1942
*April 28, 29.
* June 26.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF STANSTEAD

ALBERT SIDELEAU (PETITIONER) .....APPELLANT;

AND

ROBERT GREIG DAVIDSON (DEFENDANT ..... RESPONDENT.

ON APPEAL FROM THE DECISION OF SURVEYER AND MCDOUGALL JJ.

*Election law—Dominion Controverted Elections Act—Petition to annul election—Corrupt practices—Knowledge by candidate or official agent—"Agent" in s. 49 including unofficial agent—Distribution of liquor and money—Presumption of corrupt practices—Definite mandate by candidate not necessary to constitute an "agent"—Political organization in charge of election—Accredited members and persons employed by it deemed to be "agents"—Exoneration clause in s. 54—Burden of proof—Dominion Controverted Elections Act, R.S.C., 1927, c. 50, ss. 49, 54, 76.*

The respondent was, on March 27th, 1940, declared elected member of the House of Commons for the county of Stanstead. On April 20th, 1940, a petition was presented under the provisions of the *Dominion Controverted Elections Act* to have the respondent's election annulled on the grounds that he, personally and through his agents, had committed corrupt and illegal practices, consisting particularly in the distribution of whisky and money. The organization of the campaign on behalf of the respondent was entirely left in the hands of the Liberal Organization of the county, the joint-presidents being one Wilkinson and one Jubinville. The latter exercising his activities as chief organizer in the town of Coaticook, received from the former a sum of $1,200 which in part served to purchase whisky afterward deposited at the hotel of one Maurice in Coaticook, and the balance was distributed to local organizers in the surrounding municipalities who were not asked to give any account of their disbursements. Moreover, Maurice bought an additional quantity of whisky, saw personally to its distribution and on the day of the election treated a number of electors whether they had voted or not. Many other persons also treated electors within the limits of the places where they were organizing and working on behalf of the respondent. Some whisky was also served to voters in the street, in private houses, in automobiles and inside some industrial premises. On a smaller scale, some voters received money for their votes and some others were the recipient of unexpected gifts, which were termed as having been made for "charitable purposes". The trial judges dismissed the petition and the appellant appealed to this Court.

*Held* that all the acts established by the evidence in this case amount to corrupt practices and that they are sufficient to void the election, although the respondent himself and his official agent have not been parties to those practices.

* PRESENT:—Rinfret, Kerwin, Hudson and Taschereau JJ. and Maclean J. *ad hoc*

When section 49 of the *Dominion Controverted Elections Act* enacts that "any corrupt practice * * * committed by a candidate * * *, or by his agent" renders the election void, the word "agent" does not mean only the "official agent", but includes any unofficial agent.

The distribution of moneys to local organizers who were not asked to give any account of their disbursements creates a presumption and allows a court to draw the inference that it was intended for the corruption of the electors. *Belleau* v. *Dussault* (Lévis case, 1885, 11 Can. S.R. 133) and *Gallery* v. *Darlington* (St. Ann's case, 1906, 37 Can. S.C.R. 563) followed.

Even if there was evidence that an elector had treated another elector or had given him money to induce him to vote for a candidate, the election should not be voided unless the so-called agent is linked in some way to the candidate himself; but it is not necessary that there should be a definite mandate by a candidate to one of his supporters in order that the latter be termed an agent within the meaning of the *Dominion Controverted Elections Act, Brassard* v. *Langevin* (Charlevoix case, 1877, 1 Can. S.C.R. 145) cited.

When a candidate and his official agent rely upon a political organization to promote the campaign and bring the election to a successful conclusion, the accredited members of the association should be held to be the agents of the candidate, and all those employed by the association are, within the limits of their duties, in the same sense the agents of the candidate himself.

