

1889 CHARLES WESLEY COLTER (RE- } APPELLANT;  
 \*Dec. 13, 14. SPONDENT IN COURT BELOW.)..... }  
 1890 AND  
 \*Jan. 22. WILLIAM GLENN (PETITIONER).....RESPONDENT ;

ON APPEAL FROM THE JUDGMENT OF MR. JUSTICE  
 FALCONBRIDGE, SITTING FOR THE TRIAL OF THE  
 HALDIMAND CONTROVERTED ELECTION.

*Controverted election—Bribery by agent—Proof of agency—Proof by conduct.*

AN election petition charged that H., an agent of the candidate whose election was attacked, corruptly offered and paid \$5 to induce a voter to refrain from voting. The evidence showed that H. was in the habit of assisting this particular voter, and that being told by the voter that he contemplated going away from home on a visit a few days before the election, and being away on election day, H. promised him \$5 towards paying his expenses. Shortly after the voter went to the house of H. to borrow a coat for his journey, and H's. brother gave him \$5. He went away and was absent on election day.

*Held*, that the offer and payment of the \$5 formed one transaction and constituted a corrupt practice under the Election Act.

At the election in question there was no formal organization of the party supporting the appellant. The County Reform Association had been disbanded and the minutes, regularly kept since 1882, destroyed, as were the rough minutes of every meeting of a convention of the party held since that date. In lieu of local committees vice-presidents were appointed for the respective townships, and on the approach of a contest the vice-presidents called a meeting of the county association, composed of all reformers in the riding, to go over the lists and do all the necessary work of the election.

The evidence of H's. agency relied on by the petitioner was, that he had always been a reformer, had been active for two elections, had attended one important committee meeting and been recognized

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

by the vice-president of his township as an active supporter of the appellant, and that he acted as scrutineer at the polls in the election in question. The trial judge held that all these elements combined, in view of the state of affairs regarding organization, were sufficient to constitute H. an agent of the appellant. On appeal to the Supreme Court of Canada—

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*Held*, Ritchie C. J. dissenting, and Taschereau J. hesitating, that the circumstances proved justified the trial judge in holding the agency of H. established.

**APPEAL** from the judgment of Mr. Justice Falconbridge on the trial of an election petition against the return of the appellant as a member of the House of Commons on an election in the County of Haldimand, whereby the appellant was unseated for bribery by an agent.

The election in question was held on Jan. 30th, 1889, and resulted in the return of the appellant. A petition was filed against such return which was tried before Mr. Justice Falconbridge in Sept., 1889, with the result that the appellant was unseated for bribery committed by one Haslett, his agent. He appealed to the Supreme Court of Canada from such decision.

The appeal was limited to two charges of bribery, numbered 8 and 82 in the petition. It is only necessary to refer to No. 82, which was follows:

“That on or about the day of the election in question, at the Township of Walpole, James Haslett, of Walpole, an agent of the respondent, offered and promised to pay and did pay to Henry Bridges, of the same place, a voter in the said electoral district, the sum of \$5 to induce him, the said Bridges, to refrain from voting in the election at question or to vote thereat for the said respondent.”

The respondent filed a cross-appeal submitting the other charges in the petition which were not passed upon by the trial judge as grounds for retaining the judgment appealed from.

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The following were the circumstances of the act of bribery charged in the petition as above set out: The voter, Bridges, was a conservative and a neighbor of the alleged briber Haslett who was in the habit of assisting him occasionally with loans and gifts of money and in other ways. A few days before the election he was at Haslett's house, having gone there to borrow a flail, and in conversation with Haslett told him that he contemplated going to Petrolia on a visit for two or three weeks. Haslett then said that if \$5 would be of use to him he could have it. In giving evidence at the trial, Bridges swore that he demurred to taking the money as it might make trouble about the election. This Haslett denied. Shortly after this Bridges again went to Haslett's house to borrow a coat for his journey to Petrolia and while there a younger brother of Haslett gave him \$5. He went to Petrolia and was away on polling day. The trial judge found that this payment to Bridges was a corrupt act on the part of Haslett.

To show that Haslett was an agent of the reform candidate at this election the petitioner produced evidence of his having been active on behalf of the same candidate at a former election in Haldimand; of his having attended a committee meeting during the election in question in this case and gone over the list of voters; and of his acting as scrutineer at this present election. It was also shown that there was no organization of the reform party in connection with this contest but that the candidate had addressed a mass meeting of the electors and stated that he wished them all to do their best to secure his return. This, it was contended, made every reformer in the riding an agent under the act.

The evidence relating to the conduct of Haslett as given by himself at the trial is as follows:

Q. Your politics, I believe, are pretty well pronounced, are they not? A. I do not know as they are. 1889

Q. Have you any doubt about your own politics? A. Oh, I have no doubt about it. HALDIMAND ELECTION CASE.

Q. Well, why do you cast doubt upon it? A. Well, I never took any very active part in politics.

Q. But which side are you on? A. I am a Reformer.

Q. Always been on the Reform side? A. Yes.

Q. Did you say you never took any active part? A. Well, I did not until these last two elections.

Q. These last two elections you have taken an active part? A. Well, I did not do but very little.

Q. You contrast these last two with the former elections. What have you been doing at these last two elections more than you did at the former elections? A. I do not know that I did anything particularly, any more than go out to vote.

