

Elec. Case.]

NORTH WENTWORTH ELECTION PETITION.

[Ontario.]

by Sullivan, who says he was there when Stock arrived, and did not hear Stock invite. The witnesses on the affirmative are not impeached on general character, nor is any motive suggested. Much reliance cannot be placed on the respondent's account of the proceedings, for he must have been under considerable excitement or he would not have countenanced any violation of the law, or joined in it. Under subsec. 2 of sec. 3, 36 Vict., cap. 2, if the candidate be a consenting party to a breach of the law, agency need not be proved. It is proved that Sullivan committed a breach of the law, and admitted that respondent consented to the act. He also relied upon the fact, in proof of Sullivan's agency, that it was proved by the evidence of Edgar, that a caution was given by the respondent to those present at the Carlisle meeting to do nothing to avoid the election, thus showing that he himself considered he would be responsible for their illegal acts. It was also proved that Sullivan had canvassed for the respondent.

Robertson, Q.C., for the respondent, contended that the evidence of Morden and Valleck did not agree, Valleck saying he did not hear Stock invite the crowd to drink, Morden asserting that he had. He also dwelt upon the fact that whereas a large number of persons had been present, many of them voters and known to the petitioner, none had been called to testify to the fact except two young and irresponsible persons; that the respondent did nothing but partake of refreshment, and is not brought by that act within the definition of a corrupt practice; that there was no proof of Sullivan's being an agent; that, in fact, he was not an agent, nor was he a member of the Conservative Association, by whom the respondent was brought out; nor was there any charge in the particulars of Sullivan's being guilty of a breach of sec. 66.

DRAPER, C. J., E. & A. In the interval between the adjournment of the Court yesterday evening and the meeting this morning, I carefully read and considered the whole evidence. The result at which I arrived in regard to the acts of the respondent and others on the polling day and during the hours appointed for taking the polls at Davidson's hotel in the village of Carlisle, rendered it unnecessary, in my opinion, to determine any other of the charges advanced for the purpose of avoiding the election. My finding and my report to the Speaker will be limited to that one matter.

It will be convenient to begin by referring to the statutory provisions on which the charge of corrupt practices is founded. They are contained

in the Ontario Statutes 32 Vict. cap. 21, sec. 66; 36 Vict. cap. 2, secs. 1 and 3, sub-secs. 1 and 2.

The first of these enactments is: "Every hotel, tavern, and shop in which spirituous or fermented liquors or drinks are ordinarily sold, shall be closed during the day appointed for polling in the wards or municipalities in which the polls are held, and no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period under a penalty of \$100 in every such case."

2nd. "'Corrupt practices' or 'corrupt practice' shall mean bribery, treating and undue influence or any of such offences as defined by this or any other act of the Legislature or recognized by the common law of the Parliament of England, also any violation of the 46th, 61st and 71st secs. of the Election Law of 1868, and any violation of the 66th section of such last mentioned act during the hours appointed for polling."

3rd. "When it is found, upon the report of a judge upon an election petition, that any corrupt practice has been committed by any candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, the election of such candidate, if he has been elected, shall be void;" and further, when it has in like manner been found "that any corrupt practice has been committed by or with the actual knowledge or consent of any candidate at an election, in addition to his election, if he has been elected, being void, he shall, during the eight years next after the date of his being so found guilty, be incapable of being elected," &c., &c.

It will be seen, therefore, that the first provision above stated prohibits certain things, and subjects the persons who act contrary to the prohibition to a penalty of \$100 in every such case. The second, among other things, makes things prohibited corrupt practices; and the third, in its first branch, avoids the election of a candidate found guilty of such corrupt practice, and, by the second branch, superadds a very severe personal disqualification.

The question I have to determine is, whether the respondent is guilty to the full extent, so as to be unseated and disqualified, or so far only as to be unseated, and this question is to be disposed of on the evidence taken on the trial.

Now, it is not disputed that the 66th section above quoted was entirely set at naught in both particulars. Davidson's hotel was not kept closed during the day appointed for polling, and