A candidate, in order to be relieved from the consequences of corrupt practices by the operation of section 54 of the *Dominion Controverted Elections Act* (exonerating clause), must bring himself strictly within all its terms; and the respondent in this case has failed to show that he should be allowed to take advantage of that section. Although it has been established that he and his official agent have committed no reprehensible acts, it is not in evidence (and the burden of proof was upon the respondent) that the corrupt practices were committed contrary to the order of the candidate or his official agent, and nothing in the record can lead the court to the conclusion that they have taken all reasonable means for preventing the commission of corrupt practices.

Judgment of the trial judges reversed, petition maintained and election of the respondent annulled (1).

APPEAL from the judgment of Surveyer and McDougall JJ. sitting as trial judges under the provisions of the "Dominion Controverted Elections Act," R.S.C. (1927), c. 50, in the matter of the controverted election of a member for the electoral district of Stanstead, in the

(1) *Reporter's note*:—A motion by the respondent for a stay of proceedings pending an application to the Judicial Committee of the Privy Council for special leave to appeal was dismissed with costs by Hudson J. in chambers, July 16th, 1942. This judgment is reported below, p. 318.

1942

SIDELEAU v. DAVIDSON.

House of Commons of Canada, rendered on the 8th of October, 1941, dismissing the appellant's petition for the voiding of the election.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgment now reported.

*J. C. Samson* for the appellant.

*D. Landry K.C.* for the respondent.

The judgment of the Court has been delivered by

TASCHEREAU J.—The respondent Robert Greig Davidson, was on the 27th day of March, 1940, declared elected member of the House of Commons for the county of Stanstead, by a majority of 306 votes over his opponent, Alphonse Girard of Magog.

On April the 20th, a petition was presented by Albert Sideleau of Coaticook and Telesphore Goyette of Magog, under the provisions of the *Act Respecting Controverted Elections of Members of the House of Commons,* R.S.C., 1927, chap. 50, to have the respondent's election annulled, and on the 8th of October, 1941, the Honourable Justices Fabre Surveyer and McDougall of the Superior Court for the province of Quebec, dismissed the petition with costs.

The appellant now appeals from that decision.

The petition alleges that the respondent personally and through his agents has committed corrupt and illegal practices, consisting particularly in the distribution of whisky and money.

The learned trial judges came to the conclusion that some reprehensible acts have been committed by some of the organizers of the respondent's campaign, but were of the opinion, without making any reference to the exoneration clause, which is section 54 of the Act, that they were not sufficient to prevent the election from having been "very decent". In the last paragraph the trial judges conclude their judgment as follows:—

> On the whole, we are disposed to believe that the respondent has taken very little part in this election, and that his official agent neither committed nor encouraged any reprehensible acts. As to the unofficial agents, one may say, with witness Leclerc, who seems to have witnessed many others, that, as elections go, the present one was very decent.

The *Act Respecting Controverted Elections of Members of the House of Commons* contains amongst others the following clause:—

> 49. If it is found by the report of the trial judges that any corrupt practice has been commited by a candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, or that any illegal practice has been committed by a candidate or by his official agent or by any other agent of the candidate with the actual knowledge and consent of the candidate, the election of such candidate, if he has been elected, shall be void.

By this section, it will be seen that any corrupt practice committed by a candidate or by his agent, whether with or without the consent and knowledge of the candidate, renders the election void.—As to an illegal practice, the election is void if such illegal practice has been committed by the candidate, or by his official agent, or by any other agent with the actual knowledge and consent of the candidate.

It was argued on behalf of the respondent that the word "agent" in the first part of this section 49 means only the "official agent" and that, therefore, if any corrupt practices have been committed by an unofficial agent, the election cannot be voided.

We come to the conclusion that this contention cannot be sustained and we cannot see how the word "agent" in the first part of the section can have such a limited meaning. The Act taken as a whole, and particularly the reading of sections 54 and 76 must irresistibly lead us to a different conclusion.

Section 54, which is the exoneration section which may be invoked on behalf of a candidate, contains subsection (*d*) which says that the election is not void, when the judges have found that

> in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents.

