CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF MACDONALD.

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NATHANIEL BOYD (RESPONDENT).....APPELLANT;

*Feb. 17.

*Mar. 24.

AND

EDWY WILLIAM SNIDER (PETITIONER).....RESPONDENT.

ON APPEAL FROM THE DECISION OF THE COURT OF QUEEN'S BENCH FOR MANITOBA.

Election petition — Service — Copy — Status of petitioner — Preliminary objection.

On the hearing of preliminary objections to an election petition to prove the status of the petitioner a list of voters was offered with a certificate of the Clerk of the Crown in Chancery which, after stating that said list was a true copy of that finally revised for the district, proceeded as follows: "And is also a true copy of a list of voters which was used at said polling division at and in relation to an election of a member of the House of Commons of Canada for the said electoral district * * which original list of voters was returned to me by the returning officer for said

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

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electoral district in the same plight and condition as it now appers, and said original list of voters is now on record in my office."

Held, that this was, in effect, a certificate that the list offered in evidence was a true copy of a paper returned to the clerk of the Crown by the returning officer as the very list used by the deputy returning officer at the polling district in question, and that such list remained of record in possession of said clerk. It was then a sufficient certificate of the paper offered being a true copy of the list actually used at the election. *Richelieu Election Case* (21 Can. S. C. R. 168) followed.

APPEAL from decisions of Mr. Justice Dubuc in the Winnipeg case, and the Court of Queen's Bench in the Macdonald case, overruling preliminary objections to the petitions filed against the return of the respective appellants.

The appeal was limited in each of these cases to two grounds. 1. That the petitions were not properly served. 2. That the status of the petitioners was not proved. The first ground was not strongly pressed on the argument, and is not dealt with by the judgment of the court on this appeal.

The evidence offered in each case to prove status was a copy of a list of voters containing the name of the petitioner, to which was annexed a certificate of the Clerk of the Crown in Chancery. In the Winnipeg case the certificate was as follows:

I, Samuel E. St. O. Chapleau, the undersigned Clerk of the Crown in Chancery for Canada, do hereby certify that the foregoing list is a true copy of the list of voters of polling division number seven in the electoral district of the city of Winnipeg, Man., which remains of record in my office, and is also a true copy of the list of voters which was used at said polling division, at and in relation to an election of a member to the House of Commons of Canada, for the said electoral district, holden on the sixteenth and twenty-third days of June, A.D. 1896, held pursuant to a writ of election issued therefor and dated the twenty-fourth day of April, A.D. 1896, which original list of voters was returned to me by the returning officer for said electoral district

in the same plight and condition as it now appears, and said original list of voters is now on record in my office.

Dated at Ottawa, this twenty-second day of August, A.D. 1896.

[Sgd.] SAMUEL E. ST. O. CHAPLEAU,
C.C.C.C.

{ C.C.C.C. Seal. }

The following was the certificate in the Macdonald case:

I, Samuel E. St. O. Chapleau, the undersigned Clerk of the Crown in Chancery for Canada, do hereby certify that the foregoing list, consisting of two pages, and containing 231 names, is a true copy of the list of voters for polling district number thirteen, in the electoral district of Macdonald as finally revised for the year 1894, under "The Electoral Franchise Act," and as used at and in relation to an election of a member of the House of Commons of Canada for the said electoral district, holden in the sixteenth and twenty-third days of June, 1896, held pursuant to writ of election issued therefor and dated the twenty-fourth day of April, A.D. 1896, which original list of voters was returned to me by the returning officer for said electoral district in the same plight and condition as it now appears, and said original list of voters is now on record in my office.

Dated at Otttawa, this 8th day of August, A.D. 1896.

[Sgd.] SAMUEL E. ST. O. CHAPLEAU,
C.C.C.C.

{ C.C.C.C. Seal. }

It was contended that these certificates were not sufficient; that the *Richelieu Election Case* (1) decided that it was necessary to prove that the petitioner's name was on the list actually used at the election, and the Clerk of the Crown in Chancery could not certify to a copy of the list so used, as he could have no knowledge, except by information from others, that it was such a copy. The objections were dismissed by the court below in both cases.

Stewart Tupper Q.C. for the appellants. The petitioner must prove his status. *Stanstead Election Case* (2); *Bellechasse Election Case* (3).

