

CANADA REPORTS.

ONTARIO.

ELECTION CASES.

COUNTY OF GREY (SOUTH RIDING) ELECTION PETITION.

HUNTER, *Petitioner*, v. LAUDER, *Respondent*.*(Reported for the Canada Law Journal by C. A. BROUGH, Barrister-at-Law.)***Controverted Elections Acts—Adjournment—Power of judge to change place of hearing—Evidence of bribery—Responsibility for acts of agents and sub-agents—Payment of expenses of voter—Treating—Destroying election accounts.**

When a rule of Court has been granted in pursuance of 34 Vic., cap. 3, sec. 14, appointing a place for the trial, not within the Division, the election for which is in question, the judge by whom the petition is being tried has no power to adjourn, for the further hearing of the cause, from the place named in the Rule of Court to a place within such division.

Where a charge of bribery is only the unaccepted offer of a bribe, the evidence must be more exact than that required to prove a bribe actually given or accepted.

The Respondent entrusted about \$700 to an agent for election purposes without having supervised the expenditure. *Held:* that this did not make him personally a party within 34 Vic. cap. 3, sec. 46, to every illegal application of the money by the agent, or by those who received money from him. But if a very excessive sum had been so entrusted to the agent, the argument of a corrupt purpose might have been reasonable.

When a candidate puts money into the hands of his agent, and exercises no supervision over the way in which the agent is spending that money, but accredits and trusts him, and leaves him the power of spending the money although he may have given directions that none of the money should be improperly spent, there is such an agency established that the candidate is liable to the fullest extent, not only for what that agent may do, but also for what all the people whom that agent employs may do.

The payment of a voter's expenses in going to the poll is illegal, as such, even though the payment may not have been intended as a bribe.

The distribution of liquor on the polling day, with the object of promoting the election of a candidate, will make his election void.

When all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct.

Where bribery by an agent is proved, costs follow the event, even though personal charges made against the respondent have not been proved, there having been no additional expense occasioned to the respondent by such personal charges.

[Owen Sound—Sept. 12, 13, 14, and Nov. 7, 8, 1871—*Mowat, P. C.*]

The petition in this case was presented by Alexander Hunter, a voter at the election, against the return of Abraham William Lauder.

By virtue of a rule of the Court of Queen's Bench, the case came on for hearing at Owen Sound, a place not within the electoral division, in September, but owing to the absence of a material witness was adjourned until November. Upon the adjournment the question was raised whether the presiding judge could adjourn from Owen Sound to a place within the electoral division, for the further hearing of the case. But the learned Vice-Chancellor decided that he had no power to grant such an adjournment, as by so doing he would in effect override a rule of court.

It was alleged in the petition (amongst other things) that corrupt practices within the meaning of section 46 of "The Controverted Elections Act of 1871," 34 Vic. cap. 3, had been com-

mitted by and with the knowledge and consent of the respondent himself, and also by his agents.

The corrupt practices with which Mr. Lauder, the respondent, was personally charged, were direct offers of bribes, and treating meetings of electors.

The offers of bribes were said to have been made to one Alexander McKechnie and one James Black, who were examined as witnesses. The evidence of both was contradicted by Mr. Lauder on his own oath. McKechnie had actively supported the respondent at the previous election for the riding, and Mr. Lauder seemed to have expected a like support from him at the election now in question. In this expectation Mr. Lauder (according to McKechnie's evidence) asked him to "come into our committee to-night," and added, "we'll furnish you with plenty of means." McKechnie did not go to the committee, and did not give Mr. Lauder his support. He deposed that he considered Mr. Lauder's observation "in the light of bribing" him.

James Black deposed that he had heard that Mr. Lauder had a large sum of money to spend on the election; that he applied to Mr. Lauder for some of it; that he offered to work, if paid; and that he (the witness) said that money would "do good" in his section; but he also deposed that Mr. Lauder would not give him any money; said it would be illegal to do so, and made him no offer. The witness added that Mr. Lauder told him to "go to Perry." He stated that he did go to Mr. Perry, and that Mr. Perry said he had no money. And it further appeared that the witness in fact got no money either from Mr. Lauder or from Mr. Perry, and that he in consequence voted for Mr. McFayden, the opposing candidate.

As to the treating, it was proved that on various occasions Mr. Lauder expressly forbade all treating, as well as everything else of an illegal kind being done to promote his election. But it appeared that on the nomination day, at a meeting held after the nomination, in the Orange Hall in the village of Durham, refreshments were brought into the room by one Woodland, and were partaken of by the persons present. Mr. Lauder deposed that he knew nothing of these refreshments before they were brought in; that he told the parties bringing them in to be careful, and that they might be "coming too near the law." He further deposed that he did not pay for these refreshments, and that no account for them had been rendered to him. There was no evidence to the contrary of what Mr. Lauder thus deposed. There was, however, evidence that he did pay for refreshments provided for various committees at their business meetings. The central committee at Durham consisted of about nine persons; the local committees did not seem to have respectively comprised so many. There was evidence, also, that on some other occasions there was a general treating of electors at the close of public meetings of electors, which Mr. Lauder had been addressing, and while he was in the house where the treating took place. There was no other evidence of knowledge or consent. One Thomas Smith swore that after a meeting held at a tavern in Egremont, which meeting had been addressed by Mr. Lauder, he had given a treat for which he paid \$5; that some time after the