

Q. B.]

IN RE ELECTION FOR TOWN OF BROCKVILLE AND TP. ELIZABETHTOWN.

[Q. B.]

The election law does not prohibit stealing, but it does prohibit the wearing of a party badge within the electoral division on the day of election or polling, or within eight days before such day, or during the continuance of the election. The thief may have on his person at the time he votes the watch of the returning officer, or of the candidate whom he supports, but he is an innocent man by the election law, and a good voter; while the elector who has worn a party badge but for five minutes anywhere in the electoral division, miles away from the polling place, within eight days before the election, is a criminal by the election law, and an illegal voter, although in fact a very honest respectable man. The vote of the one, though not his person, will stand the strictest scrutiny. The vote of the other must fail. The thief has been guilty of no corrupt practice, but the wearer of the badge has. This cannot then be a law to be enforced, unless the enactment be a plain and positive one.

I do not think we should call every illegal and prohibited act by this special statute, which is intended to operate for a limited time, on a peculiar occasion, and for a particular purpose, a *corrupt practice*, against the provisions of that law, unless the act be shown to have been done in some way or other with a view to the election, or to bear upon it, or as connected with it, or in relation to it, or as calculated or intended so to operate. If any other construction be given to the statute, it will be attended with very oppressive and needless consequences of punishment and forfeiture.

A general state of drinking and drunkenness at the time of the election among the electors and inhabitants of the locality, resulting from the dispensation of liquor, might well be deemed to be a dispensation of such liquor in relation to the election, although it were made without any special reference to the election. The state of mind, the influence and general condition of things it would induce, would tend naturally to disorder the proceedings, and to cause an untrue and improper expression to be given of the sober popular will. That was the case in *O'Malley and Hardcastle*, 85.

But the giving or selling of liquor in consequence of a horse trade, or in payment of an old bet, or from mere friendship, or to test the quality of it as a medicine, or to be shipped abroad, or for any other purpose not "in reference to the election," would not, in my opinion, be an illegal or prohibited act, so as to be a corrupt practice within the meaning of the statute. Nor do I think the giving or selling of liquor, though on the polling day, but after the poll was closed, and miles away from where the poll was held, would necessarily be an illegal and prohibited act in reference to the election, so as to amount to a corrupt practice: *Coventry Election Petition*, 20 L. T. N. S. 405.

The 61st section of the 32 Vict., ch. 21, permits the candidate and others acting for him, even with intent to promote his election, to furnish entertainment to the electors, so long as it is done at the usual place of residence of the candidate, or of those who furnish it for him. Such *entertainment*, it would be difficult to say, should not include even a single glass of wine.

The statutes contain many illegal and prohibitory acts besides the giving and selling of liquor on the day of the poll, and to hold them to be corrupt practices, although *not* done in reference to the election, would be hurtful to all parties, and utterly unreasonable.

By 32 Vict., ch. 21, sec. 57, sub-sec. 3, any person disturbing the peace and good order may be imprisoned by the returning officer or his deputy, for a time not later than the final closing of the poll. Is the vote of that person to be rejected, or afterwards struck off, although his act had no reference to the election, but was occasioned by some great wrong done or provocation given to him?

By sec. 60 every person convicted of a battery committed during any part of the election or polling day, within two miles of the place of election or poll, is to forfeit \$50. Is that person also to forfeit his vote, although the battery had nothing whatever to do with the election, or happened after the election was over?

It appears to me these cases plainly answer themselves, and enable the matter with respect to the giving and selling of liquor to be as easily answered.

The penalties are already quite severe enough, without increasing them against the voter, and extending them to the candidate, and to the other electors of the constituency, who suffer as well as the voter by the disallowance of his vote, unless we are obliged by the most explicit enactment of the law to do so.

In my opinion, on the case stated with respect to these persons, we are not required, and would not be justified, in avoiding their votes.

The facts show that the giving and selling of the liquor were not acts done in reference to the election.

On this point, I may however say that I am more satisfied with my conclusion as to the act of Houston, as to the giving of the liquor, than I am with respect to Burns, who sold the liquor in a place and under circumstances giving rise to some degree of suspicion.

The other part of the case relates to the act of Price.

His conduct is complained of on the ground of its having been an illegal and prohibited act in reference to the election, contrary to the 32 Vict., ch. 21, sec. 71. That section declares, so far as is applicable here, "that the hiring or promising to pay, or paying for, any horse," &c., "by any candidate, or by any person on his behalf," to convey voters at any election, shall be an illegal act, and the person offending shall incur a penalty of \$100; and any elector who shall hire any horse, &c., for any candidate or for any agent of a candidate, for the purpose of conveying electors, &c., "shall *ipso facto* be disqualified from voting at such election, and for every such offence shall incur a penalty of \$100."

The section, it will be observed, is in two parts. The first part affects the candidate and his agent, by subjecting them to a penalty. The second part affects the electors, and besides subjecting them to a penalty it disqualifies them from voting.

Price was an agent of the candidate, and so, as to the penalty, is within the operation of the