

Now, every word of the judgment up to this would have to be accepted as good law if it were possible to establish the position that, in exercising their functions under the Election Act, the judges having jurisdiction could not possibly err, and would be incapable of exceeding such jurisdiction. But the whole judgment disregards the very ground upon which the writ of prohibition issued, namely, that the County Court judge was proceeding to hold a recount of votes where the Election Act gave him no authority to do so. It must be assumed that the Supreme Court of New Brunswick was right in holding that he had no such authority, for their judgment was not appealed against, and, on this point, stands entirely unimpeached. Then, according to Judge Fournier, the object of Parliament in transferring election matters to the courts can only be accomplished by allowing those authorized to deal with them to usurp jurisdiction if they choose, and be subject to no control. In other words, there must be a speedy decision, whether right or wrong, whether authorized or unauthorized, and, if the latter, no interference is permitted.

Apparently the only solid ground upon which this judgment can stand is the authority of the *Centre Wellington Case*, 44 U.C.R. 132, in which the Court of Queen's Bench in Ontario refused a mandamus to compel a County Court judge to hold a recount. He relies upon this, however, on the assumption that mandamus and prohibition are absolutely identical, whereas it requires very little consideration to show a great dissimilarity between them. To command a recount of votes where the jurisdiction is doubtful may be productive of great, and, perhaps, irreparable, mischief, and is, moreover, unnecessary, as the same object may be attained by an election petition. On the other hand, to prohibit such recount may prevent the very mischief a mandamus, or allowing it to proceed, might occasion, and, at the worst, can only cause delay. It is true that the Chief Justice in the case just cited expressed the opinion that neither mandamus nor prohibition would lie in such case, but he was only dealing with the former, and the different considerations affecting the other may never have occurred to him. At all events, it is only the dictum of a single judge, and cannot override the matured opinion of five judges of the highest court in New Brunswick.

But the final conclusion, from the argument above outlined in