L. J. 101; 29 & 30 Vic. c. 52, sec. 160, and subsections.

ADAM WILSON, J.—I do not think I am obliged to hold that every irregularity shall defeat an election. The present case shows that it would be a harsh application of the law if it were made as it is claimed.

The clerk of the township in making out five certified lists of the candidates names for the offices of councillors omitted one of the ten names from one of the lists, so that the list for division No. 2 did not contain the name of Alex. Henry as a candidate, though the other four lists contained all the names correctly.

The affidavits show that six votes in No. 2 division were thus lost to Henry, and none were lost to him, as appears in the other divisions that I can make out, though something of the kind is suggested.

These six votes would have made no difference in the result of the contest so far as he is concerned, for they would, if added on to the 145 votes, give him only 151, whereas there were other two persons, Stubbs and the relator, who had 187 votes, and, unless their standing can be impeached, the additional votes if allowed to Henry cannot at all serve him.

But Walker, the relator, argues that they might have served *him*, and as there was an equality between Stubbs and himself, he might have had some additional vote or Stubbs might have had some vote less, and so he would have been returned; but this is a speculative view of his case and rights, and the result might have been just the other way.

If the omission of one of the candidates names from the list out of ten candidates must necessarily defeat the whole election, independently of any effect which that omission had or could have had upon the results of the election, I do not see why the omission of a single voters name from the book delivered to the returning officer should not as an abstract proposition produce the like consequences.

I think this must be determined by what effect the omission of the name has had or might reasonably be considered to have had upon the final result of the election, and not on the mere abstract ground of an omission; and viewing the case in this manner I do not see that the omission complained of did produce, or can be presumed to have produced any material change in the voting, and certainly none in the persons who have been seated as the elected members.

When bad votes are given an election is not interfered with unless those votes, if struck out, would put the candidate for whom they were given in a minority: *Reg.* v. *Thwaites*, 1 E. & B. 704.

This is the rule in every case of parliamentary scrutiny, for the enquiry is, which member has the majority.

In the election of mayor where a councillor was excluded from voting, and his vote in consequence of an equality would have elected a different person, the election was set aside: *The Queen* v. *Coaks*, 3 E. & B. 249.

In *The Queen* v. *Mayor of Leeds*, 11 A. & E. 512, the list of the councillors elected containing the name of P. as one of the number, was published by the particular time named in the statute. After the expiry of this time, and on discovering a supposed error, the mayor and assessors published another list containing the name of R. instead of P. The court held that P. having made the necessary declarations was the councillor *de facto*, and that all that was done in correcting the list after the hour fixed by statute was void.

Voting papers not signed and not shewing the situation of the property for which the voter was rated on the burgess roll were held to be bad. The object of the statute being to prevent personation as much as possible: *Reg.* v. *Tart*, 5 Jur. N. S. 679.

In *Seale* v. *The Queen*, 8 E. & B. 22, the mayor and assessors at the revision of the burgess list erroneously treated the burgess list *de facto* made out for one of the parishes as a nullity, and made out a fresh list for that parish, and inserted in it the name of a person in the original parish list who proved his title to their satisfaction, and the name thus inserted was transferred to the burgess roll. It was held that such person, though qualified in all respects to be on the list acquired by the act of the mayor and assessors, no title to be a burgess The lists sent in were valid, and the mayor and assessors had no power to do anything else. than to act on the lists sent in, by inserting or expunging names on these lists to ignore the list sent in, and to substitute a fresh one was wholly illegal,—the plaintiff in error was charged with usurping the office of burgess.

Brumfitt, appellant v. *Bremner, respondent*, 9 C. B. N. S. 1, shews also a case of alteration of a list to cure a mistake by which a name was supposed to have been erased which was not erased, and the correction was maintained.

It is certain that Henry could not maintain an action against the returning officer for refusing to allow him to be voted for until his name was put in the poll book, because in such an action malice must be alleged and proved, and as the candidates name was not on the certified list of the clerk, malice could not be presumed against the returning officer: *Tozer* v. *Child*, 7 E. & B. 377.

The clerk on the day after the nomination is to post up in his office the names of the persons proposed for the respective offices. This I should think was directory only, and if he did it the second day after the nomination, an election had upon it would not be avoided.

The clerk is also to provide the returning officer of each division with a certified list of the names of such candidates, specifying the offices for which they are respectively candidates. No time is named when these certified lists are to be provided. No doubt it must be sometime before the polling day, for the clerk is also to provide the returning officer with a poll book, and he or his clerk shall enter therein in separate columns the names of the candidates proposed and seconded at the nomination; all of which must be done of course before the voting begins.

It may be presumed the returning officer is to take his information from the certified list of the clerk as to the persons who were the candidates that were proposed and seconded at the nomination. But the act does not say so. I should think the returning officer could not properly insert any name on the clerk's list of his own authority, or any name