

NEW ZEALAND,



ANNO VICESIMO PRIMO ET VICESIMO SECUNDO

VICTORIÆ REGINÆ.

No. 58.

ANALYSIS:

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Election Petitions.

Title.

AN ACT to make provision for the trial of Petitions against the Election or Return of Members of the House of Representatives. [19th August, 1858.]

BE IT ENACTED by the General Assembly of New Zealand, in Parliament assembled, and by the authority of the same, as follows :—

What shall be deemed Election Petitions.

I. Every Petition which shall be presented to the House of Representatives, complaining of an undue election, or return of a Member of the House of Representatives, or complaining that no return has been made to any writ issued for the election of any Member of the House of Representatives, or that no return has been made within the time within which any writ is made returnable, or that any return is not according to the requisition of the writ, or complaining of any special matters contained in any such return, shall be deemed an Election Petition.

When election Petitions shall be presented, and by whom subscribed,

II. Every Election Petition shall be presented to the House within such time as shall be from time to time limited by the House in that behalf; and no such Petition shall be received, unless, at the time it is presented, it shall have been subscribed by an Elector who had a right to vote at the Election to which the same shall relate, or by some person who had been a Candidate at such Election.

Bond to be entered into by Petitioner.

III. Before any Election Petition shall be presented to the House, the person or persons subscribing the same, or some one or more of them, shall enter into a Bond to the Speaker of the House, with a condition, in the form set forth in the Schedule to this Act, for the sum of £100, with one, two, three, or four sufficient Sureties, either in the same Bond or in separate Bonds, for the additional sum of £100, in a sum or sums of not less than £25 each, for the payment of the costs and expenses, in the said Bond specified.

Sureties to make Affidavit of sufficiency.

IV. Every such person who shall enter into any such Bond, as surety for any other person, shall testify upon Oath in writing, to be sworn at the time of entering into such Bond, and before the person by whom his Bond shall be taken, that he is seized or possessed of real or personal estate, or both, above what will satisfy his debts of the clear value of the sum for which he shall be bound by the said Bond, and every such Affidavit shall be annexed to the Bond; and in every such Bond shall be mentioned the names and usual places of residence of the persons becoming sureties as aforesaid, with such other descriptions of the sureties, as may be sufficient to identify them readily.

Speaker to appoint examiner of Election Bonds.

V. The Speaker shall from time to time, as occasion shall require, appoint the Clerk of the House, or some other person, to be Examiner of Election Bonds, and every person so appointed shall hold his office during the pleasure of the Speaker.

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VI. Every Bond hereinbefore required shall be entered into, and every Affidavit hereinbefore required shall be sworn, before the Examiner, or one of Her Majesty's Justices of the Peace; and the Examiner, and also every Justice of the Peace, is hereby authorised to administer the same.

How Bonds to be entered into,

VII. Every such Bond and Affidavit which shall be taken before a Justice of the Peace, being duly certified under the hand of such Justice, shall be delivered or transmitted to the Clerk of the House.

Bonds taken before Justices of the Peace, to be delivered to Clerk of the House.

VIII. It shall be lawful for any person by whom such Petition shall be signed, instead of entering into a Bond with Sureties for the full amount of the sums hereinbefore required, to pay into a Bank to be designated by the Examiner, and in his name as Trustee for like purposes for which the Bond is hereinbefore required, any amount of Money which such person shall think fit, in a sum or sums not less than £25 each; and in such case, the person by whom the Petition shall be signed shall still be required to enter into his personal Bond for the sum of £100, but shall be required to find a Surety or Sureties as aforesaid for so much only of the additional sum of £100 as the sum paid into the Bank shall fall short of the sum of £100.

Money may be paid into Bank instead of security given,

IX. No Money shall be deemed, for the purposes of this Act, to be paid into the Bank, until a Bank Receipt shall have been delivered to the Examiner.

When money deemed to be paid into Bank.

X. No Election Petition shall be received, unless at the time it is presented to the House it shall be endorsed by a Certificate, under the hand of the Examiner, that the Bond hereinbefore required has been entered into and received by him, with the Affidavit thereto annexed; and if the Bond shall not have been taken for the full amount, that the necessary amount has been paid into a Bank as hereinbefore required.

No Petition to be received unless endorsed by Examiner.

XI. On or before the day when any Petition shall be presented to the House, the Bonds, and Affidavits, and Bank Receipts (if any) shall be opened to the inspection of all parties concerned.

Bonds and Affidavits to be open to inspection.

