

Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1830. Fredericton, NB: John Simpson, Printer to the King's Most Excellent Majesty, 1830.

10 & 11 George IV – Chapter 37 (1828)

An Act to regulate the Trials or controverted Elections, or Returns of Members to serve in General Assembly. Passed 5th April, 1828.

Whereas the present mode of decision upon Petitions complaining of undue Elections or Returns of Members to serve in General Assembly, obstructs public business, occasions much expense, trouble and delay to the Parties, is defective, for the want of those Sanctions and Solemnities, which are established by law in other Trials. For remedy thereof—

I. Be it enacted by the Lieutenant Governor, Council and Assembly, That after the next General Election, whenever a Petition complaining of an undue Election or Return of a Member or Members to serve in General Assembly, shall be presented to the House of Assembly, a day and hour shall be appointed by the said House for taking the same into consideration, and notice thereof in writing shall be forthwith given by the Speaker to the Petitioners; and the sitting Member or their respective Agents, accompanied with an Order to them to attend the House, at the time appointed, by themselves, their Counsel or Agents.

Provided always, That the House may alter the day and hour so appointed, and appoint some subsequent day and hour for the same, as occasion shall require; giving the like notice as aforesaid.

II. And be it further enacted, That at the time appointed for taking such Petition into consideration, and previous to reading the order of the day for that purpose, the Sergeant at Arms shall be directed to go and require the immediate attendance of the Members on the business of the House, and that after his return, the House shall be counted and if there be less than twenty members present, the order for taking such Petition into consideration shall be immediately adjourned to a particular hour on the next day to which the House shall adjourn; and on the said next day the House shall proceed in the same manner, and so from day to day till there be an attendance of twenty members at the reading of the Order of the Day to take such Petition into consideration.

III. And be it further enacted, That if after, summoning the members and counting the House as aforesaid, twenty members shall be found to be present, the Petitioners by themselves, their Counsel or Agents, and the Counsel or Agents of the sitting 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 Petitioners, their Counsel or Agents and the Counsel or Agents of the sitting members shall be directed to withdraw. And when the door shall be locked as aforesaid, the order of the day shall be read, and the names of the members of the House written or printed on distinct pieces of parchment, or paper, being all as near as may be of equal size, and rolled up in the same manner, shall be put in equal numbers into two boxes or glasses to be

placed on the table for that purpose, and shall be there shaken together; and then the Clerk or Clerk Assistant attending the House shall publicly draw out of the said two boxes or glasses alternately the said pieces of parchment or paper, and deliver the same to the Speaker, to be by him read to the House, and so shall continue to do until eleven names of the members then present be drawn.

IV. Provided always, And be it further enacted, that if the name of any member who shall have given his vote at the Election so complained of as aforesaid, or who shall be a Petitioner complaining of an undue Election, or against whose return a Petition shall be then depending, shall be drawn, his name shall, be set aside, with the names of those who are absent from the House. Provided always, That if the name of any member who has served on an Election Committee during the same Session be drawn, he shall if he require it be excused from serving, unless the House should adjudge it necessary for him to serve; and the House may also excuse any other member or members from serving, if it should be made manifest that such service would be attended with great detriment to such member or members; and in case of members so set aside and excused, the names of other members shall be drawn, who may in like manner be set aside or excused, and others drawn to supply their places until the whole number of eleven members, not liable to be so 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.

V. Provided always, and be it further enacted, That if at the time of drawing by lot the names of the members, the number of eleven members not set aside, nor excused, cannot be completed, the House shall proceed in the same manner as herein before directed in case of less than twenty members being present at the counting of the House, and so from day to day, as often as the case shall happen; And provided also, that either of the Members nominated as above shall or may be set aside for any of the same causes as those chosen by lot; or if he requires it, may be excused; and the party who so nominated the member set aside or excused, shall nominate another in his stead, and so continue to do as often as the case shall happen, until his nominee is admitted.

VI. And be it further enacted, That as soon as the said eleven members shall have been so chosen by lot, and nominees appointed; the door of the house shall be opened and the House may proceed upon any other business; and the list of the eleven members so drawn by lot shall be reduced to five by the parties striking off alternately; and the reduced list, with the names of the nominees added thereto shall be delivered in to the House; and the said five members, together with the two nominees shall be sworn at the table, well and truly to try the matters 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 said Return or Election; and shall meet at a certain time and place to be fixed by the House for that purpose.

