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\*Feb. 8.

\*April 4.

CONTROVERTED ELECTION FOR THE  
ELECTORAL DISTRICT OF WELLAND.

WILLIAM MANLY GERMAN (RE- } APPELLANT;  
SPONDENT)..... }

AND

JESSE CALHOUN ROTHERY (PETI- } RESPONDENT.  
TIONER)..... }

ON APPEAL FROM THE JUDGMENT OF ROSE AND  
MACMAHON JJ. AT TRIAL OF PETITION.

*Election—Promise to procure employment by candidate—Corrupt prac-  
tice—Finding of the trial judges—49 Vic. ch. 8, sec. 84 (b).*

On a charge by the petitioner that the appellant had been guilty personally of a corrupt practice by promising to a voter W. to endeavour to procure him a situation in order to induce him to vote, and that such promise was subsequently carried into effect, the trial judges held on the evidence that the charge had been proved.

The promise was charged as having been made in the township of Thorold on the 28th February, 1891. At the trial it was proved that W. some time before the trial made a declaration upon which the charge was based, at the instance of the solicitor for the petitioner, and had got for such declaration employment in Montreal from the C.P.R. Co. until the trial took place, and W. swore that the promise had been made on the 17th February. G. the appellant, although denying the charge, admitted in his examination that he intimated to W. that he would assist him, and there was evidence that after the elections G. wrote to W. and did endeavour to procure him the situation, but the letters were not put in evidence having been destroyed by W. at the request of the appellant.

*Held*, affirming the judgment of the court below, that as the evidence of W. was in part corroborated by the evidence of the appellant, the conclusion arrived at by the trial judges was not wrong, still

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

less so entirely erroneous as to justify the court as an appellate tribunal in reversing the decision of the court below on the questions of fact involved.

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APPEAL from the judgment of the Honourable Justices Rose and MacMahon who tried the election petition in this case and found the sitting member, the present appellant, guilty personally of a corrupt practice.

The election petition in this case charged the appellant with being guilty of corrupt practices by himself and by his agents and prayed that the appellant be unseated and disqualified.

The particulars of the charges furnished by the petitioner upon which the evidence with respect to the disqualification of the appellant was given at the trial were as follows:

"3. On or about the 28th day of February, 1891, at the township of Thorold, the said respondent gave to one Joseph B. Wood, of the Village of Niagara Falls, in the said electoral district, agent, the sum of \$10, in order to induce the said Wood to vote for the said respondent at the said election.

"4. On or about the 28th day of February, 1891, at the said township of Thorold, the said respondent agreed to procure and offered and promised to procure or to endeavour to procure place or employment for the said Joseph B. Wood, in order to induce the said Wood to vote for the said respondent at the said election.

"5. Some time after the said election, at the City of Buffalo, in the State of New York, one of the United States of America, the said respondent corruptly promised to procure and to endeavour to procure a place or employment for the said Joseph B. Wood, on account of the said Wood having voted for the said respondent at the said election."

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After hearing of the evidence, which is reviewed in the judgments hereafter given, the learned trial judges found the appellant W. M. German guilty of having agreed to procure, and having offered and promised to procure or to endeavour to procure, a place or employment for one Joseph B. Wood, a voter entitled to vote at the said election, in order to induce the said Wood to vote for the appellant at the said election.

The appellant limited the subject of this appeal to so much of the judgment as granted that portion of the prayer of the petition which related to the personal charges against the present appellant, and found and declared the present appellant (the respondent in the court below) guilty of a personal corrupt practice at the said election.

The judgment of Mr. Justice Rose on the personal charges was as follows :—

“ ROSE J.—With reference to the personal charges against the respondent the facts appear, as far as may be necessary to consider them, somewhat as follows: The respondent accompanied the witness Wood to Buffalo for the purpose of obtaining a situation for him. This was possibly some two or three weeks after the election, within that time certainly. Now the respondent was in Buffalo very active in endeavouring to procure a situation for Wood. The evidence does not disclose what claim Wood had upon him, outside of the election, to demand or receive the assistance that he was then obtaining. True the respondent had acted as solicitor for Wood and his brother; but as far as the evidence discloses the witness Wood was not brought into close personal intercourse with the respondent, and there is no such personal claim shown in the evidence as would cause one to expect that the respondent would make much effort to obtain a situation for him. We then look for a cause for this

action. We find that the parties met at Thorold. Now the relations between them were such as provoked words of caution from the supporters or friends of the respondent, warning him not to have anything to do with Wood, that he would get him into trouble. Exactly what conduct caused this warning is, perhaps, not made very clear unless we adopt the statement of the witness Wood; but it is clear, I think, upon the evidence, that there was then and there discussed the question of obtaining a situation for the witness Wood. We have then during the election a conversation between the respondent and the witness Wood at which was discussed the obtaining of a situation, and we have after the election the endeavour to obtain that situation by the respondent. Whether at this meeting in Thorold, owing to circumstances which were detailed in evidence, the respondent was acting incautiously, and whether under the circumstances to which I am referring his memory is not very clear as to what then did take place, and whether he was led to do and say something then that was imprudent, is perhaps a matter of surmise; but we find that after the meeting in Thorold the respondent wrote a letter to Wood. In that letter some statement was made. Wood says that it was a request to see another voter and wound up by a reference to a previous promise, and a further promise to fulfil that previous promise. Subsequently another letter was written by the respondent to the witness Wood, and in that subsequent letter without doubt upon the evidence there was a request that the previous letter should be destroyed, and that the subsequent letters should be destroyed. Both these letters were destroyed by Wood. Now everything must be presumed against one who destroys written evidence. Why were these letters destroyed? The respondent says

