

returning officer was to be held a ground for rejecting the ballot.

It is also to be noticed that the election Judge from whose judgment the appeal to the Supreme Court was taken, had treated it as clear that all the votes at number 3 Dawn must have been rejected because the deputy returning officer had indorsed on each ballot paper the number of the voter on the voters' list, "so that," as he said, "there could be no difficulty whatever in ascertaining how each elector had voted:" p. 680.

In the face of the decision of the Election Court in the East Hastings case and of the body of judicial opinion to which I have referred, it would not be open to me to give effect to my own view as to the scope of the provision for rejecting ballot papers upon which a writing or mark by which the voter could be identified appears, even as that provision stood before the amendment made in the Revised Statutes and subsequently re-enacted in the Act of 1900, and the amendment then introduced and so re-enacted makes it still more impossible for me to do so.

The amendment amounts, in my opinion, to an adoption by Parliament of the construction which had been given to the enactment in the East Hastings case, and was apparently designed to prevent a ballot paper which the deputy returning officer had numbered, in the proper discharge of his duty, and as he was required by the Act to do, from being rejected at the counting of the ballot papers. The amendment was probably unnecessary, as a writing or mark which the deputy returning officer was required by the Act to put upon the ballot paper, although it afforded means for identifying the voter by whom it had been cast, could not by possibility have been intended to be treated as a writing or mark within the meaning of sec. 80. The introduction of the amendment, nevertheless, in my opinion, is a clear indication that it was intended that a writing or mark, though made by the deputy returning officer, if it was one by which the voter could be identified, unless it was the numbering by the deputy returning officer in the cases provided for in the previous section, should render necessary the rejection of the ballot paper in the counting of the votes.

It was said by counsel for the petitioner, that in a comparatively recent unreported case (the North Bruce case) it was held by the Chancellor of Ontario and my brother Street that ballot papers numbered as those in question in this case were, ought not to be rejected under the provisions of sec. 80; but a perusal of the shorthand notes of the proceed-