

1860-1.

VICTORIA.



REPORT

FROM THE

SELECT COMMITTEE

ON

P R I V I L E G E

(DR. HUNTER'S CASE),

TOGETHER WITH PROCEEDINGS OF COMMITTEE AND MINUTES OF
EVIDENCE.

Ordered by the Legislative Assembly to be printed, 14th May, 1861.



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D.—No. 22.

EXTRACTED FROM THE VOTES AND PROCEEDINGS OF THE LEGISLATIVE
ASSEMBLY.

THURSDAY, 2ND MAY, 1861.

3. PRIVILEGE.—Alexander Hunter, Esquire, one of the Members of this Assembly for East Melbourne, having complained to this House that whilst on his passage to England he had been summoned to leave the ship at the Port Phillip Heads, and detained a prisoner until bailed, Mr. Grant moved, That a Committee be appointed, consisting of Mr. Gavan Duffy, Dr. Evans, Mr. Wood, Mr. Mollison, Mr. J. S. Johnston, Mr. O'Hea, Mr. Haines, Mr. Michie, Mr. O'Shanassy, Mr. Brooke, Mr. Greeves, and Mr. Lalor; five to form a quorum; and that such Committee do search the Journals of the British Parliament, and report to this House whether, in their opinion, the matter of complaint of Alexander Hunter, Esquire, now made to this House is a breach of the privileges of this House; and have power to send for persons, papers, and records.

Debate ensued.

Mr. Wood moved, That all the words after the word "That" be omitted, with a view to insert instead thereof the words "inasmuch as the reason why Members of Parliament enjoy freedom from arrest is that they may attend to their Parliamentary duties, and as it appears from the statement now made by the Honorable Member for East Melbourne that when he was arrested he was about to leave the colony on a voyage to England, and thereby put it beyond his power to attend to his Parliamentary duties, this House is of opinion it is inexpedient to institute any proceedings against those persons who were concerned in his arrest, or to take any further notice of the matter."

Debate ensued.

Question—That the words proposed to be omitted stand part of the question—put and resolved in the affirmative.

Question—That a Committee be appointed, consisting of Mr. Gavan Duffy, Dr. Evans, Mr. Wood, Mr. Mollison, Mr. J. S. Johnston, Mr. O'Hea, Mr. Haines, Mr. Michie, Mr. O'Shanassy, Mr. Brooke, Mr. Greeves, and Mr. Lalor; five to form a quorum; and that such Committee do search the Journals of the British Parliament, and report to this House whether, in their opinion, the matter of complaint of Alexander Hunter, Esquire, now made to this House, is a breach of the privileges of this House; and have power to send for persons, papers, and records—put and resolved in the affirmative.

REPORT.

THE SELECT COMMITTEE appointed to search the Journals of the British Parliament, and to report to this House whether the complaint of Alexander Hunter, Esquire, made to the House 2nd May instant, was a breach of the privileges of this House, have the honor to report—

Your Committee first heard Mr. Hunter's statement in support of his complaint, and afterwards took evidence as to the issue of the warrant, and the arrest thereon of Mr. Hunter; from which it appeared that Mr. Hunter, was on the 23rd day of April last, arrested whilst on board the ship *Donald Mackay*, off Williamstown, upon a charge of leaving his wife destitute and without due means of support; and brought to Melbourne in charge of a constable.

That on the same night Mr. Hunter was liberated, on giving bail.

That such arrest was, in the opinion of your Committee, a breach of the privileges of this House; but that, after duly considering the circumstances under which the arrest took place, your Committee do not recommend the House to take further proceedings in this matter.

Committee-room,

9th May, 1861.

PROCEEDINGS OF COMMITTEE.

TUESDAY, 7TH MAY, 1861.

Members present :

Mr. O'Shanassy, in the Chair;

Dr. Evans,	Mr. Greeves,
Mr. O'Hea,	Mr. Wood,
Mr. Lalor,	Mr. Haines.
Mr. Mollison,	

Resolved—That Dr. Hunter be summoned to attend the next meeting to state his complaint to the Committee.

Ordered—That the following witnesses be summoned to attend the next meeting, *viz.*, Mr. Hackett, Mr. Kerr, the Clerk of Petty Sessions—the latter to produce complaint, order-warrant, and any other documents in his possession with reference to this case—and the summoning constable.

Adjourned to Thursday next at one o'clock.

THURSDAY, 9TH MAY, 1861.

Members present :

Mr. O'Shanassy, in the Chair;

Mr. Mollison,	Mr. Greeves,
Mr. Haines,	Mr. Lalor,
Mr. O'Hea,	Mr. Wood.
Dr. Evans,	

C. P. Hackett, Esq., Police Magistrate, was present.

The minutes of the previous meeting were read.

Alexander Hunter, Esq., M.L.A., called in and examined.

