1875.
NEW ZEALAND.

DISQUALIFICATION ACT INFRINGEMENT COMMITTEE.

(REPORT OF, TOGETHER WITH APPENDIX.)

Report brought up, and ordered to be printed, 29th September, 1875.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

WEDNESDAY, THE 1ST DAY OF SEPTEMBER, 1875.

Resolved, That, allegations having been made, and returns and papers having been laid on the Table, showing apparently that Members of the Legislature, during the term of the present Parliament, have been or are interested in agreements or transactions with the Executive Government, it is expedient that a Select Committee be appointed to inquire into and report upon the circumstances under which the same have been entered into, and as to whether the provisions of the Disqualifications Act have been thereby infringed. Such Committee to have power to call for persons and papers, and to report within one month.—(*Mr. Rolleston.*)

THURSDAY, THE 2ND DAY OF SEPTEMBER, 1875.

Ordered, That the Select Committee on alleged breaches of the Disqualification Act consist of the Hon. Major Atkinson, Mr. G. B. Parker, Mr. Stout, Mr. Johnston, Sir G. Grey, Mr. Curtis, and Mr. Rolleston.—(*Mr. Rolleston.*)

FRIDAY, THE 3RD DAY OF SEPTEMBER, 1875.

Ordered, That the quorum of the Committee on the alleged breaches of the Disqualification Act be fixed at five.—(*Mr. Rolleston.*)

THURSDAY, THE 9TH DAY OF SEPTEMBER, 1875.

Ordered, That the Select Committee appointed to consider certain questions referred to it, with reference to infringement of the Disqualification Act, have power to communicate from time to time with the Committee on the same subject appointed by the Legislative Council.

THE Committee appointed to inquire into and report upon the circumstances under which agreements or transactions have been entered into between Members of the Legislature and the Executive Government during the term of the present Parliament, and as to whether the provisions of the Disqualification Act have been thereby infringed, have the honor to report that they have had under consideration the following transactions, in which it has been alleged that Members of the Legislature have, during the term of the present Parliament, been concerned in contracts or agreements with the Executive Government:—

(1.) The proposed purchase from the Government of the Piako–Waikato swamp by Mr. Thomas Russell on behalf of a number of capitalists, in which the Hon. Mr. Taylor is said to have been interested.

(2.) The purchase from the Government of the Oroua block by Mr. Douglas and others, of whom the Hon. Mr. Campbell is said to be one.

(3.) The agreement with regard to the Murimotu block, as detailed in Parliamentary Papers, C. No. 6, page 2, in which Mr. John Studholme is said to be concerned.

(4.) The purchase by the Government, from Mr. W. T. Buckland, Member for Franklin District, of his interest in certain lands in the Waikato District.

In the consideration of these questions they have had before them the original documents relating to the several transactions, and also the evidence taken with regard to them before a similar Committee of the Legislative Council.

The proposed sale of the Piako–Waikato swamp to Mr. T. Russell, acting on behalf of a number of capitalists, is not authorized by any existing regulations under the New Zealand Settlements Acts.

The law provides that all lands taken under the authority of "The New Zealand Settlements Act, 1863," and "The New Zealand Settlements Amendment and Continuance Act, 1865," or either of them, and sold or disposed of under the authority of the said first recited Act, shall be sold or disposed of under regulations to be made by the Governor in Council, which regulations shall be published in the *New Zealand Gazette*.

Under existing regulations all lands must be sold by auction, and previously surveyed.

Notice has also to be given of every intended sale for a least one month previously.

It does not appear that these conditions have been complied with. It has been stated in evidence that this land had been open for purchase for seven or eight years, but the Committee

have been unable to find any record of this. The facts as related in the papers and evidence are these:—

In the month of February, 1873, Mr. T. Russell made proposals to the Native Minister, "on behalf of a number of capitalists," for the purchase of the swamp and the construction of a road across it. After some correspondence, it was finally agreed, in the month of April, 1873, that the land, some 80,000 acres, should be sold at the rate of 5s. per acre, that the purchasers should construct a main line of road over the land to connect Hamilton and Ngaruawahia with the head of the Piako navigation. On the completion of the road, or on the expiration of two years, the purchase money to be due, and on payment thereof the purchasers to be entitled to a grant of the land. As payment or part payment of the cost of the road, and the necessary surveys, drains, and works connected therewith, an allowance to be made by the Government out of the purchase money, such allowance not to exceed 2s. 6d. per acre; proof of the expenditure to be made to the Government, and if the works cost less than 2s. 6d. per acre, the purchasers to pay the Government the difference in cash; the balance of the purchase money after this allowance to be paid in cash on the issue of the Crown grant.

