

otherwise." The duty of the council then is purely ministerial, if three-fifths of the electors voting approve; and any defects in the manner of passing the by-law would, in my opinion, therefore, be of little consequence. The proviso in R. S. O. ch. 245, sec. 141 (1), is: "Provided that the by-law, before the final passing thereof, has been duly approved of by the electors of the municipality in the manner provided by the sections in that behalf of the Municipal Act." Let the by-law be approved of by the electors in the manner provided by secs. 338 et seq. of the Municipal Act, that is, by voting after such advertisement and other proceedings as are prescribed; let three-fifths of the electors, as a fact, approve in this way of the by-law; and the duty of the council is clear. I do not think that any proceedings after the polling are necessary, such as a summing up, or declaration by the clerk, as provided by sec. 364 or otherwise; if the voting, as a fact, has resulted in the statutory approval, the duty of the council is clear. Any proceedings taken after the polling may be of assistance to the council in determining the actual state of the poll; but I think that the council may assure themselves of this by any other means; and the validity of the final passing of the by-law will depend upon the fact of the result of the voting, and not upon the method of ascertaining such fact. There may be some doubt as to the application of secs. 367-374 to a by-law of this kind at all. I think there need be no declaration by the clerk of the council as to the result of the voting; and consequently the elector who might desire a scrutiny may be in a difficulty under sec. 369. But if these sections do apply, I am unable to accept the judgment of the learned Chief Justice holding that for 2 weeks after such a declaration, if it be made, the council cannot pass the by-law. There is no such prohibition in terms, and I do not think the prohibition should be applied. The whole purpose of a scrutiny would be to shew that the necessary three-fifths had not approved of the by-law; that being shewn at any time, the basis upon which the by-law rests fails, the necessary pre-requisite is found to be wanting (6 Edw. VII. ch. 47, sec. 24 (5)); the council are proved not to have had the power to pass the by-law they have purported to pass. The result will follow that follows in any other case of a by-law passed without jurisdiction; any action or proceeding under it would fail, and it might be quashed by the Court. There would be no necessity of any repeal; that, it is argued, is for-