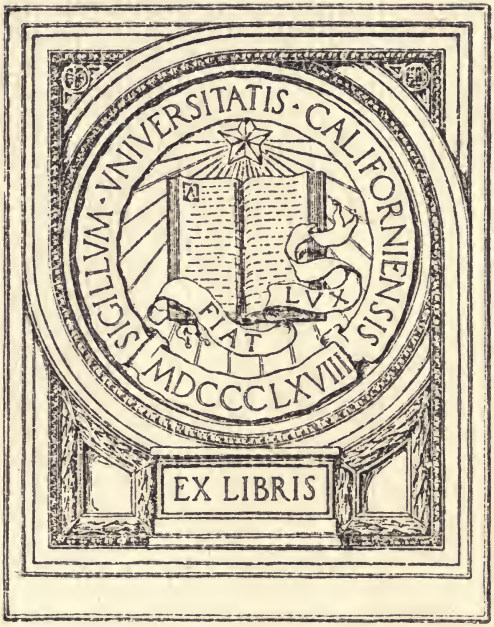
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CORRUPT AND ILLEGAL PRACTICES
AT PARLIAMENTARY ELECTIONS

CORRUPT AND ILLEGAL PRACTICES AT PARLIAMENTARY ELECTIONS

AS DEFINED IN THE

JUDGMENTS IN ELECTION PETITIONS

FROM 1886 TO 1906

BY

J. RENWICK SEAGER

AUTHOR OF "NOTES ON REGISTRATION"; "COUNTY COUNCIL ELECTIONS"; "THE CORRUPT AND ILLEGAL PRACTICES ACT, 1883"; "THE MUNICIPAL ELECTIONS ACT, 1884"; ETC., ETC., ETC.

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PREFACE

WHILE on the whole the Corrupt and Illegal Practices Prevention Act, 1883, has done much to lessen the grosser forms of corrupt practices at Parliamentary Elections, and to limit election expenses, experience shows that the present law is much in need of alteration if the purity of elections is to be obtained.

The puzzles of the Act have been from time to time presented to the Election Judges, but unfortunately have not obtained much elucidation; and although Justice Vaughan Williams stated that he "did not believe that in these Acts, fairly construed and applied, there was any trap or pitfall into which a candidate, determined to conduct his election honestly, need fall," the fact remains that many questions such as "When does an election begin?" and, therefore, "When do election expenses begin to be a charge against a candidate?" questions of agency and other matters, are still without settlement; while the position of outside associations taking part in election contests is most unsatisfactory. Conclusions have also been arrived at by the Courts which

are not in the interest of that freedom of election and limitation of expense at which the Act was aimed.

The following pages are an attempt to place before candidates, and agents, and members of the public interested in elections, a simple statement of the law, as laid down by the Election Courts upon questions submitted to them in election petitions under the Act of 1883.

The quotations from the judgments are taken from the Parliamentary Returns of the judgments delivered by the Election Judges.

J. RENWICK SEAGER.

41, PARLIAMENT STREET, S.W.
June, 1909.

CORRUPT & ILLEGAL PRACTICES

CHAPTER I

BRIBERY

BRIBERY in its grosser form, of paying an elector to vote for a person for whom he would not otherwise have voted, or to abstain from voting for some person for whom he would have otherwise voted, has always been a corrupt practice, and although these charges occur in most petitions, it is unnecessary here to refer to them. In its more insidious methods of allowing unreasonable time off to vote, in paying railway fares to voters, in giving refreshments to workers, the Election Judges have given important decisions.

Time off to vote.

In the Aylesbury case (1886) it was charged that certain electors employed on the respondent's estate by a contractor who was planting trees on the estate were given time off on polling day to vote, and those who did not return had their time deducted on pay day ; while, in another case, workmen on the estate had time

off to go to vote and did not return, but were paid their full wages. This was charged as bribery.

Mr. Justice Field, in the course of his judgment dealing with this question, said:—

"We have to consider what the mode of bribery alleged here is. One mode of bribery exists where people have a large quantity of labour—workmen in factories, or labourers upon land under their control, and for which they are paying wages—and what has been done was to give them a holiday on the day of the polling, apparently for the purpose of enabling them to exercise their franchise, but with the real intention of inducing them to vote for their employer, or the candidate whom he supported. To make the law upon this point clear, a recent Statute, finding there was some doubt about the law, has expressly defined circumstances under which, in the absence of corruption, a candidate may lawfully act. The stipulation in the Statute, roughly speaking, is: that it shall not be illegal for an employer to allow his men a reasonable time to enable them to go and record their votes, and yet still to pay them their wages for that time. Then the Statute put in a proviso that it must be done to all alike, it must be equal to everybody, and it must not be done with the corrupt intention of influencing their votes.

Two of the charges of bribery which we have to deal with range themselves, therefore, under that head, and the allegation is that at Halton and at Eythrop the Baron did, not himself personally—that is not suggested in any shape or way—but by persons on his behalf, bribe voters by giving them an unreasonable time for their holiday upon this day, and yet paying them their full day's wages. The places at which this offence is

said to have been committed are, as I have said, at Halton and at Eythrop; and it is necessary to consider for a moment what is the position of those places. Halton is the residence of a cousin of the respondent; he has an estate there of a considerable number of acres; and his sister, Miss Alice Rothschild, lives with him, and she has an estate of 1,500, or 1,600 acres. What appears to have happened is that at Halton, taking that first, Mr. Alfred Rothschild had begun in the September previous to, and was at the time of the election continuing, a very considerable operation in the way of planting upon his estate. I forget exactly how many men there were said to be engaged under Mr. Dalton, who was Mr. Veitch's foreman, but it was a very considerable number, something like 158; besides which Mr. Alfred de Rothschild had himself a large number of labourers, also about 105, employed, who were under the management of a Mr. Bould, who was also an election sub-agent for the respondent for the district in which the Halton property is situated.

The petitioner called several persons to show that on that day workmen were allowed to go away at eleven or half-past eleven, and at twelve or one, to vote, and did not return, and that on the following pay day they did not lose any time.

The distances that many of the men had to go were undoubtedly not such as to render it reasonable that they should not return on the same day if their employer had so wished it; some had to go only a mile and a-half or two miles, and, therefore, unquestionably a *prima facie* case was made that workmen of Mr. Dalton had been permitted to absent themselves for an unreasonable time to vote, and yet had been paid their wages.

The facts as to Dalton were that there was a contract which had been entered into upon the

20th October between Mr. Veitch, the well-known nurseryman and horticulturist, and Mr. Alfred de Rothschild for planting a part of the Halton Estate. The number of men employed by Mr. Dalton under his contract was very considerable, and it is not contradicted, and is no doubt true, that Dalton had received orders from Mr. Veitch not to employ more single men than he could help, a very important point to observe. Now, Dalton says that what happened was, that on that Saturday he and Swanston were standing at the gate talking about the election, and he said to Swanston, 'What are you going to do with your men?' and Swanston said, 'I shall allow them a reasonable time to go and vote;' and Dalton then said, 'What do you call a reasonable time?' Whereupon a book was produced, which Mr. Swanston, being a sub-agent, the solicitors in the country had furnished him with, for the purpose of showing him what things were to be avoided in carrying on the election, and in which the provisions of the Statute were set out; but an arrangement was come to between them. Swanston, however, adopted the safe course of only allowing his men a reasonable time to go and vote, and deducted the time of those who stayed away without consent; whilst Dalton gave all his men leave for the day, and paid them their full wages.

I have carefully considered all the circumstances of this case, and the first question I have to ask myself is, whether or not I am able to come to the conclusion that this was corrupt conduct upon the part of Swanston or Dalton? Now, it is said that it was corrupt upon the part of Swanston, not because he himself was a party to this thing, but because he sanctioned the arrangement made with Dalton on the Saturday about the question of giving the men a holiday. When I say sanctioned,

he is said to have sanctioned it, but he had no power over Mr. Dalton, or over Mr. Dalton's men; his sanction was not required in any shape or way, nor does he appear to have done so.

With regard to Dalton, I am unable also to say that his conduct, under those circumstances, was corrupt ; but I express no opinion upon that point at all, because it is unnecessary for the purposes of the decision in this case, inasmuch as I have come to the conclusion that Dalton was in no way a person acting on behalf of the sitting Member, and for whose acts the sitting Member was responsible."

Payment of railway fare.

The payment of an elector's railway fare to come to the poll has been held to be bribery, both under the Corrupt Practices Act, 1854, and also by the Act of 1883. Under the latter Act in the Ipswich petition, 1886, it was proved that a person, held by the Court to be an agent, wrote to a freeman residing at Colchester (who had said the expense prevented him going to Ipswich) informing him that if he would come "The lucre would find its way to South Street, Colchester," where the elector lived. Mr. Justice Denman said:—

"The most favourable construction that you can put upon that letter is 'money to pay your travelling expenses will be paid to you if you come and vote for West and Collings.' I cannot see that there is any less construction to be put upon it than that, for if you put any other construction upon it it must be this: If you come some lucre, an indefinite quantity of lucre, will be paid to you, to do more than pay your expenses, namely, to pay the very loss of time which he speaks of himself in his own account, and the expenses. That

would make it a worse case, because it would more clearly come within the definition of bribery in the Act of 1854."

The Court held that this was bribery, and the two successful candidates were unseated.

Strike fund.

The contribution by a candidate to a miners' strike fund was held in the Lichfield case, (1895), not to be bribery, likewise in the St. George's East case (1896), the subscription to a coster union, formed to uphold the rights of stallholders, and to which the respondent at the meeting to start the union subscribed five guineas, was held not to be bribery.

Subscription to costers' union.

Mr. Baron Pollock said:—

"If ever there was an occasion where a member for a borough or a candidate would be justified in assisting a body of persons living in the borough to maintain their just rights, it seems to us that this was the case."

Tickets for food.

The gift of tickets entitling the bearer to food, coals or groceries may be bribery. In the St. George's East case (1896), a philanthropic society was started, its operations being confined to the poor of St. George's and Wapping; that is, within the limits of the Parliamentary Division. The society was non-sectarian and non-political. A considerable sum was subscribed. The tickets were distributed by many persons, among others, ministers of religion and members of the committee. One of the persons was a gentleman

taking an active part on behalf of the respondent. It was given in evidence that in speeches the respondent had referred to the part he had taken in the distribution of the food and coals. The Court held that the motive must be corrupt to render the respondent liable, and exonerated him, but deprecated candidates taking part in the distribution.

Baron Pollock, in the course of his judgment on this point, said:—

"Now, there are two ways in which a candidate, or his agent, may be guilty of bribery in the distribution of charitable tickets: First, by the giving of them to individuals, coupled with a request for their vote, in which case the offence falls within the same principle as any other direct bribery which is procured by the giving of money, or anything else which is valuable to the recipient. Another, and certainly not a less mischievous mode of bribing by the distribution of charitable tickets, is by giving them dishonestly and colourably on a large scale, and without due consideration of the need of the persons to whom they are given, so that the proper inference to be drawn from the conduct of the giver is that his motive was not that of true charity, but of corrupting the minds of the recipients, and inducing them to support him in his election; and this might well be so, althought there was no selection of voters only, and even if a large proportion of those to whom the tickets were given were non-voters, women and children. Indeed, such a course of conduct would amount to bribery at common law, apart from the recent Statutes, and is probably more mischievous and insidious than the buying

of a vote by money. It has been said of mercy that it is twice blessed, ' blesseth him that gives and him that takes,' but it might well be said of such charity as this that it is twice cursed, as corrupting alike the giver and the receiver."

CHAPTER II

TREATING

TREATING to be illegal must contain the element of corruption : not all treating is therefore illegal.

Mr. Justice Field, in the Aylesbury case (1886), laid this down :—

Corrupt treating.

"The Statute uses the word corrupt. It is well settled, and there is no dispute as to the law. Treating is not in itself *per se* a corrupt act, but at the same time the gifts of honest and sincere friendship may be perverted for corrupt purposes, and in old, in modern times also, people of wealth and influence have sought to corrupt the poorer people by giving them entertainments and drink."

Entertainments.

Entertainments organised by associations formed the subject of inquiry in the Hexham and Rochester cases. Evidence was given in the Hexham case (1892) that a supper had taken place on November 21st, 1891, at Mickley, that the price of the ticket was eighteenpence, and that that payment included unlimited drink. Part of the food consumed was supplied free by local tradesmen; no political speeches were made, nor was the candidate

present, but the gentleman who subsequently acted as election agent of the respondent attended, and made a speech about football. The deficiency on the supper was made up by the same gentleman, who was formally appointed election agent to the respondent on June 13th, 1892, but who, at the time of the Mickley supper, was secretary to the Primrose League and the Conservative Association. The Court held that the candidate had recognised the secretary of the Association as an agent by supplying the Association with funds through him.

Social gatherings.

The executive committee of the Hexham Conservative Association issued a circular to the local associations, in which they were strongly recommended to keep up the interest in their respective localities by organising social and other gatherings during suitable seasons of the year. In commenting upon this Mr. Justice Cave said:—

"Now I venture to think that that is somewhat dangerous advice. No doubt so long as local associations confine themselves to their own members, and do not tout for subscriptions for such a purpose; if they unite in order that by means of uniting they may be able to afford a social gathering, which, but for such union they would not be able to afford, I should see nothing wrong in that. But, undoubtedly, it is somewhat dangerous, because it is so easy to pass from that to something which is objectionable; and when a local organisation has got up a social fete, and there happens to be a loss upon it, there is then the

temptation to other people to subscribe and make good that loss, which, if the treat is one involving the giving of meat and drink at a less price than it can be furnished at by those who are engaged in furnishing it, comes very perilously near to treating, and cannot be too strongly deprecated."

In the course of the case it was shown in evidence that the treasurer of the Association had died, and that no successor had been appointed, but so far as the expenditure of money was concerned, the honorary secretary took it upon himself to supply the place of the treasurer, trusting to be repaid at some future time by either the Association or the Conservative candidate.

Payment of deficiency.

Amongst these payments was a sum of £3 16s. 7d., to supply a deficiency attending the expenses of the annual meeting of the Association. As to this particular payment Mr. Justice Cave said:—

"Undoubtedly, if that had been a single instance, although even a single instance is to be deprecated, yet if it had been a single instance, I should have been very far from holding that Mr. B. had been guilty of corrupt practices. Unfortunately that is not so. A large number of payments follow, with regard to which one cannot but come to the conclusion that they were designed to promote the Conservative cause, and as a necessary consequence the success of the Conservative candidate. The Conservative agent (who was also hon. secretary of the Conservative Association) handed to the treasurer of the local association the sum of £50 to pay outstanding accounts.

I think that is enough to show that the local association was in an impecunious condition.

No accounts from that association have been laid before us, nor has the treasurer been called; and I should strongly suspect that that sum of £50 was to be applied in meeting outstanding accounts, which could not bear inspection so well as the accounts of the divisional association."

Picnics.

Another sum of £20 was paid by the same gentleman towards the expenses of a picnic, which, however, was more successful than expected, and £15 of the £20 was returned, leaving the total sum advanced £5, to which is to be added a sum of £1 14s., which appears to have been expended in providing certain necessities for the picnic. Other sums were paid from the same source.

Another picnic was given at the residence of the Conservative candidate, and £35 was paid to cover the deficiency caused by issuing railway tickets at less than the price charged by the railway company, and supplying refreshments at less than the price charged by the caterer; treats were given at other centres, to which poor people were admitted free, all these taking place between January and November, 1891.

The evidence also showed that the Conservative candidate handed over a cheque for £326 to cover the payments thus made.

Mr. Justice Cave, in commenting on this form of treating, said:—

"It must be borne in mind that treating is the particular form of corruption which can be practised with advantage at the present time. Now that the constituencies are so large it becomes impossible successfully to bribe. You do not know how much of that kind of thing is necessary, and bribery does not produce any result, except on the part of those who actually are bribed. No one cares to go and vote for a man because he is supposed to be willing to pay for votes, unless he has got an agreement beforehand, if he is a man of that character and description. But with reference to treating it is far otherwise; a very small amount is sufficient to procure a great deal of popularity, because there is in every constituency now, looking at the very wide extension of the franchise, a considerable number of men who do not make politics their serious business at all, or even attach much importance to one side or the other.

