

his Honor thought it had not, and the powers of the County Council and the Local Council co-exist. The County Council of Brome, therefore, had the right to pass the by-law in question, and to prohibit altogether the sale of liquors within the County of Brome. The second question was whether the vote had been properly taken. The judge in the Court below [Dunkin, J.] held that as the failure to hold a poll in West Bolton could not have affected the result, the irregularity was not material. It appeared that the returning officer opened the poll at ten o'clock, but there being no one to vote, he closed the poll at once, instead of waiting the half hour required by law. There was no complaint on the part of the petitioner that there were any voters who were prevented from voting, or that any injury had been done by closing the poll immediately. He founded his complaint merely upon this, that a formality of the law had not been observed, and not that its non-observance had any effect upon the vote. The question was, was this formality so rigorous in its nature that the absence of it annulled the election? In Parliamentary elections, it had been held that an election would not be annulled because of an irregularity which had no effect on the result. His Honor was disposed to coincide with the view taken by the Judge of the Court below, and to say, first, that the County Council had the right to prohibit the sale of intoxicating liquors; and, secondly, that the failure to keep the poll open at one place for half an hour, not having any effect upon the general vote, did not annul the proceeding. There had been a question raised as to whether the case was appealable. The Judges were all agreed that the case was undoubtedly appealable.

The majority of the Court reversed the judgment, on the ground that the irregularity was fatal. The *considerants* are as follows:

"The Court, etc.

"Considering that it has not been legally proved or established that the by-law in question in this cause, entitled by-law No. 28, passed by the Municipal Council of the County of Brome, held on the 14th March, 1877, prohibiting the sale of intoxicating liquors, and the issuing of licenses therefor within the said County, has been in due form of law approved of by the municipal electors of the said county of Brome by a duly ascertained majority there-

for, and more especially it appears by the evidence adduced, that the mode adopted for taking the votes of the municipal electors of the Township of West Bolton, a subdivision of the said County, on the question of the approval or rejection of the said by-law, was irregular, illegal and insufficient; that in fact no poll was held for the taking of said votes of the municipal electors of said Township in manner or form as required by law, and that consequently said by-law is inoperative, null and of no effect:

"And considering that in the judgment of the Circuit Court for the District of Bedford, sitting at Sweetsburgh, on the 11th of July, 1877, there is error, this Court doth cancel, annul, and set aside the said judgment," &c.

Judgment reversed.

*O'Halloran, Q. C.*, for appellant.

*W. W. Lynch* for respondents.

#### LARCENY.

What facts, or what condition of circumstances, constitute, or fail to establish, the crime of larceny, has always, and, so long as the law on the subject remains ill defined as it is at present, will always be a matter of profound difficulty to the judicial mind to determine the meshes of the law, or, if we may be permitted to say so, the interstices between the meshes are of such dimensions, that in some cases it is a matter of ease for the knowing criminal to escape thereby into the open; while, again, fine distinctions are drawn at times by the judges on acts, which, to the lay mind, seem innocent, but which are by the former adjudged to be of a criminal nature. Some weeks ago the following facts were proved before one of the metropolitan police magistrates: the prisoner was intrusted by his master with a check for the purpose of having it cashed; the prisoner got the check cashed, failed to deliver the proceeds to his master, and appropriated the money to his own use; it was held by the learned magistrate that upon these facts he was not warranted in convicting the prisoner of, or committing him for, larceny. Now as is well known, there are three factors which go to make up the crime of larceny: (1) *The asportatio*, (2) *the animus furandi*, and (3) *the inivitus dominus*. Which of these three factors were wanting in this case? *The animus fu-*