
APPENDICES.

ESQUIMALT ELECTION PETITION.

TRANSCRIPT OF SHORT-HAND WRITER'S NOTES,

TAKEN AT THE TRIAL, BEFORE THE HON. MR. JUSTICE GRAY.

MONDAY, OCTOBER 9TH, 1882.

His Lordship to Mr. Davie—Now, Mr. Davie, what have you ready for me to hear?
Mr. Davie—I propose to call Joseph Lavender.

JOSEPH LAVENDER called.

Mr. Davie to Joseph Lavender—What is your name? Joseph Lavender.

Did you vote at the last Esquimalt Election? Yes, sir.

Are you the person as described on the register of voters as Joseph Lavender? Yes, sir.

What was the place of your birth? North Carolina.

Were your parents resident there? They lived there.

What is your age? I don't know my age, but I think about 47.

Mr. Pollard to witness—Mr. Lavender, when did you register at Esquimalt?

Mr. Davie—I object to this question, the only person who is able to answer this being the collector of votes.

Mr. Pollard—When did you come to the Province? I don't recollect how many years ago. I think about 20 years since I came to this country.

Have you resided here ever since? Yes, sir.

When did you first apply to register your name to vote in this Province?

Mr. Davie—This is the same question again.

Mr. Pollard—When did you first apply to register your vote in this Province? I don't recollect how long its been. I did not keep a count at that time.

His Lordship to witness—How long? About 10 years ago.

Mr. Pollard—Where did you first apply to have your vote registered? At the Four Mile House.

What district? Esquimalt.

At whose request? At my own.

How often have you voted? I could not tell you that exactly, but I have voted several years.

Has any objection ever been made to your name being registered?

His Lordship—Now, Mr. Pollard, you are going too far. Because a man goes on from year to year doing wrong, that does not make his wrong-doing right. Because the man's name had never been objected to before, does not destroy Mr. Muir's right to object to it now.

Mr. Pollard—Has any objection been made to your voting? Not as I am aware of.

Did any one object to your voting on 24th July last? No, sir.

Did you take the oath of allegiance to the Queen? I did.

When? About 15 or 16 years ago.

Were you ever a citizen of the United States?

Mr. Davie—I object to this question.

His Lordship—The question is not what he was in the United States, but is he a subject of the Queen.

Mr. Pollard—Had you a right to vote in the United States? No, sir; never did.

Where were your parents born? In North Carolina, I suppose, but don't know.

When were they born?

His Lordship—Well, if he knows that he knows more than most of us. (To witness)—No one expects you to remember when your parents were born.

Mr. Davie to witness—Where did you take the oath of allegiance? In this house over here (pointing).

What was the occasion of your taking this oath? I went there to get my marriage licence.

Mr. Davie—The occasion of taking your oath of allegiance there then too? Yes.

Before whom did you take the oath? I don't know the man's name at all, sir.

Was it before a Judge of the Supreme Court?

His Lordship—He said he does not know the man's name.

Mr. Davie—The only occasion you had was for the purpose of getting married? The man told me I would have to take the oath when he issued the marriage licence.

Did you get married shortly afterwards? I got married inside of a month.

Can you tell us the date of your marriage? No, sir.

You have your marriage certificate? No, sir.

At all events your marriage certificate is dated in the year 1866? I believe so.

Did you do anything further towards getting naturalized? I took the oath of allegiance at the same time as I went to get the marriage licence; that was all I did.

Mr. Davie—This is all the evidence I have to offer in this man Lavender.

His Lordship—What has the respondent to say? Let each objection be dealt with separately. The

respondent should produce papers to show that the witness is not an alien. This would expedite the proceedings. It is not fair to keep a number of witnesses here until the close of the trial.

Mr. Pollard—It is the place of the petitioner to go on with his case. I ask, therefore, if it is closed.

Mr. Davie—The proper way to deal with the votes objected to is to take them one by one and so dispose of them (quoting Election Petition for the Borough of Horsham, 14 Law Times Report, new series, p. 272, and further, the case of the Oldham Election Petition, 20 Law Times Report, new series, p. 307, mentioning Owen and Baxter's case.)

Mr. Pollard—In Owen's case there is no rule laid down showing it is disposed of separately.

His Lordship, after examining rules—I think you are bound to exhaust the fact whether Joseph Lavender is an alien or not an alien. So far as the Court knows he has not taken out any naturalization papers.

Mr. Pollard refers to a case which he thinks is stronger than the one in dispute, where the cross examination of a witness is postponed.

His Lordship—Then you mean to say you want a postponement till you can get witnesses as to Lavender's naturalization.

Mr. Pollard—I don't ask for a postponement at all.

His Lordship—I decide we must exhaust the evidence as to Lavender.

Mr. Pollard—Then I shall have to call Mr. Francis, the United States Consul, to give evidence as to the rights in Slave States.

Mr. Walls—I have served him with a subpoena, but he can't attend till the end of the week.

His Lordship—Why?

Mr. Walls—His evidence is necessary to prove Lavender never was a citizen of the United States.

His Lordship—That fact does not make him a citizen of this country. He may be a Turk or an Arab, but that does not make him a subject of the Queen.

Mr. Walls—The case may turn on a question of domicile.

His Lordship—The witness has already proved his domicile.

Mr. Walls—Lavender will be proved by the American Consul that he was never a citizen of the United States.

His Lordship—The mere fact that he is not a citizen of the United States would not make him have a right to vote here. If you reside in France 10 or 15 years, that does not make you a Frenchman.

Mr. Davie—I will consent to take the evidence of Mr. Francis later on.

His Lordship—I will not admit an irregularity to please you.

FRANK SYLVESTER then called.

Mr. Pollard to witness—Were you the returning officer at the last election at Esquimalt? I was.

When did you seal up the ballot papers under the Act? On the 25th July.

His Lordship—Sealed up the returns under the Ballot Act? Yes.

Mr. Pollard—After you sealed them up what did you do with them? Gave them to Mr. Prevost, Registrar of the Supreme Court.

Where did you seal these up? At my own residence.

What time of day on the 25th? I commenced about noon and finished sometime in the evening of the 25th.

His Lordship—What day was the election on? On the 24th, but I sealed them up on the 25th.

Mr. Pollard—Were you at Mr. Pooley's office on the 25th or 26th? On the 25th July.

What time in the day? About 10 o'clock in the forenoon; I met Mr. Pooley in his doorway.

Did you go to see him? He called me; I did not go to see or meet him.

Were you there twice that day? I think not.

Will you swear that? Yes, I will.

Were you inside his office that particular day? No, sir.

Were you there on the 26th? I think so.

Inside Mr. Pooley's office? Very likely; I think I was. I think it was in the forenoon. I walked there.

Was Mr. Pooley at your house on the 25th? He was.

