

SESS. II.—1879.
NEW ZEALAND.

CITY OF AUCKLAND WEST ELECTION PETITION
INQUIRY COMMITTEE

(REPORT OF, TOGETHER WITH MINUTES OF PROCEEDINGS AND EVIDENCE, AND APPENDIX.)

Report brought up 24th October; Minutes of Proceedings and Evidence brought up 20th November, 1879; and ordered to be printed.

ORDERS OF REFERENCE.

Extracts from the Journals of the House of Representatives.

FRIDAY, THE 17TH DAY OF OCTOBER, 1879.

Ordered, "That it be referred to a Select Committee to inquire whether the forms of this House and the requirements of the Election Petitions Acts have been complied with by the petitioner in the petition of Joseph Newman against the return of Dr. Wallis and Mr. Hurst as members of the House; that the Committee report to the House within seven days; the Committee to be appointed by the Committee of Selection; four to form a quorum."—(*Mr. Hislop.*)

TUESDAY, THE 21ST DAY OF OCTOBER, 1879.

Mr. Seymour, from the Committee of Selection, brought up a report, and the same was read as followeth:—

"In pursuance of the resolution of the House of Representatives, dated the 17th day of October instant, the Committee of Selection have the honor to report that they have appointed the Committee to inquire whether the forms of the House and the requirements of the Election Petitions Acts have been complied with by the petitioner in the petition of Joseph Newman against the return of Dr. Wallis and Mr. Hurst as members of this House; such Committee to consist of Mr. Bain, Captain Colbeck, Hon. Mr. Gisborne, Mr. Johnston, Mr. Montgomery, Mr. Whyte, and Mr. Swanson.

"A. P. SEYMOUR, Chairman."

REPORT.

THE Committee, to whom was referred the question whether the forms of this House and the requirements of the Election Petitions Acts have been complied with by the petitioner in the petition of Joseph Newman against the return of Dr. Wallis and Mr. Hurst as members of the House, have the honor to report as follows:—

The Committee are unanimously of opinion that the forms of the House and the requirements of the Election Petitions Acts have not been complied with by the petitioner in this case.

The word "bribery," as one of the alleged charges, has been interlined in the petition, and the interlineation is a breach of Standing Order No. 263, because it is not, as required by the order, signed or initialed at *each* end of such interlineation, and because such interlineation is not, as also required by the order, "indorsed and duly signed and attested on the back of every such petition by the petitioner or petitioners."

The petition is against two members jointly named therein. The Committee are unanimously of opinion that the Election Petitions Acts do not sanction nor make any provision for the presentation of a single petition against the return of more than one member.

24th October, 1879.

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W. GISBORNE,
Chairman.

MINUTES OF PROCEEDINGS.

WEDNESDAY, 22ND OCTOBER, 1879.

The Committee met, pursuant to notice, at 10 a.m.

Present : Mr. Bain, Captain Colbeck, Hon. Mr. Gisborne, Mr. Johnston, Mr. Montgomery, Mr. Swanson, Mr. Whyte.

The orders of reference dated 17th and 21st October being read, Hon. Mr. Gisborne was voted to the chair.

Resolved, on the motion of Mr. Johnston, That the Clerk be instructed to inform the members petitioned against, and the representatives of the petitioner, that the Committee has decided to hear counsel if the parties desire it, and that the Committee will meet at 10 a.m. to-morrow; also that the Examiner of Election Bonds be summoned to attend and give evidence.

Resolved, on the motion of Mr. Montgomery, That the Committee do adjourn until to-morrow at 10 a.m.

The Committee then adjourned.

THURSDAY, 23RD OCTOBER, 1879.

The Committee met pursuant to adjournment.

Present : Mr. Bain, Captain Colbeck, Hon. Mr. Gisborne (Chairman), Mr. Johnston, Mr. Montgomery, Mr. Swanson, Mr. Whyte.

The minutes of the last meeting were read and confirmed.

The following witnesses were examined: The Hon. the Speaker of the House of Representatives; Major Campbell, Examiner of Election Bonds. (*Vide* Minutes of Evidence.)

Mr. W. L. Rees addressed the Committee as counsel for Dr. Wallis.

Resolved, on the motion of Mr. Montgomery, That the petitioner or his counsel, and Mr. Pitt, M.H.R., be informed that the Committee will meet to-morrow at 10 a.m., when the Committee will be prepared to hear anything they may wish to say upon the subject of the petition; also that Mr. Rees be informed of this decision.

The Committee then adjourned.

FRIDAY, 24TH OCTOBER, 1879.

