

four of them were not residents when the voters' list was certified and did not afterwards become residents; and the Judge finds that the five votes were illegal. . . . There was no determination of this question by the Divisional Court in *Re Ellis and Town of Renfrew*.

In the *Saltfleet* case, 16 O.L.R. 293, the Chancellor, in discussing sec. 24 of the Voters' Lists Act, 1908, . . . at p. 302, says: "A subsequent change of residence, which would disqualify, may be investigated under sub-clause (2), but not a subsequent change of status. . . . If the farmers' sons votes struck off as non-resident became so non-resident subsequently to the list being certified, that might be dealt with upon proper evidence by the County Court Judge. The Judge has, therefore, exceeded his jurisdiction in going behind the ballot papers and the voters' list in these particulars, and he should be enjoined. Mabee, J., concurred in this judgment.

This construction was also adopted in *Re Orangeville Local Option By-law*, 20 O.L.R. 476.

The effect of the decision in the *Saltfleet* case, in thus limiting the inquiry, was not discussed by Mr. Justice Garrow in his dictum in *Re Ellis and Town of Renfrew*; and I learn from my brother Middleton that, upon the argument in this matter before him, counsel for both parties assumed that the Court of Appeal in *Re Ellis and Town of Renfrew* overruled on this point the judgment in the *Saltfleet* case.

Although it leads to the incongruous result that, while the vote of tenant A., who may have become a non-resident a month or more before the list was certified and remained a non-resident until after the election, is good, the vote of tenant B., who did not become a non-resident until a day before the election, is bad, and although sec. 86 of the Municipal Act, 1903, requires, *inter alia*, as a qualification of tenant voters that they must have resided within the municipality "for one month next before the election," the decision in the *Saltfleet* case is, nevertheless, binding upon this Court. Following it, therefore, it must be held that the votes of the four tenants who were non-resident when the list was certified cannot be attacked on the scrutiny. With these votes held good, the County Court Judge must certify to the municipality that the by-law was carried.

While it would, therefore, be fruitless for him now to inquire how the ballot of the one illegal vote was marked, as he is directed to do by the judgment appealed from, the question of his right to do so is of sufficient importance for determination by