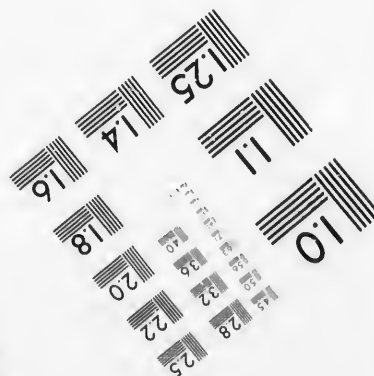
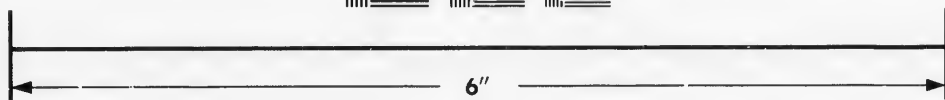
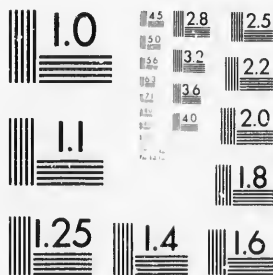


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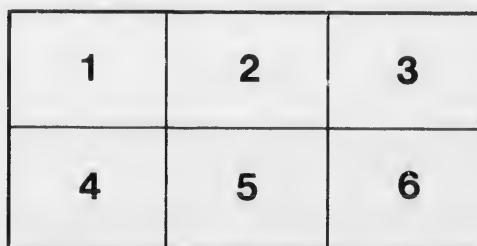
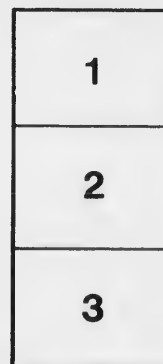
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HINTS

ON THE

Parliamentary Law of Agency

AND OF

CORRUPT PRACTICES

AT ELECTIONS FOR THE HOUSE OF COMMONS,

COMPILED FOR THE USE OF

CANDIDATES AND COMMITTEES,

BY

THOMAS HODGINS, Q. C.

Printed for Private Circulation by the Ontario Reform Association.

Toronto :

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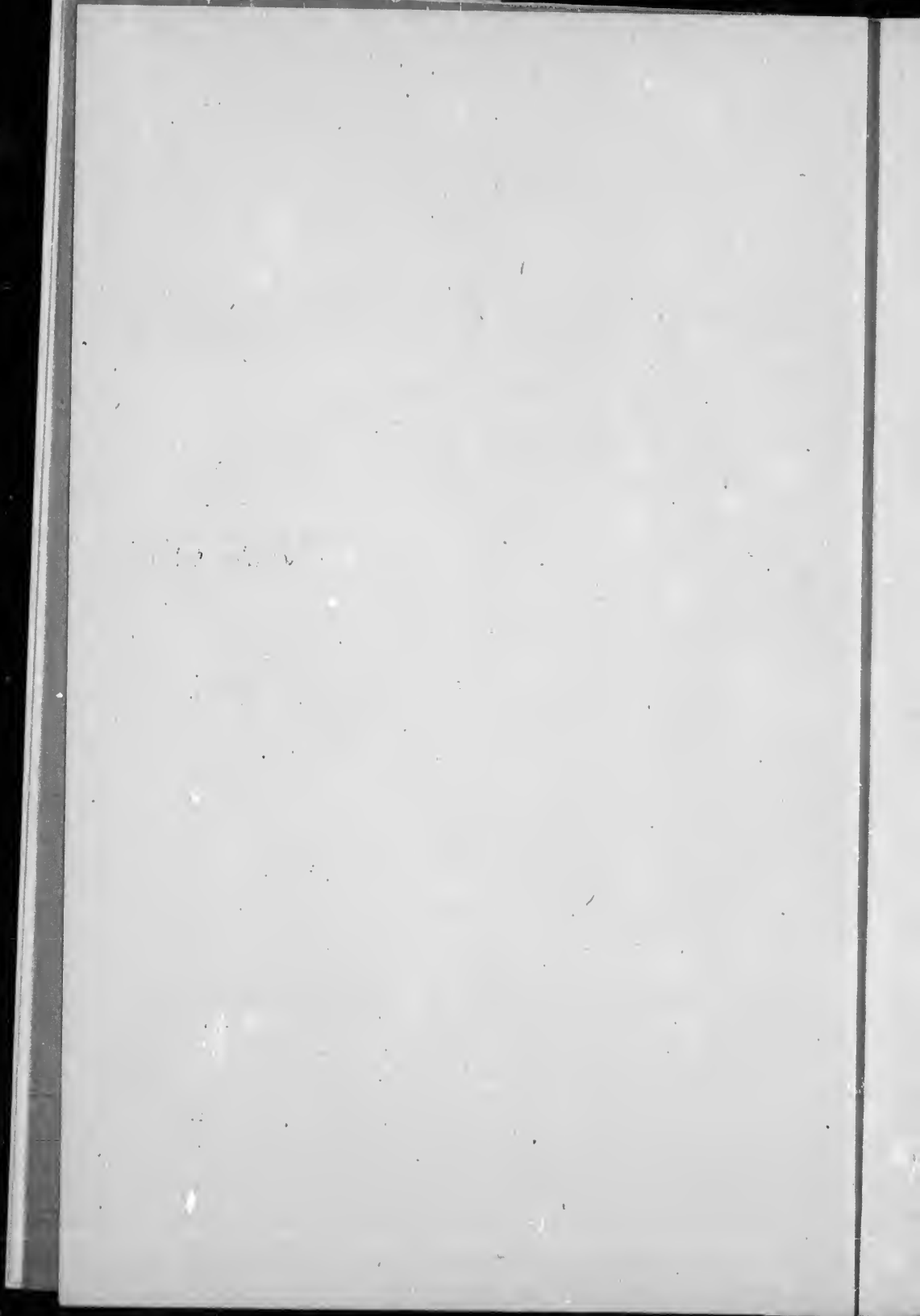
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HINTS ON THE LAW OF ELECTIONS.

LAW OF ELECTION AGENCY.

"What constitutes an agent is very ill defined."—*Per* BLACKBURN, J.

THE law of agency in election matters bears closer analogy to the law of master and servant than to the ordinary law of principal and agent in commercial transactions. Thus, at common law, a principal is not held responsible for the consequences of an illegal act done by an agent, if it is not within the scope of the agent's employment; nor for a wilful and malicious act committed by an agent in the due course of his service. But the relation of master and servant imposes upon the master a liability for an unlawful act done by the servant in the due course of his employment, and notwithstanding that express instructions may have been given to him by his master not to do the act in an unlawful or improper manner.