VII. Provided always, and be it further enacted, That if, upon the drawing out the name of any member by lot as aforesaid, the said Petitioner or sitting member or their agents shall declare that such member is intended to be one of the two nominees to be nominated by them respectively,

and if such member shall consent to such nomination, the name of such member so drawn by lot shall be set aside, and unless objected to as aforesaid he shall serve as such nominee, and the name of another member shall be drawn to supply his place, to complete the number of eleven members to be drawn by lot; And if the said Petitioners or sitting members or their agents shall not respectively nominate a member then present who shall be admitted according to the directions of this Act, then the want of such nomination shall be supplied by drawing out instead thereof the name of one or two members as the case shall require; who shall be drawn by lot in the like manner, and subject to the like objections and excuses as the other members already drawn by lot, and shall be added thereto, and shall be liable to be struck off in the same manner, leaving always the number of seven members in the whole, and no more, as a Select Committee for the purposes aforesaid.

VIII. And be it further enacted, That the said Select Committee shall on their meeting elect a Chairman from among such of the members thereof 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 for electing a new Chairman on the death or necessary absence of the Chairman first elected; and no member of the Select Committee shall be allowed to absent himself from the same without leave of the House, or excuse allowed by the House, or special cause shewn and verified upon oath; and the Committee shall not sit until all members to whom such leave has not been granted or excuse allowed are met; and in case they shall not all meet within one hour after the time to which the said Select Committee shall have been adjourned, a further adjournment shall be made in the manner as before directed, and reported with the cause thereof to the House.

IX. And be it further enacted, That the Chairman of the said Select Committee shall at the next meeting of the House always report the name of every member thereof who shall have been absent therefrom without such leave or excuse as aforesaid; and such member shall be directed to attend the House at the next sitting thereof, and shall then be ordered to be taken into the custody of the Sergeant at Arms for such neglect of his duty, and otherwise punished or censured at the discretion of the House, unless it shall appear to the House by facts specially stated and verified upon oath that such member was by sudden accident or by necessity prevented from attending the said Select Committee; and the Committee shall not sit if more than two members be absent, but shall adjourn in manner aforesaid, and so from time to time until five members are assembled.

X. 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 upon oath; which oath the Chairman or the Clerk (if any) attending such Committee are hereby severally empowered to administer, and shall try the merits of the Return or Election, or both; and shall determine by a majority of voices of the said Select Committee, whether the Petitioner, or sitting 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 in the Journals, and give the necessary directions for confirming or altering the return, or for the issuing a

new writ for a new election, or for carrying the said determination into execution, as the case may require.

XI. And be it further enacted, That in case the number of members able to attend the said Select Committee shall, by death or otherwise, be unavoidably reduced to less than five, and shall so continue for the space of six sitting days, the said Select Committee shall be dissolved and another chosen to try and determine the matter of such Petition in manner aforesaid; and all the proceedings of the said former Select Committee shall be void and of no effect.

XII. And be it further enacted, That if the said Select Committee shall come to any other resolution 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 the Chairman of the said Select Committee shall inform the House of such determination; and the House may confirm or disagree with such Resolution, and make such orders thereon as to them shall seem proper.

XIII. Provided always, 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 interposition of their authority or censure, as the case shall require; and 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, under the oath to be taken by virtue of this Act, shall on conviction thereof incur and suffer the like pains and penalties to which any other persons convicted of that offence are liable.

XIV. 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 the Petition referred to them as aforesaid, as soon as the said Select Committee shall have heard the evidence and the parties or counsel on both sides relative thereunto, the room or place wherein 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 determinations, and all other resolutions, shall be by a majority of voices; and if the voices shall be equal, the Chairman shall have a casting voice.

XV. And be it further enacted, That no proceedings shall be had upon any Petition complaining of an undue Election or Return, unless the person or persons subscribing the same, or some one or more of them shall, within ten days after the same shall have been presented, or such further time as shall be limited by the House, personally enter into a recognizance to our Sovereign Lord the King, according to the form hereunto annexed in the sum of two hundred pounds, with two sufficient sureties in the sum of one hundred pounds each, to appear before the House at such time or times as shall be fixed by the House for taking such Petition into consideration, and also to appear before any Select Committee which shall be appointed by the House for the trial of the same; and also for the payment of all costs, expences and fees which shall become due to any witness who shall have been summoned in behalf of the person or persons so subscribing such

Petition, or to the party who shall appear before the House or Committee in opposition to such Petition, in case such person or persons shall fail to appear before the House at such time or times as shall be fixed for taking such Petition into consideration; or in case the said Petition shall be withdrawn by the permission of the House; or in case such Committee shall report to the House that the said Petition appears to them frivolous or vexatious; and if at the expiration of the said ten days such recognizance shall not have been so entered into or shall not have been received by the Speaker, he shall report the same to the House, and the order for taking such Petition into consideration shall thereupon be discharged, unless upon matter specially stated and verified on oath to the satisfaction of the House, the House shall enlarge the time for entering into such recognizance; and whenever such time shall be so enlarged, the order for taking such Petition into consideration shall, if necessary, be postponed; so that no such Petition shall be so taken into consideration till after such recognizance shall have been entered into and received by the Speaker.