Room cleared.

Committee deliberated.

Parties recalled.

Alexander Hunter, Esq., again called in and further examined.

M. J. P. Hanify, Esq., called in and examined.

The witness produced Information and Warrant for the arrest of Dr. Hunter.

Mr. Joyce (sergeant of the Water Police) called in and examined.

C. P. Hackett, Esq., called in and examined.

Room cleared.

Committee deliberated.

R. Kerr, Esq., J.P., called in and examined.

Motion made—That the report should contain a statement of the reasons which induce the Committee to believe that the Parliament of Victoria enjoy the same privileges as the House of Commons.—(*Mr. Wood.*)

Question put.

Committee divided.

Ayes, 2.
Mr. Wood,
Mr. Lalor.

Noes, 5.
Mr. Mollison,
Mr. Haines,
Mr. O'Hea,
Dr. Evans,
Mr. Greeves.

And so it passed in the negative.

Draft Report brought up and read.

Motion made—That the same be adopted.—(*Mr. Mollison.*)

Ayes, 5.
Mr. Mollison,
Mr. Haines,
Mr. O'Hea,
Dr. Evans,
Mr. Greeves.

Noes, 2.
Mr. Wood,
Mr. Lalor.

Chairman ordered to report.



MINUTES OF EVIDENCE.

THURSDAY, 9th MAY, 1861.

Members present:

Mr. O'SHANASSY, in the Chair;

Dr. Evans,
Mr. O'Hea,
Mr. Mollison,
Mr. Wood,

Mr. Haines,
Mr. Greeves,
Mr. Lalor,

Alexander Hunter, Esq., a Member of the House, examined.

1. *By the Chairman*—Will you be kind enough to state briefly the nature of your complaint?—I thought it better just to make a few heads, so that I might not make any error in regard to dates. I have made a very succinct account of it in writing, and I would rather read that and fill in any further information the Committee may require.

A. Hunter, Esq.,
9th May, 1861.

Charles Prendergast Hackett, Esq. was called in, and informed by the Chairman that the Committee were of opinion that he should be permitted to be present during the statement of his case about to be made by Dr. Hunter.

Witness.—“About the 1st or 2nd of April, shortly after my public notice to the electors of my resignation, I called upon Mr. Hackett, stipendiary magistrate, and told him that I was about to leave this country for Britain, and that I wished to notify to him in his capacity as magistrate, that I was most anxious to take Mrs. Hunter with me, or to so arrange as to get her to precede or follow me. I called his attention particularly to my having waited upon him for that purpose, so that nothing might occur of an unpleasant nature;” and I may state in passing, that I reiterated that to Mr. Hackett in a way that could not fail to call it to his attention. “I then advertised my sale of furniture for the 18th of April, that being two days before my intended departure by the *Donald Mackay*, which was advertised for the 20th April. On the 15th I received a summons to appear at the police court on the 16th, to show reason why I should leave Mrs. Hunter destitute and without maintenance in the colony. I appeared to that summons, and stated in substance what I have here stated—that I had waited upon Mr. Hackett ten or fourteen days before to make arrangements to take Mrs. Hunter with me, that I might convey her to her own relations in Edinburgh. Mr. Hackett himself was on the Bench, with five other magistrates—it might be one more or one less—“and I again repeated my offer, or to deposit from £60 to £100 in the hands of a friend to pay for her passage home in case she should consent to go. But she then and there, in the open court, peremptorily declined either to go with me or to follow me, further adding, that she never intended leaving this country; upon which the magistrates, after explaining to her the law on the point, unanimously dismissed the case, declining to interfere further in it. On the morning of the 20th April, just before I left to go on board the *Donald Mackay*, I sent a letter to Mr. Wragge, chemist, Collins-street, which I now hand in.—(*The same was delivered in, and is as follows*):—

“Melbourne, 20th April, 1861.

To Mr. Wragge, Chemist, Collins-street.

DEAR SIR,

After my sale, and paying all necessary accounts, I find, contrary to my expectations, that I have only one hundred pounds sterling left me to live at home, and to return to this country. I had hoped from what Mr. Beauchamp calculated, that I should have realized at least five hundred pounds from the sale, a little more perhaps, or a little less, but certainly not so small a sum as £320; so that after paying passage money and other necessary sums, I find I have only the sum as mentioned remaining.

Now, if Mrs. Hunter had, even so late as Saturday last, consented to go home, I could have arranged with the shipping agents to have taken a deferred payment, upon security of some kind, till we arrived at Home. But this now is impossible from want of her consent, and it is also impossible for me to leave in any one's hands, money for that most desirable purpose, if, as I trust she may, desire at an early day, to return to her friends.

