

The trial Judge had full power under Rule 1130 to determine the question of costs as he did. *Henderson v. Bank of Hamilton*, 25 O. R. 641, was a very exceptional case in which the trial Judge himself thought proper to apply strictly the old practice where defendant failed to pay into Court a sufficient sum.

The appeal will be dismissed, but, in the peculiar circumstances of the case, without costs.

BRITTON, J., gave reasons in writing for the same conclusion.

CLUTE, J., concurred.

DECEMBER 28TH, 1906.

C.A.

RE SINCLAIR AND TOWN OF OWEN SOUND.

Municipal Corporations—Local Option By-law—Motion to Quash—Vote of Ratepayers—Town Divided into Wards—Right of Persons Owning Property in Different Wards to Vote more than once—Confusion from Colour of Ballot Papers—Persons Voting Without Right—Irregularities in Taking of Vote—Effect on Result—Municipal Act, sec. 204.

Appeal by William Henry Sinclair, the applicant in the Court below, from an order of a Divisional Court (ante 460, 12 O. L. R. 488), reversing an order pronounced by MABEE, J. (ante 239), quashing by-law number 1172 passed by the council of the town on 15th January, 1906.

The by-law was enacted under the local option provisions of R. S. O. 1897 ch. 245, known as the Liquor License Act, to prohibit the sale by retail of spirituous liquors within the municipality; and on 1st January, 1906, before it was finally passed by the council, it was submitted for the approval of the electors of the municipality as provided by sec. 141 of the Act.