

Full Court.]

DUNCAN v. TOWN OF MIDLAND.

[Jan. 22.

*Municipal law—Local option by-law—Requisite two-thirds majority obtained—Two weeks allowed for scrutiny—Final passing by council before expiry thereof—Refusal to quash.*

By sub-s. 11 of s. 141 of R.S.O. 1897 c. 141, the Municipal Council may pass a local option by-law, provided that before the final passing thereof it has been approved by the electors "in the manner provided by the sections in that behalf of the Municipal Act;" but by s. 24 of 6 Edw. VII. c. 47(O.), if three-fifths of the electors voting on the by-law approve of it the council shall within six weeks thereafter finally pass it, and that the duty so imposed may be enforced by mandamas or otherwise.

*Held*, per OSLER and GARROW, JJ.A.—The provisions of the Municipal Act, sections 369 and 374, as to the ascertainment by the clerk of the result of the voting and as to the right to a scrutiny, apply to a by-law of this kind; and, therefore, the by-law should not be finally passed by the council until the expiration of the two weeks next after the clerk has declared the result of the voting thereon; but as the fact of there being the requisite two-thirds majority and no attempt made to obtain a scrutiny, and the only objection made was as to the faulty third reading, and as this was only a formal and ministerial act, as the council could be compelled to pass the by-law, nothing would be gained by quashing it.

Per MACLAREN and MEREDITH, JJ.A.—The bylaw could properly be passed by the council at any time within the six weeks, notwithstanding the non-expiry of the two weeks for the scrutiny, so long as there is a three-fifths majority, there being nothing to prevent a scrutiny be had afterwards.

MOSS, C.J.O., agreed in the result.

Judgment of Divisional Court affirmed and judgment of MULOCK, C.J., reversed.

*J. B. Mackenzie*, for appellants. *F. E. Hodgins*, K.C., for respondents.

Full Court.]

MONTGOMERY v. RYAN.

[Jan. 22.

*Banks and banking—Overdrawn account—Collateral securities—Transfer to third person—Inspection of account—Interest—Compounding.*

R., having had an account with a bank for many years pre-