

364) but he has no vote. The by-law must receive a majority of three-fifths of those voting, otherwise it is defeated.

After the clerk has certified the result to the council a period of two weeks should be allowed for the scrutiny under s. 369, before the by-law is read a third time even although no one asks for such a scrutiny. This is to avoid trouble in view of the decision of the Court of Appeal in *Re Duncan and Midland*, ante. But the point is still doubtful as the Divisional Court reversed Mulock, C.J., on this point and the Court of Appeal was equally divided, Moss, C.J., only agreeing in the result which was to dismiss the appeal from the Divisional Court. Mulock, C.J., in *Re Coxwell and Henshall* (1908) not reported, has since refused to give effect to that objection.

Section 204 is applicable to the carrying of these local option by-laws. It provides in effect that the vote which gives the assent of the electors shall not be declared invalid by reason of a non-compliance with the provisions of the Municipal Act (1) as to the taking of the poll, (2) the counting of the votes, (3) as to any mistake in the use of the forms, (4) or by reason of any irregularity, if it appears to the court that the voting was conducted in accordance with the principles laid down in the Act and if such non-compliance, mistake or irregularity did not affect the result of the voting.

This provision is most important. The courts have generally striven to apply it where fair attention has been given to the conduct of the voting and no one has been prevented from voting. The following have been held to be within the saving provisions of this section.

1. No newspaper designated in the by-law: *Dillon v. Cardinal* (1905) 10 O.L.R. 371; and no places specifically designated for the voting: *Re Coxwell and Henshall*, ante.

2. Persons allowed in the polling place who were not entitled to be there: *idem* and *Re Sinclair v. Owen Sound* (1906) 12 O.L.R. 488; *Re Rickey v. Marlborough* (1907) 14 O.L.R. 587, but see *Re Hickey v. Orillia*, ante, a case strikingly similar on the facts to the *Cardinal Case*. But the Divisional Court held in the *Orillia Case* this offended against the principle of secrecy.