

Elec. Case.]

SOUTH ESSEX ELECTION PETITION.

[Ontario.]

out a special Act constituting the act of receiving a distinct offence. Then again, it is said that the person who procures an act to be done by another is himself a principal and so liable. That, no doubt, is a rule of law and a very good one in its place, but it is not of universal application. A man who procures another to sell his farm and to lend him the money, is not himself the vendor, nor is the rule of universal application in the case of crime. A man who procures another to commit bigamy is not himself guilty of bigamy.

These and like suggestions are all lost in the consideration that it is impossible for a judge to pronounce that to be criminal or penal which, without an Act of Parliament, is neither the one nor the other, unless he has the authority of the Legislature unqualifiedly conveyed in express terms for doing so. He cannot proceed upon a suggestion of constructive guilt. This seems to afford a complete answer to the point, in so far as the respondent is concerned. In so far as Mr. Paterson as a giver is affected, I shall content myself at present with saying that I do not think the statute authorises two penalties in the case, and therefore for this act of treating I shall not report him as guilty of a corrupt practice within the Act. Whether or not the Legislature contemplated, when passing the 66th section, to impose a penalty upon the tavern-keeper for such a single act as is proved here may perhaps be open to doubt; but as he comes within the express terms of the section, even though we should read the second branch as dependent upon and connected with the first, I feel compelled to report him as guilty.

The result is, that I adjudge, declare and determine, that the said Thomas Scott, the above respondent, was duly elected as member of the North Riding of Grey, and that the petition against his return be and is hereby dismissed with costs, to be paid by the petitioner to the respondent; and I shall have to report as guilty of a violation of the 61st section of the Act of 1868, the following persons, viz.: Dr. Duncan McGregor, George Wright, John Hill and Edmund Haynes. Some evidence was also given against one Mutton, but as he was not called himself, and his first name did not appear in the evidence, I am unable to report him. I shall have also to report Thomas Spiers as guilty of a violation of the 66th section of the same Act.

*Petition dismissed.**

SOUTH ESSEX ELECTION PETITION.

SAMUEL MCGEE, *Petitioner*, v. LEWIS WIGLE, *Respondent*.

32 Vict. cap. 21, sec. 68, Ont.—36 Vict. cap. 2, sec. 1
—*Treating during hours of polling—Agency.*

Held, that, if an agent partakes of a treat during the hours of polling, the election is thereby avoided.

[Sandwich, July 6-10, and Toronto, July 13, 1875.
SPRAGGE, C.]

The petition was in the usual form. The case was tried at Sandwich, before the Chancellor of Ontario.

The only point that need here be referred to came up on the evidence of one James McQueen, who stated as follows: "I know Alfred Wigle, brother of respondent, and I know the respondent. Saw the respondent at the hall and on the street between nomination and polling days, and at a meeting he was holding. Had a conversation with him. He asked me if I could vote for him. Told him I did not know that I would vote for any one. He told me I might throw the party aside and come out and give him a vote. Saw Alfred Wigle at Lovelace's hotel while polling was going on. Saw drinking at both hotels. There was some drinking going on all day. Alfred Wigle treated at Taylor's and I treated at Lovelace's hotel. Went to Taylor's about nine a.m. about the time of the opening of the poll. Was told that the poll was open before we went into Taylor's. Think it must have been after nine a.m. when we went into the hotel. It was about this time Alfred Wigle treated. Myself, J. Ainslie and G. Ainslie, and one of the Ryall boys were there at the time. Went into the sitting-room adjoining the bar. Went in by the front door. The entrance to the bar was open part of the day. The front door of the bar-room was not open. The drinks came through the side-door leading from the bar-room into the sitting-room. No canvassing was done in the sitting-room. Went to Lovelace's about noon. No canvassing was done while at Lovelace's. Alfred Wigle proposed the first treat. Think he knew I was not going to vote for respondent."

Alfred Wigle stated: "I heard McQueen's evidence. I saw him on polling day. I treated him on polling day. It was pretty early; I don't know whether it was before or after the polling hours; it was pretty early, and before the opening of the poll, I think.

Cross-examined.—I was not agent of my brother at the poll; I did not act as scrutineer for respondent; I did not come and ask to be

See the next case and the decision of Draper, C. J., *E. & A.*, in the *North Wentworth case*, ante p. 196.—*Edw. L. J.*