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* June 6.

* June 24.

WILLIAM HENRY SINCLAIR.....APPELLANT;

AND

THE CORPORATION OF THE }
TOWN OF OWEN SOUND.....} RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

*Municipal Act—Vote on by-law—Local option—Division into wards—
Single or multiple voting—3 Edw. VII. c. 19, s. 355.*

Sec. 355 of the Ontario Municipal Act, 3 Edw. VII. ch. 19, providing that “when a municipality is divided into wards each ratepayer shall be so entitled to vote in each ward in which he has the qualification necessary to enable him to vote on the by-law” does not apply to the vote on a local option by-law required by sec. 141 of the Liquor License Act (R.S.O. [1897] ch. 245).

Judgment of the court of appeal (13 Ont. L.R. 447) affirming that of the divisional court (12 Ont. L.R. 488) affirmed.

APPEAL from a decision of the court of appeal for Ontario(1) affirming the judgment of a divisional court(2) in favour of the Town of Owen Sound.

The question for decision was whether on submission to ratepayers of a by-law under the local option provisions of the “Liquor License Act” of Ontario(3) a ratepayer was restricted to one vote or could vote in every ward of the town in which he had property.

The court of appeal and divisional court held that only single voting was permissible in such case overruling the opinion of Mr. Justice Mabee to the contrary.

*PRESENT:—Girouard, Davies, Idington, MacLennan and Duff JJ.

(1) 13 Ont. L.R. 447.

(2) 12 Ont. L.R. 488.

(3) R.S.O. [1897] ch. 245.

Nesbitt K.C. and *Wright* for the appellant.

Hodgins K.C. and *Frost* for the respondents.

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GIROUARD J.—I am of opinion that this appeal should be dismissed.

DAVIES J.—The questions for our determination are whether in cases where a municipality is divided into wards and a by-law other than one for contracting a debt is submitted for the approval of the electors each rate payer is entitled to vote in each ward in which he has the necessary qualification, and secondly whether in the case of the particular by-law now in question where the right of the rate payer to vote in each ward was denied and refused the by-law should because of such refusal be quashed.

The able and exhaustive analysis to which the “Municipal Act of Ontario” was subjected in its several consolidations and amendments by counsel for the several parties satisfied me that amidst much which was ambiguous and obscure one fact was clear and that was that the whole controversy depended upon the construction to be given to section 355 of the “Consolidated Municipal Act of 1903.”

That section lying in the statute between sections 353 and 354 defining the qualifications of ratepayers entitled to vote “on any by-law *for contracting a debt*” and sections 356 and 357 giving the form of oaths of freeholders and leaseholders in the expressed cases of “*by-laws for contracting a debt*” reads as follows:

Where a municipality is divided into wards each ratepayer shall be so entitled to vote in each ward in which he has the qualification necessary to entitle him to vote on the by-law.

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Do the words "so entitled to vote in each ward" refer to the by-laws "for contracting debts" with respect to which alone the two preceding sections refer or can they be made to apply to all by-laws as to which the assent of the ratepayers is required?

In his very clear factum, as also in his oral argument, Mr. Nesbitt frankly conceded it was only as regards electors who are ratepayers entitled to vote under sections 353 and 354 that the appellants are here raising any claim. It seemed to me on the argument that this admission made it next to impossible to give to the words of section 355 the broad interpretation he sought to put upon them.

When the "Liquor License Act," R.S.O. 1897, ch. 245, was passed providing that such a by-law as that now before us should be duly approved before its final passing

by the electors of the municipality in the manner provided by the sections in that behalf of the Municipal Act.

there existed a section of the latter Act, 137, expressly providing that

in towns and cities every voter may vote in each ward in which he has been rated for the necessary qualification

except with respect to the mayor or reeve when he was restricted to one vote.

In the consolidation of 1897 that section was continued as section 158, but in the revision of 1899 it was entirely changed and the duplicate voting no longer extended to by-laws but was expressly confined to councillors and aldermen where they were elected by wards.

Until this change was made there can be no doubt that the principle of duplicate voting was applicable

to all by-laws requiring the approval of the electors. Sections 353 and 354 had not then been limited to by-laws for contracting debts and Mr. Nesbitt contended that at any rate until that limitation was introduced into these sections in 1903, the principle of duplicate voting by wards must be held to have been continued, notwithstanding the dropping out and changing of section 158 in 1897.

But conceding all that, we find in 1899 the legislature in express terms limiting sections 353 and 354 to "by-laws for contracting debts."

When this change was made section 158 had disappeared and all trace of express provisions for polling duplicate votes on by-laws other than those for contracting debts seems to have been eliminated from the Act.

