

Elec. Case.]

NORTH GREY ELECTION PETITION.

[Ontario.]

to his friend Mr. Paterson in some such terms as follows: "Is not this a hard law; I have had nothing since 8 o'clock, and I should so like a drink;" whereupon Mr. Paterson very kindly, according to the respondent's version, said that he would give him a glass, not thinking this mode of giving refreshment to the respondent to be illegal, or, according to Mr. Paterson's version, the respondent asked Mr. Paterson to treat him, which Mr. Paterson agreed to do, both believing this to be legal. Accordingly they went over together to Spiers' hotel, where the bar being closed against the public, they procured Spiers to get them each a glass of ale, for which Mr. Paterson paid, and which they drank in the hall of the hotel.

The contention now is, that this conduct constitutes a violation of the 66th section, not only by Spiers, the tavernkeeper who sold the ale, but also by Paterson, who purchased it and gave a glass to Scott, and by Scott who drank the glass so given to him. Paterson, according to this contention, is liable in two capacities; 1st, as the giver of a glass to Scott; and 2nd, in drinking one himself; and lastly, Scott, as it is contended, is further liable, not merely as having drank the glass which Paterson gave him, but also for having asked Paterson to give him the glass, as he did if Paterson's version be accepted, and both of them, for having asked Spiers to sell the ale. And so it is contended that for this act the election is not only void, but that Scott is disqualified personally.

The argument is, that it is a violation of this clause of the Act, for any person, whether a tavernkeeper or shopkeeper, or not, during polling hours, to sell or give any spirituous or fermented liquors whatever, and whether by retail or wholesale, to any person, whether an elector or a perfect stranger, and whether it be sold for consumption in a private house or for transportation abroad even to a foreign country. For example, if any person within the municipality takes a friend who does not live within the municipality, and is not an elector, home to dinner with him, and gives him at his dinner a glass of ale or wine within the polling hours; or if any person, within the same hours and within the municipality, sell to any person, though not an elector nor living within the municipality, a hhd. of brandy to be transported abroad, and ships it in the ordinary course, the statute, it is contended, is violated both in the giver and the receiver in the one case, and in the vendor and the vendee in the other. Whether or not this is the true construction of the Act I do not feel myself at present called

upon to express an opinion, and therefore reserve my opinion until some such case shall arrive, if it ever shall. At present I am called upon to go further than either of the above cases, and to declare that to be a violation of the law which beyond all question is not within its letter, but which, as is contended, is within its spirit and intent.

The Act of 1873, which makes all violations of the 66th section which are committed within the polling hours to be corrupt practices, does not make anything to be a violation of that sec. which was not so before. The question, therefore, must be considered wholly irrespective of the Act of 1873, the simple question being, has there been a violation of the 66th section of the Act of 1868, and if so, by whom? Assuming for the sake of argument that the second branch of this 66th section has no connection whatever with the first, and is to be read without any light from the previous part, then what the section says is, that no spirituous or fermented liquors or drinks *shall be sold or given* within the limits of such municipality during the said period under a penalty of \$100.

The question then resolves itself into this: Is the receiver or drinker of the liquor liable to a penalty under this section, and also the seller to another, and also the giver, if there be a person who buys and treats, to another.

The contention here is, that for every glass sold by the tavernkeeper he is liable to a separate penalty, and for each glass so sold to a person who treats others the treator is liable to a separate penalty as giver, and for each same glass the drinker is liable to a distinct penalty. In this view, assuming twenty persons to be treated by a person intervening to purchase and give, the penalties recoverable under the Act amount to \$6,000.

The simple answer to this contention, it appears to me, in so far as the respondent is concerned, is that no judge has any jurisdiction to extend a penal statute so as to create a penalty which the statute itself has not in express terms created. The statute in its terms imposes no penalty upon one who receives and drinks; it is said that it should be construed as doing so, because that morally the receiver is as culpable as the seller and giver, and that if there were no one to receive and drink, there would be no one to sell or give. Grant this to the fullest extent. With the ethics of the case I am not at present concerned. The same may be and often is said of the receiver of stolen goods, yet a receiver was never for that reason liable to be indicted for the larceny, nor could he have been indicted with-