It appears from the evidence that, subsequently to the conclusion of the arrangement, a Member of the Legislature (the Hon. Mr. Taylor) became interested in the agreement, though it does not appear that the Government, until recently, were cognizant of the fact.

Your Committee is of opinion that the issue of regulations under which it was intended to dispose of confiscated lands should have been precedent to any negotiations for the sale of such land, in order to place the public generally in a position to apply on equal terms to become purchasers; and the sale of these lands otherwise than by public auction, and under regulations previously published, is in any case, where Members of the Legislature are concerned, incompatible with the intention of the Disqualification Act.

In the present instance, your Committee is of opinion that the spirit, if not the letter, of the Disqualification Act has been infringed by Mr. Taylor's participation in the contract; but, as the circumstances are under the consideration of a Committee of the other branch of the Legislature, they refrain from further comment.

The sale of the Oroua block purports to be under the provisions of "The Wellington Settlements Act, 1871." A member of the Upper House (the Hon. Mr. Campbell) is interested in the purchase. The terms and conditions of the sale are described in the Order in Council issued on 5th September, 1874, which appears in the *New Zealand Gazette*, September 11th, 1874. The block of land which is agreed to be sold consists of about 22,000 acres, and the issue of the Crown grant is contingent upon the fulfilment of certain conditions over a period of years. The sale in this case is by the Superintendent of the province; but, as the conditions have to be the subject of an Order in Council by the Governor, the remarks made with regard to the previous case, as to the issue of regulations framed by the Executive Government, where Members of the Legislature are concerned, apply to a great extent in this instance.

The transaction in which it appears, from evidence given by the Premier before a Committee of the Legislative Council, that during the negotiations a member of the Legislature was concerned, and personally negotiating with the Executive Government as to the nature of the conditions to be imposed, is, in the opinion of your Committee, inconsistent with the intention of the Disqualification Act, though in accordance with the provisions of the Wellington Special Settlements Act.

The agreement with reference to the acquisition of the Murimotu block, said to be about 144,000 acres, in which Mr. John Studholme, lately member for Kaiapoi, was concerned, is set forth in a Parliamentary Paper, C. No. 6, presented to both Houses of the General Assembly by command of His Excellency during the present session.

The agreement is apparently without legal sanction. As the facts will come under the revision of the Legislature before any effect can be given to the arrangement, your Committee do not consider it necessary to do more than report their opinion that the terms of the agreement, at the time it was made, involved an infraction of the spirit of the Act.

It appears, from Mr. Buckland's statement to the Committee and from documents placed before them, that towards the close of the Session of 1873 Mr. Buckland made an offer to the Colonial Government to dispose of his interest in certain blocks of Native lands for a specified sum, and then understood from the Colonial Secretary that his offer would be accepted upon his producing the necessary deeds. Subsequently, the matter having remained for some time in abeyance, a difference having arisen between Mr. Buckland and the Government about paying the 10 per cent. duty under the Native Lands Act, the Government finally concluded arrangements by which, on the 2nd April, 1874, Mr. Buckland transferred to the Crown, for the sum of £2,000, the deed of conveyance of 10,000 acres of the Oruanui block, bought by him from Hohepa Tamamutu and other Natives; and on the same date the lease of 20,142 acres, being the balance of the same (Oruanui) block, was transferred to the Crown for the sum of £50.

By another arrangement the Government agreed to purchase Mr. Buckland's interest in what is known as the Taharua block for the sum of £500. Your Committee have taken the opinion of the Solicitor-General with reference to this and other cases before them; they append this opinion to their Report. It will be seen that the advice given by the Solicitor-General is that "assuming that contracts for the sale of land to the Crown are within the Act (which, however, the Solicitor-General does not think was intended), then, if the sale or assignment was

effected while the House was sitting, the Member would be incapable of sitting or voting. If the House was not sitting, and if the contract was completed before the meeting of Parliament, the Member would not be disqualified from sitting or voting, because he could not be said to be concerned or interested in a contract which was wholly completed." Your Committee, after careful consideration of all the circumstances of this case, have to report their opinion that, whatever may be the correct view of the question in its legal and technical aspect, the spirit and intention of the provisions of the Disqualification Act have been departed from. They have further to report that there is such an uncertainty in the terms of the Act, especially in regard to transactions such as those with respect to land, which do not appear to have been contemplated at the time the Act was framed, as to call for an immediate amendment of the law of disqualification. They are of opinion that such amendment should be so framed as indicated in the resolution of the House of Representatives, of the 1st September, 1875, as to prevent any agreements or transactions being entered into, either during the recess or during the sitting of Parliament, between the Executive Government and Members of the Legislature, involving the payment of money or the granting of present or prospective pecuniary advantage to such Members, except under the express sanction of the Legislature.

