

be identified : *Cirencester*, 4 O'M. & H. 196, per Hawkins, J. No. 7369 was well marked for MacNish, but had the words "Mr. MacNish, West Elgin," in pencil, on the back. I think it was properly allowed by the learned judge. No. 7509 was properly marked for MacNish, and had the initials "D.F." on the back, as well as those of the deputy returning officer. It was allowed by both the deputy returning officer and the learned judge, and I think rightly. No. 7582 was properly marked for McDiarmid, but had the name "John Cains," in pencil, on the back, besides the initials of the deputy returning officer. It was rejected both by the deputy returning officer and the learned judge. It may have been because there was a voter of that name on the list. I cannot say it was not rightly rejected.

There were three cases of alleged imperfect and doubtful crosses. Of these 5867 and 7165 were, I think, rightly allowed for MacNish. The first was a sprawling sort of a cross, but a cross nevertheless. The other was a cross, one of the lines being indistinct at and for a very short distance on both sides of the intersection, but still quite visible. No. 6145 was an unusually large cross, the arms extending into McDiarmid's field, but the intersection wholly within McNish's division. It was rejected both by the deputy returning officer and the learned judge. I think it should have been counted for MacNish.

The remaining ballot is no. 8176. The learned judge thinks this ballot was found in the spoiled ballots' envelope, but he says that, looking at the ballot paper account and all the documents which were before him, he thinks it was placed in a wrong envelope by mistake, and he allowed it. It is well marked for McDiarmid, but it is like number 5350, mentioned above, in having a cross in MacNish's field with evident obliteration marks over it. I think the learned judge rightly allowed it, if it was not a spoiled ballot. I have no means of reviewing his conclusion that it was not a spoiled ballot, inasmuch as, this appeal being a limited one, the Act does not authorize the transmission to me of anything but the ballot papers which are the subject of appeal, together with a notice of appeal and a certificate of the learned judge's finding.

The result is that Mr. McDiarmid has a majority of one. No costs of the appeal.

E. F. B. Johnston, Q.C., and *Aylesworth*, Q.C., for Donald MacNish.
Wallace Nesbitt and *T. W. Crothers*, for Finlay G. McDiarmid.

MacLennan, J.A.] SOUTH PERTH PROVINCIAL ELECTION. [March 26.
Ballots—Re-count—Ballot numbered by D.R.O.—Ballot marked in wrong place—Defective form of ballot—Ambiguity.

There was a re-count of votes before the Judge of the County Court of the County of Perth, from which two of the candidates (Moscrip and Monteith) appealed.

MACLENNAN, J.A.—The objection to the ballots cast at No. 3, Downie, and No. 4, Hibbert, was that a number had been placed on the back of each ballot by the deputy returning officer, in pencil. The learned judge disallowed the objection, and I think he was clearly right in doing so, inasmuch as s. 112