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*Oct. 4.

*Nov. 2.

CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF RICHELIEU.

FRANÇOIS XAVIER ALCIDE PARADIS (PETITIONER) ..... } APPELLANT;

AND

ARTHUR AIMÉ BRUNEAU (RESPONDENT) ..... } RESPONDENT.

ON APPEAL FROM THE JUDGMENT OF GILL J., SUPERIOR COURT FOR LOWER CANADA.

Election petition—Status of petitioner—Preliminary objection — Lists of voters—Dominion Elections Act, R. S. C., ch. 8, sections 30 (*b*), 31, 33, 41, 54, 58 *and* 65—*The Electoral Franchise Act, R. S. C., ch.* 5 *section* 32.

Held, affirming the decision of Gill J., that where the petitioner's status in an election petition is objected to by preliminary objection, such status should be established by the production of the voters' list actually used at the election or a copy thereof certified by the clerk of the Crown in Chancery (R. S. C., ch. 8, sections 41, 58 and 65, R. S. C. ch. 5, section 32), and the production at the *enquête* of a copy, certified by the revising officer, of the list of voters upon which his name appears, but which has not been compared with the voters' list actually used at said election, is insufficient proof. Gwynne and Patterson JJ. dissenting.

APPEAL from a judgment of the Superior Court for Lower Canada, District of Richelieu, (Gill J.) maintaining the preliminary objections filed by the respondent to the election petition.

The respondent by a preliminary objection to the election petition filed against his return as a member of the House of Commons of Canada, for the Electoral Division of Richelieu, specially denied the qualification of the petitioner (appellant) as an elector who had a right

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PRESENT.—Strong J. Fournier, Taschereau, Gwynne and Patterson JJ.

to vote at the said election and alleged that he had no right to be a petitioner, not being, at the time of the election, an elector for the county of Richelieu, and that said petitioner had lost his right to vote at said election on account of corrupt practices during said election.

The case having been fixed for proof and hearing on the preliminary objections on the 23rd July, 1892, the returning officer, one J. N. Mondor, was heard as a witness, and produced as petitioner's exhibit "A" the voters' list for 1891, on which the said election had been held, duly certified by the revising officer. The respondent objected to the production of this list and all proof therefrom, claiming that the copies of the lists which had been placed in the hands of the deputy returning officer and which had been returned to the Clerk of the Crown in Chancery were the only lists which could be put in evidence.

After hearing counsel on both sides the presiding judge dismissed this objection.

The returning officer then stated that the list produced was the one on which the election had been held, and that petitioner, whom he identified and declared he well knew, was a voter and his name was on such list and further that he had got such list certified by the revising officer for the purpose of its being put in as evidence.

An adjournment was asked for by the respondent to prepare his evidence and on the 27th July the case was resumed, the petitioner with the permission of the judge once more examining the returning officer to correct an omission made by the clerk in writing down his deposition, and added that the list he had produced had not been used at the said election.

On this evidence the case was submitted and adjourned to the 10th August, 1892.

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After the argument the petitioner, on the 10th August, while protesting he waived no right and was not bound so to do, in order to remove all cause of doubt made a motion to be allowed to re-open his *enquête* in order that he might produce the list returned to the Clerk of the Crown in Chancery.

The learned judge refused to grant this motion, and on the 13th August dismissed the petition on the sole ground that the list produced was no evidence, and that the lists returned to the Clerk of the Crown in Chancery alone could have been put in as evidence.

Morgan and *Gemmill* for appellant contended that under the statute and the law of Lower Canada, the copy of the list produced by the appellant, certified by the revising officer, makes equal proof and is as good evidence as the original in the hands of the revising officer, and is binding as evidence, under the Electoral Franchise Act, cap. 5, sec. 22 R.S.C., of the right of petitioner to vote at the election in question, and is sufficient for all purposes of election petitions, and cited and relied on R.S.C. ch. 8 sec. 13; 52 Vic. ch. 9 sec. 8; arts. 1207 and 1211 C.C.; *Magnan* v. *Dugas* (1); *The Megantic Election Case* (2); *The Prescott Election Case* (3).

This coupled with the rejection of petitioner's motion to be allowed to make such further proof would be quite valid ground for the allowance of the present appeal were it not fully justified by the evidence adduced and the law and jurisprudence on the subject.

Belcourt and *Plamondon* for respondent contended that it was not proved that the copy of the list which had been produced was a copy of the list which had been used for the election in question in this case, and that such evidence could have been

(1) 12 Rev. Leg. 226. (2) 9 Can. S.C.R. 279.
(3) 20 Can. S.C.R. 196.

easily given, and that by law and the decision of this court in the *Stanstead Election Case* (1), the petitioner was obliged to prove his quality of elector when such quality was denied by preliminary objection, and that by law he was obliged to make such proof by the best possible evidence; viz. in this case by the production of the list used for the election, or a copy thereof duly certified by the Clerk of the Crown in Chancery, and cited and relied on sections 41, 65 and 67, ch. 8 R.S.C.; Greenleaf on Evidence (2); Powell Law of Evidence (3).

STRONG J.—This is an appeal from a judgment of Mr. Justice Gill of the Superior Court of the province of Quebec, dismissing the petition of the appellant against the return of the present respondent as a member of the House of Commons for the electoral division of Richelieu.

The election was held on the 4th and 11th of January, 1892. The petition of the appellant François Xavier Alcide Paradis was filed in due time after the return.

In the third paragraph of the petition the petitioner alleged that he was an elector qualified to vote and having a right to vote at the election, and that his name was inscribed on the list of voters which was used as well as on those which ought to have been used at the election.

The petition alleged various corrupt acts on the part of the sitting member (the present respondent) and his agents, and prayed that the election might be set aside and the respondent disqualified.

The respondent filed preliminary objections, one of which was that the petitioner had not the right of

(1) 20 Can. S.C.R. 12. (2) 15 ed. sec. 82.
(3) Ed. 1868 p. 51.

