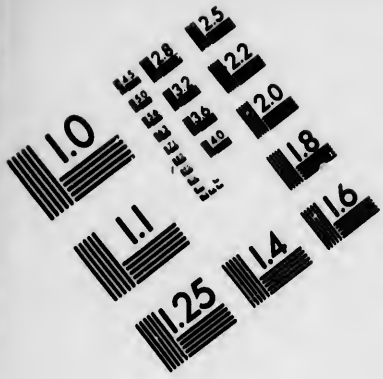

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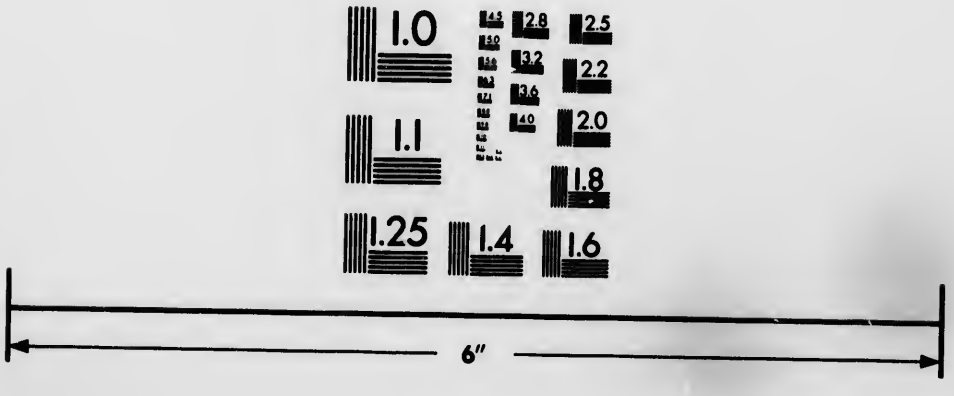

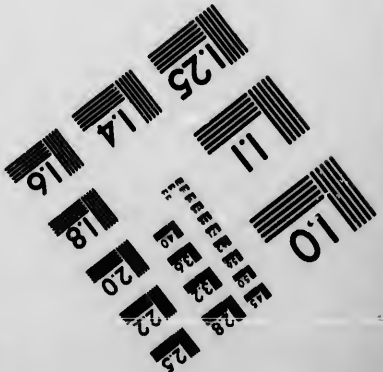

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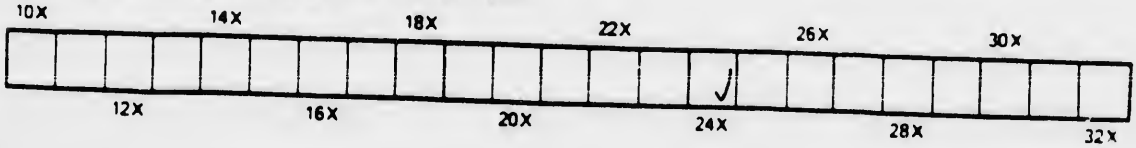

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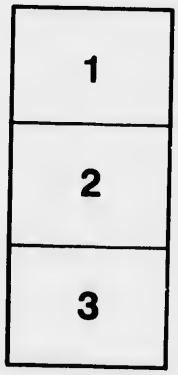

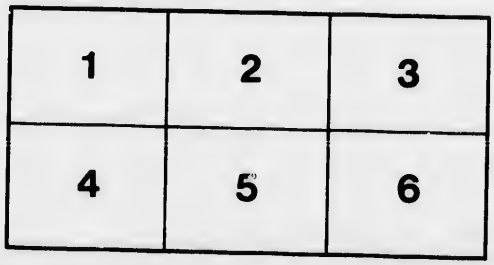

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OF

ELECTION CASES

By THOMAS HODGINS, Q.C.

PART I.

PROVINCIAL ELECTIONS, 1871,

Under the "Election Law of 1868" (32 Vic., c. 21), and the "Controverted Elections Act, 1871" (34 Vic., c. 3).

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NOTE.

The publication of these Election Cases is due to a suggestion made by a learned Judge to the compiler as follows:

"Do you think it would be a good thing to collect all the Ontario Election Cases which have been from time to time reported in the *Law Journal* and elsewhere, into one volume? At present they are very difficult of access, owing to the irregular way in which they have been reported.

"We are constantly dealing with election cases, and therefere find much inconvenience from the want of regular reports of the Ontario cases."

The cases will be published in the following order:

PART I.—Election cases arising out of the Provincial General Election of 1871.

PART II.—Election cases arising out of the Provincial General Election of 1875.

PART III.—Election Cases arising out of the Provincial General Election of 1879.

PART IV.—Election cases arising out of the Dominion General Election of 1874.

PART V.—Election cases arising out of the Dominion General Election of 1878.

The evidence reported in each case is taken from the official notes of evidence returned to the House by the Judge trying the Election Petition.

At the suggestion of the editor of the Ontario Reports, who has revised these cases at the request of the Committee on Reporting, the last part will be accompanied by a short summary of the statutory changes made in the Election Law since 1871.

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REPORTS

OF

ELECTION CASES.

PROVINCIAL ELECTIONS, 1871.

PRESCOTT.

BEFORE CHIEF JUSTICE RICHARDS.

L'ORIGNAL, *20th to 23rd June, 1871.*

JAMES STEWART MCKENZIE *et al, Petitioners,* v. GEORGE WELLESLEY HAMILTON, *Respondent.*

Respondent's right to impeach Petitioner's qualification—Alienage—Voter in respect of wife's estate.—Notarial copy of Assignment in Insolvency, C.S.C., c. 80, s. 2.—Extensive Bribery by Agents—Calling upon parties guilty of Corrupt Practices to appear.

The respondent attacked the qualification of one of the petitioners on the grounds that he was an alien, and that he had no property qualification, having made an assignment in insolvency before the election. The learned Judge admitted the evidence, but

Held, (1) That the evidence as to petitioner having lived in the United States without showing that his parents were American citizens, was not sufficient to establish the charge of alienage. (2) That the Election Act of 1868, by the term "owner," gives to a husband whose wife has an estate for life or a greater estate, the right to vote in respect of his wife's property; and that the petitioner having that qualification, and being in possession of his wife's estate, was held entitled to petition.

Held, further, that a notarial copy of an assignment in insolvency may be received as evidence of such assignment under C.S.C., c. 80, s. 2.

The petitioners having given evidence of corrupt practices,

Held, (1) That the election was void for bribery by agents. (2) That corrupt practices extensively prevailed at this election.

Quære—Whether the Judge presiding at the trial should not direct notice to be given to the parties who, from the evidence, were apparently guilty of corrupt practices, so that the Judge might decide upon their liability to disqualification, and report them under the statute.

The petition contained the usual allegations of bribery, etc., and that illegal votes had been received, and claimed the seat for the defeated candidate, Mr. James Boyd. The majority for the respondent was 134.

Mr. Bethune and Mr. J. K. Kerr, for petitioners.

Mr. J. Hillyard Cameron, Q.C., for respondent.

Counsel for the respondent proposed to call witnesses to prove that the petitioners had no right to vote. Counsel for the petitioners contended, 1st, That the objection was a preliminary one, and should have been taken before a Judge, or the Court, and could not be taken now: and 2nd, That the petitioners had obtained an order for particulars against the respondent, and the objection had been waived. *Youghall case* (21 L. T. N. S., 306, 308). (*a*)

The CHIEF JUSTICE said he would not preclude the party from raising this objection now, but would reserve it if necessary.

Evidence was then given to show that the petitioner, J. H. Cleveland, had stated that he "had lived at Fort Covington," that he "had come from Fort Covington," in the United States. The Clerk of the Peace proved that no affidavits for the naturalization of the petitioner had been filed in his office.

Counsel for the respondent then proposed to put in a notarial copy of an assignment in insolvency, made by the same petitioner on the 10th July, 1867, to John White, of Montreal, official assignee.

Counsel for the petitioners objected that the assignment is not provable by a notarial copy, and that express provision was made in the Insolvent Acts of 1864 and 1869, for proving it.

The CHIEF JUSTICE, under C.S.C., c. 80, s. 2, admitted the notarial copy of the assignment.

Evidence was then given that petitioner's father, by will, dated 25th June, 1861, devised certain real estate to the petitioner and his wife. The property was assessed in petitioner's name for $600.

Mr. Bethune contended that there was no evidence that the petitioner was an alien; that as to the qualification, the will gave an estate by entireties. In any event, the petitioner's wife retained one half of the estate, and the

(a) See *South Huron case* (D.), 29 C. P., 301; s. p. *Dufferin case* (O.), 4 App. R., 420.

husband would be entitled to vote on her qualification. As occupant, he would have a right to vote: *Rogers on Elections* (11th Ed.), 9, 32.

Mr. Cameron contended that the effect of the will was that both parties were seized in entirety. The petitioner is not entitled to vote as occupant, for he is not an occupant to his own use and benefit, but merely for the benefit of his wife: *Watkins on Conveyancing*, 170.

RICHARDS, C. J.—As to the first ground of objection, I do not think the respondent has gone far enough. The petitioner is said to be here, and can be called. It is not shown that the parents were American citizens, or were born before 1783, and resided in the United States since. There is nothing against the presumption that they may have been natural born subjects, and the father devises this very property. But if it becomes necessary to consider the question as affecting the result, I will reserve it as a point of law for the consideration of the Court, whether the evidence is such as to justify me in finding the petitioner an alien or not.

As to the interest in the estate of his wife after the petitioner had assigned the interest devised to him under the will, I think the wife has the estate yet, notwithstanding the assignment by the husband. I think that the Elections Act of 1868, by the term "owner" means to give the right to vote to the husband whose wife has an estate for life, or a greater estate in the land; and that when in possession of such an estate he is proprietor in right of his wife. Here the land is assessed for $600, and the wife's one-half share will be worth $300, more than sufficient to qualify the husband. If it becomes necessary, I will reserve this question of qualification in right of the wife's estate, for the opinion of the Court.

Evidence was then given proving bribery and treating by agents of the respondent. The evidence material to the issue was as follows:

Walter Shane proved that he had received $40 from James H. Milloy and $60 from Col. Higginson, of which

he paid $2 to Daniel Harrigan for the use of his team in taking voters to the poll on polling day; $3 to John Franklin for a similar service; also some money to Charles Quesnel, a voter: "I gave it to him at his own place; I just gave it to him; it was not for voting;" also to Michael Shane $15, because he brought two voters from the shanties; also $3 to Moses: "Moses voted for Mr. Hamilton. It was after the election I made him a present of $3. It was not for having voted; it was just for having gone up. I thought he had voted. I did give it to him just to pay his way. I laid out the rest of the money several ways I know about, and spent it. I did not give it to any one else.

Cross-examined: "The balance I have kept; no one ever asked me to give it back, nor have I ever asked any one to take it back. I did vote."

James H. Milloy proved that he was on the respondent's committee, and canvassed with him; that he received $40 from the Hon. John Hamilton to hire men in place of certain voters who were in the shanties so that such voters might come to the election and vote; that he handed the money to Walter Shane; that he received further sums amounting to $400 or $500 from Col. Higginson, in the committee, and kept no record of it. "It was handed to me without any instructions, and it was never counted. I was to use the money. No one gave me instructions how to lay out that money. I consider the money was handed to me to spend at the election. I gave it to parties. I gave Mr. Allan J. Grant $50. I told him he was to go and electioneer; left it discretionary with him to use as he thought best. I gave $50 to the Rev. Mr. Phillips of the R. C. Church on the morning of the nomination; I felt assured he would make good use of it; it's usual to be liberal with the clergy at these times. I gave $40 or $50 to Mr. Leanch. He voted for Mr. Hamilton. I handed him the money; I believe I said to him that was to pay his travelling expenses, or something of that kind, for election purposes. I suppose we understood each other.

I gave Mr. Linden money. He is a voter who voted for Mr. Hamilton. I gave him $15; did not tell him what it was for. It was after he voted he asked me for money; he said he had been at some expense. I knew he had, and gave him the money. I gave Mr. Peter Gallagher at a meeting of our committee $100. He did not ask me for the money; I supposed he would promote the election with it. Mr. Gallagher voted for Mr. Hamilton, I believe. Mr. Bradley got some, say $25. He said there were only $15; I thought $25. Mr. Higginson handed it to me to hand to him, no doubt to promote the election. Terence O'Boyle got, I think, $25; I handed it to him; Col. Higginson handed it to me. I think all the parties understood what they were to do with it. I believe Mr. Patrick McDonald got $20 or $25 of the same, and small sums of between $15 and $20 paid out to other parties. I spent the rest in treating and in paying travelling expenses. I treated at Caledonia Springs' meeting with part of the election expenses."

After an adjournment, Counsel for the respondent stated that, after the evidence given yesterday, he considered a sufficient case had been made to avoid the election. The respondent in his examination prior to the adjournment denied that any money in relation to the election was expended with his knowledge and consent.

Counsel for the petitioners stated they did not wish to examine the respondent further. The end which they wished to attain was the setting aside of the election, and they had no wish to proceed with the matter further.

RICHARDS, C. J.—I determine the election was void. I determine that no corrupt practices have been proved to have been committed by or with the knowledge and consent of either of the candidates at such election. I shall certify that there is reason to believe that corrupt practices have extensively prevailed at the election to which the petition relates.

I have some doubt whether I ought not to direct that notice be given to the parties under the statute, who are apparently, from the evidence, guilty of corrupt practices, that they may have an opportunity of being heard, so that I may decide and report to the Speaker on that subject under subs. *b.* of section 17 of the Controverted Elections Act of 1871. The Act itself having been passed so recently before the elections, the practice under the Act being new, the Judges being much pressed for time in carrying out the Act, the delay which must ensue if these proceedings are adjourned to give the proper notice to the parties who were apparently the most active in the corrupt acts, the inconvenience to all parties concerned and the fact that the parties who are guilty may still be prosecuted for penalties, induce me to consent to the matter not being proceeded with further, for the purpose of making the parties liable to the penalties under the statute of 1871.

Petitioners are entitled to their costs, having reference to the cases of voters in which they failed to make out a case. (*a.*) (5 *Journal Legis. Assem.*, 1871-2, p. 5).

CARLETON.

BEFORE MR. VICE-CHANCELLOR MOWAT.

OTTAWA, *16th and 17th June, 1871.*

ROBERT LYON, *Petitioner*, v. GEORGE W. MONK, *Respondent.*

Bribery by an Agent—Admission of Counsel.

The admission of Counsel in open Court,—that the giving of $2 to a voter by an agent of the respondent, after such voter had voted, such voter admitting that he did not know why the $2 was given to him, was bribery,—acted upon, and the election avoided.

The petition contained the usual allegations of bribery, &c., and claimed the seat for the petitioner on a scrutiny. The votes at the election were: For respondent, 822; for petitioner, 812. Majority for the respondent, 10.

(*a*) See as to the taxation of costs in this case, 32 Q. B., 303.

Mr. J. Hillyard Cameron, Q.C., for respondent.

Mr. R. A. Harrison, Q.C., for petitioner.

Particulars of charges of personal bribery against the petitioner were filed; but after the examination of one witness, they were abandoned.

The evidence affecting the election was as follows:—

Alexander Kinch: I know Crawford Corbett; he lives near me, two miles from me. I am a farmer; have a rented farm. Crawford Corbett gave me $2 after I had voted; I dont know why he gave me the $2; I did not ask him; he owed me nothing.

The Counsel for the respondent admitted this vote to be bad.

Five other votes for respondent were admitted to be bad.

Mr. Harrison, for petitioner, then abandoned the scrutiny and the claim to the seat.

Mr. Cameron, for respondent, consented, and that the election should be declared void. He further admitted that the voter *Kinch*, whose name was struck off for bribery, was bribed by the agent of the sitting member, and without his knowledge or consent.

The VICE-CHANCELLOR on the foregoing evidence and on the admission of Counsel, then declared the election void; and made the following special report:

"That the votes of *John Craig*, and *Alexander Kinch*, who voted at the said election, were struck off by me, on the scrutiny on the trial, on the ground of bribery; the evidence in each case being that of the voter himself given at the trial.

"That the persons who paid the money to the said voters were not produced as witnesses at the said trial; and there was no proof before me that they had the opportunity of being heard as required by the 49th section of the Act."

No costs to either party. (5 *Journal Legis. Assem.*, 1871-2, p. 6.)

GLENGARRY.

BEFORE CHIEF JUSTICE HAGARTY.

CORNWALL, *22nd and 23rd June, 1871.*

RODERICK MCLENNAN *et al, Petitioners,* v. JAMES CRAIG, *Respondent.*

Treating at Meetings of Electors—Illegal and Prohibited Acts—Bribery—Gift—Excessive payments—32 Vict., cap. 21, secs. 61, 65 and 67—Costs.

The respondent who was then representing the county in the Legislature, on two several occasions at the close of public meetings of electors called by him to explain his conduct as such member, treated all present to liquor at taverns. He had not at the time made up his mind to be a candidate at the then coming election, but told the electors that "if they gave him their support he would expect it."

Held, under the circumstances, that such treating was not done with a corrupt intent.

Quære—Whether such treating was in any case a corrupt practice, under sec. 61, of 32 Vict., cap. 21, or other than an illegal act which subjected the party to a penalty of $100 under sec. 65—the statute pointedly omitting all mention of treating.

Where a charge of a corrupt intent in treating is made, the evidence must satisfy the Judge, beyond reasonable doubt, that the treating was intended directly to influence the election, and to produce an effect upon the electors, and was so done with a corrupt intent.

The respondent after announcing himself as a candidate, gave $10 in two $5 bills to a child of a voter, then three or four years old, which had been named after him. He had two years previously intimated that he would make the child a present.

Held, that the gift, under such circumstances, was not bribery.

The respondent while canvassing had refreshment for his man and two horses at a tavern for part of a day and a night, for which he paid the tavern-keeper $5, and next day $5 more, in all $10, without asking for a bill. The bill would have amounted to about $3. The respondent stated that the tavern-keeper was an old friend of his, and was just starting in business, and that he thought it right to pay him as it were a compliment on his first visit to his tavern, and that he believed he would have done the same thing if it was not election time.

Held, that being an isolated case in an election contest free from profuse expenditure, and this being a quasi-criminal trial, involving grievous results to the respondent if found a corrupt practice, such payment was not—after the explanations of the respondent—an act of bribery.

The petition was dismissed, but owing to the unwise and imprudent acts of the respondent, he was allowed only one half of the taxable costs.

The petition contained the usual allegations as to corrupt practices, etc.; but did not claim the seat. The candidates at the election were James Craig, the respondent, who was elected, and James Maclennan.

Mr. Maclennan, Mr. Bethune, and Mr. Wilson, for petitioners.

Mr. J. Hillyard Cameron, Q.C., and Mr. D. B. McLennan, for respondent.

The petitioners relied upon the cases referred to in the following evidence:

James Craig, respondent: I was a candidate at the last election, and was successful. I was rather unwilling to stand. The meetings held were to offer explanations of my conduct. The first meeting was at Somerstown. At that time I did not know the election was coming on. I had not made up my mind to be a candidate. Made up my mind at Alexandria to become a candidate At Somerstown I was the only one that spoke. The meeting was in a building or ball-room in connection with the hotel. I told the people that if they gave me their support I would expect it, and if not they might do otherwise. After I spoke I told the people to go into Somer's bar and have something to drink; this was to be at my expense. There were from 50 to 100 there; I can't be sure. Some went in, so did I; I partook of the refreshment at the bar with them. My invitation was general: perhaps 20 or 30 went in to drink. I only paid for one treat; I paid $5 in all to the proprietor. I left, leaving several there. At Williamstown the meetings were in a public hall. I spoke; no one else after I spoke. I said, as they all had been out late, and as they had behaved well, to go to their respective hotels and have some refreshment, and I would call round in the morning. All that was understood was to have a glass of liquor as at Somerstown. Three hotels were there, kept by Thomas, Angus, and John Macdonald, respectively. I think, not sure, these three men were my supporters. Some of them went to the hotels; I went to all three; they got liquor there; I talked with some in the bars; I paid for this. I paid from $3 to $4 to each of the three hotels for this; I paid it next day; paid none since then. I paid them what they said was the cost; the whole did not exceed $12. At the close of the Alexandria

meeting I gave them a like invitation. The meeting was in a hall, part of McPhee's hotel. The Attorney-General happened to be there, and he told me it was contrary to law; and then I said, if so, I would not treat, and I did not. He said it might cost me my election. I gave John Tobin $10 two or three weeks before the election. I stopped part of two days, and left my man and horses. It was a very dirty time. I gave him $5, saying I was sorry I had dirtied his house. Next day I gave him $5 more. He asked me should he treat the people there; I told him no, to make them pay for their drinks. I did not eat or sleep there; I slept with a nephew. My man must have taken two or three meals, and stayed a night. I had two horses; they were there part of a day and a night, and got three or four meals. I understood I was paying for self, man and two horses. I did not ask what his bill was. I said, I have dirtied up your house, and I would come this way often. Twenty-five cents a meal is a common charge; fifty cents for a feed of oats, two gallons each for a pair of horses; not so much if staying over night. Twenty-five cents for a bed is usual. Nothing was said about elections. I was at Tobin's after the meeting at Alexandria. I went up there to attend a meeting; a missionary meeting; an elder was with me; it was an independent meeting; it was a regularly appointed Presbyterian meeting. I was written to go as a representative elder. I never asked Tobin to vote for me; I believe he did poll for me. He was a very old friend of mine; we were raised as boys together, and I had never been in his house before. I believe I would have given it to him if there were no election; he was a young man beginning business. I was at Alexander Grant's (Junior) house after the Alexandria meeting; I went there to see a son of his who was called after me; I saw the child; it seemed three or four years old. Grant was not at home; I did not ask for him. The child could talk a little. I gave the child $10; I did it as an acknowledgment. I heard of his being my name-child about two years before.

I had not been in that part of the country but once before; I live twenty miles off. I had said when I first heard the child was called after me, that I would make him a present as an acknowledgment. I gave the money to the child; the mother said they did not want money. I said it was not for her, it was for the child. The child took the money; I gave him two $5 bills. The mother knew me, and shook hands. I said I understand you have a little boy here of mine; she said there is one called after you. I was not there over ten minutes. Intended to do this long before. I knew Grant four years ago; he was a strong supporter of mine at elections. I don't think I had met him since the preceding election. Our first acquaintance was at that election. I spoke to J. McKenzie that I was going to give this; this was ten days or a fortnight before I went to Grant's. I had never called at the Grant's before this. I made no similar present before out of my own connections. I have no name-child. I have given presents to those called after me of my relations.

Mr. Bethune contended that the election was void, on three grounds—1st, The treating at the meetings; 2nd, The gift to Grant's child; 3rd, The payment of $10 to Tobin. As to the first point, in England the law was directed against treating of individuals with a view of changing their votes, which was a species of bribery, and this accounted for the use of the words "corrupt treating" in the English Act. Our Act was directed at the practice of giving entertainments at taverns to meetings of electors, with the view of promoting the election. Next, as to the intention of the candidate in treating. As was said in an English case, the treating may not have been done with the view of gaining the vote of A or B, but it was done to gain popularity, and that was sufficient to meet the statute as to promoting his election. If in England this was the case, where a single voter was in question *a fortiori*, must it be followed here when a large number of electors were in question. The meeting and the speeches were intended to gain popularity, and the treating after-

wards could have no other object. No subject was discussed but the election, and the whole end of the meetings and treatings was the promotion of the elections. *Hereford case*, 21 L. T. N.S., 121. There was not an English case where corruptly was construed to mean *mala fide*; it only meant doing an illegal and forbidden action. Under the statute of 1871 the term "corrupt practice" was defined to include "bribery, undue influence and illegal and prohibited acts."

[The CHIEF JUSTICE said, if he had to decide the case merely on the ground that the act of treating was a corrupt practice because prohibited by the law, he would reserve the case for the Court on account of the consequences that would ensue.]

The word corruptly did not occur in the 61st section. It had been left out advisedly, and the statute must be read without it.

[The CHIEF JUSTICE. There was nothing of course immoral in treating apart from the statute. Even under the Act the candidate might treat as much as he liked at his own house, and his agents at their own houses.]

Bribes were always covered up in some way, and especially would the candidate be anxious to conceal his conduct now that such serious consequences ensued. Bribes were always given under the color of some excuse, which, it was supposed, would account for the gifts if they were called in question. As to the gift to the child; the money went eventually to the benefit of the parents, for it saved them so much of its clothing or support. It was the only instance in which Mr. Craig had made such a gift, and it had been talked over just before the elections. It was a plain case of bribery with a view of influencing the vote. If this was held to be an innocent gift, there was nothing to prevent gifts to all the children in Glengarry next election.

[The CHIEF JUSTICE.—It would be different if two or three cases had been proved against Mr. Craig.]

As to Tobin's case, sub-sec. 6, sec. 67, of the Election Act, allowed the candidate to pay expenses, but it was

carefully limited to "actual" expenses. Here, the real expenses were about three dollars; and ten dollars was given. And it had been said that the seven dollars was not for treating, though treating privately under our statutes was legal enough, except as evidence of a corrupt bargain. It was given, no doubt, with a view of conciliating the publican. He was not in need of charity, or else the fact of being an old neighbor might have divested the act of its corrupt appearance. The fact that he gave $5 at night, when only 75 cents were due, and followed it up with a second $5 next day, when little more was due, made the case worse. Suppose it had only been shown that he gave him $7, and that Tobin voted, the inference would have been that it was a bribe, and he submitted that the explanation given did not rebut that inference.

Mr. Maclennan on the same side.—As to Tobin's case, he pointed out that if the plea of old acquaintanceship with Tobin was to prevail Mr. Craig might bribe all Glengarry next election, for they would all be pretty well known to him then. The excuse was of the most flimsy character. As to the payment to Grant's child, the gift was not of a character suitable for a child, and was not given so as to provide for its amusement or benefit; the money was given in the shape of two $5 bills, and unless taken from the child would be torn up in five minutes, and not for the benefit of the child so much as for the parents. If it had been intended for the child's amusement it should have taken the shape of a toy, and if for his benefit some instructions would have been left about it. As to the treating, it was part and parcel of the meeting, and was intended to promote the election. It was given not to his personal friends but to the general body of voters at the meeting. *Hereford case*, 21 L. T. N. S., 120; *Limerick case*, 1 O'M. & H., 260.

Mr. Cameron denied that the term corrupt could mean everything illegal or prohibited by the Election Act. If so, then an election would be voided for infraction of the 2nd section (which declared who should not vote), 3rd

section, 14th section (as to who are to be returning officers), 15th section (as to poll clerks), 23rd section (as to no show of hands), 27th (as to voting in more than one place), 46th (as to personation of voters), and the 59th, 60th, 61st, 62nd, 63rd, 64th, 66th, all of which prohibit something or another. If this view prevailed, the wearing a shamrock or an orange lily, or a bright necktie, or the candidate's wife wearing a party colored scarf, or carrying a fowling-piece within two miles of a polling place, might void an election. The only illegal and prohibited acts, included as corrupt, were those in the 67th and subsequent sections, such as carrying voters, &c. The wider intention could not have been meant by the Legislature, and if it had they had not so expressed it. He contended, further, that the treating was not connected with the sitting member. He was not a candidate when either acts of treating was committed. In England, acts done before the person became an actual candidate affected him; here a candidate meant not only a person elected, but one who had been nominated, or who had declared his intention to become a candidate. The evidence of the sitting member was strongly in his own favor. The petitioners showed the dependence they placed in the respondent's evidence by calling no one to contradict him. His only object in calling those meetings was to give explanation as to his past conduct. He urged that entertainment did not mean a mere drink. In the 61st section the words entertainment and drink are contrasted, and a distinction is made. Treating was not mentioned in the statutes, and the Court or Judges should not interpolate it. The respondent had said that he had no view of influencing the election when he treated, and that stood uncontradicted.

[The CHIEF JUSTICE said he had more difficulty about the Tobin case than about the name-child's case.]

Mr. Craig's conduct had been injudicious.

[The CHIEF JUSTICE.—"And highly dangerous."]

After a short adjournment, the following judgment was delivered:

HAGARTY, C. J.—At the close of the evidence the petitioners' counsel reduced their objections to three matters: First, the entertainment at the meetings; second, the ten dollar gift to the child; third, the ten dollars to Tobin. As to furnishing entertainment to the meeting of the electors, under the 61st section of the Act of 1868, I should have little doubt in deciding that the only consequences under that statute should have been the penalty of $100 provided by section 65. (*a*) The late Act, however, has raised a question as to whether this comes under the head of a corrupt practice as an illegal and prohibited act in reference to elections. If it comes under that description, it not only voids the election, but renders the candidate liable to the grievous personal disabilities set forth in the Act, for a period of eight years. If the case before me turned upon the naked question, whether the matter prohibited by clause 61 was under the present law a corrupt practice, with all its heavy consequences, I should reserve the legal point for the consideration of the Court; but for the purposes of this case I shall treat it as such, subject to this modification, that I think by all fair rules of statute construction I am bound to hold that the evidence must satisfy me that what was done was done corruptly. When the statute says the candidate shall not do a thing with intent to promote his election, I think it must mean something beyond the literal meaning of the words. If he contemplates being a candidate, every step he takes, the issuing of hand-bills; canvassing of electors; the mere act of travelling to any given point; of paying for a conveyance for such purpose; these and a hundred other things may literally be said to be with intent to promote his election. When, therefore, a charge like the present is made, I think the evidence must satisfy the Judge, beyond reasonable doubt, that the giving of the

(*a*) The clauses relating to Treating, here commented upon by the learned Chief Justice, were materially altered by subsequent legislation. In section 61, the words "with intent to promote his election," and "with intent to promote the election of any such candidate," were struck out; and the furnishing of drink or other entertainment to any meeting of electors assembled for the purpose of promoting an election, was made a corrupt practice by 36 Vict., c. 2, s. 2; now R. S. O., c. 10, s. 151. See *West Wellington*, 1875, *post*.

entertainment was intended directly to influence the election, and to produce an effect upon the electors. If not so, why were the words introduced? They are quite useless if it was intended to prohibit the mere giving of an entertainment to a meeting of electors, absolutely without reference to the giver's intention and design in the act of giving. If the Legislature make it a corrupt practice to give entertainment with intent to promote his election, it must in my judgment compel a decision that the intent to promote must be a corrupt intent in the legal sense of the term as hereinafter explained. I am dealing with the statute avowedly in its preamble aimed at corrupt practices, which Act at the same time pointedly omits all mention of treating from its language. Whenever, therefore, the act prohibited is not in its very nature necessarily corrupt, such as bribery, I feel an almost insuperable difficulty in holding it to be a corrupt practice, involving such momentous consequences, unless it be done corruptly. In the statutable sense of that term, what is the meaning of "corrupt?" In the *Bewdley case* (1 O'M. and H., 19), Blackburn, J., says, "corrupt" means "with the object and intention of doing what the Legislature plainly means to forbid." In the *Hereford case* (*Ibid.* 195), the same learned Judge says, that corrupt treating means, "with a motive or intention, by means of it to produce an effect upon the election." In the *Lichfield case* (*Ibid.* 25), Willes, J., says, treating is forbidden "wherever it is resorted to for the purpose of pampering people's appetites, and thereby inducing electors either to vote or to abstain from voting otherwise than they would have done if their palates had not been tickled by eating and drinking, supplied by the candidates." Again he speaks of treating "as a means of being elected . . . . in order to influence voters." And so in the *Tamworth case* (*Ibid.* 83), the same learned Judge suggests cases where treating may well be considered and held corrupt, and he says it is always a question of intention—an intention to produce that effect which the Legislature meant to forbid. See also the

Wallingford case (*Ibid.* 57), and the facts there held to shew corrupt intention. In the *Coventry case* (*Ibid.* 106), the same Judge says, "when eating and drinking takes the form of enticing people, for the purpose of inducing them to change their minds and vote for the party to which they do not belong, then it becomes corrupt." In the *Bradford case* (*Ibid.* 37), Baron Martin defines "corruptly" thus: "I am satisfied it means a thing done with an evil mind and intention. Unless there is an evil mind and intention accompanying the act it is not done corruptly. It means an act done by a man knowing that he is doing what is wrong, and doing it with an evil object. There must be an evil motive in it, and it must be done in order to be elected." In the case last mentioned, it was not done in order to be elected, because it was known how all the men would vote. They were there because they were voters pledged to support respondent. It is therefore idle to suppose the meat and drink were given to induce them to vote. In the *Staleybridge case* (*Ibid.* 73), Willes, J., says "that it must be done to influence the election by the giving of meat and drink. The question whether or no there is a corrupt giving of meat or drink must, like every other question of intention, depend upon what was done, and in a great measure the extent to which it was done, the manner and way: and therefore it is a question which must always be more or less a question of fact." All these remarks are made under a statute speaking of corrupt treating in order to be elected, or for the purpose of corruptly influencing persons to vote or refrain from voting. I may also refer to the very striking remarks of Willes, J., in the *Bodmin case* (*Ibid.* 124), where he says the Judge must satisfy his mind whether that which was done was really done in so unusual and suspicious a way that he ought to impute to the person who has done it a criminal intention in doing it, or whether the circumstances are such that it may fairly be imputed to the man's sincerity, or his profusion, or his desire to express his good will to those who

honestly help his cause without resorting to the illegal mode of attracting voters by means of an appeal to their appetites. On both the occasions when entertainment was given, the respondent, according to his uncontradicted evidence, was still undecided as to his becoming a candidate. When the meetings broke up he offers, and does treat all persons there. The amount expended was, on the first occasion, $5; on the second, $12. I feel bound to say that the evidence given by the respondent seemed given with great candor, and favorably impressed me as to its truth, and I feel wholly unable to draw from it any honest belief that he provided this entertainment, consisting apparently of a glass of liquor all round, with an idea that he was thereby seeking to influence the election, or promote his election in any of the senses referred to in the cases. He was unaware of the state of the law on this subject, as he says. He is not to be excused on the ground of his ignorance; but the fact (his ignorance) is not wholly unimportant as bearing on the common custom of the country—too common, as it unfortunately is—of making all friendly meetings the occasion or the excuse of a drink or treat. The strong impression on my mind, and I think it would be the impression of any honest jury, is that the treats in question were just given in the common course of things, as following a common custom. In the appropriate language already cited, the Judge must satisfy himself whether that which was done, was really done in so unusual and suspicious a way that he ought to impute to the person a criminal intention in doing it.

On the second head the petitioners' counsel have rested their case wholly on the respondent's evidence, and I am asked to infer from it the existence of a corrupt intention to bribe. While telling us of his giving this money, he also swears that it was simply in pursuance of a declared purpose of his, avowed two years before. There being nothing very extraordinary in the presentation of $10 to a god-child or name-child, either in the fact or

the amount of the gift, I do not feel at liberty to refuse to believe that part of his evidence which proves his innocence, and to accept as conclusive the existence of a motive which he expressly disclaims.

Thirdly, as to $10 to Tobin, I think it was an act of singular imprudence under the circumstances; of this I have no doubt. But I am not so clear as to its being corrupt and criminal. The explanation given by respondent is, that Tobin was a very old friend, brought up as a boy with him, a young man recently started in business, and he (respondent) had never been in his house before; and as he had dirtied the house much, in paying for his actual expenses, which Mr. Bethune says could not exceed three dollars, he thought it right to pay him as it were a compliment on his first visit, and he said he would have done the same thing if it had not been election time. Had I found respondent generally resorting to such a course in his canvass, and making payments to innkeepers and others largely in excess of the measure of fair remuneration, or even had there been proof of several such instances, I think I should have found great difficulty in accepting the explanation. In this isolated case, in an election contest singularly and exceptionally free from any profuse expenditure, conducted, in fact, upon the most economical principles, with no personal canvass or colorable employment of agents, I find it still harder to refuse to accept the innocent interpretation. The election for Glengarry is shown not to have cost the successful candidate over $100 for every expense. I only refer to this fact as in some way rebutting the imputation of any general design of carrying the election by corrupt means. Had the evidence been at all evenly balanced, I should have been placed in the most painful position of deciding in a quasi-criminal case, without the aid of a jury, a point involving such grievous results to a candidate. Such position is well described in a late English case, *Stevens* v. *Tillett*, L. R., 6, C. P., 147, where the Judge says: "I cannot imagine to myself a jurisdiction more painful or more

responsible than that of a Judge deciding, without the assistance of a jury, that a candidate has been personally guilty of so grievous an offence." I have to accept the heavy responsibility imposed upon me to decide on a man's motives and intentions; in the words of the last case cited, "with all the questions that must operate on the mind of a Judge not assisted by a jury in pronouncing alone, and without appeal, in a criminal case, and to make the candidate subject to the grievous disabilities imposed in respect of his future status, both parliamentary and otherwise."

