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No. 78.

2nd Session, 6th Parliament, 22 Victoria, 1859.

BILL.

An Act further to secure the independence
of Parliament.

Received and read, first time, Thursday, 24th
February, 1859.

Second reading, Monday, 28th February, 1859.

MR. McDougall.

TORONTO :

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An Act further to secure the Independence of Parliament.

WHEREAS it is expedient to repeal the Act passed in the twentieth year of Her Majesty's Reign, intituled, "An Act further to secure the Independence of Parliament," with a view to amend its provisions: Therefore Her Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly, enacts as follows:

Preamble. 20 V. c. 22.

Notwithstanding this preamble, there is no clause in this Bill, repealing the 20 V. c. 22.

I. From and after the passing of this Act, it shall not be lawful for any person holding any office, place, commission, or appointment from the Crown, or from or in any public department, or from the Legislative Council or Legislative Assembly or any officer thereof, to vote at any election of a member of the Legislative Council or of the Legislative Assembly: Provided that nothing in this section shall prevent any officer of the army, or navy, or any officer of the militia, or any Justice of the Peace, or any Postmaster whose salary or income as such does not exceed \$ per annum, from voting at such election, if not otherwise incapacitated.

Office holders not to vote at Elections.

This is an altogether new provision as to employees of the Govt Council or Assembly but why except the Postmasters?

II. The vote of every person rendered incapable of voting by section one, shall be null and void; and for giving the same, he shall incur a penalty of two thousand dollars, to be recovered by any person who shall sue therefor in any Court of competent jurisdiction; and if the first plaintiff in any action for the penalty shall not proceed to trial at the sittings of the Court next after the issue of his writ, it shall be lawful for any other person to sue for the penalty, and the person who first obtains judgment shall be entitled to execution.

Votes of such persons to be null if given.

off. to his own use?

III. Except as hereinafter specially provided it shall not be lawful for any person holding any office, place, commission, or employment, permanent or temporary, from the Crown, to which any salary, fee, allowance, emolument, or profit appertains, to be a candidate, or be elected at any election of a member of the Legislative Council or Legislative Assembly.

Office holders not to be elected.

as this includes temporary employ. it ought to say "during such holding or employment, permanent or temporary"

IV. Except as hereinafter specially provided it shall not be lawful for any person to sit or vote in the Legislative Assembly, or in the Legislative Council as an elected member thereof, while holding any such office, place, commission, or employment.

Nor to sit or vote in either House.

what for to 20 V. 5.3 except intended 30

V. But nothing in this Act shall render ineligible to be elected, or disqualified to sit and vote in either House, any officer of the army, or of the navy, or any officer of the militia, (except an officer on the

Exceptions—Officers of the army.

for V. c. 5.3. 20:2.

R.S. The principal objections are that the Bill propose

1st To Exclude from seats in Parliament

- 1- Solicitor general
2- Minister of agriculture

2d. Requires the Speaker of Leg. Council to go to ...

It also abolishes the plan of changing Offices.

staff receiving a salary) or any Justice of the Peace, by reason of his being such officer or Justice.

Similar in effect to sect 4 of old act

Contractors with H. M. or Public Departments, &c., not to be elected, or to sit or vote.

VI. It shall not be lawful for any person holding or enjoying, undertaking or executing, directly or indirectly, alone or with any other, of having any share or interest in any contract or agreement with Her Majesty, or with any public officer or department, or with any other person, with respect to the public service, or under or by virtue of which any public money of the Province is to be paid for any service, work, matter or thing, to be a candidate, or be elected a member of the Legislative Council or Legislative Assembly, or to sit or vote therein. 5 10

no. sect 5.

Returns of disqualified persons to be void.

VII. If any ineligible or disqualified person shall, nevertheless, be elected and returned as a member of either House, his election and return shall be null and void, and the person (if any) next highest on the poll shall, if not ineligible, be entitled to the seat; and for every day every person so ineligible or disqualified shall sit or vote in either House, he shall incur a penalty of two thousand dollars, which may be sued for and recovered by any person or persons in the same manner as the penalty in section two, may be sued for and recovered. 15

Penalty on such persons sitting or voting.

no. sect 6.

Members accepting office or becoming Contractors, to vacate their seats.

VIII. If any member of the Legislative Assembly or any elected member of the Legislative Council, shall at any time accept any office, place, commission, or employment, from the Crown, or become a party to, or interested in any such contract or agreement as aforesaid, the seat of such member shall thereby be vacated, and a writ shall be forthwith issue for a new election, as if he were naturally dead. 20 25

Similar to sect 3. 100 proviso - Except Encl. That this proposed section excludes Solicitor General & Minister of Agriculture & Speaker of Legislature.

Persons holding certain offices may be elected and sit.