XVI. And be it further enacted, That the said recognizance shall be entered into before the Speaker, who is hereby authorized and empowered to take the same; or if entered into twenty miles distant from Fredericton, then the said recognizance may be entered into before any of His Majesty's Justices of the Peace, which Justices are hereby empowered to take the same: And that the sureties shall in all cases severally justify before the said Speaker or Justice of the Peace, by affidavit, that they are severally worth double the sum for which they are respectively bound by such recognizance, after paying all their just debts; and that the said recognizance shall not be considered as entered into until such affidavit is made, unless the parties concerned should agree to dispense with the same.

XVII. And for the removal of any doubts which might arise as to the authority of Select Committee to examine as a witness any person who may have subscribed the Petition, to try and determine which such Committee shall have been appointed. Be it hereby declared and enacted, That it is and shall be lawful for any such Select Committee to examine any person although he may have subscribed such Petition, except it shall otherwise appear to such Committee that such person shall be an interested witness.

XVIII. And be it further enacted, That every such Select Committee, at the same time that 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 they shall in like manner report with respect to every party or parties who shall have appeared before them in opposition to such Petition, whether the opposition of such party or parties respectively did or did not appear to them frivolous or vexatious, and that if no party shall have appeared before them in opposition to such Petition, they shall then report to the House whether such Election or Return, according as the case may be, did or did not appear to them to be vexatious or corrupt.

XIX. And be it further enacted, 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 expences which such party or parties shall have incurred in opposing the Same; such costs and expences to be ascertained in the manner hereinafter directed.

XX. And be it further enacted, That whenever any such Committee shall report to the House with respect to the opposition made to such Petition by any party or parties who shall have appeared before them, that such opposition appeared to them to be frivolous or vexatious, the person or persons who shall have signed such Petition shall be entitled to recover from such party or parties, or any of them, with respect to whom such report shall be made, the full costs and expences which such Petitioner or Petitioners shall have respectively incurred in prosecuting their said Petition, such costs and expences to be ascertained in the manner hereinafter directed.

XXI. And be it further enacted, That in the several cases herein before mentioned the costs and expences of prosecuting or opposing any such Petition shall be ascertained in manner following, that is to say:--That on application made to the Speaker, he shall examine and tax the same, calling to his assistance, if he should so think fit, the Clerk or Clerk Assistant of the House of Assembly; the Clerk of the Supreme Court and Masters in Chancery; or any one or more of such officers; and after such costs and expences are allowed and taxed, the Speaker shall, on application, deliver to the party or parties a certificate signed by himself, expressing the amount of the costs and expences allowed and taxed: And it shall and may be lawful for the party or parties entitled to such costs and expences, or for his or their executors or administrators, to demand the whole amount thereof so certified as above, from any one or more of the persons respectively, who are herein before made liable for the payment thereof in the several cases herein before mentioned, and in case of non-payment thereof to recover the same by action of debt in any of his Majesty's Courts of Record having jurisdiction in the premises; in which action it shall be sufficient for the plaintiff or plaintiffs to declare that the defendant or defendants is or are indebted to him or them (in the sum to which the costs and expences ascertained in manner aforesaid shall amount) by virtue of this Act; and the Speaker's certificate under his signature of the amount of such costs and expences, together with an examined copy of the Entries in the Journals of the Assembly of the resolution or resolutions of the said Select Committee, shall be deemed full and sufficient evidence in support of such action of debt; in which action the party or parties in whose favour judgment shall be given, shall recover his or their costs.

XXII. And be it further enacted, That in every case where the amount of such costs and expences shall have been so recovered from any person or persons, it shall and may be lawful for such person or persons to recover in like manner from the other persons or any of them, if such there shall be, who shall be liable for the payment of the said costs and expences, a proportionable share thereof according to the number of persons so liable.