The law of agency which would vitiate an election is utterly different from that which would subject a candidate to a penalty, or an indictment; and the question of his right to sit in Parliament has to be settled on an entirely different principle. The relation is more on the principle of master and servant, than of principal and agent. A master is responsible for an act of negligence on the part of his servant, notwithstanding what directions he may have given him. For instance, if he is driving a carriage and carelessly does an injury.—*Per* Martin B., *Norwich Election*, 1 O'M. & H. 10.

The analogy of the responsibility of the candidate for the acts of his agent which I put, is a strong one—I mean that of the liability of the sheriff for the under-sheriff—when he is not merely responsible for the acts which he himself has done, but also for the acts of those whom the under-sheriff employs; and not only responsible for the acts done by virtue of the mandate, but also for the acts done under color of the mandate—matters which have been carried very far indeed in relation to the sheriff.—*Per* Blackburn J., *Bewdley Election*, 1, O'M. & H. 19.

I might put a variety of cases in which a principal is held liable, even civilly, for an act of his agent, which he never intended, and at which he is exceedingly displeased. The case of a bank held liable for the fraud of a manager or clerk ; the case of a person who employs a man to navigate his boat for hire, held liable for the infringement of a ferry by the boatman, without his authority and against his will ; and a case which occurred in London in the rivalry between the omnibuses—where the proprietor of an omnibus was held liable for the wilful act of his coachman in cutting in before another omnibus, and injuring the vehicle and the horses, and injuring one of the passengers, for the purpose of getting a fare—having in his mind at the time the compound motive of effecting his own spiteful desire, and at the same time of getting before the other omnibus to get a fare for his master.—*Per Willes J., Westbury Election*, 1 O.M. & H. 54. It is a principle of substantive law that for the preservation of the purity and freedom of elections, that the member returned shall be answerable not only for his own acts, but for the acts of his agents. If a race were to take place between two vessels for a prize, and the steersman aboard one of those vessels was to thwart his opponent by declining to give way to the vessel that had a right to keep her wind ; or if one of the crew hoisted an extra sail not allowed by the rules of the race, and the vessel aboard which that foul play took place was to come in first, the owner could not claim the prize, even by showing that he was away, that he had nothing to do with the misconduct of his servants, or even that he forbade them to be guilty of such misconduct ; nor could he mend his position by showing that if no such misconduct had taken place, his vessel would, nevertheless, have been sure to come in first. *Per Willes J., Tamworth Election*, 1, O.M. & H. 81. As it has been expressed from early time—no person can win and wear a prize upon whose behalf the contest has not been legitimately and fairly carried on ; and whether it be the person who contends—in respect of any unfair play of his own ; whether it be the owner of a horse—in respect of the unfair play of his jockey ; whether it be the owner of a ship—in respect of the fault of his steersman, or the hoisting of an additional sail, against the rules of the race, by one of the seamen ; or whether it be a candidate in a parliamentary contest—in respect of his agent ; in every one of those cases—whether it has been the principal who has been guilty of illegality, or whether the illegality has been committed by the agent only, even without his authority, or against his will, provided it be done in his agency and for the supposed behalf of his principal—such principal must bear the brunt, and cannot hold the benefit in respect of that in which the agent has compromised him, and, in a matter of this description, has also betrayed the public, who have a right that a just election be held. *Per Willes J., Blackburn Election*, 1 O.M. & H., 202. The law is a stringent law, a harsh law, a hard

law ; it makes a man responsible, who has directly forbidden a thing, when that thing is 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. *Per Martin B., Westminster Election*, 1 O'M. & H. 95. If a man gives another person a general authority to act in his business for him, he is responsible for all his agent's acts, but he is not responsible for the acts which his alleged agent chooses to do on his own behalf. But if that construction of agency were put upon acts done at elections, it would be almost impossible to prevent corruption. Accordingly, a wider scope has been given to the term "agency" in election matters, and a candidate is responsible generally, you may say, for the deeds of those who to his knowledge, for the purpose of promoting his election canvass, and do such other acts as may tend to promote his election. *Per Grove J., Wakefield Election*, 2 O'M. & H., 102. Where in these election petitions it is proved that a candidate is having his election carried on by a committee or certain canvassers, and those canvassers do something which will invalidate the election, it is held that he is responsible for it in the sense of making the validity of the election depend upon it. I do not see how these election petitions would be of the least use otherwise, because I suppose there are very few candidates indeed who undertake the practice of corruption by their own hand. I presume there are equally few candidates, or very nearly so, who ever say to their agents that they are to proceed corruptly in the matter of the election. *Per Lord Barcable, Greenock Election*, 1 O'M. & H., 251. Under the allegation, "other persons in his behalf," it is competent for the petitioner to go into any act of bribery by the respondent, and further, to go into any acts of bribery by a person who, by reason of the construction put on these Acts of Parliament, or I may say, the law that was laid down by Committees of the House of Commons (a construction which to some extent is binding on us) was acting on his behalf. *Per Martin B., Norwich Election*, 19 L. T. N. S., 617. On the question, "What is the definition of agency?" a question of very great difficulty, the decisions of Election Committees, so far as I have been able to look at them, do not assist me at all, because that tribunal, from the way in which it was constituted, did not give any reasons for any of those decisions. *Per Blackburn J., Staleybridge Election*, 1 O'M. & H., 69.

ACTS OF ELECTION AGENCY.

1.—Cases Before Election Committees.

In the following cases,—decided by the Election Committees of the English House of Commons prior to the Parliamentary Elections Act of 1868, which transferred the jurisdiction in Election cases to the Election Judges—the acts proved were held sufficient evidence of agency, for which the candidate was held responsible.