The Committee met pursuant to notice

Present : Mr. Bain, Captain Colbeck, Hon. Mr. Gisborne (Chairman), Mr. Johnston, Mr. Montgomery, Mr. Swanson, and Mr. Whyte.

The minutes of the last meeting were read and confirmed.

Mr. Travers addressed the Committee as counsel for the petitioner, and Mr. Rees as counsel for Dr. Wallis.

Resolved, on the motion of Mr. Johnston, That, in the opinion of the Committee, the forms of the House and the requirements of the Election Petitions Acts have not been complied with; that the interlineation of the word "bribery" is a breach of Standing Order No. 263; that, this petition being against two members jointly, the Committee are of opinion that the Election Petitions Acts do not sanction nor make provision for a single petition being made against the return of more than one member.

Resolved unanimously, That the Chairman do report to the House, this afternoon, in accordance with the above resolution.

The Committee then adjourned.

MINUTES OF EVIDENCE.

THURSDAY, 23RD OCTOBER, 1879.

The Hon. the SPEAKER of the HOUSE OF REPRESENTATIVES, examined.

1. *The Chairman.*] You have seen this petition that has been presented against the election of Dr. Wallis and Mr. Hurst?—Yes.

2. In what relation do you consider yourself as Speaker in regard to a petition of this kind. Is there any particular law describing your duties in reference to it?—It is my duty as Speaker to appoint the Examiner of Bonds. Major Campbell held the appointment under the previous Speaker, and asked me whether I thought it would be advisable to make a fresh appointment. I said it did not appear to me to be absolutely necessary, but it might be as well to reappoint, as it was in my power, if I thought proper, to appoint another officer, and I reappointed Major Campbell, as he had always held the office. Having appointed him Examiner of Bonds, I had nothing further to do with the Examiner's duties. After he had put the certificate on the petition, I at once laid it on the table of the House, with the certificate indorsed. I may say that I subsequently intimated to the House that I saw there was a difficulty with regard to the appointment of the Committee, inasmuch as it appeared to me that, according to law, each person petitioned against had a right to appoint a member to represent him on the Com-

mittee, and, if that were allowed, the petition being against two members, the Committee would contain one too many—would consist of eight instead of seven—and if the spirit of the law was carried out, that each party petitioned against should have two left to serve on the Committee when the list was struck, this would bring the number up to ten. That difficulty seemed incapable of solution, and I thought it better that the House should be informed of it, and should, if possible, devise a means of solving the difficulty.

3. *Mr. Johnston.*] I understand you have certain duties imposed on you by the Act, and that you did not see your way to carry out those duties: that it is your duty to see about the appointment of the Committee, next the proceedings, and so on?—I have to cause a list of all members available to serve on the Committee to be made out, and a copy delivered to each party. I then, in the House, call on each party to name a Committeeman; I then nominate the Chairman. I do not consider that it is part of my duty to see that the Committee is struck, although I was present when the Christchurch Committee was struck, and allowed the use of my room for the purpose. The duties devolve upon the Chairman and the two members representing the parties to see that the Committee is properly struck.

4. *The Chairman.*] You did not consider it part of your duty to rule whether this petition was in order or not?—No, I did not.

5. *Mr. Johnston.*] I think you said you could see no solution of the difficulty, as you pointed out to the House?—Yes; I could see no way out of it. If the two members petitioned against had agreed to nominate one man to represent them both, they would have got over the difficulty; also, if the two parties thought proper to apply for, or the House to appoint, a separate Committee for each person, they would have solved it. It will be in the recollection of the Committee that that course was proposed by the Premier, Mr. Hall, but the House thought it better to appoint this Committee to investigate the matter.

6. *The Chairman.*] The Act says, “Each party shall then name one member whose name shall be on the list, and the two members so named shall be two members of the Committee.” Suppose each party named the same member in any case. Suppose the petitioner named one person, and the member petitioned against named the same man?—I do not think we could contemplate that in such a case as the Christchurch election Sir George Grey and the Hon. Mr. Richardson would nominate the same man. Each would nominate some person to represent his interests; but it is not probable they would both nominate the same member. The petitioner has a right to strike off the first name in striking the Committee.

7. Do you think, if the two persons joined in naming one member, the Act would be complied with?—I think so, although it would be, perhaps, a straining of the law.

8. But you could not force them to do it?—I did mention the matter to one of the members petitioned against, and he said he would be no party to any such arrangement.

9. Did you see your way, if each of the persons petitioned against chose to exercise the right given them by the law in naming two different parties, by which a Committee could be constituted to try the merits of this petition?—I could see no way if each person insisted on the rights they had of being represented on the Committee; I could see no way out of the difficulty.