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voting at the election, and that "he was not and is not" inscribed on the list of electors in force at the said election, and that he has not the quality required for maintaining the petition.

On the 23rd of July, 1892, an *enquête* on the preliminary objections was opened before the Honourable Mr. Justice Gill, and the returning officer, Mr. Mondor, was called as a witness on the part of the petitioner, who proved that he was returning officer at the election, and he produced a copy of the list of electors for 1891 for the polling district No. 1, of the electoral division of Richelieu, certified by the revising officer, the certificate being dated the 20th of July, 1892, and being in the form prescribed by the the statute 32 Vic. ch. 9 s. 8. The witness further said that he knew the petitioner, and that he was the person of the same name who was entered on the copy of the list produced.

On the 27th of July, 1892, the *enquête* was continued and the same witness was re-called, and upon being examined again on behalf of the petitioner added that the copy of list produced was a copy of that which had been used at the election. He was further asked if he knew that the exhibit had been examined with the original but the question being objected to was withdrawn. On cross-examination the witness was interrogated as follows:—

"Q. De sorte que cette liste exhibit A n'a pas servi à l'élection?" To which he answered: "Non."

On the 10th of August, 1892, the petitioner moved before the same judge to open the *enquête* in order that he might put in evidence the list of electors in the hands of the Clerk of the Crown in Chancery which had actually been used at the election.

This motion the learned judge refused to grant.

On the 13th August, 1892, the hearing on the preliminary objections took place when the judge con-

sidering that the petitioner had not proved his quality of elector, which was expressly denied by the preliminary objections, rendered a judgment dismissing the petition.

From that judgment the present appeal has been brought.

By section 5 of the "Dominion Controverted Elections Act" it is enacted that an election petition may be presented either by a candidate, or by a person who had a right to vote at the election to which the petition relates. Section 41 of the Dominion Elections Act 49 Vic. ch. 8 enacts that "subject to the provisions " hereinafter contained, all persons whose names are " registered on the lists of voters for polling districts in " the electoral division, on the day of the polling at any " election for such electoral divison, shall be entitled to " vote at any such election for such electoral district " and no other person shall be entitled to vote thereat."

By section 13 of the same act the returning officer is required to obtain at least two copies of the list of voters as finally certified by the revising officer and then in force, for each of the polling districts in such electoral division.

By section 30 (b) 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, such copy being first certified by himself or by the revising officer.

By section 54 of the same act, a person representing himself to be a particular elector named in the list of voters, applying for a ballot paper after another has voted as such elector, is required to take the oath set forth in Form Y in the first schedule to the act.

Form Y is as follows: "I solemnly swear that I am " A. B., of....., whose name is entered on the " list of voters now shown me."

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By section 58 the deputy-returning officer at the close of the poll is to enclose in the ballot box with ballots and other papers, the list of voters used by him and the ballot box having first been locked and sealed is to be forthwith delivered to the returning officer or his election clerk.

By section 65 the returning officer is to transmit to the Clerk of the Crown in Chancery with his return, the ballot papers, the original statements of the deputy-returning officers "together with the lists of voters used in the several polling districts," and all other lists and documents used or required at said election or which have been transmitted to him by the deputy-returning officers.

By section 32 of the Electoral Franchise Act as amended by sec. 8 of 52 Vic., ch. 9, "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."

From these provisions of the statute I am of opinion in the first place that no person has an actual right to vote unless his name appears in fact to be entered upon the list of voters furnished, pursuant to the statute by the returning officer to the deputy-returning officer, for the polling district in which the vote is tendered.

It is apparent from the whole scope of the act, and especially from the oath required to be tendered to a voter who claims that another person has wrongly voted in his name, that no person has a right to vote unless his name appears upon the list so furnished to the deputy-returning officer, either as a voter whose vote has been allowed and against whom there is no appeal, or as a voter whose vote has been allowed but has

been appealed against, or as a person who has claimed to vote but whose claim having been disallowed is the subject of a pending appeal.

The oath Y in the schedule of the act has this pertinence to the question, it shows that the deputy-returning officer is to be guided exclusively by the list delivered to him by the returning officer. This oath, which is to be tendered to a voter who claims that he has been personated by another who has already wrongfully voted in his name, requires that the list of voters shall be actually exhibited to the claimant, the list referred to being manifestly the only official list in the hands of the deputy-returning officer, namely, that which had been delivered to him by the returning officer. This demonstrates that the right to vote depends upon a voter's name being upon the list delivered to the deputy-returning officer. In short the officer in allowing or refusing claims to vote is to be guided by the list before him and is to be restricted to that.

The very object of registration would be defeated by any other construction of the act.

If then a person whose name does not appear upon the list furnished to the deputy-returning officer claims to vote his claim must be at once disallowed, and he cannot be permitted to sustain it by referring to the list as originally revised.

Can it then be said that such a person has a right to vote? The answer must be certainly in the negative, for although the name of such a claimant may by a misprision of the officer who certifies the list or otherwise have been omitted therefrom, and he may thus be wrongfully deprived of his right to vote, still it cannot be said that he has a right to poll a vote which the officer to whom it is tendered could not, without a gross dereliction of duty, receive.

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It may be that this consideration is a reason why statutory precautions greater than the act actually provides for should been acted to insure accurracy in the lists used in the polling, but this is nothing to the purpose of the present inquiry. As the law at present stands no one can have a right to vote whose name does not appear on the list according to which the poll is to be taken.

To hold otherwise and permit deputy-returning officers to enter upon inquiries as to the right of persons whose names do not appear on the lists to vote, would be to set at naught the whole scheme of the statute and to restore the evils and inconveniences which it was the especial object of the legislature to obviate by providing for a system of registration.

It is to be observed that the words of the 41st section, which says that all persons whose names are registered on the lists as revised shall be entitled to vote, are not absolute, but that the enactment is expressly declared to be subject to the other provisions of the act. Then one of these provisions of the act, if not expressed yet to be derived from necessary implication, is that the vote of a person whose name does not appear on the list furnished to the deputy-returning officer for the purpose of the poll shall not be received.