Q. But didn't you go out to vote at the former elections? A. Yes.

Q. Well, you did take an active part in the last two elections? A. Very little.

Q. What do you mean by taking an active part? A. Going out and getting in voters.

Q. You then went into the meeting? A. Yes.

Q. And were there how long? A. Perhaps an hour or so.

Q. While the talking was going on about the list? A. Yes.

Q. Did you take any part in it? A. Nothing more than looking at the list and seeing who were the outside men.

Q. Discussing whether they would come and so on? A. Yes.

Q. Did you do any of that? A. No.

Q. Well, what did you do these last two elections? A. Well, this last election I was the agent for Mr. Colter.

He explains in his cross-examination that this was as an agent appointed to attend as a scrutineer at the poll, and again he says: "I am not positive who asked me to act."

Q. Were you appointed at a meeting? A. No, I was not.

Q. Well, if you were not appointed at a meeting you can tell me who asked you to act? A. Well, I think maybe it was Mr. Noble.

Q. And who was Mr. Noble? A. A tailor.

Q. Mr. Noble is the tailor of Jarvis? A. One of the tailors.

Q. What part does Mr. Noble take in politics? A. Well, he was not in our polling division this last election.

Q. James Noble, do you mean? A. Yes.

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Q. He is the vice-president, is he? A. Well, I think he is for the township.

Q. Who is the chairman for the polling division? A. I do not know if there is one.

Q. You have been showing some interest in this election? A. Well, I do not know as I took any great interest in it.

Q. Did you canvass any person? A. I did not.

Q. Did you attend any political meetings? A. Yes, I attended political meetings in Jarvis.

Q. How many? A. I was at Mr. Colter's and at Dr. Montague's.

Q. Anybody else's? A. No, that is all there were.

Q. Did you attend any private meetings? A. No.

Q. You know what a committee meeting is, do you? A. Yes.

Q. Were you ever at a committee meeting? A. I have been at them.

Q. Where? A. In Jarvis.

Q. And when? A. Well, there was a committee meeting before the election.

Q. Where was that held? A. I think it was held in the hotel.

Q. Whose hotel? A. Hanrahan's.

Q. And you attended that? A. Yes.

Q. Did you attend only one meeting? A. I think that is all.

Q. How long was that before the election? A. Probably a couple of weeks.

Q. Who gave you notice to attend that meeting? A. Well, there was nobody gave notice.

Q. How did you know about it? A. Well, we just met one another on the street.

Q. Who was it told you? A. I could not say.

Q. Was it a day meeting or a night meeting? A. Night.

Q. What was done at that meeting? A. Just to look up the outside vote, and see about getting it in.

Q. What else? What about the doubtful vote at home? A. There was nothing particular done about that.

Q. You went over the voters' list, I suppose? A. Yes.

Q. And were doubtful men assigned to different parties to be seen after? A. No.

Q. For what purpose then, did you go over the list? A. Just to kind of see, to have an idea, how many men were outside the county.

Q. That was the particular business? A. Yes.

Q. And how long did the meeting last? A. Perhaps an hour.

Q. And who was the chairman? A. I do not think there was a chairman.

Q. Who was the secretary? A. There was no secretary.

Q. Who had the voters' list? A. I think I had the voters' list.

Q. Who gave you the voters' list? You were the secretary? A. I guess not.

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On his cross-examination he says:

Q. You told Mr. McCarthy you had been appointed Mr. Colter's agent in this last election? A. Yes.

Q. In what way, agent for what? A. To act as scrutineer at the polling division of Jarvis.

Q. Is that all you mean? A. Yes.

Q. You mean the appointment in writing, I suppose? A. No, just to check the votes as they came in.

Q. Did you get a written appointment? Or do you remember? A. I do not remember.

Q. Did you see Mr. Colter personally about it? A. No.

Q. Did you see him at all during the campaign, except at the public meetings? A. No.

Q. Have any private talk with him at all? A. Never had a private talk with Mr. Colter.

Q. And you were asked by somebody or other to be scrutineer? A. Yes.

Q. You had once been scrutineer before at a previous election? A. No, I had been appointed but they got some other man in my place and I did not act.

