

Mr. Docker.  
8th Sept., 1871.

"That is the position of the law as laid down by Baron Alderson, and as applicable to the circumstances of the present case. There is no control of any kind over the voting in this country, which is by ballot, and no promise which could be made could have an ulterior effect upon the party voting. I say no breach of any promise made by the voter could produce any ulterior effect upon him; because, notwithstanding some loose expressions to the contrary, there is no possible means of ascertaining in what way he may have voted. And now, I would ask, what evidence is there to show that the money was given as an inducement to vote for a particular candidate? None whatever. There was no condition of any kind attached to the payment. Mr. Bell, in his evidence, distinctly states that when he was spoken to on the subject, he attached no condition whatever—that no condition was even suggested. It is perfectly clear that he is straightforward upon the subject. What, indeed, does Mr. Bell say in reference to this transaction? He says, "I remember Dreyer coming to me and saying, 'Here are twelve Germans come down from Kerr's Hill to vote for Monro.'" These were the first words used by Dreyer in accosting Mr. Bell, before the latter had communicated with these persons at all [Counsel reads the evidence of Mr. Bell on this part of the case]. He distinctly swore that no condition whatever was attached to the giving of the £2; that it was given as part of the expenses they would necessarily incur; that it was not given in the nature of a bribe, or for the purpose of influencing the minds of the voters. It had been distinctly stated by Dreyer, by whom he was put in communication with them in the first instance, and then by the foreman himself, before he said anything to Bell on the subject of expenses, that they had come down to vote for Sir D. Monro. "We are twelve (said he) and we want to vote for Sir David Monro." And one of the witnesses distinctly stated that, had they not voted for Sir David Monro, they would not have voted at all on the occasion. Under these circumstances, I submit that the fact is clearly shown that these men considered themselves justified in asking for their travelling expenses, and that they made it no condition whatever that, unless those travelling expenses were paid, they would not vote for Sir David Monro, or would vote for somebody else; but that, in order to save them from the unnecessary loss to which they would be put by having travelled eighty or ninety miles, they ought to be indemnified. It comes distinctly within the language used by Baron Alderson, in the case I have referred to. The case also goes into the question of treating, and shows clearly that the treating must be given corruptly, on account of an elector having voted, or in order to induce him to vote. That comes strictly within the language of our Statute, which I believe is word for word with the English Statute. Mr. Justice Williams, it is true, differed from the other Judges, but only on the question of whether or not there was evidence to go to the jury, and not upon the law. He said:—

"As to the eighth count, I think the same view ought to be taken; for there was some evidence that Mr. Slade, in performance of a previous promise, had paid the travelling expenses of a voter who had come and voted for him at the election. And this, I think, amounted to some evidence, not only that Mr. Slade had given money to the voter on account of his having voted, but that he had given it corruptly; because the promise, in my view of the Statute, is to be deemed bribery. And if so, a payment in performance of it is, I apprehend, a corrupt payment within the meaning of the Act. I am quite aware that the Statute, as I have construed it, will act harshly, and apply to cases which can hardly have been in the contemplation of the Legislature. But the language of the Act appears to me so plain and unambiguous that these considerations afford only an argument to prove that the Statute was inconsiderately passed, and ought to be amended."

The distinction drawn by the rest of the Court was this:—That although there was clear evidence that the money was paid in pursuance of a previous promise, there was not any evidence that it was paid in pursuance of a previous promise coupled with a condition that the voter should record his vote in a particular way. I therefore submit to the Committee that the evidence does not sustain the charge against these parties, of having committed the grave offence of bribery, and does not justify the Committee in causing the names of these men to be erased from the electoral roll, or unseating Sir David Monro on the ground that the votes in question were given under a corrupt contract; that they were to receive a sum of money as the condition of their doing so.

Mr. Allan: In answer to this, I may say that my friend has made a great deal of the result of any unfavourable decision to Sir David Monro; but I believe that the Committee will not allow any such consideration to affect the conclusion at which they may arrive. The view that the Committee will adopt will be formed entirely on the facts and the law. I think there can be no doubt that it will be held that Mr. Bell and David Kerr acted as agents of the sitting Member: not only from the evidence adduced, but also from the fact that Sir David Monro has admitted that he has since discharged the balance agreed to be paid by these gentlemen, that is to say, the amount necessary to make up the sum of 16s. to each man.

The Chairman: You have not identified the original promiser, Kerr, as agent.

Mr. Allan: The paying of the balance ratifies the proceedings of all these different persons. Now what is the law relating to agency?

In *Rogers on Elections*, p. 381, it is laid down as a clear canon, that "There is a wide difference between the principles of Common Law and Parliamentary Agency. Any agent employed by the candidate for the purposes of the election makes the candidate liable for the parliamentary consequences of all his acts, though some of those acts may not only be unauthorized by, but are expressly contrary to, the wishes of the candidate; whereas no liability is incurred at Common Law, without proof of authority, express or implied, on the part of the candidate." Now, I believe I have established agency by more conclusive evidence than any that will be found in any of the reports on election cases in the General Assembly Library, in which it has been decided that persons only were the agents of the candidate on whose behalf the bribe has been given. We have shown that Mr. Bell was a member of Sir David Monro's Committee, that he took an active part in the election, and was paid for his services. He was clearly, therefore, Sir David Monro's agent; and however unauthorized his acts may originally have been, Sir David Monro, according to the dogma above quoted, must be held responsible for their consequences. But further, whatever Sir David Monro may now say, the Committee, I think, will be clearly of opinion that he ratified those acts by paying the money agreed to be paid to the Germans who voted.