I think the giving of refreshments to public meetings a most unsafe and dangerous proceeding on the part of the candidate. He is always exposed to imputations on his integrity, and to a possible adverse decision on a judicial inquiry. I reserve to myself to decide whenever occasion may require the broader question suggested on the construction of our statutes. My decision rests on a construction possibly more favorable to the petitioners' view of the law than may be hereafter adopted. Acting, as I am satisfied any jury desirous to act honestly would act on the facts in evidence, I acquit the respondent of the charges advanced against him. To mark, however, my sense of the unwise and imprudent matters that have most probably given rise to this petition. I direct that one-half of the gross amount of respondent's costs taxable against petitioners be disallowed, and that petitioners pay the other half to the respondent.

(5 *Journal Legis. Assem.*, 1871-2, p. 6.)

STORMONT.

Before Chief Justice Richards.

Cornwall, *12th to 17th June, and 12th September, 1871.*

James Bethune, *Petitioner*, v. William Colquhoun, *Respondent.*

Petition — Practice — Writ of Election — Scrutiny — Qualification — Mistake in entry of voter on the Roll — Right to Vote — Value of Property — Amendment — Aliens.

Held, 1.—That the writ of Election and Return need not be produced or proved before any evidence of the election is given.

2.—On a scrutiny the practice is for the person in a minority to first place himself in a majority, and then for the person thus placed in a minority to strike off his opponent's votes.

3.—The name of the voter being on the poll-book is *prima facie* evidence of his right to vote. The party attacking the vote may either call the voter, or offer any other evidence he has on the subject.

4.—A voter being duly qualified in other respects, and having his name on the roll and list, but by mistake entered as tenant instead of owner or occupant, or *vice versa*: *Held*, not disfranchised merely because his name was entered under one head instead of another.

5.—The only question as to the qualification of a voter settled by the Court of Revision under the Assessment Act, is the one of value.—*George N. Stewart's vote.*

6.—Where father and son live together on the father's farm, and the father is in fact the principal to whom money is paid, and who distributes it as he thinks proper, and the son has no agreement binding on the father to compel him to give the son a share of the proceeds of the farm, or to cultivate a share of the land, but merely receives what the father's sense of justice dictates: *Held*, the son has no vote. —*Wm. P. Eamon's vote.*

7.—In a milling business where the agreement between the father and the son was, that if the son would take charge of the mill, and manage the business, he should have a share of the profits, and the son, in fact, solely managed the business, keeping possession of the mill, and applying a portion of the proceeds to his own use: *Held*, that the son had such an interest in the business, and, while the business lasted, such an interest in the land, as entitled him to vote.—*Robert Bullock's vote.*

8.—Where a certain occupancy was proved on the part of the son distinct from that of the father, but no agreement to entitle the son to a share of the profits, and the son merely worked with the rest of the family for their common benefit: *Held*, that although the son was not merely assessed for the real but the personal property on the place (his title to the latter being on the same footing as the former), he was not entitled to vote.—*John Raney's vote.*

9.—Where the objection taken was, that the voter was not at the time of the final revision of the Assessment Roll the *bonâ fide* owner occupant or tenant of the property in respect of which he voted; and the

evidence shewed a *joint* occupancy on the part of the voter and his father on land rated at $240: *Held*, that the notice given did not point to the objection that if the parties were joint occupants they were insufficiently rated, and as the objection to the vote was not properly taken, the vote was held good.—*Owen Baker's vote.*

[The learned C. J. intimated that if the objection had been properly taken, or if the counsel for petitioner (whose interest it was to sustain the vote) had stated that he was not prejudiced by the form of the objection, he would have held the vote bad. See as to this judgment, the case of *Duncan Cahey, post.*]

10.—Where the father had made a will in his son's favor, and told the son if he would work the place and support the family he would give it to him, and the entire management remained in the son's hands from that time, the property being assessed in both names—the profits to be applied to pay the debt due on the place: *Held*, that as the understanding was that the son worked the place for the support of the family, and beyond that for the benefit of the estate, which he expected to possess under his father's will, and that he did not hold immediately to his own use and benefit, and was not entitled to vote.—*Joshua Weort's vote.*

11.—Where the voter had only received a deed of the property on which he voted on the 16th August, 1870, but previous to that date had been assessed for and paid taxes on the place, but had not owned it: *Held*, that not possessing the qualification at the time he was assessed, or at the final revision of the roll, he was not entitled to vote.—*Duncan Cahey's vote.*

A question being raised in this case as to the sufficiency of the notice of objection that the voter was not actually and *bonâ fide* the owner, tenant or occupant of real property within the meaning of Sec. 5 of the Election Law of 1868, the learned C. J. remarked, "The respondent's counsel does not say that he is prejudiced by the way in which the objection is taken; if he had, I would postpone the consideration of the case. It is objected that the case of Owen Baker should be subject to the same rule, and if the question had been presented to me in that view, I think I should have felt at liberty to go into the case, giving time to the petitioner to make further inquiries, if he thought proper." The particulars would thereupon have been amended.

12.—Where the voter had been originally, before 1865 or 1866, put upon the Assessment Roll merely to give him a vote, but by a subsequent arrangement with his father, made in 1865 or 1866, he was to support the father, and apply the rest of the proceeds to his own support: *Held*, that if he had been put on originally merely for the purpose of giving a vote, and that was the vote questioned, it would have been bad, but being continued several years after he really became the occupant for his own benefit, he was entitled to vote, though originally the assessment began in his name merely to qualify him.—*Benjamin Gore's vote.*

13.—Where the voter was the equitable owner, the deed being taken in the father's name but the son furnishing the money, the father in occupation with the assent of his son, and the proceeds not divided: *Held*, that being the equitable owner, notwithstanding the deed to the father, he had the right to vote. *Held*, also, that being rated as tenant instead of owner did not affect his vote.—*Donald Blair's vote.*

14.—Where the voter and his son leased certain property, and the lease was drawn in the son's name alone, and when the crops were reaped the son claimed they belonged to him solely, the voter owning other property, but being assessed for this only and voting on it: *Held*, that although he was on the roll and had the necessary qualification, but not assessed for it, he was not entitled to vote.—*Samuel Hill's vote.*

15.—Where the voter was the tenant of certain property belonging to his father-in-law, and before the expiration of his tenancy the father-in-law, with the consent of the votor (the latter being a witness to the lease), leased the property to another, the voter's lease not expiring until November, and the new lease being made on the 28th March, 1870: *Held*, that after the surrender by the lease to which he was a subscribing witness, he ceased to be a tenant on the 28th of March, 1870, and that to entitle him to vote he must have the qualification at the time of the final revision of the assessment roll, though not necessarily at the time he voted, so long as he was still a resident of the electoral division.—*Joshua Rupert's vote.*

16.—Where a verbal agreement was made between the voter and his father in January, 1870, and on this agreement the voter from that time had exercised control, and took the proceeds to his own use, although the deed was not executed until September following: *Held*, entitled to vote.—*Wm. J. Gollinger's vote.*

17.—Where the voter was born in the United States, his parents being British-born subjects, his father and grandfather being U. E. Loyalists and the voter residing nearly all his life in Canada: *Held*, entitled to vote.—*Wm. Place's vote.*

Special report, and observations on making the revised lists of voters final, except as to matters subsequent to the revision.

The petition contained charges as to illegal votes, and claimed the seat on a scrutiny for the defeated candidate, James Bethune. The vote was: For respondent, 705; for James Bethune, 700; majority for respondent, 5.

Mr. R. A. Harrison, Q.C., *and the Petitioner* in person appeared for the petitioner.

Mr. J. Hillyard Cameron, Q.C., *and Mr. D. B. McLennan* for the respondent.

Mr. Harrison 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.

Mr. Cameron 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.

Mr. Harrison 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.

Mr. Harrison then urged that the respondent should first dispose of the recriminatory charges of bribery.

Mr. Cameron 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.

Mr. Harrison 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 voter being on the poll book is *primâ 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.

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 versâ*, he, really having the qualification, is not disfranchised, merely because his name is entered under one of the heads, instead of under another.

The petitioner then proceeded with the scrutiny:

GEORGE N. STEWART'S VOTE.

Gilbert Stewart was called on the vote of *George N. Stewart*. It appeared by the evidence that the witness was the owner of Lot 6, in the Township of Osnabruck, and 4 or 5 acres of Lot 7, for the latter of which George N., his son, the voter, was assessed. The son had been assessed on this for 3 or 4 years. The taxes were paid the same as the rest of the taxes on the place. The son had no more interest in these 4 or 5 acres than in the rest of the farm. He was accustomed to use what he required for necessaries, clothing, &c., but did not own anything as of right on the farm.

Mr. Cameron contended that under the Assessment Law, the voters' list is final as to qualification, and cited 32 Vic. c. 21, s. 7, subs. 10.

RICHARDS, C. J.—The *rota* Judges have had this question under consideration, and have arrived at the conclusion that under the statute the only question of qualification which was considered as settled by the Court of Revision, was the one of value. The others are open for investigation on a scrutiny. Vote bad.

WILLIAM P. EAMON'S VOTE.

Joseph Eamon called on the vote of *Wm. P. Eamon:* I live in Osnabruck. I live on the East ¼ of 7 and West ¼ of 6 in that concession. I have lived there about

23 years. I own the land. Wm. P. Eamon is my son. We have possession. He lives in the same house with me, a member of the family. He makes his living off it. I gave him a privilege of half what we raise—the bargain is verbal. It has been going on that way for some years. There was no bargain in particular made about it. Never made division of the crop, except when sold. I gave him more than half of it. There never was any bargain made between us. He is the only son I have. I expect him to have the place after I die. He has a family. There is no distinct share agreed on between us. He, when the grain is sold, gets better than half of the money. I give it to him, because he does more than half the work. I allow him to give in 50 acres of the land. He has no title of it. That is not cultivated any different from the rest. He does the chief part of the work. We paid the taxes and did the road work between us. I allowed him to give in the 50 acres to satisfy him. I don't know if it was to give him a vote—it might have been. I don't recollect its being talked over for that purpose. The house and barn on that part I gave it myself. The grain is all put in the same barn—used at the same time. My son has three children. I have my son and a daughter. He has always lived with me. I told him when he was married he could bring his wife there, and remain with me. He expects, of course, to get all my property. This arrangement continued since he was married. He has a part of the house considered his own, but we all eat together. When anything is sold he receives a part of it. The practice has grown up between us since he was married, to give him a share of the proceeds, and that has taken place every year since he was married. He still hands me the money, and I give him his portion. Sometimes it amounts to more than others, according to what he sells. He manages the whole farm for me. I have been in the habit of considering him as jointly in occupation of the farm.

Cross-examined: His proportion is more or less, as the grain will sell. We can't divide the grain—we divide the

money. I generally give him more than half. He has got half ever since he was married. We keep no accounts. I just handed him what I had a mind to, and that was the only arrangement, and he was satisfied. He had no writing to him made out. If he was not satisfied with what I gave him, he could not compel me to give him any more. I did not intend to make any arrangement with him so that he could compel me to give him any share. If we should at any time disagree, I could turn him out at any time. He has no right to remain there. I am master myself.

It appeared in this case that the assessment roll showed both father and son rated for the land, two quarter lots. On the voters' list the father was rated for one quarter, the son for the other.

Mr. Cameron contended that the vote was good, and cited the Assessment Act of 1868-9, sec. 27, Election Act 1868-9, sec. 5, sub-sec. 2, followed by the interpretation of the term "occupant," sec. 6, sub-sec. 2.

RICHARDS, C. J.—The rule applicable to this case, and which I think is in accordance with the view of the *rota* judges, is that when the father and son live together on the father's farm, the father being in fact the principal, as in this case, to whom moneys are paid over, and who distributes them as he thinks proper, and the son has no agreement or understanding binding on the father, either to compel him to give him a share of the proceeds of the farm, or to allow him to cultivate a share of the land, and he merely receives what he gets from the father's sense of justice and right, that then the son has not such an interest as qualifies him to vote under the election law.

ROBERT BULLOCK'S VOTE.

Robert Knight Bullock, called on the vote of *Robert Bullock*: Robert Bullock is my son. I own Lot No. 8 in 1st Con., Osnabruck. I have owned it 30 years and upwards. I have been in possession of it, and am still in possession of it. My son Robert was born on the land.

He has not always been there with me. He has been with me the last four years. He occupies the mill on the west part of the lot. I own the mill. My son runs the mill for his benefit and mine. There is only a verbal agreement between us about it. It was made four years ago. The agreement was that he should have a fair proportion—whatever was considered as fair. I think the agreement was made in presence of the whole of the family. He keeps the accounts. We have never had a settlement. He had all he required. He charged himself with what he took. Cannot say what he charged himself the last four years. He handed over the proceeds every week, save what he kept for himself, to his mother or me. He is a miller—runs the mill. The business is carried on in my name and his. The invoices are generally made out in the name of R. K. Bullock. I have seen some made out in his name. He lives at my house, with the rest of the family. The agreement was to last as long as it suited him and me. I think he has kept more than was reasonable to clothe him and furnish pocket money. We have had losses in the business. He gave no money towards them, but was more moderate in what he drew. He is not married. I cannot tell what he got in any one year. He was to have a liberal allowanee, having charge of the mill—more than most young men.

Cross-examined: It is a grist mill, with three run of stones; he has no wages; he runs this mill jointly with me, and has done so for four years. I could not put him out of the mill as I thought proper. I have had no settlement with my son as to our transactions. He will be 28 next birthday. I thought him entitled to a good liberal allowance—once or twice I thought he drew more than required for the business we were doing just then. Sometimes the profit was very small. He is a miller—understands the trade. I presume there would be some trouble in putting him out of the mill—some time to give him notice. The understanding between us was, when we returned from the West, if he would stay, he would have a

good liberal allowance for his work. There was a man employed about the mill at so much a month; he was paid in cash; Robert hired him; he took what he chose; sometimes I presume what he took was more than sufficient for his ordinary expenses. The share he took would amount to more than £50 a year. He was differently situated from my other sons. He did all the collecting of the debts; is still there on the same terms. Before he took charge this was rated in my name. Immediately after he came there he made the arrangement; there was a change. I think he sent the money for the taxes; I know I did not. I am not there a great deal; he is, and he attends to those things. He does not get $300 in cash from the mill—not much less than $200. He boards at home. I have a first-class miller at $500 a year and the house, and they board themselves.

Re-examined: I have bought some of his clothing since he came back. I did not charge him with it; sometimes he pays for it, sometimes not. I have paid for a good share of his clothing for the last four years. When he wants to go away from home, and the horses are there, he generally takes one. I am certain he took more than $100 in cash in each year for the last year or two.

RICHARDS, C. J.—I think in this case, the original agreement between the parties shows an intention to give the son something more than a mere gratuity such as the father might choose to allow him. The father says he told him if he would stay at home and take charge of the mill, he would give him a share of the profits; no specific share was agreed on, and the son took out of the proceeds what he thought right; the father sometimes thought it too much, but did not mention this to the son; did not close the business or the connection. I think here the son had something more than a sum of money out of the premises at the will of the father; he was entitled to a share; had an interest in the business, and, as such, while the business lasted, an interest in the land, and was at all events a partner in the profits, and might be considered as

having an interest in the land. Bullock says, I understood we were to be partners in the milling business under this arrangement, and he was to have a fair proportion of the profits. I, therefore, think this vote good.

JOHN RANEY'S VOTE.

John Raney, called as to his own vote: I voted in Stormont as the owner of the east half of twenty-five, in the third concession, Roxborough. My father owns it; I have no title or lease of it; I live on it; have lived on it eighteen or twenty years. Father lives on it with me. We both live in the same house. I was married about two years ago. Father has told me he would give it to me. He has offered me a deed of half the lot. Mother is dead. I have a sister living; my sister managed the household until I was married. My father is about seventy. I always remained there with him. I thought he would give it to me. No writing between us. I have remained in the expectation of getting the whole when he dies.

Cross-examined: My father is not able to work. We live together. He said he would give me a deed of half at any time, and that the whole place was for me. My brother left five years since or more; he is younger than I. There are a hundred acres in the lot, thirty-five or forty acres cleared. I sell if I am there; he sells if he is there. I do pretty much all the business. When he sells grain he gets all the money. I am relying on what he said to me in staying with him. It has been assessed to me eight or nine years; sometimes my father, and sometimes I myself give it in. Father pays if he is there when the assessor comes; and when I am there, I pay. I keep the store account in my name and pay the necessaries for the house. He directs the place to be assessed in my name. I don't know who is master of the house; we are both there; he built it. I consider I ought to obey his orders as a son ought to do towards his parent. I tell him what I do with regard to the business of the place. One of the horses I bought this winter I claim. My sister and

sister's daughter claim most of the horned cattle. When I sell anything, I consult him if he is there; if not there, I sell and tell him. The cattle are assessed in my name—everything. My father, when able, gets about and sees to odd things about the house, but can do no hard work. I consider it my duty to consult him about what I sell. If he was about to assist a neighbor, and consulted me about it, I don't think I would be justified in objecting to his doing so. I consider him the owner of the place. Before I was married we were living together; I would give in he was boss of the house. My sister was also living there, and also a niece of mine, seventeen or eighteen years of age.

Mr. Harrison contended that the voter had a right to enforce specific performance of the agreement with his father, and cited *McDonald* v. *Rose*, 17 Grant, 657.

RICHARDS, C. J.—This case has much in it to shew a kind of occupancy distinct from the father, and if the father had received from him a certain share, or he himself a certain share, or there had been an agreement between them, either expressed or implied, that he should receive the profits of the place, and the father lived with him, it might have been different. But the case seems to me, to be really that of a man and some of his unmarried children and grand-children living together *en famille*, the hard work being done by the younger branches who are able to work, the old man not being able to do so, but in fact being the head of the family nevertheless. It is true the place is assessed in the name of the son, but so were the cattle and other loose property, as I understand from the witness, and he did not claim to own them. On the whole, I think this vote bad.

OWEN BAKER'S VOTE.

Owen Baker, called as to his own vote. The evidence was very similar to that in the case of Robert Bullock. It appeared on the evidence of the voter that he and his elder brother had entered into an agreement with their

father, that they were to carry on his (the father's) mercantile business in the village of Aultsville for three years, the sons to leave the business at the expiration of that time in as good condition as when they commenced—the sons to have all the profit. Shortly after the agreement the elder brother left the country, and the voter continued to carry on the business with the aid of his father. The voter was assessed on ten acres of the farm (one hundred acres) which was managed in the same manner as the mercantile part of the concern. The books were kept and purchases made in the father's name, who could also sell what he pleased out of the concern, or the produce of the farm.

On cross-examination he stated that he thought his father could not compel him to leave, if he was unwilling, before the expiration of the three years. When the agreement was entered into stock was taken. The son could sell a team if he thought fit without speaking to his father about it, could sell stock as he pleased, and appropriate the money. The ten acres was worth about $30 an acre.

Simeon Baker, the father of the voter Owen Baker. The assessment on the roll for the son was ten acres, value $240. He was entered as freeholder. Was not certain if he gave it in as occupant. No one lived on the farm, but the son worked it. Had promised the interest of it for three years. The understanding with the son was, he was to keep it as good as when they started. Would consider it wrong to take $20 out of the produce of the farm, but could do it if he thought proper. Could buy and sell in the store, but could not say that he could take anything without the son's leave. The ten acres was considered sufficient rating to give the son a vote. There was no agreement in writing as to the land or anything else.

On cross-examination this witness stated that the object in making the arrangement was to benefit the son; he was working in Matilda, and the witness wanted him and his brother at home. They thought of going West, which

he, the father, did not desire. They took up the business on the arrangement that they were to have all the profits for three years—the stock to be returned to witness as good as when they commenced—the personal expenses of the witness to be the same as the rest of the family.

Mr. Cameron objected that the voter had no interest in the land. He was not a joint occupant with the father and if he were, the assessment was not sufficient in amount to qualify for both. Election Act, 1868-9, sec. 5, sub-sec. 2.

RICHARDS, C. J.—I consider the father and the son have a substantial interest in the business and its proceeds, and in the proceeds of the farm, and in the land; but perhaps not strictly a term. I think the interest the son has is in the nature of a joint one with the father.

Mr. Harrison contended that the objection taken to this vote does not touch the point. The grounds of objection are in schedule No. 6, and are thus stated: "List of voters who voted for the petitioner at the said election, objected to on the ground that they were not, at the time of the final revision of the assessment roll in which their names appear, and on which the respective voters' lists were based, the *bonâ fide* owners, occupants, or tenants respectively of the property in respect of which they were assessed and voted."

Mr. Cameron, said that the objection came fairly up, under the objection that he is not a *bonâ fide* owner, occupant, or tenant of the property in respect of which they were assessed and voted. This means that he was not assessed to the value to qualify him. See *Wolferstan*, p. 98.

RICHARDS, C. J.—I do not consider that the notice, as given, points to the objection, that if the parties were joint occupants, they were insufficiently rated to qualify the voter. I therefore hold this vote good, on the ground that the objection taken does not point to the real difficulty, viz., the joint interest being insufficient. But if the objection had been properly taken, or if the counsel for the petitioner (whose interest it was to sustain the vote) had

stated that he was not prejudiced by the form of the objection, I would have held the vote bad. (See *Cahey's vote, post.*)

JOSHUA WEORT'S VOTE.

Joshua Weort, called as to his own vote: I live on part of 16, in 7th Concession of Osnabruck; my father lives with me. I have no lease or deed. He made his will to me last January. Some seven years ago my father told me if I would stay and reclaim the place and support him and my mother and my sister, and if I worked the place, he would give it to me. I did work the place, but made very little out of it. It was pretty well run down; and so involved, that the loose property would not come near paying the demands. I worked on and made money, and redeemed the place, and father made a will in my favor in January last. I am married; have been four years. My wife and all live together in the same house. I think my father is about 77.

Cross-examined: I was to have the use of the place in the meantime. From that time I have had the use of the place just as I liked; used it as my own; contracted and paid all debts as my owr—I have used the place just as if I had had a deed of it for the last four years. He then became so old that he could not assist me. He has not been able to do anything of any value. I bought and sold stock on my own responsibility. There was some stock on the place when I went on; it was understood it was to be mine if I paid off the debts. I have paid off between four and five hundred dollars. There was a change in matters after that; I became the master there, and he consented to it. My father used to apply to me for money within the last two or three years. I am managing this business as my own, on my own account, and for my benefit, and that is the understanding between us. I presume it is so generally understood in the neighborhood. It is assessed, for four or five years last, in the name of myself and my father; the cattle all assessed in his name.

Re-examined: I did this to clear off the place; to get it in the end for myself. That was the motive with which I made the agreement. My father and the family were to have their support in the meantime, and whatever I made was to go to pay off the debts; they are not wholly paid yet. I had confidence in my father that he would will it to me, and did not make any agreement as to what I would have in the event of his not willing it to me.

RICHARDS, C. J.—The arrangement is, in fact, such as shows the use and occupation for the benefit of the estate in paying off the debt. I consider that the real understanding is, that the voter works for the benefit of the estate, and beyond what is used in supporting the family is to go to that purpose. If he had had a right to it for his own benefit, it would be possessed for his own use and benefit. What he really works for, and the profit of the estate goes to, is his expected possession of his father's estate under his will. I think this vote bad.

DUNCAN CAHEY'S VOTE.

Duncan Cahey, called as to his own vote: I live in Roxborough, 1st Con., part of 17 and 18. My father's name is Edward. My father lives on the lot; has lived there 30 years; owns part of it. I own the south part of west half of 17. I have a deed for it; I have it with me: I got it last August, the day it was dated; its date is the 16th August, 1870. I did not own the lot until I got the deed. I had no claim to it before that. I voted at the election; I am called McCahey. I don't own any other property; the property has been assessed in my name for the last 5 or 6 years. My father is over 70. I have generally paid the taxes.

Mr. Harrison.—This man is not a voter within the meaning of section 5 of the Election Act 1868-9. He is not rated for the lot—if he was, he is not a voter under the section. The true meaning of the section is, that he was so possessed at the time of assessment. See the form of oath to be administered to voter under section 41 of the Act.

Mr. Cameron, contra.—There is nothing to show that the roll might not have been revised after he got his deed—nothing in the 5th section of the Act to declare that the person should have the title, and nothing in the section referred to, to call attention to the particular objection now raised, and it is only by referring to the oath that the point comes up.

Mr. Harrison, in reply.—The statute only permitted appeals to 5th July, under the Assessment Act, 32 Vic., cap. 36, section 63, sub-section 6. The general form of objection was sufficient: if the parties thought it not sufficiently specified, they should have demanded better or further particulars.

RICHARDS, C. J.—I think this vote bad, because the voter did not possess the qualification at the time he was assessed, or before the final revision of the roll. The respondent's counsel does not say that he is prejudiced by the way in which the objection is taken. If he had been, I should postpone the consideration of the case. It is objected that the case of Owen Baker should be subject to the same rule, and if the question had been presented to me in that view, I think I should have felt at liberty to go into the case, giving time to the petitioner to make further inquiries if he thought proper.

BENJAMIN GORE'S VOTE.

Benjamin Gore, called as to his own vote. It appeared by the evidence of the witness, that he lived with his father, and had voted on his, the father's property. His father had made a will in his favor, but he had no title but a verbal agreement with the father. The agreement was made at the time the will was made, about 1865 or 1866. The son was to take the proceeds after supporting his father and himself; did not account to his father for the proceeds. Witness was assessed for 10 acres, value $250. The assessment was made in his, the witness' name, before the arrangement with the father. It was done to give him a vote. The father paid the taxes before the agreement, the son pays them now.

Mr. Cameron, contended that the arrangement was a colorable one, merely to give the son a vote. The ten acres were not specially mentioned.

RICHARDS, C. J.—If the name had been put on originally (before 1866) merely for the purpose of giving a vote, and that was the vote questioned, I should probably hold it bad; but being continued after he really became the occupant for his own benefit (since 1866), I cannot say that he is not now properly a voter, even though the name was continued there to enable him to vote. I think the vote good.

DONALD BLAIR'S VOTE.

James Blair, called on the vote of *Donald Blair*: I live on the west ½ of Lot 26 in the 6th Con., Roxborough. I am the father of Donald Blair. He lives with me. He has no written agreement, lease, or instrument. When it was purchased he sent me the money to pay for it, about four years ago, and I took the deed in my own name. He was then in the States, and came back a year after. He is living with me, as the other son. He is the oldest. He is not married. By means of that lot he has bought another last spring. He paid only $300 for the lot. We are all working the place. He has got a deed for 32 in same concession. Bought it last spring. I own my place. The N. W. ½ of 26 in the 6th Con. is the lot the boy voted on and which he sent me the money for. My sons and me are working and occupying it since about a year ago. He had not any interest in it beyond this, that his money bought it.

Cross-examined: I bought Lot 26 more than thirty years ago. I bought 25 for Donald. I wrote him I could buy the place for him cheap. I mentioned $300, if he could send me the money. I bought the place about four years ago. Took the deed in my own name, as he was not at home (he is about 27), and when he returned he went to live with me. Neither of us live on 25; he works it it all comes in together, and is worked the same as my farm. By the labor and assistance of myself and his

brother, we made money which enabled him to buy another place. I consider it his, and it is his. He thought it would be too little to give his vote on the lot he bought, and he was assessed for three years for Lot 25. He was assessed the first time the assessor came round after I bought it. The other son is 20. I have three daughters unmarried and two married. My son never asked me for a deed for it, nor did we ever speak of it. Nothing separate from what was raised on 25 for my own. No building now on 25. We all worked on the three lots assisting one another. Before we bought the last lot we all worked on the two, assisting one another. We make no shares. The young boy expects my lot; it is so understood. The homestead is 130 acres with buildings. The oldest son gets 150 acres—no buildings. The girls are to have the loose property. We are working harmoniously, assisting and aiding each other. It is understood in the neighborhood that he is the owner.

Mr. Cameron.—The father is trustee for the son. They are not rated for enough to have them both qualified. And as to the ownership, the father is in possession, and has the profits to his own use, and therefore is literally the owner.

RICHARDS, C. J.—I think the father is in fact the owner, but not in his right as owner in fee, but as occupant with the assent of his son. I think, on this evidence, the son is the equitable owner, and rated as owner, would have a right to vote, notwithstanding the deed to his father, and I hold that the mistake in that respect, being rated as tenant instead of owner, does no harm. I therefore for the present hold the vote good, but, if necessary, may reserve it.

SAMUEL HILL'S VOTE.

Samuel Hill, called as to his own vote. It appeared, on the evidence of the witness, that he and his son had leased certain property, the lease was drawn in the son's name alone, and when he and his son reaped the crops, the son claimed that they belonged to him solely. The witness

owned other property, but when the assessor called on him he requested him to assess this particular property to him, and on this he voted.

Mr. Harrison.—As he was on the roll, and had the necessary qualification, though not assessed for it, the vote should stand.

Mr. Cameron.—He voted in right of this property, and had it assessed to him in preference to the other by his own desire, and cannot in consequence now claim to vote.

The CHIEF JUSTICE held the vote bad.

JOSHUA RUPERT'S VOTE.

Joshua Rupert, called as to his own vote. It appeared on the evidence of the voter that he voted on part of Lot No. 6, 8th Concession, Osnabruck. Did not own it; his father-in-law did. Had occupied it for five years, paying rent to his father-in-law. Lease expired in November last. Left it about a year ago—on first of last April. After he left, it was let by his father-in-law, with his consent, to a man named Stewart, for a larger sum than he paid, and the father-in-law paid him the extra rent. Was a witness to the lease to Stewart, which was dated 28th March, 1870.

On cross-examination he said that it was agreed at the time of the lease to Stewart that the father-in-law should pay him, the voter, the increased rent, which he did.

RICHARDS, C. J.—I think after the surrender by the lease, to which he was a subscribing witness, he ceased to be a tenant. I am of opinion that the party must have the interest that qualifies him at the time of the last final revision. If he has it then, though not at the time of the election, he could properly vote if he were still a resident of the electoral division, but not unless he had the interest at the time of the revision of the roll. The roll was completed 30th March, two days after the new lease. I think the vote bad.

WILLIAM J. GOLLINGER'S VOTE.

George M. Gollinger, called on the vote of *Wm. J. Gollinger:* I made a deed to Wm. J. Gollinger of east half 31, fifth Concession, Osnabruck. It was made on or about 12th

September, 1870. There was a verbal agreement between him and me about 10th or 12th January, 1870. I was to give him the property. He left home and went to Wisconsin a few days before the holidays of 1869. About 10th January I sent him word if he would come back I would give him a deed of this lot; he came back immediately with the person by whom I sent the message. He was not then married. In September I made him the deed. We had some understanding about it before I made the deed. My son William got the proceeds of the place wholly and solely. I never got a fraction of the proceeds of this.

Cross-examined: We had three farms. We worked together. It was understood he was to have the produce of this farm to himself separately. This was the understanding between us in January, 1870. His share was put by itself, and kept separate from the rest. I worked 100 acres in the 7th Concession, and 50 acres in the 4th Concession also. Of these he had no share. We lived together at that time in the dwelling on this lot, until I gave him the deed. When I gave him the deed I was to leave. It was his privilege to let me remain. I had no management of this part. I did on the others, but let him do as he liked about this. I think my son was twenty-three years old in May or June. This understanding was not varied in any way after. It was part of the understanding that he was to have control of the place last summer. I suppose he went away because he wanted some property and I would not give it to him, but I changed my mind.

Re-examined: When he came back the agreement was that if he would stay at home and work the farm, I would give him a deed at any time he chose to ask for it. He would rather I should stay with him and give him a deed, so that he could have control. I would rather have control myself, and so I would not stay there. He was anxious for the deed, and so I gave it to him. I thought he would have been willing I should stay there if I would

give him the deed. I would prefer to stay elsewhere. I did not have any control. I never wished to stay there from the time I made the verbal bargain. His own hand worked it. I gave him a team, span of horses, for stock farming in September. I promised that in January, and transferred it in September. I told him I would give him seed to sow the place. I promised him no help. I helped him some. He did not pay me for his board, nor did I pay him for the rent of the house. The teams pastured on the place. His lot and mine remained together, not separated by fences. I could not tell how many bushels of grain I gave him that year. He did not promise to work for me. He worked as before—beginning at one field and finishing that, and then at another, and so on, as before; but this was upon an understanding. In September I went to a lot I had in the 7th Concession. He remained on the lot. I gave him the deed and property I promised him, and the cattle, and I went to the 7th Concession. Until he got the deed it was understood he was to go and work the farm—the east half of 31—if he should think proper. I was to give him a span of horses, waggon, harrow, four cows, six sheep, four hogs, and two pigs, and he was to have one half of the house furniture. He was to have these at any time he wanted. This was to be done at the same time with the deed, and at the time of the deed I did give them to him; he went on then under these terms, and went to work. He never said he wanted them until Sep[illegible]ber. He took possession of them in January—of the horses and cattle, and these things. We never drove them off. I pointed out the four cows and the horses, and he took possession of them then. He was to get six sheep out of the flock. He was to have four of the hogs in the fall. He attended to these horses himself, and my son to the other team. He groomed and fed them as his own. I said to him in the spring, if he would help us to put in a crop in the other land, we would help him; he agreed to do so, and we went and did it. There is only one barn on 31; it was on his part. There

were no crops to mine; the stuff was put into the barn on the place as before. He took control of it after, and used it. I had nothing to do with it after. I did not take anything off the place since or before.

RICHARDS, C. J.—I think this vote good, according to the rule we have acted on.

WILLIAM PLACE'S VOTE.

William Place, called as to his own vote. It appeared from the evidence of the witness that he was informed by his mother he was born in Ogdensburgh, in the United States. Both father and mother were born in Canada. He left Ogdensburgh when he was nine months old, came to Canada, and had resided in Canada ever since.

F. H. Shaver, called as to same vote. Witness was cousin of the voter. Knew him and his family. The voter's grandfather came originally from the United States. Drew land from Government, as did also voter's father as a U. E. Loyalist. Understood that the voter was born in Ogdensburgh. The father of the voter moved to Ogdensburgh about three months before the voter was born.

RICHARDS, C. J., held the vote good.

The Court was then adjourned; and on the reassembling of the Court (12th Sept., 1871) it was found that both parties appeared to have an equality of votes on the scrutiny.

The CHIEF JUSTICE thereupon declared the election void, and made the following special report on the case:

"I think it my duty to make a special report in relation to the proceedings before me on the trial of this Election Petition.

"The trial commenced on Monday, the 12th June, and continued during the week. A large number of witnesses was in attendance. It became necessary to adjourn the proceedings until the 12th September; on which day the Court again met at Cornwall.

"Immediately after the opening of the Court it was admitted that [three votes] were bad, and should be struck

off from the votes polled for Mr. Bethune; making on the whole 40 votes that had to be struck off from the 700 who voted for Mr. Bethune, leaving for him 660 votes. And Mr. Colquhoun's votes numbered 705, and there have been struck off of these 45 as bad votes, showing 660 votes for him, thus leaving an equality of votes; and the parties agreed not to proceed further with the scrutiny.

"The charge of corrupt practices against the petitioner was abandoned, and no such charge was made against the respondent in the petition. The petitioner then offered himself for personal examination as to corrupt practices. I did not see any reason for examining petitioner or respondent.

"Both petitioner and respondent agreed that it was best for the interest of all parties that the case should be disposed of by my determining the election void, as was proper to do when there was an equality of votes. (1 Roe, 804; 1 Peckwell, 504; Chambers' Dictionary of Elections, 228).

"The number of votes to be inquired into on either side on the objection taken to them, was great, the witnesses were very numerous, and the expense of their attendance such that both parties felt that it would be less burdensome to themselves, and the electors even to have a new election than to continue that inquiry, which would likely be procrastinated for two weeks.

"I was not prepared to dissent from these views, and saw no reason why the parties should not be allowed to carry them out.