Section 76 authorizes the trial judges to condemn the agents to pay costs when the election is void by reason of any act of an agent committed without the knowledge and consent of the candidate.

These two sections clearly show that corrupt practices even without the knowledge and consent of the candidate are in certain cases sufficient to void an election and, there-

1942

SIDELEAU v. DAVIDSON.

Taschereau J.

fore, these two sections would be meaningless if we were to interpret section 49 in the manner suggested by the respondent.

With due deference, we have to come to the conclusion that in the present case, corrupt practices have been committed, to which however it must be said, the respondent himself and his official agent have not been parties.

The organization of the campaign on behalf of the respondent was entirely left in the hands of the Liberal Organization of the county of Stanstead, the joint-presidents of which were Frank Wilkinson and Noé Jubinville.

For the purpose of organizing the election, the county of Stanstead was divided into two sections with headquarters at Magog and Coaticook. The evidence does not allow us to reach the conclusion that there were any corrupt practices at Magog sufficient to void the election, and on that point the evidence is contradictory as to whether there was any liquor served at a "smoker" held at Magog. If there were any, it is very doubtful if it was served with the knowledge and consent of the organizers of the respondent.

But, we are confronted with a different state of facts as to what happened at Coaticook and in the vicinity where Noé Jubinville was exercising his activities as chief organizer. In that capacity, he received from Frank Wilkinson a sum of approximately $1,200 which in part served to purchase whisky which was afterwards deposited at the hotel of Adrien Maurice at Coaticook, and the balance was distributed to local organizers in the surrounding municipalities who were not asked to give any account of their disbursements.

This immediately creates a presumption, and allows us to draw the inference that it was intended for the corruption of the electors.

In the *St. Ann's* election case (1), Mr. Justice Davies says:—

> We are asked to believe that this money was intended to be honestly paid to "locators" so called, for bona fide and necessary work to be done by them, while in the same breath we are told that at least one-half of those to whom the money was to be paid, and actually was paid, were electors whom the receipt of these moneys for alleged services in connection with the elections would actually disfranchise.

(1) *Gallery* v. *Darlington*, (1906) 37 Can. S.C.R. 563, at 566.

The money paid to these chairmen of committees was not counted, no receipt was taken, no memorandum of payments made, no account kept by those to whom it was paid, of those electors and others to whom they paid the money and no evidence or the slightest possible that any actual bona fide work was done by those to whom it was paid, or if and where any work was done by any or by which of them.

In the *Levis* case (1), it was held, affirming the judgment of the court below that when an agent of a candidate receives and spends for election purposes large sums of money, and does not render an account of such expenditure, it will create a presumption that corrupt practices have been resorted to.

In the present case, we have not only the presumption which has been thus created, but we have the uncontradicted evidence that Noé Jubinville not only sent this quantity of whisky to Maurice for distribution, but distributed some personally to other organizers and voters. Adrien Maurice, the hotelkeeper and one of the organizers, was obviously not satisfied with the quantity of whisky which he had received from Jubinville but purchased an additional quantity from the Quebec Liquor Commission. He saw personally to the distribution of that whisky, and on the day of the election he treated a number of electors whether they had voted or not. On that point, he is quite frank, for in his evidence he says:—

Q. A tout événement, les personnes savaient que vous en aviez un dépôt chez-vous pour les fins de l'élection?
A. On avait ça pour s'en servir.

Joseph Laroche, Charles-Emile Audet, Arthur Leclerc, Kenneth Akhurst, René Jean-Marie, Georges Primeau, Thomas Handy, also treated electors within the limits of the places where they were organizing and working on behalf of the respondent. Some whisky was served to voters in the street, in private houses, in automobiles, and, Georges Primeau treated some employees of the Kilgour Chair Company which he had been asked to bring to the polls, and the same conduct was followed by Kenneth Akhurst with the voters employed by the Belding Corticelli Company.

