affidavit estimated to raise $5,771, making in all $10,390, leaving, after deducting expenditure and providing for liabilities for the year, a balance of $1,755 for future appropriations.

It also appeared by the affidavits of the Deputy Reeve and the Clerk, that when the rate of 1¼ cents was struck the applicant knew that in the estimate of expenditure was included the $1,500 for the town hall: that he himself drew the resolution to levy the rate of 1¼ cents with that knowledge, and voted for the same, and that in accordance with that resolution a by-law was passed on the 19th August, 1867.

It also appeared that the fee of the land on which the hall was built was vested in the corporation, and that the town hall had been fully completed and accepted, and had been occupied and used for some time: that it had also been paid for, except as to $200 unpaid, the amount being in silver in the Treasurer's hands, and the person holding the order for it preferring to wait until bank notes came into the Treasurer's hands, and the $200 only remained unpaid for that reason.

It was also denied that any inconvenience or loss had been occasioned to any one, as stated in the applicant's affidavit.

C. Robinson, Q C,, shewed cause, citing *Michie and The Corporation of Toronto*, 11 C. P. 386; *Clapp and The Corporation of Thurlow*, 10 C. P. 533; *Gibson and the Corporation of Huron and Bruce*, 20 U. C. R. 111; *Hawke and the Municipality of Wellesley*, 13 U. C. R. 636.

John Paterson supported the rule, and cited *McMaster and The Corporation of Newmarket*, 11 C. P. 402.

MORRISON, J.—Upon a perusal of the affidavits and papers filed on both sides, we are of opinion that this rule should be discharged.

On the whole, the affidavits filed on the part of the corporation fully meet and displace the case made by the applicant.

Then with respect to the by-law itself, for all that appears on its face there was money on hand to meet the demand; and as to the last objection, that it does not contain the necessary recitals, assuming for argument that it is a by-law requiring recitals, as said by Sir John Robinson in giving judgment in *Gibson and The Corporation of Huron and Bruce* (20 U.C.R. 121), "From the absence of any such recitals and provisions we are not at liberty to infer anything against the validity of the by-law, unless we can see clearly on the face of the by-law, or have otherwise shewn to us, that the by-law was passed for a purpose which required them to be inserted If for all that appears the by-law may be legal, we are not to conjecture the existence of facts that would render it illegal * * It is difficult to foresee how much public inconvenience may be sometimes occasioned by quashing by-laws after they have been acted upon, and though this can never be admitted as a reason for sustaining what has been clearly shewn to be illegal, it is a strong reason for declining to quash a by-law except on some clear grounds."

Rule discharged, with costs.

COMMON PLEAS.

(Reported by S. J. VANKOUGHNET, Esq., *Reporter to the Court.)*

IN RE MOORE v. LUCE.

Insolvency—Debt not matured—Right of creditor to commence proceedings.

Under the Insolvent Acts of this Province a creditor, whose debt is immatured, may commence proceedings against his debtor, who is insolvent, in like manner as he might have done, if his debt had been overdue at the time. But, in this case, it appearing that the debtor did not owe more than $100 beyond the creditor's debt, none of which was at the time due, and a portion not payable for several years to come, the Court directed that he should be allowed further time to shew, if he could, that he was not, in fact, insolvent, and so not liable to have his estate placed in compulsory liquidation.

[C. P., E. T., 31 Vic., 1868.]

A writ of attachment in insolvency was issued on the 25th of March, 1868, on the usual affidavits. The principal affidavit was made by R. P. Luce, the agent of the creditor, who stated, among other facts, that John R. Moore "is indebted to the plaintiff in the sum of eight hundred and sixty-six dollars and sixty-five cents, currency, for principal money accruing due upon eight promissory notes, hereunto annexed, made by said defendant: to the best of my belief and knowledge, the defendant is insolvent."

This affidavit was made on the 9th of March, 1868.

The first note was as follows:

"$100.—Two years after date, for value received, I promise to pay to Luce Brothers, or bearer, one hundred dollars, with interest at the rate of eight per cent. per annum until paid.

"JOHN R. MOORE."

The first note and the seventh were payable to Luce Brothers, or bearer, and both were stated to have been endorsed to T. J. Luce

The first six notes were dated the 14th of Nov, 1866. The seventh and eighth notes were dated the 19th of November, 1866.

The first six notes were for $100 each.

The seventh note was for $128

The eighth note was for $138 65.

The first note was at eight per cent. generally. The remaining seven notes were at eight per cent. payable annually.

The first note was payable at two years, and each of the other notes was payable respectively, at three, four, five, six, seven, eight and nine years.

The debtor petitioned the Judge on the 28th of March, 1865, to set aside the attachment, because his estate had not become subject to compulsory liquidation, as he was quite solvent, and the notes mentioned were not due.

The petition was argued before the learned Judge in the Court below, and he decided that by the Act of 1864, sec. 12, sub sec. 5, the plaintiff was a *creditor*, and, being a creditor, he could establish his claim under sec 3, sub-sec 7; that he was not required to shew his debt was overdue, or that he had an existing cause of action at law; that *Phillips* v. *Poland*. L. R 1 C. P. 206, placed a construction on the term *creditor* as applicable to the English Bankruptcy Act of 1849, sec. 112, which shewed that it meant, as to that Act, a person would come in under the Act and have the benefit of it; that *Wood* v. *DeMattos*, L. R. 1 Exch. 91, decided the same