

votes cast at the poll, the votes were properly counted and ought not to be rejected.

3. A ballot was properly counted for a candidate which had a well formed cross in his division, although there was a distinct indication that a cross had been placed in the other candidates division which was afterwards erased: *Re West Elgin*, No. 1 (1898) 2 O.E.C., at p. 45; and *Re Lennox* (1898) 4 O.L.R. 378, followed.

4. A ballot with a mark 2 in one of the divisions was well marked: *Re West Huron* (1898) 2 O.E.C. 38.

D. C. Ross, for the appeal. *C. H. Widdifield*, contra.

HIGH COURT OF JUSTICE.

Master in Chambers.] DUNLOP v. DUNLOP. [February 10.

Evidence—Ex parte motion—Examination of witness.

Con. Rule 491 applies to an ex parte motion, and therefore a witness may be examined in support of such a motion.

W. J. Elliott, for plaintiff. *Middleton*, for defendant.

Master in Chambers.]

[March 2.

REN EX REL. JAMIESON v. COOK.

Municipal election—Councillor elected while member of school board—Disqualification.

The respondent having been elected in January, 1903, as school trustee for two years took the oath of office on Jan. 21st, 1903. On Dec. 26th, 1904, he was nominated as councillor and school trustee, but next day filed with the secretary of the school board a memorandum in these words: "I hereby tender my resignation as candidate for trustee for 1905." He took the oath of qualification as councillor Dec. 27th, 1904, made his declaration of office as such on Jan. 9th, 1905, and took his seat in the council. The first meeting of the new school board when the same was organized was held Jan. 18th, 1905.

Held, that the election of the respondent as councillor must be set aside: *Rex ex rel. Zimmerman v. Steele* (1903) 5 C.L.R. 565 followed; *O'Connor v. City of Hamilton* (1904) 8 O.L.R. 391 referred to.

F. E. Hodgins, K.C., and *D. S. Storey*, for relator. *J. E. Jones*, for respondent.