

The respondent was declared elected on a recount had before the senior Judge of the County Court of Wentworth, but the petitioner claimed the seat, alleging that upon a proper counting of the ballot papers being had it would be found that he had received a majority of the votes cast and was duly elected.

The petition contained charges of corrupt practices, and there was a cross-petition filed by the respondent making similar charges against the petitioner. These charges were abandoned by both parties, and they agreed on a special case, which contained a statement of the facts upon which the opinion of the Court was asked upon the following questions:—

1. Is the respondent, E. D. Smith, the duly elected member for the electoral district of Wentworth?

2. If not, is the petitioner, W. O. Sealey, the duly elected member for the said electoral district of Wentworth?

3. Or is the said election for the electoral district of Wentworth null and void?

A. B. Aylesworth, K.C., and R. A. Grant, for Sealey.

G. Lynch-Staunton, K.C., W. A. H. Duff, Hamilton, and H. C. Gwyn, Dundas, for Smith.

MEREDITH, C.J.—The result, as far as it is to be determined by the counting of the ballot papers, depends upon whether the County Court Judge was right in rejecting, as he did, all those cast at polling subdivision number 23 in the township of Beverley.

The claim of the respondent that these ballot papers ought not to have been, as they were, counted, by the deputy returning officer, and were properly rejected upon the recount, is based upon the provisions of sub-section 2 of sec. 80 of the Dominion Elections Act, 1900:—“(2) In counting the votes he (i.e., the deputy returning officer) shall reject all ballot papers which have not been supplied by the deputy returning officer, all those by which votes have been given for more candidates than are to be elected, and all those upon which there is any writing or mark by which the voter could be identified, other than the numbering by the deputy returning officer in the cases hereinbefore provided for.”

Each of the ballot papers in question had on the back of it a number which corresponded with that put opposite to the name of the voter in the poll book, and it was placed there by the deputy returning officer before the ballot paper was handed to the voter.