

Elec. Case.]

NORTH VICTORIA ELECTION PETITION.

[Dominion.]

is the foundation of another proceeding. It does not seem to have occurred to the framers of our Act that it was necessary to provide for some "proceeding in which, after notice of the charge," the person inculpated by the Judge's report may have an "opportunity of being heard;" and while making use of section 45, they did not remember or refer to section 16 of the English statute, and thus, as appears to me, the mode of subjecting a party to the penal consequences of the 49th section has not been provided. It may be as well, however, to invite attention to the fact that our enactment applies to persons guilty of any corrupt practices. The English Act (section 45) extends only to those found guilty of bribery.

In my opinion the power of adjudging a person "other than a candidate" guilty of corrupt practices so as to subject him to the disqualification enumerated, is not conferred either upon the Election Court or the Judges on the rota, and that the Judges' report of "the names of any persons who have been proved at the trial to have been guilty of any corrupt practice" is not final and conclusive, so as to bring such persons within the operation of the 49th section as found guilty, and therefore subject to the penal consequence.

I think, therefore, an order should issue to strike out the 17th paragraph, and the concluding paragraph of the prayer of the petition.

I understand the application is made on behalf of the respondent, and not of Brown. If it were on behalf of the latter, I should give him his costs, as no objection was made to his being heard. If of the respondent, the point being new, I will give no costs.

### QUEEN'S BENCH.

#### NORTH VICTORIA ELECTION PETITION.

HECTOR CAMERON v. JAMES MACLENNAN.

*Dominion Election—Mode of marking ballots—Votes tendered but rejected, not being on copies of voters' lists—Adding same—Agency—Treating.*

Mode of marking ballot papers, and as to where the mark or cross may be placed, and various irregular modes of making the marks considered.

The names of certain voters who were entitled to vote at the election appeared on the last revised assessment roll, and should have appeared on the copies of voters' lists, as furnished to deputy returning officers, but were omitted from such lists. They

tendered their votes to the deputy returning officer and many of them stated they desired to vote for the petitioner. *Semble*, that these votes must be counted for the petitioner, if it were clear that they tendered their votes and intended to vote for him.

*Held*, that the evidence set out below did not constitute Peters an agent for the petitioner so as to make the latter responsible for his acts.

*Quare*, whether the giving by an agent of a free dinner to a number of voters who have come a long distance in severe winter weather, the evidence not showing a corrupt intent on the part of the agent, is a "corrupt act."

[Lindsay, April 13-16.—Toronto, May 4, 1875.—Wilson, J.]

This cause was tried before his Lordship, Mr Justice Wilson, at Lindsay, on the 13th, 14th, 15th and 16th of April last, and the final argument was concluded before him on the 24th day of the same month.

The respondent was declared elected by a majority of three votes. The petitioner (the unsuccessful candidate) asked for a scrutiny in his petition, and on the scrutiny claimed a small majority. The respondent sought largely to reduce this by showing that one Peters, alleged to be an agent of the respondent, paid for dinners given to forty electors on the polling day. The evidence on this point is so fully stated in the judgment of the learned judge that it is not here repeated.

The points to be determined were:—

1. Whether, on an inspection of the ballot papers which were rejected by the deputy returning officers at the polls, and accordingly as it might seem proper they should be allowed or disallowed, the majority of the whole poll was in favour of the petitioner or the respondent.

2. Whether electors whose names are on the original list from which the copies for taking the polls were made; but whether names were by some mistake or otherwise left out of these copies, and who had good votes, and were entitled to vote at the said election, and who claimed to vote, and desired the deputy returning officers to allow them to vote, but who were refused by the deputy returning officers to be furnished with ballot papers for the purpose of voting, and whose tender of votes was refused, could now, in any case, or under any circumstances, be added to the poll of either party.

3. Whether William Peters was the agent of the petitioner to render the petitioner answerable for the acts and consequences of the acts of Peters in procuring and paying for forty dinners for the petitioner's supporters and voters on the polling day, near to the polling place of the