Therefore section 41 must necessarily be read subject to this provision just as much as if it was in so many words inserted in that section itself.

Having thus ascertained the fact required to be proved, the next inquiry must be: How is that fact to be established? This fact is susceptible of very easy and inexpensive proof. By section 58 of the Dominion Elections Act before set out the deputy-returning officers are to return the lists used by them to the returning officer who in his turn is by section 65, sub-

section 3, to transmit the same to the Clerk of the Crown in Chancery, in whose hands they are to remain deposited.

Then by a copy certified by the last named officer under sec. 32 of the electoral Franchise Act the proof required may be made without subpœnaing the Clerk of the Crown in Chancery to produce the original list returned to him.

No such proof was, however, made by the appellant in the present case.

It does not follow that because the name of the appellant appeared as a voter duly registered, or on the original list as revised, that it is to be presumed that it was also on the list furnished to the deputy-returning officer by which alone he could legally be guided.

In dealing with questions of evidence courts do not permit facts in themselves susceptible of easy proof to be established by mere inference from other facts from which they are not necessary consequences.

This was the point insisted upon by Mr. Belcourt at the argument, but I did not see the force of it until I had examined the several provisions of the statute. I am, however, now of opinion that there was no evidence before the court below from which the fact essential to be proved appeared.

It is to be remembered in connection with this point that the appellant does not prove, nor does he even allege in his petition, that he actually voted at the election.

Further, it is to be observed that as regards the fact which he had to prove the petitioner himself in his petition takes the view of the law now enunciated, for in the third paragraph he distinctly avers: "Que son nom était inscrit sur les listes des électeurs qui ont servi à la dite élection."

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As regards the motion to open the *enquête* for the purpose of letting in proof of the list of voters returned to the Clerk of the Crown in Chancery, proof which as I have said could easily have been made and which need not have occasioned any serious delay, it is not for me to pronounce upon the course the learned judge thought fit to pursue.

The statute has made him the final judge upon that incidental proceeding. No appeal lies to this court from that decision, and we have no authority in any way to review it. I may, however, be permitted to add that the appellant suffers a severe penalty for having made a slip in his evidence, and for that reason I very much regret to be compelled to come to the conclusion that it is impossible to say the court below was wrong in dismissing the petition.

This appeal must be dismissed with costs.

FOURNIER J.—La seule question à décider en cette cause est celle de la légalité de la preuve de la qualité d'électeur du pétitionnaire que l'intimé a soulevée par le moyen de ses objections préliminaires.

D'après la loi concernant les élections parlementaires, (1).

Toutes personnes dont les noms seront inscrits sur les listes d'électeurs pour des arrondissements de votation, dans tout district électoral, alors en vigueur sous l'empire des dispositions de l'Acte du cens électoral, ou de l'acte passé durant la session tenue dans les quarante-huitième et quarante-neuvième années du règne de Sa Majesté et intitulé : "Acte concernant le cens électoral," le jour de la votation à toute élection pour ce district électoral, auront droit de voter à cette élection pour ce district électoral ; mais ce droit n'appartiendra à nul autre.

Par la sec. 5, ch. 9, 49 Vic. toute personne qui avait droit de voter à l'élection d'un membre du parlement a droit de se porter pétitionnaire, pour en contester la

(1) R. S. C. ch. 8 sec. 41.

validité,—ou un candidat à telle élection. Dans le cas actuel le pétitionnaire est un électeur.

Le défendeur a allégué dans ses objections préliminaires que le pétitionnaire n'avait pas le droit de voter à l'élection dont il s'agit dans la dite pétition, et qu'il n'était pas et n'est pas inscrit sur la liste des électeurs en force, lors de la dite élection, et qu'il n'a pas la qualité requise pour se porter pétitionnaire.

Le premier devoir de l'officier-rapporteur en recevant un bref d'élection est tracé dans la section 13 du chapitre 8, 49 Vic:

> L'officier-rapporteur de chaque district électoral devra immédiatement après avoir reçu le bref d'élection, se procurer du reviseur ou des reviseurs du district électoral pour lequel il est officier-rapporteur, au moins un exemplaire de la liste des électeurs alors en vigueur, telle que définitivement revisée et attestée par le reviseur ou les reviseurs, pour chacun des arrondissements de votation de ce district électoral, ainsi qu'une copie de l'ordre du reviseur ou des reviseurs divisant le district électoral en arrondissements de votation ; et il établira immédiatement dans chacun de ces arrondissements un bureau de votation à un endroit central et convenable.

Après l'accomplissement des prescriptions indiquées dans cette section, il doit transmettre à ses députés officiers-rapporteurs, avec leurs commissions comme tels les listes d'électeurs qu'il a obtenues du reviseur. Ses députés sont ensuite obligés d'après la section 58 en lui faisant rapport de leurs procédés à l'élection, de lui rendre les listes électorales qu'ils en ont reçues.

L'élection terminée, l'officier-rapporteur redevenu en possession des listes d'électeurs qu'il avait confiées à ses députés, doit, d'après la 65e section, faire au greffie en chancellerie le rapport exigé par cette section, et il doit spécialement, d'après le paragraphe 3, transmettre au greffier de la couronne en chancellerie, avec son retour, les bulletins, l'original des états des divers députés officiers-rapporteurs ci-dessus mentionnés, avec les listes de voteurs et les livres de poll et autres

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documents qui ont servi à la dite élection, ou qui ont été transmis par lui aux députés officiers-rapporteurs.

On voit d'après les dispositions ci-dessus citées que la liste électorale qui a servi à l'élection, obtenue du reviseur d'abord par l'officier-rapporteur et ensuite par lui remis à son député qui, après l'élection, l'a retournée à l'officier-rapporteur, est transmise par l'officier-rapporteur avec son rapport et tous les documents ayant rapport à l'élection, au greffier en chancellerie. C'est dans le bureau de ce dernier qu'elle est déposée comme record.

