

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

(Reported for the LAW JOURNAL by HENRY O'BRIEN,
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LINCOLN ELECTION PETITION.

J. C. RYKERT, *Petitioner*, v. SYLVESTER NEELON, *Respondent*.

82 Vict., cap. 21, sec. 86 (Ont.) *Treating—Implied knowledge by candidate of agent's acts.*

Appeal from the judgment of Mr. Justice Gwynne, avoiding the election and disqualifying the respondent.

His decision sustained as to the complicity of the respondent in the "Stewart case," the particulars of which are set out below, but otherwise as to the "Sunday raid," his knowledge and consent to the corrupt acts of his agents *held* not proven, the circumstances not being inconsistent with his innocence.

The question discussed as to how far or when a candidate is to be assumed to be aware of, and impliedly consenting to corrupt acts done by his agents, of which, in the natural course of things, he can scarcely be ignorant, or of which he wilfully avoids any knowledge.

Sembla per Draper, C.J., contrary to the opinion expressed by Mr. Justice Gwynne at the trial, that section 86 of 82 Vict., cap. 21, must be construed distributively, and that under it the penalty may be inflicted, (1) on a tavern keeper &c., who does not keep his tavern closed during the hours of polling, and (2) on any person, whether a tavern keeper, &c., or not, who sells or gives drink to another within the time and place specified.

[January 22, 1876.]

This was an appeal from the judgment of Mr. Justice Gwynne, before whom the petition was tried.

The effect of this judgment was to disqualify the respondent, as the learned Judge held that he was guilty of personal corruption in the Stewart case (the particulars of which sufficiently appear hereafter in the judgments of the Chief Justice of Appeal and Mr. Justice Patterson), and that he must have had personal knowledge of certain corrupt acts of his agents committed on the Sunday night previous to the election. Another question arose which caused much discussion—viz., the treating by one Larkins, an agent of the respondent, at Doyle's tavern. Mr. Justice Gwynne held that under the interpretation which he placed upon section 86 of 82 Vict., cap. 21, the election could not be avoided on this ground. His decision on this point was not appealed from, but as the law bearing on it

is discussed by the learned Chief Justice of Appeal in his judgment, it is desirable here to refer to the argument of Mr. Justice Gwynne, who, after speaking of the result of that view of the law against which he was contending, said:

"I confess it does appear to me to be inconceivable that the Legislature could have contemplated the possibility of the section in question being open to the construction that whenever any person, whether a resident in the municipality wherein the election is going on or not, and whether an elector therein or not, sells or gives any quantity of spirituous liquors, whether by wholesale or otherwise, to any person, whether an elector in the municipality or not, and although the transaction, beyond all question, had no relation to, and has no effect upon, the election, the section is violated and the penalty incurred. If then it be, as it appears to me to be, impossible that the section should be construed literally, we must, in order to construe it in the sense intended by the Legislature, endeavour to ascertain with what object, and in order to guard against what evil was this section enacted. And I confess that the difficulties suggested against construing the section as containing two separate and independent offences, appear to me to be so great as to involve the necessity of excluding such a construction, and of reading the section as defining one offence to the commission of which the prescribed penalty is attached.

"The prime object of the act, there can be no doubt, was to secure freedom and purity in elections. The particular section in question is placed under the heading 'Keeping the peace and good order at elections.' The giving spirituous liquor directly, for the express purpose of obtaining a vote, or after a vote was given, in pursuance of a promise made in order to obtain the vote, is sufficiently guarded against, independently of this section, as an act of bribery. The indirect influence which might be exercised by the providing any species of entertainment or drink, whether previous to or during the election to any meeting of electors assembled for the purpose of promoting the election at any place except the entertainer's own private residence, where such entertainment is permitted, and the paying or promising or engaging to pay for any such drink or entertainment, was provided against by the prohibition contained in the 61st section.

"Still it remained possible, if spirituous liquors could be obtained at the hotels, taverns, and shops where they are ordinarily sold, that much drinking might be indulged in, which the