

But adopting the finality of the voters' list leaves open the question of the nature and extent of the inquiry which must be made in the case of tenants whose names were left upon the voters' list, although actually then disqualified by non-residence and whose disqualification continued down to the time of the election. Riddell, J., was of the opinion that this was a question not open to the County Court Judge upon a scrutiny—a question, it seems to me, left in considerable and unnecessary obscurity in the legislation upon the subject. But it was certainly open to Riddell, J., to consider and determine the question. The law is properly most careful to protect the bona fide voter in exercising his right, but I see no sign of favour extended to the voter who is so only by virtue of the statutory estoppel. Sub-section 2 of sec. 24 of the Voters' Lists Act speaks of "persons who subsequently to the list being certified are not or have not been resident within the municipality." This language seems amply wide enough to include the case of the persons to whom I have referred, as well as those, if any, who, after the list was certified, became disqualified by becoming non-resident. It would be an odd and wholly illogical conclusion that the person who was actually disqualified when the list was certified should be in a better position than one who, properly qualified then, subsequently became disqualified—a result which, in my opinion, could not have been intended, and which is certainly not clearly within the language used. . . .

[The learned Judge then examined the votes in dispute, and in effect agreed with the conclusions of RIDDELL, J.]

The result is, that there are 9 votes, including that of the town clerk, to be deducted, which leaves the total number of votes 592, of which three-fifths is 355. And deducting 9 votes from 368, the total number of votes in favour of the by-law, leaves 359, or a majority of 4 over the statutory requirement.

Appeal dismissed with costs.

MACLAREN, J.A., agreed.

MOSS, C.J.O., and MAGEE, J.A., agreed in the result; MAGEE, J.A., stating reasons in writing.

MEREDITH, J.A., dissented, for reasons stated in writing, holding that sec. 24 of the Voters' Lists Act did not apply to such a case as this, and that sec. 204 of the Municipal Act could not be invoked in favour of the by-law.