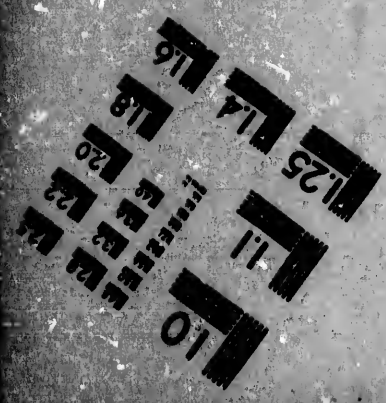
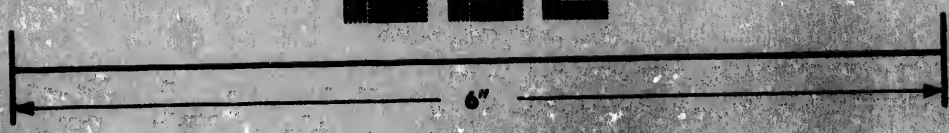
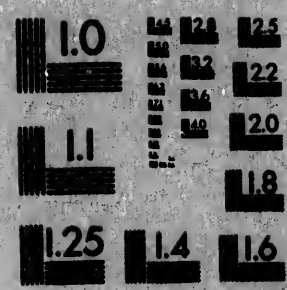


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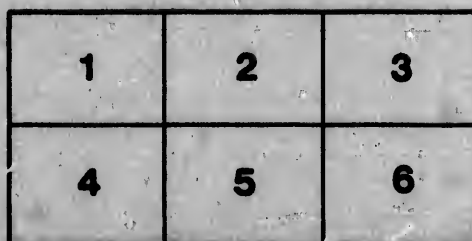
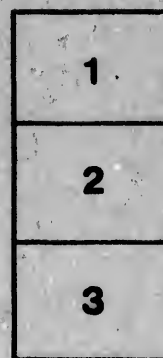
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Controverted Elections

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IN THE

DOMINION OF CANADA.

BY JOHN NOTMAN,

A CLERK IN THE CONTROVERTED ELECTIONS OFFICE,
HOUSE OF COMMONS.

Ed. Bois, Jr.



OTTAWA:
HUNTER, ROSE & CO., PUBLISHERS.
1867.



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P R E F A C E .

In offering this little book to the public, the author has not been actuated by the desire for authorship, by the expectation of profit, or the acquirement of fame, though not insensible to each and all of these.

Its sale must be very limited, and therefore precludes the hope of gain, while its contents are chiefly compilation, and may not justify a claim to honor.

A presumption that those interested in and connected with the intricate working of Contested Elections might be assisted, is the chief plea for its publication.

Your obedient servant,

JOHN NOTMAN.

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A SHORT TREATISE

ON

Controverted Parliamentary Elections.

THIS little Treatise is diffidently offered for assistance to new and young Members of the House, not designed to supersede the Law, or a careful study of it, but only to exhibit a general view of its scope and policy.

A contested election has always been of great importance and interest to the Constituency affected, to the Ministry, to Legislators, and to the political world at large; how necessary then that it be conducted lawfully, equitably, impartially and seriously. The political and party sentiments and connections of every one of the five Members who try it are almost invariably well known, and their acts are watched with sleepless jealousy, as those of five gentlemen sworn to do justice.

It has been several times proposed that the adjudication upon controverted elections should be vested in an independent tribunal; but the House is unlikely ever to part with so large an element of its rights and privileges.

The Controverted Parliamentary Election Act

has been considered cumbrous and ambiguous, but all late attempts to improve it have been rejected, and it is possible, that if carried out in a consistent manner, it can be but very little improved.

It is but fair to imagine that parties contesting an election, and those most intimately concerned, should not content themselves with a cursory glance at the Law, or even with one attentive reading.

In contesting an election, the first duty of the petitioner is, to procure a Recognizance for the sum of eight hundred dollars. This is necessary for securing the discharge of such costs and expenses as may become payable, and to protect all parties concerned against inconsiderate, malicious, and harassing applications to Parliament. See the Act, section 10.

Parties entering into Recognizances must, at the same time and before the same person, testify upon oath in writing, that they possess, severally, sufficient to pay double the clear amount for which they stand bound, after discharging all their just debts, and such affidavit must be endorsed upon, or annexed to, the Recognizance. See the Act, section 12.

Every recognizance must be entered into, and Affidavit of sufficiency of surety sworn, before Mr. Speaker, or a Justice of the Peace; and certain persons shall be deemed Justices of the Peace. See the Act, sections 14, 154.

It would at first sight seem not difficult to comply with such explicit statutory requisitions; yet the instances are numerous in which the parties

have failed to do so. A flaw has been suddenly discovered by an acute opponent, and the petition thrown aside, with all the expense, exertion, and anxiety bestowed upon it, as well as the many hopes and fears which it has called forth.

Every Recognizance and Affidavit of sufficiency of surety should be drawn up with the greatest care, as they are open to many fatal objections.

There should be a strict adherence to the prescribed forms.

Initials and figures should by no means be used.

Marginal corrections are far from desirable, and if made must be attested.

Erasures or interlineations are highly imprudent, requiring at the very least inconvenience, rigid proof that such occurred before signature, and that the document had been read to the parties as it subsequently appeared.

The party or parties subscribing the petition cannot stand in the Recognizance as surety.

When the papers are filed and the petition presented to the House, no corrections can be allowed.

The jurat should be written in full, and the party who makes it should give a full and clear account of his office and authority, also of the day and place at which such were taken, and he can only act thus in the locality where he has jurisdiction.

Names, surnames, places of residence, and business or profession of all persons mentioned, should be in full, with such other description as may be sufficient to identify them easily. See the Act, section 13.

The words "taken and acknowledged before me, at the day and place aforesaid," &c., signed by a justice of the peace, are considered a sufficient certificate of the Recognizance, as required in the Act, section 14.

When the Recognizance and Affidavit, or Affidavits have been duly perfected, they must be delivered to Mr. Speaker, who causes them to be filed in the Controverted Elections Office, and certifies upon the petition about to be presented, his receipt of such. See the Act, sections 14, 17.

Money may be deposited with the Chief Clerk of the House instead of giving a Recognizance, and is the most direct and unobjectionable security. See the Act, sections 15, 24.

The Chief Clerk's receipt for the money must be delivered to Mr. Speaker, who causes a true copy of it, certified under his hand, to be filed in the Controverted Elections Office, and certifies upon the petition about to be presented, his reception of the Clerk's receipt for said money deposited. See the Act, sections 16, 17.

After the petition has been endorsed with the Speaker's certificate as to Recognizance or money deposited in lieu thereof, it may be delivered to a Member of the House for presentation.

Every "Election Petition" must complain of the undue Election or Return of a Member to serve in Parliament,—or that no return has been made,—or that a Double Return has been made,—or of matter contained in any Special Return made; and it must be subscribed by some person or persons who voted at the election, or who

had a right to vote at the election, or by some person claiming to have had a right to be returned or elected at that election, or by some person alleging himself to have been a Candidate at that election. See the Act, section 1.

There is no precise technical form of a petition prescribed, nevertheless that instrument requires care to frame it. It ought to be prepared with a comprehensive circumspection, and deliberately review the whole facts intended to be inquired into, as well as the evidence by which those facts are to be established. It should be borne in mind that the essence of a petition is a complaint, and the alleged grievance should be distinctly and pointedly set forth, disclosing both persons and facts, as a defendant may be presumed to prepare himself to answer nothing but what is alleged.

The circumstances intended to be relied on ought not to be introduced as a matter of recital, but charged as a matter of complaint. It would not benefit a petitioner to declare that he was a Candidate at the last election, and that the poll opened at ten o'clock in the morning and closed at three o'clock in the afternoon, so long as he did not complain that a wrong Return had been made, or that the short time allowed for polling affected his election.

Election Petitions arising out of an Election held in consequence of the expiration or dissolution of a Parliament, must be presented to the House within the first fourteen days of the first Session of the new Parliament. See the Act, section 2.

If the Return to an Election be made on one of the last fourteen days of a Session, then an Election Petition may be presented within the first fourteen days of the following Session. See the Act, section 3.

If the Return to an Election be made while the House is in Session, and the House continues to sit for fourteen days afterwards, any Election Petition must be presented to the House within such fourteen days. See the Act, section 4.

When the Return to an Election is made, and the House in Session, the substance of such Return is reported to the House by Mr. Speaker as soon as possible, and published in the Votes and Proceedings of the House, so that it becomes well known.

An Election Petition cannot be presented to the House until the routine business has proceeded so far as to allow of presenting petitions; but it may be presented at any subsequent period of the day, as a matter of privilege. See the Act, section 5.

No meeting of Parliament which does not last for at least fifteen days can be deemed a Session.* See the Act, section 6.

Election Petitions containing allegations of bribery or corruption, and specifically alleging payment of money or other reward, by any Member, or on his account, or with his privity, since the time of the return of the Writ under which such Election was held, may be presented within

*Nor is it a Session unless some Public Act has been passed.

twenty-eight days instead of fourteen. See the Act, section 7.

No petition can be received as an Election Petition, unless presented to the House within the time limited by law. See the Act, section 8.

A petitioner may at any time after the presentation of his petition withdraw the same, by sending a written Notice under his hand, or the hand of his Agent, to the Speaker, and also to the Sitting Member or his Agent, and also to any party opposing such petition; but in such case the petitioner becomes liable to the payment of all costs and expenses incurred. See the Act, section 9.

It is customary when employing an Agent for conducting the business of the contestation to give him a Power of Attorney, as authority for his action; and on his first appearance as Agent or Counsel, he files said Power of Attorney, and also a paper of his appearance as such Attorney, in the Controverted Elections Office.

The power which petitioners possess of withdrawing their petitions might be often much abused. Petitions might be presented not for the purpose of being tried, but in order that they may be a set-off against other petitions, when it is proposed to compromise them.

Again, Petitions might be presented in order to temporarily disqualify the most able Members from serving on General Committee of Elections, Chairmen's Panel, or a Select Committee; thereby causing injustice and expense to innocent parties, and calculated to bring the proceedings of this branch of Legislature into contempt, as re-

stricting the House in the exercise of the power of administering relief which the law, through the medium of election petitions, was specifically passed to afford. Petitions so presented may be considered as avowedly fictitious and illusory, and of a tendency to interfere with the rights of a constituency. .

On the day after the last allowed for receiving Election Petitions, generally the fifteenth day of the first Session, and in other Sessions as soon as convenient, the Speaker lays his Warrant on the Table of the House, nominating six Members against whose return there is no petition and none of whom is a petitioner, to be "The General Committee of Elections," and such Warrant must lie three days, liable to the disapproval of the House. See the Act, sections 31, 32, 33.

The six gentlemen appointed to form the General Committee of Elections are generally selected with a scrupulous regard to political impartiality, and to their qualifications in respect of ability and parliamentary experience, and usually include three Members from the two sides of the House.

The next step is to ascertain what Members are liable to be called to serve on Election Committees, and for this purpose, on or next after the fifteenth day of the first Session of every Parliament, an Alphabetical List of all the Members of the House, distinguishing the name of every Member excused or disqualified from serving on Election Committees, and the cause thereof, is openly read over in the House by the Clerk, and lies on the Table three days for corrections. See the Act, sections 46, 47.

This admirable operation is only required in the first Session of every Parliament, but it has been customary to adopt it sessionally, as it gives the most ample and correct means of ascertaining those Members liable for service; whereas, suppose that ten Select Election Committees during the first Session reported their cases finally to the House and claimed exemption from further service for that Session, they with the Chairmen's Panel would amount to over fifty Members of whom there would be no account, as they could not be on the last amended panels. Then suppose the Speaker's Warrant, in the second Session, named Members to form the General Committee of Elections, different from those of last Session, such Committee might have great difficulty in correcting the panels.

Every Member having leave of absence from the House, is excused during such leave. A Member may rise in his place and offer any other excuse, the fitness of which is tested by resolution of the House.

Every Member who is a Petitioner, or against whose return a petition is pending, is disqualified.

Also by reason of having voted at the election in question, or by reason of being the party on whose behalf the seat is claimed, or related to him or to the Sitting Member by kindred or affinity in the first, second, third, or fourth degree, according to civil law. See the Act, sections 44, 45, 62.

Consanguinity or kindred, according to civil law, stands thus in Stephen's Commentaries, page 211, vol. 2:—

1st degree.—Father, Son.

2nd degree.—Grandfather, Brother, Grandson.

3rd degree.—Great-Grandfather, Uncle, Nephew, Great-Grandson.

4th degree.—Great-Grandfather's Father, Great-Uncle, Cousin-German, Son of the Nephew or Brother's Grandson.

Affinity is relationship by marriage in the same degrees.

No Member can be excused who does not claim to be so before he is chosen to serve, and though the practice of the General Committee of Elections has heretofore been to carefully avoid putting on a Select Election Committee any Minister of the Crown, no doubt presuming as a reason, that they could not attend without prejudice to their other and important official duties; yet, the requirement of the law is, for such to rise in their places in the House, whilst the Alphabetical List lies on the Table for corrections, and to offer statements of excuse to be considered and resolved upon by the House.

It must be desirable to get the panels properly corrected, so that when a Select Committee is once appointed it may go into service without impediment, we might, therefore, suppose the propriety of an excuse being offered by proxy, though no such is mentioned; for a Member might be confined by sickness and therefore unable to be in his place and offer an excuse, or to serve on an Election Committee; or he might be only recovering from a lengthened sickness and in such a precarious state as to fear the confine-

ment of a Committee Room, and might be temporarily excused by the House from service.

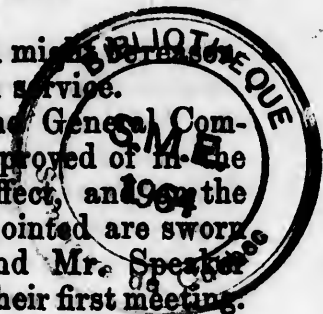
If the Warrant nominating the General Committee of Elections be not disapproved of in the course of three days, it takes effect, and on the fourth day the Members so appointed are sworn at the Table of the House, and Mr. Speaker appoints the time and place for their first meeting. See the Act, sections 31, 39.

Though the Law does not recognize a Chairman nor grant any precedence among the Members composing the General Committee of Elections, yet it allows them to regulate their own proceedings, and it is customary to appoint the most experienced Member amongst them to be Chairman of the Committee, who presents their Reports, offers Motions, and attends particularly to the requisitions of the Act in connection with the House.

Immediately after the General Committee of Elections has been sworn, the Corrected Alphabetical List of all the Members of the House liable to serve on Election Committees is referred to it, by a motion. See the Act, section 48.

All the Election Petitions are referred to the General Committee of Elections, by a motion. See the Act, section 53.

The General Committee of Elections meet at the time and place appointed by Mr. Speaker, and from the Corrected Alphabetical List they select four, six, or eight Members to serve as Chairmen of Election Committees, to be called "The Chairmen's Panel." The Members then remaining are divided into three panels, each



panel containing, as near as may be, the same number of names, and severally marked, A, B, C. See the Act, sections 39, 48, 49.

In choosing Members to compose the Chairmen's Panel, a due regard is had to their parliamentary experience and judicial ability, and this panel may be increased, but cannot at any time consist of more than eleven Members, without the leave of the House first obtained. See the Act, section 52.

The Law does not demand that additions to the Chairmen's Panel shall be reported to the House; still it must be important to give publicity to such an action, especially as there is no provision for Members thus added being specially notified that they have been transferred from Members' Panels to Chairmen's Panel; besides, it has been customary to report such, and can hardly be deemed an impropriety.

No business can be transacted by the General Committee of Elections, unless four members thereof be present and unanimously agree to it. See the Act, sections 40, 63.

When a vacancy occurs in the General Committee of Elections, the Speaker makes it known to the House at its next sitting, and all proceedings of the said Committee are suspended until the vacancy be supplied. See the Act, sections 36, 43.

Vacancies are supplied and re-appointments made, by Warrant of Mr. Speaker, and in the same manner as the original appointment. See the Act, section 38.

The General Committee of Elections and the

Chairmen's Panel, are appointed for the Session at farthest, but may be sooner dissolved. See the Act, sections 35, 48, 37.

The three Members' Panels, when reported to the House, are shaken together and drawn by the Clerk at the Table, who denotes the order in which they were drawn by the numbers 1, 2, 3. The Panels are then returned to the General Committee of Elections, and from these panels are chosen the private Members of the Select Committees. See the Act, section 49.

Till noon of the eleventh day, after a petition has been presented to the House, is allowed for parties defending the Return to enter objections to the Recognizance. The objections must be in writing, under the hand of the party objecting, or that of his Agent, and delivered to Mr. Speaker, who appoints a day for hearing them argued in his chamber, not fewer than three, nor more than five days from that on which he received the statement of them, and a notice acknowledging the receipt of objections and the day for hearing them, is conspicuously displayed in the Controverted Elections Office. See the Act, sections 21, 22.

If the death of any surety be argued as an objection, it may be overcome by the Petitioner depositing the amount for which such surety stood bound, and delivering the Chief Clerk's receipt for such deposit to the Speaker, within three days after that on which the statement of such objections was delivered to said Speaker. See the Act, section 24.

If the time allowed for filing objections pass

without any objections being delivered, Mr. Speaker reports the Recognizances in such cases to be unobjectionable at the next sitting of the House. See the Act, section 25.

On the appointed day, the Speaker inquires into the aforesaid objections, but into those only, and may examine upon oath, or by affidavit all necessary witnesses; he may adjourn from time to time till he decide on the validity of the objections, when he reports his decision to the House, and from such decision there is no appeal. See the Act, sections 23, 25.

The Law does not require the Speaker to give a written judgment as the result of his scrutiny upon Recognizances, but from the importance of the subject to many, he frequently writes his judgment, giving precedent and reason for coming to such a decision. It is difficult, however, to determine how far one should be guided by precedents.

One Speaker may think himself justified in judging strictly in accordance with law, and after much reading and searching for precedents, he may give a judgment which is wondered at, and which he himself acceded to with difficulty.

Another Speaker may view things more according to a feeling of equity without disregard to the requirements of law, and were precedents urged strongly upon him he might give a judgment not quite reconcilable with his own feelings.

Counsel generally appears before the Speaker, both to support the objections and to oppose them, every phase of the matter is therefore likely to be presented, and it might perhaps be as well that

the Speaker should judge according to the evidence actually before him.

The Speaker may, if he think fit, award costs to either party, in respect of either making or resisting objections to the Recognizance, which may be recovered in the usual way. See the Act, section 23.

All papers delivered to the Speaker and connected with Contested Elections are filed by him in the Controverted Elections Office, and are open to the inspection of all parties concerned or interested. See the Act, sections 14, 16, 20, 21, 22, 25.

A List is made of all the Election Petitions on which Mr. Speaker has reported that the Recognizances are unobjectionable, arranged in the order in which they were so reported, which list is laid before the General Committee of Elections, and the cases are taken up and dealt with according to their order on list. See the Act, sections, 25, 53.

When an Election Petition is withdrawn, or the Speaker reports the Recognizance objectionable, the order referring such petition to the General Committee of Elections is discharged by a motion. See the Act, section 53.

After the Panels have been made public and a few cases have been reported by Mr Speaker, the General Committee of Elections meet to examine the list of cases so reported on, and generally taking up one-third of the whole number of cases, they determine upon a day for selecting committees to try such, and they report such day and cases to the House at its next sitting. See the Act, section 56.

Notice of the time and place at which such Select Committees will be chosen must be published with the Votes, not fewer than eight days before that appointed for the choosing; and if the Returning Officer's conduct has been complained of, fourteen days' notice must be given, and such notice sent to him by post. See the Act, section 58.

By a little attention to the course of proceedings, a Member may always avoid being taken by surprise. He should first examine the panels, which are printed and distributed with the Votes, and by observing the number of that in which his name appears, he may judge how soon it is possible he may be chosen.

Panel No. 1 comes first into service, and a new panel in rotation as drawn, comes into service every week in which election committees are appointed; therefore, if his absence should be unavoidable during the week in which committees will be chosen from his panel, he should apply to the House for leave of absence.

He is also acquainted every Saturday morning by a conspicuous Notice in Friday's Votes, what election committees will be chosen during the ensuing week, from what panel, and on what day; and if he be on that panel, he should be in readiness, in case he should be appointed on any one of the committees. See the Act, section 61.

The General Committee of Elections may change the time appointed for choosing a Select Committee, but in every such case they must report forthwith the change to the House, with their reasons for making it, and give notice of it in the printed Votes. See the Act, section 60.

If at any time before the appointment of a Select Election Committee, the Speaker be informed by a certificate in writing, subscribed by two Members of the House, of the death of any Sitting Member whose election is complained of, or of the death of any Member returned upon a double return and complained of, or if the House have resolved that the seat of any such Member has by law become vacant, or if any such Member deliver to the Speaker a written declaration within fourteen days after that on which the Petition was presented, that he will not defend his Election or Return; a notice is immediately sent by the Speaker to the General Committee of Elections, also to the Chairmen's Panel, and also to the Returning Officer; and such notice must be inserted in one of the next two *Canada Gazettes*, and also communicated by Mr. Speaker to the House. See the Act, section 26.

When a Member declines to defend his election or return, he is not allowed to sit or vote, or interfere in the business before the House, till the Election Petition against him be decided upon. See the Act, section 28.

Any person who voted or had a right to vote at the election to which the notice in the *Gazette* refers, may, within twenty-one days after such notice appears, petition for leave to defend the Return, or to oppose the petition against it, and must be admitted thereupon. See the Act, section 27.

While particular legislative provision has been made for the death of the Sitting Member at a particular period, viz., between the presenting of

the petition and the appointment of the Select Committee, none such seems to exist to meet the case of the death of a Sitting Member during the hearing before the Select Committee.

