

Elec. Case.]

LINCOLN ELECTION PETITION.

[Ontario.]

Larkin at Doyle's hotel, although Doyle undoubtedly was guilty of a violation of the 66th section of the Act of 1868, and thereby of a corrupt practice within the meaning of the 1st section of the Act of 1873, and is liable to be made amenable, under that section, to all consequences of having committed a corrupt practice."

The case was argued before the Court of Appeal by

C. Robinson, Q.C., and *James Bethune*, for the appellant (the respondent to the petition), and

J. A. Miller for the respondent (the petitioner).

DRAPER, C.J.—The only reason given for appeal in this case is as follows:—"That there was not sufficient evidence of corrupt practices having been committed by any agents of respondent, or by the respondent himself, or by and with his actual knowledge and consent, to warrant a judgment voiding the election herein." The judgment was that the respondent was not duly elected—that the election was void "by reason of corrupt practices committed by himself personally, and by reason of other corrupt practices committed by his agents with his knowledge and consent."

In the outset, I must say (speaking for myself only) that I entirely concur in the introductory observations to the judgment delivered, to the effect following: "The difficulty which I have experienced in evolving truth from the greater part of this mass of evidence has been great beyond what can well be conceived, arising from the fact that the manner in which many of the witnesses gave their evidence—who from their intimate connection with the respondent in his business relations, and in the connection with the canvass on his behalf, should reasonably be expected to be able to place matters in a clear light—has left an impression on my mind that their whole object was to suppress the truth."

Apart from the weight to which the opinion of the learned Judge is entitled, he having heard the whole evidence and having had the fullest opportunity to notice the demeanour of each witness—his manner of giving evidence, whether serious and considered or otherwise—and having myself repeatedly gone over it to compare the statements of the witnesses, I feel it my duty to say that I recognise the justice of the censure thus passed upon no inconsiderable portion of the testimony; and severe as the comment undoubtedly is which the learned Judge felt himself called upon to make in regard to the evidence of Mr. John W. King, I see

much reason for thinking that it was not uncalled for. One illustration of the want of correspondence between their verbal resolves and their actions may be given. On the afternoon or evening of Saturday the 16th January (the poll was to take place on Monday following), as one witness stated, "We spoke about spending money, but it was resolved not to. It was the subject of general conversation. Spending money was talked of the same as any other election matter, but there was no way of spending it, the law was so strict." On the Sunday evening (Mr. James Norris is the witness) some parties met at Mr. John W. King's house, at St. Catharines, Mr. King being the bookkeeper and confidential clerk of the respondent. Mr. Norris says, "There was a discussion that evening which could lead to the requirement of money. They spoke, I think, of money being used against them. The party said so. * * * The impression among us was that money was being used against us, and we spoke of using money to counteract it. We decided not to use any money." That same evening, at a late hour, Robert McMaugh and Hugh Hagan left St. Catharines. They drove to Clements', the postmaster, and with him went to several houses. The evidence as to the acts of some one or other of them is quite sufficient as against them to sustain the charge of bribing voters. Whether the evidence, on a consideration of the whole case, will bring the respondent within the scope of subs. 2 of sec. 3, of 36 Vict., c. 2, on the ground of corrupt practice committed by and with his actual knowledge and consent, is a question which will be more conveniently disposed of after other cases have been stated and remarked upon.

[The learned Chief Justice here referred at length to the Clements case, but thought that there was not sufficient evidence that the respondent did, or that King did on respondent's behalf, give or lend, or agree to give or lend, or offer or promise any money or valuable consideration, either to Clements or his wife, to induce him to vote for respondent.]

The case of treating during polling hours in a tavern in the town of Niagara, by giving spirituous liquors which were drank in the tavern, calls for an interpretation of the 66th sec. of the Act of Ontario 32 Vict., cap. 21.

That section is placed in a division of the statute headed "Keeping the peace and good order at elections," and is thus worded: "Every hotel, tavern and shop in which spirituous or fermented liquors or drinks are ordinarily sold,