"Neither of the parties asked for the costs of these proceedings.

"I adjudged and returned that there was an equality of votes as between the petitioner and the respondent.

"It was agreed between the parties that a new writ might be issued by the House, and I finally determined, as already reported, that the said William Colquhoun was not duly elected, in this that it then appeared there was

an equality of votes between him and the said petitioner, and therefore the said election was void.

"I would respectfully submit for the consideration of the Legislature whether the law should not be so amended that the certified List of Voters, after it has been finally revised, should be considered as establishing the right of the elector to vote, at the time of the revision; and that the only matter, as to the right of the elector to vote, that should be inquired into before the Rota Judges, on a scrutiny, should be such as might arise after the filing of the Revised List of Voters. And if it is thought the present mode of revising the list is not the best for preventing fraud, that some other mode should be devised by the Legislature in their wisdom for that purpose.

"The present system of investigating the qualification of voters on a scrutiny before the Court is ruinously expensive to the parties, and may be very inconvenient to the electors who are required to attend the Court for that purpose.

"In consequence of the inquiry being made at one place as to all the disputed votes that have been polled at the election, it becomes necessary for a great many of the electors to attend so that the trial may not be delayed for want of witnesses, and of course, much time is lost in consequence.

"Whereas the Court before which the revision of the list is to be had, might avoid the inconvenience by regulating its sittings as to the season of the year, and fixing of the days on which the Voters' List of any particular township, or division, was to be revised; and in this way would require only the attendance of a few persons, and at a time and at the season most favorable for them."

(5 *Journal Legis. Assem.*, 1871-2, p. 6.)

PRINCE EDWARD.

BEFORE CHIEF JUSTICE RICHARDS.

PICTON, *27th September, 1871.*

WM. ANDERSON, *Petitioner*, v. GIDEON STRIKER, *Respondent.*

Right to attack Candidate-Petitioner's qualification—Hiring of Teams by Agents.

The respondent, on the opening of the case, charged that the petitioner was a candidate at the election, and as such candidate was guilty of corrupt practices, and therefore disqualified to be a petitioner. The Chief Justice, without deciding whether the respondent had the right to attack the qualification of the petitioner, allowed the evidence to be given, but *Held* the same to be insufficient.

On the admission of the respondent's counsel the election was avoided, on the ground that agents of the respondent had, during the election, hired and paid for teams to convey voters to the polls.

The petition contained the usual allegations of bribery, etc.

Mr. J. Hillyard Cameron, Q.C., for petitioner.

Mr. Bethune, Mr. J. K. Kerr, and Mr. Allison, for respondent.

At the opening of the case, counsel for the respondent contended that they had a right to contest the petitioner's qualification, and to show that he was disqualified from being a candidate by being guilty of corrupt practices by himself and his agents; citing the *Youghall case*, 21 L. T. N. S., 306.

Counsel for the petitioner contended that though a petitioner might be disqualified as a voter, and disqualified to be elected, yet the objection now urged cannot apply to a candidate. *Leigh and Le Marchant's Election Law*, 102. A bribed voter is disqualified by Common Law. A party disqualified by statute from being elected is not disqualified from petitioning as a candidate. If the application now made had applied to the petitioner as a voter, the petitioner might have asked that some one else should be allowed to petition, or be substituted. The charge is against the petitioner as a candidate, and the statute works no disqualification as such.

RICHARDS J. C.—I do not feel disposed to decide on the narrow ground that a party may be qualified as a candidate who is incapable of being elected. I therefore prefer reserving this question to deciding it against the respondent. If the petitioner requires time to meet these charges, so suddenly brought against him, I will probably give him further time.

Evidence was then given on the charge of bribery against the petitioner, after which,

The CHIEF JUSTICE held that the evidence failed to establish the charge.

Counsel for the petitioner then proposed to adduce evidence that the agents of the respondent had paid for conveying voters to the polls.

Counsel for the respondent admitted that the hiring of teams by agents of the respondent, to convey voters to the polls, had taken place during the election without the knowledge of the respondent. The respondent was then examined, and proved that he had no personal participation in such or any other illegal acts. At the conclusion of his evidence judgment was given as follows:

RICHARDS, C. J.—I am of opinion that the corrupt practices relied on by the petitioner, as above stated, and admitted by the respondent, are corrupt practices within the meaning of the Controverted Elections Act of 1871, and that the same prevailed at this election, and that the election is therefore void; such practices, in my judgment, being of a character to affect the result of the election.

It has not been proved before me that any corrupt practices have been committed with the knowledge and consent of either of the candidates at such election.

The names of persons who have committed corrupt practices have not been given in. I am not prepared to say that corrupt practices extensively prevailed at the said election.

Costs followed the result.

(5 *Journal Legis. Assem.*, 1871-2, p. 7.)

WELLAND.

BEFORE MR. VICE-CHANCELLOR STRONG.

WELLAND, *9th October, 1871.*

JAMES HUGH BEATTY, *Petitioner*, v. JAMES GEORGE CURRIE, *Respondent.*

Amendment of Particulars — Evidences of Agency — Treating without Corrupt Intent — Costs.

At the trial of the petition, an amendment of the particulars as to corrupt practices will be allowed; and if the respondent is prejudiced by the surprise, terms may be imposed.

To sustain the relation of agency, the petitioner must show some recognition by the candidate of a voluntary agent's services.

The *Westminster case* (1 O'M. & H., 89) as to agency followed.

Treating, when done in compliance with a custom prevalent in the country and without any corrupt intent, will not avoid an election.

The petition was dismissed, and, by consent of the respondent, without costs.

The petition contained the usual charges of corrupt practices, etc.

Mr. J. Hillyard Cameron, Q.C., *and Mr. Baxter*, for petitioner.

The Respondent in person, *Mr. C. E. Hamilton, and Mr. A. G. Hill*, for respondent.

The evidence affecting the charges on which the learned Judge gave judgment, was as follows:

Sylvester Neelon: I live at St. Catharines. Am a voter in Welland. I canvassed for Mr. Currie at the last election. To the best of my knowledge I received a note from Mr. Currie asking me to solicit a couple of persons to vote for him. I spent no money on account of the election. I went into a tavern at Port Colborne on polling day. I cannot give the name of the tavern.

The Respondent objected. No charge as to this witness is in the particulars. The names of persons who are charged with having treated voters are given, but this witness is not among them.

Mr. Cameron.—There is a general allegation of corrupt practices in the petition, and this is a corrupt practice. By the 66th section spirituous liquors are prohibited from being sold or given on polling day, and all prohibited acts are corrupt practices.

The VICE-CHANCELLOR.—The name of this witness is not in the particulars, but the petitioner is entitled to an amendment adding it. If the respondent is prejudiced by the surprise, terms may be imposed.

The amendment was then made.

Witness continued: I treated several of Beatty's men there. I paid something for the treat. I also treated a few persons at a small shop in Humberstone. I think also I had something to drink in a tavern in Welland on polling day. I cannot say whether I treated, or other persons treated me, on the last occasion.

William O. Cowan: I live in Thorold. I voted for Mr. Currie. There were a few of us who undertook to look up voters' lists and canvass for Mr. Currie. I never met Mr. Currie at Thorold. I saw him frequently at St. Catharines during the canvass and spoke of the election. We met at Mr. Munro's several times about the election. We spent no money that I know of, nor was there any treating. I asked one Fair to vote for Mr. Currie. I held out no inducement or promise to him. On one occasion previous to the election I treated him. I asked him, if he would not vote for Currie not to vote against him. I say positively I held out no inducement to Fair. There has not been a meeting of the committee since the election.

Cross-examined: There was never any committee; no organization. We did not communicate with Mr. Currie, nor make him aware of our proceedings.

Robert Eday: I live in Thorold, and voted for respondent. I was not a member of any committee. I never spoke to Mr. Currie during the election. I canvassed only three persons. I met some others who looked over voters' lists I met them casually on the street. I canvassed Sanders,

Galbraith and Pew, and no others. I paid and promised no money. I said to these three men, if there was any money forthcoming they would get their share of it. Mr. Cowan met me and said if I could do anything with these parties and get them to vote, it would be all right. I said to Mr. Cowan and Mr. Bann that if stamps were not used the election would go wrong. Mr. Bann and Mr. Cowan said that Mr. Currie would not spend a cent. The way I came to offer Galbraith money was, he said he guessed he could not vote as the other side had promised him $20. I told him to come along and it would be all right. The persons named voted for Currie.

William O. Cowan, recalled: Eddy met me on the street and told me of the three men; he said they could be got. I merely told Eddy that he might tell the three men mentioned by him that if they would vote they should have money if we got any money. I did this on my own behalf.

James Munro: I live at Thorold, and voted for Mr. Currie. I was a member of the convention which brought out Mr. Currie. There were evening meetings at my store of the friends of Mr. Currie, with a view to promote his election. Mr. Cowan was at these meetings. I think it very likely something was said about expenses. There was no expenditure of money to my knowledge. I saw Mr. Currrie at Thorold at a public meeting in the drill shed. I canvassed a little. I don't think there were more than two or three meetings at my store. I stood at the poll at Thorold; I had no authority from Mr. Currie.

Cross-examined: I never saw Mr. Currie from the time of the convention meeting until the nomination. There was a resolution of the convention pledging the members of it to support Mr. Currie.

After the examination of other witnesses,

Mr. Cameron stated that the evidence he had to offer would add nothing to what had already been given. With the exception of the evidence of Neelon and Eddy, there was nothing to affect the election. The questions

to be considered were whether agency had been proved, and secondly, whether the acts of the supposed agents had been such as would avoid the election. He thought it would be fair and proper that the petition should be proceeded with no further.

The VICE-CHANCELLOR.—"That amounts to withdrawing the petition, and I see by the Act I have jurisdiction to allow that." In giving judgment, the learned Judge said there had been no sufficient proof of agency, and referred to the *Westminster case* in England (1 O'M. & H., 89), and to the dictum of the Judge who tried the case, to the effect that some recognition by the candidate of a voluntary agent's services must be proved. He held that here agency had not been proved. The treating by Neelon he held did not come within the Act; it was evidently done in compliance with a custom prevalent in the country when friends meet. There must be, in cases under the Election Law, a corrupt intent shown in order to affect the election. One glass of liquor, as had been said in England, given with a view of influencing a vote, would avoid the election.

The petition was dismissed, and, by consent of the respondent, without costs, as he had subpœnaed no witnesses.

(5 *Journal Legis. Assem.*, 1871-2, p. 12.)

NORTH SIMCOE.

BEFORE MR. VICE-CHANCELLOR STRONG.

BARRIE, *16th October, 1871.*

JONATHAN SISSONS, *Petitioner*, v. WILLIAM D. ARDAGH, *Respondent.*

Hiring Railway Train to convey Voters to the Election—Agency—Recriminatory Case.

Held, that the hiring by an agent of the respondent of a railway train to convey voters to and from places along the line of railway where they could vote, was a payment of the travelling expenses of voters in going to and from the election, within the meaning of sec. 71 of 32 VIC., c. 21, and was a corrupt practice, and avoided the election.

Where a charge of corrupt practices by way of a recriminatory case is alleged by a respondent against a petitioner, it may be reserved until the conclusion of the petitioner's case.

The petition contained the usual allegations of bribery and corrupt practices, and the hiring of teams and of a railway train, to convey voters to and from the election.

Mr. Bethune and Mr. J. K. Kerr, for petitioner.

Mr. D'Alton McCarthy for respondent.

Counsel for the respondent objected that petitioner was disqualified on the ground of bribery, and produced a notice served on the petitioner, calling upon him to appear, in order that evidence might be given to prove him guilty of bribery.

The VICE-CHANCELLOR said he would reserve the question until the conclusion of the petitioner's case.

Evidence of the payment of travelling expenses of voters going to and from the election was as follows:

William Davis Ardagh, Respondent: "I was a candidate at the last election for North Simcoe. I knew that a special train on the Northern Railway had been hired to bring voters in my interest and of the other candidates, down the line of railway. A share of the expense of this train was paid by my partner, John Ardagh. This may have been charged to me. The amount was $200 or $180. I suppose my partner expected that I should pay it. The agreement for this train was made between Mr. McCarthy or Mr. John Ardagh, on my behalf, Mr. Morrison, for Mr. Lount, and Mr. Thompson, for Mr. Cook. I consider it optional with myself whether I shall repay the amount incurred for this train or not. I am satisfied the election was not in any way affected by this train. I have not yet determined whether I will repay my partner what he advanced on account of the election or not. There was a committee for my election, as I knew at the time, at Barrie. Mr. D'Alton McCarthy was the chairman of this committee. Mr. John

Ardagh was, I knew, taking an interest in my election. He went out and held one or two meetings on my behalf."

The VICE-CHANCELLOR, on this evidence, held that the election was void, on the ground that persons acting on behalf of the respondent had paid the travelling expenses of divers electors in going to and returning from the election.

Costs were ordered to be paid by respondent, so far as the same related to the avoidance of the election.

(5 *Journal Legis. Assem.*, 1871-2, p. 12.)

SOUTH GREY.

BEFORE MR. VICE-CHANCELLOR MOWAT.

OWEN SOUND, *12 to 14 September; 7 to 8 November, 1871.*

ALEXANDER HUNTER, *Petitioner*, v. ABRAM WILLIAM LAUDER, *Respondent.*

Controverted Elections Acts—Adjournment—Power of Judge to Change Place of Hearing—Evidence of Bribery—Responsibility for Acts of Agents and Sub-agents—Payment of Expenses of Voters—Treating—Destroying Election Accounts—Costs.

When a Rule of Court has been issued under the Controverted Elections Act, appointing a place for the trial not within the constituency the election for which is in question, the Judge by whom the petition is being tried, has no power to adjourn, for the further hearing of the cause, from the place named in the Rule of Court to a place within such constituency.

Reasonable refreshments furnished *bonâ fide* to committees promoting the election are not illegal.

Where a charge of bribery is only the unaccepted offer of a bribe, the evidence must be more exact than that required to prove a bribe actually given or accepted.

The respondent entrusted about $700 to an agent for election purposes without having supervised the expenditure. *Held*, that this did not make him personally a party within 34 Vic., cap. 3, sec. 46, to every illegal application of the money by the agent, or by those who received money from him. But if a very excessive sum had been so entrusted to the agent, the presumption of a corrupt purpose might have been reasonable.

When a candidate puts money into the hands of his agent, and exercises no supervision over the way in which the agent is spending that money, but accredits and trusts him, and leaves him the power of spending the money, although he may have given directions that none of the money should be improperly spent, there is such an agency established that the candidate is liable to the fullest extent not only for what that agent may do, but also for what all those whom that agent employs may do.

The payment of a voter's expenses in going to the poll is illegal, as such, and a corrupt practice, even though the payment may not have been intended as a bribe.

The distribution of spirituous liquor on the polling day, with the object of promoting the election of a candidate, will make his election void.

When all the accounts and records of an election are intentionally destroyed by the respondent's agent, even if the case be stripped of all other circumstances, the strongest conclusions will be drawn against the respondent, and every presumption will be made against the legality of the acts concealed by such conduct.

Where bribery by an agent is proved, costs follow the event, even though personal charges made against the respondent have not been proved, there having been no additional expense occasioned to the respondent by such personal charges.

The petition contained the usual charges of corrupt practices.

Mr. J. K. [illegible] for the petitioner.

The *Respondent* in person.

By a rule of Court the case was tried at Owen Sound, a place not within the electoral division. Upon an adjournment the question was raised whether the presiding judge could adjourn from Owen Sound to a place within the electoral division, for the further hearing of the case.

The VICE-CHANCELLOR held that he had no power to grant such an adjournment, as by so doing he would in effect override a rule of Court.

Offers of bribes were said to have been made to one *Alexander McKechnie* and one *James Black*, who were examined as witnesses. The evidence of both was contradicted by Mr. Lauder on his own oath. McKechnie had actively supported the respondent at the previous election for the riding, and Mr. Lauder seemed to have expected a like support from him at the election now in question. In this expectation Mr. Lauder (according to McKechnie's evidence) asked him to "come into our committee to-night," and added, "we'll furnish you with plenty of means." McKechnie did not go to the committee, and did not give Mr. Lauder his support. He deposed that he considered Mr. Lauder's observation "in the light of bribing" him.

James Black deposed that he had heard that Mr. Lauder had a large sum of money to spend on the election; that he applied to Mr. Lauder for some of it; that he offered to work, if paid; and that he (the witness) said that money would "do good" in his section; but he also deposed that Mr. Lauder would not give him any money; said it would be illegal to do so, and made him no offer. The witness added that Mr. Lauder told him to "go to Perry." He stated that he did go to Mr. Perry, and that Mr. Perry said he had no money. And it further appeared that the witness in fact got no money either from Mr. Lauder or from Mr. Perry, and that he in consequence voted for Mr. McFayden, the opposing candidate.

As to the treating, it was proved that on various occasions Mr. Lauder expressly forbade all treating as well as everything else of an illegal kind being done to promote his election. But it appeared that on the nomination day, at an election meeting held after the nomination, in the Orange Hall in the village of Durham, refreshments were brought into the room by one Woodland, and were partaken of by the persons present. Mr. Lauder deposed that he knew nothing of these refreshments before they were brought in; that he told the parties bringing them in to be careful, and that they might be "coming too near the law." He further deposed that he did not pay for these refreshments, and that no account for them had been rendered to him. There was no evidence to the contrary of what Mr. Lauder thus deposed. There was, however, evidence that he did pay for refreshments provided for various committees at their election meetings. The central committee at Durham consisted of about nine persons; the local committees did not seem to have respectively comprised so many. There was evidence, also, that on some other occasions there was a general treating of electors at the close of public meetings of electors which Mr. Lauder had been addressing, and while he was in the house where the treating took place. There was no other evidence of knowledge or consent. One

Thomas Smith swore that after a meeting held at a tavern in Egremont, which meeting had been addressed by Mr. Lauder, he had given a treat for which he paid $5; that some time after the treat he received $20 from Mr. Lauder; that he had paid the $5 at the time the treat was given, and before he received the $20; and that the treat was given on his own responsibility, and Mr. Lauder was no party to it; that Mr. Lauder gave the $20 to pay for the use of the room in which the meeting was held, for his (Mr. Lauder's) own personal expenses at the tavern, and for refreshments which had been furnished for a committee which held a meeting at the tavern that evening. It was not shown that Mr. Lauder was aware that Smith had treated when he gave him the $20. Smith also swore that he had expended more than $20 for refreshments for committee-men, for feed for their horses, etc., in addition to the $5 paid for the treat.

The corrupt practices said to have been committed by Mr. Lauder's agents were chiefly these: 1, bribery; 2, treating meetings of electors; and 3, giving spirituous liquor during the polling day.

In regard to bribery, the principal instances proved were committed by one George Privat. Privat was the principal canvasser for Mr. Lauder in that part of the township of Normanby called the "Old Survey." Privat was called on by one William Scott and one Charles Grant, and was either asked to go on the committee (for securing Mr. Lauder's election), or was told by Scott that he had been put on the committee. The former was his own recollection, the latter was Grant's recollection of what had occurred. He sent word to Durham by these persons "that it would take $100 to work up the Old Survey." In reply, he was told that so much could not be given. He was told also to go to one Meddaugh, whom he knew. He went to Meddaugh accordingly, and at Meddaugh's instance Mr. Perry gave him $50. Privat "was not told what he was to do with the money," but he received it "to spend on the election." He went into the canvass,

and in the course of it he committed the alleged acts of bribery.

The alleged bribery was this: it appeared from his own evidence that after conversing with certain named voters severally, a day or two before the election, he dropped money for them on the ground, and then walked away; that in each case he meant this money to be picked up by the voter; that his chief or only purpose in this was to secure the voter's support for Mr. Lauder; and that he dropped the money instead of handing it to the voter, because he imagined that this indirect mode would enable the voter, if sworn, to say that he had received no money. Meddaugh, to whom he referred Privat as to money, was another member of the central committee. Perry, who gave Privat the money, was a distant relation of Mr. Lauder's; he was the secretary of the central committee; kept all accounts; was the treasurer for the contest, and received from Mr. Lauder, and disbursed most of the funds which Mr. Lauder from time to time supplied for the purposes of the election. Mr. Lauder stated in his evidence that he had "refused to have anything to do with committees" The only instructions which he appeared to have given with reference to the expenditure of the money were those implied in his forbidding any treating, hiring of teams, or paying for votes. Two of these voters were examined, and proved the finding of the money which Privat had dropped. Privat stated that he had some talk with the voters referred to about their doing some ploughing for him.

[The VICE-CHANCELLOR considered that if this part of his evidence was correct, the suggestion about ploughing was, like the dropping of the money, a colorable pretence by which it was intended to evade the law.]

William Scott, who solicited Privat to take part in the active work of the election, was a member of the central committee. He "went round to the different places and brought in returns, sometimes written and sometimes verbal, of how the other committees were getting on."

Mr. Perry paid out about $1,700 for the purposes of the election, and after the election he claimed credit for that amount from Mr. Lauder. Mr. Lauder allowed and settled $625 only, but objected to the balance as unnecessarily spent (not, he said, as illegally spent), and had not yet paid it. Perry swore that he, notwithstanding, expected to be paid, though he had not yet received any promise to that effect.

It appeared that the letters and accounts with reference to the election had been destroyed. Mr. Lauder stated that he had destroyed all the letters written to him, and had kept no copies of the letters written by him, in which reference was made to money matters; and Perry swore that he had destroyed all papers connected with the election about ten days after it took place, including a list of the members of the central committee, a record of their proceedings, and an account of moneys expended.

After the argument of Counsel on the personal charges of bribery against the respondent, the following judgment was delivered:

MOWAT, V.-C.—I am satisfied that no case has been made out against Mr. Lauder personally.

With regard to the Orange Hall meeting, the weight of evidence goes to show that it was a meeting of committees; and besides, no refreshments for the meeting were ordered or furnished by Mr. Lauder, or paid for, or promised to be paid for, by him. I do not think that reasonable refreshments furnished *bonâ fide* to committees are illegal.

As to the alleged treating at Normanby, Smith's evidence is unsatisfactory, but there is no ground for believing that Mr. Lauder knew that Smith had treated when he gave him the money.

The case of McKechnie, as stated by himself, is not sufficient to prove Mr. Lauder guilty. McKechnie states that Mr. Lauder said, "come over to our committee to-night, and you shall be furnished with plenty of means,"

and McKechnie swears that he considered this an offer of a bribe to him. He did not go to the meeting, and no other conversation on this point took place. Now, where the charge is only the unaccepted offer of a bribe, the evidence must be more exact than is required to prove a bribe actually given or accepted. A very little difference in the language employed might make a great difference in the intention of the supposed offer. Where a conversation is not followed by the act spoken of, we are not, unnecessarily, to presume a bad intention. In an election, means are required for legitimate purposes; and I am not at liberty to infer that Mr. Lauder meant "I shall furnish you with plenty of means for illegal purposes."

The case of Black is weaker than that of McKechnie. He says: "I heard Mr. Lauder had a large amount of money for election purposes, and I asked him for some. He refused it, and said it was illegal, and told me to go to Perry." Black applied to Perry, and Perry neither gave him money nor the promise of any. It would be preposterous to say judicially on this evidence that Mr. Lauder or Mr. Perry offered or promised to give the money which they both refused to give. Both McKechnie and Black voted against Mr. Lauder.

Next it is said that Mr Lauder entrusted large sums to Perry; that he should have supervised the expenditure, and that his failure to do so makes him personally a party within section 4[illegible] of the Act of 1871 (34 Vic., c. 3) to every illegal application of money by Perry, or by those who received money from Perry. The sum which Mr. Lauder gave was under $700; there is no evidence before me that that sum was an excessive one for legitimate expenses; and a certain amount of discretion must be placed in a candidate's agents. If he had put $7,000 into Perry's hands, the argument of a corrupt purpose might have been reasonable. The facts do not suggest to my mind any idea that Mr. Lauder intended his money to be employed illegally.

For these reasons I think the personal charges not made out.

Counsel then addressed the Court as to bribery by agents, after which judgment was given as follows:

MOWAT, V. C.—I may dispose of this case on the ground of the illegality of Privat's acts. He was asked by Scott to assist in the canvass, and was referred to Durham for money. He went there, and got the money from Perry, through the intervention of Meddaugh. These three persons were the members of, or connected with, the committee at Durham. Mr. Lauder argues that it does not appear that Perry paid the money with the concurrence of the committee; but there is no evidence that Mr. Lauder had said or done anything to create a necessity for this concurrence, and there is evidence to the contrary. Perry received no instructions as to the mode of the distribution of the money. That was left to his discretion; and Mr. Lauder in his evidence distinctly repudiated all committees, and stated that he had made his payments through Perry. But even if Perry had been directed to carry out the instructions of the committee, and had disobeyed, he being the treasurer for the election, the secretary of the committee, and the confidential agent of the candidate, his acts would still bind the candidate. This is laid down in the *Staleybridge case* (1 O'M. & H., 69). There Mr. Justice Willes said: "I have already in the *Bewdley case* (*Ib.* 18) had occasion to decide this much. There it appeared that the sitting member had put a sum of money into the hands of his agent, and that he exercised no supervision over the way in which that agent was spending that money; that he had given him directions, and I thought really intended, that none of that money should be improperly spent; but that he had accredited and trusted his agent, and left him the power of spending the money, and I came to the conclusion upon that, that there was such an agency established as that the

sitting member was responsible to the fullest extent, not only for what that agent might do, but for all the people whom that agent employed might do: in short, making that agent, as far as that matter was concerned, himself, and being responsible for his acts. I see no reason to doubt at all that that is perfectly correct."

This is no new law: it has been the rule ever since there was a record of the law of Parliament; it is founded on reason, and if another rule were adopted, a candidate might give his agent money, take the benefit of the expenditure, and afterwards say that he did not authorize the mode in which the money had been spent, claim freedom from responsibility in respect of the use made of it, and thus evade the whole law against corrupt practices. I cannot hold otherwise in this instance (in which there is no dispute as to the facts) than that Mr. Lauder is responsible for the acts of Privat.

As to these acts: Privat talked to certain voters about the election, and dropped the money for them, so (as he explains it) that they might be able to swear that they had received no money. To constitute the offence, it is not necessary that voters should accept an offered bribe. The two voters called confirm all that was necessary in Privat's evidence to make out the charge against him. His purpose was to secure the votes by means of this money. I have no alternative but to hold that Privat has been guilty of such acts as agent as render the election void.

So far the case is free from doubt.

As to some other points, it may be proper that, for the information of parties concerned, I should intimate the impression I have formed.

As to Ray, I do not consider the $2 given to him to have been a bribe, as distinguished from a payment for the expenses of himself and the other voters who were going with him to the polls; but the payment would be illegal either way, according to the decision of Chief Justice Richards at Picton, (*a*) and of my brother Strong at Barrie. (*b*).

(*a*) Prince Edward case, *ante* p. 45.
(*b*) North Simcoe case, *ante* p. 50.

As to the treating by agents of meetings of electors, in order to promote the election, if the validity of the election had in my view depended on that question, I would, in consequence of the decision in the *Glengarry case*, (a) have reserved the point for the opinion of the Court of Queen's Bench.

If it had been necessary for me to decide as to the effect of distributing liquor on the polling day, I do not at present see how I could avoid holding that the object was the promotion of the election of Mr. Lauder, and that the election was void on that ground.

With regard to the destruction of the accounts and papers, I consider the matter a very grave one. If the case were stripped of all other circumstances but the destruction of the records of the committee and the accounts, by a person holding the position of Mr. Perry in the election, I incline at present to think that it would be my duty to draw the strongest possible conclusions against the respondent; and that I should make every presumption against the legality of the acts which were concealed by such conduct. The only safe course for an honest candidate to pursue is to have all papers preserved, and to be able to show how all the money was expended. For such a candidate, or any agent of his, to be content with saying he does not know how the money is spent, is very unwise.

But I pronounce no decision on these points, as the conduct of Privat has rendered it unnecessary. On the ground of Privat's acts I declare the election void, and I shall report that it was not established to my satisfaction that corrupt acts were committed by or with the knowledge of Mr. Lauder personally.

The English practice is that costs follow the event where bribery by an agent is proved, and I follow that practice.

The *Respondent* then urged that there should be an apportionment of the costs, as according to the judgment

(a) *Ante* p. 8.

of the Court, the petitioner had been successful on some only of the issues.

The VICE-CHANCELLOR said that there did not appear to have been any increase of the costs on account of the issues on which the petitioner had failed; that his observations as to the destruction of papers were to be borne in mind, and that, under all the circumstances, he did not think there should be any apportionment.

(5 *Journal Legis. Assem.*, 1871-2, p. 13.)

NORTH YORK.

BEFORE MR. JUSTICE GALT.

NEWMARKET, *14th to 17th November, 1871.*

NELSON GORHAM *et al.*, *Petitioners*, v. ALFRED BOULTBEE, *Respondent.*

"Illegal and Prohibited Acts."—Treating—Selling Liquor on Polling Day—Agency—Costs—Special Case.

Held, 1.—That "illegal and prohibited acts relating to elections," in the definition of corrupt practices in the Controverted Elections Act, 1871, were confined to bribery, hiring of teams, and undue influence, as defined by secs. 67 to 74 of the Election Act of 1868.

2.—That violations of section 61 (treating at meetings) and section 66 (giving or selling liquor at taverns on polling day) are not corrupt practices within the meaning of the said Acts, unless committed in order to influence voters at the election complained of.

Evidence was given to show that certain parties had attended meetings with the respondent and canvassed for him, and had performed other acts of alleged agency, as set out in the evidence.

Held that the acts of alleged agency relied on in the evidence were not sufficient to constitute such parties the agents of the respondent.

The petition nevertheless was dismissed without costs.

A special case may be reserved for the opinion of the Court of Queen's Bench only when the Judge presiding at the election trial has a serious doubt as to what the law is; or believed that the Court might entertain a different opinion from that of the election judge.

The petition was in the usual form as to corrupt practices, and claimed the seat for the defeated candidate. The votes at the election were: For the respondent, 1,306; for the Hon. John McMurrich, 1,301; majority for respondent, 5.

Mr. K. Mackenzie, Q. C., *Mr. Bethune*, and *Mr. McMurrich*, for petitioner.

Dr. McMichael and Mr. D'Arcy Boulton, for respondent.

The evidence as to agency and treating was as follows:

David C. Burke: I live at Newmarket; am a partner of respondent. I took part in the last election for Mr. Boultbee; I canvassed for him. I went with him when he was holding meetings; I was not a member of his committee. I know a place called Gun Swamp, I went through there the night before the election. David Willoughby went with me. It was dark. We met parties on the road; they all said they were going to vote for Boultbee. I had some liquor with me, a few small bottles; I bought them at Huggard's hotel; I got it to treat my friends. I left them at the mill; I think there was a dozen when I started. I stopped at Bellhaven; it was a polling place, I got there about 11 or 12 p.m. Mr. Willoughby was with me. The bottles were left in the buggy; they were in an open box. I took the liquor to drink myself, and to treat my friends. The bottles were taken from the buggy; I missed them next day. I did not treat any person; don't think I made any inquiry about the whiskey.

Archibald McVenn: I was bar-keeper in Hewett's hotel in March last. I remember the meeting of the 18th March. I heard it was a meeting of Boultbee's friends. Saw Mr. Hogaboom there. I cannot say what they were talking about. I charged $50 for the liquor; that was the value of the liquor. I guessed at it. George Hogaboom ordered it. I did not tell him what I charged. I cannot say how often I served them with liquor. They were mostly village people; some of them got a little drunk. I charged 5 cents a glass. I charged $10 for the room. I did not try to keep an account of the glasses. I think there were $40 worth of liquor drank. It was whiskey and beer and cigars; there was drinking at the bar besides, which was not included. Mr. Hogaboom did not say who would pay for the liquor. I charged it to

him because he ordered it. Hogaboom did not engage the room.

John Hartray: I reside in Newmarket. I voted at the last election for Mr. Boultbee. I was at the meeting on the 18th March. I do not know what the meeting was for. I went to hear the result of the canvass. It was a committee meeting. They were counting up the votes of the town in favor of Boultbee. I had a glass of beer in the room. The meeting was suggested by Mr. Burke and Mr. Hogaboom. There was a number of Boultbee's friends there. When I arrived at the meeting there was quite a number there.

James Hackett, M.D.: I am a voter; I voted for Mr. Boultbee at the last election. I canvassed for Mr. Boultbee. There was no regular committee to my knowledge. I occasionally got voters together to promote the election on my own responsibility. David Willoughby was, I suppose, one of Boultbee's committee in North Gwillimbury. I saw a list of voters in Mr. Sheppard's possession, but I think Mr. Willoughby showed it to me.

Cross-examined: I do not know that Mr. Boultbee appointed any person to act as a committee-man or canvasser. I was an independent canvasser. Mr. Boultbee knew I was canvassing.

David Glover: I saw Mr. Boultbee during the canvass. I supported him at the former election. I canvassed for him. George Hamilton and I were appointed a committee to canvass Gum Swamp school section; we were appointed upon the committee at the meeting at Bellhaven. David Willoughby was, I think, chairman of the committee; John Anderson was secretary. There was a large meeting; perhaps 30 or 40 were present. There was nothing to drink. There was another meeting at which I was not present.

David Sprague: There was a number of the people of North Gwillimbury met; I was one. David Willoughby and others were there. We supported Mr. Boultbee. There were a number of other neighbors there. Mr.

Willoughby was chairman. There was no treasurer and no money. Mr Boultbee had a meeting at Bellhaven before the nomination.

Cross-examined: Mr. Boultbee had nothing to do with calling the first meeting. It was called for the purpose of ascertaining the feelings of the people.

James Cheney: I live in King. I voted for Mr. Boultbee. I saw him in Newmarket after he became a candidate. I attended a meeting at the Royal hotel. There were a good many persons there. I suppose 20 or 30 persons were present. We met to arrange about the election. Mr. Boultbee was present. Persons were appointed to canvass. I was to canvass on the south side of the township. Mr. Boultbee was in and out. I spoke to him, not about the election. Mr. Morgan, Mr. Boultbee's partner, was there.

Edward Morgan: I am partner with Mr. Boultbee. The object of the meeting at the Royal hotel was to ascertain the views of the electors; Hogaboom was there, but I am not positive; Willoughby was there. I live at the hotel. I was in and out very often. I was not taking an interest in the election, except a natural desire to see Mr. Boultbee elected. My going in and out had nothing to do with the election. I did not go to the meeting to see after the election; it was simply curiosity. I did not know there was to be a meeting. I went to the hotel and I saw some enter, and I was told they were favorable to Mr. Boultbee. They were talking of what they had done. It seemed a jollification. I think I had some beer. I made a few remarks. I acted as scrutineer at one of the polls. Mr. Boultbee requested me to go there. I was at Street's tavern. I gave two or three persons there some liquor. I did not know them to be electors. I told the land'ord it was illegal for him to keep open his bar, or to give or sell liquor, on election day. I will not swear I did not go behind the bar and take the liquor. I either did that or called for it. I was cold after my long drive. I think it was after this I was consulted.

George Hogaboom: I live at Newmarket. I was anxious for Mr. Boultbee's election. I asked some men for their votes. I do not think I asked many. I went with Mr. Boultbee to Aurora. I think he had a meeting there. I spoke to people about the election. The meeting was at the Town Hall. There was a tavern about a quarter of a mile distant; we put up our horse there. There were 50 or 60 persons present. There was no drink furnished there. I attended the meeting at Hewett's hotel, Newmarket; I ordered one drink. I told the bartender to bring in a drink for the crowd. I had no particular object. There were probably 50 there. There were 5 or 6 drinks ordered; I rather think Mr. Morgan ordered a drink. I did not engage the room. The meeting lasted about two hours; we were talking about the election. I was present at the meeting at the Royal hotel; I took no part in it. I think I talked to a good many about the election. I knew that some of them were leading supporters of Mr. Boultbee. I did not act as scrutineer.

Cross-examined: I was not a member of any committee. I was not appointed in any way as an agent. I knew nothing of the meeting at Hewett's until I got there. Mr. Boultbee was not present. I was the first person who ordered liquor there. I said that all who were not Boultbee men were requested to leave the room, that it was a meeting of the friends of Mr. Boultbee alone. We then began to discuss the prospects of the election.

