

number 20, upon which the voter is required to mark his ballot "for the by-law" or "against the by-law."

The first objection taken to this by-law is that the council departed from this explicit direction of the statute, and apparently assumed that the voting was not upon the by-law, but upon a plebiscite or a question submitted under sec. 398 (10) for the opinion of the electors.

The ballots are headed "plebiscite re tavern licenses" and "plebiscite re shop licenses" respectively; and instead of voting upon a by-law the voters are asked to vote upon a question "are you in favour of limiting the number of shop licenses in the City of Ottawa to ten for the ensuing license year beginning 1st May, 1914, and for all future license years thereafter until the by-law is altered or repealed?" (the by-law in the case of the tavern licenses being precisely similar, except that the word "tavern" is substituted for "shop" and "36" for "10." The voter was required to mark his ballot "yes" or "no."

This is, I think, the substitution of an entirely different form of ballot from that prescribed by the legislature; and the case of *Milne v. Thorold*, 25 O. L. R. 420, must be taken to determine that where the legislature has prescribed a particular form, the by-law cannot be upheld if the voting is upon an entirely different form of ballot. This is not a mistake in the use of the form, nor is it an immaterial variation from a prescribed form. It is the substitution of a totally different form, which may well have misled the voter into thinking that his opinion only was desired, and may have failed to bring home to his mind the fact that legislative action must follow inevitably upon the result of the voting.

I regret exceedingly to be driven to prevent effect being given to the expressed will of the electorate. There is a heavy responsibility upon those charged with the conduct of the elections; and where the result of the carelessness, stupidity, or worse of those charged with this responsibility results in a miscarriage such as this, it should be understood that the responsibility is theirs for the Court has no duty save to see that that which the legislature has required is complied with. There is much force in the view stated in the case which I follow, that those whose property rights are being taken away from them by the will of a bare majority have the right to insist that this shall only be done in the manner in which the law permits it to be done.