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because he had been warned against Wood. The letters therefore, and especially the first letter, must have contained something the disclosure of which would prejudice the respondent. How could a letter written under such circumstances prejudice the respondent? Only by affecting his election. How could it affect his election? Only by furnishing evidence of the commission of some corrupt practice. If the letter had reference to a corrupt practice what corrupt practice? The only practice, upon this evidence suggested, apart from other evidence to which I am not now referring, is the obtaining of employment or promising to endeavour to obtain employment for the witness Wood. I come to the conclusion as to that charge that the respondent did at Thorold for the purpose of influencing the vote of the witness Wood promise that if he would vote for him he would after the election endeavour to obtain a situation for him, and that, in pursuance of that promise given, he did endeavour to obtain a situation for the witness Wood. This evidence of a corrupt practice by the respondent compels us to grant the prayer of the petition and to find the respondent guilty of personally corrupt practice. It is therefore unnecessary for us to consider the other charges made, or the charge that is involved in this charge as to witness Wood. And we are glad to be relieved from further consideration of the evidence, and we have not so considered it as to come to a final and definite conclusion as to the credibility of the witnesses. If in the further history of this case we are called upon to examine that evidence and to express our opinion as to the credit to be attached to the various statements, we shall be of course compelled to enter upon an inquiry which will be unpleasant to ourselves, but we think we have sufficiently discharged our duty when we express the

opinion that we are expressing in regard to this corrupt practice, declaring that the respondent is guilty of a corrupt practice, namely, a promise to the witness Wood to endeavour to procure a situation for him if he would vote for him, the respondent, and that that promise was subsequently carried into effect as far as the respondent was able to perform it."

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*W. Cassels* Q.C. appeared on behalf of the appellant, and

*Blackstock* Q.C. appeared on behalf of the respondent.

Sir W. J. RITCHIE C.J.—All we have to deal with in this case are the following charges, namely that :

4. On or about the 28th day of February, 1891, at the said township of Thorold, the said respondent agreed to procure, and offered and promised to procure or to endeavour to procure a place or employment for the said Joseph B. Wood, in order to induce the said Wood to vote for the said respondent at the said election.

5. Some time after the said election, at the city of Buffalo, in the state of New York, one of the United States of America, the said respondent corruptly promised to procure and to endeavour to procure a place or employment for the said Joseph B. Wood, on account of the said Wood having voted for the said respondent at the said election.

On these charges the learned judges who tried the case came to the conclusion as to that charge,

that the respondent did at Thorold for the purpose of influencing the vote of the witness Wood promise that if he would vote for him he would after the election endeavour to obtain a situation for him, and that, in pursuance of that promise then given, he did endeavour to obtain a situation for the witness Wood. This evidence of a corrupt practice by the respondent compels us to grant the prayer of the petition and to find the respondent guilty of a personally corrupt practice.

This finding we are now asked to reverse.

The evidence of the witness Wood, as to what the appellant promised him in regard to getting a situation, is as follows :

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He had said he saw appellant in Thorold.

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Q. When was that? What was going on there? A. He had a meeting in Thorold the night I saw him there.

Q. And where did you see him? A. At Hammond's hotel.

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Q. And what took place between you? A. I told him there that I had considered the thing over again and if he would give me something to do I would much rather have it than the ten dollars. Why, he says, "I will do both."

Q. Then is that all that took place on that occasion? A. Yes.

Q. Then when did you next see him? A. At Port Robinson.

He then describes the circumstances under which he met appellant and is asked :

Q. What happened? A. Well, he came in; I asked him to sit down; he said he would not sit down, he was in a hurry to get back to the meeting. He gave me the ten dollars he promised me, and told me, he says "I give you the ten dollars now; you vote for me and after the election I will get you the situation."

Then he is asked :

Q. Did he write you a letter during the election? A. He did.

Q. Have you got that letter? A. No, I have not.

Q. Where is it? A. It is burned up.

Q. Why did you burn it up? A. He asked me to.

Q. What was in that letter? A. Well, I don't remember what there was in the first letter; I told him that day of a man named Watson that lived below there, and he wrote me the first time to see Watson and see if I could do anything with him; I could not do anything with Watson; I had no influence with any person in a political contest. He requested me to see Watson and do what I could for him, and he said he would do what he promised me.

