

Elec. Case.]

KINGSTON ELECTION CASE—MORROW V. WOOD.

[U. S. Rep.]

can see that Mr. Campbell did not take any steps whatever to prevent improper expenditure, and it might, therefore, be inferred from his conduct that he thought it best not to take a different course for fear that it might have prejudiced respondent's chance of success in the contest.

I must confess I have been very much embarrassed in coming to a conclusion in this matter satisfactory to myself. If it was not that I felt compelled to look upon this branch of the case in the nature of a penal proceeding requiring that the petitioner should prove his allegations affirmatively by satisfactory evidence, and that he might have given further evidence to have repelled some of the suggestions in respondent's favor, if such suggestions were not reasonable ones, I should feel bound to decide against the respondent, but looking at the whole case I do not think I ought to do so.

It is found from experience that the provisions contained in the present laws now in force in the Dominion and in Ontario do not effectually put an end to corrupt practices at elections, and that in order to do so it will be necessary to bring candidates within the highly penal provisions of declaring them, when they violate the law, incapable of being elected or holding office for several years, election judges will probably find themselves compelled to take the same broad view of the evidence to sustain these highly penal charges that experience compelled committees of the House of Commons to take as to the evidence necessary to set aside an election. I think the petitioner was well warranted in continuing the enquiry as to the personal complicity of the respondent with the illegal acts done by his agents, and that he is entitled to full costs, and that the respondent is not entitled to any costs for obtaining his amended particulars.

I shall, in accordance with Mr. Bethune's request, report that respondent, by his agents, has been guilty of bribery, but that they were not his authorised agents for that purpose, and that no corrupt practices have been proven to have been committed by or with the knowledge or consent of the respondent. From my present view of the law I do not think that such finding can affect the status of the respondent as a candidate at any future election under the statute, but I so make my report that the petitioner may have whatever benefits from it he thinks it will entitle him to. I will certify that the witnesses made full and true answers to my satisfaction.

Election set aside with costs.

UNITED STATES REPORTS.

SUPREME COURT OF IOWA.

ANNIE MORROW, Respondent, v. JAMES WOOD, Appellant.

A parent in sending his child to school surrenders to the teacher such control over the child as is necessary for the proper government and discipline of the school. But where the parent desires that the child shall omit a part of the regular course of study and so directs him, the teacher has no paramount authority to enforce the study of the omitted part, and corporal punishment of the child for disobedience under such circumstances is an unlawful assault.

The fact that the school was a public one, in which the studies were prescribed by statute, held not to vary the general rule as to the right of a parent to direct the omission of part of the prescribed studies.

This was an action by Annie Morrow, the respondent in error, against Wood, the appellant, for malicious prosecution. The plaintiff was a teacher in a public school, and the defendant, Wood, was the father of one of the pupils, a boy about twelve years of age. Defendant's child on coming to the school was directed by plaintiff to take up certain studies including geography. The boy, by command of his father, refused to study geography, and for this disobedience was punished by the teacher. The father thereupon commenced a prosecution against the teacher for assault and battery. After some continuances the prosecutor failed to appear before the justice, and the case was discontinued. The teacher then brought this action and obtained a verdict for \$500, whereupon the defendant took a writ of error to this court.

Barber & Clementson, for appellant.

G. C. Hazelton and O. B. Thomas, for appellee.

The opinion of the court was delivered by

COLE, J.—It is claimed by the counsel for the defendant that the court below should have granted the motion for a nonsuit, because all the evidence showed that the criminal prosecution against the plaintiff for an alleged assault and battery committed by her upon the infant son of the defendant was never tried upon the merits, but was discontinued on her motion and against the consent of the complainant in that action. It is insisted that before an action for malicious prosecution can be maintained, it must appear that the criminal prosecution has been determined in favor of the party prosecuted, by a trial and acquittal, or the prosecution must have been discontinued against his consent.