars advanced by the appellant to *Hurd* to pay for his bill at a hotel cannot, I think, have any necessary reference to what previously passed between them. It was given at the request of

Hurd, who said he did not expect to have been at the meeting held by the appellant and respondent, and was without money. It was not one of the meetings held by *Hurd*, or one of those for addressing which he expected to be paid his expenses for holding. It would, I think, be making the law oppressive to unseat and disqualify a candidate for such an act.

I think the appeal should be allowed and judgment given for the appellant with costs.

TASCHEREAU, J. :—

I am of opinion, with Mr. Justice *Armour*, who presided at the trial in this cause, that the hiring of electors as orators and canvassers is within the very words of sub-sec. 3 of sec. 92 of the Election Act, and is therefore bribery. Taking, then, *Wheler's* own version of the engagement with *Hurd*, this engagement was clearly illegal. Whether he thought it to be so or not does not make any difference. Corrupt practices in elections would easily be committed with impunity if courts of justice required their perpetrators to acknowledge under oath that they have acted with the intention to violate the law, before finding them guilty. The *Quebec East* election (1) has been referred to, as holding that the payment of canvassers is not a corrupt practice, under a statute similar to the one which rules this case. It is true, that it was so held in the case referred to, but what clearly shows that this decision was entirely opposed to the intentions of the legislature by which it was enacted is, that a few weeks after this decision they passed a special enactment (2), by which it is expressly ordered that the payment of canvassers shall be corrupt practices, and this, no doubt, to meet the point decided in the *Quebec East* election.

But, in the present case, I am of opinion further, that

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

(2) 39 Vic., ch. 13, sec. 19, Q.

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a gross case of bribery has been proved against *Wheler*. That *Hurd* sold himself to *Wheler's* party, with *Wheler's* knowledge, seems to me clearly proved. There is no doubt that *Hurd* is a witness of a very contemptible character, and that his evidence must be received with great caution. But there is, in my opinion, sufficient corroboration of his evidence to support the material parts of it. I need not refer at length here, to the depositions given by the witnesses. Mr. Justice *Gwynne* has done so, and having had communication of his notes, I can only say that I fully concur in all his views of the case. I will merely state, that the fact that *Wheler*, who knew all that *Paxton* could say in the matter, did not put him in the witness box, tells, in my mind, strongly against him. I think this appeal should be dismissed.

GWYNNE, J. :—

It is painful to see a gentleman of the legal profession, a practitioner of upwards of eighteen years' standing, obliged to accuse himself in the unblushing manner in which the witness *Hurd*, in his evidence given under oath, has accused himself, of the infamy of selling his services and his influence to procure the return of the appellant as a member of parliament; but the picture which he has painted of his own infamy may serve to indicate the height to which corruption in parliamentary elections had reached, and the urgent necessity which there was for the stringent provisions enacted in the Dominion Election Acts of 1874, with a view to the purging and purifying the body politic from the odious plague spot. Of the fitness of the appellant to fill the high office to which he aspired, the venal advocate, upon his own shewing, seems to have known little. In a postscript to his letter of the 8th Oct., 1878, to Mr. *McClelland*, the convenient go-between, he says :

If I had known this man as well before as I do now I would not have voted for him or worked for him if he had given me \$2,000. He kept poor *Paxton* on starving allowance during the campaign. I know *Paxton* had to borrow \$20 to pay his expenses, and without *Paxton* and myself he had no more chance of being elected than he had of Heaven.

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How much beyond \$2,000 would have been sufficient to have induced him to vote and to work for the appellant, if he had known him as well when he made the bargain which he says he did, as he did know him after the election was over, he does not say ; but looking at the whole character of the witness's evidence, it would not seem to be an uncharitable conclusion to draw, that the price he would have set upon his venality would have been upon a scale in inverse ratio to the opinion he entertained of the qualifications and fitness of the candidate.

Whether the bargain was of the nature which the witness swears he made the condition of his corruption, or of the nature which the appellant in his testimony admits, matters little ; the only substantial difference between them, as it seems to me, is as to amount, the appellant admitting that he agreed to pay the witness the expenses attending his rendering the services contracted for, and the witness insisting, that besides his expenses he was to receive \$400 in any event, and the further sum of \$600 in the event of success. The learned judge who tried the case has found as a matter of fact, that the arrangement which the appellant, in his evidence, admitted that he made with *Hurd* was so made *to induce Hurd to endeavor to secure the return of the appellant to serve in the House of Commons.*

In all cases we should have great delicacy in overruling the finding of a learned judge upon a pure matter of fact. He has the superior advantage of observing the manner in which parties give their evidence to assist him in forming a correct judgment of

