

Election Case.] WEST TORONTO ELECTION—(ARMSTRONG V. CROOKS.) [Election Case.]

after the day on which such return has been so brought into the office of the Clerk in Chancery," &c. The preceding statute had provided for the returning officer making an indenture with the electors as to the return, and section 70 provided for his transmitting the original poll-books with the writ of election and his return to the Clerk of the Crown in Chancery. I cite this as merely illustrative of the meaning Parliament has placed upon somewhat ambiguous words. My opinion on this point is against the respondent.

It is next objected that the petitioners have no right to exclude Good Friday and Easter Monday from the twenty-one days. Section 52 of our late act says, "In reckoning time for the purposes of this act, Sunday and any day set apart by any act of the Legislature of Ontario for a public holiday, fast or thanksgiving, shall be excluded." The respondent contends that the Legislature has never in fact set apart any day for a public holiday. This is true in terms; there has been no specific setting apart of any such day. But the petitioners rely on the Ontario Interpretation Act, 31 Vic. cap. 1. Section 7 says, "Subject to the limitations in the 6th section (which provides that 'unless it be otherwise provided, or there be something in the context or other provisions thereof indicating a different meaning or calling for a different construction,' &c.), in every act of the Legislature of Ontario to which this section applies, * * * (13thly,) the word 'holiday' shall include Sunday, New Year's Day, Good Friday, Easter Monday and Christmas Day, the days appointed for the birthdays of her Majesty and her Royal successors, and any day appointed by proclamation for a general fast or thanksgiving." Now, as it appears to me, the weight of respondent's objection is that our late act says "any day set apart by any act of the Legislature, &c., for a public holiday;" and that, as a matter of strict construction, the Legislature never has in terms set any day apart. Had the words been "Sunday and any public holiday, fast or thanksgiving," I do not think there could be any serious question but that the Interpretation Act would require us to read it so that the word "holiday" should include Good Friday, Easter Monday, &c. If respondent's contention be right, there can be no holiday in Ontario on this Election Act, unless and until an Act be passed expressly setting certain named days apart. We must of course read the two clauses together. It would then read in popular language thus, "Whenever we, the Legislature use the word 'holiday,' we declare that by that we mean Good Friday, Easter Monday, &c., and any further days appointed by proclamation. &c. Then we tell you in the Election Act, in reckoning time, not to include any day which we, the Legislature, set apart as a public holiday, fast or thanksgiving. We have already declared that by holiday it means these days in question."

It is to be noted that the "fast or thanksgiving" is not fixed or to be fixed by Act of the Legislature, it is by proclamation. So that by respondent's argument a proclaimed fast or thanksgiving could not be excluded from the reckoning, as it was not so set apart by any Act of the Legislature. But I consider the

"setting apart by Act of the Legislature" has in this cause been already defined in the case of a fast or thanksgiving, where it shall be proclaimed as such. I think in the same manner the words "public holiday set apart by Act of the Legislature" is answered. The joint effect of the two clauses read together is that when the word "holiday" is used, it includes these two days as being set apart by Act of the Legislature.

I observe in the Election Act of 1868-9 the word "holiday" does not occur, but section 30 declares that the day of polling shall not be a Sunday, New Year's Day, Good Friday, Christmas Day, First of July or Birthday of the Sovereign. In the Interpretation Act of Canada, 22 Vic. ch. 5 sec. 12 defines what the words "holiday" shall include—Sunday, New Year's Day, Epiphany, Annunciation, Good Friday, &c., omitting Easter Monday and any day appointed by proclamation, &c. In the Dominion Interpretation Act, 31 Vic. ch. 1 sec. 15, it says the word "holiday" shall include Sunday, Good Friday, &c., &c., Easter Monday and any day appointed by proclamation. It should be observed that in these interpretation Acts the word is "holiday," not "public holiday." I do not consider the respondent has succeeded in making any valid distinction between the words for the purposes of this application.

I decide against the objections. I think, in so doing, I obey the directions of our Interpretation Act in giving the words before me, "such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act, and of such provision or enactment according to their true intent, meaning, and spirit."

The remaining questions are as to amending the petition by striking out the allegations of "treating" or otherwise so as to state any offence contrary to the statute. The petition is drawn in the widest and vaguest terms. It charges simply "bribery, treating and undue influence." This general form seems sanctioned by the English Practice (See *Beal v. Smith*, L. R. 4, C. P. 145), where the allegations seemed precisely similar. Bovill, C.J., in giving judgment, says:—"It seems to me that it sufficiently follows the spirit and intention of the rules, and no injustice can be done by its generality, because ample provision is made by the rules to prevent respondents being surprised or deprived of an opportunity of a fair trial by an order for such particulars as the Judge may deem reasonable."

Our statute does not specifically prohibit "treating" by name, and certain provisions in the English Acts as to giving meat or drink to individuals are omitted. Our statute, section 61, prohibits the furnishing of entertainment to any meeting of electors assembled for the purpose of promoting such elections, or pay for, procure or engage to pay for, any such entertainment, except at a persons residence. Now, I do not feel at liberty to insist in an alteration in the form of the petition, as possibly under the general term of "treating" some matter may be gone into, coming within our law.

*Summons discharged.**

* From the above judgment the respondent appealed to the Court of Queen's Bench, but the decision was upheld.—Eds. L. J.