cumstances observed in similar cases in the superior courts in England." A similar rule exists in this court.

RICHARDS, C. J.—I do not think we can grant the rule sought for on the materials now before us, nor without granting a rule *nisi*. The certificate produced on the motion does not express the grounds of the dismissal of the attorney as required by the rule of court, which would seem to be fatal to the application now made.

The practice in England, as I understand it, before the passing of Imperial Statute 23 & 24 Vic., cap. 127 and which existed when our rule of court was made, was to have a rule *nisi* issued in the first instance and served on the attorney before striking him off the roll, though his name might have been removed from the roll of attornies of another court. The case In re ———, gent., one, &c., reported in 1 Ex. 453, Michaelmas Term, 1847, decides expressly that the motion should not be made the last day of term, and inferentially that the rule should be to shew cause. Alderson, B., said, "this is the last day of term, he ought to have the opportunity of denying that he is the same person" Pollock, C. B., said, "this is the last day of term and the matter would hang over his head during the whole of the vacation. The motion should be made so as to give him an opportunity of answering it promptly."

It is true that *In re John Collins*, reported in Easter Term, 1856, 18 C. B. 272, the Court of Common Pleas struck an attorney off the roll of that court on the production of a rule of the Court of Queen's Bench, shewing he had been struck off the roll of that court for misconduct. Jervis, C. J., said, "out of deference to that court we do not enquire into the circumstances upon which they acted. The rule may go."

The case of *In re Hall*, 2 Jur. N. S. 1233, seems to be an authority, that the Queen's Bench in England, so late as Michaelmas Term, 1857, held that the rule to strike the attorney off the roll should be on a rule to show cause, and the case of *In re Sill*, of the same volume, p. 1232, shews that when an attorney has been readmitted in the court in which the initiative had been taken for striking him off the roll, the rule to readmit him in another court must be a rule *nisi*.

The 25th section of the Imperial statute, passed 28th August, 1860, to which I have referred, provides that the name of every person who shall be struck off the roll of attorneys of any of the superior courts of law at Westminster, by the rule of any of such courts, or off the roll of solicitors of the Court of Chancery, by order of any judge of that court, shall, upon the production of an office copy of such rule or order, and an affidavit of the identity of the person named therein, to the proper officer of every or any other of the said courts of which such person is an attorney or solicitor, be struck off the roll of such court; and when restored to the roll of the court from which he was first struck off, on production of the rule or order restoring him, with a similar affidavit of identity to the proper officer, his name shall be restored to the roll of the other courts.

Notwithstanding this enactment, the Court of Queen's Bench in England, in the case of *In re De Medina*, one, &c., 6 L. Times, N. S. p. 536, 17 June, 1862, when an attorney had been suspended from practice, by a rule of the Court of Exchequer, determined that they would look into the affidavits and exercise their discretion about suspending him from practice in that court.

In the case before us, the application must fail, as the certificate from the Court of Queen's Bench does not shew the grounds of the dismissal of the party applied against in the court, as required by the rule of court; as well as on the ground that the application was made on the last day of term, and is for a rule absolute in the first instance. Adam Wilson, J., and J. Wilson, J., concurred.

Per cur.—Rule refused.

IN RE CAMPBELL AND THE CORPORATION OF THE CITY OF KINGSTON.

Municipal Institutions Act, sec. 294, sub secs. 4 and 15—Harbour Dues—Firewood—Tolls thereon.

Held—That a clause in a by law which imposed tonnage dues on scows, craft, rafts, railway cars, &c., coming into the city of Kingston, containing firewood to be exposed or offered for sale, or marketed for consumption within the city, was illegal, and not authorized by sub-sec. 15 of sec. 294, of the Municipal Institutions Act, the toll or duty must be imposed upon the vehicle *in which* anything is *exposed* for sale in any street or public place

The fourth subsection of the same section only authorizes the imposition of reasonable tolls on vessels and other craft, for the purpose of cleaning and repairing harbours, and paying a harbour master, and does not sanction the levying such dues for the revenue purposes of the municipality to which the harbour belongs.

