

if there is reasonable ground for believing, not that the majority has actually been prevented from making its choice, but that it may have been prevented, the common law declares the election void. That surely means that to prevent this result in such a case as the present the respondent must shew that the irregularities did not affect the result. Who can say that if the lists were made up on the principle admitted by the town clerk, and every voter on the revised list was disfranchised unless his name was also on the rate roll, there is not reasonable ground for believing that the result may have been affected by the irregularity? I greatly doubt if there is one of the Judges who heard the appeal in the former case who does not believe that the result would have been different if the proper lists had been used. The evidence then before the Court is not available here. It would be if the learned trial Judge had not rejected the evidence tendered by the petitioner, and I think it is a most remarkable contention for a respondent to make, that because he has obtained from the trial Judge a ruling that has excluded the petitioner's evidence, or at least acquiesced in that ruling, he should ask us to infer against all the probabilities of the case that the excluded evidence might shew that the result had not been affected. The question as to the burden of proof can easily be answered, it seems to me. Suppose that for some reason the rate book could not be produced and that no further evidence could be given than that already before the Court, could the election be sustained? The answer seems to me too clear for argument that in consequence of the erroneous principle on which the lists were made up, disfranchising all the voters named thereon whose names were not also on the rate book, the election would have to be declared void. If this be so the burden was clearly upon the respondent to bring forward some fact that would save it, instead of asking us to infer that the evidence which the petitioner sought to introduce, and which must have been excluded at the respondent's instance, or with his concurrence, might possibly have that effect.

The appeal should, in my opinion, be allowed, and the election declared void.

New trial ordered.