him to give any notice to electors at the polls,—electors could not then nominate another candidate.

There was collusion on the part of Boyes, the former relator, and the defendant, and therefore the judgment in his case was no bar to this application, and Boyes was not qualified as a relator in that case, having voted at the election for one Williams, who was not in fact a candidate and had not gone to the polls.

He cited *Reg. ex rel. Metcalfe* v. *Smart*, 10 U. C. Q. B. 89; *Reg. ex rel. Tinning* v. *Edgar*, 3 U. C. L. J., N. S., 39; *Reg. ex rel. Richmond* v. *Teggart*, 7 U. C. L. J. 128; *Reg. ex rel. Dexter* v. *Gowan*, 1 Prac. Rep. 104.

McKenzie, Q. C., *contra*.

J. WILSON, J.—I think Boyes was qualified as a relator under the statute.

If voters perversely throw away votes the minority candidate has a right to his seat, but the facts here do not shew that they did, as the electors might reasonably have thought that all the candidates were qualified. The relator should have gone further and told the electors at the polls that defendant was not qualified, and warned them not to vote for him.

The candidate with the largest number of votes should of course be elected, if possible, and, under all the circumstances, I do not think the relator should have the seat, for he waived his first protest by going to the polls. If a candidate claims to stand on his rights he must do so, and not waive them by afterwards going to the polls. He must elect his position and stand by it.

It was not suggested in the first case that there was another case pending on precisely the same grounds, or they would have been both disposed of at the same time, but the judgment in both will be the same.

As to costs, I do not think the first application was, so far as Detlor was concerned, collusive, and if not he should not be visited with costs of both applications. In this case each party must pay his own costs.

INSOLVENCY CASE.

(Reported by HENRY O'BRIEN, Esq., *Barrister-at-Law, Reporter in Practice Court and Chambers.)*

BRAND v. BICKELL.

Insolvent Acts of 1864 *and* 1865—*Sale of goods—Interpleader.*

When a sale has been had under an execution against a judgment debtor, who after the sale makes an assignment in insolvency, the proceeds of the sale are not vested in the official assignee, but go to the judgment creditors. A Sheriff has a right to an interpleader in such a case, where proceeds claimed by the official assignee.

[Chambers, January 15, 1868.]

On the 30th December last, the Sheriff of the United Counties of Northumberland and Durham obtained from the Chief Justice of the Common Pleas an interpleader summons, calling upon the plaintiff (the execution creditor) and one Robert Elias Sculthorp, the claimant of the proceeds of the sale had under a writ of *fi. fa.* issued herein, to appear and show cause why they should not maintain or relinquish their respective claims.

The summons was returnable on 3rd January, when it was enlarged till the 8th January, on which day the Sheriff filed an additional affidavit showing that, since the service of the summons, the defendant (the execution debtor) had made a voluntary assignment to one E. A. McNaughton, an official assignee, at Cobourg under the Insolvent Act of 1864; and that he (the sheriff) had been served with a notice of claim by or on behalf of the official assignee, who also claimed the proceeds of the sale; upon which Mr. Justice Morrison, then presiding in Chambers, enlarged the summons for a week, at the same time ordering notice of the enlargement to be served on the official assignee, to enable him to appear and sustain or relinquish his claim, which was accordingly done.

On the 15th January, the summons again came up for argument before Mr. Justice Adam Wilson, when it was agreed between the parties that his Lordship should dispose of the claims summarily, and not order an issue. It appeared, from the affidavits filed by the Sheriff, in addition to the above facts, that the sale under the writ of *fi. fa.* herein had taken place on the day of December last; and that he realized thereon the sum of $230. That on the day of December, the day before the sale, a writ of *fi. fa.* (goods) against the same defendant, at the suit of the said Sculthorp, the claimant herein, had been placed in his hands; and that the said Sculthorp had, since the sale, served him with a notice that he claimed the proceeds of the said sale under his execution, on the ground that the judgment on which plaintiff's execution was issued had been released.

——— appeared for the claimant Sculthorp, and filed a verified copy of a release executed in 1865, by the plaintiff and others, releasing the defendant from all claims whatsoever that they or any of them had against him (the defendant), and contended that if the judgment was a good and valid release, the plaintiff was not entitled to issue execution upon it, or to take any steps whatever to enforce it, and that therefore the claimant was as against the plaintiff entitled to have the proceeds of the sale applied in his execution, which was not in any way impeached.

Then as to the claim of the official assignee, he referred to the Insolvent Act of 1864, sub-sec. 7 of sec. 2, and sub-sec. 22 of sec. 3, and to the sections 12 & 13 of the Act of 1865, amending the same; and contended that under sec. 12, as a sale of the goods had actually taken place under an execution, the proceeds thereof were not vested in the official assignee by virtue of the assignment, as it had been made subsequent thereto, and that therefore the official assignee was not entitled to the proceeds; and in support of this contention cited, in addition to the above mentioned acts, *Converse* v. *Michie*, 16 U.C. C.P. 167, and *White* v. *Treadwell*, 17 U. C. C. P. 487.

A. H. Meyers for execution creditor. The proceeds of the sale are claimed by the official assignee, under the Insolvent Act of 1864, and the Sheriff has no right to make this application. The act of 1865 respecting interpleading does not apply to such a case as this. The release had never been acted upon or considered as releasing the judgment by the plaintiff.

Donald Bethune, for the official assignee. The Sheriff is not properly in court, and the official assignee is entitled to receive the proceeds of the