Au jour fixé pour la preuve sur les objections préliminaires, le pétitionnaire, au lieu de faire produire par le greffier en chancellerie la liste de record chez lui, qui avait servi à l'élection, le pétitionnaire a fait entendre comme témoin J. N. Mondor qui a produit une copie de liste d'élection du comté de Richelieu.

Après cela la cause ayant été ajournée pour la preuve du défendeur, le pétitionnaire fit motion pour rouvrir son enquête et appela comme témoin le même J. N. Mondor qui déposa que la liste produite par lui était une vraie copie de la liste des électeurs du comté de Richelieu, qui avait servi à la dite élection. Le défendeur fit objection à cette preuve.

Le pétitionnaire ne produisit aucun des documents publics par lesquels il aurait pu prouver légalement l'élection, tels que le bref d'élection, les proclamations de l'officier-rapporteur, les livres de poll, les listes électorales, le retour de l'élection, etc. Il prétendit pouvoir remplacer cette preuve par la production de la copie de la liste électorale produite par Mondor. Celui-ci, quelques jours auparavant, s'était procuré cette liste de l'honorable juge Gill, qui avait été officier reviseur. Mondor dans son témoignage, en réponse à la question. "De sorte que cette liste exhibit A n'a pas servi à l'élection?" Répond, "non." Mais il avait déjà

corrigé son témoignage sur le principe que sa réponse n'avait pas été correctement consignée dans sa première déposition, en ajoutant à sa réponse les mots suivants :

Qui est une copie de la dite liste qui a servi à l'élection du 11 janvier 1892, dont le retour est contesté dans la présente cause.

La production de la liste par Mondor et son témoignage sont-ils suffisants pour prouver que la liste en question est une vraie copie de la liste qui a servi à la dite élection ? Non, certainement.

D'abord, la liste à sa face ne comporte aucun indice, aucune déclaration qu'elle a servi à la dite élection. Le juge Gill comme reviseur pouvait certainement donner une copie authentique de la liste qu'il avait faite lui-même, et elle fait preuve complète de son contenu, mais seulement de son contenu. Il n'y est nullement fait mention qu'elle est la liste qui a servi à l'élection dont il s'agit, il certifie seulement qu'elle est la liste des électeurs de l'arrondissement de votation n° un, Richelieu, dans le district électoral de Richelieu, telle que définitivement revisée pour l'année 1891, en vertu de l'acte du cens électoral. Il ne dit pas que c'est la liste qui a servi à la dite élection. La simple production de cette liste ne prouve pas le fait essentiel, qu'elle est celle qui a servi à la dite élection. Il faut aller chercher cette preuve ailleurs. C'est pour cette raison que le pétitionnaire a fait revenir Mondor, pensant pouvoir faire preuve par lui de ce fait.

Mais loin de faire cette preuve il dit que ce n'est pas une copie de celle qui a servi à la dite élection. En effet, celle-là est chez le greffier en chancellerie, et la copie donnée par le juge Gill n'a pas même été comparée avec celle qui avait servi à la dite élection.

Le fait que la liste a servi à la dite élection doit nécessairement être prouvé par une preuve en dehors de la liste ; mais est-ce par témoignage ou par écrit qu'elle doit être faite ? Cette preuve ne peut résulter

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que de l'ensemble de la production des documents publics, comme le bref d'élection, les proclamations, les livres de poll, les listes électorales, et le retour de la dite élection. En effet, la liste qui a servi est celle qui a été rapportée au greffier en chancellerie avec tous les autres documents, et cette preuve ne peut être faite que par la production de ces documents.

C'est en vain que l'on voudrait invoquer les inconvénients qu'il peut y avoir à faire voyager le greffier en chancellerie dans tous les comtés où il peut y avoir des contestations, pour la production de ses documents. La chose a été faite depuis plusieurs années, sans que les plaideurs en aient souffert. D'ailleurs cet argument n'a aucune valeur légale, et ne peut justifier la violation d'une des premières règles concernant la preuve qui est que les parties doivent fournir la meilleure preuve possible, et cette preuve est la preuve écrite lorsqu'elle peut être produite. Elle le peut dans ce cas-ci. Le greffier en chancellerie, par la production de ses documents concernant la dite élection, aurait fait la preuve complète de la liste qui a servi à la dite élection. Ce n'est pas pour dispenser de cette preuve qu'un amendement à la loi a permis au reviseur et à l'imprimeur de la Reine, de donner des copies de listes électorales qui ont certainement toute la force probante de celles que peut donner le greffier en chancellerie. Mais ces copies ne feraient aucune preuve du fait qu'elles ont servi à la dite élection,—sans la production en même temps de celles déposées chez le greffier en chancellerie, il y aurait toujours une lacune dans la preuve. C'est uniquement pour la commodité du public qu'il a été permis à ces officiers d'en donner des copies,—car en temps d'élection il en est fait un grand usage.

L'objection faite à la liste produite n'est pas parce qu'elle vient du reviseur, mais parce qu'il n'est pas

prouvé légalement qu'elle est celle qui a servi à la dite élection. Le témoignage de Mondor ne pouvait faire légalement cette preuve qui existait dans les documents écrits du greffier en chancellerie. Leur production était indispensable.

Mais on fait l'objection que si l'élection a lieu par acclamation, il n'y aura pas de liste qui aura servi à l'élection, puisqu'il n'y a pas eu de votation, et partant personne de qualifié à attaquer une telle élection. On en conclut que la liste qui a servi à l'élection n'est pas indispensable puisque dans ce cas même il y a toujours des électeurs qualifiés qui ont droit de prouver leur qualification. A cela je réponds que, même dans le cas d'une élection par acclamation, qu'il y a toujours une liste qui a servi à l'élection. Comme on l'a vu par la section 13 du chapitre 8, citée plus haut, le premier devoir de l'officier-rapporteur, en recevant le bref d'élection, est de se procurer du reviseur la liste électorale. Ce n'est qu'après cela qu'il procède à la publication de ses proclamations pour la tenue de l'élection, la nomination des députés officiers-rapporteurs. Lorsque l'élection a lieu même par acclamation, l'officier-rapporteur est déjà en possession des listes électorales—et il doit les renvoyer au greffier en chancellerie avec son retour de l'élection. C'est cette liste qui a servi à l'élection et que le pétitionnaire doit produire, ou une copie d'icelle donnée par le greffier en chancellerie, (1) pour faire la preuve de sa qualification. Il est facile de voir que cette objection n'est d'aucune force et ne peut dispenser en aucun cas de la production de la liste du greffier en chancellerie.

