

Elec. Case.]

ONTARIO REPORTS.

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have been in the mind of the Legislature to enable a full inspection to be made under the supervision of an agent of the law whose position and habitual engagements would give assurance that the ballots would be carefully guarded and preserved in the condition in which they came; that is, an inspection that those interested might think it expedient to make in view of the ulterior proceedings to question an election return on petition. However that may be, there is the enactment, and I repeat that in my judgment the duty assigned to the judge is of a very humble character. The judge's authority is special—to act in the matter of the recount—the particular agent is designated by his name of office. He has no office in the matter, no general authority accrues to him; such as he has arises only from the mandate in the statute and to the extent set down. A mere statutory agent, he acts as and within the limits pointed out. If it had been intended to give anything like a general authority to deal with the matter so as to accomplish complete justice or reach the very truth of the matter, the judge would have received power for examination into the facts involved, to secure and receive evidence necessary to a complete enquiry, and all the papers connected with the election would have been ordered to be produced before him. As it is he is simply to recount upon the material required to be laid before him, and the only material is the ballots used as contained in the parcels returned by the D. R. O. This is the sole material, in the shape of evidence, upon which the judge can act, and he is directed to recount the ballots and VERIFY—prove to be true—or CORRECT—make right—the ballot paper account.

In this recount he is limited and restrained by the rules in sec. 55, he has only the intrinsic evidence furnished by the ballots themselves, and he must form his judgment by simple inspection of the only material the statute has provided in the way of evidence. I believe this to be the proper view to take of the enactment. I feel that as a mere statutory agent I must keep strictly within the limits assigned to me. I have said the parcels of ballots are the sole material upon which the Judge can act—the only evidence before him. The 67 sec. after providing for the appointing of time and place for a recount of votes by the Judge and notice thereof to the candidates, directs that the Judge shall

command the R. O. and election clerk to attend at the time and place appointed with the parcels containing the ballots used at the election, which command the R. O. and his election clerk shall obey. The "parcels." What are these parcels? It is argued that the clause in certain instructions to Returning Officers concerning the direction to their deputies to enclose the ballots, voters' list and other documents to form one parcel, shows that all the papers are put together in this parcel, and that it is the parcel to be brought before the County Judge. How can I look at any instructions to R. O. not properly before me? But even if I could I do not see how instructions subsequently framed could give any clue to the interpretation of the terms used in the Act. Looking at sec. 55, we see that the D. R. O. after making his count, shall put into "separate envelopes or parcels" all the ballot papers—those given for each candidate, those rejected, and all being endorsed to indicate their contents, and to put them in the ballot box. In sec. 57, he is directed to make out a statement of results, and enclose such statement in the ballot box, together with other election papers. These are all open and for use by R. O's. The four envelopes or parcels containing the ballots alone are sealed and these the R. O. is not to open. The R. O., having received all the ballot boxes, opens them, and from the statements contained sums up the votes. That the parcels containing the ballots only are the parcels referred to in sec. 67 seems to me most obvious. The R. O., whose summing up is challenged—if the question was one of mere "summing up"—must, of necessity, produce the material upon which his summing up was made. It is not of necessity in case of recount that the statements should be under the Judge's eyes. I think he could open the ballot parcels if they were not. But however that may be, although not required in express words to produce it the R. O. is required to be present and with his election clerk, and for what purpose I know not, if it is not for exhibiting the statements on which he acted. The things to be proved true or corrected are these statements. They are accounts assailed as incorrect, and probably it might be going too far to say the Returning Officer is not by implication bound to produce THEM—that it was an omission in the statute—he is certainly not expressly required to do so. But if he produce them, they are nothing more than the *prima facie* proof on which he acted.