

1888.  
NEW ZEALAND.

# PRIVILEGE COMMITTEE

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

*Report brought up 2nd August, 1888, and ordered to be printed.*

## ORDERS OF REFERENCE.

*Extracts from the Journals of the House of Representatives.*

WEDNESDAY, THE 18TH DAY OF JULY, 1888.

*Ordered*, "That a Select Committee be appointed to search for precedents, and report to the House, in relation to the question of privilege raised as to the placing by command on the table of the House a letter written by the Chief Judge, Native Land Court, addressed to the Native Minister, and commenting on words uttered by a member of the House in debate; the Committee to consist of Mr. Speaker, the Hon. Mr. Ballance, the Hon. Sir J. Hall, the Hon. Mr. Hislop, Mr. Ormond, Mr. Samuel, Mr. W. D. Stewart, Mr. Seymour, and the mover; with power to call for persons and papers; to report within a week; three to be a quorum."—(Mr. WALKER.)

WEDNESDAY, THE 25TH DAY OF JULY, 1888.

*Ordered*, "That the Privilege Committee have the time extended for one week in which to bring up their report."—(Mr. WALKER.)

## REPORT.

THE Select Committee appointed on the 18th July, "to search for precedents and report to the House in relation to the question of privilege as to the placing by command on the table of the House a letter written by the Chief Judge, Native Land Court, addressed to the Native Minister, and commenting on words uttered by a member of the House in debate," have the honour to report as follows:—

That, in a debate in the House on the question of adjournment of the House, the honourable member for Franklin South made certain allegations affecting the character of the Chief Judge of the Native Land Court, and his fitness for the official position occupied by him.

That the Hon. the Native Minister caused the attention of the Chief Judge of the Native Land Court to be drawn to the allegations of the honourable member for Franklin South, as reported in *Hansard*, and requested that an explanation in reference thereto should be made to him.

That the Chief Judge of the Native Land Court accordingly forwarded to the Hon. the Native Minister a letter, quoting from the speech of the honourable member for Franklin South, as reported in *Hansard*, and making observations on the allegations of facts contained in that speech.

That the Hon. the Native Minister, on receiving such letter, forwarded it to His Excellency the Governor, with a recommendation that it should be presented to the House; and such recommendation was approved by His Excellency.

That the Hon. the Native Minister stated in the House that he had the honour to present, by command of His Excellency, a letter from the Chief Judge of the Native Land Court in reference to certain allegations reported in *Hansard* of the 15th June, 1888, and moved that the same do lie on the table of the House, and be printed.

That the question was put from the chair, and it was ordered, without discussion, that the paper presented by the Hon. the Native Minister do lie on the table of the House and be printed.

That the letter referred to, now printed and circulated as G.-1A, is couched in respectful terms, and is confined to allegations of facts in contradiction of those contained in the speech of the honourable member for Franklin South, as reported in *Hansard*.

That your Committee have diligently searched for precedents, but can find none of recent date, or applicable to the circumstances of the New Zealand Legislature, which in any degree assist them in coming to a decision upon the question submitted to them.

Seeing, therefore, that at the time of the presentation of the paper there was no question before the House having any reference to the subject thereof, and that what has been done cannot have been done with a view to influence a decision of the House, your Committee recommend that no further action should be taken in the matter.

2nd August, 1888.

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G. MAURICE O'ROrKE,  
Chairman.

## MINUTES OF PROCEEDINGS.

THURSDAY, 19TH JULY, 1888.

The Committee met pursuant to notice.

*Present*: Hon. the Speaker, Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Seymour, Mr. W. D. Stewart, Mr. Walker.

The order of reference of the 18th July was read by the Clerk.

*Resolved*, That Sir Maurice O'Rorke be appointed Chairman of the Committee.

*Resolved*, That Major Campbell and the Hon. Mr. Mitchelson be summoned to attend the next meeting of the Committee.

*Resolved*, That the Committee adjourn till 11 a.m. on Monday, the 23rd July instant.

MONDAY, 23RD JULY, 1888.

