

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Tuesday, the Twelfth day of December, 1820, in the First year of the Reign of our Sovereign Lord George the Fourth, by the Grace of God, of the United Kingdom of Great Britain and Ireland, King, Defender of the Faith &c. &c. and ended on the Third Day of March, in the Second Year of the Reign of our Sovereign Lord George the Fourth, being the First Session of the Twelfth General Assembly, convened in the said Province. From William Hill & W. B. Bliss, The Statutes at Large, passed in the General Assemblies held in His Majesty's Province of Nova Scotia: from the Year 1817, to the year 1826, inclusive (vol. 3). Halifax: John Howe & Son, 1827.

1 & 2 George IV – Chapter 17

An Act to regulate the Trials of Controverted Elections, or Returns of Members to serve in the House of Assembly of this Province.

Whereas the present mode of decision upon petitions complaining of undue elections, or returns of members to serve in the house of assembly of this province, frequently obstructs public business, occasions much expense, trouble and delay, to the parties, is defective for want of those sanctions and solemnities which are established by law, in other trials, and is attended with many other inconveniences, for remedy thereof:

I. Be it enacted by the Lieutenant-Governor, Council and Assembly, that, after the end of the present session of assembly, whenever a petition, complaining of an undue election or return of a member or members to serve in the house of assembly, shall be presented to the said house, a day and hour shall be appointed by the said house for taking the same into consideration, and notice in writing shall be forthwith given by the speaker, to the petitioner or petitioners, and the sitting member or members, or their respective agents, accompanied with an order to them to attend the house at the time appointed by themselves, their counsel or agents.

II. And be it further enacted, that at the time appointed for taking such petition into consideration, and previous to the reading the order of the day, for that purpose, the sergeant at arms shall be directed to go to the places adjacent, and require the immediate attendance of the members, on the business of the said house; and that after his return the house shall be counted, and if there be less than twenty-seven members present, the order for taking such petition into consideration, shall be immediately adjourned to a particular hour on the following day, (Sunday, Christmas Day and Good Friday, always excepted) and on the following day the house shall proceed in the same manner, and so from day to day till there be an attendance of twenty-seven members, at the reading of the order of the day, to take such petition in consideration.

III. And be it further enacted, that if after summoning the members, and counting the house, as aforesaid, twenty-seven members shall be found to be present, the petitioner or petitioners, their counsel or agents, and the counsel or agents of the sitting member or

members, shall be ordered to attend at the bar, and then the door of the house shall be locked, and no member shall be suffered to enter into, or depart from, the house, until the petitioner or petitioners, their counsel or agents, and the counsel or agent, for the sitting member or members, shall be directed to withdraw, as hereinafter is mentioned; and when the door shall be locked, as aforesaid, the order of the day shall be read, and the names of all the members of the house, written on distinct pieces of paper, being in as near as may be of equal size, and rolled up in the same manner, shall be equally divided and put into several boxes, to be placed on the table for that purpose; and shall then be shaken together; and then the clerk shall publicly draw out the said two boxes, alternately, the said pieces of paper, and deliver the same to the speaker, to be by him read to the house, and so shall continue to do, until fifteen names of the members then present be drawn. Provided always, that if the name of any member, who shall have given his vote at the election so complained of, as aforesaid, or against whose return a petition shall be then depending, shall be drawn, his name shall be set aside.

IV. And be it further enacted, that if any member shall offer, and verify under oath, any excuse, the substance of the allegations so verified upon oath 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 be taken thereon; and if the house shall resolve, that the member is unable to serve, or cannot, without great and manifest detriment, serve in such select committee, he shall be excused from such service.

V. And be it further enacted, that instead of the members so set aside and excused, the names of other members shall be drawn, who may in like manner be set aside and excused, and others drawn to supply their place, until the whole number of fifteen members, not liable to be set aside or excused, shall be complete, and the petitioners or their agents shall then name one, and the sitting members or their agents another, from among the members then present, whose names shall not have been drawn, to be added to those who shall have been so chosen by lot.

VI. And be it further enacted, that as soon as the said fifteen members shall have been so chosen by lot, and the two members to be added thereto, shall have been so nominated as aforesaid, the door of the house shall be opened, and the house may proceed upon any other business; and lists of the fifteen members so chosen by lot, shall be given to the petitioner or petitioners, his or their counsel or agents, and the sitting member or members, his or their counsel or agents, who shall immediately withdraw, together with the clerk or his assistant: and the said petitioners and sitting members, their counsel or agents, beginning on the part of the petitioners, shall alternately strike off one of the fifteen members, until the said number be reduced to seven, and the said clerk or his assistant, within one hour at farthest from the parties so withdrawing from the house, shall deliver into the house the names of the seven members then remaining, and the said seven members, together with the said two members nominated as aforesaid, shall be sworn at the table, well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence; and shall be a select committee, to try and

determine the merits of the return or election appointed by the house to be that day taken into consideration; and the house shall order the said select committee to meet at a certain time, to be fixed by the house, and the place of their meeting shall be some one of the committee-rooms of the said house, properly prepared for that purpose, which said select committee shall sit every day (Sunday, Christmas Day and Good Friday, excepted) and shall not adjourn for a longer period than twenty-four hours, without leave obtained from the said house, upon special cause assigned for such longer adjournment.

