

Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

[Elec. Court.]

the law stood in England, was not a violation of the statute, but promising to pay might be held to be bribery. In the present state of the law we do not think we can properly exclude inquiring into these matters.

As to the objection to the 10th paragraph. If the names of persons, whose votes would not be legal in the view already expressed in the objection to the 5th paragraph of the petition, were inserted on the lists handed to the deputy returning officer, their votes for respondent would be bad, though the names were on the lists handed to the deputy returning officer, for the reasons already given. And if persons who were in other respects properly entitled to vote, and whose names were on the last revised and certified list of voters according to the provision of the statute, tendered their votes for petitioner, it may be contended with great force that they are entitled to have their votes now recorded for the petitioner. The mistake in copying their names on the list for the particular subdivision or ward should not deprive a legally qualified voter of his vote, though it might justify the deputy returning officer in refusing to receive it. But the mere fact that the lists were not correct alphabetical lists, or had not the correct number of the lot, or their not being duly certified according to the statute, would be no ground for setting aside the election, unless some injury resulted from the omission, as if some electors were deprived of their votes, or the result of the election in some way was influenced by the mistake.

As to the 12th paragraph, the observation just made will apply to it. These objections to what may really be considered as omitting the doing of matters as to which the statute is considered as directory, have never been held of sufficient importance to avoid an election, unless it can be shown that some injustice has been done by the omission—that voters who were entitled to vote have been deprived of their rights, and that if what the statute required had really been done a different result would have followed. In the absence of this being shown, these objections would not have any weight; and this paragraph was given up on the argument.

The result is that all the paragraphs in the petition stand except the 12th: that all the preliminary objections are over-ruled except the 1st and the 8th, and if it is shown at the trial that the petitioner had not the necessary property qualification, he cannot be seated, but he may still show that respondent was not duly elected.

SPRAGGE, C.—I have entertained some doubt whether the voters' lists under the Provincial statute, 32 Vict., cap. 21, are not conclusive, so far as the property qualification of voters is concerned, though I confess I feel the force of the reasoning by which an opposite conclusion is arrived at. Section 5 of the Act defines the property qualification entitling a person to vote. Then follow other sections, making provision for the registration of voters and the making out by municipal officers of lists of persons entitled to vote. Then follows sec. 10, as follows:—"No person shall be admitted to vote unless his name appears on the last list of voters made, certified, and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election; and no question of qualification shall be raised at any such election, except to ascertain whether the party tendering his vote is the same party intended to be designated in the alphabetical list as aforesaid." Sec. 41 provides for an oath being administered to a voter by the deputy returning officer. This oath is in proof (*inter alia*) of property qualification in the real estate in respect of which the voter's name appears on the voters' list; also as to his being a British subject; as to his being of age; that he has not voted before at the election, and has not received or been promised anything to induce him to vote.

An oath being required as to the property qualification of the voter, is raising a question of qualification other than the question of identity, so that even at the election itself the voters' list is not conclusive as to the right of a person whose name is upon it, to vote: and if not conclusive there, it is, *a fortiori*, that it would not be conclusive upon a scrutiny upon the trial of an election petition.

Upon sec. 10 alone I should have felt some doubt, for the defining of the qualification in sec. 5 was necessary to the registration of voters, and preparing the lists for election; and the provision in sec. 5 might well be introduced in the Act for that purpose only; but sec. 41 and the voters' oath show that the voters' lists were not intended to be conclusive. The voter is required to swear that at the final revision and correction of the assessment roll he was actually, truly, and in good faith possessed, to his own use and benefit as owner or tenant, of the real estate in respect of which his name is on the voters' list; and I agree in thinking that the fact whether he was so possessed is a fact necessarily open to question upon a scrutiny.

HAGARTY, C.J., C.P., concurred.