

the other cases I have quoted; and I submit I have shown ample authority in support of this contention. I contend, therefore, that the seat of the member for Awarua is not vacant, and that the Court cannot declare it vacant; that he is fully qualified, possessing as the case states all the other qualifications entitling him to take his seat; and that to hold otherwise will be to do violence to the intention of the Legislature. I submit, therefore, the answers to these questions should be in favour of the person claiming the seat.

*Mr. Skerrett*: May it please your Honours,—It must be admitted that there never was, either at common law or by the usages of the House of Commons, any disqualification of an undischarged bankrupt from being elected or sitting in the House of Commons. The disqualification is created purely by statute. The first statute which imposed the disqualification was the Imperial Bankrupt Act of 1869. The disqualification therefore, is purely statutory, and depends exclusively upon the statute. I propose to supplement Mr. Cooper's observations by a few remarks of a general character on the construction of section 130 of "The Electoral Act, 1893." First, I submit that the appropriate office of section 130 is to define a class of well-known disqualifications—namely, those that occur after the election of a member and create a disqualification from sitting. And, I submit, if this be the scope and purpose of section 130, an operation ought not to be given to it beyond that scope and purpose, unless the language of the statute clearly and unequivocally required it. There are two classes of disqualification which have always been regarded as separate and distinct, and which have always been considered by the Legislature as separate and distinct. First, the disqualifications which preclude a person from being eligible and from being a candidate. These disqualifications are set out in sections 8 and 9. The second class are disqualifications which arise after a person is clothed with the status of a member, and they are the disqualifications which are intended to be defined by section 130. They are in their very nature separate and distinct, and in all legislation on the subject they have been kept separate and distinct. An event happening before a person is elected might not disqualify him from being a member, while the same event happening after he was elected would cause disqualification and render the seat vacant. An illustration of that is a conviction of felony. Before election a conviction of felony is no disqualification after pardon or sentence served, whereas after election it is a disqualification. The difference between the two classes of disqualification is shown by the circumstance that the House of Commons itself never had any control over the eligibility of candidates except in the course of administering the laws upon which that eligibility depended. ("May," page 53.) Dealing with the matter, Sir Thomas May says: "But, notwithstanding their extensive jurisdiction in regard to elections, the Commons have no control over the eligibility of candidates except in the administration of the laws which define their qualifications." The result therefore is, where the Commons have exercised their power of expulsion and have said a member by reason of gross misconduct should not occupy a seat in the House, that has not been held to be a disqualification to him being re-elected.

*Mr. Justice Denniston*: That is in Wilkes's case.

*Mr. Skerrett*: Yes, your Honour.

*Mr. Justice Edwards*: It is a disqualification to stand if the man has been convicted of any offence punishable by imprisonment of one year or upwards.

*Mr. Skerrett*: Apparently it is a disqualification for eligibility as a candidate if a man has been convicted under the Police Offences Act; whereas such a conviction after election would not be a disqualification. Section 8 provides that no person convicted under "The Police Offences Act, 1884," shall be qualified as an elector unless he has received a free pardon or undergone the sentence or punishment to which he shall have been adjudged for such offence. That shows, of course, that the two classes of disqualification are separate and distinct. The statutes my learned friend cited also showed that the two classes are separate and distinct.

*The Chief Justice*: Do you say as part of your argument that a member cannot lose his seat except for some cause mentioned in this vacating clause?

*Mr. Skerrett*: Yes; your Honour, or under some statute expressly creating the disqualification. In England the Lunacy Act contains a disqualification.

*Mr. Justice Denniston*: Until recently a member could remain a member of Parliament although he was a lunatic.

*Mr. Skerrett*: Yes; but a provision was afterwards made providing for the expulsion of a lunatic after he has been ascertained to be such, and declaring his seat vacant. Before the passing of the statute, a case occurred of a lunatic having been brought from a lunatic asylum for the purpose of recording his vote. First of all dealing with the question as to whether the Legislature has not kept the two classes of disqualification separate and distinct, in our Constitution Act, and indeed in all the statutes, such as the Act of George III., dealing with the disqualification of bankrupts in the three kingdoms, in all these the Legislature has kept separate and distinct clauses affecting the non-eligibility of candidates and those disqualifying a member from sitting. Allow me to refer to the language of the very first statute disqualifying bankrupts from sitting; that is, 32 and 33 Victoria, cap. 71, which is the English Bankruptcy Act of 1869. Section 121 reads: "If a person, being a member of the Commons House of Parliament, is adjudged bankrupt, he shall be and remain during one year from the date of the order of adjudication incapable of sitting and voting in that House, unless within that time either the order is annulled or the creditors who prove debts under the bankruptcy are fully paid or satisfied." Then, there is a provision relating to a disputed debt, and then follows section 122, which reads: "If within the time aforesaid the order of adjudication is not annulled and the debts of the bankrupt are not fully paid or satisfied as aforesaid, then the Court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of such member shall be vacant." Your Honours will see that the effect of the Act of 1869 was only to disqualify a member from sitting and voting in the House of Commons, and it is stated in the early edition of Rogers that it only went to that extent. (Twelfth edition, Rogers, page 259.) Dealing with the Act of 1869, he says: "It will be observed that the above Act is confined to such persons as become bankrupts