

Election Case.]

EAST TORONTO ELECTION PETITION.

[Election Case.

that was before the conversation at Duggan's. He fell in at the end of a meeting in favor of Medcalf at Duggan's; was also at a meeting at Hamilton's, and said something to two of Cameron's supporters there.

Mr. Carruthers was called, and said he never offered Smith a cent to vote for Mr. Cameron. Smith said no money would induce him to vote against Medcalf. He never gave or offered Agnew two dollars to vote, or make up his mind about voting. He knew very well he would vote for Medcalf, whatever might have been given to him. He denied speaking to Nesbit at Duggan's; he had observed him at Foley's tavern before that, and he would not speak to him, and did not all that night. He never hinted to him that the Government had plenty of money, and could pay election bills. Nesbit was trying to prevent Mr. Cameron from speaking at Lynch's, by making a noise and shouting, before seeing him at Duggan's. He saw Agnew at the lager beer saloon, and he was drunk.

McDermott said he saw Nesbit at Duggan's, and asked him who he was going for. He said he did not know. He offered him nothing to vote for anybody, nor did Macdonald. He and Macdonald did not take Nesbit aside to speak about the election, nor offer him anything to vote. He denied having the conversation with Nesbit which Nesbit said he had had with him. The quarrel at the poll began from Nesbit swearing McDermott as to his vote; and the latter then said if he had got two dollars the night before, he would have been for Cameron. He said he thought he wanted to be bought, coming round a committee room the night before the election, not knowing who he was going to vote for.

In the *Cheltenham Case*, 1 O'M. & H. 64-65, when the question came up as to evidence in the case of an offer to bribe, Baron Martin said, "When the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself, * * * it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence; but one person understands what is said by another, differently from what he intends it."

Looking at the whole evidence as applicable to the offer to bribe said to have been made by Carruthers to Smith, Agnew and Nesbit, I do not think such a clear case is made out as would justify me in setting aside this election on the ground of an offer to bribe these three persons. They received nothing, they did not alter their votes, and I fail to see that clear and distinct offers to bribe, which I think the rules laid down in these cases require, to justify me in finding that they were made as alleged.

During the proceedings there were some other cases referred to, which at some stage of the proceedings seemed to require further explanation, but the further progress of the enquiry served to afford a satisfactory answer, and I have only referred to those cases which were specially adverted to by the petitioner's counsel at the summing up at the close of the case.

I do not think I can better express many of the views that I entertain in relation to this case

than by quoting the language of Baron Martin in the *Wigan Case*, 1 O'M. & H. 192, as to the principle on which a judge should act in trying a petition alleging corrupt practices. He says:

"If I am satisfied that the candidates honestly intended to comply with the law and meant to obey it, and that they themselves did no act contrary to the law, and *bona fide* intended that no person employed in the election should do any act contrary to the law, I will not unsettle such a person upon the supposed act of an agent, unless the act is established to my entire satisfaction. Things may have been done at an election of which I do not approve—for instance, having committees at public houses, hiring a number of carriages (which now in borough elections is prohibited), or hiring "roughs"—but which do not of themselves avoid an election. They are ingredients which may be taken into consideration, and they may tend to show what was the real quality and meaning of an ambiguous act, which may have one effect or another, according as the judge's mind is satisfied that it was honestly or dishonestly done. It may be that in an election certain acts have taken place which the judge disapproves of, but which do not satisfy him that another act on which the validity of the election depends, was corruptly done. But if upon a future petition ensuing upon another election in the same place, acts similar to those of which the judge had expressed his disapproval, were proved to have been repeated, the judge who tried the second petition might well take them into consideration to aid his conclusion, that the act upon which the validity of the election depended was a corrupt and dishonest act."

I am satisfied that the respondent honestly intended to comply with the law, and meant to obey it, and has done no act contrary to the law, and *bona fide* intended that no person employed in the election should do any act contrary to the law. I have not that clear and satisfactory evidence of acts contrary to law, done by his agents, which will, in my opinion, justify me in declaring the election of the respondent void, and it therefore becomes my duty to declare that the respondent was duly elected.

As to costs, there were no grounds whatever for charging the respondent personally with acts of bribery or other corrupt practices, and the scrutiny was abandoned after some attempts were made to go on with it. The costs as to these parts of the case, I direct shall be paid by the petitioner to the respondent.

As to the other parts of the case, though the respondent is successful, I think the matters were proper to be inquired into in the interest of the public, and as to them I give costs to neither party.