

Elec. Case.]

HALTON ELECTION PETITION.

[Ontario.]

clusion that the apparent motives of the party and the inference from the act itself, should influence our decision.

My brother Patterson has also drawn my attention to the case of *Simpson v. Yeend*, 4 L. R. Q. B., at p. 628. That was an action to recover a penalty for bribery, and it was virtually decided under the Imp. Stat. 17 & 18 Vict., cap. 102, sec. 2, sub-sec. 1, as I have already mentioned, similar to the section of the provincial statute under which we are called on to decide the case before us. The promise to the voter was, "I said he would be remunerated for his loss of time." The learned Judge who gave the judgment, Mr. Justice Mellor, said: "We delayed giving our judgment at the close of the argument, not because of any doubt existing in our minds as to the answer which we ought to return to the question put by the judge of the county court, but because we were assured by the counsel for the defendant that the election judges had in their decisions upon the section taken a view differing from that which we were disposed to take. Had the fact been as suggested, we should not have felt ourselves bound by the opinion of the election judges, unless upon consideration we had agreed with it, but we thought it desirable to ascertain what opinion had in fact been expressed by them with reference to a subject with which their duties had necessarily made them familiar. Upon inquiry, we find, as we anticipated, that those learned judges have expressed no opinion adverse to the conclusion at which we have arrived. Their observations upon this section, so far as it refers to an offer or promise not accepted, merely expressed a rule of prudence and caution as to the quantity and character of the evidence by which such an offer or promise should be considered as proved. * * *

We cannot doubt the words used, "that the voter would be remunerated for what loss of time might occur," did, under the circumstances, amount to an offer or promise to procure, or to endeavour to procure, "money or valuable consideration to a voter" in order to induce him to vote at the election in question. The expression remuneration for loss of time would necessarily convey to the apprehension of the voter that if he would vote for a particular candidate he should receive, either directly from the person offering or by his procurement, money or valuable consideration which he would not otherwise obtain; and any assurance of that kind which can only be so understood, is calculated to operate upon the mind of the elector as a direct inducement to vote for such candidate.

After referring to *Cooper v. Slude*, 6 H. L. C. 746, the learned Judge proceeds: "It is so important to the public interest that electors should be left free to vote without any disturbing influence of any kind, that we feel ourselves bound, in construing the statute in question, to give full effect to the plain meaning of the words used, and to apply them to the substantial facts of the case *without raising subtle distinctions or refinements as to the precise words or expressions in which the promise or offer may be conveyed.*"

Here we have no doubt that the words used did substantially convey to the mind of Mrs. Robins that if she used her influence, as the respondent wished her to, she would, in the language just quoted, receive money or valuable consideration which she would not otherwise obtain, and this was calculated to operate on her mind as a direct inducement to do that which respondent wished her to do.

Our duty, then, is to give effect to this statute, though the consequences of our judgment to the respondent will be so very serious. We are not at liberty to fritter away by subtle distinctions an act of Parliament. The same learned Judge, whose language I have quoted above, Mr. Justice Mellor, in one of our recent cases, decided last year, the *Bolton case*, reported in 31 L. T. N. S., at p. 196, uses the following language on this subject: "I take it to be the duty of a judge to take care that he does not fritter away the meaning of acts of Parliament by any subtle construction, but to give a bold but at the same time cautious decision, which shall further rather than defeat the object of any act of Parliament of this character which he has to construe."

We are all of opinion that the judgment of the learned Chief Justice should be affirmed: that the clerk of this court should certify to the clerk of the Legislative Assembly that the said respondent was not duly elected: that the said respondent was proved to have been guilty of a corrupt practice at such election, and that such corrupt practice was by promising to Christina Robins, the wife of Nathan Robins, if she would keep her husband from voting for Mr. Beatty at the said election, he would give her a nice present.

There is no reason to believe that corrupt practices prevailed extensively at said election.

We direct the respondent to pay the costs of the trial, of the petition, and of this appeal.

STRONG, J. The question of fact argued on this appeal must, I am of opinion, be held to be concluded by the determination of the learned Judge