and although there is no decided case under this clause, Mr. Grant, in his Treatise on Corporations, page 234, in commenting on this 54th section says: "The effect, therefore, of an adverse judgment in a prosecution under this enactment, is to strip the burgess *ipso facto* of his corporate character and rights; and it does not seem necessary, under the peculiarly strong terms used," (much stronger than our 121st clause) "that the corporation should go through the ceremony of removing him, but that they may fill up his place by a fresh election, as though he had terminated his natural life. But the proper course for the corporation to take, in case such person should persist in acting as a corporator, notwithstanding such judgment, is not to disfranchise, for that is not the correct course in cases of defective title, but to obtain an injunction in the nature of *quo warranto* to oust him. He might also, it is probable, be indicted as for a misdemeanor in acting in his place or office in contempt of an act of parliament." These remarks are equally applicable to the case before us.

In the case of *The Queen* v. *The Mayor of Cambridge*, 12 A. & E. 702, in which the effect of the Statute 9 Geo. IV. ch. 17, came in question—which statute enacted that any person who shall thereafter be elected, &c., to the office of Mayor, &c., shall within one calendar month next before or upon his admission into the office, make and subscribe the declaration therein set forth, and the 4th section of which provides that if any person elected, &c., into any of the offices mentioned, shall omit or neglect to make the declaration, such election, &c., shall be *void*, and it shall *not* be lawful for such person to do any act in the execution of the office.—Lord Denman, in giving judgment, says: "I decide, however, upon the ground that, notwithstanding the enactment in Statute 9 Geo. IV. ch. 17, which declares the election 'void,' it is clear that the party could not have been removed without a *quo warranto*. In the former acts similar words are used, to which effect could be given only by *quo warranto*. It could not be denied that a person disqualified under those acts was an officer until he was so removed."

These authorities go to shew that the relator has misconceived his remedy; but without them, the very nature of the case suggests that the remedy most expeditious and convenient, as well as consonant to the principles which guide us in other cases, is that by *quo warranto*. In that case the party himself is called upon to answer, and he must either admit or deny the alleged fact which would disqualify him or disentitle him to exercise the office. Under the rule in this case the party most interested is not before the court, although holding the office *de facto*.

Upon this ground alone we think the application must fail. In the case of *The King* v. *Bankes*, 3 Burr. 1452, 1 W. Bl. 445, it was held, upon precedents there cited, as upon the reason of the thing, that the rule could not proceed because the name of the acting Mayor was not in the rule, he being in the possession of the office, and materially interested in the event of the question: that he ought to be heard in defence of his right before the issuing of a mandamus to proceed to the election of another in his stead.

We are therefore of opinion that the rule should be discharged, and with costs.

The only affidavit filed by the relator in support of his application is the affidavit of Mr. Allen, a member of the council of this corporation. One would have thought that before he became a party to a proceeding of this kind, he would have first taken some step in the council for the amotion of Mr. McDougall, if he was of opinion that he retained his seat contrary to law, and so have avoided all this litigation. We also note that that gentleman, when referring in his affidavit to the alleged vacancy, qualifies it by the words "if any," evidently shewing that he had doubts on the subject.

Rule discharged, with costs.

In re Drope and the Corporation of the Township of Hamilton.

By-law—Delay in moving against.

The court refused a rule *nisi* to quash a by-law passed to stop up a road, where the relator was aware of the intention to pass it, and allowed two years and three months to elapse before moving—the objections urged being that there was no applicant for such by-law, and no sufficient notice of it published.

[Q. B., E. T., 1866.]

Hector Cameron moved for a rule calling on the corporation to shew cause why a by-law passed on the 3rd August, 1863, stopping up a road or highway opened by the authority of a by-law passed in 1854, should not be quashed, on the grounds: 1. That there was no applicant for such by-law, as required by the Municipal Institutions Act, Consol. Stat. U. C. ch. 54, sec. 321. 2. That there was no sufficient publication in the local newspaper of a notice of the intended by-law, and that the same was passed prematurely and within four weeks from the first publication of the notice, and that the Council allowed the relator no opportunity of opposing the by-law.

The affidavit on which it was moved stated affirmatively that there was no applicant for the passage of this by-law. It further set out a resolution passed by the township council on the 26th of May, 1863, that the clerk should give the necessary notice that the Council would after thirty days from publication pass a by-law closing up the road in question: that a notice dated 2nd July, 1863, was published in a local newspaper on the 8th, 15th, 22nd and 29th July, 1863; and that on the 3rd August, 1863, the relator wrote to the Clerk of the Court referring to this resolution, and objecting to the proposed by-law, and requesting "if any action is taken" that the clerk will please to record his objection. It was further sworn that an indictment was preferred (it was not stated at whose instance) against the Corporation for not keeping this road in repair, at the June Sessions, 1862, which, as the defendant did not appear, was removed into this court by certiorari, but was not tried until the last assizes for Northumberland and Durham.

Cur. Adv. Vult.

Draper, C. J. delivered the judgment of the court.

We are of opinion that upon the relator's own shewing there has been too great a delay to justify our summary interposition to quash this by-law. Our refusal to interfere in this way will not legalize it, nor will it prevent the assertion