

Elec. Case.]

HALTON ELECTION PETITION.

[Ontario.]

424, where he says: "On the first question we have been fairly pressed by the argument, that the Lord Ordinary, who had the advantage of seeing the witnesses and judging of their veracity from their demeanour before himself, should not have his decision lightly set aside; and undoubtedly the value of *viva voce* testimony can be much better ascertained by those who hear it than by those who know it only by report. But there is this peculiarity in the present case, that the Lord Ordinary has put us somewhat in his own position, and enabled us, so to speak, to see with his own eyes, when he states the impression produced upon him by the principal witness, and describes her as 'a girl of modest appearance, who gave her testimony generally with an air of truthfulness,' and he speaks favourably of her aunt, another witness, whose part in the transactions is of great importance. Besides we are concerned directly, not with the judgment of the Lord Ordinary, but with that which overruled it, and the latter we ought to affirm, unless we are satisfied of its error." In the present case I can see no ground for arriving at a conclusion different from that of his lordship the Chief Justice, who gives credit to the Robins' family after carefully balancing the reasons for preferring their account of the transaction.

I have, however, had strong doubts whether the promise to make a "*nice present*" was an offer of "money or valuable consideration" within the meaning of section 67 of the statute. This point was taken by Mr. Blake in his argument before us, though not taken before the Chief Justice at the trial, and we were referred to a dictum of Alderson B., in *Cooper v. Slade*, which is noted in the report of that case, in 27 L. T. 139, and 2 Jur. N.S. 1016, though not in the report in 6 E. & B. 447. The report in the Jurist is, "Alderson B. added: I entertain this opinion also, that the words 'money or other valuable consideration' ought to be construed to mean 'money or other valuable consideration to be estimated by money.'"

I have not seen any case in which any Judge or court has actually decided that any offer or promise which came in question, was not an offer of money or valuable consideration, except the decision in the Exchequer Chamber, in *Cooper v. Slade*, where it was held that giving money to a voter to pay his railway fare in going to vote was not giving money to induce him to vote. That decision was, however, reversed in the House of Lords, 6 H. L. Cas. 746. In the *Launceston case*, 2 O'M. & H. 129; 30 L. J. N. S. 823, Mr. Justice Mellor held, that an

offer by a landlord to his tenants of the privilege of shooting rabbits on their farms was bribery, because it was a valuable consideration, capable of being represented by some money value. If the question had been merely whether an offer of a nice present was an offer of something having some money value, I should not have hesitated much as to the correct decision; because I think there can be no doubt that such an offer would convey to the mind of the person to whom it was addressed, that something which was either money or money's worth was to be given. My doubt has been not as to *some value* being implied, but as to whether the words "valuable consideration," which are technical words, should not, in construing this statute, receive the same construction as they would receive with reference to contracts.

The present statute takes the place of one in which the words were apparently of a more general character, viz., Con. Stat. Can. c. 6, s. 82, where the words used were "sum of money, offices place, employment, *gratuity*, *reward*, or any bond, bill or note, or conveyance of land." Having regard to this change in phraseology, as well as to the fact that the words "valuable consideration" have a recognised meaning in law, it seemed to me that we ought to construe the clause as requiring such a consideration as would ordinarily support a promise; and that the offer now in question was too indefinite in its character to fulfil that condition.

The adequacy of the consideration for which a promise is made, is usually not a material inquiry, because parties may agree for what consideration they please; but where there is no agreement—where there is merely an unaccepted offer, and the adequacy is not, therefore, settled by consent—it would seem that a consideration which is entirely indefinite is not one which can be called a "valuable consideration," as we are accustomed to use the term. Thus a promise to forbear "*for a little time*," or for "*some time*" is too indefinite to constitute a good consideration for a guaranty (Ch. Cont. 29, citing 1 Roll. Abr. 23, pl. 25) which doctrine is approved by Bramwell, B., in giving the judgment of himself and Watson, B., in *Oldershaw v. King*, 2 H. & N. 399, and in the same case in the Exchequer Chamber by Cockburn, C.J., at p. 519 of the same volume, and it does not seem to be disputed by any of the Judges who gave judgment in that case; and in *Davy v. Baker*, 4 Burr. 2471, a declaration in debt on 2 Geo. 2, c. 24, which alleged in the words of the statute that the defendant did receive "a gift or reward," was