What time in the day? In the forenoon, between 10 and 12.

Did you see him there? Certainly, sir; he went up to the house with me.

Did Mr. Pooley go inside? Yes, sir, in company with a man named Scott.

Did you have any conversation with him about the election. [Witness asks his Lordship if he was to give what was said.]

Mr. Davie—I must object to this. The evidence must be confined to the question whether Lavender is a legal voter or not.

Mr. Pollard—The respondent is obliged to call this evidence.

His Lordship—What has this evidence to do with Mr. Lavender being an alien. On the first day I told you the case is limited to the legality of the votes of these particular parties.

Mr. Pollard—I wish to prove the ballot papers were interfered with since the election.

His Lordship—Then in that case the whole election is void, and the disputed seat worse than ever.

Mr. Pollard—What I submit is that, because the ballot papers have been tampered with, the Court has no power to scrutinize the votes.

His Lordship—Well, I will hear you on that point. If they have been tampered with, you own Government officer did it.

Mr. Davie—I submit objections like this can't be made, not having had any notice of same, it not being in the list furnished me.

His Lordship—Mr. Pollard, look under rules 7 and 8, and show me how your objection can be supported.

Mr. Davie read rules 7 and 8, and said the votes must be delivered at a certain time.

His Lordship—I rule, after the question of the legality of the votes has been disposed of, this point can be argued afterwards, just as an application for a nonsuit.

Mr. Pollard—But your Lordship has just decided that each vote must be disposed of separately.

His Lordship—You must confine yourself to the objections stated. You can't now say the whole proceedings in this trial are irregular.

Mr. Pollard—We don't object to Lavender's vote on the ground that the ballot papers were tampered with; its Mr. Davie who does that. I submit the Court has no right to order a recount after the ballot boxes have been tampered with, and I have to produce the present witness to prove that such was the case.

His Lordship—First of all I want you to exhaust the facts of Whetstone's and Lavender's alienage. The evidence you propose to take now can be objected to because you gave no notice of same.

Mr. Pollard—I submit I am not called to give notice of the objections to show that whether or not the petitioner proves his allegations. There is no right vested in the Court to order a scrutiny when the ballot boxes have been tampered with after the election.

His Lordship—Well state your objection in distinct language. I am not going to sit here for ever. By whom were the ballots interfered with?

Mr. Pollard—My object is to show that the ballot papers have been interfered with since the election by Mr. Sylvester, the returning officer, and Mr. Pooley.

His Lordship—In what way?

Mr. Pollard—By inspection since the count, and, therefore, the Court has no power to re-count the ballot papers or strike off any votes.

His Lordship—Don't you think this objection should have been raised before the order was given by me to have these ballot papers opened and inspected. That was the time to have made the objection. Surely it is too late now—the summons was served on the 22nd September, why did you not object at the hearing then. If you had said at the time that the ballot papers had been tampered with, that would have ended the case. This is another instance of trifling with the Court. In the matter of public interest I will see if a returning officer has violated his oath, and with a member of the bar tampered with the ballot papers. I will, therefore, allow the enquiry to be made.

Mr. Davie—I object to the legality of this evidence, because the matter is foreign to the issue and that I have had no notice of it under rule seven of the English rules, and wish you to note my objection.

His Lordship—I shall admit it on public grounds.

Mr. Pollard to Sylvester—Will you please tell me what date he went to your house? Mr. Pooley called me from the front of his office and stated that he had been informed by Scott that a practice existed in California of putting false bottoms in the ballot boxes with springs, so that the ballots could be taken in and out, what he called ballot box stuffing. I treated the matter as a joke at first, but as he seemed to be decided about it, I took him up to see these boxes to satisfy myself. We went to the House, Mr. Pooley, myself, and met Mr. Scott at the door way. Previous to his coming I took everything out of the boxes, and removed all the papers of the Esquimalt Election of any nature whatsoever, the ballot papers, counterfoils, and sealed them, under my private seal, in separate packages, and enclosed all the separate packages in one large package, and again sealed that.

His Lordship—Were those papers in your house at this time? Yes, and sealed.

I then showed Mr. Pooley and Mr. Scott three empty ballot boxes. They took a pocket knife and tried the bottoms and sides very carefully, and found no false bottoms, and thanked me very much and left. The papers, after being sealed, were never opened by me or anyone else, but were given by me to the Registrar. From the time I counted the ballot papers at Esquimalt School House, no human eye saw them until they were handed to Mr. Prevost.

Mr. Pollard—Was that package sealed when handed to the Registrar? To the best of my belief and knowledge.

You are quite sure the counterfoils were sealed up in this large package? Quite sure.

That you sealed these papers up on the 25th? Yes, but I put on more sealing wax on the 26th—left them on the 25th in my parlor.

Did you seal the ballot box up on the 25th? Had not occasion in my own house.

Did you ever count these ballots after they were counted at Esquimalt? Yes.

Who was present? No one. I locked the door; did not allow my wife to see them.

You took them out of the ballot boxes simply to see there was no stuffing? No, I did not; they were taken out before Mr. Pooley and Mr. Scott came to my house.

How many times was Mr. Pooley at your house between the 24th and 26th July? Only once at my house in his life, and that was to see the boxes, and on no other occasion that I am aware of.

EDWIN LEIGH sworn.

Mr. Pollard to witness—Are you the Collector of Voters for the Esquimalt Election? I am.

Mr. Walls—Have you the list of voters of the Esquimalt District? I have. I have not the list of all the applications of voters. I have since 1876.

And no more? No previous ones.

You have no application from Joseph Lavender? The name of Joseph Lavender appears on the voters list which was made up to the end of September, 1877. I have not that application. The list is certified by Mr. Prevost, and dated September, 1877.

Was he the Returning Officer? He was the Collector of Voters for the Esquimalt District on the 1st September, 1877.

Do you know what became of the applications after that date? There are none in the office of applications previous to September, 1877. There is an application from Joseph Lavender dated 14th February, 18s2, but I don't know whether it is the same person registered twice.

His Lordship—What is the application; read it.

His Lordship—Who is the witness to this mark? How do you explain this Mr. Walls? Will you take this as the same Joseph Lavender who is on the list made up to September, 1877? I don't know.

His Lordship—How can Joseph Lavender know?

Mr. Pollard—Lavender can swear to it.

Mr. Davie—I want to know, Mr. Leigh, if Joseph Lavender's name is on the list, as certified by Mr.

Prevost, on the 1st September, 1877? Yes sir.

Will you look and see if he is on the register of votes in 1875. [List handed.]

His Lordship—What are you putting into Mr. Leigh's hands?

Mr. Davie—A list certified by Richard Woods, Collector.

His Lordship—Joseph Lavender is there? Yes, my Lord.

His Lordship to Mr. Pollard—Next witness.