Q. At this time you did act? A. Yes.

Q. As inside scrutineer? A. Yes.

Q. Some party asked you to act? A. Yes.

Q. Mr. Noble asked you to act, and you did act? A. I am not sure whether it was Mr. Noble or not.

Q. Besides this was there any other work that you did at this election? A. No.

Q. How was it you happened to go to this meeting? A. I was just told of it on the street and went.

Q. Then you did not go from your own home intending to go to the meeting? A. No.

The judgment at the trial on the question of Haslett's agency was as follows:

"It remains to consider the question of agency. In dealing with this, regard must be had to the plan adopted by the party supporting Mr. Colter for carrying on the last campaign. Mr. Parker, Dr. Harrison and other leading reformers stated with some com-

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placency that having discovered at the trial of an election petition in the county in October, 1887, that the conservative organization was superior to theirs they set out to remodel their own system so as to make it at least equal to that of their opponents. To this end they at once after said trial destroyed all the minutes of the county reform association which had been regularly kept since 1882; they immediately after every meeting of a convention and association destroyed the rough minutes of that meeting; and they substituted for the appointment of local committees vice-presidents (generally one for each township) which vice-presidents were named by the townships at meetings of the county association. There was no shibboleth or test for membership of the association, save only sympathising with the reform cause. The association was supposed to comprehend in its ranks every reformer within the limits. Conventions are held by the township associations sending delegates."

"When a contest is approaching the vice-president or chairman of the township is instructed to call a meeting of the township association, to go over the lists, to appoint agents at the polls, bring out voters, look after absentees, &c., and the work is carried on by the aid of reformers who choose to assist."

"Shortly what is meant is this:—

(1.) As to the proceedings of the party as an organization there are to be no records except such as repose in frail human memory. As Mr. Parker puts it, 'so that no information could be got out of me except what I could remember.'"

"(2) The abolition of local committees was apparently intended to serve a double purpose, viz., to lessen the apparent number of persons for whose acts the candidate might be responsible and to render it more difficult to ascertain afterwards who those persons were"

"It may be that in their avowed desire to improve on the tactics of their opponents, the friends of the respondent have increased instead of diminishing the number of his agents. Certain it is that the law of agency in election matters is so elastic that the courts will be astute to meet and cope with the ever-increasing ingenuity of some of those who manage election contests."

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"The evidence of agency relied on by the petitioner is that Haslett has always been a reformer, has been active for two elections, that he was a scrutineer at the polls and that he attended one important committee meeting. No one of these elements is perhaps sufficient by itself to constitute Haslett an agent, but all taken together, with the recognition conferred on him by his local chief, Mr. Noble, in view of the state of affairs as regards organization which I have above alluded to, constrain me to hold him to have been an agent of the candidate."

"I therefore find that James Haslett, an agent of the respondent, committed the corrupt practice charged, without the knowledge or consent of the respondent."

*Aylesworth* for the appellant. The act of Haslett was not a corrupt act under the circumstances proved. *Somerville v. Laflamme* (1); *Windsor Election Case* (2); *Kingston Election Case* (3).

A loan to induce a voter to be absent on election day has been held not a corrupt act. *East Elgin Election Case* (4).

The agency of Haslett was not proved. *Berthier Election Case* (5)

*McCarthy* Q.C. for the respondent, cited the judgment of Mr. Justice Patterson in *Muskoka and Parry Sound*

(1) 2 Can. S.C.R. 216.

(3) *Hodgin's El. Cas.* 625.

(2) 31 L.T.N.S. 135.

(4) 1 Ont. El. Cas. 475.

(5) 9 Can. S.C.R. 102.



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Sir W. J. RITCHIE C.J.—Mr. Colter, the appellant, was nominated a candidate at a meeting of delegates selected from different parts of the riding of persons holding reform principles, and accepted the nomination. The regular nomination of candidates took place on the 23rd of January, 1889; the polling was on the 30th January, 1889; the trial of this petition was on the 3rd and 10th of September, 1889.

Two charges of corrupt practices by agents were considered by the learned judge who tried the petition and found to have been established. The first, which we have now to deal, with was alleged to have been by James Haslett to the effect that he offered and promised to pay one Henry Bridges \$5 to induce him to refrain from voting at the said election. I think the petitioner has established that such an offer and payment were made; that the offer and the payment formed in fact one transaction though the offer and the payment were made at different times; and that a corrupt practice was thereby committed. The only question then that remains to be determined is as to the agency of Haslett. This agency should be established beyond all reasonable doubt to the satisfaction of the learned judge and the burthen of the proof of agency was, in my opinion, clearly on the petitioner. As to the necessity of making a case out beyond all reasonable doubt ample authority is to be found.

In *The Westminster Election Case* (7) Mr. Baron Martin says—

(1) 1 Ont. El. Cas. 203.

(4) P. 108.

(2) 1 Ont. El. Cas. 159-161.

(5) 1 O'M. & H. 260.

(3) 4 Ed., p. 75.

(6) 2 O'M. & H. 2

(7) 1 O'M. & H. 95.

But I think I am justified, when I am about to apply such a law, in requiring to be satisfied beyond all reasonable doubt that the act of bribery was done, and that unless the proof is strong and cogent—I should say very strong and very cogent—it ought not to affect the seat of an honest and well-intentioned man by the act of a third person.

