

From the affidavits filed in support of the application and the copies of extracts of the minutes of the council of the County of Peterborough referred to, it appeared that on the 25th of March, 1863, a committee of the council recommended that the townships of Burleigh and Harvey be resurveyed in all places where the old lines could not be found, and that stone monuments be placed on the government lines, and that a memorial be sent to the government to appoint John Reid and Theodore Clementi to make such re-survey: that on the 27th of March, 1863, the county council memorialized the government, representing that the settlement of the townships of Harvey and Burleigh had been greatly prevented owing to the uncertainty which existed regarding the lot and concession lines, the landmarks of the old surveys having in a great measure been obliterated. And they prayed His Excellency the Governor-General to cause a re-survey of those townships to be made, stating that towards the expenses of the survey they were prepared to contribute in the proportion of the lands patented in those townships; and they recommended for such survey the appointment of Messrs. Reid and Clementi, provincial surveyors.

It also appeared that the government, through the honourable the Commissioner of Crown Lands, caused the township of Harvey to be wholly re-surveyed by the surveyors, or one of them, above-named, the amount of remuneration being first settled at five cents an acre, being the lowest government price, and which was agreed to by the county council on the 15th of May, 1863; and on the 22nd of January, 1864, a resolution was adopted by the council, authorizing the warden to enter into an agreement with Mr. Clementi for the re-survey of the township of Harvey, and to pay him at the rate of five cents per acre for the whole area of land and water—all lakes and waters to be properly laid out on the plan, with their contents in acres; and it further appeared that, upon the certificate and order of the Commissioner of Crown Lands, the treasurer of the county paid \$2541.5 as their proportion of the expenses incurred in performing such re-survey.

An affidavit of the treasurer was filed on shewing cause, who swore that in order that the sum of \$2541.5 might be levied by the corporation of the united townships of Smith and Harvey, as well as to inform them of the amount necessary to be raised and levied to defray and pay the expenses of the re-survey, that part of the by-law sought to be quashed was passed; and that the corporation of the united townships did thereupon pass a by-law for the purpose of levying the said sum of money, and that they proceeded to act under such by-law, and that before this application they levied and collected a large portion of the money, but had not yet paid the same to the county of Peterborough.

MORRISON, J., delivered the judgment of the court.

As our judgment proceeds upon the ground of the second objection taken, it is unnecessary to decide whether the first objection is sustainable, although it is probable, upon an examination of the 6th, 7th, 8th, and 9th sections of ch. 93, Consol. Stat. U. C., and corresponding sections 58, 59, 60, and sec. 61 of ch. 77, Consol. Stats.

C., which are word for word the same, that the by-law, upon the ground of the first objection, would be found to be illegal.

As to the second objection, assuming the county council had authority to pass the by-law as to a re-survey of the whole township, it was contended that that part of the by-law requiring the amount to be levied and collected from the patented and leased lands of the township of Harvey is illegal and defective, and we are of opinion that the objection is well taken.

The term *leased lands* is very ambiguous. No doubt the council intended it to apply to lands leased by the Crown. The sixth section referred to enacts, that the survey shall be at the cost of the proprietors of the lands interested, and the ninth section refers to the same being levied on the said proprietors. The term *proprietor* we take to apply to and include a larger class of persons than owners of patented and leased lands. The by-law should have followed the words of the statute. Thus restricting the levying of the expenses to a smaller class of persons or lands than those mentioned in the statute, may exempt many persons and lands from paying or being liable to a share of the expenses, and thereby cast a heavier burden upon the other inhabitants and owners, contrary to the provisions of the statutes.

Upon this ground, in our judgment, that portion of the by-law moved against is defective and illegal, and ought to be quashed.

During the argument it appeared to me that the portion of the by-law objected to only amounted to a mere expression of opinion of the county council, and that it was unnecessary that this court should interfere; but, on consideration, permitting the by-law to remain as it is, might hereafter give rise to some difficulty, or in some way effect or create a liability on the part of the municipality of Harvey; and the better course, in order to avoid future question, is to set it aside.

Rule absolute to quash so much of the by-law objected to, with costs.

Rule absolute.

CORRESPONDENCE.

Insolvent Act of 1864.

TO THE EDITORS OF THE LAW JOURNAL.

GENTLEMEN,—“A Barrister,” in your last issue raises some questions under the Insolvent Act of 1864, and amongst others whether or not it is necessary to mail a notice to each creditor on an application by an insolvent for his discharge, and refers to a recent decision on the question—doubtless, *In re Waddell*, as you suggest.

The same question arose in my practice. I argued that it was not necessary to mail the notice, and the learned county judge sustained me. I am still firmly of the opinion that the statute does not require it. My reasons are as follows.