Patrick McCutcheon: I reside in Vaughan. I voted at Nobleton. I saw Mr. Morgan there before the poll was open at Street's tavern. Mr. Street would not sell anything. Mr. Morgan said he would run the machine anyway. He went in behind the bar, took down the decanters, and treated 3 or 4 persons. He paid for it. He acted as scrutineer afterwards for Mr. Boultbee.

David Willoughby: I live in North Gwillimbury. I was at a meeting at Huggard's. I made up my mind to support Mr. Boultbee. There were probably 30 persons there; Mr. Boultbee was there. There was no section

given me to canvass. I did canvass; I went through about half the township. I only wanted to know how they were going to vote. I did not keep any list; I made no report. I don't know that I was ever on a committee. There was some of us met at Bellhaven; I was appointed chairman, and Mr. Anderson secretary. There was a conversation among ourselves to ascertain how many would support Mr. Boultbee. I was, during each day for about four days, making the tour of the township. I went principally alone; the last day I went with Mr. Burke. I got into the buggy and went with him. He was calling on the people about the election on behalf of Mr. Boultbee. I was at the poll at Bellhaven. I think Mr. Burke was scrutineer. He had liquor with him. There may have been a dozen; I saw about half a dozen. I saw him give some of it to others. I did not see him give any of it on the day of the election. I took a little myself on the polling day. (*The witness here claimed a certificate under the statute*). I gave Mr. John Morton some, also John Ryner; it was after they had voted. I gave liquor to four in all. I do not know what became of the other bottles. I attended a meeting at Bellhaven and Ravenshoe; Mr. Boultbee was present; it was held in a hall adjoining the tavern. There was a drink after the meeting.

Alfred Boultbee, Respondent: I did not appoint any agents in this election. I had no committee appointed. David Burke was not employed by me in any way to forward the election. I remember him driving me through King and across to Whitchurch to address meetings I had called. I believe I stated to every meeting that I would have no agents. I did not go round canvassing. I appointed meetings and addressed them. I was present at the meeting at Huggard's. I had little or no organization for carrying on my election. I asked Mr. Morgan to go to Nobleton. I think there were 3 or 4 who offered to act as scrutineers; they are the only persons I appointed. I appointed no persons in North Gwillimbury.

Cross-examined: I may have seen drinking at some of the meetings; I furnished none; I did not treat. The meeting at Huggard's was, I think, called at my suggestion to see what my prospects were at the election. They were persons who were friendly to me. If those persons had not agreed to support me I do not think I should have come out; I relied on their support as one of the means by which I could carry my election. I believed what Burke could do he would do. I think Willoughby was at Huggard's.

After the argument of Counsel, the following judgment was delivered:

GALT, J.—I would not have the slightest objection to avoid the responsibility of sending this case to the Queen's Bench; but in that case I ought to do so only because I had a serious doubt as to what the law is; and I ought to be satisfied also that the Court would entertain a different opinion from mine; and in neither view can I hesitate to give judgment at present. The case has resolved itself into two points: first, the effect of the meeting at Hewitt's; and second, the treating on the polling day, and whether there was such a violation of the 61st and 66th sections respectively as would render the election void. (*a*) I must say I have a strong opinion that the illegal and prohibited acts, referred to in the definition of corrupt practices in the interpretation clause, in section 3 of the Controverted Elections Act, 34 Vic., c. 3, are confined to sections 67 to 74 inclusive. (*b*) The fact that undue influence and carrying voters were not sufficient to void the election under the previous Acts, enables me to find that these sections would exactly cover the

(*a*) 32 Vic., c. 21,—s. 61: No drink or other entertainment to be furnished to any meeting of electors assembled for the purpose of promoting the election; s. 66, all hotels, taverns, etc., to be closed on the polling day, and no spirituous or fermented drinks to be sold or given to any person on such day, within the electoral district. (See R. S. O., c. 10, ss. 151, 157).

(*b*) 32 Vic., c. 21,—ss. 67 and 68 define bribery; s. 69, election of candidate guilty of bribery void; s. 70, bribed votes void; s. 71, hiring of teams to convey electors to the poll illegal; s. 72, undue influence defined; s. 73, persons must give evidence, though the answers may criminate them; s. 74, contracts arising out of the elections void. (See R. S. O., c. 10, ss. 149, 150, 154, 155, 158, 163, 170, 176).

definition. It would be impossible to hold that every violation of the Act would be a corrupt practice. The 61st section is perfectly intelligible, when read with the heading "keeping the peace and good order at elections." Bearing in mind the object that heading points out, we can easily tell why the word "agent" is omitted: the evil is the same whether the candidate, or "any other person" gives the entertainment which has the effect of breaking the peace or good order at elections. The meeting at Hewitt's was a violation of that clause, and was called to promote the election of Mr. Bo[illegible]bee; I don't say who called it: according to law it was an illegal act to furnish the entertainment. So with the 66th section; every tavern, the statute says, shall be closed, and this section is consistent also with the view I have expressed as to the 61st section. It is impossible to say that Morgan's treating was a corrupt practice: he was cold, and took a drink and gave it to his friends. If I held this to be a corrupt act, I would have to declare him incapable of holding office for 8 years. The words "illegal and prohibited acts" apply from the sections from 67 to [illegible], and to those only. But I do not wish to be misunderstood. If refreshments be given to influence voters, it would be bribery. It is of no consequence what shape the bribery takes. The election in that case would be void, not for a violation of the 61st section, but because it came within the range of sections 67 to 74. So as to the 66th section. If there was a distribution of a large quantity of liquor,—which is not suggested here,—the election might be declared void. I may mention that the Judges have considered this section, and they were unanimous that no violation of it would avoid the election. The majority of the rota judges was of the opinion, I believe, that no violation of sections 57 to 66 would void the election. There has been some division of opinion, I believe, as to the 61st section: none as to the 66th. If the candidate gave a drink out of a flask on election day it would not avoid the election. Private persons like Morgan and Willoughby

are entitled to my clear opinion that they have not been guilty of corrupt practices, according to the views I entertain of the statute. I cannot find Willoughby, Morgan, or Hogaboom to be agents of the respondent, as I would have to report if I reserved the case for the Queen's Bench. [The learned Judge then reviewed the evidence as to the agency of these parties.] On these and on public grounds also I think I ought not to reserve a case for the Queen's Bench.

After a short adjournment, counsel for the petitioners stated they would abandon the further prosecution of the petition.

GALT, J.—I think the proceeding a wise one, and the best for all parties. I therefore dismiss the petition; each party to pay his own costs.

(5 *Journal Legis. Assem.*, 1871-2, p. 7.)

EAST TORONTO.

BEFORE CHIEF JUSTICE RICHARDS.

TORONTO, *2nd to 6th September; 27th November, 1871.*

NICHOLAS RENNICK, *Petitioner*, v. MATTHEW CROOKS CAMERON, *Respondent.*

Agents—Accounts of Expenditure by—Excessive Expenditure—Personal Expenses of Candidate—Payment to Canvassers—Refreshments—Treating—Bribery—Evidence as to Offers to Bribe—Cumulative Evidence against an Agent—Costs.

A candidate in good faith intended that his election should be conducted in accordance both with the letter and the spirit of the law; and he subscribed and paid no money, except for printing. Money, however, was given by friends of the candidate to different persons for election purposes, who kept no accounts or vouchers of what they paid.

Held, that bribery would not be inferred as against the candidate, who neither knew nor desired such a state of things, from the omission of these subordinate agents to keep an account of their expenditure, especially as the law was new, and contained no provision similar to the Imperial statute, which requires a detailed statement of expenditure to be furnished to the returning officer. But it is always more satisfactory to have the expenditure shown by proper vouchers; and if money is paid to voters for distributing cards, or for teams, or

refreshments, these will be open to attack, and judges will be less inclined, as the law becomes known, to take a favorable view of conduct that may bear two constructions, one favorable to the candidate and the other unfavorable.

The candidate is not restricted to his purely personal expenses, but may (if there is no intent thereby to influence voters, or to induce others to procure his return) hire rooms for committees and meetings, and employ men to act as canvassers, to distribute cards and placards, and to perform similar services in connection with the election.

The plain and reasonable meaning of the statute is, that when the prohibited things are done in order to induce another to procure, or to endeavor to procure, the return of any person to serve in Parliament, or the vote of any voter at any election, the person so doing is guilty of bribery.

The difference between the Imperial statute (17 and 18 Vic., c. 102, s. 2, subs. 3, proviso) and the Ontario statute (32 Vic., c. 21, s. 67, subs. 3, proviso), as to "legal expenses" in elections, pointed out.

The friends of the candidate formed themselves into committees, and some of them voluntarily distributed cards and canvassed different localities, with books containing lists of voters, noting certain particulars as to promises, etc. These canvassers often met voters in public houses, and while there, according to custom treated those whom they found there, and thus spent their money as well as their time. On this being represented to those who had charge of the money for election expenses, the latter, in several cases, reimbursed the canvassers.

Held, 1. That these general payments, if not exceeding what would be paid to a person for working the same time in other employments, would not be such evidence of bribery as to set aside an election.

2. That the furnishing of refreshment to voters by an agent of a candidate, without the knowledge or consent of the candidate and against his will, will not be sufficient ground to set aside an election, unless done corruptly or with intent to influence voters.

Where the object of an agent in treating is to gain popularity for himself, and not with any view of advancing the interest of his employers, such treating is not bribery.

The total expenditure proved was $610, and the number of voters on the roll was 4,669.

Held, that the expenditure was not excessive.

Where the evidence as to bribery consists of offers or proposals to bribe, the evidence should be stronger than with respect to actual bribery.

Where three voters swore to three separate offers of bribery made to each of them separately by an agent of the respondent, which such agent swore were never made by him,

Held, that the evidence was not sufficient to justify the setting aside of the election.

The language of Martin, B., in the *Wigan case* (1 O'M. & H., 192), adopted as a general rule applicable to this case.

There being no grounds for charging the respondent personally with corrupt practices, and the scrutiny having been abandoned, the costs of those parts of the case were ordered to be paid by the petitioner. But with respect to the other costs, though the respondent was successful, the matters were proper to be inquired into in the public interest, and each party was left to pay his own costs.

The petition contained the usual charges of bribery, undue influence, intimidation, and other illegal and prohi-

bited acts and corrupt practices, and claimed that Francis H. Medcalf, the defeated candidate, had the highest number of legal votes, and should have been returned. The votes were: for the respondent, 1,232 votes; for F. H. Medcalf, 1,112; majority for respondent, 120.

Mr. Maclennan and Mr. Delamere appeared for petitioner.

The Respondent in person, and *Dr. McMichael*, for the respondent.

The petitioner abandoned the charge of personal complicity of respondent in any of the matters charged in the third and twelfth paragraphs of the petition, but not such acts by his agents as might affect his seat; and proposed to show a large number of votes bribed by Mr. Cameron's agents, and that undue influence was practised by said agents. The scrutiny was afterwards abandoned.

On the trial of this petition evidence was given to show the expenditure of various sums of money on behalf of the respondent by his friends. It was mentioned incidentally that Mr. McMichael, respondent's law partner, had paid some charges for printing, and this was the only sum that was expended by the respondent himself, and as to this, it was not suggested that there was anything illegal.

Any other moneys that were expended were raised by the friends of the respondent, and if any was improperly or illegally expended, it was without his knowledge and contrary to his express directions.

The chairman and secretary of St. James' Ward, the most populous in the division, were examined. They expressly denied the payment of any moneys for any illegal or improper purpose; and the secretary (*Mr. Scott*), through whom all the payments were made, said they were made on cheques, and proper receipts and vouchers were taken therefor, and the same could be produced if desired.

F. Warwick, the secretary of the committee of St. David's Ward, was twice examined. On his first examination he stated he had prepared books from the roll; the

books were supplied by the general committee. There were fifteen or sixteen of the committee, and they did the canvassing. He used no money; was not promised any. He saw some money paid for cards or bills by Mr. John Carruthers, chairman of the committee of that ward; saw money paid for posting bills; saw one Harrington paid by Carruthers; saw some other money paid by Carruthers for something connected with that work. Several persons were paid for carrying around cards; some fifteen or twenty dollars were thus paid. Parties were paid for going around to give notice of committee meetings and for carrying around cards; saw as much as $2 given to a messenger, and as many as sixteen employed to carry around cards. Half of the number may have got nothing. Was not paid for his services. He knew very well Mr. Cameron had never been in the habit of paying for such services, and he had very little hope of ever receiving any for his; never received anything from any one for his services. Mr. Cameron visited the committee room and told him to be sure and have no money promised or paid for votes, and to be very careful and do nothing wrong. He gave up his school during the whole canvass, about fifteen days; no bargain about being paid; would not say he had no hope of being paid. He was subsequently recalled, and a paper shown him containing a list of names of about 47 persons under the heads "names," "services," $, cts. Under the head of "services" opposite most of these 47 names were entered "scrutineer," "canvasser," "scrutineer," etc. Opposite a few, "meeting scrutineer," "meeting canvasser." The largest sum opposite "scrutineer and canvasser" was $15 opposite the name of G. Morphy. Opposite the names of four persons $10 was put, and the remainder, $3, $4, $5, $2, and as high as $7, and half-a-dozen as low as $2. One name in pencil, Mitchell, had $20 opposite it. Joseph Duggan's name was put down, "use of room for committee 12 days, 2 meetings, etc., $30." Fred. Warmoll "12 day's constant attendance at committee room from 9 to 7, making out canvass books, including

payment of two meals each day, $30." There was a pencil memorandum at the bottom of the page, $306. If that was intended to be the addition, some claims amounting to $18 were added afterwards. The three last items in the statement would make the amount. In relation to the memorandum he stated it was in his own handwriting, that the men mentioned in the list claimed those amounts as what they ought to have. He gave it to Mr. Carruthers after the election was over, with all the other papers When he made up the paper he told them he thought there was no chance of their getting anything. The parties named came to him to put their names down. They abused him about it; said he and Carruthers had got the money between them. When Mr. Carruthers employed men to distribute the tickets, he told them they should not get more than a common day's work, that they should do a little for the cause without pay, as others did. When he put down their names he told them they might as well put down three times as much as it was worth; they had been engaged with the knowledge that Mr. Cameron or Mr. Carruthers would not pay for these services. They had been so warned in his presence before they went to work. The parties named came to his house, he did not go to them. He might have seen them in the committee-room; they must have come to him. He never saw the paper since he gave it to Carruthers until then. He spoke to Carruthers about his own claim, and Carruthers said he had nothing to do with it.

A. De Grassi, the secretary of the central committee, said parties had applied to him for pay, but they were told there was no chance of their getting any.

Nineteen of the persons named on the list were called as witnesses. They almost all denied any knowledge of their names being on the list, or expecting any money, or having been promised any. Among the rest,

Thomas McDonald, whose name was on the list for $5. He borrowed two sums of $5 from Carruthers, who was his father-in-law, during the election. He said he received

nothing, nor gave anything to any one to vote for Mr. Cameron. Carruthers in his evidence said he paid McDonald two dollars for distributing cards, etc.

John Roddy, whose name was on the list for $5, says he never made any claim to Warwick; but Warwick told him he had heard from Carruthers that those who acted as scrutineers were going to get something, and his name was down for $5. He said he was never promised any money, and did not expect anything until Warwick mentioned it. He never went for any.

Joseph Duggan, whose name was on the list for $30 for use of rooms, said Carruthers asked him what his charge was. He told him he made no claim, and he had not made any claim.

John Fitzgerald, whose name was down for $10, said he got $5 from Mr. Carruthers for distributing tickets—two dollars at one time and three dollars at another—and he was about nine days and nights canvassing and distributing. He asked Carruthers at one time if anything more was to be got? He said he did not know anything about it. He asked Mr Warwick how he was getting along, and he said the election was protested. Carruthers paid him the money not for his interest but his labor. He did not promise him anything more.

Louis Walker, whose name was down for $2, received $2 from Carruthers. He and some other men undertook to canvass in a certain section, and in doing so spent money for refreshments. He told Carruthers he could not afford to lose his time and spend money in going about. Carruthers told him he had got money from Mr. Gooderham to pay for printing, but nothing to give away. He told him he would pay him for his time out of his own pocket, and to go on. He gave him $2, and that was all he received.

The rest of those who were called whose names appeared on the list denied having authorized any claim or application being made on their behalf. They did not claim anything and did not expect anything.

William Gooderham, the younger, placed in Mr. Carruther's hands for the purposes of the election about $150, and in the hands of Mr. William Hamilton, the younger, for a similar purpose, $100. He states that when giving the money to Carruthers, it was mentioned the money was required for posting bills and other legitimate purposes of the election. He understood the payments were to be made for bill delivering, bill posting, and the proper expenses of the election. The money given to Mr. Hamilton was for St. Lawrence Ward, getting bills, tickets and cards printed, &c. He understood Mr. Carruthers was to do the necessary printing, the distributing tickets, and pay the other legitimate expenses. His impression was that some printing was done by the central and some by the ward committees. He supposed parties had to be paid for taking around tickets, and for rooms to hold meetings in, and other legitimate purposes. He told him to be careful and spend the money for legitimate purposes only.

Thomas C. Chisholm placed in the hands of Patrick Hynes about $80, and of John Reid, $80, and he spent about $40 himself; making his expenditure about $200. He gave the money to Messrs. Hynes and Reid to expend in printing and distributing cards, paying for committee rooms, &c. He told them he did not want Mr. Cameron defeated, and that they were not to expend the money for any purpose that was not legitimate. He believed it was so used. He thought it was to be used in the three wards. He gave it to them because he supposed they would use it to get canvassers and printing, and other legitimate purposes. Did not think the central committee printed all the cards; thinks there were other cards printed besides.

John Carruthers said there might be as high as $5 a-piece paid for carrying around cards. He said he had paid all the expenses that had been paid in St. David's Ward, as far as he knew. Could not say how much he paid in these matters. It might or might not be $100. It might or might not be $50, for anything he knew. He did not get

the funds from any one for the purpose of paying the amounts in the statement. He did not know whose writing it was in; to the best of his knowledge he never saw it before. He gave money to McDonald—a dollar or two. He gave no man $10; he did not spend $200. Won't swear he did not spend $100. He got money for election purposes from Mr. Gooderham. It was a small trifle to pay for posting up some bills. It was cash to pay some men they had going round posting bills. Mr. Gooderham said to him directly there was to be no money paid for votes. Thinks no one has asked him to pay for any services rendered during the election for Mr. Cameron. He might have given Louis Walker a dollar or so. He kept no accounts of the payments; had no reason for not doing so. If he paid Walker any money it was for delivering cards. No one received money for voting, nor did he ever give any one money to pay them for voting or for influencing their vote. He was strictly forbidden by Mr. Cameron to pay money. Heard him say, if one dollar would secure his election, he would not give it. Was never authorized by Mr. Cameron to pay for distributing cards or anything else. If he did so, it was on his own account entirely. He was sure that in any money paid for distributing cards he did not allow each one more than at the rate of a dollar a day for what he did. The canvassing and committee meetings, off and on, lasted about two weeks. No person he employed as a canvasser or scrutineer was ever paid by him, even at the rate of a dollar a day.

On his subsequent examination, he said people came themselves and volunteered to take a book and go and canvass for Mr. Cameron. There were arrangements as to certain parties taking certain districts. He would give each man a couple of streets, perhaps four or five; for two other streets, perhaps a dozen. Sometimes they would send men over the same ground. He thought some of the men made mistakes. Only paid parties for delivering cards. Might have had notices sent out for holding meet-

ings—that was most of it. The persons so employed were generally voters. He spent all the money he received for those purposes. The services they rendered were not as well paid for as if they had been laboring men employed by the day. Most of his own men got double pay for the same time as these men got who delivered these tickets. He denied that Warwick had ever handed him the list or any paper connected with the last election, except two or three scrutineers' books and some bills for printing. There might have been some small memorandum books. He had destroyed or lost all of them.

William Hamilton, Jun., chairman of the committee in St. Lawrence Ward, said he paid some money for distributing cards and posters, and some other legitimate expenses, and for no other legitimate expenses that he knew. There were fourteen or fifteen employed to distribute cards or posters; most of them strangers to him. He paid them $5, $6, or $10 a-piece, according to the time they rendered. They did not render any account, and he got no receipts or vouchers. He could not recollect the names of any of them. Could not say if they were electors. At the ward meetings these persons came and rendered their accounts of the time they had been occupied in distributing the cards. In addition to these, there were two or three who canvassed. The persons to whom money was paid were those who went about posting bills and distributing cards. He employed fourteen or fifteen men. Thinks it would take four or five days to distribute the cards. They looked as if they were persons taking an interest in the election. He could not name any man he had paid money to. He spent from $80 to $100 in the election in this way. He kept an account of it. Got the money from Mr. Gooderham. He did not put down the names of persons to whom he paid money; knew Mr. Gooderham had confidence in him, and he would take his word for it. The money was paid for distributing cards. The bills were posted by the printers. It was given to fourteen or fifteen persons; thinks it was all done in a

week or ten days. He did not suppose it could be done for less; believes it was a reasonable sum to charge. He paid after the service was rendered. It was considered a fair sum, and he so believed it at the time, and it was not given for the purpose of inducing them to vote. He did not think any of them voted, because he did not know they voted. He did not bring any of them to vote, and did not see any of them vote. He was not aware of any one else paying any money in that ward.

Patrick Hynes said he received from $75 to $100 from Mr. Chisholm. It was given to men who were distributing cards. He gave it to them with a distinct understanding and belief that they were distributing cards. To some who said they were out three or four days he gave four or five dollars a-piece. Some might have worked in St. James' Ward. He understood they were generally working in St. David's Ward. Mr. Carruthers said he had got some money from Mr. Gooderham to pay for distributing cards—he mentioned $50—that he had paid out all he had got, and people were finding fault with him that he had not paid them. He said he could not get enough to pay them all. He did not canvass any of the men; he understood they were warm friends of Mr. Cameron and were anxious for his success, but were not able to spend their time in doing this work without being paid. He thought it was legitimate work. He believed they had done the work. He did not know if they had spent all their time in canvassing; they appeared not to be doing anything else. He saw them both in the daytime and at night. He did not keep an account of those to whom he paid it. He of course treated parties; he did not consider it as done to induce them to vote. He thought it likely he spent from $75 to $100. He knew most of the men, but could not tell their names. If the parties came to him and said they had been out two or three days canvassing, he would pay them for it. They were laboring men, or a poor class of mechanics. He did not ask when he paid them if they had worked all the day, or how many hours

they had been out. He understood they had been employed, and paid them accordingly. Mr. Chisholm gave him the money for legitimate purposes. He understood that distributing tickets, posting bills, and work of that kind was considered legitimate, and that was the purpose for which it was expended. Never was expended, that he was aware of, for the purpose of bribing the electors, and none used for the purpose of treating at any meeting of electors. None given for the purpose of bribing himself. None were paid a sum, he thought, equal to fair wages for what they did, supposing them to have worked as they said they did and as he believed they did. He did not think any man got over $5; some may have got more, others may have only got one or two dollars. He could not say if any of those mentioned in the list as entitled to money in St. David's Ward were paid by him. Could not recollect that they were.

John Reid said he received money from Mr. Chisholm. He did not know how much; did not count it. Was certain it was not $100 or $200. It was under $100; he did not count it. It was over $25. He could not come any nearer than that. The money was spent in distributing cards through the ward. He had no idea how many were distributed. They were given to the men to distribute, two or three together distributing them. Knows the names of a good many who were employed distributing. Thinks G. Morphy was so employed. Did not give him any money. Does not remember giving money to any of those mentioned in the list. Does not remember the name of any one he did pay; is not aware that he paid anybody; can't name a single person to whom he paid any of it. Is quite sure he has not the money still. He gave it to persons for distributing cards at promiscuous meetings. He did not remember to whom he paid it. Did not give any cards to those who would vote for Medcalf. Thinks he spent some of his own money in that way. Can't tell how much. Thinks he spent of his own money less than $100 and over $25. He spent all the money he got from

Mr. Chisholm. Did not think he had spent $80 of his own money. Will not swear he did not. Did not know of any but himself spending money at that election. The money that he spent of his own and Mr. Chisholm's was spent entirely in the distribution of cards. He thought the parties were friendly to Mr. Cameron. His impression was that some were electors and some were not. To most of them he paid a couple of dollars; he gave each man what he thought he was worth. Did not know if they asked him for payment. They were men in middling circumstances. Very few of the laboring class had votes. They seemed very anxious for their man before they got the $2. Thought there were about 1,000 voters in St. David's Ward. Did not know Mr. Hynes had any money to spend. Mr. Chisholm did not tell him so. Did not tell any of the committee he had funds for distributing cards. No particular arrangements were made by the committee for distributing cards, except that certain men had certain localities for distributing cards in. Some were paid and some not. He paid some not mentioned by the committee. He gave cards to men to distribute himself. The secretary of the committee in St. David's Ward generally distributed them. He was not aware that the committee knew he was distributing them promiscuously. He told the men, when he gave them the cards, the streets he wanted them distributed in. He could canvass about 300 in a day. Did not think that an unreasonable number; thought 500 not unreasonable. Some days he could not canvass over 20. Sometimes a man would require a longer time to persuade. He said three or four hundred would be a great many to canvass in a day—to go from house to house. If it were only necessary to throw the card into the house, three or five hundred cards could be distributed in a day. Did not think he spent $75 in distributing tickets. Mr. Chisholm did not pay anything to him for the purpose of influencing him: all he was worth would not influence him. He supported Mr. Cameron before Mr. Cameron gave him the money. The money was not given for the purpose of in-

fluencing other voters, or bribing them. He did not use the money for the purpose of influencing the voters, or corrupting or bribing them; he used no money for corrupt purposes. He was well aware Mr. Cameron was opposed to spending money for the purpose of the election.

The case was then argued by Counsel, and the Court adjourned until the 27th September, when the following judgment was delivered:

RICHARDS, C. J.—It was conceded, and the evidence seems to establish beyond all doubt, that the respondent, in good faith, intended that the election should be conducted, not only according to the letter of the law, but according to its very spirit and intent. He subscribed no money, and paid none, except for some printing, the amount of which was not mentioned, and which there is no doubt it was proper for him to pay; and it did not appear that he even knew that any considerable amount of money was being expended.

When a man so situated is to be held liable for the acts of his agents, the observations of Martin, B., in the *Westminster case* (1 O'M. & H., 95), seem to me to enunciate opinions that will meet with general approbation: "The law is a stringent law, a harsh law, a hard law; it makes a man responsible who has directly forbidden a thing to be done, when that thing has been done by a subordinate agent. It is in point of fact making the relation between a candidate and his agent the relation of master and servant, and not the relation of principal and agent. But I think I am justified, when I am about to apply such a law, in requiring to be satisfied, beyond all reasonable doubt, that the act of bribery was done; and unless the proof is strong and cogent—I should say very strong and very cogent—it ought not to affect the seat of an honest and well-intentioned man by the act of a third person."

It was urged on behalf of the petitioner, that large sums of money were expended to aid in the election of respondent, and the responsibility was cast on him to show that it was spent in a legitimate manner.

In the *Bradford case* (1 O'M. & H., 30), the respondent opened an unlimited credit at his banker's in favor of his agent, who availed himself of it to the extent of upwards of £7,200; and the agent sent the returning officer a mere abstract of the totals of outlay, unaccompanied by vouchers; and this was knowingly done, contrary to the statute 26 & 27 Vic., cap. 29, sec. 4. It was shown that large numbers of electors were influenced by corrupt practices committed by the agents of respondent. Martin, B., said as to this (p. 33 of the case), that his impression was, if petitioner's counsel had put in the account, and proved that no bills or vouchers had been delivered to the returning officer, he would have called on the respondent to prove the legality of every payment contained in the account from the beginning to the end of it. His impression was that that alone would have made a *primâ facie* case against any person, especially when he called attention to the amounts contained in that paper.

The Imperial statute referred to required that no election expenses should be paid except through an agent, whose name should be given to the returning officer, and it was to be published. The bills were to be sent in to the agent within a month. A detailed statement of expenditure, with vouchers, was to be furnished by the agent to the returning officer within two months after the election.

We have no such provision in our statutes, (*a*) and we are now for the first time called upon to carry out the provisions of the law, which has been characterized by Baron Martin as a harsh law, and apply its principles to the conduct and actions of men, some of whom have never been accustomed to keep accounts of any kind, and certainly not accounts and vouchers relative to election expenses. I do not think I can be called upon, as against a person who neither knew nor desired this state of things, to infer bribery from the omission of these subordinate agents to keep an account of their expenditure, or to

(*a*) See now R. S. O., c. 10, ss. 183-187.

recollect the persons to whom the money by them expended was paid, as I would do if administering the law according to the enactments which prevail in England on the subject.

Here the money was not furnished by the candidate, nor does it clearly appear that he was aware that any had been subscribed or was being expended for the purposes of the election; but it is probable he may have thought that was the case, and it appears he impressed upon his friends the absolute necessity of obeying the law. If he had been aware that a lavish expenditure was going on, or if it was manifest that money was being recklessly used, he ought to have checked and prevented it; and although if I were satisfied the money had been used for corrupt purposes I would be compelled to avoid the election, yet I do not feel called upon to infer that it was so used from the mere absence of a satisfactory account of its expenditure, verified by vouchers.

There has been no evidence given to show that the expenditure, on the whole, was excessive, if the kind of expenditure referred to is allowable at all.

Mr. Scott expended say about $300 in St. James' Ward—no objection is offered to the expenditure or its details; Mr. Gooderham gave Carruthers say $150; Mr. Chisholm gave Hynes $80, and Reid for all the wards, $80; say, if all expended in St. David's Ward, $210; Mr. Gooderham gave Hamilton, for St. Lawrence Ward, say $100; making in all $610.

The number of voters on the roll, in St. James' Ward, were 1,856; St. David's, 1,827; St. Lawrence, 986.

If the expenditure in St. James be considered a fair one at $300, the others do not seem unreasonable, though the St. James' committee may have paid for more of the printing than was paid for in the other wards.

From the manner in which they gave their evidence, I was under the impression that Hamilton and Hynes had spent all the money placed in their hands for the purposes they mention—for the *bonâ fide* object of paying

for services rendered, and not with a view of corrupting or unduly influencing votes.

As to Carruthers, I am by no means satisfied that he paid out all the money he received. The list, which the petitioner's counsel in some mysterious way obtained possession of, showed the names of persons who had been employed in taking around tickets, some five of whom had received small sums, and the larger portion had not received anything, and never asked or expected anything. Some of them, when applying to Carruthers, were told he had no money to expend for these purposes, but only for printing; yet he paid some small sums, as he said, out of his own pocket. If he was unwilling to pay these men for the services so rendered, and who were all friends of Mr. Cameron, out of the money he received, I do not think it likely he would pay over the money to induce others to vote for Mr. Cameron. Warwick, in his evidence, said that many of the parties who applied to him for their pay stated that Carruthers and he had received money to pay these expenses, but had kept it themselves. Hynes said that Carruthers told him he had received some money from Mr. Gooderham to pay for printing, etc., but he understood it was only $50. It may have been he had only received $50 then, as Mr. Gooderham said he paid the money to him at different times.

The evidence of Reid was equally unsatisfactory, and did not impress me with the conviction that he had spent all the money he received in paying expenses connected with the election, whether legitimate or otherwise.

It is contended that the decisions under the English statute are not applicable to the state of the law existing here.

Reference is made to the three clauses of the second section of the Imperial statute, 17 & 18 Vic., cap. 102, which enacts "That every person who shall directly or indirectly, by himself or any other person on his behalf, make any gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such

person to procure, or endeavor to procure, the return of any person to serve in Parliament, or the vote of any voter at any election," shall be guilty of bribery.

In the *Coventry case* (1 O'M & H., 106), Mr. Justice Willes, in referring to this section, says: "Therefore anything, great or small, which is given to procure a vote would be a bribe; and if given to another to purchase his influence at the election, it unquestionably would be a bribe, and would avoid the election. Our own statute, 32 Vic., cap. 21, sec. 67, 3rd paragraph, is in the same words.

At the conclusion of the second section of the Imperial statute are the words, "Provided always that the aforesaid enactment shall not extend, or be construed to extend, to any money paid or agreed to be paid for or on account of any legal expenses *bonâ fide* incurred at or concerning any election." The proviso at the end of the section in our statute is, "Provided always that the *actual personal expenses of any candidate, his expenses for actual professional services performed, and bonâ fide payments for the fair cost of printing and advertising*, shall be held to be expenses lawfully incurred, and the payment thereof shall not be a contravention of this Act."

It is argued that the effect of our statute is to restrict the candidate to the payment of his personal expenses—that is, for his own board, lodging, horse hire, travelling expenses, I suppose, and his expenses for actual professional services performed,—meaning fees paid to lawyers for their services as such.

In this view, he could not hire a room to meet the electors in, or for his committee to meet in, unless he were then personally present; and none of his committee could hire a room for that purpose (for that would not be for professional services), if such room belonged to a voter, and none other could be conveniently obtained. I am not inclined to put this narrow construction on a statute so highly penal as this is. The plain and reasonable meaning of the statute seems to me to be what its words indicate, that when the prohibited things are done "in order

to induce such person to procure or endeavor to procure the return of any person to serve in parliament, or the vote of any voter at any election,"—the person so doing shall be guilty of bribery.

In the *Coventry case*, the point was whether one candidate offering to pay the expenses of a co-candidate was guilty of bribery, and reference being made to the proviso in the section of the English Act, the learned Judge (Willes) said, "It does not relate to the expenses of voters. To pay the expenses of voters on condition of their voting or abstaining from voting, is unquestionably bribery." He then proceeds, "But the candidate may pay his own expenses, and employ voters in a variety of ways; for instance, he may employ voters to take around advertising boards, to act as messengers as to the state of the poll, or to keep the polling booths clear. He may also adopt the course which appears to have been adopted in this city, that is to say, the city or borough is divided into districts, and committees are formed amongst the voters themselves, of selected persons, who go about and canvass certain portions of the district, and for their services these persons are sometimes paid and sometimes not paid. Now, unquestionably if the third clause of the second section was to be taken in its literal terms, the payment to canvassers under such circumstances, being, as it is, a payment to induce them to procure votes by means of their canvass, would come within the terms of this clause, and would avoid the election. We have, therefore, a test supplied of the meaning of the third clause of the second section, by means of which we see that it was not intended by this section to do away with every payment made by the candidate in the course of the election." After referring to the *Tamworth case*, where reference is made to the cases deciding that employing voters and paying them as canvassers was not colorable, he then refers to the *Lambeth case*, in which voters employed as canvassers were paid, and it was not considered illegal. He adds: "It is hardly necessary to point out how exceedingly dangerous the

adoption of that system is, both in respect to the payment of canvassers, and also in respect of that which has been held lawful, viz.: the supply of fair refreshments to unpaid canvassers, whilst engaged actually and not colorably upon this work; and in like manner, of refreshments to committee-men. It is proper, when this system is referred to as not being unlawful in itself, to say that it exposes members to very great danger, and when it is merely colorable it would avoid the election." He comes to the conclusion that paying the expenses of a co-candidate is not bribery, and is not prohibited by the statute. He further adds: "You must show an intention to do that which is against the law, before you bring the case within the highly penal clauses of the statute."

From the evidence given, and the surrounding circumstances, I do not feel warranted in inferring that the sums really paid to electors for putting up placards, distributing cards, and similar services, were paid colorably and to influence votes.

The course pursued, as I understand, was that Mr. Cameron's friends formed themselves into committees in the several wards, and persons came forward and volunteered to distribute cards in the several localities. They were furnished with books showing the names and residences of the parties they were to call on, and they returned these names and the answers they gave as to whom they would vote for, to the secretary of the committee; and in that way the information was conveyed to the scrutineers as to the parties who were on the list, whether they were in the city, whether they were dead, and for whom they were expected to vote. The parties entrusted with these books and tickets were, it may be presumed, those in whom the friends of Mr. Cameron had confidence, or they would not have had that position. When the parties commenced to distribute cards, &c., they often found the parties on whom they were to call at public houses, and when there, and speaking on the subject of the election, they, as seems to be the almost universal custom

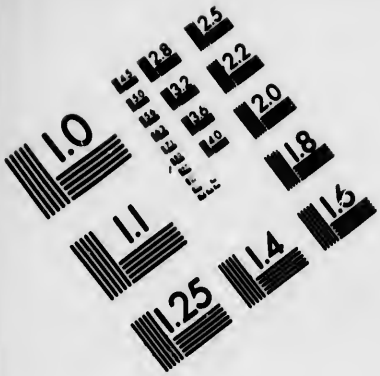
with the class of men whom they meet, asked them to drink, and if others were present they were also asked. The consequence was, the parties distributing tickets frequently spent their money, lost their time, and got no pay. When this was represented to the parties having funds to expend they considered it a legitimate purpose to pay these parties for their services a reasonable sum, not at any time exceeding what would be paid to a person for working the same length of time in other employments. I cannot say that the evidence of these general payments shows any such bribery as would justify me in setting aside the election.

