CONTROVERTED ELECTION FOR THE ELECTORAL DISTRICT OF BEAUHARNOIS.

GEORGE. M. LOY (RESPONDENT).....APPELLANT; 1901

AND *Oct. 1.

JOSEPH EMERY POIRIER (PETITIONER) ..... } RESPONDENT. *Oct. 29.

ON APPEAL FROM THE JUDGMENT OF MR. JUSTICE BELANGER.

Controverted election—Preliminary objections—Status of petitioner—61 *V. c.* 14; 63 *& 64 V. c.* 12 *(D.)*—59 *V. c.* 9, *s.* 272 *(Que.)*—*Dominion franchise—Construction of statute.*

The principal contention on preliminary objections to a controverted election petition was that the petitioner had been guilty of corrupt practices before and during the election, and that, by the effect of the statutes 61 Vict. ch. 14 and 63 & 64 Vict. ch. 12, the Dominion Franchise Act was repealed, and the provisions of the "Quebec Elections Act" regulating the franchise in the Province of Quebec substituted therefor so as, thereby, to deprive the petitioner of a right to vote under 59 Vict. ch. 9, sec. 272, and being so deprived of a vote that he had no status as petitioner. In the Election Court, evidence was taken on issues joined and the judge, holding that no corrupt practice upon the part of the petitioner had been proved, dismissed the preliminary objections. On appeal to the Supreme Court of Canada;

Held, that, as corrupt practices had not been proved, the question as to the effect of the statutes did not arise.

Per Gwynne J.—The amendment to the Dominion Franchise Act by 61 Vict. ch. 14 (D.) and 63 & 64 Vict. ch. 12 (D.) has not introduced into that Act the provisions of section 272 of "The Quebec Elections Act" so as to deprive a person properly on the list of voters for a Dominion election of his right to vote at such election.

APPEAL from the judgment of His Lordship Mr. Justice Bélanger dismissing the preliminary objec-

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

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tions to the petition against the return of the appellant as member for the Electoral District of Beauharnois in the House of Commons of Canada.

The questions at issue upon this appeal are stated in the judgments reported.

Belcourt K.C. for the appellant cited the statutes, and *Rouville Election Case* (1); Cunningham on Elections (3 ed.) p. 281.

Bisaillon K.C. and *Laurendeau* for the respondent.

THE CHIEF JUSTICE.—The preliminary objection in this case was to the status of the petitioner. It was said that he was a person not entitled to vote because he had been guilty of corrupt acts.

There was a long argument to shew that either under the new Franchise Act (which makes the law of Quebec the test of the right to vote at a Dominion election in that province) or under the Dominion Elections Act, a person guilty of corrupt practices cannot vote and consequently cannot maintain a petition against the return. All this argument as to the law, however, appears to me to be immaterial in the absence of evidence shewing that the petitioner, (the respondent in this appeal), was guilty of a corrupt act.

For this reason of the want of proof of the pretended ground of disqualification the preliminary objection was rightly dismissed by the court *a quo* and this appeal must be similarly dealt with.

TASCHEREAU, J.—The petitioner-respondent alleges in his petition that he is an elector, who had a right to vote, and has voted at the election to which the

(1) Q. R. 13 S. C. 94.

petition relates, the Dominion election held on the 7th of November, 1900.

The appellant filed a preliminary objection on the ground that the respondent, during the said election, had been guilty of corrupt practices and had therefore no right to vote, and consequently no right to present this petition, as the statute gives the right to present an election petition exclusively to a person who has the right to vote.

We have, first, to see if, in fact, the appellant has proved that the respondent has committed the corrupt practices of which he accuses him. The question of law whether corrupt practices by a petitioner disentitle him *ipso facto*, of the right to petition does not come up for our determination if this petitioner is not proved to have committed any. The Superior Court found, as a fact, that he had not. I am of opinion, that the appellant has failed to establish that this finding is wrong. The charge in his bill of particulars upon which he seems to rely more specially is that the respondent, two or three days before the election, promised some money to one *Joseph* Vallée to induce him to vote for the candidate Bergeron, and did in fact later on, give him two dollars. Not *Joseph* but one *François* Vallée was brought as witness for the appellant to prove that charge. Now, suffice it to say that the judge who heard this witness entirely rejects his testimony as unworthy of belief. Moreover, the bill of particulars does not mention *François* Vallée's name, and this evidence should not have been received. The charge as to one Bougie is also not mentioned in the bill of particulars And Roch Sauvé, a witness brought by the appellant, entirely fails to prove that respondent committed a corrupt practice by treating any of the electors. The witnesses Emile Boyer and Dominique Lecompte prove nothing whatever against the respond-

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ent. These are the only cases relied upon before us by the appellant. The Superior Court could not but find the respondent not guilty of the charges brought against him.

