

mishaps. And we think the same result should follow if, by reason of any such or similar mishaps, the tribunal, without being able to say that a majority had been prevented, should be satisfied that there was reasonable ground to believe that a majority of the electors may have been prevented from electing the candidate they preferred. But, if the tribunal should only be satisfied that certain of such mishaps had occurred, but should not be satisfied either that a majority had been, or that there was reasonable ground to believe that a majority might have been, prevented from electing the candidate they preferred, then we think that the existence of such mishaps would not entitle the tribunal to declare the election void by the common law of Parliament."

That quotation was used with approval in *Howley vs. Campbell* (1939) D.L.R. at page 438, a decision of the Nova Scotia Court of Appeal, though not on the point in issue in the present case. With respect, we think the quotation sets out the rule by which the present case is to be decided because what happened here comes within the first branch of the rule, the question being, was there a real election. It was not within the second branch, an election that "was not really conducted under the subsisting election laws," that is, the Canada Elections Act. Lord Coleridge gave as an example of that kind of an election the case where a constituency voted but not by ballot where the election laws called for an election by ballot. Lord Coleridge, having stated the rule, then went on to say, at page 745:

"If the rule be as thus stated, then the next question is, whether we can say, upon the facts disclosed in the present case, that a majority of the electors have been, or that there is reasonable ground to believe that a majority may have been, by misconduct or error of the presiding officers prevented from recording their votes with effect."

The Court in the *Akaroa* case, having considered the *Woodward* case and several others then proceeded, at pages 164 and 165:

"Adopting, therefore, the language of *Woodward v. Sarsons*, the question in the present case is whether we can say, upon the facts disclosed, that a majority of the electors have been, or that there is reasonable ground to believe that a majority may have been, prevented from recording their votes by reason of ten out of the eleven polling booths having been closed at 6 p.m. instead of at 7 p.m. There is no duty imposed on the Returning Officer to notify in any way when the poll closes. It is assumed that the voters will themselves know the legal hour. Had there been such a duty, and had an erroneous intimation of the hour of closing been officially made, we might have had to consider the case of voters who might have been unable to vote before six, and who might have been deterred by the erroneous official intimation from voting at all. Such cases might have caused considerable difficulty. As the case stands, the error could only have affected those persons who, after six o'clock, either presented themselves at a polling-place for the purpose of voting, or who, intending to do so, were informed that the polling places had closed. Had the majority in favour of the successful candidate been small it may well be that, without any evidence on the part of the petitioner, the possibility of such cases having occurred would have induced such an amount of reasonable doubt as to their possible effect on the result of the election as would have made it necessary for the respondent to give evidence. In that case, if he failed in showing facts negating the reasonable possibility of the result having been affected, the Court might have felt compelled to hold the election void. But the majority in the present