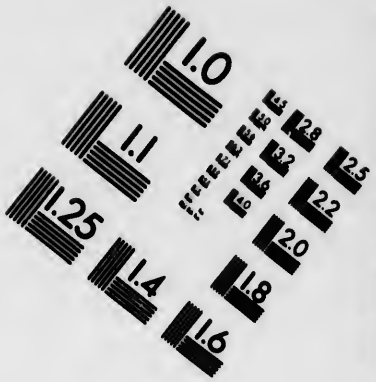
On this particular feature of the case, I may as well remark that when a candidate or his friends expended large sums of money during an election, it is always more satisfactory to have such expenditure shown by correct and proper vouchers; and if any money be paid to voters, or large sums paid out for refreshments, or teams used in any way, this will be open to attack and observation, and judges will be less inclined, as the law becomes known and its provisions pointed out, to take a favorable view o acts and conduct that may bear two constructions, one favorable to the party elected, and the other against him.

As to $10 paid to Mr. McDonald, the son-in-law o Carruthers, Carruthers himself says he gave him a dollar or two. McDonald says he borrowed from him during this election, $5 at one time and $5 at another, and this had nothing to do with the election. He seemed to be a warm supporter of Mr. Cameron, and I am not inclined to think Carruthers gave him the $10 on account of his services during the election, or to bribe him.

The next point is that, with intent of promoting Mr. Cameron's election, Mr. Chisholm spent money for supplying drink to a meeting of electors, assembled for the purpose of promoting such election.

Mr. Chisholm gives evidence on that point, and it is the only evidence given on the subject. He says his own expenses were, on the whole, for cab hire and money paid





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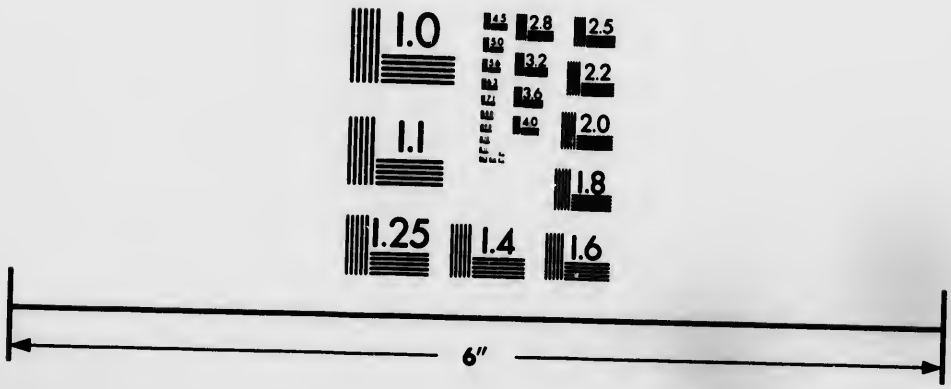

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at ward meetings, about $40. He was ill before the election, and hired cabs to take him from one place to another. After the meetings were over he asked those present to drink, and all present drank. He said his object was to be friendly with them, and if, after that, they were friendly to his candidate, he was glad of it. His largest expenditure in an evening was six or seven dollars, including cab hire. When he asked the people to drink the question of voting was never mentioned. He did it on his own account. In doing so he had no desire to influence the people's votes. "The object I had in view was this: when men take an interest in these matters, as I did, and exert themselves, if they don't treat people, they think they are mean, and I do not wish to be considered mean." Without deciding that furnishing refreshment by an agent of a candidate, without his knowledge or consent, and against his will, will set aside the election, I think I may dispose of this point in the case, in deciding whether what was done was done corruptly, to influence votes. The lengthened exposition of the cases, as to furnishing refreshments, in the judgment of Chief Justice Hagarty, in the *Glengarry case*, (*a*) makes it unnecessary for me to refer to them at length.

In the *Tamworth case*, where men were employed to keep the peace on the polling day by an agent of one of the respondents, amongst whom were some 29 voters, at 10s. a-head, Mr. Justice Willes had to consider why the agent employed those men, and he said: "I believe he employed them because he desired to gain popularity for himself, and because he desired to make a handle of their employment to gain favor for himself amongst the class to which the men belonged. . . . . Upon the whole, however, I come to the conclusion, that it was an unauthorized act, done by Baraclough for the purpose of obtaining popularity for himself, and that it was not, either in respect of the question of law, or upon the established facts, an act which I can designate as having

(*a*) Page 15, *ante*.

been bribery. It is an act which, so far as I judicially can, I reprehend and condemn; and if I thought it had been done by him with any view of advancing the interests of his employers, so that I had to impute the intention to do that which was the natural consequence of the act, I must have held the election to be void."

Looking then at this as as an unauthorized act against the wishes of the candidate, I think the fairest and most reasonable conclusion to arrive at is what Mr. Chisholm himself says, viz.: that he treated because people would have thought him mean if he did not, and without any corrupt intent.

The next class of cases to which my attention was directed was that of those to whom offers of bribes were made to induce them to vote for respondent.

The first is John Fulton. He stated that Leonard Hewit asked him to vote for Mr. Cameron. He said he could not. Hewit asked if he was not going to build a house; he said he was. Hewit said he would give him two thousand feet of lumber if he would vote for Cameron. He said he could not do it. Hewit said he would send him some more if that was not enough. He said he voted for Medcalf. Mr. Cameron's scrutineer swore him, and that was the way his name came here. On another occasion, just to try him, he asked Hewit what he would give him to vote for Cameron. Hewit said $20, just to try him; he said he wanted more. Hewit finally decided to give him $25, and gave his word of honor he would make it all right. Hewit asked, would he not take his word and honor until after the election. He said he supposed he must, and he was to vote for Mr. Cameron.

On cross-examination he said he did not promise to vote for Mr. Cameron. He said he wanted to get a hold on Hewit; he thought he was too officious, and he wanted to get hold of him. He said he never promised to vote for Mr. Cameron. He would travel from here to Cooksville on his bare feet to vote for Medcalf rather than for Cameron. He said there were plenty of men present when the

conversation about the lumber took place, but he could not name any of them. The first time he thought Hewit was in earnest, and he was so himself when he refused him. The men could not hear them. He could not tell a single man present when Hewit made the offer.

Hewit was called and denied ever offering him any lumber to vote for Mr. Cameron. He said in conversation (they worked in the same shop with other men) about the candidates, that Fulton said when he last voted he got lumber enough to build a house, and he would not vote for either of the candidates unless they came down. He asked him if he thought Medcalf would come down. Fulton said he did not think he would. He (Hewit) said if that was the matter he was foolish for voting for him; that the Government had plenty of money and lumber too; that was about the substance of his conversation. He did not offer to send up 2,000 feet, or any lumber. He did not offer him $25 to vote for Cameron. He must be laboring under a mistake; he never offered him a copper. Hewit contradicts Fulton's statements as to offering to give $20 or anything. He never understood fr[illegible] egin-ning to end he was to vote for Cameron; alw[illegible] nder-stood he was to vote for Medcalf. He canvassed for him. He did not know Fulton had a vacant lot. He said that what he did say to Fulton was in the way of chaffing and as a joke. He said he was foolish for voting for Medcalf; that the Government had plenty of money and lumber too. Nothing was said from which any person could seriously infer that he intended to offer Fulton anything to vote for Mr. Cameron. He did not think 2,000 feet of lumber or $25 in cash would have induced him to vote against Medcalf. From the manner in which these men gave their evidence, I was not satisfied that any serious offer to bribe Fulton had been made by Hewit.

The other persons to whom offers were made were George Smith, James Agnew, and Samuel Nisbet.

George Smith said that one of the Gooderhams, he did not know which, said if he would vote for Mr. Cameron

if we all supported him down there, they would give the right to have South Park Street through. He believed they surveyed it out the day before the election. He believed Gooderham owned a small lawn.

I understand by this that Mr. Gooderham would consent to a street being continued through the lawn. Whether this gentleman was an agent of Mr. Cameron's or not does not appear. I think we cannot on this vague kind of statement unseat the sitting member.

George Smith also stated that Carruthers told him he had bets on the election, and he could make more bets if he (Smith) would vote for Mr. Cameron. He said he would give him $20 if he would vote for Mr. Cameron against the old man (meaning Mr. Medcalf). Smith said he would not take $100 and vote against him. He said he could make up bets; he had one made with Victor Thomas at the same time. Carruthers said he would win the bet if he voted against the old man. This was on the nomination day the speaking was going on; it was a little damp, and he wanted to get away.

John Agnew said that on the night of the meeting at the Dutch Farm, Carruthers said to him, "You always did go for me." He replied, "But I can't now." He would do all he could for Mr. Cameron only for Mr. Medcalf. Carruthers said, "You had better have a couple of dollars. You will have your mind made up before the election comes on." He said he had his mind already made up.

Samuel Nisbet was a scrutineer for Medcalf. He said he met Carruthers at Duggan's tavern; McDermott and McDonald were there. Carruthers said if he would go with them, he had a nice inside job for him to-morrow. Nisbet said he could not promise. Carruthers said if he went with him he would not rue it; that there was lots of money going. He (Carruthers) said before Wednesday or Thursday night at the outside, he should be recompensed. McDermott and McDonald pressed him to go with them —said there was lots of money. He asked how money could be used. They said they would make that all right,

saying, before Wednesday or Thursday night he would find out. On the day of the polling McDermott and McDonald came in; they were surprised to see him there acting as scrutineer for Medcalf; they began to abuse him and call him names. He threatened them if they did not keep quiet at the polling booth, he would use their own words against them. They told him if he had got the two dollars the night before, he would have been for Cameron.

On cross-examination, he said he told McDonald on the day of election he would use the words against him. He first told it to the petitioner's solicitor that day. It was not known, before the conversation at Duggan's, that he was going to support Medcalf. He did say something to Mr. Cameron at Lynch's; found fault with him, and showed a preference for Medcalf; and that was before the conversation at Duggan's. He fell in at the end of a meeting in favor of Medcalf at Duggan's; was also at a meeting at Hamilton's, and said something to two of Cameron's supporters there.

Mr. Carruthers was called, and said he never offered Smith a cent to vote for Mr. Cameron. Smith said no money would induce him to vote against Medcalf. He never gave or offered Agnew two dollars to vote, or make up his mind about voting. He knew very well he would vote for Medcalf, whatever might have been given to him. He denied speaking to Nesbit at Duggan's; he had observed him at Foley's tavern before that, and he would not speak to him, and did not all that night. He never hinted to him that the Government had plenty of money, and could pay election bills. Nesbit was trying to prevent Mr. Cameron from speaking at Lynch's, by making a noise and shouting, before seeing him at Duggan's. He saw Agnew at the lager beer saloon, and he was drunk.

McDermott said he saw Nesbit at Duggan's, and asked him who he was going for. He said he did not know. He offered him nothing to vote for anybody, nor did McDonald. He and McDonald did not take Nesbit aside

to speak about the election, nor offer him anything to vote. He denied having the conversation with Nesbit which Nesbit said he had had with him. The quarrel at the poll began from Nesbit swearing McDermott as to his vote; and the latter then said if he had got two dollars the night before, he would have been for Cameron. He said he thought he wanted to be bought, coming round a committee room the night before the election, not knowing who he was going to vote for.

In the *Cheltenham case* (1 O'M. & H., 64–65), when the question came up as to evidence in the case of an offer to bribe, Baron Martin said: "Where the evidence as to bribery consists merely of offers or proposals to bribe, the evidence required should be stronger than that with respect to bribery itself, ... it ought to be made out beyond all doubt, because when two people are talking of a thing which is not carried out, it may be that they honestly give their evidence; but one person understands what is said by another differently from what he intends it."

Looking at the whole evidence as applicable to the offer to bribe said to have been made by Carruthers to Smith, Agnew and Nesbit, I do not think such a clear case is made out as would justify me in setting aside this election on the ground of an offer to bribe these three persons. They received nothing, they did not alter their votes, and I fail to see clear and distinct offers to bribe, which I think the rules laid down in these cases require to justify me in finding that they were made as alleged.

During the proceedings there were some other cases referred to, which at some stage of the proceedings seemed to require further explanation, but the further progress of the inquiry served to afford a satisfactory answer, and I have only referred to those cases which were specially adverted to by the petitioner's counsel, at the summing up at the close of the case.

I do not think I can better express many of the views that I entertain in relation to this case than by quoting

the language of Baron Martin, in the *Wigan case* (1 O'M. & H., 192), as to the principle on which a judge should act in trying a petition alleging corrupt practices. He says: "If I am satisfied that the candidates honestly intended to comply with the law and meant to obey it, and that they themselves did no act contrary to the law, and *bonâ fide* intended that no person employed in the election should do any act contrary to the law, I will not unseat such a person upon the supposed act of an agent, unless the act is established to my entire satisfaction. Things may have been done at an election of which I do not approve—for instance, having committees at public houses, hiring a number of carriages (which now in borough elections is prohibited), or hiring "roughs"—but which do not of themselves avoid an election. They are ingredients which may be taken into consideration, and they may tend to show what was the real quality and meaning of an ambiguous act, which may have one effect or another, according as the judge's mind is satisfied that it was honestly or dishonestly done. It may be that in an election, certain acts have taken place which the judge disapproves of, but which do not satisfy him that another act, on which the validity of the election depends, was corruptly done. But if, upon a future petition ensuing upon another election in the same place, acts similar to those of which the judge had expressed his disapproval were proved to have been repeated, the judge who tried the second petition might well take them into consideration to aid his conclusion, that the act upon which the validity of the election depended was a corrupt and dishonest act."

I am satisfied that the respondent honestly intended to comply with the law, and meant to obey it, and has done no act contrary to the law, and *bonâ fide* intended that no person employed in the election should do any act contrary to the law. I have not that clear and satisfactory evidence of acts contrary to law, done by his agents, which will, in my opinion, justify me in declaring the

election of the respondent void, and it therefore becomes my duty to declare that the respondent was duly elected.

As to costs, there were no grounds whatever for charging the respondent personally with acts of bribery or other corrupt practices, and the scrutiny was abandoned after some attempts were made to go on with it. The costs as to these parts of the case I direct shall be paid by the petitioner to the respondent.

As to the other parts of the case, though the respondent is successful, I think the matters were proper to be inquired into in the interest of the public; and as to them, I give costs to neither party.

(5 *Journal Legis. Assem.*, 1871-2, p. 10).

WEST TORONTO.

BEFORE CHIEF JUSTICE RICHARDS.

TORONTO, *7th to 9th September; 27th November, 1871.*

ROBERT ARMSTRONG, *Petitioner*, v. ADAM CROOKS, *Respondent.*

Bonâ fides of Candidate—Election Committee Decisions, 34 Vic., c. 3, s. 30—Judge acting as Juror—Canvassers for Special Classes of Voters—Money paid to Voters not rendering Services—Agency and Sub-Agency—Ratification of Illegal Payments—Hiring of Teams, 32 Vic., c. 21, s. 71—Costs.

Where a candidate in good faith intended that his election should be conducted legally, and printed a synopsis of the new law as to corrupt practices, and circulated the same throughout the constituency, and caused it to be published in a newspaper with an editorial article on it, and an abbreviated form of the synopsis to be posted in each committee room, and informed his central election committee of its provisions; and the Judge found that he had taken a good deal of trouble to have the law explained and circulated amongst the electors, and desired to obey it:

Held,—That although many of the acts done during the election created a good deal of doubt and hesitation in the mind of the Judge, yet, as the return of a member is a serious matter, and ought not to be lightly set aside, the Judge ought to be satisfied beyond all reasonable doubt that the acts so done were done with the intention of influencing voters, and so done corruptly; and this election was upheld.

The effect of s. 30 of 34 Vic., c. 3, requiring the Judge to be guided by "the principles, practice and rules on which election petitions touching the election of members to the House of Commons in England are dealt with," is, that the Judge is to act on the principles upon which Election Committees have acted, where he has no light from the rules

which his own professional experience supplies him with. And he is in addition to be bound by the decisions of the Rota Judges in England trying elections under acts similar to our own, in the same way as the Courts feel bound by their judicial decisions in other legal matters.

Where in ordinary cases there is evidence to go to a jury, but on which the Judge, if sitting as a juror, would find for the defendant; in similar cases in election trials he ought to find against the charge of bribery.

The *bonâ fide* employment and payment of a voter to canvass voters belonging to a particular religious denomination, or to the same trade or business, or to the same rank in life, or to canvass voters who only understand the French or Celtic languages, is not illegal.

The fact that such a voter has skill or knowledge and capacity to canvass would not make his employment illegal.

Money was paid by an agent of the respondent ($7 each) to certain voters for canvassing, they observing that "a little money in election time was allowed for knocking around," which observation the agent considered "going about to solicit votes." The agent denied it was paid with any corrupt intent, although his evidence was not satisfactory. The voters swore the money was paid to their wives, and the agent was not recalled to explain it.

Held,—That although such payment might be open to an unfavorable interpretation, it was not, according to the evidence, inconsistent with being made without any improper motive.

Where money was paid to voters for services agreed to be rendered, but such services were not rendered owing to the misconduct of the voters, such payment was not bribery.

A voter who had a claim of $3 from a former election of respondent, when canvassed to vote said he did not think he should vote, evidently putting forth the $3 that was due to him as a grievance. The clerk of an agent of the respondent promised to pay it to him, and he voted, and the money was paid after the election, and charged by the clerk in the agent's accounts as "paid J. Landy $3." but without the knowledge of such agent. Another agent of the respondent (McD.), who was treasurer of the ward, and was aware of the claim, and had told the voter it would be made right, paid the first agent's account, but did not then take particular notice of the payment, and it was not explained to him. The clerk had been requested by his employer (the agent first mentioned) to canvass a particular voter, but was not employed as a canvasser generally by any one.

Held, 1.—That such clerk was not an agent or sub-agent of the respondent.

2.—That the payment of the account by the agent (McD.) was not under the circumstances a ratification by him after the act, so as to affect the election.

Cabs and carriages were hired for the use of committee-men and canvassers during the election and on the day of polling, with instructions to the drivers that they were not to convey voters to and from the poll. One cab was however used for that purpose for the greater part of the day, but without the assent of the agent of the respondent, who had charge of the cab.

Held,—That as the evidence did not show that the cabs and carriages were colorably hired for the purpose of bribery or conveying voters to the poll, or that the one cab was so used with the assent of the agent of respondent, the hiring was not an illegal act within s. 71 of 32 Vic. c. 21.

Observations on the reasons why candidates should be held liable for acts done by their agents. The *Taunton case* (1 O'M. & H., 184) approved.

The election was sustained, but it being in the public interest that the matters brought forward should have been inquired into, and as the respondent had not exercised supervision over the expenditures in connection with the election, the petition was dismissed without costs.

The petition contained the usual charges of corrupt practices against the respondent and his agents, and claimed the seat for the defeated candidate, John Wallis. The votes at the election were: For respondent, 1,487; for John Wallis, 1,316; majority for respondent, 171.

Mr. Harrison, Q.C., for petitioner.

Mr. Bethune, for respondent.

The evidence affecting the acts of the respondent and his agents at the election is fully set out in the judgment.

RICHARDS, C. J.—The petitioner, Robert Armstrong, in the third paragraph of his petition, represents that Adam Crooks, who was returned duly elected to represent the said division in the Parliament of the Province of Ontario, at the general election held on the 21st March last, by himself and other persons on his behalf, was guilty of bribery, treating and undue influence, before, during and after the said election; whereby he was and is incapacitated from serving in the Parliament of Ontario for the West Riding of the City of Toronto; praying that the return of the said Adam Crooks should be declared void, and that John Wallis was duly elected and ought to have been returned.

The evidence shows that a fund was raised by subscription by respondent's friends, amounting to about $450, for the purpose of defraying the expenses of the election, to which the respondent contributed in the first instance $500. It was thought that the contribution of $500 by respondent, and what would be contributed by others, would pay all the expenses of the election; but if not, Mr. Cattanach (a member of the law firm of Crooks; Kingsmill, and Cattanach, of which firm respondent was a member), was authorized to apply any funds to the credit of respondent in the partnership to pay any legitimate charges, and charge it to his account in the part-

nership. Mr. Cattanach, though not at first appointed treasurer of the fund, eventually acted as such, and was at liberty to exercise his own discretion in paying the legitimate charges without applying to respondent as to each payment so to be made. A central committee was formed, and committees in each of the four wards composing the Western Division. Efforts were made to get vacant houses to use as committee rooms in all the wards, and when these could be obtained they were hired for that purpose. When the vacant houses could not be obtained, rooms for the committees were engaged at public houses.

The respondent informed the central committee of the provisions of the new law; made a synopsis of it, got it printed and inserted in the *Globe*, with an editorial on it; he had a large number of copies of the synopsis printed and circulated, and called attention to it, with instructions to have it pasted in each canvasser's book; a more abbreviated form was stuck up in the committee rooms. The respondent said he was convinced that by a strict observance of the law they could carry the election. He did not know of any violation of the election law on his own part, or by any one on his behalf.

The chairmen of the ward committees were furnished with money to pay expenses. Mr. Hime, the chairman of St. Patrick's Ward, stated that when he gave the money to the parties he told them none of it was to be expended in treating or in influencing voters; it was to pay their own personal expenses. He also gave written instructions that any one who received pay for his services must not vote. Those parties who did spend the money for expenses said they did so in getting refreshments for themselves when canvassing, and if any friends were present they would ask them to partake, but that that was not done with the intention of influencing their votes. In St. George's Ward the money was disbursed by Mr. Kingsmill, another partner of the respondent; about $30 were paid for cab and

carriage hire, of which $18 (this is in addition to those spoken of by Mr. Cattanach, and others, which have not been paid for) were for carriages refe..ed to hereafter, messengers, use of committee room, and for distributing notices and getting up the state of the polls, and employment of persons to inquire about voters whose names were on the list, and who were not known to any of the committee. There was an item of personal expenses during the canvass of $19, being about three weeks, for refreshments, cab hire, and such like charges. Mr. Kingsmill stated that he hired two carriages for the day of election from Mr. Bond, one to be at the disposal of Mr. Jaffray, the chairman of St. John's Ward, and Mr. Millichamp, who was looking after some of the committees; there was another carriage and driver, and the charge was $18 for all; directions were given to Bond, from whom they were hired, not to carry voters in those carriages. They were to use the carriages to send them to what polling places they chose to carry agents, committee-men, &c.

Mr. Kingsmill said in his evidence they were discussing in St. George's Ward committee about getting voters up, and they came to the conclusion that it would be legal for Mr. Crooks' friends to bring up electors in their own vehicles. Several persons and cabmen volunteered. He told the cabmen when they volunteered the use of their cabs it must be *bonâ fide;* that if they claimed payment for the cab after that, they would not get it. The evidence shows that several others besides cabmen volunteered their conveyances also. Mr. Kingsmill stated that there were about 32 polling places in the division; it was very difficult to collect the state of the poll, from time to time, in each polling division. They despatched carriages from time to time. It was not done as effectually as he wished, as it required a good number of cabs. It was necessary to keep up connections with the different scrutineers, to inform them when a man voted in one subdivision who had a vote in another, so as to prevent him voting more than once, and they had occasion

to send messengers from the central committee to see that the other committees and scrutineers did their duty. They, in that way, required the services of a good many persons. The expenditure in St. George's Ward amounted to about $100.

The remaining ward is St. Andrew's, the chairman of which was Dr. Howson, who was also secretary and treasurer of the central committee. The expenditure there has amounted to about $360.

Dr. Howson stated that, in any bargain made with any of the parties who were voters, it was not once stated to any of them how they were to vote. There was no understanding how they were to vote. He had no intention of influencing any of those who were voters by any purchases made, or by the employment of those who were employed, or of any of them. He did not in any case pay what he considered an exorbitant price for anything done or furnished at his request during or just before the election. He did not expend any part of the money received from Mr. Cattanach, or of his own money, directly or indirectly, in bribing or to influence electors. He was anxious to carry out the instructions to the committees in good faith. In addition to the printed instructions, he verbally cautioned members against using any means that might be construed into bribing electors or treating. With regard to refreshments furnished to committees, the respondent said himself that, when it was stated on the day of election that the committee in St. John's Ward were unwilling to get refreshments for those who were employed as committee-men and scrutineers, he directed that it should be procured; he seems to have ordered a carriage for himself on the day of election, and two others for the use of the central committee.

These carriages were ordered at Bond's. One of the Bonds, the father, was a voter.

The respondent himself, when canvassing, stopped at some of the public houses and took some refreshments,

which were paid for either by himself or some other person who was with him.

Most if not all of the parties that were owners of cabs, who had volunteered the use of their cabs on the day of the election, after the election was over sent in their bills to the central committee or to Mr. Cattanach, but payment for the cab hire was invariably refused. Mr. Cattanach, at the conclusion of his evidence, made a synopsis of the whole expenditure for the purposes of the election under different heads.

Mr. Harrison's first proposition is that the election is void by the profligate expenditure of ney, for which respondent is responsible, and which had the effect of corrupting the whole constituency, so that the election was not free. On this subject Baron Martin, in the *Bradford case* (19 L. T. N. S. 725), said: "If it had been proved that there existed in this town generally bribery to a large extent, and that it came from unknown quarters, that no one could tell where it had come from, but that people were bribed generally and indiscriminately; or if it could be proved there was treating in all directions on purpose to influence voters, that houses were thrown open where people could get drink without paying for it; by the common law such election would be void." In reference to undue influences, he said: "Amongst these influences are what are called bribery, treating, and oppression—that is, an improper and undue pressure put upon a man. But if pressure is put upon a man, or a bribe is administered to him, no matter by whom, or refreshments are given to a man, no matter by whom, for the purpose of affecting his vote, the effect is to annihilate the man's vote, because he gives his vote upon an influence which the law says deprives him of free action; he becomes a man incompetent to give a vote because he has not that freedom of will and of mind which the law contemplates he ought to have for the purpose of voting."

In the same case (1 O'M. & H., 33), Baron Martin, in referring to treating, said: "It is proved that there were

open in this town, by persons for whom it is admitted respondent was responsible, 158 public houses, and that in 115 of these public houses refreshments were supplied. Counsel for respondent stated that these refreshments were supplied to people who had done work, but the evidence is directly to the contrary. The evidence is that persons were admitted to these committee rooms; that the farce was gone through of putting down their names as committee-men; and that refreshments were supplied to them whether they were voters or non-voters, or messengers. It is proved by respondent's own witnesses that directions were given, that at these public houses refreshments were to be afforded to the persons who came there, and that they were afforded both to voters and non-voters, and to any person admitted to the room, with the caution that they should not be excessive, but reasonable;" and under the English Act that was sufficient to avoid the election.

In the *Bewdley case* (1 O'M. & H., 16), it was proved that the respondent deposited as much as £11,000 in the hands of one Pardoe, directing him, in his letters, to apply that money honestly, but not exercising, either personally or by any one else, any control over the manner in which that money was spent; in fact, not knowing how it was spent. Upon that Mr. Justice Blackburn said: "I can come to no other conclusion than that the respondent made Pardoe his agent for the election, to almost the fullest extent to which agency can be given. A person proved to be an agent to this extent, is not only himself an agent of the candidate, but also makes those agents whom he employs. . . . An agent employed so extensively as is shown here makes the candidate liable not only for his own acts, but also for the acts of those whom he, the agent, did so employ, even though they are persons whom the candidate might not know or be brought in personal contact with."

It is contended that I ought to set aside this election in consequence of the profuse expenditure of money by the respondent and his agents.

In the *Bradford case* an unlimited amount was placed at the credit of the respondent's agent for the purposes of the election, of which he spent £7,200. There were 158 public houses kept open by persons for whom the respondent was responsible. In the *Bewdley case* there was £11,000 placed in the hands of the respondent's agent. An insufficient return of the expenses by the respondent's agent was held sufficient knowledge on his part of corrup' practices.

The evidence did not impress me with the conviction there was any particular recklessness of expenditure to indicate general corruption of the electors. There was no keeping of open houses during the period of the canvass, no such general treating as would, under the provisions of the English Act—which contains a special provision on the subject not contained in our own statute—be considered a violation of the law, and certainly none that at common law would be considered as evidence of bribery to avoid the election.

It is said that the respondent himself, when canvassing, on three or four occasions stopped at a public house and there obtained refreshments of some kind; at one place ginger-beer and then soda-water; a third, a cigar, a fourth, a glass of wine, for which sometimes he paid, at others those who were with him; and that these have to be considered corrupt practices within the meaning of our statutes. I do not doubt but treating may be carried to such an excess as to verge on bribery or undue influence at common law, and in that way make it proper to set aside an election. I do not think such excess was shown in relation to the respondent here. The treating by the parties who canvassed for respondent was also referred to. It seems to me that what they stated on that point was, that the canvassing was generally done in the evening by and amongst a class of men who usually, as a matter of courtesy, when they meet ask each other to drink, and when drinking it is usual also to ask such of their acquaintances as are then present to drink also. It did not

strike me that the expenditure in this way was large, or that there were the usual indications of excessive drinking exhibited in the range of this canvass; we hear of no quarrels or unpleasant disputes which usually accompany excessive drinking. In this respect, therefore, I do not see my way clear in interfering.

Another objection urged is the large amount paid for refreshments to committee-men. Furnishing refreshments to committee-men as such, whilst engaged in their work, will not *per se* be considered as given for the corrupt purpose of influencing their votes; they are employed as committee-men because they are known to be favorable to the candidate. People must eat during election time, and if men are employed in this work as committee-men, giving them refreshments under these circumstances does not imply that it is done in order to influence their votes. The largest amount for refreshments appears to have been disbursed by Dr. Howson, and that was for St. Andrew's committee and for the central committee; the whole amount was $43. The committees in organization two or three weeks before the election, say two weeks, are not generally very large, and if the average attendance of committee-men in the central and St. Andrew's Ward committees united was 14 or 15 persons per night of the 12 nights of two weeks, and they all got refreshments, the $43 would not pay more than the rate of 25 cents for each person, which would not be very extravagant. Even if there were fewer persons attending the amount would not seem unreasonably large. The amount of $23 expended in St. John's Ward included the refreshments furnished to the canvassers' agents, and committee-men, on the day of election. The refreshments during the day of the election at the polling places were distributed amongst all who were then engaged, as well the Deputy Returning officers and their clerks, as the scrutineers and agents on both sides. I think the decided cases show this, the furnishing of refreshments, not improper.

Another ground of objection was, that the hiring of cabs and carriages before the election (those hired on the day being subject to further observation) showed a profuse expenditure, and thei_ 'ore evidence of bribery.

There was nothing came out in the evidence to induce me to suppose that more than the usual and proper amounts were paid for the use of these carriages.

There were, I understand, 32 polling places in the electoral division. In order to secure the proper organization of committees, selection of scrutineers, the printing and distribution of handbills, voters' lists, preparing and distributing the books to be used by scrutineers and canvassers—all of which seem to be fair and legitimate objects, and reasonably necessary to be attended to by a candidate who wishes to prevent fraud—great activity was required; to get over the ground as speedily as possible, and complete the organization with the least possible loss of time, the use of carriages and vehicles of that sort seems to have been absolutely necessary; and I cannot say the number of persons employed for the purpose, or the amounts paid, are so extravagant as to convince me that this expense was used with a view of corrupting the parties employed or improperly influencing votes.

Exception was taken to the payment of canvassers who were electors, and also for distributing, posting bills, &c. Mr. Justice Willes, in the *Coventry case* (1 O'M. & H., 101) uses this language: "But the candidate may pay his own expenses, and the candidate may, paying his own expenses, employ voters in a variety of ways; for instance, he may employ voters to take round advertising boards, to act as messengers as to the state of the poll, or to keep the polling booths clear. He may also adopt the course which appears to have been adopted in this city, that is to say, the city or borough is divided into districts, and committees are formed amongst the voters themselves of selected persons, who go about and canvass certain portions of the district; and for these services these persons are sometimes paid, and sometimes not paid. Now, un-

questionably, if the third clause of the second section was to be taken in its literal terms, the payment to canvassers under such circumstances, being as it is a payment to induce them to procure votes by means of their canvass, would come within the terms of this clause, and would avoid the election."

We have therefore a test supplied of the meaning of the third clause of the second section (the same as our own statute 32 Vic., c. 21, s. 67, subs. 6), by means of which we see that it was not intended by this section to do away with every payment made by the candidate in the course of the election. And to come more nearly to the present case, it affords a test whether this third clause was intended to prevent every payment to persons for assisting the candidate in obtaining the election. He refers to the *Tamworth case* (1 O'M. & H., 79), when he had occasion to review the cases in which the employment of voters had come before the election committee. With respect to canvassers he referred (p. 102) to the *Lambeth case* (Wolferstan & Dew, 129), where "it was held that the system of dividing the boroughs into wards, and forming committees amongst the voters, and employing them to send out canvassers, was not objectionable, notwithstanding that there was a payment made to the canvassers for their services in canvassing. It is hardly necessary to point out how exceedingly dangerous the adoption of that system is both in respect of the payment of canvassers and also in respect of that which has been held lawful, viz., the supply of fair refreshments to unpaid canvassers, whilst engaged actually, and not colorably, upon work, and in like manner of refreshments to committee-men. It is proper, whenever this system is referred to as not being unlawful in itself, to say that it exposes members to very great danger, and when it is merely colorable, it would avoid the election; I refer to these cases to show that it is not every payment for the purpose of procuring a vote that can be held within the third clause of the second section. . . . You must show an intention to do that which is against

the law before you bring the case within any of those highly penal clauses of the Act." The cases referred to by the learned judge are the *Tamworth case* (1 O'M. & H., 79), and the *Leicester case* (1 Power, Rodwell and Dew, 178), where it was laid down that the *colorable* employment of voters under the pretence of giving them wages for services which were not rendered is bribery, and that the colorable employment of voters for the purpose of inducing or enticing them to vote for the candidate who employs them, is bribery. On the same side of the question is the *Oxford case* (Wolferstan and Dew, 109), and the *Hull case* (Wolferstan and Bristowe, 87). On the other side there are various cases in which the committees came to the conclusion that the employment of voters was not colorable; in some, because the services, though not rendered, were expected by the candidate or his agent to be rendered, and in others because the intention to bribe was negatived by the circumstance *that service was contemplated by the candidate or his agent, and that it was only by reason of the misconduct of the voters employed that it was not rendered.* The most remarkable of these cases is the *Cambridge case* (Wolferstan and Dew, 23, 41) when Mr. Deasy (now Baron Deasy) delivered a reasoned judgment. There is also the *Lambeth case* (Wolferstan & Dew, 129), where the committee decided that the system of organized canvassing proved to have existed at that election, accompanied by the payment of the canvassers, was, under the circumstances, legitimate, though payments were made to the voters who were employed in the course of the system. In the *Preston case* too (Wolferstan and Bristowe, 76), the committee declined to set aside the election on the ground that the system had been resorted to.

The 26th section of the English Parliamentary Elections Act, 1868 (similar to section 30 of our Act 34 Vic., c. 3), provides that "the principles, practice and rules on which Committees of the House of Commons have heretofore acted in dealing with election petitions, shall be observed so far as may be, by the Court and Judge in the

case of election petitions under this Act." This directs the Judge to act on the principles upon which election committees have acted when he has no light from the rules which his own professional experience supplies him with.

I take it the Judges here are called upon to act on the same principles; and in addition they are bound by the decisions of the Rota Judges in England sitting for the trial of controverted elections under acts similar to our own, in the same way as we feel bound by their decisions in relation to other legal matters.