Before any such petition for permission to defend be presented to the House, a Recognizance must be entered into for the sum of four hundred dollars; and such Recognizance must be entered into before the Speaker or a Justice of the Peace, and be accompanied by affidavit or affidavits of sufficiency of surety; and also an affidavit from the petitioner, declaring his belief, that those who have entered into Recognizance for him are fully sufficient; and such Recognizance is liable to the same objections as in the first case mentioned, but the validity of the objections is tested by the Select Committee appointed to try the case. Money may be deposited in lieu of Recognizance. See the Act, section 29.

If in the case of an Election Petition complaining of a double return, the Member petitioned against declare his intention not to defend; and if no party having the right to do so petition for leave to defend, within the time allowed for that purpose, then, if there be no Election Petition complaining of the other Member returned, the last-mentioned Member, or the persons who subscribed the petition, may withdraw such petition by letter addressed to the Speaker, and the order referring it to the General Committee of Elections is discharged, and the return is amended as the House may direct. See the Act, section 30.

When notice of death, vacancy, or intention not to defend is given, the General Committee of

Elections must suspend their proceedings in the matter, until twenty-one days after that on which such notice appeared in the *Canada Gazette*; unless the petition of some person admitted to defend in room of such Member be sooner referred. See the Act, section 54.

When more than one election petition relating to the same election or return are referred to the General Committee of Elections, they cannot take up the case until the Speaker has reported respecting the Recognizance upon each of such petitions, and when this is done, the petitions are bracketted together and given to the Select Committee as one petition. See the Act, section 55.

After the given eight days' notice, the General Committee of Elections meet at the time and place appointed, and taking up the first case on the list, any member of the Committee is free to name, from the panel in service, whomsoever he thinks qualified to compose such Select Committee. See the Act, section 62.

The Law provides that at least four of the General Committee of Elections must agree before any such selection be confirmed as an appointment; however, I have never seen a selection confirmed other than unanimously. If any demur was made to a name offered, such name was invariably laid aside and another taken on which they could all agree.

On the day appointed for choosing Select Committees, the Chairmen's Panel meets in a room contiguous to that of the General Committee of Elections.

If at such meeting every member of the Chair-

men's Panel be present, and they be unanimous in their selection of a Member to act as Chairman on a certain election committee, then such selection becomes an appointment; but if any Member be absent, or such selection be not unanimous, then the name of each member on the panel is written on a slip of paper, rolled up and put into the Ballot-Box, and one drawn by any Member then present; and when they have been informed by the General Committee of Elections that four Members have been chosen by them to form such Select Committee, then they communicate the name of the Member unanimously selected or drawn by lot, as the Chairman on such Committee. See the Act, section 64.

The parties interested in the selection are called before the General Committee of Elections, and informed of the Members so chosen and to be intrusted with their case, the parties then withdraw to consider the names, and they may within one half hour afterwards appear and object to all or any so selected, as being disqualified. See the Act, sections 66, 68.

If in the opinion of four members of the General Committee of Elections, such objections be valid and substantiated, a new Committee is appointed; or if such objections be established against the Chairman, his name is sent back to the Chairmen's Panel, and another selected or drawn. See the Act, sections 69, 70.

When four Members and a Chairman have been selected, a notice of the general and special grounds of disqualification and excuse from serving is sent to each Member so selected, and also of

the time and place for the meeting of the General Committee of Elections on the morrow, and such last-mentioned notice is published in the Votes and Proceedings of the House. See the Act, section 71.

On the following day the General Committee of Elections meet pursuant to notice, and if within one quarter of an hour after the time of meeting, any Member appear and prove himself disqualified or ineligible to serve, or that his service would affect the impartial character of the tribunal, then a new committee is chosen; but if no one appear, or appearing, fails to prove such, then at the next meeting of the House, the General Committee of Elections report the names so selected to the House, and annex to their Report all Election Petitions relating to the election whose merits are to be tried by such Select Committee. See the Act, sections 72, 73.

On the following day, at four o'clock P.M., the five Members composing the Select Committee are sworn at the table by the Chief Clerk, and the petition to be tried by them is referred by a motion, as also the time and place appointed for their first meeting. See the Act, sections 74, 78.

If every Member do not attend to be sworn within one hour after four o'clock, P.M., on the day of swearing, such absent Member is ordered to be taken into custody by the Sergeant-at-Arms, upon motions to that effect. See the Act, section 75.

If any such absent Member be not brought into the House within three hours after four o'clock, P.M., on the day first appointed for swearing said

committee, provided the House sit so long, or if not, then within the like time on the following day of sitting, the swearing shall be adjourned by motions to that effect. See the Act, section 76.

If on the second day all the members of said committee do not attend, and be sworn within one hour after four o'clock, P.M., or sufficient cause be shewn why such member's attendance should be dispensed with, then such committee is discharged and the Petition referred back from the House to the General Committee of Elections, for the purpose of selecting a new committee on the following day. See the Act, section 77.

The General Committee of Elections may, as often as they think fit, correct the Panels; but each time they are so amended they must be reported to the House, and printed with the Votes and Proceedings of the House. The Panels are generally corrected every week after committees are chosen. See the Act, section 50.

The Select Committee, when constituted, meet at the time and place appointed, and proceed to try the merits of the petition referred to them, and they cannot adjourn for more than twenty-four hours—Sundays and Statutory holidays excepted—without leave asked and obtained from the House, upon motion and special cause assigned; and if the House be sitting at the time to which such Select Committee is adjourned, then the business of the House is stayed, and a motion made for a further adjournment, for any time to be fixed by the House. See Act, section 79.

When Select Election Committees have been

sworn, and it is desirable that they should meet at six o'clock on that same evening, such meetings are effected by Motion.

When the hour for Select Election Committees to meet has arrived and the House at that hour is in Session, the meetings have been effected by Motion for adjournment of House for ten minutes, to enable Select Election Committees to meet *pro forma*.

When leave for an adjournment has been asked of and obtained from the House, for any Select Election Committee, it is necessary to make a Motion to that effect, and meet, when the Chairman informs the Committee that the leave for adjournment asked for the House has been granted, and he declares the Committee now adjourned until the time granted shall expire.

When it is intended to enter on a scrutiny, the parties on each side, those complaining of as well as those defending the election, are required to deliver to the Chairman of the Select Committee, lists of the voters intended to be objected to, under proper heads of objection, at any time before six o'clock P.M. of the day appointed for the first meeting of the Committee. See the Act. sections 80, 81.

The heads of objection are generally as follows, though it is well to be correct in respect of describing each particular voter :

1. Voted in a wrong capacity as Proprietors.
2. Voted in a wrong capacity as Occupants.
3. Voted in a wrong capacity as Tenants.
4. Objected to as unnaturalized Aliens.

5. Objected to on account of bribery and corruption.
6. Objected to as infants or under age when voting.
7. Objected to as voting while unregistered.
8. Objected to as being partners in business and joint tenants, but separately nonsufficient.
9. Objected to as having voted oftener than once.

The list of voters intended to be objected to is a document of equal importance with the Petition, and requires great care in the preparation. The fate of an Election Petition may depend upon a single vote, and that again exclusively upon the sufficiency with which an objection to it is indicated on the list. It is necessary first to consider whether a proposed objection be a valid one in point of law, and whether in point of fact it can be sustained by evidence; secondly, to specify and distinguish it against the Voter's name in the list, and these involve correctness in the manner and description of the Voter, and especially in respect of his number in the Register, together with a pointed and precise statement of the objection intended to be insisted on. It is right to go before the Committee prepared with all proper documents and instruments of evidence; not only with lists of votes objected to, but a copy of Assessment Roll, Voters' Register signed by the officer in charge of it, Poll-books, and any other that might assist the scrutiny or afford information to the Select Committee when required.

When a Select Election Committee meets for

the first time, the Chairman generally sends a notice to the Clerk of the Crown in Chancery for production of Poll-books, and such production is considered *prima facie* evidence of their authenticity.

The Select Committee may regulate their own proceedings in such a manner as is most conducive to the ends of justice ; but their chief duty is to interpret the law and execute its provisions, and no evidence can be given before or received by them, unless included in one of the lists delivered, or in the Petition. See the Act, section 83.

A Select Election Committee must never proceed to business till all its Members be present, and if any be absent till one hour after the time appointed for the meeting, a further adjournment is made and reported to the House, together with the cause thereof, and the absentee is ordered to attend the House at its next sitting. See the Act, section 84.

At next sitting, if such absent Member fail to attend and verify upon oath that his absence was caused by accident or necessity, he is taken into the custody of the Sergeant-at-Arms, and dealt with by the House. See the Act, section 85.

If, by report of the Sergeant-at-Arms, it appear that such Member is likely to be absent for some days, it is well for some Member of the Select Committee to move that such absent Member be excused from service during indisposition, or as the case may be, so that the scrutiny may proceed and not be damaged by delay. See the Act, section 84.

A Select Election Committee is not dissolved

by death, and if the Chairman die, the Committee may elect one of themselves to fill his place ; but if the Committee be reduced to fewer than three, it may be dissolved and another appointed, and all the proceedings of the former Committee are void ; nevertheless, if all parties are satisfied, two, or even one, may continue to act and conclude the trial. See the Act, sections 86, 87.

Before any application be made to any Select Election Committee on the part of any Sitting Member concerned, for the issuing of a Commission to take evidence upon the trial, a Recognizance must be entered into as surety for such Sitting Member, for the sum of four hundred dollars, and such Recognizance must be entered into before the Speaker or a Justice of the Peace, and be accompanied by Affidavits of Sufficiency of Surety. Money may be deposited in lieu of Recognizance. See the Act, section 11.

A Copy of the Recognizance and Affidavit, or Affidavits, required from such Sitting Member, and certified under the hand of the Speaker, or of the Chief Clerk's Receipt for money deposited, together with an Affidavit from such Sitting Member as to his belief in the sufficiency of his Sureties, must be delivered to the Committee. See the Act, section 18.

Objections may be raised as to Recognizance and Affidavits, and submitted in writing to the Select Election Committee, and all such objections are tried and decided upon by such Select Committee. See the Act, section 19.

Every party intending to apply for a Commission of enquiry, must give to the opposite party

two full days' notice in writing, of his intention to apply to Select Committee for such Commission. See the Act, section 98.

Any Select Election Committee may, whenever it seems fit, appoint a Commissioner to take evidence relative to all points at issue before the Committee, and if all parties agree to the appointment of a certain Commissioner, and any such Commissioner be willing to serve, he may be appointed by the Committee; or if the parties do not agree, or the Select Committee choose to exercise their own judgment, some one of the County Judges of Upper Canada may be appointed, if the case belong to Upper Canada, and his name openly announced for the information of all who may attend and be concerned. And such parties interested or concerned may urge objections to such appointment, when, if the objections appear good, the Committee select another Judge to be the Commissioner, and so on till they obtain one unobjected to, or against whom such objections have been overruled. See the Act, sections 97, 99.

The Act is very explicit as to the person who shall be appointed a Commissioner in Upper Canada, but not so much so in respect to Lower Canada; the power, however, remains with the Committee, to appoint whomsoever they may agree upon to act as such Commissioner. See the Act, section 99.

A Warrant under the hand and Seal of the Chairman of the Select Election Committee charged with the case is then issued, empowering and commanding such Commissioner, under a penalty of four hundred dollars, to repair to the

Electoral Division under consideration, on a certain day named in the said warrant, but not fewer than fourteen nor more than twenty-one from the date of his Commission, to examine all matter and things now referred to him. See the Act, section 99.

In the event of such Commissioner dying or becoming incompetent or unable to act under such Commission, a new Commissioner is appointed with like powers as the person first appointed, who completes the evidence partially taken, or takes the whole anew, as the order from Committee may direct. See the Act, section 100.

Every such appointed Commissioner may punish for contempt against him and his orders in the same manner as if he sat in his own Court, but an appeal may be made to the Select Committee controlling the subject. See the Act, section 101.

Every such Commissioner may appoint another County Judge or Barrister-at-law to sit for him and act as Judge while he is executing the Commission; and such instrument of appointment must be executed in triplicate, the Judge, now Commissioner, files one in the County Court, delivers a second to the person appointed by him, and transmits the third to the Provincial Secretary for the information of the Governor, who may annul such, and appoint another person if he chooses to do so. See the Act, sections 102, 103, 104.

The Commissioner may appoint one or more Clerks to take minutes of his proceedings and evidence given or produced before him, and so many Bailiffs and other Officers as he deems re-

quisite, but no one can be so employed who voted or had a right to vote at such election, without the consent and approbation in writing of all parties interested. See the Act, sections 108, 109.

Along with Commission are sent to the Commissioner, true copies of the Election Petition, of the List of disputed votes, and such other documents as the Select Committee may think proper; and such are conveyed by Post. See the Act, section 111.

Immediately after the completion of these proceedings the Chairman of the Select Committee reports the same to the House, and asks permission for the Committee to adjourn until the Speaker, by his Warrant, may direct it to re-assemble, and such being granted, the Committee adjourns accordingly. See the Act, section 112.

On the day appointed in Warrant, the Commissioner opens his court at the place assigned, by reading all the papers he has received from the Chairman, he then takes and subscribes his oath of office in the presence of the parties interested who may attend. See the Act, section 113.

The Commissioner must sit every lawful day from 10 A. M. till 4 P. M., and cannot adjourn except by the written consent of all parties, or their Agents, or permission of the Select Committee; nor can he omit such daily sittings, except in cases of sudden accident or necessity, forthwith specially reported to the Select Committee, and verified upon oath of such Commissioner and his Physician, or by a party cognizant of the facts, and made before a Justice of the

Peace, and such omission otherwise incurs a penalty of one hundred dollars per day forfeited by such Commissioner. See the Act, sections 114, 115.

Such special report is considered by Committee when a new Commissioner may be appointed if necessary; and in the event of the death of a Commissioner, a special report and return of all proceedings had and taken by such Commissioner may be made by the Clerk on Commission, if such action be not objected to by those concerned and interested. See the Act, section 116.

The Commissioner may from time to time adjourn to other places more convenient for examining witnesses and scrutinizing the rights of voters, within the Division, and at all times send for persons, papers and records relating to the trial; and the Clerk must give true copies of all proceedings to such as may demand them, at the rate of ten cents for every hundred words; and within ten days after the close of Commission, he is required to make a true copy of the whole, which the Commissioner sends through the Post, under seal, to the Speaker of the House, who accordingly communicates such receipt to the House. But as this may sometimes be impracticable on account of the quantity of evidence, such Commissioner may, in such cases, transmit such copy with all convenient despatch, and at the same time assign the reason for delay, all of which is subject to the investigation of the Committee, and may be reported on to the House. See the Act, sections 118, 119, 125.

No Barrister or Counsel can be allowed to plead

or interfere before the Commissioner, and if evidence be tendered which the Commissioner considers exceptional, such evidence may be taken *de bene esse*, along with the objections to it, and the Select Committee determines as to its relevancy. See the Act, sections 120, 121.

Within two days after the copy of the proceeding before the Commissioner has been received by Mr. Speaker, a Warrant is issued under his hand and seal, directing the Select Committee in charge of the case to re-assemble and meet again on a certain day mentioned, within the space of fourteen from the date of such Warrant, provided Parliament be then sitting, and in case Parliament be not then sitting, to meet on some day within one month after the commencement of the next Session; and on such day the Committee meets again and takes the proceedings had by Commissioner into consideration, but no further evidence either written or parole can be admitted, except the power to do so has been specially reserved; but Council may be heard as to the effect of evidence received. See the Act, section 122.

The Speaker upon issuing his Warrant for the re-assembling of the Select Committee, causes a notice of such to be published in the *Canada Gazette*, and also to accompany the Votes and Proceedings of the House until the day of meeting. See the Act, section 124.

From the 122nd section of the Act it is clear, that within two days after receipt of the copy of Minutes of Proceedings had before the Commissioner, the Speaker is expected to issue his War-

rant re-assembling the Select Committee charged with the case; and if he receive such Return during the Recess of Parliament and before a day has been appointed for re-opening Parliament, the best way might be to re-assemble such Committee on the eighth day after the commencement of the next Session to be holden next after date of said Warrant, or at least on some day reckoned weekly from that on which Parliament may be re-opened, for Parliament has no chance to be opened on a Sunday or Statutory holiday, nor would that day reckoned weekly be a Sunday, and a little forethought would determine whether it would be a holiday.

The Select Committee may direct any further or other Warrant to Commissioner, directing him to resume his sittings for further proceedings in the trial, or may send to him for all or any books, papers and records produced in evidence before him as Commissioner. See the Act, sections 126, 127.

All questions as to the sufficiency or regularity of any proceeding regarding the trial and disposal of an Election Petition, are wholly judged of and determined by the Select Committee, and not by the House. See the Act, section 155.

When the Select Committee meets to consider the proceedings had before the Commissioner, it is customary to examine first all cases alleging bribery or corruption; because one such case fully proven to a majority of the Committee, renders it unnecessary to proceed further. If a Principal give or promise even a sandwich and a glass of wine, before, during, or immediately after the

Election, to one of his voters; or if such be done by an Agent, with or without the knowledge and direction of the Principal, it has rendered void the election of such Principal.

The next class generally taken into consideration is that of Aliens; because it is the least difficult to decide. The other classes are taken according to apparent convenience.

Though the same name should appear more than once under a little difference of orthography, it is held the same so long as *idem sonantia*.

When any doubt exists as to qualification of a voter, it is generally given in favor of the franchise.

The Poll-books are held by Select Committee as the conclusive evidence of every vote, so that it would be vain to argue that a vote recorded for A, should have been recorded for B. Equally vain is it to argue that in discrepancies between Poll-book and Register, the fault has been with Poll Clerk; every vote is held by its description on Poll-book.

A vote is considered bad and struck off by Committee when there is proof of its having been given under a corrupt influence, *i. e.*, under reward or expectation of reward, though neither from Candidate nor his Agent.

An innocent Candidate should not be at the mercy of a guilty third person who might from malevolent motives corrupt an elector, but neither should he have the benefit of a vote which the law declares no vote.

Proof of agency has always been a great difficulty, but it is generally held that there is no

difference between an implied and an express agency, except as to the mode of substantiating it. An express agency is proved by an actual agreement or appointment; an implied agency, by the general course of dealing between the parties; such as being more or less frequently, during the election, in company with the Candidate; canvassing for him; attending more or less frequently at his committee-rooms, and assisting in the general business of the election; referring voters or others concerned to the Candidate, who sees them without objection; or having such persons referred to him by the Candidate.

When the Commission has been a joint one; viz., evidence taken in support of the Sitting Member as well as in support of the petition, it is customary to scrutinize the votes for Sitting Member till the petitioner is in a majority of five; then the Sitting Member reduces the petitioner's poll till he attains a majority of five, and so they continue *alternis vicibus* to strike off voters until one is exhausted.

The enquiry into each vote is a separate case, and is opened, answered, and decided upon by itself.

In the scrutiny of proceedings had as to Aliens every foreigner, to become naturalized, must have taken and subscribed the necessary oaths of residence and allegiance before a Justice of the Peace, have received from him a certificate of residence, and procure the same to be filed of record by the Clerk of the Peace, and have received from said Clerk a certificate of Naturalization. See Consolidated Statutes of Canada, 22 Vic., cap. 8.

The Select Committee always requires the best evidence of which the nature of the particular case before them is susceptible.

Whenever the absence of primary evidence is satisfactorily accounted for, secondary evidence may be given.

Hearsay is not evidence, and is not receivable in judicial investigations. This has been a fundamental principle ever since the time of Charles II.

A vote is presumed to be a valid one until impeached by evidence, and it is incumbent on the party making objections to prove them.

Whenever any Select Election Committee think it necessary to deliberate among themselves, they may clear the room; and all questions before the Committee when consisting of more than one member, are decided by a majority of voices, the Chairman has a second or casting voice when the votes are equal, and no member is allowed to refrain from voting on any question; and whenever a division takes place on any question, the Yeas and Nays are recorded in the minutes, and along with the question which caused such division, are appended to the final report of the Committee and presented to the House. See the Act, sections 88, 89, 90.

Every Select Election Committee must try the merits of the Election complained of, and determine by a majority of voices whether the Sitting Member, or any, and what other person was duly returned or elected; or whether the election be void, or whether a new Writ ought to issue; and such determination is final between all parties, and such determination being reported to the

House, is entered in the Journals, and the necessary directions given for altering or confirming the Return. See the Act, section 94.

Every Member who has served on one Election Committee, and who within seven days after final report made, notifies the Clerk of the General Committee of Elections, that he wishes to be exempt from so further serving during the Session, is exempt. See the Act, section 44.

If Parliament be prorogued after the appointment of a Select Election Committee, and before they have reported to the House their determination thereon, such Committee is not dissolved, but merely adjourned to twelve o'clock, noon, on the day immediately following that on which Parliament meets again for the despatch of business. See the Act, section 96.

Immediately after the Select Committee have made their final report to the House, every Commissioner is entitled to demand and receive from the parties interested or concerned, ten dollars per day while engaged on said Commission, and also travelling expenses at the rate of twenty cents per mile; and every Clerk, a sum not exceeding four dollars per day, and ten cents for every hundred words supplied by copy. See the Act, section 131.

Bailiffs and other Officers employed, receive two dollars per day, and ten cents per mile for travelling, whilst executing business specially directed by the Commissioner; and every such Commissioner, Clerk, Bailiff or other Officer, may take remedy upon the Recognizance. See the Act, sections 133, 134.

If the Select Committee report to the House that the Petition was frivolous or vexatious, the parties opposing are entitled to recover, from those who signed such Petition, the costs and expenses incurred by them in opposing ; and if the opposition be reported frivolous or vexatious, the Petitioner is entitled to recover the costs and expenses incurred in prosecuting such Petition. See the Act, sections 135, 136.

