

By the enacting part, the by-law is confirmed and declared to be legal, valid, and binding on the corporation of the town of Napanee and the ratepayers thereof, notwithstanding any defect or error in substance or form or in any proceeding relating thereto or in the manner of passing the same. It is further enacted that nothing in the Act contained shall affect the costs of any appeal now pending, but the same shall be in the discretion of the Court, and may be determined and awarded in the same manner as if the Act had not been passed.

So far, therefore, as our views with regard to the objections made to the by-law are concerned, the legislation has rendered it of little consequence whether or not we give expression to them, for they cannot now affect the validity of the by-law. Probably it would have been better if the legislature, having gone so far, had seen fit to dispose of the whole matter, including the question of costs. But, as the determination of the costs has been left in our discretion, the parties are entitled to our award in respect of them.

In general the incidence of costs depends upon the result of the proceedings taken, and, as a rule, when that result is ascertained, little difficulty is experienced in determining upon which party the payment of the costs should fall. But here the respondents, by their action in obtaining curative legislation, have deprived the appellants of the chance of obtaining any substantial benefit from their appeals.

The learned Judges in the Court below appear to have been of the opinion that the respondents were in the wrong in neglecting to properly comply with the requirements which the Municipal Act imposes as conditions precedent to the passage of a valid by-law of the nature of that in question here. And in appeal the respondents were really compelled to rely upon the excuses put forward in their affidavits as sufficient to justify waiver of the provisions of the statute. Many of these had little or no bearing on the real question. No circumstances were shewn upon which the appellants could be held to be estopped of their rights as ratepayers; and their relations to the Napanee Water and Electric Light Company and the Napanee Gas Company, their attitude on the policy of the town in undertaking the construction and installation of an electric light plant, and their motives in moving against the by-law, were beside the