10. Did you see your way, in conformity with the requirements of the Act, that two Committees should try one question?—I do not think two Committees could have been appointed, unless the House interposed its authority, and said that two Committees must be appointed.

11. Could the House alter the law, in your opinion, by such resolution? Do you consider it to be a case in which the House, by resolution, could require such a thing to be done as the appointment of two Committees under the provisions of this Act?—I believe that the House is ultimately supreme in a matter of this kind. There is a recent case at Home, in 1868, where a member was petitioned against. It is quoted in “May.” He was petitioned against as being a Government contractor, and it was a case that might have been tried by the Judges of the Supreme Court; but, instead of this being done, as the Statute authorized, the House itself tried the matter, and pronounced the member disqualified. “May” remarks that this was a singular case, inasmuch as the House adjudged a matter which might have been determined by law. The point has been endeavoured to be established that all matters affecting seats should be decided by the Supreme Court Judges; but that rule was not held in the cases of O’Donovan Rossa and John Mitchell, and the House still has an undoubted and inherent right to judge of the right of a member to sit in their own House.

11A. I can understand the House saying, We are not going to try this under the Election Petitions Act; we will try it under our own inherent constitutional power, and decide on the validity of the seat: but can this House have this case tried under the Election Petitions Act, submitted by resolution of the House, where the Election Petitions Act seems distinctive? Did it strike you that the resolution of the House declaring there should be two Committees would not be supplementing the Election Petitions Act—would not be taking election petitions out of the purview of trying it under the Election Petitions Act, and supplementing it by resolution of the House?—I do not think so. The case of Waterlow, in “May,” was a somewhat analogous one, though his seat was not claimed by another person on the ground of his bribing or treating, but on the ground of his being a Government contractor; and the seat was declared vacant, though the petition was withdrawn.

12. But if the House had declared that this case should be tried by the Judges, and given some supplementary power by resolution of its own?—I doubt whether the House of Commons would have the right to supplement the law of the land except by Act.

13. *Mr. Rees* (through the Chairman).] I should like to ask whether it is not necessary that the petition should be clear and distinct; not that there should be a mere statement that the persons petitioned against were guilty of bribing and treating, and other corrupt practices, which would give the person petitioned against no information of the specific grounds and absolute facts, but that he should have a clear indication of what he is required to meet?—I do not think it would be necessary to set forth specific acts of treating: the grounds would be, to my mind, sufficiently set forth by describing them either as intimidation, bribery, treating, or otherwise, leaving the facts and acts to be established by evidence adduced before the Committee.

14. Then, what kind of notice would they get of the case they had to meet?—Witnesses to establish the treating or bribery would appear before the Committee.

15. If they did not know that such-and-such things were alleged on such a day, how would they know what to meet?—If the petitioner produced A and B to prove that charge, it would be for the person petitioned against to meet that.

16. Then he would have to get witnesses from Auckland, and adjourn?—Certainly. Witnesses for and against the parties would have to be produced before the Committee.

17. I ask you whether, under the Act of 1858, the petition should not allege specific grounds, time, place, and circumstances?—I do not think the petition is expected to set forth each case of bribery and treating. I do not attach any great weight to my opinion upon the point upon which I am asked to express an opinion. I have not seen any of the Home petitions under the Act for trying them by the Judges, and did not come prepared to answer such questions; but I thought that the petition should generally set forth such charges against the sitting member as would form a basis for the inquiry if the Committee were appointed.

18. Can you see any way by which the security for costs can be obtained under an ordinary bond of these two gentlemen?—I believe the two persons that have entered into the security are not only liable for the amount of the bond, but for whatever costs may be awarded. At the first blush I thought that, two persons being petitioned against, a bond should be given in each case. Mr. Hislop told me that at Home, where two persons are petitioned against, one bond in £1,000 would be sufficient for the petition against those two persons.

19. Do you know that in the English Act there is a clause that where there is a case of two persons petitioned against the one petition shall be treated as covering the two?—I believe, in the Grenville Act—that of 1770—where two persons were petitioned against, the law required they should jointly nominate one person to represent them on the Committee appointed to try the merits of the petition.

Major CAMPBELL, Examiner of Election Bonds, examined.

20. *The Chairman.*] You are Examiner of Election Bonds, I believe?—Yes.

21. Appointed under the hand of the Speaker?—Yes.

22. On this petition against the return of two members to the House of Representatives, Messrs. Hurst and Wallis, there is a certificate signed by the Examiner of Election Bonds?—Yes.