Mr. Nesbitt now frankly admits that the ratepayer referred to in the disputed section 355 of the consolidation of 1903 is the ratepayer whose qualification is determined by the two preceding sections 353 and 354. Then, if so, it seems to me the words "so entitled to vote" must necessarily relate to and be confined within the limitation of subjects on which he can vote expressly set out in these sections—which would mean so entitled to vote on by-laws for contracting debts.

I thought at one time it might be possible to hold that these words "so entitled to vote" might be held to have reference to any preceding sections in which the right to vote was defined or clearly set out on which construction it might refer to section 348 providing in the case of municipalities divided into wards for the delivery to the deputy returning officer for every ward of

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a voters' list containing the names of all persons appearing by the then last revised assessment roll *to be entitled to vote* in that ward.

But Mr. Nesbitt disclaims, as I understand his argument, that these persons so appearing on the list are the persons "entitled to vote" referred to in section 355. The reference is exclusively he says to those electors who are such ratepayers as are defined in sections 353 and 354 and it is only as to the manner of their voting that he contends.

That being so, and the principle of duplicate voting upon by-laws generally which formerly expressly existed having been eliminated, by the dropping out from the Act of the old section 158 and by the express limitation introduced into sections 353 and 354 confining them to by-laws for contracting debts, I am of the opinion that, in view of the frank and proper admission before referred to made by Mr. Nesbitt, there is only one reasonable construction which section 355 can in its present collocation bear and that is that the words so entitled to vote mean so entitled on by-laws for contracting debts to which the two preceding sections 353 and 354 and the two subsequent sections 356 and 357 exclusively relate. They are only entitled to vote in each ward on by-laws submitted to them for contracting debts.

The appeal therefore must be dismissed with costs.

IDINGTON J.—I concur in the opinion of Mr. Justice MacLennan.

MACLENNAN J.—I am clearly of opinion that this appeal should be dismissed.

Unless the appellant's argument in favour of

double voting can be maintained, there is nothing else to support his contention, and I think a careful consideration of the various sections of the "Municipal Act," affords no warrant for double voting on a liquor by-law.

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Section 141 of the "Liquor License Act" requires such a by-law to be approved by the *electors, in the manner* provided by the sections in that behalf of the "Municipal Act."

By section 2(5) of the latter Act, the word "electors" is defined to mean the persons entitled to vote at any municipal election, or in respect of any by-law, * * * in the municipality, ward or polling division.

The question then is, what is *the manner*, provided by the "Municipal Act," for the approval of a by-law by the persons entitled to vote in the municipality of Owen Sound?

The answer to that question is found in section 338, and following sections. Section 338 provides that in case a by-law requires the assent of the electors of a municipality, before the final passing thereof, the following proceedings shall, *except* in cases otherwise provided for, be taken for ascertaining such assent: after which follow various detailed directions, preparatory to the poll.

Section 350 directs that the poll shall be held at the day and hour previously fixed, and that the vote shall be taken by ballot.

Section 351 then declares that the proceedings at the poll, and for and incidental to the same, and the purposes thereof, shall be the same, as nearly as may be, as at municipal elections, and all the provisions of sections 138 to 206 inclusive, except section 179,

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of this Act, so far as the same are applicable, and *except so far as herein otherwise provided, shall apply to the taking of votes at the poll*, and to all matters incidental thereto.

Now looking back to sections 138 to 206, we find a number of sections from 158 to 163 inclusive under the general title of: "Where and *how often* electors may vote." These sections provide, with minute particularity, that in cities and towns, townships or villages, no persons shall vote more than once, for mayor, reeve, councillor or alderman, except in cities and towns where aldermen or councillors are elected by wards, in which an elector may vote *once* in each ward in which he has the necessary qualifications, for each alderman or councillor to be elected. The same rule of one vote is applied by section 160 to elections for county councillors, and section 162 imposes a penalty of \$50 for voting oftener than allowed by the Act.

These sections being made applicable to votes on by-laws by section 351 conclude the question, unless they are excluded from application to the present by-law by the words in that section, *except so far as herein otherwise provided*.

I think it is clear that there is nothing *otherwise provided*, except as to by-laws for contracting debts.

Sections 353 and 354 deal with by-laws for contracting debts and with those alone, and make minute provision for by-laws of that kind; and it is plain that the following section 355 must be held to refer to by-laws of the same kind, when it provides that each ratepayer shall be so entitled to vote in each ward in which he has qualifications.

The appeal should be dismissed with costs.

DUFF J.—I concur in the opinion of Mr. Justice
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Appeal dismissed with costs.

Solicitors for the appellant: *Lucas, Wright &*
McArdle.

Solicitor for the respondents: *J. W. Frost.*