Canvassing with the sitting member, and attending committee meetings when the sitting member was present. *Great Yarmouth Election*, 1 P. R. & D., 5-6. Being present with the sitting member at entertainments to which the election agent invited electors. *1st Lancaster Election*, *Ibid.* 44. Canvassing with the sitting member and for him, and introducing the sitting member to the electors. *2nd Horsham Election*, *Ibid.*, 251-3. Attending the sitting member in his canvass, and generally employed by a committee to canvass electors. *Liverpool Election*, 2 P. R. & D. 51. Canvassing with the sitting member; making out the list of messengers who were paid by the sitting member's committee; ordering breakfast for voters, and believed to be in the sitting member's committee room. *Oxford Election*, W. & D. 107. Canvassing with the sitting member and attending in his committee room; name entered on the list of member's supporters, and having a deposit of money in his hands for election purposes. *Galway Election*, W. & D., 140-1. Canvassing voters personally and in company with the sitting member; engaging the sitting member's committee rooms; dining with the sitting member at the rooms, and paying the bill. *Falkirk Election*, W. & D., 169. Employing door-keepers for committee rooms; nominating his party's list of special constables, the list being in the hand-writing of a clerk of the sitting member's election agent; attending committee rooms and giving directions there; present when the parties employed were paid at the close of the election, and directing how much should be paid. *Great Yarmouth Election*, W. & D. 185. Attending at the tally-rooms of the sitting member's committee on the nomination and polling day, and engaged at writing there; canvassing electors in the presence of the sitting member's sons. *Drogheda Election*, W. & D. 210. President of a society for promoting the election of the sitting member; chairman of a meeting addressed by the sitting member; several times at the sitt-

ing member's committee rooms; taking voters to the poll; hiring men to bring up voters—the men so hired being paid by the sitting member's election agent; paying accounts for ascertaining the political state of the constituency and for advertising *Dublin Election*, W. & D. 230. Asking the sitting member to be a candidate; meeting him on his arrival; joining in the procession; addressing the electors on behalf of the sitting member and in his presence, and constantly with the sitting member during the election. *Beverley Election*, W. & B. 79.

But by some Election Committees the following acts were held not to be sufficient evidence of agency:—Being in company with the sitting member's election agent in the sitting member's committee rooms; walking arm in arm with the sitting member, and making a speech in favour of the sitting member during the election. *2nd Sligo Election*, P. R. & D., 212. Being an active member of a committee, and being placarded as a member of a committee in a published list. *North Cheshire Election*, 1 P. R. & D., 222. Canvassing electors although not seen in the sitting member's committee rooms. *Bolton Election*, 1 P. R. & D. 52. Being on a local committee, giving voting papers, and paying canvassers. *Preston Election*, W. & B. 73.

2.—Cases Before Election Judges.

The general position is that a person employed to canvass and get a vote is an agent for whom the candidate must be to that extent responsible. As a general proposition, that would go a great way towards saying who is an agent, but I don't think we can take it as an absolute hard-and-fast rule on which we can say, that, whenever a case of corruption has been brought home to a person who was within this limit, the seat should be vacated. The effect of that would be to say that whenever there were volunteers who were acting at all, and whose voluntary acting was not repudiated by the candidate or his agents,—whenever, in fact, a person came forward and said, "I will act for you, and endeavour to assist you," and the candidate or his agent said, "I am very much obliged to you, sir," any corrupt act done by that volunteer, although unconnected with the member, would render the election void. To lay down such hard-and-fast rules would at times work great injustice. Each case must be considered upon the whole facts taken together, and it must be determined in that way whether the relation between the person guilty of the corrupt act, and the member, was such as to make the latter fairly responsible for it.—*Per Blackburn, J., Staleybridge Election*, 1 O'M. & H. 70.

I do not apprehend that agency is established, by merely showing that a particular person has gone about with a candidate and canvassed. Canvassing will only afford premises from which a judge—

discharging the functions of a jury—may conclude that agency is established. If a gentleman comes down to canvass a borough, and as a kind of guarantee for his respectability, he is introduced to the voters by persons of station and position in the borough, I am of opinion that such canvassing—though it would be properly called canvassing—would not be canvassing within the meaning of the words from which I am to infer the agency existed. I draw in my own mind the widest distinction between the kind of canvassing in the presence of the candidate, and canvassing of such a character as to constitute agency.—*Per Channel B., Shrewsbury Election, 2 O'M. & H. 36.*

Authority to canvass—and I purposely used the word “authority” and not “employment” because I mean the observation to apply to persons authorized to canvass, whether paid or not, for their services,—would in my opinion constitute an agency; and that authority for the general management of an election, would involve authority to canvass. *Per Willes J., Windsor Election, 1 O'M. & H. 3.* Any act, however trifling, is evidence of agency, and an aggregate of isolated acts will by their cumulative force, constitute agency, though no one of them alone, if severed from the others, might be conclusive.

All agree that the relation is not the common law one of principal and agent, but that the candidate may be responsible for the acts of one acting in his behalf, though the acts be beyond the scope of the authority given, or indeed in violation of express injunction. I am of opinion that to establish agency, for which the candidate would be responsible, he must be proved, by himself, or his authorized agent, to have employed the persons whose conduct is impugned, to act on his behalf, or to have, to some extent, put himself in their hands, or to have made common cause with them, for the purpose of promoting his election. Mere non-interference with persons who, feeling interested in the success of the candidate, may act in support of his canvass, is not sufficient, in my judgment, to saddle the candidate with the unlawful acts of others, of which the tribunal is satisfied he, or his authorized agent, is ignorant. *Per Grove J., Taunton Election, 2 O. & H. 74.*

In the following cases the evidence was held sufficient:—

Going round with respondent and canvassing the electors. *Lichfield Election, 1 O. & H. 25.* Canvassing and bringing up voters to the poll. *Norwich Election, 19, L. T. N. S. 618.* The wife of the candidate may be held to be his agent. *Hastings Election, Judgments 235.* Being a member of a committee consisting of a limited number of persons. *Westminster Election, 1 O. & H. 92.* Canvassing alone, and with or without a canvassing book. *Staleybridge Election, 1 O. & H. 70;* *Lichfield Election, Ibid. 25.* Attending meetings and speaking on behalf of the candidate. *Galway Election, 1872;* *West Welington Election (Fahey's Case) 11 Jour. Leg. Assem., Ontario, p. 10.*

COMMITTEES.

Committees are, collectively and individually, agents. Per Lord Kenyon, C. J., *Rider v. Moore*, Cliff, 371. A member of a committee who conducts an election for a candidate is such an agent as shall bind his principal in his acts. *Honeywood v. Geary*, 6 Esp. 119.

Persons who do what committee-men formerly did, and are seen taking an active part in the election, are just as much committee men as if they were called so. Per Willis J., *Lichfield Election*, 1 O. & H. 25. The committee man whom I mean, and whom I would hold the respondent responsible for, is a committee man in the ordinary intelligible sense of the word, that is to say, a person in whom faith is put by the candidate, and for whose acts, therefore, he is responsible. Per Martin B., *Westminster Election*, 1 O. & H. 92.