(1) 21 Can. S. C. R. 168. (2) 20 Can. S. C. R. 12.
(3) 20 Can. S. C. R. 181.

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The certificates of the Clerk of the Crown in Chancery are worthless as he professes to certify to a fact of which he can have no knowledge. See *Richelieu Election Case* (1).

Howell Q.C. and *Chrysler* Q.C. for the respondents. Petitioners having voted in *primâ facie* evidence of status. *Rex.* v. *Gordon* (2). *In re Stormont* (3).

The appellants have not made out the strong case required on preliminary objections. *Shelburne Election Case* (4).

The judgment of the court was delivered by:

GWYNNE J.—The grounds of appeal in these cases are identical. By the 21st section of the Electoral Franchise Act, 49 Vict. ch. 5, as amended by 53 Vict. ch. 8, it is enacted that after the lists for the several polling districts have been finally revised the revising officer shall prepare the final list of voters in the form prescribed in the Act and shall certify the *original* list as corrected and so finally settled in the form E set out in the schedule to the Act. Then in subsection 3 it is enacted that *copies in duplicate* of such revised lists shall be prepared by the revising officer *who shall retain one copy and forward the other* by registered letter, to the Clerk of the Crown in Chancery at Ottawa. Then by subsection 7 it is enacted that the Clerk of the Crown in Chancery as such *lists* are received by him shall cause them to be printed by the Queen's Printer, and after the verification of the printed copy by the revising officer who has prepared such list he shall transmit a sufficient number of such printed copies to such revising officer. It is thus apparent that the duplicate copies of such finally revised list of which one is retained by the revising

(1) 21 Can. S. C. R. 168.
(2) Leach C. C. 515.
(3) Hodgins Elec. Cas. 21.
(4) 14 Can. S. C. R. 258.

officer in each district, and the other transmitted by him to the Clerk of the Crown in Chancery, are duplicate originals of the finally revised lists in the several electoral divisions. So likewise the printed copy first prepared by the Queen's Printer from the list furnished to him by the Clerk of the Crown in Chancery *after verification* by the revising officer who prepared the list as required by subsection 7 may also be said to be a duplicate original of the list as finally revised. It is in this view as it appears to me that the 32nd section of the said Electoral Franchise Act as amended by the said Act 53 Vict. ch. 8, enacts that the revising officer, the Clerk of the Crown in Chancery and the Queen's Printer shall supply certified copies of the *said lists finally printed and verified as hereinbefore provided* to any person applying for the same and paying therefore, &c., &c.

2. Every copy of a list of voters supplied by the revising officer, the Clerk of the Crown in Chancery, or the Queen's Printer, and certified by any one of such officers as correct *in the form E* in the schedule to the Act shall be deemed to be an authentic copy of such list.

Now the form E is that prescribed for the certificate to be attached by the revising officer to the finally revised lists, duplicate originals of which he is, as above shown, required to prepare and to transmit one to the Clerk of the Crown in Chancery, and is as follows:

"I, ——, the undersigned revising officer for the electoral district of do hereby certify that the foregoing list is a *true copy* of the *list* of voters for polling district number , in the said electoral district as finally revised (or, as finally revised and corrected on appeal as the case may be) for the year under the Electoral Franchise Act." Now

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it appears to me, I confess, to be free from doubt that the only document in the Queen's Printer's possession which would enable him to give a certificate in the above form is the copy printed by him from the list furnished to him by the Clerk of the Crown in Chancery, after verification thereof by the revising officer who had prepared the list as required by the above subsection 7 of section 21, and that therefore *such verified* printed copy may, as I have said, be well regarded also as a duplicate original of the list as finally revised, with which, upon the copy proposed to be certified by the Queen's Printer being compared he may give a certificate in the form prescribed, and that such certificate shall be sufficient evidence that the copy so certified is *an authentic copy* of the list as finally revised and of which it is certified to be a copy, so the Clerk of the Crown in Chancery can only certify a copy presented to him for his certificate in the form prescribed upon comparing it with the duplicate original of the list as finally revised transmitted to him by the revising officer under the subsection 3 of the above 21st section, or possibly he might consider himself to be justified in giving his certificate upon satisfying himself that the list presented to him for his certificate was one of the copies printed by the Queen's Printer *from the printed copy verified* by the revising officer and furnished to the Queen's Printer. But this 32nd section does not appear to contemplate giving the character of authenticity in evidence to any document that is not certified (by whomsoever it may be certified whether by the revising officer, the Clerk of the Crown or the Queen's Printer) to be a true copy of the list as finally revised by the revising officer of the electoral district under consideration, that section does not give authenticity or validity to any other certificate.