Though no party appears to oppose the Petition, and such Committee report to the House the Election or Return "vexatious or corrupt," those who signed the Petition are entitled to recover the costs and expenses from the Sitting Member, unless due notice of intention not to defend has been given. See the Act, section 137.

On application made to the Speaker of the House by any petitioner, party, or witness, for ascertaining such costs and expenses, not later than three months after the determination of the merits of such Petition, or after the withdrawal of any Petition, the Speaker makes an order that such costs and expenses be taxed on a certain day named, and on such day he examines and taxes such costs and expenses, and reports the amount thereof, together with the name of the party liable to pay the same, and the name of the party entitled to receive the same, to the House, and upon application made to him, delivers to the party a certificate signed by him, expressing the amount allowed in such report, with the name of the party entitled to receive the same, and such certificate so signed by the Speaker is conclusive evidence for all purposes to recover the same, and


upon payment being made, a receipt at the foot of such certificate is a sufficient discharge for the same. See the Act, section 140.

The Speaker may examine upon oath any party claiming any such costs and expenses. See the Act, section 141.

The party entitled to such taxed costs and expenses, or his or her personal representatives, may demand the whole amount from any one or more of the persons liable to the payment thereof, and in case of non-payment, may recover the same by action of debt in any of Her Majesty's Courts having jurisdiction. See the Act, section 142.

The party from whom such amount has been recovered, may, in like manner, recover a proportionate share from the other parties liable, according to their ability. See the Act, section 143.

I do not consider it necessary to proceed further in my remarks on the Act, as the subject of estreating Recognizances has never in my experience been resorted to, and pecuniary arrangements are made without recourse to such a measure.



THE ACT

RESPECTING

Controverted Parliamentary Elections.

22 VICTORIA, CAP. 7.

EXTRACTED FROM THE CONSOLIDATED STATUTES OF CANADA.

HER MAJESTY, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows :

1.—ELECTION PETITIONS AND THEIR RECEPTION.

1. Every Petition presented to the Legislative Council or to the Legislative Assembly of this Province, within the time hereinafter for that purpose limited with respect to such Petition, and complaining of an undue election or return of a Member of the House to which the Petition is presented, to serve in Parliament,—or complaining that no return has been made according to the requisition of any Writ issued for the election of a Member of such House to serve in Parliament,—or complaining of the special matters contained in any such return,—and subscribed by some person who voted or had a right to vote at the Election to which the same relates, or by

some person claiming to have had a right to be returned or elected thereat, or alleging himself to have been a Candidate at the Election,—shall be deemed an Election Petition:—And any such Petition shall be presented to, and all proceedings relative to it shall be had in that one of the said two Houses of Parliament for which the Election was held to which such Petition relates; and in construing this Act with reference to any Election Petition, the Speaker, Members, Committees and officers referred to shall be understood to be those of the House to which the Petition is or ought to be presented.

2. In the case of every such Election Petition arising out of an Election held in consequence of the expiration or dissolution of any Parliament, such Election Petition shall be presented to the Legislative Assembly within the first fourteen days of the Session of Parliament commencing or being held on or next after the Return Day of the Writ under which such Election was held,—provided the said House has on the last of such fourteen days, entered upon and gone through with that head or division of the daily routine of the business thereof which consists in the presenting and bringing up of Petitions; And if the said House in such last-mentioned case has not entered upon and gone through with such head or division of the said daily routine on such last day, then, and in every such case, such Petition shall be so presented upon the first day thereafter upon which the said House has entered upon and gone through with such head or division of the said daily routine as aforesaid.

3. In the case of every such Election Petition arising out of any Election held otherwise than in consequence of the expiration or dissolution of any Parliament, if the day on which the Return upon such Election is brought into the office of the Clerk of the Crown in Chancery is a day on which Parliament is not in Session, or is one of the last fourteen days of any Session, then, and in every such case, such Petition shall be so presented within the first fourteen days of the Session of Parliament commencing and held next after the day on which such Return has been so brought into the office of the Clerk of the Crown in Chancery, provided the House to which the Petition is to be presented has, on the last of such last-mentioned fourteen days, entered upon and gone through with that head or division of the daily routine of the business thereof which consists in the presenting and bringing up of Petitions; And if the said House in such last-mentioned case, has not entered upon and gone through with such head or division of the said daily routine on such last day, then, and in every such case, such Petition shall be so presented to the proper House upon the first day thereafter upon which the said House has entered upon and gone through with such head or division of the said daily routine as aforesaid.

4. In the case of every Election Petition arising out of an Election held otherwise than in consequence of the expiration or dissolution of any Parliament, if the day on which the Return upon such Election is brought into the office of the Clerk of the Crown in Chancery is a day on which

Parliament is in Session, but not one of the last fourteen days of any such Session, then, and in every such case, such Petition shall be so presented within the first fourteen days next after such Return has been so brought into the office of the Clerk of the Crown in Chancery, provided the House to which the Petition is to be presented has, on the last of such fourteen days, entered upon and gone through with the said head or division of the daily routine of the business thereof which consists in the presenting and bringing up of Petitions ; And if the said House, in such last-mentioned case, has not entered upon and gone through with such head or division of the said daily routine on such last day, then, and in every such case, such Petition shall be so presented upon the first day thereafter upon which the said House has entered upon and gone through with such head or division of the said daily routine as aforesaid.

5. Nothing herein contained shall preclude the presenting and bringing up of any such Election Petition, as a matter in which the privileges of the House are concerned, during any part of any day on which such Election Petition might be presented and brought up, according to the provisions of the next preceding three sections of this Act, by reason merely of the routine period for presenting and bringing up such Petition for such day having passed, provided the same is so presented and brought up at a time and in the manner agreeable in other respects to the orders and practice of the House.

6. No Session of Parliament which has not

lasted for fifteen days at the least, including the day of its meeting and the day of its prorogation, shall be deemed a Session thereof within the meaning of the second, third and fourth sections of this Act, or any of them.

7. If any such Election Petition contains any allegation of bribery or corruption, with a specific allegation of any payment of money or other reward having been made by any Member, or on his account, or with his privity, since the time of the Return of the Writ under which such Election was held, in pursuance or in furtherance of such bribery or corruption, then, and in every such case, twenty-eight days shall be allowed instead of fourteen days for the presenting of such Petition, which twenty-eight days shall in all such cases be reckoned from the day of such payment exclusive of such day.

2. And in all the cases in which by the five next preceding sections of this Act, a further time is allowed beyond the fourteen days therein and thereby limited for presenting and bringing up Election Petitions not containing any such charge of bribery or corruption as aforesaid, a like further time shall be allowed beyond the said twenty-eight days herein limited for presenting and bringing up Election Petitions containing any such charge of bribery or corruption as aforesaid.

3. And all the provisions hereinbefore contained for such purposes in the second, third, fourth and fifth sections of this Act, shall apply as if the same had been here repeated *mutatis mutandis*, in respect of Election Petitions containing any such charge of bribery or corruption as aforesaid,

and the said twenty-eight days hereby allowed for the presenting and bringing up of the same as aforesaid.

8. No Petition, although otherwise within the description of an Election Petition contained in first section of this Act, shall be deemed to be an Election Petition within the meaning of the same, unless it has been presented to the said proper House of Parliament, within the time for that purpose limited, with respect to such Petition, by the provisions contained in the six next preceding sections of this Act.

9. The Petitioner may at any time after the presentation of his Election Petition, 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 has 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 have been incurred by the Sitting Member or other party complained of in such Petition, and also by any party admitted to oppose the prayer of such Petition, to be taxed as hereinafter provided.

2.—RECOGNIZANCES.

10. Before any Election Petition shall be presented to either House, a Recognizance shall be entered into by one, two, three or four persons, as sureties for the person subscribing such Petition, for the sum of eight hundred dollars in one

sum, or in several sums of not less than two hundred dollars each, for the payment of all costs and expenses which under the provisions herein contained may become payable by the person subscribing the Petition, to any witness summoned in his behalf, or to the Sitting Member, or other the party complained of in such Petition, or to any party admitted to defend such Petition as hereinafter provided, or to any person who on the application of such Petitioner for the issue of a Commission to take evidence on such trial, is appointed a Commissioner for that purpose, or to any Clerk, Bailiff or other Officer employed by such Commissioner in or about, or in any way relating to the execution of the Commission issued to him in that behalf;—And such Recognizance may be in the form or to the like effect as is set forth in the Schedule to this Act annexed marked A (1), with such alterations as are necessary to adapt such form to the circumstances of the case.

11. Before any application shall be made to any Select Election Committee appointed under this Act, on the part of any Sitting Member interested or concerned in any such Election Petition, for the issuing of a Commission to take evidence upon the trial thereof, a Recognizance shall be entered into by one, two, three or four persons as sureties for such Sitting Member, for the sum of four hundred dollars in one sum, or in several sums of not less than one hundred dollars each, for the payment of all costs and expenses which under the provisions herein contained may become payable by such Sitting Member to any Commissioner

appointed for taking such evidence for such trial, or to any Clerk, Bailiff or other Officer employed by such Commissioner in or about, or in any way relating to the execution of such Commission.

2. Such Recognizance shall be entered into before the Speaker or a Justice of the Peace, as is herein provided, with respect to other Recognizances to be entered into under this Act, and shall be accompanied by Affidavits of the sufficiency of the sureties as is provided with respect to the same, or a deposit of money may be made in lieu of such Recognizance, or a deposit of money in lieu of some part of the amount required to be so secured, and a Recognizance for the residue thereof shall be made and entered into as is hereby provided with respect to such other Recognizance;—and such Recognizance may be in the form or to the like effect as is set forth in the Schedule to this Act annexed marked A (2), with such alterations as are necessary to adapt such form to the circumstances of the case.

12. Any person who enters into any such Recognizance shall testify upon oath in writing, to be sworn at the time of entering into the said Recognizance, and before the same person by whom his Recognizance is taken, that he is seized or possessed of real or personal estate (or both) above what will satisfy all his just debts, of double the clear value of the sum for which he is bound by his said Recognizance;—and every such affidavit shall be endorsed upon or annexed to the Recognizance, and such Affidavit may be in the form or to the like effect as is set forth in the Schedule to this Act annexed marked A (4), with

such alterations as are necessary to adapt such form to the circumstances of the case.

13. In every such Recognizance and affidavit of sufficiency of sureties, shall be mentioned the christian and surnames in full, and the usual places of residence or business of the persons becoming sureties as aforesaid, with such other description of the sureties as may be sufficient to identify them easily.

14. Every Recognizance hereinbefore required, shall be entered into, and every Affidavit of sufficiency of sureties hereinbefore required shall be sworn, before the Speaker of the House to which the Election Petition is to be presented, or a Justice of the Peace; and the said Speaker, and also every Justice of the Peace, may take the same; And every such Recognizance and affidavit taken before a Justice, being duly certified under the hand of such Justice, shall be delivered to the said Speaker, who shall thereupon cause the same, as well as all such Recognizances and Affidavits taken before himself, to be filed in the office of the Chief Clerk of the said House, for the information of the House and its Committees, and of all parties concerned or interested in the same.

15. Any person by whom an Election Petition is signed, or any such Sitting Member by whom an application for the issue of a Commission to take evidence as aforesaid is about to be made, may, instead of procuring a Recognizance for the amount or the full amount of the sums of eight hundred dollars and four hundred dollars respectively hereinbefore required for such purpose,

pay into the hands of the Chief Clerk of the House to which such Petition is presented, or to be presented, for the like purposes for which such Recognizance is hereinbefore required, either the whole or any part of such eight hundred or four hundred dollars, as the case may be, which he thinks fit, not being less than two hundred dollars;—and in such case such person shall, if the whole of such sum be paid in, be required to find no sureties for such purpose, and if a part only of such sum be paid in, he shall then be required to find sureties for so much only of the said sum of eight hundred dollars or of four hundred dollars respectively, as the sum paid into the hands of such Chief Clerk as aforesaid falls short of such eight hundred dollars or four hundred dollars, as the case may be.

2. Every sum so paid into the hands of such Chief Clerk as aforesaid, shall be carried by him to the credit of an account to be opened by him with the Speaker of the said House by his name of office, and shall be paid out by such Chief Clerk for the time being, from time to time, in discharge of such Warrants as may from time to time be issued for that purpose upon him by the Speaker of the said House for the time being, in pursuance of the provisions of this Act; and the said Chief Clerk shall preserve in his books a remembrance of the Petition upon which every such sum of money has been paid into his hands as aforesaid, as the same has been stated by the party paying in the same, and shall grant to such party a receipt or certificate for the same.

16. No money shall be deemed, for the purposes

of this Chapter, to have been paid into the hands of such Chief Clerk until such receipt or certificate is procured and delivered to the Speaker of the said House, who shall thereupon cause a copy of the same, certified under his hand, to be filed in the office of the Chief Clerk of the said House for the information of the House and its Committees, and of all parties concerned or interested in the same, and shall thereupon re-deliver the original of such receipt or certificate with a Memorandum under his hand of the same having been delivered to him according to the provisions of this Act, to the party by whom the same was so delivered to him, as aforesaid.

17. No Election Petition shall be received unless, at the time it is presented to the House, it be endorsed with a certificate under the hand of the Speaker of the said House, that the Recognizance hereinbefore required has been entered into and received by him, with the required Affidavit of sufficiency of sureties thereunto annexed or endorsed,—or that the Chief Clerk's receipt or certificate for the amount of such Recognizance has been delivered to him,—or that a Recognizance with Affidavits of sufficiency for part, and the Chief Clerk's receipt or certificate for the residue of such amount, has been so delivered to him as aforesaid.

18. No application shall be entertained by any Select Election Committee under this Act, on the part of any Sitting Member interested or concerned in any such Election Petition, for the issue of any Commission to take evidence upon such trial, unless, at the time of such application there

shall be produced to such Select Committee copies, —certified under the hand of the Speaker or the Chief Clerk of the House to which the Election Petition in the case is presented, to be true copies of the same,—of the Recognizance herein required, to be entered into on behalf of such Sitting Member,—of all Affidavits by which the sufficiency of the sureties in such Recognizance has been established,—or of the Chief Clerk's certificates of the deposit of money in lieu of such Recognizance or of such Recognizances and Affidavits for any part of such amount, and of the Chief Clerk's certificates for the residue thereof, as the fact is,—together with an Affidavit from such Sitting Member that he is acquainted with the persons who have entered into such Recognizance, if any have been given as aforesaid, and that he has reason to believe, irrespective of having the same sworn to by such persons, and that he does verily believe that such persons are worth the amounts respectively stated by them in their said Affidavits of sufficiency respectively;—And every such Recognizance shall have the same requirements as to the names and description of parties and the manner of taking the same, as is hereinbefore provided with respect to the Recognizances required of Petitioners.

19. In case, at the time of any such application on the part of the Sitting Member for the issue of any such Commission as aforesaid, it shall be objected on the part of the Petitioners in such Election Petition, that the sureties of such Sitting Member, or any of them, are not really worth the amounts stated in their Affidavits of suffi-

ciency respectively,—or that such Recognizance is objectionable upon similar grounds to those hereinafter mentioned in the twenty-first section of this Act, or any of them, or any other that shall appear to such Select Committee to require explanation or correction,—such Select Committee may, if upon hearing the parties they deem it just to do so, give time to such petitioner to make good such objection, and make such orders from time to time as to the same, and as to the putting in of new Recognizances or a deposit of money in lieu thereof, or part thereof, and as to the justification of the sufficiency of the persons entering into any such Recognizances,—as to such Select Committee shall appear just in the premises.

2. And all such orders shall be binding upon the parties interested or concerned in such Election Petition, and the neglect of any party to obey the same shall be attended with such consequences in respect of the same, and the prosecution or defence of his case before such Select Committee, and the payment of costs to the party or parties inconvenienced or delayed,—which shall be taxed and recovered as hereinafter provided for the costs and expenses of prosecuting or opposing Election Petitions,—as such Election Committee thinks fit or proper to order and direct in that behalf;—or the payment of such cost and expenses may be made a condition to allowing the party to proceed with his prosecution or defence if such Select Committee think fit so to order and direct.

3. But, nevertheless, no such Sitting Member

shall obtain the benefit of any evidence taken on his behalf under any such Commission, until he has perfected the security hereby required in that behalf, either by Recognizance or deposit as hereinbefore provided, and has obtained an order of such Select Election Committee allowing the same as sufficient.

20. On or before the day when any such Petition is presented to the House, or when notice of the intention of any Sitting Member to apply to the Select Committee for the trial of such Election Petition for the issue of a Commission to take evidence upon such trial, has been served on the Petitioners,—the names and descriptions of the sureties, where there are sureties, as set forth in the Recognizance, and the amount of the Chief Clerk's receipts or certificates of deposits in lieu of the Recognizance, shall be entered in a book to be kept by the Chief Clerk of the House in his office, and the said book and also the Recognizances and Affidavits, and the Chief Clerk's said receipts or certificates, shall be open to the inspection of all parties concerned.

21. Any Sitting Member petitioned against, or any Electors petitioning and admitted parties to defend the election or return, may object to any such Recognizance on the ground that the same is invalid,—or that the same was not duly entered into or received by the Speaker, with the affidavit thereunto annexed or endorsed as hereinbefore required,—or on the ground that the sureties or any of them are insufficient, or that a surety is dead, or that he cannot be found or ascertained for want of a sufficient description in

the Recognizance,--or that a person named in the Recognizance has not duly acknowledged the same :

2. Provided, firstly, 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 Speaker of the House, within ten days, or not later than twelve o'clock at noon of the eleventh day after the presentation of the Petition ;

3. Secondly, that if such eleventh day happens to be on a Sunday or other Statutory holiday, such notice of objection may be delivered to the Speaker not later than twelve o'clock at noon of the following day, or of the first day thereafter which shall not be a Sunday or Statutory holiday ;

4. And, thirdly, that the Speaker shall thereupon cause the said objection to be forthwith filed in the office of the Chief Clerk of the House, for the inspection of the House and its Committees, and of all parties concerned or interested in the same.

22. As soon as any such statement of objection is received by the Speaker, he shall cause the Chief Clerk of the House to put up an acknowledgment thereof in some conspicuous part of his office, and shall appoint a day for hearing such objections, not less than three nor more than five days from the day on which he received such statement ; and the Petitioner and his agent shall be allowed to examine and take copies of every such objection.

23. At the time appointed, the Speaker shall

enquire into the alleged objections, on the grounds stated in the notice of objection, but not on any other ground; And for the purpose of such enquiry, he may examine upon oath any persons tendered by either party for examination by him, and may also receive in evidence any affidavit relating to the matter in dispute before him, sworn before him, or before any Justice of the Peace;— And the said Speaker may, if he thinks fit, adjourn the said enquiry from time to time until he decides on the validity of such objection, and he may if he thinks fit, award costs to be paid by either party to the other, which costs shall be taxed and recovered as hereinafter provided for the costs and expenses of prosecuting or opposing Election Petitions: And the decision of the Speaker shall be final and conclusive against all parties.

24. If any surety dies and his death is stated as a ground of objection before the end of the time allowed for objecting to Recognizances, the Petitioner may pay into the hands of the Chief Clerk of the House, on the account of the Speaker, the sum for which the deceased surety was bound; and upon the delivery of the receipt or certificate of the said Chief Clerk for such sum to the Speaker, within three days after the day on which the statement of such objection was delivered to the said Speaker, the Recognizances shall be deemed unobjectionable if no other ground of objection thereto be stated within the time before mentioned for stating objections to Recognizances.

25. If the Speaker has received any statement of objection to the Recognizances of any such Election Petition, and has decided that such Re-

cognizances are objectionable, he shall forthwith report to the House that such Recognizances are objectionable;—but if he has decided that such Recognizances are unobjectionable, or if he has not received any such statement of objection, then, as soon as the time hereinbefore allowed for stating any such objection has elapsed after the presentation of the Petition, or as soon thereafter as he has decided upon the statement of objection, he shall report to the House that the Recognizances to such Petition are unobjectionable; and every such report shall be final and conclusive to all intents and purposes;—And the Chief Clerk of the House shall make out a list of all Election Petitions on which the Speaker has reported to the House that the Recognizances are unobjectionable, in which list the Petitions shall be arranged in the order in which they are so reported upon; and a copy of such list shall be kept in the office of the said Chief Clerk, and shall be open to the inspection of all parties concerned or interested in the same.

3.—ADMISSION OF PARTIES TO DEFEND.

26. If at any time before the appointment of a Select Committee, as hereinafter provided, to try any Election Petition, the Speaker of the House to which such Petition is presented is informed by a certificate in writing, subscribed by two of the Members of such House,—of the death of any Sitting Member whose election or return is complained of in such Petition,—or of the death of any Member returned upon a double return, whose

election or return is complained of in such Petition,—or if the said House has resolved that the seat of any such Member has by law become vacant,—or if the House be informed by a declaration in writing, subscribed by any such Member and delivered to the Speaker within fourteen days after the day on which the Petition was presented, (whether such fourteen days or any of them occur during a Session of Parliament or during a prorogation thereof,) that it is not the intention of such Member to defend his election or return,—in every such case notice thereof shall immediately be sent by the Speaker to the General Committee of Elections, and to the Members of the Chairmen's Panel hereinafter mentioned, and also to the Sheriff or other Returning Officer for the Electoral Division to which such Petition relates;—and such Sheriff or other Returning Officer shall cause a true copy of such notice to be affixed in some conspicuous place in or near to the place where the nomination for such election was held;—and such notice shall also be inserted by order of the Speaker, in one of the next two Government Official *Gazettes* of the Province, and shall, as soon as may be, be communicated by him to the House.