All this I deeply deplore, that my simple poverty in leaving this country should have prevented me carrying out what my heart so much desires. If, however, she should express a wish to return home, if any of my good and well-wishing friends could co-operate and enable her to effect her object, I should be placed under a lasting favor.

And as I understand that funds have been twice remitted to this country for that purpose, perhaps it is still possible to make them available; and as Mr. Hackett himself knows something about the last remittances made through Mr. Callander, of the firm of Caldwell, Callander, and Co., he might kindly take an interest in this matter, and make those inquiries, which are necessary to ascertain how far they yet remain to be operated on.

However, if all should fail in this direction, the last and only thing I can do is to offer as security all my instruments, books, bed and table linen which is left behind me for any sum which may be advanced to assist her; also my carriage which is not sold, and is in the hands of MacNaughton and Macgregor, coach-builders.

Believe me, dear Sir,

To remain yours very truly,

ALEX. HUNTER.

A. Hunter, Esq.,
continued,
9th May, 1861.

Witness.—"I returned from the *Donald Mackay* the same night, Saturday, her day of sailing having been postponed till the following Monday. On the Monday I again went on board with my son, by the steamer from Cole's wharf. Mrs. Hunter also went by this steamer and boarded the *Donald Mackay*, where she remained for some time. Mr. Hackett is personally aware of that. He was on board the *Donald Mackay* on that occasion, and remained till late in the evening. I slept on board that night and I spoke also to Mr. Hackett on board, and on Tuesday night about eight o'clock I was informed that some one from the shore desired to see me. This was a water police officer, who put into my hands a warrant for my arrest. I had nothing for it but to obey. I accordingly went on shore and was carried to the Melbourne police, where I found I was a prisoner, unless I could find bail to appear on the following morning. In company of an officer I waited upon Dr. Iffla and luckily found him at home. I told him my errand, and he, at once, with another medical friend, went to the police with me, and bail was accepted. On the morning of Wednesday, the 24th April, I appeared in court"—I should say in a private room, not in court—"and after much discussion in reference to the cause of my arrest, to save my passage it was hurriedly agreed to give a bill or note for £60, to pay Mrs. Hunter's passage home in case she so inclined." Those are all the notes I thought fit to take, but as my mind is quite fresh upon all the points, and I only put these remarks succinctly together for the purpose of dates, so that there may be no error there, I am quite prepared to go on with the statement or remain until further questions are asked; but I think I had better finish the statement of what took place. This matter was so hurriedly settled that I might not lose my passage. I immediately left there in the conveyance of Dr. Bowman, and we drove down to Sandridge, believing, as I did, that the vessel would not lift her anchor till one o'clock. The preceding night the captain of the vessel said, "I do not think there will be any chance of lifting the anchors before twelve or one o'clock to-morrow. I do not promise anything whatever, because I am entirely in the hands of the agents, but I think it likely." I felt therefore safe up to about twelve o'clock or one o'clock, and other parties repeatedly stated that very likely she would not sail until that time. I however lost no time, but drove over from the police office to Sandridge. We had not got down the road more than two-thirds of it, when I was informed by those who met me on the road and knew me. They said, "You are too late, she has sailed." We immediately lost no time, and we went to the Telegraph Office and telegraphed to the Heads, and the answer we got from the telegraph is as follows:—"By Electric Telegraph, dated Queenscliff, 24th April, 1861. Telegram for Dr. Hunter. Now coming through south channel, expected to pass out at three o'clock."

2. Is there any hour mentioned upon that telegram?—It would be about half-past eleven when I received it.

3. Then the *Donald Mackay* must have sailed early in the morning?—We then telegraphed a second time to the *Donald Mackay* instantly, and requested that they should send a pilot off to intimate to the *Donald Mackay* that Dr. Hunter would be at the Heads at four o'clock, still believing I might be able to do that by ardent effort. I failed in that. The telegram was conveyed. The pilots were instructed to go off and meet the *Donald Mackay* and put the telegram in the hands of the captain. He received it and read it aloud, and a scene took place on board the ship which I do not wish to describe here. My son petitioned the captain to remain, stating that his father would be sure to be up according to his promise; in fact I was there about a quarter past four. The vessel went through about half an hour before, but did not stop in any way. Having despatched those telegrams I went to the pier and hired a boat to take me to the Heads, but we discovered that we could not do it in time. We then found the *City of Hobart* was about to start on her passage to Hobarton. I got on board of her. My friend, Dr. Bowman, stated what my object was, and the Captain put off as quickly as possible and put on all his pressure very obligingly, and we got to the Heads about half-an-hour posterior to the passing out of the *Donald Mackay*. Through a glass we saw her about some four or five miles ahead, under sail, pushing away to the west of Tasmania, not taking her usual course. In place of going by the eastern course she took the west. If she had taken the ordinary course of easting, the master pilot said, I would be sure to have overtaken her; and the master of the steamer said, if she had done so, he would be sure to have overtaken the *Donald Mackay*, but we found her in full sail, taking the western coast of the island and entirely beyond reach, going twelve knots an hour, as they estimated it. I then returned that evening by the pilot boat to Queenscliff. I remained there until a tug-boat sailed or steamed, and I got home to town about half-past twelve o'clock or one o'clock.