XII. It shall be lawful for any sitting Member petitioned against, or for any Electors petitioning and admitted parties to defend the Election or Return, to object to the Sureties, or any of them, who shall have entered into such Bond on the ground of insufficiency, or that a Surety is dead, or cannot be found, from the want of a sufficient description in the Bond, or that a person named in the Bond has not duly executed the same: Provided that the ground of objection shall be stated in writing, under the hand of the Objecting Party or his Agent, and shall be delivered to the Examiner before twelve o'clock at noon on the tenth day after the presentation of the Petition, and if such tenth day be Sunday, Christmas Day, or Good Friday, then before twelve o'clock at noon on the following day.

Sureties may be objected to.

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Examiner to appoint a day for hearing objections.

XIII. As soon as any such Statement shall be received by the Examiner, he shall appoint a day for hearing such objection, not less than three nor more than five days from the day on which he shall have received such Statement, and the Petitioner and his Agent shall be allowed to examine and take copies of every such Statement.

Examiner to decide on objections.

XIV. At the time appointed, the Examiner shall enquire into the alleged insufficiency of the Sureties objected to, on the grounds stated in the Notice of Objection, but on no other grounds; and for the purpose of such enquiry, the Examiner is hereby required to examine upon Oath any persons who may be tendered by either party for examination by him; and also to receive in evidence any Affidavit relating to the matter in dispute before him, which shall be sworn before him, or before a Justice of the Peace, each of whom is hereby authorised and required to take and certify such Affidavit; and the Examiner shall have power, if he shall think fit, to adjourn the enquiry from time to time, until he shall decide on the validity of such Objection, and, if he shall think fit, to award Costs to be paid by either party to the other, and to give a Certificate thereof, which Costs shall be recovered in an Action of Debt in any Court of competent Jurisdiction; and the decision of the Examiner shall be final and conclusive against all parties: Provided always, that the validity of such Certificate (the handwriting of the Examiner thereto being duly verified) shall not be called in question in any Court.

In case of insufficiency, or death of Surety, money may be paid into Bank.

XV. If the Examiner shall have decided that any such Surety is objectionable, or if any Surety shall die, and his death shall be stated as a ground of objection before the end of the time allowed for objecting to the Sureties, it shall be lawful for the Petitioner to pay into a Bank to be designated by the Examiner, and in his name, the sum for which the deceased Surety was bound, and on delivery of a Bank Receipt for such sum to the Examiner, within three days after the day on which the statement of such objection shall have been delivered to the Examiner, the Sureties shall be deemed unobjectionable, if no ground of objection shall be stated to any other of the Sureties, within the time before mentioned for stating objections to Sureties.

How Petitions may be withdrawn.

XVI. It shall be competent to any Petitioner, at any time after the presentation of the Petition, to withdraw the same upon giving notice in writing under his hand, or under the hand of his Agent, to the Speaker, and also to the sitting Member, or his Agent, and also to any party who may have been admitted to oppose the prayer of such Petition, that it is not intended to proceed with the Petition, and in such case the Petitioner shall be liable to the payment of such Costs and Expenses as may have been incurred by the sitting Member, and also by any party who may have been admitted to oppose the prayer of such Petition; such Costs and Expenses to be ascertained and fixed in such manner and by such person as the Speaker shall direct, and the same being so ascertained and fixed, the Speaker shall give a Certificate thereof, whereupon the same shall be recoverable

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in any Court of competent Jurisdiction; and the validity of such Certificate (the handwriting of the Speaker thereto being duly verified) shall not be called in question in any Court.

XVII. If at any time after such Election Petition shall have been presented, the Member petitioned against shall declare in writing to the Speaker that he will not defend his Election or Return (notice whereof shall be given by the Speaker in such manner as he shall deem best calculated to give full publicity to the same) it shall be lawful for any person having a right to vote at any Election to which such Petition shall relate, at any time within ten days after the publication of such notice, to petition the House to be permitted to defend such Return, or oppose the prayer of such Petition, and such person shall thereupon be admitted to defend or oppose the same respectively.

Elector may be admitted to defend return or oppose Petition,

XVIII. Whenever any Member, whose Election or Return is so complained of in such Petition, shall have given notice as aforesaid of his intention not to defend the same, he shall not afterwards be allowed to appear or act as a party against such Petition in any proceedings thereon; and he shall not be entitled to sit in the House, or vote on any question, until such Petition shall have been decided on,

Member giving notice of his intention not to defend, not to be allowed to sit, or vote, till Petition decided.

