

Elec. Case.]

HALTON ELECTION PETITION.

[Ontario.]

who tried the petition. It depended altogether on the credit to be given to witnesses who were examined before the Judge in open court; and there was therefore afforded to him opportunities of observing the demeanour of the witnesses, and of forming a judgment as to their truthfulness, which this court does not possess. It is a principle well established in the procedure of appellate tribunals, including the highest court of the empire—the House of Lords—that questions of fact depending on the veracity of witnesses, and the credit to be given to them, are concluded by the finding of the judge of the court of first instance, in whose presence the testimony is given.

This rule was acted on in this court in the case of *Sanderson v. Burdett*, 18 Gr. 417; and in addition to that case and the authorities there referred to, I may mention the cases of *Penn v. Bibby*, L. R. 2 Ch. App. 127; and *Ball v. Ray*, 28 L. T. Rep., 346 (per Selborne, C.), and I would also refer to the judgment of Coleridge, J., in the case of *R. v. Bertrand*, L. R. 1 P. C. 535, who speaks of written as compared with oral evidence, as “the dead body of evidence without its spirit; which is supplied when given openly and orally by the eye and ear of those who receive it.”

Taking the promise to be proved, as found by the Chief Justice, the case of *Simpson v. Yeend*, L. R. 4 Q. B. 626, discovered by the research of my brother Patterson, clearly shows that we must hold it to have been a promise or offer of “valuable consideration,” within section 67, sub-section 1 of 32 Vict. cap. 21, a conclusion to which, for reasons which I do not think it necessary to give at length, as they have been already stated in the judgment of the Chief Justice, I should have come, even if we had not had the satisfaction of knowing that our view was supported by the high authority of the English Court of Queen's Bench.

In my judgment the appeal must be dismissed with costs, and the certificate should be as already indicated by the Chief Justice.

BURTON, J. I fully concur in the judgments which have just been pronounced. The only difficulty I have felt is as to whether the words alleged to have been used come within the 67th section, but when one regards the mischief which the Legislature intended to deal with, and the words of our own Interpretation Act, which declares that every act shall receive such fair, large and liberal interpretation as will best ensure the attainment of the object of the act according to its true intent, meaning and spirit,

it is impossible, I think, to come to any other conclusion than that this promise comes within it. To hold otherwise would open the door to every kind of ingenious evasion of the act.

The Legislature has endeavoured to put down an evil which prevailed to an alarming extent throughout the Province, and to meet every possible case of bribery or other corrupt practices; and we are bound, I think, to give full effect to the meaning of the language they have employed without, as expressed in one of the cases, raising subtle distinctions or refinements as to the precise words or expressions in which the offer or promise may be conveyed. A “nice present” must have been understood by both parties as something of value, and would convey to the mind of the party to whom it was made, that if the elector would vote for the candidate he would receive something, and could only be so understood.

I agree, therefore, that the appeal should be dismissed.

PATTERSON, J. The finding of his lordship, the Chief Justice of this court, that the respondent promised Christina Robins a nice present if she would procure her husband to vote for the respondent or to refrain from voting, is clearly supported by the evidence. After hearing the witnesses, and seeing their demeanour, and testing the value of their evidence by a consideration of the circumstances which tended to give probability to the statement on the one side, as against the opposing evidence of the respondent, his lordship arrives at the conclusion that the charge is proved.

We are, it is true, to sit in appeal from decisions upon questions of fact as well as upon questions of law; but this does not necessarily mean that we are to criticise the opinion formed of the witnesses by the judge who sees and hears them. In many cases the finding of a fact depends not so much upon the credit to be attached to one statement as against another, or to the credit to be accorded to individual witnesses, as upon the proper deduction from facts which are not seriously disputed. On questions depending on such considerations, appellate courts frequently reverse the finding of courts below. Even where there is conflicting evidence, and where much may depend on the credit given to particular witnesses, the appellate court may, by the report of the judge who hears the witnesses, be enabled to review his finding; as noticed by Lord O'Hagan in the case of *Symington v. Symington*, L. R. 2 Sc. App.