4. Was that the only arrest, the officer going on board at Williamstown, that you have to complain of?—Yes.

5. Did he produce a warrant?—Yes, for maintenance—that I had left the colony without giving Mrs. Hunter maintenance.

6. *By Mr. Mollison.*—Have you a copy of the warrant?—I have not. The police took it from me. The officer produced it and kept it in his hand; and the letter to Mr. Wragge, which I have referred to, was making my last disposition before I left the city. One or two letters arrived addressed to me when I went on board the *Donald Mackay*; on the Saturday another from my own legal agent, Mr. Cookman, who appeared in court upon the occasion of my being summoned by Mrs. Hunter, and Mr. Hackett who is here now, was one of the magistrates who presided. These letters went to state that I had made no arrangement for Mrs. Hunter, as they believed. Mr. Hackett will correct me if I am wrong, they came from his office. They could not assert that actually, for I had made every arrangement before I left, and placed it in the hands of Mr. Wragge. Why they should have assumed it of me I cannot tell; it is an assumption of prescience—of foreknowledge—that no one has a right to assume.

7. *By the Chairman.*—Who was present when you made the hurried arrangement about the bill for £60; you have stated that you came back from Williamstown with the officer of police, and that you made a hurried arrangement in the police office the following morning, settling £60 by bill or something of that kind, and that you endeavored to overtake the ship and could not?—Yes.

A. Hunter, Esq.,
continued,
9th May, 1861.

8. Who was present at that arrangement?—Mr. Sturt only was present in the private room. Mr. Hackett it seemed was not in town. I did expect to find him there but he was not there, and Mr. Sturt officiated.

9. Was the arrangement made by authority of the law, or was it a private arrangement with private friends?—I really cannot tell that.

10. Was it made in pursuance of the warrant, or was it a private arrangement?—I presume it was under the warrant, but it was private inasmuch as it was out of court. Perhaps that was in regard simply to my own personal feelings. I cannot state that. I did not ask it. I went to court, and before the case came on I was summoned into a private room with my friends, and I sent for Mr. Beauchamp, the auctioneer who sold my furniture, to state what he got for it. Mrs. Hunter then appeared with her agent. The agent was Mr. Thomas Miller I think.

11. *By Mr. O'Hea.*—Do you wish to convey to the Committee the impression that although previously to the arrest you made all the requisite arrangements to prevent the possibility of arrest, yet, nevertheless, for some ulterior purpose, there was a stretch of magisterial power afterwards?—Undoubtedly so. I did everything that a man could do and should do who pretends to be a man of honor, and I had this case dismissed in court; but, nevertheless, the dismissal was not my object, for I was most anxious either to take Mrs. Hunter home with me or to get her home by hook or by crook.

12. Can you state the date of your advertisement of resignation, addressed to the democracy of Victoria?—That must have been the end of March, or the beginning of April.

13. *By the Chairman.*—And after that you said, about the 1st or 2nd, that you went voluntarily to the police office and mentioned to Mr. Hackett your intention of doing so and so?—Yes. I referred to the subject of my public resignation, and drew his attention to the fact, and that now I came specially to present myself to him that he might take notice of what I wished to say in regard to Mrs. Hunter—that I wished to take her home with me, or if not with me, before me or after me, and to enter into arrangement of any kind for the purpose of carrying out those views; but I was most anxious she should not remain here. One of my chief objects in going home was to convey her with me.

14. *By Mr. O'Hea.*—When you stated to the magistrate that you had resigned your seat in Parliament, was it your intention to impress upon his mind that you were a private member of society?—No; such a thing never entered my mind. I could not see the events, nor could I think of the events; I only thought of showing to Mr. Hackett that it was a matter of fact that I was about to leave the colony, and wished to make arrangements about Mrs. Hunter.

15. *By the Chairman.*—Did any question at all arise about your membership?—Not the least. That could not occur, inasmuch as believing that I was going away by a particular date my resignation legally or parliamentary was in the hands of a member of Parliament, to be delivered when he thought necessary—not in regard to my sailing, but in regard to the electoral rolls. It was an arrangement of the political party to which I belonged that I should not resign until the electoral rolls were revised. It had nothing to do with my sailing at all; and I made no arrangement with reference to such a thing as my being arrested.

16. In opening your conversation with Mr. Hackett, did not you say in general terms, "I have notified to my constituents and the public my intention to withdraw from public life, and leave this country?"—Yes. It would not have occurred to my mind at all not to have resigned when I wrote the address to the public, but I was stopped by the political party to which I belonged, and they induced me. It did not come from myself at all.