Q. What else? A. That was about all there was in the letter.

Q. He said he would do as he promised you? A. Yes.

The appellant's testimony to a certain extent corroborates the witness Wood's, though he certainly denies that he said he would endeavour to get him a situation. This is the account which he gives of the matter :

Q. Then, when you saw him down at Thorold, did you have any conversation with him? A. Yes, shortly.

Q. Who were present on that occasion? A. There were several in the bar, but I do not think there was any person near enough to hear any conversation we had.

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Q. What was the conversation? A. Well, I think that he spoke to me; I think it was on that occasion that he called me to one side, and he said, Don't you know some one in Buffalo that you can introduce me to, who will help to get me a situation over there; he says, I want to get out of this country; I am in debt, and they are bothering me, and I want to get away. I told him I thought I did, and that was all.

Q. You did say that you would endeavour to get him the situation? A. No, he asked me if I knew any people in Buffalo that could get him a situation. I told him I thought I did, and that was all that was said. He may have asked me when I would be going to Buffalo, and I told him I did not know, but not until after the elections anyway; that might have been said.

Q. Did he speak to you about getting a situation, and did you intimate that you would assist him in that respect? A. There was just that of it; he asked me if I knew any people in Buffalo that could assist him.

Q. Did you intend to represent that you did not intimate to him that you would assist him? A. There was the intimation of course.

Is not this directly confirmatory of Wood. How should this intimation be given to Wood without conveying to Wood that he relied on his assistance. Then as to the letters he is asked:

Q. Did you during the election write a letter to Wood? A. Don't know that I did during the election.

Q. Will you swear that you did not? A. No.

Q. Have you any recollection of whether you did or not? A. I have a recollection that Wood asked me here in Welland when I would be going to Buffalo, I think it was in Welland; if it was not on the Thorold occasion, and I don't think it was; I think it was in Welland he asked me when I would be going to Buffalo, he wanted to go with me. I said I didn't know, but I would let him know, and I might have dropped him a line telling him when I would be going to Buffalo; whether that was before election day or after I would not be positive.

The statement of Wood was certainly corroborated by the undoubted performance of the alleged promise in Buffalo; and then we have the statement by Wood that a letter was written by appellant to him, in



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which he says: "He requested me to see Watson, and do what I could for him, and he would do what he promised me." This letter could not be produced because it had been destroyed, at appellant's request, as the following evidence clearly shows.

Wood swears:—

Q. You say that you destroyed that letter because Mr. German asked you to; how did he ask you? A. By another letter.

Q. When? A. Before the election.

Q. What did you do with that letter? A. I destroyed the both of them.

Q. What were the contents of the second letter? A. He asked me if I had seen Watson and what he was going to do.

Q. And what else? A. And if I had the first letter, why to destroy it, it wasn't necessary for any person to know anything about the first letter at all.

Q. Did you then destroy it? A. I did.

The appellant's testimony as to the letters is very unsatisfactory.

Q. Will you undertake to say that you did not write him a letter during the election? A. The only recollection I have is what I told you.

Q. Have you any recollection of writing him a letter telling him not to tell anyone the conversation that you had with him? A. No.

Q. Will you swear you did not? A. It is quite unlikely, there is no reason why I should.

Q. Will you swear you did not? A. If there is such a letter I wrote it, but—

Q. Will you swear that you did not? A. No, I won't swear positively; I don't believe I did, but still if there is such a letter produced, of course it is there.

Q. I did not ask that. Will you swear that you did not, yes or no? A. I will not swear absolutely that I did not.

Q. If you wrote him such a letter why did you write it? A. Well, if I wrote him such a letter it would be for this reason, that I was warned by some parties here in Welland to beware of Joe Wood. Mr. Sidey, Mr. Cowper and several others saw he was with me, and they warned me to be careful of Joe Wood, that he would get me into trouble, and if I wrote the letter at all, it was with a desire to influence him not to say anything about any conversation that there was so that there could be no trouble.

Q. Does that now come back to you? A. It does not.

Q. Have you any recollection upon that subject now? A. I have not any recollection of writing the letter, I don't believe I wrote it, but if a letter of that kind is produced, then I say that is the explanation that I give of writing it.

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Q. Did you recollect writing him a letter after the election was over? A. I have no recollection as to any letter positively, excepting the one I have told you about, the day I would be going to Buffalo.

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Q. You do recollect writing him that letter? A. I think very likely I did.

Q. And that must have been after the election? A. Well, I am inclined to think it was after the election.

Q. It must have been, because you did not make any appointment with him to go to Buffalo until after the election? A. I made no definite appointment at all to go to Buffalo with him, and this letter, if I wrote a letter, was a letter fixing the day.

Q. In that letter written after the election was over and making the appointment to go to Buffalo, did you add to the letter a request to Wood that he should destroy your former letter to him written to him during the election? A. I don't know.

Q. Will you swear that you did not? A. I don't believe—I don't know, I would not swear that I did not.

Q. Have you any recollection upon that subject? A. I have no recollection excepting the recollection as to going to Buffalo.

Q. Have you any recollection upon the subject upon which I am now asking you? A. I have not.

Q. If you wrote and was asking him to destroy your former letter, why did you do so? A. Well, I can only tell you what I have told you, that it was because I had been warned that Wood was a dangerous man, and that I had better be careful of him; that was all.

