

It was argued on behalf of the petitioner that this numbering of the ballot papers did not affect their validity, for two reasons: (1) because it was the act of the deputy returning officer, and, as it was said, the section does not apply to a writing or mark on the ballot paper made by any one but the voter; and (2) because it is only a writing or mark by which, without calling in the aid of extrinsic evidence, the voter could be identified, that requires or justifies the rejection of the ballot paper.

The Election Act by which the system of voting by ballot was first introduced was 37 Vict. ch. 9, and the provision in it as to the rejection of ballot papers was substantially the same as that contained in sub-sec. 2 of sec. 80 of the Act of 1900, except that the concluding words, "other than the numbering by the deputy returning officer in the cases hereinbefore provided for," are not found in the original provision (sec. 55), though the Act contained a provision for the numbering of the ballot paper supplied to any person representing himself to be a particular elector named on the register or list of voters who applied for a ballot paper after another person had voted as the elector: sec. 53.

Two other classes of ballot papers were, by sec. 37 of the Electoral Franchise Act (48 & 49 Vict. ch. 40), required to be numbered.

It was not, however, until the revision of the statutes in 1886, that any change was made in the provision in the Election Act for the rejection of ballot papers by the introduction of any qualification of the generality of the provision as to rejecting ballot papers on which a writing or mark by which the voter could be identified appeared.

In the Consolidated Statutes the Election Act appears as ch. 8, and the section providing for the rejection of ballot papers is sec. 56. There for the first time is introduced the qualification to which I have referred, and it is in the very words in which it is expressed in sec. 80 of the Act of 1900.

The Act of 1900, it may be remarked here, introduced another class of ballot papers which the deputy returning officer is required to number: sec. 67.

It is somewhat singular that nowhere in the Act is there to be found any provision forbidding the voter to place upon his ballot paper any mark by which he can afterwards be identified, nor any declaration that a ballot paper upon which such a mark is placed shall be void, though no doubt in "the directions for the guidance of electors in voting," which the deputy returning officer is, by sec. 41, required