23. Is it yours?—Yes, it is my certificate.

24. In signing that certificate did you look to all parts of the Act, or confine your attention to a particular portion?—On the first occasion of my acting as Examiner I was advised that I had nothing to do with the requirements of the Act excepting those which refer to the duties of the Examiner.

25. Then this was not the first occasion of your signing such a certificate?—No. I was advised that this form of certificate covered all the requirements as far as my business was concerned. I saw that the bond had been entered into, and was accompanied by the necessary affidavits.

26. That is what I wanted to direct your attention to—whether you looked into the question as to whether the petition could be received against two members—whether a petition should be against each member, and whether, this being so, it could be received?—I do not consider that as Examiner of Election Bonds I had anything to do with such a question.

27. That is just what I wished to find out. I want to know what you consider is your duty—what part of the Act you consider it your duty to study?—All that part which refers to the bond, as mentioned in the Election Acts of 1858 and 1862.

28. *Mr. Johnston.*] I should like to ask you this question: As to the first requirements of the Act relating to the matter of the bond, it has been suggested that the amount of security required for a petition against the return of two members ought to be £400; but in the present instance it appears that the security given was only for £200. Did you look into that matter?—I do not consider I should be required to look into a question of that kind.

29. *The Chairman* here read over the 10th section of the Act, and then continued: In signing that certificate did you consider the question of a single petition being presented against two members, and the amount of the bond required by the Act?—No; I did not consider that was any part of my duty as Examiner.

30. Have there been any objections on the question of the insufficiency of the securities lodged before you as Examiner?—None.

31. Has there been any objection on the ground that the bond was not double the amount that has to be given in the case of the petition against one member?—The Act provides that objections as to the sureties shall be lodged with the Examiner before the tenth day after the presentation of the petition. No such objection has been left with me.

32. *Mr. Rees* (through the Chairman).] Under what Act is the certificate which you have indorsed on the petition issued?—Under the Act of 1862, which I am advised covers the certificate required in the Act of 1858.

33. You say absolutely under the Act of 1862, and then you explain that you are advised this covers both Acts. I ask you have you taken any advice at all as to a petition like this, in which the return of two members is prayed against?—No; I do not conceive that to be any part of my duty as Examiner of Election Bonds.

34. Then you considered it your duty not to take the conduct of the proceedings into your consideration, but simply the question of bonds?—Yes; seeing from the certificates that the preliminary steps required by the Act had been complied with.

35. Did you not know by the Act that the bond is for the purpose of securing to the person petitioned against his costs in the case?—I know that in a clause of the Act the amount of the bond may be appropriated in that way.

36. Must it not be so if costs are allowed by the House—I do not mean *may*, but *must*?—I did not consider that that is a question with which I had anything to do as Examiner.

37. Then your certificate is simply a certificate by you that the stipulations, provisions, and requirements of the Election Petitions Acts of 1858 and 1862 have been complied with so far as relates to finding the bond itself?—For the purpose of promoting the petition—yes.

38. The clause says no election petition shall be received unless the provisions of clause 3, subsection (2) of the Act of 1862 have been complied with. That is very general, but I understand that you do not read those words as meaning that you are certifying that any provisions and requirements of the Act have been fulfilled except with regard to giving the bond?—That is all.

39. The words are: “Every petition shall allege the specific grounds upon which the election is impugned.” Do I understand you to say that in giving that certificate you do not mean to certify that the requirements have been fulfilled outside the giving the bond?—That is all that I consider I am called on to certify to.

40. *Mr. Montgomery.*] I think the question was in evidence before whether Major Campbell considered that the bond of £200, which the Act provides should be given for one member, was sufficient for two?—I did not consider that question. I considered, as I stated before, that the bond is to secure a *bonâ fide* petition.

41. Do you consider that the amount of £200 in a petition against two members complied with the provisions of the Act, or that it should be £200 for each?—The Act says nothing about one man petitioning against two members. I considered that the £200 bond was to secure the *bona fides* of the petitioner, and, that having been complied with, I do not consider it to be part of my duty to go beyond it.

42. *The Chairman.*] Did it strike you, Major Campbell, the petition being against two members, how the requirements of the Act could be fulfilled as to the appointment of a Committee to inquire into this petition?—As Examiner of Election Bonds I do not see that I have anything to do with that question.

43. What makes me ask is, that the certificate you give is so general. It says the requirements of the Act have been complied with?—By the persons promoting that petition—merely a preliminary proceeding before the presentation of the petition to the House.

44. What clause of the Act authorizes your appointment?—It is the 5th clause of the Act of 1858.

45. You consider that appointment confines your duties to the bond alone?—Yes.

