

Elec. Case.]

CORNWALL ELECTION PETITION.

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Common Law of Parliament does not apply to elections to the House of Commons, can not, in my opinion, be supported. It would be more accurate to refer to this law as the Common Law of England relating to Parliamentary elections, and in the absence of any expressed intention to the contrary, it must be held to come within the Provincial enactments introducing generally the Common Law of England. *Reg. v. Gamble & Boulton*, 9 U. C. Q. B. 546, is an authority in support of this view.

The law of agency as regards Parliamentary elections is not the ordinary law of agency, but a special law. The usual rule is, that where an agent acts contrary to his instructions, the principal is not bound; but in Parliamentary agency it is different, for there the principal is liable for all acts of the agent whatsoever, even though they be done contrary to his express instructions. (His Lordship referred to the remarks of Blackburn, J., in the *Bewdley Case*, 1 O'M. & H. 16.)

As to the evidence of agency, mere canvassing of itself does not prove agency, but it tends to prove it. An act, however trifling in itself, may be evidence of agency,—and a number of acts, no one of which might in itself be conclusive evidence, may together amount to proof. It is hardly necessary to observe that an agent need not be a paid agent.

In this case Mr. D. B. Macleannan was an agent for whose acts the respondent was responsible. Mr. Macleannan was instrumental in overcoming the reluctance of the respondent to become a candidate. He acted with the respondent in various matters connected with the election; went to the factories at Cornwall with him; canvassed part of the town; went to the meetings at St. Andrews with the respondent; held meetings for the promotion of the election at his office, at which the respondent personally attended. It was a clear case of agency. Even two or three of these circumstances alone, perhaps even one, without the others, would establish agency clearly. There was no authority from the respondent to Macleannan to corrupt the constituency, but there was no necessity for this authority in order to render the respondent liable for corrupt acts done by Macleannan.

The entrusting of large sums of money, as has been done in some cases in England, is only one of the modes of appointing a chief agent, and is not essential to such appointment.

Henry Sandfield Macdonald must also be considered as an agent of the respondent. He canvassed the township with the approbation of

the respondent. He drove the respondent through the township and introduced him to voters, and he did not on these occasions accompany the respondent as a mere driver, for the respondent on two or three occasions waited for his convenience, showing that his personal attendance was considered desirable. He took so active a part in the election that he considered himself justified in calling the meetings at St. Andrews. At the first meeting he suggested to those present what should be done to further the election; at the second he examined the results of the canvass. The evidence of agency was very cogent.

I think the general authority given to D. B. Macleannan and H. Sandfield Macdonald empowered them to employ sub-agents, for whose acts the respondent would be liable in like manner as for their own acts.

Besides Mr. D. B. Macleannan and Mr. Henry Sandfield Macdonald, the sub-agents appointed by them, and those who were appointed canvassers at the meetings in St. Andrews and in town must also be considered agents for whom the respondent is answerable.

With reference to the first meeting at St. Andrews, it has been said that it was not regularly convened. Certainly there was less regularity and formality about its calling than is usual in such cases. But this regularity or formality is by no means necessary. If the meeting assembles, and has the sanction of the candidate, this is sufficient to render the candidate liable for its acts, and those of agents appointed by it. The object of the meetings at St. Andrews was to secure a canvass of the township, not merely to discuss election matters.

Where the number of those present at a meeting is very large, that is a reason why all present should not be considered as being appointed agents. It is clear in this case that the whole 150 or 200 present at the meeting were not appointed agents; certain of them only were requested to canvass their neighbourhoods, and, to use the words of a witness, "to interest themselves in the election." It is these persons alone who can be considered as agents. It is immaterial whether a committee be formally or informally appointed. It is sufficient if certain duties be assigned to its members and the candidate sanction this assignment of duties. Here the respondent drove out to the meetings with Mr. D. B. Macleannan, one of his chief agents. He was present during the meetings, and was there undoubtedly to further his own election. He cannot be considered as a mere spectator. Being present