Je suis d'avis que le jugement doit être confirmé et l'appel renvoyé.

(1) 49 Vic. ch. 5, s. 32.

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TASCHEREAU J. concurred in dismissing the appeal for the reasons given by Strong and Fournier JJ.

Gwynne J.

GWYNNE J.—In the month of January, 1892, an election took place for a member of the House of Commons, for the electoral district of Richelieu, at which the respondent was returned as duly elected. The appellant filed a petition in the Superior Court for the province of Quebec, in which the electoral district of Richelieu is situate, and therein complained that the return of the respondent was obtained by means of bribery and corruption committed by the respondent and his agents, and that the said election and return of the respondent might be declared null and void. To this petition the respondent filed certain preliminary objections and among them—

That the petitioner had no right to vote at the said election and that he was not and is not inscribed on the list of voters in force at the time of the said election and that he has not the quality entitling him to be a petitioner against the election and return of the respondent.

The question raised by this preliminary objection came down for trial on the 23rd day of July, 1892, before Mr. Justice Gill, when the petitioner produced in evidence a list of voters qualified to vote at the said election, in the form prescribed by the statute in that behalf, signed and certified by the revising officer for the said electoral district, who was the judge himself before whom the question raised by the said preliminary objection was being tried, by which it appeared that a person bearing the name of the petitioner was a duly qualified voter entitled to vote at the said election, and evidence was given which established that the person whose name was so entered on the list was the petitioner. Counsel for the respondent objected to the reception in evidence of this certified list upon the contention that the said list could not be used as tend-

ing to the proof or for the purpose of proving that the petitioner was an elector and so qualified to be a petitioner. The learned judge disallowed the objection, "l'objection renvoyée," and received the list in evidence. Afterwards the learned judge, upon the 10th of August, 1892, in giving judgment upon the preliminary objection, dismissed the election petition upon the ground that the certified list of voters, qualified to vote at the said election, which had been produced by the petitioner, and so received by the learned judge, was not "the best proof possible," and he refused to extend time to the petitioner to enable him to produce the evidence, whatever it might be, which the learned judge deemed to be the best proof, of the last revised list of voters in the said electoral district. It is from this judgment of the learned judge dismissing the election petition that this appeal is taken.

As the list produced by the petitioner was received by the learned judge after an objection to its reception had been disallowed by him, it certainly appears to me that if upon further consideration he formed the opinion that it was not sufficient proof of the fact in proof of which it was offered and received, he, in common justice, should have extended the time to have enabled the petitioner to produce whatever the learned judge deemed to be the requisite and only sufficient proof instead of dismissing the petition. But, as it appears to me, the learned judge's first ruling when he disallowed the objection to the reception of the list as evidence and received the list in evidence was quite right; for in my opinion it is plainly enough made, by the statute, sufficient evidence of the fact in proof of which it was offered, and I cannot conceive what better evidence of any fact can be required than that which a statute makes sufficient.

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The petitioner had the status which qualified him to be a petitioner if he was a person whose name was registered on the list of voters for the electoral district of Richelieu in force under the provisions of the Electoral Franchise Act, on the day of the polling at the election held for such electoral district in January, 1892 (1). The only question raised by the preliminary objection of the respondent that the petitioner had not the status qualifying him to be a petitioner was whether or not the petitioner was a person whose name was upon the last revised list of voters for the said electoral district in January, 1892, when the election under consideration took place. If it was the petitioner's status was established, whether he voted at the election or not. Now by the 21st section of the Electoral Franchise Act, as amended by 53 Vic. ch. 8, s. 7, it is enacted that every list as finally revised, and a duplicate copy thereof, shall be forwarded to the Clerk of the Crown in Chancery, at Ottawa, who shall cause such list so forwarded to him to be printed by the Queen's Printer, and after 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.

Then by section 22, it was enacted that every list of voters so finally revised should remain in force until other lists in a future year should be revised and brought into force in their stead as in the act provided; and that the persons whose names are entered upon such lists as revised should alone be entitled to vote at any election in the polling districts and electoral districts for which such lists are respectively made; and it is thereby expressly enacted that—

The said lists shall be binding on every judge and other tribunal appointed for the trial of any petition complaining of an undue elec-

(1) 49 Vic. ch. 8 s. 41.

tion or return of a member to serve in the House of Commons of Canada.

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What is here made binding upon courts of justice is the "last revised list of voters" in force at the time of the election which is complained of being held, and not the copy of such list which was used at such election and which itself was a list of the same character precisely as the one which the learned judge at first received, and after having received rejected, in the present case, as appears by the 31st section of the Electoral Franchise Act, which enacts that—

> The revising officer shall furnish to the returning officer for his electotal district, or portion of an electoral district, within forty-eight hours after demand of the returning officer therefor "one copy" of the list of voters then in force for each polling district in the electoral district, or portion of an electoral district, with a copy of the description of each such polling district as contained in the order of the revising officer constituting the same and then in force, "each of which copies shall be duly certified by the revising officer."

