

Elec. Case.]

NORTH VICTORIA ELECTION PETITION.

[Dominion.]

whom he voted, yet it appearing under circumstances before the returning officer, that it could not be mistaken for whom he meant to vote, his vote will be added to the poll: 2 Peck. 167 n. The tender of a vote must be to the proper officer: *Warrington case*, 1 O. & H., pp. 45, 46. In none of these cases was the tender of vote made under the system of voting by ballot.

In all of the cases now before me on this trial for adjudication, the deputy returning officer refused to give the persons in question ballot papers to vote upon. By the statute no person is entitled to know the candidate for whom any voter at such polling place is about to vote, or had voted: sec. 72, sub-sec. 2, "Nor shall any person communicate at any time to any person any information obtained at a polling place; or to the candidate for whom any voter at such polling place is about to vote, or has voted:" sub-sec. 3.

If the elector must first tender his vote for a candidate to the deputy returning officer, before he can properly claim a ballot paper, in a case such as those under consideration, that is, where the elector's name is on the original roll, but not on the copy, and where but for that defect he would be unquestionably a good voter to the knowledge of the deputy returning officer, then the rule of secrecy is broken, and the officer becomes aware of the candidate the elector is about to vote for. If the deputy returning officer can demand or must have made to him a good tender, as under the old law, by having the name of the candidate for whom the elector is about to vote, declared to him before he can be called upon to furnish the ballot paper, he may apply that rule in every case to persons whose names are on the copy of the list, and entitled to vote, as well as to those whose names are not on the copy, but who are entitled to vote. And yet, unless such a tender of the vote for a particular candidate be then made to the officer, how can a vote for any particular candidate be afterwards entered for him? Assuming there is the power to do so, there is a difficulty certainly in the way. Sub-sec. 3, above referred to, shows, however, that knowledge of the way the elector intends to vote may come to the officer in some way or other, for he is forbidden to communicate that information to any person. Here, as a fact, there are eight persons who told the officer for whom they desired to vote—that is, for the petitioner; and he got four affidavits from other electors stating for whom they proposed to vote; and there is reason to believe that in the other cases

mentioned by Leary the agent of the petitioner at Eldon Station, No. 4, the votes that the returning officer there rejected, he knew were for the petitioner, because Leary was the petitioner's agent there, and he pressed the deputy returning officer to take the votes and keep the ballots separate from the others. So that if any are added to the petitioner—all of them should be added according to the rule and practice before referred to in such cases.

The principal question, however, is, can any of them be added under the present law. It is plain, if it cannot be done that the election is in effect placed absolutely and irrevocably, while the law remains as it is, in the power of an unscrupulous deputy returning officer. It rests with him to seat whom he likes, and exclude from Parliament whom he likes, and to disfranchise also whom he likes. A pecuniary recovery had against him for his misconduct is no recompense. The result of the election is not to be nullified if the result can be plainly and satisfactorily made out by such an examination as a committee of the House could always, by its common law powers, apply to the case.

I have referred to the exercise of these common law powers in cases which had not been provided for, and I have referred to a case at law where the election Judge added on votes and disposed of others according as he thought they had been regularly tendered or not, although the statute under which he acted made no mention of any such power. The same course was pursued in this country before the voting by ballot was introduced. The Judge may, under the 73rd and 94th sections, strike votes off in cases of bribery, treating, or undue influence. The deputy returning officer may reject ballot paper in five cases: sec. 55—(1.) When they are not similar to those supplied by him, (2) or are contained in any envelope different from that supplied by him. (3.) All those by which votes have been given for more candidates than are to be elected. (4.) All those contained in the same envelope when such envelope contains more than one. (5.) And all those upon which there is any writing or mark by which the voter can be identified. He can reject them, perhaps, in some other cases, although they are not specified; but, whether he can or not, are illegal votes to stand when it is plainly proved they have been given? If a woman, or a minor, or an alien vote, who are all incompetent—are their votes to stand? If there be plain rank personation, both of the living and the dead; or there be no such property as that voted upon, or if the Judges