

deputy returning officers had improperly counted or improperly rejected any ballots, or had made a wrong addition of them; that he had no power to hear evidence or to examine the returning officer or the deputy returning officers. His Honor was disposed to allow considerable latitude in the mode of making the cross on the ballots, and he was also disposed to admit ballots the only objection to which was the omission of the deputy returning officer to initial the number on the back. Under sect. 56, the deputy returning officer was bound to number and paraph any objection made to a ballot. "If he did not," his Honor remarked, "he neglected his duty, but the law did not go on to say that such ballot was null and void. He did not see why a voter should lose his right because the deputy returning officer had omitted to paraph a number, an omission with which the voter had nothing to do." The result of the recount was that Mr. Girouard was declared to have a majority of the votes, and he was returned accordingly.

A prosecution was subsequently instituted against several persons for frauds perpetrated at poll No. 2, in the same county. The charge was that a number of votes cast for Mr. Girouard had been abstracted from the ballot box. Several witnesses being called to prove that they had voted for Mr. Girouard, and that their ballots were not among those returned by the deputy returning officer, it was objected to this evidence that a voter could not be permitted to reveal for whom he had voted, but the Court, Ramsay, J., presiding, overruled the objection, remarking that sect. 77 of the Election Act applied only to a legal proceeding to test the validity of an election, and not to a criminal cause like the present, arising out of a contravention of the law.

REPORTS AND NOTES OF CASES.

COURT OF QUEEN'S BENCH.

Montreal, Sept. 21, 1878.

Present: DOBION, C. J., MONK, RAMSAY, TESSIER, and CROSS, JJ.

LAFLEUR et al., (contestants in the Court

below,) appellants; and THE CITIZENS' INSURANCE Co., (*tiers saisis* in the Court below), respondents.

Insurance—Condition requiring Notice of other Insurance—Waiver.

A person effected an insurance against fire, for one month, the insurance being subject to the conditions of the fire insurance policies of the company. He asked for a policy, but was told that it was not customary to issue policies for short dates. Among the conditions of the fire policies of the company was one requiring notice of any other insurance effected on the property, and endorsement of such insurance on the policy. The insured failed to give such notice. *Held*, that the non-delivery of a policy to the insured was a waiver on the part of the company of the condition cited.

The question was whether the failure to give an insurance company notice of other insurance effected on the same property, under the special circumstances, rendered the insurance void. One Limoges went to the Citizens' Company and insured his property for one month. He got a receipt for the premium, which stated that he was insured for one month, subject to the conditions contained in the ordinary policies issued by the Company. On getting the receipt he asked the clerk for a policy, but the clerk replied that it was not usual to issue policies for short dates. Limoges then went away, and effected another insurance in the Royal Canadian. He gave no notice to the Citizens' Company of this insurance. Three days afterwards a fire occurred. His creditors, the appellants, having attached the insurance money, the Company declared that they owed Limoges nothing, and when the declaration was contested, they pleaded that by one of the conditions of their policies the insured was bound to notify them of any insurance existing elsewhere. The question was whether the insured was bound by the usual condition of the Company's policies, where no policy issued.

The Court below held the insurance to be void.

The majority of the Court of Appeal, Ramsay, Tessier, and Cross, JJ., reversed this judgment. The reasons are sufficiently set forth in the *considérants* which are as follows:—

"The Court, etc.:—

"Considering that in and by the receipt and undertaking made and delivered by the Respondents, the said Citizens' Insurance Company, to François Xavier Limoges, on the 28th of August, 1876, it was therein in effect declared