They are perfectly ready to vote for the man who is popular, and if by reason of treats and picnics, and things of that kind, you can produce a general feeling that the particular candidate is a good fellow, and that he is willing to give a poor man a supper or a treat, or an entertainment of this kind and the other, and that gets generally spread over the division, an enormous amount of popularity is produced by that which, as against an association which did not resort to the same sort of thing, would have a very large effect when the polling came to take place."

Suppers.

Referring to a supper given by a local association, and a picnic by another local association, for the deficiencies of which the Conservative agent supplied funds, Mr. Justice Cave reviewed the instance of some sports

Sports.

held under the auspices of the Conservative Association at Seal on Whit-Monday, which was announced by large bills in Conservative colours, and to which large numbers of people were attracted. The Conservative candidate was in the chair, and political addresses were delivered. The expenses which the agent paid for this fête amounted to £30, or twice the amount obtained from those attending the fete, which Mr. Justice Cave characterised as a clear case of corrupt treating, and proceeded:—

Paying deficiency.

"It seems to me, therefore, that with regard to two of the charges in the petition, the charge of making up the deficiency of the supper, and with regard to the fête on Whit-Monday, there were on these occasions two instances of treating which are shown by the history of the case, to my mind conclusively, to have been provided by Mr. B. for the purpose of inducing people to adopt Conservative views, or to confirm waverers in those views, and induce them at the election, which it was known on the 6th June was certainly impending within a very short time, to vote for Mr. Clayton. I have no doubt, as I say, in coming to the conclusion that both those occasions were occasions of corrupt expenditure by Mr. B., as at that time he had been treated by Mr. Clayton as his agent, and that they amount to a corrupt treating by Mr. B.; and consequently avoid this election."

When Candidate liable.

As to the question of personal treating by paying a large sum, which included the £35 for the picnic, it was held that if the candidate

was *bona fide* ignorant of what had taken place, then he would not be personally liable for that treating. On the other hand, if he was ignorant *mala fide* he would be. Mere carelessness is not sufficient unless it is of so gross a character as to compel you to come to the conclusion that the ignorance is *mala fide*; that is to say, that the candidate suspected something was wrong and chose wilfully to shut his eyes in order that he might be able to say on a future occasion that he did not actually know what was going on. Mr. Justice Cave said:—

"I think he was very careless in paying that large sum of money; he ought to have known what the expenses were, because he was president of the society, and was one of the executive committee, and he ought to have known what the annual expenses of the association were, and ought to have been staggered at the large amount he was called upon to pay. And if I could have seen that he had any reason to suspect Mr. B. (his agent) of being guilty of corrupt practices, then I should have said that the refusal to inquire upon that occasion was, and pointed to ignorance which was not bona fide, and I should have come to the conclusion that he must be held responsible for personal treating. I have not, however, been able to find anything of that kind. There is nothing that I can find in the previous career of Mr. B. (the agent)—nothing at all events has been proved here which, in my judgment, should have led Mr. Clayton to suspect what Mr. B. did, to induce him to decline to believe his statement, or to refuse to pay the money."

The candidate, therefore, was exonerated from personal blame, although he had found the whole of the money from which the corrupt payments had been made. As, however, he was responsible for his agent's action the election was voided.

Conversaziones

In the Rochester case (1892) the arrangements for the conversaziones were in the hands of a committee of the Constitutional Association, the secretary of which afterwards became the election agent of the respondent. Conversaziones were held, and 3d. only charged for refreshments. Mr. Justice Cave said:—

"It is obvious that these refreshments could not be supplied for the amount which was charged, and I have come to the conclusion that those refreshments were supplied in that excessive quantity with a view to promote the election of Mr. Davies, to influence, that is to say, voters to give him their votes, and that, consequently, that amounted to corrupt treating."

Smoking concerts.

In the same judgment, Mr. Justice Cave dealt with smoking concerts and birthnight clubs. He stated that smoking concerts were not necessarily corrupt, but they tended to foster among certain people an expectation that, by joining these associations, they would secure free meat and drink to an extent which they would not be able to get in any other way.

"In that way they are dangerous; they tend to foster that kind of feeling, which may easily degenerate into corrupt treating."

Whether intoxicants or non-intoxicants are supplied makes no difference. Non-intoxicants.

Mr. Justice Vaughan Williams, in the same case, held that:—

"I should not like it to be supposed that there is any inherent difference between a cup of tea and a bun, and a glass of beer and a sandwich. Inherently a cup of tea and a bun contain just as much of the element of corruption as a glass of beer and a sandwich, and certainly, as far as I am concerned, my decision is in no way founded upon any essential difference between beer and tea. I had to ask myself the question whether the entertainment was given with the corrupt intention of corruptly influencing voters. That is, a question of fact and a question of intention."

In the course of the Rochester case (1892) the judgments of the Court at Hexham were referred to by counsel, who pointed out that before that judgment many lawyers, as well as laymen, had thought that such a transaction would have been outside the Corrupt Practices Act. Mr. Justice Cave, in answer, stated that the judgment must not be taken as an intimation that any of the transactions there referred to, standing alone, would be held to amount to treating. In all cases you have to look at the whole of the circumstances, whether it is a repetition of a thing constantly done, or done merely once and never again followed up.

The distribution of free tickets for picnics, or social gatherings, is also likely to be held Free tickets.

to be "treating" within the Act. In the Hexham case (1892) it was proved that a practice had grown up of money being contributed to buy tickets for such entertainments, the tickets then being distributed among poor people. This may have been done from perpectly pure motives, but in his judgment Mr. Justice Cave said:—

"That is a most objectionable practice, and any person who can be proved to have done it will run a very great risk of being found guilty of a corrupt practice."

Habitual treating.

Baron Pollock held in the Montgomery case (1892) that an habitual drinker, who, when in his cups, treated nearly every one he came across, was not a proper person to act on a committee, but that his actions could not be considered corrupt. Mr. Justice Wills pointed out that the practice of drinking and getting drunk could not be put a stop to at election times.

"There is inherent in a great many of the people with whom we have had to deal in this inquiry the habit of giving and accepting drinks. It is as natural for them to treat and be treated as it is to have their breakfast, or their dinner, or anything else that forms part of their daily life, and to suppose that such habits would be dropped at election times is preposterous. It is, therefore, not sufficient, in order to make out a case of treating or bribery, to show that in this place or that place this kind of refreshment and treating has taken place."

He dissented, however, from Mr. Baron Pollock as to the effect of the treating by the habitual drinker, considering that "it was a most unfortunate and reprehensible selection of an agent, and ought to recoil upon those who have been guilty of such culpable carelessness." In his opinion, this matter was sufficient to unseat the respondent. The judges, however, being divided in opinion, the petition was dismissed.

Habitual treating.

In the Worcester case (1892) Mr. Justice Cave, in dealing with a charge of treating against a gentleman who habitually treated people, said:—

"Mr. B. is a gentleman of a very liberal mind. Whatever may have been his political principles he had a habit which, I hope, is not uncommon among mankind, of sharing his enjoyments of life with other people. He had a habit of attending meetings, sometimes for the purpose of cricket, quoits, fishing and other amenities, which make life more happy, and he certainly had a habit in common with others, when he was in the chair at those meetings, of standing drinks towards the end of the evening, in a manner which, if there were no question of politics whatever, and it were not done to excess, so as to lead to inebriety, could not be found fault with. But when there comes a time when these meetings are political, as meetings of the Conservative Association, and there is an election pending, certainly a person in Mr. B's position should be extremely careful in his conduct.

Having said that, I wish to say no more, because, though if I had found that corruption was

proved I should have found that agency was proved, I think in this case, though there may not have been that prudence and wisdom there ought to have at such a time, and under such circumstances, I certainly myself cannot find that what Mr. B. did can be called a corrupt practice."

Mr. Justice Wills, in the course of his judgment in the same case, dealing with charges of treating against the same gentleman, held that "no man was bound to abstain from harmless hospitalities because an election is pending."

Free drinks at smoking concerts.

In the Lancaster case (1896), dealing with smoking concerts where free drinks were given, Baron Pollock laid it down that, under certain circumstances, this was not illegal :—

"A Conservative Association had been established for some time, and part of its duty would be, of course, to see that the register was accurately kept, to look after voters, strike out those who were dead, and keep the register clean and clear for working purposes, and then to see each year from time to time that all those who were members of the party were got together, and also that any persons who might be wavering in their political opinions were, if possible, converted to what they believed to be the better opinion. But, after a time, it was thought that the mind of the working classes could be better got at by these smoking concerts which were said to combine 'pleasure and politics.' Accordingly, these smoking concerts were formed ; they were held from time to time, and it is reasonable to say they would have been held, whether there was an election coming on or not, as part of the scheme.

Now, before it is said that this practice is illegal, one must look very carefully first to see what the practice is; and, secondly, to see what the law condemns. The practice, which is a bad one in the views of temperance people, and, I should say for myself, not a fortunate practice certainly, especially where you are dealing with the working classes, was that the entertainment commenced by the gentleman, whoever he was that occupied the chair, to use the common rough language, standing drinks all round. It is done from month to month, and from year to year, and you cannot expect that it should be stopped because an election is coming at some time. That being so, I do not think it can be said that because Mr. B., who was deeply interested in the Conservative Association, went to these meetings, and because he was afterwards appointed an agent of Colonel Foster for the election—his election agent in fact—therefore, those who went there were themselves party to a system of bribery."

Where no election is imminent the Court has held that the giving of refreshments to persons attending a meeting is not illegal.

Treating where no Election imminent

In the St. George's East case (1896) the Irish Unionist Alliance held a meeting on licensed premises. Each person attending the meeting received in exchange for his ticket a voucher, entitling him to refreshments to the value of 1s. At this meeting, by invitation, the Conservative candidate was present, and made a speech. The meeting was held on May 4th, and the election took place on July 17th.

Mr. Baron Pollock said:—

"It does not appear to us that there was anything corrupt in the giving of the refreshments at this meeting on the 4th May. At that time there was no election in immediate prospect, and we think there is nothing to prohibit persons who are interested in promoting a particular opinion, even though it be an opinion touching a political question, inviting those whose attention they wish to engage, to listen to addresses advocating that opinion, and offering them refreshment of a moderate kind to attract them to the meeting. . . . It would, we think, be to impose restrictions upon the advocacy of many public questions which the Legislature never intended to be imposed, if it were to be held that a temperance meeting, or a meeting to advocate the admission of women to the franchise, or a meeting for the disestablishment of the Church in Wales, at which tea and other refreshments were provided, was to be considered as a corrupt act simply because the affect of the meeting might be to give force and strength to an agitation in favour of a political measure to carry out the views of the promoters of the meeting.

The question of corrupt treating must, as it seems to us, be in each case a question of fact. If the refreshments provided were excessive, if the occasions were numerous, and if there were other circumstances calculated to excite suspicion, a corrupt intention might be inferred."

The Court held that the charges of bribery and corrupt treating were not proved.

Refreshments for workers.

In the Barrow petition (1886) the main question was the provision of refreshments for workers. The Liberal Association passed a resolution suspending their operations as an association during the election. An Election

Committee was formed, the chairman of the Association became chairman of the committee, and the honorary secretary of the Association acted as election agent. The custom at Municipal Elections had been that workers at elections should be provided with refreshments. But after the passing of the Corrupt and Illegal Practices Act, 1883, both sides agreed to discontinue the practice. At this election ward committees were formed; the workers were called together, and it was there agreed, in the presence of the Liberal candidate, that refreshments should be given, and a refreshment committee was formed. On polling day 330 workers for the Liberal candidate took part, and 441 meals in all were provided. The Court held that these workers had been employed for payment, and that this constituted an illegal practice and unseated the Liberal candidate.

Refreshments for workers.

Mr. Justice Field said:—

"It is hardly possible to suppose that a large body of the workers should not be themselves voters, or that their brothers, friends, relations, dependents, or other people, should not be voters also; and if, under any circumstances, you determined to offer a reward or comfort, or luxury, if you like, or necessity, if you please to persons who are voters, or whose friends or relations are voters, either superior to them in position or otherwise, you do run a danger of introducing into the exercise of the franchise an element which all good statesmen, and all wise people are desir-

ous of seeing eliminated as much as possible, because the principle of representation, by means of which all the affairs of the country are managed, is that each individual should freely vote according to his own views of his political interests, unbiassed by gifts or presents, or influence, or intimidation, or anything else ; and should give his honest, fair, and free vote in support of those principles with regard to managing the affairs of the country which he thinks right and proper."

Mr. Justice Field then proceeded with his judgment :—

" There was first of all distinctly at common law, as well as by Statute, a prohibition of everything ' corrupt '—meaning thereby not an immoral thing like stealing a chain or a purse, or assaulting a man, but meaning thereby an intentional infringement of those provisions of the law (I am speaking of the common law) for the purpose of securing the free and full exercise of the franchise. Anything like bribery always was, and is still, at common law as well as by Statute, a corrupt and improper thing.

Then there was another thing which, although clearly included in the corrupt act of bribing, differred to this extent, that instead of giving a man 5s., or 10s., or £1 for his vote, a habit had crept in of giving people refreshments under the guise of honest fair dealing and fair treating. Hospitality always has been, and I hope always will be, a virtue with the people of this country. Therefore, *primâ facie*, as has been pointed out over and over again, the mere exercise of hospitality is not an offence ; indeed, it may be, and often is, the right thing to be done.

But then, if that guise of hospitality is made use of for a purpose which in the mind of the

Legislature is corrupt, for the purpose of inducing a man to vote otherwise than he would vote ; either to vote in favour of the man who engages his feelings and affections by giving him a handsome treat, or to refrain from voting for the man who would not do it, and who is, therefore, called, in common parlance, 'stingy,' the Legislature has always said by express enactment, independent of the question of bribery, that that is an offence ; and it always was.

Undoubtedly no money was paid, and if, to construe the Act, payment means handing over something in the shape of current coin of the realm, Mr. Pope will have made out a case ; but then it is quite clear that that is too restricted a meaning.

Refreshments may be payment to workers.

First of all the Statute says, not only 'payment,' but pecuniary or other reward, even if you want more ; and if you come to look at the decisions under the old election law, it has always been held that the giving of meat and drink to voters was as much bribery as giving money. I should hardly say 'as much,' because I think that the law intended a difference between drink and bare money. Bare money of necessity must be corrupt ; it is impossible to suppose that if a man receives 5s., or 10s., or £1 for his vote, that he, the man who gave it to him, and he, the man who received it, are not corruptor or corrupted. In regard to treating, it was an intermediate state of things ; it might or might not be wrong when it was due only to honest feeling and hospitality and kindness, without any desire whatever to influence a vote, but it might be grossly corrupt if it was done with the intention, not only of influencing his vote, but also of influencing the votes of others who were likely to be influenced by him.

It was argued very powerfully that there was

no evidence of any particular contract between man and man ; but I am happy to say that the law, although it is very often supposed to be contrary to common sense, is not so very much contrary to it as people imagine ; and it is not merely because there is an absence of any express contract, either in writing or in words that the law will say there is no contract ; the law will imply a contract from conduct. It has long been established that if a man engages to do a thing, or to pay money in consideration of something else which somebody else has to do, if that somebody else does the thing he has a legal right to the money ; and I cannot help coming to the conclusion here that there was, on this occasion, an employment of these men. That is clear.

In the result, therefore, it seems to me that it will be my duty, and my brother's duty, if he concurs, to report to the House that the candidate and his election agent have been proved before us to have committed what is called in the Act the offence of illegal employment, and which offence in their particular condition—not as regards everybody else, but in their particular condition—is also defined in the Act as being an illegal practice ; and it is our duty under the Act, being satisfied that that illegal practice has obtained, to report that to the Speaker of the House."

