

Election Case.]

STORMONT ELECTION PETITION.

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corded for or on behalf of the said William Colquhoun, the number of votes taken and recorded at the said election for and on behalf of your petitioner would have exceeded the number taken and recorded for the said William Colquhoun at the said election.

15. And your petitioner says further, that a greater number of persons legally entitled to vote at the said election voted for your petitioner than for the said William Colquhoun.

16. Wherefore your petitioner prays that it may be determined that the said William Colquhoun was not duly elected or returned, and that your petitioner was duly elected, and ought to have been returned.

(Signed) JAMES BETHUNE.

The particulars of the petition showed that 159 votes were objected to, on the ground that the voter was not the owner, tenant, or occupant of real property within the meaning of section 5 of the Election Law of 1868, 17 votes of aliens, 7 under 21 years of age, 11 of voters unduly influenced, intimidated and compelled, 45 of bribery within the meaning of section 68 of the Election Law of 1868, 45 of bribery within the meaning of section 67 of the Election Law of 1868, 3 of personation, 44 of corrupt practices within the meaning of section 3 of the Controverted Elections Act of 1871, and 8 of unduly influencing, intimidating, and compelling voters to vote for respondent and against petitioner.

The respondent gave notice, that under section 56 of the Controverted Elections Act of 1871, he intended to give evidence that the election of the petitioner was undue, and assigned bribery by petitioner and his agents, undue influence, intimidation, corrupt practices, treating, providing entertainment, &c.

On behalf of the respondent, the particulars showed 6 cases of voters under the age of 21 years, 14 of aliens, 119 of bribery and undue influence, 18 not on last revised assessment roll sufficient to qualify, 5 at the time they voted not owners or tenants respectively of the property in respect of which they voted, 114 not at the time of the final revision of the assessment roll in which their names appear, the *bona fide* owners, occupants or tenants respectively of the property in respect of which they were assessed and voted, 2 disqualified by reason of their being employed and paid for their services at the election.

The respondent also gave full particulars under his notice, objecting to the return of the petitioner pursuant to section 56 of the Controverted Election Act of 1871.

Harrison, Q. C., and Bethune appeared for the petitioner.

J. H. Cameron, Q. C., and D. B. McLennan for the respondent.

Harrison, Q. C., in opening the case for the petitioner, stated that he intended going into the question of scrutiny first, and proposed to follow the practice of the English cases, viz: for the person in a minority to first place himself in a majority, then the person thus placed in a minority to strike off his opponent's votes.

RICHARDS, C. J.—We had better follow the same practice here.

The petitioner having placed himself in a majority, the respondent struck off a sufficient number of votes to place him in the same position as when he commenced.

Cameron, Q. C., took the objection, that the writ of election was necessary before any evidence of the election could be given, and that the writ and return should be produced.

Harrison, Q. C., replied, and cited the *Coventry case*, 20 L. T. N. S. 406, where Willes, J., was reported to have said, "I shall not require the election to be proved in any of these cases. The poll books are here, and they tell me an election was held."

RICHARDS, C. J.—I consider the proceedings somewhat analogous to an interpleader issue. The matter is sent down here now to be tried, and it seems to me that after a petition has been presented asserting an election and return, and parties have appeared demanding particulars, &c., and have themselves made recriminatory charges, and delivered lists of votes objected to, it would be very inconsistent now to assume that there had not been an election and return. If it were so, we should probably have had an appeal long ere this showing that fact. I think the *dictum* of Willes, J., in the *Coventry case* reasonable, and it ought to be followed.

Harrison, Q. C., then urged that the respondent should first dispose of the recriminatory charges of bribery.

Cameron, Q. C., stated that as to the recriminatory charges, there were only three which affected the petitioner's status under the statute, and as to them, he was not prepared to go on; as to the others, that they did not charge personal knowledge of the corrupt practices by the petitioner, and in his opinion there must be personal participation in the corrupt practice by the petitioner to disqualify him.

RICHARDS, C. J.—I do not think he ought to be compelled to go on with the first three now.

Harrison, Q. C., contended that the onus of proving a qualification was thrown on the voter, or on the party who wishes to sustain the vote.

RICHARDS, C. J.—I think the vote being on the poll book is *prima facie* evidence of his right to vote. If the party objecting to it resolves to attack it, he may call the voter if he please, or give any other evidence he has on the subject.

Counsel on both sides then requested the ruling of the Court on the question of a voter, properly qualified, but who by mistake was entered on the roll as tenant, instead of owner or occupant, or *vice versa*.

RICHARDS, C. J.—The *rota* Judges have determined to hold that when a voter is duly qualified in other respects, and his name is on the roll and list, but is by mistake entered as tenant instead of owner or occupant, or *vice versa*, he, really having the qualification, is not disfranchised, merely because his name is entered under one of the heads, instead of under another.

SCRUTINY.

The petitioner now proceeded with his scrutiny:

Gilbert Stewart was called to attack the vote of *George N. Stewart*. It appeared by the evidence that the witness was the owner of Lot 6, in the