

S. H. Blake, K.C., W. D. McPherson, and E. G. Porter, Belleville, for Carscallen.

G. H. Watson, K.C., and Grayson Smith, for Madole.

MACLENNAN, J.A.—It was objected that the County Court Judge was confined in the recount to the consideration of cases in respect of which an objection was made before the deputy returning officer when counting the votes at the close of the poll. I think this objection should be overruled: see secs. 112 (4), 124 (1), and 126 of the Election Act.

The ballot papers used at this election were in the form prescribed by the statute, having two divisions for the names of the candidates separated by a line from left to right, and also having a line above the upper division, and one below the lower division, parallel to the dividing line. Outside of these last-mentioned lines, there is a margin about half an inch wide. Ballot 405 was marked with a cross outside, but near, the upper line or boundary of Carscallen's division, and was rejected. I think that it should be allowed, for the upper line is not essential, and a ballot without an upper line would be good. All that is above the first name may be regarded as a part of the division of the first candidate, and all below the second name as a part of the division of the other candidate. West Elgin Case, 2 E. C. 41, applied. North Bruce Case (1901, per Boyd, C., and Street, J.), unreported, distinguished because of the express directions of sec. 72 of the Dominion Election Act, 63 & 64 Vict. ch. 12, that the cross shall be made in the white space containing the name of the candidate.

Ballot 4032 is marked in the proper place for Madole, but the mark is a circle, not a cross, and not an apparent attempt to make a cross. I think that the vote must be disallowed.

Ballot 4004 is well marked for Carscallen, but was disallowed because of an irregular shapeless pencil mark in Madole's division. This should not have been disallowed, but should be counted for Carscallen, not being a cross or any attempt to make a cross, nor a mark by which the voter could be identified.

Ballot 5288 was also distinctly marked by a cross for Carscallen. It had, however, in Carscallen's division, in the sub-division containing his number, the initials S. A. in small but legible capitals. This was rejected by the County Judge. I have spoken to my brother Osler, and he agrees with me, that any written word or name upon a ballot, presumably written by the voter, ought to