When treating not corrupt.

With regard to the further question as to whether there was also "corrupt practice," Justice Field said:—

"I have had very grave doubts indeed, whether it would not come to be my duty to say that the practice was a corrupt practice.

I take into account, first of all, the habit that prevailed in Barrow, which was an innocent one, admitted on both sides ; I take into account very

much indeed, the fact that all this was done openly and in public, and there was no doubt about the matter, there was no concealment, and none of those dark practices which used to prevail, but which, I hope, no longer prevail in this country. This was an open practice at all events.

Then I take into account the difference between the two agents on this very question. These circumstances, therefore, I take into account, in considering whether it was a dark, underhand proceeding, and a dishonest one, intentionally dishonest ; or whether I can account for it in any other way.

To what are these things due? First of all to the abnegation of his duties by the election agent in entrusting the matter to three or four people who did not know the importance of these things. Then of those three or four people some do not attend and some do ; and then, in one particular ward, there is a mode of organisation adopted, which, if carried out, would have been effective, namely, by giving a ticket to everybody who was known to be a worker, and only paying upon the production of the vouchers by the contractor. Some attempt of that kind was made, but it was abandoned in the very ward which was the very best of them all. It has been said that is dishonest ; that is, the evidence of corruption. But I think it is consistent with want of care, want of knowledge of these things, and a certain amount of indifference as to whether it did good or not. I think I am warranted in saying that I am not bound, as a juryman, under these circumstances, to come to the conclusion that the conduct of the parties was corrupt in the sense intended in the Act of Parliament. I should not have hesitated if I thought it right in coming to that conclusion in saying so ; but I ought not to come to that conclusion unless I am quite satisfied in my own mind

that there is no other result to be deduced from the circumstances. I, therefore, come to the conclusion that there is no ground for reporting to the Speaker that the candidate was guilty of corrupt practice."

Mr. Justice Day, in the same case, said:—

"It is unnecessary for me to say more than that; to my mind it has been clearly established, on the evidence before us, that persons were, for the purpose of promoting and procuring the election of Mr. Duncan at the last election, engaged and employed for payment, and promise of payment, for purposes and in capacities other than those sanctioned by the Statute.

That constitutes under the Act an illegal payment and employment; and in the case of the candidate and his agent, that constitutes an illegal practice, and such illegal practice found and reported by us necessarily voids the election."

Refreshments for stewards.

In the Norwich case (1886), at a meeting to hear the gentleman, who afterwards became the candidate, a number of stewards were employed to keep order. For these a tea was provided at 1s. 6d. a head. Mr. Justice Denman said:—

"The tea was ordered mainly for the stewards. The stewards were apparently, most of them, respectable people, and many of them voters. They would not unnaturally require a place in which they could assemble, meet together, and have refreshments at a time of the day when this would take place; and I do not think that the fact that they were supplied with a tea by the leaders of their party at 1s. 6d. a head is a thing which would warrant me in saying that that was a

mode of bribery, the worst offence known to electoral law."

School treat.

In the Aylesbury case (1886) a school treat was held not to be treating, although a very large number of persons attended it, estimated at between 7,000 and 10,000 people. The treat was given by the candidate, and had been given by him annually for five or six years.

Mr. Justice Field said:—

"It is over and over again said that treating may be innocent; *primâ facie* almost always it is innocent, but it may take place under such circumstances as to lead the tribunal to conclude that it was not innocent, but corrupt."

In this case the Court exonerated the candidate.

Independent associations.

In the Cockermouth case (1901), where an entertainment was given by an association whose headquarters were in London, and the cost of which entertainment was provided by the head of the branch association, it was held that it was an independent association, and that it did not make the candidate responsible for its action, although it was organised for political purposes.

Mr. Justice Darling, in giving judgment, said:—

"The next matter I need deal with is the matter of the Liberal-Unionist tea. Now, with respect to that, it is said that that is an illegal practice, as being against Section 28 of the Corrupt Prac-

tices Act, 1883, which provides that no payment ' shall be made by a candidate ' or ' on behalf of a candidate ' . . . ' in respect of any expenses incurred on account of or in respect of the conduct or management of such election otherwise than by or through the election agent.' There is a corresponding provision relating to the return and declaration of election expenses in Section 33, Sub-Section (f), which provides that ' a statement of all money, securities, and equivalent of money received by the election agent from the candidate or any other person for the purpose of expenses incurred, or to be incurred, on account of, or in respect of, the conduct or management of the election, with a statement of the name of every person from whom the same may have been received.' Now, that tea party undoubtedly was not paid for by or through any election agent of Mr. Randles, and it is said that because of that an offence was committed. Now, it was paid for by the Liberal-Unionists—the committee who have been called before us, or the Association, some of whom have been called before us. The whole of the tea party was paid for—exactly the money spent upon refreshments—by the head of the branch, which had its offices in London, £5 19s. The rest of the expenses, the incidental expenses, were paid by the Association in this constituency ; and if those expenses were incurred ' on account of, or in respect of the conduct or management of,' the election, then an offence was committed, because they were not paid by or through any agent of Mr. Randles ; but I do not think that those expenses were incurred in respect of the conduct or management of the election.

I am satisfied that this Association was an independent association, that it had meant to have that tea party some considerable time before, that it did not arrange it on that date in order to assist

in the conduct or management of Mr. Randles' election at all, that Mr. Randles had nothing to do with the getting of it up, that he did not contribute in any shape or form to the expenses, he simply came there to what was a party held by other people, not a party having to do with the conduct or management of his election, but something got up by them for their own purposes ; political purposes, no doubt, but still their own purposes, and that, being there, he did make the few remarks which have been repeated to us. In those circumstances it seems to me that Mr. Randles is in no way guilty of an offence under that section of this Statute.

One other word I would like to say about it. The expenses of this meeting were not included in Mr. Randles' election expenses, and, I think, properly, not included, because I do not think he had got anything to do with the matter. One can perfectly well see that if they had been included a very grave question might have arisen, because whether those Liberal-Unionists, if they really had been acting on behalf of the candidate in the management of his election, would not have avoided his election by being guilty of treating, is, to my mind, a very nice question, and I think they would have very great difficulty in satisfying an Election Court to the contrary. They supply people with tea and so on at less than it costs.

They were evidently doing what would have been a very dangerous thing if they had been acting on behalf of any candidate, and, therefore, it would have been an unforunate thing for Mr. Randles if he had been obliged to include that particular party in his election expenses ; but, as I have already said, for the reasons I have given, I think that he was perfectly justified in omitting that from his election expenses. I think further as regards those expenses, that he would

not have been justified in including them in his election expenses, because I do not think they had anything whatever to do with his expenses in the conduct and management of his election. He is not bound to include entertainments and expenses of other people which have nothing to do with the election expenses—which is the only thing he is concerned to render an account of to the sheriff."

Mr. Justice Channell said:—

"The difference between an act done for the conduct and management of the election, and a thing done merely for the promotion of the success of a particular candidate, seems to me to be this: If another person pays an expense, and that expense is one of the ordinary expenses of the candidate, so that the doing of that by the third person relieves the candidate from part of his election expenses, then the candidate must treat that assistance as given to him in respect of his election expenses, and must treat the expenses as part of his expenses. It is just the same as if the Carlton Club, or anybody else in London, had contributed £100 towards Mr. Randles' expenses, it must be included; and if a person, instead of giving money, gives a particular portion of the election expenses by providing the expenses of a meeting, or doing something or other of that sort, then he does something in reference to 'the conduct and management of the election.' But if he, being merely a person interested for some reason, as a Liberal-Unionist, or any other reason, in the success of a particular candidate, chooses to do things on his own account which do not go to relieve the candidate from any portion of his election expenses, that is not doing anything in reference to 'the conduct or management of the election'; and it would be perfectly impossible for elections to be conducted if it was so; but

no candidate can prevent any people who think they would like him to be elected, because they think him more in accordance with their own special views, either upon vaccination, or upon temperance, or any of the other things which people have strong opinions about.

You cannot prevent their incurring expenses, printing literature, and various things in support of the particular candidature ; and none of those things come into the candidate's expenses."

Garden party.

In the Bodmin case (1906) one of the charges was of treating by an entertainment given by the Liberal Social Council in the form of a garden party. The party was held in the grounds belonging to the respondent's father. About 5,000 persons attended, and temperance refreshments were supplied.

Mr. Justice Grantham said* :—

" There could be no doubt that, in the eye of the law, that garden party was corrupt treating, but corrupt meant only doing that which the law forbade. There could be no doubt that that party was given for the purpose of affecting the election, and obtaining popularity for the respondent."

Mr. Justice Lawrence said*.—

" As to the Liberal Social Council, but for the time when the thing was done the party would have been perfectly legal ; but any association giving such an entertainment on the eve of the election was doing a fatal thing. He had nothing to say against the Council if it did its work at the right time, but it did not do so. Even if everyone at the party were a Liberal, it could make no difference in his mind."

*_Times_ Report, 19th June, 1906.

"At Home."

In the Great Yarmouth case (1906), among other charges, was one of treating at a series of meetings held on licensed premises, which closed with an "At Home," held in the Town Hall, to which practically any person could attend, and where, not only tea and coffee and light refreshments were distributed, but a free supply of spirits in a room set apart for the purpose. This gathering was held at a later date than the garden party in the Bodmin case, but the Court was divided in opinion on other points, and the petition was dismissed.

Free drinks at political meetings.

With reference to giving drink at political meetings, Mr. Justice Channell said:—

"I am inclined to think that the main reason why it was done was to get people to come. However interesting a speaker may be, it requires some sort of attraction to get people to come to listen to his views upon subjects which are supposed to interest politicians, but do not interest everybody. Therefore, I cannot help thinking that the main object of giving away a little drink on these occasions was to get an audience. But whether that is so or not, I do not think there is enough for us to find that anybody gave the drink with reference to the next forthcoming Parliamentary election, which was a year from most of the meetings, and might have been longer, or might have been shorter for others. I should not draw that inference of fact.

Now a candidate, by subscribing to a political organisation, may make the members of that organisation his agents. He may, but it does not follow that he does, and I should not be inclined to hold that anybody who treated at

those ward meetings, even assuming that the man who treated did, in his own mind, do it in reference to Mr. Fell's interest in the future Parliamentary election, I should not be inclined to hold that there is enough evidence that Mr. Fell so far adopted that as to make the people who did it his agents. I think upon this question of agency the nearness of the election is the most important factor, and that the same thing which would have made a chairman of one of those meetings the agent of the candidate if the meeting had been taking place within a week of the election, does not by any means make him the agent of the candidate when the same thing is taking place a year before."

Mr. Justice Grantham endorsed the judgment of Mr. Justice Channell. He said people like to have a glass before them, some made it last a long time,

"As to these free-and-easies, or friendly meetings, the people who attend are mostly people of their own political persuasion. There is no wrong so long as it does not become wrong from treating becoming corrupt in the way in which these things are conducted. If the main object was to get the people together to know the candidate, and for him to get personally in touch with the people, so that he would become popular by his civility or his wife's civility, and there is no excessive lavishment in the articles provided, then there is no corruption."

Mr. Justice Channell held that the object of the "At Home" was to show, by the presence of Sir John Colomb (the former member), that Mr. Fell was the same generous kind

of man, and that it was not intended to corrupt the electors. He said, however:—

"The question is what was the intention with which that entertainment was given; and if I felt bound to come to the conclusion that that entertainment was given for the purpose of getting votes, as is said, through the mouths and stomachs of the people who drank the whisky and tea, and ate the bread and butter—if one came to that conclusion as a fact, one would be bound to hold that it was corrupt treating within the meaning of the Act of Parliament. But I do not feel bound to come to that conclusion, I only say that it was a risky thing to do—that it is very near the line—and that it is only because I feel able to come to the conclusion that the main object of the entertainment was a different one, that I am able to come to the conclusion that that was not corrupt treating."

Mr. Justice Grantham said:—

"If it had been held during an election I quite agree that the circumstances would have been entirely different. But at that time there was no idea of an imminent election."

CHAPTER III

POLITICAL ASSOCIATIONS

One of the many difficult questions which has exercised the minds of candidates and agents is the position of a political association with reference to the law of agency. Decisions on the subject prior to the Corrupt and Illegal Practices Prevention Act, 1883, were somewhat conflicting, and the decisions of the Election Courts since that time have not done much to settle the law. It has been laid down over and over again by the Judges that it is quite legitimate for an association to carry on work of a propaganda, to endeavour to lay before the public their own views on political questions, and also to look after the registration of voters. All these matters may be properly done by a political association quite outside the candidate, and although their work tends to advance his cause, yet the candidate will not be responsible either for their action nor for the necessary expenditure in that behalf. It is not necessarily part of his election expenses, nor are the committee or the association in any sense his agents.

On matters outside these matters the Courts

have, however, dealt with each succeeding case upon its merits, and have not laid down definite lines to guide future candidates. This question has been discussed in the cases of the Hexham, Lancaster, Shoreditch, Worcester, Rochester, Stepney and Cockermouth Election petitions.

Association funds.

In the Hexham case (1892) it was proved that the Conservative Association appointed an executive committee, and the committee collected funds, which, in the main, were spent on registration and other legitimate objects.

In June, 1886, a meeting of the Association was held, at which it was resolved that the Liberal Unionist candidate should be supported. It was then resolved that circulars should be issued, applying to Conservatives for funds for registration purposes, and also to enable the Executive Committee of the Association to have at their disposal a fund wherewith to further the interests of the Conservatives in the Division. Mr. Justice Cave said:—

"They, therefore, contemplated furthering the interests of the Conservatives, and undoubtedly endeavouring to promote the election of a Unionist; and if their action was recognised by the candidate that would, of course, be quite sufficient to make the Association his agent. When I say the Association, of course, I do not mean every member of the Association, whoever he might be, but I do mean that it was sufficient to

make the acts of the executive committee the acts for which the candidate would be responsible so long as he chose to acquiesce in their endeavouring to support him and to promote his election."

Entertainments by Associations.

In this case entertainments had been organised by the Conservative Association; railway tickets to the place of entertainment were supplied at less than cost price; while refreshments were provided at a less sum than the contractor could supply them for, the deficiency in each case being made up by the secretary of the Association, who was afterwards the appointed election agent of the Unionist candidate.

Mr. Justice Cave, in giving judgment, pointed out that the corrupt practices which were charged against the respondent sprang mainly out of the acts of the respondent's agent, and of the divisional and local Conservative Associations and branches of the Primrose League. There was, of course, nothing to be said in the abstract against associations for the promotion of either Conservative or Liberal views, so long as they resorted solely to things which were likely to produce an effect upon the reason of those to whom they addressed themselves.

"It is only when they endeavour to go beyond that and to acquire popularity for political principles of a particular kind by endeavouring to secure the adhesion of those voters who take a less strong view of political matters, by addressing

themselves, not to their reason, but to less praiseworthy methods by giving them treats and entertainments for the purpose ; by these means inducing those who take but little interest in politics, for the sake of what they may get at those treats and picnics, to join one or other of the great political parties into which the country is divided."

The Court held that up to May, 1891, there was no fault to find with the Conservative Association, but, in the report then issued, district associations were recommended to hold entertainments at suitable seasons. That was a dangerous thing. There was always temptation, in case of loss, for people to subscribe to pay the deficiency, and that involved treating, which could not be too strongly deprecated. That at the Chesters' entertainment, on August 15th, the railway fares were given at reduced prices, and tea was provided at less than the contractor could supply it for, and the result was that there was a deficiency of £35. The entertainment was attended by a great number of people, and was calculated to increase the popularity of Mr. Clayton (the respondent) among the larger number of voters who had no great political interest one way or the other. The total of the sums expended by the agent in this way came to £102.

Mr. Justice Vaughan Williams, in the course of his judgment spoke of

Primrose League.