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their acts and of their motives, but without this aid, in this case, the *matter* of the appellant's evidence as appearing in the case before us is abundantly sufficient in my judgment to support that finding, at all events to prevent our overruling it and declaring that the fact so found by him is not warranted by the evidence. The appellant gave evidence, that *McClelland* had stated to him that he had spoken to *Hurd*, who said he could do appellant some good ; that *Hurd* said he had not decided what course he would take, but that if he addressed meetings *he would have to be paid his expenses*. The appellant said that his reply to this was, that he was not aware whether the law would allow him to pay any expenses, that he was looking for information on that point, and that until he got that information *he could not give any answer* whatever. The appellant adds : " I understood Mr. *Hurd* would require his expenses paid." Again he admits, that at an interview which he subsequently had with Mr. *Hurd*, he asked *Hurd* for his support, and that *Hurd* replied that he had not exactly decided what course he would take, that he would not do so for a week, that he was going over to the *States* for some information respecting protection, and *if he decided to take any action in the matter he would require his personal expenses to be paid by appellant if he addressed meetings*. The appellant adds :

He asked me what I would require him to do ; I said, if he took hold of the matter, it would be to address meetings only. I told him I would want him to address meetings, if my Reform friends decided to engage him to do it, or to accept him. Nothing more was said about terms ; nothing about amount. He asked me whether I would want him to hold meetings generally throughout the riding, or in any locality. He said, if I do take hold of the matter, I propose to hold a meeting at *Port Perry* in the first place, or at *Uxbridge* village ; and he said, I wish to take control of the meeting. He would not allow anybody to address the meeting but himself, and that he would take about two or three hours and not refer to Mr. *Gibbs* or anybody else. He said he would not allow Mr. *Gibbs*

or myself to address the meetings, and that he wanted his speech to be revised and printed in fly form, and five or six thousand distributed through the riding, and he *wanted to know if I would go to that expense*. I said that if he went on and addressed the meeting, and my friends considered his speech was worth it, we would consider whether it would be worth while going to that expense. There was nothing more said about expense at that time. He stated it was quite correct and proper and legal for me to pay his legal expenses. I stated if it was, and if our people decided to accept him as a speaker for us, I would pay whatever was legal and proper towards his legal expenses.

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And again he says :

At our interview I told him I was prepared to pay legitimate expenses for addressing meetings if the party accepted him. *My understanding was that my party had accepted him, and that I was willing to pay his personal expenses*. I thought his personal expenses would cover his conveyance, the printing and his own personal expenses. He stated he would have to leave his office and his son there, and he could not afford to do it unless his expenses were paid. He called meetings in the south portion of the riding. As near as I can understand, he held five or six meetings, all within a radius of a few miles.

Again he says :

Mr. *Hurd* spoke to me the next morning after the *Cannington* meeting, and said "I did not expect to come to this meeting this evening, and I have not enough money. I wish you would let me have enough to pay the expenses of my horse at *Sunderland*." I think he said *Sunderland*. And I gave him a dollar, or two dollars. That was all the money I ever gave him. *He has not sent me a statement of his personal expenses, and I have not settled up with him yet*. On the 12th October, I think it was the day the fair was there. I called at his office, and was there while his son was looking around for his father for an hour or an hour and a half, *to get his bill of expenses, to see what his expenses were*. *I left word with his son to write to me and to send the bill of expenses*.

Then, upon being asked if he remembered asking *Hurd's* son if he had heard anything about a protest, he replied :—

No, I did not ask him that question. I did not send any message to his father by him, *except that I wanted him to send a statement of his accounts*.

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And again, being asked whether, at the interview which he had with Mr. *Hurd* on the 10th August, he did not say to Mr. *Hurd*—"I understand you will support me on certain conditions?" he replied :

*Well, I said to him that I understood he would support me and address meetings. He told me he would support me, but that he would take no part unless his expenses were paid attending meetings.*

Upon this evidence, I cannot see that any objection can well be taken to the finding of the learned judge upon the simple question of fact, as to the promise by the now appellant to pay *Hurd* his expenses, in order to induce the latter to use his influence, (which he had refused to use unless paid) to procure the return of appellant as a member of the House of Commons.

The secrecy attending the whole transaction and the evidence generally, in my opinion, warrant the conclusion that, notwithstanding that *Hurd* may have expressed to the appellant his opinion that payment for such services was legal, the appellant himself entertained grave doubts as to the correctness of this opinion ; but, however this may be, the appellant's belief in the correctness of the opinion will not exempt him from responsibility, if the opinion be not sound and the act be declared by law to be bribery and corruption.

Upon principle then, and upon the authority of what was said by *Martin*, B., in the *Bradford* case (1) and by *Willes*, J., in the *Coventry* case (2), the conclusion of the learned judge that the appellant was guilty of bribery within sub-sec. 3 of sec. 92 of the *Dominion Elections Act* of 1874, cannot be impeached. Nor is this judgment at all at variance with what is said in the *Lambeth* case (3), to the effect that :

Where the consideration for the payment was the *bonâ fide* employ-

(1) 1 O'M. & H. 32.