The Committee met at 11 a.m., pursuant to notice.

*Present*: Hon. the Speaker (Chairman), Hon. Mr. Ballance, Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Samuel, Mr. W. D. Stewart, Mr. Walker.

The minutes of the previous meeting were read and confirmed.

Major Campbell and the Hon. Mr. Mitchelson attended and gave evidence, which was taken down in shorthand.

The Committee adjourned till Wednesday, the 25th July, at 11 a.m.

WEDNESDAY, 25TH JULY, 1888.

The Committee met at 11 a.m., pursuant to notice.

*Present*: Hon. the Speaker (Chairman), Hon. Mr. Ballance, Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour, Mr. W. D. Stewart, Mr. Walker.

The minutes of the previous meeting were read and confirmed.

Moved by Mr. W. D. Stewart, That it was an infringement of the privileges of the House to present to it, "by command," copy of a letter from J. E. Macdonald, Esq., Chief Judge of the Native Land Court, in reference to, and containing comments on, certain statements made by Mr. Hamlin as a member of the House.

The Hon. Mr. Hislop submitted an alternative draft report.

A discussion on the subject of the inquiry then ensued.

*Resolved*, That the Committee adjourn till next Wednesday, the 1st August, and that Mr. Walker apply for an extension of the time allowed the Committee to bring up its report.

The Committee then adjourned.

WEDNESDAY, 1ST AUGUST, 1888.

The Committee met at 11 a.m., pursuant to notice.

*Present*: Hon. the Speaker (Chairman), Hon. Mr. Ballance, Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour, Mr. W. D. Stewart, Mr. Walker.

The minutes of the previous meeting were read and confirmed.

The order of reference, dated the 25th July, extending the time allowed the Committee to bring up its report, was also read.

Moved by Mr. W. D. Stewart, That it was an infringement of the privileges of the House to present to it, "by command," copy of a letter from J. E. Macdonald, Esq., Chief Judge of the Native Land Court, in reference to, and containing comments on, certain statements made by Mr. Hamlin as a member of the House.

And the question being put, a division was called for, and the names were taken down as follow:—

*Ayes*, 3.—Hon. Mr. Ballance, Mr. W. D. Stewart, Mr. Walker.

*Noes*, 4.—Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Seymour, Mr. Samuel.

The motion was therefore negatived.

Proposed by the Chairman, That the following be adopted as the report of the Committee:—

The Committee appointed on the 18th July to search for precedents in reference to placing, "by command," on the table of the House a letter written by the Chief Judge of the Native Land Court, addressed to the Native Minister and commenting on words uttered by a member of the House in debate, have the honour to report:—

1. That they have been unable to find any modern precedents exactly to the point, and they accept the dictum of Professor Stubbs in his "Constitutional History," Vol. III., p. 489, that on the subject of the privilege of debate, "invaluable as the privilege is, it is not susceptible of much historical illustration."

2. That your Committee attribute the non-interference, since the Revolution, of the Crown in England with the debates in Parliament to the clause in the Bill of Rights: "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament."

3. That this Committee can come to no other conclusion but that it was a breach of the privileges of the House for a Minister to present, by command of the Governor, a document commenting on a speech made in the House.

4. That it is clear to your Committee that no responsibility attaches to the Governor in the matter, but that the responsibility rests solely with his Responsible Adviser.

5. That the Committee are quite satisfied, from the statement made before them by the Minister who presented the document to the House, "by command," that he was not aware that in presenting the document to the House "by command" he was violating any of its privileges; and the Committee feel sure that he had no intention of in any degree infringing the privileges of the House.

6. That the Committee recommends that the House should proceed no further in the matter beyond recording in the Journals that the presentation to the House, "by command," of Judge Macdonald's letter to the Native Minister on the 4th July last be not drawn into a precedent.

On the question being put, That this report be agreed to, a division was called for, and the names were taken down as follow:—

*Ayes*, 3.—Hon. Mr. Ballance, Mr. W. D. Stewart, Mr. Walker.

*Noes*, 4.—Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour.

The motion was therefore negatived.