Q. When were you warned that Wood was a dangerous man? A. I was warned that night in Thorold.

Q. And you say you were warned by Mr. Sidey, Mr. Cowper, and who else? A. There were others, but I don't remember their names.

The appellant was re-called and examined by his own counsel two or three hours later, and after giving all his former evidence in such examination, deposed, in answer to the interrogatories of his own counsel, as follows:—

Q. In regard to the letters to Wood, have you any recollection about that?

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Mr. Blackstock—He was asked all about that and he said he had no recollection.

Mr. Cassels—Since your examination have you thought it over? A. After Mr. Blackstock began to examine me about writing a letter it came to my mind that I remembered writing Joe Wood a letter to destroy some letter that I had written him previously, but without any reference to the election at all. I have been trying to remember what it was. It was something regarding some private business that I had quite forgotten, but I do remember writing Joe Wood to destroy some letter that I had previously written.

The letters unquestionably were destroyed at appellant's request and can any one doubt that the reason why appellant wished these letters destroyed was because they, or one of them, contained matter in connection with the election, compromising the appellant? And is not the observation of the learned judges with reference to the destruction of these letters most apposite?

They say everything must be presumed against one who destroys written evidence. Why were these letters destroyed? The respondent says because he had been warned against Wood. The letters therefore, and especially the first letter, must have contained something the disclosure of which would prejudice the respondent. How could a letter written under such circumstances prejudice the respondent? Only by affecting his election. How could it affect his election? Only by furnishing evidence of the commission of some corrupt practice. If the letter had reference to a corrupt practice, what corrupt practice? The only corrupt practice upon this evidence suggested, apart from other evidence to which I am now referring, is the obtaining of employment for the witness Wood. I come to the conclusion as to that charge that the respondent did at Thorold for the purpose of influencing the vote of the witness Wood promise that if he would vote for him he would after the election endeavour to obtain a situation for him, and that in pursuance of that promise then given he did endeavour to obtain a situation for the witness Wood. This evidence of a corrupt practice by the respondent compels us to grant the prayer of the petition and to find the respondent guilty of a personal corrupt practice.

It cannot be denied as has been repeatedly held that in cases which turn on conflicting evidence the judge, who has the witnesses before

him hears the testimony and sees the manner in which they answer questions, and as my learned and lamented predecessor said in the *Jacques Cartier Case* (1), "sees whether they are prompt, natural and given without feeling or prejudice, with an honest desire to tell the truth, or whether they are studied, evasive and reckless, or intended to deceive, &c.," is much more competent to appreciate the evidence and determine on the credibility of the witnesses, and the weight due to the statements than those who merely read the statements of the witnesses as they have been taken down.

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In the *Bellechasse Case* (2), after referring to my predecessor's remarks in the *Jacques Cartier Case* (1), I went on to say that "A case such as this is very different from a case at common law ; there the witnesses are in general disinterested parties unconnected with the case, and so more or less impartial, while in election cases the witnesses are generally strong partisans, or more or less mixed up with the election. The opinion of the learned judge who has heard the case is entitled to great weight, and before his decision can be set aside we must be entirely satisfied that he is wrong. In affirmance with this view we have the repeated declaration of appellate courts, that on questions of fact such tribunals must be clearly satisfied that the conclusion at which the judge who tried the case arrived, was not only wrong, but entirely erroneous."

To this opinion I adhere. I am by no means prepared to say that the conclusion arrived at by the learned judges was wrong, still less, "entirely erroneous;" on the contrary I cannot see how they could have arrived at any other conclusion.

STRONG J.—The appellant has been unseated on a personal charge of bribery, and if the judgment against

(1) 2 Can. S.C.R. 227.  
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(2) 5 Can. S.C.R. 102.

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him is maintained on this appeal he will, by the express provision of section 96 of the Dominion Elections Act, be incapable for the next seven years of being elected to and of sitting in the House of Commons and of voting at any election of a member of that House, and of holding any office in the nomination of the Crown or the Governor General in Canada.

These serious penal consequences call for the most careful examination and scrutiny of the evidence upon which such a judgment is founded.

The charge which the learned judges before whom the petition was tried have found to be established is, as stated in the particulars delivered by the respondent, that of having on or about the 28th day of February, 1891, at the township of Thorold, agreed to procure, and offered and promised to procure, or to endeavour to procure a place or employment for Joseph B. Wood, an elector, in order to induce the said Wood to vote for the appellant at the election.

There were two other personal charges relating to the same voter, one of bribery in having given the same Joseph B. Wood ten dollars to induce him to vote for the appellant, and the other a charge of having at the city of Buffalo promised to procure and to endeavour to procure employment for Joseph B. Wood, by reason of his having voted for the appellant. The learned judges have, however confined their judgments exclusively to the first mentioned charge. The judgment of the court, which was delivered by Mr. Justice Rose, concludes in these words :

We think we have sufficiently discharged our duty when we express the opinion that we are expressing in regard to this corrupt practice, declaring that the respondent is guilty of a corrupt practice, namely, a promise to the witness Wood to endeavour to procure a situation for him if he would vote for him the respondent, and that that promise

was subsequently carried into effect as far as the respondent was able to perform it.

