

express terms. There was much more reason in Rex and Chitty and Mossman's disqualification for importing a disqualification. In those cases there was an express proviso that the member disqualified by bankruptcy could not be elected until certain events happened—a much stronger reason for importing a disqualification than in the present case.

*The Chief Justice*: Are you arguing that a disqualification for election should be intended in this case?

*Mr. Skerrett*: What I argue is that the opposing construction must either go to the length of intending a disqualification for election, or it creates the absurdity which Mr. Cooper points out. My friend, Mr. Gully, is on the horns of a dilemma. Either this construction has the effect of intending a disqualification in section 8, or it creates the absurdity of a person qualified by the same Statute for being a candidate and being elected, and instant after the election rendered incapable of sitting. I submit that that is an absurdity.

*The Chief Justice*: Your contention is very plain. It is that the seat shall become vacant if he is bankrupt. "Become," you say, indicates change; whereas the contention of the other side is that there is no change.

*Mr. Skerrett*: Just so, your Honour. That is precisely our argument. I wish to make one observation as to whether it is an absurdity for a candidate to be elected and yet be incapable of sitting. There never has been an instance of that type created in one and the same statute. It is quite true that where the House of Commons expels a member he is entitled to go back to his constituency, and they are entitled to return him again and again. It is not a species of disqualification at all; the difficulty arises from the circumstance that Parliament has no control over the eligibility of persons to be elected, although it has the right to say that no person guilty of misconduct shall sit. I submit that great stress is to be laid on section 131 as an aid to construction. Section 131 provides not only the machinery for ascertaining when a vacancy by reason of bankruptcy occurs, but also when a vacancy is caused by conviction or attainder. It will be seen that if a member is attainted of treason, or is a public defaulter, or is convicted of felony, the Registrar or Clerk of the Court must notify the same to the Speaker. The same course is taken if the member has been adjudged a bankrupt. Section 131 is the complement both of subsections (4) and (5). Subsection (5) is clearly future, and applies to a conviction or attainder after election, although the subsection is expressed in the present tense. Surely the same method of construction must be applied to subsection (4); and, to read it plainly, relates to a bankruptcy occurring after election.

*Mr. Justice Dennistoun*: Was not that the case of Wilkes? As a matter of fact, the sheriff returned Mr. Luttrell's name although Mr. Wilkes had a majority. The electors petitioned against Mr. Luttrell, but the Commons resolved that he ought to have been returned, and never receded from the position maintained then. Mr. Luttrell did sit, and was returned, although Wilkes had a majority, on the strength of Wilkes's expulsion from the House of Commons.

*Mr. Skerrett*: A resolution was placed on the Journals of the House declaring such a course unconstitutional. May says the resolution declaring Mr. Luttrell elected was ordered to be expunged from the Journals. There is only one observation I wish to make, and that is this: It seems to me the only argument my friend is able to urge in the opposite direction is the suggestion that, there being a change of language from the Constitution Act, it must have been intended to have altered the sense or the meaning. Now, I submit that, in most of the subsections, it was a mere change of expression—a mere alteration in the grammatical form, and not a change in the meaning. If all the subsections but the bankruptcy section had been preserved in the future tense, and that one alone altered into the present tense, then there would be a great deal of weight and force in the argument.

*Mr. Gully*: The argument which has been put before your Honours amounts to this: that a person who becomes a bankrupt the day before his election is left entirely unfettered by the consequences of his bankruptcy; but if he becomes bankrupt the day after his election, then immediately there is a vacancy in the seat, and he enters upon a period of disability. Now, the fallacy, I submit, of the argument for the claimant in this case is that it almost wholly rests upon the suggestion that we are asking the Court to read in a disqualification into sections 8 and 9 which is not to be found there. I submit, however, that upon a close analysis of section 130 it will be found that section 8 of the Statute is not exclusive, that there are grounds upon which a vacancy may occur quite apart from the disqualifications under that section; and further, that such vacancy may occur immediately upon election. If that be so, it does away with a great deal of the effect of the argument on which my friends rely in reference to the construction of section 130.

*The Chief Justice*: At the time of election, you say, there may be a cause existing which would vacate the seat though it does not disqualify for election.

*Mr. Gully*: Yes; although it is not a *personal* disqualification affecting the right of the member to stand, it nullifies the election because "he is bankrupt." I submit that view is supported not only by section 130 but by other sections. The first observation I desire to make is this: that section 8 does not primarily relate either to qualification or status. Primarily, it relates to the elector, not to the candidate. It is true that under section 9 the qualification the elector is bound by is made a *sine qua non* of the right of the member to be elected, but that is all. Now, manifestly, in considering the effect of bankruptcy upon a member or candidate, considerations affecting an elector must be entirely different from those affecting the status of a member. Therefore, apart from the actual legislation, I submit we ought to approach the question of disability in a different spirit to the disqualification of an elector. It is obvious that an elector who has in the performance of his functions to take a few moments only is differently affected by bankruptcy compared with a member who (as I suggest) by the Bankruptcy Act is almost *incapable* of performing the functions of a member of the House, and at the same time of doing his statutory duty under the Bankruptcy Act. Section 9 simply says this, "You shall not put up for election unless you are a registered elector." Before coming to the construction of section 130, I would ask to be allowed very shortly to suggest that the construction of the present