

appear that John Smith was an elector who had voted, unless reference were made to the poll book, and what would such a reference be but the calling in of extrinsic evidence?

It is, nevertheless, I confess, singular that the only provision in the Election Act dealing with the effect of a writing or mark on the ballot paper by which the voter could be identified, except the directions for the guidance of electors, is that providing for the rejection of the ballot paper when the counting of the votes is taking place at the close of the poll, and that there is nothing in terms providing that the ballot paper shall be void, and the result of the legislation, as it has been interpreted by the Courts, is certainly anomalous. The deputy returning officer must decide as to the rejection of the ballot paper on the inference which may be drawn from what appears on the ballot paper itself, and that alone, and on the recount the Judge is confined to the same inferences. The decision of the deputy returning officer is final, subject to reversal on recount or on petition questioning the election or return—sec. 81—and yet on petition questioning the election or return, according to the decisions, the scope of the inquiry is widened, and extrinsic evidence is admissible to prove that the writing or mark which appears on the ballot paper is one by which the voter could be identified.

The cases and opinions to which I have referred are conclusive against the second ground urged by Mr. Aylesworth, for they establish beyond doubt that a number placed on the ballot paper, corresponding with that set opposite to the voter's name, is a writing or mark by which the voter could be identified, within the meaning of sub-sec. 2 of sec. 80.

I come therefore to the conclusion that all the ballot papers in question were rightly rejected.

There remains to be considered the question whether the election should be avoided or the respondent should be declared to have been elected.

In *Woodward v. Sarsons*, L. R. 10 C. P. 733, it was said by Lord Coleridge: "An election is to be declared void by the common law applicable to parliamentary elections if it was so conducted that the tribunal which is asked to avoid it is satisfied, as matter of fact, either that there was no real electing at all, or that the election was not really conducted under the subsisting election laws. As to the first, the tribunal should be so satisfied, i.e., that there was no real electing by the constituency at all, if it were proved to its satisfaction that the constituency had not in fact had a fair and free oppor-