

applicant to establish the non-compliance, mistake, or irregularity; but, when that is shewn, the burden rests upon the person upholding the election to make "it appear . . . that such non-compliance, mistake, or irregularity did not affect the result of the election." Re Hickey and Town of Orillia, 17 O. L. R. 317, 330-1, 12 O. W. R. 68, 433, 650.

For these reasons, I am of opinion that the election of the municipal council of the city of St. Catharines must be set aside, and that an order should issue for the holding of a new election. The respondents, other than the mayor, must pay to the relator his costs of this motion.

ANGLIN, J.

FEBRUARY 18TH, 1909.

WEEKLY COURT.

MARTIN v. CITY OF ST. CATHARINES.

*Municipal Corporations—Injunction to Restrain Council from Passing By-law—Illegality of Election of Councillors—Powers of de Facto Council—Impropriety of Acting when Election Attacked—Refusal of Injunction—Costs.*

**L**

Motion by plaintiff to continue an injunction granted by the local Judge at St. Catharines restraining the defendants and their city council from proceeding with the third reading of a by-law to reduce the number of liquor licenses in the city, upon the ground of the illegality of the election of the mayor and councillors. See *Rex ex rel. Black v. Campbell*, ante.

W. N. Tilley, for plaintiff.

C. H. Connor, St. Catharines, for defendants.

ANGLIN, J.:—In view of the disposition of the motion to unseat the city councillors, it is unnecessary, in disposing of this motion, to say more than that the injunction sought has now become unnecessary. With the consent of the parties, the motion may be turned into a motion for judgment.