from the recount, as conducted by the county judge there is a provision made in subsection 6 of section 12, of the Revised Statutes of Ontario:

That in case of appeal to the Court of Appeal the judge of the Court of Appeal may direct by whom the cost of appeal shall be paid.

And the judge makes the order accordingly. But so far as the recount is concerned, no deposit is required. The only restriction with respect to a recount in Ontario is that in case the candidate has a majority of 50 or less, he can secure a recount, but if his majority exceeds that number no recount can be granted. I see no reason why we in Ontario should be called upon to deposit anything for a recount. If I wish to have a recount I secure the assistance of a lawyer and pay him for his services, the judge receives a salary for his services, and the returning officer receives payment for his services. No witnesses are required, and there is no cost attached to the proceeding at all. I see no reason therefore why we should be called upon to make a deposit. I have had a recount on a local provincial contest, but I was not called upon to put up a deposit. I fancy if I had been called upon to put up a deposit, very little of it would have been returned to me after the lawyers got through with it.

Mr. BERGERON. I again call the attention of the committee to subsection 9 of this section:

The judge shall forthwith certify the result of the recount or final addition to the returning officer, who shall then declare to be elected the candidate having the highest number of votes; and in case of an equality of votes, the returning officer shall give the casting vote.

This provision is in conflict with section 86 which we passed this afternoon, and which says that if there is an equality of votes the returning officer shall give his casting vote. Well, he has already given his casting vote in the first place, and here you allow him to give another vote. But you are prevented from doing that by section 77, which says that no person shall vote more than once in the same electoral district at the same election. Now, under this subsection the returning officer can vote twice. Why not make the law in such a way that we will not give a man two votes when he can have but one? Whether he votes by ballot or not makes no difference.

Mr. RUSSELL. His vote has only been counted as one vote in the final result.

Mr. DAVID HENDERSON (Halton). I am unable to see the matter in the same light as the hon. member for Beauharnois (Mr. Bergeron). It seems to me that when a recount is asked for, the vote which the returning officer gave to break the tie is practically void and done away with, because the final determination of the election is to be decided by another tribunal. Then he gives his casting vote if necessary, and the only vote which really counts. His first vote is absolutely void the moment a request is made for a recount.

Mr. BERGERON. But he has already voted.

Mr. HENDERSON. But when the recount is asked for, practically that vote is cancelled.

Mr. McNEILL. But suppose no recount was called for; in that case he had elected the candidate.

Mr. BERGERON. If there is no recount will that candidate remain elected, and if so by whose vote?

Mr. HENDERSON. I repeat that the moment the recount is asked for the first vote given by the returning officer is void by operation of the law, it ceases to have any force or effect whatever, because the final decision of that election is handed over to the judge. If the judge finds there is still an equality of votes without counting in the vote of the returning officer, he then refers it back to the returning officer to give his final vote. But certainly he does not vote twice.

Mr. INGRAM. Can any person point out why it is that the returning officer has not a vote during the election the same as any other elector. The object is, in the case of a tie, that he can give his casting vote.

Mr. POWELL. The hon. member for Simcoe (Mr. Bennett) brought a point to the attention of the hon. Solicitor General which, although I do not agree with him in his contention, deserves some consideration on the part of the promoter of the Bill. It is in respect to judicial districts in which there may be more than one county court judge, or electoral districts which may be, in part, in different judicial districts. In view of that, I think it would be better that the word 'the' in the fourth line of the section should be changed to 'a.' And then, at the 13th section, it may be added, that in case an application be made to more than one judge, the judge to whom the application is first made shall be seized of jurisdiction to the exclusion of all the rest. The hon. Solicitor General evidently is of the opinion that the matter would work out on that principle. I think it is the common law of the country. A case was cited in Ontario in which one county court judge was first seized of jurisdiction, and another attempted to oust him and to take up a second application. The second judge, if he were aware that the first judge had had the application made to him was really violating, not the Criminal Code, but the criminal common law of the country. I shall call to the hon. Solicitor General's attention the case of Regina vs. Stainsbury 4 T. R. 456, and Regina vs. Great Marlow 2 East 244. These cases are summarized in the following language: