

RIDDELL, J.

MAY 3RD, 1910.

## \*RE BEGG AND TOWNSHIP OF DUNWICH.

*Municipal Corporations—Local Option By-law—Voting on—Persons Voting without Right—Result as to Three-fifths Majority not Affected—Notices not Properly Posted — Municipal Act, sec. 338 (2)—Application of Curative Clause, sec. 204—Publication in Newspaper not in Municipality—Quashing By-law—Costs.*

Motion by Begg to quash a by-law of the township to prohibit the sale of liquor, which was submitted to the voters on Monday the 3rd January, 1910, with the result that of a total vote cast of 781, 481 were in favour of the by-law, 469 being the minimum required, and was passed by the council on the 7th March, 1910, there having been no scrutiny.

Frank McCarthy, for the applicant.

J. M. Ferguson, for the township corporation.

RIDDELL, J.:—1. It is asserted that the clerk of the municipality voted, and that some 19 others who had in fact no votes also voted. I do not need to pass upon any of these votes; for, applying the proper rule . . . it will be found that the least number of votes which would require to be struck off to destroy the minimum is 52. . . .

2. That the notices were not properly posted, as required by sec. 338 (2) of the Act.

At least as early as 1850, the Courts said that corporations should be careful to preserve proof of regular notices by affidavits of persons employed to put them up: In re Lafferty v. Wentworth and Halton, 8 U. C. R. 232. (Now, of course, statutory declarations should be taken.) But corporations from that day to this continue to omit the proper precautions, and trouble frequently ensues. . . .

[Examination of the evidence as to posting of notices.]

I think sec. 338 (2) has not been complied with.

The remaining question upon this objection is, whether sec. 204 applies to heal this defect.

In Re Pickett and Township of Wainfleet, 28 O. R. 464, it was held by Osler, J.A. (p. 467), that "the onus of proving that the omission to comply with the statutory direction has not affected the result, is upon the respondents."

\* This case will be reported in the Ontario Law Reports.