

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbyshire & George Desbarats, 1857.

20 Victoria – Chapter 23

An Act to improve the mode of obtaining Evidence in cases of controverted Elections. Assented to 10th June, 1857.

Whereas it is desirable more speedily to obtain evidence in cases of controverted elections: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. From and after the passing of this Act, whenever any person or persons shall intend to contest the election of any person proclaimed or returned as being elected a member of the Legislative Assembly, upon any other grounds 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 Cleric of the Crown in Chancery or kept by the Returning Officer, he shall, within fourteen days after the result of such election shall have been determined by the Returning Officer, give' notice in writing in the manner hereinafter mentioned, to the person whose election he intends to contest, of his intention to contest the same, and in such notice he shall specify particularly the facts and circumstances upon which he intends to contest the election; and no Election Petition alleging other facts or circumstances than those stated in such notice shall be received by the Legislative Assembly except as hereinafter excepted, nor shall such Petition be received unless a copy of such notice, and affidavit of the due service thereof, by the person who made such service, be annexed to the said Petition, nor shall any Select Committee take into consideration any facts or circumstances touching which such notice is hereby required to be given, unless they are stated in such notice.

II. The member upon whom the notice mentioned in the first section of this Act shall be served, shall, within fourteen days after the service thereof, answer such notice, admitting or denying the facts and circumstances alleged therein respectively, and may in such answer: set forth any other facts and circumstances 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 contesting party in the manner hereinafter mentioned; and such member shall not be permitted to give evidence of any facts or circumstances other than those he shall have alleged in his said answer; and the service of such answer shall be proved to the Judge before whom the evidence is to be taken, by producing a copy thereof with the affidavit of service in the manner hereinafter mentioned; and if he serve no answer within the time hereinbefore mentioned, he shall not be permitted to prove any facts or circumstances on his behalf, other than by way of rebutting the case made against his election.

III. The service of such notice and answer thereto 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 person of his family, and may be made by any literate person, and shall be proved by affidavit sworn to before some Justice of the Peace or Commissioner for taking affidavits, in which shall be stated the time, place and manner of such service; And if there be more than one contesting party

joining in the notice to the member proclaimed or returned, then such notice shall state some place at which the answer of the member elect may be served on all the contesting parties by leaving one copy only of such answer at such place for all of them; and if such notice contain no such statement, it shall be void, and deemed not to have been given.

IV. When any of the parties shall be desirous of taking the evidence respecting the facts and circumstances alleged in such notice or answer, it shall be lawful for him to make application in writing to the Judge of the County Court in Upper Canada, or Superior or Circuit Judge in Lower Canada, residing or having jurisdiction within the Electoral Division or in the District in which such controverted election was held, requiring him to take the evidence upon all matters of fact mentioned in the notice of the said contesting party, and in the answer (if any) made by the party who has been declared elected and the said Judge shall forthwith appoint a time and place for proceeding therein, of which due notice shall be given, at least six days before proceeding therein, to the opposite party; but such application on behalf of the contesting party shall not be received by any such Judge as aforesaid, unless it be made within six days from the time when the answer of the returned member shall have been served on such contesting party, or within six days from the expiration of the time allowed for serving such answer if none be served within the said time, nor unless at the time of such application such contesting party shall produce and file with such Judge a copy of his intended Petition against such election, and a copy of the said notice sworn to by the person who served the Same, and a copy of the answer, if any, and if no answer, then with an affidavit denying that any answer has been served, together with 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 Petitions; Provided always, that the application shall be held void if the contesting party shall wilfully omit to file the notice in answer (if any) of the member elected or returned: And such application shall not be received on the part of the member who has been declared elected, by any such Judge; unless made within six days after the service of the answer to the contesting party's notice, nor unless at the time of making such application the said member shall produce to such Judge a copy of the notice served on him, and his answer thereto, together with an affidavit of the service of such answer, and a recognizance and affidavits of the sufficiency of the sureties required by the Election Petitions Act of 1851, from the sitting member.

V. The said recognizance on behalf of the contesting party shall be held to refer to the Petition to be presented to the Legislative Assembly of which the copy shall have been filed with the Judge as aforesaid, and to no other; and no other or different Petition shall be received by the Legislative Assembly in the case; and unless such copy of the intended Petition be so filed, the application shall not be deemed to be 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 Commissioner appointed under the said Election Petitions Act; and such recognizance shall avail and be estreated or enforced accordingly, in default of payment by the contesting party of any costs incurred by reason of such application as aforesaid, whether such contesting party shall petition against the return of the member so elected or otherwise; and such recognizance and copy of Petition as aforesaid shall, by the Judge to whom such application shall be made, be 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, the recognizance shall be annexed to the Petition when presented, and shall avail accordingly.

VI. 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 and circumstances mentioned in the notice of the said contesting party, 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 it shall be the duty of the said Judges, respectively, to take upon them the duties imposed by this Act, and they shall then have all the powers and rights (including remuneration for their services and the right of appointing Deputies to act for them as such Judges 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 their powers shall be limited to the questions of fact set forth in the notice of the contesting party, and the answer (if any) of the returned member, and the questions concerning the validity of the recognizance, if it be objected to: and the Select Committee may deal with any 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 acts aforesaid.

VII. The evidence taken by any such Judge shall be transmitted by him in the manner prescribed by the said Election Petitions 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.

VIII. 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 proceedings shall be received, and shall then be directed to re-assemble in the manner provided by the said Election Petitions Act in like cases.

IX. 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.

X. 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.