XIX. Whenever any Election Petition shall have been presented to the House, a day and hour shall be appointed by the House for the selection of a Committee to try the allegations therein contained, and notice thereof in writing shall be given by the Speaker to the Petitioners and the sitting Member, or to the person who may have been admitted to defend the Return or oppose the prayer of the Petition, or to their Agents, accompanied by an order to attend the House at the time appointed.

When Election Petition presented, time to be fixed for taking same into consideration,

XX. At the time appointed the Speaker shall cause to be made out a list containing the names of all the Members of the House, excepting only those of the Speaker and the Chairman of Committees and such Members as have obtained leave of absence, or are not available for service on the Committee through illness or absence, or from such other cause as the House, on the question being referred to them by the Speaker, shall determine to be sufficient excuse for not serving on the Committee.

Lists to be made of Members available to serve on Committees,

XXI. The Speaker shall cause to be delivered to each party a copy of the list so to be made out as aforesaid.

Copy of Lists to be delivered to each party.

XXII. Each party shall then name one Member whose name shall be on the said list, and the two Members so named shall be two Members of the Committee.

Each party to choose one Member.

XXIII. The Speaker shall then appoint some one of the other Members on the said list to be the Chairman of the Committee; and in case at any time any Chairman shall from any cause cease to act on the Committee, the Speaker shall appoint some other Member of the Committee to be the Chairman thereof.

Speaker to appoint Chairman.

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Each party to strike names alternately of Members on List, till number reduced to four.

XXIV. Each party, the Petitioners commencing, shall then alternately strike off one name from the said List till the number thereon shall be reduced to four, and such four, together with the two Members named as aforesaid, and the Chairman, appointed by the Speaker, shall form the Committee for the purpose of trying the merits of the Petition referred to them, three of whom shall be a quorum.

Mode of proceeding in case parties fail to attend.

XXV. If on the day so to be appointed as aforesaid for selecting the Committee, either party shall neglect to attend, it shall be lawful for the Speaker to appoint either the Clerk of the House or some other person to act on behalf of the party neglecting to attend; and if both parties shall neglect to attend, the Petition shall be dismissed without costs to either party, and no further proceedings shall be taken thereon.

Notice of Committee having been chosen, to be given to Members selected.

XXVI. When the Committee shall have been chosen as aforesaid, the Speaker shall cause notice thereof in writing to be given to each of the Members so selected, and require his attendance at a certain time and place, to be fixed by the Speaker, for the purpose of holding the first meeting of the Committee.

Members of Committee to be sworn.

XXVII. Every Member of the Committee, before he shall act, shall be sworn at the table of the House by the Clerk, well and truly to try the merits of the Petition referred to the Committee, and a true judgment give according to the evidence.

Committee not to adjourn for more than thirty hours without leave of House.

XXVIII. Every such Committee shall sit from day to day, Sunday, Christmas Day, and Good Friday only excepted, and shall never adjourn for more than thirty hours unless a Sunday, Christmay Day, or Good Friday intervene, and in such case for not more than thirty hours exclusive of such Sunday, Christmas Day, or Good Friday, without leave first obtained from the House upon motion, and a Special cause assigned for a longer adjournment: Provided always, that if such Select Committee have occasion to apply or report to the House, and the House be then adjourned for more than thirty hours, such Select Committee may also adjourn to the day appointed for the meeting of the House.

Members absenting themselves without leave, may be censured or punished.

XXIX. Every Member of a Select Committee appointed to try the merits of any Election Petition who shall absent himself from any Meeting of the Committee, without the leave of the House, may be ordered by the House to be taken into custody by the Sergeant-at-Arms for such neglect of duty, and shall be censured or punished by a fine not exceeding £20, at the discretion of the House, and kept in such Custody for ten days unless the fine be sooner paid, or such Member be discharged by order of the House, unless it shall appear by facts specially stated and verified upon Oath, to be sworn before the Speaker that such Member was by necessity prevented from attending.

If Committee reduced to less than three, to be dissolved.

XXX. If the number of Members able to attend such Committee be unavoidably reduced to less than three, and so continue for

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the space of three sitting days, such Committee shall be dissolved, and another, to be appointed in manner hereinbefore provided, shall be appointed to try the merits of the Petition: Provided always that if the parties before the Committee consent thereto the two remaining Members of the Committee, or the sole remaining Member, if only one shall continue to act, shall thenceforward constitute the Committee.