On a smaller scale however, some voters received money for their votes, and some others were the recipients of unexpected gifts, which have been termed by one of the

(1) *Belleau* v. *Dussault*, (1885) 11 Can. S.R. 133.

1942

SIDELEAU v. DAVIDSON.

Taschereau J.

witnesses for the respondent to have been made for "charitable purposes". The organizers guilty of these particular acts of corruption are Charles-Emile Audet and Arthur Leclerc.

With due deference, we believe that all these acts amount to corrupt practices and that they are sufficient to void the election. More than once, this Court has annulled elections for isolated cases of corruption and in other cases for practices which did not have the serious character which the evidence reveals in the present case.

We might refer to *Larue* v. *Deslauriers* (1); *Colter* v. *Glenn* (2); *German* v. *Rothery* (3); *Hackett* v. *Larkin* (4), and *Gallery* v. *Darlington* (5).

The question has been raised as to whether all those who worked on behalf of the respondent, and who have committed corrupt practices were agents of the respondent for which, within the meaning of the *Dominion Controverted Elections Act,* he can be held responsible.

There can be no doubt that if an elector choses to treat another elector or to give him money to induce him to vote for a candidate, the candidate's election cannot be voided if the so-called agent is not linked in some way to the candidate himself. But, it is not necessary that there should be a definite mandate by a candidate to one of his supporters in order that the latter be termed an agent within the meaning of the Act. As it has been said in *Brassard* v. *Langevin* (6):—

> Let us remark here that the law does not require that the agency should be established by means of a written or even a verbal authority; it is inferred from the relations of the parties—from the bona fide support which the agent affords to the candidate with the sincere view of ensuring his election. The agent here in question is not the one specified by section 121 of the Election Act whose name should be notified by the candidate to the returning officer, but is the one specified by section 101; that is, the one who, with the formal or implied consent of a candidate, in good faith supports his candidature.

In the present case, the respondent himself did not take a very active part in his own election, and we do not think, except for a few cases with which we will deal later, that he appointed expressly any agents to work on his behalf.

(1) (1880) 5 Can. S.C.R. 91.
(2) (1889) 17 Can. S.C.R. 170.
(3) (1892) 20 Can. S.C.R. 376.
(4) (1897) 27 Can. S.C.R. 241.
(5) (1906) 37 Can. S.C.R. 563.
(6) (1887) 1 Can. S.C.R. 145, at 191.

At the time the election was held, the weather was not favourable, the roads were closed in many sections of the county and the respondent who addressed only a few meetings stayed most of his time at Katevale, his home town.

In his examination on discovery, he tells us however that there was a Liberal Organization in the county of Stanstead, called the Stanstead County Liberal Organization. He was aware that there were two presidents at the head of this organization, namely, Frank Wilkinson and Noé Jubinville, and he frankly admits that he was the official candidate for the Liberal party and chosen by the Liberal Association of the county. One of the important features of his evidence is that, it was the Liberal Association which was to secure his election. Here are his exact words:—

Q. Is there any official or any Liberal organization in the county of Stanstead?

A. Yes.

Q. How do you call that association?

A. Stanstead County Liberal Organization.

Q. Who was the president, at the time of the election, of that association?

A. I am not sufficiently familiar with it, I know there are two,—Frank Wilkinson and Noé Jubinville.

Q. Mr. Noé Jubinville was joint-president for the Liberal Association of the county of Stanstead?

A. As I understand.

Q. And you were the official candidate for the Liberal Association, or the Liberal party?

A. Yes, sir.

Q. Could you, Mr. Davidson, give other names of members of the Liberal Association for the county of Stanstead?

A. Well, yes.

Q. I suppose there was a membership at the head of that organition.

A. There was an organization, but I must confess I don't know them all.

And further:—

Q. After you had been chosen, Mr. Davidson, as official candidate for the Liberal party for the county of Stanstead for the election held on the 26th of March, 1940, were those gentlemen you just mentioned, were they to secure your election?

