

Elec. Case.]

NORTH GREY ELECTION PETITION.

[Ontario.]

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## ELECTION CASES.

## NORTH GREY ELECTION PETITION.

BOARDMAN V. SCOTT.

32 Vict. cap. 21, secs. 61-66 (Ont.)—*Treating during hours of polling—Political associations—Agency.*

The mere fact of a political association putting forward and supporting a particular candidate does not make every member of the Association his agent, though the candidate may so avail himself of their services as to make them his agents.

One M., the reeve of a township, exerted himself strongly in favour of the respondent, to whom he was politically opposed, and against the other candidate, and attended meetings where the respondent was, and spoke in his favour. The reason for his supporting the respondent and opposing the ministerial candidate, with whom he was politically in accord, was, that the ministry of the day had separated the township of which he was reeve from the riding. He was much annoyed and indignant at this separation, and announced his intention of using all his influence against the ministerial candidate. *Held*, that the question of agency being one of intent, the respondent never conferred, and M. never assumed the authority of an agent for the respondent.

*Held*, that the receiving of a treat by the respondent during the hours of polling, does not, under sec. 66 Vict. cap. 21, (Ont.) which must be construed strictly, either avoid the election or render him liable to any penalty.

*Semble*, that as to the seller or giver of the treat, the only person liable to the penalty would be the tavern-keeper, as the statute does not authorise two penalties for the same act.

[OWEN SOUND, June 29, July 2, 1875—Gwynne, J.]

The trial of this petition took place at Owen Sound, before Mr. Justice Gwynne.

J. K. Kerr appeared for the petitioner.

M. C. Cameron for the respondent.

The points insisted upon by the counsel for the petitioner at the close of the evidence, as sufficient to invalidate the election of the respondent, were :

1st, Corrupt practices committed by Dr. McGregor who, as was contended, was an agent of the respondent, in treating at meetings at Desborough, Chatsworth and Williamsford, near a separate school-house, where a meeting had been convened.

2nd, Corrupt practices by one George Wright who, as was also contended, was an agent of the respondent, in treating at meetings of committees held at his own tavern.

3rd, Corrupt practices committed by respondent personally, in having, as was contended, given dinner to Roseburgh and Atkins,

and in conveying them to the polls, and in having paid or been a party to the payment of \$1 to Atkins to get him to go down to St. Vincent to vote for respondent ; and

4th, Corrupt practice in Robert Paterson, within the polling hours, upon the polling day, in treating the respondent to a glass of beer at the hotel of Thomas Spiers.

The facts and arguments fully appear in the judgment delivered by

GYWYNE, J. I propose to deal with these heads of complaint, upon which, after hearing all the evidence, the petitioner, through his counsel, rests his case, in a different order from that in which they were taken, and I shall deal firstly with that thirdly above taken, as the most serious, involving a grave charge, affecting not only the conduct and character of the respondent, but his civil status for a period of at least eight years, if the charge is established.

No duty can be more painful, and sometimes more difficult, for a judge to discharge than that of estimating with discrimination and with due regard to the interest of the public on the one hand, and to that of the accused on the other, the proper weight to be given to evidence in support of, or in refutation of, charges of personal bribery. There are so many things to be considered. We must be careful not to be too hasty in rejecting the accusatory evidence as coming from a tainted source, for in cases of this kind it is frequently by the recipient of the bribe alone that the offence can be proved. Of the general character of the accuser we frequently know little. Although the recipient of a bribe, his truthfulness may be as reliable as that of the accused, who always has a strong interest to maintain his position, even at the expense of his veracity ; but again, the accuser may be a person of such a character and habits as to make it difficult to place implicit confidence in his statements, although it may be impossible to adduce evidence such as the law requires to impeach the witness as unworthy of belief. We must, therefore, in all these cases scan with care all the surrounding circumstances, for the purpose of determining upon which side the truth lies, namely, whether upon that of him who, while accusing another accuses himself also, or upon that of him who asserts only his own innocence. Every case must depend upon its own circumstances ; the manner of the witnesses as well as the matter of their evidence must be diligently noted ; and after all, all that a judge can do is to express the honest conviction which the whole evidence and bearing of the witnesses