

Elec. Court.]

NORTH SIMCOE ELECTION PETITION.

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son who claims to be placed on the list of voters for any county, he shall expunge his name from the list, if it be on the list, or disallow his claim to be put on the list. These statutes contemplate the party being found guilty before the penalties attach. The decision of Mr. Justice Blackburn in the *Bewdly Case*, in 1 O'M. & H. 176, is to the same effect as the latest case referred to in the Common Pleas.

As to the alleged champerty, if the petitioner could not enforce the alleged bargain that the persons known as the Liberal-Conservative Association made with him as to paying costs, that does not establish the fact that this petitioner has not a right to present a petition. His right arises from his being an elector, duly qualified to vote at the election, not from any interest acquired by virtue of a champertous bargain. It may be doubted whether a proceeding of this kind is one to which the ordinary rules relating to champerty can apply.

One of the latest cases I have seen on the subject is *Hilton v. Woods*, L. R. 4 Equity 432. There the plaintiff was not aware that he was the owner of certain coal mines until a Mr. Wright informed him of it. An engagement was finally made between him and Wright, that in consideration that he would guarantee the plaintiff against any costs, Wright should have a portion of the value of the property. It was contended on the argument that the bill must be dismissed on the ground that the agreement entered into between the plaintiff and Mr. Wright amounted to champerty and maintenance, and was an illegal contract. Sir R. Malins, V.C., in giving judgment, said:—"I have carefully examined all the authorities which were referred to in support of the argument (as to dismissing the bill,) and they clearly establish that wherever the right of the plaintiff in respect of which he sues is derived under a title founded on champerty or maintenance his suit will on that account necessarily fail. But no authority was cited, nor have I met with any, which goes the length of deciding that when a plaintiff has an original and good title to property, he becomes disqualified to sue for it by having entered into an improper bargain with his solicitor as to the mode of remunerating him for his professional services or otherwise. * * * If Mr. Wright had been suing by virtue of a title derived under that contract, it would have been my duty to dismiss the bill. * * * In this case the plaintiff comes forward to assert his title to property which

was vested in him long before he entered into the improper bargain with Mr. Wright, and I cannot therefore hold him disqualified to sustain the suit." He refused to dismiss the bill.

Here the petitioner's right is not acquired by virtue of any bargain with the Liberal-Conservative Association, and by analogy to the above case, even even if the alleged bargain were champertous, which I am by no means inclined to think it was, that would be no reason for staying the proceedings on this petition. See also *Carr v. Tannahill et al.* 31 U. C. Q. B. 210.

We do not consider that the objection, as stated, to the petitioner's right to vote at the election, and his consequent inability to petition, arises under the 71st section of the Ontario Act, 32 Vic., cap. 21, or a similar provision, section 3 in the Corrupt Practices Act of Canada, passed in 1860.

It is said that the fact that a third person was to pay the expenses of the petition, and had in fact paid for the last petition, was not considered to be any impediment to the hearing: *Lyme-Regis Case* P. R. D. 37; *Wolferstan* 44, 14.

As to the last preliminary objection, that the petition was not signed by the petitioner *bona fide*, it is stated in *Wolferstan on Elections*, 44, that where fraud was proven against the petitioner the petition was not heard: *Canterbury Case*, Cliff. 361. Such, it is presumed, would also be the decision in the case of a petition proved to have been signed *mala fide* by some person on behalf of the real petitioners: See *Sligo Case*, F. & F. 546. But the fact that a third person was to pay the expenses was not considered an objection to the hearing: *Lyme-Regis Case*, 1 P. R. & D. 37. At page 14 of the same work it is stated that if fraud or other improper influence has been used in obtaining the subscription of names to a petition, such a petition doubtless would not be proceeded with.

The result is, that as to the first preliminary objection, that is triable before the Election Judge as a matter of fact. The second preliminary objection is disallowed, as also the fourth, with regard to champerty. As to the fifth, it is a matter of fact whether he is the petitioner or whether any fraud has been practised on him. The mere fact that it has been agreed between him and others that he shall proceed with the petition in his name, and that they will contribute towards paying the expenses, can be no objection to the petition as we understand the law.