Mr. Pollard—I call Mr. HETT.

Mr. Pollard to witness—Your name? John Roland Hett.

Are you the respondent in this case? I am the respondent in this petition.

Had you any conversation with Mr. Sylvester, the Returning Officer, concerning this election? I had.

His Lordship to Mr. Davie—Do you object to this?

Mr. Davie—Yes. Mr. Sylvester has not shown himself to be a hostile witness.

Mr. Pollard—It does not necessarily follow Mr. Sylvester would be an hostile witness.

Mr. Pollard to witness—Do you remember any occurrence taking place on the 25th July relative to the election at Esquimalt? Yes, from information received I waited outside my office door.

His Lordship—That is on the 25th July? Yes, in the afternoon of the 25th; probably between two and three o'clock. I waited about a quarter of an hour, and then saw the Returning Officer come out of Mr. Pooley's office. I beckoned him across the street. His horse and buggy had been tied up beside Mr. Pooley's office some little time before that. Those are the bare facts I can speak to.

MR. SYLVESTER recalled by Mr. Pollard.

Mr. Pollard to witness—Had you any conversation on the 25th July, in the afternoon, with Mr. Hett? I don't remember. I spoke before Mr. Hett at Esquimalt.

Mr. Pollard—After the closing of the election? I don't remember.

Mr. Davie—The object of a question like that would be discrediting the witness and showing him hostile.

His Lordship—The whole of this evidence is really inadmissible, but I wish to see if there has been any tampering with the ballots.

Mr. Davie to His Lordship—The witness says he does not remember any conversation, and nothing has been brought to refresh his memory.

A discussion followed as to what a hostile witness was, when Mr. Davie referred to the Hereford Petition (14 Law Times Report, new series, page 347), which was read by him, and added—take also the case of John Thornton, for the Borough of Northallerton, page 304.

His Lordship read the first case, and remarked—the whole of this evidence is inadmissible, but did not want any evidence excluded which could possibly leave a doubt as to these officers, and the way they did their business.

His Lordship to Mr. Pollard—Do you say the witness is hostile to you?

Mr. Pollard to witness—Do you remember in a conversation on the afternoon of the 25th July last, the day after the election, just after the count, that you told Mr. Hett that Mr. Pooley had some protest against the return, or against the count, or words to that effect? I did; but don't remember whether it was on the 25th or 26th. I heard Mr. Pooley was to protest the election.

Mr. Pollard—Was not that remark made immediately after coming out of Mr. Pooley's office? I did not receive the information from Mr. Pooley, I received it from D. W. Higgins in the street.

Did Mr. Hett on that occasion say to you that it was not exactly the thing for you, being a Returning Officer, to be in Mr. Pooley's office after the count? No.

Did you say you had been through the matter with Mr. Pooley, and was perfectly satisfied everything was in order? No. I asked Mr. Pooley and he said "No, not that he was aware of." This was in the course of common conversation.

Mr. Pollard recalled MR. HETT.

Mr. Pollard to witness—What took place in the afternoon of the 25th July, on Langley Street? When Mr. Sylvester came out of Mr. Pooley's office I beckoned him across the road the day of the count. I told him I thought it seemed rather odd for him to be with one of the candidates for half an hour, and he then explained that Mr. Pooley wanted to contest the return, and had gone through the papers with Mr. Pooley. Mr. Sylvester seemed annoyed that there should have been any suggestion as to any irregularity on his part, and that he felt satisfied everything was in order.

Mr. Pollard—Nothing else? No.

His Lordship—Is that all with reference to Lavender?

MR. POOLEY called.

Mr. Pollard to witness—Your name? Charles Edward Pooley.

Were you one of the candidates at the late election at Esquimalt? I was.

Do you remember at any time after the count of votes at Esquimalt Mr. Sylvester being at your office? Yes.

Could you fix the date the first time after the count Mr. Sylvester was at your office? The same day, I think.

Mr. Pollard—In the afternoon? Yes, I think the day of the count.

What did he come to your office for? He came to tell me a piece of news Mr. Walls told him about bribery and corruption. This was at my office door, at the side-walk in the street.

Had you any further conversation on that day? No.

Do you remember going up to Mr. Sylvester's house? I do.

On what day? I think, Mr. Pollard, it was the next day, but I would not be certain.

Who went with you? Mr. Sylvester and Mr. Scott.

Did you all go together? Yes; started from my office. Mr. Sylvester came to my office at 11 o'clock to inspect the ballot box which had been used at Parson's Bridge, because there was an impression that that box had been tampered with. Mr. Scott came to my office and told me he had had some experience in

California with regard to stuffing ballot boxes, and that if there was any tampering with this box he could discover it, and asked Mr. Sylvester if he could see it. I went up, and the result was I asked Mr. Sylvester, and he said then he would allow Mr. Scott to see the ballot box to satisfy himself there was no tampering with it, and I asked Mr. Sylvester if 11 o'clock in the morning would suit him; Mr. Sylvester replied "Yes." In consequence of that Mr. Sylvester, Scott, and myself went to Mr. Sylvester's house. Mr. Scott saw the ballot box and examined it. I was present, and satisfied myself the box had not been tampered with.

Mr. Pollard—How many were there? Three.

Were the ballot boxes empty? Yes. I went into Mr. Sylvester's house at the right hand door, and they were standing on the table. Mr. Sylvester took up the ballot box—the Parson's Bridge box. There was nothing in that box.

Was there nothing in the other boxes? Where were the ballot papers? Mr. Sylvester replied they were all lying there and all sealed up.

Did you see more than one package? Yes, there were more than one package. I suppose there must have been three or four packages. They were not on the table but under the table.

Mr. Pollard—They were all sealed? I don't know. I took a casual look and saw the seal on one. I did not see if all.

AFTERNOON SITTING.

Mr. Davie to His Lordship—The next vote I intend to impeach is Archibald C. Muir, on the ground that at the time of voting and registration his name was upon two lists, namely: at Esquimalt and the electoral district of Nanaimo.

His Lordship—Have you given notice of these two objections? Yes.

Mr. Davie referred to No. 18 of Qualification and Registration of Voters Act, Chapter 66.

MARSHAL BRAY SWORN.

Mr. Davie to witness—What is your name? Marshal Bray.

You are the collector of votes for the electoral district of Nanaimo? Yes.

Will you produce the registered voters' list as the same that existed on 24th July last? This is the one (produced.)

Mr. Pollard—I object to that document.

Witness—This is the copy of the list sent to the Registrar of the Supreme Court; sent sometime in August, 1881.

It is the list as existed in July, 1882? Yes.

His Lordship to Counsel—Kept by himself? Witness—Yes.

Mr. Pollard—I have already objected.

His Lordship—On what ground?

Mr. Pollard—Because there is no date on it.

His Lordship—But he keeps it himself.

