

was returned on 7th October. Section 7 of the Voters' Lists Act, relied upon by Mr. Connor, directs that within 30 days after the return of the roll the clerk shall make out an alphabetical list of voters, shall cause 200 copies of the list to be printed in pamphlet form, and shall post up and deliver the copies as directed by sec. 9; that complaints against the list may be made within 30 days after such posting; and that the lists shall be finally revised, corrected, and certified by the Judge within one month after the day for making complaints. Under these provisions the Judge was not required finally to certify the list for the city of St. Catharines until 5th January, 1909. It is therefore manifest that it was not contemplated by the legislature that the voters' list for 1909 should necessarily be used at the municipal election for that year; hence the provision made by sec. 148, that "the proper list to be used . . . shall be the last list of voters certified by the Judge and delivered or transmitted to the Clerk of the Peace"—pointing clearly in this case to the list of the preceding year.

In my opinion, the list used was not the proper list, and the election held upon it cannot be supported.

It was argued that the use of the wrong list is merely a non-compliance with the provisions of the Act as to the taking of the poll or an irregularity which should be held to be cured by the provisions of sec. 204. In my opinion, this case does not come within sec. 204. The foundation of a contested election under the Municipal Act is the voters' list. As provided by sec. 165, his right to vote depends upon the elector's name being entered upon the voters' list. If an election is held upon a list which is not a voters' list or is not the proper voters' list to be used, it is not, in my opinion, an election conducted in accordance with the principles laid down in the Act.

But, if sec. 204 did apply, it would be, I think, impossible to say that "it appears" to the Court "that such non-compliance, mistake, or irregularity did not affect the result of the election." It was argued that the applicant must shew that the irregularity did affect the result of the election. This would involve treating the statute as if it read, "if it does not appear . . . that such non-compliance, mistake, or irregularity did affect the result of the election." Although some of the cases appear to lend colour to this view of the provisions of sec. 204, I can find no justification for so altering its plain language. The burden is upon the