

"allowance, emolument or profit, of any kind or amount
 "whatever, coming from the province, is attached, shall be
 "appointed a legislative councillor, or shall be eligible as
 "a member of the legislative assembly, or, in either case,
 "shall sit or vote as such, while holding such office, com-
 "mission, or employment."

But the sub-section so amended, shall be subject to the exceptions enacted in the sub-section following in the section hereinabove cited.

CAP. V.

An Act to provide for the decision of Controverted Elections by the Judges, and to make better provision for the prevention of corrupt practices at Elections.

[Assented to 24th December, 1872.]

Preamble.

WHEREAS it is expedient to amend the law relating to the trial of election petitions, and to provide more effectually for the prevention of corrupt practices at elections for the Legislative Assembly of Quebec; Therefore Her Majesty, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

Short title of this Act.

1. This act may be cited for all purposes as "The Controverted Elections Act of 1872."

Definition of the words "the court" "the Judge."

2. The expression "the court" shall for the purposes of this act, mean three judges of the superior court sitting at Quebec or Montreal, in the manner hereinafter provided for the final hearing and determination of election petitions; the expression "the judge" shall mean the judge of the superior court residing in, or to whom is assigned, the district wherein proceedings on such petitions are hereinafter appointed to be had, and the expression "the prothonotary" shall mean the prothonotary or deputy prothonotary of the superior court for the district in which such proceedings are appointed to be had as aforesaid.

"Prothonotary."

Interpretation of the following terms:

3. The following terms shall, in this act, have the meaning hereinafter assigned to them, unless there is something in the context repugnant to such construction, that is to say:

"Member."

"Member," shall mean a member of the legislative assembly of Quebec;

"Elections."

"Election," shall mean an election of a member to serve in the legislative assembly of Quebec;

"Division," shall mean an electoral division returning a "Division." member;

"Candidate," shall mean any person elected to serve as "Candidate." a member, and any person who has been nominated as, or declared himself a candidate at an election;

"Corrupt practices," or "corrupt practice," shall mean "Corrupt bribery and undue influence, and illegal and prohibited practices," or acts in reference to elections, or any of such offences, as "corrupt practices." defined by act of the legislature;

"Rules of court," shall mean rules to be made as herein- "Rules of after mentioned; court."

"Prescribed," shall mean "prescribed by the rules of "Prescribed." court if any are made in virtue of this act."

4. For the purposes of this act, the expression "the "The speaker," shall mean the speaker of the legislative assembly; and when the office of speaker is vacant, or when the speaker is absent from the province, or is unable to act, the clerk of the legislative assembly, or any other officer for the time being, performing the duties of the clerk of the legislative assembly, shall be deemed to be substituted for and included in the expression "the speaker."

5. From and after the passing of this act, a petition complaining of an undue return, or undue election of a member, may be presented by any one or more of the following persons: By whom election petition may be presented

(1.) Some person who was duly qualified to vote at the election to which the petition relates; or, By voters.

(2.) Some person claiming to have had a right to be returned or elected at such election; and such petition is hereinafter called an election petition. By persons claiming to be elected.

6. The following enactments are made with respect to the presentation of an election petition under this act: Presentation of petitions.

1. The petition need not be in any particular form, but it must complain of the undue election or return of a member to serve in the legislative assembly, or that no return has been made, or of matter contained in any special return made, and it must be signed by the petitioner or all the petitioners, if there be more than one; Form of petition and by whom to be signed.

2. The petition shall be presented within fifteen days after the election day, or if a poll was held after the polling day, unless it question the return or election upon an allegation of corrupt practices, and specially alleges a payment of money, or other act of bribery to have been committed by the member, or on his account, or with his privity, since the time of such return in pursuance or in furtherance of such corrupt practices, in which case, the petition may be presented at any time within eight days after the date of such payment, or acts so committed; Petition when to be presented.

And to whom.