Moved by Mr. Samuel, That the following six paragraphs of the draft report prepared by himself be adopted:—

The Select Committee appointed to search for precedents and report to the House in connection with the question of privilege raised by Mr. Walker have the honour to report as follows:—

1. That, in a debate in the House on the question of adjournment of the House, Mr. Hamlin made certain allegations affecting the character of the Chief Judge of the Native Land Court, and his fitness for the official position occupied by him.

2. That the Native Minister caused the attention of the Chief Judge to be drawn to the allegations of Mr. Hamlin, as reported in *Hansard*, and requested that an explanation in reference thereto should be made to him.

3. That the Chief Judge of the Native Land Court accordingly forwarded to the Native Minister a letter quoting from the speech of Mr. Hamlin, as reported in *Hansard*, and making observations on the allegations of fact therein.

4. That the Native Minister, on receiving such letter, forwarded it to His Excellency the Governor with a recommendation that it should be presented to the House, and such recommendation was approved by His Excellency.

5. That the Native Minister stated in the House that he had the honour to present, "by command of His Excellency," a letter from the Chief Judge of the Native Land Court in reference to certain allegations in a speech reported in *Hansard* on the 15th June, 1888, and moved that the same do lie on the table of the House, and be printed.

6. That the question was put from the chair, and it was ordered, without discussion, that the paper presented by the Native Minister be laid on the table and be printed.

The motion was agreed to without division.

Moved by Mr. Samuel, That the following be clause 7 of the report:—

7. That the letter referred to is that now printed and circulated as G.-4A; that it is couched in respectful terms, and is confined to allegations of fact in contradiction of those contained in Mr. Hamlin's speech, as reported in *Hansard*.

On the question being put, a division was called for, and the names were taken down as follow:—

*Ayes*, 4.—Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour.

*Noes*, 3.—Hon. Mr. Ballance, Mr. Stewart, Mr. Walker.

The motion was therefore carried.

Moved by Mr. Samuel, That the following be clause 8 of the report:—

8. That your Committee have diligently searched for precedents, but can find none of recent date, or applicable to the circumstances of the New Zealand Legislature, which in any degree assist them in coming to a decision upon the question submitted to them.

On the question being put, a division was called for, and the names were taken down as follow:—

*Ayes*, 4.—Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour.

*Noes*, 3.—Hon. Mr. Ballance, Mr. W. D. Stewart, Mr. Walker.

The motion was therefore carried.

Moved by Mr. Samuel, That the following be clauses 9, 10, and 11 of the report:—

9. That the establishment of Ministerial responsibility as it now exists in this colony, and the presence in both Houses of Ministers of the Crown, seem to your Committee to have brought the Executive Government and the Legislature into such uninterrupted intercourse and combined action as to render precedents laid down under other circumstances more or less inapplicable; it seems also to your Committee doubtful whether the ancient order of Parliament, that the Crown should not be acquainted with anything that is in debate in either House "till the House has taken some course in it," and the analagous rule that no member of either House should allude to debates in the

other House, are not materially affected by the fact that *Hansard* is in New Zealand an official record of debates in Parliament published by authority, it having been held that the last-mentioned rule in the Imperial Parliament applies only to debates no official record of which is published by authority, and not to reports, votes, or proceedings of either House as they are recorded and printed by authority (May's "Parliamentary Practice," 9th edition, p. 368).

10. That at the time of the presentation of the paper there was no question before the House having any reference to the subject thereof, and therefore what has been done cannot have been done with a view to influence a decision of the House.

11. That, seeing, therefore, that the Native Minister, when presenting the paper, stated briefly its nature, and that the House thereafter resolved that it should lie on the table and be printed, your Committee cannot recommend that any objection be made to what has been done on the ground that a breach of privilege has been committed.

On the question being put that clause 9, as proposed by Mr. Samuel, be adopted, a division was called for, and the names were taken down as follow :—

*Ayes*, 3.—Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour.

*Noes*, 4.—Hon. Mr. Ballance, Hon. Sir J. Hall, Mr. W. D. Stewart, Mr. Walker.

