

Elec. Case.]

HALTON ELECTION PETITION.

[Ontario.]

RICHARDS, C.J. We do not think we can properly interfere with the decision of the learned Chief Justice as to the facts found by him, the general rule being that the finding of the Judge who hears the witnesses when there is conflicting evidence, and the decision turns on the credibility of the witnesses, should prevail. He sees the witnesses, hears their testimony, observes the way in which they answer questions, and is in a much better position to decide on conflicting evidence than those who merely read the statements of the witnesses as they have been taken down. We are all of opinion that we ought not to interfere with the finding of the learned Chief Justice as to the matters of fact.

It was not urged before the learned Chief Justice that if he came to the conclusion that the respondent had offered to make Mrs. Robins a nice present if she would keep her husband from voting against him, that this was not bribery within the meaning of the statute of this province, 32 Vict., cap. 21, sec. 67.

The question is raised before this court for the first time; and it is contended that there must be something named as the present to be given, or it will not be a promise or offer of a *valuable consideration* (within the meaning of the act) to Mrs. Robins to induce her husband to vote or refrain from voting at the election.

It is not in terms an offer of money. Does it imply that something of *value* is to be given if the promise or offer is carried out? and if so, is that not what is meant by a promise of money or a valuable consideration? Not a promise of something which has no appreciable value, such, for instance, as to make a lady one of the patronesses of some exhibition, where no one was to receive any pecuniary benefit, but all were to pay money or buying a ticket to admit a person to grounds on which a picnic was being held, where each person attending paid for or furnished his own lunch; or to make an elector a member of an election committee, where he would receive no emolument, and would probably be compelled to labour, and might be subject to loss.

When this offer was made was it a mere pretence? Are we to presume the respondent wished Mrs. Robins to understand, as she appears to have understood, that she was to receive a present of some value, when he intended to give her something of no value or no appreciable value. This would be presuming a certain kind of fraud on his part, and in his favour to relieve him from what would be the consequence of his

act, which I do not think that judges or courts usually do.

One of the earlier statutes on the subject of bribery, 7 & 8 Wm. 3, cap. 4, provided that no person to be elected to serve in Parliament "shall directly or indirectly make any promise to give any money, meat, drink, provision, *present, reward*, or entertainment to and for any person having a voice in the election, or for the use, advantage, benefit, employment, profit or preferment of any such person in order to be elected to serve in Parliament."

Our own Con. Stat. Canada, 22 Vict., cap. 6, sec. 82, provided that no candidate should directly or indirectly employ any means of corruption by giving any sum of money, office, place, *gratuity, reward*, or any bond, bill or note, or conveyance of land, or *any promise* of the same; nor shall he threaten any elector with losing any office, &c., with intent to corrupt or bribe any elector to vote for such candidate, or to *keep back* any elector from voting. Nor shall he support or open any house of public entertainment for the accommodation of the electors. And if any representative returned to Parliament is proven guilty of using any of the above means to procure his election, his election shall be declared void, and he shall be incapable of being a candidate or being elected during that Parliament.

The above provisions were repealed, and the Legislature of Canada passed the statute 23 Vict., cap. 17. The first three sub-sections of section 1 of that act define bribery in the same way as it is defined by the Imp. Stat. 17 & 18 Vict., cap. 102, and by sub-sections 1, 2 & 3 of sec. 67 of the Stat. of Ontario, 32 Vict., cap. 21. These provisions were in force when *Cooper v. Slade*, 27 L. T. Rep., O. S. 137, was decided in England, and I suppose are still in force there.

The words of Baron Alderson, after giving the judgment in *Cooper v. Slade*, as reported in 27 L. T. Rep., O. S., at p. 139, are: "I entertain this opinion also, whether the rest of the Court agree in it or not, that the words 'money or other valuable consideration' ought to be expounded, money or other valuable consideration estimable."

In construing this statute we must consider what was the intention of the Legislature? and there is no doubt the primary object was that votes should be given from the conviction in the mind of the voter and those who supported a candidate that he was the best person for the situation, and that the public interests would be best served by electing him. The evil to