Mr. Davie—The document with the registrar is sealed up with regard to that election and could not be opened.

Mr. Pollard—I object to it under section 20 of chapter 66.

Mr. Davie—What is the difference about the other; its been returned to him under the Registration Act.

Mr. Davie to witness—Have you a list of voters for July, 1882? Yes.

Does that include all the names of the parties entitled to vote on 24th July, 1882? Yes.

Witness, continuing—I registered the letter containing the list of registered voters and sent to Mr. Prevost on 10th August, 1882.

Mr. Prevost—I have no recollection of receiving it.

Mr. Davie to witness—Does that list include the persons entitled to vote on the 24th July last for the electoral district of Nanaimo? Yes.

Witness showed the way, at this point, how the list for the present year was made up from the previous year.

Mr. Pollard wanted the list of 1881 produced.

Mr. Davie—Here it is in the sessional papers, signed by the government paper printer.

His Lordship—There is an Act, I think, which legalizes sessional papers.

Mr. Davie—I am not aware of such an Act, but it may be in force.

Mr. Davie to witness—You produce these two lists of 1881 and 1882.

His Lordship—His name is on this as number 316. Where does his name appear in the sessional papers?

Mr. Pollard—I object to sessional papers.

Mr. Davie—Any document signed by the Queen's Printer is evidence. Quoting Taylor on evidence, page 14, vol. 1, section 7, to show parliamentary papers are received in evidence.

His Lordship, after examining same—I admit that evidence Mr. Pollard.

Mr. Davie—Will you point Mr. Muir out to me in Court? [Witness pointed him out.]

Now will you look at the register of voters for 1882?

His Lordship to witness—Kept and certified by yourself as the proper officer? Yes.

Mr. Pollard—When did you make that copy? I completed it August 10th, 1882.

Where is the original of that? This is the original; the copy of it was sent to Mr. Prevost. The 1881 list contains a memorandum of the names of voters added, the alterations having been struck out.

Then you take the original list as 1881 and you strike out and add to as requested? Yes.

Mr. Davie to witness—Now, does the name of Archibald Muir appear in list 1881, number 316? Yes, sir.

And that he is the person you pointed out in Court?

His Lordship—Point it out in list and read it? Archibald Muir, engineer, number 316, Nanaimo.

Mr. Davie—Did his name remain on that list on the 24th July? Yes.

Is his name still upon the revised list for August 10th, 1882? (Revised list produced.) Yes.

Did you ever receive from Mr. Muir, before the 24th July, 1882, a request signed by him, requesting you to have his name taken off the register of voters? No.

Did you, previous to the election of 1882, receive any document from anyone at Esquimalt requesting you to remove their name from it? Yes.

Will you produce that? [Letter produced.]

Is that signed by anyone? No.

Read it? Letter read as follows:—[“Esquimalt, May 8th, 1882, Marshal Bray, Esq., Sir,—I will thank you to take my name off the electoral roll of Nanaimo district, as I intend to vote in the Esquimalt district. I remain, sir, yours respectfully.”]

His Lordship—I rule the evidence out.

Mr. Pollard to witness—When you received letters to strike a man's name off the register when did you do so? At the time.

When you made that certified copy who did you examine it with? With my assistant, Mr. Dick.

Is that the last used? Yes, the 1881 list.

Mr. Davie—Will you produce Mr. Muir's original application to vote at Nanaimo? Application is produced and read by the registrar, called form “A,” and dated at Nanaimo, 16th June, 1876.

His Lordship—I hope, during next session of the legislature, there will be some revision of the law in controverted elections.

Mr. Davie—I wish to ask your Lordship if you will grant an order for Mr. Wolfenden, Government Printer, to attend the Court, as documents from Cariboo, sent down to the registrar, have been handed to Mr. Wolfenden and he has refused to produce them, probably by order of the government, being a government official.

His Lordship—I have no doubt Mr. Wolfenden will attend if asked to do so, if not, an order of the Court can be made out to oblige him to attend, but I think it is quite unnecessary.

Mr. Davie—I wish to say application was made to Mr. Wolfenden for Yale election voters' list, which was produced last week on payment of twenty-five cents, the usual fee, but since then it appears he has received instructions not to allow the Cariboo document to be produced, and I think this is done to create a prejudice against the government.

His Lordship—I cannot help that, but I will do justice in the case irrespective of party.

MR. LEIGH recalled.

Mr. Davie to witness—You are the collector of votes for Esquimalt? I am.

Do you know Archibald C. Muir? Personally, I do not. I recognize him in Court as the person pointed out by Marshal Bray.

Was his name on the list of voters for 24th July, 1882? Yes, his name was put on by me on the 12th July, his application filed on the 12th May.

Have you his original claim to vote in your district? Yes, [produced.]

You could tell without looking at the marked register of voters whether Mr. Muir voted or not? No.

Mr. Prevost has it, and it has already been produced.

His Lordship—You can call for it after Mr. Leigh's done with.

Mr. Pollard to witness—What date did you receive Mr. Muir's application? On the 12th May.

His Lordship—Let me see the register of voters.

MR. SYLVESTER recalled, to prove Mr. Muir voted.

Mr. Pollard—My Lord, I think it quite irregular to prove the marked register.

His Lordship—On what grounds—here is the proper officer?

Mr. Davie to witness—Do you know Mr. Muir? I have seen the man as pointed out by Mr. Leigh and Bray.

Did he vote at the Esquimalt election? Yes.

Does his name appear on the register of voters list? Yes.

Did you keep a record of his name? My poll clerk did. A. C. Muir voted number seventh at the station.

Mr. Pollard—This closes with Mr. Muir.

MR. MUIR sworn.

Mr. Pollard to witness—Your name? Archibald C. Muir.

Are you the Muir referred to by the last witness in this case? I am.

You were registered for Esquimalt on the 12th May last? Yes.

Previous to your application did you request the collector at Nanaimo to remove your name from that list? Yes.

By what way? By letter, with a three-cent stamp on it.

Mr. Davie objected against parol evidence; the best evidence is the document itself, and its not been proved that that document has been lost, until its been proved secondary evidence cannot be taken.

Mr. Pollard—Under Section 17, Qualification of Voters Act, he sent the written request, which was prepaid and posted.

[Letter here produced.]

His Lordship—This has no name on it.

Mr. Pollard—You can call Mr. Bray to prove it.

His Lordship—No one is bound by an anonymous letter.

MR. BRAY recalled.

Mr. Pollard—You are already sworn? Yes.

Do you remember receiving from Mr. Muir in writing to strike his name off the list of voters for this year? I received no communication from Mr. Muir to that effect.

Did you from anybody? Yes. [Letter read, which was dated at Esquimalt, May 8th, 1882.]

His Lordship—You could not remove any name in this instance? No, my Lord.