3. Presentation of a petition shall be made by delivering it at the office of the prothonotary for the district in which the election was held ;

Security for costs.

4. At the time of the presentation of the petition, security for the payment of all costs, charges and expenses that may become payable by the petitioner shall be given on behalf of the petitioner.

(a) To any person summoned as a witness on his behalf ;
or,

(b.) To the member whose election or return is complained of (who is hereinafter referred to as the respondent.)

5. The security shall be to the amount of eight hundred dollars ; it shall be given either by recognizance, to be entered into jointly and severally with the petitioner by any number of sureties, not exceeding four, or by a deposit of money with the prothonotary, or partly in one way, and partly in the other.

Notice of objection to security.

7. Notice of the presentation of a petition under this act, and the nature of the proposed security, accompanied with a copy of the petition, shall, within five days after the day on which the security is given, or within such longer time as the judge may, under special circumstances of difficulty in effecting service, allow, be served by the petitioner on the respondent, and it shall be lawful for the respondent where the security is given, wholly or partially, by recognizance, within five days from the day of the service on him of the notice, to object in writing to such recognizance, on the ground that the sureties, or any of them, are insufficient, or that a surety is dead, or that he cannot be found or ascertained from the want of a sufficient description in the recognizance, or that a person named in the recognizance has not duly acknowledged the same. In case service cannot be effected on the respondent, either personally or at his domicile, within the delay granted by the judge, then it may be effected upon such other person, or in such other manner as the judge, on the application of the petitioner, may appoint.

Objections to security how heard and decided.

8. Any objection made to the security given shall be heard and decided by the judge in a summary manner :—If an objection to the security is allowed, it shall be lawful for the petitioner, within five days after the day of such allowance, to remove such objection by a deposit, in the hands of the prothonotary, of such sum of money as may be deemed by the judge, or officer having cognizance of the matter, proper to make the security sufficient. If on objection made, the security is decided to be insufficient, and such objection is not removed in manner hereinbefore mentioned,

Removal of objections.

If objections allowed are not removed proceedings to cease.

no further proceedings shall be had on the petition; otherwise, on the expiration, without objection made, of the time limited for making objections, or after objection made, on the sufficiency of the security being established, the respondent shall be bound to answer the petition.

When respondent is bound to answer.

9. Within five days after the expiration of the time limited for objecting to the security, or after the security has been established, the respondent shall present in writing the preliminary objections or grounds of insufficiency which he may have to urge, and shall at the same time file a copy thereof for the petitioner. The judge shall thereupon hear the parties upon such objections and grounds and shall decide the same in a summary manner.

Preliminary objections.

10. Within five days after the decision upon the preliminary objections, or after the expiration of the delay for presenting the same, the respondent shall file a written answer to the petition, together with a copy thereof for the petitioner; and thereupon on the application of either party the judge shall fix some convenient day for the adduction of evidence.

Respondent's answer.

11. The evidence shall be taken down in writing under the direction of the judge, and shall continue to be taken from day to day until the evidence of the petitioner has been concluded, and thereupon if the respondent is not ready to proceed immediately with his evidence a day shall be fixed by the judge for the adduction thereof, and it shall continue to be taken from day to day until all the witnesses have been examined. It shall be lawful for the judge to order the parties to secure the services of a short-hand writer for the taking of such evidence, if such services can be procured.

Evidence.

12. If during the taking of evidence any portion thereof is objected to or any question of law arises, the judge shall decide such objection or question, and a note thereof and of such decision shall be entered upon and form part of the record.

Objections to evidence.

13. As soon as the evidence on both sides shall have been declared closed the prothonotary shall transmit the record, together with a list of all the papers which form part of it, and a transcript of all the entries in the register relating thereto, to the prothonotary of the superior court at Quebec or Montreal, that is to say, at Quebec, if the evidence was taken in any one of the districts of Quebec, Three Rivers, Saguenay, Chicoutimi, Gaspé, Rimouski, Kamouraska, Montmagny, Beauce, or Arthabaska, and at

Record to be transmitted to Quebec or Montreal.

