The petitioner asserts the negative of this proposition, and the burden which he thereby assumes is that of showing that facts occurred at some step in the election proceedings which interfered in a substantial manner with the free choice of a member for the constituency by the majority of the electors, in accordance with the principles laid down in *The Saskatchewan Election Act,* R.S.S. 1930, ch. 4. Now it is the clear intention of the law that the member for a constituency shall receive a majority, over his nearest opponent of the qualified votes cast at the election. If the facts disclosed make it impossible to determine that any candidate is in this position, no candidate can validly be declared elected, and the election is void. That it is the duty of the Court to investigate such questions, I have no doubt. Sec. 4 of *The Controverted Elections Act* says that the petitioner may pray for a declaration that the election be declared void and set aside, and sec. 5 of *The Saskatchewan Election Act* says that no election shall be invalidated by reason of certain irregularities enumerated in the section if it appears to the Court that, notwithstanding these irregularities, the election was conducted in accordance with the principles of the Act, and that the result of the election was not affected. As *The Controverted Elections Act* is the only statute which gives the Court jurisdiction over elections to the Legislative Assembly, sec. 5 of *The Saskatchewan Election Act* must be read with it, as indicating the nature and extent of the jurisdiction intended to be conferred. Upon a petition of this sort the Court therefore has the power, and the duty, to ascertain whether the petitioner has shown the existence of circumstances which render the election invalid in the interest of the constituency as a whole. If so, the petitioner has proved his case and the election must be set aside, however unfortunate this result may be to the respondent, who may suffer from no personal disqualification and may have deserved no blame.

"In the case before us it is shown by evidence adduced by the petitioner that 17 unqualified persons voted at the election. The majority of all the votes polled (not counting spoiled ballots) was five in favour of the respondent. The law will not allow the secrecy of the ballot to be violated, even in the case of unqualified voters; Sec. 170 of the Act; *In re Lincoln Election Petition,* supra, at p. 210. There is, therefore, no means of finding out for which candidate these illegal votes, or any of them, were cast. But as the majority in favour of the respondent is only five, it cannot be said that there was an electing of a member by a majority of the qualified electors as required by law. In such a case, on the strength of the authorities I have cited, the election must be declared void."

This reasoning is so precisely applicable to the case before us as to be overwhelmingly persuasive.

Descending from the general to the particular we propose first to deal with those cases in which the voters were either not vouched for or were vouched for by unqualified persons.

In *Blanchard vs Cole* (1950) 4 D.L.R. 316 the Supreme Court of Nova Scotia discussed an almost identical situation in the light of similar legislation. The two persons whose votes were contested were not enrolled on the voters' list. The applicable legislation provided as here, that although not enrolled they might vote if resident in the Electoral Division on polling day provided they swore to certain facts and were vouched for on oath by voters in the district. The two voters were not sworn or vouched for as required. The