Mr. Davie—Did you have any conversation with Mr. Muir upon this anonymous letter? No.

His Lordship—This is not evidence, and Counsel for the respondent must know perfectly well that he cannot prove the existence of a document unless there is a copy, or proof that the original has been lost or destroyed.

Mr. Pollard—Then you decline the evidence that the letter was sent.

Mr. Davie—I propose to call Mr. Joseph Lavender to give evidence as to the vote of Robert Semple, who was alleged to have had his name on the Cariboo and Esquimalt voters' list.

JOSEPH LAVENDER recalled.

Mr. Davie to witness—Do you know Robert Semple? I know him by sight, but am not acquainted with him; I have never had any conversation with him.

Mr. Davie to His Lordship—I will put in the evidence received from Cariboo now, which was taken before Mr. Justice McCreight.

[The list of voters for Cariboo produced for 24th July, 1882, and signed by J. Bowron, marked as Exhibit B.]

Mr. Davie—As there is no objection as to the admission of this evidence, it will not be necessary for me to argue the point.

Mr. Pollard—The exhibit produced is not an original.

His Lordship—This is a return made by the collector of votes officially, as he returned the votes. Will you shew me what is the objection to it? Is there any law to shew why a collector cannot use a printed paper as well as written? The presumption of law is correct, as he signs it officially.

Mr. Pollard—That is a copy, and not the original; he swears it to be a copy.

His Lordship here referred to chapter 66, Qualification and Registration of Voters Act, in the Consolidated Statutes, section 20.

Mr. Davie—I submit the one from Mr. Prevost is little use, as it is revised to the 10th August, and not on 24th July, consequently it is probable there will be more names on the one which Mr. Prevost has than that; the best evidence is what Mr. Bowron gives, as he signs it with his own name as being correct on 24th July, that being what your Lordship has before you.

Mr. Davie referred to chapter 66, Consolidated Statutes, section 20, and stated a copy was only required to be sent to the Registrar.

Mr. Prevost stated witness swears to Exhibit B being an original copy.

His Lordship asked the Registrar to get the copy in his possession, and will peruse it in the meantime.

Mr. Davie called ROBERT SEMPLE.

Mr. Davie to witness—Your name is Robert Semple? Yes, sir.

Did you formerly reside in Cariboo? Only one season.

What year was that? About seven years ago.

Did you register your vote there? Yes, on Lightning Creek.

You are the person described on the Cariboo list of voters? I suppose so.

As No. 247? Well, that is my name (referring to list).

Did you vote at the last election at Esquimalt? Yes, sir.

And your name was on the register of voters for Esquimalt? Yes.

Mr. Pollard—When did you apply to register in Esquimalt? It was just within the limit of the time this year.

Mr. Pollard to His Lordship—I can only prove this by Mr. Leigh.

Mr. Pollard—When you applied to register your name at Esquimalt, had you any idea that your name was on the Cariboo list? None, whatever.

Or any other list? No.

Did you ever give notice to have your name taken off the list? Yes, verbally, to Samuel Archer.

When was that? Just before I left Lightning Creek.

In what year? In 1875.

Who was Samuel Archer? He was collector of voters at that time.

What did he say to you? "All right Mr. Semple, I will do so. I shall not be in this country much longer, and it is not necessary to write."

When did you go to Cariboo? I went in 1874, and stayed the whole winter.

And left when? In 1875.

Have you ever been there since? Never. My wife has been here (Victoria) for the last twenty years.

When did you apply to register in Cariboo? In 1875.

You went there in the fall of 1874, and left in November, 1875? Yes.

Do you remember what part of the year you applied to register in Cariboo? I never made any application; Mr. Archer came and asked me to put my name on the list. I said "all right," and had my name put on.

Did you send any written application to have it put on? No.

Was any objection made to your registering your vote at Esquimalt? No.

Mr. Davie—When was it you went to Cariboo? In 1874, in the fall.

Were you asked about the voting in the fall of 1874 or the spring of 1875? I can't swear; I was told we had to re-register.

When was that? I don't know exactly.

Do you know how long before you left Cariboo that you asked the collector of votes to take your name off? In the spring of 1875, when I left Lightning Creek, though I can't swear exactly to it.

May it have been in the fall? I do not think so.

Case here adjourned till 11 a.m. next day.

EVIDENCE ON TUESDAY, OCTOBER 10TH, 1882.

His Lordship to Counsel—I have examined the Exhibits B and C, and the evidence taken before Mr. Justice McCreight, and have decided to admit both these papers as evidence, on the ground that they must be held to be the official list of voters. The fact that an original list has been lost, does not matter; but it will be left for the opposite party to impeach it; therefore, until this is done, the substituted article for the original document must be accepted as the result of an officer's work, sworn to do his duty. It is only proper that the exhibits should be received as evidence under these circumstances. The objection was merely a formal one, under Rule 50 of the English Rules.

It would be mere folly to assert under such circumstances that the documents are only copies, as they bear the imprimatur of the Government printer, and as such have the authority of the law.

Mr. Davie to His Lordship—All the documents connected with the Esquimalt election are presumed to be before the Court, and referred to the Coventry election (20 Law Times, page 406, new series) and Rogers on elections (page 506), regarding the scrutiny of such by the Court, and asked it to be noted.

His Lordship—I will note the same, but as the evidence will be completed to-day, the legal points can be reserved till a future day.

Mr. Pollard called THOS. ELWYN.

Mr. Pollard—What is your occupation? Deputy Provincial Secretary and Clerk of Executive Council. Who was the collector of votes of the Lightning Creek polling division in 1874? Samuel Archer was appointed collector of votes on the 4th April, 1874.

Who was the collector of voters in 1875? Mr. Archer, I assume.

Cannot you say how long? Yes, from 4th April, 1874, to 2nd June, 1876.

Who was the collector of voters in 1876? Mr. John Bowron was appointed 2nd June, 1876.

Has John Bowron been collector of voters ever since? He has, up to now.

Who was the collector of voters of Omineca polling division previous to—

His Lordship—What has this to do with evidence; Omineca has never been mentioned before.

Mr. Pollard—It refers to the next case.

His Lordship—Well, you will have this one in proper course.

Mr. Davie—I will proceed to attack the vote of Abraham Whetstone.

ABRAHAM WHETSTONE, SWORN.

Mr. Davie—When were you in Cariboo? I first went to Cariboo in '62.

Did you register your vote there? In Germansen Creek in '71.

Did you ever register it afterwards in Cariboo? No.

You are the Abraham Whetstone whose name appears on the Cariboo list? Yes; that is my name.

It is on the Cariboo list as No. 500? I suppose it is.

His Lordship to Mr. Davie—Just refer to the List, Exhibit B.

Mr. Davie to witness—Look at No. 500 there. That is the way my name is spelt.

