

one said to Pouliot that the nephew and not the uncle was the voter, and that the uncle had no right to vote, but this was after the voting, and after Pouliot had any communication with the man. It had been said that Pouliot was present at a previous election just four months before, and that what passed then must have informed him that the uncle had no vote. I do not think this proves anything. The voter rejected was not the uncle but his tenant; Pouliot may not have heard what passed, and he may very well have forgotten it if he did hear it. Examined as a witness, Pouliot swears he did not know that the uncle was not a voter, and that he did not know of the existence of the other man. I find two cases decided by Mr. Justice Blackburn, (now Lord Blackburn) in the Gloucester election case, not unlike this one, in which the learned judge declared the evidence insufficient, and more particularly in face of the fact that the person accused had denied on oath having the guilty knowledge alleged.

The first ruling was on the case of a man named George Williams, whose vote was objected to as not being that of the George Williams who was the person really entitled to vote. It appeared that two persons of this name lived in Brook street, but that the one who voted had not come to live there until it was too late for him to be registered. Mr. Justice Blackburn said: "I am quite satisfied that he was not the man meant upon the register, but that the man whose vote has been counted was the man meant." * * * "But as to Mr. Picard (the agent) after the evidence that he has given, I cannot say that he could have been a party to his personation, because he honestly believed George Williams was the right George Williams, and I need not say it is obvious in point of law that in that case he is not a party to it."

On the same contestation objection was taken to the vote of one George Gage. The man who voted continued to occupy his father's house, the father's name being John Gage and being on the register. The son's name was not on the register. One Maslyn, said to be an agent of respondent, induced John to vote. Maslyn when called as a witness stated that he knew nothing of George Gage's father, that he did not know the voter's Christian name, and

that he believed the man who voted was the person whose name was on the register. Mr. Justice Blackburn said: "If Maslyn knew that John Gage was the person who was the voter, and not George, and, notwithstanding this, sought to persuade George to go and vote instead of John, he would of course have been guilty of the offence of personating, and if his agency was proved, the seat would be forfeited. But after Maslyn's distinct oath, I cannot come to the conclusion that he is now committing perjury and was then committing felony. I must therefore hold that this case fails." The Gloucester case, 2 O'mally & Hardcastle, pp. 63 and 64.

The judgment was reversed with costs, Cross, J., dissenting.

COURT OF QUEEN'S BENCH.

QUEBEC, December, 1882.

DORION, C.J., RAMSAY, TESSIER, CROSS & BABY, J.J.

DORION (plff. below), Appellant, & DUFRESNE et al. (defts. below), Respondents.

Certificate of Work—Transfer.

RAMSAY, J. (dissenting). This is an action by Appellant taking the quality of *cessionnaire* of one Payton, who obtained a sub-contract from Respondents to make certain fencing on the line of the North Shore Railroad.

The *moyens* of defence of Respondents are, in effect, that Appellant is not the *cessionnaire* of Payton, and that the length of fence constructed was 589 acres and not 608, as is pretended, and that this sum is fully paid to Payton or to his legal representatives.

With regard to the second pretention, we are all agreed that it is fully proved that the length constructed was 608 acres. It is established by the certificate of the government engineer, upon whose certificate it was agreed the payments should be made. Respondents say, that the engineer Boyd is not the engineer referred to in the contract, and that the engineer was only to certify as to the quality and not as to quantity of the work. We think that the certificate of Boyd is sufficient. He was a government engineer acting for that division. This is admitted on all hands. The admission seems to cover it. The defendant Dufresne, in his testimony, admits distinctly his quality. The witnesses Vallée and Lajoie also prove it. Who