

plaintiff may be advised to bring for the rescission of the contract to purchase the shares; or the plaintiff may have the option of a new trial confined to the representation as to the \$40,000, on payment of the costs of the last trial and of this motion.

BOYD, C.:—The only matter to be considered is as to the \$40,000 representation. This was not complained of till a late stage, and then by amended pleading. The representation as pleaded is not as proved, but materially varies therefrom. The evidence as to what was represented is not distinct and clear cut, such as would be expected in order to establish fraud and deceit, and altogether I am not disposed to differ from the conclusion of my brother Meredith.

J. S. Mackay, Woodstock, solicitor for plaintiff.

Smith & Mahon, Woodstock, solicitors for defendants.

MACMAHON, J.

MAY 12TH, 1902.

CHAMBERS.

REX EX REL. IVISON v. IRWIN.

Municipal Election—Tampering with Ballots—Evidence of Voters as to how they Cast their Ballots not Admissible—Evidence Viva Voce Supplementary to Affidavit Evidence Admissible—Discretion to Refuse Leave to Cross-Examine Affiants—Irregularities.

Appeal by respondent from the judgment of the senior Judge of the County Court of Essex, declaring void and setting aside the election of the relator as a councillor of the town of Leamington.

A. B. Aylesworth, K.C., for the respondent.

J. H. Rodd, Windsor, for the relator.

MACMAHON, J.—There were ten candidates for the office of councillor for the town of Leamington, of whom only six could be elected. The respondent was elected by a majority of 101 votes over Mr. Coultice, the minority candidate who polled the vote next in number to the respondent, the vote being :

Irwin.....	300
Coultice.....	199

Majority for Irwin... 101

Out of 142 ballots cast at poll No. 3, 132 were found to be marked for the respondent, while 29 voters by their affidavits and 3 others who gave *viva voce* evidence—in all, 32 voters,—swear that they did not vote for him; there is the strongest possible evidence that in some way access was had to the ballot box and the ballot papers tampered with.

With regard to the objection of the improper reception by the County Court Judge of *viva voce* evidence on behalf