CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF TWO MOUNTAINS.

1901

JOSEPH A. C. ETHIER (RESPONDENT)...APPELLANT;

*Oct. 1.
*Oct. 29,

AND

JOSEPH LEGAULT (PETITIONER).....RESPONDENT.

ON APPEAL FROM THE JUDGMENT OF MR. JUSTICE H. T. TASCHEREAU.

Controverted election—Status of petitioner—Evidence—Certified copy of voters' list—Imprint of Queen's Printer—Form of petition—Jurat— 61 *V. c.* 14 *s.* 10, (*D*).

On the hearing of preliminary objections to a controverted election petition the production of a list appearing on its face to be an imprint emanating from the Queen's Printer, certified by the Clerk of the Crown in Chancery to be a copy of the voters' list used at the election, and upon which the name of the petitioner appeared as a person having a right to vote at such election, is sufficient proof of the status of the petitioner.

A copy of a list of electors bearing upon its face a statement that it is issued by the Queen's Printer makes proof of its contents without further verification.

The jurat of the affidavit accompanying the petition was subscribed "Grignon & Fortier, Protonotaire de la Cour Supérieure dans et pour le District de Terrebonne."

Per Gwynne J.—An objection to the regularity of the subscription to the jurat does not constitute proper matter to be inquired into by way of preliminary objection to the petition.

APPEAL from the judgment of Mr. Justice H. T. Taschereau, at Ste. Scholastique, in the District of Terrebonne, Province of Quebec, dismissing preliminary objections to the petition against the return of the appellant as member for the Electoral District of Two Mountains, in the House of Commons of Canada.

* PRESENT:—Sir Henry Strong C. J. and Taschereau, Gwynne, Sedgewick, Girouard and Davies JJ.

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The questions arising on this appeal are stated in the judgments reported.

Belcourt K.C. and *Perron* for the appellant. The affidavit was received, as appears by the jurat, before a firm of prothonotaries who do not constitute a moral person capable of administering or receiving oaths in judicial proceedings. Art. 23 C. P. Q. The affidavit is not in conformity with 54 & 55 Vict. ch. 20, sec. 3, because the petitioner uses in his affidavit the words "contestation d'élection" instead of the words "pétition d'élection," and has sworn merely that the contestation of election is true, to the best of his knowledge, and does not conform to the statute which gives the form of affidavit and exacts that the petitioner should swear that the allegations of the election petition are true.

No copy of the petition certified by the prothonotary as required by law was served on the appellant; the copy served as well as that of the procedure accompanying it was certified by "Grignon & Fortier, prothonotary, etc.", who have no right, as a firm, to certify judicial proceedings. Further, there has been no sufficient proof made of the quality of the petitioner as an elector, as required by R. S. C. ch 9, sec. 5. *Richelieu Election Case* (1); *Macdonald Election Case* (2).

The petition was served in the office of the prothonotory of the Superior Court, and in the presence of one of the prothonotaries who was then acting during the vacation in the place and stead of the judge. This service was contrary to Art. 147 C. P. Q.

Beaudin K.C. for the respondent cited *The Lunenburg Election Case* (3); *Macdonald Election Case* (2); *Mercier* v. *Bouffard* (4); 61 Vict. ch. 14, sec. 10, sub-sec. 6;

(1) 21 Can. S. C. R. 168.
(2) 27 Can. S. C. R. 201.
(3) 27 Can. S. C. R. 226.
(4) Q. R. 12 S. C. 385.

Richelieu Election Case (1); *Hickson* v. *Abbott* (2); *White* v. *Mackenzie* (3); *Caverhill* v. *Ryan* (4); *Queen's (P. E. I.) Election Case* (5); *The Queen* v. *Forget* (6); *Bureau* v *Normand* (7); 6 Fuzier Herman, vo. Audience No. 164; *Bussière* v. *Faucher* (8); *Wilson* v. *Ibbotson* (9); *Hus* v. *Charland* (10). The Code of Civil Procedure has no application in the present case, and service must be regulated by the Act respecting controverted elections as amended by 54 & 55 Vict. ch. 20, sec. 8, which provides "that the petition can be served on the respondent at any place within Canada." If article 147 C. P. Q. could apply, respondent has not, under Art. 174, alleged and proved prejudice.

THE CHIEF JUSTICE.—This is an appeal by the sitting member against a judgment dismissing his preliminary objections to a petition against the return.

Four objections to the judgment of the court below are raised by the appeal. Two were dismissed on the hearing and one was abandoned. There only remains to be considered he objection numbered three which is that "the petitioner has not proved his quality."

The petitioner filed the petition in the character of a voter, or, in the words of the statute "as a person who had a right to vote at the election." The appellant by his preliminary objections denied the petitioner's status as a person having a right to vote. It was therefore incumbent on the petitioner to prove his right.

The petitioner established by his evidence that his name appeared on the voters' list used at the election,

(1) 21 Can. S. C. R. 168.
(2) 25 L. C. Jur. 289.
(3) 19 L. C. Jur. 117.
(4) 18 L. C. Jur. 323.
(5) 7 Can. S. C. R. 247.
(6) 1 Legal News, 542.
(7) 5 R. L. 40.
(8) 14 L. C. R. 87.
(9) 13 L. C. Jur. 186.
(10) 29 L. C. Jur. 33.