27. At any time within fourteen days after the day on which any Election Petition was presented,—or within twenty-one days after the day on which any notice was inserted in the *Gazette* to the effect that the seat is vacant, or that the Member returned will not defend his election or return,—or if either of the said periods expire during a prorogation of Parliament, or during an ad-

journalment of the House to which such Petition was presented for any period exceeding seven full days exclusive of the day of adjournment and the day of meeting according to such adjournment, and if he has not done so before, then on the first day on which the House meets after such prorogation or adjournment, provided the said House shall on such first day have entered upon and gone through with that head or division of the daily routine of the business thereof which consists in the presenting and bringing up of Petitions,—and if the said House, in such last-mentioned case has not entered upon and gone through with such head or division of the said daily routine of such first day, then, and in every such case, upon the first day thereafter upon which the said House has entered upon and gone through with such head or division of the said daily routine as aforesaid,—Any person who voted or had a right to vote at the Election to which the Petition relates, may petition the said House, praying to be admitted as a party to defend such return, or to oppose the prayer of such Petition; and such person shall thereupon be admitted as a party, together with the Sitting Member if he be then a party, against such Petition, or in the room of such Member if he be not then a party against the Petition, and every such Petition shall be referred by the House to the General Committee of Elections hereinafter mentioned :

2. Provided, nevertheless, that nothing herein contained shall preclude the presenting or bringing up of such Petition of any such party during any part of any day on which such Petition might

be presented as is provided by the fifth section of this Act respecting Election Petitions.

28. Whenever the Member whose election or return is so complained of in such Election Petition, has given notice as aforesaid of his intention not to defend the same, he shall not be afterwards allowed to appear or act as a party against such Petition in any proceedings thereupon, and he shall also be restrained from sitting in the House, or voting therein on any question, until such Petition has been decided upon.

29. Before any such Petition for permission to defend shall be presented to the House, a Recognizance shall be entered into on the part of such Petitioner by one, two, three or four persons as sureties for the persons subscribing such Petition, for the sum of four hundred dollars in one sum, or in several sums of not less than one hundred dollars each, for the payment of all costs and expenses which under the provisions herein contained may become payable by the person subscribing such Petition, to any witness summoned in his behalf, or to the person subscribing the Election Petition to which such person prays permission to appear for the purpose of defence as aforesaid, or to any person who, upon the application of such first-mentioned Petitioner for the issue of a Commission to take evidence upon the trial of such Election Petition, is appointed a Commissioner for that purpose, or to any Clerk, Bailiff or other Officer employed by such Judge or Commissioner in or about or in any way relating to the execution of the Commission issued to him in that behalf.

2. And such Recognizance shall be entered into before the Speaker or a Justice of the Peace as is herein provided with respect to other Recognizances to be entered into under this Act, and shall be accompanied by Affidavits of the sufficiency of the sureties as is provided with respect to the same, and the same may be in the form or to the like effect as is set forth in the Schedule to this Act annexed marked A (3), with such alterations as are necessary to adapt such form to the circumstances of the case; or a deposit of money may be made in lieu of such Recognizance—or a deposit of money in lieu of some part of the amount required to be so secured, and a Recognizance for the residue thereof, shall be made and entered into as is hereby provided with respect to such other Recognizance, which shall be accompanied by Affidavits of sufficiency from the sureties, and an affidavit of belief in such sufficiency made by such Petitioner for permission to defend, as is hereinbefore provided with respect to the Recognizance to be entered into on behalf of any such Sitting Member as aforesaid.

3. Provided always, nevertheless, that all objections to such sureties or the manner in which they have been put in, shall be heard and disposed of by the Select Election Committee for the trial of such Election Petition, in the same manner and subject to the like powers and provisions, as well respecting costs and the payment and recovery thereof, as respecting all other matters connected with the enquiry into and allowance of the sufficiency of such sureties, as is herein provided with respect to the Recognizance hereby

required to be entered into by any such Sitting Member as aforesaid.

30. If in the case of an Election Petition complaining of a double return, the Member whose return is complained of in such Petition has given notice, as aforesaid, that it is not his intention to defend his return,—and if no party, within the period hereinbefore allowed for that purpose, has been admitted to defend such return,—then if there be no Election Petition complaining of the other Member returned on such double return, the last-mentioned Member, or other the persons who subscribed the Petition complaining of such double return, may withdraw such Petition by letter addressed to the Speaker; and thereupon the order for referring such Petition to the General Committee of Elections shall be discharged, and the House shall give the necessary directions for amending the said double return, by taking off the file the indenture by which the person so declining to defend his return was returned, or otherwise, as the case may require.

4.—GENERAL COMMITTEE OF ELECTIONS.

31. In the Legislative Assembly, in the first Session of every Parliament, on the first meeting of that House on or next after the fifteenth day of such Session,—and in the Legislative Council in the first Session after the Periodical Election of Councillors, on the first meeting of that House, on or next after the fifteenth day of such Session, and in either House in every other Session, as soon as convenient, after the commencement of

the Session,—the Speaker shall, by Warrant under his hand, appoint six Members of the House against whose return no Petition is then depending, and none of whom is a Petitioner complaining of any election or return, to be Members of a Committee to be called, "The General Committee of Elections," and every such Warrant shall be laid on the Table of the House, and if not disapproved of by the House in the course of the three next days on which the House meets for the despatch of business, shall take effect as an appointment of such General Committee.

32. If the House disapproves of any such Warrant, the Speaker shall, on or before the third day on which the House meets after such disapproval, lay upon the Table of the House, a new Warrant for the appointment of six Members qualified as aforesaid, and so from time to time, until six Members have been appointed by a Warrant not disapproved by the House.

33. The disapproval of the Warrant may be either general in respect of the constitution of the whole Committee, or special in respect of any Member or Members named in the Warrant.

34. The Speaker may, if he thinks fit, name in the second or any subsequent Warrant, any of the Members named in any former Warrant whose appointment has not been specially disapproved by the House as aforesaid.

35. After the appointment of the General Committee, every Member appointed shall continue to be a member of the Committee until the end of that Session of Parliament, or until he

cease to be a Member of the House, or until the General Committee report that he is disabled by continued illness from attending the Committee, or until the Committee be dissolved as hereinafter provided.

36. In every case of vacancy in the General Committee of Elections, the Speaker, on the first day on which the House meets after such vacancy is known by him, shall make known the vacancy to the House, and thereupon all proceedings of the General Committee shall be suspended until the vacancy is supplied as hereinafter provided.

37. If the General Committee of Elections at any time reports to the House, that by reason of the continued absence of more than two of its members, or by reason of irreconcilable disagreement of opinion, the said Committee is unable to proceed in the discharge of its duties, or if the House resolves that the General Committee of Elections be dissolved, the General Committee shall be thereby forthwith dissolved.

38. Every appointment to supply a vacancy in the General Committee, and every re-appointment of the General Committee, after the dissolution thereof, shall be made by the Speaker by Warrant under his hand, laid upon the table of the House, on or before the third day on which the House meets after the dissolution of the Committee, or notification of the vacancy, as the case requires, and the Warrant shall be subject to the disapproval of the House in the like manner as is hereinbefore provided in the case of the first Warrant for the appointment of the General Committee;—and upon any re-appointment of

the General Committee, the Speaker may, if he thinks fit, re-appoint any of the members of the former Committee not disqualified to serve on it.

39. The Speaker shall appoint the time and place of the first meeting of the General Committee of Elections, and the Committee shall meet at the time and place so appointed; but no Member shall Act upon such Committee until he has been sworn at the table of the House by the Clerk, truly and faithfully to perform the duties belonging to a member of the said Committee, to the best of his judgment and ability, without fear or favor.

40. No business shall be transacted by the General Committee of Elections, unless at the least four members thereof be then present together; and no appointment of a Select Committee by the General Committee to be made as hereinafter provided, shall be of force, unless at the least four members then present of the General Committee agree to the appointment.

41. Subject to the provisions of this Act, the General Committee of Elections shall make regulations for the order and manner of conducting the business to be transacted by it.

42. The General Committee shall be attended by one of the Committee Clerks of the House, selected for that purpose by the Chief Clerk of the House, and such Committee Clerk shall make a minute of all the proceedings of the Committee, in such form and manner as shall from time to time be directed by the regulations or directions of the said General Committee, and a copy of the

minutes so kept shall be laid from time to time before the House.

43. If at the time of the dissolution or suspension of the proceedings of the General Committee of Elections, there be any business appointed to be transacted by such General Committee on any certain day, the Speaker may adjourn the transaction of such business to such other day as to him seems convenient.

5.—PANELS.

44. Every Member having leave of absence from the House shall be excused from serving on Election Committees during such leave; And if any Member in his place offer any other excuse, the substance of the allegations shall be taken down by the Clerk, in order that the same may be afterwards entered on the Journals, and the opinion of the House shall then be taken thereon; and if the House resolve that the said Member ought to be excused, he shall be excused from serving on Election Committees for such time as to the House seems fit, but no Member shall be so excused who does not claim to be excused before he is chosen to serve.

2. Every Member who has served on one Election Committee, and who within seven days after such Committee has made its final report to the House, notifies to the Clerk of the General Committee his claim to be excused from so serving again, shall be excused during the remainder of the Session, unless the House at any time resolves upon the report of the General Committee that

the number of Members who have not so served is insufficient; but no Member shall be deemed to have served on an Election Committee, who, on account of inability or accident, has been excused from attending the same throughout.

45. Every Member who is a Petitioner complaining of an undue election or return, or against whose return a Petition is depending, shall be disqualified to serve on Election Committees during the continuance of such ground of disqualification.*

46. The Clerk of the House shall make out an Alphabetical list of all the Members thereof, distinguishing in such list the names of every Member for the time being excused or disqualified, and shall also notice in the list every cause of such temporary excuse or disqualification, and the duration thereof;—And such list shall be openly read over in the House by the Clerk thereof, at the next meeting of the House, on or after the fifteenth day of the first Session of every Parliament, in the Legislative Assembly; and on or after the fifteenth day of the first Session after the periodical Election of Members in the Legislative Council,—and be thereafter printed and distributed to the Members of the House with the printed Votes of the House.

47. During three days next after the day of the openly reading of such list in the House as aforesaid, corrections may be made in such list by leave of the Speaker, if it appears that any name has been improperly left on or struck

* Members who have pledged themselves as surety should be peremptorily excluded.

out of such list, or that there is any other error in such list.

48. The list finally corrected shall be referred to the General Committee of Elections, and the General Committee shall therefrom select in their discretion four, six or eight Members whom they think duly qualified to serve as Chairmen of Election Committees, and the Members so selected shall be formed into a separate Panel, to be called the Chairmen's Panel, which shall be reported to the House; and while the name of any Member is upon the Chairmen's Panel, he shall not be liable or qualified to serve on any Election Committee otherwise than as Chairman; And every Member placed on the Chairmen's Panel shall be bound to continue upon it till the end of the Session, or until he sooner ceases to be a Member of the House, or until by leave of the House he is discharged from continuing upon the Chairmen's Panel:

2. Provided always, that every Member of the Chairmen's Panel who has served on one or more Election Committees, and who notifies to the Clerk of the General Committee of Elections his claim to be discharged from continuing upon the Chairmen's Panel, shall be so discharged accordingly,—and every such Member shall be excused from serving upon any Election Committee, either as Chairman or otherwise, during the remainder of the Session, unless in either of such cases, the House should at any time resolve, upon the report of the General Committee of Elections, that the number of Members who have not so served is insufficient;—but no member of the Chairmen's

Panel shall be deemed to have served on any Election Committee, who on account of inability or accident, has been excused from attending the same throughout.

49. After the Chairmen's Panel has been so as aforesaid selected; the General Committee shall divide the Members then remaining on such list into three Panels, in such manner as to them seems most convenient, but so, nevertheless, that each Panel may contain, as nearly as may be, the same number of Members; and they shall report to the House the divisions so made by them, and the Clerk shall decide by lot at the table the order of the Panels as settled by the General Committee, and shall distinguish each of them by a number denoting the order in which they were drawn; and the Panels shall then be returned to the General Committee of Elections, and shall be the Panels from which Members shall be chosen to serve on Election Committees.

50. The General Committee of Elections shall correct the said Panels from time to time, by striking out of them the name of every Member who ceases to be a Member of the House, or who from time to time becomes entitled and claims as aforesaid to be excused from serving on Election Committees, and by inserting in one of the Panels, to be chosen by the General Committee at their discretion, the name of every new Member of the House not excused or disqualified for any of the reasons aforesaid,—and shall also from time to time distinguish in the manner aforesaid in the said Panels, the names of the Members for the time being excused or disqualified for any of the

reasons aforesaid ; And the General Committee shall, as often as they think fit, report to the House the Panels as corrected ; and as often as the General Committee reports the said Panels to the House, they shall be printed and distributed with the votes of the House, and the names of all the Members so omitted shall be also printed and distributed with the Votes.

51. When leave of absence for a limited time has been granted by the House to any Member, the General Committee of Elections may transfer the name of such Member from the Panel in which it has been placed to some other Panel subsequent in rotation, if they think fit to do so, having regard to the length of time for which such leave of absence has been granted, and to the number of Select Committees then about to be appointed.

52. Whenever any member of the Chairmen's Panel ceases to be a Member of the House,—or is by leave of the House discharged from continuing upon the Chairmen's Panel,—or is so discharged by reason of service under the provision hereinbefore contained,—the General Committee shall forthwith select another Member to be placed upon the Chairmen's Panel in his room ;—and in case it shall at any time appear to the General Committee that the Chairmen's Panel is too small, they may select one, two, or three additional Members to place upon it, so nevertheless that the Chairmen's Panel shall not at any time consist of more than eleven Members without the leave of the House first obtained.

6.—APPOINTMENT OF SELECT COMMITTEES.

53. All Election Petitions received by either House shall be referred by the House to the General Committee of Elections for the purpose of choosing Select Committees as hereinafter provided, to try such Petitions,—and the Speaker shall communicate to the House and to the General Committee, every proceeding had before him concerning the Recognizances to any Election Petition.

2. In every case in which any Election Petition is withdrawn, or the Speaker reports to the House that the Recognizances are objectionable, the order for referring such Petition to the General Committee of Elections shall be discharged and no further proceeding shall be had upon such Petition.

3. The General Committee shall make out a list of all Election Petitions, in which the Speaker has reported to the House, that the Recognizances are unobjectionable, and in which the proceedings are not suspended, in which list the Petitions shall be arranged in the order in which they were so reported upon; And in every case in which the proceedings in any Petition inserted in such list are afterwards suspended, the Petition shall be struck out of the list, and shall be again inserted at the bottom of the list, at the end of such suspension of proceedings.

54. When notice of the death or vacancy of the seat of any Member petitioned against, or that it is not the intention of such Member to defend his election or return, is given to the

General Committee by the Speaker as hereinbefore provided,—the General Committee shall suspend their proceedings in the matter of the Petition referred to in such notice, until twenty-one days after the day on which notice of such death or vacancy, or intention not to defend, has been inserted in the *Canada Gazette*, under the provisions hereinbefore contained; unless the Petition of some person claiming to be admitted as a party in the room of such Member be sooner referred to them.

55. When more than one Election Petition relating to the same election or return are referred to the General Committee of Elections, they shall suspend their proceedings in the matter of all such Petitions until the report of the Speaker, respecting the Recognizance upon each of such Petitions, or such of them as have not been withdrawn, is received by them,—and upon receipt of the list of such reports, they shall place such Petitions at the bottom of the then list of Election Petitions, bracketed together, and such Petitions shall afterwards be dealt with as one Petition.

56. The General Committee of Elections shall choose the Committees to try the Election Petitions standing in the said list of Petitions, in the order in which the said Petitions stand in such list, and they shall from time to time determine how many Committees shall be chosen in each week for trying such Petitions, and the days on which they will meet for choosing such Committees, having regard to the number of Select Committees which may then be sitting for the trial of

Election Petitions, and to the whole number of such Committees then to be appointed,—and they shall report to the House from time to time the days appointed by them for choosing such Committees.

57. If Parliament is prorogued after any Election Petition has been presented, but before the appointment of a Select Committee to try such Petition, the General Committee of Elections appointed in the following Session shall, within two days after their first meeting, in case the sureties have been then reported unobjectionable, appoint a day and hour for selecting a Committee to try the Petition so standing over as aforesaid:

2. Provided always that if the number of Petitions so standing over be so great that the times for selecting Committees to try the whole thereof cannot in the judgment of the General Committee be conveniently appointed within two days after their first meeting, the said General Committee shall, within two days after their first meeting, appoint the times for selecting Committees to try so many of the said Petitions as the said General Committee deems convenient, and shall afterwards from time to time, as soon as conveniently may be, appoint the times for selecting the Committees to try the remainder of such Petitions.

58. Notice of the time and place at which the Committee will be chosen to try any Election Petition shall be published, with the printed votes, not less than eight days before the day on which such Committee is appointed to be chosen; And in case the conduct of the Returning Officer

is complained of, such notice shall be sent to him through the Post not less than fourteen days before the day on which such Committee is appointed to be chosen; And every such notice shall direct all parties interested to attend the General Committee of Elections by themselves or their agents, at the time and place appointed for choosing the Select Committee; And if after such notice has been published with the printed Votes, or sent to the Returning Officer as aforesaid, the proceedings in the matter of such Petition become suspended, notice of such suspension shall be immediately published with the printed Votes, and in case the conduct of the Returning Officer is complained of, such notice shall be sent to him through the Post.

59. If notice of the death or vacancy of the seat of any Member petitioned against, or that it is not the intention of such Member to defend his election or return, has been inserted in the *Canada Gazette* by order of the Speaker as hereinbefore provided, and no party has been admitted to defend such election or return,—then if the conduct of the Returning Officer is not complained of in such Petition, it shall not be necessary to insert such Petition at the bottom of the then list of Petitions, but the General Committee of Elections shall meet for choosing the Select Committee to try such Petition, as soon as conveniently may be after the expiration of the time allowed for parties to come in to defend such election or return; And not less than one day's notice of the time and place appointed for choosing such Committee shall be given in the printed

votes of the House, and in such case it shall not be necessary to deliver to the Chairman of the Select Committee for the trial of such Election Petition, a list of the voters intended to be objected to as hereinafter is required in other cases, unless the same is specially ordered by such Select Committee.

60. The General Committee of Elections may change the day and hour appointed by them for choosing the Select Committee to try any Election Petition, and appoint some subsequent, or, by the consent of all parties concerned, some earlier day and hour for the same, if in their judgment it is expedient so to do, giving notice in the printed votes of the House, of the day and hour so subsequently appointed; And in every case in which any such change is made by them, they shall forthwith report the same to the House with their reasons for making such change.

61. Notice shall be published, with the votes, of the Petitions appointed for each calendar week reckoned from Sunday to Saturday inclusive, and of the Panel from which Committees will be chosen to try such Petitions; And each Panel shall serve for a calendar week, beginning with the Panel first drawn, and continuing by rotation in the order in which they were drawn, and not reckoning those weeks in which no Select Committee is appointed to be chosen.

62. The General Committee shall meet at the time and place appointed for choosing the Committee to try any Election Petition, and shall choose from the Panel in service four Members not being then excused or disqualified from any

of the causes aforesaid, and not specially disqualified for being appointed on the Committee to try such Petition for any of the following causes, that is to say:—by reason of having voted at the Election, or by reason of being the party on whose behalf the seat is claimed, or related to him or to the Sitting Member by kindred or affinity in the first, second, third or fourth degree according to the civil law.

63. If at the least four members then present of the General Committee of Elections do not agree in choosing a Committee to try any Election Petition, the General Committee shall adjourn the choosing of that Committee and of the remaining Committees appointed to be chosen on the same day, to the following day, and the parties shall be directed to attend on the following day, and if such following day happen during an adjournment of the House, then on the day to which the House stands adjourned, and so from day to day until all such Committees are chosen, or until the General Committee of Elections is dissolved as hereinbefore provided; And the General Committee shall not in any case proceed to choose a Committee to try an Election Petition until they have chosen a Committee to try every other Election Petition standing higher in the list aforesaid, the order for referring which has not then been discharged, except in the case when the day originally appointed for choosing a Committee has been changed under the provision hereinbefore contained.

64. On the day appointed by the General Committee to choose an Election Committee, the

Members upon the Chairmen's Panel shall, in the manner hereinafter provided, select one of such Members to act as the Chairman of such Election Committee,—and when they have been informed by the General Committee that four members of such Election Committee have been chosen, they shall communicate the name of the Member so selected by them to the General Committee; but no Member shall be so elected who would be disqualified from serving on such Committee if not upon the Chairmen's Panel :

2. Provided, firstly, that if with reference to any Petition for trying which they are about to appoint a Chairman, the members of the Chairmen's Panel receive notice from the Speaker under the provision hereinbefore contained, of the death or vacancy of the seat of the Sitting Member petitioned against in such Petition, or that it is not his intention to defend his seat, they shall suspend their proceedings with regard to the appointment of a Chairman to try such Petition until the day appointed by the General Committee of Elections for selecting a Committee to try such Petition.

3. And provided also, secondly, that every such selection of a Chairman shall be either by the unanimous voices of all the members of such Chairmen's Panel, or in case of the absence of any member of such Chairmen's Panel on any such occasion, or of the dissent of the Member proposed to be selected, or of any other Member thereof, from any such proposed selection, then, and in every such case, the Chairmen's Panel, or such of them as shall be present, shall, in the

presence of the parties interested or concerned in such Election Petition, their Counsel or Agent, or such of them as shall attend, proceed to select one of such Chairmen's Panel, by lot, to be the Chairman of such Election Committee.

65. Subject to the provisions of this Act, the Members upon the Chairmen's Panel may from time to time make such regulations as they find convenient for securing the appointment or selection of Chairmen of Election Committees, and for distributing the duties of Chairmen among all of them.

