

Elec. Case.]

LINCOLN ELECTION PETITION.

[Ontario.]

the election of a candidate, will the candidate, if elected, forfeit his seat by reason of such act within the meaning of the 3rd section of the Act of 1873, the first sub-section of which enacts that 'When it is found upon the report of a judge upon an election petition, that any corrupt practice has been committed by any candidate at an election, or by his agent, whether with or without the actual knowledge and consent of such candidate, his election, if he has been elected, shall be void.' If a person who is a candidate choose to appoint as his agent a hotel or tavern-keeper who has an independent interest of his own in violating the statute, and whose violation of it may, as it certainly might, lead to violence endangering the freedom of the election, it would be plainly proper that a candidate who appoints such a person as his agent should have his election avoided, if his agent should so conduct himself in plain contravention of the statute, and we should not stop to inquire whether the violation of the statute did or not in fact affect the election. It is quite sufficient that it was well calculated to do so. And it was because it was well calculated to do so that the section prohibiting such practices, and that pronouncing them to be corrupt, were passed. But it seems to be quite another thing, where an agent, not himself a tavernkeeper, and being in need of refreshment goes to a tavern, and for that purpose buys there a glass of beer, wine, or other liquor for himself, and at the same time treats a friend or two to a glass as he would on any other occasion, such treat having no reference whatever to the election, and, it may be, being given to a person not an elector—in such case, although the tavernkeeper who sells the liquor would undoubtedly be guilty of a violation of the 68th section of the Act of 1868, and so of the statutory corrupt practice declared by the Act of 1873, and even though the agent may also be in like manner guilty, shall the innocent principal in such case have his election avoided by such treat?

"The Legislature, no doubt, may arbitrarily enact that any act, even one in which the candidate is in no way concerned, and which is not done in his actual or supposed interest or in pursuit of the object of the election, may notwithstanding avoid the election, but in the absence of the most express words conveying such an intent, we should avoid a construction having such effect.

"What the Legislature has said upon the subject is contained now in the third section of the Act of 1873, which contains two sub-sections that must be read together, and so as to be con-

sistent with each other. The object and effect of that section was plainly, as it appears to me, to repeal wholly the 69th section of the Act of 1868, which has been in effect though not in terms repealed by the 46th section of the Act of 1871, and to substitute a clause in lieu of the 46th section. That 46th section of the Act of 1871 had enacted that where it is found by the report of the Judge upon an election petition under the act that any corrupt practice has been committed by or with the knowledge and consent of any candidate at any election, his election, if he has been elected, shall be void, and he shall during the eight years next, after the date of his being so found guilty, be 'incapable of being elected to, and of sitting in the Legislative Assembly, and of being registered as a voter and voting at any election, and of holding any office at the nomination of the Crown, and of the Lieutenant-Governor in Ontario, or any municipal office.'

"It might perhaps have been held under this section, prior to the passing of the Act of 1873, that a corrupt practice committed by any person should avoid a candidate's election and subject him to disqualification for eight years if committed with his knowledge and consent, for the only practices which were corrupt were such as were directly or indirectly done by the candidate himself or by some person on his behalf, with a view to the promotion of his election within the provisions of the Act of 1868, or the common law of Parliament, but whether or not there could have been any corrupt practice committed by any one, other than the candidate himself or his agent, to which this 46th section of the Act of 1871 could be applied, it is unnecessary to inquire, for that section is repealed by the 3rd section of the Act of 1873, the 1st sub-section of which very distinctly, to my mind, expresses and declares all the cases in which an election shall be avoided, namely, in the cases only of corrupt practices committed by the candidate himself or by his agent at the election, while the 2nd sub-section declares that in addition to the avoidance so declared by the first sub-section, disqualification shall also ensue when the corrupt act which so avoids the election is done by or with the knowledge and consent of the candidate, that is where it is done by himself personally or by his agent, with his knowledge and consent, for unless done by himself or his agents the election is not avoided at all. The second sub-section carefully abstains from saying that any corrupt practice committed by or with the actual knowledge and consent of any candidate shall avoid