

Elec. Case.]

MUSKOKA ELECTION PETITION.

[Ontario.]

whether he was elected or not, I am disposed to think that such a case might be brought within the operation of that section of the statute. For, although there was nothing addressed to any particular 100 or 500, and the persons to be selected could not then be known, yet the great number who were to be employed would afford and support a very strong ground for each person supposing that he might be one of so numerous a body; and in that way, although the offer or promise were not made to any specified body or number of persons, it was made to such a body and numbers that it operated practically in influencing a very great number of people, and raised just expectation that the promise so made would be or might be fulfilled to each in his own case. A promise to two to employ one, not naming which one, would, in my opinion, be within the act. A promise to one thousand to employ one of them, would, in my opinion, not be within the act. In this district there were at least 1400 voters polled. Those capable of being overseers, or who might probably look for or take the office, I only conjecture, perhaps there were several hundreds; and as the expenditure was not very large (I am not sure whether it was named or not), the number of overseers would not be very numerous. The data are not given to me to state them accurately; but I have no reason to believe that acting upon the rule which I have stated, the exact facts if I knew them, would establish a case, within the provision of the act, of an offer or promise of any kind respecting place or employment which could possibly be called an offer or promise having been made contrary to that enactment by the respondent. If it is a violation of the act, or of the common law of the Parliament of England, it must be by reason of its amounting to undue influence by the respondent.

"The 72nd section of the act defines what is undue influence under that act. 'Every person who shall directly or indirectly, by himself or by any other person on his behalf, make use of, or threaten to make use of any force, violence or restraint, or inflict or threaten the infliction by himself or by or through any other person of any injury, damage, harm or loss, or in any manner practise intimidation upon or against any person, in order to induce or compel such person to vote or refrain from voting, &c., shall be deemed to have committed the offence of undue influence, and shall incur a penalty of £200.'

"Can the case be brought within the terms just quoted of that section? If it can it must be by

the following words of the statute:—'Every person who shall directly or indirectly, &c., make use of, &c., any restraint, &c., or in any manner practise intimidation upon or against any person in order to induce or compel such person to vote or refrain from voting &c., shall be deemed to have committed the offence of undue influence.' The word *restrained* is used, it will be seen, in connection with *force or violence*, and so may be said to mean some physical restraint. But *menace* has been held not to be confined to indicating only bodily injury. . . . I think language may be addressed to a body of electors which, by a particular person, may constitute a restraint upon the free action of the electors.

"Now what I have to determine is, whether the language in question can be held to have been a *restraint* upon or against any person in order to induce or compel such person to vote or refrain from voting? or whether it can be said the respondent, by his language, in any manner practised intimidation upon or against any person for the like purposes, or whether it can be said to be an act or the exercise of undue influence recognised by the common law of the Parliament of England, within the meaning of the statute. Too much strictness must not be imposed upon election speeches. It is said 'a hustling's speech has become almost a proverb for insincerity.'—'Freeman's Federal Government,' p. 83. But that will not sanction anything being said without any check or restraint. I do not pretend to define the limit or subjects of a candidate's speech to electors. He will be quite sure to remember his own qualifications in some form or other, and to present them to the electors as grounds as satisfactory to them as they are to himself, why they should prefer him to the other candidate or candidates. He will probably, if he follow the custom in such cases, promise much of what he will do, if he be elected, and he will probably also recount at their full value his former work and services, and devotion, and perhaps losses, in their interests and for the sake of the cause, whatever that may happen at the time to be.

"He may with great propriety refer to such services and show what he has accomplished or attempted to accomplish, and to his experience in and knowledge of the business of legislation and the general duties of a representative.

"He may contend he can do more for the welfare of the country and of his constituents in particular from such knowledge and experience and by reason of (what his friends say he *has*) his abilities.