Then by the Dominion Elections Act 49 Vic. ch. 8, sec. 13, it is enacted that the returning officer for each electoral district shall forthwith upon the receipt of a writ of election, obtain from the revising officer of the electoral district for which he is returning officer, at least one *copy* of the *list* of voters as finally revised and certified by the revising officer and then in force for each of the polling districts in such electoral district, &c., &c.

Then by section 30, subsection *b*, it is enacted that on a poll being granted the returning officer shall furnish each deputy returning officer with *a copy* of the *list* of voters in the polling district for which he is appointed, each *copy* being first certified *by himself or* by the revising officer for the electoral district in which such polling district is situate.

Then by section 41 it is enacted that subject to the provisions thereinafter contained all persons whose names are registered on *the list* of voters, for polling districts in any electoral district, *in force under the provisions of the Electoral Franchise Act* on the day of the polling at any election for such electoral district, *shall be entitled to vote* at any such election, and no other person shall be entitled to vote thereat. Then in section 42 is inserted an enumeration of the persons who although registered as voters on the *list* as finally revised by the revising officer under the Electoral Franchise Act are by section 41 disqualified and rendered incompetent to vote, namely, judges, revising officers, returning officers and others. The persons here named are the only persons deprived of the qualification to vote conferred upon them by their names being registered on *the lists* as *finally* revised by the revising officers.

The Acts of the legislature, always dealing as they do with the list of voters actually used by a deputy

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returning officer at an election as a *copy* of the original list *as finally* revised by the revising officers, there is nothing in the Acts providing for the possible but unlikely occurrence of an error or errors in the *copy* furnished to the deputy returning officers by reason of the names of one or more voters which are registered upon the *finally* revised list as voters being by mistake omitted in the copy furnished to a deputy returning officer. Such an omission could only take place by error, and although by the provisions of the Act as to the deputy returning officer furnishing ballot papers to all persons coming forward to vote, the deputy returning officer by reason of such name or names being so by error omitted from the copy of the list furnished to him might refuse to give to such party or parties, ballot papers, and so they might be unable to have their votes recorded, yet in such a case it would be more proper to say that those persons were by such neglect and error of some person deprived of the power to exercise their absolute inextinguishable right to vote by reason of their being registered on the list as finally revised under the provisions of the Dominion Franchise Act. They cannot with any propriety be said to be disfranchised or at all disqualified and deprived of their right to file a petition to set aside an election under 49 Vict. ch. 9, sec. 5. Their status as petitioner in such a petition would, in my judgment, be unaffected by such an error. But for the judgment of this court in the *Richelieu Case* (1) I should have no doubt that upon an issue calling in question the status and qualification of the petitioner in an election petition a copy of the finally revised list in force under the Electoral Franchise Act certified by the revising officer or by the Clerk of the Crown in Chancery to be a true copy of such finally revised list upon which the

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

name of the petitioner appeared to be registered as a qualified voter, was conclusive evidence of his status and qualification to file the petition. This court, however, in that case decided otherwise, and held that such a certified copy was of no use whatever, and that the only certificate which would be of any use was a certified copy of the copy actually used by the deputy returning officer at the election under consideration, which certificate the court held could be given by the Clerk of the Crown in Chancery. In the present cases the petitioners respectively produced copies of a list of voters whereon their names respectively appeared. That in the Winnipeg case was intituled and headed: "List of voters, 1894, for the polling district no. 7, in the city of Winnipeg, in the electoral district of Winnipeg," that being the polling district under consideration in that case. At the foot of this list is a certificate purporting to be a copy of a certificate of the revising officer of that electoral district in the words following:

I, David M. Walker, the undersigned revising officer for the electoral district of Winnipeg, do hereby certify that the foregoing list consisting of three pages, and containing 507 names, is a true copy of the list of voters for polling district number seven, in the electoral district of Winnipeg, as finally revised for the year 1894, under the Electoral Franchise Act.