The learned judges have therefore refrained from expressing any opinion upon the evidence, as to the alleged bribery by payment of ten dollars, or upon the charge relating to a promise subsequent to the election.

The notice of appeal to this court purports to be limited pursuant to the statute to so much of the judgment as grants that portion of the prayer of the petition which relates to the personal charges against the appellant and finds and declares the appellant guilty of a personal corrupt practice at the election, and the appellant announces that he will upon the hearing of the appeal contend that the judgment, so far as it declares the appellant guilty of any corrupt practice personally, should be reversed and set aside.

The evidence relating to this charge of a promise to procure or endeavour to procure employment for Wood is, as I have said, confined to the testimony of the two parties to the transaction, Wood and Mr. German himself. The charge was opened by the examination of Mr. German who was called by the respondent's counsel. It will, however, be most convenient first to consider the evidence of Wood and ascertain as precisely as possible the material facts deposed to by him.

Wood speaks of at least four interviews with the appellant in the course of the canvass which preceded the election; the first being at Welland when nothing material is said to have occurred; the next meeting was at Port Robinson, where Wood lived; then a third interview took place at the City Hotel (Hammond's Hotel) at Thorold, where the promise to endeavour to procure a situation for Wood is said to have been made, and later on the parties again met at Port Robinson.

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Wood's account of what took place at the first Port Robinson interview is as follows. He says he met Mr. German "on" the street and Mr. German asked him if he was going to vote for him, to which the witness says he answered he hadn't thought anything of it. Then the witness says (taking the exact words from his deposition) :—

He (German) pressed me to vote for him, and I finally told him that I had heard there was money in the county and I was poor and hard up, and nothing to do, and if there was any I might vote for him. He asked me how much I wanted and I told him ten dollars; he said he would see I got it. I told him that I would rather have it from him, it was something that I had never done before and I did not want it generally known that I had done that kind of business. He said all right, he would see I got it from himself; he said he would give it to me.

The witness says this ended the conversation on that occasion.

Then the next meeting of the parties was at Hammond's Hotel (the City Hotel) at Thorold, on an evening when a meeting of the appellant's supporters was being held at Thorold. To the question put to him by counsel as to what took place between Mr. German and himself on this last occasion, the witness answers :

I told him that I had considered the thing over again and if he would give me something to do I would much rather have it than the ten dollars. Why, he says, "I will do both."

Wood says this was all that took place on that occasion. Then on cross-examination the witness speaks further of this Thorold interview. I extract from his deposition the following passage :

Q. And when you saw Mr. German you told him you were hard up? A. I did.

Q. And told him that you were anxious to get employment? A. I did.

Q. And that you would like very much if he could help you to get employment? A. Yes.

Q. You had known him before? A. Yes.

Q. And when you saw him, you being hard up and wanting employment, asked him if he could not help you to get employment, that is what you say? A. I asked him that at Thorold. I told him I would rather have employment than money.

Q. When did you first speak to him about employment? A. At Thorold.

Q. What date was it? A. I don't know that.

The third interview which, according to Wood, was had between the witness and the appellant, took place at Port Robinson subsequent to the meeting at Thorold. Wood says that Mr. German met him early in the evening in the street, that they separated, he (Wood) going directly home. That in a short time after he had got home, within three or four minutes, the appellant came to his house, that the witness himself opened the door for him. That there was no one in the house but the witness and his wife. Then I extract verbatim from the record what follows:—

Q. What happened? A. Well he came in, I asked him to sit down, he said he would not sit down, he was in a hurry to get back to the meeting. He gave me the ten dollars he promised me, and told me he says, "I'll give you the ten dollars now; you vote for me and after the election I will give you the situation."

Q. Is there any doubt that that took place? A. Not the slightest.

The personal history of Wood and his conduct in relation to this election as given by himself are not irrelevant in considering the weight to be given to his evidence, and so far as I am able to give an opinion as to the credibility of a witness I did not see examined and whose demeanour in the witness box I had no opportunity of observing, I should say the account he gives of himself, his admitted offer to sell his vote, and the way he has acted since the election with reference to his evidence, all tend to discredit him, and that for these reasons his testimony does not commend itself to favourable consideration except in so far as it is supported by other circumstances or by the admissions of

