

Elec. Case.]

NORTH MIDDLESEX ELECTION PETITION.

[Ontario.]

that we have not in this Province any enactment equivalent to section 4 of the Corrupt Practices Prevention Act (Imperial Act of 1854,) which makes corrupt treating a statutory offence. Treating, therefore, not to a meeting of electors can only be reached by the common law, and must be of such a character as to amount to bribery.

It is not contended by Mr. Kerr that the case comes within the old treating act 7 & 8 W. & M. cap. 4, which forbids treating within certain times specified, "in order to be elected or for being elected." I do not know whether it has been decided that the Act is in force in Canada; but it appears to be interpreted in *Hughes v. Marshall*, 2 C. & J. 118, to be in affirmance of the common law, inasmuch as treating "in order to be elected" is only a species of bribery. The same may be said, I think, of the Act of 1854; for to bring a case within that Act, the treating must be with a corrupt intent, *i.e.*, to influence electors to give their votes to the person treating them.

My doubt has been whether the treating by the respondent in the course of his canvass, as described by himself, and to which I have referred, does not come within the definition of corrupt treating given by Mr. Justice Blackburn in the *Wallingford Case*, 1 O'M. & H. 59, that "whenever a candidate is, either by himself or by his agents, in any way accessory to providing meat, drink, or entertainment for the purpose of being elected, with an intention to produce an effect upon the election, that amounts to corrupt treating. Whenever also the intention is by such means to gain popularity and thereby to affect the election, or if it be that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans, and of the persons who like drink whenever they can get it for nothing, they will become unpopular, and they therefore provide it in order to affect the election—when there is an intention in the mind either of the candidate or his agent to produce that effect, then I think that it is corrupt treating."

I think that the respondent in doing what he did was treading upon dangerous ground; but before holding that his seat is thereby avoided and himself disqualified, I must be satisfied that what he did was done with a corrupt intent; and in judging of this, the general habit of treating in the country and the respondent's own practice may properly be considered.

In the *Kingston Case*, 11 C. L. J. 23, the Chief Justice of Ontario observed: "The general practice which prevails here amongst classes of

persons, many of whom are voters, of drinking in a friendly way when they meet, would require strong evidence of a very profuse expenditure of money in drinking to induce a judge to say that it was corruptly done, so as to make it bribery, or come within the meaning of "treating," as a corrupt practice at the common law."

In the *Glengarry Case*, Chief Justice Hagarty has referred to the language of English judges upon the question, as to what in their judgment would amount to corrupt treating. I find the case reported in Mr. Brough's very useful little work, "A Guide to the Law of Elections," at p. 21. I quote from the passages given in the judgment of the Chief Justice. "In the *Bewdley Case*, 1 O'M. & H. 19, Blackburn, J., says, 'corruptly means with the object and intention of doing that which the Legislature plainly means to forbid.' In the same reports (p. 195) in the *Hereford Case*, the same judge says that corrupt treating means 'with a motive, or intention by means of it to produce an effect upon the election.' In the *Lichfield Case* (ib. 25) Willes J., says treating is forbidden 'whenever it is resorted to for the purpose of pampering people's appetites, and thereby inducing voters either to vote or to abstain from voting otherwise than they would have done if their palates had not been tickled by eating and drinking supplied by the candidates;' and again that the treating must be done 'in order to influence voters' (p. 26). And so in the same reports in the *Tamworth Case* (p. 83). His lordship also cited the *Coventry Case* (ib. 106) and the *Wallingford Case* (ib. 58), in which it was said by Blackburn, J., that 'the intention of the Legislature in construing the word corruptly was to make it a question of intention.' Also the *Bradford Case* (ib. 27) where Martin, B., as to the meaning of corruptly says: "I am satisfied it means a thing done with an evil mind and intention; and unless there be an evil mind or an evil intention accompanying the act, it is not corruptly done. Corruptly means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object * * * There must be some evil motive in it, and it must be done 'in order to be elected.'"

Without subscribing to every word contained in the passages quoted, they contain no doubt, upon the whole, a sound exposition of the law.

The extent of the treating, the quantity of drink given, should also be taken into account. It was said by Willes, J., in the *Lichfield Case*, 10 M. & H. 25, "It may be doubted whether treating in the sense of ingratiating by mere