

How many he means by "some" does not appear, but comparison of the list as completed by the town clerk and given to the election officers with that prepared by the deputy town clerk which had not erased from it the names of the persons I have been referring to, shews that the number of the persons referred to was about 300. More than enough to have possibly changed the result of the election if one fourth of them had voted. This, however, is assumed in the correctness of the McDougall list of which there is no evidence in the case. The only way by which the correctness of the list on which the election was conducted can be determined is by comparison with the rate roll and revisors' lists. I think the learned County Court Judge should not have rejected the evidence tendered, and therefore there should be a new trial and the case remitted back to the said Judge who tried the same.

RUSSELL, J.:—I agree with everything in the opinion of my learned brother Graham, except the conclusion. The clerk, in my opinion, erred in red-lining names appearing on the voters' list because he could not find them entered on the rate book. He had a right to red-line any name appearing on the rate book of a person whose taxes and rates had not been paid. But a voter whose name appeared on the revisors' list could not be disfranchised because his name was not on the rate book. The list prepared for the purpose of the election was prepared therefore on a wrong principle. There can be no doubt about this. He says he found some names on the voters' lists which he did not find on the rate or poll books (meaning, I suppose, poll tax books) of the town—the latter not being, I think, provided for by statute but probably in use as a convenience. "I red-lined these names." If the irregularity was merely that of the accidental omission of a few names it would not be a vital matter, because the petitioner must establish that it was reasonably probable that the result could be affected. But where the foundation of a valid election is shewn to be altogether wanting, as I think it is shewn when the lists are made up on a wrong principle, I incline to the opinion—in fact I have no doubt whatever—that the burden is upon the respondent to shew that the irregularity did not affect the result. If the rate book had been admitted it is stated by counsel for the petitioner that it would have shewn that several hundred qualified voters had been red-lined and thus disfranchised. The majority of the