" The Primrose League and other associations which unhappily seem to make a practice of giv-

ing entertainments, picnics, dances, suppers, teas, sports and what not—a practice which is dangerously akin to corrupt treating, and a practice which, if indulged in by a candidate, would certainly amount to corrupt treating. Some useful purpose will have been gained if party associations are taught that these entertainments are fraught with danger to the candidate of their own party. Something will have been gained if collective bribery by treating—collective corruption I would rather say—has been made more difficult, especially now, when, as Mr. Justice Cave has already observed, the size of the constituency makes individual bribery or corruption practically impossible."

The successful candidate was unseated.

Meetings at licensed houses.

In the Worcester case (1892) the Conservatives had formed what were called lodges of the National Conservative League, and it was said that these lodges held meetings at licensed houses at which every man who called himself a Conservative could have free entertainments.

Mr. Baron Pollock pointed out that there was one case of general treating which he would have occasion to deal with, and that was the question of the Conservative Associations and other bodies who, by treating and other conduct, attempted to exercise an undue influence upon the minds of the electors. Modern times, it was said, brought about modern manners, and the conduct of elections changed, partly owing to an alteration in the habits of men, and partly by reforms enacted by Parliament; and at the present time, per-

haps, the greatest influence used in Parliamentary elections was that of the political associations. In the course of his judgment, Baron Pollock said:—

Registration work legitimate.

"I, for one, would wish it to be distinctly understood that, if there be a political association upon one side or the other whose character is permanent, who from month to month and from year to year are industrious in watching the register, correct it, influencing people to get their names put upon the register, and are holding meetings and gatherings for that purpose, it is not to be too hastily assumed that because an election takes place at some particular period, every act which is done by the association, although it may be, perhaps, necessary in the furtherance of the election, makes that association, or the different members of it, necessarily agents for the candidate. It is not because an election takes place that a political association should hold its hand from going on in its steady courses with regard to the register and other matters."

But, he added, that, if the work of an association were directed towards the immediate benefit of a candidate, then he, for one, would look upon that political organisation with great suspicion, and he would be the first to say that agency had been proved.

Smoking concerts.

In the Rochester case (1892) it was alleged that free smoking concerts were organised by a Conservative Club and a fête given by the Primrose League. At the first entertainment it was said that free drinks were given, and at the fête that the sum charged for entrance (3d.)

could not possibly cover the cost of the refreshments supplied. Conversaziones were also organised by the Constitutional Association, which supported the Conservative candidate, and to whose funds the Conservative candidate had subscribed, in the course of the three years prior to the election, the sum of £900. There were a few other subscribers, but they were not very considerable.

Conversaziones

Mr. Justice Cave, in delivering judgment, pointed out that with reference to the conversaziones, it was obvious that the refreshment provided could not be supplied for the threepence charged, and he had come to the conclusion that those refreshments were supplied in that excessive quantity with a view to promote the election of Mr. Davies, to influence the voters to give him their votes, and consequently that amounted to corrupt treating. All the arrangements were left in the hands of a committee of the Constitutional Association, of which Mr. Walter, afterwards election agent, was the secretary. The charge in the particulars was directed against Mr. Davies (the Conservative candidate) and Mr. Walter, and against them only. He very much regretted that it should be limited to those two persons, because it appeared to him that there were others who occupied a position of much greater responsibility than Mr. Walter, and who were really the guilty persons in this

matter. He was unable to come to the conclusion that Mr. Davies knew of or assented to the provision of these refreshments at the time. With some degree of carelessness, he appeared to have left the whole matter in the hands of the executive of the Constitutional Association; and if a charge had been made in the particulars against any members of the committee, who it was shown had taken part in the supply of the refreshments, he should certainly have come to the conclusion that those persons were guilty of corrupt practices. He had not come to the conclusion that Mr. Davies did it himself, or that it was done with his knowledge or assent, but those who did it were undoubtedly agents of Mr. Davies, and he must bear the consequences of their illegal acts.

Objects of Association.

Mr. Justice Cave, in the course of his judgment, said:—

" With regard to this Constitutional Association it strikes me as being an association which ought not to exist for the purposes for which this association exists. There is, undoubtedly, no harm in political associations so long as they confine themselves to legitimate ends. So long as they confine themselves to promoting the political views which they are formed to support by legitimate means, there is no fault to be found with them ; but they are liable always to be diverted towards illegitimate means, and that is the danger of them ; and, undoubtedly, it would be a wise plan, as soon as a candidate has been fixed upon, if those associations would suspend

Suspension of Association.

their operations until the election is over, and entirely abstain, as an association, from taking any part, collecting any money, incurring any expense, or paying any accounts during the whole time that the active candidature is going forward. In this particular case that certainly was not done, and one cannot shut one's eyes to the fact that this Constitutional Association was in close connection with the Rochester and Strood Conservative Club, and also with the Constitutional Birthnight Club. Those appear to have been, to some extent, organisations for the purpose of providing gratuitous meat and drink for persons who were willing to join those particular bodies. The Birthnight Club, it is said, has been in existence since 1889 ; be it so. But, unfortunately, it is in its results calculated to produce a quantity of gratuitous drinking amongst its members. Prominent men upon a birthday night might have been in the habit of putting sandwiches on the table, as Mr. Boucher did, or beer, or wine, or something of that kind as the case might be ; and all those practices, as it seems to me, are liable to degenerate into corrupt practices. I do not mean to say that they are, and, certainly, I do not say that in every case they are corrupt, but they tend to engender, on the part of those who are liable to be affected by such considerations, an expectation that they are going to get free drink, or practically free drink, at the expense of other people, and so to induce them to join those associations, and in that way to join the party which those associations are formed to promote."

Birthnight Club.

Mr. Justice Vaughan Williams also expressed strong views on the same matter:—

" I have already said that one of the lessons which is taught by the Hexham election petition

has been taught here—that in respect of the care which is required from an agent. But there is another of the lessons which was taught by that election petition, which is taught also by the present one, and that is the danger of a candidate trusting in the slightest degree those political clubs which are formed, not only for the purpose of advocating the political cause to which they are attached, not only for the purpose of gathering together the people who belong to that party in order that their enthusiasm and energy may be excited, because that is a perfectly legitimate and proper action, and I should be extremely sorry, speaking for myself, to say one word which should impede or interfere with the practice of gathering people together to sympathise in the cause to which they are attached ; but these political clubs are also formed for the purpose of giving entertainments, for the purpose of providing ' meat, drink and entertainment '—the very words used in the first section of this Act of Parliament ; and I say that the lesson taught by the Hexham petition, and by this petition, is that every candidate who wishes honestly to prevent the commission of corrupt and illegal practices will from the moment that he becomes a candidate—will from the moment that his candidature is accepted—make up his mind that he will have nothing to do with any political club or association, which makes it part of its business to provide meat, drink, and entertainment for the persons who are interested in the cause ; and if the results of these petitions is that those political clubs which provide meat, drink and entertainment are discouraged, I believe that a great step will be made toward securing purity of election.''

Candidate's connection with Association.

On similar facts in the Lancaster petition (1896), Mr. Baron Pollock said:—

" I find, I, myself, in the Walsall case, spoke of the well-known course taken by institutions such as Conservative Associations, and the words I there used were :—' That although you may be nearing the approach of an election, and although a candidate may be named, I do not agree in the view that every act which after that time is done by the Conservative Association and their immediate agents, must be taken to be the act of the candidate, as if it were done by an agent either appointed by him beforehand, or whose acts are ratified by him afterwards.'

Registration Agency.

It would really lead to a curious anomaly. It has always been said that a mere registration agency is not an agency in connection with an association, and is not a thing that is harmful, or from which the candidate, until the election actually takes place, need keep himself clear ; and yet I should like to ask which is most effective? Which is the real thing that wins an election—a future election—it may be years afterwards—an industrial careful keeping up of the registration, or the holding of meetings—and meetings even combined with pleasure—where music may be heard, and drinks go round at the commencement?

Now, then, Parliament might well have said : No person who intends to be a candidate within one year, two years, or three years, shall subscribe to a political association.

Have they said so? Certainly not.

Agency of Associaiton.

Then it seems to me these associations are going on ; they would go on whether there was an election imminent or not ; and the only question is whether Colonel Foster is to be prohibited, because he is going to be a candidate hereafter, from exercising the right which every other citizen possesses of going and attending these meetings, unless his attending them carries with it the mark that he thereby makes them his agents to incur

expenses which, in this case, he certainly was not going to pay, and which it never was intended he should pay. I cannot think that. The only other question which I have very carefully considered in my mind is this: In many cases, as we held in the Lichfield case, it is a very important element, when a political association, club, or whatever it may be called, is of such a fragile nature that it does not become even a skeleton, that you should look to see where the funds are provided; and if you find that those funds are provided by the very man for whose benefits these things are done, then, of course, the matter falls into a different category. Colonel Foster's subscription was larger than the subscription of many other people. When you take the whole of the subscriptions for the two years we have before us, and then take Colonel Foster's portion of it, I cannot think it is a sum which would justify anybody making the observation with regard to the association itself that I made just now with regard to the association that existed in the Lichfield case. I think I have said all I desire to say upon that part of the case, except that, no doubt some of the things that were said by my Brother Cave in the Hexham case, may seem to come a little near to this case; but I have considered that case again and again since the judgment was given, and I think that it is to be supported upon the grounds that I have last mentioned."

Agency of Secretary of Association.

In the Shoreditch case (1896), where the secretary of an association which had selected the candidate performed certain acts, the Court held that the council of which he was secretary were in such close contact with the candidate that their acts bound the candidate, and made him responsible therefor.

Mr. Justice Wright, in the course of his judgment, laid it down that:—

"Though I do not believe the Unionist Council was a sham, still I do think that the Unionist Council were made by Mr. Lowles, his agents, in the words of the late Mr. Justice Wills in the Lichfield case, who said (I do not profess to be quoting him with perfect accuracy): 'If persons are appointed to do the work of committeemen it does not matter whether they are called by that name or any other name, equally it would bind the candidate.' Now if, as I think, the Council was really Mr. Lowles' agent for the promotion of his candidature, and Protheroe was their principal secretary, as he says he was, in that way Protheroe, even if not in other ways, was Mr. Lowles' agent. Therefore, I think that on that ground alone the election ought to be avoided."

Salary of Secretary not an Election expense.

Mr. Justice Bruce, however, with reference to election expenses, held that the salary received by the secretary did not necessarily form part of the election expenses.

"So with reference to the paid secretaries, where a secretary is paid for registration work, or for organisation work, and he devotes his time substantially to work of that character, I do not feel sure that merely because he gives part of his time to work which may be determined to be election work, that, therefore, a portion of his salary must be necessarily allotted as forming part of the election expenses."

In the Stepney Petition (1892) a different view was held by Mr. Justice Cave, who pointed

out the difficulty which would arise if the work of the secretary was partly preparation for the election, and that was not defined in his accounts.

Mr. Justice Cave said:—

Registration expenses.

"What I would like to point out with reference to that matter (registration expenses) is, the very great danger that follows, if you are going to have this registration campaign going on all the year round, of the real legitimate election expenses being met under the guise of registration expenses, and in that way the provisions of the Act of Parliament with respect to the maximum, and with respect to the returns, and so on, being rendered of no effect. It seems to me that it is a dangerous course, and that unless an election agent can make it quite clear that he has not been doing election work under the guise of registration work, he must not be surprised when his accounts are brought before an Election Court, if the judges take the view that he has been purposely muddling the two accounts up together in order that he may escape from the fetters of the Act of Parliament."

The Cockermouth case (1901) decided a very important point as to the action of an association providing entertainment and refreshments. The Court held that the entertainment was by an independent association, and that the tea provided was not for the promotion of a candidature, and was not an election expense, and, therefore, was not to be included in the election returns. (See page 29.)

Work of an Association.

The lesson apparently to be drawn from these judgments is that a political association is entitled to carry on the legitimate work of political organisation and registration, and that a candidate may safely contribute to its funds for those purposes; but that it becomes a dangerous society if it steps outside these objects to endeavour to stimulate political interest by free or partially free picnics, concerts, or other entertainments, and that the candidate runs a great risk if he has either contributed money to the association or has accepted their support, and has adopted them as his agents under such circumstances. On the other hand, independent associations not connected with his candidature and where his presence at a gathering is merely that of a guest, have a free hand.

Expenses before appointment of agent.

In the Stepney case (1892) two meetings were held under the auspices of the Conservative Association prior to the appointment of the election agent. At those meetings resolutions in support of the Conservative candidature were moved and carried. The expenses of the meetings were paid by the Association, and were not included in the election agent's return. Evidence was given that the funds of the Conservative Association were mainly supplied by the Conservative candidate, and that he was the president of the Association. It was charged that these meetings were part of the election campaign, and that, as the ex-

pense of them was not included in the election return, an illegal practice had been committed. The Court held that these meetings should have been included in the election return, but, on application, granted relief.

Mr. Justice Cave said:—

"I think it has been established that that was an illegal practice. It appears to me that those expenses were part of the campaign expenses. They were the commencement, so to say, of the electoral campaign. The expenses were paid by Mr. C. and Mr. M., who were two of the officers of the Association, and of which, at all events, the main expenses, if not practically the whole expenses, are borne by Mr. Isaacson (the Conservative candidate). I think that those two meetings ought properly to have been treated as part of the campaign, and the expenses of them as expenses of conducting and managing the election."

TRADE ASSOCIATIONS.

A very serious feature in the elections of 1892 and 1906 was the organised electioneering by the Brewers' and Licensed Victuallers' Associations, and the decisions of the Election Judges in the petitions of 1892 have caused consternation in the minds of all those who have desired that the spirit of the Corrupt Practices Act should be maintained. These associations expended large sums of money in holding meetings of those connected with the trade, in the distribution of literature and other matters, and in supporting by active work the

candidature of Conservative candidates, on the ground that by so doing they were defending the interests of their trade. The money so expended was not included in any election agent's return, and, therefore, must have, in many instances, caused the amount expended in a candidate's interest to be in excess of the maximum allowed by the Act. The Courts, however, held that such expenditure was outside the scope of the Corrupt Practices Act.

In the Walsall petition (1892) Mr. Baron Pollock, in delivering judgment, said:—

Licensed Victuallers' Association.

"Then there comes the question, which is one, no doubt, of considerable magnitude. I allude to the question of the position that was assumed by the Conservative Association and the Licensed Victuallers' Association. I think it right to allude to these questions, because they are of general importance. The Licensed Victuallers' Association occupy a very different position from that of the Conservative Association, because those who are members of, and constitute the Licensed Victuallers' Association, had a distinct and necessarily a direct interest in the contest, because the question of the drink laws, which must from time to time be brought before the Houses of Parliament, is to them, whatever may be the arguments upon the one side or the other, a vital question.

Therefore, it was essential to them to know what would be the views taken by those candidates who were presenting themselves for election, and I do not think it can be said for a moment that because they, as a body, interested themselves by sending circulars, by holding meet-

ings, by inviting opinions, and even by taking an interest in the election of one or the other candidate, they became thereby, in any sense, agents for the candidate."

Likewise in the Stepney case (1892), where the Licensed Victuallers held a meeting at their own expense, Mr. Justice Cave said:—

"With regard to the Licensed Victuallers' Association, I see no ground at all for saying that those were expenses which were election expenses. They appear to have been expenses incurred by them for their own purposes. No doubt they were desirous to assist Mr. Isaacson, whom they preferred as a candidate to Mr. Thomson; but it does not follow that because they were desirous of doing that, every expense that they chose to run into would become an election expense. That is not so at all. They may have made themselves agents for Mr. Isaacson so that any corrupt practice traced to them might unseat him; I do not say that it would, because it has not been necessary for us to direct our attention specifically to that point; but it does not follow that because that is so, every expense that they resort to thereby becomes an election expense which must be paid by Mr. Isaacson. If that were so the fate of a candidate would be very deplorable. He would have no control over persons who choose to say that they were acting in his interest and for his benefit, and would be compelled to pay every expense that they might think fit to incur. No such liability exists at the present time; and I do not think the Licensed Victuallers' case was one in which it can be said with any shadow of truth, that the expenses were expenses of conducting the election, and not expenses rather incurred by the

Association for their own ends, and for their own purposes, quite distinct from Mr. Isaacson's election, although undoubtedly his election was one of the things they were anxious to secure."