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In *The Taunton Case* (1) Mr. Justice Grove says—

To use the language of that eminent judge, the late Mr. Justice Willes, 'No amount of evidence ought to induce a judicial tribunal to act upon mere suspicion or to imagine the existence of evidence which might have been given by the petitioner, but which he has not thought it to his interest actually to bring forward, and to act upon that evidence and not upon the evidence which really has been brought forward. The second principle, which is more particularly applicable to circumstantial evidence, is this, that the circumstances to establish the affirmative of a proposition, where circumstantial evidence is relied upon, must be all, such of them as are believed, circumstances consistent with the affirmative, and that there must be some one or more circumstances believed by the tribunal, if you are dealing with a criminal case, inconsistent with any reasonable theory of innocence, and when you are dealing with a civil case (otherwise expressed though probably the result is for the most part the same), proving the probability of the affirmative to be so much stronger than that of the negative that a reasonable mind would adopt the affirmative in preference to the negative.'

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In *The Sligo Case* (2); Mr. Justice Keogh, as to the law of agency, said:—

An observation was made by the counsel for the respondent that the evidence ought to be strong—very strong, clear and conclusive—of agency before a judge allows himself to attach the penalties of the Corrupt Practices Prevention Act, 1854, to any individual. I agree to that.

As to the nature of the evidence necessary to establish a charge of bribery, Judge O'Brien says in the *Londonderry Case* (3);

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 are very serious. In the first place it avoids the election, and in the recent

(1) 2 O'M. & H. 74.

(2) 1 O'M. & H. 301.

(3) 1 O'M. & H. 279.

1890 trial of the Warrington election petition, Baron Martin is reported to have said that he agreed with what had been said by Mr. Justice HALDIMAND Wille at Lichfield, that before a judge upset a election, he ought to ELECTION be satisfied beyond all doubt that the election was altogether void. CASE.

Ritchie C.J. . Accepting then these cases as truly expounding the law as to the amount of evidence required to sustain charges of bribery and agency, let us consider how far the case has been made out beyond all reasonable doubt.

The learned judge after stating the plan adopted by the party supporting Mr. Colter for carrying on the campaign, says (1) :

The learned judge thus says it is by combining the three considerations, viz: the organization of the association, the attendance at the meeting of the appellant and the appointment of the appellant as scrutineer that the agency is made out, and that neither alone would establish it.

Now, as to Haslett's having acted as scrutineer, whether appointed to that position by the appellant, or acting as such at the request of Noble, a vice-president for the township of Walpole, or as one of the electors under section 36 of the Election Act, R.S.C. ch. 8, by no means clearly appears, but assuming that he was duly appointed to and acted in that capacity at the poll in the interests of the appellant, did this constitute him an agent of the appellant generally and make the appellant liable for his acts committed before such appointment? I think not, and I think the learned judge should not have considered that appointment as an element in determining the question of agency. The appointment of such an agent as provided for by R.S.C. ch. 8, secs. 36 and 38, has clearly reference only to the proceedings on polling day and, therefore, the whole question of agency must turn on the fact of

(1) See pp. 177-8.

Haslett having attended a so called committee meeting shortly before this election, probably a couple of weeks, and of being a person professing reform principles. Would these two establish the agency? As I read the judgment they would not, for the learned judge says, "It is the combination of the three that does it not the combination of any two." But I think the question of being a reformer must be also eliminated. Colter did not accept the nomination directly from the reformers of Haldimand, for it is abundantly clear that those who nominated Colter were not the body of the reformers of the Riding but a select body of delegates, of whom Haslett was not one, who when appointed were no doubt from, but entirely independent of, the whole body of persons holding the views of the reformers. Having accepted such nomination I cannot think he thereby made all persons in the constituency professing reform principles his agents. In this case it is not necessary to enquire how far or to what extent, if any, he made the members of that convention his agents; it is for the purposes of this case sufficient to say that he did not, apart from them, make all or any of the persons professing reform principles his agents unless he or his agents gave them the authority to act for him or recognised their right to do so by adopting their acts. This leaves then only the attendance at the meeting which the learned judge admits would not alone be sufficient to establish the agency. Had he not attended this meeting I can see no pretence whatever for the contention that he was an agent of Mr. Colter. It does not appear that this meeting was held at the instance or even with the knowledge of the candidates, or was called by or held at the instance of any person having the charge or management of the election or in any way authorized to call or hold it.

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There was no evidence that Haslett canvassed ; on the contrary he distinctly swears that he did not ; nor is there any evidence that he did any other act directly or indirectly touching the election save and except attending the meeting in question, of which he swears he had only accidentally heard, and going through the list in order to ascertain who the absent voters were. This is the account he gives of the meeting and he is the only witness who speaks of it. (His Lordship here read the evidence of Haslett which will be found in the statement of facts at p. 174.)