Instructions for conducting the election were sent to the various ward committees. The learned judge said: These instructions, signed as they are by the respondent's conducting agents, are a clear, distinct, and manifest adoption of all the members of the ward committees as agents. Here, under the hands of the conducting agents, is a distinct and positive recognition of all the members of the ward committees, and their acts are just as much the acts of the conducting agents as if they had all been separately appointed by those agents; as if they had all gone round to each of those wards, and nominated every man of them, beginning at the president down to the honorary secretary. Per Keogh J., *Dublin Election*, 1 O. & H. 272. When a Conservative association was formed for the purpose of conducting the registration of voters, and at the time of the election, the agents of the respondent acted in concert with it in promoting the election, and the respondent and his agents knew that the association was actively canvassing in the respondent's behalf, the association were held to be agents of the respondent. *Taunton Election*, 1 O. & H. 181. A Conservative association issued a circular requesting the party to secure, in the municipal and parliamentary elections, the success of the respondents. The association was afterwards adopted by the respondents in the place of a committee for the management of the election, and were therefore held to be their agents. *Blackburn Election*, 1 O. & H. 200.

VOLUNTEER COMMITTEES.

In a case where I am convinced that the parties were real *bonâ fide* volunteer voters, acting for themselves, not selected by the candidate, or chosen by him at all, but really *bonâ fide* in a business-like manner the voters of the district choosing sober and respectable men, in whom they had confidence, to be the head of their own department, and acting together, a messenger who is sent by one of them is not so directly connected with the candidate or any of his responsible

agents, as to make him responsible. *Staleybridge Election*, 1, O. & H. 72. Where it was not proved how one P. got on a committee, or who nominated him, or what his duties were, or what he did, except that he stated he understood that his duties were to do the best for the respondent—held not an agent. *Windsor Election*, 2, O. & H. 89.

A "Workingman's Conservative Association" was proved to be an independent political organization, acting in its own behalf, but its funds were expended in canvassing persons to vote for the respondent; held, that the corrupt act of one who canvassed for the association did not affect the respondent. *Westminster Election*, 1, O. & H. 91. A Liberal Association was formed, with a view of promoting the interests of the liberal party, to which the respondent and other gentlemen of similar political opinions contributed. The manager of the association employed one to attend the registration as objector, on behalf of the liberal party; the association was held not to be agents of the respondent. *Wigan Election*, 1, O. & H. 189.

SUB-AGENCY.

There is always a great difference in the degrees of agency. As you go lower down, you require more distinctly to show that the act was done by a person whom the candidate would be responsible for. As you come higher up, it is more as if the candidate had done it himself. *Per Blackburn J., Hereford Election*, 21 L. T. N. S. 118. A person proved to be the direct agent of a candidate is not only himself an agent, but he also makes those agents of the candidate whom he employs. *Ibid. Bewdley Election*, 1 O. & H. 13. A candidate is responsible for the illegal acts of a sub-agent, appointed by a man who was his agent for all lawful purposes, and who gave general directions that the order of the sub-agent should be complied with. *Middlesex Election*, 2 Peck. 32.

A person appointed by the election agent to incur expenses and furnish an account of his expenditure in a ward, and being in communication with the chairman of the central committee up to the polling day, was held to be a sub-agent, for whose acts the candidate was responsible. *Preston Election*, 1 O. & H. 74. The wife of an agent held to be a sub-agent. *Cashel Election*, 1 O. & H. 288. A salaried clerk of a person authorized by a candidate to conduct his election, will affect the candidate by a corrupt act. *Bewdley Election*, 19, L. T. N. S. 676. If a candidate or his agent employ a person to bring up a voter to the poll, and that person does corruptly what he was instructed to do incorruptly, the candidate must take the consequences of that person's act. *Staleybridge Election*, 20 L. T. N. S. 75. Where an agent of a candidate handed a voters' list and canvassing book to a third party, such third party was held a sub-agent, and his corrupt act avoided the election. *Welland Election*, 11 C. L. J. N. S. 273.

LIMITED AGENCY.

A person employed to canvass a particular voter or votes only (as a manufacturer his own workmen), makes the candidate liable to that limited extent.—*Westbury Election*, 1 O. & H. 48. So, a landlord canvassing his own tenants.—*North Norfolk Election*, 1 O. & H. 237. Such a person would be one whose authority was limited to such votes or voters, and his illegal act in respect of others would not affect the candidate, because he would be only an agent in the particular limited capacity.—*Bodmin Election*, 1 O. & H. 120.

AGENT ACTING FRAUDULENTLY.

If it had been proved that M., at the time he was the paid agent of the candidate, was planning to betray him, I do not think he could any longer be considered as such agent, so that his acts would vacate the election. If a member employs an agent, and that agent, contrary to his wish, and contrary to his direction, commits a corrupt act, the sitting member is responsible for it; but when he employs an agent, and the agent treacherously or traitorously agrees with the other side, then if he does a corrupt act it would not vacate the seat.—*Per Blackburn J., Stafford Election*, 1 O. & H. 230. If a man who was employed as an agent deliberately communicated with the other side, and committed an act of bribery to avoid the seat, it certainly would not avoid the seat, for this reason, that fraud avoids all acts as against the fraudulent party. What the agent does must be within the general scope of his authority, and must be done for the benefit of his principal; but immediately he sells himself to the other side, he does some act in pursuance of a design of his own, and for his own benefit, and the principal is rid of him. *Per Willes J., Committee on Parliamentary and Municipal Elections*, p. 441.

CORRUPT PRACTICES.

Laws of the Dominion and Provinces.

By the *Dominion Elections Act*, 1874, sect. 98, "The offences of bribing, treating, or undue influence, or any of the offences defined by this or any other Act of the Parliament of Canada; personation, or the inducing any person to commit personation, or any wilful offence against any one of the six next preceding (92, 93, 94, 95, 96, and 97) sections of this Act, shall be corrupt practices, within the meaning of the provisions of this Act."

And by the *Dominion Controverted Elections Act*, 1874, section 4, "‘corrupt practice,’ or ‘corrupt practices,’ shal linean acts in reference to elections which are declared to be corrupt practices by the *Dominion Elections Act*, 1874. or any other Act of the Parliament of Canada, or recognized as such by the common law of Parliament."

By section 103 of the Election Act, if a candidate personally engages, as canvasser, or agent any person whom he knows to have been, within 8 years previous to such engagement, found guilty of any corrupt practice by any competent tribunal, or by the report of any judge or other tribunal for the trial of election petitions, the election of such candidate shall be void.

In ONTARIO, corrupt practices at elections for the Legislative Assembly are the same as those which apply to elections for the House of Commons—with the addition of (1) Selling or giving spirituous liquor at any hotel, tavern, shop or other place within the limits of a polling sub-division (R. S. O., section 157) during the hours appointed for polling (*Ibid.* section 2, sub-section 11.) (2) Treating at Meetings of electors, (*Ibid.* s. 15.) (3) Members of the Legislative Assembly receiving fees for drafting or promoting to bribes, or other parliamentary services, is also a corrupt practice.—(R. S. O., c. 12, ss. 40, 43).