Clause 9, as proposed, was therefore negatived.

Mr. Samuel thereupon asked leave to withdraw the succeeding clauses, 10 and 11, proposed by himself.

Leave to withdraw proposed clauses 10 and 11 was granted.

Moved by Mr. Samuel, That the following be clause 9 of the report :—

9. Seeing, therefore, that at the time of the presentation of the paper there was no question before the House having any reference to the subject thereof, and that what has been done cannot have been done with a view to influence a decision of the House, your Committee recommend that no further action should be taken in the matter.

And the question being put, a division was called for, and the names were taken down as follow :—

*Ayes*, 4.—Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour.

*Noes*, 3.—Hon. Mr. Ballance, Mr. W. D. Stewart, Mr. Walker.

The motion was therefore carried.

Moved by Mr. Samuel, That the following be clause 10 of the report :—

10. At the same time, your Committee recognise that under other circumstances some of the questions cognate to this reference might become of vital importance, and your Committee therefore recommend that the action taken on this occasion be not drawn into a precedent.

Amendment moved by the Hon. Mr. Ballance, That in clause 10, as proposed by Mr. Samuel, the following words be omitted : " recognise that under other circumstances some of the questions cognate to this reference might become of vital importance, and your Committee therefore."

And the question being put, That the words proposed to be omitted stand part of the question, a division was called for, and the names were taken down as follow :—

*Ayes*, 3.—Hon. Sir J. Hall, Mr. Samuel, Mr. Seymour.

*Noes*, 4.—Hon. Mr. Ballance, Hon. Mr. Hislop, Mr. W. D. Stewart, Mr. Walker.

The words were therefore omitted.

Moved by the Hon. Mr. Ballance, That proposed clause 10, as amended, be adopted.

And the question being put, a division was called for, and the names were taken down as follow :—

*Ayes*, 3.—Hon. Mr. Ballance, Mr. W. D. Stewart, Mr. Walker.

*Noes*, 4.—Hon. Sir J. Hall, Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour.

The clause, as amended, was therefore negatived.

*Resolved*, That clauses 1 to 9 inclusive, as adopted, be presented to the House as the report of the Committee.

The Committee then adjourned.

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FRIDAY, 3RD AUGUST, 1888.

The Committee met at 12 noon, pursuant to notice.

*Present* : Hon. the Speaker (Chairman), Hon. Mr. Ballance, Hon. Mr. Hislop, Mr. Samuel, Mr. Seymour, Mr. Stewart, Mr. Walker.

The minutes of the previous meeting were read and confirmed.

The Chairman stated to the Committee that the business before it was the reconsideration of the first paragraph of the report, which did not quote fully the terms of the appointment of the Committee.

*Resolved*, That the preamble of the report should be a quotation from the order of reference appointing the Committee, and be shown to be a quotation by being contained within inverted commas.

*Resolved*, That Mr. Walker be requested to present the report, as amended, to the House.

The Committee then adjourned.

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## MINUTES OF EVIDENCE.

MONDAY, 23RD JULY, 1888.—(Hon. Sir G. M. O'RORKE, Chairman.)

Major F. E. CAMPBELL, Clerk of Parliaments, in attendance and examined.

1. *The Chairman.*] Do you recollect a paper being laid on the table of the House by the Native Minister with regard to some remarks that were made by Mr. Hamlin in the course of his speech?—Yes.

2. Were you aware of the nature of that document when it was being presented?—No; I was not.

3. From your own experience, as Clerk of the House, did you think it was necessary that that document should have been presented "by command of His Excellency," instead of on the authority simply of a Minister?—I have not read the paper, and, therefore, cannot answer the question. I think that would be in the discretion of the Minister presenting it.

4. I observe that some papers are presented "by command" and others "by leave;" would you be good enough to explain the difference between these forms in regard to papers presented to the House?—I think that the more important papers or documents are usually presented "by command," as far as my experience goes. But it frequently happens that, if a paper is sent to a Minister during the sitting of the House, or if the printing of it has only just been completed, and it is thought desirable to present it without loss of time, the Minister would present it "by leave of the House" rather than wait for the Governor's authority to present it "by command." Many papers, I am aware, are presented "by leave of the House" in that way.