The notice referred to by Dr. Hunter, published in the "Argus" on the 11th of April, was read as follows:—

To the Electors of East Melbourne and the Democracy of Victoria generally.

GENTLEMEN,

In now lifting the pen to address you, I do so with extreme regret and pain, as the occasion which demands it is one which I had hoped would not have occurred. And I the more deeply regret though unavailingly, that the same cause should have so operated upon me as to have rendered me unable to do that service to you and our adopted country, which, as your representative, I had fain hoped I might. But gentlemen, with me fate seemed to be inexorable I have struggled hard against a broken constitution, brought on by domestic misfortunes, but my best efforts have ended in failure and utter disappointment.

Ere, then, I leave this country, to seek in my native air for that health which I have been unable to regain here, it becomes my duty to render back to you that responsible trust which you did me the honor to repose in my keeping; and if I have done nothing to elevate the character of the representative function it is consistent with my sense of honor to say that at least I have done nothing to degrade it. Should I be fortunate enough, and again recover health and energy my first wish will be to return to Victoria, the land of my adoption, when at some future day I may be able, in the ranks of democracy to realize those wishes which have been nearest my heart. With best wishes for the prosperity and political progress of Victoria,

I remain,

Your humble and devoted representative,
ALEXANDER HUNTER.

Fellow of the Royal College of Surgeons, Edinburgh.

Witness.—I advertised in the *Age* and *Herald* first, and the *Argus* last and as that is in the *Argus* of the 11th April I must have advertised on the 9th, 10th, and 11th April, I know that shortly after my public statement I waited upon Mr. Hackett; it might have been two or three days after my first announcement that I waited upon the magistrate.



Mr. Michael John Page Hanify examined.

Mr. Hanify,
9th May, 1861.

17. *By the Chairman.*—Are you clerk of the District Police Court in Melbourne?—Yes.
18. Do you produce the warrant upon which Mr. Hunter was arrested?—Yes, and also the information upon which the warrant was issued.

[The same were delivered in and are as follows:—]

VICTORIA.

[No. 104.]

INFORMATION AND COMPLAINT.

Melbourne }
To Wit. }

(a) Trade, calling, or profession. THE information and complaint of Janet R. Hunter, of Melbourne, in the Colony of Victoria, (a) the wife of Alexander Hunter, Surgeon, taken (a) upon oath this twenty-third day of April, in the year of Our Lord One thousand eight hundred and sixty-one, before the undersigned (a) of Her Majesty's Justices of the Peace for the (b) said Colony, who saith that on the (a) One or two. twentieth day of April instant, A.D. 1861, at Melbourne, in the Colony aforesaid Alexander (a) Trade, calling, or profession. Hunter, of Melbourne, in the said Colony, (a) surgeon, did (b) leave this deponent, Janet Rochfort Hunter, your lawful wife, destitute in this Colony, and being without due means of support contrary to the (a) Act of Council in that case made and provided, and thereupon the (a) Statute or Act of Council. said Janet R. Hunter prayeth that the said Alexander Hunter may be (a) apprehended and (a) Summoned or apprehended. dealt with according to law.
(a) And sworn, if so. TAKEN (a) and sworn before me, at Melbourne aforesaid, the day and year first above written.

ROBERT KERR, J.P.

(C.)

[No. 109.]

(11 and 12 Vic., c. 43.)

WARRANT IN THE FIRST INSTANCE.

To all Constables of Melbourne, in the Colony of Victoria, and to all other Peace Officers in the City of Melbourne, in the said Colony.

WHEREAS information hath this day been laid before the undersigned of Her Majesty's Justices of the Peace in and for the City of Melbourne and said Colony, for that* one Alexander Hunter, surgeon, did on the twentieth day of April, 1861, at Melbourne aforesaid, leave this deponent, Janet Rochfort Hunter, his lawful wife destitute in this Colony, and being without due means of support, and oath being now made before me substantiating the matter of such Information. These are therefore to command you, in Her Majesty's Name, forthwith to apprehend the said Alexander Hunter, and to bring him before some one or more of Her Majesty's Justices of the Peace in and for the said Colony, to answer to the said Information, and to be further dealt with according to law.

GIVEN under my Hand and Seal this twenty-third day of April, in the Year of Our Lord One thousand eight hundred and sixty-one at Melbourne in the Colony aforesaid.

ROBERT KERR, J.P.
(L.S.)

Memorandum accompanying Warrant.

"Will the officer in charge of the Water Police at Williamstown be so good as to cause the accompanying warrant to be executed upon the within-named defendant. (Dr. Hunter.)"

"JAS. ROBERTSON, C.P.S.

"Melbourne, April 23rd, 1861.

