

## Election Case.]

## STORMONT ELECTION PETITION.

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I cannot tell what he got in any one year. He was to have a liberal allowance, having charge of the mill—more than most young men.

*Cross-examined.*—It is a grist mill, with three run of stones; he has no wages; he runs this mill jointly with me, and has done so for four years. I could not put him out of the mill as I thought proper. I have had no settlement with my son as to our transactions. He will be 28 next birthday. I thought him entitled to a good liberal allowance—once or twice I thought he drew more than required for the business we were doing just then. Sometimes the profit was very small. He is a miller—understands the trade. I presume there would be some trouble in putting him out of the mill—some time to give him notice. The understanding between us was, when he returned from the West, if he would stay, he would have a good liberal allowance for his work. There was a man employed about the mill at so much a month; he was paid in cash; Robert hired him; he took what he chose; sometimes I presume what he took was more than sufficient for his ordinary expenses. The share he took would amount to more than £50 a year. He was differently situated from my other sons. He did all the collecting of the debts; is still there on the same terms. Before he took charge this was rated in my name. Immediately after he came there we made the arrangement; there was a change. I think he sent the money for the taxes. I know I did not. I am not there a great deal; he is, and he attends to those things. He does not get \$300 in cash from the mill—not much less than \$200. He boards at home. I have a first-class miller at \$500 a year and the house, and they board themselves.

*Re-examined.*—I have bought some of his clothing since he came back. I did not charge him with it; sometimes he pays for it, sometimes not. I have paid for a good share of his clothing for the last four years. When he wants to go away from home, and the horses are there, he generally takes one. I am certain he took more than \$100 in cash in each year for the last year or two."

RICHARDS, C. J.—I think in this case the original agreement between the parties shows an intention to give the son something more than a mere gratuity such as the father might choose to allow him. The father says he told him if he would stay at home and take charge of the mill, he would give him a share of the profits; no specific share was agreed on, and the son took out of the proceeds what he thought right; the father sometimes thought it too much, but did not mention this to the son; did not close the business or the connection. I think here the son had something more than a sum of money out of the premises at the will of the father; he was entitled to a share; had an interest in the business, and, as such, while the business lasted, an interest in the land, and was at all events a partner in the profits, and might be considered as having an interest in the land. Bullock says, I understood we were to be partners in the milling business under this arrangement, and he was to have a fair proportion of the profits."

I therefore think this vote good.

*John Raney*, the voter called as to his own vote—"I voted in Stormont as the owner of the east half of twenty-five, in the third concession, Roxborough. My father owns it. I have no title or lease of it. I live on it. Have lived on it eighteen or twenty years. Father lives on it with me. We both live in the same house. I was married about two years ago. Father has told me he would give it to me. He has offered me a deed of half the lot. Mother is dead. I have a sister living. My sister managed the household until I was married. My father is about seventy. I always remained there with him. I thought he would give it to me. No writing between us. I have remained in the expectation of getting the whole when he dies.

*Cross-examined.*—My father is not able to work. We live together. He said he would give me a deed of half at any time and that the whole place was for me. My brother left five years since or more. He is younger than I. There are a hundred acres in the lot, thirty-five or forty acres cleared. I sell if I am there, he sells if he is there. I do pretty much all the business. When he sells grain he gets the money. I am relying on what he said to me in staying with him. It has been assessed to me eight or nine years. Sometimes my father and sometimes I myself give it in. Father pays if he is there when the assessor comes; and when I am there I pay. I keep the store account in my name and pay the necessities for the house. He directs the place to be assessed in my name. I don't know who is master of the house. We are both there. He built it. I consider I ought to obey his orders as a son ought to do towards his parent. I tell him what I do with regard to the business of the place. One of the horses I bought this winter I claim. My sister and sister's daughter claim most of the horned cattle. When I sell anything I consult him if he is there; if not there I sell and tell him. The cattle are assessed in my name—everything. My father when able gets about and sees to odd things about the house but can do no hard work. I consider it my duty to consult him about what I sell. If he was about to assist a neighbour and consulted me about it, I don't think I would be justified in objecting to his doing so. I consider him the owner of the place. Before I was married we were living together. I would give in he was boss of the house. My sister was also living there, and also a niece of mine seventeen or eighteen years of age."

*Harrison, Q.C.*, contended that the voter has a right to enforce specific performance of the agreement with his father, and cited *McDonald v. Rose*, 17 Grant.

RICHARDS, C. J.—This case has much in it to show a kind of occupancy distinct from the father, and if the father had received from him a certain share, or he himself a certain share, or there had been any agreement between them, either expressed or implied, that he should receive the profits of the place, and the father lived with him, it might have been different. But the case seems to me, to be really that of a man and some of his unmarried children, and grandchildren living together, *en famille*, the hard work being done by the younger branches who