

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

Burns, avoided the votes of the said persons, or either of them?

(Signed) JOHN H. HAGARTY, C.J., C.P.

In this Term, *Bethune* appeared for the petitioner. The question as to the votes of Houston and Burns, arises under the Ontario Act 32 Vict., ch. 21, sec. 66, which requires all hotels, taverns, and shops in which liquors are ordinarily sold, to be closed during the polling day, and forbids any liquor to be sold or given to any person within the municipality during such period, under a penalty of \$100. The amending Act, 34 Vict., ch. 3, had two objects—to change the mode of trial, and more effectually to prevent corrupt practices at elections. In it, by sec. 3, a definition of corrupt practices is for the first time given, and it could hardly have been more comprehensive. It includes all “illegal and prohibited acts in reference to elections, or any of such offences, as defined by Act of the Legislature.” The acts of both of them were clearly prohibited, and contrary to the statute, and were therefore corrupt practices: 1 *O'Malley* and *Hardcastle*, 134. Their votes are both bad, therefore, under sec. 47 of 34 Vict., which declares that any corrupt practice committed by an elector voting at an election shall avoid his vote. There is no clause expressly against “treating,” as in the English Act, where it is provided for specially. Secs. 61 and 66 of our Act, 32 Vict., ch. 21, provide against it in effect, and are very stringent, making no exceptions even for medical purposes, though perhaps that might be implied. No question as to intention can arise under sec. 66, as under secs. 61, 63, 67, nor as to agency, as under sec. 71.

As to Price's conduct, the 34 Vict., ch. 3, sec. 47 avoids his vote. His act was one of agency on behalf of the respondent. The intent of the agent is of no consequence; and the principal is affected by his act, although the agent was not employed for the purpose in which he violated the Act: 1 *O'Malley* and *Hardcastle*, 107, 184, 201. His act was an offence against sec. 71. The payment he made after the election was intended as compensation for carrying the voter, and although the agency had terminated, yet such payment, being connected with the precedent act of the agent, related back to the time when the service was performed, by analogy to the doctrine of ratification: 1 *O'Malley* and *Hardcastle*, 261.

The statute, under the Interpretation Act, 31 Vict., ch. 1, sec. 7, sub-sec. 39, should be liberally construed, so as best to ensure the attainment of its object. Votes are given on certain conditions, which must be observed. [WILSON, J.—Is that so? Is it not rather a right, of which the *se* provisions are merely safeguards?] If a prohibited act be done by a candidate, it avoids the election; if it be done by a voter, it avoids his vote; if done by another, it subjects the person to a penalty.

J. H. Cameron, Q.C., contra. It is not pretended the election can be avoided excepting by reason of the payment by Price. As to the matters relating to Houston and Burns: the acts prohibited by sec. 66, before referred to, are not necessarily connected with elections at all. Hotels, &c., are required to be closed dur-

ing the polling day, and no liquor is to be sold or given that day under a penalty. The election may be over early in the day; but at whatever hour the poll is closed, the hotels, &c., must be kept closed the whole of that day, from the earliest hour in the morning till midnight. The illegal or prohibited act, to be a “corrupt practice,” and to avoid a vote, must be an illegal or prohibited act “in reference to elections,” which these acts were not. The heading of “Prevention of Corrupt Practices at Elections,” before sec. 67, cannot be held to govern all the sections down to 74; for sec. 72 defines what shall be deemed to be “undue influence.” There is no necessity to hold any act to be a *corrupt practice* unless it be expressly declared to be so, because all prohibited acts have some penalty or other attached to them. Houston and Burns may be subject to a penalty under sec. 66; but their votes are good, and cannot be disallowed.

As to Price's case. Agency, if established at the time he employed the team, must be shown to have continued up to the time when he paid the money. There was no proof of hiring under 32 Vict., ch. 21, sec. 71; and the act of payment was a voluntary act of Price after the election was over, made not on account of the service rendered, but from charity, and not for the candidate, but for himself, and in his business. There was no agency existing then. A *payment* must be the act and intent of both; such intent was absent from the minds of both, but if absent from the mind of one, that is sufficient to make it no payment. Price's act, if within sec. 71, merely destroys his vote, and subjects him to a penalty; it does not defeat the election. Nothing will avoid the election unless under the 46th sec. of 34 Vict., ch. 3, a corrupt practice be reported by the judge to have been committed by or with the knowledge and consent of the candidate. An election committee has much greater power in this respect under ch. 21, sec. 69. The argument may be thus shortly restated:—1. Price was not an agent at the time of the payment. 2. If he were, the payment was not with the knowledge and consent of the candidate. The election, therefore, cannot be avoided. 3. Price did not *hire* any team; his vote, therefore, cannot be struck off. Houston's and Burns's votes are good; at most their acts were prohibited, and they may be subject to a penalty. Where the Legislature have declared that a vote shall be lost for a particular cause, it does not intend that it shall be forfeited for any other cause.

Bethune, in reply. Selling or giving liquor does avoid the votes. As to what is undue influence, see *Huguenin v. Baseley*, 14 Ves., 272, and in 2 *White and Tudor*, L. C. 504, 3rd ed. It differs in its nature from an illegal or prohibited act. If the 47th section is not more extensive than the law was before, it is of no value.

Entertainment, it is not said shall avoid the election; but it does so because it is a prohibited act. The 43rd section of the Imperial Act, is the one which has not been adopted in our Act. As to Price's act, it avoids the whole election; but at any rate his vote is avoided by the 71st section. Most of the payments in such cases are made after the election. He referred to the cases already decided under this Act.