

tunity of electing the candidate which the majority might prefer. This would certainly be so, if a majority of the electors were proved to have been prevented from recording their votes effectively according to their own preference, by general corruption or general intimidation, or by being prevented from voting by want of the machinery necessary for so voting, as by polling stations being demolished, or not opened, or by other of the means of voting according to law not being supplied, or supplied with such errors as to render the voting by means of them void, or by fraudulent counting of votes or false declaration of numbers by a returning officer, or by other such acts or mishaps:" p. 743.

These observations by Lord Coleridge were quoted with approval by Harrison, C.J., in *In re Johnson and County of Lambton* (1877), 40 U. C. R. 297, at pp. 306-307, and acting upon the same principle it was held in the *East Hastings* case that the effect of the numbering of the ballots and their consequent rejection was not to seat the candidate who, if the rejected votes had been counted, would have been in a minority, but to avoid the election, and it was avoided accordingly.

The same conclusion ought, in my opinion, to be reached in this case.

In this case the majority of the electors had not in fact a fair and free opportunity of electing the candidate whom they preferred, for enough of them to turn the majority into a minority were prevented from voting by the means of voting according to law being supplied with such errors as to render the voting by means of them void, for every ballot paper supplied at polling station No. 23, when it was handed to the voter, was so marked as to render the voting by means of it void, and so in effect every voter at that polling station was disfranchised.

I would, therefore, answer the questions of the stated case as follows:

That the respondent is not the duly elected member for the electoral district of Wentworth.

That the petitioner is not the duly elected member for the said electoral district of Wentworth.

That the said election for the electoral district of Wentworth is null and void.

And, following the course taken in the *East Hastings Case* and the *Russell Case No. 2*, there should be no costs to either party.

TEETZEL, J., concurred.