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the appellant. Wood says that after having been in business as a butcher at Welland in partnership with his brother and having failed there he went to live at the International Bridge, which place he admits he left in order to avoid his creditors, and then went to Wisconsin, and after remaining there for some time he went to Buffalo, then returned to Welland and again moved to Port Robinson where he was living at the time of the election being engaged in selling fruit trees and being in poor circumstances. Then after the election, and after he had communicated the facts he swears to in his examination to Mr. Raymond, the solicitor of the present respondent, thus betraying Mr. German, the candidate he had, as he admits, taken a bribe to support, he obtained through Mr. Raymond a situation in the Canadian Pacific Railway Company's service at Montreal, which employment came to an end a short time before the trial of the petition. He further states that Mr. Raymond took from him a statutory declaration embodying the statements which he reiterated in his evidence. Having been the sort of person he describes himself to have been, and having given his evidence *in vinculis* as it were, his conscience bound by the statutory declaration most improperly taken from him by the petitioner's solicitor (1), and having been induced to remain in the country and rewarded for making the statutory declaration mentioned, by the situation obtained for him by or through the solicitor, coupled with his admitted readiness to be corrupted, implied in the statement that the proposal for the bribe which he swears he took, as well as for the offer about procuring employment came not from the appellant but from himself, I should not under all these circumstances, had there been no confirmatory evidence, have been inclined to

(1) See *Harvey v. Mount 8 Beav.* 439.

attach weight to his testimony if I were driven to express an opinion as to it.

It is usual for judges presiding at criminal trials to recommend jurors not to convict upon the evidence of an accomplice, unless confirmed in respect of some material fact; this is done not by way of a direction in law or as a ruling on evidence, but is a simple recommendation to the jury which the judge is not bound to give, it being intended merely as an indication of what the judge would consider it safe and proper to do, if he himself were dealing with the facts. No law or practice requires a court to adopt such a rule in weighing evidence on the trial of an election petition, but had I to deal with the evidence we have before us on this appeal without being able to find in the appellant's own deposition any admissions confirmatory of the statements of Wood, I should adopt and act on the usage I have referred to, not as a rule binding on me, but as a safe and convenient principle to guide me to a conclusion.

If the learned trial judges had stated in their judgment which of the conflicting statements of the opposing witnesses they gave credit to that would have been, as has frequently been held here, conclusive and we should then have had nothing to do with the credibility of witnesses. They have, however, expressly disclaimed doing this as appears from the following passage from the judgment. They say:

We are glad to be relieved from further consideration of the evidence, and we have not so considered it as to come to a final and definite conclusion as to the credibility of the witnesses.

The learned judges reached the conclusion they arrived at upon another principle and upon evidence yet to be mentioned.

If, therefore, there had been a clear, direct and explicit denial by the appellant of the facts deposed to

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by Wood and had there been no circumstances in the case confirmatory of his statement, no admissions by the appellant and nothing warranting presumptions against him, I should then in the absence of any finding by the trial judges as to the credibility of witnesses have found it impossible to decide adversely to the appellant.

Then I proceed to consider the appellant's own evidence. As regards what Wood swears to as having occurred at the two Port Robinson meetings, Mr. German does give a positive and explicit denial to Wood's statements which are in no way confirmed by admitted facts, or by presumptions therefrom, and the question so far as it depends on what passed on those occasions is, therefore, reduced entirely to one of the credit to be attached to one witness rather than the other. It was probably for this reason that the learned judges who, as I have pointed out, abstained from expressing any opinion as to the veracity of the witnesses did not pass upon the charge as to the bribe by paying the \$10.

The case is reduced then to the consideration of the promise or offer to procure or to endeavour to procure employment, alleged by Wood to have been made at Thorold, and to which the decision of the trial court has been entirely restricted. It now becomes necessary to examine the evidence given by Mr. German himself as to this charge of having promised to endeavour to procure employment for Wood. What the appellant says on this head is contained in the following extracts from his evidence :

Q. Then, when you saw him down at Thorold, did you have any conversation with him? A. Yes, shortly.

Q. Who were present on that occasion? A. There were several in the bar, but I do not think there was any person near enough to hear any conversation we had.

Q. What was the conversation? A. Well, I think that he spoke to me; I think it was on that occasion that he called me to one side and he said, don't you know some one in Buffalo that you can introduce me to, who will help to get me a situation over there; he says, I want to get out of this country; I am in debt, and they are bothering me, and I want to get away. I told him I thought I did, and that was all.

Q. That was the whole of that conversation? A. Yes, practically all; I was in a hurry, and Mr. Cowper was waiting for me and some friends in the other room.

Mr. Blackstock—Q. On the occasion that you refer to? A. I believe that was the time that he spoke to me about this situation.

Q. That is all the conversation so far as you recollect? A. That is all; there might have been some further words said, but I don't think there was.

Q. On that occasion did he tell you he would rather have a situation than ten dollars you had promised him, or indeed one hundred dollars? A. No.

Q. Did he say that he would rather have a situation than one hundred dollars? A. No.

Q. Did you in reply to that say to him that you would do both for him, give him the ten dollars and get the situation? A. No.

Q. You did say that you would endeavour to get him the situation? A. No, he asked me if I knew any people in Buffalo that could get him a situation. I told him I thought I did, and that was all that was said. He may have asked me when I would be going to Buffalo, and I told him I did not know, but not until after the elections any way, that might have been said.

Q. Did he speak to you about getting a situation, and did you intimate that you would assist him in that respect? A. There was just that of it; he asked me if I knew any people in Buffalo that could assist him.

Q. Do you intend to represent that you did not intimate to him that you would assist him? A. There was the intimation of course.