Haslett does not appear to have been in any way entrusted with any duty whatever of managing or influencing the election, or procuring Mr. Colter's return, and he does not appear ever to have spoken to Mr. Colter ; in fact he says he never spoke to him. There is not a tittle of evidence that Colter by any act or deed in any way authorized Haslett to act for him or recognized him as his agent directly or indirectly, or ratified or adopted any of his acts. Haslett appears to have been simply a volunteer, not selected by Colter or any person having any authority in connection with the management and conduct of the election, nor does he appear to have been in any way in the counsels of those conducting the election.

I think the cases clearly establish that there must be an appointment as agent or an acting in the business of the election with the knowledge and consent of the candidate or of some person duly authorized to give him power to act in the election or some adoption or ratification of his acts by the candidate or his duly authorized agent, or such on acting in the business of the election with the knowledge of the candidate or his agent from which authority to act can be inferred, all of which appear to me to be entirely wanting in this case.

*The Westminster Case* (1) Mr. Baron Martin—

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I have said, and the other judges have said, that bribing by one of his committee would affect the candidate; but by a 'committee' I meant a number of persons, comparatively few (of course in a county that extends over a considerable district it would be larger), who were entrusted by the candidate with the work of carrying out his election, in whom he put faith and trust, and who, in fact, were his agents for the purpose of carrying it out; but I have never supposed, nor do I believe that either Mr. Justice Blackburn or Mr. Justice Willes ever considered, that where a number of people (600 or 700) choose to call themselves 'a committee' thereupon they become 'agents' of the candidate for the purpose of making him responsible for an illegal act done by one of them. I think it is a conclusion that could not be borne out by common sense. The committee-man whom I mean, and whom I would hold the respondent to be responsible for, is a committee man in the ordinary intelligible sense of the word, that is to say, a person in whom faith is put by the candidate, and for whose acts therefore he is responsible.

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How can it be said in this case that Haslett was such a committee man?

In *The Londonderry Case* (2) Mr. Justice O'Brien, on the question of agency, said—

It is clear (as held in the Windsor Case) that the employment of a man as messenger is not sufficient to constitute him an agent. Mr. Justice Willes in that case, in those accurate terms for which he is remarkable, said, 'I have stated that authority to canvass—and I purposely used the word authority and not employment, because I meant the observation to apply to persons authorized to canvass, whether paid or not for their services—would, in my opinion, constitute an agent.' I cannot concur in the opinion that any supporter of a candidate who chooses to ask others for their votes and to make speeches in his favor, can force himself upon the candidate as an agent, or that a candidate should be held responsible for the acts of one from whom he actually endeavors to disassociate himself.

In *The Taunton Case* (3) Mr. Justice Grove says—

So far as regards the present case, I am of opinion that to establish agency for which the candidate would be responsible he must be proved by himself or by his authorized agent to have employed the persons whose conduct is impugned to act on his behalf, or to have to some extent put himself in their hands, or to have made common cause.

(1) 1 O'M. &amp; H. 92.

(2) 1 O'M &amp; H. 278.

(3) 2 O'M. &amp; H. 74.

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with them for the purpose of promoting his election. To what extent such relation may be sufficient to fix the candidate must, it seems to me, be a question of degree and evidence to be judged of by the election petition tribunal. Mere non-interference with persons who, feeling interested in the success of the candidate, may act in support of his canvass, is not sufficient, in my judgment, to saddle the candidate with any unlawful act of theirs of which the tribunal is satisfied he or his authorized agent is ignorant. It would be vain to attempt an exhaustive definition, and possibly exception may be taken to the approximate limitation which I have endeavored to express.

*In The Windsor Case* (1) the report states that—

In the course of the case, it was proved that one Pantling wrote a letter to a voter named Juniper, who at the time of the election was away from the Borough, offering to pay his travelling expenses if he would come and vote; and it was admitted that this offer, if made by the respondent or an agent of his, would have unseated him. The only evidence of Pantling being an agent was that he was a member of a committee which had been formed for the purpose of promoting the respondent's election. It was not proved who put him on the committee, or how he got there, what his duties were, or what he did; but his own statement as to this was that he understood that his duties were to do the best he could for the respondent.

**Mr. Baron Bramwell, in his judgment, said as to this:**

I am invited to believe that in some way or other a man who has given no description of himself, except that he was on a committee, was an agent so that his act in writing this letter should unseat the respondent. It appears to me really impossible to hold that he was an agent. I think that according to the authorities, and according to the good sense of the matter, he was not an agent. He has given us no account of how he came to write this letter to Juniper, he having told him where he had gone to and having told him to write upon the occasion of an election. I cannot help agreeing with Mr. Giffard that if we were to hold this man to be an agent it would make the law of agency as applicable to candidates positively hateful and ludicrous.

*The Stroud Case* (2). **Mr. Baron Pigott:—**

It is clear that a person is not to be made an agent of the sitting member by his merely acting, that is not enough; he must act in promotion of the election, and he must have authority, or there must be circumstances from which we can infer authority.

*Borough of Dungannon* (3). **Baron Fitzgerald:—**

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

(2) 3 O'M. & H. 11.

