

Full Court.]

[June 15.]

REGINA v. SAUNDERS.

*Criminal law—Evidence—Ballot—Compelling witness to disclose for whom he voted—Dominion Elections' Act, s. 71.*

The accused was convicted at the last assizes at Portage la Prairie for ballot box stuffing, chiefly by the evidence of a large number of witnesses who swore that they had marked their ballots for the unsuccessful candidate, the number being greater than the number of marked ballots for such candidate found in the box when opened. The inference was that the accused, who was the Deputy Returning Officer at that particular polling place, had fraudulently substituted other ballots for some of the ballots marked by the witnesses.

A case was reserved for the next sitting of the Full Court as to whether under s. 71 of the Dominion Elections' Act, R.S.C., c. 8, a witness could be required or allowed to state for whom he had voted.

*Held*, following *Queen v. Beardsall*, 1 Q.B.D. 452, that the question should be answered in the affirmative, as purity of elections is of at least equal importance with secrecy of voting, and the section referred to relates only to evidence in a legal proceeding questioning the election.

*Held*, also, that the evidence objected to should not be ruled out as secondary evidence of the contents of a written document, because under the Act there is no way of identifying the particular ballot marked by any witness.

Conviction affirmed.

*Howell*, Q.C., for the Crown.

*Wilson*, for the accused.

KILLAM, J.

BERTRAND v. CANADIAN RUBBER CO.

[June 17.]

*Fraudulent preference—Insolvent circumstances—Intent to prefer.*

The plaintiff, being the assignee of one Lamonte, under an assignment for the benefit of his creditors, brought this action to set aside a chattel mortgage on Lamonte's stock-in-trade, made in favor of the defendants, on the ground that Lamonte was at the time in insolvent circumstances, and unable to pay his debts in full, and gave the defendants the mortgage as a preference over his other creditors.

At the date of the mortgage, Lamonte, who was a retail merchant, had a surplus upon his valuation of his stock of about \$1,000, besides a piece of land valued by him at \$750. He was carrying a stock of \$9,000 or \$10,000, and had a profitable and increasing business. Another creditor, as his claim was about maturing, notified Lamonte that he insisted upon payment; other considerable sums were already overdue, or, about maturing, which it was impossible for him to meet at once; and taking all the circumstances into consideration the proper inference was that, even upon the terms of credit on which the sale was eventually made, Lamonte could not at the time of making the mortgage dispose of his assets for sufficient to meet his liabilities.

*Held*, that he must be deemed to have been then in insolvent circumstances, and, as the giving of the mortgage was entirely at his suggestion, and there was no pressure on the part of the mortgagees, it must be declared that