

applies to a vote upon a by-law it does not prevent a person from stating of his own accord for whom he voted. See secs. 218 and 219 of this Act, and *Langdon v. Arthur*, 45 U.C.B.R. 47, see page 52.

Section 306 does not bring in section 171 or any other section not incidental to the taking of the votes.

In one polling sub-division only 6 votes were polled against the by-law; any bad votes on the poll book over six in number must have been polled for the by-law and should be struck out.

*J. L. Whiting* for the Railway Company.—Probably the ballot with the straight mark and no cross ought to be rejected. All the others ought probably to be allowed. The ballots upon which the deputy returning officer merely put the initial of his surname ought under the decided cases to be allowed. He could identify the ballot as the one he gave to the voter, and the object of putting on the initials is such identification. Even if there was an irregularity it is cured by section 175. As to powers of the County Judge the Legislature discriminated as to powers conferred, sec. 320, sub-sec. 3, sec. 335. Sections 323 to 326 are all under the head of "scrutiny" and controlled by that term, *Wood v. Hurl*, 28 Grant 146. The meaning of secs. 323, 324, and 325, and the jurisdiction of the judge has been decided by *Chapman v. Rand*, 11 Sup. Court, 312. See Canada Temperance Act, secs. 61, 62 and 63. No hardship arises in this case as might under the Canada Temperance Act, as the Legislature has made provision for application to quash by-laws. Although apparently sec. 326 gives further power to the judge, in reality it does not, and that section must be controlled by the three previous sections. The meaning is that any incidental powers as to allowing costs or such like powers as the judge would have upon a trial of the validity of the election of a member of a municipal council he has in such a case as this. Sec. 171 does apply.

MCDONALD, C.J.—Upon a consideration of the 2nd sub-section of sec. 320 and of secs. 323, 324, 325 and 326 of the Municipal Act, and of the authorities cited to me, I am of opinion that my powers are limited to an inspection of the ballot papers, to ascertaining who are and who are not entitled to vote for the by-law, and, as a result of such inspection and ascertainment, to determining whether the by-law has or has not

been carried. In my judgment, the provisions of sec. 326 as to the powers and authority of the judge must be read in connection with the foregoing sections under the head of "scrutiny," and the limitation of them thereto or thereby is not at all a strained construction. In fact, the very insertion—I might say, repetition—of the words "upon the scrutiny" after the word "arising" appears to me to evidence an intention upon the part of the Legislature to impose the limitation which I find exists. I therefore merely consider the matters above mentioned as being those as to which I have jurisdiction, and as to them I adjudge as follows:

Polling Sub-division No. 2:

Two ballots objected to, one for and one against the by-law. The cross upon each of these ballots is marked in a rough manner. I have not any doubt as to the honesty of the mark, and do not believe that the peculiar manner of making the cross was intended to lead to identification of the voter. I allow them.

Polling Sub-division No. 3:

One ballot against the by-law objected to. There is a distinct cross in the compartment, and near it and within the same compartment, a cross hardly distinguishable, which possibly may have been made by the voter as a cross or mark, or which may be a mere mark in the paper as it came from the mill, or a mark upon it afterward accidentally made. But even if the two crosses were made by the voter, the vote was not thereby invalidated. See *Bothwell Election Case*, Supreme Court, vol. 8, and *Woodworth v. Sessions*, 10 L.R.C.P. 733 or 773.

Polling Sub-division No. 4:

All the ballot papers objected to on the ground that the deputy-returning-officer did not put his initials upon them. He did put "P," the initial of his surname. I hold the ballots good.

Two votes for the by-law objected to, one on the ground that the voter made two crosses, the other on the ground that the mark made is not a cross. My decision in the case of the ballot objected to in Polling Sub-division No. 3 applies to the former, and the vote is allowed. As to the latter, I hold that the mark cannot be considered to be a cross, but must be held to be a straight line, and under the authority of the *Bothwell* case above cited, I disallow and strike off the vote.

Polling Sub-division No. 5:

No ballots objected to.