A Member of the Committee, who was obliged to be absent when the report was drawn up, handed in a memorandum bearing on the legal aspect of the case, which your Committee think it right to append to this report.

29th September, 1875.

Wm. Rolleston,
Chairman.

APPENDIX.

No. 1.—Opinion of the Solicitor-General.

In re "The Disqualification Act, 1870."

1. Does a member of the House of Representatives become disqualified by selling a portion of land to the Government and receiving a sum of public money therefor—
   (*a.*) During the sitting of the House?
   (*b.*) During the time the House is not sitting?
2. Does a Member of the House of Representatives become disqualified by assigning to the Crown for a sum of money a lease of land which he holds from certain Natives—
   (*a.*) During the sitting of the House?
   (*b.*) During the time the House is not sitting?
3. Whether the sale, transfer, or surrender of any rights or alleged rights, such as those which purport to be transferred in the Murimotu Papers (C. No. 6, p. 2), disqualify a member from sitting in the House?
4. Does the sale of land for railway purposes disqualify a member for sitting—
   (*a.*) If the land is compulsorily taken?
   (*b.*) If the owner consents to sell, or enters into a voluntary agreement?

The above questions turn upon the interpretation to be given to the ninth and succeeding clauses of the Disqualification Act; and it will be convenient in the first place to consider these clauses, for the purpose of ascertaining the mischief and defects they were intended to remedy, and in the second place to see if the cases referred to in the questions put to me come within the terms of the Act; or, if not, whether it is clear that they are wholly without the Act.

1. The 9th section, after reciting that it is expedient to prevent persons concerned or interested in contracts affecting the Public Service of the colony from exercising undue influence with or over the Government of the colony, proceeds to enact in substance, so far as is material to these questions, that—

> No person concerned or interested in any contract or agreement with respect to the Public Service of the colony under which public money is to be paid for any service, work, matter or thing, shall be capable of being elected as a member of the House of Representatives, nor shall any such person sit or vote in the House during the time he shall be concerned or interested in any such contract or agreement.

The clause excepts certain contracts, which do not apparently affect the points raised.

The 10th clause is to the effect that if any person disqualified by the Act or declared incapable of sitting shall be elected, his election shall be void.

The 11th clause is not material to the question.

And the 12th clause declares that if any person disqualified or declared incapable of sitting or voting shall presume to sit or vote, he shall be liable to a penalty of £100 for each day he so sits or votes.

Appended hereto are the 1st and 2nd clauses of the Imperial Act—22 Geo. III. c. 45, (marked "A")—and the 9th clause of the Colonial Act of 1870 (marked "B").

Upon referring to the English Statute it will be seen that the disqualifying words of the 1st section are more ample and specific than in the Colonial Act; they not only enumerate the

several departments with which it shall not be lawful for any person "directly or indirectly himself, or by any person whatsoever in trust for him or on his account, to undertake, execute, hold, or enjoy in the whole or in part, or to make or enter into, any contract, agreement, or commission," but extend the disqualification to contracts with any person or persons whatsoever on account of the Public Service, or who shall furnish or provide money to be sent abroad, or any wares or merchandize to be used or employed in the service of the public. The second section vacates the seat of any member who shall continue to hold a contract after the then next session.

