

Q. B.] IN RE ELECTION FOR TOWN OF BROCKVILLE AND TP. ELIZABETHTOWN. [Q. B.]

The *Glengarry Case*, before Hagarty, C. J.; *North York Case*, before Galt, J.; *Simcoe Case*, before Strong, V. C.; and the *South Grey Case*, before Mowat, V. C.; 8 C. L. J. N.S.; and see *East Toronto case*, 8 C. L. J. N.S. 115.

WILSON, J.—The particular cases referred to us by the learned Chief Justice of the Common Pleas, are—1stly, that of George Houston. He voted for respondent: was a saloon keeper in Brockville. On the polling day his saloon was closed and locked. Upstairs, in a room in his private residence, he had beer and whiskey on a table. He gave it to those who came without pay or expectation of it. It was not done in the interest of either candidate, nor to influence any vote or voter, nor to produce any effect on the election; nor did the respondent know of or sanction it.

2ndly. That of Samuel Burns. He had no license to sell liquors. He voted for respondent. He sold liquor on the polling day, near a poll in one of the townships, and charged for it. He sold it to persons without reference to their side or politics. In other respects, his case is similar to that of Houston.

These two cases may, therefore, be considered together.

The part of the 32 Vict., ch. 21, sec. 66, which applies to these cases, is the latter part of it: "And no spirituous or fermented liquors or drinks shall be sold or given to any person within the limits of such municipality during the said period," (*i.e.* during the day appointed for polling) "under a penalty of \$100 in every such case."

And it was argued that because they had infringed the provisions of this section, the one by *giving* and the other by *selling* liquor, they had not only incurred a penalty, but had forfeited their votes: that such giving and selling were prohibited acts, and were within the provisions as to corrupt practices.

The deprivation of the right to vote, or the forfeiture of a vote already given, is not to be imposed as a penalty upon any one, unless under the express enactment of the legislature. There are other persons interested in and affected by that vote beside the voter. The candidate for whom he has voted is interested in it, and so are the whole body of electors who have voted for the same candidate. One vote has and may again influence or change the result of an election, and that is not to be brought about by merely inferential or argumentative legislation, or as to what the Legislature must have intended. There must be a plain enactment declaring that the vote shall be rejected if tendered, or shall be struck off if given, to justify the disallowance of it, and, as a consequence, to double the penalty on the voter, and so seriously to affect the rights, privileges and interests of others dependent on the vote.

What then has the statute said on this point?

32 Vict., ch. 21, sec. 70, declares that on its being proved before any election committee that any elector voting was *bribed*, his vote shall be null and void.

What *bribery* is under that Act, is explained by sections 67 and 68; the acts stated are not acts of bribery; the first of these sections has

the caption of "Prevention of Corrupt Practices at Elections."

The 34 Vict., ch. 3, sec. 3, declares that "corrupt practices" or "corrupt practice," shall mean bribery and undue influence, and illegal and prohibited acts in reference to elections, or any of such offences, as defined by Act of the Legislature."

The 47th section enacts that, "If on the trial of any election petition, it is proved that any corrupt practice has been committed by any elector voting at the election, his vote shall be null and void." It is under this section that the votes of Houston and Burns are said to be void. It is said they have each been guilty of a *corrupt practice*, not by reason of having committed bribery, but by reason of their having exercised undue influence, or from their having done illegal and prohibited acts, in consequence of the one having given liquor, and the other having sold it on the polling day.

It is quite plain that undue influence and illegal and prohibited acts in reference to elections must be corrupt practices when the Legislature has declared they shall be so.

Firstly. Were the giving and selling of liquor acts of *undue influence*? The meaning of that term is explained and defined by the 32 Vict., ch. 21, sec. 72, and it is quite manifest that the acts charged against Houston and Burns are not within that category.

Secondly. Were the giving and selling of liquor, as before stated, "illegal and prohibited acts in reference to elections?"

It is necessary to settle what the meaning is of "illegal and prohibited acts in relation to elections." Does the expression mean generally all illegal and prohibited acts *under the election law*; or does it mean illegal and prohibited acts when and because they are done in connection with, or to affect, or in reference to, elections?

In the one case, giving and selling liquor, however disconnected with the election they may be, will, if done within the municipality during the election, be illegal and prohibited acts, and as a consequence will be corrupt practices.

In the other case, such acts will not constitute corrupt practices, unless they are shown to have been done to influence or to affect the election, or in some way to have been done in connection with it.

The section in which the illegal and prohibited acts in relation to elections are named, contains the election law offences of bribery and undue influence, both of which acts have and must necessarily have a direct and inseparable relation to the actual electoral contest, and to the proceedings anterior to it. Bribery and undue influence in general are not prohibited, but bribery and undue influence in relation to elections only. Why then should any greater effect be given to the other words of the section, "and all illegal and prohibited acts," and more especially as the words "in reference to elections," have been superadded?

It will be found also that the offences of entertaining electors, furnishing colors or badges, and carrying or wearing them, relate in like manner to the elections.

The election law morality is very different from what morality is under the general law.