IX. Any person holding one of the following offices, that is to say; the office of Receiver General, Inspector General, Secretary of the Province, Commissioner of Crown Lands, Commissioner of Public Works, President of Committees of the Executive Council, Attorney General, or Post Master General, may be elected a member of the Legislative Council or Legislative Assembly, and sit and vote therein, without incurring the penalty aforesaid; but any member of the Legislative Assembly, or elected member of the Legislative Council, accepting any of the said offices after election, shall thereby vacate his seat, provided that such acceptance of office by any member shall not render him ineligible to be re-elected. 30 35

But, accepting any such office after election, to vacate the seat, subject to re-election.

in effect same as sect 9.

Members may resign their seats, and how.

X. Any member of either House may voluntarily resign his seat by giving in his place notice of his intention to resign it, in which case, and immediately after such notice shall have been entered by the Clerk on the Journals of the House, the Speaker may address his warrant under his hand and seal to the Clerk of the Crown in Chancery, for the issue of a writ for the election of a member in the place of the member resigning; or such member may address and cause to be delivered to the Speaker a declaration of his intention to resign his seat, made in writing under his hand and seal before two witnesses, which declaration may be so made and delivered either during a session of Parliament or in the interval between two sessions, and the Speaker may, upon receiving such declaration, forthwith address his warrant under his hand and seal to the Clerk of the Crown in Chancery, for the issue of a writ for the election of a member in the 40 45 50

Speaker to issue his warrant for a new writ.

place of the member so resigning, and a writ shall issue accordingly; and an entry of the declaration so delivered to the Speaker shall be thereafter made in the Journals of the House, and the member so tendering his resignation shall be held to have vacated his seat, and cease to be a member of such House.

XI. Provided always, that no member shall so tender his resignation while his election is lawfully contested, nor until after the expiration of the time during which it may by law be contested, on other grounds than corruption or bribery.

Not to resign while election is contested, &c.

Same as sect 10.

XII. If any member shall wish to resign his seat in the interval between two sessions of Parliament, and there be then no Speaker of the House to which such member belongs, or if such member be himself the Speaker, he may address and cause to be delivered to any two members of the said House, the declaration before mentioned of his intention to resign; and such two members upon receiving such declaration shall forthwith address their warrant, under their hands and seals, to the Clerk of the Crown in Chancery, for the issue of a new writ for the election of a member in the place of the member so notifying his intention to resign, and such writ shall issue accordingly, and the member so tendering his resignation shall be held to have vacated his seat.

Proceeding in case there be no Speaker, or the Speaker wishes to resign his seat.

Same as sect 11.

XIII. If any vacancy shall happen in the Legislative Council or in the Legislative Assembly by the death of any member, or by his accepting any office, or by his having forfeited his seat for any other cause, the Speaker of the House to which such member belonged, on being informed of such vacancy by any member of such House in his place, or by notice in writing under the hands and seals of any two members of such House, shall forthwith address his warrant to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member to fill such vacancy, and a new writ shall issue accordingly; and if when such vacancy shall happen, or at any time thereafter before the Speaker's warrant for a new writ shall have issued, there be no Speaker of the House, or the Speaker be absent from the Province, or if the member whose seat is vacated be himself the Speaker, then any two members of the House may address their warrant under their hands and seals to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member to fill such vacancy, and such writ shall issue accordingly.

Notice of vacancies, how to be given.

Same as sect 12

New writ.

And if there be no Speaker or he is absent.

XIV. The notice of any vacancy in the Legislative Council, or Legislative Assembly, which shall be given to the Clerk of the Crown in Chancery, in and by any warrant of the Speaker, or of two members of the House, in the manner hereinbefore provided, shall be held to be the notice of such vacancy mentioned in the twenty-fourth section of the Act of the Imperial Parliament, passed in the session held in the third and fourth years of Her Majesty's Reign, and intituled, "An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada."

Such notice under this Act to be given to notice under section 24 of the Union Act.

Same as sect 13

XV. A warrant may issue to the Clerk of the Crown in Chancery for the issue of a new writ for the election of a member of the Legislative Assembly to fill up any vacancy arising subsequently to a general

New writs may issue before the first meeting of a Parliament.

Same as sect 14

election, and before the first meeting of Parliament thereafter, by reason of the death or acceptance of office of any member, and such writ may issue at any time after such death or acceptance of office: Provided always, that the election to be held under such writ shall not in any manner affect the rights of any person who may be entitled to contest the previous election.

Proviso.

Somewhat framed on sect: 15 - but is very up to the speaker of

Foregoing enactments to be subject to ss. 22, 24, of 19, 20 V, c. 140.

XVI. Provided always, that the foregoing enactments shall be subject to the twenty-second and twenty-fourth sections of the Act of 1856, for changing the Constitution of the Legislative Council.

Leg: Council vacating his seat on taking office.



That point is much more clearly expressed in the 15th section of the present act -