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by the production of a certified copy of that list returned to the Clerk of the Crown in Chancery; see Dominion Evidence Act, 56 Vict. ch. 31, secs. 13 & 14; and which copy moreover appears to be an imprint emanating from the Queen's Printer, which of course under the law as it now stands required no verification beyond the statement appearing on its face that it was issued by the Queen's Printer. 61 Vict. ch. 14, sec. 10, subsec. 5. This was amply sufficient and the objection is therefore nothing less than frivolous.

The appeal is dismissed with costs.

TASCHEREAU J.—All the objections taken by the appellant have been abandoned or dismissed instanter at the hearing except the one concerning the proof of the election list, which, in my opinion, is as frivolous as the other ones.

I would dismiss the appeal with costs. It is one clearly taken only for delay.

GWYNNE J.—This is an appeal from a judgment dismissing preliminary objections filed to an election petition.

The petition was filed in the office of the prothonotary of the Superior Court of the District of Terrebonne having at the foot of it an affidavit the jurat to which was as follows:

> Assermenté devant nous à St-Scholastique dans le district de Terrebonne ce quinzième jour de décembre mil neuf cent.
>
> GRIGNON & FORTIER,
>
> Protonotaire de la cour superieure dans et pour le district de Terrebonne.

At the same time a copy of the petition was left with the prothonotary to be forwarded to the returning

officer pursuant to the statute, which copy was on the same day mailed to the address of the returning officer.

It may here be observed that it is not disputed that in point of fact the petitioner was sworn to the truth of the matters alleged in the affidavit by one or other of the two gentlemen named respectively Grignon and Fortier, or that they jointly are prothonotary or prothonotaries of the Superior Court of the District of Terrebonne.

The preliminary objections are contained in twenty-two paragraphs, in the 18th of which the defendant alleges

> that the petitioner did not appear upon the list of the electors of the Electoral District of Two Mountains at the time of the election in this cause.

This objection is again repeated thus in paragraph 21.

> The petitioner in this cause has not and had not a right to vote at the election which is in question in the present cause. That he is not inscribed as an elector upon the electoral list which was used at the said election.

In the 19th and 20th paragraphs the respondent in the petition complained that the petitioner had lost, if he ever had, the right to vote at said election by reason of the committal by him of divers acts of bribery and corrupt practices said to have been committed by him both before and during the election.

It is not perhaps now necessary to inquire whether the charges alleged in these paragraphs which appear to aim at converting a petition against a sitting member to avoid his election upon charges made of bribery and corruption into an indictment against the petitioner upon charges of bribery and corrupt practices alleged to have been committed by him, constitute proper matter to be inquired into by way of preliminary objection to an election petition, because the defendant

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although given the most ample opportunity for proof failed to establish any of the charges alleged and the learned judge who adjudicated upon the preliminary objections has so adjudged and determined, and no suggestion of any ground of appeal against such judgment has been made before us or in the appellant's factum on appeal.

The whole gist and substance of the objections alleged in the other paragraphs of the preliminary objections are thus comprised and summed up in paragraphs 22 and 23.

22. The intimation of the said election petition and of the notice of its presentation—of the certificate of deposit of security—of the appearance and election of domicil of the petitioner's advocate—of the appointment of the petitioner's attorney made to the defendant is irregular, illegal and null, inasmuch as the said intimation was made to him in the office of the clerk of the Superior Court for the Province of Quebec, in the District of Terrebonne, during office hours, in presence of the prothonotary of the said court then acting as such prothonotary in vacation, in the absence of the judge of the said court for the said district.

23. In consequence no intimation of the petition and of the notice of presentation of the said election petition—of the security *and the other proceedings in this cause* has been made to the defendant.

The defendant produces in support of his preliminary objections the following exhibits;—

1. A copy of the election petition and of the affidavit at the foot thereof;

2. A copy of the certificate of deposit of security;

3. A copy of the appointment of petitioner's attorney;

4. The appearance and election of domicil of the petitioner's advocate;

and the preliminary exceptions thus conclude:

For all the reasons above mentioned the defendant concludes to dismiss the petition with costs.

It thus appears upon the defendant's own shewing that in point of fact he was served with the above several documents, and it was further shown in

evidence that the election petition with the affidavit at the foot thereof was presented and filed in the prothonotary's office on the 15th December, 1900, and a copy delivered to the prothonotary to forward and which was forwarded by him by post on the same day to the returning officer, and the defendant's sole contention was that by reason of alleged irregularity in the manner in which the signature of the prothonotaries appeared on the affidavit and the other papers and proceedings filed and certified by Grignon & Fortier, prothonotaries of the Superior Court, &c., were all null and void and nullified the petition which was filed. The learned judge before whom the matter of the preliminary objections was heard adjudged and determined that the petitioner had established his status of a petitioner who had a right to vote at the election and to file the election petition filed in the cause, and as to the several objections of alleged irregularities relied upon by the defendant as constituting nullities he adjudged and determined that they were not well founded in law and so he dismissed the preliminary objections. From this judgment the present appeal is taken, and in the argument before us in so far as relates to the alleged irregularities relied upon as constituting nullities the contention of the appellant was limited to the fact of the affidavit having the jurat subscribed with the names "Grignon & Fortier, protonotaire," &c., &c., and the fact of other papers served on defendant being similarly signed. The fact that the petitioner had made oath to the matter alleged in the petition before one of the two gentlemen who jointly fill the office of prothonotary of the Superior Court of the District of Terrebonne not being disputed the objection taken that the one who administered the affidavit had subscribed the jurat, with the name of "Grignon & Fortier, protonotaire," &c., &c., can