Montreal, if the evidence was taken in any one of the districts of Montreal, Ottawa, Terrebonne, Joliette, Richelieu, St. Francis, Bedford, St. Hyacinthe, Iberville, or Beauharnois.

Hearing.

14. Immediately upon receipt of the record the said prothonotary of the superior court at Quebec or Montreal, as the case may be, shall notify the judges of the said court residing in that city, who shall thereupon fix a day, within ten days after the receipt of the record, upon which day three of the said judges shall sit in court for the final hearing of the merits of the election petition and of the answer or answers thereto ; and the parties shall be bound to be prepared on the day so fixed and shall continue to be heard until the closing of the hearing, unless the court, in its discretion, on the application of either party, thinks fit to adjourn the case to some other day.

Disqualified judges how replaced.

15. If any one or more of the said judges are disqualified or incompetent by reason of relationship or otherwise to sit for the hearing of any election petition, the prothonotary shall notify the chief justice of the superior court who shall thereupon select some other judge of the said court in this province, whose duty it shall be to sit and hear the case in the place of the judge so disqualified or incompetent ; and the latter judge may at the same time be required by the chief justice, if necessary, to perform all such duties as the replacing judge might have performed, had he not been selected to sit for the hearing of the said election petition.

Precedence of election petition.

16. If the day so fixed be one on which other cases are fixed to be heard before the superior court, or the said judges, the hearing of the said election petition shall take precedence over all other cases, and over all other business before the said court or the said judges.

Judges to determine the issue and give certificates of such determination, with copy of notes to the speaker.

17. The court shall decide whether the member whose election or return is complained of, or any and what other person was duly returned or elected, or whether the election was void, and shall forthwith transmit in writing its judgment to the speaker, appending thereto a copy of the notes of the evidence, and the judgment thus transmitted shall be final to all intents and purposes.

The speaker shall give order for a new writ on the certificate of nullity of the election.

So soon as the speaker shall have received the judgment of the court establishing the nullity of the election of any member, it shall be his duty, on requisition of three electors of the division, the election for which shall have so been declared null, to give an order to the clerk of the Crown in Chancery, for the issue of another writ to proceed to the election of a member for the said division.

18. When any charge is made in an election petition of any corrupt practice having been committed at the election to which the petition refers, the court shall, in addition to such judgment, and at the same time, report in writing to the speaker as follows:

(a.) Whether any corrupt practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, stating the name of such candidate, and the nature of such corrupt practice:

(b.) The names of any persons who have been proved, at the trial, to have been guilty of any corrupt practice;

(c.) Whether corrupt practices have, or whether there is reason to believe, that corrupt practices have extensively prevailed at the election to which the petition relates.

19. The court shall at the same time make a special report to the speaker as to any matters arising in the course of the trial, an account of which, in their judgment, ought to be submitted to the legislative assembly.

20. The speaker shall, at the earliest practicable moment, after he receives the certificate, and report or reports, (if any), of the court, communicate the same to the legislative assembly, and the legislative assembly shall forth with thereafter order the same to be entered on its journals.

21. Unless the judge otherwise direct, any charge of corrupt practices may be gone into, and evidence in relation thereto received, before any proof has been given of agency on the part of any candidate in respect of such corrupt practices.

22. Any election petition may be presented, and the trial of an election petition under this act, shall be proceeded with, notwithstanding the acceptance by the respondent of an office of profit under the crown, or his resignation of the seat, but the respondent may, notwithstanding any thing in this or any other act contained, accept office or resign his seat at any time after the election.

23. The trial of an election petition under this act, shall be proceeded with notwithstanding the prorogation of the legislative assembly.

PROCEDURE.

24. An election petition under this act, shall be served as nearly as may be, in the manner in which a writ of summons is served, in civil matters.

Several petitions to be treated as one.

