

Elec. Case.]

REGINA EX REL. THOMPSON V. MEDCALF.

[Mun. Elec. Case.]

sworn in as agent; I was bringing in voters. Albert Ryall, Jas. Ainsly, Alexander Reed and Fin were present when McQueen proposed a drink. We went to Taylor's and sat in the sitting room. I don't know whether the inside bar door was open; we went to the private room. The reason I think the polls were not open is that it was early in the morning, and I had just come up town; I went to Lovelace's hotel in the middle of the day and had a drink; I and McQueen tossed for the treat; he lost, and we went in and had a drink. There were five or six of us. I was bringing up voters to the poll during the day. I know Stock well; I never asked him how he was going to vote. I took a pretty active part in the election ever since my brother came into the field; I used my own horse and cutter in bringing voters to the poll. I attended a meeting about the middle of the week before the nomination. I thought it well to form a little committee at Ruthven, and I spoke to several men about it. We formed ourselves into a little committee to work up the locality; I was chairman and Robert Shanks was secretary. We only met once; we went over the lists together and marked off the names. I did not canvass unless people came to the store. My father did not come down to see me. I reported to my father as to how I thought we would stand. I told him I was doing all I could. My father did not ask me to work; he knew I would work without being asked. I saw respondent twice during election, and told him I thought we could give him pretty good support. I told Dr. Allworth we would give pretty good support where we were. I appointed Harry Smith as scrutineer for respondent, and got him to act as such on the polling day.

Re-examined.—I had no authority from the respondent to form a committee; what I did was on my own responsibility. When McQueen and I drank nothing was said about election."

Alex. Cameron for the petitioner, claimed that the treating Alfred Wigle during the hours of polling avoided the election under section 66 of 32 Vict. cap. 21.

S. White and *C. R. Horne* for the respondent, *contra*.

The learned Chancellor took time to consider, and gave judgment in Toronto on July 13.

SPRAGGE, C. At the close of the argument on Saturday last, I gave my views upon the several points of law and of fact presented in the case. One point only I did not decide finally, viz: whether the partaking by Alfred Wigle, whom I find to be an agent of the respondent, of a treat given by James McQueen

during polling hours in Lovelace's tavern, was a corrupt act within the statute, which would avoid the election. I could see no escape from the conclusion that this act, prohibited by the 66th sec. of the act 32 Vict. cap. 21, and declared to be—being within polling hours—a corrupt act by 36 Vict. cap. 21, and being an act participated in by one for whose acts the respondent was responsible, must avoid the election.

I have since had an opportunity of conferring with three of the other judges, and they all concur in the view which I expressed at the conclusion of the argument. The result is that I must declare the election void, by reason of a corrupt practice by an agent.

As to costs, I think the petitioner is entitled to the general costs of the inquiry; but the costs have been greatly increased by the calling of witnesses to charges which the petitioners have failed to prove; and the costs, so far as they have been so increased, are to be disallowed. No costs to be taxed in respect to the evidence except such as have been incurred by proof of the fact upon which my judgment proceeds.

In the searching and protracted inquiry which has been had before me, I find no personal wrong proved against the respondent. The expenses of the election have been very moderate, and the evidence leads me to believe that the respondent desired and endeavoured that the election should be a pure one.

Election set aside.

COMMON LAW CHAMBERS.

MUNICIPAL ELECTION CASE.

REGINA EX REL. THOMPSON V. MEDCALF.

Municipal Election—Agency—Hiring teams.

The respondent on the polling day was invited by K., a supporter of his, to take a drive in his sleigh. When passing a cab-stand (after respondent had left the sleigh), K. called out to the cabmen, "Boys, follow me;" and some six of the cabs did so and were said to have been employed during the remainder of the day in taking voters to the poll. They never received anything, and respondent denied Kelly's agency, and disavowed any knowledge of his act.

Held, that there was not sufficient evidence of agency on the part of K. to affect respondent with his acts.

[Com. Law Cham.—MR. DALTON, June 8, 1875.]

Proceedings in the nature of *quo warranto* were commenced herein to evict Mr. Medcalf from his office as Mayor of Toronto. Various reasons were stated in the petition why he should be unseated, but after an examination of