In reference to the sums paid by Mr. Hime to McLellan, McQuinn, McGee, McGrath and Wimberton, the last not a voter, he states that these sums were paid to them to cover their expenses in canvassing, &c.; Wimberton got an additional $5 to pay him for acting as scrutineer. It is said these parties were not called to show how they had expended the money. *Primâ facie* it was paid for what, according to the above decisions, if *bonâ fide*, was a legitimate purpose, and if the petitioner wished to show it was corrupt, the onus of calling the witnesses to show it seems to be on him. (*Lichfield case*, 1 O'M. & H., 23.)

The expenditure by Graham of the $40 entrusted to him, it is contended is not satisfactorily accounted for. In his evidence Graham said the $40 was given to him as chairman of a sub-committee; he thinks there were eight or ten of the sub-committee. Mr. Hime asked him what he thought would be necessary for the usual expenditure in the east end; he told him he thought $40 would do; he would require the money to give to canvassers to pay their necessary expenses; all the members of the sub-committee were canvassers: Patrick Smith and James Walsh, of Dummer Street, William Mulligan, McGaw, Mr. Gossage and Mr. Ford, Ald. Dickey, and some man connected with the foundry; he thought he gave Ford, $3; Mulligan, perhaps $4; McGaw, $2 or $3; Jas. Walsh, $7; he said in consequence of his living on Dummer Street, he would want more; is not sure he asked for $7; he thought

that would be necessary; could not say why his expenses were more than the man who lived on Caer Howell Street, McGaw; he said he would vote for Mr. Crooks before he paid him any money; believed he voted at the former election for Mr. Crooks; gave Patrick Smith $7 for his ordinary expenses; he did not know to whom he paid the remainder; never kept an account; did not know he would be called to account for it; Mr. Hime told him to use the money in a fair, square way, meaning, as he understood, without treating or bribing, or any but for expenses.

On the Saturday night before the election, Smith and Ryan said they wanted to do all they could, and would do all they could. On the evening before the election they met at Mr. Gossage's house; they said they got on well and would be down next morning. Next morning Walsh came and voted for Wallis. Before that he pretended he was doing all he could for Mr. Crooks. Smith said he had canvassed for them. He did not use a book; he knew all the voters. They both told Mr. Gossage they were doing all they could for him. He paid ordinary expenses in going about canvassing himself; can't say how much he expended; thinks it possible he may have spent $1.50 a night. He says he may have spent $21 in treating. When he gave Walsh and Smith the money he believed they were honestly on Mr. Crooks' committee, and intended voting for him. He paid them the money without the slightest intention of inducing them to vote for Mr. Crooks. They told him before he gave them the money they had been working for Crooks, and doing all they could, and wanted a little money to pay their expenses. At the meeting at Mr. Gossage's it was arranged they should bring up voters for Mr. Crooks—those that lived in that locality; they did not discover that Walsh was against them until he voted on the morning of the election for Mr. Wallis; Mr. Gossage on that wished Smith sworn, and he refused to take the oath; the others to whom he gave the money had been working a week before for Mr. Crooks, as he knew; the money was given

them without the slightest intention of influencing their votes; he was told at the beginning not to spend any money for that purpose. On re-examination he said they never gave an account of the expenditure of the money, and he never asked them for one.

Mr. Graham's account of how he disposed of the money placed in his hands is far from satisfactory; but as already intimated in a previous case, I do not, in the present state of the law on the subject, feel at liberty to infer from that fact alone that he has spent it for the purpose of bribing electors, or other corrupt practices. The money, I have no doubt, was given him in good faith, to be expended, properly and legally, for the purposes of the election; whether he has spent it all or not, the evidence does not satisfy me. But I have to decide whether the money has been spent for bribery. As to all the persons objected to, to whom Graham paid the money, I do not think the evidence points to any, as to whom, on the principles on which I think I am to decide this case, I can say they have been bribed. The only two about whom the most serious discussion has taken place are Walsh and Smith. The first point is, that the money was paid to them as representing a particular religious denomination, to influence other voters belonging to the same church as they did. That may be an argument to show why the money was paid to them, but if the employment of a voter *bonâ fide* to canvass is not illegal, and the cases show it is not, the mere fact that such voter has skill or knowledge and capacity to canvass, would not make his employment illegal; nor would the fact of the canvasser being of the same trade or business, or of the same rank in life of a class of electors, make such employment corrupt. If they were subjects of Her Majesty who only understood the French or Celtic languages, employing a canvasser familiar with those languages, could not be improper. Then why, because he happens to be of the same country and religion? In the *Bradford case* (1 O'M. & H., 32), it was proved that a number of persons who were known to

have influence with the Irish voters, of whom there were many in the borough, were paid on behalf of the respondent to use their influence with these voters to restrain them from voting against the respondent. Baron Martin said: "There were a number of voters whose support it was deemed desirous to obtain, and money was given to a few persons to exercise their influence on those persons to induce them to refrain from voting. That seems to me to come within the very words of the statute. It was quite different from canvassing, from paying a person for his labor, and for using such persuasions as were lawful when inducing a voter to vote." It is contended here that these men were employed to use such persuasions as were lawful to induce voters to vote, not to restrain them from voting. On this point I think the objection must fail. But the question still remains, was the money so paid to these parties really paid to them to canvass and otherwise exert themselves for the respondent by looking after votes, or to pay their expenses while doing so. If the case depended solely on Graham's evidence, I might have more difficulty to decide; looking only at the evidence of Graham, Smith and Walsh, it is very manifest that they were, by their conduct and actions, giving Graham to understand that they were in favor of Mr. Crooks, and this before the money was paid them; and the observation of one of them that a little money in election time was allowed for knocking around, and the whole nature of the evidence, satisfies me that Graham was convinced they were supporting his candidate. He undoubtedly thought they were proper persons to employ to canvass on Dummer Street, and considered the observation as to money when knocking around in election times meant when going about to solicit votes. Graham says, before he gave the the money they told him they had been working for Crooks, and doing all they could, and wanted a little money to pay expenses, and he gave it to them. It is suggested the amount indicates more than would be necessary to pay the expenses; $5 was given to

other parties to pay their expenses, and $7 to each of these two. He said Walsh stated that in consequence of living on Dummer Street he would want more; he thought that would be necessary, but could not explain why it should be more than the men who lived on Caer Howell Street received. I cannot tell whether the canvass of the portion of the division that these two persons were expected to overlook, would necessitate a larger or less amount than was given; if these men were laboring men and could not afford to lose any money paid out by them, and were to be paid anything for their time; if they were considered to be active members of the committee, and were to look after and bring up votes on the day of election, I cannot say that the $7 each appears to me to be so great that I will assume it was intended to bribe these men to vote for Mr. Crooks, when the man who gave it to them positively denies any such intent, and when he had every reason to believe that they intended to support Mr. Crooks before he gave them the money. Though I am not satisfied with Graham's account of how he disposed of the money, I certainly would be more inclined to believe his statements than I would theirs when they conflict. It does not appear very clearly how it was that the money was paid to their wives. If they were not at home at the time there would be nothing singular about that, and even if they were present, one can scarcely see any particular reason why it should be so paid unless it might be thought that payment to the wife would enable them to deny it if they wished to do so. This matter came out on the evidence of these two persons after Graham had been examined. He was not recalled to explain it, and although it might have borne an unfavorable interpretation, it is not inconsistent with being done without any improper motive. The matter was not sufficiently inquired into to enable me to say, with any certainty, that there was anything wrong about it.

As to, however, the cross-examination of Walsh and Smith is referred to, and the evidence of Mr. Gossage and

Mr. Ford, the statements of the former are certainly not to be relied on, and they impressed the two last named witnesses, as well as Mr. Graham, with the conviction that they were ardent supporters of Mr Crooks. As to Walsh and Smith, on the principles on which I feel bound to act in these matters, I do not think the evidence will warrant me in holding that Smith and Walsh were bribed, though, in fact, they may not have rendered services for the money they received. Their services were expected by Graham to be rendered when he paid the money, and they were not rendered by reason of the *misconduct of the voters employed.* (See reference to the decided cases on this subject already referred to in Mr. Justice Willes' judgment in the *Tamworth case,* 1 O'M. & H., 79).

These observations will apply with equal force to the case of George Evans.

Mr. Hime, the gentleman who gave the $10 to Evans, gave his evidence in a frank, straightforward manner, and seemed to me to be stating the truth. He said he was to take charge of the west end, and employ others to assist him. He told parties when he gave them money that none of it was to be expended in treating or influencing voters, but it was to pay their own personal expenses. I do not think under these circumstances I can infer bribery. The impression on my mind is, that it was given to Mr. Evans believing him at the time to be a warm friend of Mr. Crooks, to be expended in paying proper expenses whilst he was endeavoring to secure Mr. Crooks' return. If Mr. Evans, instead of expending the money for that purpose, kept it himself, I cannot infer from his misconduct that it was given to him as a bribe, and not for the services he undertook to render.

This brings me to the last case of bribery—James Landy.

Landy claimed that there were three dollars due him for driving for Mr. Crooks at the former election; that he was employed by Mr. Jaffray, and when he applied for the pay some weeks after the election, Jaffray said he

ought to have applied before; that the accounts were made up, and he could not pay him. At this election, when spoken to to vote, he said he did not think he should vote, and was evidently putting forth the $3 that were due him as a grievance. There was evidence that Mr. McDonald, who acted as treasurer of the committee for St. John's Ward, told him that would be made right, and finally Ryan, a clerk of Jaffray's, who was the chairman of the committee of the ward, gave him his word that he would pay him; after that he voted, and some week or two after the election Ryan paid him, and the amount so paid was entered in the account which Jaffray had against the committee for refreshments furnished to scrutineers, committee-men, etc., in St. John's Ward on the election day already spoken of; it was an isolated entry: for James Landy, $3. The refreshments were got by Jaffray because McDonald, the secretary of the committee, had some difficulty in procuring the supplies. Jaffray said he never gave Ryan any money to give to Landy, but after the election was over he believed McDonald did. Ryan was not on the committee for St. John's Ward. Ryan said that he got the $3 to pay Landy out of Mr. Jaffray's till. He did not think Mr. Jaffray knew it. McDonald repaid the amount to Mr. Jaffray about a week after the election. He said he paid the money to Mr. L., and when the account for cheese, biscuits and other articles supplied to the committee was made up, he included the $3 in it. He was doubtful if he told Mr. McDonald of the entry of this payment, independent of the entry in the account. He said he was not on Mr. Crooks' committee, and was not instructed to take any part in the election. What he did was of his own free will, except that Mr. Jaffray asked him to drive the carriage he was entitled to as chairman of the committee that day. He thought Mr. Jaffray asked him to call on Mr. Brown and solicit his vote for Mr. Crooks, and he was the only person Mr. Jaffray asked him to solicit to vote; he did not mention Landy's name to him at all; he made

a note of payment to J. Landy of $3, without mentioning what it was for; he had no authority from Mr. Jaffray to pay out money on account of the election. Mr. McDonald, on being recalled, said that after the conversation said to have taken place in Landy's house, when he was present, in which it was said he intimated to Landy that his claim for the prior sum would be made right, he had seen Landy and told him positively that he should not and could not give one cent of his claim to gain the election; he said that when he was settling up the accounts about the election, he requested Mr. Jaffray to have his account made up, and when he came in in the evening the account was made up; the amount was mentioned, $26.26; he paid it, believing it was all right. At that time he did not know the item of "paid J. Landy $3," in the bill, was for paying the old claim Mr. Landy had; about a week or two after he examined the bill, and saw the charge of payment of $3 to Landy in it; he did not take particular notice of it then.

I do not think Ryan can properly be considered an agent to bind the respondent by his acts. He was not employed as a canvasser generally by any one, and the only person he was asked to canvass was Mr. Brown. Mr. Jaffray asked him to call on Mr. Brown and solicit his vote for Mr. Crooks; but Mr. Brown had promised Wallis, and voted for him. This appears not to bring Ryan as an agent within any of the views of agency laid down by Mr. Justice Willes in the *Bodmin case* (1 O'M. & H., 120): "It might be limited to the case of a person who was employed to canvass a particular voter or particular voters only, and then that person would be one whose authority being limited to such voter or voters, his illegal act in respect of others could not affect the member, because he would be only an agent in that particular limited capacity." He must be an agent employed by a member to canvass. There is no pretence that Ryan did in fact canvass generally. In the *Westminster case* (1 O'M. & H., 96), as to the conduct of the son

of one Hotton, Baron Martin said: "His may be a strong case; but, although young Hotton seems to have been active with regard to the election, I cannot hold that an act done by him because his father was a person for whom the respondent would be responsible, would make young Hotton also;" I do not think respondent would be responsible for the conduct of Ryan, even if he had been more active; the only question is whether respondent can be held responsible for Ryan's act because McDonald paid the money, and therefore ratified Ryan's act and agency in making the promise. In the *Tamworth case*, Justice Willes said: "But the rule is plain that a ratification after the act is equivocal to an authority given at the time. The rule is also plain as limited to the case in which the principal, the person sought to be made liable as principal, is acquainted with the character of the act at the time when he ratifies." Was McDonald at the time he paid the money aware of the reason and purpose for which Ryan had paid it to Landy? He says he was not; that when he paid the account he did not observe that it was there: and when he saw it about two weeks afterwards, it did not occur to him it was for a payment of the kind it turned out to be. There is nothing to show that he had been informed by Ryan of the nature of the services for which Landy had been paid, nor is there anything to show he was aware that Ryan had had any intercourse with Landy to induce him to suppose it could have been paid for any objectionable matter. It is suggested that it was strange Mr. McDonald did not inquire of Mr. Jaffray in paying the bill what all these charges were for. The answer he gives is that he had every confidence in Mr. Jaffray, that he would only put down what was right, and Mr. Jaffray he supposed, knew, being chairman of the committee, what was required, and that he had confidence he only got that, and paid for what was got. As to this case, I do not think I can properly set aside the election.

The remaining question is as to the hiring of conveyances by the respondent to be used on the last day of the

election, and the volunteering by certain cabmen of their cabs for the carrying of voters to the polls on that day. The 71st section of our statute 32 Vic., cap. 21, after reciting "that doubts may arise as to whether the hiring of teams and vehicles to convey electors to and from the polls, and the paying of railway fares and other expenses of voters, be or be not according to law," declares and enacts "that the hiring or promising to pay, or paying for any horse, team, carriage, cab, or other vehicle by any candidate, or by any person on his behalf, to convey voters to or near, or from the poll, or from the neighborhood thereof at any election, etc., etc., shall be illegal acts."

[The CHIEF JUSTICE then referred to Mr. Cattanach's evidence on this point, before referred to, and said]:

The only case I have met, in which a circumstance at all similar is referred to, is in the *Longford case* (2 O'M. & H., 14). It was proved there was considerable difficulty in providing conveyances for voters living at a distance to go to the poll, and that certain voters who owned cabs were induced to lend them for the conveyance of other voters, and were paid for so doing; it was contended that these payments to voters were colorable payments, and the reward to them for voting or to induce them to vote. The learned Judge (Fitzgerald), after stating that he had come to the conclusion that this was not a colorable proceeding, said: "I think it was a step of a very dangerous character; it brought the parties to the very verge of the law, and it would have required very little, if payments were actually made, to come to the conclusion that they were made to influence the vote, and so to void the election on the ground of bribery."

If the money had been paid in the case before us, no doubt the inference against the respondent would have been much stronger; but acting on the principle before mentioned, I do not feel justified in holding the proceeding to have been colorable.

Then as to the hiring of the carriages at Bond's for the use of the committee-men and canvassers on the day of

the election. These carriages were not hired for the conveyance of voters to the poll, and instructions were given to the drivers that they were not to be used; but from the evidence of Ryan, the one sent to St. John's Ward was used for that purpose most of the day. He said he did not think Mr. Jaffray mentioned that they were not to take Osler in his carriage, but he did hear him say that no voters were to be taken to the polls in hired buggies, carriages, or cabs. The carriage was one of Bond's, but he understood it was the chairman's carriage. Jaffray himself was not asked anything about voters being brought up in the carriage.

I cannot infer that these carriages were colorably hired for the purpose of bringing up voters; that one was so employed more or less is evident; but it is not clear that it was so used with the assent of Mr. Jaffray, and therefore such an illegal act on his part as would avoid the election, as his hiring one carriage or using a hired one for that purpose would have that effect.

I am not prepared to hold that the election is void on the ground of the employment of these carriages by the respondent on the morning of the election. In the *Salford case* (1 O'M. & H., 133) it was proved that a considerable number of cabs were hired for the respondents, not for the conveyance of voters to the poll, but for the canvassers to go into the places where the voters were at work, the canvassers then walking up to the poll with the voters. It was not proved (although it was alleged) that in many instances voters were conveyed in the cabs. The fourth allegation in the petition in that case was that the respondents did, by themselves and other persons on their behalf, hire and engage and pay money for and on account of a number of conveyances for the purpose of conveying voters to the poll, and which were used for such a purpose on the day of the election in their interest. In giving judgment, Baron Martin said: "I have already stated, if I considered the allegation proved I should reserve the point for the Court of Com-

mon Pleas; but after the evidence of the respondent, Mr. Cawley, and others, I could not state as a fact that the conveyances were hired for the purpose of conveying voters to the poll." Baron Martin said, in the same case, in reference to section 36 of the English Representation of the People Act, 1867, "it showed as plainly as possible that the intention of the Legislature was that voters should either walk to the poll or go in their own carriages. The Legislature has made most stringent provisions as to having polling places in the most convenient places in boroughs for every voter. The intention is to prevent the hiring of conveyances for voters, and to provide that people should walk to the poll or go in their private carriages, and it seems to me it is the same thing whether a man rides in a private carriage provided for him or comes in a hired carriage." Our statute is not in terms like the section to which he was referring, and I am not prepared to say that a man who has a carriage may not, if he chooses so to do, take any of his neighbors to the poll with him, provided it is not done colorably, and with intent to charge for it, or to bribe the voter. As to the hiring of the carriages by Mr. Crooks, I cannot find, as a fact, that he intended at the time of the hiring, they should be used to convey voters to the polls, or that Mr. Jaffray so intended to use them.

There are two cases, Thompson's and Halligan's, referred to. As to James Thompson, he at first seemed to be acting for Wallis, but afterwards changed and became a member of Mr. Crooks' committee. His own account of his reason for changing is not satisfactory, and his statements afterwards made to Mr. Dodds were not of a character to induce any one to suppose that his motives were purely patriotic in changing. Mr. Cattanach stated that he was not aware that Thompson had been acting on Wallis's committee until he heard him state it in his examination. The first Mr. Cattanach knew of him was as a professed supporter of Mr. Crooks. He never spoke to him about getting his vote, or getting him to canvass. He promised him nothing before the election, and when

he paid him the money he represented that he had been exclusively employed for some days canvassing. He had met him both in the daytime and at night; in the daytime canvassing, and at night in the committee-room. He also said he knew what Thompson had done in the way of canvassing—how much he had gone about—and though he charged $10 he only paid $5, which he considered his legitimate expenses. As to Halligan's evidence, it is not at all satisfactory. Mr. Cattanach said he canvassed for Mr. Crooks; he applied for a larger sum than $10; said he had been working for Mr. Crooks; spent money necessarily in what he was doing; wanted Mr. Cattanach to pay him; wanted more than $10; he said his disbursements had been $10 for necessary refreshments; Mr. Cattanach inquired immediately how he had spent the money; was satisfied he had not spent the money for illegal purposes; he knew he had been very active; thought the sum not unreasonable, and paid him $10.

I believe I have gone over each particular point and case made, and referred to by Mr. Harrison in the argument, and if I have not expressly decided each by name I think I have in effect disposed of them all. I believe I have not expressly mentioned the amount paid for the repair of the mission house, which was injured whilst Mr. Crooks was holding a meeting there. I see no reason why in law or justice this should not be paid.

In deciding under the statute, the first question I had to consider was, did the respondent really desire to obey the law and carry it out fairly, and did those for whose acts he is responsible desire to do so. I have come to the conclusion that they so intended. Mr. Crooks himself took a good deal of trouble to have the law explained and circulated amongst the electors generally, and I have no doubt desired to obey it as he understood it. Mr. Cattanach I have no doubt was influenced by the same motives, and I think they acted in this view, and the subordinate agents also, so far as not intending to resort to illegal practices. I cannot say but many of the things

done during the canvass and the election, brought out in the inquiry, created a great deal of hesitation and doubt in my mind how far I ought to consider these acts colorable or not.

It would be very easy to dispose of this and other similar cases, whenever anything questionable may arise, to take the most unfavorable view of it, and at once consider that any act that was at all questionable was evidence of such a corrupt practice as would avoid the election. Take the case, for instance, of money placed in the hands of an agent to disburse for proper legitimate purposes; when called on to explain what he has done with the money, if he fails to tell how he has spent it all, to whom he gave it, and for what purpose, then that I am to infer he spent it for bribery, and therefore set aside the election. In construing a statute of so penal a character as this I do not feel at liberty to pursue such a course; in fact, as already intimated, I consider myself, under the words of our statute, called upon to act upon the principles upon which election committees have acted in relation to these matters, and that I am bound by the decisions of the Rota Judges and the Courts, in the same way as I would be in disposing of cases of common law. In my judgment in the *East Toronto case* (*a*) I have cited the strong language used by Baron Martin in the *Wigan case*, where he refers to the necessity of establishing the acts to unseat a candidate to his entire satisfaction, though much may have been done at the election of which he disapproved. The doctrine seems to be well established through most of the cases, that to upset an election a Judge ought to be satisfied that the election was void, and that the return of a member is a serious matter, and not to be lightly set aside. In the *Londonderry case* (1 O'M. & H., 278), Mr. Justice O'Brien said: "The charge of bribery, whether by a candidate or his agent, is one which should be established by clear and satisfactory evidence. The consequences resulting

(*a*) Page 96, *ante*.

from such a charge being established are very serious. In the first place it avoids the election, and in the *Warrington case* (1 O'M. & H., 44), Baron Martin is reported to have said that he agreed with what had been said by Mr. Justice Willes at Lichfield, that before a Judge upsets an election he ought to be satisfied beyond all doubt that the election was altogether void. In the next place the 46th and 49th sections of the Controverted Elections Act 1871, impose further and severe penalties for the offence, whether committed by the candidate or by his agent. Mere suspicion, therefore, will not be sufficient to establish a charge of bribery, and a Judge in discharging the duty imposed upon him by the statute, acting in the double capacity of judge and juror, should not hold that charge established upon evidence which in his opinion would not be sufficient to warrant a jury in finding the charge proved. There may be cases where there is evidence to go to a jury, and on which they are to decide as to the effect it has on their minds and come to a conclusion, but in which if the Judge were sitting as a juror he would find for the defendant; and I apprehend in such a case he ought to find against the bribery.

Baron Martin in the *Westminister case* (1 O'M. & H., 89), laid down the doctrine that in those cases the Judge ought to be satisfied beyond all reasonable doubt. In that case £209 were expended in paying shopkeepers at the rate of 7s. a week for allowing boards with posters to remain in front of their windows. Inquiry being sought as to that point, he said, p. 90: "For me to decide that the respondent is incapable of being elected by reason of these boards, I must be satisfied that when these boards were issued there was in the mind of the respondent's agents the intention that the payment in regard to them was to be, not for the purpose of compensating the persons for exhibiting them, but to be a benefit given to these persons in order to induce their votes. That I am not satisfied of." I refer to these cases to show the necessity of a clear case being established before an election is set aside.

I have disposed of the question as to the employment of cabs and teams on the merits, without deciding whether, for the mere employing of a vehicle to convey voters to the poll, I should order an election to be set aside. I have no doubt there may be such an employment as would produce that effect, and Baron Martin, in the case already referred to, stated if it had become necessary to decide that point he would have referred the question to the Court of Common Pleas, though the English Act by no means in terms implies that the violation of it would set aside the election.

The course pursued in this election, and also in the East Toronto election, of placing money in the hands of agents or committee-men, without taking the precaution of seeing that it was all properly expended according to law, if continued, will probably induce Judges hereafter to take the view most unfavorable to those who thus place the means of bribery in the hands of subordinate agents. The employment of electors as paid agents of any kind is always hazardous, and must often, if continued, lead to fraud. Many of the parties so employed, it is said, were paid merely their expenses. If it is expected that Judges are to decide that payments made for that purpose are to be recognized as *bonâ fide* and not colorable, each person should be prepared to show and prove what his expenses are that he has paid, otherwise the Judge will be likely to infer that he is paid for his services besides. But if paid for services as canvasser, scrutineer, or other services of a similar character, he does not seem entitled to vote under sec. 3 of our statute (32 Vic., cap. 21). I should have felt very much embarrassed if I had been called on, in the event of a scrutiny, to decide how many of these voters who received pay for their expenses satisfied me that they had really expended the sums they had received. I have not felt warranted in taking an unfavorable view of the omission to show the expenditure of all sums placed in the hands of subordinate agents, because the rule has not obtained in this country that prevails in

England, of having all these payments made through the hands of an agent, and where parties understand that it is necessary to show with reasonable certainty, by accounts in detail, the amounts they have actually expended, and what for. But hereafter it is most probable parties will be held to a more strict accountability in this respect.

In my own opinion, to make these expenditures of money during elections at all satisfactory, the same rigid care and responsibility should be demanded in its expenditures, and in the production of vouchers therefor, as are required in the ordinary business transactions between man and man; that because a man is a candidate at an election, he shall not be compelled to make a profuse expenditure of money to satisfy the appetites of a few cormorants, who, under the pretence of being his friends, may be really fleecing him under pretence of paying out his money for the legitimate purposes of his election, or others who may be feasting at his expense under the pretext of devoting themselves to his services without pay or reward.

The getting cabmen to volunteer the use of their cabs to bring voters up to the polls on the election day is another practice which, if followed up, will be likely to lead to great abuse. Here I have no doubt that Mr. Cattanach and the other gentlemen who intimated that this course might be adopted, honestly intended what they said to the owners of cabs, that they would not be paid for their use. But did the cabmen themselves believe that was *bonâ fide?* Every one of them, I believe, sent in bills claiming pay for these days. It is true the payment of these bills was refused; but if the practice be persisted in it will be difficult to justify it. The question will always be open for discussion, and the previous employment of these parties, and the rate at which they were paid, will be inquired into to see whether what seems a free offer on their part is not in truth merely working for the pay they have received, or expect to receive. As to the hiring of carriages for the use of committee-men, if many of these are engaged, and they are really used for carrying voters,

though the party hiring them may not so intend, that will be open for discussion. It is of course very difficult, when carriages are standing in the vicinity of a polling booth, for canvassers to avoid taking them to go after voters, and still more difficult to avoid using them to bring up the voters; and if that course should be pursued to any extent hereafter, it is probable that the inference would be drawn that the reason why they were sent was not for the *bonâ fide* use of the committee-men, but to facilitate the bringing up voters, which is against the law.

The amount expended at this election seems large—about $1,800, including some accounts not yet paid; a very large portion of the expenditure—nearly $800—appears to have been for printing, advertising and stationery; yet the remaining portion strikes one as large and demanding inquiry.

It may be as well here to refer to the reason for the rule why candidates should be made liable for acts done by their agents. Mr. Justice Blackburn refers to it in the *Taunton case* (1 O'M. & H., 184) in these words: "The rule of parliamentary election law, that a candidate is responsible for the corrupt act of his agent, though he himself not only did not intend it or authorize it, but *bonâ fide* did his best to hinder it, is a rule that must at all times fall with great hardship upon particular persons. But I may just mention the considerations which, no doubt, led the common law, as I may call it, of Parliament to establish it. Corruption, as we all know in practice and in fact, is seldom or never done by the hand of the candidate. The two modes in which it was found in practice that corruption was carried on were these: persons were put forward to do all the work of canvassing and conducting an election, and these persons acted corruptly; but the candidate purposely kept himself out of the knowledge of anything about the matter, so that he might have the full benefit of their services; and were it not for this rule which has been established, he would not suffer for their misdeeds. That is one of the great reasons.

Another great reason would be that no doubt people were put forward as to whom the candidate was carefully kept from knowing they were spending any money, or doing anything, with the notion, according to the loose morality that prevailed in election matters, that when the time for petitioning was past, those persons might come to him and say, 'I did spend that £1,000 for you upon the election; of course I did not tell you about it, or say a word about it at the time, but now you are bound in honor to repay me that £1,000 of which you had the benefit;' and which, in point of fact, the candidates did feel themselves bound in honor to pay. This, therefore, was another reason for the parliamentary law declaring that the candidate should be responsible for the act of his agent."

I think, under the decided cases and the rules applicable to these trials, that I ought to hold that the respondent was duly elected. I am of opinion, however, that it was and is for the interest of the public that the matters brought forward in this case should have been inquired into, and I shall not allow the respondent any costs. The respondent himself subscribed a large sum of money, and was aware that a considerable sum was being expended by others, and he himself directed the payment of any further amount that would be required. He was therefore cognizant that these expenditures were going on, and exercised no supervision over them, and I do not feel inclined to draw any distinction as to costs in relation to any of the matters contained in the petition.

I direct that each side bear their own costs.

(5 *Journal Legis. Assem.*, 1871-2, p. 11.)

BROCKVILLE.

Before Chief Justice Hagarty.

Brockville, *26th to 30th June, 5th and 6th July, 1871, and 9th January, 1872.*

Samuel Flint, *Petitioner*, v. William Fitzsimmons, *Respondent.*

Scrutiny—Property Qualification of Voters—Aliens.

Where a voter, properly assessed, who was accidentally omitted from the Voters' List for polling subdivision No. 1, where his property lay, and entered in the Voters' List for sub-division No. 2, voted without question in No. 1, though not on the list, his vote was held good.—*William Little's vote.*

A.'s name appeared on the Assessment Roll and Voters' List as owner, but no property appeared opposite his name: just below A.'s name, the name of B. was entered as tenant, with certain property following it, but B.'s name was not bracketed with A.'s. Evidence was admitted to show that A. owned the property next below his name, for which B. his tenant was assessed as tenant, and A.'s vote was held good.—*James Baker's vote.*

The widow of an intestate owner continuing to live on the property with her children, who own the estate and work and manage it, should not, till her dower is assigned, be assessed jointly with the joint tenants, nor should any interest of hers be deducted from the whole assessed value. Where, therefore, four joint tenants and such doweress occupied property assessed for $900, the joint tenants were held entitled to the qualification of voters.—*Jeremiah Gilroy's vote.*

Where a husband had possession of a lot for which he was assessed as occupant and his wife as owner, but which belonged to the wife's daughters by a former husband, his vote was held good.—*Thomas Whaley's vote.*

Where the owner died intestate, and the husband of one of his daughters leased the property and received the rents, such husband was held not entitled to vote.—*Edward Leslie's vote.*

Where it was proved that for some time past the owner had given up the whole management of the farm to his son,—retaining his right to be supported from the product of the place, the son dealing with the crops as his own, and disposing of them to his own use—the son's vote was held good.—*James Caldwell, John A. Moore, and Charles Smith's votes.*

Where it was proved that an agreement exists (verbal or otherwise) that the son should have a share in the crops as his own, and such agreement was *bonâ fide* acted on, the son being duly assessed, his vote was held good; the ordinary test being: had the voter an actual existing interest in the crops growing and grown?—*Ibid.*

But where such crops could not be seized for the son's debt, the son was not entitled to vote.—*Ross Francis' vote.*

Where the agreement did not show what share in the crops the son was to have with his father, and it appeared to be in the father's discretion to determine the share, such son was not entitled to vote.—*John Johnson's vote.*

Where a father was by a verbal agreement "to have his living off the place," the son being owner and in occupation with the father, the father was not entitled to vote.—*Samuel Wiltse's vote.*

A tenant from year to year cannot create a sub-tenancy nor create a right to vote by giving another a share in the crops raised on the leased property.—*A. D. Dunham's vote.*

Where a man occupied a house as toll collector, and not in any other right, he was not qualified to vote.—*William McArthur's vote.*

An alien who came to Canada in 1850, and had taken the oath of allegiance in 1861, but had taken no proceedings to obtain a certificate of naturalization from the Court of Quarter Sessions, was held not qualified to vote.—*Alanson Bacon's vote.*

Nor was an alien, whose father had taken the oath of allegiance on obtaining the patent for his land under 9 George IV., c. 21, qualified to vote.—*George Healey's vote.*

The evidence that the parents of a voter had stated to such voter that he was born in the United States, but that his father was born in Canada, received, and the vote held good.—*Silas Wright's vote.*

The petition contained the usual allegations of corrupt practices, and claimed the seat for the defeated candidate Jacob D. Buell. The votes were: For the respondent, 620; for Jacob D. Buell, 613; majority for respondent, 7.

Mr. Bethune, Mr. J. K. Kerr, and Mr. C. F. Fraser, for petitioner.

Mr. J. Hillyard Cameron, Q.C., *and Mr. J. Deacon*, for respondent.

The evidence on the charge of corrupt practices is set out in the special case, p. 139, *post.*

The following are some of the material points decided on the scrutiny of votes.

WILLIAM LITTLE'S VOTE.

James Jessup, Clerk of Peace: I produce Voters' List for fifth subdivision, Elizabethtown. The voter's name is not on list five. There are six lists. I produce the Voters' List for polling subdivision four. The name William Little is on that list for part of lot thirteen in the seventh concession.

Stafford McBratney: I am Reeve of Elizabethtown. The road allowance between lots twelve and thirteen is the division line between polling subdivisions four and five. Little's land lies in polling subdivision number five.

On examining the Poll Book, it appeared that the voter voted at polling subdivision number five.

HAGARTY, C. J.—It is clear the man had a good vote, and voted in the proper division, but his name was on the

list for the adjoining division, and not on the list for his own division. The vote was not questioned at the poll. I would not willingly disfranchise a man because a mistake had been made. My impression is strongly in favor of the vote. Vote held good.

JAMES BAKER'S VOTE.

Petitioner put in the Assessment Roll and Voters' List on which appeared the name of James Baker as owner, and a blank opposite; but on the line immediately under was the entry, Benjamin Leviston, tenant, E. ½ 35, 10, no bracket connecting the entries.

Counsel for the respondent proposed to call evidence to explain the entry, which was objected to by the petitioner.

The CHIEF JUSTICE ruled that evidence could be given to explain the entry, and to show that the voter owned the property next below his name.

William Stafford: Am Deputy Reeve. I know the lot (35 in 10 Con.); the voter owns the lot. About a year ago Leviston was his tenant, but he left before the election, and Baker has since lived on the lot.

HAGARTY, C. J.—It seems to be all brought down to the omission of a bracket in the Assessment Roll and Voters' List. I think I cannot strike off the vote. Vote held good.

JEREMIAH GILROY'S VOTE.

Jeremiah Gilroy: I live on the property. It belongs to me and my two brothers. The assessors put mother's name down as owner. Father died one year ago last December, without a will. He left seven in family. Three lived at home last year; four part of the time. My sister married, August, 1870. In spring four lived there. Last August got a deed of release from two of my sisters whom we paid off—I, William, Joshua, and my sister Mary. Three are away. No assignment of dower has been made, or anything done about dower. Mother leaves us to manage the farm. I am assessed as occupant.

HAGARTY, C. J.—The point in this case is that the property is assessed at $900, and that four children and their mother are actually in possession. Their mother is entitled to dower, but her dower has not been assigned to her. I hold therefore that the mother should not be rated jointly with the children, who are the joint tenants; and as the property is sufficient to give a qualification to four, the vote is good.

THOMAS WHALEY'S VOTE.

Thomas Whaley: I voted on number sixteen Elizabethtown. I live in Yonge. I own part of sixteen in the fourth concession, but can't describe the part. The south end is the front. It is the rear part I own; about seventy-five acres. It is my wife's property. No one lives on it. We were married in September, 1869. She lived in Yonge. Never lived in Elizabethtown. She was the widow of Toxton. He died intestate and left four daughters. I worked on the place in 1870. It is meadow and pasture. I put up some fences, picked off stones. This was in June, part in April. Got the hay crop off in July. I was assessed as occupant, she as owner. I am not sure how my wife got it. I did statute labour and paid taxes.

HAGARTY, C. J., held the vote good.

EDWARD LESLIE'S VOTE.

Edward Leslie: I live at Prescott. I voted on property on Buell Street. My wife is a part owner. Her father bought it, and died intestate five years ago; left two children, a son and my present wife. He had a daughter, who died leaving children. I am assessed as owner.