5. Your answer would lead us to suppose that, in your opinion, all papers should be presented "by command"?—I think so; I think it is the usual parliamentary practice for a Minister to present papers "by command," except in the case of papers which are returns to the order of the House or are presented pursuant to an Act of Parliament.

6. Will your memory assist you in telling the Committee in what terms the Minister announced the presentation of the paper?—It is usual to state whether the paper is presented "by command," or whether it is a "return to an order of the House," or whether it is presented "pursuant to an Act," or "by leave;" if "by leave," he simply asks the leave of the House.

7. That is not the point I want to know: what I want to know is whether you recollect if the Minister announced distinctly what was the nature of the paper presented; this paper has a title to it?—I could not say positively whether the title was read, but it is almost invariably the case that the Minister does read the title of the paper.

8. I think you have stated to the Committee that you were aware of the purport of the paper?—Of the purport of the paper I was, but I have not read it.

9. With reference to the custom of the House of Commons, I have gone through the index of one of their Journals under the heading Accounts and Papers presented with you, Major Campbell, and found that they were invariably presented "by command," except returns?—Since I looked through the index of the papers presented to the House of Commons I have also looked through a great many volumes, with the result that I find your statement borne out by subsequent investigation. They are invariably presented "by command," or "pursuant to an order of the House," or "by Act."

10. *Hon. Sir J. Hall.*] You are aware that this Committee has been appointed to inquire whether laying this paper on the table of the House constituted a breach of the privileges of the House?—Yes.

11. Are you aware of any precedent of the Imperial Parliament, or any authority bearing on the question, whether papers laid on the table of the House "by command," under circumstances at all similar to those which have taken place here, are a breach of privilege?—I have made search and I cannot find anything bearing on the point in regard to the Imperial Parliament.

12. Of course, there is the general question, the rule which is absolute, that no comment is to be made on a speech delivered in the House. There is the further rule that any notice by the Sovereign—that is, the Crown—of what takes place in the House of Commons with a view to interfere with the proceedings or influence the decision of Parliament would be a breach of privilege?—I can find nothing precisely in point.

13. *Mr. Walker.*] What do you infer from that? Is it that the privileges of Parliament being undoubted no breach of them is recorded?—I have not been able to find any case in point. I am not aware of any precedent.

14. Is it that that privilege has been undoubted, and therefore never attempted to be invaded. You refer to the English Parliament?—I have not been able to find a case.

15. *The Chairman.*] Do you know the case of Mr. Barton and Judge Richmond?—I remember that.

16. In what year was it?—I think, 1878.

17. *Hon. Mr. Ballance.*] If a person is reflected on in Parliament, and aspersions are made upon him, what is his remedy? Have you come across a case where a person has been aspersed in Parliament and where he tried to answer the aspersions?—Do you ask my opinion as to what course he should pursue?

18. What I ask is whether you have come across any case for the investigation of the circumstances?—No; I cannot say that I have. I would ask whether the case of a Government or public officer is referred to?

19. To any one?—I think there are many cases where aspersions have been passed on private persons and they have tried to resent it.

20. *Hon. Mr. Ballance.*] Then, what would be the remedy?—Petition to the House.

21. Would that be the remedy?—In the case of a private individual I should say so. In the case of a public officer I should say he would be justified in addressing the Ministerial head of his department

22. That would be the usual constitutional remedy?—In the case of a public officer.

23. You have not come across any case of that kind?—No.

24. *Hon. Mr. Hislop.*] Do you remember the case of Mr. Justice Richmond addressing the Colonial Secretary when attacked in the House?—That was read in the House.

25. *The Chairman.*] What year was that in?—I think it was 1878.

26. *Hon. Sir J. Hall.*] Was that “by command”?—I forget.

27. *The Chairman.*] Is it printed?—Yes; the papers in connection with the case appear in the Appendices for 1878 and 1879.

