

fore in respect of the 209 persons who voted in polling divisions where they were not ordinarily resident on polling day, it can be said that it does not matter whether they were on that day resident in the Yukon or elsewhere. Residence in the Yukon will not cure their disqualification.

Two classes of persons are entitled to vote at a polling division:

1. Persons whose names are enrolled on the list of electors for that polling division.
2. Persons not so enrolled who
 - (a) are ordinarily resident in the polling division on polling day and who
 - (b) comply with the requirements of s.s. (2) of s. 46.

It is clear from admissions made by the respondent that the number of persons who purported to vote pursuant to s. 46 but who were not, in fact, ordinarily resident on polling day in the polling divisions where they voted is large enough to affect the result of the election.

It is also clear from the evidence that the number of persons who, whether or not they were on polling day ordinarily resident in the polling division where they voted, failed to comply with the requirements of s.s. (2) of s. 46 is likewise large enough to affect the result of the election.

We have before us non-compliance with s. 37 and s. 46 by some 465 voters. Should this void the election, or should these errors on the part of voters and election officials be held insufficient to void the election?

The respondent invokes s. 84 of the Canada Elections Act which reads thus:

“84. No election shall be declared invalid by reason of non-compliance with the provisions of this Act as to limitations of time unless it appears to the tribunal having cognizance of the question that such non-compliance may have affected the result of the election, or as to the taking of the poll or the counting of the votes, or by reason of any want of qualification in the persons signing any nomination paper, or because of any error in the name, or omission of or error in the address or occupation of any candidate as stated on such nomination paper as received by a returning officer, or of any insufficiency in any publication of any proclamation, notice or other document, or any mistake in the use of the Forms contained in this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance did not affect the result of the election.”

In *Lamb vs McLeod* (1932) 3 W.W.R. 596, Turgeon, J. A. discussed a similar section of the Saskatchewan Elections Act and a situation markedly akin to that which exists here. We cite from p. 598:

“In petitions of this kind the Court is not confined to a balancing of the relative rights and merits of two candidates. The inquiry may go beyond the candidates and strike at the election itself. As we remarked by Madden, J. in the *North Louth Case* (1911) 6 O'M & H. 103, at 114, ‘an election may be voided on two very different classes of cases, personal to the candidate or his agent, or affecting the constituency as a whole.’ The question then becomes (and in the present case it did become) *having regard to the rights of the electors: Was a valid election held?*”