tempt at an X, I disallow. (Bothwell Elec. Case, 7 S. C. Can. 677.)

Several ballots were not initialed by the D. R. O., but counting the unused ballots in such cases, I find no reason to suspect a fraudulent insertion into the boxes of any ballots not legally supplied, and therefore in those cases, I accept the decision of the officer at the close of the poll, that these ballots were supplied by him. In Sandy Cove, I find seven ballots for Vail, and four for Campbell, on which the Deputy Returning Officer has not put his initials, thus throwing upon the authenticity of the ballots a doubt which it is the decided policy of the law to guard against.

But the gravest mistake (or crime, if it was wilfully done for a purpose) is that in several districts, ballots, besides the initials, bear on their backs certain figures, which it is suggested to me, are the numbers of the voters on the electoral lists, or on the voters' list in the clerk's poll book. District No. 1, Hillsburgh, shows five ballots for Campbell, and eleven for Vail, with these figures on them. Weymouth, forty-five for Campbell, and eighteen for Vail, have such figures endorsed on them; and every ballot cast at No. 10 Church Point, and No. 15 Rossway has figures, with "No." before it thus endorsed. All these illegal marks are in the same handwriting, evidently that of the Deputy Returning Officer. If these figures really represent the numbers of the voters on the electoral or voters' list of the respective districts, then a serious wrong and injury has been perpetrated on every voter who has gone to the polls in full confidence that the secrecy of his ballot was to be sacredly preserved; but who has been delivered a ballot containing on its back a number that would, by comparing it with the list, show for whom he voted.

Mr. Campbell's majority being ninety-five, it would be reduced to fifty-two or fifty-three if I rejected the ballots containing these illegal marks; but I long ago concluded that the County Court judge ought not, on a recount, to reject ballots which have been supplied by the Deputy Returning Officer, in consequence of any mark calculated to identify the voter, unless such mark was placed there by the voter himself. To do so, would be to enable Deputy Returning Officers, through ignorance or evil design, to disfranchise whole districts at their will, and temporarily, at least, to seat in Parliament men who are not sustained by the voice of the people. The Deputy Returning Officer is required by sec. 55, Act of 1874, to "reject" all ballot papers "upon which there is any writing or mark by which the voter could be identified." Common sense requires that this rule should be read with this qualification, viz.: That a Deputy Returning Officer has no authority to disfranchise a voter; and, therefore, he is bound to count and allow a ballot, although he himself has put an illegal mark on it, to render it ineffective. The County Judge is to recount "according to the rules set forth in sec. 55"; that is, according to those rules qualified and limited, as I have explained, as respects ballots illegally marked by the Deputy Returning Officer. He is simply to count and allow what the Deputy Returning Officer *ought* to have counted and allowed, and reject and disallow what the Deputy Returning Officer *ought* to have rejected and disallowed. To go further would be to usurp the functions of the Superior Court, which alone has jurisdiction of election petitions, and can alone only apply the appropriate remedy, viz.: Vacate the election for irregularity, and order a new one, giving the wronged electors a chance to deposit their votes legally. On the contrary, by counting out the candidate for whom the people had properly marked the majority of the ballots, condemning those ballots for a defect in them caused by the Returning Officer's improper act, the County Judge himself would become the instrument of corrupt or ignorant officials to thwart, for the time being, the "well understood wishes of the people," leaving the onus of proceeding to set the election aside, on the man whom the people had signified their wish to elect. I am indeed, not to know whether these are identifying numbers or not, for I cannot take evidence, and will not examine the lists to see. My duty on a recount is, I hold, but little more than ministerial, in accordance with the view of it, which I have already set forth. I concur in every word of the judgment of his Honor Judge Cowan, then chairman of the Board of County Judges of Ontario, a judge of forty years' experience, as reported in 18 *Canada Law Journal* (N S.), 304. In this case, fortunately, the majority is so large that the error would not affect the result; but if it did—if the majority in this case were wiped out, and a majority given to the opposite candidate, by the destruction of these ballots in that way, I should, nevertheless, count them, and leave it to the Supreme Court to prescribe the remedy on petition; and I submit, with all deference and respect, that those of my learned brethren who have felt themselves impelled to a contrary conclusion have exceeded their authority.

Other irregularities of lesser moment have been committed in this election. Some Deputy Returning Officers put in the ballot-box no statement showing the numbers polled for each candidate; many of them did not annex to their statements the affidavit which, by sec. 57, must be annexed to it; some only put a statement in the poll-book;