28. *Hon. Mr. Ballance.*] You think that the proper course for a public officer would be to address the head of his department, and that according to the invariable rule of the House of Commons that paper would be laid on the table “by command”?—I did not say that.

29. *Hon. Mr. Hislop.*] It is the rule to lay papers on the table of the House, informing Ministers of any matter within the knowledge of the Crown?—Yes.

30. *Hon. Mr. Ballance.*] Take the Chinese Conference, for instance, or other matter which produces papers containing information, they might be laid on the table of the House “by command” without any question of privilege being concerned?—Yes.

31. Have you found any precedent where it has been held that it is improper for the Crown to communicate the opinions of any person else?—With regard to matter stated in the House, I have no doubt there are cases, but I cannot just now call one to memory. I gather from parliamentary practice that that has been done.

32. *Hon. Mr. Hislop.*] There is a distinction between matters that are “agitating” the House and which “have agitated it” which have been decided?—Yes.

33. And also matters reported to the House with a view simply to giving information, and which have nothing whatever to do with privilege, which simply affect third parties. I mean that the doctrine of privilege arose out of the desire on the part of the House of Commons that the Crown should not interfere with its special privilege?—No doubt, that it should not interfere with matter in debate.

34. *The Chairman.*] That would lead up to this question: Do you think that the Crown is at liberty when a debate is concluded to begin then to take notice?—I hardly think it goes that far. I do not think it goes so far as to say that the Crown would interfere when the matter was settled.

35. *Hon. Mr. Hislop.*] Have you any precedent?—No.

36. How are matters communicated as a matter of fact?—By the presentation of an address. It would be done Ministerially, no doubt.

37. I suppose Ministers have the right to communicate to the Crown any matter which affects the character of persons appointed by the Crown. Do you admit they have the right, and that it is their duty to inform the Crown of any matter affecting the character of any one whom the Crown has appointed?—I should say so, certainly.

38. If matters affecting such persons are mentioned in the House, does that make it less the duty of the Minister to inform the Crown?—I should say not, in the communications of the Minister with the Crown.

39. Then, if the Crown is informed of the answer of the officer, does it follow from that he ought not to inform those who made the change?—I do not think that follows: it is a privileged communication between the Minister and the Crown.

40. They can make it privileged or not privileged?

41. *Mr. W. D. Stewart.*] Between themselves?—But not as regards the House, I think.

42. Was I right in assuming that the practice here has been to present only papers of importance “by command”?—I should say not. There are many papers of little importance presented “by command.”

43. So that there is no rule?—No rule as to the character of the paper.

44. What has been the practice in this House during the time you have been Clerk in regard to papers presented “by command.” Have they been laid on the table simply, or is leave of the House first asked?—As to papers presented “by command,” I do not think the question is necessary; when laid on the table “with leave,” of course, the question is involved in that. But it is usual that the question should be put by the Speaker, although the paper was presented “by command.”

45. *Hon. Sir J. Hall.*] What question?—The question “That the paper do lie on the table.”

46. *Mr. W. D. Stewart.*] Has there been any variation of the practice during your experience?—No.

47. Then, when a paper is presented “by command,” the Speaker puts the question, “That the paper do lie on the table”?—Yes.

48. *Mr. W. D. Stewart.*] Are you aware whether the Crown has transmitted, to be laid on the table of the House “by command,” any paper containing comments or arguments on any speech delivered in the House?—No; I cannot recollect any such case. The case of Lord Normanby, relative to Mr. Wilson, in the Legislative Council, is the only case analogous.

49. Apart from that case you have no recollection of a Governor of the colony asking, at any time, to lay on the table of the House, “by command,” any paper commenting upon any speech, or any matter of debate in the House?—No.

50. *The Chairman.*] If that paper had been presented on the occasion referred to “by leave of the House,” would you have thought there was any departure from ordinary practice?—No, I cannot see that there would have been.

51. I think when you and I were looking through the Index to the Journals of the House of Commons the other day, while there were innumerable instances of papers presented "by command," there were none of papers presented "by leave," according to the system we have here?—I have looked since, and can find no instance of a paper presented "by leave."