"Dr. Hunter is on board the *Donald M'Kay*, about to sail to Liverpool."

19. Are both the signatures to the documents you have handed in the signatures of Mr. Robert Kerr, the magistrate?—Yes.

20. And is the signature to the memorandum annexed the signature of Mr. Robertson, the Clerk of Petty Sessions?—Yes.

The witness withdrew.

Michael Joyce, examined.

Michael Joyce,
9th May, 1861.

21. *By the Chairman.*—What are you?—Sergeant of the Water Police.

22. Did you arrest Dr. Hunter under that warrant—[handing to the witness the warrant just produced]?—I did.

23. On what day?—On the evening of the 23rd of April, between seven and eight o'clock. My instructions from my Inspector were that I should apprehend Dr. Hunter, on board the *Donald Mackay*, and take him to Sandridge, and hand him over to the sergeant there, so that he might be conveyed to Melbourne.

24. Did you do that?—I could not see the sergeant, but I handed Dr. Hunter over to one of the constables, with the warrant.

25. *By Dr. Evans.*—Who put the warrant into your hands?—Mr. Hare, the Inspector of Police.

The witness withdrew.

Charles Prendergast Hackett, Esq., examined.

C.P. Hackett, Esq.,
9th May, 1861.

26. *By the Chairman.*—The Committee wish to afford you an opportunity, if you desire, to make any remarks upon Dr. Hunter's statement, which you have heard?—Dr. Hunter's statement was certainly, I think, quite correct. He called upon me, as he stated to you, on a certain day; he then intimated to me that he had or was about to resign his seat in Parliament, and asked me whether I was not aware of it. I said, I was aware of it at the time, for it was matter of public notoriety through the ordinary channels; I said I was very glad to see him, and I hoped he was come in order to make arrangements with regard to Mrs. Hunter. He stated that that was his intention, and he then, after talking some very considerable length to me on the subject, stated that he was willing to place a sum of money in my hands, or the hands of any person I might

wish to appoint, in order to provide her a first-class passage home and give her means to go from the port of arrival to her family in Scotland. And I said that appeared to me to be exceedingly fair and proper. C.P. Hackett, Esq.
continued,
9th May, 1861.

27. Do you recollect the date?—I have no memorandum, but I have no doubt Dr. Hunter is correct; it was somewhere about the 9th or 10th of April, immediately after the fact of his intended resignation had become public through the public press. On the following days I had several interviews with Mrs. Hunter, who was not sparing of her own or my time in the matter. The order of the Quarter Sessions under which Dr. Hunter has been hitherto paying her an allowance was an order of the court of Quarter Sessions, not of the police court. I then told her that I thought the law would not allow us to interfere to prevent his changing his domicile. I subsequently suggested to Mr. Hunter, as he got very excited, that he should employ some professional man, and he employed Mr. Cookman. A summons was taken out to call upon Mr. Hunter to give sureties to obey the order of the court of Quarter Sessions during his absence in England. On the previous day in order to be safe I went to the Supreme Court and looked up the law of this matter, and I felt convinced that my first view was correct, and that we could not make this order. Dr. Hunter, then in court in the witness box, reiterated the offer he had made to me, and I then stated to the gentlemen on the Bench that Dr. Hunter had come forward and stated that he was willing to provide his wife with a suitable passage to England, and some funds necessary to take her to Scotland, and the Bench thought that under those circumstances they could not interfere in the matter. Mrs. Hunter, it is perfectly true, stated that she would not leave this colony. The Bench determined that considering Dr. Hunter would fulfil his promise they would not interfere in the matter, and would not call upon him to find sureties. A few days elapsed and I heard no more from Dr. Hunter; in the meantime applications were made to me more than once by Mrs. Hunter, and by her solicitor, to know whether Dr. Hunter had made the arrangements that he had promised. I stated that he had not. Becoming then pretty conscious that it was not Mrs. Hunter's intention, or that of her legal advisers to allow him to slip away without fulfilling his promise, I directed the senior clerk in my office to write a letter to Dr. Hunter, pointing out that it was not sufficient merely to make a promise, but that he must fulfil that promise, and that if he did not place the matter in some person's hands or make the arrangements to which he had agreed, he would place himself in a position that would justify Mrs. Hunter in swearing an information of his intention to desert her and leave the colony, and that he would then be liable to be arrested. Mr. Cookman, his lawyer, then called upon me, and I asked him whether Dr. Hunter had made any such arrangement as he promised, and he said he had not. I pointed out to him the false position Dr. Hunter was placing himself in, and Mr. Cookman then wrote him a letter, pointing out that it was necessary that he should make some arrangement for his wife; and the Bench would expect him to make the arrangement that he promised. Nothing was done. On the Monday I was invited by Captain Price to go on board his ship and dine with him, and I went, and I then saw Dr. Hunter, and I said, "I am very much afraid that you will get yourself into trouble in this matter;" and he then informed me that he had made an arrangement with Mr. Wragge, and I said, "To whom have you communicated that, because if you have not communicated it to some one you may as well have made an arrangement with the man in the moon, nobody knows of it." I then, on the following morning, wrote a letter to Mr. Wragge; and to that I never got an answer, except from a person in his employ stating that he was out. On the Tuesday when I came out of Court, between three and four o'clock, I saw Mr. Sturt in the office; I had been told whilst sitting on the Bench that it was Mrs. Hunter's intention, and that of her solicitor who was then present, to apply for a warrant for Dr. Hunter's apprehension. When I went into the office, I saw on the table, I presume, these documents.—[*The information and warrant handed in.*]—They were not written by any of the clerks in our office; and I said to Mr. Sturt, "I see there is an intention to apply for a warrant against Dr. Hunter. It is very foolish of him not to settle the matter, because he will be stopped at the Heads." I said, "Will you attend to this as I have some private business;" and he said, "Yes, I should not like to issue a warrant against him, because he would attribute it to personal motives. I will send it down to some other magistrate;" and on the following morning, at ten o'clock, Dr. Hunter was brought into the private room, and had Mr. Wragge intimated that any arrangement had been made, Dr. Hunter would have been discharged; but no such arrangement was made, but only this—a promissory note was given, signed by some half-dozen gentlemen, one of whom called upon me to say he did not mean to adhere to it.