In a recent case—*Royse* v. *Birley* (Law Reports, C.P. vol. 4, p. 296)—which was heard before the Court established under "The Parliamentary Elections Act, 1868" (31° and 32° Vict. c. 125), most of the previous cases under the Act of Geo. III. were referred to. The head-note to that case states, "A contract was entered into in June, 1868, for the supply of goods for the Public Service of India. The contract was completely executed by the contractors by the delivery and acceptance of the goods by the 23rd October, 1868, but the contractors did not receive payment from the India Office until the 18th of January, 1869. In the interval, viz. on the 18th of November, 1868, one of the contractors was elected a member of the House of Commons. Held, that assuming the contract to be within 22 Geo. III. c. 45, § 1, it did not avoid the election." There were other phases of the same case, and a question with regard to the supply of goods on behalf of the Public Service after the election, which turned chiefly on the meaning to be given to the words "knowingly and willingly" in the first section of the Act. It appeared that goods had been supplied to the superintendent of a lunatic asylum in ignorance that the contractors were dealing with a Government institution, and the sitting member was held not disqualified. The case was argued at great length before Bovill, C. J., and Willes, Montague Smith, and Brett, J's. The Chief Justice did not give judgment, but Willes, J., stated that he concurred in the judgment of the Court, which was unanimously in favour of the sitting member.

Willes, J., said,—"Reading the 1st section by itself, with the light of the preamble, that this was an Act for securing the freedom and independence of Parliament, and finding that the specific provisions in the section seem to point to the execution of a contract with the Government, and finding also that the provision for disqualification is limited to the time during which the person contracting should 'execute, hold, or enjoy any such contract, agreement, or commission,' I think the enactment refers to the case of a man having a contract under which he is to derive some future benefit from dealing with the Government, in respect of which they might control him; as, for instance, by directing their officers not to look too closely to the sort of goods he sent in, or the like. I should be strongly disposed to come to the conclusion that a person cannot be said to execute, hold, or enjoy a contract, when the only thing he can be said to enjoy is, the not being paid money in respect of something which he has completely done at some former time, and for which he would have been entitled to be paid on the spot, and at the instant, if that were the course of business." (pp. 311, 312.)

Montague Smith, J.: After referring to the fact that it was not necessary to decide whether the contract with the Secretary of State for India was a contract within the meaning of the Imperial Statute, said, "I decide this case, so far as regards that contract, upon the ground that at the time of the election the contract was no longer executory, and nothing remained to be done upon it but for the Government to pay the price of the goods. Looking at this Act of Parliament and the general tenor of it, I certainly am strongly of opinion that the Legislature intended it to apply only to contracts of a continuing nature, such as contracts for the building of works, and contracts for a recurring supply of goods, though I do not say that a contract for a single supply of goods is not within the terms which are used. But to my mind it very plainly appears that the Statute did not mean to disqualify a contractor, unless the contract was in an executory state on his part, that is to say, that something remained to be done by him; and that in no other way can the Act of Parliament be properly construed." * * * And he continues: "But when the contract is no longer executory on the contractor's part, and he is only a creditor of the Government, I do not think he can be said to 'execute, hold, or enjoy,' within the meaning of this Act of Parliament. The consequence of holding otherwise would be, that a man might be disqualified from entering Parliament by the misfeazance of the Government; and more, it would be twisting the Act so as to produce the very consequence it was sought to avoid, viz. giving the Government a control over a man, and leaving it to their discretion, by paying him or not, whether they would allow him to enter Parliament or not. I think we ought not to put a construction upon the clause which would lead to such a consequence, unless we are compelled by plain and direct words so to do. On these grounds, therefore, I come to the conclusion that Mr. Birley was not disqualified by reason of Messrs. Mackintosh and Co. being unpaid at the time of the election for the goods they had previously supplied." (pp. 316, 317, 318.)

In the Dartmouth case (reported in Barron and Arnold's Election Cases, p. 460) the sitting member was the owner of several ships engaged under contracts in the service of the Admiralty. A few days before the election he made an assignment of the contracts to his nephews, and was released by the Admiralty therefrom. It was held that the member was not disqualified, although the bills of sale transferring his ships to his nephews were not registered at the Custom House till after the election, and circumstances appeared tending to show that the assignment of the ships and contracts was not complete at the time of the election.

Again, in 1855, the House of Commons appointed a Committee to inquire whether Baron Lionel de Rothschild had not vacated his seat by reason of his firm having entered into a contract with the Government for a loan of £16,000,000 for the Public Service. The Committee reported that, in their opinion, there was no contract, agreement, or commission, within the true intent and meaning of 22nd George III. c. 45; but in order to avoid future doubts a clause has been introduced into the Acts since passed for raising loans, providing that the Act of George III. shall not be construed to extend to any subscriber or contributor to the loan. (See "May's Parliamentary Practice," p. 35, 6th edition.)