Dated at Winnipeg, 20th March, 1896.

(Sgd.) D. M. WALKER.

Immediately under this is a certificate signed by the Clerk of the Crown in Chancery, in the words following:

I, Samuel E. St. O. Chapleau, the undersigned Clerk of the Crown in Chancery for Canada, do hereby certify that the foregoing list is a true copy of the list of voters of polling division number seven in the electoral district of the city of Winnipeg, Man., *which remains of record in my office*, and is *also* a true copy of *the list* of voters which was used at said polling division at and in relation to an election of a member of the House of Commons of Canada for the

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said electoral district holden on the sixteenth and twenty-third days of June, A.D. 1896, held pursuant to a writ of election issued therefor, and dated the twenty-fourth day of April, A.D. 1896, *which original list* of voters was returned to me by the returning officer for said electoral district in the same plight and condition as it now appears, and said original list of voters is now on record in my office.

Dated at Ottawa, this twenty-second day of August, A.D. 1896.

SAMUEL E. ST. O. CHAPLEAU,
C.C.C.C.

The list of voters produced in the Macdonald case was intituled and headed: "List of voters, 1894, for polling district no. 13 of Portage la Prairie, East Centre, in the electoral district of Macdonald," (that being the polling district under consideration in that case). At the foot of this list is a certificate signed by the Clerk of the Crown in Chancery in the words following:

I, Samuel E. St. O. Chapleau, the undersigned Clerk of the Crown in Chancery for Canada, do hereby certify that the foregoing list consisting of two pages and containing 231 names, is a true copy of the list of voters for polling district number thirteen in the electoral district of Macdonald, as finally revised for the year 1894, under the Electoral Franchise Act, and as used at and in relation to an election for a member of the House of Commons, holden on the sixteenth and twenty-third days of June, 1896, held pursuant to writ of election issued therefor and dated the twenty-fourth day of April, A.D. 1896, which original list of voters was returned to me by the returning officer for said electoral district in the same plight and condition as it now appears and said original list of voters is now on record in my office.

Dated at Ottawa this 8th day of August, A.D. 1896.

SAMUEL E. ST. O. CHAPLEAU.

These certificates appear to have been framed in the above form under the erroneous impression that the decision of this court in the Richelieu case was that certified copies both of the list as finally revised by the revising officer and in force under the Electoral Franchise Act, and of the copy which was actually used by the deputy returning officer at an election

brought into contestation by an election petition, must be produced in support of the status and qualification of the petitioner, and the learned counsel for the appellants in his argument before us contended that the certificates of the Clerk of the Crown in Chancery produced in these cases were defective in both characters, that is to say both as certificates that the copies produced were respectively true copies of the lists as finally revised by the revising officer under the Electoral Franchise Act as the lists applicable to the elections under consideration, and also as certificates that the copies produced are respectively true copies of the lists or copies of lists which were actually used by each of the deputy returning officers at the polling districts under consideration. His objection to the certificates in so far as related to the question whether the list produced in the Macdonald case was a true copy of the list as finally revised by the revising officer under the Electoral Franchise Act was that it is not in the form E prescribed by the statute inasmuch as it does not state the year to which the list relates as required by the form prescribed by the statute, so as to show that it was the list in force at the election in question. This objection does not appear to be open upon the certificate in the Macdonald case which is in the form E as prescribed in the statute in so far as relates to the lists as finally revised is concerned, but as the decision in the Richelieu case is, that certified copies of the list as finally revised under the Electoral Franchise Act cannot be received at all in evidence of a petitioner's status to file an election petition when such status is called in question it is unnecessary now to deal with that part of the certificates. The learned counsel's main argument, however, was that the certificates were wholly defective in so far as they purport