XXXI. Every Committee shall have power to regulate the form and manner of its proceedings, and to adjourn from time to time, subject nevertheless as hereinbefore mentioned: Provided always that every Committee, shall be guided by justice and good conscience, without regard to legal forms and solemnities, and shall direct themselves by the best evidence they can procure, or that is laid before them, whether the same be such evidence as the Law would require in other cases or not: Provided also that the proceedings before any such Committee shall be open to the public, except when the Committee shall think fit to deliberate amongst themselves before coming to a decision on any question: And Provided also that such proceedings shall not in any case extend beyond seven sitting days, and if no decision be come to within that period, the Chairman of such Committee shall, on such evidence as is then before such Committee, pronounce a decision, and every decision, whether so pronounced by the Committee or by the Chairman, shall be final and conclusive without appeal.

Committee to regulate form of proceedings.

XXXII. All questions before any Committee, if for the time being consisting of more than one member, shall be decided by a majority of votes, and whenever the votes are equal, the Chairman shall have a second or casting vote, and no member of the Committee shall be allowed to refrain from voting on any question on which the Committee is divided.

Questions to be determined by majority.

XXXIII. Whenever a Committee is divided upon any question, the names of the Members voting in the affirmative, and of those voting in the negative shall be separately entered on the minutes of the Committee, and shall be reported to the House with the question on which such decision took place, at the same time with the final report of the Committee.

Names of Members voting for or against any Resolutions to be reported to the House,

XXXIV. Every such Committee shall be attended by a competent Clerk, who shall make a minute of all proceedings of the Committee in such form and manner as shall be from time to time directed by the Committee, and a copy of the minutes shall be laid from time to time, or at the termination of the enquiry, before the House.

Committee to be attended by a competent Clerk, and Minutes kept.

XXXV. Every such Committee may send for persons, books, papers, records, and other documentary evidence, and may examine any person they may think fit, whether a party to the proceedings before them or not upon Oath, which Oath the Chairman of the Committee is hereby authorised to administer; and it shall also be competent for any such Committee in its discretion, if it

Committee empowered to send for and examine persons, books, papers, records, and documents.

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shall think fit to receive Affidavits relative to any of the matters referred to it taken before any Justice of the Peace, which Affidavit Justices of the Peace are hereby authorised and required to take,

Persons misbehaving,
to be guilty of a mis-
demeanour.

XXXVI. If any person, whether a party to the proceedings or not, who shall have been summoned by any such Committee by a Summons under the hand of the Chairman thereof, shall disobey such summons, or shall neglect or refuse to produce any books, papers, records, or other documentary evidence relating to or affecting the matter under investigation, which shall have been sent for by any such Committee, or shall refuse to submit himself to examination, or shall give false evidence, or prevaricate, or otherwise misbehave in giving or refusing to give evidence, he shall be deemed guilty of a misdemeanor; and it shall be lawful for the Chairman of any Committee, when authorised by a Resolution passed by the Committee, to direct by a Warrant under his hand, the Sergeant-at-Arms of the House, or some other person to be employed by the Chairman for that purpose, to take any person so offending into custody, and at the earliest convenient time to take him before a Justice of the Peace: Provided always that no person shall be kept in custody for more than forty-eight hours, before being taken before a Justice of the Peace: Provided also, that if any person be discharged at the end of forty-eight hours in consequence of there not having been found a Justice of the Peace to hear the case, such person may be prosecuted at any future time on the charge against him being preferred in the usual way.

Giving false evidence
to be Perjury.

XXXVII. Every person who wilfully gives false evidence before any Committee, or who wilfully swears falsely in any Affidavit authorised by this Act, shall on conviction thereof be liable to the penalties of wilful and corrupt perjury; and every such person may be taken into custody, and dealt with in manner prescribed by the last preceding section of this Act.

Committee to decide
and report their de-
termination to the
House,

XXXVIII. Every such Committee shall try the merits of the Return or Election complained of in the Election Petition referred to them, and shall determine by a majority of votes, if for the time being consisting of more than one Member, whether the sitting Member or any other person, was duly returned or elected, or whether the Election was void, and whether a new writ ought to issue, which determination shall be final between the parties to all intents and purposes; and the House, on the same being reported to them, shall order such report to be entered on their journal, and shall give the necessary directions for confirming or altering the Return, or for ordering a Return to be made, or for causing a Writ for a new Election to be issued, or for carrying the said determination into effect, as the case may require: Provided always, that the Electoral Roll shall be deemed and taken to be conclusive evidence that the persons therein named were duly qualified to vote.

Committee may report
their determination
on other matters to
the House.