There are several other cases; but I have referred at length to *Royse* v. *Birley*, for the purpose of extracting the remarks of the Judges as throwing light upon the way in which the Act of George III. is to be construed, and as a guide to help in the construction of the Colonial Act passed for like purposes, although not identically in the same terms.

The mischief intended to be remedied by the Disqualification Act was to prevent members having undue influence "with or over the Government of the colony," and I think that the guiding principle of construction ought to have reference to the expressed intention of the Act. Moreover, being in its nature highly penal, the Act would receive a strict interpretation according to the rule of construction in such cases. (See "Dwarris on Statutes," part 2, p. 634, 2nd edition.)

To come within the letter of the Act, there must be a contract or agreement for the Public Service under which public money is to be paid for some service, work, matter, or thing. The term "contract" in its widest signification comprises every kind of legal tie, whereby a person binds himself to do, or omit to do, some act; but in its more familiar sense it is most frequently applied to agreements not under seal; and the term "agreement" is rarely used except in relation to contracts not under seal, and this is evidently its proper use. (See "Chitty on Contracts," p. 2, 8th edition.)

Bearing in mind the rule above stated as to the construction of penal Statutes, and also that statutory words are to be understood in their usual and most known signification, it might be fairly argued that by the use of the terms "contract or agreement" it was intended to exclude deeds or other more formal instruments, and this argument has some force on looking at the proviso to section 9, where dealings with waste lands are set out fully—as by "lease, license, occupation, sale or purchase" or to any agreement for any such lease, &c. But assuming that the terms "contract or agreement" are to be understood in their widest signification, the contracts which are intended to disqualify are those upon which public money is to be paid. Now, contracts are usually divided into "executed" and "executory;" the first, extending to cases where nothing remains to be done by either party, and where the transaction is completed at the time it is made, as when goods are sold and the money paid at once; the second, where some act is to be done at a future time, as for instance, to build a ship within six months.

I think that the class of contracts intended to be affected by the Act were those of an executory nature, and this opinion is founded not alone upon the intention of the Act, but upon the express terms of the ninth section; where the disqualifying contract is spoken of as one "under which any public money is to be paid;" which, I think, refers to cases where the contract is of a continuing nature, and the money would be payable from time to time as it became due. I do not think that entire contracts such as usually form the subject of the sale of lands are within the meaning of the Act, or the mischief it intended to remedy. By an entire contract, I mean a contract upon which a gross sum of money is paid for a certain and definite consideration. Such a contract may be within the words, but, as I have said, I do not think it is within the meaning of the Disqualification Act. In the case of a sale of lands to the Crown, the money is paid when the conveyance is signed, and there the transaction ends. Ordinarily, there would remain no opportunity or occasion for exercising "undue influence" with or over the Government of the colony. True, in such a conveyance, there would usually be inserted covenants for title on the part of the seller, but in case of breach of these, the liability is to the Crown, not against it; so that as far as that part of the contract is concerned, it never could be within the Act, because no public money of the colony could be paid upon it. In any case, I think the dicta of the learned Judges in *Royse* v. *Birley*, above cited, clearly establish the principle that where a contract has been completely executed, disqualification would not attach even although some act might remain to be done or payment made under such contract. In the case of a lease of lands to the Crown, no doubt public money would be payable as rent, and such a case might be held to be within the Act.

Again, the claas of contracts affected by the Act are "for any service, work, matter, or thing." It may be said that the words "matter or thing" are to have relation to and be read in connection with the words "service or work," in which case, of course, the Act would not apply to such transactions as sales of land, or interests in land; but on the other hand the proviso to the 9th section exempts from the operation of the Act contracts for the sale, &c., of waste lands, and which would seem to apply that the Act was intended to cover transactions relating to contracts for the sale, &c., of other lands.

I have referred at greater length than perhaps was necessary to the wording of the Act, with the view of affording the Committee such assistance as I could on the questions before them; but I wish to remark on this branch of the subject, that I do not think any general rule can safely be laid down for guidance in such cases, but that each case which is alleged to come

within the meaning of the Act will depend in a great measure upon the nature of the contract or agreement, and the particular incidents connected with it, whether disqualification attaches or not.

2. I now come to the particular questions asked me. These assume that the person selling the land to the Crown is already a member of the House, so that the disability incurred would be the liability to the daily penalty prescribed by Section 12.

As to questions Nos. 1 and 2.—These may be taken together, as they relate to the same kind of contract, although effected by different classes of instruments :—

(*a*.) Assuming that contracts for the sale of land to the Crown are within the Act (but which I have already said I do not think was intended), then I think that if the sale or assignment was effected while the House was sitting, the member would be incapable of sitting or voting.