That list, if produced, would have proved no more than the one produced, having been itself but a copy certified by the same revising officer in the same manner as the one which was produced; both of them were equally authentic, and either one or the other was equally sufficient to be received in proof of, or to assist in proof of, the fact in issue, namely: whether the petitioner was on the last revised list of voters in force in the electoral division, not whether he was on the copy of that list supplied by the revising officer to the returning officer. If the petitioner's name was on the last revised list his status was proved and that a person of his name was on that list was proved, by the certified list produced, and that he was such person was also proved. Then immediately follows the 32nd section which, as amended by 53 Vic. ch. 8, sec. 9, 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

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printed and verified as hereinbefore provided to any person or persons applying for the same and paying therefor * * * and 2nd. 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 one of such officers as correct in the form E in the schedule to this act shall be deemed to be an authentic copy of such list.

Now, for what purpose should a list so certified be deemed to be "authentic" unless it be for the purpose of "being binding" (as specified in the 22nd section) on every judge and other tribunal appointed for the trial of any petition complaining of an undue election or return of a member to serve in the House of Commons in Canada. The meaning of the term "authentic" as given in Webster's dictionary is :—

Having a genuine original or authority; being what it purports to be—genuine—true; as applied to things—"an authentic paper or register"; and in law—"vested with all due formalities, and legally attested."

Now the form of the certificate prescribed by the act in order to qualify it to be received as an "authentic," genuine and true list or register of voters, legally attested is as follows:

CERTIFICATE OF LIST OF VOTERS.

I , the undersigned revising officer for the Electoral District of , or Clerk of the Crown in Chancery, or Queen's Printer for Canada (as the case may be) do hereby certify that the foregoing list, consisting of pages, and containing names is a true copy of the t of voters for Polling District number , as finally revised (or as finally, revised and corrected on appeal, as the case may be) for the year under the Electoral Franchise Act, 54-55 Vic. ch. 18, sec. 3.

The certificate which was given in evidence by the petitioner upon the trial of the preliminary objection to his petition that he had not the status to be petitioner was in the above form duly filled in and signed by the revising officer whose duty it was to sign it, and the effect of the certificate was (as is provided by the act, and by the prescribed form of the certificate

appears) that the list of names so certified is a genuine, true, authentic—legally attested, list or register of the names of persons entitled to vote at the election in question, and the name of the petitioner having been proved to be on the list his status as a petitioner was established. I find it difficult to conceive what better proof of the petitioner's right to be on the voters list in force at the time of the election than that his name appears on the list made by statute, an authentic list of such voters, legally attested and certified to be such by a duly authorized officer. The Clerk of the Crown in Chancery could have given no other. The law does not authorize him to give a certificate of a copy of the copy of the list used at the election, nor if given does it attach any value to such a certificate. The certificates of the Clerk of the Crown in Chancery and of the revising officer are both equally authentic and are certificates that the lists certified are authentic copies of the original revised lists. The law which declares the certificate of the revising officer or of the Clerk of the Crown in Chancery to be authentic would be wholly inoperative if it should be held to be so far useless that, notwithstanding its production, it would be necessary to call upon the Clerk of the Crown in Chancery to produce the original in his charge or the copy returned to him as used at the election as, in my opinion, would be necessary if the certificate produced by the petitioner in the present case was insufficient. For my part I cannot entertain a doubt that the object of the statute, in attaching authenticity to the lists certified by the revising officer as well as to those certified by the Clerk of the Crown in Chancery in the form prescribed by the act, was to give to lists so certified the authenticity and character of genuine originals, and that such authenticity was given to them

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to obviate the necessity, and the utter impracticability of the Clerk of Crown in Chancery attending under a subpœna *duces tecum* to produce the list or lists in his charge, as he might be subpœnaed to do at a dozen or more different electoral divisions at remote places throughout the Dominion upon the same day.

The result of the judgment of the learned judge which is appealed from in the present case being maintained, will be to prove how utterly defective the law is for the purpose of enabling electors of members for the House of Commons to call in question any election, however much the return of the member elected thereat may have been procured by the bribery, corruption and other illegal acts of himself and his agents; the simple process being for every person whose election is contested to question, by preliminary objection, the status of the petitioner. I cannot concur in the opinion that the law as it stands is so utterly defective that the status of a petitioner cannot be established otherwise than by subpœnaing the Clerk of the Crown in Chancery to reproduce the list in his custody and so insisting upon a mode of proof which is quite impracticable. In my judgment the appeal should be allowed with costs and the election petition should be remitted for trial upon its merits.

PATTERSON J.—By the Dominion Controverted Elections Act (1), an election petition may be presented by "a person who had a right to vote at the election to which the petition relates."

The election to which the petition now in question relates took place in January, 1892.

The persons entitled to vote at that election were those whose names appeared on the voters' lists revised in 1891.

(1) R. S. C. ch. 9 s. 5.

The petitioner resides in the city of Sorel in the electoral district of Richelieu.

The voters' list for that electoral district was revised by the Honourable Judge Gill as revising officer.

The petitioner in stating his qualification in his petition, unfortunately as I think, did not confine himself to the statutable form of words by simply alleging that he had a right to vote at the election (1).

He introduced those words, it is true, but he amplified them by additional verbiage which added nothing to their force, while probably suggesting the discussion of one or two topics not entirely relevant to the main inquiry, which is: Did the petitioner give sufficient evidence upon the trial of the preliminary objections to prove that he was a person who had a right to vote at the election for the electoral district of Richelieu on the 11th of January, 1892?

The persons who may present a petition under section 5 of the Dominion Controverted Elections Act, are "(*a*) A person who had a right to vote at the election to which the petition relates; or (*b*) A candidate at such election." This petitioner was not a candidate. He relies on his being a person who had a right to vote.

It happens that at this election for Richelieu there was a poll. The returning officer and his deputies had, as we may assume, lists of voters, and it is assumed that the returning officer transmitted those lists with his return to the Clerk of the Crown in Chancery as directed by section 65 of the Dominion Elections Act (2).

(1) The allegation is in these words :—Que le pétitionnaire était et est électeur à voter, et ayant droit de voter à la dite élection à laquelle la présente pétition se rapporte, et que son nom était inscrit sur les listes des électeurs qui ont servi à la dite élection ainsi que sur celles qui auraient dû servir à la dite élection, et qu'il est encore habile et qualifié à voter à l'élection d'un membre de la Chambre des Communes du Canada.

