

Elec. Case.]

MUSKOKA ELECTION PETITION.

[Ontario.]

obliged to find the fifth charge has been sustained."

The argument of the learned Judge on that branch of the case which was especially referred to by the Court of Appeal, namely, as to effect of answers to charges, each one supported by a different witness, but severally denied by the respondent, without any corroboratory testimony, fully appears in the following judgment, where Mr. Justice Wilson's language on that point is fully quoted.

James Bethune, for appellant.

Boulbee, contra.

DRAPER, C.J.—I agree in the conclusion arrived at by my brother Burton, that the appeal should be allowed and the petition dismissed.

But a principle as to the law of evidence was laid down in the *North Renfrew* case (not reported), which was referred to and acted upon in the present case, with regard to which I entertain some doubts; and I do not wish, by passing it over in silence, to be supposed to concur in it, or to have been influenced by it in being a party to the judgment now given. I am not deciding one way or the other.

It has been distinctly enough held that on a petition charging any corrupt practice, the respondent is, in a case of even and fully counter-balanced testimony, entitled to the presumption of innocency, to turn the scale in his favour. Now the question presented in the present case is, whether the evidence can be said to be so equally balanced as to render it necessary for this respondent to invoke the aid of that presumption, or, on the other hand, to entitle him to it. It is put in the judgment in the following shape: "The question is, whether the evidence can, on this record, be said to be equally balanced, so as to give him the right and benefit of all just presumptions of law and of fact. That will depend upon the other charges which are still to be considered; for if in the other cases I find that they are respectively balanced by the evidence of the respondent, the same witness in all of them as against several witnesses—one, however, only in each case—I should then feel obliged to rely more on the impartiality and truth of the greater number who testified against the respondent, and whose evidence and characters were respectively for reliability and veracity, as much to be depended on as those of the respondent. I have already stated my opinion on this point in the *North Renfrew* case."

In another part of the same judgment it is said: "If this stood by itself, as before stated, oath against oath, and each side equally credi-

ble and no collateral or accompanying circumstances to aid me either way, I should hold the charge not to be proved. But the other charges, if severally sworn to by a credible witness, and the united weight of their testimony is to overcome the effect of the respondent's word (second oath), I may be obliged to attach such a degree of importance to the combined testimony of these witnesses as to hold the charges to which they severally speak as sufficiently proved in law against the opposing testimony of the respondent."

In the *North Renfrew* case there were nine independent charges of corrupt practices committed by Thomas Murray, the brother and agent of the respondent. Each charge was proved by one witness only, and was based upon offers or promises, not upon any act of the agent. Admitting the general circumstances and much of the conversation, and in the very words of each witness, Thomas Murray gave a different colour to the language and a different turn to the expression used, which altered the meaning of the conversations detailed by the witnesses, and so constituted in effect a complete substantial denial of the character of the charge attempted to be proved, and in many respects he directly contradicted the witnesses. The learned Judge discussed at some length the question as to whose testimony he should act upon, and observed: "It is impossible to avoid seeing and feeling that the more frequently a witness is contradicted by others—although such opposing witnesses contradict him on a separate point—the more is our confidence in that single witness affected, until at length, by the number of contradictory witnesses, we may be induced in effect to disbelieve him altogether. It is difficult to believe that so many are wrong; it is easier to believe that one is wrong so many times; and the more there are who speak against him, the more we are led to believe that he is the one who is in the wrong. . . . The question of veracity does not depend only upon the strength of numbers, nor in some cases does it so at all. Its true basis is character. It is upon the quality of the evidence, and the point is to determine that quality." In the application of these observations in several cases, the determination was against the respondent, although it was expressly stated that if that case stood alone it would have been decided the other way. In one case the learned Judge said: "I would, as I have already said of other charges, decide this against the petitioner if this were the only charge; but as it is one of a series of charges, each one of which is sup-