

of ballot used in voting upon the by-laws was not that prescribed by the statute of 1908.

Held, that the expressed wish of the voters ought not to be defeated by the clerk's mistake in departing from the words of the statutory form, where it is not shewn that the departure confused any one and so prevented the will of the voters from being manifested; that the circumstances brought the case within the gauge of the Interpretation Act, 7 Edw. VII. c. 2, s. 7(35); and, while it is a matter of regret that a municipal officer should depart from the plain directions of a statute, the by-law should not be quashed. Motion dismissed without costs.

Haverson, K.C., for applicant. *Raney*, K.C., and *J. Hales*, for respondents.

Meredith, C.J.C.P.]

[April 22.

RE GREEN v. CRAWFORD.

Division Courts—Jurisdiction—Promissory note for more than \$100—Item in larger account—Merger in mortgage—Matters of defence.

Motion by the plaintiff for a mandamus to the junior judge of the County Court of Elgin, commanding him to try this action, which was brought in the 3rd Division Court in the county of Elgin, upon a promissory note made by the defendant for \$140, to recover the amount of it with interest, amounting in all to \$154.60. At the trial the plaintiff produced and proved the making of the promissory note. On his cross-examination it appeared that he had other dealings with the defendant and a Mrs. James, that he had an account in his books with them, that the amount of the note formed one of the items of this account, and that he had taken a mortgage from Mrs. James covering the amount of the account. Upon this appearing, the County Court judge stopped the case, holding that the Division Court had no jurisdiction; and the plaintiff then moved for the mandamus.

Held, that the plaintiff's claim came within the provisions of clause (d) of sub-s. 1, of s. 72, of the Division Courts Act, R.S.O. 1897, c. 60, as amended by 4 Edw. VII. c. 12, s. 1. He sued on the promissory note only, and to make out his case all that was necessary was the production of the note and proof of the signature of the defendant. The question whether the claim on it had become merged in the mortgage, if that question could or did