

embarrassment arising from their being conflicting decisions on the same question; but in this matter like many others, a well-known maxim may be applied with a variation, "the Legislature propose, but the judges dispose."

We have an illustration in a recent case of the utter futility of such legislation. In some of the recent local option by-law cases, as is well known, attempts have been made to question the finality of the voters' lists as regards the qualification of voters. *In re Cleary v. Nepean*, 14 O.L.R. 392, Mabee, J., determined that the lists were not conclusive as to the right of a person named therein to vote; but *In re Mitchell v. Campbellford*, 16 O.L.R. 578, Clute, J., came to the conclusion that prior decisions to that of Mabee, J., had determined that the voters' list was final and conclusive as to the right of a voter named therein to vote and he therefore refused to follow Mabee, J.

The section of the Judicature Act above referred to seems to be violated, and yet how is it to be worked out? If a judge disregards prior decisions he is violating the statute. Is it intended that if he does so, all subsequent cases must be decided according to his view? or is the remedy that the point of law in question should be referred in any subsequent case where the prior decision is regarded as erroneous to a Court of Appeal in order that such prior decision may be formally reversed? We are rather inclined to think that this is the procedure the statute contemplates and not that each judge is to assume the right "not to follow" a prior decision of a judge of co-ordinate jurisdiction because he happens to think it erroneous. It may be said that in order to do so he would still have to violate the statute whatever course he took wherever there were prior conflicting decisions; but what the Legislature was aiming at was the doing away with conflicting decisions of judges of co-ordinate jurisdiction, which leaves the law in a state of uncertainty, by enabling a judge whenever that state of things exists before him, to refer the case to a higher tribunal so that the point in question may be definitely settled, and not left as a sort of battledore and shuttlecock game in which one judge may follow A. and another follow B. according to his personal predilection.