(2) R. S. C. ch. 8.

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At the trial of the preliminary objections the petitioner did not produce the list used at the polling and returned to the Clerk of the Crown, in order to show that his name was on it. The respondent contends that he ought to have done so.

The contention of the respondent is, in my opinion, founded upon a misapprehension of the law.

The right to petition is not confined to elections at which a poll is demanded.

It may be scarcely accurate, in view of our present mode of conducting an election, to use the old term election by acclamation, but a return under section 24 of the act comes to the same thing. Such a return may be petitioned against as well as a return made under section 65 after a poll. In each case, that is to say, whether there has been a poll and lists of voters used at it, or a return without a poll, the test of the qualification of a petitioner against the return is the same. The right to question the return by an election petition under section 5 does not depend on the accident of a poll being or not being demanded and held. Therefore the point touching the proof of the particular printed list which was in the hands of some one of the deputy-returning officers, which has been elaborated by the respondent in his factum and vigorously pressed in argument before us, cannot be entirely relevant unless there is something in the statutes which one is not prepared to expect.

The proceedings of the revising officer are regulated by various sections of the Electoral Franchise Act (1), ending with section 21. Under the second subsection of that section, as re-enacted by 53 Vic. ch. 8, after the lists for the several polling districts have been finally revised the revising officer prepares the final list of voters. For this some directions are given

(1) R.S.C. c. 5.

which we need not notice, and he "shall certify the original list as so corrected in form E in the schedule to this act."

I stop to notice this form E, in anticipation of something which I have to say further on.

In the original statute, as we have it in the Revised Statutes, the form was for a certificate by the revising officer, and by no one else, certifying that the list was a true copy of the list of voters for polling district number (blank) in the electoral district, as finally revised for the year. An amended form was substituted in 1889, by 52 Vic. ch. 9, not differing from the other in substance, but prepared not for the revising officer only but also for the Clerk of the Crown in Chancery and for the Queen's Printer.

The significance of this amendment will appear further on. In the meantime I remark that under subsection 2 of section 21 the revising officer is to certify the original list as corrected in that form, and, by subsection 3 he is to prepare copies in duplicate of such revised and amended lists, and is to retain one duplicate copy and send the other to the Clerk of the Crown in Chancery.

The original or certified list is retained, as I understand, by the revising officer.

By subsection 4 the Clerk of the Crown in Chancery, on receipt of all the lists for an electoral district—"the lists" here meaning the *copies* sent by the revising officer, the two expressions being used interchangeably —inserts in the Canada Gazette a notice that he has received *the lists* of voters finally revised for all the polling districts of the electoral district for the year, and thereupon the persons whose names are entered on the lists as voters are to be held to be duly registered voters in and for the electoral district, subject to an appeal given by section 33 in cases where the revising officer is not a judge.

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Subsection 7 directs that the Clerk of the Crown in Chancery shall, as such lists are received by him, cause them to be printed by the Queen's Printer, and after 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.

Then we have section 22 which declares that after the lists of voters have been so finally revised or amended and corrected on appeal, if any such appeal takes place, and after they have been certified and brought into force as thereinbefore prescribed..... those persons only whose names are entered on such lists as so revised, or amended and corrected on appeal, if any, shall be entitled to vote at any election in the polling districts and electoral districts for which such lists are respectively made; and the said lists shall be binding on every judge and other tribunal appointed for the trial of any petition complaining of the undue election or return of a member to serve in the House of Commons for Canada.

Under these provisions it is plain that the task of the petitioner was to prove that he was a person named in the list for 1891 finally revised, certified and brought into force under section 21.

Subsection 6 of section 21 enacts that every such list shall be so finally revised and certified, and the duplicate copy thereof forwarded to the Clerk of the Crown in Chancery at Ottawa, on or before the thirty-first day of December in each year, and the notice in the Canada Gazette under subsection 4 is to be in the issue next after the receipt of all the lists for the electoral district by the Clerk of the Crown in Chancery.

No question has been made as to the regular proceedings having been taken by the revising officer and the Clerk of the Crown in Chancery, in the year 1891, or

as to the notice appearing in the first issue of the Gazette after the receipt of the lists. Those are things which I apprehend must be presumed to be properly done unless the contrary appears.

The ground on which the judgment appealed from is rested is that the petitioner had not given the best proof possible of his qualification.

The judgment does not intimate what proof the court regarded as the best proof which the petitioner had failed to produce, but I gather from the position taken before us, as well as from the notes of the position taken before the election court, that it was considered to be incumbent on the petitioner to prove that his name was on the printed list used by the deputy-returning officer of polling district no. 1 at the election, and that his failure was in being unable to prove that the paper he produced was the one so used. He in fact affirmatively proved the .contrary. His witness, Mr. Mondor, the returning officer, produced a list of voters for the polling district containing the name of the petitioner and certified in statutory form E by the revising officer, but it had been procured long after the election, and apparently for the purpose of being produced in evidence as it was now produced.

I have shown why, in my opinion, it was unnecessary to produce or to give evidence of the particular paper used at the poll, and why I consider that the provisions of the Electoral Franchise Act are those to which resort must be had, and I have referred to some of those provisions. They contain no reference to the proceedings at a poll, and, as I have pointed out, the same rule must apply to all elections whether a poll has or has not been held.

