

Elec. Case.]

EAST NORTHUMBERLAND EL. PET.—SWARTWOUT V. SKEAD.

[Nisi Prius.

porter of the respondent in the convention ; voted for his candidature—that, although perhaps not very active at first, he worked for the respondent to promote his election in canvassing for him, arranging for the bringing up of voters, and otherwise as is customary with nominated agents, and that the respondent, as the nominee of the convention, expected and claimed to be entitled to such his support and assistance.

Under these circumstances, I must hold that Mr. Richmond was a person for whose acts the respondent is responsible. It is said that the organisation is such, in express terms, that the candidate shall only receive the assistance of the delegates as committeemen on his behalf in all matters that are legal. That is precisely the authority given to all election agents. No man appoints another his agent to do an illegal act ; he appoints him only to do legal acts ; but if, instead of confining himself to such, he does illegal acts amounting to bribery and such like, the candidate is responsible.

The first question then to be decided is : whether or not Cyrus Richmond did make to Arthur Lyndon the offer of a bribe, which it is charged that he did make [The learned judge, after discussing at length the evidence on this point, decided that an act of bribery had been committed by Richmond, and on that ground declared the election void.]

As to the other point raised, namely, the issuing of the circular on the Saturday night preceding the polling day, there is no doubt in my mind that all the parties to the issuing of that circular were persons who, equally with Richmond, who was himself one of them, must for the same reason be regarded as the respondent's agents, for whom he must be held responsible. I am, however, of opinion, that even assuming the matters stated in the circular to be false to the knowledge of the parties issuing it, it does not come within the 72nd sec. of the Act of 1868, which enacts that "everybody who shall directly or indirectly, by himself, or by any other person on his behalf, by any fraudulent device or contrivance impede, prevent or otherwise interfere with the free exercise of the franchise of any voter, shall be deemed to have committed the offence of undue influence." It is, in my judgment, distinguishable from the *Gloucester case*, 2 O'M. & H. 60, which is the only case reported having any resemblance to the present. There the act complained of was one which if it had been designed with the intent imputed would have been calculated to have the effect of mis-

leading persons without any exercise of judgment to place their mark on the ballot paper opposite the respondent's name only, and so have been calculated to make persons, by a trick and deception, vote for a candidate for whom at the time of voting they did not intend to vote. In the case before me, the most that can be said is (assuming the statement in the circular to be false to the knowledge of the parties issuing it), that they were by a falsehood appealing to the electors to exercise their judgment in voting for the friend of the parties issuing the circular.

Now I do not think that this clause of the statute was intended to cover cases where parties, although it be by falsehood and slander, appeal to the electors to exercise their judgment how to vote. Election squibs, it is to be regretted, are accustomed to deal freely with the character of opposing candidates ; this, although a practice which is immoral in the extreme and to be condemned by all honest men, has not as yet, in my judgment, been touched by legislation.

Election set aside.

NISI PRIUS.

SWARTWOUT V. SKEAD.

Certificate for costs—County Court jurisdiction.

Claim for \$475, ascertained by agreement between the parties, reduced by payment to an amount within County Court jurisdiction. The plaintiff, however before he could recover was obliged to give evidence, of the fulfilment of a condition. *Held*, that the plaintiff was entitled to a certificate for full costs.

[Ottawa, October 5th, 1875.—PATTERSON, J.]

This was a case tried at the last Ottawa Assizes.

The particulars of the plaintiff's claim were as follows :—

1872.

May 1.	To one patent log turner.....	\$175 00
	To royalty on two Swartwout	
	patent gangs, as per agreem't	300 00
		475 00

CR.

By cash on account...	\$100 00
By allowance for putting in logs.....	25 00

	125 00	
Balance due.....	\$350 00	

At the close of the case the presiding judge, Mr. Justice Patterson, found in effect that the defendant had agreed to pay the plaintiff \$300