

COUNTY COURT OF BRANDON.

Cumberland, Co.J.]

[March 21.]

WALLACE v. FLEMING.

Election petition—Municipal election—Municipal Act, R.S.M. 1902, c. 116, ss. 90, 116, 118, 191, 287—Irregularities of officials conducting elections—Directory or imperative requirements of statute—Illiterate voters—Secrecy of the ballot.

Sections 90, 116, 118, 191 and 287 of the Municipal Act, R.S.M. 1902, c. 116, relating to the duties of the municipal officers in connection with the holding of the annual election of the mayor of a city, are directory and not imperative, and breaches of any or all of those sections by the officers, not amounting to wilful misconduct, and not materially affecting the result of the polling, will not be sufficient to warrant the declaring of the election void. *Woodward v. Sarsons*, L.R. 10 C.P. 747, followed.

The following irregularities and omissions, therefore, were held not to be fatal to the election:

1. That the clerk did not post up notices giving the names of the candidates in all the places pointed out by section 90, but only in two of them. *Re Wycott and Ernestown*, 38 U.C.R. 533, followed. Cases arising under the Canada Temperance Act, or under local option clauses of Liquor License Acts, such as *Hatch v. Oakland*, 19 M.R. 692; *Re Mace and Frontenac*, 42 U.C.R. 70; *Re Henderson and Mono*, 9 O.W.R. 599, and *Hall v. South Norfolk*, 8 M.R. 437, distinguished.

2. That the clerk did not, as required by section 287, furnish each of the deputy returning officers with two copies of sections 276 to 287 inclusive (the sections dealing with corrupt practices) and did not post up a copy in his office and one in the post-office. *West Gwillimbury v. Simcoe*, 20 Gr. 211, followed.

3. That most of the deputy returning officers, poll clerks and agents failed to take the oath of secrecy as to the marking of the ballots required by section 191, there being nothing to indicate that the officials did not, in fact, substantially maintain the secrecy of the ballot or that they permitted any invasion of that principle. *Wynn v. Weston*, 15 O.L.R. 1, followed.

4. That the clerk, as returning officer, relieved the deputy and acted in his stead for a short time in each of three polling places on the polling day, although the ballots initialled by him were disallowed. *Watterworth v. Buchanan*, 28 O.R. 352, 357, and *Re Ellis and Renfrew*, 21 O.L.R. 74, 85, followed.