In QUEBEC, corrupt practices at elections for the Legislative Assembly, are the same as those which apply to elections for the House of Commons, with the addition of (1.) Bets by a candidate or his agent with a qualified elector, concerning or in relation to any election, (38 Vic., c. 7, section 254, Que.); and (2). The payment of money, or other valuable consideration made to any person to engage him to work, or for having worked, as a canvasser (39 Vic., chap. 13, sec. 19 Que.)

In NOVA SCOTIA, corrupt practices at elections for the General Assembly are limited to (1) Bribery, and (2) Undue Influence.—(R. S. N.S., c. 5.)

In NEW BRUNSWICK, corrupt practices at elections for the General Assembly are limited to (1) Bribery, and (2) Treating.—(32 Vic., chap. 32. N. B.). "The common law of parliament, or, in other words, the parliamentary law of agency, is in force in this Province, (N.B.), and is to be acted upon in administering the Bribery and Corruption and Election Petitions Act of 1869."—*Duffy & Ryan*, 3 Pugsley, N. B. 110.

In MANITOBA, corrupt practices at elections for the Legislative Assembly are the same as those which apply to elections for the House of Commons, with the addition of (1) Bets by a candidate or his agent, with a qualified elector, concerning, or at the time of, any election.—(32 Vic., c. 2, Man.). (2) Constraining or inducing any one to take a false oath, where an oath is required, at the election.—*Ibid.*

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Vic., No. 6, B. C.)

BRIBERY.

The clauses of the Election Act relating to bribery are the 92nd and 93rd. The offence of bribery has been thus defined : Whenever a person is bound by law to act without any view to his own private emolument, and another, by a corrupt contract, engages such person, on condition of a payment or promise of money or other lucrative consideration, to act in a manner which he shall prescribe, both parties are by virtue of such contract guilty of bribery, *St. Ives Election*, 2 Doug. El. Cas. 195. It is the offering of money or money's worth with the view of influencing a vote. It must be corrupt—i. e., to influence votes. *Cheltenham Election*, 1 O. & H. 65. To produce that result which the Legislature intended to forbid. *Wallingham Election*, 1 O. & H. 60. Contrary to the intention of the Act, with a motive or intention by means of it to produce an effect upon the election, not going so far as bribery, but with a motive thereby to influence the election. *Hereford Election*, Judgments 109. Any offer of money or money's worth is equally forbidden : "It cannot be supposed that an offer to bribe is not as bad as the actual payment of money. It is a legal offence." *Per Willes, J., Coventry Election*, 1 O. & H. 107. A promise or offer to cause a workman or other person to be no loser by his coming to vote, comes within the meaning of the Act, and is an act of bribery and corruption. *Staley-bridge Election*, 1 O. & H. 67. So a promise to remunerate a voter for his loss of time ; *Simpson v. Yeend*, L. R. 4 Q. B. 626, s. c., 10 B. & S. 752. So the payment, shortly before the election, of 5s. each to a number of voters who had attended on the registration of voters, as a day's pay for their loss of time. *Taunton Election*, 1 O. & H. 181. An offer of reward in any shape, will constitute the offence of bribery. *Halton Election*, 11 C. L. J. N. S. 273. Giving leave to shoot rabbits, not so much from an abstract sense of justice to the electors, but from a desire to influence the election, and so a corrupt act. *Launceston Election*, 2 O. & H. 129. The payment of money to take a voter out of the custody of the sheriff, to enable him to vote, is bribery. *Londonderry Election*, 1 O. & H. 275. So the payment of voter's taxes to induce him to vote. *Cheltenham Election*, 1 O. & H. 63. Must be done corruptly. *Oldham Election*, *Ibid.* 164 ; *Wigan Election*, *Ibid.* 189. A "bribed voter, who has voted, loses his status, and his vote is an absolute nullity ; but until that is established, his vote must stand as it appears on the poll-book." *Per Martin, B., in Norwich Election*, 19 L. T. N. S. 621. An offer to secure a seat in the Town Council for a voter was held to be bribery. *Waterford Election*, 2 O. & H. 25. So money given to a disqualified voter is within the terms of the Act. *Guilford Election*, 1 O. &

H. 14; *Lichfield Election*, *Ibid.* 29. Giving money to forbear to vote, is an offence within the Bribery Act, and subjects to the penalty, although the party actually voted for the opponent, or did not vote. *Bush v. Ralling*, Sayer 289; *Sulston v. Norton*, 3 Burr. 1235; Simeon on Elections, 207. It is immaterial whether the party corrupted had a right to vote, as the corrupter thought he had, and the other claimed it. *Lilley v. Corne*, 1 Selw. N. P. 647, n. It will make no difference in the corrupter's offence whether the voter agrees to the corrupt bargain, or professedly assents, intending never to fulfil his part of the transaction; or indignantly rejects it. *Henslow v. Fawcett*, 8 A. & E. 51; *Harding v. Stokes*, 2 M. & W. 233. The voter is guilty of bribery if he asks, receives, or takes; or agrees, or contracts for any money, &c., to give, or to forbear to give, his vote. The candidate is guilty of bribery if he by any gift or reward corrupts, or procures, any person to give or refuse his vote. *Barnstable Election*, 1 Peck, 91. The offer, in order to become criminal, need not be made to the voter himself. Clerk's *Law of Elections*, 79. Wherever it is a crime to give, it is a crime to take; they are reciprocal. The attempt is a crime, and it is complete on his side who offers it. *Rex v. Vaughan*, 4 Burr. 2501; *Rex v. Plympton*, 2 Ld. Ray. 1377; *Ward v. Broughton*, 3 V. & B. 173; *Huntingtower v. Gardiner*, 1 B. & C. 297. The payment by a respondent through his election agent of an innkeeper's account, to the amount of \$362.30, "for expenses of orateurs during the election," in the absence of any proof as to the names and occupations of, or the services rendered by, the persons styled *orateurs*; and payments moreover not included in the statement of expenses required by law, were held corrupt practices on the part of the respondent. *Chambly Election*, 19 L. C. Jur. 86; afterwards affirmed, *Ibid.*, 332. The gift or loan of money by a respondent to a voter, pending the contestation of the first election, is a corrupt practice falling with sec. 92 of Election Act of 1874, *Ibid.* One C., the agent of the respondent, was found guilty of great carelessness, if not reckless indifference, by placing the unrestricted use of considerable sums of money in the hands of various parties, and apparently showing an indifference as to whether the law of the land was violated or not; but the evidence not connecting the respondent with the expenditure of money, and he having on oath disclaimed knowledge of such a reckless expenditure, although he had contributed \$1,000, was not held personally liable. *Kingston Election*, (1874), 11 C. L. J. N. S. 19. And so when a respondent did not make inquiries and did not examine into the expenditure of a large sum of \$2,000, entrusted to his agent, until the election trial. *Niagara Election*, (1874), 10 C. L. J. N. S. 317. But the Court on an appeal from the Judge, held that circumstantial evidence was sufficient to show that corrupt practices were committed by the agents of the respondent with his knowledge and consent, notwithstanding his disclaimer on oath of

