

Elec. Case.] NORTH MIDDLESEX ELECTION PETITION.—BACON V. CAMPBELL. [C. L. Cham.

hospitality, even to the extent of profusion, was struck at by the common law ;" but he goes on to say in effect that it is now forbidden by the Act of 1854, whenever resorted to with the corrupt intent of influencing voters.

In the treating in question there was the reverse of profusion ; there was not more, but much less, than the usual hospitality practised by the respondent, so that there is really no room for saying that the respondent was actuated by the intention of ingratiating himself with the electors by profuse hospitality. I will upon this head quote the language of two learned judges not quoted in the *Glengarry Case*.

In the *Wallingford Case*, 1 O'M. & H. 59, Mr. Justice Blackburn considers that the amount of treating is an element of consideration upon the question of intention, and observes, "When we are considering as a matter of fact the evidence to see whether a sign of that intention does exist, we must as a matter of common sense see on what scale and to what extent it was done. "So Mr. Justice Willes in the *Tamworth Case*, ib. 83, says that it is "obvious that the Legislature did not intend that every bit of bread or sup of drink given to a voter in the course of an election, should have the effect of defeating that election ;" and the same learned judge, in the *Westbury Case*, ib. 50, took occasion to explain what he had done in a previous case, desiring it not to be supposed "that treating by a single glass of beer would not be treating if it were really given to induce a man to vote or not to vote. All that he had ever said was, that that was not sufficient to bring his mind to the conclusion that the intention existed to influence a man's vote by so small a quantity of liquor."

It seems all to come to this. Treating is not *per se* a corrupt act. The intent of the act must be judged of by all the circumstances by which it is attended. If in this case the evidence led me to the conclusion that the respondent did what he did in order to make for himself a reputation for good fellowship and hospitality, and thereby to influence electors to vote for him, I should incline to think it a species of bribery which would avoid the election at common law ; but upon a careful consideration of the evidence, it does not lead me to that conclusion. There was nothing wrong in the eye of the law in the respondent making his canvass by meeting the electors at taverns, and he does not seem to have abused the occasions of so meeting them, by seeking to obtain their votes by pampering their appetites for drink or by other undue means. I apprehend that I must

be able to see with reasonable certainty that he has done this, before I can set aside the election.

COMMON LAW CHAMBERS.

BACON V. CAMPBELL ET AL.

Administration of Justice Act, 1873, sec. 24.—*Examination of defendant—Ejectment.*

One of two defendants in an action of ejectment allowed judgment to go by default. *Held*, that he was nevertheless liable to be examined under *Administration of Justice Act*, 1873, Sec. 24.

[December 14, 1875.—MR. DALTON.]

This was an action of ejectment. The plaintiff claimed title to the lands by reason of a breach of a covenant in a lease not to assign or sub-let without leave. Campbell was sued as the sub-lessee of his co-defendant Hayes, to whom, when served with the writ, he handed it, saying "you must help me out of the difficulty." Hayes defended for the whole of the land, but no appearance was entered for Campbell, against whom judgment was signed by default. Subsequently to this the usual *ex parte* order to examine Campbell was taken out ; but by advice of counsel he refused to be sworn when attending before the special examiner. A summons was then taken out to set aside the order to examine.

Mr. Armour (Crawford & Crombie) showed cause : The order was perfectly regular. The cause was at issue as to the other defendants, and the Act is broad enough to cover this case. Campbell did not necessarily admit the title of plaintiff by allowing judgment to go against him by default. He was still in possession, and it was such a case as was contemplated by the 36 Vict., cap. 14, (Ont.) which enables a plaintiff to recover costs against a defendant who does not defend an ejectment suit, on an affidavit of actual adverse possession. The case is somewhat analogous to that of a defendant in equity who disclaims, and who, if costs are asked against him, cannot avoid giving discovery by disclaiming : *Daniell Ch. Pr.*, 5th Ed., 613. Even if the defendant's possession is not adverse, his interest is adverse to the plaintiff's, and this is all that is necessary under the Act. He plainly identified his interest with that of Hayes, by stating that he would have to help him out of the difficulty. Even if Campbell were considered as a mere witness, he could not evade discovery on that ground : *Daniell*, p. 255.