

before or at the opening of the poll on the day of polling to "cause to be posted up in some conspicuous place outside of the polling station and also in each compartment of the polling station," electors are informed, among other things, that if the voter "places any mark on the ballot paper by which he can afterwards be identified his vote will be void and will not be counted."

If sec. 80 did not contain the qualification to which I have referred, I should, if unfettered by authority, be disposed to hold that it was only a writing or mark placed on the ballot paper by the voter himself, or by his connivance or with his consent, that justified the rejection of his ballot paper.

On principle, it appears to me most unjust that an elector who has complied with every requirement of the law as to the manner in which he shall evidence his will as to the choice of a member of parliament, should be subjected to have his vote destroyed by the wrongful or improper act of an election officer in dealing with his ballot paper, and the Court is bound, I think, if possible, to avoid construing such a provision so as to lead to that result.

Reading the provision as to the rejection of ballot papers, as it stood before the revision of the statutes in 1886, in connection with the directions for the guidance of electors in voting, no canon of construction would be violated, I think, by interpreting the words "any writing or mark by which the voter could be identified," as meaning any such writing or mark placed on the ballot paper as is mentioned in the directions, and therefore as extending only to those placed on it by the voter himself or by his connivance or with his consent.

We are not, however, at liberty to deal with the question as *res integra*, for it has been passed upon by election Judges whose decisions we ought to follow, leaving it to an appellate Court, if they ought not to govern, to so declare, especially as, though the Legislature of the Province of Ontario has expressly provided, by an amendment of its election law, against a ballot paper being rendered void by "words or marks corruptly or intentionally or by mistake written or made or omitted to be made by the deputy returning officer on a ballot paper" (42 Vict. ch. 4, sec. 18), the Parliament of Canada has not seen fit to enact such an amendment to its election law.

In the East Hastings case, H. E. C. 764 (27th January, 1879), the question was directly raised, and the election