

under sub-sec. 4 of sec. 129, and they took the oath of office. Being de facto members of council, the validity of their legislative acts cannot be impeached on the ground that their election was invalid in law. . . .

[Reference to Scadding v. Lorant, 3 H. L. Cas. 418; Brice on Ultra Vires, 3rd ed., pp. 304, 613; and Dillon on Municipal Corporations, 4th ed., sec. 276.]

This objection is also overruled.

The 3rd objection is also untenable. The council on 15th January adopted a resolution finally passing the by-law, and directed that the same should be signed by the reeve and clerk, and the corporate seal attached. It was shortly afterwards duly signed by the clerk and the seal attached, and on 3rd February it was signed by William Mitchell, who was then de facto reeve, notwithstanding it would appear that on 2nd February he went through the form of resigning his position as reeve. His resignation, however, in my opinion, was not effective to disqualify him from signing the by-law, inasmuch as there was not a compliance with sec. 210 of the Municipal Act, which provides for resignation with the consent of the majority of the members of the council present, to be entered upon the minutes of the council. This not being done, the resignation was not effective. See Chaplin v. Woodstock Public School Board, 16 O. R. 728; Hardwick v. Brown, L. R. 8 C. P. 406; Biggar's Municipal Manual, p. 228.

The motion will, therefore, be dismissed with costs.

---

MAY 7TH, 1906.

DIVISIONAL COURT.

MERCHANTS BANK v. STERLING.

*Principal and Agent—Moneys Advanced by Bank to Agent—  
Liability of Principal—Evidence—Authority of Agent—  
Burden of Proof.*

Appeal by defendants from judgment of BRITTON, J., ante 67, in favour of plaintiffs in an action to recover moneys advanced by plaintiffs to one E. J. Witherford, the