

Elec. Cases.]

MONCK ELECTION PETITION (DOMINION.)

[Ontario.]

and the removal of difficulties in the way of an elector exercising his franchise.

There seems to be no doubt that the election in question was conducted in accordance with these principles. It cannot be said that the irregularities complained of affected or bore upon the result of the election, nor were they calculated to do so. It was not even argued that any injury of the kind has here arisen—that any other than the provided ballot-papers had been used, or that the vote of any one not entitled to vote had been received. The neglect of the officer should not be visited on the elector or candidate, unless it is apparent that it has, or might have caused some substantial injustice. Of the 132 votes cast in Pelham Division No. 1, it is said 130 are open to the objection that the ballot-papers were not initialed by the deputy returning officer. I do not think I should lightly disfranchise so large a body of the electors, nor should I lightly say the irregularity is of such a nature as to disfranchise, and this disfranchisement being so general, the whole matter must be set at large and a new election ordered.

I am of opinion that, under this clause, irregularities of the nature here relied upon in order to invalidate the election must be substantial and not mere informalities—that the informality must be of such a nature as that it may reasonably be said to have a tendency to produce a substantial effect upon the election. I do not think the irregularities here complained of in any manner interfered with the election being a real one, nor did they in any manner affect the result, and therefore they cannot be raised as grounds for avoiding it. This view is corroborated by the finding in the *Hackney Case*, 31 L. T. N. S. 72. There Mr. Justice Grove says: "An election is not to be upset for an informality or for a triviality. It is not to be upset because the clock at one of the polling-booths was five minutes too late, or because some of the voting papers were not delivered in a proper manner, or were not marked in a proper way. The objection must be something substantial, something calculated to affect the result of the election."

It must also be borne in mind that if the Court lightly interferes with elections on account of errors of the officers employed in their conduct, a very large power may thus be placed in the hands of these men. That which arises from carelessness to-day may be from a corrupt motive to-morrow, and thus the officer is enabled, by some trivial act or omission, to serve some

sinister purpose, and have an election avoided, and at the same time to run but little chance of the fraudulent intent being proved against him. I therefore disallow the objection taken to votes given by means of ballot-papers marked with the pen and ink provided in the polling-booth, and to those given on the ballot-papers provided by the returning officer but not initialed by him.

There were three other points argued before me:

1. What mark sufficiently expresses the intention of the elector as to his voting? 2. Where must this mark be placed? 3. What additional mark warrants the rejection of the ballot-paper? The following portions of section 45 and of schedule I. deal with the first two of these questions: "The elector . . . shall . . . mark his ballot-paper, making a cross on the right-hand side, opposite the name of the candidate . . . for whom he intends to vote." "The voter will . . . place a cross opposite the name . . . of the candidate . . . for whom he votes, thus x." It is also to be noted that in the form given the cross is not exactly opposite the word "Roe," or the words "Richard Roe," but appears as follows:—

	ROE.	
II.	RICHARD ROE, of —	
	TOWN in—	x

I think that every reasonable latitude that can be given to an elector as to the form or position of his mark, without a direct invasion of the statute, should be given to him. The act, however, requires that this mark should be a cross, and it also requires that this cross should be on the right-hand side, opposite the name of the candidate. I cannot say, therefore, that, so far as the mark is concerned, the elector has complied with the act when, in its place, he puts a single line. I must rather conclude that the elector, for some purpose, desired to go merely through the form of voting, and expressed this intention by placing such a mark there as evidenced his design of not complying with the requirements necessary to allow his ballot to be counted for either of the candidates. The single stroke does not show a concluded intention of voting, for only a portion of that which is the defined figure is thus made. The voter is told that if he puts a cross in a particular place, which is well defined on his ballot-paper, his vote will be accepted; if he does not choose to do that, he loses his vote. It may be that at first this rule will work hardly; but soon a matter so easily comprehended will be