(3) 3 O'M. & H. 101.

I think it must be made out that a party, before he is chargeable as an agent, has been entrusted in some way or other by the candidate with some material part of the business of the election which ordinarily is performed, or is supposed to be performed, by the candidate himself. Whether it has any distinct reference to canvassing or anything of that kind, appears to me to be immaterial, but in some sense or another he must be considered as entrusted by the candidate with the performance of some part of the business of the election, which properly belongs to the candidate himself, though he is unable to perform it in many cases without somebody to aid him. But that entrusting may be made out not merely by an express appointment to the performance of some material duty in reference to the election, but may be made out by implication. The circumstances of each case may differ, but that implication ordinarily must arise from the knowledge which it appears that the candidate has of the part which the person is taking in the election. If that part of the business of an election which ordinarily and properly belongs to the candidate himself be done to the knowledge of the candidate by some other person, it appears to me that that other person is an agent of the candidate, and the candidate is responsible for any corrupt act done by that person.

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How can it be said that anything that was done by Haslett was done with the knowledge of Mr. Colter, or that anything was entrusted to Haslett by Colter or by any person authorized to give Haslett authority to act?

Can it be said that the agency has been established in this case beyond all reasonable doubt? The most that can be said, I think, is that there are suspicious circumstances in relation to the bribery but it is clear that these suspicions will not do.

Under these circumstances I am of opinion the agency was not established and therefore as to this charge the appeal should be allowed.

STRONG J.—For the reasons stated by Mr. Justice Falconbridge in giving judgment in the court below on charge No. 82 (which I adopt in their entirety, and to which I have nothing to add) I am of opinion that this appeal should be dismissed with costs.



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TASCHEREAU J.—On that charge 82, “that on or about the day of election in question James Haslett, an agent of the respondent (now appellant), offered and promised to pay and did pay to Henry Brydges, a voter in the same electoral district, the sum of \$5 to induce him, the said Brydges, to refrain from voting at the election in question, or to vote thereat for the said respondent (now appellant),” the evidence is conclusive. I need not repeat the facts of the case. They, it seems to me, show a clear and unmistakable act of corrupt practice, and we are, I believe, unanimous on this point.

I have great doubts, however, on the question of Haslett’s agency. I am free to say that had I presided at the trial, with the evidence on record, as I read it, I would have hesitated before finding agency. On the other hand, I am impressed here with the grave and obvious reasons which, in cases of this kind more particularly, should restrain an appellate court from interfering with the finding of the judge at the trial. I have not succeeded yet in bringing my mind to that point of certainty always required to reverse. At the same time, I see the difficulty of finding on this record clear evidence of agency. I cannot say that I have made up my mind one way or the other, and if my conclusions were to affect the result of the judgment I would require more time to consider the point. But as a majority of the court have come to a final determination of the matter it would have been utterly useless for me to delay the judgment, a course I would not, it seems to me, have been justified in taking in a case of this nature, where public interests require a judgment as speedily as possible.

GWYNNE J.—The questions in this case are purely questions of fact and I cannot say that the conclusions

upon them, which have been arrived at by the learned judge who tried the election petition, are clearly erroneous. I cannot say that the evidence clearly does not justify the conclusion that the organization of the reform association in the County of Haldimand, as detailed in the evidence, (and of which organization the appellant was an approving member, and whose nomination as a candidate, which was offered to him by a convention of the association in pursuance of the scheme of organization, he accepted), was devised for the purpose of giving to a candidate brought forward by a convention of the association the benefits of the organization as a general committee of the candidate without exposing him to the risk attending his nomination of committeemen to manage and conduct the election for him. Nor can I say that the evidence clearly does not justify the conclusion that the attendance by James Haslett at the committee meeting held at Hanrahan's Hotel was an act done by him in perfect accordance with the scheme of organization, and in pursuance of it in the character of a committeeman acting in the interest of and as an agent of the candidate, just as if he had been appointed by the candidate himself. If these conclusions do not appear to my mind to be clearly erroneous I must adhere to the rule laid down by this court, and acted upon in several cases, and among these in the *Bellechasse Election Case* (1) and decline to interfere and to reverse as beyond all doubt erroneous the judgment of the learned judge who tried the case upon mere questions of fact. I entirely concur in the observation of the learned judge, to the effect that the courts should be astute to meet and cope with the ever-increasing ingenuity of those who manage election contests. This timely suggestion thus thrown out appears to me to be a mild criticism

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by no means inappropriate to the evidence given in this case, as to the origin, the object and the *modus operandi* of the organization in the County of Haldimand. The appeal must, in my opinion, be dismissed with costs, and the result communicated in the ordinary way to the Speaker of the House of Commons.

PATTERSON J.—The decision that the act of bribery which constituted charge 82 was committed by Haslett was so amply sustained by the reported evidence that, after hearing from Mr. Aylesworth all that could be urged against the view taken by the learned judge, we did not think it necessary to hear Mr. McCarthy on that subject.

