

The policy of the Provincial Legislature for forty years has been to prevent the vote of a voter, who has done all that the law requires him to do to entitle him to exercise his franchise, from being lost by the mistake or misconduct of a deputy returning officer. The qualification of sec. 108 of the Ontario Election Act was intended to prevent any act of a returning officer from invalidating the vote by an omission to do something that he ought to have done, or doing something that he ought not to have done, and this legislation is to be construed liberally; and, in my view, it was not so construed by the learned Judge of the County Court.

As I said during the argument, the respondent is upon the horns of a dilemma. If, as Mr. Justice Osler says in *Re Stormont Provincial Election* (1908), 17 O.L.R. 171, the counterfoil is not a part of the ballot paper, then there is no mark of identification upon it, and therefore no right to reject it. If the counterfoil is a part of the ballot paper, then the numbers are upon the ballot papers, and the case is brought plainly within the section.

It is either one of two things. If these numbers were not put there by the returning officer, the consecutive numbers would afford no means of identifying the voter. If they were put there by the deputy returning officer, they are marks upon the ballot papers by which it is probable that the voter can be identified, and the saving clause says that any mark which the deputy returning officer puts on the ballot paper, which but for the saving clause would vitiate the vote, is not to do so.

It seems to me that, looking at it in either way, the decision must be in favour of the appellant. I thoroughly agree with what Mr. Justice Osler says in the *Stormont* case, 17 O.L.R. at p. 174: "No doubt the whole question may be reconsidered upon a petition, and it is possible that a different view may prevail, but if there be a doubt, though I do not wish to be considered as intimating that I have a doubt, it should be resolved in favour of the view which gives effect to the intention of the electors rather than in support of one which would disfranchise so large a body of them by reason of the carelessness of an official."

As I have said, I entirely agree with that; and, if I were in doubt about the result, I would act on that view and hold for the purpose of this inquiry that the ballots are not to be rejected.

I have already said, with regard to the ballot in *No. 3 Bosanquet*, that I think the Judge properly rejected it. The ballots marked with a single line were properly rejected, and also the one on which was written the words "my vote."