

"In the Queen's Bench," only, and not in any cause. In re. Municipality of Augusta v. County Council of Leeds and Grenville, 1 Practice Cases, U. C. p. 121, where the affidavits applying for the Rule were entitled "In re. complaint of — v. —." The Chief Justice of the Court of Queen's Bench, in giving the judgment of the Court, says—"As to entitling the affidavits, the applicant must take his chance of their being held regular after cause shewn. The cases shew that if entitled as in a cause (before rule nisi granted) as *The Queen v. —*, they should be rejected." The case in 6 Term Reports may probably be considered the leading one as to this point. In accordance with these authorities I feel bound to rule for the dft. on the point raised.

It does not appear to me that there is much force in the objection that defendant was proposed by Peter Cleland, who was not at the time a qualified elector. As to the question of his interest in the township, it is quite manifest that it is much greater than that of many of the qualified electors, he being a freeholder and rated on the assessment roll, but disqualified from voting in consequence of residing in another township. The nomination after all is the mere introduction of the candidate to the electors; their assent or approval constitutes the election; and I am not aware that it is necessary that the person who proposes should be an elector at the time.

On the whole, therefore, I consider that the dft. is entitled to the said office, and that the summons should be dismissed. Inasmuch, however, as the dft. succeeds partly on the technical ground taken by him, and the conduct of the returning officer, in improperly rejecting the relator as a candidate has caused the difficulty, I think I shall best exercise the discretion given me by the statute, by declining to give costs to any of the parties.

(In the Insolvent Court for the Co. of Elgin.—D. J. Hughes, Judge.)

IN RE. F. MILLER.

*An alleged insolvent debtor in close custody for debt over £100, under mesne process.*

An expression of opinion has been asked from me with regard to this person now in gaol at Sandwich, on behalf of whom a petition was presented to me some time ago, and an application made for an *ad interim* order, under 8th Vic. c. 48 (the debtor having resided in this county for the twelve months next preceding the time of presenting the petition), but refused on account of various objections to the petition, and on account of the insufficiency and informalities of the notice and petition; and who, it is alleged, was a trader up to the period of his imprisonment, and owing debts amounting to more than £100.

I think a County Court Judge, acting in this Court, could not place so liberal a construction upon the intentions of the Legislature, either before or after the expiration of the Bankrupt Act, 7 Vic. c. 10, as to hold that the provisions of the Insolvent Debtor's Act could apply for the relief of persons who were originally excepted from its provisions by express enactment, as being traders within the meaning of the Bankruptcy Act now expired. The Bankrupt and the Insolvent Debtor's Acts, 7 Vic. c. 10, and 8 Vic. c. 48, were only temporary in their duration; the former was allowed to lapse by effluxion of time, the latter has been continued by various statutes passed since—and those continuing enactments (except 14 & 15 Vic. c. 116) do not in anywise extend its original provisions, altho' the Bankrupt Act (which was intended for the relief of a class of debtors not provided for by the Insolvent Act) had in the meanwhile expired.

\*It is not in our power at present to review this case, but we hope to be able to do so at a future day, after we have seen other decisions which we understand have been given, adverse to Judge Hughes' view, on the point involved in the above case.—*Ed. L. J.*

By the stat. 14 & 15 Vic. c. 116, the original statute 8 Vic. c. 48 is extended, and relief is afforded to a certain description of persons not originally provided for; had the Legislature ever intended that by the expiration of the Bankrupt Law traders of all kinds should be allowed to take advantage of the original act, I cannot help thinking it would have been so expressed when some of the continuing statutes, and especially when 14 & 15 Vic. c. 116 were passed. I think, too, that a Judge has no right to construe the intention of the Parliament beyond the provisions of its own direct expression, especially when the subject seems to have been considered if not reviewed by its own act for extending the provisions of the first statute.

The Insolvent Act requires the form and substance of the Petition to be framed in accordance with a schedule presented, and expressly enacts that if the petition be not framed according to that schedule, it shall be dismissed. That form of petition requires to be inserted "*at full length*" the name, address, and quality of the petitioner, and also the trade or business, or (if more than one) the trades or businesses which he carries or has carried on, during his twelve months' residence within the district of the Court." In setting all these matters forth, I apprehend it would be indispensable for him to shew that the business or trade he carries or has carried on are not such as would exclude the Court from its jurisdiction over him; for if he be of a "quality" described as a trader within the meaning of the expired Bankrupt Act, he would clearly, in my opinion, not be entitled to relief as an insolvent debtor within the meaning of 8 Vic. c. 48.

On the whole, I think it would be stretching the intention of the Legislature to an unreasonable length to say that it was intended for the Insolvent Law to apply to all persons, traders or not, when express reference is made to a bankrupt law then in existence but since expired, and when certain traders are expressly excluded from its provisions—it would be tantamount to construing an intention in the Legislature (negatively expressed by not continuing the Bankrupt Law), long after the Statute was declared to be in force, and making reference to another existing law, because that other law had been allowed to lapse. I think whatever the intention of the Legislature was, was expressed at the time the law was passed; and in order rightly to construe that intention, we must duly consider all the circumstances that existed at that time.

I am aware that I differ to some extent from a learned Judge (who is much my senior) in the opinion I now venture to deliver, and I have therefore approached the subject with much diffidence, and should not now (perhaps needlessly) have given this opinion, had not the debtor been represented as being about to prepare and present another petition, and incur an additional outlay of money in advertising, &c., and subjecting himself to the delay of remaining longer in gaol.

I think there is no existing relief provided by 8 Vic. c. 48, either by express enactment or by any reasonable intendment, for traders owing debts amounting to more than £100, unless they were traders before the passing of the expired Bankrupt Act, but excluded from its provisions unless they come within the scope and meaning of 14 & 15 Vic. c. 116.

## MUNICIPAL CASES.

(Digested from U. C. Reports.)

From 12 Victoria, chap. 81, inclusive.

(Continued from page 91.)

### BY-LAWS.

1. *Alteration of Roads—By-Law of Municipal Council.* 12 Vic. c. 81, secs. 31, 189.

A Municipal Council in passing a by-law for the alteration of an old road, described the point of commencement of the new road as being "*about eight chains south of N.W. corner,*