

Elec. Case.]

LINCOLN ELECTION PETITION.

[Ontario.]

than they did when the Act of 1868 was passed. There may have been a necessity for some greater punishment than a mere pecuniary penalty to check the undiminished practice of having taverns open on polling days, or of selling liquor or treating on those days, and hence the additional provision in the 36th Victoria.

But for the word "give" I might have thought the whole section 66 was confined to the keepers of hotels, taverns and shops. But looking at the object, viz., "Keeping the peace and good order at elections," and the prohibition to *give* as well as to *sell*, I think that would be too narrow a construction; and I am of opinion that any person who during the day appointed for polling shall give any spirituous or fermented liquor or drink to any other person within a hotel, tavern or shop in which such liquors or drinks are ordinarily sold, in the wards or municipalities in which the polls are held, is as guilty of a violation of the section in question as the keeper of such establishment would be who himself should give the liquor. If it was intended to limit sec. 66 to the hotel keepers, &c., by the provision that no spirituous or fermented liquors or drinks shall be sold or given, it would have been much simpler to have said within his hotel, &c., instead of within the limits of such municipality, and simpler still to have said, and no keeper, &c., of any such hotel shall sell or give, &c.

The peculiar form of expression tends to show that the Legislature intended to prescribe one thing, *i.e.*, keeping the hotel, &c., closed; and to forbid another, *i.e.*, selling or giving liquor, and to impose a penalty on every person who neglected to obey the one or who acted in defiance of the other.

As the tavernkeeper, &c., who sells in violation of the statute commits an offence, so the purchaser is equally guilty with the former if he gives the liquor purchased by him to persons in the tavern.

That Larkins was an active agent of respondent is sufficiently proved, and in my view of the law he was guilty of a corrupt practice in treating at Doyle's. The learned Judge, after a very elaborate consideration of the statute and of other authorities which he has referred to in relation to the question, held that the election could not be avoided for this treat, and the petitioner has not appealed against that decision.

The case of W. H. Stewart (the coloured man) remains to be considered. Upwards of two years before the election a pair of respondent's horses ran over Stewart's wife, and one of her legs was broken. She was laid up for eight months

in consequence. At that time Stewart was indebted to the respondent, and the debt was written off in the respondent's mill book. Mr. J. W. King gave this account of the matter: "Mr. Stewart had no legal claim. It was an act of charity to pay him what we did. It is two years since we paid him, whatever it was. It was given as a little present on account of the affliction." And on the 23rd November, 1872, Stewart signed a receipt in presence of J. W. King, as follows: "Received from S. Neelon the sum of fifty-four dollars and sixty-six cents, in full of all accounts or claims whatsoever." About a week before the election now under consideration, the respondent having apparently heard that Stewart or his wife were dissatisfied, sent his salesman, Sisterson, to see her. She told him she was not satisfied—she did not think respondent had done her justice. After the election she came and saw the respondent, and he told her he would give her \$30, and asked if that would satisfy her. Credit was then given for \$19.12 on an account against Stewart, and \$18.88 was paid to her in cash, by respondent's direction. But before this payment, and also about a week before this election, Stewart and the respondent met at the municipal election at the Grantham school-house, and according to Stewart's account, respondent said to him, "I would like to have you with me at the election." Stewart replied he could not very well be with him, because he, respondent, did not give what Stewart thought were the damages due to his wife. That he told respondent he had not done him justice, and that respondent said if he had not done what was right he was able to make it right. Respondent did not say anything about his (Stewart's) vote, but he told more than one time that he would like to have Stewart with him. Daniel Stanley was sitting with Stewart at the time, and says respondent asked Stewart if he was going to do anything for him; that Stewart said "No, sir, I cannot." Respondent asked, "Why?" Stewart said, "You did not do the fair thing when my wife's leg was broken." This is Stanley's account, and he goes on: Mr. Neelon said, "If you will see me in this cause or case, if I have not done the fair thing, I will do the fair thing." Stanley says he heard the conversation distinctly—he could not help hearing it particularly, and did not think there was anything wrong in what was said at the time, and did not think from the language that Mr. Neelon was trying to buy the man's vote. And Robertson, who was standing near, heard respondent say, "Mr. Stewart, I am willing to