

Elec. Case.]

SOUTH ONTARIO ELECTION PETITION.

[Ontario.]

the meaning of section 66, for reasons to which I shall refer presently. But it is broadly argued by the learned counsel for the respondent that, even assuming these persons to have been agents, there was no corrupt practice, because section 66 of the Act of 1868 is only intended to deal with the keepers of hotels, taverns and shops in which spirituous or fermented liquors are ordinarily sold, and to prohibit the selling or giving of liquor by persons answering that description. If that be the true interpretation of the section, it becomes immaterial to discuss the evidence of agency. On the other hand, it is contended by the counsel for the appellant that the section is divisible; that while the first part relates to keepers of taverns, &c., alone, the second extends to and renders penal the giving of liquor by any person to any person in the electoral division during polling day; and that consequently, if given by an agent of the candidate during the polling hours, the election is avoided by force of sections 1 and 3 of the Act of 1873 (36 Vict., cap. 2).

The words used are certainly of extreme generality. Read literally they are sufficient to support the appellant's contention. But there are numerous cases in which language quite as wide and terms quite as general have been restricted by a consideration of the previous state of the law, the express object of the statute, and other circumstances which the Courts have held fitting to be regarded in arriving at the intent of the Legislature. [The learned Judge here cited and reviewed the following authorities: *Hawkins v. Gathercole*, 6 D. McN. & G. 1; *Lord Auckland v. Westminster Local Board of Works*, L. R., 7 Chy., 597; *Sedgwick on Statutory and Constitutional Law*, 234.]

These references are authority sufficient, not only for the proposition that we should regard the terms of the enactment for which section 66 was substituted, but that we should presume that the Legislature only intended to change the law to the extent that it has clearly and positively expressed. The 66th section of the statute of 1868 was substituted for the 81st section of the Consolidated Statutes of Canada, cap. 6. In each statute the section forms one of a group collected under the heading of "Keeping the peace and good order at elections." Some doubt has been expressed whether it is allowable to refer to this heading upon a question of the proper construction of one of the sections coming under it. It seems to me that it can be taken into account for the purpose of determining the immediate and special object which the Legislature had in view while passing

these sections, and there is no doubt that the nature of this object may have an important bearing upon the interpretation to be given to language of a general character. In *Bryan v. Child*, 5 Ex. 368, Pollock, C.B., refers to the mode then "recently introduced in statutes, namely, by having certain clauses connected by a sort of preamble to each separate class of clauses, which preamble may really operate as part of the statute;" and he decides that such preamble must be read in order to ascertain the meaning of the Legislature. The so-called preamble was this: "And with respect to transactions with the bankrupt, &c., be it enacted." Our statute may fairly be read as if expressed thus: "For the purpose of keeping the peace and good order at elections, be it enacted," &c. In *Robinson v. Collingwood*, 17 C. B., N.S. 777, the word "trusts" used without any limitation in a statute was construed in the light of the preamble to mean "trusts in favour of the grantor."

It appears, then, that the object which the Legislature had in view when it passed the sections in the Consolidated Statute was the maintenance of peace and good order; and that the object was still the same when the corresponding sections of the statute of 1868 were enacted. According to the principles of construction to which I have referred, we ought not to assume that the Legislature, which, in the associate clauses was re-enacting the former statute, contemplated such a wide extension of the law, as is contended for by the appellant, unless it has used language clearly expressing that purpose. How wide that extension would be is manifest from an examination of the 81st section. There is no room for doubt as to the description of persons who were affected by its provisions. It enacts that every hotel shall be closed, and no spirituous or fermented liquors shall be sold or given during the said period, under a penalty of \$100 against the keeper thereof if he neglects to close it, and under a like penalty if he sells or gives liquor. This language is free from all ambiguity. The persons subjected to a penalty for giving or selling liquor are the keepers of the houses directed to be kept closed. In the statute of 1868 the phraseology is—except in some particulars immaterial to the present argument—precisely the same until the part relating to the penalty is reached. The injunction to keep closed and the prohibition against such a gift are expressed in the same terms in both statutes. If, then, the later statute, passed with the same object as the earlier, and coinciding with it in the correa-