

Elec. Case.]

MUSKOKA ELECTION PETITION.

[Ontario.]

doubt it was meant for a purpose, and that purpose could only have been, and in his case it was, I think, unduly to influence the electors in their free choice and deliberate judgment of a candidate.

"The conclusion I come to with reference to this charge is, that I am inclined to think the respondent did make use of restraint or practise intimidation upon the occasion in question upon or against the electors present at the meeting at Matthias Hall, and perhaps upon or against those who were not present, in order to induce or compel such persons to vote, or refrain from voting, at that election. Or if the case do not come within that section of the statute, I am of opinion it must be undue influence according to the common law of the Parliament of England. New modes of undue influence must or may be practised from time to time which may not be covered by the written law, but the principle of the law itself, written or unwritten, is, that the election must be free: Inst. 169; 1 W. & M. Sess. 2, cap. 2, secs. 1, 2; 2 W. & M., Sess. 1, cap. 7. That the electors must be allowed freely and indifferently to exercise their franchise, and it is for that cause an election is vacated by riot or other serious disturbance, or by general drunkenness, or by general bribery, although neither the sitting member nor any one for him had anything to do with such acts: *Lichfield case*, 1 O. & H., page 26; *Bradford case*, 1 O. & H., 40; *Beverley case*, 1 O. & H., at page 147; *Stafford case*, 1 O. & H., at page 234; *Tamworth case*, 1 O. & H., at page 85. However varied or novel the acts or conduct of those may be who proceed in such a manner as to violate the freedom of the election, can make no difference in the law. If the law itself be broken, if the whole election be rendered in any manner or by any persons, not free, the result must be that it will be vacated as a void election. If the whole election be not so affected, but the sitting member or any of his agents is or are chargeable with certain acts of violation of such freedom, the return of the election of that candidate will be avoided.

"But if the candidate is in no way chargeable with any individual case of violating the principle of a free election, his seat will not be affected; the vote or votes which may be affected by it will be deemed to be illegal. There is a resolution of the Commons of December, 1779, Journals 507, against the interference in elections by ministers of the Crown—"That it is highly criminal in any minister or ministers or other servants under the Crown in Great Bri-

tain, directly or indirectly, to use the powers of office in the election of representatives to serve in Parliament, and an attempt at such influence will at all times be resented by the house as aimed at its own honour, dignity, and independence, as an infringement of the dearest rights of every subject throughout the empire, and to sap the basis of this free and happy constitution.'—Rogers on Elections, 9th ed. In Chambers' Election Law, p. 374, it is said the interference of ministers was made a principal ground of avoiding the election in the *Dublin case*, 1831. That case I have not seen. The only one I have seen, where a charge was made against the interference of ministers of the Crown, is the *Dover case*, Wolf & Br., 121.

"If it is highly criminal in a minister of the Crown to use the power of office in electoral contests, it must be objectionable for a candidate to assert that he has and will have those powers, although he is not in office, because he is the Government or ministerial candidate, whatever may be the result of the election. The powers of office are not to be used in the contest, and whether they are used by a minister or a friend, ally or supporter of the minister, must be alike vicious and objectionable. Of course, in all of these cases I am assuming that such a course of proceeding is adopted with the intent mainly to influence the election: for, as I have already said, the intent is everything in such a case. These powers of office are the patronage and influence which that office confers. The exercise of that patronage and influence by delegation to a ministerial supporter is quite as effectual to operate perniciously on the freedom of elections as if the powers were exercised by the principal himself. I see no difference between a minister saying to the electors in an electoral district in which there are Crown lands to be valued for the settlers, 'I have the power and patronage of the valuation of all your lands'—or, 'I will have the valuation of them'—if said with the intent unduly to influence the election in which he is a candidate, or the supporter of a candidate, and another person (not a minister, but the friend and supporter) saying the same thing by reason of his being such supporter, and of his contesting the constituency in favour of the Government, if such person say it with the like intent; and the same thing applies to language of the like kind addressed to lumbermen with respect to lumber dues in their imposition, omission or otherwise, and to the expenditure of Government appropriations in the opening of roads or in the performance of other public works. I am