

Elec. Case.]

LINCOLN ELECTION PETITION.

[Ontario.]

conversation between him and Stewart related to the election and to Stewart's vote, and that Stewart's statement that respondent said to him "I would like to have you with me at the election," is the key-note to all that followed. Stewart understood it, though his vote was not directly mentioned, and the respondent expected it would be so interpreted though so guardedly veiled; and the subsequent settlement and payment confirm me in this conclusion.

I feel therefore constrained to hold this to have been an indirect offer, originating with the respondent, of money or valuable consideration, made to Stewart to induce him to vote for respondent at the coming election, and I therefore agree in the judgment that the election is void by reason of this corrupt practice committed by the respondent himself, as well as by reason of other corrupt practices committed by James S. Clement, Robert McMaugh, Hugh Hagan, and others his agents.

Before concluding, I desire to make an observation as to the proceedings and bribery which are proved to have occurred on the Sunday night before, or in the early morning of the day of the polling.

The professions of a candidate that he is entirely ignorant of the conduct and acts of his most zealous supporters, especially in reference to such acts as are rarely adopted except as a last resort, must unavoidably be regarded with suspicion, and cannot be accepted without scrutiny. And this the more if among these supporters are found some who for years have been and still are in his service, employed and trusted by him in business relations, some of them confidential, and of frequent, perhaps daily occurrence—the candidate, to insure immunity, to all appearance keeping aloof from the consultations of his friends, avoiding any apparent participation in their acts, and thus remaining ignorant of everything which might not become known to the most ordinary observer—ignorant, in fact, because he will not use the means of information which surround him.

Such ignorance brings to mind the old maxim, *Ignorantia juris quod quisque tenetur scire neminem excusat*, and makes Mr. Best's comment on the maxim more pertinent: "If those only should be amenable to the laws who could be proved acquainted with them * * * persons would naturally avoid acquiring a knowledge which carried such dangerous consequences with it."

And so the wilful avoidance of a knowledge also fraught with danger might, without much

strain, be deemed evidence of approval or even of consent.

But in this case I do not find any proof of a determination to resort to bribery until a late hour on Sunday evening, and it was immediately acted upon and carried out by an early hour on Monday morning. As a fact, I cannot find proof of the respondent's knowledge or consent. The evidence of agency I think ample, so also of bribery by those agents, and this avoids the election. The shortness of the interval between the resolve and the execution renders improbable the fact of the respondent's actual knowledge, and a finding against him ought to be free from reasonable doubt.

BURTON, J.—I concur in thinking that this appeal must be dismissed, but I desire to base my decision entirely upon the Stewart case.

I agree with the learned Chief Justice, that there is no evidence to connect the respondent with what is spoken of as the Sunday raid. That transaction was conceived and carried out only a few hours before the polling day, and there is not a scintilla of evidence to show that the respondent had knowledge of it, nor, in my opinion, that there was any arrangement to which he was a party, that he should be kept in ignorance of the particular acts of corruption, whilst having a general knowledge that such means were being employed; and adopting the language of the late Mr. Justice Willes: No amount of evidence ought to induce a judicial tribunal to act upon mere suspicion, or to imagine the existence of evidence which might have been given, but which the petitioner has not thought proper to bring forward, and to act upon that evidence, and not upon that which really has been brought forward; and that when circumstantial evidence is relied on, the circumstances to establish the affirmative of a proposition must be all consistent with the affirmative, and that there must be one or more circumstances believed by the tribunal, if you are dealing with a criminal case, inconsistent with any reasonable theory of innocence. There is nothing in the whole of the evidence which is not consistent with the respondent's innocence.

As regards the Stewart case, there was evidence which might impress different minds differently.

In dealing with the finding of the learned Judge upon that evidence, we are much in the position of Judges when a rule is moved for to set aside the verdict of a jury on the ground that the verdict is against evidence. The Judges do not consider what conclusion they would have arrived at had they been placed in