

*The Chief Justice* : You cannot call subsection (7) future.

*Mr. Cooper* : Oh, yes, because he becomes a member on the declaration of the poll.

*The Chief Justice* : Yes, and before he takes his seat, and it is not future before he takes his seat.

*Mr. Cooper* : Yes, it is. It is an act which happens after he is elected, and after he is a member, and it might happen after he has taken his seat. What is to prevent an election petition going on concurrently while he holds his seat. It is something which has happened after the man has become the member for the district. It is not the ground upon which the election is declared void which disqualifies him. It is the judgment of the Election Court, which is a future act, something which happens after he has taken the status of a member.

*The Chief Justice* : After the election?

*Mr. Cooper* : After the election. He becomes a member by virtue of the declaration. The writ issues for the return of a "member," and the Returning Officer declares the man to be elected as a member. Section 120 says, "The Returning Officer shall make up, from the list made out by him as last aforesaid, and from the list so transmitted by the Deputy Returning Officers as aforesaid (corrected by disallowing votes if need be), the general state of the poll, and shall, as soon as conveniently may be on or after the day of the poll, give public notice of the number of votes received by each candidate, and declare the candidate or candidates, not exceeding the number to be elected, who have received in the aggregate at all the polling-places the greatest number of votes, to be duly elected as *member or members* for the district." So that the membership arises upon the declaration of the poll, and therefore I submit subsection (7) is future, and refers to a future act. Now, why should any of the other subsections be read as present, as continuing a status? I submit that the only reasonable interpretation that can be put on section 130 is to construe the words of subsection (4) as "If he is adjudged a bankrupt," or "If he becomes bankrupt," or "If he shall become a bankrupt," and these are the words which are in the Constitution Act. Perhaps upon this branch of the case your Honours may pardon me if I refer in detail to prior legislation, beginning with the Constitution Act. Now, the Constitution Act provides under sections 49 and 50 for the vacating of seats. Section 49 says, "It shall be lawful for any member of the House of Representatives by writing addressed to the Speaker of the said House to resign his seat in the said House, and upon such resignation the seat of such member shall become vacant." Section 50 is as follows, "If any member . . . shall for one whole session of the General Assembly . . . fail to give his attendance in the said House, or shall take any oath or make any declaration or acknowledgement of allegiance to any foreign prince or Power, or do or concur in or adopt any act whereby he may become a subject or citizen of any foreign State or Power, or become entitled to the rights, privileges, or immunities of a subject of any foreign State or Power, or shall become bankrupt, or shall become an insolvent debtor within the meaning of the laws relating to insolvent debtors, or shall become a public defaulter or be attainted of treason, or be convicted of felony or any infamous crime, his seat in such house shall become vacant." Contrast the first subsection of clause 130 of the Electoral Act of 1893—"If for one whole session of the General Assembly he fails, without permission of the House, to give his attendance in the House." I submit that there can be no argument drawn from the fact that the Legislature has, in the Act of 1893, altered the language, because we find no reason for the alteration of the language in that first subsection from the future to the present. In the Constitution Act it says, "If he *shall* fail to give his attendance." In the present Act it is, "If he fails." It is merely a grammatical alteration by the draftsman. Then, "If he shall take the oath," &c. Now, it is "If he takes" in the Act of 1893. What possible reason can there be for the alteration of the language, unless it is the one I take it to be, unless it is because the draftsman thought he was a better grammarian than the draftsman of the Constitution Act; and that I submit is the key to the alteration from the future to the present. The draftsman has, in following out the same principle, put subsection (4) in the present tense too. In the Constitution Act it is, "If he shall become a public defaulter," and the draftsman, following out the same principle in the Act of 1893 has put in, "If he is a public defaulter," "If he is convicted of felony, or is convicted of a corrupt practice in reference to any election," the seat of any member of the House of Representatives shall become vacant. Contrasting the Constitution Act with our Act of 1893, and dealing with these subsections in the way I have dealt with them, it is quite clear there was no object in the Legislature changing the language. It is a mere change of terms, but not of the law. We find in the Constitution Act the qualifications of a member. Under section 42 the members were to be chosen by the votes of those qualified to vote in the election of members of the Provincial Council, "and every person legally qualified as such elector shall be qualified to be elected a member of the House." Now we find, in going back to section 7 of the Constitution Act, what is the qualification of electors for election in the Provincial Council, and that was a freehold qualification. Then, in section 8 we find the disqualifications were as follow: "Aliens, persons attainted or convicted of any treason felony or infamous offence within any part of Her Majesty's dominion unless pardoned, or unless sentence or punishment served." There was therefore no disqualification in the Constitution Act of persons who enter upon the status of bankruptcy, and the importance of this will be manifest when I quote authorities to your Honours which are conclusive on the point: that, at any rate under the Constitution Act, an undischarged bankrupt was entitled to be elected a member of a representative body. There was no disqualification on the ground of bankruptcy or that the person was a "public defaulter," and, however disgraceful it might be, a "public defaulter" might be elected a member for any constituency. There seems to be no doubt that he could be elected, the Act leaving it to the House to expel him in the exercise of its inherent jurisdiction. Now, these are the qualifications and disqualifications in the Constitution Act; and I emphasise this position, that the words in the Constitution Act are future in reference to each one of the Acts referred