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No. 22.

3d Session, 5th Parliament, 20 Victoria, 1857.

BILL.

An Act to improve the mode of obtaining
Evidence in cases of controverted Elections.

Received and read, first time, Tuesday, 3rd
March, 1857.

Second Reading, Monday, 9th March, 1857.

MR. MACKENZIE.

TORONTO :

PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to improve the mode of obtaining Evidence in cases of controverted Elections.

WHEREAS it is highly desirable to shorten the time now uselessly consumed in obtaining evidence in case of controverted elections: Therefore Her Majesty, &c., enacts as follows: Preamble.

I. From and after the passing of this Act, whenever any person or persons shall pretend to contest the election of any person returned as being elected a member of the Legislative Assembly, upon any other ground than matters appearing upon the face of the Return, or of the Poll Books, or other documents of which the original or certified copies are by law to be transmitted to the Clerk of the Crown in Chancery, or kept by the Returning Officer, he shall, within days after the result of such election shall have been determined by the Returning Officer, give notice in writing to the person whose election he designs to contest, of his intention to contest the same, and in such notice shall specify particularly the facts upon which he relies in the contest; and no Election Petition alleging facts of which such notice is required to be given, shall be received by the Legislative Assembly, unless with the recognizance required in such case, there shall be fyled in office of the Clerk of the Legislative Assembly a copy of such notice and a certificate of the due service thereof, on the oath or oath of office of the person who made such service, nor unless the Speaker shall certify that such copy and certificate have been so fyled, nor shall such Select Committee take into consideration any facts touching which such notice is required to be given unless they are stated in such notice.

Whoever intends to contest the Election of a Member on grounds not appearing on the face of the Return, &c., must give notice to such Member within days &c.

II. The member upon whom the notice mentioned in the first section of this Act shall be served, shall, within days after the service thereof, answer such notice, admitting or denying the facts alleged therein respectively, and stating specially any other facts not appearing upon the face of the Return or of the Poll Books or such documents as aforesaid, upon which he rests the validity of his election, and shall serve a copy of his answer upon the contestant; nor shall such member be permitted by the Select Committee to be appointed to try such contestation, to give evidence of any such facts as aforesaid other than those he shall have alleged in his said answer; and if he serve no answer within the time hereinbefore mentioned, he shall not be permitted by the said Committee to prove any such facts; and his having served such answer shall be proved to the Committee by a copy thereof and certificate of service produced to them.

Member to answer such notice specially within days.

III. Such service as aforesaid shall be made by delivering a copy of the said notice or answer to the party to be served in person, or by leaving the same at his residence with some grown up and literate person of his family, and may be made by any literate person, who shall swear before some Justice of the Peace, that the same was duly made, or by any sworn Bailiff of one of the Superior Courts of Law who shall certify the same on his oath of

Service, how made: notice by more than one contestant must contain election of domicile.

If there be more than one contestant.

office : And if there be more than one contestant joining in the notice to the member returned, then such notice shall state some place at which the answer of the member may be validly served on all the contestants by leaving one copy only of such answer at such place for all of them ; and if the notice contain no such statement it shall be void and deemed not to have been given. 5

Application to a County or Circuit Judge to take evidence on facts alleged in notice and answer.

IV. When any such contestant shall be desirous of obtaining testimony respecting the facts alleged in such notice or answer, it shall be lawful for him to make application to any County or Circuit Judge, residing or having jurisdiction within the Electoral Division in which such controverted election was held ; but such application on the part of the contestant shall not be received by any such Judge as aforesaid, unless it be made within 10 days of the time when the answer of the returned member shall have been served on such contestant, or within days from the expiration of the time allowed for serving such answer, if none be served within the 15 said time, nor unless at the time of such application such contestant shall produce and file with such Judge, a recognizance and the affidavit or affidavits of sufficiency on the part of the sureties, required by the Election Petitions Act of 1851, of persons presenting Election 20 Petitions ; and such Judge shall dismiss such application forthwith, if at any time while the examination is pending, it shall be proved to his satisfaction that the said sureties or any of them are or is insufficient, or that such recognizance is void for any matter of form or substance, and his powers shall extend to all evidence required to prove or disprove the sufficiency of 25 such recognizance ; but if the member returned does not allege and prove such insufficiency before such Judge, or if the recognizance be declared valid by the Judge, it shall not be subject to objection before the Speaker, but the Election Petition may be at once referred to a Select Committee as if the Speaker had declared the recognizance unobjectionable.