28. Was there any mention made of his privilege at that meeting?—No, the question was never referred to. Everybody believed that he had resigned. I had seen that there was an address to the electors, and I had been informed by a gentleman that he was going to stand in his place, and that there was a committee forming; and in common with the public at large, who did not examine very closely into the matter, I believed he had resigned. I knew he was going home, and had practically given up his duties. But even supposing he had not resigned, if any member of the Legislature was going away, and an information was sworn against him, I believe it would be my duty to issue a warrant against him and arrest him. I certainly should do it. I never took so much trouble about any case before, and certainly never should again. I was exceedingly anxious to get rid of the whole business.

29. You have not done any act in your magisterial capacity relating to this matter?—I have not; but I do not wish to repudiate anything I would have done if I had been there, and say that it was Mr. Kerr's fault. I have no hesitation in saying if Mrs. Hunter had come during office hours—(she did not come till long past)—but if she had come during office hours I should have felt it my bounden duty to take her information, and issue the warrant under the Act.

C. P. Hackett, Esq.
continued,
9th May, 1861.

30. *By Mr. Haines.*—And that irrespective of any notice of his having resigned?—Perfectly so. I may be wrong in the matter, but I should not feel that I was guilty of any personal disrespect to the Legislative Assembly in treating any member as an ordinary citizen.

31. *By Dr. Evans.*—Would you judge whether he would be in his place next session of Parliament?—I should not consider the question one way or the other. If an information was sworn before me that a gentleman was going to leave his wife and children—in fact, according to the law of England, was going to commit an act of vagrancy—I think I should be bound to put the law in force. An ordinary summons was issued in the first instance, to call upon Dr. Hunter to find security for obeying the order of the court of Quarter Sessions. The bench declined to interfere, because they believed Dr. Hunter's offer was a *bonâ fide* offer, and not an offer to evade the order of the court of Quarter Sessions.

32. *By Mr. Lalor.*—Would it not have been better to summon him again instead of issuing a warrant?—Undoubtedly where it could be done; but where a man is going on board a ship and sailing out of the Bay a summons would be perfectly useless, and the Act states that a warrant may be issued on an information on oath.

33. *By Mr. O'Hea.*—Without a summons?—Yes, the IV. Victoriae No. 5 section I says:—"That if it shall be made to appear to the reasonable satisfaction of any justice of the peace that any married woman hath been (whether before or after the passing of this Act) unlawfully deserted by her husband, or hath been left by him without means of support, it shall be lawful for such justice upon complaint on oath by her or any reputable person on her behalf, to cause a summons to be issued directing the husband to appear before two justices to show cause why she should not be supported by him; and in any such case of desertion it shall be lawful for the justice upon proof thereof on oath to issue a warrant for the husband's apprehension in order to compel such appearance."

The witness withdrew.

Robert Kerr, Esq., J.P. examined.

R. Kerr, Esq., J.P.
9th May, 1861.

34. *By the Chairman.*—Would you state the circumstances under which you issued that warrant; when did you receive the first information?—I think on the 23rd April. Mr. Miller, the solicitor, and Mrs. Hunter, called at my office with this information and warrant and requested me to sign it as a magistrate. Mrs. Hunter swore in my presence that her husband had gone on board the *Donald Mackay* and had not made any provision for her support, and on her giving me that information I signed this warrant and handed it to her solicitor, Mr. Miller.

