

Elec. Case.]

LINCOLN ELECTION PETITION.

[Ontario.]

the election, as the 46th section of the act of 1871 had done; it simply annexes to the avoidance of the election, which the first sub-section regulates and declares, disqualification if the act avoiding the election (which can only be the act of the candidate or his agent) be done with his knowledge and consent; the whole section taken together enacting that any corrupt practice committed by a candidate at an election, or by his agent, shall avoid the election whether done with or without his knowledge, which words can only refer to the acts of the agent, but if done by himself personally 'or with his knowledge or consent,' (which words must also be held here to refer to the act of the agent, to be consistent throughout, for no other act but that of the candidate or his agent avoids the election), disqualification also shall ensue in addition to the avoidance.

"Now the avoidance of a candidate's election being confined to the acts of himself or his agents, what are the acts of an agent within the meaning of these words in the section, 'committed by any candidate at an election, or by his agent?' The first section of the Act of 1873 adds to the category of corrupt practices the violation of the 66th section of the Act of 1868. This violation can, in my judgment, be committed only, as I have said, by the keeper of the hotel, tavern, or shop where spirituous liquors or drinks are ordinarily sold, but such violation of the section may be committed by a person who is an agent of the candidate, in such a manner as to have no reference whatever to the promotion of the purpose for which the agency was created—in such a manner as in no possible way to be capable of having any effect whatever on the election; as, for example, where a candidate and a friend find it absolutely necessary to take the refreshment of dinner at a hotel, and at the dinner partake of their usual reasonable quantity of beer or wine—it may be one or two glasses, supplied by the hotel-keeper as part of the dinner—can it be that the Legislature contemplated not only avoiding a candidate's election, but also of disqualifying him for eight years, because (admitting, for the sake of argument, the hotel-keeper, within the rigid terms of the 66th section, to have been guilty of its violation) the candidate partook of the refreshments so supplied, or paid for what was supplied to his friend, and was, so far as such act could make him, a consenting party to the violation of the act by the hotel-keeper. The 66th section does not say that any person consenting to a hotel-keeper or other person violating the 66th section shall himself be guilty

of a violation of it. I must say that, to my mind, it would be contrary to the plainest principles of common sense and justice, to attribute such an intent to the Legislature, or to put such a construction upon the act. Such a construction would have the effect, in my judgment, of enacting laws of the most penal character by judicial decision—not by Legislative declaration clearly expressed, without which latter sanction, plainly expressed, no penal consequences of any description—much less of the character of those penalties here referred to—can be imposed. Every Act of Parliament should be so construed as to be consistent with common sense and justice, and not so as to do violence to common sense and to work injustice.

"The sensible construction then of the 8rd section of the Act of 1873, which declares the election to be avoided by the corrupt act of the candidate's agent, seems to me to be to confine its operation to such acts as are done by the agent—I do not say within the scope of, but in the course of or exercise of the agency, and in the pursuit of the object of the agency—acts done as specified in the 6th section of the Act of 1868, directly or indirectly by the candidate himself—some act done with a view to promoting in some way the objects of the principal, and not to extend to acts in which the principal is in no way concerned, and which are done not with any view to his interests, or to the object of the agency. Such acts are, it is true, the acts of the person who is agent, but they are not the acts of the agent *qua* agent. In some cases a question may sometimes arise whether or not the act of the agent, which is relied upon as avoiding the election, was done by him *qua* agent, that is to say, in the pursuit of the object of the agency, and with a view to the interests of the principal; in such cases justice will be done, and the purity of election secured, by determining the point in doubt in favour of avoidance, but if, beyond all question, the act complained of is not done in pursuit of the object of the agency, in view of the interest, actual or supposed, of the candidate, or in any way in relation to the election, but solely for the purpose, interest, or gratification of the person who is agent, and is not corrupt otherwise than as it is prohibited and made so by the statute, such an act, not being done by the agent *qua* agent, is not an act which can, in my opinion, be within the meaning of the 8rd section of the Act of 1873.

"I am of opinion, therefore, for all of the above reasons, that the respondent's election cannot be avoided for the treat referred to as given by