

in the case of the latter as well as of the former, in a scrutiny before such a Judge, he would, no doubt, be bound by the terms of sec. 24 of the Voters' Lists Act, which, after all, does not seem to lay down an entirely new rule: see *The Queen ex rel. St. Louis v. Reaume*, 26 O.R. 460, 462; *Regina ex rel. McKenzie v. Martin*, 28 O.R. 523; *In re Armour and Township of Onondaga*, 14 O.L.R. 606—all decided upon facts arising before the Voters' Lists Act was passed.

This, however, is not a case of a scrutiny, or in the nature of a scrutiny, but a proceeding, under sec. 378 of the Municipal Act, to quash the by-law in question, upon the ground, among others, that it was not carried by the votes of a majority of those entitled to vote for it. And, the defence of a statutory estoppel failing, there seems to be nothing in the way of the Court exercising its long-unchallenged jurisdiction to inquire into questions of illegality, such as this, which are not apparent on the face of the by-law: see *Re Fenton v. County of Simcoe*, 10 O.R. 27; and per Gwynne, J., in *Edwin v. Townsend*, 21 C.P. 330, at p. 334.

I also agree with the reasoning and the conclusion expressed by Meredith, C.J., delivering the judgment of the Divisional Court, as to the lack of qualification of the five voters whom he names. *Sawers v. City of Toronto*, 4 O.L.R. 624, cited by the appellants, in which *In re Flatt and United Counties of Prescott and Russell*, 18 A.R. 1, was distinguished, presented a wholly different question.

The appeal should, in my opinion, be dismissed with costs.

MOSS, C.J.O., MACLAREN, MEREDITH, and MAGEE, JJ.A., concurred; MEREDITH, J.A., stating reasons in writing.

JANUARY 17TH, 1911.

SEAMAN v. CANADIAN STEWART CO.

Mechanics' Liens—Assignment of Part of Claim of Lien-holder—Rights of Assignee—Enforcement of Lien—Contract—Validity—Recovery According to Terms of—Payment into Court of Amount Claimed to Free Lands—Proceeding to Enforce Lien—Scope of—Enlargement by Consent of Parties—Quantum Meruit—Damages—Work Taken out of Lien-holder's Hands—Status of Referee—Conflict of Interests—Findings of Trial Judge—Reversal on Appeal—Costs.