

Mun. Elec. Case.] REG. V. MEDCALF—REG. V. JUSTICES OF KING'S COUNTY. [New Bruns. Rep.]

the respondent and others before the Judge of the County Court, the relator decided to abandon all his charges of illegality in the election, except one, viz., that of hiring vehicles for the purpose of conveying electors to and from the polls.

The evidence in support of this charge was in substance as follows: The respondent on the polling day met one Kelly—a supporter of his—driving in a sleigh. Kelly invited respondent to get in and have a ride. He did so, and they drove together a short distance, when respondent left the sleigh. Shortly after, as Kelly was passing the cab-stand, he called out to the cabmen, "Boys, follow me," and drove on. Six of the cabmen immediately went after him and were said to have been employed during the remainder of the day in taking electors to the polls. In Mr. Medcalf's deposition, he stated "that he never hired teams nor authorised Kelly or any person else to do so for him. He did not know of Kelly's having hired any cabs. He had not paid any of the cabmen for conveying electors on polling day. Some of them had applied to him for payment, but he had refused to give them anything because he had not employed them."

R. A. Harrison, Q.C., for the respondent, shewed cause. To enable the relator to succeed, he must show: (1.) That the hiring of the cabs was for a corrupt purpose connected with the election. (2.) That Kelly was the agent of the respondent. And (3.) That these illegal acts were done with the knowledge, consent, or privity of the respondent. The principle applicable to bribery by agents is different in municipal election from what it is in Parliamentary; for in the former it must be shown that the agent acted with the knowledge, consent, or privity of the candidate, to affect the latter by the illegal acts of the former. Section 157 of the Municipal Act does not alter this, because the knowledge, &c., of the agent is that of the principal. Kelly's evidence merely shows a request, and no contract. As to the effect of such evidence, see the *Westminster case*, 1 O'M. & H. 89; *Taunton case*, 2 O'M. & H. 75. These cases show that the evidence must be as explicit as in criminal cases. This rule was observed in the *East Toronto case*, *West Toronto case*, and *Kingston case*. The *Dungarvan case*, 2 P. R. & D. 302, shows that the oath of the respondent must be taken. It was stated that Kelly had paid some of the cabmen after the election, but upon the authority of the *Brockville case*, 32 U.C.Q.B. 87,

he submitted that that was not an act of an agent within the meaning of the law. Kelly cannot be considered an agent of the candidate. See *The Bridgewater case*, 1 O'M. & H. 112; *The Taunton case*, 2 O'M. & H. 66; *The Bolton case*, 2 O'M. & H. 140.

Fenton, contra. Contended that the act was done with Medcalf's approbation, and therefore was equivalent to his doing it himself.

Mr. DALTON—Held that the evidence was not sufficient to prove agency on the part of Kelly. He therefore discharged the summons.

NEW BRUNSWICK REPORTS.

REGINA V. THE JUSTICES OF THE PEACE OF THE COUNTY OF KINGS. *Ex parte* McMANUS.

Spirituuous Liquors—Right of local legislatures to prohibit sale of, under British North America Act, 1867—Trade and Commerce—Regulation of—Revenue—Ultra vires.

A local legislature has no power, since the British North America Act, 1867, to pass a law directly or indirectly prohibiting the manufacture or sale, or limiting the use of spirituous liquors, and an Act passed with this object in view was held *ultra vires* and void.

[PUGSEY'S REP. II. 535—Feb. 1875.]

In Trinity Term, 1874, S. R. Thomson, Q.C., on behalf of Montgomery McManus, obtained a rule *nisi* for a mandamus to compel the Sessions of King's County to grant him a license to sell liquor. An affidavit was read, shewing that McManus had tendered the money for a license, which had been refused, the Justices absolutely declining to grant licenses to any person. The grounds on which the rule was granted were: 1st, That under the Act 36 Vict., c. 10, the Justices have the right to discriminate as to the persons to whom they will grant licenses, but no power absolutely to refuse them to all persons. 2nd, Assuming the Act to give them this power, it is *ultra vires* the local legislature, under the British North America Act, 1867, (a) because it professes to deal with the criminal law; (b) because it interferes with trade and commerce.

Oct. 14. Dr. Tuck, Q.C., shewed cause. The second section of the 36 Vict., c. 10, provides, that "the General Sessions of the Peace for the several counties in this province are hereby empowered to grant wholesale and tavern licenses to such and so many persons of good character as they in their discretion shall think proper, to sell liquor by wholesale, or keep a tavern within their respective counties, demanding and receiving for every such license a sum