was doing so in defiance of the order of I.; and upon the latter, because the jury had not made the necessary findings upon which to base a judgment in respect of the order given by I. But, by the Ontario Factories Act, R.S.O. 1897, c. 256, s. 3, the plaintiff's employment was wholly unlawful, and a primâ facie case under that Act was made simply by proof of his age, the employment, and the injury. To such primâ facie case no answer was made; there was no finding of contributory negligence; and the employers' premises were, within the meaning of the Act, a factory, of which the elevator formed part. The employers were, therefore, liable under the Factories Act to the extent of $1,500.

MEREDITH, J.A., dissented in part.

Judgment of ANGLIN, J., varied.

Hellmuth, K.C., and *Greer*, for appellants. *DuVernet* and *Knox*, for appellants. *Masten* and *J. H. Spence*, for plaintiffs.

HIGH COURT OF JUSTICE.

Mabee, J.] [March 8.

RE CLEARY AND TOWNSHIP OF NEPEAN.

Municipal corporations—Local option by-law—Adoption by electors—Three-fifths majority—Computation—Rejected or uncounted ballots—Illegal votes—Finding of Voters' Lists—Effect on by-law.

In computing the three-fifths majority of voters required for a local option by-law by 6 Edw. VII. c. 47, s. 24, s-s. 4 (O.), rejected or uncounted ballots are not to be considered.

Upon a motion to quash such a by-law the applicant may go behind the voters' lists and shew that illegal votes were cast; if he succeeds in shewing that, the illegal votes must be deducted from those favourable to the by-law; and if the result be that the majority is not sufficient, the by-law will be quashed.

Re Gerow and Township of Pickering (1906) 12 O.L.R. 545, and *Re Sinclair and Town of Owen Sound* (1906) ib. 488 followed.

Gordon Henderson and *D. H. McLean*, for applicant. *W. Greene*, for respondents.