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any knowledge of improper expenditures, and the decision, in his favor, of the Judge trying the petition. The assent of a candidate to a corrupt expenditure of money by his agents may be assumed from his non-interference or non-objection when he has the opportunity. *London Election* (1874), 24 C. P. 434. See further *South Grey Election*, 8 C. L. J. N. S. 17; *East Toronto Election*. *Ibid.* 113; *South Renfrew Election*, 10 C. L. J. N. S. 286; *North Simcoe Election*, *Ibid.* 232; *London Election*, *Ibid.* 281; *Cornwall Election*, 10 C. L. J. N. S. 313; *South Huron Election*, 24 C. P. 487; *Brockville Election*, 32 Q. B. 132; *Halton Election*, 11 C. L. J. N. S. 273; *Welland Election*, *Ibid.* 273; *South Oxford Election*, *Ibid.* 161; *East Northumberland Election*, *Ibid.* 328; *Lincoln Election*, (1st) 12 C. L. J. N. S. 161. The decisions respecting "bets" or "wagers," are conflicting. "If I lay a wager of five guineas with A that he does not vote for me, it is a bribe." *Anon.*, Loft 552. Where a bet was laid upon the result of a decision in the House of Lords, Lord Mansfield, C. J., said: "If the wager had been made with one of the Judges, or one of the Lords, it would have been a bribe." *Jones v. Randall*, 1 Cowp. 39. A bet on the result of an election is illegal, and will not be enforced in the Courts. *Allen v. Hearn*, 1 T. R. 56. From the moment the wager is laid, both parties are fettered. It has an influence on the mind. It is therefore laying them under pecuniary influence. *Per* Lord Mansfield, C. J., *Ibid.* A voter bet £10 to £5 with another, that B would not be elected, he made a bet of £1 with another, that D would beat B by 100 votes; £1 with another that D would beat B by 200 votes; and afterwards he made a bet of £1 he would win both his bets: *Held*, acts of bribery. *Worcester Election (Dutton's Case)*, K. & Omb. 254. A voter bet £5 with another person, not a voter, that B would beat E. After the bet, he and another voter went to E's committee rooms, and withdrew the promises they had made to vote for E. After the election he received his bet: *Held*, bribery. *New Windsor Election (Brugg and Dyson's Cases)*, K. & O. 191. A and P as agents of R, a candidate, made several bets with the supporters of N, the opposing candidate, in this form, "I bet you \$5, or \$10, that you dare not vote for R." Several voters accepted the bet, and voted for R: *Held*, that such bets were acts of bribery. *Lincoln Election*, 1876. So, similar bets, as to one P, a candidate. *Niagara Election*, 10 C. L. J. N. S. 317 *Sed contra Monmouth Election*, K. & Omb. 416; *Youghall Election*, 4 F. & F. 404.

It seems hard at first sight that a single act of bribery should avoid an election, but when an act of bribery is committed the whole election of the party bribing is tainted. *Per* Keating, J., *Norwich Election*, 2 O. & H. 41. "Any act committed previous to an election, with a view to influence a voter at the coming election, whether it is one, two, or three years before, is just as much bribery as if it was committed the day before the election, or the day of the election:

Nay more, if a man commits bribery on the first week of a Parliament; and if he asks for the suffrages of that constituency in the last week of the seven years which precede the dissolution, that act committed six years before can be given in evidence against him, and his seat would be forfeited. *Per Keogh, J., Sligo Election*, 1 O. & H. 302. An Act of Parliament has been passed under which, if sitting members or any of their agents pay in respect of the election, one shilling in bribery at any time between the present hour and the last hour of the session of this present Parliament, for 28 days after every such payment, a new petition can be presented, and if such a payment be proved, the seat of the sitting member is effectually gone. *Per Keogh, J., Galway Election*, 1 O. & H. 305.

TREATING.

By the *Dominion Elections Act*, s. 94, is defined to be corruptly giving, or providing meat, drink, refreshment or provision, to or for any person in order to be elected, or for being elected; or for the purpose of corruptly influencing such person to give or refrain from giving his vote at an election. And also the giving or causing to be given to any voter on the nomination day or day of polling on account of such voter having voted or being about to vote, any meat, drink, or refreshment, or any money, or ticket to enable such voter to procure refreshment. What the legislature means by the word 'corruptly,' is this: that whenever a candidate is, by himself or his agents, in any way accessory to providing meat, drink or entertainment, for the purpose of being elected, with an intention to produce an effect upon the election, that amounts to corrupt treating. But everything is involved in the question of intention, and it becomes important to see what is the amount of the treating. The statute does not say or mean that it shall depend upon the amount of drink. The smallest quantity, given with the intention, will avoid the election. *Per Blackburn J., Wallingford Election*, 1 O. & H. 59. Whenever the intention is by means of treating to gain popularity, and thereby to affect the election, or even if the case is as perhaps it very often is, that persons are afraid that if they do not provide entertainment and drink to secure the strong interest of the publicans, and the persons who take drink whenever they get it for nothing—who are always a numerous body—they will become unpopular, provided it is done in order to affect the election, when there is an intention in the mind of the candidate or his agent to produce that effect, it is corrupt treating, and the seat ought to be vacated. *Mallow Election*, 2 O. & H. 22. Where no evidence was given at the election trial to show that equally convenient places, and such as were more proper than taverns to be used for the purpose of election meetings, could have been obtained, and where the opponents also held their meetings at taverns, the keeping of open houses, and treating at such taverns, was not held illegal. *Kingston Election*, 1874, 11 C. L. J. N. S. 19. Treating, for the pur-

