

CORRESPONDENCE.

We know, however, that it was the country which had been suffering from the too ready reception of votes recorded really for corrupt purposes, and that the publicity of each elector's choice (a main element in that evil) was sought to be removed. I read the election act as a restraining, not an enlarging, statute.

It is true the end to be attained is to learn and give effect to the vote of the electors, but it is the electors as a whole, at the expense if necessary of individuals of them; the work to be done by the statute is principally to *confine* the receipt of votes to those tendered according to a prescribed method, to surround them with such strict regulations, that individuals, or even bodies of electors, shall lose their votes unless they conform to the conditions described by the legislature as necessary in the public interest; this I submit as the true *general intent* of the election law.

Different legislatures may hold different views concerning the length to which the principle of secrecy should be carried. One may think it expedient to ignore every ballot so marked as to lead to identification, and if this strict rule should be found sometimes to interfere with the will of the majority, then to bear the expense of a new election. By such a course the public might be convinced that without regard to cost or other consequences, secret voting would be maintained; and it may be argued that this method would eventually remedy the evil, more surely than by making exceptions.

Another legislature, however, may believe that wrong doing by deputy returning officers will be so rare that the principle of secret voting will not be seriously impaired by counting those votes which are made open votes through the fault of these officials.

Legislatures entertaining these different views would frame their respective statutes accordingly.

The present Dominion Election Law, sec. 55, enacts that the officer is to "count the number of votes given for each candidate. In doing so, he shall reject all ballot papers . . . upon which there is any writing or mark by which the voter could be identified."

Considering the mischief to be remedied, is it in the mouth of a judge to say, the object of that act can be accomplished by counting those votes under some circumstances better than by rejecting them?

In *Heydon's* case (3 Rep. 7) it was resolved by the Barons for the sure interpretation of all statutes that "the office of all the judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief and *pro privato commodo*, and add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*."

Very able jurists have over and over again pointed out the evil of disregarding express enactments—one laments "that in so many instances the courts have departed from the plain and literal construction of statutes." Lord Coke said "the good expositor . . . gives effect to every word in the statute," (11 Rep. 34).

Lord Tenterden said, "Our decision may perhaps in this particular case, operate to defeat the object of the statute, but it is better to abide by this consequence than to put upon it a construction not warranted by the words of the Act in order to give effect to what we may suppose to be the intention of the legislature."—(*Rex v. Barham*, 8 B. & C. 104).

Chief Justice Moss said the principle of the Ballot Act was "the securing of secrecy and the non-identification of the voter, but in working out this principle we are obliged to look at the precise machinery which the Act has devised and employed."—(*The Russell Case*, Hodgins 520). These rules of interpretation are so familiar to lawyers that the mention of them here almost requires an apology; the excuse is that they seem to have been overlooked lately in contending for a construction contrary to the express enactments of the statute in question.

So far I have dealt only with principles, but the authorities are, according to my understanding, entirely with me, or rather my view does but follow in their wake. It is not to be expected that the wording of the statutes of different legislatures would be exactly similar. I know of only one judgment (*The East Hastings Case*) on the very wording of the Dominion Act concerning these ballots, but there are others on enactments substantially the same.

In *Woodward v. Sarsons* (L. R. 10 C. P. 749) it appeared that the presiding officer at polling station number 130, improperly placed on every ballot (294 in all) the number of the voter as it appeared on the Burgess Roll. The