CHAPTER IV

UNDUE INFLUENCE

It is satisfactory to notice that, among the charges contained in the election petitions heard by any of the Courts since the passing of the Corrupt and Illegal Practices Act, 1883, intimidation and undue influence was only included in one of the English, Scotch or Welsh cases. In Ireland alone such charges not only were made, but were proved by overwhelming evidence, and those who were charged with having exercised intimidation, or who attempted to exercise influence of an illegitimate character, were ministers of religion. It is to be regretted that these gentlemen did not confine themselves to that natural influence which their position gave them. Undue influence is a corrupt practice.

Riot.

In the English case, South Gloucester (1886) the charge was of riot and intimidation, but while the Court deprecated such conduct, as the rioting was confined to one portion only of the division, they did not on that ground unseat the respondent.

Mr. Justice Field adopted the language of

Baron Bramwell in the Durham case, under the Act of 1854:—

Intimidation.

"When the language of the Act is examined, it will be found that intimidation to be within the Statute must be intimidation practised on an individual. I do not mean to say upon some one person only, so that it would not do if practised upon two or a dozen, but there must be an identification of some one or more specific individuals affected by the intimidation. I will not say influenced by it, but to whom the intimidation was addressed, before it could be intimidation within the Statute, otherwise it comes under the head of general intimidation."

As in spite of the alleged intimidation in the district complained of, out of 789 electors on the register, 702 voted, the Court held that they would not disfranchise all the other electors in the division, and put them to a fresh election.

Bishop's pastoral.

Both in the North and South Meath elections (1892) the clergy seem to have taken a very prominent and active part. The Bishop, Dr. Nulty, issued a pastoral, in which, among other expressions, appear to have been the following: "Parnellism saps the very root and strikes at the foundation of the Catholic faith"; "No man could remain a Catholic so long as he elects to cling to Parnellism"; "The dying Parnellite himself will hardly dare to face the justice of his Master till he has been prepared and anointed by us for the last awful struggle and the terrible judgment that

will immediately follow it. I earnestly implore you, then, dearly beloved, to stamp out by your votes at the coming election the great moral, social, and religious evil which has brought about so much disunion and bad blood amongst a hitherto united people."

The Meath cases justify the action of Parliament in enacting that it shall be illegal to inflict or threaten to inflict any temporal or spiritual injury, damage, harm, or loss upon or against any person in order to induce or compel such person to vote or refrain from voting.

Spiritual injury.

Evidence was given that priests called voters who differed with them by objectionable names likely to arouse the hatred of their fellow-townsmen, and that there were distinct cases of threats to withhold the sacraments, as well as threats, which probably appear to be absurd, but yet which would have great effect upon a peasantry, "to put fire to their heels and toes," and that if they voted for the Parnellite candidate they "would go to hell." Evidence was given that one priest, in preaching, had described those who canvassed for the Parnellite candidate as "disreputable individuals," and "that it would be worse for them here and hereafter." Of another it was said that from the altar he stated "that the time had come when nobody could remain a Catholic and be a Parnellite," and, striking

the altar, he said " that he knew who would be marked men."

Temporal injury.

As an instance of the temporal injury which could be inflicted by one in the position of a priest, was the case of a pensioner who had been accustomed to have the certificate for his pension signed by a particular priest. Having been canvassed by this gentleman, and having refused to vote as requested, he was informed by the priest, " I will never sign your papers again." Such a threat to a man in that position might be expected to have a very serious influence.

Mr. Justice O'Brien, in the South Meath case, in delivering judgment, alluded at length to the evidence of Patrick King, to the effect that he would be refused the sacraments when dying. After comparing the words admitted by Father Tynan with those of the witness King.

" It was impossible not to come to the conclusion that the language did contain a menace of a certain kind."

Dealing with the priests and the decision of the question of undue influence, his lordship observed that it was laid down in the Longford case

Refusal of Sacraments.

" That it is the undoubted right of the clergy to canvass and induce persons to vote in a particular way, but that it is not lawful to declare it to be a sin to vote in a different manner, or to threaten to refuse the sacraments to a person for

so doing. Questions of great moment have been introduced into this case. It is contended that the rights of the bishops and clergy in a Catholic country are to direct their flocks upon questions of faith and morals. It embraces also the power to determine what is the province of faith and morals. That is a tremendous authority to claim."

It must be observed, however, that the Bishop's pastoral did not directly advance such a proposition. His lordship then dealt with the pastoral of Dr. Nulty, which was read in the churches on July 3rd. It was clear, he said, that that document had a powerful effect on the community to which it was addressed.

Spiritual influence.

"Parnellism was alleged to strike at the root and sap the very foundations of the Catholic faith. It was stated to have been declared unlawful and unholy by the successors of the Apostles, though the resolutions of the bishops, as far as I recollect, related solely to the question of political leadership. Those who refused to accept that proposition on the assumed authority of the Catholic hierarchy, were pronounced to have deprived themselves of every reason for believing in the doctrines of revealed religion, which all rested on the same authority."

Although the resolution of the bishops, which was the foundation of that proposition, related solely to the question of political leadership, Dr. Nulty laid it down that no intelligent or well informed person could remain a Roman Catholic and adhere to Parnellism.

In reference to the remarkable sermons of the Rev. Father O'Connell, who said that he would "fire the heels and toes" of certain persons, it was admitted by that gentleman himself that he used the words.

Reviewing the whole case, his lordship said that,

Spiritual influence.

"From the multitude of instances, it was his opinion that during the election the clergy of the diocese, under a strong obligation of obedience to their own bishop, did use language calculated to convey to the minds of the voters in this division that their conduct upon this election involved the question of eternal condemnation or the contrary."

Mr. Justice Andrews, in the same case, agreed with Mr. Justice O'Brien's judgment, and remarked:—

"There are several remarkable cases in which clergymen who, upon the evidence, were undoubtedly agents of the respondent, have, in my judgment, been proved to have been guilty of further undue influence by what I cannot distinguish from spiritual intimidation."

In the North Meath case, in addition to the reading of the pastoral referred to in the previous case, evidence was given of actual physical violence by the priests. Mr. Justice Andrews, in the course of his judgment, stated that it had been relied on by the petitioners' counsel that a species of widespread undue spiritual influence had prevailed in the constituency during the election, by which it was maintained harm and

loss had been done to the petitioner in the matter of votes. The evidence upon this point he had listened to with deep regret. A number of cases were disclosed of acts on the part of clergymen which he could not leave unnoticed. It had been urged on their behalf that they had unfortunately allowed loss of temper to betray them into some deplorable acts of personal violence. In some of the cases women had been the objects of attack, which could hardly be justified by any public explanation, and the respondent's counsel admitted this in addressing the Court, and expressed, on their behalf, regret for what had occurred. Observations had also been made to the effect that the clergy must be regarded as agents of the respondent in relation to such matters as the promulgation of the Bishop's pastoral, and of the promotion of the effect which it was intended to produce among the electors. The Court entirely acquitted the respondent of any complicity, direct or indirect, with acts of personal violence, so gravely censurable, which had occurred, and the election could not have been voided thereby; but about the Bishop's pastoral, in regard to which there was so much discussion, he had, on a previous occasion, and after full and careful consideration, arrived at an opinion which he was unable to change.

He also dealt with the distinction between spiritual and physical undue influence. Spiritual influence.

"The former is a much more subtle form of influence, and its full effect is much more difficult to estimate. Although the Statute law classes the offence of undue influence among what it defines as corrupt practices, it is not essential, in order to determine whether this offence has been committed, to find a corrupt motive in the ordinary sense of those words. Its illegality, both at common law and under Statute law, lies in its interference with what the law so jealously guards —the freedom of election."

Mr. Justice Johnson, concurring with the judgment of Mr. Justice Andrews, believed that passages in the pastoral were calculated to exercise undue influence, and held that the respondent, by his agents, was clearly responsible for the pastoral.

"Agency does not depend solely on formal appointment by the respondent, though he appointed many of the priests his personation agents. It is a fact to be gathered from all the circumstances in evidence in each case." Agency of priests.

In both cases the elections were voided.

Any fraudulent device which may impede or prevent the free exercise of the franchise of any elector is prohibited by Section 2 of the Act of 1883, and is included in the term undue influence.

In the Stepney case (1886) polling cards were issued, and were in shape like a ballot paper, and a X was put to the candidate's Polling cards.

name for whom the card was issued. The electors were told that if they marked the ballot paper otherwise than as shown on the card the vote would be lost. The other candidate's name was in much smaller type.

Mr. Justice Denman said:—

"I am unable to hold that the distribution of the yellow cards, in the absence of any evidence that anyone was in fact deceived by them, was an act (however objectionable and discreditable to the party who circulated them) which deprives the petitioner of a right to sit for the division in case any vacancy should occur during the present Parliament."

This is a decision contrary to one given by Mr. Justice Blackburn under the earlier Corrupt Practices Act, 17 and 18 Vic. C. 102, in the Gloucester case. Giving judgment on a similar question, he said:—

Fraudulent device.

"The real question is: What was the effect likely to be produced? and added: If I come to the conclusion that those who issued the cards intended to trick people into putting no mark for Robinson (the other candidate) for fear that it should invalidate their vote, that I suppose would be a fraudulent device within the meaning of the Act."

CHAPTER V

MARKS OF DISTINCTION

THE 16th section of the Corrupt Practices Act of 1883 is very explicit with reference to the illegality of payment or contract for payment for bands of music, torches, flags, banners, cockades, ribbons, or other marks of distinction. The payment for bands of music, etc., is only prohibited when it is for the purpose of promoting or procuring the return of a candidate at an election. It is the *payment* or *contract for payment* which is prohibited. The service of a band rendered gratuitously may be accepted.

In the Hexham petition (1893) there were charges against the respondent that bands of music had been employed and paid for, and it was argued by counsel that the words of the section "at any election" were added to "candidate" to identify the person, and not to limit the time. Mr. Justice Cave disagreed with counsel's interpretation of the section, and said:—

Bands.

"Payment on account of a band is illegal as soon as the election has begun; but up to that time I do not find anything that makes it illegal."

Flags.

In the Rochester case (1892), although evidence was given as to the purchase of flags and ribbons, the judges do not appear to have taken any notice of it in their judgments.

Banners.

In the Stepney case (1892) evidence was given that the respondent, through his agent, paid for broad strips of canvas, upon which was painted "Isaacson for Stepney," these banners being suspended by ropes from houses on opposite sides of the street. It was contended by counsel for the respondent that these were not banners under the Act; that they were nothing more than canvas advertisements, and both counsel and the Court exercised their wits in a jocular direction as to the meaning of the word "banner." Mr. Justice Vaughan Williams suggested that he did not think these were what the poet Gray meant when he wrote, "Confusion on thy banners wait," to which the petitioner's counsel retorted that when Shakespeare wrote, "Hang out our banners on the outward walls," they were just such banners as these. Mr. Justice Cave, in giving judgment, said:—

"I am clearly of opinion that these 'canvas advertisements,' as they were called, are banners and nothing else. In order to get them, they go to a man who describes himself as a 'flag and banner maker.' They are described in the bills which are sent in as banners, and if you were to put a stick at each end of the canvas and set two men to carry it along the street no one could doubt that it would be a banner

to all intents and purposes. It is suggested that the object of the Act of Parliament was to preclude this kind of mark of distinction which might lead to a fight. I do not think that that was the intention of the Act of 1883, because if it had been, it seems to me that all colours, all badges and all banners would have been made illegal. It seems to me that the object of the Act of Parliament was entirely different. What was intended to be struck at was the waste of money at elections, which served no useful purpose at all, and to prevent a man gaining a false show of popularity by laying out his money in flags, and banners, and ribbons, and cockades and things of that kind. There are a number of persons whose political opinions are extremely weak, to the extent of being sometimes non-existent, and who, if they care to vote at all, like to be in the majority. Everyone knows what a powerful influence that requires, and how important it is to win the first elections that are decided, because there are many people who love to go with the flowing tide. It is immaterial whether the banner is carried about the streets or whether it is fixed upon a house.

In either case, if the place is covered with blue canvas advertisements, or red canvas advertisements, as the case may be, hanging on private houses, the result undoubtedly produced is an impression that the parties who display the most of those decorations are in the ascendancy."

Mr. Justice Vaughan Williams, in the same case, however, while agreeing with Mr. Justice Cave as to the definition of the word "banners," and that in this case they were used as marks of distinction, questioned whether a payment for banners not used as

marks of distinction would be illegal. He said:—

ommittee
om signs.

"Supposing you had a committee room, and from out of the window of that committee room was hung an announcement, either in the shape of a flag or in the shape of a banner, to inform people that that room was the committee room of the candidate. I do not think, or at all events, I should hesitate much, to find in that case that the user of that flag or banner was a matter, the payment for which would come within this section, because, in such a case, the flag or banner is not used as a mark of distinction."

Here, however, he held it was plain that they were used as marks of distinction, and came within the Acts 17 and 18 Vict. chap. 102, Section 7, and the Act of 1883, Section 16, combined and construed together.

This, of course, raises a question as to what banners would be illegal, and in what case it would be legitimate to use them. In the course of the argument, Mr. Justice Vaughan Williams suggested that a very pretty Christmas conundrum would be, "When is a banner not a banner?" It is quite clear that if no *payment* had been made for the banners, and that friends of the respondent had chosen to make them and present them to him, there would have been nothing illegal in so doing; and probably, if these canvases had only had written upon them "Mr. Isaacson's Committee Rooms," as an advertisement of the fact

anners not
id for.

that at that house there was a Committee Room; that could not have been said to have been a mark of distinction, and this is probably what was in Mr. Justice Vaughan Williams' mind when he made the remarks above quoted. It may, however, be considered wiser by those who conduct elections, after this decision of the Court, to refrain from payment for banners of any description.

Hat cards.

One other mark of distinction not mentioned in the Corrupt Practices Act came under the consideration of the Judges in the Walsall case (1892), and that was the distribution of a large number of cards with the portrait of the candidate and the words, "Play up, Swifts. James for Walsall." The cards were printed with the portrait of the candidate on the upper part of the card, the lower part of the card having the corners cut off for the purpose of inserting in the hat-band. There were two questions to be decided—first, was it a breach of the Act; and secondly, had the respondent been relieved from it on the ground of inadvertence? The facts amounted in substance to this: That a very large number of the cards were ordered, were supplied, were worn, and were paid for in the account. According to the books of Henry Robinson, 2,000 cards for hats with "Play up, Swifts" on them were ordered, and 2,000 ditto on stout paper, these being spoken

of as cards for hats. It was perfectly well known that the election badge used in all elections years ago was beyond all doubt what the Statute intended to prohibit.

Although a number of other charges were made against the respondent in this case, the Court based their decision to unseat him on the one point of the payment for the printing of these cards. Mr. Baron Pollock, in the course of his judgment, said:—

"There was one case which is a very peculiar one. I am referring to the charge which was made of payment by the election agent for what had been called the 'hat cards.' Now, it is to be remembered here that this charge is made not in respect of the ordering of the hat cards, which was done here by someone who was not an immediate agent of the candidate, nor is it a charge for the distributing, or wearing, of hat cards. The charge is that these hat cards, having been made, and the letters printed on them, and that they having been worn in the hat by a very large numbers of persons, the agent for the candidate paid for them, and that payment was an illegal payment, and consequently an illegal practice which would set aside this election."

As to ordinary canvassing cards. Mr. Baron Pollock said:—

Vote and interest cards.

