

Elec. Case.]

NORTH VICTORIA ELECTION PETITION.

[Dominion.]

Carden poll at the election, and in taking to the same place a small quantity of whiskey for the use of the voters of the petitioner.

4. Whether, if William Peters was to be considered the agent of the petitioner, the acts of Peters were acts of treating, or bribery and corruption within the meaning of the statute. If Peters were the agent of the petitioner, and if the act of Peters as to the dinners was treating within the provisions of the statute, then such a number of votes must be taken from the poll of the petitioner that the sitting member would be left greatly in the majority, notwithstanding all other additions which the petitioner could make to his poll, and he would be entitled to retain his seat.

The following was the argument on the two last points :

*MacLennan*, Q.C. (the respondent).

The majority in my favour is said to be only three, and supposing that the result of the scrutiny is against me by a few votes, it is clear the election was wholly void, because as many as fifteen or sixteen persons who were duly qualified to vote, and who had endeavoured to vote, had been deprived of the power of voting, and had been prevented from voting by the omission of their names from the copies of the voters' lists furnished to the deputies. If these men had voted, the result might have been different. It could not be said how they would have voted, because until the ballot is marked a man may change his mind, and he may vote, and the ballot act is for the purpose of enabling him, if he think fit, to vote contrary to his expressed intention. The votes cannot now be added, and the result is the disfranchisement of a sufficient number of electors to turn the scale. To hold otherwise would be to put the election in the power of the Returning Officer or the Clerk of the Peace: See Wordsworth on Elections, 27; Heywood's Cases, 511.

Peters' act was illegal, and a misdemeanour under sections 87 and 90 of the Election Act, and was a corrupt practice which affected Mr. Cameron under section 94. There was no doubt as to the facts. Peters furnished dinners at the polling place for 40 electors at his own expense, and the only question was whether that had been done *corruptly*. The judges in England had decided that corruptly meant "with the motive or intention of affecting the election, not necessarily going as far as bribery": *Launston case*, 30 L. T. N. S., 831. No other motive could be imagined here. The time, the place, all the circumstances favoured the corrupt motive. Peters admitted that many

of the electors were strangers to him. He was an active partizan, had done all he could for Mr. Cameron in the election, was chairman of an election meeting called by Mr. Cameron at this very polling place, had spoken there, drove Mr. Cameron home to his hotel afterwards, and on the way discussed the propriety of those very dinners. The discussion was renewed on a subsequent occasion, when, on Mr. Cameron saying that he (Mr. Cameron) could be no party to it, Peters proposed to do it at his own expense. Mr. Cameron told him he could not prevent him, but did not want him to do it, and would rather he did not do it. All this clearly showed that both Mr. Cameron and Peters considered it a matter relating to the election, and the doing or not doing of which might affect it favourably or otherwise. On the election day Peters was on the ground early and distributed his dinner tickets through a friend who knew the electors. It is not only clear the motive was to affect the election, but it must have done so in fact. There were in all 112 voters polled there—49 for Cameron and 63 for MacLennan. It is plain that the distribution of these tickets must have tended to make Mr. Cameron popular, and to create a favourable impression towards him. Besides, Peters carried there several bottles of liquor which were consumed among the electors, and there is evidence of canvassing at least one voter over a glass of whiskey. The corrupt character of the act is therefore plain and the agency of Peters is equally clear. His presiding and speaking at the election meeting called by Mr. Cameron, and at which he was present, would alone be sufficient to establish the agency, *per Justice Keogh, Galway (County) case*, 2 O. & H. 54, 1872. But here there were other circumstances of the strongest kind, especially the repeated discussion with the candidate of the expediency and propriety of the very act complained of as an election move. It was in fact a counsel taken between them as to a means of promoting the election. The result of the decisions on the subject of agency is, that an agent is a person exerting himself in the election with the knowledge and approval of the candidate, and the result is that Peters was an agent for whose acts, to the extent of disqualifying him from taking the seat, Mr. Cameron was responsible.

The act of Mr. Peters has, however, another very important bearing under section 73; a vote must be taken from Mr. Cameron for every one of the party who got his dinner free of charge by means of the tickets issued by Peters. This section provides that one vote must be struck off