25. When under this act more petitions than one are presented relating to the same election or return, all such petitions shall be dealt with, as far as may be, as one petition.

JURISDICTION AND RULES OF COURT.

Judges may make rules of court.

26. The judges of the superior court for the province of Quebec, resident in the cities of Quebec and Montreal, or a majority of them, may, from time to time, make, and may, from time to time, revoke and alter general rules and orders (in this act referred to as the rules of court) for the effectual execution of this act, and of the intention and object thereof, and the regulation of the practice, and procedure of elections, election petitions and the trial thereof, and the certifying and reporting thereon. Any general rules and orders made as aforesaid, and not inconsistent with this act, shall be deemed to be within the powers conferred by this act, and shall, while unrevoked, be of the same force as if they were enacted in the body of this act. Any general rules and orders made, in pursuance of this section, shall be laid before the legislative assembly, within three weeks after they are made, if the legislative assembly be then sitting, and if the legislative assembly be not then sitting, within three weeks after the beginning of the then next session of the legislative assembly.

Such rules to be laid before the legislature.

Practice in cases not provided for.

27. Until rules of court have been made in pursuance of this act, and in all cases not provided for by such rules, when they are made, the procedure, practice and rules of the superior court at proof sittings or sitting in term, as the case may be, shall be observed so far as consistently with this act they may be observed by the court or judge.

ATTENDANCE AND JURISDICTION OF THE JUDGE.

Attendance of judges.

28. Whenever an election petition has been presented in any district in which there is no resident judge, then the judge to whom such district has been assigned shall so often as his presence is required for any proceedings upon or connected with the said petition, and upon sufficient notice from the prothonotary, of the day on which his presence will be necessary, attend at the court-house of such district.

Powers of the judge.

29. On the trial of an election petition under this act, the judge, or the court respectively, shall, subject to the provisions of this act, have the same powers, jurisdiction and authority, as a judge of the superior court holding

proof sittings, or the superior court itself sitting in term, as the case may be, would have, and the court shall be a court of record.

WITNESSES.

30. Witnesses shall be subpoenaed and sworn in the same manner, as nearly as circumstances admit, as in cases within the jurisdiction of the superior courts. Witness to be subpoenaed and sworn.

31. On the trial of an election petition under this act, the judge may, by order under his hand, compel the attendance of any person as a witness, who appears to him to have been concerned in the election to which the petition refers, and any person refusing to obey such order, shall be guilty of contempt of court. The judge may examine any witness so compelled to attend or any person present, although such witness is not called and examined by any party to the petition. After the examination of a witness as aforesaid by a judge, such witness may be cross-examined by or on behalf of the petitioner and respondent, or either of them. Judge may order attendance of witnesses. Examination of such witnesses.

32. No person shall be excused from answering any question put to him under this act, touching or concerning any election, or the conduct of any person thereat, or in relation thereto, on the ground that the answer to such question will tend to criminate such person; but no answer given by any person, claiming to be excused on the ground that such answer will tend to criminate himself, shall be used on any criminal proceeding against any such person, other than an indictment for perjury, if the judge shall give to the witness a certificate that he claimed the right to be excused on the grounds aforesaid, and made full and true answers to the satisfaction of the judge. Witness not to refuse answers.

33. The reasonable expenses incurred by any person in appearing to give evidence at the trial of an election petition under this act, according to the scale allowed to witnesses on the trial of civil actions in the superior court, may be allowed to such person by a certificate, under the hand of the judge or of the prothonotary, and such expenses, shall be taxed against such party interested in the trial of such petition as the judge may determine. Expenses of witnesses.

WITHDRAWAL AND ABATEMENT OF ELECTION PETITIONS.

34. If a petition is withdrawn, the petitioner shall be liable to pay the costs of the respondent, unless the court otherwise orders. Where there are more petitioners than one, no petition shall be withdrawn, except with the consent of all the petitioners. Withdrawal of petition.

