

Elec. Case.]

SOUTH ONTARIO ELECTION PETITION.

[Ontario.]

enquired into or adjudicated upon, nor did the evidence seem to support it.

The other grounds of appeal were :

2. That the giving of spirituous or fermented liquor in a certain tavern in Oshawa on the day of polling, and during the hours appointed for polling, by Francis Clarke to one Jordan, referred to in the said judgment, was a corrupt practice which avoided the respondent's election.

3. That W. H. Thomas, referred to in the said judgment, was an agent of the respondent, and that the said W. H. Thomas was guilty of a corrupt practice in giving liquor to divers persons at Oshawa, in Hallett's hotel, on the day of polling, and during the hours appointed for polling.

4. That Frank Gibbs, referred to in the said judgment, was an agent of the respondent, and that the giving of liquor by the said Frank Gibbs to divers persons in a tavern at Oshawa, on the day of polling, and during the hours appointed for polling, was a corrupt practice.

The facts as to the second charge above set out, and known as Clarke's case, sufficiently appear hereafter in the judgment of the learned Chief Justice of Appeal.

James Bethune for the appellant.

Hector Cameron, Q.C., for the respondent.

DRAPER, C.J.—I have doubted the correctness of the decision in Clarke's case, and am not sorry to find that the learned Judge had also a considerable degree of doubt, as I should not, unless upon the clearest conviction, depart from his deliberate opinion.

The facts seem to be as follows : One Jordan was a voter, whose residence was in Whitby, and who was a voter in that municipality. During the time of the election he was working in Oshawa—both places, though separate municipalities, being within the electoral division of South Ontario. Clarke, whose agency appears to be sufficiently proved, went to Oshawa on the polling day to bring Jordan up to vote at Whitby, and treated him in an hotel at Oshawa to a glass of whiskey. This was held not to be a violation of the 68th sec., because the liquor was not given by Clarke to Jordan within the municipality in which the poll for the town of Whitby was held. No question was asked as to the hour when this treating took place—no doubt suggested as to its being within the hours appointed for polling, *i. e.* from nine a.m. to five p.m. Considering that to make this treating a corrupt practice, which, if committed by an agent without the actual knowledge and consent of the candidate, would avoid the election, it cannot have been over-

looked at the trial, and as the evidence shows that Clarke drove from Whitby to Oshawa to get Jordan; that Clarke had told him when they had got to his (Jordan's) own place that he could stop there and go down after dinner and vote; and that no point has been suggested on either side that the treat was or was not within the hours appointed for polling, I shall assume it to have been so.

I have already expressed my opinion upon this section in the *Lincoln case*, but I avail myself of this opportunity to add a few observations.

So far as keeping peace and good order at elections is concerned, it can make little difference, as between two coterminous wards or municipalities, in which of them persons who commit a breach of the peace drank the liquor which overcame their discretion and influenced their disorderly proceedings. The distance between municipalities in which polls are being held at the same time may be such as to render quite unnecessary any provision against dangers to arise from the prohibited cause, and ought to repel the idea that the Legislature had the prevention of any such danger in their contemplation. But it would be little, if at all, less absurd to hold that treating voters in municipality A, who being excited to lawlessness and influenced by liquor, went into adjoining municipality B, where they created a disturbance, would not be within the mischief intended to be prevented by the Act, as if the tavern in which the liquor was given to them was in municipality B.

Further; I see nothing in sec. 66 which makes the fact that the person to whom liquor is given is or is not a voter an element in the matter prohibited, that is, selling or giving to any person within the limits of such municipality. There is no necessity that a man should be a voter to make selling or giving liquor to him on the polling day an offence subject to penalty. In Jordan's case, if he had not been a voter, giving liquor to him in a tavern in Oshawa would have been a violation of the law, assuming as I do that the day in question was appointed for holding the polls in the municipality in which the tavern stood.

I think we surmount most of the difficulties suggested by holding that section 66 is confined to the regulation of hotels, taverns and shops in which liquors are ordinarily sold. On the day appointed for polling they must be kept closed under a penalty. No liquor must be sold or given to any person in any such hotel, &c., on the polling day. The words, "within the limits of such municipality" may perhaps be