Subsequently, Mr. German being examined by his own counsel having been recalled as a witness on his own behalf, gives this further evidence as to the Thorold conversation:—

Q. The fourth charge is, "on or about the 28th day of February, 1891, at the said township of Thorold, the said respondent agreed to procure and offered and promised to procure, or to endeavour to procure a place or employment for the said Joseph B. Wood, in order to induce the said Wood to vote for the said respondent at the said elec-

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tion." Is that true? A. No, it is not. I told him I would introduce him to some people.

Now, upon the evidence obtained from the appellant himself, I regret to be obliged to say that I must hold the fourth charge proved.

The statutory provision applying to this charge is that contained in section 84, subsec. (b) of the Dominion Elections Act, which reads as follows:

The following persons are guilty of bribery and are punishable accordingly: Every person who, directly or indirectly by himself or 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 any such act as aforesaid on account of any voter having voted or refrained from voting at any election.

The cardinal questions to be decided here, are then, (taking out the words of the clause which apply to the case before us): 1st. Whether Mr. German did offer or promise to procure employment for the voter Wood? 2nd. Whether such promise was made to induce Wood to vote?

Now, to turn again to Mr. German's evidence, we find him saying (to take his own words already quoted from the record) that Wood asked him if he knew any people at Buffalo that could assist him in getting a situation, and that he did in reply "intimate" to him that he would assist him, he says: "There was the intimation of course."

Then what does this mean but that Wood having asked Mr. German to assist him in getting a situation at Buffalo, Mr. German said to him that he would assist him in doing so. And saying that he would in the future assist him is nothing else than promising to assist. Of course the word "promise" need not be actually used. If a candidate says to a voter "I will do

my best in trying to get you a situation," that surely is a promise of an endeavour to procure employment, and what difference is there between a promise to try and get a situation and a promise to help or assist the voter in getting one? Both forms of expression mean that the party promising will endeavour to get the employment wanted and amount to nothing less than a promise not to get, but in the words of the statute, to endeavour to get employment.

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It is not enough, however, that such a promise was made—it must have been made corruptly; that is to induce the person to whom it is made to vote. Now the corrupt intent, that is the intent to induce the voter to vote, will not be implied though such an offer or promise be made to an elector in the very heat of a canvass if it can be ascribed to any lawful motive. In the case, for instance, where relations of kinship, of business, or long or close friendship exist between the parties, which afford reasonable ground for supposing that the candidate would be willing to aid the voter in the way promised, irrespective altogether of the election, the offer or promise will not be readily ascribed to a corrupt motive. But in the present case it may be asked what possible suggestion can there be, upon the evidence before us, of any motive which could have induced the appellant to promise Wood that he would endeavour to get him employment at Buffalo save the election? It is impossible that any such motive can be suggested. The only connection which, so far as we can see from the proofs in the record, had ever existed between Mr. German and Wood was, that some time before the election, some years, I should think, Mr. German had acted professionally as solicitor for the firm of butchers at Welland to which Wood then belonged, about some chattel mortgages. Under these circumstances and in the absence of proof to the con-

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trary, it is impossible to say that the object of Mr. German (who admits he had previously, at Port Robinson, canvassed Wood for his vote) in making the promise or intimation to Wood, was any other than one in connection with the election; and if so, it could only have been with the intent of inducing him to vote. Then as to the evidence of Mr. German when recalled by his own counsel and asked whether the 4th charge (which was read to him) was true—all that need be said is that it actually confirms his former evidence. Mr. German says: "I told him that I would introduce him to some people." What is that but saying over again that he promised to endeavour to get him employment. Of course the answer implies that he was to introduce Wood to people with a view to getting him a situation, as in fact the appellant afterwards did.

I have not overlooked the *Cheltenham Case* (1) in which Baron Martin is said to have held that a mere offer of employment not accepted or carried out would not amount to bribery. But I am of opinion that in view of the express words of the statute which I have already read such a decision cannot be followed. Moreover, in the *Waterford Case* (2) Hughes B. acted on the very opposite view of the law.

Further, in the present case, it does not rest on a mere offer or promise, for the appellant did carry out his promise by going to Buffalo with Wood and endeavouring through Beuhl to get him employment. And this it may also be said must be presumed to have been done in pursuance of the "intimation" which Mr. German says he gave to Wood that he would comply with his request to assist him, and shows not by words but by acts and conduct, that what was meant by that

(1) 19 L.T. (N.S.) p. 816-820.

(2) 2 O'M. & H. 25.

assent was nothing less than a promise to endeavour to procure employment.

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In Cunningham's Treatise on Corrupt Practices at Elections (3) the law will be found laid down as I have stated it, and the *Chettenham Case* is distinctly denied to be law.

