

TEETZEL, J.:—The grounds of objection are: (1) that the day fixed for taking the votes was more than 5 weeks after the first publication, in violation of sec. 338, sub-sec. 1, of the Municipal Act, 1903; (2) that the council which finally passed the by-law, after it had been voted on by the electors, was not legally elected, and that the persons who assumed to be members thereof, were mere usurpers of office; and (3) that the by-law was not duly signed by the reeve.

The by-law fixed 1st January, 1906, as voting day, and the council intrusted the clerk with the duty of publication. By mistake he caused the by-law to be published in a newspaper on 22nd November, which would be more than 5 weeks before voting day. Very shortly after the publication on 22nd November, the clerk's attention was called to the mistake, and he at once ordered its cancellation; and on 29th November he caused another publication of the by-law to be made in the same newspaper, and on or about 30th November caused 4 copies of the by-law to be posted, as required by the Act. Appended to the copies of the by-law so published was the notice required by sub-sec. 3 of sec. 338, in which the date of the first publication was certified to be 29th November. The publication on 22nd November was thereafter regarded by the clerk and council as a nullity, and the publication on 29th November as the real first publication.

It is manifest that the mistake was unintentional, and there is not in the material any suggestion that the result of the voting was in the slightest degree affected by it. . . .

[Re Armstrong and Township of Toronto, 17 O. R. 766, distinguished.]

In my opinion, it would be doing great violence to well settled rules of construction to hold that the will of the electors must be thwarted by the unintentional mistake in question, notwithstanding its immediate correction, and notwithstanding the absence of any suggestion that such mistake in any way affected the result of the vote.

The objection is therefore overruled.

As to the second objection, I do not think it necessary to express any opinion upon the validity of the election of the members of the council who finally passed the by-law. Whether legally elected or not, they were in fact returned as duly elected, by the clerk, who acted as returning officer,