

(3) expressly provides that "no word or mark written or made or omitted to be written or made by the deputy returning officer on a ballot paper shall void the same."

I have examined each one of the whole 112 ballots which were questioned, and specially passed upon by the learned judge, and I agree with his decision thereon in each case, and generally with his reasons, with the exception of 14 ballots allowed for Monteith, and with regard to which, with great respect, I have been unable to come to the same conclusion. I find myself obliged to come to the conclusion that all these ballots are either marked for the candidate Frame, or are void for uncertainty, and so cannot be counted for Monteith, as they have been by the learned judge. The difficulty is occasioned by a fault in the printing of the ballot papers. There were three candidates, Frame, Monteith, and Moscrip, and their names were arranged in alphabetical order, Monteith's being in the centre division. Frame chose black as his colour, Monteith, blue, and Moscrip, red; and it is said, and I suppose truly, that the ballot had to pass through the printing press at least three times. And in all these fourteen cases, Monteith's surname, that is, the one printed in large type, was placed either upon or above the line separating his division from Frame's, instead of being placed wholly within the division intended for it. The Christian name and surname, however, in smaller type, and the addition of each candidate, are wholly within his own division. In two of such cases, in which the cross was placed at the right hand of the large surname, but a little higher up than exactly opposite to it, the learned judge allowed the votes for Frame; but in the above fourteen cases, where the cross was very nearly opposite to the large name "Monteith," he allowed it, although in one case it was exact, on the dividing line, and in all the other cases wholly above it. His reason for doing so is that the voter, having placed his mark opposite to the candidate's name on the right hand side, has complied literally with the Act; and that would be so but for the other direction that it may be placed anywhere within the division containing the candidate's name. The difficulty is that one of Monteith's names is in, or partly in, Frame's division, and that persons intending to vote for the latter are told they may do so by placing their cross anywhere within the division containing the name. When the Legislature speaks of divisions containing the names, and when the form of ballot prescribed and used has lines upon it indicating such divisions, I think it cannot be said that the lines are immaterial, or that they may be disregarded. I think a voter intending to vote for Frame, and being told that he would be right if he put his mark anywhere in the division containing his name, might have marked his ballot exactly as any one of these fourteen which have been allowed for Monteith. There is one exception from that remark, namely, No. 5230, in which the cross is exactly upon the line, and may have been intended for either one or the other. The learned judge says the dividing line between Frame's division and Monteith's division must be conceived to be drawn immediately above the surname of the latter; but I think I cannot disregard the fact that there is an actual dividing line upon the ballot, separating the two divisions, and that every one of the votes in question may in fact have been intended for Frame, being within the division of the ballot containing his