Taschereau J. I would dismiss the appeal with costs.

GWYNNE J.—This appeal arises upon an election petition to which the defendant filed divers preliminary objections which have been dismissed and from the judgment dismissing them this appeal is taken.

The petitioner in his petition alleged that his name was inscribed, as a voter, upon the electoral list used at the last election held in the electoral district of Beauharnois in the Province of Quebec of a member of the House of Commons, to represent the constituency of that electoral district; that he was an elector qualified and having the right to vote, and as such did vote at the said election; and the petitioner prayed that the return of the respondent as the member elected at the said election should be set aside and declared to be null and void by reason of the respondent having been, as was alleged in the petition, guilty of divers numerous acts of bribery and corrupt practices mentioned in the petition. The point raised by the appeal is a wholly novel one, insisting in fact, that by force of the recent change in the law affected by the Dominion Franchise Act, 61 Vict. ch. 14, and the Dominion Election Act, 63, & 64, Vict. ch. 12, the power of defendants in an election petition to raise by way of preliminary objections thereto, questions of a wholly new character is extended in an unlimited degree. The point having been almost the sole point discussed in the appeal before us and having been pressed upon us by the learned counsel for the appellant with the greatest earnestness and persistency, and as the point is one of very considerable importance as effecting in

the future election petitions, and the right now claimed for defendants to meet them by filing preliminary objections being of a novel character, I think we should dispose of the appeal upon the point so pressed upon us, even at the risk of being deemed to treat the case at greater length then may be thought absolutely necessary for the disposal of the appeal.

The respondent met the petition by filing a long list of preliminary objections.

In the fifth he alleges:

That before, during and after the said election, the petitioner directly and indirectly by his agents and other persons acting for him and in his name, has made gifts, loans, offers, promises and agreements with electors and with other persons with intent to induce *electors to support and to undertake to support his election and with intent to obtain the votes of electors at the said election.* and especially to Joseph Vallée an elector and labourer of Salaberry de Valleyfield.

Now not to dwell upon a fact which appears upon perusal of the objections, namely, that some of them are framed as if the petitioner was himself the opposing candidate at the election, notably that which I have above quoted, and also some of the others, it is to be observed that the objections relate to acts which are by 63 & 64 Vict. ch. 12 declared to constitute indictable offences which upon conviction are punishable some with fine and imprisonment, some by fine alone, or by a liability to pay a sum of money by way of forfeiture to any one who shall sue therefor, as a penalty imposed by the act, and it is to be observed that the objections are stated in the most general terms possible (much in the form which, I think it is much to be regretted, has been sanctioned by practice in election petitions), charging the petitioner with having "committed all and every one of the acts of corruption defined and prohibited by the law", and thus enumerating all of the offences of every description which are mentioned in secs 108 to 113

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both inclusively, and which are all made indictable offences punishable severally upon conviction in the manner prescribed in the Act. The only attempt at assigning a particular specific act as having been committed by the petitioner is that alleged in the objection above quoted, which is framed as if the petitioner himself had been an opposing candidate, and the offence charged involves the indictable offences of bribery punishable upon conviction by fine and imprisonment.

Besides being made indictable offences and punishable on conviction all the acts alleged are made inquirable into *upon the trial* of an election petition, calling in question the validity of the election, and upon being proved to the satisfaction of the court or judge to have been committed by a candidate or any agent of his, the election may be declared void and in some cases a candidate may be disqualified, but no such judgment or finding of the court or judge trying the election petition subjects any person other than a candidate who may have been the person who actually committed the offence so proved to any penalty whatever imposed by the statute on such person.