(*b*.) If the House was not sitting, and if the contract was completed before the meeting of Parliament, I think the member would not be disqualified from sitting or voting, because he could not be said to be concerned or interested in a contract which was wholly completed. The principle of *Royse* v. *Birley* would clearly apply to this branch of the question.

As to No. 3.—The information conveyed by the printed paper No. 3 (C. 6, 1875) is hardly sufficient to enable me to say what the actual contract was. It appears to be an arrangement to surrender certain claims to Native lands upon condition that a proportionate part of such lands shall be left in the occupation of persons contracting with the Government on terms stated. Paragraph 8 of the terms of arrangement states that a sum is to be paid by way of compensation on an equitable scale, if the whole or part of the lands are required by the *Provincial* Government; and paragraph 10 provides that actual money payments (made apparently as part payment of purchase from the Natives) shall be refunded by the *Government.* It is not stated by whom compensation is to be paid in the first case, nor what Government is to make the refund in the other. It will be seen the lands are spoken of as *Native lands,* and therefore do not come within the strict letter of the proviso to section 9 of the Disqualification Act, which excepts from the operation of the Act sales of, and other dealings with, *Waste Lands.* I am inclined to think, however, that by the terms of this arrangement the lands spoken of would be within the equity of the proviso; because they were apparently to be treated as waste lands. By paragraph 7 rent was to be paid at the rate and under conditions reserved by the Waste Lands Regulations of the province; and by paragraph 9 it is stated that as doubts exist as to the power of effectuating the agreement, the General and Provincial Governments shall take action to secure such "measures of legislation" as may be necessary to give effect to it.

But if this transaction be a contract upon which public money is to be paid, then the answers which I have given to the preceding questions as affecting a member of the House of Representatives would also apply to this case.

As to the 4th question.—

(*a*.) I do not think that the taking of land compulsorily for railway purposes can be said to be within the Disqualification Act. In the city of Londonderry case (reported in Wolferston and Bristowe's Reports of Decisions of Election Committees, p. 206), it was settled that the lessee of a railway from the Public Works Loan Commissioners in Ireland was not disqualified from being elected a member of Parliament as a contractor, either by reason of his being such lessee, or by reason of his conveying mails on his railway under a contract with the Postmaster-General. The Irish Statute is the 41st Geo. III., cap. 52, and is similar in its provisions to the English Statute.

I do not think that the compulsory taking of land by the Crown under any Statute or authority authorizing the taking of such land, as, for instance, under the Immigration and Public Works Acts, could be held to be a contract or agreement within the meaning of the Disqualification Act; even although the party conveying executed a conveyance which he would be compellable to execute under "The Lands Clauses Consolidation Act, 1863," or "The Immigration and Public Works Act Amendment Act, 1871." In such a case there is really no contract or agreement at all in the ordinary meaning of the term; the seller may be, and often is, an unwilling party, and I think it would be a violent straining of the Act to say that such a transaction involved disqualification.

(*b*.) If it is to be held that a sale of land is within the meaning of the Disqualification Act, then a voluntary contract or agreement to sell land for railway purposes would disqualify quite as much as such a contract as is referred to in the first question.

This last answer must, of course, be read in connection with the answer I have given to that question.

Crown Law Office, Wellington, 10th September, 1875. W. S. Reid.

A.

[22° Geo. III. c. XLV. (§§ 1 and 2).]

For further securing the freedom and independence of Parliament: Be it enacted, &c., That from and after the end of this present session of Parliament, any person who shall, directly or indirectly, himself, or by any person whatsoever in trust for him, or for his use or benefit, or on his account, undertake, execute, hold or enjoy, in the whole or in part, any contract, agreement, or commission, made or entered into with, under, or from the Commissioners of His Majesty's Treasury, or of the Navy or Victualling Office, or with the Master-General or Board of Ordnance, or with any one or more of such Commissioners, or with any other person or persons whatsoever, for or on account of the Public Service; or shall knowingly and willingly furnish or provide, in pursuance of any such agreement, contract, or commission, which he or they shall have made or entered into as aforesaid, any money to be remitted abroad, or any wares or merchandize to be used or employed in the service of the public, shall be incapable of being elected, or of sitting or voting as a Member of the House of Commons, during the time that he shall execute, hold, or enjoy any such contract, agreement, or commission, or any part or share thereof, or any benefit or emolument arising from the same.