"There was another matter of a very different character, namely, cards were printed, not merely cards of invitation as the old cards were, but cards which, since the introduction of photography, bear a photographic likeness of the candidate, and short words of invitation and encouragement, and so forth, to vote for him, which cards could not be found fault with as being within the Act of Parlia-

ment, and in the words ' marks of distinction.' And so long as cards alone were used there could be no objection ; and one may even go further ; one may say sometimes these cards might be pinned to a man's coat, or fixed on to the outside of his hat, and yet that user, according to the idea of each individual, might not necessarily make them ' marks of distinction.' But if such a thing as the present card is made specially adapted to place in the hat as this is, if as a matter of fact it is used for that purpose ; and then if, after having been ordered, after having been used for that purpose, and after having been so described in the account, the person who paid that account pays it knowing what it is in fact, it is a very different thing from the case of a person who says, ' I printed some cards, and distributed them, but I am not responsible for the way in which people used them.' "

The Legislature has decided that they would prohibit by penalty any mark of distinction for the obvious reason that it was a party badge. When the Corrupt Practices Act, 1883, was passed, the Legislature endeavoured to extinguish mischief of this kind by preventing not only the ordering of such badges, but the wearing of them.

Probably few elections since the passing of the Corrupt Practices Act have been held where cards with the portrait of the candidate have not been issued; possibly not in the exact form of the one in question, nor were they issued for the definite purpose of being used as a badge, but they have been used on either side, either to place in the hat, or to pin on the

coat. It will be noted that the Court stated that so long as cards alone were used there could be no objection; but if such a thing as the present card were made to be placed in the hat; and, if, as a matter of fact, they were used for that purpose, if they had been ordered, and used for that purpose, and been so described in the account, the person who paid that account, and had paid it knowing what it was, had committed an offence under Section 16 of the Corrupt and Illegal Practices Prevention Act, 1883.

The above decision, apparently, does not prohibit the printing of cards with the portrait of the candidate, so long as the letterpress amounts to a declaration of his views, or an invitation to vote for the candidate, and that they are not issued as marks of distinction.

Hat cards.

The Walsall decision was discussed in the East Clare petition some days later. At that election 3,000 cards were printed and distributed with the words, "Men of Clare, remember Parnell, and vote for Redmond," printed upon them, and it was said, they were worn in the hats of the voters. Mr. Justice O'Brien, in delivering judgment, was convinced that there was no illegality whatever in the distribution of the cards.

"The cards produced are not distinctions within the meaning of the Act of Parliament. The Cork card is the usual one for 'the honour of the vote and interest.' From another card the name of a

second candidate is erased. The Ennis card says, 'Remember Parnell and vote for Redmond,' which is the same thing substantially, as to vote for Mr. Redmond, the Parnellite candidate. These are canvassing cards or invitation cards, which, in the judgment of the Court in the Walsall case, are expressly declared to be innocent. The Walsall case is considered to have gone to the extreme verge of the law and of common sense, but we are asked to step across the border into the region of entire and utter absurdity. Anything, no doubt, may be turned into a party distinction, but the party distinctions, which are forbidden by the Act, must be things which are paid for and intended to be used as such, of which there was no real evidence in this case. In the Walsall judgment the objects are expressly stated to be hat cards, and to have a picture of the candidate, which, at least, Mr. Redmond had spared us in this case. These are not such things at all—they have another use altogether ; they are common cards, and the fact that another use is made of them does not constitute illegality, unless there is specific evidence from which we must draw the conclusion that that other use was intended. Anything, no doubt, might be made use of as a distinction. Some things were suggested by the counsel for the petitioner—a piece of blank paper or a mourning band on a hat."

If that argument was followed into the wider field of feminine ornament, then the real war would begin as to what is a distinction.

Portraits of candidates may be banners.

In the St. George's in the East petition (1896) a counter charge against the petitioner was that he had paid for banners. These consisted of a large portrait of the candidate sketched on linen, with laths top and bottom.

They were issued for the purpose of affixing on walls, instead of pasting them on as ordinary posters. Evidence was given that boys had fastened these to sticks, and had carried them about the constituency. This was not the purpose for which they had been provided.

The Court, however, held that they were marks of distinction.

Baron Pollock said:—

Marks of distinction.

"A banner, or anything like it, apart from the question of its being a banner or not a banner, may be a mark of distinction; and, to my mind, it is absolutely clear that whatever may have been the intention, or the idea, of the person who ordered these large photos, some printed on linen, and some on paper, they, in themselves, were marks of distinction: it is obvious that it is not the case of a man who has ordered a thing for one purpose, and found it used by other persons, to suit their interest, for a perfectly distinct and different purpose, for which, in the first instance, it would not be an appropriate thing to use. I think no one could have ordered these things—no one could have seen them used apart from their being used as banners—without seeing that they were within the spirit of the Act of Parliament, and so far as the words 'marks of distinction' go, within the wording."

Mr. Justice Bruce, in the same case, held that the portraits were party badges.

"A thing that contains no address, and gives no information respecting the opinions of the candidates, that imports no intelligence, that contains no announcement or request, but is simply

intended to be used, and is used, to indicate that the person exhibiting it, or inhabiting the house on which it is exhibited, belongs to a particular party, is, I think, a mark of distinction within the meaning of the Act."

CHAPTER VI

AGENCY

THERE is no decided case which lays down in distinct terms what constitutes election agency. Each case has to be dealt with on its merits, and the question has arisen in some of the election petitions. A man cannot make himself a sub-agent, nor does the fact that a man wore party colours prove that he was an agent, unless his action has been adopted, or ratified by the candidate in whose interest he has acted. Whether a member of a political association is an agent, for whose illegal acts the candidate is responsible, is entirely a question for an Election Court. In some cases it has been held that such an association may be one to whose funds the candidate has contributed, and which has advocated his cause, and yet he may not be responsible for its acts; while in another case an association supporting the candidate, but not receiving any financial support from him, was found by the judges to be so closely connected with the candidate as to make him responsible for its acts. In the Hexham case, the secretary of a Conservative Association made illegal payments

out of funds mainly provided by subscription from the candidate; yet, although such payments were not with his knowledge or consent, the candidate was held responsible. (See Hexham, pages 10-16.)

Priests as agents.

In the South Meath case (1892) the clergy had canvassed for the respondent, and had taken a very active part in the election. Meetings of the clergy had been held, and in many instances they had been appointed by the respondent as personation agents. Mr. Justice O'Brien's remark upon this was:—

"The only question which could remain on my mind, as to the result of the evidence, is about the application of this term agent at all, or the possible application of any such term to the position that the clergy assumed, who appear to me to have fulfilled the relation of principal to whom Mr. Fullam (the candidate) was merely an agent, and upon that part of the matter, therefore, I entertain no doubt."

Mr. Justice Andrews, in the same case, said:—

"From the hour of his election as their candidate up to his return the motive power in his election contest was theirs, and from first to last he well knew that this was so. I hold that by unmistakeable recognition and adoption he made the priests his agents."

Club chairman.

In the Rochester case (1892) the Conservative party had organised a club known as the Rochester Constitutional Birthnight Club. The respondent was a member of the club,

and subscribed to its funds. The chairman of the club, on the occasion of his own birthday, treated the members of the club, which met at the Conservative Club, to refreshments. The respondent was present at the gathering, and responded to the toast of his health. The Court held that the chairman was an agent of the respondent. (See page 16.)

Habitual drinker.

In the Montgomery case (1892), where an habitual drinker had been elected on to the respondent's committee, it was admitted that he treated indiscriminately, but he stated to the Court that he had not canvassed for the respondent. Mr. Baron Pollock said:—

> "I cannot help thinking, knowing the position in which T. J. was placed, that while there those around him, of all classes, who gave the best evidence they could give as to the confidence placed in him, by entrusting him with the affairs of life which are usually entrusted to a solicitor, whose duty is necessarily confidential, and there were some who were not even aware of his being a man who gave way to that great temptation of drink; but there were others, probably the majority, who did know his habits, and who looked upon them with a feeling of commiseration. He accordingly exonerated him from any corrupt motive."

Mr. Justice Wills, however, dissented from this view of the case.

Principle of agency.

In the Aylesbury case (1886) Mr. Justice Field said:—

"I have very carefully gone through the various decisions of learned Judges who have sat in this tribunal before me, and have ascertained the principles that they have laid down. There is no doubt but that the agency to affect a seat is very much wider than the agency to affect a principal. It is not a case of principal and agent. The nearest analogy is that of master and servant; and I have come to the conclusion, laying down to myself the law, that any person whom a candidate puts in his place to do a portion of the task that he has to do, namely, to procure his election as a Member of Parliament, is a person for whose acts he would be liable."

Associations as agents.

In the Lancaster case (1896), dealing with the relative position of political associations and candidate, Mr. Baron Pollock said:—

"Of course, there are some things which, if done, even by an association, or their agents, must, from the very character of the acts, be done so immediately and directly for the benefit of the candidate, that, although there may have been no direct employment by him of anybody to the office, the persons who did those acts were doing them as agents for the candidate."

In the St. George's East case (1896) Mr. Baron Pollock said:—

Association as agent.

"In determining the question how far a candidate by attending the meetings of a political association makes it or any of its officers his agents, it is necessary first to inquire what is the object and character of the association. If, for instance, its object be simply to secure the election to Parliament of a particular individual, it would be difficult, if not impossible, for a candi-

date to take part in its operations without becoming responsible for its acts during an election. Again, if the object of the association be to procure the election of some candidate professing the political views of one of the two great parties which are supposed to divide the opinions entertained by the whole electorate of the country, a candidate, if during an election he attended its meetings, and availed himself of the assistance of the association, he would probably be held so to sanction the association acting on his behalf as to constitute the officers of the association his agents."

In the Hexham case (1892) corrupt practices were charged against the respondent as the acts of the Conservative Association. The Court held that there was nothing to be said in the abstract against the formation of political associations, and that people had a right to associate together, in order to persuade their fellow-countrymen to adopt their views on political matters. Where, however, their acts were accepted by the candidate he became responsible for those acts if they should happen to be illegal.

Mr. Justice Cave said:—

"They, therefore, contemplated furthering the interest of the Conservatives, and undoubtedly endeavouring to promote the election of a Unionist; and if their action was recognised by the candidate, that would of course, be quite sufficient to make the association his agents. When I say 'the association,' of course, I do not mean every member of the association, whoever he might be, but I do mean that it was sufficient to

make the acts of the executive committee the acts for which the candidate would be responsible as long as he chose to acquiesce in their endeavouring to support him and to procure his election."

In the Great Yarmouth case (1906) a man who had interested himself in the election obtained the use of a vehicle, and took voters to the poll, and in some cases had given them money. The candidate, on the hearing of the petition, repudiated him, and it was said that he was not on the list of workers, and had not, therefore, received express instructions, as other workers had, not to do anything illegal.

Mr. Justice Channell said:—

Canvasser as agent.

"There are principles, and the substance of the principle is, that if a man is employed at an election to get you votes, or, if without being employed, he is authorised to get you votes, or if, although neither employed nor authorised, he does to your knowledge get you votes, and you accept it and adopt it, then, in either of these cases, he becomes a person for whose acts you are responsible in this sense: That if his acts had been of an illegal character you cannot retain the benefit which those illegal acts have helped to procure for you—helped to procure for you, I say, because it is not necessary, of course, that the bribery should extend to the full amount of the cases necessary to put you in a majority. Now, that is, as I apprehend, clearly established law. It is hard upon candidates in one sense, because it makes them responsible for acts which are not only not with their wish, but which are contrary to their expressed wish, and contrary to their expressed desire."

Canvasser as agent.

In the Norwich case (1886) a person who had been entrusted with canvassing cards given to him in the candidate's committee room was held to be an agent, and, having been found guilty of an act of bribery, the candidate on whose behalf he had worked was held responsible for his acts, and the election was declared void.

Mr. Justice Denman said:—

"B. himself, who is a good witness to that, admits that he was in the committee room, in and out; that he had cards given to him. We know now the nature of the cards; they were, in fact, the cards, and the only cards, which were used on the polling day for the purpose of enabling persons to go about soliciting votes. We have evidence which we cannot resist, that he was an active person taking part in the election. He was not an elector. He was not upon the register, but I apprehend that that really makes no difference. If anything, it shows a keenness and a desire to take part in the election, and an ability to be made use of for the purposes of the election beyond that even of an elector; but suffice it that he was an active person canvassing voters, going about spending his day upon that business, and that that is proved by his own admission, and by the evidence of other witnesses. Now, that being so, I have come to the conclusion, most reluctantly I must admit, that this election will have to be avoided."

In the Walsall case (1892) a series of ward meetings were organised by the Conservatives, addressed by the candidate, from

February down to the election in July, and it was held that the association were acting for the candidate.

Mr. Justice Hawkins said:—

"There is another meeting on the 27th February, at which he (the candidate) stated that 'this is the first of a series of meetings in anticipation and preparation for the coming election.' Now, from February down to the month of July, these ward meetings were carried on, and it is difficult really how it could be said that the Conservative Association, at all events, were not during that period acting for and on behalf of Mr. James.

I only desire to express my opinion that agency is not confined within any precise and definite period, but that the commencement of agency must be determined in each case by the particular circumstances of that case."

Committeemen as agents.

In the Haggerston case (1896) it was held that the candidate was responsible for the acts of committeemen.

Mr. Justice Wright agreed with Mr. Justice Wills in the Lichfield case that:—

"If persons are appointed to do the work of committeemen it does not matter whether they are called by that name or any other name, equally it would bind the candidate. Now, if, as I think, the Council was really Mr. Lowles' agent for the promotion of his candidature, and P. was their principal secretary, as he says he was, in that way P., even if not in other ways, was Mr. Lowles' agent."

CHAPTER VII

COMMENCEMENT OF A CANDIDATURE

THE very difficult question—When does a person become a candidate so as to become responsible for the acts of other persons, and also the time from which the election expenses begin, has puzzled the Courts in several cases. It has become the habit in recent times to allude to a candidate as a "prospective candidate," in the belief that by so doing no election expense is incurred, and that he is under no liability for acts by the association which selects him. It would appear, however, that much depends on the action of the candidate himself. It is to be regretted that the Courts have not laid down any rule for the guidance of candidates in the matter. They have, however, expressed some opinions on the subject, from which it would appear that a candidate invited to stand at the next election who does not definitely accept the invitation, but expresses some hope and expectancy that he may possibly be induced to accept the invitation when the election arrives, is not responsible for the acts of the association, nor for any expense they may incur in

propaganda work for the cause, as apart from the candidate. In this condition of affairs he may contribute to the local expenses of the association, and pay the cost of registration. He must not, however, incur any election expense during the prospective period.

In the Walsall petition (1892) certain cases of bribery and treating having been proved, the question how far the acts of Conservative Association could affect the Conservative candidate was considered.

Mr. Justice Hawkins, dealing with the point in his judgment, said the question was one of considerable difficulty.

Definition of a Candidate.

"The answers to it depends on the peculiar circumstances of the case. Mr. Young cited Section 63 of the Corrupt and Illegal Practices Prevention Act, 1883, as defining what is meant by the word 'candidate.' He says that the expression 'candidate' in the Act, unless the context otherwise requires, means 'any person elected to serve in Parliament at such election, and any person who is nominated as a candidate at such election.' I do not think that that definition will guide us in the consideration which arises here, viz., whether Mr. James would or would not be responsible for the acts of treating and bribery if they had been established in point of fact. I cannot help thinking that the period during which the candidate can be held responsible for the illegal and injudicious acts of his recognised supporters must be confined within reasonable limits. It would not be reasonable to say that a man who contemplates in the year 1892 becoming a candidate in the year 1896

could not legally employ a person to do for him a variety of acts to ingratiate him with those whose votes and suffrages he intended to seek in some future year. Upon the present occasion I think the limit of time to which we ought fairly to apply our minds is a period commencing from the time when it was first known that Mr. James announced his intention to present himself as a candidate for election at the next ensuing election. Now, in the spring of the present year, it was very well known, at all events, all reasonable people suspected and believed, that a dissolution would take place in the course of the summer, and I find, in the extracts from the newspapers which have been handed up, that Mr. James himself, in the month of February, expressed himself to this effect that 'the election had induced a good deal of fresh interest in their cause.' They 'had asked him to fight their battle,' and he went on to say that he consented to do so. . . . There is another meeting, I think, on the 27th February, at which he stated that 'this is the first of a series of meetings in anticipation and preparation for the coming election. It could not be very far off, and he thought they might assume, as a matter of fact, that it would be this year.'