VII. And be it further enacted, that the said select committee shall, on their meeting, elect a chairman from among such of the members as shall have been chosen by lot, and if in the election of a chairman there be an equal number of voices, the member whose name was first drawn in the house shall have a casting voice, so likewise in case there should ever be occasion to elect a new chairman, on the death or necessary absence of the chairman first elected.

VIII. And be it further enacted, that the said select committee shall have power to send for persons, papers and records, and shall examine all the witnesses who come before them on oath, and shall try the merits of the return, or the election, or both, and shall determine by a majority of voices, of the said select committee, whether the petitioner or petitioners, or the sitting member or members, or either of them, be duly returned or elected, or whether the election be void: which determination shall be final between the parties, to all intents and purposes; and the house, on being informed thereof by the chairman of the said select committee, shall order the same to be entered on their journals, and give the necessary directions for confirming or altering the return, or for carrying the said determination into execution, as the case may require.

IX. And be it further enacted, that no member of the said select committee, shall be allowed to absent himself from the same, without leave obtained from the house; and that the chairman of the said select committee shall always report the name of every member thereof, who shall so absent himself without such leave as aforesaid, who shall, for such neglect of his duty, be punished or censured at the discretion of the house.

X. And be it further enacted, that in case the member or members of the said select committee shall, by death or otherwise, be unavoidably reduced to less than five, and shall so continue for the space of three days, the said select committee shall be dissolved, and another chosen in manner aforesaid.

XI. And be it further enacted, that if any person, summoned by the said select committee, shall disobey such summons; or if any witness before such select committee shall prevaricate, or shall otherwise misbehave, in giving or refusing to give evidence, the chairman of the said select committee, by their direction, may, at any time during the course of their proceedings, report the same to the house, for the inter-position of their authority or censure, as the case may require.

XII. And be it further enacted, that whenever the said select committee shall think it necessary to deliberate among themselves upon any question which shall arise in the course of the trial, or upon the determination thereof, or upon any resolution concerning the matter of any petition referred to them as aforesaid, as soon as the said select committee shall have heard the evidence and counsel on both sides relative thereunto, the room or place where they shall sit shall be cleared, if they shall think proper, while the members of the said select committee consider thereof, and all such questions as well as such determination, and all other resolutions, shall be by a majority of voices, and if the voices shall be equal the chairman shall have the casting vote.

XIII. And be it further enacted, that in any case when the decision of the said committee shall not be concurred in by five at least of the persons composing the same, it shall and may be lawful for the house, upon sufficient ground being laid for that purpose, to order a new trial to take place by a committee to be chosen as aforesaid.

XIV. And be it further enacted, that the oaths by this act directed to be taken in the house, shall be administered by the said clerk; and that the said oaths by this act directed to be taken before the said select committee, shall be administered by the chairman of the said committee; and that all persons who shall be guilty of wilful and corrupt perjury in any evidence which they shall give before the house, or the said select committee, in consequence of the oath which they shall have taken by the direction of this act, shall, on conviction thereof, incur and suffer the like pains and penalties to which any other person convicted of wilful and corrupt perjury is liable by the laws and statutes of this province.

XV. And be it further enacted, that every such committee, at the time they report to the house their final determination on the merits of the petition which they were sworn to try, shall also report to the house, whether such petition did or did not appear to them to be frivolous or vexatious; and that whenever any such committee shall report to the house with respect to any such petition that the same appeared to them to be frivolous or vexatious, the party or parties, if any, who shall have appeared before the committee in opposition to such petition, shall be entitled to recover from the person or persons, or any of them, who shall have signed such petition, the full costs and expenses which such party or parties shall have incurred in opposing the same; such costs and expenses to be ascertained in the manner hereinafter directed.

XVI. And be it further enacted, that the costs and expenses of opposing any such petition shall be ascertained in manner following, that is to say: that on application made to the speaker of the house, by the party or parties who shall have appeared before the committee in opposition to such petition, for ascertaining such costs and expenses, he shall direct the same to be taxed by two persons, of whom the clerk of the house shall always be one, and one of the masters in the court of chancery, in this province. And the persons to be authorised and directed to tax such costs and expenses shall, and they are hereby required to, examine the same, and to report the amount thereof to the speaker of the said house, who, if the said costs shall be approved of by the house, shall, on application made to him,

deliver to the party or parties a certificate, signed by himself, expressing the amount of the costs, and report the amount thereof, are hereby authorised to demand and receive for such taxation and report, such fees as shall, from time to time, be fixed by any resolution of the house.

XVII. And be it further enacted, that it shall and may be lawful for the party or parties, entitled to such costs and expenses, to demand the whole amount thereof, so certified as above, from any one or more of the persons respectively who are hereinbefore made liable to the payment thereof; and in case of non-payment thereof, to recover the same by action of debt, in the supreme court of this province, in which action it shall be sufficient for the plaintiff or plaintiffs to declare that the defendant or defendants are indebted to him or them, in the sum to which the costs and expenses ascertained in manner aforesaid shall amount, by virtue of this act. And the certificate of the speaker of the house of assembly, under his signature, of the amount of such costs and expenses, together with an examined copy of the entries on the journals of the house of the resolution or resolutions of the said select committee, shall be deemed full and sufficient evidence in support of such action of debt; and provided always, that the party or parties in whose favour judgment shall be given in any such action, shall recover his or their costs.