

Elec. Case.]

SOUTH ONTARIO ELECTION PETITION.

[Ontario.]

the hours of polling, the persons in each case being treated by the agents at a tavern ; but the agents not being the tavern-keepers, but merely casual guests.

In this respect the three charges are precisely alike. The questions peculiar to each case are those touching the fact of the agency and the places where the drinking took place,

It is contended by the appellant that under section 66 the giving of spirituous or fermented liquors by *any person* to any other person during the day appointed for polling is made penal, and, by the Act of 1873, is a corrupt practice. On the other side, it is insisted that the section applies only to those who sell or give in the character of keepers of a hotel, tavern or shop in which spirituous or other fermented liquors or drinks are ordinarily sold. It seems to me that we must either construe the clause literally, and give their full effect to the words "no spirituous or fermented liquors or drinks shall be sold to any person ;" or we must read the words with which the clause commences as indicating the class to which the whole clause applies ; and read the clause as if worded to the effect that "no keeper of a hotel, tavern or shop in which spirituous or fermented liquors or drinks are ordinarily sold, shall open his hotel, &c., during the day appointed for polling ; nor sell or give to any person, &c." This was evidently the effect of the clause as it stood in C. S. Can., cap. 6, sec. 81, where it forms, as it does in the Act of 1868, one of the provisions for "keeping the peace and good order at elections."

It is not difficult to suggest reasons why, as a matter of policy, it may be desirable to extend the prohibition against distributing liquor on polling days beyond the ordinary dealer in liquors. We have, however, to enquire whether that has been done, and if so, whether this extension is in any way limited, or whether it reaches all persons in the municipality without regard to the place where liquor may be given, or the purpose for which it may be required.

The consequences which would follow from holding the restriction to be entirely unlimited have been well pointed out by the learned Judge below, and they are of a character so startling that it is impossible to suppose they could have been in the contemplation of the Legislature. And, besides this, the clause, so construed, would apparently be in conflict with sec. 61, which allows a candidate to entertain a meeting of electors at his own house on the polling day.

I believe we are all agreed that this unlimited effect cannot be given to the section ; but his

Lordship the Chief Justice, while he construes the prohibition as extending to all persons, considers that the law is only violated when the liquor is sold or given in a hotel, tavern or shop in which liquors are ordinarily sold. I have not been able to see in the clause itself or in the context anything which imposes this limitation. I cannot find room for any middle course. I think these two alternatives only are presented: Either the keeper of the house alone is aimed at—or the prohibition applies against all persons and to all places within the municipality.

The true view of the enactment in my judgment, is that it is simply a re-enactment of the former law, either without modification or with no modification that points to any more extensive operation, and I think this appears whether we closely examine the clause itself or look elsewhere, as we may do in vain, for indications of an intention to change the law.

All the other clauses in this division of the statute are verbatim re-enactments of the former statute, except that the penalties, while the old amounts are retained, are imposed in terms adopted to avoid any appearance of legislating as to criminal law.

Three changes are made in the section. The first change is the omission of the words which directed that the house should be closed on polling days "in the same manner as it should be on Sunday during divine service"—an omission apparently made because the omitted words were not applicable to any law in Ontario, but which has no bearing on the argument now in hand. The second is the insertion of the words which I quote in italics in the passage, "And no spirituous or fermented liquors or drinks shall be sold or given to *any person within the limits of such municipality* during the said period."

The clause as it stood was, in its terms, general enough to forbid the selling or giving of liquor anywhere in the municipality ; but I have no idea that either the most literal or the most fanciful expounder would have so construed it. Where was the necessity for the words now inserted ! To my mind the reason is plain. The whole section as it stood admittedly applied only to keepers of hotels, &c. The danger was that this part of the section might be read as forbidding only selling or giving in *their houses*, but not the dispensing of liquor outside of their four walls. That doubt is set at rest, and the present section is either simply declaratory of the law as it stood, or modifies it only so far as to make evasion of its intention more difficult, without, by force of the in-