I suppose the view which, if I correctly understand the grounds of the judgment, was acted on in the

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court below, is founded on a construction of some provisions of the Dominion Elections Act (1). Section 41 of that act declares that, subject to certain provisions, all persons whose names are registered on the lists of voters for polling districts in any electoral district in force under the provisions of the Electoral Franchise Act or of the act of 48 & 49 Vic. ch. 40, on the day of the polling at any election for such electoral district, shall be entitled to vote at any such election for such electoral district and no other person shall be entitled to vote thereat. So read the section agrees in effect with section 22 of the Electoral Franchise Act, and is not unlike it in terms. But when we look at the interpretation clauses of the two statutes we find that the expression "list of voters," when used in the Franchise Act, means "the list of voters to be revised and completed under the provisions of that act in each year for each polling district of an electoral district when finally revised, and includes a list corrected in appeal;" and that the same expression, when used in the Dominion Elections Act, means the certified copy of the list or corrected list of voters for a polling district furnished to the returning officer or any deputy-returning officer under the Electoral Franchise Act, or the act 48 & 49 Vic. ch. 40.

We have thus the one act declaring that every person whose name is entered as a voter on the lists as finally revised shall be entitled to vote, and the other apparently confining the right to those persons whose names appear on a particular copy of the list.

It is only at first sight that any discrepancy between these provisions suggests itself.

The copy of the list for the polling district furnished to the returning officer or deputy-returning officer is

(1) R. S. C. ch. 8.

one of those printed by the Queen's Printer after verification by the revising officer.

Under subsection 7 of section 21, the Clerk of the Crown in Chancery transmits a sufficient number of these copies to the revising officer, and section 31 provides for the revising officer supplying one copy for each polling district when the returning officer asks for them, which will, of course, be only in cases where a poll is demanded.

The copy in the hands of the deputy-returning officer is thus a verified copy of the list as finally revised.

Why then is the expression "list of voters" defined differently in the two statutes? The explanation may be that provisions of the Dominion Elections Act like section 41 being intended for the guidance of the officer conducting the poll he is instructed by that section, in connection with the interpretation of the expression "list of voters," that he has not to look beyond the paper in his hands, and is not to receive the vote of any one whose name does not appear on the paper.

The explanation of the legislation is not a matter that much concerns us at present, but one effect of it is that at an election at which a poll is not demanded there is absolutely no list of voters for the electoral district or the polling districts, within the meaning of the term "list of voters" as used in section 41 or any other section of the Dominion Elections Act, and, therefore, if we are to look to that statute for the test of a petitioner's qualifications, there is no one entitled to contest the validity of the election.

It is practically impossible, under the present methods, for the names on the copy to differ from those on the list; but suppose, for argument's sake, that at an election where a poll was held a name did happen to be dropped in making the copy, or suppose a copy of a wrong list to be inadvertently furnished—the list

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of 1889 for example which was continued in force till that of 1891 was finally revised (1),—the officer at the poll would of course reject any voter whose name was not on the paper in his hands; but can it be argued that a person whose name was on the true list, and who was therefore entitled to vote under the provisions of the Electoral Franchise Act, was disabled by the omission of his name from the copy used at the poll from contesting the validity of the election on any ground, even on the ground that his name was omitted from the copy of the list of voters used at the poll or that the list used was not what the statute required?

It is almost unnecessary to say that there is no conflict between the two statutes, regard being had to the scope and purpose of each of them; still I am clearly of opinion that it is to the Electoral Franchise Act which applies in all cases whether there is or is not a poll, and not to the Dominion Elections Act, that we must look to ascertain if the person who presents an election petition is a person who had a right to vote at the election to which the petition relates.

I think, moreover, that that opinion is supported by the unanimous decision of this court in the *Megantic Case* decided in 1884 (2).

Section 32 of the Electoral Franchise Act, as now framed in 53 Vic. ch. 8, reads as follows :—

32. 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 or persons applying for the same and paying, &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 this Act, shall be deemed to be an authentic copy of such list.

The expression "authentic copy" is adopted from the forensic vocabulary of the province of Quebec,

(1) By 53 Vic. ch. 8 s. 12. (2) 9 Can. S. C. R. 279.

and denotes a copy which is of such authority as to prove the contents of the original document from which it is taken.

The copy of the list of voters put in evidence at the trial was, under section 32, an authentic copy of the list as finally revised, and it proved the status of the petitioner as a person who had, under the Electoral Franchise Act, a right to vote at the election.

But I go further than that. I am of opinion that even if it were necessary to prove that the petitioner's name was on the list used at the poll sufficient evidence was given.

I have already adverted to the manner in which the terms "copy" and "list" are used interchangeably in the statute, and how what is in one place called a copy is in another called the list. For all practical purposes the copies made by the Queen's Printer, particularly when given authenticity by the certificate, are regarded as the lists of voters, each one being like every other, and the idea of there being an original to which the copies may be referred being apparently absent. I make no point at present on this view of the statute beyond noticing it as consistent in its effect with what I am about to argue.

The copy of the list for any polling district furnished by the revising officer to the returning officer under section 31 is obviously one of those printed by the Queen's Printer and transmitted to the revising officer under section 21, subsection 7. It is the *copy* of the list of voters which by force of the interpretation clause is denoted by the expression "list of voters" in section 41 of the Dominion Elections Act.

It is the law, at least as settled in English courts, that all printed copies struck off in one common impression, though they constitute only secondary evidence of the contents of the paper from which the year

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taken, are primary evidence of the contents of each other. That doctrine will be found stated and illustrated by reference to decisions in Taylor on Evidence (1).

On this principle the copy of the list procured by Mr. Mondor, being a print from the same type as the copy which was used at the poll, was primary evidence of the contents of the latter.

Looking therefore at the case from the respondent's point of view I am not prepared to affirm the decision. I think it proceeds on a fallacious conception of the nature of the document which it was held to be necessary to produce. It regards that document as an original document the contents of which must be proved by its production, whereas the document can have been nothing but one of the printed copies. The very definition of the term in the interpretation clause which introduces or includes the fact of the document being that which was in the hands of the returning officer, describes it as a copy.

I rely most strongly on the ground I have first discussed, but on both grounds or on either of them I think the appeal should be allowed.

Appeal dismissed with costs.

Solicitors for appellant: *Ethier & Lefebvre.*

Solicitors for respondent: *Bruneau & Plamondon.*

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(1) P. 588 s. 418 of 8th ed.