

An attempt was made to support the by-law upon the theory that the first certificate must be taken to have been a certificate in accordance with sec. 259, and that the council must be taken to have acted upon it, and that everything done by the commissioner thereafter was a nullity.

I do not think that this contention can be successfully made; for the only certificate that was ever before the council was the later one. . . . I also think that at any time before the council had acted upon the certificate it was open to the commissioner to correct any error that he might have made.

Section 259 contains a provision that in cases where it applies the certificate of the commissioner is final and conclusive. The desirability of some such provision is clearly manifest, but I think that the section as it now stands is not wide enough to reach the case of a license reduction by-law. . . . It applies only where, by the Municipal Act or some other statute, "it is provided that a by-law may be passed by a council upon the application of a prescribed number of electors." There are many instances in which it is so provided, but the Liquor License Act, already quoted, provides for a totally different thing. If the prescribed number of electors petition, the council is not empowered to pass a by-law, but is required to submit it to the electorate. If the electorate carry the by-law, then the council must pass it. . . . There is the widest difference. . . . In the one case the council may itself act if the proper requisition is made—in the other, the council must submit the by-law to the electorate, and, if the electorate approve, must pass it.

This . . . is emphasised by the requirement of sec. 259, that the certificate shall be furnished before the by-law is finally passed. It would be most reasonable that the sufficiency of the petition under the Liquor License Act should be determined in some similar way, but the determination ought to be before the by-law is submitted to the electorate, and not only before the by-law is finally dealt with.

Sub-section 3 of sec. 16 of the Liquor License Act, imposing the compulsory duty upon the council, to be enforced at the instance of any elector, by mandamus or otherwise, contains no exception based upon the existence of the certificate.

If the municipal council had satisfied itself that the petition was signed by the requisite number of electors, and then had directed the vote, and no proceedings had been taken to interfere with the submission to the ratepayers, I should have thought that it might well be argued that, after the submission, it was