

of a school house under steps subsequently taken therefor under the section, where all the requisites thereof were duly complied with.

Judgment of FALCONBRIDGE, C.J.K.B., reversed.

On motion therefor leave to appeal to the Court of Appeal was granted.

Riddell, K.C., for applicants. H. J. Hunter, contra.

MacMahon, J.] REX EX REL. IVISON v. IRWIN. [May 12.

*Municipal election—Quo warranto—Tampering with ballots—Breach as to immediate delivery of ballot box to Town Clerk—Setting aside election—Supporting affidavits by viva voce evidence—Admissibility of evidence as to how voters voted—Cross-examining on affidavits after commencement of trial.*

Where in a quo warranto proceeding under the Municipal Act, R.S.O. c. 223, before a county judge, to set aside the election of a town counsellor, it was found by the judge upon a scrutiny of the ballot papers, having regard to the character of the evidence both viva voce and by affidavit, that such ballot papers had been tampered with, and there was also a breach of the Act in the deputy returning officer taking the ballot box to his own house instead of directly to the town clerk, and it was impossible to say that the result of the election was not affected thereby, an order of the judge setting aside the election was affirmed.

Affidavit evidence may be supported at the trial by viva voce evidence, although not mentioned in notice of motion. *Reg. ex rel. Mangan v. Fleming* (1892) 14 P. R. 458, referred to.

The provisions of s. 200 of the Act that "No person who has voted at an election shall in any legal proceeding to question the election or return, be required to state for whom he voted" must be construed in furtherance of the object of the Act, as absolutely excluding such testimony.

After the trial of such proceeding has commenced it is discretionary with the judge as to allowing a person who has made an affidavit to be cross-examined, though before the commencement of the trial cross-examination may properly be had.

Aylesworth, K.C., for appellant. Rodd, for the relator, respondent.

Divisional Court.] REX v. MCGREGOR. [May 13.

*Conviction—By-law—Prohibition against keeping certain quantities of coal oil, etc. — Constitutional law — Provincial legislation — Dominion legislation — Petroleum Inspection Act.*

The defendant was convicted for a breach of a city by-law, which enacted that no larger quantity than three barrels of rock oil, coal oil, or