

Q. B.] IN RE ELECTION FOR TOWN OF BROCKVILLE AND TP. ELIZABETHTOWN. [Q. B.]

for such carriage, but M. thought it was in payment for work which he had done for P. as carter. The candidate knew nothing of the matter.

Held, that there was properly no payment by P. to M. for any purpose, the money being given for one purpose and received for another; but that if there had been it was made after P.'s agency had ceased, and there was no previous hiring or promise to pay, to which it could relate back.

If such payment had been established as a corrupt practice, it would have avoided P.'s vote, but not M.'s; and it would not have defeated the election, for it was not found to have been committed with the knowledge or consent of the candidate, but the contrary.

Quære, whether, under 34 Vict., ch. 3, sec. 20, the Judge has power, before the close of the case, to reserve questions for the Court.

This was a case stated under the Controverted Elections Act of 1871, as follows:—

CASE.

IN THE QUEEN'S BENCH.

Controverted Elections Act of 1871.

Election for the town of Brockville, with the Township of Elizabethtown thereto attached, holden on the fourteenth and twenty-first days of March, A.D. 1871.

Court for the trial of an Election Petition for the town of Brockville, with the Township of Elizabethtown thereto attached, between Samuel Flint, *Petitioner*, and William Fitzsimmons, *Respondent*.

At the above court, holden on the 26th, 27th, 28th, 29th, and 30th days of June, and on the 5th and 6th days of July, A.D. 1871, before me, the Honourable John Hawkins Hagarty, Chief Justice of the Court of Common Pleas, and one of the judges on the rota for the trial of election petitions, the above-named petitioner charged by his petition that the said respondent was not duly elected or returned, and that the said election was void, by reason that the said respondent and his agents, with a view of promoting the election of the said respondent, caused certain hotels, taverns, and shops, in which spirituous or fermented liquor or drinks were, at the time of the said election, ordinarily sold, to be opened and kept open on the day of polling votes at said election, in the wards and municipalities in which said polls were held, and caused spirituous and fermented liquors and drinks to be sold and given to divers persons within the limits of the said town of Brockville and the township of Elizabethtown during the day of polling votes at the said election; and hired certain horses and vehicles, and promised to pay for certain other horses and vehicles, and did pay for the same, to convey voters to, or near, or from the polls or polling places, or the neighbourhood thereof, at the said election; and also by reason that divers persons who were guilty of the above practices voted at the said election for the said respondent. And the said petitioner by the said petition prayed the said seat, or a scrutiny, and that on such scrutiny the votes of the said persons who were guilty of the above corrupt practices should be struck off the poll.

Upon consideration of the evidence adduced on behalf of the petitioner as to the said charges, I find as follows:—

1. As to George Houston. I find that George Houston, one of respondent's voters, was a saloon-keeper in Brockville: that on the polling

day his saloon was closed and locked: that up stairs, in a room in his private residence, he had beer and whiskey on a table: that many of his friends, perhaps to the number of twenty to thirty, were that day, at different times, up in this room, and had liquor: that no pay was taken or expected, nor any charge made for this: he told any of his friends who were in the habit of coming to his saloon that they could have a drink up stairs: that friends of both candidates were there on his invitation, and some not voters: that he was under the impression that so giving this liquor was not violating the law: that this was not done to influence any vote or voter by means of liquor: that it was not done in the interest of either candidate, nor to produce any effect in the election or its result: and that the respondent did not know of or sanction these proceedings.

2. As to Samuel Burns. I find that Samuel Burns had no license to sell liquors: that he voted for respondent: that he sold liquor to all persons that asked and paid for it on the polling day, at a place near one of the polls in the township: that he sold to persons, voters and others, without reference to their side or politics: that this was not done in the interest of either candidate, or to affect the election or its result, but simply for the sake of gain; and that the respondent did not know of or sanction these proceedings.

3. As to the charge of conveying voters to poll. I find that William McKay, a carter in Brockville, and a voter for respondent, did, at the request of Thomas Price, an agent of respondent, carry an old man named Paul, a voter for respondent, a distance of five or six miles to the polling place: that McKay was aware on the polling day that it was illegal to carry voters for hire, and had expressed his willingness to carry voluntarily and free of charge, being anxious to help the respondent: that when Paul was spoken of, Price asked McKay could he McKay, not carry him to the poll, and McKay said he would do so without charge, and that no hiring or payment was then contemplated between them: that some days after the election Price gave McKay \$2, considering that McKay was a poor man, and that he ought to give him something, and paid him the money intending it as a compensation for so carrying the voter: that McKay did not receive it as such, but received it thinking it was in payment for some work he had done for Price as a carter in his ordinary business, and that there was an account between them for work in or about the amount of that sum: that when the \$2 were paid, nothing was said about carrying the voter: that the respondent knew nothing of this matter, and never authorized or sanctioned it.

The opinion of the Court of Queen's Bench is requested:

1st. What is the legal effect of the payment by Price, an agent for respondent, to McKay, as found by me: whether it was a "corrupt practice," and, if so, did it avoid the vote of Price or McKay, or of both, as voters for respondent, or does it avoid the respondent's election?

2nd. Whether the giving or selling of liquors, as found by me, in such cases as Houston or