Ward meetings.

Now, from February down to the month of July, these ward meetings were carried on, and it is difficult really how it could be said that the Conservative Association, at all events, were not during that period acting for and on behalf of Mr. James."

"I only desire to express my opinion that agency is not confined within any precise and definite period, but that the commencement of agency must be determined in each case by the particular circumstances of that case."

In the Lancaster petition (1896) questions as to what were election expenses arose. Election expenses.

Mr. Baron Pollock, in giving judgment, said:—

"I must say, with all who have gone before me, in giving judgment upon this point, the Statute does not state when the election begins. It says many things as to the appointment of an agent and the incurring of election expenses, which might point, with the words 'or management of the election,' to this meaning: Until the election, after the election was actually at work, and the agent appointed; but the Judges have not accepted that construction. They have said, 'We can go behind that and start from an earlier date'; but still, it is entirely a matter, I will not say of discretion, but of sound judgment, to say how far you may go back and how far you may not go back. I do not agree with the argument that there is to be no distinction made between a person who is an active candidate and a person who is a prospective candidate. I cannot conceive that the Legislature ever meant to say, having used no words to say it, that by using the words 'the management of the election,' it intended to prohibit, or that it could have intended to prohibit, a person from not only taking an active part in politics, but from announcing his intention that, under certain circumstances, when a vacancy occurred, he was willing to become a candidate."

Mr. Justice Bruce, in the same case, said:—

"But the limit of time is not the only question to be considered. Even after a person has become a candidate he is only liable to return expenses incurred in the conduct or management of the

election. The question of the time of the commencement of the candidature is only one element to be considered."

Referring to a meeting held on May 8th, 1895, Mr. Justice Bruce went on to say:—

Prospective Candidate.

"That is a meeting held by the Conservative and Unionist Associations. At that meeting Colonel Foster spoke of his standing as a candidate as a thing he 'hoped' for; he hoped to be at some future time in the position of a candidate. In spite of that declaration, we are asked to determine that he was a candidate at that time; we are asked to interpret the hope for the future as an acceptance of present responsibility. No resolution adopting Colonel Foster's candidature was even proposed or passed; and, although some of the speakers said that they hoped that Colonel Foster would be returned, it does not seem to me, after the explicit declaration of Colonel Foster, that he did not, at that time, regard himself as a candidate, that it would be reasonable to construe the expressions used by individual speakers as affecting the status of Colonel Foster. The Conservative Association were entitled to hold meetings to promote their particular principles, whether there was, or was not, a candidate in the field; and I do not think that the presence of Colonel Foster at that meeting makes the meeting a meeting for the purpose of promoting or procuring his election."

In the Elgin and Nairn petition (1895) the candidate's connection with the constituency was admitted to have begun early in February, 1894, or sixteen months preceding the dissolution of Parliament. Various meetings were

held in the constituency, and it was sought to have these expenses, together with the salary of the Conservative agent, included in the election expenses, which would have brought the total amount beyond the maximum allowed by the Corrupt and Illegal Practices Prevention Act, 1883. The Court, therefore, discussed the question of the time when the election could be said to have begun.

Lord Maclaren, in giving judgment, said:—

Adverse vote in Parliament.

"I think that 'conduct or management of such election' means a definite election within the knowledge and contemplation of the parties who are engaged in conducting and managing it. . . . The late General Election sufficiently illustrates my meaning:—the case where there is a vote in the House of Commons adverse to the Ministry, and where from the moment when that vote is announced, every one is looking forward to a dissolution of Parliament, with a view to determining whether the Government of the day is to continue to enjoy the confidence of the country. I should certainly hold that from that time the election had begun in the sense of the sections we are considering. I do not say it may not have begun at an earlier period. If, for example, a candidate not proceeding upon any public and patent facts, but trusting to his own political sagacity, and, looking round the political horison, thinks that an election is imminent, and proceeds to institute what is called a canvass of the constituency, which he continues without intermission right down to the election, it may very well be that in such a case his own judgment as to when it is necessary to attend to his electoral interest

shall be taken as fixing the commencement of that particular election."

Referring to the candidate's action in this election, it was pointed out in the judgment that he did not consider himself in any way bound to be the candidate, but that he had been willing to make the acquaintance of the electors, in the hope that if he were acceptable, he might allow himself to be nominated as the candidate.

As to this position Lord Maclaren said:—

Prospective Candidate.

"He describes his position as that of a 'prospective candidate,' and that seems to be a good enough designation if you limit the meaning of 'candidate' to its official meaning as that of a person nominated on the nomination day; but, of course, in construing the Election Acts it is impossible to put so limited a meaning on the word 'candidate,' and I think that from February, 1894, Mr. Gordon was a candidate, and that, for example, if a case of corrupt acts by any agent of his subsequent to that period were proved, it would be impossible to resist the conclusion that he was a candidate in the sense of making himself responsible, so far as the Statute puts it upon him, for the acts of his agents."

Meeting to select Candidate.

In the Norwich case (1886) the question arose whether the meeting held to select the candidate was an election expense, and the judgment of Mr. Justice Denman laid down the principle that as the payment to be an election expense must be one in respect of such election, this meeting was not for that purpose.

" According to my view these expenses, the expenses for the meeting, were really not in substance expenses incurred in the ' conduct and management ' of that election, the election of the candidate. They were expenses incurred in order to induce a particular person to become a candidate, and the two things are in my judgment totally distinct. I think, therefore, that until Mr. Bullard had become the candidate, that is to say, until he consented, until he was one of those persons who would come within the definition (supposing he had not been successful) of the second branch of Section 63, the payment was not a payment on his behalf. . . .

If the thing was unfairly done, if, under the pretence of getting up a meeting in order to obtain a candidate, and for the general purposes of a party with a candidate ready cut and dried, they were keeping the candidate back, knowing that it was to support him, that he would consent, or that he had consented privately, and, if, in accordance with that they were doing these acts, then I should say at once it would be colourable, and it would come within the meaning of the Act."

Adopted Candidate.

In the Great Yarmouth case (1906) Mr. Justice Channell, dealing with the question of election expenses, and the commencement of an election, said:—

" It certainly is not limited to the commencement of the active part of the election by the issue of the writ, or by the occurrence of a vacancy. But, although the election may begin from the time that any particular individual is announced as a candidate, it does not follow that the work of the election does begin there.

From the time that the man becomes the adopted candidate, at any rate he is in the position

in which he may incur expenses for the conduct and management of that election which is still in the future, but it does not by any means follow that all the expenses which he incurs, because he is a candidate, and which he would not incur if he was not a candidate, and which in one sense, therefore, have a reference to that election which is still in the future—it does not follow that all those expenses are expenses in the conduct and management of the election. They may possibly be; but they are not by any means necessary, and I should think, as a general rule, they would not be."

Political meetings.

Mr. Justice Channell then dealt with expenses which were not election expenses, such as

"The holding of meetings for the purpose of delivering speeches upon this or that subject which the party politicians have taken up, or which they take up in answer to what their opponents are taking up—political subjects of the day, expenses must be incurred to that by an intending candidate. . . . In my opinion, these expenses, if they can be identified as being in reference to the political views of his party, are not expenses 'about the conduct and management of his election.'"

Registration expenses.

He also included registration expenses as not being election expenses. Then as to the expenses of "nursing" the constituency.

Nursing a constituency.

"The expenses which a candidate incurs for the purpose of making himself personally popular. Now, that class of expenses are not, I think, necessarily part of the conduct and management of the election. You have to look a little carefully at each expense, and see what it was—and

see whether it was identified with the particular election that is coming. But, speaking generally, expenses of that character would not, in my opinion, come within expenses in the 'conduct and management of the election' which have to be paid through the election agent, and which have to be kept within a definite maximum."

Meetings to advance candidature.

In the Lichfield case (1895) it was complained that the election expenses return did not disclose payment for holding meetings to promote the candidature of Mr. Fulford. Baron Pollock said:—

"That question depends upon when the election may be said to have commenced. I think as soon as a candidate begins to hold meetings in the constituency to advance his candidature—in other words, as soon as he begins to take measures to promote his election—the election commences. I cannot doubt that the meeting of the 14th of March was an election meeting. That meeting pledged itself to secure the return of Mr. Fulford to Parliament. It was a public meeting—it was a meeting of the electors. It was not a meeting of any particular section of the electors, nor of any committee; and, as I have said, it concluded with a resolution to secure the return to Parliament of a candidate; and that the expenses of that meeting, and the expenses incurred after that date to promote Mr. Fulford's candidature, were election expenses, and that there was a neglect to comply with the requirements of the Statute in not returning those expenses."

CHAPTER VIII

ILLEGAL PAYMENTS AND HIRING

THE payment for conveyance of voters to the poll, and the user of hackney carriages is an illegal practice, and so is any payment incidental to the use of a private carriage, such as baiting horses or feeing coachmen, although the owners of the carriages are justified in lending them and also the services of the coachman free of charge.

Cost of baiting horses.

In the Lichfield petition (1895) many carriages came from a long distance for use on polling day. It was necessary that they should arrive before that day to be of any use, they were, therefore, put up, and the cost of stabling and baiting, and the drivers were lodged and fed, and the expenses paid by one who was held by the Court to be an agent.

Mr. Justice Bruce, in his judgment, said:—

"There are several charges made for illegal payments. These charges involve the question whether payment made for stabling and baiting horses, and putting up carriages, and lodging and feeding drivers to enable voters to be carried to the poll, are to be regarded as payments made on account of the conveyance of electors to the poll

within the meaning of the seventh section of the Corrupt Practices Act, 1883. Many of the carriages came from Birmingham, a considerable distance, I think about fifteen miles or more ; and in order that the carriages, and horses, and drivers, should be available for the carriage of voters on the day of the poll, it was necessary that they should be put up overnight. It is not necessary to consider the question whether there would have been anything illegal in the friends of the candidate putting up vehicles, horses, and men gratuitously ; but I entertain no doubt that a payment made to procure such accommodation as is necessary to render the vehicles available for the conveyance of electors to or from the poll is a payment within the meaning of the section."

Mr. Baron Pollock, in the same case, said:—

" When there has been a systematic arrangement, as, of course, in some sense there must be where it is done, a systematic arrangement by which vehicles should be got within range of the poll, and where the distance is such that they must come there overnight, and possibly leave next day, that baiting should be provided for them. I think it is impossible to say that such a payment for baiting is not a payment ' made on account of the conveyance of voters to or from the poll.' It is clear to me that this matter of the baiting is as much included as the hiring of the vehicle itself."

Railway fare.

In the Southampton case (1895) Mr. Justice Wright, dealing with the case of the payment of 2s. for a voter's fare, said:—

"It cannot be too widely known that anyone who pays any sum, however small, for the conveyance of a voter to the poll, or from the poll, will thereby avoid and destroy the very election which he wants to forward."

The payment of persons to keep order at election meetings is an illegal payment.

Chuckers out.

In the Ipswich petition (1886) it was proved that a person, held by the Court to be an agent, employed some rough men to attend the meeting to enforce order, and to turn out people disturbing the meeting. The Court held this was an election expense, but an illegal one.

Mr. Justice Cave said:—

"Such a payment, if it could have been made legally by the election agent, must clearly have been returned by him as part of the expenses of the election. It is incurred for the purpose of enabling the arguments of the candidate to reach the ears of the audience, which they could not do if the meeting were disturbed by cries, or broken up by violence, and, in fact, such payment is as much an election expense as the expenses of printing and distributing a written address. It is also clear that the expenditure is illegal. By Section 17 no person may for the purpose of promoting the election of a candidate at any election be employed for payment for any purpose, except for those mentioned in the first or second part of the first schedule to the Act. Now, the purpose of keeping order at a meeting is not a purpose for which persons may be legally employed under that schedule, and consequently these expenses fall

within the section, are not excepted by the proviso.

In my judgment there can be no objection to the employment of unpaid volunteers to put down disturbances of this kind, and where any serious disorder is apprehended, it may be a wise proceeding to swear in such volunteers as special constables ; but I must deprecate in the strongest manner so feeble and unmanly and degenerate a proceeding as the payment of roughs to keep them quiet, and to induce them to permit the orderly to meet in peace."

Printer's name and address.

Under Section 18 of the Corrupt and Illegal Practices Act, 1883, every bill, poster, or placard having reference to the election must bear on its face the name and address of the printer and publisher, otherwise the persons printing or publishing the same is liable, if the candidate or election agent, to the penalties attaching to an illegal practice, and in the case of any other person, to a fine not exceeding £100. The expense of distributing addresses and notices is a legal expense, and persons may be employed for this purpose. It is clear that whereas by Schedule 1, Part 2, Corrupt and Illegal Practices Act, 1883, the words "placard or poster" relate to something capable of being placarded or posted, "bill" is a larger term. It apparently includes any address or notice.

Distributing notices.

In the Barrow-in-Furness petition (1886) the question arose whether persons might be employed and paid for distributing documents

relating to the election. It was held that such employment and payment was not illegal.

What is a bill?

In the course of the judgment Mr. Justice Field discussed the question of the meaning of a "bill." He said:—

> "It seems to me that whatever a 'bill' may be (and it is a very large word indeed) if it is lawful to employ an advertisement contractor to exhibit the bill, it must be equally lawful to take the bill to be exhibited—and the bill cannot be exhibited until it is printed, and it must be posted up—and the labour of doing all that involves an expense which would be incurred by the candidate; and, therefore, I have come to the conclusion that these words must not be construed in the narrower sense in which it is sought to construe them here, but must be taken to include such things as fairly come within the definition in the Act. I am by no means precluding myself from holding that certain other things may be decided not to be within it."

Handbill.

In the Stepney petition (1886) also it was contended that a handbill was not an address, nor a notice.

Mr. Justice Field again discussed the meaning of bill, address, notice, and used language very similar to that used by him in the Barrow-in-Furness petition. He held that the employment of persons for the distribution of bills, addresses and notices was not illegal, but would not define the meaning of "address." It might, he said, be a notice,

> "But again I am in doubt. I do not know, but how am I to limit 'notice?' . . . In order

to make a man guilty of an offence the Legislature must tell us its meaning plainly, and it is remarkable that when they do mean to speak plainly they know how to do it, because, by Section 16, they expressly prohibit bands of music, torches, flags, banners, cockades, and everything else. There the argument again arises, they must be taken to have known that among the various sorts of communications to the electors handbills were always used at every election ; I cannot help thinking that if they intended positively to prohibit them they would have included them in that section under the head of bands, banners and flags. For these reasons I have come to the conclusion that there was no illegal practice committed in reference to the distribution of those bills."

Canvassing electors by paid agents is illegal, but canvassing by a person who is paid to perform duty as sub-agent, clerk, or messenger, in his own time is not illegal.

Clerks as canvassers.

This point was decided in the Lichfield petition (1895) by Mr. Baron Pollock. There it was admitted that "some of the persons employed as clerks had acted as canvassers."

Mr. Baron Pollock said :—

"It is not because a man, who is employed to act as a clerk only for a part of the day, or for some possibly trivial or small matters, such as the directing of envelopes, or what not ; it is not because he occupies that time, which is his own, that he is to be robbed of the ordinary right of a citizen to go about and take an interest in an election where he cares for the politics involved, and to canvass."

Mr. Justice Bruce, in the same case, said :—

"If a person paid as a clerk should in his leisure time engage in canvassing, that would not necessarily be an infringement of the section. Even if a clerk should during business hours, on one or two exceptional occasions, canvass voters, that would not be an infringement of the section. But if a person who is paid as clerk or messenger devotes a considerable portion of his time regularly and systematically to canvassing voters, then I think he must be taken to be employed in contravention of the section in question."