While some petitioners neglect to proceed, the others may proceed notwithstanding.

35. Whenever in any case there are two or more petitioners, and by reason of the unwillingness of some one, or more of them, the proceedings are prevented or retarded, the petitioner or petitioners who are desirous of obtaining judgment upon the petition, may, upon application to the judge, or to the court, obtain leave to conduct and continue the necessary proceedings, independently of their unwilling co-petitioners, without however diminishing the joint risk or liability of such co-petitioners as regards costs, or damages, or any other matter.

Court to report whether withdrawal was the result of a corrupt arrangement, &c.

36. In every case of the withdrawal of an election petition, if the court or judge shall be of opinion that the withdrawal of such petition was the result of any corrupt arrangement, or in consideration of the withdrawal of any other petition, such court or judge shall report such opinion to the speaker stating the reasons thereof, and the circumstances attending the withdrawal.

Abatement of petition by deaths, &c.

37. An election petition under this act shall be abated by the death of a sole petitioner, or of the survivor of several petitioners.

The abatement of a petition shall not affect the liability of the petitioner to the payment of costs previously incurred.

Notice to be given of certain events in the case of the respondent.

38. If before or during the trial of any election petition under this act, any of the following events happen in the case of the respondent, (that is to say):

- (1.) If he die;
- (2.) If the legislative assembly have resolved that his seat is vacant;
- (3.) If he give notice to the court or judge that he does not intend to oppose, or further to oppose the petition;

And new respondent may be admitted.

Notice of such event having taken place shall be given in the division to which the petition relates, and within the prescribed time after notice is given, any person who might have been a petitioner in respect of the election to which the petition relates, may apply to the court or judge, to be admitted as a respondent to oppose the petition, or so much thereof as may remain undisposed of, and such person shall, on such application be admitted accordingly, to oppose such petition or such portion thereof, either with the co-respondent, if there be one, or in place of the respondent, and any number of persons not exceeding three, may assume the same position; and if either of such events happen during the trial, the judge shall adjourn the same, in order to the giving of notice that such event has happened as herein provided.

39. A respondent who has given notice that he does not intend to oppose or further oppose the petition, shall not be allowed to appear or act as a party against such petition in any proceedings thereon, and shall not sit or vote in the legislative assembly until the legislative assembly has been informed of the judgment on the petition; and the court or judge shall, in all cases in which such notice has been given, report the same to the speaker.

Respondent withdrawing to cease acting and shall not sit or vote, &c., until.

40. When an election petition under this act complains of a double return, and the respondent has given notice that it is not his intention to oppose the petition, and no party has been admitted, in pursuance of this act, to oppose the petition, then the petitioner, if there be no petition complaining of the other member returned on such double return, may withdraw his petition, and upon such withdrawal, the prothonotary shall report the fact to the speaker, and the legislative assembly shall, thereupon, give the necessary directions for amending the said double return, in such manner as the case may require.

Cases of double return, where respondent declines to defend.

COSTS.

41. All costs, charges and expenses of and incidental to the presentation of a petition under this act, and to the proceedings consequent thereon, shall be defrayed by the parties to the petition in such manner and in such proportions as the court or judge may determine, regard being had to the disallowance of any costs, charges or expenses, which may, in the opinion of the court or judge, have been caused by vexatious conduct, unfounded allegations or unfounded objections on the part either of the petitioner or the respondent, and regard being had to the discouragement of any needless expense, by throwing the burden of defraying the same on the parties by whom it has been caused, whether such parties are, or are not on the whole successful.

Costs of petition, &c.

The costs may be taxed in the same manner, and according to the same principles as they are taxed between parties in civil actions, and such costs may be recovered in the same manner as the costs in civil actions.

PUNISHMENT OF CORRUPT PRACTICES.

