

## CANADA REPORTS.

## ONTARIO.

## ELECTION CASES.

## MONCK ELECTION PETITION (DOMINION.)

## GRANT V. McCALLUM.

37 *Vict. cap 9, ss. 28, 45, 80.*—*Effect of neglect of duty by returning officer.—Marking ballot paper.*

The neglect or irregularities of a returning officer in his duties under the act will not invalidate an election, unless they have or might have caused some substantial injustice in the way of affecting the election.

*Held* therefore, that the neglect of a returning officer to initial the ballot papers, and to provide pen and ink instead of a pencil to mark them, would not void the election.

The following irregularities in the mode of marking ballot papers, *held* to be fatal :—

1. Making a stroke instead of a cross.
2. Any mark which contains in itself a means of identifying the voter, such as his initials or some mark known as being one used by him.
3. Crosses made at left of name, or not to the right of the name.
4. Two single strokes not crossing.

The following irregularities *held* not to be fatal :—

1. An irregular mark in the nature of a cross so long as it does not lose the form of a cross.
2. A cross not in the proper compartment of the ballot paper, but still to the right of the candidate's name.
3. A cross with a line before it.
4. A cross rightly placed with two additional crosses, one across the other candidate's name, and the other to the left.
5. A cross in the right place on the back of the ballot paper.
6. A double cross or two crosses.
7. Ballot paper inadvertently torn.
8. Inadvertent marks in addition to the cross.
9. Cross made with pen and ink instead of a pencil.

[January 8-10, 1876—BLAKE V.C.]

Mr. McCallum was declared elected by a majority of four votes over his opponent, Mr. Edgar. A petition having been filed, claiming the seat for the latter, a scrutiny of the ballots was obtained, which was had before Vice-Chancellor Blake.

*Hodgins, Q.C., and Edgar* for the petitioner.

*McCarthy, Q.C., and Osler* for the respondent.

BLAKE, V.C.—The parties did not desire that I should state a case for the opinion of the full Court in respect of the matters raised, which seemed to me to involve questions that it would have been well to have had settled by

the Court on a rehearing. I proceed, therefore, at once to dispose of the petition, so as to enable the party dissatisfied, if he pleases, to appeal the case during the coming month.

The considerations applicable to two of the questions raised appear to me to differ from those which should regulate the disposition of the other points discussed. I refer to those irregularities which arose from the act of the deputy returning officer—the one, the use by the electors, in some instances, of pen and ink, supplied by this officer in place of a pencil; the other, the use of ballot-papers in the election not marked by the deputy returning officer, as contemplated by the act.

The duty cast upon this officer is clearly defined by the statute. The 2nd clause in the "Directions for the guidance of electors in voting," in schedule 1, is as follows: "The voter will go into one of the compartments, and with a pencil there provided place a cross opposite the name or names of the candidate, or candidates, for whom he votes, thus x;" and sub-section 4 of section 28 enacts that the returning officer is to furnish each deputy returning officer "with the necessary materials for voters to mark their ballot-papers." The latter portion of section 43 deals with the other point: Each elector "shall receive from the deputy returning officer a ballot-paper, on which such deputy returning officer shall have previously put his initials." It is to be regretted that these officers, by their culpable neglect in omitting to observe these plain and simple rules, should cause the difficulties which have arisen in the present case. Having undertaken these duties, they should have fulfilled them with intelligence, care and honesty, and they may be deservedly censured for involving the candidates in the difficulties and expense connected with the present scrutiny. It does not better their position that possibly their irregularities and mistakes may be covered by a healing clause in the act. Section 80 makes the following provision: "No election shall be declared invalid by reason of a non-compliance with the rules contained in this act as to the taking of the poll. . . or of any mistake in the use of the forms contained in the schedules to this act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this act, and that such non-compliance or mistake did not affect the result of the election." The principles laid down by the act seem to be secrecy in voting,