

Elec. Court.]

NORTH SIMCOE ELECTION PETITION.

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complaint had been made, the petitioner's name would not even now be struck off on a scrutiny, and therefore he was a good petitioner.

As to the allegation of bribery by the petitioner, as a ground of objection to his status, that is not a valid objection. The Dominion Controverted Elections Act 1873 only allows recriminatory charges to be made against a candidate who petitions, or when the seat is claimed for him. The section referred to by Mr. Bethune (Con. Stat. Can., cap. 6, sec. 84) only disqualifies a voter who *has been* bribed, not one who has bribed another.

As to the fourth objection, it is not maintenance to agree to the prosecution of a suit in which they have a common interest: *Topham v. Duke of Portland*, 32 L. J. Chy. 606; and this point was expressly decided in *Lyme-Regis Case*, 1 P. R. & D. 25, and by the Chancellor in *Re North York* (not reported) where an application was made by a petitioner to have his name struck out of the petition on the ground that his signature was obtained by misrepresentation.

RICHARDS, C. J., delivered the judgment of the Court.

As to the first preliminary objection, it is a matter of fact, whether the petitioner was duly qualified or not, and that of course may be tried.

As to the second preliminary objection, we fail to see how the facts show any actual fraud in relation to placing the petitioner's name on the list of voters. The facts themselves seem to show that what was done was what really ought to have been done, and the complaint just amounts to this, that it was not done in the formal manner in which it ought to have been done. Apparently the only fraudulent thing about the matter is the word "fraudulent." At the time this petitioner had his assessment raised on the assessment roll from two to six hundred dollars, he was paying a rent which would indicate a larger value of the property than \$600; and there is nothing to show, at the time it was done, that any election was likely to occur for which a fraudulent change would be made. We think we should not go behind the voters' list to imagine fraud from the facts stated in this preliminary objection.

In the *North Victoria Case*, reference is made to the present state of our law on the subject. Some authorities seem to show that a party bribing, who is not a candidate, is not disqualified from voting

in consequence of violating the law in that respect. But if the petitioner was a duly qualified voter before and at the time of the election, and the only ground of disqualification is that he was guilty of treating, bribery and undue influence during the election, we hardly think that would destroy his right to be a petitioner.

The subject is referred to and discussed in the *North Victoria Case*, and we are not now prepared to decide against this petitioner on this preliminary objection.

We are inclined to think if the petitioner is a person who was duly qualified to vote at the election to which the petition refers, that is sufficient—that the fact that he may have done something at the election which would justify the Judge in striking out his vote, would not create such a disqualification as to destroy his status as a petitioner. It could not by relation be held to make him a person not duly qualified to vote at the election. Even in England, with the important clauses in the Corrupt Practices Act of 1854, and the Parliamentary Election Act of 1868, referring to this subject, which are omitted in our Acts, it is held that disqualifications do not arise until after the time the parties have been *found guilty* of the bribery.

In the late *Launceston Case* (reported in the *Times* newspaper), the Court of Common Pleas held that Col. Deakin's disqualification to be elected or sit in the House of Commons existed for the *next* seven years after he was found guilty. His election was declared void because the statute declares it shall be void, but the opposing candidate was not held to be elected, as would have been the case had the disqualification then begun which existed after he was found guilty.

The same penalty, under the English Act, attaches to any person other than the candidate *found guilty* of bribery in any proceedings in which, after notice of the charge, he has had an opportunity of being heard. The incapacity exists during the seven years next after the time at which he is found guilty.

And the sixth section of the English Act as to corrupt practices, directs the Revising Barrister, when it is proved before him that any person who claims to be placed on the list of voters has been *convicted* of bribery, etc., at an election, or that judgment has been obtained for a penal sum recoverable in respect of bribery, etc., against any per-