66. As soon as the General Committee of Elections has chosen four Members of a Committee to try any Election Petition, and has received from the members of the Chairmen's Panel the name of a Chairman to serve on such Committee, the parties in attendance shall be called in, and the names of the Members so chosen and of the Chairman shall be read over to them.

67. After hearing the said names, the parties present shall be directed to withdraw, and the General Committee may proceed to choose another Committee to try the next Petition appointed for that day, and so on, until all the Committees appointed to be chosen on that day are chosen, or until the choosing of any Committee is adjourned as aforesaid:—And after any such adjournment, the General Committee shall not transact any more business on that day, except with regard to those Petitions for trying which Committees have been previously chosen.

68. Within one half hour at furthest from the time when the parties to any Election Petition

have withdrawn,—or if the parties to any Election Petition be then before the General Committee of Elections, then after such other parties have withdrawn,—the parties in attendance shall be again called before the General Committee in the same order in which they were directed to withdraw, and the Petitioners and Sitting Member, or any party admitted as aforesaid to defend the return or election, or their agents,—beginning on the part of the Petitioners,—may object to all or any of the Members chosen, or to the Chairman, as being then disqualified or excused for any of the reasons aforesaid from serving on the Committee for the trial of that Election Petition, but not for any other reason.

69. If at the least four members then present of the General Committee are satisfied that any Member so objected to is then disqualified or excused for any of the reasons aforesaid, the parties present shall be again directed to withdraw, and the General Committee shall proceed to draw from the same Panel another Committee to try that Petition;—or, if the Member to whom any such objection is substantiated is the Chairman, they shall send back his name to the members of the Chairmen's Panel, and the Members on the Chairmen's Panel shall proceed to choose another Chairman to try that Petition, and shall communicate his name to the General Committee, and so as often as the case requires.

70. In the second or any following Committee, the General Committee may, if they think fit, include any of the Members previously chosen by them, to whom no objection has been substantiat-

ed, and no party shall be allowed to object to any Member included in the second or any following Committee who was not objected to when included in the Committee first chosen to try that Petition.

71. When four Members and a Chairman have been chosen, to none of whom any objection has been substantiated, the Clerk of the General Committee of Elections shall give notice thereof in writing to each of the Members so chosen,—and with every such notice shall be sent a notice of the general and special grounds of disqualification and excuse from serving hereinbefore mentioned, and of the time and place when and where the General Committee will meet on the following day,—and notice of the time and place of such meeting shall be published with the printed votes of the House.

72. The General Committee shall meet on the following day at the time and place mentioned in such notice as last aforesaid;—and if any such Member then and there prove to the satisfaction of at least four members then present of the General Committee, that for any of the reasons aforesaid, he is disqualified or excused from serving on the Committee for which he has been so chosen,—or if any such Member prove, to the satisfaction of at least four members then present of the General Committee, that there are any circumstances in his case which render him ineligible to serve on such Select Committee—such circumstances having regard, not to his own convenience, but solely to the impartial character of the Tribunal,—the General Committee shall proceed

to choose a new Committee to try that Petition in like manner as if that Member had been objected to by any party to the Petition;—And if within the space of one quarter of an hour after the time mentioned in the notice, no Member so appear, or if any Member so appearing does not prove his disqualification or excuse to the satisfaction of at least four members then present of the General Committee, the Select Committee shall be taken to be appointed.

73. At the meeting of the House for the despatch of business next after any such Select Committee has been appointed, the General Committee of Elections shall report to the House the names of the Select Committee appointed, and shall annex to such report all Petitions referred to them by the House which relate to the return or election of which such Select Committee is appointed to try the merits, and such report shall be published with the votes.

74. At or before four of the clock on the next day on which the House meets for the despatch of business after such report, the five Members chosen to be the Select Committee shall attend in their places, and shall before departing the House be sworn at the Table by the Clerk, well and truly to try the matter of the Petitions referred to them, and a true judgment to give according to the evidence,—and shall be taken to be a Select Committee legally appointed to try and determine the merits of the return of election so referred to them by the House; And the legality of such appointment shall not be called in question on any ground whatever;—

And the Member so appointed from the Chairmen's Panel shall be the Chairman of such Committee; and they shall not depart the House until the time for the meeting of such Committee is fixed by the House, as hereinafter provided.

75. If any Member of the said Select Committee does not attend in his place within one hour after four of the clock on the day appointed for swearing the Committee, provided the House sits so long,—or if not, then within the like time on the following day of sitting, or if, after attending, any Member depart the House before the said Committee is sworn, unless the Committee be discharged or the swearing of the said Committee be adjourned, as hereinafter provided,—he shall be ordered to be taken into the custody of the Sergeant-at-Arms attending the House, for such neglect of his duty, and shall be otherwise punished or censured, at the discretion of the House, unless it appear to the House by facts specially stated and verified upon oath, that such Member was by a sudden accident or by necessity prevented from attending the House.

76. If any such absent Member be not brought into the House within three hours after four of the clock on the day first appointed for swearing the said Committee provided the House sits so long, or if not then within the like time on the following day of sitting, and if no sufficient cause be shown to the House before its rising whereon the House dispenses with the attendance of such absent Member, the swearing of the Committee shall be adjourned to the next meeting of the House, and all the Members of the said Com-

mittee shall attend in their places for the purpose of being sworn on the day of the next meeting of the House, in like manner as on the day first appointed for that purpose.

77. If on the day to which the swearing of the said Committee is so adjourned, all the members of the Committee do not attend and be sworn within one hour after four of the clock, provided the House sits so long, or if not, then within the like time on the following day of sitting,—or if on the day first appointed for swearing the said Committee, sufficient cause is shewn to the House before its rising why the attendance of any Member of the Committee should be dispensed with, the said Committee shall be taken to be discharged, and the General Committee shall meet on the following day, or if such following day happen during an adjournment of the House, then on the day to which the House stands adjourned, and shall proceed to choose a new Committee from the Panel on service for the time being, in the manner hereinbefore provided ; and notice of such meeting shall be published with the votes.

7.—PROCEEDINGS OF SELECT ELECTION COMMITTEES.

78. The House shall refer the Petitions in each case for which a Select Election Committee has been so reported by the General Committee of Elections, to the Select Committee so appointed and sworn, and shall order the said Select Committee to meet at a certain time to be fixed by the House, which shall be within twenty-four

hours of their being sworn at the table of the House, unless a Sunday or other Statutory holiday intervenes; and the place of their meeting shall be some convenient room or place adjacent to the House properly prepared for that purpose.

79. Every such Select Committee shall meet at the time and place appointed for that purpose, and shall proceed to try the merits of the Election Petition so referred to them,—and they shall sit from day to day, Sundays and other Statutory holidays only excepted, and shall never adjourn for a longer time than twenty-four hours, unless a Sunday or other Statutory holiday intervene, and in such case not for more than twenty-four hours, exclusive of such Sunday or other Statutory holiday,—without leave first obtained from the House upon motion and special cause assigned for a longer adjournment;—And if the House be sitting at the time to which such Select Committee is adjourned, then the business of the House shall be stayed, and a motion shall be made for a further adjournment, for any time to be fixed by the House.

2. Nevertheless, if such Select Committee have occasion to apply or report to the House, and the House be then adjourned for more than twenty-four hours, such Select Committee may also adjourn to the day appointed for the meeting of the House.

80. The parties complaining of or defending the Election or Return complained of in any Election Petition, shall,—except in the case provided for, in and by the fifty-ninth section of this Act,—or where otherwise directed by order of the

Select Committee, appointed to try the validity of such Election,—by themselves or their agents, deliver to the Chairman of such Select Committee, lists of the voters intended to be objected to, giving in the said lists the several heads of objection, and distinguishing the same against the names of the voters excepted to,—and the said Chairman shall cause such lists to be filed amongst the proceedings of such Committee, open to the inspection of all parties concerned.

81. When not otherwise directed by order of such Select Committee, the said lists shall be so delivered to the said Chairman at any time before six o'clock in the afternoon of the day on which by order of the House such Select Committee has been first appointed to meet, provided the said Committee has actually met and proceeded with the case on such day, or by the like hour of the first day on which such Committee actually meets, and so proceeds with the case.

82. Any such Select Committee may, by an order to be made by them for that purpose, on the first day on which they meet and proceed with the case referred to them, or on any day to which the consideration of any application for such an order shall be adjourned, require the delivery of such lists, in such other manner, at such other place, and to such other person as in their judgment is more convenient to the parties concerned, or more conducive to the ends of justice;—And any such order having been so made by such Select Committee, the said Committee may, upon the subsequent consent in writing of the parties to such Election Petition to such Committee's varying,

altering or modifying such order or the directions therein contained, from time to time vary, alter or modify the directions contained in such order, either as to time, place or person, as to such Select Committee from time to time appears more convenient to the parties concerned, or more conducive to the ends of justice;—And every such order made under the authority of this section shall, for information only, be reported by the said Committee to the House, by the second meeting of the House next after such order has been made by such Select Committee, with their reasons for having made the same.

83. No evidence shall be given before the Select Committee, or under any Commission issued by such Committee, against the validity of any vote not included in one of the lists of voters delivered as aforesaid, or upon any head of objection to any voter included in any such list, other than one of the heads specified against him in such list.

84. No Member of any such Select Committee shall absent himself from the same, without leave obtained from the House, or an excuse allowed by the House at the next sitting thereof, for the cause of sickness, verified upon the oath of his medical attendant, or for other special cause shewn and verified upon oath,—and in every such case the Member to whom such leave is granted or excuse allowed shall be discharged from attending and shall not be entitled again to sit or vote on such Committee;—And such Select Committee shall never sit until all the Members to whom such leave has not been granted nor excuse al-

lowed are met,—And in case all such Members do not meet within one hour after the time appointed for the first meeting of such Committee, or within one hour after the time to which such Committee has been adjourned, a further adjournment shall be made and reported to the House by their Chairman, with the cause thereof.

85. Every Member whose absence without leave or excuse is so reported shall be directed to attend the House at its next sitting, and shall then be ordered to be taken into the custody of the Sergeant-at-Arms attending the House, for such neglect of his duty, and shall be otherwise punished or censured at the discretion of the House, unless it appears to the House by facts specially stated and verified upon oath, that such Member was by a sudden accident or by necessity prevented from attending the said Select Committee.

86. An Election Committee shall not be dissolved by reason of the death or necessary absence of one member or two members thereof only,—but the remaining members shall thenceforward constitute the Committee;—And if there ever be occasion for electing a new Chairman on the death or necessary absence of the Chairman first appointed, the remaining members of the Committee shall elect one of themselves to be Chairman,—and if in that election there be an equal number of voices, the Member whose name stands foremost in the list of the Committee as reported to the House, shall have a second or casting vote.

87. If the number of Members able to attend

any such Select Committee is, by death or otherwise, unavoidably reduced to less than three, and so continue for the space of three sitting days, such Select Committee shall be dissolved, (except in the case hereinafter provided,) and another shall be appointed to try the Petition referred to such Committee;—and the General Committee and members of the Chairmen's Panel shall meet for that purpose as soon as conveniently may be after the occasion arises, at a day and hour to be appointed by the General Committee, and notice of such meeting shall be published with the votes;—And all the proceedings of such former Committee shall be void and of no effect, except only any Order that may have been made by them for a Commission for the examination of witnesses and the proceedings under such Order and Commission, which shall be as valid and effectual as if the dissolution of such Committee had not taken place, and shall be made use of by any other Select Committee that may be appointed to try such Election Petition, as if such Order and Commission had been made and issued under their own authority according to the provisions of this Act :

2. Nevertheless, if all 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 and shall thenceforward constitute the Committee.

88. Whenever any such Select Committee think it necessary to deliberate among themselves upon any question arising in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of the Peti-

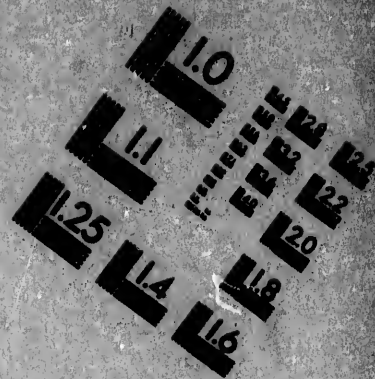
tion referred to them, as soon as they have heard the evidence and Counsel on both sides relative thereto, the room where they sit shall be cleared, if they think proper, whilst the members of the Committee consider thereof.

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

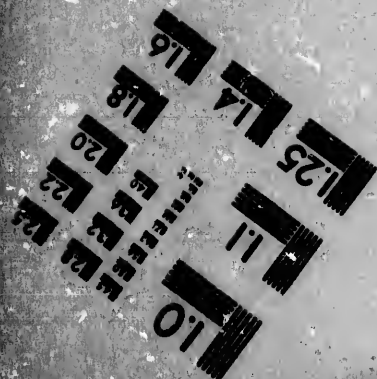
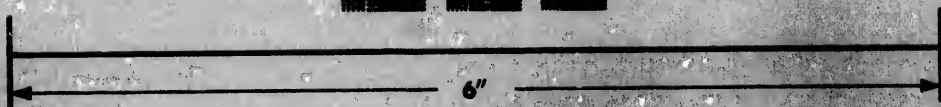
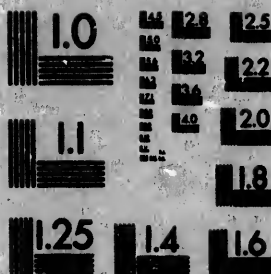
90. Whenever the Select Committee is divided upon any question, the names of the members voting in the affirmative and in the negative, shall be entered in the Minutes of the said Committee, and shall be reported to the House, with the questions on which such divisions arose, at the same time with the final report of the Committee.

91. If the parties or any of them desire it, and such parties or those so desiring it make such arrangements as in the opinion of the said Committee are proper and sufficient to secure such object and the payment of the necessary expense to be incurred thereby,—the Select Committee shall be attended by a short-hand writer, to be appointed by the Speaker of the House, and sworn by the Chairman of the said Committee faithfully and truly to take down the evidence given before such Committee, and from day to day, as occasion requires, to write or cause the same to be written in words at length for the use of the Committee.





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92. Every such Select Committee may send for persons, papers, and records, and may examine any person who subscribed the Petition which such Select Committee are appointed to try, unless it otherwise appear to such Committee that such person is an interested witness,—and they shall examine all the witnesses who come before them upon oath, which oath the Clerk attending such Select Committee may administer.

2. And if any person summoned by such Select Committee, or by the Warrant of the Speaker of the House (which Warrants the Speaker may issue from time to time as he thinks fit, disobeys such Summons,—or if any witness before such Select Committee gives false evidence or prevaricates, or otherwise misbehaves in giving or refusing to give evidence,—the Chairman of such Select Committee, by their direction, may, at any time during the course of their proceedings, report the same to the House for the interposition of the authority or censure of the House, as the case requires, and may by a Warrant under his hand directed to the Sergeant-at-Arms attending the House, or his Deputy, commit such person (not being a Member of the other House of the Provincial Parliament,) to the custody of the said Sergeant, without bail or mainprize, for any time not exceeding twenty-four hours, if the House be then sitting, and if not, then for a time not exceeding twenty-four hours after the hour to which the House stands adjourned.

93. Where in this Act anything is required to be verified on oath to either House of the Provincial Parliament, the Chief Clerk of such House

may administer an oath for that purpose, or an Affidavit for such purpose may be sworn before any Justice of the Peace;—and where for any incidental purpose connected with the conduct of any such trial before any such Election Committee, an Affidavit is required to be taken, to be used before such Election Committee, either by the provisions of this Act, or any Regulations that may be made by such General Committee of Elections for the better ordering of trials before such Election Committees,—every such Affidavit may be taken before the Chief Clerk of the House, or before the Clerk of the Select Election Committee, or before a Justice of the Peace.

94. Every such Select 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 voices, if for the time being consisting of more than one Member, whether the Sitting Members or either of them, or any and what other person were duly returned or elected, or whether the election be void, or whether a new Writ ought to issue;—And such determination shall be final between the parties to all intents and purposes, and the House, on being informed thereof by the Committee, shall order such report to be entered on their Journals, and shall give the necessary directions for confirming or altering the Return, or for ordering a Return to be made, or for issuing a Writ for a new Election, or for carrying the said determination into execution, as the case requires.

95. If any such Select Committee come to any resolution other than the determination above

mentioned, they shall, if they think proper, report the same to the House for their opinion, at the same time that they inform the House of such determination, and the House may confirm or disagree with such resolution, and make such orders thereon as to them seems proper :

2. Provided always, and it is hereby expressly declared, that the power conferred by this section upon the House shall not extend or be construed to extend to the order or orders, resolution or resolutions, containing or declaring such determination of such Select Committee,—or to any orders or resolutions of such Select Committee touching the delivery of lists of objected voters or the objections to such voters, the issue of Commissions for the examination of witnesses, or other matters arising in the course of the trial of such election, and relating merely to the conduct of such trial.

96. If the Parliament be prorogued after the appointment of any Select Committee for the trial of any Election Petition, and before they have reported to the House their determination thereon, such Committee shall not be dissolved by such prorogation, but shall be thereby adjourned to twelve o'clock on the day immediately following that on which Parliament meets again for the despatch of business (Sunday and all other Statutory holidays always excepted),—And all proceedings of such Committee and on any Commission to take evidence issued under the authority of such Committee, shall be of the same force and effect as if Parliament had not been so prorogued, and such Committee shall meet on the day

and hour to which they are so adjourned, and shall thenceforward continue to sit from day to day in the manner hereinbefore provided, until they have reported to the House their determination on the merits of such Petition.

8.—COMMISSION FOR THE EXAMINATION OF WITNESSES.

97. Upon its appearing to any such Select Election Committee, from the nature of the case and the number of witnesses to be examined relative to any particular allegation or allegations in the Election Petition, that the same cannot be effectually inquired into before such Committee, without great expense and inconvenience to the parties or either of them, the said Election Committee may, upon application of any of the parties before the said Committee, at any period during the course of their proceedings upon such Petition, make an order for the nomination and appointment of a Commission in the manner herein directed.

98. Every party intending to apply for the issue of such Commission, shall give to the opposite party or parties two full days' notice in writing, exclusive of any intervening Sunday or other Statutory holiday, (as on Monday for Thursday, or on Saturday for Wednesday,) of his intention to apply to the said Committee for such Commission as aforesaid.

99. Whenever any such Select Election Committee think fit to make an order for the appointment of a Commission as aforesaid, they may if

they think fit so to do, appoint such person to be such Commissioner as may be mutually agreed upon in writing by all the parties interested or concerned in such Election Petition, their Counsel or Agents, upon the written consent of such person to serve as such Commissioner, with an Affidavit of the due execution thereof being laid before such Select Committee.

2. Or in the event of all such parties not so agreeing as to the person to be appointed such Commissioner, or of the said Select Committee not thinking fit to appoint the person who may be so agreed upon by such parties for that purpose, then, if the Election has been one in Upper Canada, the said Committee shall appoint some one of the County Judges of Upper Canada to be such Commissioner.

3. Such Commissioner shall be appointed in manner herein mentioned, that is to say,—on the next sitting day of such Select Committee after the said order has been made by the said Committee, at the time previously appointed by the said Committee for that purpose, in the presence of all the parties interested or concerned in such Election Petition, their Counsel or Agents, if they choose to attend, the said Select Committee shall proceed to select from the list of the said County Judges, such person as it then appears to them most desirable to appoint as such Commissioner, and shall openly announce the name of such person for the information of the parties.

4. Thereupon, either then or at such future day as the said Select Committee may allow for that purpose, any of such parties may submit to

the consideration of the said Select Committee any grounds that he may have to urge against the appointment of such person as such Commissioner,—and in the event of such Committee being of opinion that upon the grounds so laid before them, such person ought not to be so appointed, they shall, so soon as they have come to a resolution declaratory of the same, proceed to select and announce some other of the said County Judges, for that purpose, and in like manner to hear and dispose of any grounds of objection that the parties or any of them have to urge against the appointment of such person,—and so on until they shall have selected and announced some one of such County Judges as aforesaid against whose appointment no objection has been urged as aforesaid, or with respect to whom the objections so urged have been over-ruled by the said Select Committee; and thereupon such person shall by the said Committee be appointed to be such Commissioner.

5. And in all cases of such appointment, a Warrant in the nature of a Commission, under the hand and seal of the Chairman of such Select Committee, shall be issued to such Commissioner, empowering him to examine all such matters and things as shall for that purpose be referred to him by the said Select Committee, by any order made or to be made by the said Committee for that purpose, and commanding such Commissioner under the penalty of four hundred dollars, to repair to the Electoral Division in and for which the Election or Return complained of, or other subject matter of the Petition, arose or happened,

on a day certain to be named in the said Warrant, and which day shall not be less than fourteen days nor more than twenty-one days distant from the day on which the said Commissioner was appointed by the said Select Committee in manner aforesaid;—And if the said Commissioner neglects or refuses to obey the injunction of the said Warrant, he shall forfeit the sum of four hundred dollars.

6. And every such Warrant shall be as nearly as may be in the form set forth in the Schedule to this Act annexed marked B (1), with such alteration as is necessary to adapt such form to the circumstances of the case.

100. In every case in which any such Commissioner has been so appointed as aforesaid, the Select Committee by whom such appointment was made, or in case of their dissolution as provided for by this Act, then the new Select Committee appointed in their stead, may, in the event of such Commissioner dying or becoming incompetent or unable to act under such Commission, supersede such Commissioner and appoint another as hereinbefore provided, and with similar powers;—in every which case such new Commissioner shall have the like powers as the person first appointed, and shall complete the taking of any evidence that has been only partially taken by the former Commissioner, or take the whole anew, as by order of such Select Committee he shall be directed or required;—And in every such case the Warrant for the appointment of such new Commissioner shall be as nearly as may be, in the form set forth in the Schedule to this

Act annexed marked B (2), with such alteration as is necessary to adapt such form to the circumstances of the case.

