Act. If our expired Act absolutely made all the persons therein specified "traders," they would be so for all purposes other (I presume) beside those of bankruptcy. But it only makes an inn-keeper, as I understand it, a trader "within the scope and meaning of the Act." Our Legislature, I consider, have advisedly used a special term, "trader," without in any way enlarging its meaning. Whoever is included in the term "trader," standing in its unexplained sense, is within the Insolvent Law. No one else can be, as it seems to be. Therefore, on the express decisions in the English Courts, down to the 6 Geo. IV. ch 16, when the inn-keepers first came under the Bankrupt Law, I think we are bound to allow this appeal.

An inn-keeper may, of course, be shewn to be within the law by some trading carried on apart from the mere position of an inn-keeper; but, simply *quatenus* inn-keeper, he was held not to be within the law.

I have referred to the authorities mentioned in the decision below. Popham on the Insolvent Law p. 18, states: "In the Province of Quebec, there is a wider signification given to the meaning of the word, as regards its application to the Insolvent Law. The word "trader" is there held to embrace (here follow many classes): "Hotels, tavern, eating-house, and boarding-keepers," referring to *Patterson* v. *Walsh* (Robertson's Digest 49), *McRoberts* v. *Scott*, (*Ib*). The first case is a decision in the year 1819, and decides that a tavern-keeper is a trader and dealer, and his note to a merchant, payable to his order, may be transferred by a blank endorsement, it is a commercial note. So in *McRoberts* v. *Scott*, in 1821. I have examined all the cases referred to in the book, as far as I can find them. They all seem to hold merely that such persons are to be governed by commercial law, and do not refer to Insolvent or Bankrupt Acts. For instance, to shew that "auctioneers" are traders, *Pozer* v. *Clapham* (Stuart's Appeal Cases, 122,) is cited; an action brought by co-partners in trade against a merchant to recover money overpaid to him on a sale: *Per curiam*, "This is clearly a commercial matter, and consequently the proof must be weighed, according to the rules of evidence, by the law of England. It refers to a decision of 1809, that the transactions of tradesmen and artisans, in the way of their trade, are to be considered as commercial matters, and recourse must be had to the English laws of evidence, under 10th sec., Ord. 15, Geo. III. ch. 2.

I can find no decision of a Lower Canada Court on this Insolvent Act. There may be such, no doubt. In Ontario I see no rule for our guidance, but the statute law already referred to,

GWYNNE, J.—The Act appears to be defective in not having a clause defining the meaning of the term "traders" as used in the Act, and giving to it a more extended application than in its ordinary acceptation it has. There are interpretation clauses (142 & 143) defining the meaning to be attached to divers words used in the Act; but the term "traders" is not one of them. In the absence of a statutory declaration of the description of persons intended to be comprehended in the term, we must construe it according to its ordinary acceptation. It was at a very early period decided, in *Swift* v. *Eyres*, Cro. Car. 546, and *Newton* v. *Trigg*, 3 Mod. 329, that an inn-keeper, *qua* inn-keeper, was not a trader within the statutes relating to bankrupts, unless so declared to be by those statutes. Ever since these decisions it has been customary for the Legislature to declare, in the several Bankrupt Laws which have been enacted, who shall be deemed to be traders within their provisions. In the absence of such a declaration we must be governed by the old decisions, and hold that within the Insolvent Act of 1869, an inn-keeper, *qua* inn-keeper, is not a trader.

The judgment to be entered below will be judgment for the plaintiff therein, the now appellant, with costs.

GALT, J., concurred.

Appeal allowed, with costs.

NOTE.—*Richardson's Dictionary*: "*Trading* or *Trade*, a way or course, trodden and re-trodden, passed and re-passed, a way of course pursued or kept, a concourse or intercourse, a regular or habitual course or practice, employment, occupation in merchandize or commerce, intercourse for buying, selling or bartering, commerce, traffic."

Imperial Dictionary: "*Trader*, one engaged in trade or commerce, a dealer in buying, in selling or barter. *Trade* is chiefly used to denote the barter or purchase and sale of goods, wares and merchandize, either by wholesale or retail."

REG. EX REL. CLEMENT v. COUNTY OF WENTWORTH.

By-law in aid of railway—Ratepayers' assent not obtained —By-Law quashed.

A by-law of a County Council, in aid of a railway, to the extent of $20,000, which had not been submitted to the ratepayers under the Municipal Institutions Act of 1866, was on that ground quashed.

[22 C. P. 300.]

In Hilary term last *E. Osler* obtained a rule to quash By-law No 210, entitled "A by-law to aid the Hamilton and Lake Erie Railway Co., by a free grant or donation of debentures, by way of bonus, to the extent of $20,000," on certain terms, &c., on the ground that it was passed by the County Council without having been submitted to the vote, and without securing the assent of the ratepayers, and on other grounds.

It was admitted that the by-law had not been submitted to the ratepayers.

The by-law recited the desire of the council to aid the railway by a free grant or donation of debentures to the extent of $20,000, and that it would require $2,200 to be raised annually by special rate to pay the debentures and interest. The debentures were to be payable within twenty years, interest at six per cent., half yearly.

Burton, Q. C., now shewed cause, and urged, first, that on the construction of the Act, it was not necessary to submit any by-law granting a bonus to a railway to the ratepayers, irrespective of the amount.

Secondly, that, as this by-law was for an amount not exceeding $20,000, it need not be so submitted. He cited *Bramston* v. *Mayor of Colchester*, 6 E. & B. 246.

Osler, contra, referred to *McLean* v. *Cornwall*, 31 U. C. 314; *Jenkins* v. *Corporation of Elgin*, 21 C. P. 325; Dwarris' Statutes, 568.

HAGARTY, C. J.—Section 349 of the Municipal Act of 1866, declares that a municipality may pass by-laws, 1st For subscribing for shares or lending to or guaranteeing the payment of any sum of money borrowed by a railway corporation,