

RIDDELL, J.:—An objection was taken at the opening of the argument that the town corporation had waived the right of appeal. It appears that the judgment appealed from having been given 25th April, 1907, the council on 29th April, as it is said in deference to the opinion of the learned Chief Justice, passed a resolution that the by-law should now be read the third time, and thereupon purported to read the by-law the third time and pass it. The by-law was not then before the council, the original being in Toronto, and nothing was done but the bare form of affecting to read it and then declaring it passed. No by-law was signed or sealed upon that day or thereafter.

I do not think this is a waiver of the appeal, notice of which had been theretofore given, even if the council has the power to waive a right of this character. The cases as to waiver are collected in *Holmsted and Langton*, p. 1003, and I think that the act done here, not being done in any action and not such as to signify conclusive acceptance of the judgment appealed from, does not destroy the right to appeal: *Phillips v. City of Belleville*, 10 O. L. R. 178, 6 O. W. R. 129. Cases such as *International Wrecking Co. v. Lobb*, 12 P. R. 207, in which the appellant has acted upon a judgment in such a way as to derive some benefit from it, have no application. As at present advised, I think the council would have been wise had they passed the by-law with all formality *ex abundanti cautela*; but that we cannot now decide, as the matter has not come before us for decision.

Upon the merits, I am unable to agree with the learned Chief Justice. It must, I think, not be lost sight of that the voters of each municipality are vested with the right of self-government to a very large extent, and that their wishes should be given full effect to if at all possible. The Court should strive to do this; and not be astute to find reasons for interfering with the result which should follow from a voting.

The Act 6 Edw. VII. ch. 47, sec. 24, amending the Liquor License Act, R. S. O. 1897 ch. 245, sec. 142, sub-sec. 4, provides that "in case three-fifths of the electors voting upon" a local option "by-law approve of the same, the council shall, within 6 weeks thereafter, finally pass such by-law, and this section shall be construed as compulsory, and the duty so imposed upon the council may be enforced at the instance of any municipal electors by mandamus or