

deputy returning officer occurred, but it does not appear that the returning officer had any difficulty in ascertaining the number of votes cast at that poll for the respective parties.

The returning officer, finding that the deputy at this poll had not made or signed the statements required by the Act, took a written statement on oath from him, that he remembered that the number of votes cast for Currie was 69, and for Norman 48, and that he had given a certificate to that effect to the agents of the respective candidates. The correctness of that statement on oath is not questioned, nor that the numbers were 69 for Currie and 48 for Norman.

There is nothing in the Act making invalid or void the votes cast at any particular poll in case the deputy returning officer has failed to comply with the requirements of the Act after the close of the poll. And sec. 133, as amended by 62 Vict. (2) ch. 5, sec. 4, makes provision for ascertaining the true facts in case the deputy returning officer has failed to comply with any such requirements. I am, therefore, of opinion that the Judge rightly decided that the votes polled at the subdivision referred to had been properly counted and ought not to be rejected.

Objection was made by the appellant to the Judge's decision with respect to . . . 18 particular ballots. I disposed of 16 of these on the argument, affirming the decisions of the Judge, and I reserved two for further consideration. These were No. 5140, subdivision 1, South Maryburgh, and No. 6814, subdivision 7, Picton.

No. 5140 had a well-formed cross in Norman's division, but in Currie's division there was distinct indication that a cross had been placed there, which was afterwards carefully erased with a knife or other sharp instrument. It is said to have been found in the spoiled ballot envelope, but it is not marked "cancelled," as required by sec. 109, in the case of a spoiled ballot; and moreover the total number of ballots found is one short of the number of votes polled at that subdivision unless this one is counted. I think the fair inference is that this was not a spoiled ballot, and that it was placed in the envelope for spoiled ballots by mistake. If that is so, it ought to have been counted for Norman, as was done in the West Elgin case, 2 Ont. Elec. Cas. 45; and in the Lennox case, 4 O. L. R. 378, 1 O. W. R. 472. -

The other ballot, No. 6814, was also marked in Norman's division, but was rejected, the mark being something like a capital Q. I think numerous decisions require me to hold that this ballot was well-marked, and ought to have been