On the question as to Haslett's agency there is more to be said on both sides but no sufficient reason has, in my judgment, been shewn for interfering with the finding of the learned judge who presided at the trial and who heard and saw the witnesses.

The rule which will be found a safe one to bear in mind in approaching a question of election agency was well stated many years ago by Mr. Justice Grove in the *Wakefield Case* (1), in language which has lost none of its force, and is still applicable to contests like the present. After speaking of the impossibility of laying down such definitions and limits as shall meet every case he said :

It is therefore well that it should be understood that it rests with the judge, not misapplying or straining the law, but applying the principles of the law to changed states of facts, to form his opinion as to whether there has or has not been what constitutes agency in these election matters. It is well that the public should know that they cannot evade the difficulty by merely getting, as they suppose, out of the technical meaning of certain words and phrases.

Many reported cases illustrate the application of the general principles referred to widely differing

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

states of facts, cases found in the English reports and in those of our own provinces, as well as some which have been before this court. It would not serve any useful purpose to refer to them in detail, while to do so might perhaps tend to suggest the erroneous idea that the doctrine was in some way limited to facts like those on which the decisions turned.

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This caution may not be unnecessary, especially when English cases are referred to. The principles acted on in those cases will be found to be wide enough and elastic enough to reach every variety of facts, yet under the system on which elections are conducted in this country facts may exist, and may be expected to exist, differing from those found in England much more than the facts of one English case will ordinarily differ from those in another English case. This difference is notably found in the relation of a candidate to his constituency, the mode of selecting the candidate, and the machinery for conducting the contest.

I have had occasion more than once to discuss the subject of election agency and to act upon my opinion. Amongst other cases there are three reported in the first volume of the Ontario Election Cases. I refer to portions of the judgments delivered by me in the *Prescott Case* (1); the *West Simcoe Case* (2); the *Muskoka Case* (3); repeating the caution that I do so for the enunciation of general principles, and not because of the facts appearing to be like those now before us, and referring to the reports in place of repeating what I then said.

When an election is approaching, the custom in the county of Haldimand is shown to be for a convention

(1) 1 Ont. El. Cas. 93-98.

(2) 1 Ont. El. Cas. 146-8.

(3) 1 Ont. El. Cas. 202-6.

1890 of the reform association of the county to nominate  
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 CASE. the election now in question, as he had been on more  
 Patterson J. than one previous occasion, and he accepted the nomi-  
 nation.

There was, as there of necessity must have been, some understanding as to the mode in which the contest was to be carried on. Work had to be done. That is shown by the evidence, though proof of the fact was hardly needed. Who was to do the work? Was the candidate to do it himself personally or did he rely on the aid of others? The understanding on the subject may have been expressed or have been tacit. These contests were no new thing in the county. The association had been in operation for a number of years, and unless a change in the way of doing things was intended the plan of campaign would not be likely to be talked over at every nomination. The *modus operandi* was already established and sufficiently understood.

Mr. Parker, the secretary of the association, gives information as to the general character of the work to be done and the very active part taken by himself, not taken, as he tells us, by reason of any consultation with Mr. Colter or with other leading men, though he had frequent communication with Colter who would inquire how he was getting on and so forth. He was asked :

Q. What part was Mr. Colter taking in the contest? A. Conducting his meetings, I suppose; I never attended any of his meetings.

Q. You were seeing to the organization of the portion of the riding that you have spoken of? A. Yes.

Q. Then Mr. Colter, so far as you know, was attending the public meetings. And was he also looking after the organization? A. Not that I know of.

Q. Did he say that to you? A. No. I suppose he would get some person else to attend to the other portion of the riding, to do the work I was doing in the part I attended to.

There is abundant evidence, apart from the necessity of the case, that many persons must have been relied on by the candidate to do the work of seeing to get voters out and whatever else an organized canvas required. These persons, whoever they were, must be held to be the agents of the candidate.

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Work had to be done. No means, apart from the organization of the association, were provided for doing it. The candidate was not doing it himself.

Mr. Colter was himself an active member of the association for six or seven years preceding 1886. Then he was nominated as candidate and went through two elections before the one now in contest under the auspices of the association. He was, therefore, familiar with the way in which things were done. The organization included local associations. There was one for the township of Walpole, which is the scene of charge 82. The associations comprise all the reformers of the locality, though only a few of them, according to Mr. Parker, usually take an active part.

Haslett had been active at the last two elections, though he modestly says he did but very little. That little, he says, was going out and getting in voters.

He afterwards said that it was only at the last election that he took an active part. One thing which he did was to attend a meeting held one night in the village where he lives.

