

perfectly known throughout the country. In the meantime, the price paid for obtaining secrecy in voting will be the virtual disfranchisement of a small proportion of voters who have not learned how to vote under the present system.

Until the mark loses entirely the figure of a cross, I think it should be allowed. It may be imperfectly made; there may be additions to it from nervousness, or awkwardness, or by way of embellishment. There may be several lines crossing another line or other lines. The one line may lie upon the other at any angle. The one line may cross the other but a short distance, yet so long as it is possible to say the figure can be taken as that of a cross, it would be the duty of the Court to say the intention of the elector is sufficiently defined to allow his ballot to stand. As with the form of the cross, so with its position. I do not think it necessary that it should be exactly opposite either the word "Roe" or "Richard Roe." It may be above or below a line produced from the name parallel with the end of the ballot-paper. It need not be in the compartment in front of the name, but the moment it ceases to be on the right-hand side, then it is no longer in the place which indicates an intention of voting, and therefore must be rejected. If it be correct that the form of the mark, such as a line or a circle, vitiates the ballot, I do not think it unreasonable to say that the position of the mark may have the same effect. A man who pretends to vote puts a stroke and nothing more, and knows his ballot paper will be rejected; a man who does not want in reality to vote may just as well say, "I will place my mark or cross to the left of the name, and thus, though apparently voting, vitiate my ballot-paper." I think it is safer in a case where the wording of the act is so plain as here, to require a reasonable compliance with that which it lays down as being the requirements of a ballot-paper which is to be accepted, rather than to enter into a minute examination of the position of each cross, and endeavour to assign some reason in each case for that which virtually is an invasion of the plain language of the act.

The third point raised depends on the true construction of section 55 and schedule 1:—

The returning officer shall reject all ballot papers "upon which there is any writing or mark by which the voter could be identified." If the voter places any mark on the ballot paper or envelope by which he can afterwards be identified, his vote will be void and will not

be counted." The marks found on the ballot papers are—(a.) Additions or embellishments to the figure intended to represent the cross, and by which such figure might be distinguished from other crosses. (b.) Marks made inadvertently near the cross, and which have arisen evidently from nervousness or awkwardness. (c.) Distinct lines or figures made in various places on the ballot paper.

The act does not say any mark, or any mark deliberately made, but a writing or mark by which the voter could be identified. I think the mark must contain in itself a means of identification of the voter in order to vitiate the ballot. There must be something in the mark itself, such as the initials, or some mark known as being one the voter is in the habit of using. If there be not this restriction, then it will naturally follow that every peculiarity about every cross should be scanned in order to see whether some of the additions were not put there designedly so as to mark distinctively that particular ballot paper. Any mark in addition to the cross might thus avoid the vote, and, on the same principle, any alteration in the position of the cross from a rigid observance of what is set forth in the act should be taken as a means of denoting the ballot as one marked so as to require its rejection. I think if the Legislature intended this result we should have found different language used from that which we have in this enactment.

I proceed on the above rules to scrutinise the votes objected to on both sides. The petitioner had 1,329 votes and the respondent 1,333, leaving a majority of four votes for the respondent. In Canboro No. 1, there were four ballots for the petitioner rejected, which rejection is objected to. This affords a fair example of the necessity for observing with exactness the rules prescribed by the act. The deputy returning officer here employed pen and ink. The crosses in these four cases were distinctly made opposite the name Edgar, and in the proper position on the ballot paper. The voter folded the paper down at once, and accurately, which made an impression opposite the name McCallum. We have by this means a cross opposite the name Edgar, and another cross identical in form opposite the name McCallum. On a close inspection it is apparent that the upper cross is the original one, and that the lower, or McCallum one, is caused merely by the paper being brought into contact with the mark the ink of which was not dry. These four votes should therefore be allowed to Edgar.