And be it further enacted by the authority aforesaid, That if any person, being a member of the House of Commons, shall, directly or indirectly, himself, or by any other person whatsoever in trust for him, or for his use or benefit, or on his account, enter into, accept of, agree for, undertake or execute, in the whole or in part, any such contract, agreement, or commission as aforesaid; or if any person, being a member of the House of Commons, and having already entered into any such contract, agreement, or commission, or part or share of any such contract, agreement, or commission, by himself, or by any other person whatsoever in trust for him, or for his use or benefit, or upon his account, shall, after the commencement of the next session of Parliament, continue to hold, execute, or enjoy the same, or any part thereof, the seat of every such person in the House of Commons shall be and is hereby declared to be void.

B.

["The Disqualification Act, 1870," No. XVII. § 9.]

And whereas it is expedient to prevent persons concerned or interested in contracts affecting the Public Service of the colony from the opportunity of exercising undue influence with or over the Government of the colony: Be it further enacted, that no person who shall be concerned or interested in any contract or agreement with Her Majesty, or with any officer or department of the General Government of New Zealand, with respect to the Public Service of New Zealand, under which any public money of the colony is to be paid, or any waste lands given for any service, work, matter, or thing shall be capable of being summoned to, or of holding a seat in the Legislative Council, or of being elected to serve as a member of the House of Representatives; nor shall any such persons sit or vote in the said Council or House during the time he shall be concerned or interested in any such contract or agreement: Provided that nothing herein contained shall extend or apply to any agreement or contract entered into by any company, partnership, or association consisting of more than twenty persons when such contract or agreement shall be entered into for the general benefit of such company, partnership, or association, or to any contract for printing or advertising, or to any contract for which not more than forty pounds is to be paid, or to any lease, license, or occupation, sale or purchase of any waste lands within the colony, in accordance with the law in time being in force for the sale, occupation, or disposal of such waste lands, or to any agreement for any such lease, license, sale, or purchase, or for the occupation of such land or for any easement therein, or for the loan of money or to any security for the payment of money only.

No. 2.—Memorandum by Mr. Stout, M.H.R.

In re "The Disqualification Act, 1870."

As I may not be able to attend the meeting of the Committee at which the report is framed, I desire to express my opinion on the general aspect of the questions the Committee has to report on. From Mr. Buckland's evidence and the papers as yet (18th September, 1875) laid before the Committee, it seems admitted that Mr. Buckland has sold certain lands known as Native lands to the Crown, the Government having purchased them under the authority of Parliament, and paid for them out of funds voted for the purchase of lands in the North Island. These facts being admitted, so far as Mr. Buckland is concerned, the first question put to the Solicitor-General seems to me the only important one. So far as the Committee's investigations have yet extended, the facts connected with the Murimotu purchase, and also the assignment of a certain lease of Native lands by Mr. Buckland, have not been formally considered by the Committee; but when considered, the answer to the first question will enable the Committee to determine whether a breach of the Act has been committed or not.

Adopting a fair construction of the Disqualification Act, it seems to me that the answer to the first question must be Yes. The Solicitor-General appears to be of opinion that two things must concur before a member of the House of Representatives becomes disqualified, viz.,—(1.) The contract must be executory, or rather I should say continuing. (2.) The House must be actually sitting at the time of the existence of the contract. In this I cannot agree with him. The whole intention of the Act would be frustrated were his interpretation adopted. For if it is not improper to make a contract with the Government when the House is not sitting, I do not see anything to prevent all the members of the House becoming contractors with the Government. To give an example, suppose the Government required stationery, could it not be purchased the day after the prorogation in one mass? Or even, perhaps, one-half of those things required for the Public Service might be so dealt with. And were his interpretation adopted, the only kind of contracts that would be reached would be those for mail services and others of a similar class, which required performance daily. The kind of contract seems to me of little importance, and the Solicitor-General himself, in the end of his reply, lays little stress on it. If indeed a contract not under seal was to disqualify, while one duly sealed and delivered worked no disqualification, all that would be required to get quit of the provisions of the Act would be to enter into the most solemn contract known to the law. The higher the kind of contract the less the disqualification. This need only be stated to show that such a doctrine would reduce the

Act to an absurdity. But it did not require a contract under seal to convey the lands to the Queen. A deed in New Zealand does not require a seal.