Objections to recognizance.

Copy of intended Petition to be filed with the recognizance and notice, at the time of application to the Judge.

V. With such recognizance as aforesaid, there shall also be delivered to 30 the Judge to whom such application as aforesaid shall be made, a copy of the Election Petition which such contestant shall intend to present to the Legislative Assembly in the case, and to this Petition the recognizance shall be held to refer and no other shall be received by the Legislative 35 Assembly in the case ; and unless such copy of the intended Petition be so filed the application shall not be deemed to have been validly made, and shall be void : and in the condition of such recognizance as aforesaid, the word "Commissioner" shall be understood to include and apply to the Judge to whom such application as aforesaid is made as well as to any Commis- 40 sioner appointed under the said Election Petitions Act ; and such recognizance shall avail and may be estreated or enforced accordingly, in default of payment by the contestant of any costs incurred by reason of such application as aforesaid : and such recognizance and copy of Petition as aforesaid shall, by the Judge to whom such application shall be made, be 45 forthwith transmitted by mail to the Chief Clerk of the Legislative Assembly, to be by him kept among the records of his office, and for the purposes of this Act and of the said Election Petitions Act, and being so transmitted, the recognizance shall be annexed to the Petition when presented and shall avail accordingly.

Copy of answer of Member to be also filed.

VI. When the said application is made there shall also be filed with the 50 Judge to whom it is made, the copy of the answer of the returned member served upon the contestant (if any such answer has been so served) and if such answer (if any) be not so filed, the application shall not be deemed to have been validly made, and shall be void.

VII. So soon as the said application shall have been validly made as aforesaid, the Judge so applied to shall be deemed, to all intents and purposes, a Commissioner for inquiring into, examining and taking evidence upon all the matters of fact mentioned in the notice of the said contestant, and the answer (if any) of the returned member, and shall take and cause to be taken by those whom he shall employ as Clerks or Bailiffs, the oath of office in the schedule to the said Election Petitions Act contained, varying the words thereof so as to meet the circumstances of the case; and the said Judge shall then have all the powers and rights (including remuneration for his services and the right of appointing a Deputy to act for him while engaged in consequence of such application) and shall perform all the duties and be subject to all the liabilities assigned by the said Election Petitions Act to persons appointed Commissioners to take evidence relative to any controverted election, saving only that his powers shall be limited to the questions of fact set forth in the notice of the contestant, and the answer (if any) of the returned member, and questions concerning the validity of the recognizance, if it be objected to: and the Select Committee may deal with such Judge as if he had been appointed Commissioner by them, and in case of his death or incapacity, from sickness or other unavoidable cause, to act at any time, may proceed as if he had been so appointed by them to take evidence as to the facts aforesaid.

Judge to whom the application is made to have the like powers and duties as if appointed Commissioner of a select Election Committee.

VIII. The evidence taken by any such Judge shall be transmitted by him, in the manner prescribed by the said Act, to the Clerk of the Legislative Assembly, to be by him laid before the Select Committee for trying the election in question, when such Committee shall be appointed, with whom it shall avail for the like purpose as if such Judge had been appointed by such Committee, Commissioner for taking such evidence.

Evidence to be transmitted &c., its effect.

IX. If at the time the Select Committee shall be appointed, the said evidence and proceedings shall not have been received by the Clerk, the Committee may proceed with any other matters incident to the contest, and not inconsistent with this Act, or if there be no such matter, shall adjourn until the said evidence and proceeding shall be received, and shall then be directed to re-assemble in the manner provided by the said Election Petitions Act in like cases.

Proceedings until the evidence is received.

X. Nothing in this Act shall prevent the presentation or reception of an Election Petition containing allegations of bribery or corruption, under the special provisions of the seventh section of the said Election Petitions Act, after the time limited for presenting Election Petitions in other cases shall have expired, or shall apply to any such Petition presented by virtue only of the said section, or shall prevent the application of the one hundred and sixtieth section of the said Election Petitions Act, in any case not provided for in this Act.

Act not to apply to petitions alleging bribery and presented solely under sect. 7 of Election Petitions Act.

XI. This Act shall be construed as part of the Election Petitions Act of 1851, and the said Act shall be construed as if the provisions of this Act were contained therein.

How this Act shall be construed.