Then there are additional reasons why presumptions are to be made against the appellant. He admits having written a letter to Wood and then having written another letter telling him to destroy both that and the first letter. This direction Wood says he acted upon and burnt both letters. Wood says these letters had reference to the election and to the promises Mr. German had made him. It is true he afterwards says he does not remember the contents of the letters, but by this he was evidently not understood by the learned judges as retracting his former evidence that the letters had reference to the election, but as merely intending to say he did not remember the exact terms of them. Mr. German when first examined by the petitioner's counsel says he does not recollect writing these or any letters to Wood, but if he did write, telling him to destroy letters—it was because he had been warned by friends not to put dependence on Wood. Later on when Mr. German is examined by his own counsel he says he did write Wood a letter and then a subsequent letter telling him to destroy both. But he does not say when this occurred, nor does he deny that it was during the canvass or after the election, and he says that these letters were “without any reference to the election at all,” that he has been trying to remember what it was about; that it was something regarding some private business which he had quite forgotten.

I agree with the learned judges of the trial court that this is an unsatisfactory way of accounting for



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these letters. Mr. German had, when he had not heard Wood's evidence that the letters had been destroyed, and when for all he knew the letters might be produced to contradict him, admitted that if he had written to Wood it was about the election. I think the court below was right in not accepting this as a sufficient explanation regarding the contents of these letters to do away with that presumption which is always made against one who destroys relevant documents, viz., that their production would have been unfavourable to him.

I do not, however, as the learned judges have done, rest my judgment exclusively on the presumption arising from the destruction of these letters, though I agree in their view also. For the reasons stated I can come to no other conclusion than that this appeal must be dismissed with costs.

TASCHEREAU J.—I agree that this appeal should be dismissed. It is a frivolous appeal. There was nothing to justify it. *Audaces fortuna juvat* should not be relied upon in courts of justice.

GWYNNE J.—I concur that the appeal must be dismissed. I cannot find any ground which would justify the reversal of the learned judges who tried the election petition.

PATTERSON J.—We had the advantage of an earnest and able presentation by Mr. Cassels of the grounds on which it is contended that the judgment of the two learned judges who tried the petition should be reversed, and I have carefully examined the report of the evidence.

It would, as has frequently been remarked, require a very plain demonstration of error on the part of the

judges who saw and heard the witnesses to justify an appellate court in differing from them upon their findings of fact. I must say, however, that looking at the reported evidence without the leaning which is natural enough in an advocate, particularly when there seems to be some hardship in his client's case, my apprehension of it does not lead me to doubt the correctness of the findings.

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The learned judges did not discredit Wood, the principal witness. It was strongly urged that they ought to have done so, and that we ought to treat his evidence as unworthy of credence because he had, some time before the trial, made a declaration at the instance of the solicitor for the petitioner, who had said that if he would do so he would get him employment to keep him in the country until the trial, employment being accordingly obtained in Montreal from the Canadian Pacific Railway Company, from which the witness was discharged a week or so before the trial. The practice of committing a witness to a certain statement of facts has occasionally been rebuked with severity and with justice, and there may be reasons found for regarding such evidence with caution and sometimes with suspicion. That is one of the things that are best dealt with by the tribunal of first instance. It is one of the complaints now made that the judges did not treat what was done with severity and, notwithstanding all that was done, believed the witness. They were the best judges in the matter. They knew, better than we can be expected to do, whether the witness ought to be regarded as a purchased witness, as we have been asked to regard him, merely because on his consenting to stay in the country till the trial employment was found for him by which he could support himself; or whether the circumstances of his having made the declaration of

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facts, which does not appear to have been put in the shape of an affidavit, or to have been anything beyond a statement in writing, affected the value of his sworn testimony.

The issue was whether the appellant had in order to influence Wood's vote offered or promised to endeavour to procure him employment, and whether after the election he had, corruptly and on account of Wood having voted, made the endeavour. The promise is charged in the particulars as having been made in the township of Thorold on or about the 28th of February.

There is ample and direct evidence of such a promise made in the town of Thorold, which is in the township of that name, and I am unable to say that the evidence of the appellant himself, as reported, is so directly opposed to that of Wood as to amount to anything like a satisfactory contradiction of it. The subsequent attempt to procure the employment is not in dispute. Both parties agree as to it, though its character depends of course on the previous promise.

The date of the promise seems, however, to have been the 17th and not the 28th of February. On the 28th something else, which was the subject of evidence, took place in Port Robinson which is also in the township of Thorold.

That other matter is charged in article 3 of the particulars, and the same date is assigned in article 4 to the promise which seems to have been referable to the 17th. I see no reason to suppose that the appellant was prejudiced or misled by the inaccuracy of the date, or that he could have given a fuller explanation of what took place on the 17th, if that date had been stated on the record. It is from the appellant that we learn that the date was the 17th. The witness Wood does not seem to have been able to fix any day in February, though in other particulars, such as the

hotel in Thorold where he saw the appellant, the two substantially agree.

I need not refer to the evidence in more detail. I make this general reference to it for the purpose of showing that it is capable of leading, and as I think leads directly enough, to the conclusion arrived at by the trial judges

I do not think we can avoid dismissing the appeal.

*Appeal dismissed with costs.*

Solicitors for appellant: *Moss, Hoyles & Aylesworth.*

Solicitors for respondent: *Meredith, Clarke, Bowes & Hilton.*

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