

Elec. Case.]

LINCOLN ELECTION PETITION.

[Ontario.

parties partaking of should themselves pay for, and which might injuriously affect the freedom and purity of the election, and from which bloodshedding riots and other breaches of the peace might ensue. Therefore, for greater caution, and with a view to securing that the election should be uninfluenced by any cause arising from the use of spirituous liquors at any of those places during polling day, this section was passed with the intent that 'Every hotel, tavern and shop, in which spirituous or fermented liquors are ordinarily sold, shall be so closed during the day appointed for polling in the wards or municipalities, that no spirituous or fermented liquors shall be sold or given to any person within the limits of such municipality under a penalty of \$100 in every such case.' That is to say, in every case in which any such hotel, tavern, or shop keeper shall in violation of this section sell or give such spirituous liquors or drinks, or permit such to be sold or given upon his premises.

"But assuming this to be the true construction, still the treating which is assailed as in violation of the 66th section of the Act of 1868, occurred at a hotel. Doyle, the hotel keeper, within the polling hours sold the drinks, of which McLellan, Lavelle, and Todd partook. Doyle is undoubtedly guilty of a violation of the section, and upon prosecution liable to its penalty. It may be also admitted that the act of selling by Doyle, as in violation of the section, is, under the provisions of the 1st section of 63 Vict., cap. 2, a statutory corrupt act committed by Doyle, although the act was never contemplated by any one to have, and although it had not in fact, any effect whatever upon the election, and that moreover by this act of sale, Doyle, upon his being proceeded against and found guilty under the provisions of the 49th section of the Act of 1871, will be rendered incapable for a period of eight years of being elected to and of sitting in the Legislative Assembly and of being registered as a voter, and of voting at any election, and of holding office at the nomination of the Crown, or of the Lieutenant-Governor of Ontario, or any municipal office. Still two questions remain:—Firstly, is Larkin also guilty of a violation of the same 66th section within the meaning of that section? And secondly, assuming him to be, and that he was an agent of the respondent, is the latter's election thereby avoided? The answer to the first of these questions depends upon the construction to be put upon the 66th section referred to, and to the latter upon the construction to be put upon the 3rd section of the Act

of 1873. The 66th section undoubtedly says that no spirituous or fermented liquors or drinks shall be sold or given.

"Now in the case in question, certainly in one sense Larkin, as the person treating McLellan, Lavelle, and Todd, may be said to be the giver to them of the drinks which Doyle sold and for which Larkin paid, but it is contended that the section is pointed against the hotel, tavern, or shop keeper, and that it is upon him that the penalty is imposed, and that where a tavern-keeper sells a glass of liquor to A. for the purpose of treating B., who thereupon drinks it while A. pays for it, there is but one act done in violation of the statute, but one offence committed, which is committed by the tavern-keeper, and that two penalties cannot be recovered, the one against the seller and the other against the treator, for one and the same glass of liquor sold. The glass of spirits, for example, which Lavelle drank, was sold only for the purpose of being drunk by him, although Larkin paid for it. For the sale of that glass Doyle is guilty of a violation of the section, and for that glass, for the sale of which Doyle is responsible and liable to be disfranchised for eight years, it is contended that Larkin cannot also be made responsible and be subjected to the like penal consequences as given within the meaning of the act, merely because he pays the price instead of Lavelle. So if a shopkeeper licensed to sell liquors sells a dozen of wine to A., who buys it for the purpose of being sent and orders the vendor to send it to B., a poor friend of A.'s unable to pay for it himself, although this being done within polling hours may make the shopkeeper liable for selling in violation of the statute, it is contended that A., who bought it only that it might be sent to B., to whom the shopkeeper did send it, is not also liable to another penalty as given. This is a point which would more satisfactorily be raised upon a prosecution for the penalty under the statute. I confess there seems to be great force in the argument. If the true view be, as it seems to me to be, that the act was intended alone to point against hotel, tavern, and shop keepers, upon whose premises spirituous liquors and drinks are ordinarily sold, and who have it in their power to control what is done there, then the words 'sold or given' must be limited to the hotel, tavern, or shop keeper, and must mean sold or given by him; the word 'given' being added to prevent the possibility of the party proceeded against for the penalty evading the statute by setting up as a defence that he did not sell, but himself gave the drinks.