

that the petitioner put himself in Peters' hands or suffered Peters to act for and represent him.

If an agency could be made out of these materials, it would, under the law, already severe enough in that respect, be quite intolerable. It would exclude the commonest acts of kindness and hospitality between neighbours. It would ostracise the candidate by keeping him estranged from the electors, who should have every opportunity of becoming acquainted with him. It would prevent association at a time when combination was especially useful, and it would well-nigh stop social intercourse altogether. I entertain no doubt that the acts to which I have alluded are not, and cannot be deemed, sufficient to establish agency for any purpose or to any extent, and thinking so, it is right I should plainly say so.

Then, did the conversation between the two as to the dinner constitute Peters the agent of the petitioner? It was not contended by the respondent that the first conversation was sufficient to establish the character of agent or agency. No doubt it did not do so, but repelled it altogether. The second conversation, it was contended, did, of course in connection with all the other circumstances, and by the force and effect of their addition and accumulation, create Peters the agent of the petitioner for the purpose of providing for the dinners which were given and paid for by him. It is so contended, because the petitioner said among other things when he was asked by Peters if there was any harm in Peters paying for the dinner out of his own pocket if he chose to do so, and he, the petitioner, answered that he could not prevent him if he chose to do it, but he did not want him to do it, and he would rather Peters would not do it; and it was argued by the respondent that the petitioner was bound to have given a positive denial to Peters. That the petitioner should have told him he must not do it, or that the petitioner could not allow him to do it, and that he should not have used such language as that he the petitioner could not prevent him and did not want him to do it, and he would rather it was not done. But can it be said if such language even as that is used, and the speaker really means what he said, and is not covertly affording an approval of the act he is assuming and pretending to condemn—and I have not the least reason for thinking the petitioner did not really mean what he said, that agency has been established—that the petitioner had put himself into the hands of Peters for that purpose? The language of Mr. Justice Grove, already quoted, is, "Mere non-interference

with parties who, feeling an interest in the success of the candidate, is not sufficient in my judgment to saddle the candidate with any unlawful acts of which the tribunal is satisfied he or his authorized agent is ignorant." But the petitioner said more, far more, than the respondent has, on his argument addressed to me, assumed he did say. The petitioner plainly disclaimed having anything of the kind done, or recognizing it if it were done. In my opinion the petitioner repudiated all connection with the business of the dinners, and Peters perfectly understood he did so, and that he was doing so.

While the numerical majority is on the side of the petitioner I must consider him to be the person who is rightfully entitled to the seat until that right is displaced, and I must look upon the charge which is made against him as if it were in effect made against the sitting member. In the language of Martin, B., in the *Warrington case*, 1 O. & H., at p. 44. "I adhere to what Mr. Justice Willes said at Lichfield, that a Judge to upset an election ought to be satisfied beyond all doubt that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside." I refer also to what was said by the same Judge in the *Wigan case*, 1 O. & H., p. 192. "If I am satisfied that the candidates honestly intended to comply with the law, and meant to obey it, and that they themselves did no act contrary to the law and *bona fide* intended that no person employed in the election should do any act contrary to the law, I will not unseat such persons upon the supposed act of an agent unless the act is established to my entire satisfaction."

I apply the same language to this case, and I add that I will not unseat the sitting member or prevent the person who has the numerical majority from having the seat upon the supposed act of an agent unless the agency is established to my entire satisfaction, and in this case that has not been done; on the contrary, the fact of agency has been disproved, disclaimed, and repudiated in the most explicit and emphatic manner, and it is well that it is so, for it is the only act that has been mentioned as having been done throughout this election of the nature attributed to it, and no doubt if there had been any acts of a more serious, or even of the like nature, they would not have lain concealed, considering the strong personal interests which enter into contests in this constituency, where the majorities in several of the late elections have been only three or four for the successful candidate.

I must say this election contrasts most