

Elec. Case.]

SOUTH ONTARIO ELECTION PETITION.

[Ontario.]

We should have to impute to the Legislature the intention to convey by the one expression two separate mandates, one of which presupposes disobedience to the other. As far as it affects the tavern-keeper, the enactment is that he is neither to open his house nor to sell or give liquor on the polling day. If he obeys this command, no other person can possibly give, on that day, any of the tavern-keeper's liquors. He is to retain his whole stock safely in his own possession. It would seem a faulty rule of construction on which we should hold that the Legislature, in contemplation of the tavern-keeper disobeying the law by parting with liquor, meant to provide against such disobedience by the further command that if he did so disobey, the recipient of the liquor must not give it away again under a penalty, and particularly as no penalty is attached to the act of receiving it. If such an intention existed it should and doubtless would have been somewhat more clearly expressed.

The only other case in which it can be suggested that *giving* at a tavern, &c., is the act intended, is the case of persons bringing liquor from elsewhere to the tavern and giving it away. This is too remote a possibility to require more than a bare mention, and no good reason can be suggested why a giving of that nature should not be an offence wherever committed, as well as when committed in a tavern or place where liquor is ordinarily sold. In my view, therefore, the agents, Thomas, Clarke and Gibbs did not violate sec. 66 by treating at taverns on the polling day.

The same remark applies to a personal charge against the candidate for treating at Ray's tavern, which seems to have been urged below, but which was not renewed before us as one of the grounds of appeal.

It is not necessary for the disposal of the case to dispose of the other questions discussed in the judgment before us, but on two of those questions it is proper that we should express our opinion.

[His Lordship then referred to the agency of Thomas, and agreed with the later opinion of Mr. Justice Wilson, that he was an agent. He then proceeded.]

The other question relates to sec. 66 of the Act of 1868. One Clarke, an agent of the candidate, had treated one Jordan, a voter, whose polling place was in Whitby, at a tavern in Oshawa, during the hours of polling. The learned Judge held that this was not an illegal act within sec. 66, "because the liquor was not given by Clarke to Jordan within the limits of

the municipality where the poll of the town of Whitby was held."

I think this is a mistaken view of the section, and that the mistake has arisen from regarding the prohibition as aimed at the treating of voters; and with that idea, reading the words "municipalities in which the polls are held" as meaning the municipalities in which are held the polls at which the voters who are treated are entitled to vote. I think it is quite plain not only that the object of the enactment, viz: "To preserve peace and good order at elections," would be very inefficiently attained if open house might be kept for all who were not voters of the particular ward or municipality, but that nothing in the section points to that construction. An election is proceeding for the riding; Whitby and Oshawa are two separate municipalities in the riding, and in each a poll is held during the same hours. A tavern-keeper who sells or gives liquor in either municipality is plainly violating sec. 66, whether he gives it to voters of that municipality or to voters of the other municipality, or to persons who are not voters. The prohibition is against selling or giving within the limits of a municipality in which a poll is being held, without any regard to the persons to whom the liquor is sold or given. The decision in Clarke's case is, therefore, upheld—not upon the ground on which the learned Judge rested it—but upon the other ground which I have discussed, viz: that the corrupt act was committed, not by Clarke, but by the person who sold him the liquor.

The appeal should be dismissed with costs.

Moss, J.—[After referring to the charge in the first ground of appeal, and holding that it could not be amended, or the appeal in relation thereto heard].

The learned Judge below, upon a review of the evidence and an examination of the authorities, held, although with much hesitation, that neither Thomas nor Gibbs was an agent by whose treating in taverns the respondent could be affected; but he was manifestly of opinion that if the agency had been established their conduct in giving treats, although not shown to be for the purpose of influencing votes, would have avoided the election. On further consideration he seems to have inclined to the view that agency had been established in the case of Thomas; and I must say that that appears to me to be the proper conclusion from the evidence. In the case of Clarke he decided that agency had been proved, but he thought that his treating was not a corrupt practice within