

Armour, C. J., Street, J.]

[Sept. 26]

IN RE YOUNG AND TOWNSHIP OF BINBROOK.

Municipal corporations—By-laws—Voters' lists—Omission of classes of voters—Irregularity—Saving clause.

A by-law prohibiting the sale of intoxicating liquor in the township, under the provisions of s. 141 of R.S.O. c. 245, was submitted to the vote required by that section, and a majority of 98 votes appeared in its favour. Upon motion to quash the by-law it was objected that the names of some 80 persons entitled to vote were omitted from the lists furnished to the deputy returning officers, and that these persons had no opportunity of voting. The clerk who prepared the lists was under the impression that only those persons were entitled to vote who would be entitled to vote upon money by-laws, and he therefore left out all farmers' sons and income voters. The number of persons entitled to vote at municipal elections was , of whom 78 were farmers' sons and 2 income voters, the remainder being owners and tenants. Only 409 names appeared on the lists given to the deputies; 272 persons actually voted, 185 for the by-law and 87 against it.

Held, following *In re Croft and Township of Peterborough*, 17 A.R. 21, and *In re Bounder and Village of Winchester*, 19 A.R. 684, that the names of the farmers' sons and income voters were improperly omitted from the lists.

Held, however, that the omission was not so serious an irregularity as to require that the court should quash the by-law.

Under s. 204 of the Municipal Act the by-law must stand if it should appear to the court "that the election was conducted in accordance with the principles laid down in the Act," and that the irregularity did not affect the result.

An election should be held to have been conducted in accordance with the principles laid down in the Act, when the directions of the Act have not been intentionally violated, and when there is no ground for believing that the unintentional violation has affected the result; and that was the state of things presented in this case.

The court was bound to assume that all the persons left off the list would have voted against the by-law; but it was not bound to assume that the error had any effect upon the minds of the persons upon the lists who voted or abstained from voting, in the absence of any evidence to shew that such was the case; and, adding the 80 votes to the 87, there was still a majority in favour of the by-law. *Woodward v. Sarsons*, L.R. 10 C.P. 733, followed.

Haverson, for Robert Young. *J. J. Maclaren*, Q.C., and *E. F. Jazier*, for township corporation.