Q. How long was that before the election? A. Probably a couple of weeks.

Q. Who gave you notice to attend that meeting? A. Well, there was nobody gave notice.

Q. How did you know about it? A. Well, we just met one another on the street.

Q. Who was it told you? A. I could not say.

Q. Was it a day meeting or a night meeting? A. Night.

Q. And was that the meeting when the affairs of the polling subdivision were arranged? A. No.

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- Q. What was done at that meeting? A. Just to look up the outside vote and seeing about getting it in.
- Q. What else? What about the doubtful vote at home? A. There was nothing particular done about that.
- Q. You went over the voters' list, I suppose? A. Yes.
- Q. And were doubtful men assigned to different parties to be seen after? A. No.
- Q. For what purpose, then, did you go over the list? A. Just to kind of see; have an idea how many men were outside the county.
- Q. That was the particular business? A. Yes.
- Q. And how long did the meeting last? A. Perhaps an hour.
- Q. And who was the chairman? A. I do not think there was a chairman.
- Q. Who was the secretary? A. There was no secretary.
- Q. Who had the voters' list? A. I think I had the voters' list.

Some interest and activity are implied by the incident of his being provided with the voters' list, which was of some use for the purposes of the meeting.

These questions and answers of Haslett have been pressed on the part of the appellant as proving that, a meeting having been called by some one, Haslett casually heard of it, and that his being there was so casual and unpremeditated as to have no significance on the question of his position in relation to the organized work of the election. It is possible that that is what the witness meant to convey by his answers, but it is not what he said. If we take the answers literally, as reported to us, they are consistent with the notion that Haslett may himself have arranged for the meeting and invited his neighbors, and that notion would not be discredited by the circumstance that Haslett was the man who had the voters' list at the meeting.

The want of written or formal notices of the meeting does not strike me as a circumstance of any importance as an indication of Haslett having heard only by chance of this meeting, particularly when it is remembered that the policy of the association, in which the tactics of another association on a different side of poli-

tics are said to have been adopted, was to have no written evidence to produce on an election trial. Obviously there was some sufficient notice to bring the men together whether Haslett gave the notice or received it. The evidence as we have it certainly does not, to my mind, account for his presence at the meeting in any way which weakens the effect, whatever the effect should properly be, of the fact of his attending the meeting with his voters' list and assisting at the business for which the meeting was convened.

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It is not my purpose to go at greater length into an examination of the evidence, though I have not failed to consider it with care, because I do not understand it to be the duty of the court to deal with it as if trying the fact as a court of first instance. We have not to disturb the finding of the trial judge unless satisfied that his finding is wrong. It rested with him, as said by Mr. Justice Grove in the passage I have quoted, to form his opinion as to whether there had or had not been in the case of Haslett what constitutes election agency. I see no reason to impute to him, in connection with that enquiry, any misapplication or straining of the law of election agency, nor can I say he arrived at a wrong decision on the facts, although on the same evidence all persons might not arrive at the same conclusion.

In the short reference I have made to the evidence I have touched but slightly upon the fact, which to my mind is an important one and which distinguishes most elections in this country from most of those in England, that the candidate makes no provision for doing many things which we know from common knowledge must be done. The election is in fact less the business of the candidate than of the party organisation by which he is nominated.



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Nor have I placed any stress upon the appointment of Haslett is scrutineer at the last election. That, by itself, occurring as it did after the act of bribery, would not prove agency at an earlier period, or agency for any other purpose than the purpose specified in his appointment. At the same time it is a fact that may fairly be considered in connection with any part he may have taken in the election work. I mean work of a systematic kind, such as meeting to go over the voters' lists or the like, not merely advocating the candidate or the cause, like the person whose agency was in question in the *Prescott case* (1) to which I have already referred.

It is urged that the extension (as it is called) of the scope of election agency to include persons like Haslett exposes candidates to risk to an unreasonable extent. The result, if it follows, seems to be due to the footing upon which party organizations have placed these matters. I have nothing to do with the merits or defects of the system as a method of collecting the suffrages of the constituencies. It is not my province to discuss it from the standpoint of either logic or politics. What I am concerned with is to ascertain whether a person convicted of committing a corrupt act in the interest of a candidate has been properly held to come within the description of agent for the candidate. If I find that a candidate who takes the field as the nominee of a party that acts through an organized association, whether the organization is strict and formal, or loose and elastic, depends upon the efforts of the association to promote his election, or relies upon such efforts, I must, as I understand the principles of the law, hold all persons accredited by the association to be the agents of the candidate. Whether a particular

(1) 1 Ont. El. Cas. 95 *et seq.*

individual does or does not come within the description is a question of fact. 1890

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I cannot say that I am impressed by the suggested danger of hardship to candidates or constituencies of letting the validity of an election be imperilled by the conduct of any one of so many people as may be election agents in a case like the present. The danger to the purity of election at which our legislation aims from holding a candidate free from risk from the corrupt acts of those on whom he relies for the conduct of his election, seems to be at least as great and as worthy of being guarded against.

I agree that we should dismiss the appeal with costs.

*Appeal dismissed with costs.*

Solicitor for appellant: *A. K. Goodman.*

Solicitors for respondent: *McCarthy, Osler, Hoskin  
& Creelman.*