

12 feet by 40 and about 2 feet high. This platform the supporters of the by-law call the "polling place." The body of the hall was allowed to be filled by voters without restriction, and many came near the deputy returning officer's table. It is asserted, and not denied—and indeed it is obvious—that these could hear the manner in which illiterate voters directed their ballots to be marked.

These irregularities are in themselves, as it seems to me, sufficient to justify the judgment appealed from. . . .

[Reference to *Re Hickey and Town of Orillia*, 17 O.L.R. 317, 340, 342.] . . .

It may be—it is not proved that it is not—the case that every one of the illiterates was adverse to the by-law and voted for it because he knew that the manner in which he voted might become public. The onus of supporting a by-law, under sec. 204 of the Municipal Act, 1903, is upon those setting up that section, and they must shew that the irregularity did not affect the result of the election.

I do not go through all the other irregularities proved—it is to my mind plain that the onus has not been met by the supporters of the by-law.

But we are pressed by the consideration that these irregularities were acquiesced in by the agents of those opposed to the by-law. That there was no objection is clear. . . .

[Reference to *Re Sturmer and Town of Beaverton*, 24 O.L.R. 65, at p. 76, per Boyd, C.; *The Queen v. Ward*, L.R. 8 Q.B. 210; *Regina ex rel. Regis v. Cusac*, 6 P.R. 303; *Regina ex rel. Harris v. Bradburn*, 6 P.R. 308; *Rex ex rel. McLeod v. Bathurst*, 5 O.L.R. 573.]

There is no evidence of any actual knowledge and acquiescence of these applicants. And I am unable to convince myself that the knowledge and acquiescence of the "agents" can have the same effect—they are appointed by the head of the municipality to attend at the polling place on behalf of the persons interested in and desirous of promoting or opposing the by-law: Municipal Act, 3 Edw. VII. ch. 19, sec. 342; but, in my view, it is going quite too far to say that they must make an objection at the time to an irregularity, or no one can take advantage of such irregularity on a motion to quash. . . .

The personal disqualification—for that is really what it is—of one who stands by and acquiesces in an irregularity does not attach to one who does not, but against whom the facts alleged are but that some one appointed by the head of the municipality to represent all who have the same interest and desire as himself