judgment of the Court (Brett, Archibald and Denman, JJ.) was read by Coleridge, C. J. After referring to the different sections touching the admissibility of ballots which did not conform to the requirements of the Act, and those sections are certainly not more positive in their terms than section 55 of our Act, he formulates the substance of them as follows:—"The paper must be marked so as to show that the voter intended to vote for some one, and so as to show for which of the candidates he intended to vote. It must not be marked so as to show that he intended to vote for more candidates than he is entitled to vote for, nor so as to leave it uncertain whether he intended to vote at all or for which candidate he intended to vote, nor so as to make it possible, by seeing the paper itself, or by reference to other available facts, to identify the way in which he has voted;" and he proceeds to say:—"Applying these views to the votes in question before us, it is clear that the 294 ballot papers marked by the presiding officer at the polling station number 130, were void and ought not to be counted. There is a mark on them by which, on reference to the Burgess Roll, the way in which the voter had voted could be identified."

Inasmuch, however, as the rejection of these ballots did not alter the main result of the election, but only changed the majority by which the candidate was returned, a new election was not ordered.

In the *East Hastings Case* (not yet reported) our present question came up before Armour, J., for judgment.

There a deputy returning officer had endorsed on every ballot issued by him a number corresponding to the number of the voter on the voters' list; these ballots were counted, and the result was that the appellant was at first declared elected. On a recount before the local judge these ballots were rejected, and the majority of valid votes being for the other candidate he was accordingly declared by the returning officer to be entitled to the seat. All these facts were proved in court, and his Lordship held that the ballots could not be counted; though the improper act was not that of the voters or of either candidate, but only of the deputy returning officer.

The effect of the statute being to cast out these votes and so to thwart the wish of the majority of voters, a new election was ordered.

The most instructive case, however, is *The Russell Case* before alluded to, the more especially as the remarks af one of the judges (Blake, V. C.) in another case (*The Monck Case*, reported volume 12 of this journal, p. 113,) are sometimes referred to as supporting a view contrary to that which I am advocating. This *Russell Case* arose out of an election held after the Ontario Act of 1879. The evidence showed that the deputy returning officers of these sub-divisions had put numbers on the backs of the ballot papers corresponding with the numbers on the voters' list, believing it was their duty so to do. Separate judgments were pronounced by Moss, C. J., and Blake, V. C., each one stating the effect of thus numbering the ballots, both as it would have been under the Act of 1874, which is (on the point here discussed) substantially similar to the present Dominion Act, and as it actually was under the amending Act of 1879, which created a clause expressly for the purpose of keeping alive ballots, which under the former law would have been rejected in consequence of some fault of the deputy returning officer.

Moss, C. J., says: "In these cases it appears that the deputy returning officers endorsed upon the back of the ballot paper not merely their initials, but the numbers which appeared upon the voters' lists . . . Under the Act of 1874 (R. S. O. c. 10) that would, I apprehend, have been a fatal objection to the validity of the votes, but the Act of 1879 (42 Vict. c. 4) was passed for the very purpose of remedying that difficulty." And again he says: "It is only by virtue of the saving clause contained in that statute that he (the petitioner) is enabled, notwithstanding the mistake of the returning officer, to receive that seat to which the votes of the people entitled him."

In the same case Blake, V. C., uses this language: "The deputy returning officers are independent officers selected under the statute for the purpose of this duty. Unfortunately, ignorantly but honestly they so dealt with the ballots as that, except for the Act of 1879, these votes must necessarily have been rejected, while neither the petitioner nor the respondent is responsible for that."

I know of nothing in any judgment of a Superior Court which weakens either of these decis-