(2) 1 O'M. & H. 100.

(3) Wolf. & Dew, 135.

ment of persons as canvassers to ascertain the votes of the constituency, although, in the course of their employment, they had to recommend the candidate employing them,

that is not within the Act, for there is a great difference between the case of a person being employed to ascertain how the voters would vote, being paid for that service as the *bonâ fide* consideration of the payment, although the persons so employed should recommend the voters to vote for their employer, and the case of a person being employed for the express purpose of inducing, persuading and endeavoring to procure the voters to vote for his employer, upon a promise of payment to be made to the person so employed for such services. If, under the guise of employment as ordinary canvassers, persons are in fact employed and paid, or promised payment, for rendering services, such as *Hurd* was employed to render here, I see no reason why the person so employing them and paying, or promising payment, for such services should not, (within the express provisions of the Act) be deemed guilty of bribery.

It would be a mockery of justice and a reproach upon common sense to hold the promise of payment, to a poor voter, of his expenses in coming to the poll to record his vote (otherwise perhaps conscientiously given), to be bribery, and the promise of payment to the witness of his expenses, in consideration of his going through the electoral division using all his influence, by the exercise of his persuasive and oratorical powers, and of his local and professional influence, to procure the return of the appellant, not to be. Indeed, as was pointed out by the learned judge in his judgment, bribery of influence is more extensive, more effectual, and more pernicious than the bribery of a voter merely to give his vote. It is difficult to conceive any conduct more odious or corrupt than that of an

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advocate who, by his oratorical powers, and the extent of his acquaintance with the electors which the practice of his profession among them had given him, while concealing the fact that his praise and his advocacy was purchased, should, under the assumed character of an independent elector, disinterestedly and conscientiously in the public interest supporting a particular candidate, exert his influence by persuading his fellow electors to vote for the man whom, in truth, he was serving under a contract of hiring.

But the letter of the Act is clear that,

Every person who, directly or indirectly, makes any promise of any money or valuable consideration to any person, in order to induce such person to endeavor to procure the return of any person to serve in the House of Commons, shall be deemed guilty of bribery ;

And we have no right to cripple the Act by depriving this section of the smallest particle of its literal force and effect. Parliament has deemed it necessary to enact this peremptory provision, in order to secure the utmost purity in the election of members to serve in parliament, and to make them be in reality, as in name, the freely chosen representatives of an independent people. And, undoubtedly, the promise to pay *Hurd* even his expenses attending his rendering the services which the appellant admits he agreed to render, does come within the letter of the clause, unless it comes within the protection of the proviso which enacts :

Provided always, that the actual personal expenses of any candidate, his expenses for actual professional services performed, and *bona fide* payments for the fair cost of printing, shall be held to be expenses lawfully incurred and the payment thereof shall not be a contravention of this Act.

Now, that services of this nature should not be held to come within the term "actual professional services," the honor of the profession and electoral purity, which it was the express object of this act to secure, alike

require. Indeed, if the services contracted to be rendered, and which appear to have been rendered by *Hurd*, could be held to be professional within the meaning of the proviso, payment of the amount which *he* swore was the consideration agreed upon would be equally legal, for the *amount agreed to be paid* for services could not determine whether or not they were, in fact, *professional* services; it is the nature of the service which must determine that question, and the learned counsel for the appellant was forced to admit, that if the contract was for the amount sworn to by *Hurd*, he could not stand up in court to justify it as legal. If the services are not protected as professional, there is nothing in the proviso which protects the promise to pay anything for them from the operation of the clause. I do not feel disposed to extend the construction to be put upon the term "expenses for actual professional services" beyond that put upon it by *Richards*, C. J., in the *East Toronto* election case (1), namely, the fees payable for services rendered by lawyers as such.

We cannot construe the Act as making the promise to be bribery, only in case it should be made to any one but a lawyer, as if the clause ran thus: "Every one who directly or indirectly promises, &c., in order to induce, &c., shall be deemed guilty of bribery and shall be punishable accordingly, provided always that such promise made to a lawyer shall not be a contravention of this Act."

The statute has expressly declared the Act of which the appellant has been found guilty, by the judgment of the learned judge, who tried the case and heard all the witnesses, to be bribery, and I can see no sufficient grounds to justify us in annulling that finding.

With the severity of the punishment annexed to the offence, we have nothing to do, but we are concerned

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to take care that we do not, by reversing upon insufficient grounds the finding of the learned judge, cause an Act which parliament has deemed to be so necessary to secure its independence to become a dead letter.

The appeal should, in my opinion, be dismissed with costs, and the Registrar should be directed to report the judgment of Mr. Justice *Armour*, and the appeal therefrom, and our judgment thereon to the House of Commons.

*Appeal allowed with costs.*

Solicitors for appellants: *Hodgins & Spragge.*

Solicitors for respondents: *Cameron & Appelbe.*

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