

MINUTES OF EVIDENCE.

WEDNESDAY, 23RD AUGUST.

23rd Aug., 1871.

The Committee met at 10 o'clock this morning.

Mr. Brandon in the Chair.

Mr. Allan appeared for the petitioner, Mr. Charles Parker, and *Mr. Travers* for Sir David Monro, the sitting member.

The Clerk read the Petition.

Mr. Allan: The two points I intend to submit, on behalf of the petitioner, will be the personation by James Hagan and Henry Tomlinson, and the case of bribery and treating.

Mr. Travers: I propose to take an objection to the jurisdiction of the Committee. I had offered to waive any irregularity upon that point, but I see by the newspapers this morning that the matter was brought under the consideration of the House by the Speaker. My only reason for raising an objection to the jurisdiction of the Committee is, that the House declined to accept the waiver I offered. If my waiver had been accepted, I should have been precluded from going into any question relating to the jurisdiction of the Committee; but as it was declined, I feel myself bound to go into that question. I will call the attention of the Committee to the fact that they are a judicial body appointed for the express purpose of hearing and determining all questions as between the petitioner, on the one side, and the sitting member, on the other; and, like any other judicial body, they must be legally and formally created, in order to have jurisdiction over the matters submitted to them. I submit that this Committee was not legally created. The election of the Committee depends upon the construction of "The Election Petitions Act, 1858;" and the clauses which relate to the question I am now about to submit to the Committee are clauses 19 to 25, both inclusive. Before specifically referring to these clauses, I may state that in the year 1770, Mr. George Grenville, then a Member of the House of Commons, which had felt the inconvenience of submitting questions relating to elections to the House as a whole, which had gradually become to be treated purely as party questions, brought in an Act for the purpose of regulating the mode of deciding election petitions. Under the provisions of the Act then passed, election petitions were directed to be referred to a Committee, to be formed by the House in the manner provided by the Act. I find in a work of authority on the subject of elections—"The Law and Practice of Legislative Assemblies," by Cushing (an American work)—that the details of the course of procedure in cases of election petitions are noted. The course of procedure which was adopted by the House of Commons under the provisions of Mr. Grenville's Act is precisely similar to that provided for under "The Election Petitions Act, 1858," of this Colony.

The Chairman: I do not think we are competent to decide the question you now put to us. The Speaker informed the House yesterday, that on a previous occasion he had referred to the authority of Cushing; but had afterwards found that his ruling had been incorrect, on referring to a debate in *Hansard* on the subject.

Mr. Travers: I am not aware of that; but I apprehend, that nevertheless the objection was taken. The House was not the judge. The whole matter was relegated to the Committee, and the House has nothing further to do with a petition which has been relegated to the Committee. The decision of the Committee is to be final and conclusive, and I submit that this Committee alone is now the judge of the matter; and that if this Committee is not legally constituted, its judgment cannot be of any value whatever.

Mr. Gillies: How can we have jurisdiction to determine whether we have jurisdiction?

Mr. Travers: Of course, if you are satisfied that you have jurisdiction you will proceed with the case; if not satisfied, you will probably take some steps to ascertain the fact and act upon it accordingly. I apprehend when an objection is taken to the jurisdiction of a Court—as I have seen it taken to the jurisdiction of the Court of Appeal, and it has to determine whether it possesses jurisdiction in the matter or not; if it decides that it has no jurisdiction, it does not deal with the matter.

Mr. Gillies: You are using the term jurisdiction in a different sense from that which we should consider it to mean.

Mr. Travers: I object in this case to the jurisdiction, on the ground that the Court is not legally constituted. I will illustrate it in this way: Some short time ago a bull belonging to the Hon. Mr. Robinson strayed across the Hurunui River; no cattle were suffered to pass across that river, and the owner of cattle crossing it was subjected to a penalty. This was under the provisions of the Diseased Cattle Act, and the Governor had the power, by warrant under his own hand, to delegate to the Superintendents of Provinces the authority to make regulations. The Superintendent in the exercise of the authority so delegated, made regulations, under which regulations an information was laid against the Hon. Mr. Robinson for the straying of this animal.

Mr. Gillies: Whether we have jurisdiction or not, we must proceed as the House has directed.

Mr. Travers: A precisely similar question was raised in connection with the proceedings of an Election Committee very recently in England, and it was decided in the Exchequer Chamber that the Election Committee, not being duly created, was incompetent to deal with the question before them. I am in a position to give an authority on the point I am now raising, namely, whether the Committee, not having been legally created by the House, and being in the character of a judicial body, shall take upon itself the functions of deciding any question relegated to it. I take the objection formally, and it may be discussed at a future time.