Have you any doubt about that being your name? I have no doubt; I suppose so.

Mr. Davie to His Lordship—This is in Exhibit B.

Did you vote at the last election for Esquimalt? Yes.

Are you the person described on the Esquimalt List as Abraham Whitstone? I don't know; my name is spelt with an e.

Are you the person referred to as living at the Gorge under that name and voted under that name Whitstone? Yes.

Mr. Davie—I produce the claim of Abraham Whetstone, signed by himself, requesting his name to be registered as a voter of the Esquimalt District.

Mr. Davie (referring to same) is this your signature? Yes; that is my signature.

Mr. Davie reads the same, which is dated Victoria, 6th Feb., '80, and signed Abraham Whetstone, residence near the Gorge, Dray Expressman.

Mr. Pollard to witness—When you registered in Cariboo did you make an application to register?—Yes; I made it in writing—that is at Germansen Creek.

When you registered your name or made your application to register for the Esquimalt list, had you any remembrance that your name was on any other list? No; I had been away so long.

So you never voted in Cariboo? Not after I went to Germansen Creek.

Did you ever give notice to have your name removed from the Cariboo list? No; I can't say I did.

When did you leave Cariboo? I left Germansen Creek in '71.

Have you ever been in the Cariboo polling district since? No.

Did you ever make application to register in the Cariboo polling district? No.

Where have you resided since you left Cariboo and Germansen Creek? In Victoria and New Westminster, fishing.

His Lordship—I understand you never made any second application to register in Cariboo? I registered in the polling district at New Westminster in '78.

His Lordship—As a voter for that district? Yes.

Did you have your name removed from New Westminster? Yes.

When? Some time before I registered in Esquimalt.

Was there any objection made to your having registered your name at Esquimalt? No.

How often have you voted at Esquimalt? Once; at the last election.

Mr. LEIGH recalled.

Mr. Davie—Was last witness' name upon the last register of voters at the time of the election? Yes. Is he the same person? I cannot say; I don't know the man personally, but there is only one name Whitstone, and I believe it to be so.

It was put on in consequence of the application received bearing his name? Yes.

Mr. Pollard calls MR. ELWYN.

Mr. Pollard—Are you the Deputy Provincial Secretary for the Province? Yes.

Who was the Collector of Voters of the Omineca Polling Division in 1874? Frank Page.

Can you tell who was between '71 and '74? I cannot say at this moment. I thought you wanted between '74 and '75.

When was the Omineca Polling Division merged into the Richfield Polling Division? On the 28th April, '75.

Who was Collector then? The Collector of the Richfield Polling Division.

What was his name? Of the Collector of the Richfield Polling Division? Yes. I cannot say without referring to the Government Gazette. The Gazette of '74 will show it.

The Government Gazettes of '74 and '75 were brought into Court by Mr. Prevost.

Witness, after examining same, replies, James Lindsay.

His Lordship to witness—That is the same one who is there now? Yes; but he is not the Collector of Voters. I find, by an error in the Gazette, Lindsay is described as of the Barkerville division instead of Richfield.

Mr. Pollard—Who was the Collector in '76? Mr. Bowron was appointed some time in '76. I think I said before the 2nd June, '76, under the new Act for the whole of the Electoral District of Cariboo.

His Lordship to Mr. Davie—This concludes my fourth case? Yes, my Lord.

Give me the name of the one withdrawn. Thomas McNally, my Lord.

His Lordship to Mr. Pollard—Now, Mr. Pollard, let me hear your two.

Mr. Pollard—Your Lordship gave us permission to call the American Consul, but he says he will come after the steamer has left.

His Lordship—All right. Go on.

His Lordship continued—You object to Scott because he is an American citizen? Yes, my Lord.

Mr. Pollard here read the respondent's objections as to the votes of Scott and William Dingle.

His Lordship to Mr. Pollard—Let us go on to Scott's case at once.

Mr. Pollard—I will recall Mr. Leigh.

His Lordship—Why?

Mr. Pollard—To show that William Dingle's name is on the official list.

Mr. Davie—It is admitted that William Dingle's name is on the official list.

His Lordship—Is it admitted that William Dingle who voted is on the official list?

Mr. Davie—Yes, my Lord.

Mr. Pollard to Mr. Davie—For the Esquimalt district? Yes.

Mr. Pollard.—I will now call Mr. Walls.

MR. WALLS, sworn—

Mr. Pollard to witness—Your name? John Patmore Walls.

In what capacity were you acting at Esquimalt during the election? As agent or check clerk in checking votes for Mr. Hett. I was one of the agents, there were two.

Do you remember William Dingle referred to in the particulars here, coming to vote on that day? I do.

Was any objection raised to his manner of voting? He came into the polling place accompanied by Mr. Pooley, and walked up in front of the returning officer and said:—"I vote for Pooley and Hett." Subsequently Mr. Pooley said, "No, no, Pooley and Child," and then he said, "Yes, Pooley and Child." I then objected to this mode of voting and said this won't do, and Mr. Sylvester then asked Dingle if he could read or write, he said "No."

Mr. Pollard—What took place then? Mr. Walls—I said, then Mr. Pooley must remove, a candidate not being present when an illiterate voter votes. Mr. Pooley then left. Mr. Sylvester then administered the oath, turning the Statute up.

His Lordship—What was the oath he administrated? Mr. Walls—The oath to an illiterate voter, a Statutory oath.

His Lordship here referred to the oath in the book.

Mr. Pollard—Then the oath was administered? Mr. Walls—Yes, and Sylvester left his seat and took the voter into one of the compartments where the voters vote. I suggested the vote should have been done openly in the presence of the agents, and he then said he would not allow any man to see him vote. Then Sylvester took him in and voted him secretly.

Mr. Pollard—Did you protest against it? No I said no more than this, that it should be done in their presence.

Mr. Pollard—Was any one present in the compartment when Sylvester and Dingle voted? No, there could not have been room for more than two.

Was the marking done in your presence? No.

Who put the ballot paper in the box? Sylvester put all the ballot papers in and put a paper-knife in the box to show that it had gone down.

Mr. Davie to witness.—What time in the day did Dingle vote? I think about noon or two o'clock.

Have you a distinct recollection what took place? Yes.

He was very pronounced with Mr. Pooley? Yes; Mr. Pooley brought him in, I cannot say whether they were arm-in-arm but very nearly.

He was one of Mr. Pooley's voters? I cannot say exactly.

He announced his intention of voting for Pooley and Child? Yes, before going into the booth.

You take it to be the duty of the returning officer of the illiterate voter to mark his paper in the presence of the agents? Yes.

The last names he (Dingle) said before going into the booth, were Pooley and Child? Certainly.

Had you a copy of the Ballot Act before you at that time? No.

