

tion of taking it away extends to every part of the paper. It may perhaps be inferred from the fact that the deputy returning officer refused to count the vote, that he did so because he knew he had not given out any ballot paper so much smaller than all the others as this, and therefore that it was the voter who had torn or cut a piece off it. But for that, it would be an assumption that there had been any part removed, or, if there had, that it had been done by the voter, or that it had not been in that condition when given to him. It is still a perfect ballot, properly marked, and it is only by comparison with the other ballot papers that the inference can be drawn that any part of it had been removed. Now, section 109 seems to be very material to this question. That provides for the case of a voter spoiling his paper, and it is only when it has been dealt with so "that it cannot be conveniently used as a ballot paper" that it is spoiled, and ought to be delivered up and a new one procured. This voter may by inadvertence have marked it wrongly in the first place, and, immediately perceiving that, may have torn or cut off the margin on which he had placed his mark. He then finds that it can still be conveniently used as a ballot paper, and he does make use of it. I think s. 109 warrants the conclusion that he might do so. This ballot is not like that which was before my brother Osler in the *West Huron* case, in which a part was torn off, and which was disallowed by him. In that case the part torn off was an essential part of the ballot paper, namely, that on which the printed number had been. I think the proper conclusion is that this ballot ought not to have been rejected, and ought to be counted for McDiarmid.

Nine ballots were questioned as having other marks thereon besides the cross. No. 3484 was well marked for McDiarmid, whose name was uppermost on the paper, and there were, besides the proper mark, two other small crosses near the upper margin of the paper, outside of the line. It was disallowed by the learned judge, but I think that was wrong, and that it should be allowed for McDiarmid. Nos. 3945 and 4858 were both marked for McDiarmid, but there was a straight stroke on MacNish's division. The learned judge disallowed them, but, I think, wrongly. They should be allowed for McDiarmid. No. 5350 was well marked for MacNish, but in McDiarmid's field there was also a cross, but carefully obliterated with a pencil. I think it was rightly allowed for MacNish by the learned judge. Nos. 6564 and 7735 were allowed, the first for McDiarmid and the other for MacNish, and I think rightly. No. 8508 was well marked for McDiarmid, but with two obscure lines opposite to MacNish's name, lying very close together, almost coincident. It was counted by the deputy returning officer, but rejected by the learned judge. I cannot say the lines do not cross each other, and therefore I cannot disturb his finding. No. 8491 is like the last in every respect, and was rejected both by the deputy returning officer and the learned judge. I cannot say they were wrong.

Four ballots were questioned for having names or initials upon them other than those of the deputy returning officer. No. 1306 has the name MacNish on the face, in pencil, in that candidate's division, as well as a proper cross. It was rejected by the learned judge. I think it should have been allowed. I am unable to see how the voter could (not, might possibly) thereby