A. I presume they would.

Q. Is it to your knowledge that they did work to secure your election?

A. Yes, from what I could understand, or what I could see.

1942

SIDELEAU v. DAVIDSON.

Taschereau J.

And still further:—

Q. My point is this: You had been chosen as official candidate for the Liberal party for the county of Stanstead. There was in Stanstead a Liberal organization, which no doubt had for its purpose the election of its official candidate?

A. Yes.

He also states that Mr. Léon Dubé was the secretary of the association and gives the name of a number of other members whom he knew belonged to the organization, as F. E. Patch of Magog, Antonio Robert, Edwin Chadsey, Fred Gilbert, Adrien Maurice. He believes also that Joseph Laroche and David Lefebvre of Coaticook did some work on his behalf after he had been chosen as the official candidate. He also relied upon Mr. Wilkinson, the president of the association, and Mr. Noé Jubinville, the joint-president, to take a special interest and part in his election.

The official agent for the respondent was Mr. Roger Bouchard of Coaticook. To his knowledge the organizers of the respondent at Coaticook were Noé Jubinville, Adrien Maurice, Joseph Laroche, Azarias Boivin and Léon Dubé. He was fully aware of the part taken by the Liberal association of the county and, according to the conversations he had with the respondent, the latter knew that Noé Jubinville, Azarias Boivin, Léon Dubé and Joseph Laroche were taking an active part in promotion of the election.

We have no doubt that the respondent and his official agent were relying particularly upon the Liberal Organization of the county of Stanstead to secure his election. As we have already pointed out, the mere fact that a man gives his support to a candidate does not make him an agent, but, we are of opinion that when a candidate relies upon an organization to promote his campaign, and bring the election to a successful conclusion, the accredited members of the association are the agents of the candidate, and all those employed by the association are, within the limits of their duties, in the same sense the agents of the candidate himself. Taunton, 1 O'M. & H. 185:—

Generally speaking, whenever a person is in any way allowed by a candidate, or has the candidate's sanction to try to carry on his election and to act for him that is some evidence to show that he is his agent.

In the *Borough of Stroud* case (1), Baron Pigott said:—

It is clear that a person is not to be made an agent of a 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.

In the present case, all those, which we find as having acted as agents, were not expressly appointed by the candidate himself, but they were well accredited members of the association or entrusted by the official organizers of the respondent to do some election work and to promote his election.

In *Borough of Dungannon* (2), Baron Fitzgerald said:—

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.

In the *Haldimand Election* case (3), Mr. Justice Gwynne says at page 187:—

* * * and in pursuance of it in the character of a committeeman acting in the interest of and as agent of the candidate, just as if he had been appointed by the candidate himself.

In the same case, at page 194, Mr. Justice Paterson says:—

If I find that a candidate who takes the field as the nominee of the 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 individual does or does not come within the description is a question of fact.

The evidence reveals, as we have already pointed out, that Noé Jubinville, Adrien Maurice, Joseph Laroche, Charles-Emile Audet, Arthur Leclerc, Kenneth Akhurst, René Jean-Marie, Georges Primeau and Thomas Handy have been guilty of corrupt practices. They were not expressly appointed agents for the respondent except, perhaps, Joseph Laroche and Charles-Emile Audet who were bearers of a proxy signed by the respondent authorizing them to represent him as his agents in certain polls. But, all these persons were members of the organization which was in charge of the election or were expressly appointed agents by the accredited members of the organi-

(1) (1874) 3 O'M. & H. 7, at 11. (2) (1880) 3 O'M. & H. 101, at 102.
(3) (1890) 17 Can. S.C.R. 176.

1942

SIDELEAU v. DAVIDSON.

Taschereau J.

zation. It follows that the respondent, having entrusted the fate of his election to these persons, must bear all the consequences of their acts however severe and far-reaching they may be. It would indeed be strange if it were otherwise, and if we were to accept the opposite views. For, in such a case, the successful candidate whose election is contested before the courts could always seek refuge behind his political campaigners to whom he has expressly or impliedly confided the care of his election, and repudiate after the polls are closed the reprehensible and corrupt acts committed by them. This view, if accepted, would defeat the object of the act and imperil the honesty of elections.