XXXIX. If any Committee come to a resolution other than the determination above mentioned, they shall, if they think pro-

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per, report the same to the House for its opinion, and the House may confirm or disagree with such Resolution, and may make such orders therein as to it may seem proper.

XL. If the General Assembly be prorogued after the appointment of any Committee, and before they have so reported to the House their determination, such Committee shall not be dissolved by such Prorogation, but shall be thereby adjourned till twelve o'clock on the day immediately following that on which the General Assembly meets again for the dispatch of business, and all proceedings of such Committee, shall be of the same force and effect as if the General Assembly had not been so prorogued, and such Committee shall meet on the day and at the hour to which it is so adjourned, and shall thereupon continue to sit from day to day in the manner hereinbefore provided, until they have reported their determination on the merits of such Petition.

Committee not dissolved by Prorogation of General Assembly.

XLI. It shall be lawful for any Committee to award to the party prosecuting, or to the Candidate against whom the Petition shall have been presented, or to the person admitted to defend the Return or Election, or to any Witness who shall, in pursuance of any Summons under the hand of the Chairman of the Committee have attended to give evidence, such reasonable costs and expenses as such Committee shall deem fit; and such costs and expenses shall be assessed and determined by the Committee and a Certificate thereof being given under the hand of the Chairman shall be recoverable by Action of Debt in any Court of competent jurisdiction from the party by such award made liable to pay the same: Provided always, that the validity of such Certificate (the handwriting thereto of such Chairman being duly verified) shall not be called in question in any Court.

Costs may be awarded.

XLII. If such costs and expenses when awarded against any person who may have given a Bond as hereinbefore provided be not paid on demand, the Speaker shall, upon application of the party entitled to such costs and expenses, cause the Bond to be put in suit, and the money recovered on such Bond shall be applied in such order as the Committee shall have directed, in satisfaction, so far as the sum will extend, of all the costs and expenses intended to be secured by such Bond; Provided always, that before putting such Bond in suit, the Speaker may, if he think fit, require Security to be given to his satisfaction, to indemnify him against all costs and expenses which he may be put to thereby: Provided always, that in lieu of putting such Bond in suit, the Speaker may assign the same to such person as he may think fit, and the endorsement on the Bond of such person's name, together with the signature of the Speaker, shall be deemed a valid, and effectual assignment of the same.

If costs be not paid, Bond to be put in suit.

XLIII. In every case in which payment of any money shall have been made into a Bank, instead of giving Security as hereinbefore provided, the Examiner shall be bound in the first place, and in such order of payment as shall be directed by the Committee, to satisfy out of the said money all the costs and expenses

Costs, to be paid out of money deposited in Bank.

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for securing payment of which such investment was made, or so much thereof as can be thereby satisfied, and thereafter to pay the surplus (if any) to the person by whom such money was paid in.

Returning Officer may be sued for neglecting to Return any person duly elected.

XLIV. If any Returning Officer shall wilfully delay, neglect, or refuse, duly to return any person who ought to be returned as a Member of the House of Representatives, such person may in case it shall have been determined by a Committee that such person was entitled to have been returned, sue the Returning Officer having so wilfully delayed, neglected, or refused duly to make such Return of his election, in the Supreme Court of New Zealand, and shall recover double the damages he has sustained by reason thereof, together with full costs of Action: Provided that such Action be commenced within three months after the conclusion of any proceedings in the House of Representatives relating to such election.

Interpretation.

XLV. In the construction of this Act, unless there be something in the subject or context repugnant to such construction, the word "House" shall mean the House of Representatives; the word "Speaker" shall mean the Speaker of the House of Representatives; the word "Examiner" shall mean the Examiner of Election Bonds; and the word "Committee" shall mean the Committee appointed under this Act to try the merits of any Election Petition as defined in section number one of this Act.

Short Title.

XLVI. The Short Title of this Act shall be "Election Petitions Act, 1858."

SCHEDULE.

FORM OF CONDITION OF BOND.

The Condition of the above written Bond is such that if (*here insert the names of all the Petitioners, and if more than one, add, or any of them*) shall well and truly pay all costs and expenses in respect of the Election Petition signed by him (*or them*) relating to the Electoral District of (*here insert name of Electoral District*) which shall become payable to the Petitioner (*or Petitioners*) under the "Election Petitions Act, 1858," to any Witness summoned in his (*or their*) behalf, or to the sitting Member, or other party complained of in the said Petition, or to any party who may be admitted to defend the same as provided by the said Act, then the above written Bond to be void otherwise, to be of full force and effect.