

Honours to the qualifications which a candidate must possess in order to entitle him to be elected a member of the House of Representatives, I should like to make a few observations upon section 130. First, the commencement of the section is in the future tense. It refers to the seat of the member, to something which the member holds, and something which in all these subsections we shall submit to the Court must happen after the seat in the first instance is legally filled. For instance, there cannot be a vacancy until there has first been a seat. The member must be a duly qualified sitting member before the vacancy referred to in all these subsections applies. Secondly, if we examine each one of these subsections, and I shall submit also the subsection (4) upon which this question turns, it is clear that the Legislature speaks of the future, of something happening after the member has obtained his seat. For instance, take subsection (1), that is the future occurrence—"if he fails to give his attendance." That is something which attaches as a disqualification to the member after he has taken his seat—after he has been duly qualified as a sitting member. So also in subsection (2)—"If he takes any oath or makes any declaration or acknowledgment of allegiance." That refers to something done by a member, not to something done by a person who becomes a member, and prior to his obtaining the seat, but it plainly refers to an act done by a person in the capacity of a member. "If he (the member) takes," that is in the future. So if he makes any declaration or acknowledgment of allegiance or oath. Subsection (3) is another disqualification with the same future meaning. If he is a member his seat becomes vacant. "If he does or concurs in or adopts any act whereby he may become a subject or citizen of any foreign State or Power." We shall submit to the Court that "If he is a bankrupt," in subsection (4), is to be read in the same tense. Our contention, which will be supported by the subsections of the statute and other provisions of the Legislature on the matter, and also by some authorities which I will bring before the Court, is that no other construction can be put upon subsection (4). Of necessity it must import something happening—the bankruptcy of the person who was, prior to the bankruptcy, a member of the House, and consequently the words, although of the present tense, have a future application. In subsection (5) we have the same word "is" as in subsection (4)—"If he is a public defaulter." I submit it is abundantly clear that the words, "If he is a public defaulter" means after he becomes a member of the House, and that the words, "or is attainted of treason, or is convicted of felony, or is convicted of a corrupt practice in reference to any election," must also refer to something which has happened after he has become a member of the House, and must of necessity be read in the future tense although literally in the present. All these subsections, with the exception of subsections (5), (7), and (8), are practically taken from the Constitution Act, with the difference that the word used in the Constitution Act is "shall." If he "shall" take any oath, if he "shall" become a bankrupt, if he "shall" become a public defaulter, or "shall" be convicted of a corrupt practice. That is in section 49 of the Act. The first point, therefore, I make in discussing section 130 is that all the subsections are, apparently, in the first instance, in the present tense; but it is apparent that subsections (1), (2), (3), (5), (6), and (8) must be read in the future as something happening after the person has become a member—if he has to resign his seat he has nothing to resign if not a member. This also applies to subsection (7). In subsection (8) we have again the words in the present tense, "If he dies." I do not know whether the legislature in putting all these sub-clauses apparently in the present tense had in mind that in the original construction of the English language there never was a future tense at all, but that it has been added by grammarians in later years; but at all events it was thought fit to use the present tense in all these matters. We shall ask your Honours to read subsection (4) in the same way, and I submit the words "If he is a bankrupt within the meaning of the laws relating to bankruptcy" really mean this: "If he becomes a bankrupt" or "if he is adjudged a bankrupt within the meaning of the laws relating to bankruptcy." Therefore, if the words had been "becomes bankrupt" that would be the present tense and have a future signification; and I submit that the words "If he is a bankrupt" must of necessity, when we consider the construction of the clause, be interpreted in the future tense, and in reference to an act happening after the member has taken his seat. We shall support that position by reasoning which I shall derive from the statute itself and by, as I have said, the authority of one or two cases. I do not intend to weary your Honours with cases upon the construction of statutes, but will later on quote one or two which will support abundantly the position we take up. The next point I would address to your Honours is "the qualification of a person entitled to present himself to the electors for election as a member." The qualification clause does not exclude an undischarged bankrupt. We find the qualification clauses in sections 6, 8, and 9, of the Electoral Act. Section 9 is very emphatic in its terms: "Every man registered as an elector, and not coming within the meaning of the last-preceding section of this Act, but no other man, is qualified to be elected a member of the House of Representatives for any electoral district." There we have a very complete qualification clause. Then there is a proviso that "any man duly qualified as an elector, and who has been registered on any electoral roll, but whose name has become removed from such roll through no fault of his own, shall not, by reason only of not being registered as an elector, be disqualified from becoming a candidate and being elected for any electoral district." Then the Legislature, which seems to have had an abundance of caution, thinking that a woman might come within the definition of a man, provides that no woman shall be entitled to be a candidate, although she may be duly registered as an elector. We have to refer back to section 6 to find out the qualifications of any person entitled to be an elector. The persons qualified to have their names on the roll are, "Every person of the age of twenty-one years or upwards having, of his own right, and not as a trustee, a freehold estate in possession situated within any electoral district;" "Every person of the age of twenty-one years or upwards who has resided for one year in the colony and in the electoral district for which he claims to vote during the three months immediately preceding the registration of his vote." The persons who are disqualified, and the only persons therefore who are