

## Elec. Case.]

## NORTH VICTORIA ELECTION PETITION.

[Dominion.]

hand side—that is in front—of the candidate's name in the left column.

For Cameron, Nos. 12, 13..... 2  
For Macleannan, Nos. 21, 25, 26, 30..... 4

(6.) Those marked, not with a proper cross, but having some addition to it as strokes which make the cross look like an X, or having lines along the top and bottom of the cross, or a line across the centre of it, or an additional stroke on one arm of the cross, or the form being somewhat like an anchor.

For Cameron, Nos. 6, 7, 19..... 3  
For Macleannan, Nos. 23, 24, 29..... 3

(7.) Those marked with a proper cross, but having some additional mark by which it was said the voter could be identified.

For Cameron, No. 4..... 1  
For Macleannan, Nos. 25, 32, 33..... 3

(8.) Those having no cross, but the candidate's name being written in full or in part, or some letters or initials put in place of the cross.

For Cameron, Nos. 35, 36..... 2  
For Macleannan, No. 22..... 1

(9.) One which is marked by a number of lines.

For Cameron ..... 0  
For Macleannan, No. 31..... 1

Making so far of the ballots accounted for:—

For Cameron..... 23  
For Macleannan ..... 13  
36

(10.) There is one, No. 15, which has a cross for each candidate. Making a total of 37; accounting for the whole number of rejected ballots.

I held at the trial, and I am of the same opinion still, that class No. 1, which is composed of crosses to the right hand side of the candidate's name, contains good votes, for within the very words of the statute they are "on the right hand side, opposite the name of the candidate;" and that they are in the compartment where the candidates name is printed, and not in the column to the right of it, which was manifestly intended as the place of the cross, i.e., of no consequence, for the statute does not say the cross should be put in the column on the right hand of the name, but merely on the right of the name, and opposite it. The two cases referred to at the trial, the *Athlone case*, 2 O. & H., 186, and the *Wigtown case*, 2 O. & H., 215, are directly in favour of this view. There is in reality, however, no decision required on the point. The statute has been literally complied with.

Then I also was of opinion at the trial, and I am so still, that the slightly ill-

formed crosses contained in class six should not be rejected. It would be too rigid a construction of the statute to apply to it which would exclude a vote and disfranchise the voter because he made a cross with small lines at the ends of the cross, or put a line across the centre of it, or upon one of the limbs of it, or because, in his hurry or confusion, or awkwardness with the pencil, he did not draw two straight lines, but curved one of them so much as to look somewhat like the blades of an anchor, when it is manifest he intended, so far as it is possible to judge, to vote honestly, and to leave or make no mark by which, contrary to the provisions of the statute, he could be identified.

Under the first class the petitioner is entitled to have six of the ballots added to his poll, which would overbalance the majority of the respondent and give the petitioner the majority of three in his favour. Under the sixth class, if the three votes under that class be added to each of the parties it will leave their relative numbers the same. And in my opinion they must either all be added or all rejected. But I think they must be added to the poll of each of the parties—three to each of them. That disposes of twelve of the ballots.

If I join classes two, three and five together, and treat them all as if they were ballots, crossed to the left of the name, that would give the petitioner five as against four, or an additional majority of one. It is not material to determine what should be done with these votes, because they do not affect the actual majority under my former ruling. If I were obliged to express an opinion one way or other, I should be disposed to count these votes, although they were not put on the right hand of the candidate's name, but to the left of it. For I am of opinion the Act is not to be read as a declaration that if the cross be not put to the right of the name the ballot should be void. A marking to the left instead of the right of the name is not a cause for which the deputy returning officer is authorized to reject the ballots under sec. 55. The instructions to the voter are that he shall mark the cross with a pencil, but it has been decided that marking it with ink is a good vote. These instructions, too, do not require the voter to put the mark on the right of the candidate's name, as the instructions in the English Act do, but merely to put it opposite the name of the candidate. There are many cases in which a strict compliance with the statute, or its literal observance has not been required. In the *Athlone case* the crosses to the