35. Were you amongst the magistrates when the case was heard in the first instance and dismissed with regard to the calling upon Dr. Hunter to give security to fulfil an order of General Sessions?—I was not.

36. So that you are only acquainted with those circumstances you have now stated?—I was only acquainted with those circumstances, except from the newspaper reports and reports out of doors. I knew nothing but what was before me.

37. Were you at the time under the impression that he was a Member of the Legislative Assembly?—I fully believed that he was not. I could not believe anything else from seeing his address in the newspapers and hearing that he had gone on board. This is the address—*[referring to the paper already produced]*—from which I concluded that he had resigned. There is no evidence here that he sent his resignation to the Speaker, but I took that for granted, because I could not think a gentleman would speak in this style to his constituents without having either sent his resignation, or doing so before he left.

38. Had you been aware at the time that he was a member of Parliament, would it have made any difference to your signing the warrant?—I should not have signed the warrant without consulting my solicitor. I should have felt it my duty to sign the warrant under any circumstances, but not without consulting my solicitor.

The witness withdrew.

Alexander Hunter, Esq. and Charles Prendergast Hackett, Esq. again called in.

The evidence of Mr. Hackett was read over by the Shorthand-Writer.

A. Hunter, Esq.,
and
C. P. Hackett, Esq.
9th May, 1861.

The Chairman intimated to Mr. Hunter that if he wished to put any questions to Mr. Hackett the Committee would allow him to do so.

39. *By Dr. Evans (to Mr. Hackett.)*—You said something about an arrangement, what arrangement do you allude to—the arrangement for the conveyance of Mrs. Hunter to Europe—or the arrangement for paying the £3 a week, or whatever it was, ordered by the Court of General Sessions—or some fresh arrangement for her maintenance?—I was not referring to any arrangement except the simple one that Dr. Hunter offered—that he intended to provide the means requisite to convey his wife to Europe.

40. Were you in court when that offer was made?—Yes, certainly.

41. Was that offer accepted or declined by Mrs. Hunter?—Mrs. Hunter declined it. She declared that she would not leave this colony.

42. Do you contemplate the removal of Mrs. Hunter by force?—My firm opinion is, that if Dr. Hunter had sailed in the *Donald Mackay*, Mrs. Hunter would have followed him; and I believe so still, notwithstanding the distinctness of her refusal.

43. By this proceeding, which you say you would have adopted and so far sanctioned, was it your intention to enforce the carrying out of the arrangement which had been expressly repudiated by Mrs. Hunter?—The Bench quite understood that Dr. Hunter would leave her

the means of going. It was not because she, in a hasty moment, said, "I will not do this, and I will do that;" the Bench would treat that as the conclusion of her mind. They knew that it was the opinion of some gentlemen who came to me about it, that Dr. Hunter leaving her the means of going home, it would be for her to elect whether she would go home afterwards; neither would they have applied the money in any other way.

A. Hunter, Esq.,
and
C.P. Hackett, Esq.
continued,
9th May, 1861.

44. Then was it the object of the Bench by this proceeding to reserve in their own hands the alternative either of conveying Mrs. Hunter to Europe or of using the money to pay a weekly allowance?—No; had the money been left in any manner that the Bench could have applied it, the Bench never contemplated applying that money in any way but for her conveyance to Europe.

45. What was the use of the warrant?—It was issued because no provision was made—

46. What was it to enforce?—She must be maintained, either here or at home,

47. After the husband has in court distinctly made an offer to take his wife with him, or to pay over a sufficient sum of money for her passage to Europe, where he was going, what was the object of this warrant subsequently given?—Because the money had not been placed in any hands.

48. But I understood you that Mrs. Hunter had distinctly refused it?—So she did.

49. Then what was the object of this warrant?—To get the arrangement made to convey her home.

50. But she had refused to go?—But the Bench treated that as nothing.

51. Then why issue the warrant?—Because nothing was done from the hearing of the case until the time of the issuing of the warrant.

52. *By Mr. Lalor.*—As a matter of law if a married lady declined to accept a sum of money to go with her husband or to be removed to the place where he is going, can she have any claim for maintenance after that?—He must give her the means of doing it. I do not think a mere naked offer amounts to anything.

53. But does the declining of the married lady?—I do not think it amounts to anything.

54. *By Dr. Evans.*—Do you require a legal tender of the money?—I only require that that woman shall not be left deserted.

55. *By Mr. Greeves.*—At the time of this offer there was a legal order for maintenance?—Yes, which was in force up to the time that Dr. Hunter sailed.

56. *By Mr. Lalor.*—Would not the offer of Dr. Hunter destroy that order for maintenance?—I do not think it would; it was an order of Quarter Sessions, we could not do away with that.

The witness withdrew.

Adjourned.