52. Can you tell me when this system grew up of presenting "by leave" instead of the English form "by command"?—I have referred to the Journals twenty years back; it was then very rarely done; the first case was in 1871 when the Hon. Mr. Fox presented a paper "by leave."

53. What was the nature of the paper: was it of large importance?—No, I should say not; it is relative to a charge made against a former Speaker of having put back the House clock.

54. Was Mr. Fox in the Ministry then?—Yes. Then, there is another case in 1872 when the Hon. Mr. Fox presented, "by leave," a report on the operation of the Prohibiting Liquor Law in Canada. There is another case when the Hon. Mr. Vogel, "by leave," presented papers relative to the settlement of accounts between the provinces and the General Government. The practice was not then so common as it has since become.

55. *Hon. Sir J. Hall.*] Do you remember the case of a paper from Sir Hercules Robinson, in 1879, commenting on something Sir George Grey said in connection with the change of Government? Do you remember whether the leave given was to read the paper or to lay it on the table?

*Hon. Mr. Hislop:* It was "to read it."

56. *Hon. Mr. Ballance.*] Are these the earliest cases?—That is the earliest case "by leave of the House," in 1871. Previously to that they were "by command" or "by order of the House" laid on the table.

57. *The Chairman.*] Who was the Speaker that year, Sir David Monro or Sir Dillon Bell?—Sir Dillon Bell was, I think, elected that year.

58. *Mr. Walker.*] Mr. Hislop asked you whether it did not make a considerable difference whether this particular matter were settled, that is, passed: in what sense can we find this as referring to passed transactions?—It would make this difference: as between the matter that would be under debate—that would be a matter that was not settled—and a matter that was wholly concluded and decided.

59. Who is to decide: What I wish to ask to ask is, whether we restrain ourselves by rule as regards debates in the present session? If we are not allowed to question or refer to debates taking place during the present session, for good reason, is it likely that, as regards the Crown, we should be less strict on this particular point than we are to ourselves?—That is rather an inference that might be drawn from the question I was asked.

*Mr. Walker:* We protect ourselves as regards the present session.

*An Hon. Member.* The object of that would appear to be to prevent acrimony in debate.

60. *Mr. Walker.*] I think you have said that you cannot find any reference to a breach of that rule?—You mean to a previous debate in the same session: I do not think Mr. Hislop's question touches that at all.

61. Will you look into this matter a little more?—Yes.

Hon. E. MITCHELSON, Minister for Public Works and Native Affairs, in attendance and examined.

62. *The Chairman.*] Will you inform the Committee whether this communication from Mr. Macdonald was made upon invitation of the Government or of his own notion?—It was made upon invitation by the Government, after hearing a statement made by Mr. Hamlin in the House which I thought reflected on an officer in the public service. I requested Mr. Macdonald, as soon as *Hansard* appeared, to peruse that statement, and to write for me a statement in reply. This paper was the reply to Mr. Hamlin; but I must say that the speech, as it appeared in *Hansard*, as far as my recollection goes, does not coincide with the speech as uttered. I may say that I have made application for a proof to be laid before this Committee, but I have been unable to obtain one. I think that if what was stated by Mr. Hamlin were true the Government would be failing in its duty if it retained Mr. Macdonald any longer in the public service.

63. Was the speech as it appeared in *Hansard* very much modified?—Yes; I think it was considerably modified.

64. *Mr. W. D. Stewart.*] Is there any report in the Press of what he said?—No.

65. It is only your recollection from which you speak?—My own recollection, and that of others.

66. *The Chairman.*] Did it occur to you when presenting this paper to the House that you were infringing one of its privileges?—No; on the contrary, I thought it was the proper thing to do. Had I thought it was a breach of privilege I would not have done it; not if I had the slightest conception that it was such. I might say that, before laying the paper on the table, I sent it to the Attorney-General who perused it and assented, and also laid a copy of it on the table of the Legislative Council.