42. When it is found, by the report of the court upon an election petition under this act, that any corrupt practice has been committed by or with the knowledge and consent of any candidate at an election, his election, if he has been elected, shall be void, and he shall, during the three years next after the date of his being so found guilty, be incapable of being elected to, and of sitting in the legisla-

Avoidance of election and punishment of candidates guilty of corrupt practices.

tive assembly, and of being registered as a voter, and of voting at any election.

Vote by elector committing any corrupt practices, null and void.

43. If on the trial of any election petition, it is proved that any corrupt practice has been committed by any elector voting at the election, his vote shall be null and void.

Penalty for employing agent, previously found guilty of corrupt practices.

44. If on the trial of any election petition under this act, any candidate is proved to have personally engaged at the election to which such petition relates, as a canvasser or agent in relation to the election, any person knowing that such person has, within two years previous to such engagement, been found guilty of any corrupt practice by any competent legal tribunal, or by the report of the court or judge upon an election petition under this act, the election of such candidate shall be void.

Punishment of persons found guilty of any corrupt practice.

45. Any person, other than a candidate, found guilty of any corrupt practice in any proceeding in which, after notice of the charge, he has had an opportunity of being heard, shall, during the three years next after the time at which he is so found guilty, be incapable of being elected to, and of sitting in the legislative assembly, and of being registered as a voter, and of voting at any election.

Removal of disqualification on proof that disqualification was procured by perjury.

46. If at any time after any person has become disqualified by virtue of this act, the witnesses or any of them, on whose testimony such person shall have so become disqualified, shall, upon the prosecution of such person, be convicted of perjury in respect of such testimony, it shall be lawful for such person to move the court to order, and the court shall, upon being satisfied that such disqualification was procured by reason of perjury, order that such disqualification shall therefore cease and determine, and the same shall cease and determine accordingly.

MISCELLANEOUS.

Returning officer may be sued for neglecting to return any person duly elected.

47. If any returning officer wilfully delays, neglects or refuses duly to return any person who ought to be returned to serve in the legislative assembly for any division, such person may, in case it has been determined on the hearing of an election petition under this act, that such person was entitled to have been returned, sue the officer having so wilfully delayed, neglected or refused duly to make such return of his election in any court of record in the province of Quebec, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit, provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of the trial relating to such election.

48. In reckoning time for the purpose of this act, Sun-Computation days and holidays shall not be included in the delays es- of time. tablished by this act.

49. No election or return which took place prior to the passing of this act shall be controverted or questioned under this act, but all contestations of such elections or returns shall be governed by the laws hitherto in force, with respect to controverted elections. Controverted elections how only to be tried.

50. Whenever any election petition complains of the conduct of any returning officer, such returning officer, for all the purposes of this act, shall be deemed to be the respondent except in the case in which respondents shall have been admitted in his place. Petition complaining of a returning officer.

51. A petition under this act, complaining of no return may be presented, and shall be deemed to be an election petition within the meaning of this act, and such order may be made thereon as may be expedient for compelling a return to be made, or the court or judge may allow such petition to be tried in the manner hereinbefore provided with respect to ordinary election petitions. Petition complaining of no return.

52. Any advocate may practice as counsel, attorney or agent, in cases of election petitions, and all matters relating to elections, before a court or judge. Advocates may act in controverted election cases.

53. The act respecting controverted parliamentary elections, chapter seven of the consolidated statutes of Canada, is repealed in so far as the same applies to elections to take place for the legislative assembly of Quebec, after the passing of this act, and in so far as relates to matters within the control of the legislature of this province. Chap. 7, C. S. C., repealed.

C A P . V I .

An Act to amend the Treasury Department Act.

[Assented to 24th December, 1872.]

HER MAJESTY, by and with the advice and consent of the Legislature of Quebec, enacts as follows:

1. Section twenty-six of the Treasury Department Act, is hereby amended, by adding at the end thereof the following words: Estimates to contain certain different items, in different columns.

"Such estimates shall contain, the statutory appropriations in one column, which do not require to be voted upon by

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