101. Every such Commissioner when engaged in the execution of the duties of his office as such Commissioner, shall have the like power and authority to commit for contempt against him and his orders, as by law is or shall be vested in the Circuit Court if he acts in Lower Canada, or in the County Court if he acts in Upper Canada, for the like contempts against it or its orders, subject always nevertheless to an Appeal from the decision of such Commissioner, in every such case, to the Select Committee for the time being charged with the disposal of such Election Petition.

102. Upon the issue of any Commission to any County Judge appointing him a Commissioner for the examination of witnesses under this Act, such Judge may, by an Instrument in writing under his hand and seal, name any other County Judge, or any other person of the degree of Barrister at Law in and for Upper Canada, to sit for him as such County Judge, and in every other capacity, whether judicial or otherwise, belonging or attached to the Office of such County Judge as such Judge, during the time that such Commission for the examination of witnesses under this Act is in force unreturned, and for twenty days after the same has been superseded or returned by the Judge to whom the same is directed.

103. Every such Instrument of nomination shall contain a recital of the Commission which has rendered such nomination necessary, and shall be executed in triplicate, one of which triplicate

originals shall, by the Judge making the same, be filed in the Office of the Clerk of the County Court, or with any Clerk of such Court if there be more than one, another of them shall be delivered or sent to the person so named to sit for such Judge, and the third shall be transmitted to the Provincial Secretary, for the information of the Governor.

104. In the case of every such nomination, the Governor may, by an Instrument under his Privy Seal, annul such nomination, and if he thinks fit so to do, may name by the same or any other Instrument under his Privy Seal, some other person legally qualified to have been named by such Judge himself, to sit for such Judge instead of the person so named by such Judge as aforesaid.

105. In every such case the person so nominated to sit for such Judge shall, so long as his nomination is unannulled, and the said Commission for the examination of witnesses under this Act remains in force unreturned,—and for twenty days after such Commission has been either superseded or returned,—have full power and authority to sit for such Judge as such County Judge, and in any other capacity whether judicial or otherwise belonging or attached to the office of such County Judge, in all Courts and on all occasions wherein such Judge by or under his Commission as such Judge, or otherwise according to Law, may be required or have occasion to sit or hold any Court whatsoever, or any sittings or sessions of any such Court or any other Court, or otherwise, to act either singly or with others, and either at chambers or elsewhere, in the discharge of any of the

duties, whether judicial or of any other character, which by the Commission of such Judge as such County Judge belong or by law attach to his office as such County Judge;—And all judgments, decisions, decrees and acts pronounced, given, made or done by such person during such time, shall be as valid and effectual in law to all intents and purposes whatsoever, as if the same had been so pronounced, given, made or done by such Judge himself.

2. Nevertheless, in all cases in which the Governor annuls any such nomination as aforesaid, all such judgments, decisions, decrees and acts pronounced, given, made or done by the person whose nomination has been so annulled previous to his receiving notice of such nomination having been so annulled, shall be and remain as valid and effectual in Law to all intents and purposes whatsoever, as if such nomination had not been so annulled as aforesaid :

3. And such Judge may, notwithstanding any such nomination, whether made by himself or the Governor as aforesaid, while the same is in force and without thereby annulling or superseding the same, perform himself, if the execution of such Commission for the examination of witnesses under this Act does not prevent his doing so, either the whole or any part of the duties of his said office of County Judge, as if such nomination had not been made as aforesaid.

106. In the case of every such nomination as aforesaid, whenever from illness of the person so nominated to sit for such Judge, or from any casualty, it happens that such person does not

arrive in time, or is not able to open any Court or any sittings or sessions of any Court on the day appointed for that purpose, the Clerk or Deputy Clerk of such Court, sittings or sessions, may, after the hour of eight o'clock in the afternoon of such day, adjourn by proclamation any such Court, sittings or sessions appointed to be held on that day to an early hour on the following day, not being Sunday or a Statutory holiday, to be by him named, and so from day to day, adjourning over such Sundays and Statutory holidays, until such person or the Judge for whom he was named to sit, arrives to open the same, or until he receives other directions from such Judge, or the person so appointed to sit for such Judge as aforesaid.

107. Every person who has sat for any such County Judge, by virtue of any such nomination made under the authority of this Act, shall for every day that he has so sat for such Judge, be entitled to receive the sum of ten dollars, and also in every case in which he is obliged to travel from the place of his usual residence to perform such duty, such further sum as will be sufficient to cover the amount of his reasonable travelling expenses in going to, remaining at, and returning from the same, the account of every such person for such service to be rendered, taxed and allowed in the same manner as other accounts for professional services rendered to the Government;— And the amount of every such account so taxed and allowed shall be paid to such person, or his personal representative, out of the Consolidated Revenue Fund of this Province, by Warrant, in

the like manner as other moneys payable out of such fund, are payable by Law.

108. For the taking down in writing Minutes of all the proceedings of such Commissioner in executing the duties imposed upon him by this Act, and of all evidence given or produced before him, in as accurate a manner as may be, and for the proper and orderly conduct of his proceedings in this behalf, every such Commissioner shall have full power to appoint one or more Clerks, and such and so many Bailiffs and other Officers as he deems requisite or necessary for that purpose, subject, always, nevertheless, to the control and direction of the said Select Committee charged for the time being with the trial and disposal of such Election Petition, and which Clerks and other Officers shall respectively take before such Commissioner the oaths set forth for that purpose in the Schedule to this Act annexed marked B (4) (5).

109. No person shall be appointed by such Commissioner under this Act to be a Clerk, Bailiff or other Officer to assist such Commissioner as aforesaid, who voted at the Election in question, or who has or claims any right or title to vote for the Electoral Division respecting which the Election or Return complained of, or other subject matter of such Petition arose or happened, without the consent and approbation in writing of all the parties interested or concerned in such Election Petition;—But any objection to the appointment of such Clerk, Bailiff or other Officer, shall be made at the time of his being appointed, or at the first sitting of the Commissioners after such

appointment has been made, otherwise such objection shall be invalid and of none effect, and such appointment shall be valid and effectual to all intents and purposes.

110. A note of the appointment of every such Clerk, Bailiff or other Officer by such Commissioner, shall be made in the Minutes of such Commission, and be open at all reasonable times to the inspection of all parties interested or concerned in such Election Petition.

111. The Chairman of the said Select Committee shall address to the said Commissioner a true copy of the Petition which has been referred to the said Committee, and of the said lists and disputed votes and statements of the several parties which have been delivered according to the provisions of this Act, together with a true copy of the Order made by the said Committee, specially assigning and limiting the facts or allegations, matters and things respecting which the said Commissioner is required and directed to examine evidence and to report the same, together with all such other documents and papers as the said Select Committee shall think proper,—all which Warrants, Petitions, Orders and Papers, shall be conveyed to such Commissioner through the Post Office, in the manner hereinafter prescribed for the transmission to the proper Court of Recognizances taken and estreated, or otherwise proceeded upon under this Act.

112. Immediately after the completion of the proceedings aforesaid, the Chairman of the said Select Committee shall thereupon report the proceedings of the said Committee to the House, and

shall ask permission of the House for the said Committee to adjourn until such time as the Speaker by his Warrant, in manner herein mentioned, directs the said Committee to re-assemble; and upon such permission being granted, the said Committee may adjourn accordingly.

113. On the day appointed in and by the Warrant appointing such Commissioner, and at such place as he has appointed for that purpose, between the hours of ten in the forenoon and four in the afternoon, the Commissioner shall proceed to open his Court or commence his proceedings by reading the Warrant of the said Chairman of the said Select Committee, and also the copy of the Petition and other papers transmitted by the said Chairman.

2. The Commissioner shall, before further proceeding on the business of his said Commission, take and subscribe the oath set forth in the Schedule to this Act annexed, marked B (3), which said Oath the said Commissioner shall take and subscribe in the presence of the parties interested or concerned in such Election Petition, or their Agents, or such of them as attend, and the taking of the same shall be noted in the Minutes of such Commission;—And if any person acts as a Commissioner in the execution of this Act without having first taken and subscribed such Oath, he shall for such offence forfeit and pay the sum of four hundred dollars.

114. The said Commissioner shall sit every day, Sundays and Statutory holidays only excepted, from the hour of ten in the morning till four in the afternoon, and shall never adjourn except by the

consent in writing of all the parties to such Election Petition or their Agents, or by permission of the Select Committee appointed for the trial of such Election Petition, or in the case provided for by the next section, for a longer time than twenty-four hours, unless Sunday or some other Statutory holiday or holidays intervene, and in case of such intervention, every sitting or adjournment shall be within twenty-four hours from the time of appointing or fixing the same, exclusive of such Sunday or other holiday or holidays as aforesaid.

115. The said Commissioner shall not, except as before excepted, omit such daily sittings except in cases of sudden accident or necessity, or in case of illness; and such cases of sudden accident or necessity shall forthwith be specially reported to the said Select Committee by such Commissioner, and be verified upon the oath of the said Commissioner, and also in case of sickness by the oath of the Physician, if any there be attending such Commissioner, or if there be no Physician in attendance, then by the oath of some third party cognizant of the fact, which oaths shall be made before one of Her Majesty's Justices of the Peace; And any Commissioner who omits such daily sittings without such lawful excuse, shall for every day on which he shall so absent himself, forfeit and pay the sum of one hundred dollars.

116. Upon every such Special Report from such Commissioner, the said Select Committee shall be ordered to meet as is provided upon the transmission of his final Report and Return, and

the said Select Committee shall thereupon proceed to hear the parties interested or concerned in such Election Petition, or such of them as choose to attend for that purpose, their Counsel or Agent, upon such Special Report.

2. And if it appears to such Select Committee upon the facts laid before them upon Affidavit, either in such Special Report, or by the parties or any of them, either that the Commissioner is dead, or that he will be unable to complete the duties imposed upon him by the said Commission within a reasonable time for that purpose, such Select Committee shall proceed to supersede the same, and to appoint another Commissioner thereupon as hereinbefore provided for that purpose.

3. But in the event of the death of any such Commissioner, the Clerk employed by him in keeping the Minutes of his proceedings under this Act, shall either by the consent of all the parties interested or concerned in such Election Petition, their Counsel or Agent, or by direction of such Select Committee, make a Report and Return of all the proceedings had and taken by such Commissioner, which Report and Return shall in such case be equally available for all the purposes of this Act as if made by such Commissioner himself.

117. If any such Commissioner is prevented from attending at the day and place appointed as aforesaid by any sudden accident, necessity or illness, to be verified upon oath in manner herein directed, he shall not be liable to the said penalty of one hundred dollars.

118. The Commissioner may from time to time

adjourn to any place within the Electoral Division in which the Election was held, different from that in which such Commissioner in the first place opened his Court or commenced his proceedings under such Warrant, in all cases where it appears to him expedient or necessary so to do.

119. The Commissioner may at all times, by Warrant under his hand and seal, send for all persons, papers and records, and shall examine all witnesses who come before him, upon oath or affirmation, as the case requires, and shall examine all matters referred to him, and shall in all respects have the same powers and authorities for examining the said matters so referred to him, as Select Committees of either House of the Provincial Parliament for the trial of Election Petitions have for examining the matters and things referred to such Select Committees.

2. The said Commissioner shall proceed in examining every witness who comes before him, and in scrutinizing the rights of any Voter or Voters, and in all matters and things whatsoever referred to him, in the same course and manner and according to the same rules, as Select Committees of the said Houses for the trial of Election Petitions ought and are empowered to proceed in like cases.

3. The Clerk appointed by the said Commissioner shall from time to time make true copies of the Minutes of all the proceedings before the said Commissioner, and of all evidence given or produced before him, and shall give one such copy to each of the parties interested, or his or their agent, or to such of them as shall demand

the same, on being paid, for each folio of the said copy consisting of one hundred words, the sum of ten cents.

4. And within ten days after the evidence before the Commissioner shall be closed, touching the matters and things referred to him, the said Commissioner shall cause copy of the Minutes of all his proceedings to be made, and shall examine the same with the said Minutes, and shall sign and seal the said copy, and shall transmit the same by his Clerk, through the Post Office, in the manner hereinafter prescribed for the transmission to the proper Court of Recognizances taken and estreated or otherwise proceeded upon under this Act, to the Speaker of the House to which the Election in question relates, who shall accordingly communicate the same to the said House, and upon the transmission of the said copy, the said Commissioner shall adjourn in order to receive such further orders from the Select Committee upon the Petition in question, as such Committee from time to time think requisite and necessary.

120. The Commissioner shall not permit or suffer any Barrister or Counsel to plead before him, or to examine or cross-examine any of the witnesses, but the said Commissioner shall himself examine and cross-examine all the witnesses that shall be produced before him.

121. In case at any time in the course of the proceedings before the Commissioner, any of the said parties tender or offer to produce to the Commissioner any witness or evidence to, of, or concerning any matter or thing whatsoever in

issue before the said Commissioner, which witness or evidence the said Commissioner is of opinion ought not to be examined, heard or received, —the said Commissioner shall state in writing the reasons and grounds upon which he has rejected the said evidence, and enter the same upon the Minutes of his proceedings, and the party tendering or offering to produce such witness or evidence may require of the Commissioner that the said witness or evidence be examined, heard and received by and before him *de bene esse*, and the testimony of such witness or the purport of such evidence shall accordingly be taken down in writing by the Clerk to the said Commissioner, separately and apart from all other evidence before the said Commissioner, and a copy thereof, with a statement of the purpose to or for which the said witness or evidence was produced, and by whom the same was produced, shall be signed and sealed by the said Commissioner in the nature of a Bill of Exceptions to evidence, and the same shall be transmitted by the said Commissioner, together with all the other proceedings before him in manner herein mentioned.

2. If the Select Committee for the trial of such Election Petition is of opinion that the tendering and offering of such witness or evidence was frivolous or vexatious, or that the testimony of such witness or the purport of such evidence was impertinent or irrelevant to the matter at issue before the Commissioner, the said Committee shall report such their opinion to the House, together with their opinion on the other matters

relating to the said Petition, and the party who before the said Commissioner opposed the examining, hearing or receiving of such witness or evidence, shall be entitled to receive from the person or persons who produced such witness or evidence, the full costs and expenses which such party or parties have incurred in opposing the same, or by reason of the same being received in manner aforesaid,—which costs and expenses shall be ascertained and recovered in the same manner as by this Act is or hereafter may be provided by law for the recovery of costs and expenses in case of frivolous or vexatious Petitions, or frivolous or vexatious opposition to such Petitions.

122. Within two days after the copy of the proceedings before the Commissioner are received by the Speaker of the House, the said Speaker shall issue a Warrant under his hand and seal, directing the select Committee upon the Petition in question to re-assemble and to meet again on some day within the space of fourteen days from the date of such Warrant, provided Parliament be then sitting, and in case Parliament be not then sitting, to meet on some day within one month after the commencement of the next Session of Parliament.

2. The said Select Committee shall accordingly re-assemble and meet again, and shall take the proceedings of the said Commissioner into consideration, and shall proceed to try and determine the merits of the said Petition, but such Select Committee shall not call for or receive any other or further evidence, written or parole, respecting

any matters or things which have been tried and examined by said Commissioner in manner aforesaid, except when the power to do so has been specially reserved and the points to which such new evidence should be directed have been specially set forth in the order for the issue of such Commission,—but, except as aforesaid, the said Committee shall determine on all such matters and things from the written Minutes of the evidence and proceedings before the said Commissioner, and the Certificates of the said Commissioner so signed, sealed and transmitted as aforesaid:

3. Provided always, that the said Committee may hear Counsel as to the effect of the said evidence in like manner as they may do respecting any other matter in question before them; and that the said Select Committee shall report their own opinion to the House upon the whole merits of the said Election or other matter of the said Petition.

123. If the Speaker of the House receives a copy of such proceedings when the House is adjourned for a longer period than one month from the day on which the Speaker is directed to issue his Warrant for the re-assembling and meeting of any such Committee,—then and in such case the said Speaker shall in such Warrant direct such Committee to re-assemble and meet on some day within one month next after the day to which the House is adjourned;—and if the said Speaker has directed the Committee to meet on any day, and if the said House subsequently adjourns to a day beyond the day so appointed for the re-as-

sembling and meeting of such Committee,—then and in such case, the said Speaker shall issue another Warrant directing such Committee to re-assemble and meet on some day within one month next after the day to which the said House is adjourned, instead of on the day first appointed in pursuance of the provisions of this Act.

124. The Speaker of the House, upon issuing any such Warrant for the re-assembling of any such Select Committee, shall cause a notice of the issue of such Warrant and of the day therein fixed for such re-assembling, to be published in the *Canada Gazette*, and to be also inserted in the Votes from thenceforth until the day so appointed for the re-assembling of such Select Committee as aforesaid.

125. And as it may be impracticable in some instances on account of the quantity of evidence taken under such Commission, for such Commissioner to transmit a copy of the Minutes of his proceedings to the Speaker of the House, within ten days after the evidence before him has been closed,—such Commissioner may in such cases transmit such copy with all convenient despatch, and at the same time assign the reasons for such delay, which reasons the Select Committee upon the Petition in question shall investigate, and report their opinion thereupon to the House at the time they make their report on the merits of such Petition.

126. The Select Committee may from time to time during the continuance of any such Commission, and at any time before reporting their final opinion to the House on the merits of the Petition

in question, direct any further or other Warrant to the said Commissioner, under the hand and seal of the Chairman of the said Committee, ordering and directing the said Commissioner to resume his sittings as such Commissioner for such purposes as are in the said Warrant specified, and such and the like proceedings shall be had upon such further Warrant of the Chairman of the said Committee as are herein directed with respect to the said Warrant of the Chairman of the said Committee herein first above mentioned.

127. When any Select Committee re-assembles to try and determine the merits of any such Election Petition, after any proceedings have been had by or before any Commissioner appointed for examining any matters referred to him by such Select Committee, or acting under this Act, such Select Committee may send for all or any books, papers and records, or other written documents produced in evidence before such Commissioner, in like manner as such Select Committee might have done if no such proceedings had been had by or before such Commissioner, and without directing any Warrant to the said Commissioner, and without ordering or directing the said Commissioner to resume his sittings as aforesaid :

2. But such Select Committee shall in all other respects proceed to try the merits of such Election Petition, in the manner directed by this Act, and shall determine on all such matters and things as have been tried and examined by the said Commissioner from the written Minutes of the evidence and proceedings before the said Commissioner, and from the inspection of such

books, papers, records and documents, so far only as may relate to such evidence and proceedings; and such Select Committee shall not call for or receive in evidence any extracts from such books, papers, records or documents other than such as were received and produced before such Commissioner, nor to any point or matter not in issue before such Commissioner.

128. Every such Commissioner as well before as after he has held his first sitting as such, or taken the oath of Office herein prescribed for him as such Commissioner, may, by Warrant under his hand and seal, directed to any Constable, or to any of his Bailiffs in that behalf, or to any other person specially appointed by such Commissioner, summon and require the attendance of any Witness or other person before him at the day and place to be mentioned in such Warrant.

129. If any person so summoned as a witness as aforesaid, neglects or refuses to attend without lawful excuse to be determined by the said Commissioner, or if any witness before such Commissioner prevaricates or otherwise misbehaves in giving or refusing to give evidence, or if any person is guilty of any contempt or misbehaviour whatsoever of or towards the said Commissioner while sitting and acting as such, the said Commissioner shall, by a Warrant under his hand and seal, and directed to the Gaoler of the Common Gaol of the County, City or place in which the said Commissioner is then sitting, commit such person, not being a Member of either House of the Provincial Parliament, to the custody of the

Gaoler, without bail or mainprize, for any time not exceeding six months.

130. In case it is requisite to summon any Member of either House of Parliament then attending his duty in Parliament, to give evidence before the said Commissioner, in such case the Commissioner shall certify the same to the Speaker of the House to which the case before him relates, who shall report the same to the House for its direction thereupon.

131. Every Commissioner acting under this Act, shall immediately after the Select Committee on the Petition in question have made their final report to the House on the merits of the said Petition, be entitled to demand and receive from the party or parties interested or concerned in such Election Petition, upon whose application to such Select Committee such Commissioner was appointed, ten dollars for every day which such Commissioner shall have been necessarily engaged on the said Commission, and also his travelling expenses at the rate of twenty cents for every mile which such Commissioner shall have travelled from and to his usual place of abode in his attendance on the execution of such Commission.

2. And the Clerk to any Commissioner under this Act shall also, upon his transmitting the said copy of such proceedings in manner aforesaid, be entitled to demand and receive from such party or parties as aforesaid, such sum or sums for his attendance on the execution of the said Commission as the said Commissioner shall under his hand certify to be reasonable, not exceeding the amount of four dollars for each day of his attend-

ance on the execution of the said Commission, together with such sum for the copy of the evidence transmitted to the Speaker of the House in manner aforesaid, as the said Commissioner thinks fit, not exceeding the sum of ten cents for every folio consisting of one hundred words which the said copy contains.

132. The Clerk appointed by any such Commissioner shall from time to time make true copies of the Minutes of all proceedings before such Commissioner, and of all evidence given or produced before him, and shall give such copy to each of the parties interested, or to his or their Agent, or to such of them as demand the same, on being paid for each folio of the said copy consisting of one hundred words, the sum of ten cents, and no more.

2. And for copies of the said Minutes and evidence to be transmitted to the Speaker of the proper House, in manner directed by this Act, such Clerk shall receive from the party or parties interested or concerned in such Election Petition, upon whose application such Commissioner was appointed or acted, such sum as the said Commissioner whose Clerk he was thinks fit, not exceeding in any case the sum of ten cents for every folio consisting of one hundred words which such copy contains, and no more.

