

OSLER, J.A.

JULY 14TH, 1902.

C.A.—CHAMBERS.

RE HALTON PROVINCIAL ELECTION.

NIXON v. BARBER.

Parliamentary Election—Ballot—Straight Mark instead of Cross—Cross not in Compartment—Writing on Ballot—Circular Mark—More than One Cross—Cross with Blue or Indelible Pencil—Evidence.

Appeal by both candidates from the decision of the Judge of the County Court of Halton upon a recount of the votes cast at the general election.

J. W. Elliott, Milton, and Eric N. Armour, for Nixon.

E. F. B. Johnston, K.C., and W. I. Dick, Milton, for Barber.

OSLER, J.A.—The majority for Barber as ascertained by the County Court Judge was 22. On the candidate Nixon's appeal, the following ballots were in question: No. 1, Esquesing, ballot 96; No. 3, Nassagaweya, No. 2523; No. 1, Trafalgar, ballot 4300; South Ward, Milton, ballot 5470. These were all marked with a single stroke for Barber, and were allowed by the County Court Judge. I think that they must be disallowed, as required by the Act and directions. Appeal allowed. The head-note to the West Huron Recount Case, 2 Ont. Elec. Cas. 58, is wrong. It is there stated that ballots marked as above were allowed. The opposite was the case; they were disallowed by the County Court Judge, and his ruling was affirmed.

No. 6, Esquesing, ballot 954, marked with a cross in Nixon's compartment, clear and well defined, and also a cross quite plain in Barber's compartment. The latter is fainter, and the paper surrounding it has a slightly clouded appearance which might be described as a smudge caused by rubbing the finger over it. The deputy returning officer and County Court Judge have not allowed this ballot for Nixon, treating it as one marked for both candidates. From an inspection of the ballot, it cannot be said with certainty that they were wrong. I dismiss the appeal as to this.

No. 1, Burlington, ballot 3472, marked for Barber and counted by the County Court Judge. This ballot has the name "Barber" written upon it. I think, having regard to the West Huron case, supra, and the recent decision of MacLennan, J.A., in the Lennox and North Grey cases, ante, pp. 472, 474, that this is not a good ballot. I allow the appeal as to this.