

Elec. Case.]

NORTH WENTWORTH ELECTION PETITION.

[Ontario.]

actual knowledge and consent of the appellant, who was one of those who received the liquor or drink, whether he invited the others in and treated them, as some witnesses say, or was treated himself along with the others by Sullivan, as it is put by Sullivan and by the appellant himself.

The question is whether under these facts the appellant's election is avoided, and himself disqualified under sub-sec. 2 of sec. 4 of the act last referred to.

The contention for the appellant is that sub-sec. 2 only applies when the candidate himself, or *his agent* with his knowledge and consent, commits a corrupt practice. It is argued that as sub-sec. 1 makes void the election by reason of any corrupt act committed by a candidate, or committed by his agent, either with or without the knowledge of the candidate, and as sub-sec. 2 does not say in direct words, as was said in sec. 46 of 34 Vict., cap. 3, that a corrupt practice, committed by or with the knowledge and consent of the candidate, *shall make his election void*, and also disqualify him, but merely says that, *in addition to the election being void*, he shall be disqualified—it must be read as saying, that in addition to the election being void—*if under sub-sec. 1 it would be void*—the candidate shall be disqualified; and that unless the election is avoided by sub-sec. 1, there is nothing in sub-sec. 2 either to avoid the election or disqualify the candidate. Besides hearing the argument addressed to us in this case, I have had the advantage of reading that part of the very ably argued judgment of Mr. Justice Gwynne in the case of the Lincoln Election, in which he discusses the construction of sub-sec. 2, and takes the same view which has been urged upon us, although I believe he decided the case on grounds which did not depend on his reading of this sub-section. With the greatest respect for the ability and authority of that learned Judge, and fully appreciating the reasoning which he so forcibly employs, I am unable to agree with him in the construction of the statute.

In 1871 the particular offence now in question had not been declared to be a corrupt practice; but section 3 of the Act of 1871 defined corrupt practices as including bribery and undue influence, and illegal and prohibited acts in reference to elections, or any of such offences as defined by Act of the Legislature. Under this definition many acts were included which were not necessarily committed by either the candidate or his agent.

Then section 46 of that act, which declared that where it was found by the Judge that any corrupt practice had been committed by or with the knowledge and consent of any candidate at an election, his election should be void and he should be disqualified, evidently applied to avoid an election and disqualify the candidate, by reason of the commission by any one, whether his agent or a volunteer, of any corrupt practice with the knowledge and consent of the candidate. What was not provided for by that act was the avoidance of the election in case the agent, without the knowledge or consent of the candidate, committed a corrupt practice. This omission has been supplied by sub-sec. 1 of sec. 3 of the Act of 1873; and the object of passing this sec. 3 probably was to supply this omission.

Having regard to the course of legislation with respect to purity of elections, which has tended constantly towards greater strictness in the provisions for repressing every act and contrivance by which the perfect freedom and honesty in the exercise of the franchise may be interfered with; and this policy being distinctly apparent in several of the provisions of the Act of 1873, particularly in the extension of the definition of corrupt practices by sec. 1,—there is no reason to suppose that the Legislature intended that any election which would have been avoided under the Act of 1871 should stand good under the Act of 1873; or that while a new ground for avoiding an election was added, viz., when an agent without the candidate's knowledge or consent committed a corrupt practice, it was intended to declare that a corrupt practice committed with the knowledge and consent of the candidate, but by one who was not his agent, should no longer either affect the seat or work any personal disqualification.

It would require language very clearly enacting such a change to have the effect contended for. We must not regard the question as relating only to the selling of liquor at taverns. It extends to bribery, undue influence, and all other prohibited acts which, according to the contention of the appellant, may now be committed or practised by volunteers, with the knowledge and consent of the candidate, without any further risk than the risk of destroying the vote that is influenced, and incurring the pecuniary penalty. If it is answered, that by the candidate's consent, the volunteer becomes *ad hoc* an agent, so does the tavern keeper.

The contention is founded on the assumption that the words in sub-sec. 2, "in addition to his election, if he has been elected, being void,"