

Full Court.]

STEPHEN v. FLEMING.

[Jan. 23.

*Municipal election—Recount—Appeal to County Court—Payment for dinners—Marking ballot paper.*

Petitioner, one of the candidates at a municipal election, was declared elected by a majority of one vote over respondent. On a recount, three of the ballots which had been counted for petitioner by the presiding officer, were thrown out and the seat awarded to respondent. On appeal to the judge of the County Court for District No. 1, the ballots thrown out by the municipal clerk were allowed, and petitioner declared elected. On further appeal,

*Held*, 1. The declaration of the municipal clerk was not final, but was simply the return that the presiding officer should have made had he counted the ballots correctly, and in its effect did not differ from the return of that officer, and that there was nothing in the Municipal Act, R.S., c. 70, s. 64, which deprived the County Court of its jurisdiction to try election petitions conferred by the Municipal and Town Elections Act, R.S., c. 72.

2. The petition in the case sufficiently complied with s. 7, sub-s. (a) of c. 72, if it complained of an undue return and set forth facts sufficient, if true, to shew that such was the case.

3. The fact that petitioner was shewn to have paid for certain dinners was not a corrupt practice for which he should be disqualified, where it appeared clearly from the evidence that the payment was not made in view of any previous arrangement or agreement, but after the electors had voted, and without any intention of influencing them.

The ballot papers used at the election in question contained the names of three candidates separated by a line printed between each name and with a double line at the top and bottom of the paper.

One of the ballots counted for petitioner by the county judge was marked with a cross below the name of the candidate and below the lines printed at the foot of the paper.

*Held*, per Russell and Longley, JJ., Townshend, C.J., and Meagher, J., contra, that the lines printed at the top and bottom of the paper were immaterial and that the mark, although made below the lines at the foot of the paper was within the division