

Elec. Case.]

NORTH VICTORIA ELECTION PETITION.

[Dominion.]

attended on the hustings. During the poll Sewell introduced a voter, saying he, Sewell, had brought him down as a candidate, and Sewell was not called on to contradict these facts. *Held*, that agency was established.

Speaking prominently on the hustings in support of a candidate, and canvassing on his behalf, coupled with offers of money, constitute a man an agent to the extent of proving corrupt practices: *Lancaster case*, 14 L. T. N. S. 276.

The parliamentary practice of holding candidates civilly responsible for the acts of their agents, although the agents have exceeded the limits of their power, rests on a better and more satisfactory basis than is commonly ascribed to it. It is this:—It is a well known rule of law and of equity that a person cannot take the advantage of an act procured by and founded on the fraud of another, although it is committed by that other as his agent without his knowledge, without being liable to lose that which he has gained by such means, or to be in some other respect liable for the fraud: *Barwick v. English Joint Stock Bank*, L. R. 2 Ex. 259; *Udell v. Atherton*, 7 H. & N. 172, as explained in L. R. 2 Ex. 265; *New Brunswick R. R. Co., v. Connybeare*, 9 H. L. 714. It would be manifestly unjust to the public that a candidate should secure his election by the corruption, or other improper means of his agent; and while taking the benefit of the acts done, repudiate the exercise of those powers which the other as his general agent had used for his benefit, and in his business and interest, although the agent was not authorized to do these specific acts. The public can have no relief in such a case, and it is the public which is most concerned, but by the invalidation of everything which has been wrongfully accomplished by such means.

The agency which I must determine to exist or not is this: Did the candidate authorize the person whose conduct is impugned to act in his behalf? Or, did the candidate to some extent put himself in the other's hands, or make common cause with him in the election, and for the purpose of promoting it? And the means by which I must determine it, are by the evidence which was given before me tested by the rules and instances so copiously given in the different election reports, and sufficiently referred to in the cases which I have before mentioned.

The person said to have been the petitioner's agent is William Peters. It is better I should consider and dispose of this part of the case before determining whether the act charged against Peters was an act done corruptly or not, because that matter would possibly require more con-

sideration than the one of agency; and if it should appear there was no agency, it will become unnecessary to consider the nature of the act done by Peters in any way. As to the alleged agency, Peters said in effect, that he was an innkeeper on the Victoria Road, and kept the inn there before and at the time of the last election. There was a meeting at Ashby's house, in the township of Carden, before the election. It was Cameron's meeting. Witness thinks he was chairman of the meeting. He took Cameron's side at the election and at the meeting. He opened the meeting. He said Cameron was there canvassing for the election. Did not know who moved he should be chairman. He put up some notices in his house of that meeting, and he sent some by Ashby or by some of the neighbours. The notices were sent to witness to be distributed. Cameron put up at witness' inn several times when he was in that part. Cameron came from Ashby's meeting in witness' cutter, and put up at witness' inn that night. There was no understanding that witness should be at the meeting. He was at the place of polling on election day. He never asked a man that day to vote on one side or the other. The following is in his own words. "Two or three days before the election I asked Ashby if he was going to get up dinners for the voters. He said he was not. He had done it before, and people did not pay him, and he was a poor man and could not do it for nothing. I told him he had better get up the dinners on account of the voters having to come so far to vote, and no place for them to get dinner. He said he could not unless some one would guarantee to pay for it, that at a former time he had given dinner to about eighty and some one went round with a hat and gathered up \$1.50, and that was all he got. I told him if he would get up the dinners I would guarantee and see him paid for forty dinners. I asked what he would charge apiece, and he said twenty-five cents. I said I would give him twenty cents apiece. It was enough, as I had to pay it out of my own pocket. He would not agree to it for less than twenty-five cents. I told him to get up the dinners. I paid for the 40 dinners. * * * I spoke to Cameron about making such an arrangement before speaking to Ashby. He said he could not do it unless Maclellan and he agreed to do it; that he durst not do it; we could not interfere in it; that the law would not allow it. I said the law must be very strict if it would not allow a man to get his dinner. I asked him if it would hurt the election if I paid for the dinners out of my own pocket. He said he did not