

I refer also to the Haldimand case (1888), 15 S. C. R. 495, and particularly to what was said by Strong, J., at p. 515, and by the present Chief Justice of Canada, at p. 528.

The cases in which the question has arisen on a recount, which were cited by Mr. Aylesworth, are, I think, distinguishable. There the Judge has very limited powers, and is unable, in determining whether a ballot paper should be counted or rejected, to seek assistance from anything but the ballot paper itself.

This is well pointed out in one of the cases, the Digby, Nova Scotia, Election Case (1887), 23 C. L. J. 171, as well as in the recent decision of Ardagh, Co.J., in the North Simcoe Case (1904), 41 C. L. J. 29.

Mr. Aylesworth's contention that the principle of *Woodward v. Sarsons* (1875), L. R. 10 C. P. 773, had been departed from in the more recent cases, is not, I think, well founded. The *Cirencester Case* (1893), 4 O'M. & H. 194, which he cited for that contention, does not, I think, support it. The Court was there dealing with marks made by the voter, and there is nothing to indicate that the authority of *Woodward v. Sarsons*, so far as it dealt with the numbering of the ballot papers, was intended to be denied or questioned.

No doubt there was an advance made in the direction of departing from the more strict rule which had been applied in the former cases to disfranchise a voter who had by his ballot paper clearly indicated the candidate for whom he intended to vote, on account of the imperfect manner in which he had marked his ballot paper, but nothing whatever was said to indicate that extrinsic evidence is not admissible to prove that by the mark which appears upon the ballot paper the voter could be identified; on the contrary, *Hawkins, J.*, said (p. 198) that the question whether the mark is one by which the voter can be identified is a matter of fact.

It is difficult to suggest any mark that it is possible to put upon the ballot paper which, standing alone and without calling in the aid of extrinsic evidence, could be found to be one by which the voter could be identified.

To illustrate by a single case: A voter, John Smith, writes upon his ballot paper the words, "This is the ballot of John Smith," having arranged that that is the sign by which he will shew to the agent of a candidate that he has voted for that candidate. The writing by itself does not shew that the ballot paper is the one handed to John Smith, nor would it