

The votes were attacked on two grounds: (1) that these persons were unable to read or write and otherwise incapacitated by blindness or other physical cause from marking their ballot-papers, and that such ballot-papers were marked by the deputy returning officer in each case, without any of the said persons making a declaration of inability to read or physical incapacity, and in the absence and not in the presence of the agents appointed for and against the by-law, and that such ballot-papers were illegal, but were put in the ballot box and counted; (2) that the ballots and votes were not the ballots and votes of the persons named, but were really the ballots and votes of the deputy returning officers.

J. C. Judd, K.C., for the applicant.

T. G. Meredith, K.C., for the corporation.

SUTHERLAND, J., after setting out the facts as above, referred to sec. 171 of R. S.*O. 1897 ch. 223, which is the section dealing with the proceedings to be taken in case of incapacity of voters to mark their ballot-papers; and said that it was apparent that no declaration as to incapacity from blindness or other physical cause or inability to read was made by any one of the 10 voters in question; that in some of the cases the ballot-papers were not marked in the presence of the agents of the parties supporting and opposing the by-law; and that no entries opposite the names of these persons in the proper column of the poll-book were made.

Counsel for the motion contends that non-compliance with the prescribed formalities renders the votes void, while the opposing counsel argues that, under sec. 204 of the Act, . . . the irregularities are curable, upon the facts in evidence. . . .

[The learned Judge then set out portions of the evidence.]

There is no doubt that matters seem to have been carried on by the deputy returning officers, in respect of the ballots complained of in a very irregular way; but the questions to be considered are: (1) Were the matters omitted to be done by them matters which, under the statute, it was obligatory to do before the voters could properly cast their ballots? Or (2) are they such irregularities as can be remedied under sec. 204 if "the election was conducted in accordance with the principles laid down in the Act, and such non-compliances, mistakes, or irregularities did not affect the result of the election?"

Let me deal shortly with the 10 voters as follows.

Demarry. The only evidence is that of Whyte, the deputy returning officer. It is plain from his affidavits that the scrutineers were not present when the ballot was marked by the deputy returning officer for the voter; that no declaration was taken as to