

MARCH 8TH, 1911.

RE RYAN AND TOWN OF ALLISTON.

Appeal—Leave to Appeal to Court of Appeal from Order of Divisional Court—Motion to Quash Local Option By-law—Voting on By-law—Voters' List—Ontario Voters' Lists Act, sec. 17(4).

Application by Ryan for leave to appeal from the order of a Divisional Court, 22 O.L.R. 200, ante 161, affirming the order of MEREDITH, C.J.C.P., 21 O.L.R. 582, 1 O.W.N. 1116, dismissing the applicant's motion to quash a local option by-law passed by the council of the town of Alliston.

The application was heard by MOSS, C.J.O., GARROW, MACLAREN, MEREDITH, and MAGEE, JJ.A.

J. B. Mackenzie, for the applicant.

W. A. J. Bell, K.C., for the respondents.

The judgment of the Court was delivered by GARROW, J.A.:—There were 25 objections originally urged as reasons for the motion, all of which but one were disposed of adversely to the applicant on the motion. One was reserved, and judgment subsequently given upon it also adversely to the applicant (21 O.L.R. 582), subsequently affirmed by a Divisional Court.

The point reserved, which was somewhat fully discussed before us on the motion, was that the learned County Court Judge in the revision of the voters' list had omitted to comply with the requirements of sub-sec. 4 of sec. 17 of the Ontario Voters' Lists Act, 7 Edw. VII. ch. 4, by holding the Court for the hearing of complaints without the notice having been first given as required by that sub-section. And upon this point the learned Chief Justice was of the opinion that, notwithstanding the omission, the list of voters then settled and certified was the proper list to be used, within the meaning of sec. 24; that the clerk, in providing the proper lists to be used at an election, was only required to resort to the last certified de facto list, and was not obliged to examine into the sufficiency of the various steps by which the final result had been arrived at. In this I agree. Any other construction would lead to great confusion, and be, indeed, contrary to what I regard as the spirit of the Act. See, for instance, sec. 42, which says that "the non-performance by the clerk of any of his duties under this Act within the times ap-