

yet the provisions of the Insolvent Act of 1864 clearly point out that such a payment is a fraud upon the other creditors.

"The second charge made against the insolvent is, that he did not keep a cash book nor other sufficient books of account suitable to his trade, which is not denied by the insolvent.

"Under these circumstances, although I do not consider with the creditors, that the insolvent should never be discharged at all, yet it seems right that some penalty should be inflicted in consequence of the faults committed by him in the above mentioned instances. I therefore order that his discharge shall be suspended until 1st February, 1867, and will sign an order granting his discharge suspensively to take effect on that day."

The petitioners being dissatisfied with the said order and decision, made an application to a judge of one of the Superior Courts of Common Law, presiding in Chambers in Toronto, to be allowed to appeal from the said order and decision, and on the seventh day of November, A.D. 1866, an order was granted by the Chief Justice of Upper Canada, allowing the petitioners to appeal to one of the judges of the Superior Courts of Common Law in Chambers from the said order.

The petitioners therefore prayed that the said order and decision of the judge of the County Court of the County of Lennox and Addington might be revised, and the same reversed and the discharge of the said insolvent, Thomas Lamb, under the said act might be absolutely refused, or that such order be made in the matter as should seem meet.

Order for the appellants.

Holmested for the insolvents.

No cases were cited by either party.

HAGARTY, J.—The learned judge below considered the insolvent's conduct to be reprehensible in not keeping proper books of account, and suspended his discharge for six months. I do not think it wise to interfere with the exercise of such a discretion on the part of a judge who has heard the examination of the insolvent and been cognizant of the various proceedings in the case, except in a very clear case in which the appellate jurisdiction is necessarily invoked to prevent an undoubted injustice.

I think that the learned judge acted with extreme leniency, and possibly took a milder view of the bankrupt's misconduct than I should have done, judging wholly from the papers before me. Had he, with his superior opportunities of forming a correct opinion, passed a much more severe sentence I should certainly not interfere with it on the insolvent's application. I think the insolvent's neglect to keep proper books a most serious breach of duty, causing great possible injury to his creditors, and tending to raise strong distrust of his integrity. The evidence of his being a very illiterate man suggests the only possible excuse, and weighed, I presume, with the learned judge. It might perhaps be said that it was not very prudent for his creditors to trust a man so unfit for the conduct of business or the keeping of accounts with such large quantities of goods on credit. I do not differ from the learned judge's view as to the alleged preference. As to the neglect to keep proper books I think it would be well always to punish such a

breach of duty in a severe and exemplary manner.

We have in this country in our legislation done everything to favour debtors and render the escape from liability as easy as possible to them. It will be well at all events that the very easy requirements of the Insolvent Act on debtors asking for their discharge should be peremptorily insisted on, and proper punishment awarded to any breach of the trader's duties in conducting his business.

I gladly avail myself of the power given me by sub-sec. 6 of sec. 7 of the act, and, while feeling bound to dismiss the appeal, do so without costs.

I think Mr Lamb's creditors had just ground for feeling indignant at his conduct and in opposing his discharge, and endeavouring to have some punishment inflicted upon him.

ENGLISH REPORTS.

QUEEN'S BENCH.

(*Law Times.*)

REG. V. BLIZARD.

Municipal corporation—Disqualification of candidate—Resignation—Quo warranto—Disclaimer.

Where a party who is elected to an office is disqualified and another claims the office as having the only legal votes, the party so elected cannot, by merely resigning his office, deprive the other party of his right to the advantage which a judgment of ouster upon a *quo warranto* will give.

A., who was a town councillor of the borough of T., which was a municipal borough within the 5 & 6 Will. 4, c. 76, having one ward only, was also mayor and returning officer of such borough, and on the 1st Nov. his term of office as councillor expired and he was re-elected. B. also was a candidate, but was unsuccessful in consequence of A. polling a greater number of votes. A. made the declaration as councillor required by the Act, but finding that he was disqualified by reason of being the returning officer, he resigned his office on the 8th of Nov. On the 12th Nov. a rule nisi was obtained for a *quo warranto* information against him for exercising the office of town councillor at the instance of B., who was relator and claimed to be duly elected.

Held, that he was entitled to file the information, for that without a disclaimer on the part of A., he would not be entitled to a *mandamus* to be admitted to the office.

[Saturday, Nov. 24, 1866.]

This was a rule calling upon Mr. Blizard to show cause why a *quo warranto* information should not be filed against him for exercising the office of town councillor of the borough of Tewkesbury. It appeared that Tewkesbury is a municipal borough within the operation of the Municipal Corporation Act (5 & 6 Will. 4, c. 76), and has only one ward. Upon the 1st Nov. last, the annual election for councillors took place, and the then mayor, Mr. Blizard, the present defendant, whose term of office as a town councillor then expired, was a candidate for re-election. There were four councillors to be elected, but there were five candidates, the present relator, Mr. Moore, being one. At the election the mayor and three others had the majority of votes, Mr. Moore being the unsuccessful candidate. It appeared from the affidavits that on the Saturday, the 29th October, Mr. Moore served Mr. Blizard with a notice to the effect that as he was mayor he was ineligible to be a candidate, and that votes given for him would be thrown away. The mayor being indisposed did not at-