133. The Bailiffs and other Officers employed by such Commissioner in and about the execution of such Commission, shall receive from the party or parties interested or concerned in such Election Petition, the sum of two dollars per day, while in actual attendance on the sittings of such

Commissioner, and at the rate of ten cents per mile for every such mile travelled in performing any of the duties properly belonging to them under this Act:

2 Provided nevertheless, firstly, that for the service of any summons on any witness requiring him to attend before the Commissioner, such Bailiff or other Officer, unless the same be specially directed by the said Commissioner in writing under his hand to be served at the expense of all the parties interested or concerned in such Election Petition, shall be entitled to receive his fees for the service thereof, only from the party who employs such Bailiff or other officer to serve the same:

3. And provided also, secondly, that such Commissioner shall not require the daily attendance of any such Bailiff or other Officer upon him at the time of his holding such sittings, unless he finds it necessary to do so, in every which case he shall in his Report state the grounds upon which he acted in so requiring the attendance of such Bailiff or other Officer as aforesaid.

134. Every such Commissioner and Clerk, Bailiff or other Officer, shall have the like remedy upon the Recognizance required to be entered into by every Petitioner under this Act, for their services in the execution of such Commission as is hereby given to any persons summoned as witnesses by such Petitioner.

9.— COSTS.

135. Whenever any Select Committee appoint-

ed to try any Election Petition reports to the House that such Petition was frivolous or vexatious, the parties, if any, who have appeared before the Committee in opposition to such Petition, shall be entitled to recover from the persons, or any of them, who signed such Petition, the full costs and expenses which such parties have incurred in opposing the same, such costs and expenses to be ascertained in the manner hereinafter directed.

136. Whenever such Committee reports to the House that the opposition made to such Petition by any party appearing before them was frivolous or vexatious, the persons who signed such Petition shall be entitled to recover from the party with respect to whom such report is made, the full costs and expenses which such Petitioners have incurred in prosecuting their Petition; such costs and expenses to be ascertained in the manner hereinafter directed.

137. Whenever no party has appeared before any such Committee in opposition to any such Petition, and such Committee reports to the House that the Election or Return, or the omission or insufficiency of a Return complained of in such Petition was vexatious or corrupt, the persons who signed such Petition shall be entitled to recover from the Sitting Member, (if any) whose Election or Return is complained of in such Petition, such Sitting Member not having given notice as aforesaid of his intention not to defend the same; or from any other persons admitted by the House as aforesaid to oppose such Petition, the full costs and expenses which such Petitioners have incurred in

prosecuting their Petition; such costs and expenses to be ascertained in the manner hereinafter directed.

138. If any ground of objection be stated against any voter in any list of voters intended to be objected to as hereinbefore provided, and if such Select Committee are of opinion that such objection was frivolous or vexatious, they shall report the same to the House, together with their opinion on the other matters relating to the said Petition, and the opposite party shall in such case be entitled to recover from the party on whose behalf any such objections were made, the full costs and expenses incurred by reason of such frivolous or vexatious objections; such costs and expenses to be ascertained in the manner hereinafter directed.

139. If either party makes before the said Select Committee any specific allegation with regard to the conduct of the other party or his Agents, and either brings no evidence in support thereof, or such evidence that the Committee is of opinion that such allegation was made without any reasonable or probable ground, the Committee may make such orders as to them may seem fit for the payment by the party making such unfounded allegation to the other party, of all costs and expenses incurred by reason of such unfounded allegation; such costs and expenses to be ascertained in the manner hereinafter directed.

140. The costs and expenses adjudged by any such Select Committee as aforesaid, to be paid, or which otherwise may become payable under the provisions of this Act, to any party prosecut-

ing or opposing or preparing to oppose any Election Petition, or to any witness summoned to attend before any Committee, under the provisions of this Act, shall be ascertained in manner following, that is to say:

On application made to the Speaker of the House to which such Petition relates, by any such petitioner, party or witness, for ascertaining such costs and expenses, not later than three months after the determination of the merits of such Petition, or after any Order of the House for discharging the order of reference of such Petition to the General Committee of Elections, or after the withdrawal of any Petition, as hereinbefore provided,—the Speaker shall make an order that the same be taxed, and shall proceed to examine and tax such costs and expenses, and shall report the amount thereof, together with the name of the party liable to pay the same, and the name of the party entitled to receive the same, to the House,—and shall also, upon application made to him, deliver to the party a certificate signed by him, expressing the amount of the costs and expenses allowed in such Report, with the name of the party liable to pay the same, and the name of the party entitled to receive the same, and such Certificate so signed by the Speaker shall be conclusive evidence for all purposes whatever, as well of the amount of the demand as of the title of the party therein named to recover the same from the party therein stated to be liable to the payment thereof; and the party claiming under the same shall, upon payment thereof, give a receipt at the

foot of such certificate, which shall be a sufficient discharge for the same.*

141. The Speaker may examine upon oath any party claiming any such costs or expenses, and any witnesses tendered to him for examination, and may receive affidavits, sworn before himself, or before any Justice of the Peace, relative to such costs and expenses.

142. The party entitled to such taxed costs and expenses, or his or her personal representatives, may demand the whole amount thereof so certified as above, from any one or more of the persons liable to the payment thereof, and in case of non-payment thereof on demand, may recover the same by action of debt in any of Her Majesty's Courts which would have jurisdiction over the same, were it an ordinary debt of a similar amount,—in which action it shall be sufficient for the Plaintiff to declare that the Defendant is indebted to him in the sum mentioned in the said certificate,—and the said Plaintiff shall, upon filing the said declaration, together with the said certificate and affidavit of such demand as aforesaid, be at liberty to sign judgment as for want of a plea by *nil dicit* or otherwise, according to the course of the Court in which the action shall be pending, or to have judgment entered or rendered in his favor according to the same, and take out execution for the said sum so mentioned in the said certificate, together with the costs of the said action according to due course of law.

2. But the validity of such certificate (the hand-

* Suppose a dissolution to take place within three months after termination of a case, and there be no Speaker.

writing of the Speaker thereunto being duly verified,) shall not be called in question in any Court.

3. And the party so impleaded may, if he thinks fit, put in any defence that he may have to such action, according to law and the practice of such Court.

143. In every case it shall be lawful for any person from whom the amount of such cost and expenses has been so recovered, to recover in like manner from the other persons, or any of them (if such there be) who are liable to the payment of the same costs and expenses, a proportionate share thereof according to the number of persons so liable, and according to the extent of the liability of each person.

144. If any person having subscribed an Election Petition under this Act, or any Sitting Member, or any Petitioner admitted to defend such Petition instead of such Sitting Member, neglects or refuses for the space of seven days after demand to pay to any witness summoned on his behalf before any Select Election Committee appointed under the provisions of this Act, or before any Judge or Commissioner for taking evidence under this Act, the sum so certified as aforesaid by the Speaker under the authority of this Act to be due to such witness,—or if such Petitioner or other party neglects or refuses for the space of six months after demand, to pay to any party opponent to him upon the trial of such Petition the sum so certified by the Speaker as aforesaid to be due to such party for his costs and expenses,—and if such neglect or refusal is, within one year after the granting of such certificate, proved

to the Speaker's satisfaction by Affidavit sworn before the said Speaker, or before a Justice of the Peace,—in every such case every person who has entered into a Recognizance on behalf of such Petitioner or other party, relating to such Petition under the provisions of this Act, shall be held to have made default in his said Recognizance, and the Speaker of the House to which such Petition related, shall thereupon certify such Recognizance into the Superior Court for Lower Canada, if such Recognizance has been taken in Lower Canada, or into the Court of Queen's Bench or Common Pleas for Upper Canada, if such Recognizance has been taken in Upper Canada, and shall also certify that such person has made default therein.

2. Such certificate shall be conclusive evidence of the validity of such Recognizance and of such default, and the Recognizance, being so certified, shall be delivered by the Clerk of the House, or some person deputed by him for that purpose, into the hands of the Chief Justice, or one of the Judges of the Court into which the same shall be so certified by the said Speaker, or into the hands of some officer of such Court appointed by such Court to receive the same, or shall be transmitted by such Clerk through the Post in manner hereinafter mentioned, to the Chief Justice or other Judge of such Court as the case requires,—and in every such case such delivery or transmission of such Recognizance shall have the same effect as if the same were estreated or otherwise proceeded upon for the like purpose from or in a Court of Law, according to the Laws of that section of the

Province in which such Recognizance was so taken as aforesaid, and the course of the Court to which the same has been so transmitted as aforesaid; and the validity of such certificate (the handwriting of the Speaker thereunto being duly verified), shall not be called in question, in any such Court upon the ground of any matter which had arisen anterior to the date of such certificate.

145. For the purpose of transmitting any such Recognizance through the Post as aforesaid, the Clerk of the House, or some other person appointed by the Speaker for that purpose, shall carry such Recognizance under a cover directed to the Chief Justice, or one of the Judges of the Court into which the same is so certified as aforesaid, to the General Post Office of the place where such Recognizance then is with the other Records of the said House, and there deliver the same to the Postmaster or Deputy Postmaster of such place for the time being, or to the person discharging the duties of such Postmaster or Deputy Postmaster therein for the time being, who, on receipt thereof, shall give an acknowledgment in writing of such receipt to the person from whom the same is received, and shall keep a duplicate of such acknowledgment signed by the parties respectively to whom the same is so delivered.

2. The said Postmaster or Deputy Postmaster, or person performing the duties of such Postmaster or Deputy Postmaster, shall despatch every such Recognizance by the first Post or Mail after the receipt thereof, to the person to whom the same is directed, accompanied with

proper directions to the Postmaster or Deputy Postmaster of the town or place to which the same is directed, or person performing the duties of such Postmaster or Deputy Postmaster at such place for the time being, requiring him forthwith to carry such Recognizance, and to deliver the same to the person to whom the same is directed, who or some officer appointed by the Court for that purpose shall give such Postmaster or Deputy Postmaster, or person performing the duties of such Postmaster or Deputy Postmaster, a memorandum in writing under his hand, acknowledging the receipt of every such Recognizance, and setting forth the day and hour the same was delivered by him as aforesaid, which memorandum shall also be signed by the person receiving the same, and be by him transmitted by the first or second Post afterwards to the said Postmaster or Deputy Postmaster of the office from which the same was so transmitted to him as aforesaid.

146. When it becomes necessary or desirable to proceed upon any such Recognizance in the other section of the Province in which the same was not taken, it shall be lawful, upon filing an exemplification of such Recognizance under the Seal of the Court into which the same has been so returned, as provided by the one hundred and forty-fourth section of this Act, to proceed thereon as if such Recognizance had been taken in such other section of the Province and duly returned into the Court in which such exemplification thereof is so filed as aforesaid.

147. If the costs and expenses intended to be secured by any Recognizance instead of which

any moneys shall have been deposited in the hands of the Chief Clerk of the proper House of the Provincial Parliament, are not paid pursuant to the provisions of this Act, all such moneys, or so much thereof as may be necessary for that purpose, shall be applied in such order of payment as the Speaker of the said House for the time being in his discretion thinks fit, in satisfaction of such costs and expenses, or so much thereof as can be thereby satisfied, and thereafter the residue of such moneys, if any, shall be paid to the party by whom or on whose account the same were so deposited as aforesaid.

148. All moneys received or recovered by reason or in pursuance of the estreating or otherwise proceeding upon any such Recognizance as aforesaid, shall, after deducting all expenses incurred in respect thereof, be forthwith paid by the proper officer for that purpose into the hands of the Chief Clerk of the proper House of the Provincial Parliament to the credit of the Speaker of the said House by his name of office, and shall be applied in manner hereinafter mentioned, in satisfaction, so far as the same will extend, of the costs and expenses intended to be secured by such Recognizance.

149. Any person who has entered into any such Recognizance may, before the same has been estreated or otherwise proceeded upon as aforesaid, pay the sum of money for which he is bound by such Recognizance into the hands of the Chief Clerk of the proper House of the Provincial Parliament, to the credit of the said Speaker's account, and the Speaker, upon pro-

duction to him of a receipt or certificate from the said Chief Clerk for the sum so paid in, shall endorse on the Recognizance in respect of which such money has been so paid in, a memorandum of such payment, and thereupon such Recognizance shall, so far as regards the person by or on whose behalf such money has been so paid, be deemed to be vacated, and shall not afterwards be estreated or otherwise proceeded upon as aforesaid, as against him, but such Recognizance shall continue to be in force as regards any other person who has entered into the same.

150. In every case in which any money is paid into the hands of such Chief Clerk, to the credit of the Speaker's account as hereinbefore provided, a receipt or certificate of the amount so paid in shall be delivered to the Speaker by the person paying in the same, and such money shall in the first place, and in such order of payment as the Speaker in his discretion thinks fit, be applied in satisfaction of all the costs and expenses for securing payment of which such Recognizance was given, or so much thereof as can be thereby satisfied, and thereafter the residue (if any) shall be paid to the party by whom or on whose account the same was paid in.

10.—MISCELLANEOUS PROVISIONS.

151. If any Sheriff or other Returning Officer wilfully delays, neglects, or refuses duly to return any person who ought to be returned to serve in Parliament for any Electoral Division in this Province, such person may, in case it has

been determined, by a Select Committee appointed in the manner hereinbefore directed, that such person was entitled to have been returned, sue the Sheriff or other Officer having so wilfully delayed, neglected or refused duly to make such return at his Election, in any of Her Majesty's Superior Courts of Record of original jurisdiction for Lower or Upper Canada, and shall recover double the damages he has sustained by reason thereof, together with full costs of suit, provided such action be commenced within one year after the commission of the act on which it is grounded, or within six months after the conclusion of any proceedings in the proper House of the Provincial Parliament relating to such Election.

152. All pecuniary penalties in and by this Act imposed, may be recovered, with full costs of suit, by any person suing for the same by action of debt in any Court in this Province having jurisdiction to the amount of such penalties respectively; and it shall be sufficient for the Plaintiff to declare that the Defendant is indebted to him to the amount of the penalty sued for, by virtue of this Act.

153. Every indictment, information or action for any offence against this Act, or any forfeiture incurred under the same, shall be found, filed or commenced within one year after the commission of the fact on which such indictment, information or action is grounded, or within six months after the conclusion of the proceedings in the proper House of the Provincial Parliament, relating to the Election Petition on the trial of which such fact arose, and not afterwards.

154. All Mayors and Aldermen of Cities and all Mayors, Town Reeves and other Heads of any of the Municipal Corporations in this Province, and other the like persons, as well as all other persons having by Statute for the time being *ex-officio* Magisterial power in any part of this Province, shall, within the limits of their jurisdiction in that respect, be and be held to be Justices of the Peace within the meaning of this Act.

155. All questions as to the sufficiency or regularity of any proceeding had, taken or followed, by either House of the Provincial Parliament,—or by the Speaker, Clerk or other Officer thereof,—or by the Select Committee, appointed for the trial of any such Election Petition, or the Chairman, Clerk or other Officer thereof,—or by any Commissioner appointed to take evidence upon any such trial, or any Clerk, Bailiff or other Officer acting under such Commissioner,—or by any of the parties interested or concerned either in the prosecution or defence of such Election Petition, his Counsel or Agent in the conduct of the case of such party upon such Election Petition,—shall, so far as the same regards the trial and disposal of such Election Petition by such Select Committee, and the action of the House upon the Report of such Select Committee, be wholly judged of and determined by such Select Committee, and not by the House;—And no order or resolution of the House respecting the sufficiency or regularity of any such proceeding shall in anywise be binding upon such Select Committee as far as regards the trial and disposal of such Election Petition.

156. The neglect or omission of any party

interested or concerned either in the prosecution or defence of any such Election Petition, to observe strictly any of the directions contained in this Act respecting any proceedings or course of proceeding to be by him had or followed in the prosecution or defence of any such Election Petition,—except only where by the use of negative as well as affirmative terms, the intention of the Legislature has been manifested that such proceeding or course of proceeding, and no other, as to time, place and circumstance, or any of them respectively, should be had or followed in such case,—shall not render such proceeding, or course of proceeding, or the subsequent proceedings of such Select Committee in the trial and disposal of such Election Petition, necessarily void or of none effect,—provided that such Select Committee thereupon come to a resolution to be reported to the House, with the reasons of such Committee for coming to the same, that such neglect or omission hath not so affected the position of the parties to such Election Petition, or any of them, or the proceedings before them in relation to the same, as to interfere with or prevent the disposal by such Select Committee of any of the substantial questions raised upon such Election Petition, upon the true merits thereof.

157. Whenever any such neglect or omission as is referred to in the next preceding section does, in the opinion of such Select Committee, affect the position of the parties to such Election Petition, or any of them, or the proceedings before them in relation to the same, so as to interfere with or prevent the disposal by such Com-

mittee of any of the substantial questions raised upon such Election Petition, upon the true merits thereof,—the said Committee shall, by a resolution to be adopted by them and reported to the House, with the reasons therefor as aforesaid, declare the same,—and thereupon the party in default shall not be thereafter received further to proceed with his case, so far as any such question is concerned, but shall be dealt with in every respect as if he had then voluntarily ceased further to prosecute his case as respects the same.

2. Except only, firstly, that it shall remain open to such party to contend, if he thinks fit, that his case as to any such question had been then already sufficiently established in respect of the same or any part thereof, to entitle him to the decision of the said Select Committee in his favor upon the same.

3. And except, also, secondly, that such resolution shall not preclude such Select Committee from taking into consideration such neglect or omission, and all the circumstances attending the same, in coming to a conclusion as to whether the prosecution or defence of such party was or was not frivolous or vexatious, and reporting the same to the said House as aforesaid.

158. In every such case of neglect or omission as is referred to in the next preceding section but one, the default of the party guilty of such neglect or omission may, in their discretion, be dealt with by the Select Committee for the trial of such Election Petition,—either by the imposition upon such party, for the benefit of the party or parties opponent, of such conditions in

respect of the future conduct of his case or any part thereof,—or by granting time or other indulgence to such party or parties opponent for facilitating the conduct of their case or cases, or some part or parts thereof,—or by the imposition of costs to be paid by the party in default to such party or parties opponent as aforesaid, or any or either of them, and by making the payment of such costs a condition precedent to permitting such party in default to proceed with his case or some part or parts thereof,—or in such other manner as to such Select Committee under all the circumstances thereof appears just in that behalf.

159. The non-observance by either House of the Provincial Parliament, or the Speaker, Clerk, or other Officer thereof,—or by the Select Committee appointed for the trial of any such Election Petition, or the Chairman, Clerk, or other Officer thereof,—or by any Commissioner appointed to take evidence upon any such trial, or acting under this Act,—or any Clerk, Bailiff, or other Officer acting under such Commissioner,—of any of the directions contained in this Act respecting any proceeding or course of proceeding to be had or taken by them respectively, in the disposal of such Election Petition, or the trial thereof,—except only where, by the use of negative as well as affirmative terms, the intention of the Legislature has been manifested, that only such proceeding or course of proceeding, and no other, as to time, place and circumstance, or any of them respectively, should be had or taken in such case,—shall not render such proceeding, or course of proceeding, or the sub-

sequent proceedings of such Select Committee in the trial and disposal of such Election Petition, necessarily void or of none effect, provided that such Select Committee thereupon come to a resolution to be reported to the House with the reasons of such Committee for coming to the same,—that such neglect or omission hath not so affected the position of the parties to such Election Petition, or any of them, or the proceedings before them in relation to the same, as to interfere with or prevent the disposal by such Committee of any substantial question raised upon such Election Petition upon the true merits thereof.

2. But in every such case where necessary, such non-observance shall be supplied, in the case of non-observance by the said House, or the Speaker, Clerk, or other Officer thereof, under the direction of the House itself,—and in the case of such non-observance by the said Select Committee, or the Chairman, Clerk, or other Officer thereof, or by any such Commissioner as aforesaid, or any Clerk, Bailiff or other Officer acting under him as aforesaid, then under the direction of such Select Committee,—so as to occasion to the parties prosecuting and defending such Election Petition as little inconvenience, delay or expense as may be.

160. In all such cases of non-observance as are referred to in the next preceding section, where such non-observance has taken place on the part of the Speaker, Clerk or other Officer of either House of the Provincial Parliament, or on that of the Select Committee appointed for the

trial of any such Election Petition, or the Chairman, Clerk or other Officer thereof, or on that of any Commissioner appointed to take evidence upon any such trial, or acting under this Act, or any Clerk, Bailiff or other Officer acting under such Commissioner,—the persons guilty of such non-observance, may, by order of the said House in its discretion, be taken into the custody of the Sergeant-at-Arms attending such House, or his Deputy, for such non-observance, and be otherwise dealt with, at the like discretion of the said House, by censure or imprisonment, or by requiring them to make such satisfaction to the parties so interested or concerned in such Election Petition, or any of them, as to the said House may seem just, and by commitment of such persons, or any of them, in execution, for such period as the said House deems proper, or until such satisfaction is made to such parties or any of them, according to the judgment come to by the said House in that behalf, or by all or any of such means as in the discretion of the said House seem just:

2. Provided nevertheless, that every such proceeding by the said House shall in all cases, except in that of the Speaker of the said House, or in that of the said Select Committee or the Chairman or other Member thereof, be had and taken by the said House only upon a special report of such non-observance made by such Select Committee to the said House, and not otherwise.

11.—CASES FOR WHICH NO SPECIAL PROVISION IS MADE.

