

Municipal Act, the County Court Judge may declare void and deduct from the result the vote of a tenant whose name was upon the certified voters' list, but who was not in fact a resident of the municipality when the list was certified, and who never afterwards became a resident therein.

This question affects four votes polled, and, if answered in the negative, as it was by the Divisional Court, practically ends any necessity for discussion as to the fate of the one other vote polled, which is in question here.

In holding that the four votes in question were not open to attack upon the scrutiny, the Divisional Court considered itself bound so to hold by the decision of another Divisional Court in *In re Local Option By-law of the Township of Saltfleet* (1908), 16 O.L.R. 293, though it had been subjected to adverse comment in some other cases.

In *Re Orangeville Local Option By-law* (1910), 20 O.L.R. 476, Meredith, C.J., considered the question of the jurisdiction of the Judge to enter upon an inquiry as to the right to vote of any one who has deposited his ballot paper, and declared his own opinion to be against the exercise of such jurisdiction. He expressed the opinion that the inquiry is limited to a scrutiny of the ballot papers, and differs only from a recount in that the Judge is not limited to dealing with the ballot papers *ex facie*, but may take evidence in the same way as may be done upon a trial of the validity of an election of a member of a municipal council, for the purpose of determining whether any ballot paper ought or ought not to be counted.

With deference, I am unable to follow the distinction drawn between a scrutiny of ballot papers and a scrutiny of votes, bearing in mind the object with which the scrutiny is entered upon. The Judge is to determine and certify whether the majority of votes given is for or against the by-law. He is not merely, as in the case of a recount under sec. 189, to count up the votes given upon the ballot papers not rejected, and make up a written statement of the number of votes given for each candidate and of the number of ballot papers rejected and not counted by him, and certify the result to the returning officer. In all this he is acting in a ministerial capacity. In a scrutiny he is acting in a judicial inquiry, with the purpose of ascertaining which way in truth and in fact the majority of the votes is given. Light is thrown upon this view by the language of sec. 24 of the Ontario Voters' Lists Act, which expressly refers to a scrutiny under the Municipal Act, as well as to one under the Ontario Election Act. That section declares that "the certified