which the assessment rolls produced had been made up. The assessors seem to have repudiated the plain and intelligent directions of the statutes and have introduced a novel mode of their own, not sanctioned by any statute whatever. To the directions contained in the 163rd section of the Municipal Institutions Act, and in the 18th and 24th sections of the Assessment Act they have paid no regard whatever in the assessment rolls produced before me, at the hearing of this cause. I am, however, bound by law to act on the rolls as they are, and not on rolls as they ought to be.

For the reasons already stated, I am of opinion that the defendant is entitled to hold the office and to judgment on the present writ of summons in the nature of a *quo warranto* issued against him. Therefore I consider and adjudge that the said office of Municipal Councilman for Rideau ward, in the City of Kingston, be allowed and adjudged to him the defendant Thomas Flynn, and that he be dismissed and discharged from the premises charged upon him; and also that he do recover against the said relator his proper costs and charges laid out and expended in defending himself.

Judgment for the defendant with costs.

ENGLISH CASES.

V. C. WOOD'S COURT.

(From the Law Times.)

HOLMES ET AL v. THE QUEEN.

Petition of right—Jurisdiction—Lands in a colony—Petition of Right Act 1860, 23 & 24 *Vict. c.* 34.

This court will not entertain a petition of right to adjudicate upon a claim to lands vested in the Crown, situated in one of the colonies, nor will it make a decree *in personam* as against the Sovereign of this country in the character of Trustee here of lands in a British colony.

(*Nov.* 15 *and* 19)

Demurrer.

This was a demurrer filed by the Crown to a petition of right, presented under the Petition of Right Act 1860, to obtain restoration from the Crown of certain lands within the city of Ottawa, in Upper Canada, taken by the Ordnance Department under the authority of the Rideau Canal Act, and not actually used for the purposes of the canal. It appeared that in 1801 a concession of lands in Upper Canada was made by the Crown to a Mrs. M'Queen. In 1827 the Rideau Canal Act, authorising the construction of a canal for connecting Lake Ontario with the river Ottawa, and containing certain provisions for vesting in the Crown the lands required for the purposes of the canal, was passed by the Upper Canada Parliament. The canal, which was completed in May 1832 passed through the lands conceded to Mrs. M'Queen, but left on both sides of the canal a tract of surplus land, which formed the subject-matter of the present claim. The present petitioners claimed under the late Colonel By, who had purchased in 1832 from the heir-at-law of Mrs. M'Queen all the lands conceded to that lady. In 1843 an Act was passed by the Provincial Parliament of Canada, for vesting in the Ordnance Department the Rideau Canal, and the lands and works belonging to it for the service of the Department. This Act contained a provision (sect. 29), that all lands taken from private owners, under the authority of the Rideau Canal Act, for the uses of the canal, which had not been used for that purpose, should be restored to the parties from whom the same were taken. In 1856 an Act was passed by the Canadian Legislature for vesting the Ordnance estate and property in her Majesty, for the benefit, use and purposes of the provinces. The petitioners, as the persons interested in Colonel By's Canada estate had filed this petition of right, claiming the restoration of so much of the land taken for the use of the Rideau Canal as had not been used for that purpose. To this petition of right the Attorney-General had demurred.

The Solicitor-General (Sir R. Palmer), *Sir H. Cairns, Q. C.* and *Wickens*, for the Crown, in support of the demurrer, contended that a court of equity in England had no jurisdiction to entertain questions of right to lands in a British colony; that the courts of the colony in which the lands were situated had ample jurisdiction to entertain such questions. No case was here raised upon which a court of equity could adjudicate. The Petition of Right Act, 23 & 24 Vict. c 34, expressly declared that a legal right was given to parties who might claim an interest in lands situated as the present were. They cited *Penn* v. *Lord Baltimore*, 1 Ves. sen. 444; *Clayton* v. *Attorney-General*, 1 C. P. Coop. 97; and referred to Story's Conflict of Laws.

Giffard Q. C., W. W. Cooper and *Hanson*, in support of the petition, contended that the court had ample jurisdiction to make a decree *in personam*, assuming her Majesty to be the trustee dwelling here, in whom the lands in question were vested as trustee. By such decree a conveyance could be directed, and an enumeration of the lands with their respective boundaries obtained. No petition of right could be presented in Canada, where the lands were. The remedy was that pointed out by the Petition of Right Act, 1860; and it was only under that Act that a petition similar to the present could be presented, and justice obtained. Unless the present petition could be entertained, the petitioners would be wholly without a remedy. They cited *Earl Kildare* v. *Eustace*, 1 Vern. 418; *Innes* v. *Mitchell*, 4 Drew. 57 and 151; S. C. on appeal, 2 De G. and Jo. 453; *Cranston* v. *Johnstone*, 3 Ves. 17; *Tulloch*, v. *Hardy*, 1 Yo. C. C. C. 115.

THE VICE-CHANCELLOR, after stating the case, said that the demurrer must be allowed, on the broad ground that this court could not take upon itself to adjudicate the claims to land in one of the colonies, and that there was nothing in the Petition of Right Act 1860 which could have the effect of withdrawing land from the jurisdiction of the country in which it was situated, and giving the English courts jurisdiction over it. It had been conceded on behalf of the petitioners that no direct remedy *in rem* could be given by this court as to lands out of the jurisdiction; but it was argued that, according to a series of cases beginning with that cited from Vernon and *Penn* v. *Lord Baltimore*, where the question did not arise so as to involve the action of the court *in rem*, but a decree could be made *in personam*, then that the Court of Chancery had authority to act, and order a conveyance to be made as directed by the colonial legislature in 1843 (according to the allegations in the petition). That really was the main question, but it appeared to him that it must clearly be decided against the petitioners. It was argued that the Crown was a trustee for these petitioners of the land in Canada, and was bound to restore it to them; that if it had been a case between subjects, and the trustees were found to be in this country, those trustees would be bound by the decree of this court, and that the Queen must be taken to be a trustee in respect of those lands present in this country. But this was a singular doctrine, and it would be a great surprise to the various colonies enjoying a separate legislature, if they were to be told that by an Act passed in England, to which they were not consenting parties, the courts of this country were authorized to determine the rights to property in the colonies as against the colonial legislature. It had been contended that the Crown, on the theory of being present everywhere within its dominions, must be taken to be in the position of a trustee present in this country, so as to bring the land in question under the jurisdiction of the English Court of Chancery. But even assuming that a trust existed, that the claim was not merely legal, and that courts of equity could exercise jurisdiction in matters relating to land in a foreign country, still it was necessary that the trustee should be within the jurisdiction to give any operation to this court. The land was unquestionably vested in her Majesty by the Act of 1856, for the benefit of the province, and in that point of view her Majesty was just as much present in Canada as in England. For the purposes of the Act, and the doctrine of this court acting *in personam*, her Majesty could not be taken to be within the jurisdiction of this court in respect of lands situate in Canada, and held by her not in virtue of her prerogative, but under the Act of the colonial legislature. On the highest ground, therefore, that it was not within the scope of the Act of 1860, or intended thereby, to transfer to this country the jurisdiction over lands in the various colonies upon the mere supposition that the Crown was present as a trustee in England, the demurrer must be allowed. This rendered it unnecessary for him (the V. C.) to enter into a consideration of the other arguments urged in support of the demurrer. He considered this ground sufficient to oblige him to allow the demurrer of the Crown, and with costs.

Order accordingly.