

Elec. Case.]

ONTARIO REPORTS.

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of these ballots unique and exceptional—written, not printed ballots, giving little more than the names of the candidates—which appeared with the ordinary printed form of ballots in two divisions, and all these Mr. Lash, on behalf of Mr. Miller, urges should be struck out as entirely void—not being ballots at all—wanting in the full name of candidates and in other particulars set forth in the nomination paper. It is urged that the objection goes to the very essence of the requirements of the Act, that the use of such ballots would militate against the chief object of the ballot system, secrecy in vote—would be dangerous as giving facilities for fraud in voting, and that the Act is imperative, making a certain paper a ballot and nothing else—imperative in respect to the voter as well as officers. I am pointed to the various sections in the Election Act showing the particular kind of ballot required to be used, and I am referred to a case going to show that an omission in an Act cannot be supplied. The fact of provision being made that the deputy may supply a ballot box, and no provision being made for supplying ballots not supplied by the R. O., is urged as showing clearly the utter absence of power in the D. R. O. to supply them upon the well known axiom of interpretation, *expressio unius*, etc. I have had the experience of three previous recounts with the assistance of able counsel, and had formed and acted upon a judgment not in accordance with the view urged upon the point first referred to, but I was desirous also to hear Mr. Lash and Mr. Pepler, in order that I might have all the assistance I could towards reaching a right conclusion on the matter now before me, and the second point Mr. Lash takes is the first of the kind I have been required to deal with. I have now had the benefit of having both points very ably argued, and it is thought convenient that I should pass upon these two general objections before taking up the other ballots which have for the most part little in common and involve a separate examination and decision upon each. Indeed, if I arrived at the conclusion that Mr. Lash contends for, the matter of these ballots would practically be of minor importance, for one candidate or the other would have a decided majority by striking out all the ballots coming within the general objection referred to. I desire to say a few words which I have hastily thrown together since the afternoon adjourn-

ment, for my first opinion has not been shaken; I am unable to come to the view Mr. Lash contends for. In examining the provisions of sect. 67 of the Election Act the first consideration that occurred to me was the object and purpose of the enactment—what was in contemplation in engrafting it upon the Election laws. The duty assigned to the judge seems to me to be of a very humble character, and especially limited and restrained. In examining the machinery for carrying out the vote by ballot, it is obvious enough that a great number of agents would necessarily be employed in the several electoral districts (42 D. R. O.'s in this district), and that many of them would probably be of limited education, certainly not accustomed to the work, of varied intelligence, and some possibly not without prejudice; in any case uniformly of decision could scarcely be expected from a number of men of ordinary ability, acting singly, in dealing with the variety of questions which might and probably would arise in reference to the marking of ballots—one rule might be applied by one D. R. O. and another by another elsewhere in the same electoral district. This, I think, the Legislature must have had in view, and as some corrective to the possible evil, deemed it essential that in respect to each particular election at least there should be some method by which a uniform rule, so far as possible, should be applied to all the ballots cast in every division of the same electoral district, and so certain judges conveniently resident were empowered to recount—one mind in place of each and all of the D. R. O.'s. Again, one can understand that in the hurry and possible excitement of dealing with and distributing a number of ballot papers, a mistake in numbers might easily be made, and that from pure inadvertence the ballot account or statement and the ballots cast might not agree, or wilful misrepresentation might occur. The returning officer would only have the statements to go upon and could not test their accuracy; this consideration may also have operated with Parliament in providing for an inspection of the ballots actually cast and a summing up of the vote in presence of parties interested, and with appropriate provision for the safe keeping of the ballots. Another reason may have prevailed. It is noticeable that not merely the parcels containing used and rejected ballots are to be opened, but the spoiled ballots as well, and I strongly incline to think it may