Registration canvassers.

In the Stepney petition (1892) it was charged that payment had been made to canvassers at the election. It was answered that they had been employed for registration purposes only, and that part of their work was to ascertain the politics of the persons canvassed.

Mr. Justice Cave said:—

"The first illegal payment alleged is the payment of canvassers. It is said, that under the guise of canvassing for registration, men were sent out to canvass for the election, and inasmuch as those men were paid, that was a case of the payment of canvassers—an illegal payment which would consequently make the election void. Now, as I have said, there is considerable difficulty in drawing the line between the two, and, therefore, it is all the more important that election agents should not allow them to get mixed up together at all. There is, and apparently there must be, a certain amount of canvassing in registration. You must know who are your friends and who are your enemies, or else you cannot determine whose claim to support, and whose to object to; and until one is satisfied that there was some mixing up of those together, with a

view of getting an indirect benefit at the election, one ought not to treat this an illegal payment."

Refreshments for workers on polling day is a payment for services. In the Barrow case (1886) Mr. Justice Field held that workers who engaged to do certain work for which they were promised refreshments, were employed and paid. (See page 23.)

Refreshments for workers.

Election expenses to be included within the maximum amount allowed by the Act of 1883 may be incurred at any time prior to the election, and it must always be a question of fact, to be decided by the Election Court when the election can be said to have begun. (See pages 84-93.) Many expenses paid by the candidate, although on work which may ultimately be of benefit to his candidature, have been held by the Courts to be legitimate, and not to be election expenses. These include subscriptions to political associations, the cost of running a newspaper, and the cost of the registration of voters.

Expenses not Election expenses.

In the Kennington petition (1886) the cost of registration was borne partly by the candidate and partly by other persons.

Cost of registration.

Mr. Justice Field, on this part of the case, said:—

"I do not doubt for a moment but that Mr. Gent-Davis considered that the registration would be, if properly looked after, a thing that would be useful to him at the election when it came on. The object of the thing was this: At that time he

was a candidate, and he intended to be the candidate whenever the dissolution took place ; and it cannot be denied for a second that in ascertaining whether a man who was a Liberal, and had no right to a vote, was to be kept upon the register, or a man who had a right to a vote was to be kept off the register, he considered that people, that is to say Conservatives, who took the same view in politics as he did, would, of course, support him. What is the good of registration—party registration I mean? The Legislature leaves the different parties in this country to follow their own interests in ascertaining and inducing a Revising Barrister to say who are, and who are not, qualified to vote ; and I must confess that merely because a person who is a candidate looks after his interests to ascertain that no persons but those who are favourable to him are upon the register, and are qualified to be upon the register, I am quite unable to come to the conclusion that that is an expense on account of the election, or on account of the conduct or management of the election."

Registration canvassers.

The employment of canvassers on registration work all the year round, when only colourable and really used for election purposes, is possibly illegal.

In the Stepney case (1892) Justice Cave, after pointing out that it was quite legitimate to ascertain persons' political views in the course of a registration canvass, said:—

"What I would like to point out with reference to that matter is, the very great danger that follows, if you are going to have this registration campaign going on all the year round, of the real legitimate election expenses being met under the

guise of registration expenses, and in that way the provisions of the Act of Parliament with respect to the maximum, and with respect to the returns and so on, being rendered of no effect. It seems to me that it is a dangerous course, and that unless an election agent can make it quite clear that he has not been doing election work under the guise of registration work, he must not be surprised, when his accounts are brought before the Election Court, if the Judges take the view that he has been purposely muddling the two accounts up together in order that he may escape from the fetters of the Act of Parliament."

Registration expenses.

In the Elgin and Nairn case (1895) Lord Maclaren, dealing with the work of political associations, said:—

"I agree with the view expressed by the Judges in the Kennington case, that this kind of expenditure, which is commonly known as registration expenditure—because, of course, the ultimate test to which everything is brought is, how many electors of your party can you put upon the register—that this kind of expenditure is outside the proper business of the election."

Payment by person not the agent.

Payment by a person for election matter is an illegal payment, unless it be of some trivial amount. Where a person issued placards and cartoons intended to incite voters to vote for a candidate, the cost of which amounted to £20, the Court held it to be an illegal payment, and ordered him to be reported.

Mr. Justice Denman, in the Norwich case (1886), said:—

"Section 28 of the Act provides that 'except

Cost of placards and cartoons.

as permitted by the Act no payment shall be made by any person at any time in respect of any expenses incurred on account of, or in respect of, the conduct or management of the election, otherwise than by or through the election agent.' Can it be doubted that this expense was incurred on account of the election? For what other reason would Mr. C. issue fair trade placards and cartoons, all of them intended to operate in Mr. Bullard's favour, and one of them directly inciting voters to vote for him. Then, if it is within the section, is it within the proviso? By the proviso the section is not to be deemed to apply to any sum disbursed by any person out of his own money for any small expenses legally incurred by himself. To my mind the proviso is meant to apply to such small payments as the hire, for instance, of a cab by a canvasser in order to go round canvassing, where no use is made of it for the purpose of taking any voter to the poll, or for telegrams, or postage, when the payer is not and does not intend to be repaid. It is not intended, to my mind, to apply to so large a sum as £20, although it might, perhaps, cover the purchase and distribution of half-a-crown's worth of cartoons, or any small expenses of that kind which is not forbidden by the Act, and which a person, who is not an agent might legally incur—that is to say, which he is not forbidden by the Act to incur.''

Meeting to select Candidate.

The cost of a meeting to select the candidate is not an election expense, and is, therefore, not to be included in the election return, unless the meetings are colourable. (See page 90.)

Political lectures.

Nor is the cost of political lectures necessarily an election expense. In the Haggerston case (1896) Justice Wright said:—

"We think it would be unduly confining the methods of political work and political enlightenment in this country if we were to attempt to lay down any such general rules as that lectures, even though given with the view of advancing the prospects of a particular candidate, are necessarily election expenses. We think that must depend upon the circumstances in each case."

Mr. Justice Bruce also said:—

"It is, as I conceive, a matter of great public importance in this country that those who exercise the franchise should have frequent opportunities of hearing lectures, speeches and discussions on political questions. Large masses of the people are not likely to exercise their voting power intelligently, unless they have the political questions of the day brought to their notice frequently, and in an attractive form. . . . In my opinion the expenses of such meetings are not election expenses, unless the meetings are in some way connected with the election of the candidate. A meeting that is called for general political purposes does not, I think, become an election meeting merely because some allusions are made to his candidature. The line must be drawn between meetings called with the direct object of advancing the election of the candidate, and meetings called for another object, from attendance upon which the candidate only derives some indirect or remote advantage."

Candidate's subscriptions.

A candidate need not withdraw his subscriptions to a political association, and presumably, therefore, he may contribute to the association when he becomes a candidate.

In the Worcester case (1892) Baron Pollock, discussing the question of agency of associa-

tion on the ground that the candidate was a subscriber to its funds, said:—

"To say that a gentleman, because he becomes a candidate for a constituency is thereupon to withdraw his subscription to such an association, and have no connection with it, would be puerile, it would be to suppose a state of things that could not exist; and, indeed, it would be, to my mind, to interfere with a course which is constitutional and proper if it be not abused."

In the Lancaster case (1896) also the same Judge said:—

"Now, then, Parliament might well have said: No person who intends to be a candidate within one year, two years, or three years, shall subscribe to a political association. Have they said so? Certainly not."

Cost of local newspaper.

In the Kennington case (1886) the candidate against whom charges of illegal practices were made, owned a local newspaper, which was run in his interest, and it was alleged that the cost of that newspaper was an election expense. The Court, however, held that the cost of the issuing of such newspaper were not expenses, on account of, or in respect of, the conduct or management of the election.

Mr. Justice Field said:—

"I have no doubt whatever that Mr. Gent-Davis would not have published this paper at all unless he had thought it would assist him. Whether he thought it would be a good speculation pecuniarily I do not know; but the question

is whether it is an expense of conducting or managing the election. It is not for me to say what difficulties might arise if we were to hold that view. I am very clearly of opinion that in neither of these cases (the cost of registration and of the newspaper) was Mr. Gent-Davis guilty of an illegal practice."

Mr. Justice Day concurred.

Subsidy to local newspaper.

So in the Lichfield case (1895), where the candidate made payment to certain newspapers as a subsidy, and did not return these payments in his election return, the Court held that the payments were not part of his election expenses.

Mr. Baron Pollock said:—

"I think that no Act of Parliament like this, where there is a doubt in the matter, ought to be so construed as to fetter and to interfere with the undoubted right, the civil and constitutional right, of a man, apart from an election, to uphold himself, to encourage the upholding by others of those political sentiments which he honestly believes in. I think, therefore, in that respect that I ought to come to the conclusion that that subsidy was arranged, that it was not a subsidy merely for the purpose of the election, but that it was the ordinary subsidy for the purpose of promoting a particular view."

All expenses of Election to be included in return.

All payments incurred in the management of the election must be included in the candidate's return, otherwise it is an illegal practice. Where in the St. George's East case (1896) the candidate hired by the year premises used for a club room, which, at the

time of the election, were used as a committee room, it was held that a proportionate amount of the cost of the premises should have been included in the return, and the failure to include it was an illegal practice.

Mr. Baron Pollock said:—

Committee room belonging to Candidate.

"Mr. Benn had taken a house in the district which he was standing for, and he added within the curtilage of that house, at the end of the yard, what he called a small house. I suppose it was principally a large room to serve the purpose of a convenient club room for men to come and read, play their games, and discuss matters; and that club was not only a social club, but a political club. In no sense is it suggested that that was a sham in the sense of an association being started which would be a useful instrument to Mr. Benn for anything like corrupt or illegal purposes; that is not the charge. The only charge is this: That the club, as was admitted by Mr. Benn, was all at his expense—he paid the rent, the taxes, the upkeep of the place, the painting and cleaning; of course, there was some labour connected with the latter item. Well, so far so good; until the time of an election came I should say such expenditure was not only not illegal, but was a reasonable and a very fair means of enabling people in a poor neighbourhood to come together and exchange their sentiments, and encourage each other in their political opinions; but when the election commences a different state of things arises; and you have to ask yourself who are the people who are contributing to and working this election, and you find the very people who are in this club, and are connected with it, are working and assisting

in the election. Well, then comes an argument from Mr. Willis which I entirely accept so far as the facts support it. He says, if a gentleman, instead of hiring a committee room elsewhere, likes to devote a certain portion of his own house, a room or two rooms, for the purpose of a committee room, are you immediately to say he ought to return a portion of his rent, a portion of his servant's labour, and a portion of his expenditure for coal and gas as being an election expense? I should say, certainly not, the answer being whether an election was pending or not, there was a room which he himself and his family would have inhabited. There was the firing, there was the gas (that must have been used either way), and I think it would be a forced construction to say that a proportion of all those expenses became election expenses. But here arises a new state of facts. When an election is taking place there must be a committee room somewhere, and that committee room must be hired unless the candidate carries it on in his own house, and there must be the expenses of rent, coals, gas, cleaning and so forth ; and but for this club room, they must have gone elsewhere. It is found more convenient to have this club room, but the people who inhabited it were the people who were workers for the election ; therefore, it seems to me that these were election expenses. I should not have cared so much for the decision in this case except for its importance, because it is just one of those little things that until the law is known may prove a source of difficulty in the minds of persons who are not acquainted with the law, and it is well that they should know in future that unless they make a return of such expenses they are guilty of a breach of the Act of Parliament."

In the return of election expenses the name

Situation of meeting place and Committee room must be specified.

and situation of every room used for public meeting, or as a committee room, must be set out, as well as the name and description of any person to whom payment is made for the use of such room.

In the Buckrose case (1886) the series of payments for such purposes was headed "paid for the hire of rooms and expenses for holding public meetings at the following places." Under this heading a number of places were entered, in only one was the name of the building and the place where the building was situated stated. The Court held that this was an illegal practice, but granted relief.

Bill posters not disqualified.

It was objected in the Central Finsbury case (1892) that two persons who were employed as bill posters were, by reason of their employment, disqualified from voting. It was proved that the bill posting was done in the ordinary course of their business; that, although some portion of it was done by themselves, the greater portion was done by their *employés*. It was argued that under Section 25 of the Ballot Act this was an employment of a "voter" at the election. Mr. Justice Vaughan Williams put the case of a printer employed to print the posters, and said the line must be drawn somewhere, and that would clearly be outside the enactment.

Sandwich men.

It was also alleged that the bill poster had employed "sandwichmen," and that that was

an illegal employment. Mr. Justice Cave characterised this argument as "monstrous," and said the votes were clearly good. The voter in such case was not employed to do the work himself, any more than the printer of a newspaper who inserts advertisements.

School caretaker.

It was likewise objected that a person who received two sums of 8s. and 2s. for cleaning a schoolroom in which meetings were held, was a person who had been employed for payment by the respondent. It was proved that the voter's wife was the caretaker of the schools, that the voter assisted her in that position, that he arranged the room for two meetings for both sides, and was paid for his services for preparing the platform, etc. The Court held that it did not come within the Act.

CHAPTER IX.

FALSE STATEMENTS

By the Corrupt and Illegal Practices Act, 1895, the making and publishing of any false statement in relation to the personal character or conduct of a candidate is an illegal practice, if made by the candidate or his agent.

In four cases charges under this Act have been under the consideration of the Election Courts.

In the Sunderland case (1896) Mr. Baron Pollock said:—

Any false statement illegal.

"Any false statement, whether charging dishonesty, or merely bringing a man into contempt, if it affects, or is calculated to affect, the election, comes within the Act. Some perfectly innocent acts may be done by people, and yet they may come, if they are stated to be done in this way, within the Act."

Quotation from newspaper.

The quotation from a newspaper of some alleged fact does not exonerate the person using the quotation.

In the same case Baron Pollock said:—

"There is one other thing I am clear upon, and that is this: If you quote another article from

another paper, you make any absolute facts stated in that article a part of your own statement ; that is to say, a man cannot shield himself, if he has charged a man with forgery, by saying, ' Oh ! but if you look at my newspaper you will find we read in the evening paper that Mr. So and So had committed a forgery.' "

When Candidate not liable.

The candidate is not liable for any false statement unless the candidate or his election agent has authorised or consented to the committing of such illegal practice by such other agent, or has paid for the circulation of the false statement.

In the St. George's East case (1896) the statement appeared in a local paper. The candidate repudiated the false statement issued; made a statutory declaration before a Commissioner that he was not responsible for it, and had copies of the declaration printed and circulated in the district. No charge was made against the election agent, and the Court held that the candidate was not liable.

Mere abuse not illegal.

In the Cockermouth case (1901) part of the reports of a speech by a supporter of the candidate (the respondent) was printed, paid for, and circulated by the candidate. It consisted in the main of vulgar abuse, but was calculated to bring the opposing candidate into contempt.

Mr. Justice Darling said:—

" It is not an offence to say something which may be severe about another person, nor which

may be unjustifiable, nor which may be derogatory, unless it amounts to a false statement of fact in relation to the personal character or conduct of such candidate ; and, I think, the Act says that there is a great distinction to be drawn between a false statement of fact which affects the personal character or conduct of the candidate, and a false statement of fact which deals with the political position, or reputation, or action of the candidate."

The Court held that the respondent had committed no offence.

Unfounded statement.

In the Monmouth case (1901) one of the charges was of a false statement made by the respondent that the opposing candidate was "living in London on the profits of cheap foreign labour, and was paying his election expenses in Monmouth district out of the profits he was making by the employment of cheap foreign labour—the labour of Italian workmen employed by him at a wage of ninepence a day." The Court found this statement to be unfounded and absolutely untrue.

Mr. Justice Kennedy said:—

"It is our opinion that there has been by him (the respondent) a violation of this Statute in the statements which he made, and which he published for the purpose of affecting the return."

They unseated the respondent.

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THE END

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