Section 129 of the Act attaches to convictions for corrupt practices, of whatever description they may be, of which a party is found guilty a very severe penalty in addition to the fine or imprisonment or both prescribed by the Act for the particular offence charged. By that section it is enacted that:

> Every person other than a candidate found guilty of any corrupt practice (in any proceeding in which after notice of the charge he has had an opportunity of being heard) shall during the eight years next, after the time *at which he is found guilty* be incapable of being elected to, and of sitting in the House of Commons and of voting at any election of a member of the House of Commons or of holding any office in the nomination of the Crown or of the Governor General of Canada.

Then section 140 enacts that:

Whenever it appears to the court or judge trying an election petition that any person has violated any of the provisions of this Act for which violation such person is subjected to a fine or *penalty* (other than fine or imprisonment imposed for any offence amounting to an indictable offence) such court or judge may order that such person shall be summoned to appear before such court or judge at the place, day and hour fixed in such summons for hearing such charge.

And by section 141 it is enacted that:

Notwithstanding anything in the Criminal Code 1892, no indictment for corrupt practices shall be tried before any court of Quarter Sessions or General Sessions of the Peace.

There is nothing in the Act which expresses any intention of Parliament to subject the offences charged in the objections filed by way of preliminary objections to inquiry thereinto as preliminary objections under the statute to an election petition. On the contrary the precise provisions of the Act by which alone a party other than a candidate shall be found guilty of such offences and subjected to the penalties of every description imposed by the statute, in my opinion, exclude all ideas of the accusation of such offences as committed by a petitioner affording a good ground of preliminary objection.

It is contented however that, (notwithstanding the precise provisions of the Act to which I have adverted) the Dominion Parliament has by implication introduced into the Dominion Franchise Act, 61 Vict. ch. 14, a clause of an act of the legislature of the Province of Quebec which has the effect of subjecting the petitioner to an election petition to having accusations by way of preliminary objections, made against him of having committed the several offences alleged to the present case, and to having them inquired into and adjudicated upon as and by way of preliminary objections to any further proceedings on the petition.

The argument is that as by 61 Vict. ch. 14, it is enacted that for the purpose of a Dominion election

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held within the limits of the province the qualifications necessary to entitle any person to vote thereat shall be those established by the laws of that province as necessary to entitle such person to vote in the same part of the province at a provincial election, and that as by a provincial statute of Quebec, 59 Vict. ch. 9, sec. 272, it is enacted:

> Tout électeur qui à une election a commis une acte constituent une manœuvre électorale quelconque défendue par la présente loi, ou a été partie à la commission d'un tel acte est *ipso facto* privé du droit de voter à cette élection.

Then the argument is that as by 37 Vict. ch. 10 sec. 7 (D.), the only persons competent to present an an election petition are

1st. A person who had a right to vote at the election to which the petition relates; and 2nd. A candidate at such election. And, by reason of the 272nd sec. of the Provincial Act 59 Vict. ch. 9, being as it is contended incorporated into the Dominion Franchise Act, it is contended that upon proof upon trial of the preliminary objections that the petitioner committed some or one of the acts of bribery and corrupt practices charged in the preliminary objections, he loses his status as a petitioner, notwithstanding that it is not disputed that he was qualified to be and was entered upon the electoral list in force at the election as a voter thereat and that upon his applying at the election for his ballot paper he was given one and that he voted thereon without his right to vote being disputed, and without his being asked to take the oath which by the Dominion law he was bound to take under penalty of forfeiting his vote if he did not.

What should be the construction of the section of the Quebec statute above mentioned, if it was, as is contended, incorporated into the Dominion Franchise Act, and whether it could be given the construction as

contended by the appellant in view of the provisions of the Dominion Acts to which I have referred, I do not propose to inquire, for in my opinion the contention that it is so incorporated is not well founded. Under the Dominion Franchise Act now in force, 61 Vict. ch. 14, the qualifications necessary to entitle any person to vote at a Dominion election, save as otherwise is provided by that Act and also by the Dominion Elections Act, 63 & 64 Vict. ch. 12, are those established by the law of the province in which the election is held as necessary to entitle such person to vote in the same part of the province at a provincial election.

By article 177 R. S. Q. the secretary-treasurer of every municipality is required to make a list in duplicate of all persons who, according to the valuation roll then in force in the municipality for local purposes, appear to be electors by reason of real estate possessed or occupied by them within the municipality, in any manner specified in article 173.