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to be certificates that the copies produced are true copies of lists or rather of the copies of lists which were actually used by the deputy returning officers at the respective polling districts under consideration. His argument was that the statute cannot be construed as contemplating the Clerk of the Crown in Chancery giving a certificate of the truth of a fact of which he has not in virtue of his office or of his duties as Clerk of the Crown in Chancery any direct knowledge whatever, of which he can know nothing except by hearsay or information from others, or as giving any statutory authenticity to such certificate if inadvertently or otherwise given; that the utmost that the statute can contemplate the Clerk of the Crown in Chancery certifying so that any effect should be given to his certificate is as to copies of documents coming under the provisions of the statute into his custody and care in the character of his office as Clerk of the Crown in Chancery; that by the express terms of section 32 of the Electoral Franchise Act the only certified copy there referred to as being given authenticity to when certified by him is a copy of the lists finally printed and verified under the Electoral Franchise Act, a duplicate original of which the 21st section provides shall be furnished to him by the revising officer, and that the only other section authorizing the Clerk of the Crown in Chancery to give any certificate which shall be received in evidence at all is the 114th sec. of 49 Vic. ch. 8, which enacts that: "The Clerk of the Crown in Chancery may deliver certified copies of any *writ*, *list of voters*, poll books, returns, reports, and other documents *in his possession* relating to an election except ballot papers, and such copies so certified shall be received as *primâ facie evidence* before any election judge or court, or before any court of justice in

Canada." Now the argument of the appellant's counsel is that this section only authorizes, and cannot be construed as authorizing more, the Clerk of the Court in Chancery to certify copies of documents in his custody as such Clerk of the Crown as true copies of such documents in his possession, and that as the Clerk of the Crown has no knowledge and can have no knowledge of what list of voters was actually used by any deputy returning officer, the only certificate which he can give to which any effect is given by the 114th section must be a certificate that a paper signed by him is a true copy of a copy of a list of voters as returned to him by the returning officer as the list which was actually used by the deputy returning officer at a particular election, and which is in his possession, and such a certificate, the argument is, can only under the section be received as *primâ facie* evidence that the copy certified is a true copy of the paper returned to the Clerk of the Crown in Chancery by the returning officer as having been the one used by the deputy returning officer, and not as evidence of the fact that the paper so returned by the returning officer was in truth the list or copy which the deputy returning officer had actually used, and in support of his argument the learned counsel dwelt upon certain passages in the judgment in the Richelieu case which he relied upon as supporting his contention. The argument of the learned counsel appeared to me, I confess, a very able argument in support of a contention that, a list certified by the Clerk of the Crown in Chancery to be a true copy of the list as finally revised by the revising officer having force at a particular election, was conclusive evidence of the status and qualification of a petitioner in an election petition upon its being made to appear that the petitioner was registered upon such list as a qualified voter, and not

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disqualified by sec. 42 of 49 Vict. ch. 8, if that question had not been concluded in the negative by the Richelieu case, but while that case remains unreversed we must give effect to it. To a point urged upon behalf of the petitioners that they had respectively voted at the election, and that this fact was sufficient proof of their status as persons having a right to vote, the learned counsel for the appellants argued that such evidence was quite insufficient, and in support of his argument he relied upon certain passages in the judgment in the Richelieu case, among which was the following: "In dealing with a question of evidence, courts do not permit facts susceptible of proof to be established by mere influence from other facts from which they are not necessary consequences," and he contended that the fact of a person voting in the name of a person upon the list of voters qualified to vote at an election was no evidence presumptive or otherwise that the person so voting was the person entitled to vote in that name.

Upon the whole, I think that as the Richelieu case decides, as I understand the judgment, that the best evidence of the status of a petitioner in an election petition to file the petition is a certified copy of the copy which was actually used by the deputy returning officer at the polling division in question, and that such certificate can be given under the provisions of the statute by the Clerk of the Crown in Chancery from the papers in his possession, I think we must construe that case as holding that such a certificate as the Clerk of the Crown in Chancery can truthfully give, viz: that the copy certified by him is a true copy of a paper returned to him by the returning officer as the very list used by the deputy returning officer at the polling district in question, and that such list remains of record in possession of the Clerk of the Crown

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in Chancery, is sufficient within the decision of the Richelieu case. The certificates given are, I think, to this effect, and so are admissible as *primâ facie* evidence of their truth; and construing the decision in the Richelieu case as above, I think the status of the petitioners *primâ facie* established, and that the appeals in these cases must be dismissed.

Appeals dismissed with costs.

Winnipeg Case :

Solicitors for the appellant: *Macdonald, Tupper, Phippin & Tupper.*

Solicitor for the respondents: *F. H. Howell.*

Macdonald Case :

Solicitors for the appellant: *Macdonald, Tupper, Phippin & Tupper.*

Solicitor for the respondent: *H. M. Howell.*