

Elec. Case.]

NORTH WENTWORTH ELECTION PETITION.

[Ontario.]

suitors; and, in order the better to do so, that you will kindly consult with the solicitors in your locality in order that the Court may have the benefit of their advice and co-operation.

The judges desire that within the first three days of each re-hearing term a return be made to the registrar of the Court, showing what references are pending in your office, how long they have been there, and where delay has occurred, giving such statements as will explain what the cause thereof has been, and why you have not proceeded *de die in diem* and closed the reference; or why you have not, under order 584, certified the case to the Court.

Your obedient servant,

A. GRANT,
Registrar.

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

COURT OF ERROR & APPEAL.

(Reported by HENRY O'BRIEN, Esq., Barrister-at-Law.)

NORTH WENTWORTH ELECTION PETITION.

THOMAS STOCK, *Appellant*, v. ROBERT CHRISTIE, (*Petitioner*) *Respondent*.

Before HAGARTY, C.J. C.P., STRONG, J., BURTON, J.,
and PATTERSON, J.

Treating during polling hours—32 Vict., cap. 21, sec. 66—36 Vict., cap. 2, sec. 1.

The decision of the learned Chief Justice of the Court of Error and Appeal, reported at page 196 *ante*, confirmed on appeal.

[Sept. 16, 25, 1875.]

This was an appeal from the decision of the learned Chief Justice of the Court of Error and Appeal, finding the present appellant (the candidate) guilty of a corrupt practice. The petition was tried at Hamilton on 19th May last, and is reported *ante* p. 196, where the facts are fully stated.

J. H. Cameron, Q.C., R. A. Harrison, Q.C., and Robertson, Q.C., for the appellant.

James Bethune for the petitioner.

HAGARTY, C.J. C.P.—The facts, as detailed by testimony friendly to the appellant, are very clear. Davidson's tavern was open for the sale of liquor during polling hours, although the form of closing the bar was observed. This was in direct violation of the statute. Several persons are assembled there. The appellant drives up, declares that he cannot and will not treat, and that some one must treat him. His supporter, Sullivan, accordingly does so, appellant takes a glass of beer, and two or three others join in Sullivan's treat.

It is forcibly argued for the appellant that these facts do not show a corrupt practice committed "by or with the actual knowledge and consent of the candidate." First, it is urged that the violation of the 32 Vict., cap. 21, sec. 66, can only mean an incurring of the penalty of \$100 thereunder, and that the appellant cannot come within its provisions; (1st) in the strictest construction of it that it only applies to the inn-keeper; and (2nd) on the wider construction that he was not either the seller or the giver of liquor. Again, that sec. 3 of the Ontario Act of 1873 is divided into two sub-sections which must be read together, and that the corrupt practice brought home to the candidate's knowledge and consent in sub-sec. 2, must be read as only the corrupt practice mentioned in the preceding sub-sec. 1, "Committed by any candidate at an election, or by his agent." That the facts before us may shew a corrupt practice in the inn-keeper, but that the latter was not the appellant's agent, or that even if a corrupt practice in Sullivan in giving the liquor, the latter was not appellant's agent.

It is pointed out that section 46 of the Act of 1871, for which the existing enactment has been substituted, provides that when any corrupt practice has been committed by or with the knowledge and consent of any candidate, his election, if elected, shall be void, and he shall be disqualified, &c. And an argument is founded on the effect of the two sub-sections substituted for this 46th section.

The legal construction of the existing clauses urged by the appellant, seems to have commended itself to the well-considered judgment of my brother Gwynne in a very recent case (*Lincoln Election Petition*).

I feel very great difficulty in bringing my mind to the same conclusion.

We have not much authority to guide us. It seems to me that we must simply try to satisfy ourselves as to the meaning of the words used by the Legislature. We have to ask ourselves what was considered the wrong to be remedied.