When you suggested that marking should be done in the presence of the agent, did you make any reference to the Act? No, I am not sure the returning officer had the Act before him.

Did you make this objection in the light of an objection? Yes.

Did you insist upon this being done? I made this objection what I have said.

Did he swear you to secrecy as agents are required? Yes.

Under what oath? I cannot say, I think it was under the form prescribed by the Ontario Act.

Do you remember after Dingle had voted, Mr. Dingle coming back from the voting room? No, I think just after that I left.

His Lordship here referred to rule for illiterate voters under the Ballot Act, section 13, first schedule, which was read by him and commented upon.

Mr. Davie to Mr. Walls.—Now I want to know whether Mr. Pooley came into the room after Mr. Dingle voted? I cannot remember.

Do you not remember Mr. Pooley coming into the room and asking how Mr. Dingle voted? No, I do not remember.

Do you not remember stating when Mr. Pooley made this observation, "It does not make any difference?" No, certainly I do not.

Mr. Pollard calls HENRY E. WILBY.

Mr. Walls to witness.—What is your name? Henry Edward Wilby.

What are you, Mr. Wilby? At present I am clerking.

Do you remember the voter Dingle coming to the Esquimalt School House voting station, and voting? I do.

At that time were you keeping a tally for Mr. Hett outside the polling stage? I was.

Do you remember the voter coming out from the polling station after voting? I do.

About what time was that? It must have been somewhere between noon and two o'clock.

Do you remember Walls following him out and asking if you knew the man and what his name was? I do.

And you then told him his name was Dingle, and that he was a baker? I did.

Mr. Davie to witness—I believe there were two parties at this election, the Government and the Opposition? There were.

Mr. Davie to His Lordship—I wish to show that because Dingle had already promised to vote for Pooley and Child the only side that could have been prejudiced by the returning officer taking the voter into the compartment was the Opposition, there being no possibility of injury to the other party, at the same time quoting Tomlin vs. Tyler in England, "Law Times Report," folio 44, New Series.

His Lordship—This point is a new one to me and I should like to hear argument on it later on, and for the present will admit the evidence.

Mr. Davie to witness—Mr. Wilby I believe there were two parties at this election, the Government and the Opposition? Yes.

You were a Government? I am not bound to say that.

Mr. Walls calls Mr. Phillips.

MR. PHILLIPS, SWORN—

Mr. Walls to witness—What is your name? Richard Phillips.

What is your occupation? Store-house man of the Naval Dock Yard.

Were you acting as agent and check clerk for Mr. Hett at the last election at Esquimalt? Yes.

Mr. Davie—I object to the witness being examined by Mr. Walls, seeing it is indelicate for counsel to bolster up his own evidence for which I submit the witness is called.

Mr. Walls—That is not my wish, I merely want the evidence confirmed.

His Lordship to Mr. Walls—Mr. Davie has already admitted the correctness of your evidence and made a strong point of it too. You know the French motto, Mr. Walls: "That the man who begins to excuse himself, really begins to accuse himself;" therefore the evidence of Mr. Phillips is quite unnecessary.

Mr. Davie calls Kenneth McKenzie.

KENNETH MCKENZIE SWORN.

Mr. Davie to Witness—You know William Dingle? Yes.

He worked in your establishment? Yes.

Did you ever canvass his vote? Yes.

How long before the election? Two months, I should think.

Who did you canvass in favour of? C. E. Pooley.

And later on for anyone else? Yes, Child. He promised faithfully to vote for Pooley and Child.

Was he a man that would go back on his promises? I do not think so. I met him a day or two after the election and he said he voted for Pooley and Child.

Mr. Walls to witness—How many years is it since Dingle worked in your establishment? Four or six years ago; I do not recollect quite.

Do you know, as a matter of fact, that over two-thirds of the voting party promised Mr. Pooley their votes? They may have done so.

Did Mr. Pooley tell you that? I do not think so.

Did you canvass for Pooley? A little; I went round the district once or twice.

You say it was about two months previous? About that time I should say.

Was he (Pooley) a candidate at that date? He was spoken of.

Was Mr. Child a candidate? He was spoken of.

Mr. Davie to witness—Who were the government candidates? Helgesen and Hett.

And who were the opposition? Pooley and Child.

Adjourned for an hour.

Mr. Davie to His Lordship—It was not my intention to call any more witnesses, as I previously stated, concerning the last vote, but have just had a consultation with my clients, and find it will be necessary to recall Messrs. Sylvester and Pooley as to the facts that took place at Dingle's vote, therefore, I wish to withdraw the notice made before recess to that effect. I believe the evidence thus adduced will prove important and, that after hearing it, Your Lordship will approve of my so doing.

MR. SYLVESTER recalled.

Mr. Davie to witness—Do you remember the occasion of William Dingle voting? I do.

Tell us what occurred? He came in, the same as any other voter, and said he wished to vote for Pooley and Child; I told him "stop my friend you must not vote in that way, here is a list," and asked him if he could not read or write, he said, "No," and said to him "I should then have to administer to him the declaration of inability to read," a printed form, which I did. I then proceeded with him into the compartment and marked his ballot in accordance with his own request; I then gave him the ballot and showed him how to fold it and bring it to me at the ballot box, and I then placed the ballot in the box in accordance as the law requires.

Do you remember Mr. Pooley coming in after this? I do.

What did he say? He asked me did Dingle vote in the presence of the candidates' agents or in the booth alone; I told him I had marked his paper alone with him; he showed me the statute book (Mr. Pooley) where it said it should be marked in the presence of the agents of the candidates. Mr. Pooley showed me the act and said he ought to have voted in the agents' presence, and everyone said, "that makes no difference, he ought to have voted in the presence of the agents, but I suppose that makes no difference." This was said openly in the presence of the agents; there were five or six agents present.

Before you took Dingle into the booth, apart from the agents, to vote, was there any objection made by the agents? No objection was made; the first objection was Mr. Pooley's.

Had you a copy of the act? Not at the time, sir.

The government supplied you with three copies of the act? Yes sir, but I had not one with me at the time.

Mr. Pollard—Do you remember Mr. Dingle coming in and requesting to vote? Yes.

Mr. Pollard—What did you say when he first came in? He said he wanted to vote for Pooley and Child.

Not for Pooley and Hett? To my knowledge I swear he did not.

When you took Mr. Dingle into the compartment did Mr. Walls say anything? No.

Did he tell you that Dingle's vote should be taken before the agents? No.

Did you state to Mr. Walls at that time, or about that time, that you would not allow anyone to see his ballot paper? No; but may have said so afterwards.

Why did you not mark that ballot paper, or have it marked, before the agents? Because I had no rules to guide me.

You should have had that paper marked in the presence of the agents? That is not for me to decide.

Who was present when Dingle came in? I cannot say; I have no list with me to remind me of their names. One gentleman's name, I remember, was Percy Wilson. I think Mr. Walls was present at the time.