Cross-examined: I lease the place to the tenant. My brother-in-law at Owen Sound never has interfered. I married two sisters, and had issue by my first wife. I then married my second wife. Father died after death of my first wife. I receive all the rents and profits. My brother-in-law never claimed or got anything. My wife's mother is living. I sometimes gave her something. The assessed value is $700. I have received the rent for five

years. During all that time my brother-in-law has never claimed or received any share of rent. I hand over the whole to my mother-in-law. He knows I pay all to her. She gives most of it to my wife. She does as she likes. I would not question her as to it. He has been often down and knows all about this. The eldest child by first wife is eighteen. There is one other younger; both are alive and always live with me.

HAGARTY, C. J., held the vote bad.

JAMES CALDWELL'S VOTE.

James Caldwell: I live with my father on number six, second concession. I am thirty; a single man. I work the place. Father gets his share, *i.e.*, his living. Our bargain was I should work the place, give him his living, and I have the rest. This was made nine years ago Father works at his trade in Brockville, coming home every Saturday night; he does not do any of the farming. Mother and sister and three brothers younger than me live at home. Two of the boys work at father's trade. I have had surplus profits. There was a debt on the farm when I got it; it is pretty nigh cleared off it; part of the profits went to pay it. I have been seven or eight years on the roll. Sometimes I pay the taxes; sometimes my father. He was to pay the taxes part of the time. No bargain made to any account. I occasionally worked a few days elsewhere; the place did not keep me in work all the time. Last fall I told collector that father was to pay taxes; I afterwards paid them myself. I dare say father will repay me.

Cross-examined: I could do as I liked with all that came from the place. I was not bound to pay off the debt; no time was fixed. I suppose father could turn me away.

HAGARTY, C. J.—I hold the vote good.

JOHN A. MOORE'S VOTE.

John A. Moore: I live on east half seventeen, in the fifth concession. I live with my father. I am twenty-

nine. He owns it. I made a bargain; I was to live with him, keep him in his lifetime, and have all the produce for my use, and he was to leave it to me at death. This was made five years ago last winter. It has been acted upon since, and I have occupied on that agreement. Father takes no part; he is near seventy. I am married, and live with wife and children in same house with him. No others of family there. The stock belongs some to him, some to me. My wife had some cows and sheep. I have raised a good many stock. Two or three of the cattle belong to father. The crops are mine; I find the seed.

HAGARTY, C. J., held the vote good.

CHARLES SMITH'S VOTE.

David Smith: I live on thirteen. I own twenty-five acres. Voter lives with me. He has taken charge of all the business. No agreement between us.

Cross-examined: He has all the crops. I told him he could take all; all I wanted was my living out of it. This was eight years ago. He owns all the stock; I own nothing but the land. He can do as he likes. He is thirty; unmarried. He has to keep me and my mother. I look to him for support whether crops or not. I let him do as he likes. He has raised all himself. I bother no more than a stranger. I have nothing to do with it.

HAGARTY, C. J.—I hold the vote good.

ROSS FRANCIS' VOTE.

Ross Francis: I live with my father on fifty acres. He owns it. My sister lives there, and a brother boards there. About four years ago I agreed to work place. I was to have all raised above what would support family. Father works when he likes. I am to have it at his death. I have had my clothes.

Cross-examined: I pay taxes. I manage all. If no crop or produce, I do not understand I am bound to support them.

John Francis: The arrangement was that he was to support me and my wife and a daughter; to have all that remained after supporting us to do as he pleased with, and have the place at my death. Crop or no crop, he was bound to support me.

Cross-examined: He was to support us off the place before he would get any of the surplus. The place has supported us. All I wanted was that we should be supported. It could not be seized for his debt, I think, until we were supported.

HAGARTY, C. J.—I hold the vote bad.

JOHN JOHNSTON'S VOTE.

John Johnston: I live on twenty-two and twenty-three. I lived with my father when assessment made. I am twenty-four, and left father last March. I was working on shares with father when assessment made. Two years ago last fall I went back to work with father. The bargain was that I was to have a share in what was raised, crop and hay. I and father to have all. No certain share mentioned. I was to have a share of what was raised. The team was mine. I expect he would have more than me. I had confidence in him. He was to give me what he thought was proper, or he thought he could bear. The family had to be supported. This bargain was made in fall of 1869. Last fall we had a good crop of grain; hay poor, five or six tons. My team and his ate the hay up. We bought hay this spring; I was to pay half of price. We raised wheat, oats, peas, etc.; wheat was ground. I got what flour was wanted, and what I want this year. I fed my team on my share of oats. I got peas to sow this spring in my present place—four bushels; could get more if I wanted them.

HAGARTY, C. J.—I hold the vote bad.

SAMUEL WILTSE'S VOTE.

Samuel Wiltse: I voted on part of twenty-one and twenty-two; I voted as occupant; my son owns it. I said if he went on, and paid for the place, all I wanted was a

house for myself and wife. We all live together. My son works it; I do what little I can. He is paying for it.

Cross-examined: I first bought it in my own name from one Boyd. I expect he has got the deed, but don't know. I paid a little when I first bought it, nine years ago. I told Boyd to give him a deed, and he did so. I control it as much as he does.

Stephen Wiltse, his son: I got a deed of this from Boyd. The understanding was that father was to get his living off the place, also mother. He has occupied ever since. I am not always there. Father minds the place when I am away. I would have no right to turn him out.

Cross-examined: I bought it subject to a mortgage of $800; $500 has been paid on it. Father was to have his living off the place and I was to take the place. No agreement as to farming on shares. I do not think I could turn him out.

HAGARTY, C. J.—The son owns the fee, and is also occupier. I can see no interest in the father to support a vote. The verbal promise, even if there was a good consideration for the bargain, cannot I think avail; I hold the vote bad.

A. D. DUNHAM'S VOTE.

Martin Hays: I own lot twenty-three, first concession. No writing made. I made verbal arrangement with William Dunham, eleven or twelve years ago. He pays $30 per annum; he pays every two months.

Cross-examined: Three or four years ago he asked me to give the receipts in his wife's name, Jane Dunham; I did nothing more than hand receipts in wife's name. The voter is her son, and lately has paid me rent, and I still give receipt in wife's name. I never agreed to alter tenancy. They all live together. One payment was made by the son, at all events, this April or May.

Counsel for the petitioner proposed to give evidence that the father had agreed to the son working the place on shares.

HAGARTY, C. J.—Even if that were proved the vote would not be good. The son has no definite interest in

the land. At present I must hold that a tenant from year to year, whose tenancy was liable to be put an end to by a six months' notice, could not carve out a lesser interest in favor of a sub-tenant. He cannot create a vote by giving a share of the crop to his son. Vote held bad.

WILLIAM McARTHUR'S VOTE.

Peter McLaren: Voter lives at the toll-gate number one. He is paid monthly for keeping it. I think he had some land rented for pasture. He gets six dollars per month and use of the house. The toll-house is on the road. The road belongs to the Lowell Road Company.

William McArthur, the voter: I was engaged at six dollars a month and the house. I keep the gate and collect tolls. I don't think they could turn me out during the month.

HAGARTY, C. J.—The man was only a servant of the company, and occupied the house only as toll collector. The company could turn him out at a moment's notice. Vote held bad.

ALANSON BACON'S VOTE.

Alanson Bacon: I was born in the United States; so was my father. I took the oath of allegiance ten years ago. I produce it, dated the 9th July, 1861. I have been twenty-one or twenty-two years in Canada. I think I came in 1850, about midsummer.

HAGARTY, C. J.—Held that as the voter had not taken the necessary proceedings to obtain a certificate of naturalization from the Quarter Sessions, his vote was bad.

GEORGE HEALEY'S VOTE.

George Healey: I was born in the United States; I understand I came to Canada forty-nine years ago, when a year old. My father lived at Potsdam, in the United States. He was born in the United States, as I understood. Father died twenty-one years ago. I never took the oath of allegiance. Grandfather came from Vermont, as I heard.

Cross-examined: My father took the oath of allegiance; he had to do so before he got the deed of his land.

[The CHIEF JUSTICE.—That would be before he got his patent under 9th Geo. IV., c. 21.]

I suppose he took it in Prescott. The land he got was lot three in the seventh concession of Elizabethtown.

HAGARTY, C. J., held the vote bad.

SILAS WRIGHT'S VOTE.

Silas Wright: I understood from my parents I was born in Morristown, New York. I understood my father was born in Canada. I have lived here from infancy. I am 33 now.

HAGARTY, C. J., held the vote good.

At the close of the scrutiny, and at the request of the parties, a special case, setting forth the evidence on the charge of corrupt practices, was reserved for the opinion of the Court of Queen's Bench, counsel for the petitioner stating that except as to the selling and giving liquor on the polling day, as set out in the special case, they had no further evidence to offer. The special case (see *post* p. 139) was then settled, and the Election Court adjourned until the 9th January, 1872.

On the reassembling of the Court, the following consent was signed by Counsel and put in:

"The Court of Queen's Bench having given judgment in favor of the respondent in the special case stated for the opinion of the said Court, it is hereby consented and admitted that there is no further evidence to be offered by either party. And it is admitted that the respondent has a majority of votes on the scrutiny, and is entitled to the seat; and it is consented and agreed that the said respondent be declared duly elected; and that each party do pay his own costs of the said petition and proceedings taken thereon."

HAGARTY, C. J.—I therefore decide that the respondent has been duly elected, and that each party do pay his own costs (as agreed). And I shall report the same to the Speaker. (5 *Journal Legis. Assem.*, 1871-2, p. 48.)

BROCKVILLE.

Before the Court of Queen's Bench.

Samuel Flint, *Petitioner*, v. William Fitzsimmons, *Respondent*.

Controverted Election—Corrupt Practices—"Illegal and Prohibited Acts in Reference to Elections"—Selling and Giving Liquor—Carriage of Voters—Right to Reserve Questions of Law—32 Vic., cap. 21; 34 Vic., cap. 3.

Upon questions reserved by the Rota Judge under "The Controverted Elections Act of 1871," it appeared that H. and B. voted for respondent. H. kept a saloon, which was closed on the polling day; but upstairs, in his private residence, he gave beer and whiskey without charge to several of his friends, among whom were friends of both candidates. B., who had no license to sell liquor, sold it at a place near one of the polls to all persons indifferently. This was not done by H. or B. in the interest of either candidate, or to influence the election, B. acting simply for the purpose of gain; and the candidate did not know of or sanction their proceedings.

Held (though with some doubt as to B.), that neither H. nor B. had committed any corrupt practice within sec. 47 of 34 Vic., cap. 3, and therefore had not forfeited their votes; for they had not been guilty of bribery or undue influence, and their acts, if illegal and prohibited, were not done "in reference to" the election, which, under sec. 47 of 34 Vic., cap. 3, is requisite in order to avoid a vote.

The words "illegal and prohibited acts in reference to elections," used in sec. 3, mean such acts done in connection with, or to affect, or in reference to elections; not all acts which are illegal and prohibited under the election law.

The right to vote is not to be taken away or the vote forfeited by the act of the voter unless under a plain and express enactment, for it is a matter in which others besides the voter are interested.

One M., a carter, who voted for respondent, at the request of P., the respondent's agent, carried a voter five or six miles to the polling place, saying that he would do so without charge. Some days after the election, P., the agent, gave M. $2, intending it as compensation for the conveyance of such voter to the poll, but M. thought it was in payment for work which he had done for P. as a carter. The candidate knew nothing of the matter.

Held, that there was properly no payment by P. to M. for any purpose, the money being given for one purpose and received for another; but that if there had been, it was made after P.'s agency had ceased, and there was no previous hiring or promise to pay, to which it could relate back.

If such payment had been established as a corrupt practice, it would have avoided P.'s vote, but not M.'s; and it would not have defeated the election, for it was not found to have been committed with the knowledge or consent of the candidate, but the contrary.

Quære, whether, under 34 Vic., cap. 3, sec. 20, the Rota Judge has power, before the close of the case, to reserve questions for the Court.

This was a case stated under the Controverted Elections Act of 1871, and reserved by the Judge trying the Election Petition (*ante* p. 129) as follows:

At the above Court, holden on the 26th, 27th, 28th, 29th, and 30th days of June, and on the 5th and 6th days of July, A.D., 1871, before me, the Honorable John Hawkins Hagarty, Chief Justice of the Court of Common Pleas, and one of the Judges on the rota for the trial of election petitions, the above named petitioner charged by his petition that the said respondent was not duly elected or returned, and that the said election was void, by reason that the said respondent and his agents, with a view of promoting the election of the said respondent, caused certain hotels, taverns, and shops, in which spirituous or fermented liquor or drinks were, at the time of the said election, ordinarily sold, to be opened and kept open on the day of polling votes at said election, in the wards and municipalities in which said polls were held, and caused spirituous and fermented liquors and drinks to be sold and given to divers persons within the limits of the said town of Brockville and the Township of Elizabethtown during the day of polling votes at the said election; and hired certain horses and vehicles, and promised to pay for certain other horses and vehicles, and did pay for the same, to convey voters to or near or from the polls or polling places, or the neighborhood thereof, at the said election; and also by reason that divers persons who were guilty of the above practices voted at the said election for the said respondent. And the said petitioner by the said petition prayed the said seat, or a scrutiny, and that on such scrutiny the votes of the said persons who were guilty of the above corrupt practices should be struck off the poll.

Upon consideration of the evidence adduced on behalf of the petitioner as to the said charges, I find as follows:

1. As to George Houston. I find that George Houston, one of respondent's voters, was a saloon-keeper in Brockville; that on the polling day his saloon was closed and

locked; that up stairs, in a room in his private residence, he had beer and whiskey on a table; that many of his friends, perhaps to the number of twenty to thirty, were that day, at different times, up in this room, and had liquor; that no pay was taken or expected, nor any charge made for this; he told any of his friends who were in the habit of coming to his saloon that they could have a drink upstairs; that friends of both candidates were there on his invitation, and some not voters; that he was under the impression that so giving this liquor was not violating the law; that this was not done to influence any vote or voter by means of liquor; that it was not done in the interest of either candidate, nor to produce any effect on the election or its result; and that the respondent did not know of or sanction these proceedings.

2. As to Samuel Burns I find that Samuel Burns had no license to sell liquors: that he voted for respondent; that he sold liquor to all persons that asked and paid for it on the polling day at a place near one of the polls in the township; that he sold to persons, voters and others, without reference to their side or politics; that this was not done in the interest of either candidate, or to affect the election or its result, but simply for the sake of gain; and that the respondent did not know of or sanction these proceedings.

3. As to the charge of conveying voters to the poll. I find that William McKay, a carter in Brockville, and a voter for respondent, did, at the request of Thomas Price, an agent of respondent, carry an old man named Paul, a voter for respondent, a distance of five or six miles to the polling place; that McKay was aware on the polling day that it was illegal to carry voters for hire, and had expressed his willingness to carry voluntarily and free of charge, being anxious to help the respondent; that when Paul was spoken of, Price asked McKay could he, McKay, not carry him to the poll, and McKay said he would do so without charge, and that no hiring or payment was

then contemplated between them; that some days after the election Price gave McKay $2, considering that McKay was a poor man, and that he ought to give him something, and paid him the money intending it as a compensation for so carrying the voter; that McKay did not receive it as such, but received it thinking it was in payment for some work he had done for Price as a carter in his ordinary business, and that there was an account between them for work in or about the amount of that sum; that when the $2 were paid, nothing was said about carrying the voter; that the respondent knew nothing of this matter, and never authorized or sanctioned it.

The opinion of the Court of Queen's Bench is requested:

1st. What is the legal effect of the payment by Price, an agent for respondent, to McKay, as found by me; whether it was a "corrupt practice," and, if so, did it avoid the vote of Price or McKay, or of both, as voters for respondent, or does it avoid the respondent's election?

2nd. Whether the giving or selling of liquors, as found by me, in such cases as Houston or Burns, avoided the votes of the said persons, or either of them?

(Signed), JOHN H. HAGARTY, C.J., C.P.

The case was argued before the Court of Queen's Bench in Michaelmas Term, 1871. *Mr. Bethune* appeared for the petitioner. The question as to the votes of Houston and Burns, arises under the Ontario Act, 32 Vic., cap. 21, sec. 66, which requires all hotels, taverns, and shops in which liquors are ordinarily sold, to be closed during the polling day, and forbids any liquor to be sold or given to any person within the municipality during such period, under a penalty of $100. The amending Act, 34 Vic., cap. 3, had two objects—to change the mode of trial, and more effectually to prevent corrupt practices at elections. In it, by sec. 3, a definition of corrupt practices is for the first time given, and it could hardly have been more comprehensive. It includes all "illegal and prohibited acts in reference to elections, or any of such offences, as defined by Act of the

Legislature." The acts of both of them were clearly prohibited and contrary to the statute, and were therefore corrupt practices, *Salford case* (1 O'M. & H., 134). Their votes are both bad, therefore, under sec. 47 of 34 Vic., which declares that any corrupt practice committed by an elector voting at an election shall avoid his vote. There is no clause expressly against "treating," as in the English Act, where it is provided for specially. Secs. 61 and 66 of our Act, 32 Vic., cap. 21, provide against it in effect, and are very stringent, making no exceptions even for medical purposes, though perhaps that might be implied. No question as to intention can arise under sec. 66, as under secs. 61, 63, 67, nor as to agency, as under sec. 71. As to Price's conduct, the 34 Vic., cap. 3, sec. 47, avoids his vote. His act was one of agency on behalf of the respondent. The intent of the agent is of no consequence; and the principal is affected by his act, although the agent was not employed for the purpose in which he violated the Act: *Coventry case* (1 O'M. & H., 107); *Taunton case* (*Ibid.* 184); *Blackburn case* (*Ibid.* 201). His act was an offence against sec. 71. The payment he made after the election was intended as compensation for carrying the voter, and although the agency had terminated, yet such payment, being connected with the precedent act of the agent, related back to the time when the service was performed, by analogy to the doctrine of ratification, *Limerick case* (1 O'M. & H., 261). The statute, under the Interpretation Act, 31 Vic., cap. 1, sec. 7, sub-sec. 39, should be liberally construed, so as best to ensure the attainment of its object. Votes are given on certain conditions, which must be observed. [WILSON, J.—Is that so? Is it not rather a right, of which these provisions are merely safeguards?] If a prohibited act be done by a candidate, it avoids the election; if it be done by a voter, it avoids his vote; if done by another, it subjects the person to a penalty.

Mr. J. H. Cameron, Q.C., contra. It is not pretended the election can be avoided excepting by reason of the pay-

ment by Price. As to the matters relating to Houston and Burns; the acts prohibited by sec. 66, before referred to, are not necessarily connected with elections at all. Hotels, &c., are required to be closed during the polling day, and no liquor is to be sold or given that day under a penalty. The election may be over early in the day; but at whatever hour the poll is closed, the hotels, etc., must be kept closed the whole of that day, from the earliest hour in the morning till midnight. The illegal or prohibited act, to be a "corrupt practice," and to avoid a vote, must be an illegal or prohibited act "in reference to elections," which these acts were not. The heading of "Prevention of Corrupt Practices at Elections," before sec. 67, cannot be held to govern all the sections down to sec. 74; for sec. 72 defines what shall be deemed to be "undue influence." There is no necessity to hold any act to be a *corrupt practice* unless it be expressly declared to be so, because all prohibited acts have some penalty or other attached to them. Houston and Burns may be subject to a penalty under sec. 66; but their votes are good, and cannot be disallowed. As to Price's case: Agency, if established at the time he employed the team, must be shown to have continued up to the time when he paid the money. There was no proof of hiring under 32 Vic., cap. 21, sec. 71; and the act of payment was a voluntary act of Price after the election was over, made not on account of the service rendered, but from charity, and not for the candidate, but for himself, and in his business. There was no agency existing then. A *payment* must be the act and intent of both; such intent was absent from the minds of both, but if absent from the mind of one, that is sufficient to make it no payment. Price's act, if within sec. 71, merely destroys his vote, and subjects him to a penalty; it does not defeat the election. Nothing will avoid the election unless, under the 46th sec. of 34 Vic., cap. 3, a corrupt practice be reported by the Judge to have been committed by or with the knowledge and consent of the candidate. An election committee has much

greater power in this respect under cap. 21, sec. 69. The argument may be thus shortly re-stated: 1. Price was not an agent at the time of the payment. 2. If he were, the payment was not with the knowledge and consent of the candidate. The election, therefore, cannot be avoided. 3. Price did not *hire* any team; his vote, therefore, cannot be struck off. Houston's and Burns' votes are good; at most their acts were prohibited, and they may be subject to a penalty. Where the Legislature has declared that a vote shall be lost for a particular cause, it does not intend that it shall be forfeited for any other cause.

Mr. Bethune, in reply. Selling or giving liquor does avoid the votes. As to what is undue influence, see *Huguenin* v. *Baseley* (14 Ves., 272; and in 2 White and Tudor, L. C., 504, 3rd ed.). It differs in its nature from an illegal or prohibited act. If the 47th section is not more extensive than the law was before, it is of no value. *Entertainment* it is not said shall avoid the election; but it does so because it is a prohibited act. The 43rd section of the Imperial Act is the one which has not been adopted in our Act. As to Price's act, it avoids the whole election; but at any rate his vote is avoided by the 71st section. Most of the payments in such cases are made after the election. He referred to the cases already decided under this act: The *Glengarry case*, before Hagarty, C.J. (*ante*, p. 8); *North York case*, before Galt, J. (*ante*, p. 62); *North Simcoe case*, before Strong, V.C. (*ante*, p. 50); and the *South Grey case*, before Mowat, V.C. (*ante*, p. 52).

WILSON, J.—The particular cases referred to us by the learned Chief Justice of the Common Pleas, are—1stly, that of George Houston. He voted for respondent; was a saloon-keeper in Brockville. On the polling day his saloon was closed and locked. Upstairs, in a room in his private residence, he had beer and whiskey on a table. He gave it to those who came without pay or expectation of it. It was not done in the interest of either candidate,

nor to influence any vote or voter, nor to produce any effect on the election; nor did the respondent know of or sanction it.

2ndly. That of Samuel Burns. He had no license to sell liquors. He voted for respondent. He sold liquor on the polling day, near a poll in one of the townships, and charged for it. He sold it to persons without reference to their side or politics. In other respects, his case is similar to that of Houston.

These two cases may therefore be considered together.

The part of the 32 Vic., cap. 21, sec. 66, which applies to these cases, is the latter part of it: "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" (*i.e.* during the day appointed for polling), "under a penalty of $100 in every such case."

And it was argued that because they had infringed the provisions of this section, the one by *giving* and the other by *selling* liquor, they had not only incurred a penalty, but had forfeited their votes; that such giving and selling were prohibited acts, and were within the provisions as to corrupt practices.

The deprivation of the right to vote, or the forfeiture of a vote already given, is not to be imposed as a penalty upon any one, unless under the express enactment of the Legislature. There are other persons interested in and affected by that vote beside the voter. The candidate for whom he has voted is interested in it, and so are the whole body of electors who have voted for the same candidate. One vote has and may again influence or change the result of an election, and that is not to be brought about by merely inferential or argumentative legislation, or as to what the Legislature must have intended. There must be a plain enactment declaring that the vote shall be rejected if tendered, or shall be struck off if given, to justify the disallowance of it, and, as a consequence, to double the penalty on the voter, and so seriously to affect the rights, privileges and interests of others dependent on the vote.

What, then, has the statute said on this point?

32 Vic., cap. 21, sec. 70, declares, that on its being proved before any election committee that any elector voting was *bribed*, his vote shall be null and void.

What *bribery* is under that Act, is explained by sections 67 and 68; the acts stated are not acts of bribery; the first of these sections has the caption of "Prevention of Corrupt Practices at Elections."

The 34 Vic., cap. 3, sec. 3, declares that "'corrupt practices' or 'corrupt practice' shall mean 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."

The 47th section enacts that, "If on the trial of any election petition, it is proved that any corrupt practice has been committed by any elector voting at the election, his vote shall be null and void." It is under this section that the votes of Houston and Burns are said to be void. It is said they have each been guilty of a *corrupt practice*, not by reason of having committed bribery, but by reason of their having exercised undue influence, or from their having done illegal and prohibited acts, in consequence of the one having given liquor and the other having sold it on the polling day.

It is quite plain that undue influence and illegal and prohibited acts in reference to elections must be corrupt practices, when the Legislature has declared they shall be so.

Firstly. Were the giving and selling of liquor acts of *undue influence?* The meaning of that term is explained and defined by the 32 Vic., cap. 21, sec. 72, and it is quite manifest that the acts charged against Houston and Burns are not within that category.

Secondly. Were the giving and selling of liquor, as before stated, "illegal and prohibited acts in reference to elections?"

It is necessary to settle what the meaning is of "illegal and prohibited acts in relation to elections." Does the

expression mean generally all illegal and prohibited acts *under the election law*; or does it mean illegal and prohibited acts when and because they are done in connection with, or to affect, or in reference to, elections?

In the one case, giving and selling liquor, however disconnected with the election they may be, will, if done within the municipality during the election, be illegal and prohibited acts, and as a consequence will be corrupt practices.

In the other case, such acts will not constitute corrupt practices, unless they are shown to have been done to influence or to affect the election, or in some way to have been done in connection with it.

The section in which the illegal and prohibited acts in relation to elections are named, contains the election law offences of bribery and undue influence, both of which acts have and must necessarily have a direct and inseparable relation to the actual electoral contest, and to the proceedings anterior to it. Bribery and undue influence in general are not prohibited, but bribery and undue influence in relation to elections only. Why then should any greater effect be given to the other words of the section, "and all illegal and prohibited acts," and more especially as the words "in reference to elections," have been superadded?

It will be found also that the offences of entertaining electors, furnishing colors or badges, and carrying or wearing them, relate in like manner to the elections.

The election law morality is very different from what morality is under the general law. The election law does not prohibit stealing, but it does prohibit the wearing of a party badge within the electoral division on the day of election or polling, or within eight days before such day, or during the continuance of the election. The thief may have on his person at the time he votes the watch of the returning officer, or of the candidate whom he supports, but he is an innocent man by the election law, and a good voter; while the elector who has worn a party badge but

for five minutes anywhere in the electoral division, miles away from the polling place, within eight days before the election, is a criminal by the election law, and an illegal voter, although in fact a very honest respectable man. The vote of the one, though not his person, will stand the strictest scrutiny. The vote of the other must fail. The thief has been guilty of no corrupt practice, but the wearer of the badge has. This cannot then be a law to *be enforced, unless the enactment* be a plain and positive one.

I do not think we should call every illegal and prohibited act by this special statute, which is intended to operate for a limited time, on a peculiar occasion, and for a particular purpose, a *corrupt practice*, against the provisions of that law, unless the act be shown to have been done in some way or other with a view to the election, or to bear upon it, or as connected with it, or in relation to it, or as calculated or intended so to operate. If any other construction be given to the statute, it will be attended with very oppressive and needless consequences of punishment and forfeiture.

A general state of drinking and drunkenness at the time of the election among the electors and inhabitants of the locality, resulting from the dispensation of liquor, might well be deemed to be a dispensation of such liquor in relation to the election, although it were made without any special reference to the election. The state of mind, the influence and general condition of things it would induce, would tend naturally to disorder the proceedings, and to cause an untrue and improper expression to be given of the sober popular will. That was the case in the *Tamworth case* (1 O'M. & H., 85).

But the giving or selling of liquor in consequence of a horse trade, or in payment of an old bet, or from mere friendship, or to test the quality of it as a medicine, or to be shipped abroad, or for any other purpose not "in reference to the election," would not, in my opinion, be an illegal or prohibited act, so as to be a corrupt practice within the meaning of the statute. Nor do I think the

giving or selling of liquor, though on the polling day, but after the poll was closed, and miles away from where the poll was held, would necessarily be an illegal and prohibited act in reference to the election, so as to amount to a corrupt practice (*Coventry Election Petition*, 20 L. T. N. S., 405).

The 61st section of the 32 Vic., cap. 21, permits the candidate and others acting for him, even with intent to promote his election, to furnish entertainment to the electors, so long as it is done at the usual place of residence of the candidate, or of those who furnish it for him. Such *entertainment*, it would be difficult to say, should not include even a single glass of wine.

The statutes contain many illegal and prohibitory acts besides the giving and selling of liquor on the day of the poll, and to hold them to be corrupt practices, although *not* done in reference to the election, would be hurtful to all parties, and utterly unreasonable.

By 32 Vic., cap. 21, sec. 57, sub-sec. 3, any person disturbing the peace and good order may be imprisoned by the returning officer or his deputy, for a time not later than the final closing of the poll. Is the vote of that person to be rejected, or afterwards struck off, although his act had no reference to the election, but was occasioned by some great wrong done or provocation given to him?

By sec. 60 every person convicted of a battery committed during any part of the election or polling day, within two miles of the place of election or poll, is to forfeit $50. Is that person also to forfeit his vote, although the battery had nothing whatever to do with the election, or happened after the election was over?

It appears to me these cases plainly answer themselves, and enable the matter with respect to the giving and selling of liquor to be as easily answered.

The penalties are already quite severe enough, without increasing them against the voter, and extending them to the candidate, and to the other electors of the constituency, who suffer as well as the voter by the disallowance of his

vote, unless we are obliged by the most explicit enactment of the law to do so.

In my opinion. on the case stated with respect to these persons, we are not required, and would not be justified, in avoiding their votes.

The facts show that the giving and selling of the liquor were not acts done in reference to the election.

On this point, I may however say that I am more satisfied with my conclusion as to the act of Houston, as to the giving of the liquor, than I am with respect to Burns, who sold the liquor in a place and under circumstances giving rise to some degree of suspicion.

The other part of the case relates to the act of Price.

His conduct is complained of on the ground of its having been an illegal and prohibited act in reference to the election, contrary to the 32 Vic., cap. 21, sec. 71. That section declares, so far as is applicable here, "that the hiring or promising to pay, or paying for, any horse," etc., "by any candidate, or by any person on his behalf," to convey voters at any election, shall be an illegal act, and the person offending shall incur a penalty of $100; and any elector who shall hire any horse, etc., for any candidate, or for any agent of a candidate, for the purpose of conveying electors, etc., "shall *ipso facto* be disqualified from voting at such election, and for every such offence shall incur a penalty of $100."

The section, it will be observed, is in two parts. The first part affects the candidate and his agent, by subjecting them to a penalty. The second part affects the electors, and besides subjecting them to a penalty, it disqualifies them from voting.

Price was an agent of the candidate, and so, as to the penalty, is within the operation of the first branch; but he was also an elector, and so he is within the operation of the second branch, as to the loss of his right to vote.

The case finds there was no hiring of McKay to carry Paul, the voter. McKay carried Paul at Price's request, but he carried him "voluntarily and free of charge." Some

days after the election, Price, as compensation to McKay, gave him $2 for carrying the voter. McKay did not receive it as compensation, but in payment of work he had done for Price in his ordinary business as a carter.

I do not see how McKay can be within the operation of the section at all. The hiring, or promising to pay, or paying for any horse, etc., applies to the candidate, and to any person on his behalf. That will extend to Price if he hired, or promised to pay, or paid McKay for any horse, etc.; but it cannot extend to McKay, as he was at most the person hired, promised to be paid, or paid. Nor does the second branch apply to him, for that extends to the electors who hire others, and not to those who are hired.

The case has to be considered, then, with regard to Price alone.

At the time he voted—for I assume he did vote, as I gather so from the first question put in the case, and from the argument of counsel, though the case itself does not say he did—he was under no disqualification; for he had not hired, promised to pay, or paid McKay, and there was no agreement or understanding to do so, but the contrary; the service was to be, as in fact it was at the time performed by McKay, free of charge.

In my opinion, the agency of Price terminated with the election—the occasion and the purpose for which he was employed. His subsequent payment was an unauthorized act as to his principal. It can relate back to nothing, for there was no hiring or promise to which it could attach. But as a fact it was not a payment; that must be the act and by the assent of both parties. When Price gave the money for one purpose, and McKay received it on another account and in respect of a different transaction, that was not a payment for the purpose that Price intended it for, more than it was a payment on the account for which McKay received it. It was properly not a payment to or for either one purpose or the other (*Thomas* v. *Cross*, 7 Ex. 728).

In no view of the case, as the learned Chief Justice has found that the respondent knew nothing of the matter between Price and McKay, and never authorized or sanctioned it, could it be possible to avoid the election, even if Price's act had been determined to be a corrupt practice. For under the 46th section of the 34 Vic., cap. 3, the learned Chief Justice, to affect the return, would have to find that "the corrupt practice had been committed by or with the knowledge and consent of the candidate," whereas he has distinctly negatived that fact.

I am not quite satisfied, as I stated during the argument, however convenient the practice may be, and however desirable it is that the law should be so, that the Rota Judge has power, until he is in a position to grant his certificate, under the 34 Vic., cap. 3, sec. 20—that is, until the close of the case—to reserve a question for the Court.

Such question is to be reserved "in like manner as questions are usually reserved by a Judge, on a trial at Nisi Prius," and no Judge at Nisi Prius can stop a case in the middle, and adjourn it until he has some intermediate difficulty cleared out of his way by a reference to the Court. If there be any doubt in this respect, the Act should be amended.

Assuming that the case is regularly before us, I shall answer the questions submitted as follows:

1. That there was no *payment* made by Price to McKay. If it were a payment, it was made by Price at a time when he was not an agent for the respondent, and with respect to a matter to which it could have no proper relation, for there was no antecedent hiring or promise to pay. The matter was, therefore, not a corrupt practice.

If it had been a corrupt practice, it would have avoided Price's vote but not McKay's vote, for he was the person hired, if there had been a hiring, and such a person is not deprived of his vote.

This act, if it had been established to have been a corrupt practice, would not have defeated the election, because it has not been found to have been "committed by or with

the knowledge and consent of the candidate;" on the contrary, the very opposite fact has been found for the candidate.

2. That the giving of liquor, as found by the case, by Houston, does not avoid his vote. I have more doubt as to the selling of liquor by Burns, but I am not so free from doubt as to find against him, on the case submitted.

I am of opinion, therefore, that neither of their votes has been avoided.

MORRISON, J., concurred.

(32 Q.B., 132).

MONCK.

BEFORE MR. JUSTICE GALT.

DUNNVILLE, *23rd and 24th August, 1871, and 8th January, 1872.*

JOHN W. COLLIAR *et al, Petitioners,* v. LACHLIN MCCALLUM, *Respondent.*

Bribery—Special Case—Irregular Voters' List—Election not Affected—Amendment of Petition—Costs.

An elector when asked to vote for respondent said that it would be a day lost if he went to vote, which would cost him $1. To which the canvasser replied, "Come out, and your $1 will be all right."

Held, not sufficient to establish a charge of bribery.

The Court of Queen's Bench on a special case (32 Q. B., 147),

Held, 1. That the proper list of voters to be used at an election is "the last list of voters made, certified, and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election."

2. That an irregular voters' list had been used in one of the townships in the Electoral Division; but that the result of the election had not been affected thereby, and that the election was not avoided.

3. That the Judge trying an election petition has power to amend the petition by allowing the insertion of any objection to the voters' list used at the election.

The petitioners were ordered to pay the costs of the respondent up to the meeting of the Election Court, and the costs of the special case; but as to the costs of the trial, each party was ordered to pay his own costs.

The petition contained the usual charges as to corrupt practices, and claimed the seat on a scrutiny of votes for the defeated candidate, James D. Edgar.

The vote was: For respondent, 931; for James D. Edgar, 926; majority for the respondent, 5.

Mr. Bethune, for petitioners.
Dr. McMichael, for respondent.

The following evidence was given as to corrupt practices.

Adam V. Moot: I am a voter in this division. I voted for Mr. Edgar. David Winslow came to my house before the polling; he asked me if I was coming out to vote. I said I did not know it would be worth my while, because I was a hired man. I said I would consider it a day lost if I went out to vote, which would cost me $1. He said: Come out, and your $1 will be all right. He was supporting McCallum.

Mr. JUSTICE GALT held that the charge of bribery was not sustained.

Evidence was then given to show that in one of the townships in the electoral division the list of voters was made up from the Assessment Roll of 1870, and was sworn to on the 13th August, 1870, but that it was not delivered to the Clerk of the Peace until the 17th March, 1871, during the election in question. It was also proved that the Voters' List of 1869 had been delivered to the Clerk of the Peace on the 19th August of that year; and that there were 41 voters on the Voters' List of 1869 who were not on that of 1870. The writ to hold the election was dated the 25th February, 1871, and the election was held on the 14th and 21st March of the same year.