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amount at most to an irregularity and one which it would be competent for the court to cause to be amended; the objection, in truth, if a good one in the opinion of the court, was attributable to the officer of the court for which the petitioner should not be made to suffer. Such an objection should be made by an ordinary motion in court like any ordinary motion upon the ground of irregularity committed in the progress of a cause and not as a preliminary objection which calls in question the validity and very existence of the petition. Upon such a motion being made I cannot think that any court or judge could hesitate in directing the jurat to be amended (if the signing the joint name of the prothonotaries was unauthorised by the practice of the Superior Court) by that one who had administered the oath subscribing his own name to the jurat *nunc pro tunc*, so as to avoid stifling an inquiry into the grave charges in the election petition.

As to the petitioner's status the appellant's contention simply is that the evidence given by the petitioner of his status was not legal evidence at all, his contention being, that the only legal evidence of status is a certified copy by the clerk of the Crown in Chancery of the list or copy of list actually used at the election. This contention he makes upon the assumed authority of the *Richelieu Election Case* (1), but no such point was decided by the court in that case; all that was decided was, that a certified copy by the clerk of the Crown in Chancery of the list returned to him by *the revising officer* as the list finally revised by him constitutes no evidence at all of a petitioner's status, and that such status can be proved only by the petitioner's name appearing as a voter on the list actually used at the election. Then in the *Winnipeg Election Case* (2), this court held that a certified copy by the clerk of the Crown in

(1) 21 Can. S. C. R. 168. (2) 27 Can. S. C. R. 201.

Chancery of the list or copy of list returned to him by the returning officer at an election as the actual list used at the election is sufficient *primâ facie* evidence of the list used at the election, and so a sufficient compliance with the judgment in the *Richelieu Election Case* (1). The appellant relies upon these two cases, and the respondent does not at all question their authority in the present case, but neither the Richelieu case nor any other case has ever held that original public documents of which for convenience of proof a copy certified by a public officer in charge of the original may be made by statute *primâ facie* evidence, when themselves produced constitute no evidence. The originals themselves do of course when produced constitute the best evidence.

The respondent in point of fact, *ex abundanti cautelâ*, produced a plethora of evidence of his status as a petitioner. He called the Secretary Treasurer who under the Provincial law made the voters' list which under the Dominion Franchise Act now in force. 61 Vict. ch 14, constitutes the voters' list in force at Dominion elections at the polling division in question. He produced the original list prepared by him and retained in his possession under Art. 185, R. S. Q. He also proved that he transmitted a duplicate original of that list to the Registrar of the County of Terrebonne as required by Art. 303, R. S. Q. The registrar was called and he produced that list and proved that he had transmitted a copy of it to the Clerk of the Crown in Chancery as required by the Dominion Statute, 61 Vict. ch. 14.

The Clerk of the Crown in Chancery was called and produced the copy of list as transmitted to him and he proved that he had transmitted it to the Queen's Printer to be printed by him as required by sec. 10, s.s. 5 of 61 Vict. ch. 14, and had received back the copy so sent to the printer together with a number of

(1) 21 Can. S. C. R. 168.

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printed copies. He also proved that immediately upon the issue of the writ of election for the election in question he transmitted to the returning officer for the District of Terrebonne two of the said printed lists of voters so received from the Queen's Printer for every polling division in his district, including the polling division in question. It was not disputed that these lists so transmitted to the returning officer were authenticated by the imprint of the Queen's Printer as provided in sec. 10, s.s. 6 of 61 Vict. ch. 14. He also produced the very list which had been returned to him by the returning officer as the one actually used at the election in question. Of the two printed lists which had been so transmitted to him by the Clerk of the Crown for the polling division in question he produced the one which he had retained in his own possession and by marks in his own handwriting on the list produced by the Clerk of the Crown as the one returned to him as the one used at the election he identified that list to be the very one he had sent to the deputy returning officer to be used, and finally the poll clerk by marks in his handwriting on that list also identified it as the very one which had been used at the election. It was not disputed that all of these lists in so far as related to the polling division in question corresponded with each other and contained the petitioner's name thereon as a voter, and his identity with the person of his name on the list was established by evidence. Thus the status of the petitioner was established in the most perfect manner possible. The appeal therefore must be dismissed with costs.

SEDGEWICK, GIROUARD and DAVIES JJ. concurred in the judgment dismissing the appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *J. L. Perron.*

Solicitor for the respondent: *S. Beaudin.*