67. He did not draw your attention to any risk of its being a breach of privilege?—No; nor did it occur to myself.

68. I presume the only object was to vindicate the character of one of your officers?—That was the only object. I might also say that, not only was I not aware of it being a breach of the privileges of the House, but I consulted myself as to whether I should read the paper.

*The Chairman:* You asked me whether, in presenting the paper, you would be at liberty to read it. I said "No." I stated that the proper course was, when you presented it, to move that it be read by the Clerk. The Clerk's reading the paper would not put it in *Hansard*. I had no idea of the nature of the contents of the paper.

*Hon. Sir John Hall:* Nor would it go into the Journals if the Clerk read it.

*The Chairman* : I had no objection to its being read ; but I did not mean to allow it to go into *Hansard* until I knew what it referred to.

*Hon. Mr. Hislop* : But it would go into the Appendices.

69. *The Chairman*.] You have said it was to vindicate the character of one of your officers. You were not at all aware that it was tending to any breach of the privileges of the House?—That is so.

70. It is hardly necessary to ask you whether, if you considered it a breach of privilege, you would have adopted the course you took?—Certainly not.

71. *Hon. Sir J. Hall*.] I think you said, Mr. Mitchelson, that the statement which you heard Mr. Hamlin make in the House was of such a character that it raised the question in your mind whether, if true, Judge Macdonald should be retained in the public service?—Yes.

72. Was it on that, before you saw the report in *Hansard*, that you called on Judge Macdonald for an explanation?—I did not call on him personally; but the Under-Secretary coming into my office next morning, I told him of the remarks that were made by Mr. Hamlin. I stated at the same time that it was my duty to call on Judge Macdonald for an explanation. I asked him to tell Judge Macdonald to read *Hansard* as soon as it appeared and send me a reply, so that I could lay the same before the Government, for I considered that the statement made by Mr. Hamlin was of a very damaging character.

73. Your action was taken on what you heard of the speech made by Mr. Hamlin?—On the hearing of myself and others.

74. It raised a question in your mind as to whether Judge Macdonald should be retained in the public service?—I considered, if the allegations were correct, that he was not a fit and proper person to remain in the service of the Government.

75. With regard to the actual laying the paper on the table—it is headed “Copy of a letter from J. E. Macdonald, Chief Judge of the Native Land Court, in reference to certain allegations, &c.”—when you rose for the purpose of putting it on the table, did you read that heading?—I read every word of it in as loud a tone as I could possibly do.

76. Did the Speaker put the question?—Yes, in the ordinary way.

77. He asked the House that it lie on the table?—Yes.

78. *The Chairman*.] “That this paper do lie on the table and be printed” was the question I put?—Yes.

79. Was any objection made?—No objection was made.

80. *Mr. Walker*.] Are you quite sure you endeavoured to make it heard?—Yes; my voice is not very strong, but I did so as far as I could.

81. I never heard you?—There is such a buzz generally about that time, when business is about to begin, that you can hardly know what is taking place.

*Hon. Sir J. Hall* : I heard every word of it.

82. *Hon. Mr. Hislop*.] Did any one take notice of it immediately afterwards?—I did not take notice.

83. *Mr. W. D. Stewart*.] What is the rule as to presenting papers “by command” or “by leave”?—I do not know of any rule; sometimes they come “by leave” sometimes “by command;” I have never been able to understand why a difference should be made.

84. Why did you do this “by command”?—Because it was considered important. The document was sent to the Governor, and remained with him twenty-four hours before it was returned.

85. *Hon. Sir J. Hall*.] A copy, you say, was sent to the Council, without requesting authority?—Yes.

86. *The Chairman*.] Do you know whether it was known outside the Chamber that a paper of this kind was to be presented?—I do not think so.

87. Was Mr. Hamlin aware of it?—I do not know.

88. Was he told of it?—I do not think so.

*Mr. Walker* : The first person who told me was a member of the Upper House, who asked me whether such a paper had been laid on the table of our House.

89. *Mr. Walker*.] Were they both laid on the table the same day?—I cannot say whether it was on the same day, but believe it was.

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