161. If with regard to any Election Petition, any case arises as to which no express provision is made by this Act, and in which, if it were treated as a case wholly without the purview of this Act, there would be a manifest failure of justice without any error, fault or neglect of any of the parties interested,—then such case shall not be held to be omitted, but it shall be lawful for the House, Speaker, General Election Committee, Chairmen's Panel, Select Committee, or Commissioner, as the case may be, to adopt such proceeding as they or he deem most consonant to the express provisions, spirit and intent of this Act, and when such proceeding is not taken by the House, to report the same to the House, for the information thereof only,—and such proceeding shall not be held illegal, unless it be inconsistent with some express provision of this Act, or some other existing provision of law.

162. The expression "Electoral Division," in this Act, means any County or other place or portion of this Province, entitled to return a Member to either House of the Provincial Parliament, unless the context shews that it applies only to an Electoral Division for the Legislative Council.

SCHEDULE A (1).

(Referred to in the Act, section 10.)

RECOGNIZANCE ON THE PART OF THE PETITIONER.

CANADA, }
to wit: }

BE IT REMEMBERED, that on the
day of _____ in the year of our Lord,
one thousand eight hundred and _____,
Before me, the Honorable A. M., Speaker of the
Honorable the Legislative Council (or Legislative
Assembly) of the Province of Canada, (or before
me, N. M., Esquire, one of Her Majesty's Justices
of the Peace for, &c.) or Mayor, Alderman, or
Town Reeve of _____, in _____ Canada,
(as the case may be) at _____, in _____,
came A. B., of, &c., Esquire, (as the case may be)
C. D., of, &c., E. F., &c., and G. H., of, &c.,
and acknowledged himself (or severally acknow-
ledged themselves) to owe to our Sovereign Lady
the Queen, the sum of eight hundred dollars, (or
the following sums) that is to say: the said A. B.
the sum of _____, the said C. D. the sum
of _____, the said E. F. the sum
of _____, and the said G. H. the sum
of _____, to be levied on his (or their
respective) goods and chattels, lands and tene-
ments, to the use of our said Sovereign Lady the
Queen, her Heirs and Successors.

The condition of this Recognizance is such,
that if (*here insert the names of the Petitioner,
and if more than one, add or any of them*) shall
well and truly pay all sums of money costs and

expenses which shall become payable by him (*or* them), in respect of the Election Petition signed by him (*or* them), relating to the (*here insert the name of the Electoral Division*) which shall become payable by the said Petitioner (*or* Petitioners) under the *Act respecting Controverted Parliamentary Elections*, to any witnesses summoned in his (*or* their) behalf, or to the Sitting Member (*or* Members) 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, or to any person who, upon the application of such Petitioner (*or* Petitioners) for the issue of a Commission to take evidence on the trial of the said Election Petition, shall be appointed Commissioner for that purpose, or to any person who may be appointed Commissioner in the place of such first-mentioned Commissioner under the provisions of the said Act, or to any Clerk, Bailiff or other Officer appointed by any of such Commissioners under the authority of the same, then this Recognizance to be void, otherwise to be of full force and effect.

Taken and acknowledged before
me at the day and place afore-
said, in pursuance of the *Act*
respecting Controverted Par-
liamentary Elections.

A. B.
C. D.
E. F.
G. H.

A. N., Speaker,

or

N. M.,

Justice of the Peace, (Mayor, &c., *as the case may be*) for, &c.

SCHEDULE A (2).

(Referred to in the Act, section 11.)

RECOGNIZANCE ON THE PART OF THE SITTING MEMBER.

CANADA, }
to wit: }

Be it remembered, that on the day of _____ in the year of our Lord, one thousand eight hundred and _____, Before me, the Honorable A. N., Speaker of the Honorable the Legislative Council (or Legislative Assembly) of the Province of Canada, (or before me, N. M., Esquire, one of Her Majesty's Justices of the Peace for, &c.) or Mayor, Alderman or Town Reeve of _____, in Canada, (as the case may be) at _____, in _____, came A. B., of, &c., Esquire, (or as the case may be) C. D., of, &c., E. F., of, &c., and G. H., of, &c., and acknowledged himself (or severally acknowledged themselves) to owe to our Sovereign Lady the Queen the sum of four hundred dollars (or the following sums, that is to say: the said A. B. the sum of _____ dollars, the said C. D., the sum of _____ dollars, the said E. F., the sum of _____ dollars, and the said G. H., the sum of _____ dollars) to be levied on his (or their respective) goods and chattels, lands and tenements, to the use of our said Sovereign Lady the Queen, her Heirs and Successors.

The condition of this Recognizance is such, that if (here insert the name of the Sitting Member or

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G. H.

ase may

Members,) the Sitting Member (*or Members*) for the County, &c., (*insert the designation of the Electoral Division*) of _____, in Upper (*or Lower*) Canada, in the Provincial Parliament, shall well and truly pay all sums of money, costs and expenses which shall become payable by him (*or them*) to any person who upon the application of such Sitting Member (*or Members*) for the issuing of a Commission to take evidence on the trial of an Election Petition, presented (*or to be presented*) to the Legislative Council (*or to the Legislative Assembly*) under the *Act respecting Controverted Parliamentary Elections*, relating to the said County (Riding, &c., *as the case may be,*) shall be appointed Commissioner for that purpose, or to any person who may be appointed Commissioner, in the place of such first-mentioned Commissioner under the provisions of the said Act, or or to any Clerk, Bailiff or other Officer appointed by any of such Commissioners under the authority of the same, then this Recognizance to be void, otherwise to be of full force and effect.

Taken and acknowledged before
me at the day and place afore-
said, in pursuance of the "Act
respecting Controverted Par-
liamentary Elections."

A. B.
C. D.
E. F.
G. H.

A. N., Speaker,

or

N. M.,

Justice of the Peace, (Mayor, &c., *as the case may be,*) for, &c.

SCHEDULE A (3).

(Referred to in the Act, section 29.)

RECOGNIZANCE ON THE PART OF PETITIONER FOR
PERMISSION TO DEFEND.

CANADA, }
to wit: }

Be it remembered, that on the _____ day
of _____, in the year of our Lord, one
thousand eight hundred and _____, before
me the Honorable A. N., Speaker of the Legis-
lative Council (or Legislative Assembly) of the
Province of Canada (or before me, N. M., Esquire,
one of Her Majesty's Justices of the Peace for,
&c.) or Mayor, Alderman or Town Reeve of
_____, in _____ Canada, (as the case may be,)
at _____ in _____ came A. B., of, &c., Esquire,
(as the case may be) C. D., of, &c., E. F., of,
&c., and G. H., of, &c., and acknowledged him-
self (or severally acknowledged themselves) to
owe to our Sovereign Lady the Queen, the sum
of four hundred dollars (or the following sums,
that is to say: the said A. B., the sum of
_____ dollars; the said C. D., the sum of
_____ dollars, the said E. F., the sum of _____ dollars,
and the said G. H., the sum of _____ dollars,)
to be levied on his (or their) goods and chattels,
lands and tenements, to the use of our said Sov-
ereign Lady the Queen, her Heirs and Successors,

The condition of this Recognizance is such, that
if (here insert the name of the Petitioner for per-

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mission to defend,) a Petitioner (or Petitioners) to the Legislative Council (or Legislative Assembly) of this Province, for permission to defend an Election Petition presented (or to be presented) to the said House, whereby the seat (or seats) of (*Here insert the name of the Sitting Member or Members*) the Sitting Member (or Members) for the County, (Riding, &c., *insert the designation of the Electoral Division,*) of _____ in Lower (or Upper) Canada, (*as the case may be*) is (or are) or may be affected, and which said Sitting Member (or Members) hath (or have) or is (or are) expected to decline defending such seat (or seats) shall well and truly pay all sums of money, costs and expenses, which shall become payable by him (or them) in respect of the Petition for permission to defend such Election Petition, which shall become payable by the said Petitioner (or Petitioners,) for permission to defend under the *Act respecting Controverted Parliamentary Elections*, to any Witness summoned on his (or their) behalf, or to the Petitioner (or Petitioners) in such Election Petition, or to any person who, upon the application of such Petitioner (or Petitioners) for permission to defend, for the issue of a Commission to take evidence on the trial of such Election Petition, shall be appointed Commissioner for that purpose, or to any person who may be appointed Commissioner in the place of such first-mentioned Commissioner, or to any Clerk, Bailiff or other Officer appointed by any of such Commissioners under the authority of the same, then this Recognizance to be void, otherwise to be of full force and effect.

Taken and acknowledged before }
 me at the day and place afore- }
 said, in pursuance of the "Act }
 respecting Controverted Par- }
 liamentary Elections." }
 A. B.
 C. D.
 E. F.
 G. G.

A. N., Speaker,

or

N. M.,

Justice of the Peace, (Mayor, &c., as the case may
 be) for, &c.

SCHEDULE A (4).

(Applicable to any of the Recognizances, and re-
 ferred to in the Act, section 12.)

AFFIDAVIT OF SUFFICIENCY OF SURETIES.

CANADA, }
 to wit: }

A. B., of, &c., (as in the Recognizance) in the
 within (or annexed) Recognizance mentioned,
 maketh oath (or affirmeth) and saith that he, this
 Deponent (or affirmant), is seized of real estate,
 (or is possessed of personal estate), [or is seized
 and possessed of real and personal estate respec-
 tively, as the case may be] over and above what
 will satisfy and discharge all his just debts to the
 amount of
 (double the amount for which he is bound in the
 Recognizance).

A. B.

Sworn by the said Deponent (*or*
 affirmed by the said Affirmant)
 at the time and place of his
 entering into the said Recog-
 nizance.

Before me, A. N., Speaker,

or

N. M.,

Justice of the Peace, (Mayor, &c., *as the case
 may be*) for, &c.

SCHEDULE B (1).

(Referred to in the Act, section 99.)

COMMISSION FOR THE EXAMINATION OF WITNESSES.

CANADA, }
 to wit: }

To His Honor, G. H., one of Her Majesty's
 County Judges in Upper Canada (*or as the
 case may be*), and all others whom it doth or
 may in any way concern :

I, J. I., of, &c., Esquire, Member of the
 Legislative Council (*or Legislative Assembly*) of
 the Province of Canada, and Chairman of the
 Select Committee appointed to try the merits of
 the Election Petition of C. D. and E. F., &c.,
(setting out the names of the Petitioners) against
 the election (*or return, or election and return*) of
 J. L., Esquire, the Sitting Member (*or as the case
 may be*) for the County (Riding, &c., *insert the*

designation of the Electoral Division) of
 in Canada in the said Legislative Council
 (or Legislative Assembly) send—Greeting :

Whereas upon the application of the said
 Petitioners, (or of C. D., one of the said Peti-
 tioners, or of the said Sitting Member, or of K.
 L., a Petitioner (or Petitioners) who has (or have)
 been admitted to defend the said Election Peti-
 tion, (*or as the case may be,*) to the said Select
 Committee, (*or otherwise, as the case may be,*) it
 has been ordered by the said Committee, in pur-
 suance of the powers vested in them by the *Act*
respecting Controverted Parliamentary Elections,
 that a Commission should issue for the examina-
 tion of witnesses on the trial of such Election
 Petition, and that you the said G. H. shall be
 appointed such Commissioner :—These are there-
 fore, in compliance with the said orders and in
 pursuance of the provisions of the said Act, to
 nominate, constitute and appoint you the said G.
 H. to be such Commissioner, to examine and
 inquire into all matters and things to you for
 that purpose referred or to be referred by the
 said Election Committee, or any other Election
 Committee that may be appointed in their place
 for the trial of such Election Petition according
 to the provisions of the said Act, with all such
 powers and authority as by law belong to the
 office of such Commissioner by virtue of the said
 Act, or otherwise howsoever ;—And you are
 hereby expressly commanded with all necessary
 speed to repair to the said County (Riding, &c.,
as the case may be) of _____, and there at
 such place therein as you shall for that purpose

the case

.)

WITNESSES.

His Majesty's
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appoint, on _____, the _____ day of _____ next, to proceed with the examination and enquiry aforesaid:—And all and whatsoever you do or cause to be done in the premises you are to return to the Honorable the Speaker of the said Legislative Council (*or* Legislative Assembly) for the time being, in the manner and within the time by the said Act for that purpose prescribed; and this you are in no wise to omit under a penalty of four hundred dollars, and such other penalties as you may by law incur by reason of any such omission or neglect.

Given under my hand and seal at _____, in _____ Canada, this _____ day of _____, in the year of our Lord one thousand eight hundred _____, and of Her Majesty's Reign the _____

J. T. (L.S.)

SCHEDULE B (2).

(Referred to in the Act, section 100.)

SIMILAR COMMISSION WHERE A NEW COMMISSIONER IS APPOINTED IN CONSEQUENCE OF THE ORIGINAL COMMISSIONER NOT BEING ABLE TO ACT.

CANADA, }
to wit: }

To His Honor G. H., one of Her Majesty's County Judges in Upper Canada (*or as the case may be,*) and to all others whom it doth or may in any wise concern :

I, J. I., of, &c., Esquire, a Member of the Legislative Council (or Legislative Assembly) of the Province of Canada, and Chairman of the Select Committee appointed to try the merits of the Election Petition of C. D. and E. F., &c., (*setting out the names of the Petitioners*) against the election (or return, or election and return) of J. L., Esquire, the Sitting Member, (*or as the case may be*) for the County (Riding, &c., *insert the designation of the Electoral Division*) of _____, in Canada, in the said Legislative Council (or Legislative Assembly) send—Greeting :

Whereas upon the application of the said Petitioners, (*or of C. D., one of the said Petitioners, or of the said Sitting Member, or of K. L., a Petitioner or Petitioners, who has or have been admitted to defend the said Election Petition, (or as the case may be) to the Select Election Committee (or otherwise, as the case may be,)*—it was ordered by the said Committee in pursuance of the powers vested in them by the “Act respecting Controverted Parliamentary Elections,” that a Commission should issue for the examination of Witnesses on the trial of such Election Petition, and that G. H. should be appointed such Commissioner ; and thereupon, by Warrant under my hand and seal, pursuant to the said Act (*or under the hand and seal of L. M., the then Chairman of the Select Election Committee to try the merits of such Election Petition, (as the case may be,)* one G. H. was appointed such Commissioner to examine and enquire into all matters and things to him for that purpose referred or to be referred by the said Election Committee, or any

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other Election Committee that might be appointed in their place, for the trial of such Election Petition, according to the provisions of the said Act;—And whereas in consequence of the death of the said (G. H., or of the incapacity of the said G. H.) from illness, (*or as the case may be*) it has become impossible that the said Commission should be executed (*or that the execution of the said Commission should be completed*) according to the exigency thereof, and it hath therefore been further ordered by the said Select Election Committee, that a new Commissioner should be appointed in the place of the said G. H., and that you the said G. B. should be appointed such last-mentioned Commissioner:—These are, therefore, in compliance with the said Orders, and in pursuance of the provisions of the said Act, to supersede the said Commission, and to nominate, constitute and appoint you the said G. B. to be such Commissioner as last aforesaid, for the purposes aforesaid, with all such powers and authority as by law belong the office of such Commissioner, by virtue of the said Act, or otherwise howsoever; and you are hereby expressly commanded, with all necessary speed, to repair to the County (Riding, &c., *as before*) of _____, and there at such place therein as you shall for that purpose appoint, on _____, the _____ day of _____ next, to proceed with the examination and enquiry aforesaid;—And all and whatsoever you shall do, or cause to be done, in the premises, you are to return to the Honorable the Speaker of the said Legislative Council (*or Legislative Assembly*) for the time being, in

the manner and within the time by the said Act for that purpose prescribed ; And this you are in no wise to omit under a penalty of four hundred dollars and such other penalties as you may by law incur by reason of any such omission or neglect.

Given under my hand and seal, at _____, in
 _____ Canada, this _____ day of
 _____, one thousand eight hundred,
 _____, and of Her Majesty's Reign
 the _____ I. J. (L. S.)

SCHEDULE B (3.)

(Referred to in the Act, section 113).

COMMISSIONER'S OATH.

I, A. B., do swear that I will, without favor, affection or malice, and according to the best of my skill and knowledge, well and truly try and examine all such matters and things as shall be brought before me, by virtue of a Warrant, dated the _____ day of _____, one thousand eight hundred and _____, under the hand and seal of the Chairman of the Select Committee of the Legislative Council (or Legislative Assembly) of this Province, on a Petition from (*here state the name or names of the Petitioner or Petitioners, and of the place to which the Petition relates*), and that I will in all things well and truly perform the duty of a Commissioner ap-

pointed to try the said matters and things, according to the rules, regulations and directions contained in the "Act respecting Controverted Parliamentary Elections." So help me God.

SCHEDULE B (4).

(Referred to in the Act, section 108.)

CLERK'S OATH.

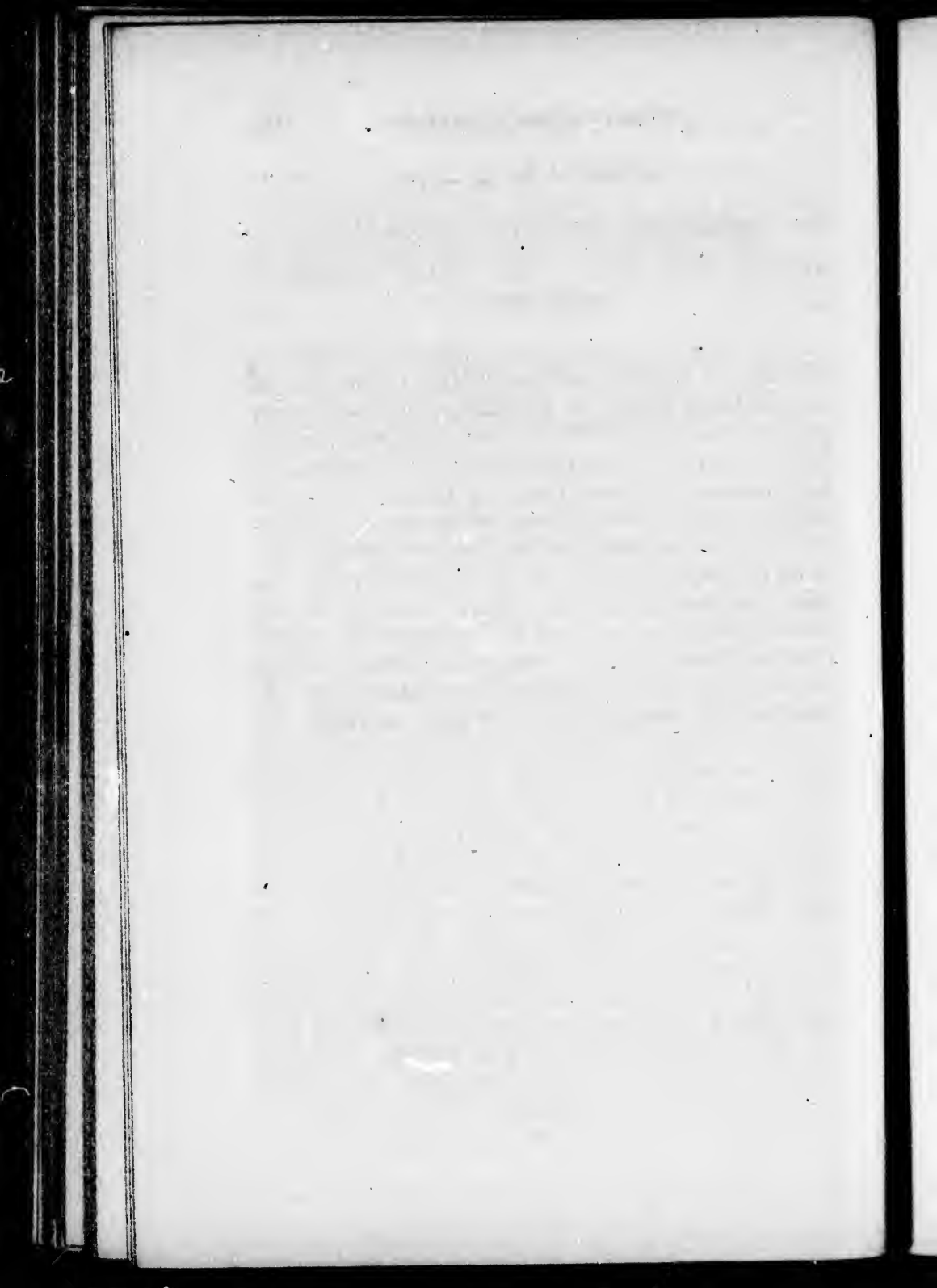
I, A, B., do swear that I will, without favor, affection or malice, and according to the best of my skill and knowledge, well and truly take down in writing the Minutes of all the proceedings had before you, or any person who may be appointed Commissioner in your place, as Commissioner for taking evidence on the trial of the pending Election Petition, relating to the County (Riding, &c., *as the case may be*) of, &c., in as accurate a manner and as nearly as may be in the exact words in which such evidence shall be delivered, and that I will in all things well and truly perform the duty of Clerk to you, and to any person who may be appointed Commissioner in your place as such Commissioner, according to the rules, regulations and directions contained in the "Act respecting Controverted Parliamentary Elections," and such lawful directions as I shall or may receive from you, or such other Commissioner, under the authority thereof. So help me God.

SCHEDULE B (5).

(Referred to in the Act, section 108.)

OATH OF THE BAILIFF OR OTHER OFFICER OF
COMMISSION.

I, A. B., do swear that I will, without favor, affection or malice, and according to the best of my skill and power in all things, well and truly perform the duty of Bailiff, (*or as the case may be*) to you, and to any person who may be appointed Commissioner in your place, as Commissioner for taking evidence on the trial of the pending Election Petition relating to the County (Riding, &c., *or as the case may be*) of, &c., according to the rules, regulations and directions contained in the *Act respecting Controverted Parliamentary Elections*, and such lawful directions as I shall or may receive from you or such other Commissioner under the authority thereof. So help me God.



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