Was Mr. Pooley present at the time he voted? No.

Did he come into the booth and ask to vote more than once? Once only, to vote for Child and Pooley.

His Lordship to witness—That is only once? Yes.

Mr. Pollard—Did you or he place the ballot in the box? I did it myself individually.

MR. POOLEY recalled by Mr. Davie.

Mr. Davie to witness—You know William Dingle? I do.

Do you remember his offering himself to vote? I do.

Did you accompany him to the polling room? No; I was sitting at the table when he came in.

What occurred? As soon as he came into the room, he said he wished to vote. I then got up and said to Campbell, the policeman, "You must withdraw; I shall also leave the room, as we have no right to be in the room when this man votes."

Did you hear who he wanted to vote for? I did not. We both withdrew and remained outside the building.

Did you come back after he voted? After Dingle came out of the building I went in. I then asked the returning officer "Did you mark this voter in the presence of the agents?" He said "No." He stated to me that he had gone into the little compartment and had there marked the ballot paper of the voter.

What occurred after that? I then said "How did you come to do this, instead of marking it in the presence of the agent," Mr. Sylvester replied to me "that was the way it was done at the other elections," referring, presumably, to the Dominion election a few days previous.

What occurred then? I then explained the law to him on the subject, as I knew it. Mr. Walls was there at the time, and was sitting there, and said, "I think Mr. Pooley is right." Mr. Phillips and Mr. Wilson, besides the returning officer and the polling clerk were in the room.

His Lordship—Who was the polling clerk? Mr. Ferguson.

Mr. Davie continued, to witness—What then, Mr. Pooley? Mr. Sylvester turned round to me and said, "Well, it is done now, and I suppose it does not make any difference." That is, the Returning Officer. He further said, "You can claim the vote if you like, or the other agents if they like."

Did Mr. Walls say anything to that? No; the general reply was, it makes no difference, though I know the man was prejudiced to vote for me.

Mr. Pollard—Did Mr. Walls say it would make no difference? Yes. "I do not think it will make any difference."

Why did you call Campbell out? Because I expected the vote to be marked in presence of the sworn agents as the law requires, and that no one else should be present.

Did he state he could not read or write? He stated he could not read or write before I left the room.

Mr. WALLS recalled.

Mr. Pollard to witness—You have heard the statement he (Pooley) made that you said it made no difference. Is that so? No; Mr. Pooley is mistaken, because I left the school-room right on the heels of the voter. I was not in the room at all, as I went out to see who Dingle was. I went in very quickly afterwards into the room, but made no such remark as to making any difference. I was not in the room at the time.

Mr. FRANCIS, sworn.

Mr. Walls to witness—Are you the United States Consul in British Columbia? Yes, sir.

Are you acquainted with the laws of the United States, especially in reference to the colored people?—

Yes.

Mr. Walls, continuing—How long have you been in the United States service? Twenty-one years.

Had free colored men a right to vote? I think not till 1863 after the proclamation of President Lincoln.

They did not receive citizen's rights till a later date? No, sir.

What were the rights of citizens as free colored men till '63, the date of Lincoln's proclamation? They had all the rights of citizens as regards property, with the exception of voting.

Do you know the status of free colored people between seven and twenty-one years of age? The Selectman or County Commissioner took them.

I believe you are a Connecticut man? Yes, sir.

Mr. Walls to his Lordship—This is the end of the Lavender case.

Examination of witness continued as regards Scott's case, with a view to release him (witness).

Mr. Walls to witness—Mr. Francis, do you know the nature of the oath that soldiers took when they entered the United States army? They only renounced all allegiance to foreign governments. It makes them an American citizen on entering lands by becoming a soldier.

In other words, a soldier becomes a naturalized citizen? Yes; he is regarded as such.

His Lordship to witness—Are you an expert in law?

Mr. Francis—I am not, sir.

Mr. Walls—Well do all soldiers who enlist have to take an oath? All who are foreigners.

Can a man become a soldier of the United States without taking the oath? He can not.

Mr. Davie to His Lordship—I object to Mr. Francis' evidence, as he is not an expert in law. [Quoting Taylor on evidence, page 1195, seventh edition, vol. 2]. And continuing—Now it is very true he holds an official position, but that does not show he is sufficiently skilled to give legal evidence.

Mr. Francis—I know they take the oath of allegiance, as I have administered it myself many times.

Mr. Davie—Do you say that the rule which you stated is a rule of universal application? I cannot say; only before the rebellion I had a commission as Major and administered the oath.

Are there laws in the United States referring to aliens? Yes.

What is he required to do? He is required to take out his papers at the end of three or five years' residence; and a soldier, to show he has been discharged, has to show his discharge papers; then he is a naturalized citizen; but officers who are volunteers, are exceptions.

Mr. Davie—The American army was a volunteer army? Yes; which number about 25,000 men.

Mr. Walls—Did they take private soldiers without administering the oath? No, only officers.

Mr. Pollard called JAMES CURTIS SCOTT.

Mr. Pollard to witness—How long have you been in this Province? Between 24 or 25 years.

Do you remember the year you came here? On the 1st day of August, 1858. Landed on the Hudson Bay wharf either the 1st or 2nd of August.

Have you lived in this Province since then? Yes, except in 1861, when I went to San Francisco for my health, for medical treatment, for about four months, and then came back.

Were you ever in the American army? Yes.

In what State? I was not a volunteer.

Where did you enlist? In New York.

Where did you serve? In Oregon, Washington Territory, and in the Indian war for about 20 months and 10 days.

Did you get your discharge? Yes.

In writing? No, in the printed form.

In what capacity did you serve in the army? I was a non-commissioned officer.

What rank did you hold? A corporal.

What was the name of the regiment? The Ninth Infantry.

When you joined did they make you a corporal? No, was a private when I joined.

Did you join for any particular time? For five years, or till I should be honourably discharged.

When you enlisted in New York, what process did you go through? Swear to serve five years, or till I was honourably discharged; but I signed no document.

Did you join under your present name? Certainly.

Mr. Davie to witness—What countryman are you? Irishman, born in the north of Ireland.

Did you ever renounce your allegiance? Never in my life. Lieutenant Miller told me I would not have to do that when I joined the United States army, or else I should have refused.

Mr. Walls to witness—Did you say in the presence of a large number of people, especially Smith, Graham, and others, that you had sworn allegiance to the United States? No.

Did you make any assertion as to joining the American army? Certainly not.

Mr. Davie—There are a number of people, I could prove, who served in the American army who never took an oath.

His Lordship—The mere fact of a man joining any one of our regiments here does not make him a British subject.

The Court then adjourned to Tuesday, the 24th October inst., at 11 a. m.

(Signed)

ROBERT CROFT.