

Elec. Court.]

NORTH VICTORIA ELECTION PETITION.

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and the candidate of the illegal and prohibited acts.

In the Act of 1860, the bribery is declared to be a misdemeanor, and the mode of recovering the penalty pointed out, but its effect on the status of the member and the voter is not declared.

Whilst the Controverted Election Act of 1873 defines what corrupt practices shall mean, and makes it necessary for the Judge, under certain circumstances, to report whether such practices have been proved to have been committed, and by whom committed, yet the statute does not declare the effect of such report. We are then left in these unprovided cases to the common law of Parliament.

The bribing of an elector was always punishable at common law, independent of the statute: Rogers on Elections, 10 Ed. 308, and Lord Mansfield's opinion expressed in *Rex v. Pitt*, 3 Burr. 1338.

In *Rex v. Vaughan*, 4 Burr. 500, Lord Mansfield said, "Wherever it is a crime to take it is a crime to give; they are reciprocal. And in many cases, especially in bribery at elections to Parliament, the attempt is a crime; it is complete on his side who offers it."

It therefore appears to be a crime in the giver as well as the receiver of the bribe, and both may be indicted.

In Bushby's Election Law, 4 Ed. 111, it is stated: "Now one consequence in Parliament of common law bribery, when committed by a duly qualified and successful candidate at an election, was to enable the House, and it exclusively, to annul his return, and that though only a single bribe was proved. All the votes so procured were void, and even after deducting them had he still a majority in his favor, the result was the same. See May's Parl. Prac. 7 Ed. 56."

This was intended not so much as a penalty, as to secure to constituents a free and incorrupt choice, seeing that a single purchased vote, brought home to the candidate, might well throw doubt on his whole majority.

It is said an elector who has administered is not disqualified at common law from voting afterwards at that or any other election: Bushby 114, and cases there cited.

The unauthorized bribes of third persons, who are not agents of the candidate, do not affect his return, though given in his interest, unless the majority depends on votes so obtained, or unless such bribes occasion general corruption: Bushby, 121.

It seems a strange state of the law that the person who bribes may be indicted for a crime and punished in that way, yet his vote may stand good, whilst the person bribed loses his vote and the candidate may lose his seat. It may be that this will be the result, because of the omissions in our statute law; but when the evidence in such a case is brought before me, and I am compelled to decide, I would give the question more consideration than I have been able as yet to bestow on it, before holding that the vote of the person giving the bribe would be held good.

In being called on as we now are, without any evidence before us, to decide certain questions which may affect the qualification of voters or the standing of candidates, and which in truth can only apply to a limited number of cases, (the law, both in the Dominion and the Province of Ontario, differing now from the statute under which we are acting), the language of Willes, J., in *Stevens v. Tillet*, L. R. 6 C. P. 166, seems to me peculiarly applicable. He says: "The order in this case to strike out the clauses in the petition which were objected to must therefore be sustained, if it be sustained, upon showing that leaving those clauses in the petition could not have any effectual end in the disposal of the prayer thereof, whatever might be the character of the evidence which was produced before the Judge at the trial. The true question, as it appears to me, upon this occasion, is whether in any reasonably conceivable state of the evidence a case might be made out, upon the trial of this petition before the Judge in the regular and ordinary way, which would make it the duty of the Judge to grant the prayer of the petition."

We do not feel warranted, in this stage of the proceedings, in striking out that portion of the fourth paragraph of the petition which relates to the votes of persons who were guilty of bribery, treating or undue influence.

Under the Dominion statute, 36 Vict., cap. 27, sec. 2, the laws in force in the several Provinces of Canada, Nova Scotia, and New Brunswick, on 1st July, 1867, relative to the qualifications &c. of members, the voters at elections of such members, the oaths to be taken by voters * * * and generally the proceedings at and incident to such elections, shall, as provided by the British North America Act of 1867, continue to apply respectively to elections of members to serve in the House of Commons for the Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick, subject to exceptions and provisions thereafter made.