pose of influencing an election, was always an offence at common law, as a *species* of bribery; the only difference being that the corrupting premium consisted of food, drink, or both. *Rogers' Election Law*, 366; *Hughes v. Marshall*, 2 C. & J. 118. But it may be doubted whether treating, in the sense of ingratiating, by mere hospitality, even to the extent of profusion, was struck at by the common law. *Lichfield Election*, 1 O. & H. 25. By a standing order of the House of Commons (21st Oct., 1678), and which may be taken to enunciate the common law of Parliament, it was ordained "that if any person shall, at any time before the day of his election, give any person having vote at such election any meat or drink, exceeding £10 in the whole, in any other place than his habitation for six months past, he shall be guilty of bribery, and, if proved, ineligible by it for such election." The Treating Act (7 Wm. III. c. 4), passed in 1696, is more comprehensive. "The greatest difference between the resolution and the statute consists in the evidence required of the facts; the former declares the facts alone, when *duly proved*, to be bribery and criminal; but the statute infers the guilt from the object and intention; the several acts must be done *in order to be elected*, before the penalty attaches, according to the words of the first section" *Ipswich Election*, note D, 1 Luters 69. A general system of treating, houses thrown open so that people could get drink without paying for it, all for the purpose of influencing votes, is contrary to the principle of the common law. *Bradford Election*, 1 O. & H. 41. The treating must be done with a corrupt intent. *Brecon Election*, (2) 1 O. & H. 121. So promise of refreshments *in futuro*. *Bodmin Election*, 1 O. & H. 124. If a publican supply drink to voters without orders, and the candidate subsequently pays him, such ratification would probably be equivalent to the original treating. *Per Willes, J., Committee on Parliamentary and Municipal Elections*, 445. The giving of a single pot of liquor to a single voter, intending thereby to gain the vote of that voter, is a corrupt practice. *Tamworth Election*, Leigh & LeM. 22. Where a dinner was given to 40 voters on the polling day at a distant polling place in the winter, where there was no inn, and it was not shown to have been corruptly given or accepted, held not a corrupt practice. *North Victoria Election*, 11 C. L. J. N. S. 163, 37 Q. B. 234.

UNDUE INFLUENCE.

Undue Influence is defined by s. 95 of the Election Act, and may be of two kinds. (1) Force or intimidation by mobs or riotous assemblies whereby the freedom of election is violated, and persons are prevented from freely exercising their franchise, and the real political feeling of the constituency is not ascertained. An election carried by violence or force, or intimidation, would, by the common law of Parliament, be avoided. *Cheltenham Election*, 1 O. & H. 64; *Longford*,

2 O. & H. 12; *Stafford Election*, Judgments, 295; *Staleybridge Election*, 1 O. & H. 72; *Galway Election*, 2 O. & H. 196; *Ferguson v. Adams*, 5 U. C. R. 194; *Wilde v. Bowen*, 37 Q. B. 504; (2.) Influencing voters by appeals to their fears. This is defined to embrace almost every case of improper influence, whether by physical intimidation, clerical undue influence, or otherwise. *Longford Election*, 2 O. & H. 16; *Galway Election*, 2 O. & H. 37, 196. Thus, if done with the intent to interfere with the free exercise of the franchise, whether by the removal of custom, or business, or employment. *Blackburn Election*, 20 L. T. N. S. 823. The freedom of election is two-fold: a voter must have an unbiassed judgment and be able to exercise it. *Salford Election*, 20 L. T. N. S. 125. The law will not tolerate that a man should tyrannize over the opinions of others. *Northallerton Election*, 21 L. T. N. S. 116. Expelling or wrongfully discharging voters shortly before or after a parliamentary election in consequence of their politics. *Ibid.* So if a landlord was to say to his tenant: "If you do not vote for so and so, I will turn you out of your house." *Regina v. Burnwell*, 5 W. R. 558. Where fellow servants or others ill-treat one another, and expel one another from their society, or the common place of employment. *Blackburn Election*, 1 O. & H. 204. Abducting, or what is vulgarly called "bottling," a voter, and exercising any trick or fraud. Leigh and Le Marchant's *Law of Elections*, 32. So a voting card, or any fraudulent device to induce voters to believe that they could not vote for A., and that their vote would only be valid if they put a cross opposite the name of B. *Ibid.* 124. The issue of a circular containing a false statement as to how a candidate was inducing his friends to vote, is not within the act. *East Northumberland Election*, 11 C. L. J. N. S. 328. See also *Muskoka Election*, 12 C. L. J. N. S. 193. Sermons and threats by parish priests, restraining the liberty of voters by declaring that the electors who voted for a certain candidate would commit a sin, or incur ecclesiastical censures, or be deprived of the sacraments, are corrupt practices. *Charlevoix Election*, 1 Sup. Ct. Can. 145; *Galway Election*, 2 O. & H. 196. Expelling from a political, or religious, or benevolent organization, on account of the political opinions, or voting of a member of such organization, would also come within the offence of undue influence.

PERSONATION.

Personation is defined by s. 74 of the Election Act, to be, when a person, at an election for the House of Commons, applies for a ballot paper in the name of some other person, whether such name be that of a person living or dead, or of a fictitious person, or who, having voted once at any such election, applies at the same election for a ballot paper. With the Ballot Act and secret voting it becomes a very dangerous thing if any one goes to vote and contrives to get a

vote registered in the name of another person when he has no right to vote. If it is once brought home, and it is shown that a particular man did not vote, but another person personated him, the vote given by that other person becomes invalid, and there is a provision in the Act for inspecting the vote and striking the vote off on a scrutiny. *Per Blackburn J., Gloucester Election*, 2 O. & H. 64. Under the English Act (6 Vic. c. 18, s. 86), the returning officer, on the declaration of any agent that a person has committed personation and, immediately after such person has voted, must order, by word of mouth, the arrest of such person.

HIRING VEHICLES AND PAYMENT OF TRAVELLING EXPENSES.

The intention of the legislature was, that voters should either walk to the poll or go in their own carriages. *Per Martin, B., Salford Election*, 1 O. & H. 135. See also *East Toronto Election*, 10 C. L. J. N. S. 248; *Cornwall Election*, *Ibid.* 313. The offer of paying travelling expenses conditional on the voter coming and voting, is an act of bribery. *Cooper v. Slade*, 6 H. Lds. Cas. 746; *Lichfield Election*, 1 O. & H. 28; *Stroud Election*, 1 O. & H. 179. And is so at common law, *Dublin Election*, 1 O. & H. 273. But not when a railway ticket is sent to the voter without conditions. *Bolton Election*, 2 O. & H. 144. The payment of a voter's expenses in going to the poll is illegal, though not intended as a bribe. *Lincoln Election*, (1st) 12 C. L. J. N. S. 161. See also *North Victoria Election*, 10 C. L. J. N. S. 217. By s. 96 of the *Dominion Elections Act*, 1874, "any voter hiring any horse, cab, cart, waggon, sleigh, carriage, or other conveyance, for any candidate, or for any agent of a candidate, for the purpose of conveying any voter or voters to or from the polling place or places, shall, *ipso facto*, be disqualified from voting at such election, and for every such offence shall forfeit the sum of \$100 to any person suing for the same."