(C. P., E. T., 27 Vic.)

During Easter Term, *Kirkpatrick* obtained a rule on behalf of James Campbell, calling on the Corporation of the City of Kingston to shew cause why section 33 of the by-law passed on the 20th April, 1864, entitled, An Act to regulate the public Markets in the City of Kingston, should not be quashed, with costs, on the grounds:

1. That such section is in excess of any authority conferred by law on the said corporation.

2nd. It is not within the powers conferred on the said corporation by the 15th sub-section of sec. 294, of c. 54 of Con. Statutes of U. C., or any other clause or sub-section of the act.

3. Because it assumes to impose toll on all carriers of produce and articles therein mentioned to the city of Kingston, and does not confine such tolls to articles and produce exposed for sale or marketed in the city of Kingston. And,

4. Because it imposes a toll on the boats of private persons bringing such articles to the city for their own consumption.

The by-law was verified by the seal of the city and the certificate of the city clerk, and there was appended to it the affidavit of Campbell, stating that he was a wood-merchant, and carried on his business as such in the city of Kingston, and that he resided in the city. He also stated in his affidavit that he received the by-law annexed to it from the city clerk.

During the term, *Prince* supported the rule, and *D. B Read*, Q. C., shewed cause. He contended that though the section of the by-law complained of, could not be entirely sustained, under the 15th sub-section of sec. 294, but with the aid of sub-sec. 4, it might all be considered as good. He urged that the section might be good in part, and if so, the court ought not to give costs for quashing the part which was bad; and the good part ought to be sustained.

He referred to *Farquhar* v. *The City of Toronto*, 10 U. C. C. P. 379; *In re Smith* v. *The City of Toronto*, ib. 225; *Patterson* v. *The County of Grey*, 18 U. C Q B. 189; *Gibson* v. *The United Counties of Huron and Bruce*, 20 U. C. Q B. 111; *Tobacco Co.* v. *Woodroffe*, 7 B. & C. 838; *Poulters Co.* v. *Phillips*, 6 Bing N. C. 314; *Regina* v. *Elmonds*. 4 E & B. 993; *Tyson* v. *Smith*, 6 A. & E 745; *Lockwood* v. *Wood*, 6 Q B. 31; *Regina* v. *Everett*, 1 E. & B. 273; Grant on Corporations, 160.

RICHARDS, C. J —I think the 33rd section of the by-law bad, and it must be quashed. The by-law itself is entitled, A By-law to regulate the public Markets of the City of Kingston.

The 32nd section of the by-law provides that each and every waggon, sleigh, cart, truck, or other conveyance, containing firewood, lumber, shingles, laths or ladders, being exposed for sale or marketed for consumption, within the city, and all boats, rafts, cribs or railway cars, bringing to the city or into the harbour for delivery at, or consumption in the city, firewood, coal, charcoal, poles, lumber, potatoes, fruit, butter, cheese or vegetables, shall be subject and liable to a toll of twenty-five cents for every ton's capacity, and so proportionably; and the clerk of the maker, for the lessee of the market tolls, or his authorized assistant is thereby authorized and empowered to collect and demand payment of said toll, and all other tolls chargeable or collectable under that act from the owner or owners, or master or person in charge to the said boats or sailing craft aforesaid, and from the owner or driver of every waggon or other vehicle mentioned in the immediately preceding section of the by-law; and all and every person or persons refusing to pay such toll shall be deemed guilty of a breach of this by-law.

The 60th section of the by-law provides that any person violating the provisions of the by-law, or failing to observe them, shall be guilty of a breach of the by-law and shall be summoned before the mayor, police magistrate, or any alderman of the city, and if convicted, on testimony of one or more credible witnesses, should be fined a sum not more than fifty dollars, nor less than fifty cents; which fine and costs, if not levied forthwith, should be levied of the goods and chattels of the offender, if sufficient,