The Disqualification Act was passed to prevent persons concerned or interested in contracts affecting the Public Service of the colony from exercising undue influence with or over the Government of the colony. The Solicitor-General implies that this undue influence could only be exercised when the House was actually sitting. I fail to see this. A reference to the Act also, in my opinion, shows clearly that the Legislature contemplated "undue influence" being exercised at other times than during the sitting of the House. Undue influence, as said by Justice Willes, in the case cited by the Solicitor-General, might be exercised in the Government "directing their officers not to look too closely to the sort of goods" a contractor sent in, or, to apply it to this case, to the kind of land sold, or the price paid for it. That the Act contemplated such will be plain if it is remembered that a contractor is incapable of being elected (see sections 9 and 10), not merely incapable of sitting and voting. Now it does not follow that when a member is elected the House is sitting; and, therefore, the Act disqualifies persons without reference to the sitting of the House. For it states,—"No person, &c., * * * shall be capable * * * of being elected." And then it adds,—"Nor shall such person sit or vote." And in section 10, if a disqualified person is elected, his election and return shall be "null and void." The position, then, that a contractor cannot be elected, even if the House is not sitting, will, I think, be conceded. And if that be conceded, it must follow that whenever he enters into a contract he becomes disqualified. The argument of the Solicitor-General would lead to this: that, I presume, he would grant that no contractor could be elected. Though a person were disqualified from being elected, yet he could, between the sittings of the House, do that which were he not a member would disqualify him from becoming one.

The case cited by him appears to me to strongly support my contention. I may state that I have not had the opportunity of looking for more recent cases. The case cited by him is the only one cited in Fisher's Dig., vol. v., tit. Election Law, that bears on the question; and it is instructive to note that such a case should have been submitted for the decision of the Court. In the case the contract was, so far as the contractor could do it, at an end. It is true the Government had not paid him the money to which he was entitled, but, as Mr. Justice Montague Smith pointed out, he was simply a creditor of the Government, and the consequence might be that through the misfeazance of the Government a man might be prevented from ever entering Parliament. But here the contract is made after the member has been elected. It is true the House is not sitting when the contract is made, nor when the money was paid. But this is, in my opinion, of no moment, and was not raised in any of the cases I have seen reported. In the other case cited by the Solicitor-General—the Dartmouth case—though the legal documents may not have been formally executed, in equity the interest of the contractor had been assigned. I may add that two other cases referred to in the argument in the Manchester case, viz. that of Sir Sydney Waterlow and the Leominster case, strengthens the view I take. And moreover, Mr. Justice Brett, in his judgment, states that the Court does not dissent from the decisions of the Election Committees in both these cases. In Sir Sydney Waterlow's case, the firm with which he was connected had a contract for the supply of stationery to the Government. He dissolved partnership, but the dissolution did not take effect until after his election, and it was held he was disqualified, as at the time of his election he had an interest in a Government contract. In the Leominster case, Mr. Bish, who was returned as one of the members, was a lottery contractor. The election took place on the 12th June, 1826. By the agreement entered into by Mr. Bish with the Lords of the Treasury, the day appointed for the final drawing of the lottery was the 17th May, 1826, and the day for the payment of the last instalment by Mr. Bish was the 29th April, 1826. Mr. Bish paid the last instalment on that date, and the list of the tickets was delivered. The final drawing was, however, postponed till after the day of the election, namely, to the 18th July. The Committee held that Mr. Bish was not duly elected, because something remained to be done to complete the contract. It is also instructive to notice that in none of these cases was any distinction attempted to be drawn between sitting and not sitting. If the person returned was a Government contractor at the time of his election, that was held to incapacitate him. But if the opinion of the Solicitor-General be correct, it is the sitting of the House that causes the disqualification to arise, not merely the entering into a contract with the Government.

From what I have already stated, it will be seen that, in my opinion, no such distinction as is drawn by the Solicitor-General can be accepted as the proper interpretation of the Act.

As to Mr. Buckland's particular case, I have not had time to deal with it on its merits—that is, as to its moral aspect; I have confined myself solely to the technical or legal question. If, however, the Committee should find that the contract was made in ignorance of the effect of the Act, and in the public interest, were I present at the Committee's deliberations I should urge that the course adopted in Mr. Forsyth's case—known as the Cambridge case—should be adopted by the New Zealand Legislature, viz. that an Act should be passed relieving Mr. Buckland from the penalties he has incurred.

Robert Stout.

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