ILLEGAL ACTS, NOT CORRUPT PRACTICES.

1. Providing or furnishing drink or other refreshment at the expense of the candidate to any elector during the election, by the candidate or any other person (sec. 87). Penalty \$100 or imprisonment or both.

2. Selling or giving spirituous liquors at any hotel, tavern, shop, or other place within the limits of any polling district, during the whole of the polling day (sec. 91). Penalty, \$100.

3. Using ensigns, flags, &c., as party flags on the day of election, or within 8 days before such day, or during the continuance of such election, or the polling (sec. 88.) Penalty, \$100 or imprisonment, or both.

4. Furnishing or wearing ribbons, favors or labels, &c., during the same period (sec. 89). Penalty, \$100 or imprisonment, or both.

5. Entering the polling district during the polling day, armed with firearms, swords, staves, bludgeons, or the like (sec. 86). Penalty, \$100 or imprisonment, or both.

The mere doing of an act which the statute means to be subject to a penalty, but does not declare to affect the election, could not by any possibility affect the seat. *Bolton Election*, 2 O. & H. 144.

PAID AGENTS AND CANVASSERS.

It is not a corrupt practice to employ voters for the purposes of the election, and to pay them the ordinary fair and reasonable remuneration for their services, but such voters thereby lose their franchise, and are disqualified from voting. But where the remuneration is found to be unreasonable or excessive for the nature of the work done or the value of the services, or where the employment is colorable, then a corrupt intent may be inferred. The following decisions show how far voters have been disqualified from voting:—A solicitor who was a paid agent *New Windsor (Barton's Case)* K. & Omb., 180. A town clerk who read the proclamation, and sat in the polling booth with the mayor during the election, and received payment therefor. *Ibid.* (*Secker's Case*) 185. An elector employed as a special messenger during the election, although it appeared that such was his ordinary calling. *Evesham Election (George's Case)*, Fal. & Fitz. 527. A check clerk employed and paid by one candidate, vote struck off the poll, including that of the other candidate by whom he had not been employed. *Bedford Election (Wilcox's Case)*, P. & K. 136, s. c., C. & R. 94. See further, *Worcester Election*, K. & Omb., 246. The votes of the following were allowed:—An elector who was employed to erect the hustings, and whose bill was afterwards paid. *Ipswich Election (Page's Case)*, K. & Omb. 387. An elector who led the band and was paid. *Monmouth Election (Partridge's Case)*, *Ibid.* 421. An elector who was a regular constable of the borough, and for whose services a sum of money was included in the town clerk's account to be paid to him. *New Windsor Election (Lovegrove's Case)*, K. & Omb. 183. So the town sergeants of the corporation, who were paid out of the rates for their services at the election. *Ipswich Election (Cook's Case)*, K. & Omb. 384; but two of them who acted as door-keepers of a candidate's committee-room were disallowed. *Ibid.* Printers who also acted as messengers, held not disqualified. The employment of sons of voters as messengers, when their wages were paid to their fathers, invalidates the votes of their fathers. *Southampton Election*, 1 O. & H. 223. So payments to a voter to remunerate him for expenses incurred in employing assistants

while he was engaged in election matters. *Ibid.* 224. But employing a voter who was a cabman, which was his ordinary occupation, does not disqualify (*Ibid.*), unless such employment was by a candidate or any agent of a candidate. See Election Act, 1874, s. 96. Employment of voters to keep the peace, or to keep the doors of the polling stations, invalidates their votes. *Gloucester Election*, 2 O. & H. 62.

SUBSCRIPTIONS TO CHARITIES, ETC.

A candidate sent £10 to a dissenting congregation at the time he issued his address. In reply to an observation of counsel, the Judge said, "I do not say I think nothing of it. I have myself often observed that people who mean to become candidates, often subscribe to things they would otherwise not have subscribed to, but I think that is a step off corrupt practices: it is charity stimulated by gratitude or hope of favours to come." *Per Willes, J., Westbury Election*, 1 O. & H. 49. A candidate, some long time before the election, gave £100, which was spent in coals, beef, and tea amongst his tenants, some of whom were voters and some not. As to a mixed motive in giving this money at the time of an election, the Judge remarked,—“But there is no harm in it if a man has a legitimate motive for doing a thing, although in addition to that he has a motive which, if it stood alone, would be an illegitimate one. He is not to refrain from that which he might legitimately have done on account of the existence of this motive, which by itself would have been an illegitimate motive.” *Per Bramwell, B., Windsor Election*, 2 O. & H. 90. Where I find that charities (at Christmas), are distributed in a borough by those who are intending to contest it as candidates, and distributed without check, I am not charitable enough to draw any other conclusion than that they do it with the intention of giving the voters money in the hope and expectation that it will influence the future election. And there is the further very great danger attending it, that the knowledge that they have been doing it will cause men at the future elections to give them votes in the expectation and hope that they will hereafter receive payment. When that is brought home to anyone, I think it would undoubtedly mean corruption. *Per Blackburn, J., Stafford Election*, 1 O. & H. 230. When a candidate made a large distribution of coals among the poor of a borough at Christmas, and among many of the persons selected were voters who were not objects of charity, some of them being small shopkeepers and others £10 householders, and the election was held in January: *Held*, that the donation was obviously not charitable, and was a corrupt practice. *Malcolm v. Parry (Boston Election)*, L. R. 9 C. P.; 610; 2 O. & H. 161. It was proved that on and immediately after the polling-day, large sums of money were distributed in shillings and half-crowns to poor people in the streets of

the borough ; none of the money, however, was given to voters. Such a proceeding was held not to be a corrupt practice within the Act. *Youghal Election*, 1 O. & H. 294. Where a candidate gave a subscription to an Orange Lodge, although he was not an Orangeman properly so-called, nor were his opinions identical with those of the Lodge, the Judge remarked, "The profession by a candidate of holding certain opinions is a legitimate mode of influencing votes ; and if the respondent thought that it would be for his benefit with reference to his election, to inform Orangemen and others that he did entertain opinions in favour of institutions of this kind, I can see nothing illegitimate in that. The case appears to me identically the same as if he had written a pamphlet in support of such institutions as Orange halls, and had paid the printer for publishing it. *Per O'Brien, J., Belfast Election*, 1 O. & H. 282. Where it was proved that a candidate gave very liberal subscriptions to churches, the Court said, "We strongly impress it upon candidates and their agents at future elections, to exhibit a larger measure of caution, and to select less suspicious seasons for exercising their liberality towards charitable and religious objects. *Per Hagarty, C. J., South Huron Election*, 24 C. P. 497.

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