The respondent has argued that even if some corrupt practices have been proved, the election could not be voided on account of the application of section 54 of the Act which is called the exoneration clause. This section reads as follows:—

> 54. Where, upon the trial of an election petition, the trial judges report that a candidate at such election was guilty by his agent or agents of any offence that would render his election void, and further find
>
> (*a*) that no corrupt or illegal practice was committed at such election by the candidate personally or by his official agent and that the offences mentioned in the said report were committed contrary to the order and without the sanction or connivance of such candidate or his official agent; and
>
> (*b*) that such candidate and his official agent took all reasonable means for preventing the commission of corrupt and illegal practices at such election; and
>
> (*c*) that the offences were of a trivial, unimportant, and limited character; and
>
> (*d*) that in all other respects the election was free from any corrupt or illegal practice on the part of such candidate and of his agents;
>
> then the election of such candidate shall not, by reasons of the offences mentioned, be void, nor shall the candidate be subject to any incapacity therefor.

It may be stated that a candidate may be relieved from the consequences of corrupt practices by the operation of this section when he brings himself strictly within all its terms.

In the *West Prince Election* case (1), after quoting what in 1897 was our present section 54, the Chief Justice adds at page 247:—

> But, as Mr. Justice Vaughan Williams held in the *Rochester* case, in order to obtain the benefit of this section a candidate must bring himself strictly within its terms.

(1) (1897) 27 Can. S.C.R. 241.

The burden was upon the respondent to show that the offences mentioned in the report of the trial judges were committed contrary to the order and without the sanction of the candidate or his official agent, that they took all reasonable means for preventing the commission of corrupt and illegal practices, that the offences were of a trivial, unimportant, and limited character, and that in all other respects the election was free from any corrupt practices on the part of such candidate and of his agents.

We believe that the respondent has failed to show that he may be allowed to take advantage of this section. Although it has been established that he and his official agent have committed no reprehensible acts, it is not in evidence that the corrupt practices were committed contrary to the order of the candidate or his official agent, and nothing in the record can lead us to the conclusion that they have taken all reasonable means for preventing the commission of corrupt practices.

In *Veilleux* v. *Boucher* (1), confirmed by this Court (2), it was held by Coderre and Denis, JJ.:—

> A defendant who neglects, whether by himself or his official agent, to give orders forbidding all other agents, and generally all persons working at the election in his interest, to refrain from all corrupt practices, is not admitted to invoke exoneration under section 54 of the *Dominion Controverted Elections Act*.

Moreover, the offences were not of a trivial, unimportant, and limited character, and we have seen, when analysing the evidence, that the election was not free from corrupt practices on the part of the agents of the candidate. Even if they had been of a limited character, as it had been submitted to us, subsection (*c*) would still be of no benefit to the respondent, for the offence of treating is surely not trivial—and the limited number of the acts and their triviality are two different elements which must be found to coexist.

We, therefore, come to the conclusion that the appeal should be allowed, the petition maintained and the election of the respondent declared elected on the 27th of March, 1940, annulled. It is ordered that the Registrar shall certify to the Speaker of the House of Commons the judgment of this Court, after settlement of the minutes thereof, annulling the decision of the trial judges. The appellant will be entitled to his costs in the Court below and in this

(1) (1932) Q.R. 70 S.C. 339. (2) [1933] S.C.R. 65.

1942

SIDELEAU v. DAVIDSON.

Taschereau J.

Court according to the tariff of the Supreme Court of Canada, and the deposit which has been made by the appellant will be returned to him.

*Appeal allowed with costs.*

Solicitor for the appellant: *J. C. Samson.*

Solicitors for the respondent: *Dalma Landry and Roger Bouchard.*