XXIII. And be it further enacted, That if the Petitioner or Petitioners who shall have entered into the aforementioned recognizance, shall in any manner fail in the performance of the conditions of the same, such person or persons shall be held to have made default in such recognizance; and the Speaker shall thereupon certify such recognizance into the Supreme Court, and shall also

certify that such person or persons have made default therein, and such certificate shall be conclusive evidence of such default, and the recognizance being so certified shall have the same effect as if the same were estreated from a Court of Law; Provided always, that such recognizance so certified shall be delivered by the Clerk or Clerk Assistant of the House or Assembly into the hands of the Chief Justice or one of the Judges of the said Supreme Court, or of such officer of the said Court as shall be appointed by the said Court to receive the same.

XXIV. And be it further enacted, That whenever it shall happen that the General Assembly shall be prorogued while any select Committee shall be sitting, and before they have reported their determination to the House, such committee shall not be dissolved by such prorogation, but shall be thereby adjourned to twelve of the clock of the day immediately following that on which the Assembly shall again meet for the despatch of business (Sundays, Good Friday and Christmas day always excepted) and all former proceedings of the said Committee shall remain and continue to be of the same force and effect as if the Assembly had not been so prorogued.

XXV. And be it further enacted, That in case there are more than one petition complaining of undue election or return to be taken into consideration by the House on the same day, it shall and may be lawful for the House to draw by lot and complete in the manner before mentioned another list to form the Committee upon the sccond petition, according to the rules, directions and regulations of this Act, Provided, not less than twenty-five members are present.

XXVI. And be it further enacted, That in all cases of controverted elections or returns, all the parties complaining of, or defending such elections or returns, shall, by themselves or their agents, deliver in to the Clerk of the House lists of the votes intended to be objected to; giving in his said lists the several heads of objections, and distinguishing the same against the name of the voters excepted to; such lists to be delivered in six days at least before the day appointed for the consideration of such petition; and that no evidence shall be adduced before the select Committee against the validity of any vote upon any head of objection to such voter other than one of the heads so specified and particularized; and if no evidence shall be produced to substantiate such objection, and if the committee shall be of opinion that such objection was frivolous or vexatious, the said Committee 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 be entitled to recover from the party making such objection the costs and expenses incurred by reason of such objection; the same to be ascertained and recovered in the manner before-mentioned.

XXVII. And be it further enacted, That all monies which may be recovered and received under and by virtue of any recognizance which may become forfeited under the directions of this Act, shall be paid into the treasury of the Province, and be applied in such manner as the General Assembly may direct.

XXVIII. And be it further enacted, That the oaths by this Act directed to be taken in the House, shall be administered by the Clerk or the Clerk Assistant of the House, who are hereby severally empowered to administer the same.

XXIX. And be it further enacted, That this Act shall not be in force until His Majesty's Royal Approbation be thereunto had and declared.

Form of the Recognizance referred to in this Act.

Be it Remembered, That on the _____ day of _____, in the year of our Lord _____ before me, A. B. (Speaker, of the House of Assembly of the Province of New-Brunswick) or one of His Majesty's Justices of the Peace for the County or City and County of _____ came C. D. of _____ E. F. of _____ and G. H. of _____ and severally acknowledged themselves to owe to our Sovereign Lord the King the following sums, that is to say: the said C. B. the sum of two hundred pounds, and the said E. J. and G. H. the sum of one hundred pounds each, to be levied on their respective goods and chattels, lands and tenements, to the use of Our said Sovereign Lord the King, his Heirs and Successors, in case the said C. D. shall fail in performing the condition hereunto annexed.

The condition of this recognizance is, that if the said C. D. shall duly appear before the House of Assembly at such time or times as shall be fixed by the said House for taking into consideration the petition signed by the said C. D. complaining of an undue election or return for the County (or city) of _____ and shall appear before any select Committee which shall be appointed by the House for the trial of the same, and shall also well and truly pay all costs, expenses and fees, which shall be due and payable from the said petitioner to any witness who shall be summoned to give evidence in his behalf and if the said C. D. shall also well and truly pay the costs and expences of the party who shall appear before the House in opposition to the said petition; in case the said petitioner shall fail to appear before the House at the time or times fixed for taking such petition into consideration: or in case the select committee appointed by the House to try the matter of the said petition, shall report to the House that the said Petition appears to them to be frivolous or vexatious. Then this recognizance to be void, otherwise to be of full force and effect.

N. B. This Act was approved by His Majesty in Council, on the 7th day of December, 1829.