Mr. JUSTICE GALT thereupon reserved a special case for the opinion of the Court of Queen's Bench, setting out the above facts, and also submitting whether the Judge presiding at the trial had power to amend the petition.

The Court of Queen's Bench (32 Q. B., 147) held that the Voters' List of 1869 should have been used at the election, it having been the one filed with the Clerk of the Peace "at least one month before the date of the writ to hold such election," pursuant to 32 Vic., c. 21, s. 7, subs.

10. But that as it was not shown that the vote of any one of the 41 entitled to vote by the list of 1869 had been rejected, nor that the use of the Voters' List for 1870, instead of that for 1869, had in any way affected the result of the election, the election was not avoided. The Court also held that the Judge trying the election petition had power to amend the petition by allowing the insertion of an objection to the voters' list used at the election.

On the reassembling of the Election Court (January 8, 1872), counsel for the petitioners stated that in consequence of the decision of the Court of Queen's Bench, it was their intention to abandon the scrutiny.

Mr. JUSTICE GALT thereupon declared the respondent duly elected, and made the following order as to costs: The petitioners to pay the costs of the petition up to the meeting of the Election Court at Dunnville. Each party to pay their own costs of the trial before the Election Court. Petitioners to pay any witness fees actually paid to witnesses before the 5th January, 1872, except the witness fees of witnesses examined at the hearing at Dunnville. Costs of the special case to be paid by petitioners.

(5 *Journal Legis. Assem.*, 1871-2, p. 49).

WEST YORK.

BEFORE CHIEF JUSTICE HAGARTY.

TORONTO, *5th and 6th September, 1871, and 8th March, 1872.*

THOMAS GRAHAME, *Petitioner*, v. PETER PATTERSON, *Respondent.*

Notice of Disqualification of Candidate—Postmaster—Office or Employment in the Service of the Dominion of Canada—31 Vic., c. 10, and 32 Vic., c. 4, s. 1—Special Case—Consent to Dismissal of Petition.

The respondent, a postmaster in the service of the Dominion of Canada, became a candidate at an election held on the 14th and 21st March, 1871, and was elected. On the 11th March he resigned his office of postmaster, which was accepted by the Postmaster General on the 13th

March. His accounts with the Post Office Department were closed and his successor appointed after the election. Evidence of the notoriety of the alleged disqualification of the respondent was given, which was that such alleged disqualification was a matter of talk, and that all the people at the meeting for the nomination of candidates were supposed to be aware of the supposed difficulty as to such disqualification.

Held, that even if the respondent was disqualified for election, the Judge could not on such evidence declare that the electors voting for the respondent had voted perversely, and had therefore thrown away their votes, so as to entitle the petitioner to claim the seat.

Where a class of persons affected by the decision of a case is numerous, and the question involved is one of general importance, the Judge may reserve a special case for the opinion of the Court of Queen's Bench; and the Judge here decided to take that course.

The petitioner, after such special case had been reserved, appeared before the Judge trying the election petition and consented to the abandonment of the special case and the dismissal of the petition with costs, and it was so ordered.

The petition alleged that at the time of the election (14th and 21st March, 1871) the respondent was disqualified to be elected a member of the Legislative Assembly by reason of his holding the office of postmaster at Patterson, West York, an office in the service of the Dominion of Canada, at the nomination of the Crown, to which a salary or fee, etc., was attached; and that such was a disqualifying office under the Act to secure the Independence of the Legislative Assembly, 32 Vic. c. 4, s. 1, which enacted that, "no person accepting or holding any office, commission or employment . . . . in the service of the Dominion of Canada, at the nomination of the Crown, to which any salary or any fee, allowance, or employment in lieu of any salary from the Crown, is attached, shall be elegible as a member of the Legislative Assembly, nor shall he sit or vote in the same during the time he holds such office, occupation, or employment." The petition claimed the seat for the petitioner on the ground that public notice of the respondent's disqualification was given to the electors.

Dr. McMichael, for petitioner.

Mr. R. A. Harrison, Q.C., *Mr. J. K. Kerr, and Mr. Bull*, for respondent.

It was admitted that the respondent was postmaster at the Village of Patterson, West York, up to the 11th March,

1871, that on that day he sent a telegram and letter to the Postmaster-General, resigning his office of postmaster, which was accepted by telegram on the 13th March, and by letter on the 18th March, 1871.

It was further admitted that the nomination of candidates took place on the 14th March and the polling on the 21st March; that the petitioner and respondent were the only candidates; and that the result of the polling was: For petitioner, 671; for respondent, 865; majority for respondent, 94. It was also admitted that the office of postmaster was one of emolument under the Postmaster-General under the Act of Canada, 31 Vic., c. 10.

The evidence of the public notoriety of the respondent's disqualification was as follows:

Robert Johnston: I was at the nomination; perhaps some three or four hundred persons were present. I showed the respondent the Post Office Regulations just before the nominations. The objection was discussed as to respondent's qualification; and after a telegram to Toronto, an answer came from Toronto stating that the respondent was all right. The respondent and his friends then consulted as to whether another candidate should be named; ultimately he and his friends decided it was all right. This was after respondent and others had been proposed and seconded. Then all others retired in favor of respondent. After receipt of the telegram it was a matter of talk, and I dare say all the people in the hall were aware of this supposed difficulty and deliberation. The nomination took place on a balcony in front of the hall. The body of the electors were in the open air in front of the hall.

Counsel for the petitioner stated that he had no stronger evidence to support the petitioner's claims to the seat.

The CHIEF JUSTICE held on this evidence that the petitioner could not claim the seat if the respondent should be found to be disqualified (*a*).

(*a*) See *Essex case*, 9 U. C. Law Jour., 247.

After the argument of counsel on the question of the disqualification of the respondent,

HAGARTY, C. J., said: I do not feel much difficulty in satisfying my own judgment on the question before me; but as the class of persons affected by the decision is numerous, the question one of general importance, and there has apparently been no express decision since the change in the mode of trying election petitions, I think it better to reserve the law of the case for the Court of Queen's Bench. If I decide, my judgment is without appeal, and it is possible another Judge, similarly situated, might view the case differently. I think it better to have the law settled by the highest authority. I shall therefore, under the 20th section of the Act, find the facts in evidence before me, and reserve for the determination of the Court of Queen's Bench two questions:

1. Is the office of postmaster (not being in or for a city or town) an office occasioning a disqualification for election?

2. Was the respondent on the day of nomination (14th March, 1871) a person holding such office?

Subsequently it was agreed between the parties that the special case should be abandoned, and that the respondent should be declared duly elected and returned, and that petitioner should pay the respondent's costs.

The CHIEF JUSTICE thereupon determined that the respondent was duly elected, and that the petition should be dismissed with costs.

(6 *Journal Legis. Assem.*, 1873, p. 3).

PRINCE EDWARD, (2).

BEFORE MR. JUSTICE MORRISON.

PICTON, *27th August, 1872.*

JOSHUA B. DORLAND *et al*, *Petitioners*, v. JAMES SIMEON MCCUAIG, *Respondent.*

List of Voters to be used at Election—Scrutiny according to the Proper List—Seat awarded to the unsuccessful Candidate at Election.

Held, following the *Monck case* (32 Q. B., 147, *ante*, p. 154), that the list of voters to be used at an election must be the list made, certified and delivered to the Clerk of the Peace at least one month before the date of the writ to hold such election.

The list of voters used at the election in the Township of Hillier was not filed until the 28th November, 1871, and the writ of election was dated 9th December, 1871.

Held, that the list of voters of 1871 should not have been used; and the Court having compared the Voters' List of 1870 with the poll books used at the election in the Township of Hillier, found that 35 persons had voted for the respondent whose names were not on the list of 1870; and the names of such persons having been struck off the poll, the respondent was found to be in a minority; and the seat was thereupon awarded to the other candidate, he having obtained on the scrutiny a majority of the votes.

An election having taken place on the avoidance of the former election (*ante*, p. 45), the respondent was declared elected. This petition was thereupon filed, praying for a scrutiny of votes, and claiming the seat for the defeated candidate, Gideon Striker.

Mr. J. K. Kerr and Mr. Allison, for petitioners.
Mr. Low, Q.C., for respondent.

The poll books were produced, from which it appeared that the total vote was as follows: For respondent, 1660; for Mr. Striker, 1644; majority for respondent, 16. The writ of election was dated the 9th December, 1871, and the election was held on the 22nd and 29th December, 1871.

Evidence was then given that the voters' list used at the election in the Township of Hillier had not been sworn to by the clerk until the 28th November, 1871, and had not been "made, certified and delivered to the Clerk

of the Peace at least one month before the date of the writ to hold such election," as required by 32 Vic., c. 21, s. 7, subs. 10. The voters' list for the same township was then produced and compared with the poll books used at the election, when it was found that 35 persons had voted for the respondent whose names did not appear on the Voters' List for 1870.

The charges and counter charges of bribery, &c., were withdrawn on both sides. After a short adjournment the Court was reopened, when the following judgment was delivered:

MORRISON, J. [after referring to the charges in the petition, and that the petitioners claimed that Mr. Striker had a majority of the legal votes] said: The poll books show that in the Township of Hillier there were 201 votes recorded for Mr. McCuaig, and 168 for Mr. Striker; that the voters' lists used by the Deputy Returning Officers in that township were taken from a list of voters for 1871, which the acting township clerk of Hillier had not certified under oath or affirmation until the 28th November, 1871, twelve days previous to the 9th December, 1871, the date of the writ of election. Under the 5th sec., and the 10th subs. of sec. 7, of 32 Vic., c. 21, no persons other than those whose names are entered and appear on the last list of voters made, certified and delivered to the Clerk of the Peace at least one month before the date of the writ of election, shall be admitted to vote; and by the 2nd subs. of the 7th sec. the clerk shall certify, by oath or affirmation, to the correctness of the list so by him made out, and deliver a duplicate original thereof certified by oath or affirmation to the Clerk of the Peace. Now, here it appeared clear that the township clerk did not certify, by oath or affirmation, the roll for 1871 until the 28th November, 1871, *i. e.*, until twelve days before the date of the writ, and it was contended that the scrutiny could only proceed on the roll for 1870, being the then last duly certified roll.

The question was deliberately considered by the Court of Queen's Bench in the case of the *Monck Election* (32 Q. B., 147, *ante* p. 154), and the learned Chief Justice of Ontario then held, and I concurred with him in opinion, that in order to qualify a voter, the statute requires that his name must appear on the last certified list delivered to the Clerk of the Peace one month before the date of the writ of election. Following that decision, I am of opinion that the roll of 1870 is the one to show the names of the duly qualified voters entitled to vote at the election now in question. And as the evidence shows, of the votes recorded for Mr. McCuaig in the Township of Hillier 35 were given by persons whose names were not on the roll of 1870, and consequently not entitled to vote at the election, and being now struck off, Mr. McCuaig is placed in a minority of 19; and that gentleman and his counsel both intimating that they could not further proceed with the scrutiny so as to place Mr. Striker in a minority, and the other charges alleged in the petition, as well as the recriminatory case on the part of the respondent, being on both sides abandoned, I have only to say that the petitioners have proved Mr. Striker to be in a majority; and I therefore find that Gideon Striker has a majority of votes, and that he was duly elected for the County of Prince Edward, and that the respondent is unseated, and that Mr. Striker ought to have been and should now be returned.

(6 *Journal Legis. Assem.*, 1873, p. 4).

SOUTH GRENVILLE.

BEFORE MR. VICE-CHANCELLOR MOWAT.

PRESCOTT, *3rd to 14th September, 1872.*

WILLIAM ELLIS, *Petitioner*, v. CHRISTOPHER FINLAY FRASER, *Respondent.*

Scrutiny—Qualification of Voters—Right of Partners, Joint Owners, Trustees, and Vendors to Vote—Mistake in Lot—Assessed Value—Evidence—Objection to Votes.

Where a son was assessed at $700 for a farm in which he and his father were partners, in the proportion of three-fourths of the profits to the father and one-fourth to the son, and the objection to the voter was non-ownership,

Held, that the partnership was established by the evidence, and in view of the objection taken, the vote was sustained.—*Haller Smales' vote.*

Where two partners in business occupied premises the freehold of which was vested in one of them, and the assessment of the premises was sufficient to give a qualification to each, both partners were held qualified to vote.—*Thomas Fitzgerald's vote.*

Where a father, the owner of a lot, told his son that he might have the lot, and advised him to get a deed drawn, and the lot had been assessed to the son for 3 or 4 years, and was rented to a tenant by the father with the assent of the son, who paid to the father his wages but the father collected the rent,

Held, that as there was nothing but a voluntary gift from the father to the son, without possession, the son's vote was bad.—*James Lundy's vote.*

Where a father had made a will devising a lot to his son who was assessed for it, and the son took the crops except what was used by the father, who resided on the lot with his wife, the son residing and working on another farm,

Held, that the son had not such a beneficial interest in the lot as would entitle him to vote.—*William Mullin's vote.*

Where A., who resided out of the riding, had made a contract in writing to sell to B. the property assessed to him as owner, but had not at the time of the election executed the deed, B. having been in possession of the property for several years under agreements with A.,

Held, that A. was a mere trustee for the purchaser, and had therefore no right to vote.—*James Holden's vote.*

Where a vendor before the revision of the Assessment Roll had conveyed and given possession of the property to a purchaser, and such purchaser had afterwards given him a license to occupy a small portion of the property, such vendor was held not entitled to vote.—*Daniel Noblin's vote.*

Where the owner of mortgaged property died intestate, leaving a widow and sons and daughters, and the property was sold under the mortgage, and the deed made to the widow, but three of the sons furnished some of the purchase money, and all remained in possession, and the eldest son was assessed as occupant,

Held, that as the eldest son did not show that the property was purchased for him, and the presumption from the evidence being that it was bought for the mother, such eldest son had no right to vote.—*John Morrow's vote.*

An objection that the persons objected to were not owners, tenants, or occupants within s. 5, excluded an objection as to the value of the assessed property.—*Ibid.*

A trustee under a will, having no present beneficial interest in the real property assessed to him, was held not entitled to vote.—*William H. Jones' vote.*

Where a voter was assessed for property which he sold on the 27th February, 1871, before the revision of the Assessment Roll, and was not assessed for other property of which he was in possession as owner or tenant, he was held not entitled to vote.—*Thomas Place's vote.*

The mistake of the number of the lot does not come under the same rule as the mistake of a name, as the latter is provided for in the statute and the voter's oath.—*Ibid.*

Where one of two joint owners was assessed for property at $200, neither of such joint owners was entitled to vote.—*Robert Stewart's vote.*

Parol evidence is inadmissible on a scrutiny to alter the value assessed against property in the Assessment Roll.—*Ibid.*

A vacancy having occurred in this constituency by the death of the member elected at the general election held in March, 1871 (see *Journal Legis. Assembly*, 1871-2, p. 247), a new election was held in March, 1872, when the respondent was declared duly elected.

A petition was presented on the 25th April, 1872, by the above named petitioner, who was a candidate at the election, alleging corrupt practices against the respondent and his agents, and claiming the seat on a scrutiny.

Mr. R. A. Harrison, Q.C. for the petitioner.

Mr. A. N. Richards, Q. C., *Mr. Maclennan, and the Respondent* in person, for the respondent.

The Respondent filed recriminatory charges of corrupt practices against the petitioner and his agents. After evidence on the charges against each of the parties had been given,

The VICE-CHANCELLOR held the evidence not sufficient.

The scrutiny of votes was then proceeded with, and the following cases were decided.

HALLER SMALES' VOTE.

Elijah Smales: I own 16 in 1st concession. My son voted on the east half of the lot, and I on the other half. My son and I live on the place together. We are in partnership. I have also a minor son living with me.

I have also two daughters living at home. Haller is not married; he is about 30. I never made to him a deed of half. My son has been a partner with me in all my business ever since he came of age. We have made sometimes $500 or $600 a year, and sometimes much more. He gets one-fourth of the profits and I get three-fourths. He works on the farm; he does farm work. I work too; both of us manage. I own other lands. Our partnership is not in writing; we don't need a writing. We keep books. We buy and sell land; we have between two and three hundred acres now, and have had much more. When my minor son comes of age I will probably give him one-fourth if he chooses to be a partner.

Cross-examined: There was a bargain when he came of age to the effect mentioned. We divide the proceeds of sales frequently. This has been so from the first.

The Assessment Roll was put in, which showed that the voter was assessed for the E. ½, $700, and the father for the W. ½, $1,200.

Mr. Harrison contended that the evidence showed that the son was only interested to the extent of one-fourth in the $700 lot, not sufficient to give him a vote.

Mr. Fraser cited Owen Baker's case, *Stormont case* (*ante*, p. 31), to show that the objection could not be taken for deficient assessment where the objection of which notice was given was non-ownership, etc.

The VICE-CHANCELLOR held the vote good. The evidence of the father, which was not impeached, showed that the father and son were partners in all the property, and the son undoubtedly ought to have the right to vote. Under these circumstances, and in view of the objection taken in Owen Baker's case, he allowed the vote.

THOMAS FITZGERALD'S VOTE.

Thomas Fitzgerald: I voted on a property on Main Street in this town. John Duffy owned the lot; when I voted he was living on it. The shoemaking business is carried

on in the house. I lived there when I voted. I am not a married man; Duffy is. My father is not alive. I am an adopted son of John Duffy, and have lived with him since my childhood. He has children of his own. Four and a half years ago he agreed to give me a share—one-third of the profits in the business. I had worked with him fifteen years before that. I was not to pay for my board. He was to give me my board and one-third of the profits of the business. That agreement has continued ever since. I never had any other agreement with him. I don't recollect the date. I had a settlement with him last year. That was the first settlement I had with him. It was in the spring. I had no settlement with him before I voted. I did not ask a settlement, because I did not want it. Any money I wanted I got from him. At the settlement I got $57 as my share of the profits for six months. That was the last six months. We had no settlement for the prior period. I did receive the $57.

Cross-examined: I had been intending to leave when the agreement was made four and a half years ago. I remained on the faith of the agreement. I was not very strict with the old man. He and I alone worked on the premises.

Re-examined: I was at the Court of Revision. They said I had a bad vote. I was asked to swear. I don't recollect whether I refused to swear whether I was a partner of Duffy's.

John Duffy: I am owner of the property Fitzgerald spoke of. I think the number is 7. I occupied the whole until about nine months ago. I rented part then to Mr. Robinson, who pays his rent to me. Fitzgerald is still working with me. Four or five years ago he had a notion of going west, and I said if he would remain with me I would give him one-third of the profits; one-third goes for wood, taxes and other expenses of the house, and I have the remaining one-third for myself. My other boys have all left me, and I could not get on without him. Both he and I work. We arrange the profits.

Cross-examined: I was at the Court of Revision. It was a mere dodge. Fitzgerald would not swear, because he was disgusted. I make the purchases. All the invoices are in my name. My business is all custom work.

Mr. Harrison contended that the voter was only entitled to one-third of the profits, and the property was only assessed for $700. The voter had no interest in the land.

The VICE-CHANCELLOR said the evidence in effect showed a partnership of one-half each, after deducting the third for expenses spoken of by Duffy; and he would hold that where two partners were in business, and one of them owned the freehold where the business was carried on, both partners could vote if the assessment was sufficient. Vote held good.

JAMES LUNDY'S VOTE.

James Lundy: I voted at the election in March last. I voted on Johnstown town plots. They contain about 36 acres. There are three park lots. This property belonged to me when I voted. My father gave it to me; he is still living. Wm. Scott lived on this property. My father gave it to me two years or more ago. He considered that I had paid for it. He did not give me a deed. My father has a deed of it. He offered me a deed, but I did not care to take it. I am not a married man. I thought he could take care of the deed better than I could. I work at different places. My father has not made a will of this property. He has asked me to get some one to write out a will of the property for him. He said if I did not it might be too late. I was not in a hurry about his making the will; I think he has a right to make a will of it to me. The tenant pays rent. I receive part. My father has told me he received part. I don't know how much I received, it was under $5. The tenant has but a small portion. It has not been rented more than a year. The rent was payable any time we wanted it. The rent is $17.50 a year. It commenced April or May last. It was not under rent

at the time I voted. At that time it was not occupied by anybody. Crops were grown on it. I cropped it this season. I helped to crop it previously. Part of the crop I fed to the cattle, and part I lived upon. My father and brothers live upon the place. I live there too when I am at home. My father is not now living on any part of the 36 acres; he moved off two years ago. He did not pay me rent. It was in the spring he moved off. The place was then rented to James Millar. He paid $35 a year. My father collected it. He gave me no part of it. He said he would give me this lot. This was when he bought the other. I allowed him to collect the rent as part payment.

Cross-examined: I consider that I have paid for the property. I worked for my father ever since I came of age. I gave him in money $100 at one time, and $50 at another time; also other two small sums. I considered he should have all this for the lot. It was called in the family my lot. My father had me assessed for it. I think I have been assessed for it for three or four years. I am not aware that my father was ever assessed for it. I am not his eldest son. My father told me that the land was mine, and that I might have it; have a deed of it any time I got married. My father made the bargain with Millar with my assent; I made the bargain with Scott. This season I have done some fencing on the place, and have worked it.

Re-examined: It is two years ago this fall that I paid the $100. I paid the $50 last summer. I did not pay these sums in pursuance of any bargain; I considered that I ought to pay these sums. These payments were made after he said I should have the place. I understood that I was to work for him or give him my earnings if I worked elsewhere. He said if I did this he would give me the place. I have done what I promised. He has given me the place in no other way than I have mentioned. I got no receipts for the money. My brothers have worked for him. I worked one year and six months out.

and gave him my wages. I gave all except what I spent for my clothes. I have been of age for five or six years. My brothers work out once in a while. They give him their wages; I cannot say what for. They have their own ideas as to that.

Mr. Maclennan submitted that an agreement was shown by the evidence of the son that he should have the property. He contended that the father could not have voted upon the evidence. The son would have a right to file a bill for specific performance.

The VICE-CHANCELLOR: At the time of the assessment there was nothing but a voluntary gift without possession. Vote held bad.

WILLIAM MULLIN'S VOTE.

Patrick Mullin: I live in Augusta. William is my son. He voted on part of 6, in 2nd concession of Augusta. William owned it then. I had willed it to him; that is his only title. I live on the place; he does not. He is a farmer. He lives with Mr. Moran; he works for him. William is my only child. He works the farm. I work a little on it; all that I am able to do.

Cross-examined: I did not vote; I am not assessed. My son alone voted on this property. William supports us, me and the old woman, whatever we do. The business is in William's name. I am 78. There are 6 acres of the property. If any help is required he hires it. Of the crops, what is not used he gets. He furnishes the seed. The neighbors do the ploughing; they make a bee of it. William often comes home. He is 30; he is not married. He has been assessed for the property for three years. I told the assessors to put it down for my son. I did so because I could not work the place, and I considered my son had the place. My son buys the groceries required, or gives me the money. My wife is three years younger than I. My son owns the crops, except what is used. I had 200 acres, but this is all that is left.

Re-examined: My son gives us money when we want it. When help is needed he either turns in or hires labor. I never sell what is to spare, and have not done so since I willed the place to him. He has sold since. My other sons are all married. They used to give me money when I wanted it, and we kept no accounts.

Mr. Harrison contended that there was no evidence of any agreement between the father and son, and the son was not in actual occupation.

Mr. Maclennan urged that this was not a suspicious case; the father was not assessed for the lot. The father said the son got whatever was over and above the support of the family. Actual residence was not required to make occupation.

The VICE-CHANCELLOR did not think the son had such a beneficial interest in the property as would give him a vote, and he therefore held the vote bad.

JAMES HOLDEN'S VOTE.

James Holden: I voted at the election in question. I live in Morrisburg—not in this county. I voted on part of S. ½ 33 in 5th con., Augusta. I was the sole owner and occupant at the time I voted. I have had the title for twenty-eight years. I bargained to sell this property in January or February last. The purchaser has not fulfilled his part, and has therefore not got his deed. The purchase money was to be paid part down, and part in instalments. The down payment was not made. It was to have been made when I gave the deed, and I am not prepared to give it yet. The bargain will be carried out next week. There is a memorandum in writing of the bargain. The lot is not improved; no house on it. To insure the bargain, he gave me $50 at the time of the contract, and is to give $600 when the deed is executed. I have not lived in this riding for upwards of 30 years. I have not the contract with me. The purchaser has the original and I have a copy.

Cross-examined: When I am prepared to give a deed I am to get the $600. I am not prepared immediately to give the deed. I made an assignment in 1857, and I had not got the conveyance back though the estate has been settled. I have a transfer from the assignee; I got it two months ago. I needed this transfer to get the legal transfer. I was owner at the time of the revision.

Re-examined: For a number of years I had sold the purchaser timber off the lot before the contract I have mentioned. Walker is the purchaser; he has the right to the possession. Walker cropped the land last year. He had a right to crop and take the standing timber, or in certain portions under the former agreements. [Produces letters from 1865 to 1868.] Walker has been in possession for several years, and cropped the land under the agreements contained in these letters. There was nothing said in the agreement of February last about possession.

Mr. Richards contended that as the equitable owner was allowed a vote in the *Stormont case* (Blair's case, *ante*, p. 37), the legal owner could not also have a vote.

Mr. Harrison contended that both could not vote as owners; the legal owner could not take the oath, as he would have to swear that "he was actually possessed to his own use and benefit as owner."

Mr. Maclennan referred to *Rogers on Elections*, 31, 9th ed.

The VICE-CHANCELLOR said that he had not much doubt but that the vote was bad; where a tenant in possession buys the premises, he is considered as being in possession under the contract of purchase, and the vendor, though he may have, as here, given no deed, is a mere trustee for the purchaser. Vote held bad.

DANIEL NOBLIN'S VOTE.

Thomas Cosgrave: I live in Augusta. I know Daniel Noblin. He is assessed for 25 acres of the front of rear half of 33 in 6th concession. I bought this from him in

April, 1871. I produce the deed [22nd April, 1871]. I have occupied the land since my purchase. I allowed him to take some limewood off and plant a small parcel of land in potatoes; he planted two bushels. I took possession when I got my deed, and had it ever since. It was after I had cleared the parcel—about 15th June—that he went on the small parcel for potatoes. I gave him liberty to take some falling wood. The wood he took was taken last winter.

Cross-examined: He was a mason, and asked me if I would allow him to plant two bushels of oats. His family was living with him. This occurred about 1st June. I hadn't the parcel cleared off until after May; the potatoes were planted. Noblin had other land, 3 acres and a house, at the time he sold to me. This land was in another concession. He lived there with his father. I would not like to give $200 for the 3 acres and barn. I can't say as to its value. When I bought the land there was lying about loose some wood he had cut. He had got this off before last May. I commenced burning 27th May.

The VICE-CHANCELLOR held that the voter had only a license to occupy a portion of the lot which he had sold to Cosgrave. Actual possession was given to, and taken by, the purchaser before the revision of the Assessment Roll, and after the voter had given Cosgrave his deed and it was after that and about the 15th June that the voter went in under the license to occupy the part in which he had planted potatoes. Vote held bad.

JOHN MORROW'S VOTE.

John Morrow: I voted in the west ward. The property I voted on is owned by my mother. She had a deed in 1871, at the time of assessment. I was assessed as occupant. I was living at home with my mother at the time. There are seven of us. We were all living at home with her at the time of assessment and do still, and have done so since

my father's death. I had no lease or conveyance from my mother, or any other writing up to the time of my voting. I am eldest of the boys.

Cross-examined: My father died in spring, 1870. There was then a mortgage on the place. My mother bought it under the mortgage. I paid for it out of my own earnings. I am the head of the house. I support the family, my mother and sisters; a younger brother and I support them. He lives with us, he does not make as much as I do. He is not quite twenty-one; I will be twenty-three in October. I pay the taxes; I keep the premises in repair. I have made no improvements since my father died. There was no understanding when the deed was made to my mother that I was to live there, and it was to be my home. It was to be a home for my brothers and sisters too; that was the agreement. Mr. Patrick held the mortgage; $600 was the purchase money. I did not see Mr. Patrick about it. It is not all paid yet. I gave $100 at the start, and have given $50 since. I agreed to pay off the amount due with the help of my brother. My father left no will. I am not sure that any deed has been made to my mother. My mother paid nothing on the mortgage. My brother paid something on it. Another brother, Charlie, paid something on it; he is dead. The property is worth six hundred dollars at least.

Re-examined: There are papers in the house. I don't know but it is a deed that was made to her. I think it was in the spring of 1870 or fall of 1869 that I had the conversation with my mother. My mother asked me what I thought about buying the place, and I said, "Go ahead," and I would see that it would be paid. I can't remember that anything else was then said. There are four brothers of us still living. I meant that if the other brothers did not help her to pay, I would. I don't remember that any of my sisters or brothers were present. There were five brothers when my father died. Three of us were earning at the time, and all of us paid our wages

or some of them to my mother from time to time. Two sisters were also working, and I suppose they gave my mother some too; I understood they were doing so. I gave my mother as high as $35 at a time. For the present year I have given her $30 every month. She uses part for the expenses of the house. My brother gave her some also. We have been getting $40 a month for the last three months. I have got sometimes $40, and sometimes more. I think I have given her $36 or $37 at one time. I never gave her as much as $40. My father had been away for five or six years before he died. He died in British Columbia. He used to send merely enough to pay the expenses of the house. I used to give my mother something out of my wages before my father's death. I did not for a couple of months give her more than I had been doing in my father's lifetime; for that time she didn't need more. My sisters also gave to my mother as before my father died. The place is a frame house with eight or nine rooms. If I got married, I don't know whether I would remain there with my wife and family. My brothers were to have the same rights as I; they were all to have their home on the place. Nothing was said then as to my sisters. $300 has been paid on the place since my mother bought it; $200 was paid down, and $100 last fall.

Mr. Harrison contended the vote was good, both as that of an owner and an occupant. The mother was trustee for the children. The boy was the head of the house, and *in loco parentis*.

Mr. Fraser objected that the assessment was too low to qualify the voter.

Mr. Harrison said that objection had not been taken.

Mr. Fraser read the heading of the respondent's list of objected votes, and showed that it used the words "that the persons objected to were not owners, tenants and occupants within section 5," which required, among other things, a sufficient rating.

The VICE-CHANCELLOR held the heading of the respondent's list excluded the question of the value of the assessed property.

After further argument,

The VICE-CHANCELLOR said that he did not think in equity that the mother would be a trustee for the voter. The witness did not say that the property was bought for him; he said he would see it paid for. The presumption was that it was bought for the mother. For the present the vote is struck off.

WILLIAM H. JONES' VOTE.

William H. Jones: I reside at Brockville, out of the Riding of South Grenville. I voted on real property in Prescott, east ward, four acres. I am owner under my mother's will [copy of will produced]. My brothers and sisters have not yet come of age. My mother was owner at her death. I have been in possession since 1864, and in receipt of the profits. I have rented it and been assessed for it. My mother died in 1862. In October, 1868, I rented the premises to one Knapp for three years. I got possession from him in the fall of 1871, his term having expired. Knapp had not the whole four acres. I used the rent of the four acres. I have been selling portions of the devised property. Ten children survived my mother, and are still living. These are not yet of age. I never lived on the property on which I have voted; all of it that I own now is vacant. No improvements have been made on the unsold lots; they were unimproved at my mother's death.

Cross-examined: I would not take $1,500 for the whole; I wouldn't take less than that. Some of us were of age in May, 1871; no more of us are of age now. I don't support any of my brothers or sisters. Very little rent has been received. If they want $5 or $10 I give it to them.

Re-examined: I am one of the parties beneficially entitled under the will. I have not been supporting the children;

they have been supported by our father. He is Registrar. There has been no necessity for subscribing for their support and maintenance. They live in a house devised by my mother, and which I have since acquired. This is in Brockville.

Mr. Maclennan contended that the vote was bad. The voter might eventually have an interest in the land, at present he was only entitled to a contingent interest; besides, there was not sufficient assessed value to qualify the voter. The land, though sworn to be worth $1,500, was assessed for $400, and it ought to be assessed for $3,000, so as to give a qualification to each of the parties interested.

Mr. Harrison said there was nothing to prevent a trustee voting when any part of the trust was in his own favor. He referred to *Rogers on Elections*, 27, 9th ed., and argued that in England a trustee could vote. The words in our statute (32 Vic., c. 21, s. 6, sub-s. 1), that a voter must be an owner, &c., "in his own right or in that of his wife," did not exclude the right of a trustee to vote.

The VICE-CHANCELLOR said at present he would hold that a trustee could not vote. What was meant was the real, the beneficial, owner should vote. The words used in the statute, referred to by Mr. Harrison, afforded a very strong presumption against the right of a trustee to vote; and referring to the terms of the oath, which required the voter to swear that he was "actually, truly, and in good faith possessed to his own use and benefit as owner," &c., he thought it was so strong as to put an end to the dispute. As to the question of the voter being an occupant, he appeared to have no present beneficial interest in the land, and no future interest, as he was excluded by the will. Vote held bad.

THOMAS PLACE'S VOTE.

Thomas Place: I voted at the Town Hall, fourth subdivision, Augusta. I formerly rented front half 27, in 6th (50

acres). I did so at the time of assessment in 1871. I own no other land. I sold 100 acres to one Carpenter. I made to him a deed of rear half of 27, in 6th concession, on the 27th February, 1871. I have had nothing to do with the land since I sold to Carpenter. He has kept it and occupied it ever since. I own 50 acres in all. I have no property except that described in the produced deed.

Cross-examined: I live on Lot 23, in 6th concession. I have owned it for a year and three-quarters. I owned no other property last year. I had 100 acres rented from Burns. I had it for three years. I gave it up May, 1872. This property is also in the 6th concession. It is about three-quarters of a mile below where I live, west of me. The lot I sold to Carpenter is west of me. The place I rented adjoins the Carpenter lot. There is a Thomas D. Place in the township. I have had nothing to do with the lot sold to Carpenter since the time I sold it to him. I can't read. I bought the 25 acres I live on from Colville. The lot I leased from Burns is the front 100 acres of the same 27 already mentioned. I paid the taxes of this.

Re-examined: I rented from John Burns. The Birkleys last summer took the crops off the land I had rented from Mr. Burns. They got possession in the spring of this year. I had a written lease from Burns.

The Assessment Roll was produced, from which it appeared that the voter was assessed for the *rear* 100 acres of Lot 27, in 6th (sold to Carpenter, 27th February, 1871), and that he was not assessed for the property he was in possession of as owner (23, in 6th con.), or as tenant (*front* 100 acres, 27, in 6th con.)

The VICE-CHANCELLOR said he would follow the decision of Chief Justice Hagarty in a similar case at Brockville, where a voter who was assessed for a wrong lot (No. 34 instead of No. 35) was held not qualified to vote. (*Brockville case*, 7 Can. L. J. 221; s.c., *Brough on Elections*, 11). The ruling of the Chief Justice was supported by the statute. The mistake in the number of a lot did not come

under the same rule as the mistake of a name, as the latter is provided for in the statute and in the voter's oath. Vote held bad.

ROBERT STEWART'S VOTE.

Robert Stewart: I voted on part of Lot 37, 4th con. Augusta. The deed produced is to myself and my brother. He and I have been joint owners since our purchase some years ago. Two or three acres were under cultivation last year. Rosnald Field was cultivating it last year. He was not assessed for it. There are 40 acres more or less. I did not see the assessor. My brother had a vote on other land, and is assessed for it.

Cross-examined: I did not give the value of the lot to the assessor. The property is worth $1,000. We paid $500 for it. My interest is worth that.

The Assessment Roll was produced, and showed that the lot was assessed at $200

The VICE-CHANCELLOR held that parol evidence of value was inadmissible to alter the value assessed against the property in the Assessment Roll. The voter and his brother were joint owners of the lot and the assessed value was not sufficient to give each a vote. Vote held bad.

At the close of the scrutiny it was admitted that the votes stood equal for each of the candidates. The parties then agreed that the election should be declared void, and that each party should pay his own costs.

The VICE-CHANCELLOR thereupon declared the election void.

(6 *Journal Legis. Assem.*, 1873, p. 3).

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