Provision is then made for the revision and correction of such list. Article 208 then enacts *that every such list when put in force as prescribed in the Act shall, during the whole period in which it remains in force be deemed the only true list of electors within the electoral district.* The law then provides for one of those duplicate original lists being retained on record by the municipality and for the other to be registered in the registry office of the registration division in which the municipality is situate. Then by 61 Vict. ch. 14, sec. 5 s.s. *c*, it is enacted that the *voters lists used at a Dominion election* shall be those prepared for and in force under the laws of the province for the purpose of provincial elections, and in sec. 10 of the same Act it is enacted that within ten days after the final revision of every list of voters for the purpose of provincial elections it shall be the duty of the custodian thereof to transmit to the Clerk

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of the Crown in Chancery a copy of such list certified under the hand of such custodian. Then in s.s. 2 of the same section it is enacted that for the purposes of Dominion elections *such certified copy shall be deemed to be the original and legal list of voters* for the polling division for which the list of which it is a copy was prepared, so long as that list remains in force, subject however to such changes and additions as are subsequent to revision made in such lists under the provisions of the provincial law. Then by s.s. 3, it is made the duty of the clerk of the Crown in Chancery to cause such certified copy to be printed by the Queen's Printer. Then by sub sec. 6, it is enacted that all voters lists so printed by the Queen's Printer shall be authenticated by his imprint in the same manner as other Parliamentary documents, and every copy of a voters list bearing such imprint *shall be deemed to be for all purposes an authentic copy of the original list of record in the office of the clerk of the Crown in Chancery*. Now from these sections it is abundantly apparent that subject to certain provisions specified in the Act and in 63 & 64 Vict. ch. 14, the sole test of the qualification of a person to vote at a Dominion election, and to be a petitioner in an election petition to avoid any such election is his being entered as a qualified voter upon the list of voters which by the above sections is declared to be, and to be deemed to be "the original and legal list" and "the only true list" of voters within the electoral district.

Section 6 of 61 Vict. ch. 14 then enumerates several descriptions or classes of persons who though they may be disqualified by the provincial law from being entered on the provincial list of voters though otherwise qualified shall not be disqualified from voting at Dominion elections, and sec. 2 provides how such persons, although not on the list shall be admitted to

vote at a Dominion election. Then 63 & 64 Vict. ch. 12, sections 7, 8, 9, 65, 68, 126 and 129 designate divers persons and classes of persons who having the qualification entitling them to be and being entered on the provincial voters lists shall be disqualified from exercising their franchise at a Dominion election. The Dominion Parliament has itself designated every person and every class of persons who although not entered upon the provincial lists as qualified electors at provincial elections shall nevertheless be qualified to vote at a Dominion election, and in like manner every person and every class of persons who although qualified to be, and as such being, entered upon the provincial lists shall nevertheless be disqualified from exercising their franchise at a Dominion election. The Dominion Parliament has plainly reserved to itself the right of determining what persons, if any, who are entered upon a provincial list as duly qualified electors at a provincial election, shall nevertheless be disqualified from exercising their franchise at a Dominion election, and no provincial Act can qualify that right in any the slightest degree. Sec. 272 of the Quebec Act, 59 Vict. ch. 9, has therefore it is clear, no operation whatever in the present case.

The parties proceeded as appears to trial of the facts alleged in the preliminary objections before having the question as to the sufficiency in point of law of the objections determined, and no evidence was offered in support of any of the objections, save only of that contained in that paragraph which I have above quoted, namely, a charge of bribing Joseph Vallée therein mentioned. The learned trial judge discredited the evidence offered in support of that charge and he declared that it was not proved, and he dismissed the preliminary objections as well for their insufficiency in point of law as for the absence

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of proof in point of fact of the only charge in the objections upon which any evidence was offered. In my opinion the sole material question raised by, and argued in the appeal is as to the right of the defendant in the election petition to make the charges involved in the matters asserted by way of preliminary objections to an election petition, and I am of opinion that no such right exists. The appeal should, I think, for that reason, be dismissed for evidence offered in support of objections or in objections not constituting good grounds to set up as preliminary objections is irrelevant and so inadmissible and should not be received. The main question here seems to be, as I have said, upon the sufficiency of the objections pleaded by any of the preliminary objections.

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

Appeal dismissed with costs.

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

Solicitor for the respondent: *J. G. Laurendeau.*