

1860-1.

VICTORIA.

---

VILLIERS AND HEYTESBURY ELECTION.

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R E P O R T

FROM THE



COMMITTEE OF ELECTIONS AND QUALIFICATIONS

UPON THE

PETITION OF R. D. IRELAND, ESQ.,

AGAINST THE RETURN OF

WILLIAM RUTLEDGE, ESQ.,

TOGETHER WITH

PROCEEDINGS OF COMMITTEE AND MINUTES OF EVIDENCE.

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

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By Authority:

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D.—No. 23.

EXTRACTED FROM THE VOTES AND PROCEEDINGS.

FRIDAY, 11TH JANUARY, 1861.

COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—In pursuance of “*The Electoral Act of 1856*,” Mr. Speaker laid upon the Table the following Warrant appointing “*The Committee of Elections and Qualifications*,” which was read, and is as follows :—

“VICTORIA.

“Pursuant to the provisions of ‘*The Electoral Act of 1856*,’ I do hereby appoint—

Robert Tarver Firebrace, Esquire,  
James Stewart Johnston, Esquire,  
James Frederick Martley, Esquire,  
William McLellan, Esquire,  
Michael Prendergast, Esquire,  
Vincent Pyke, Esquire,  
George Frederick Verdon, Esquire,

to be Members of a Committee to be called ‘*The Committee of Elections and Qualifications*.’

“Given under my hand this eleventh day of January, 1861.

(Signed)

“FRANS. MURPHY,  
“Speaker.”

TUESDAY, 15TH JANUARY, 1861.

COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The Warrant appointing “*The Committee of Elections and Qualifications*” was again laid upon the Table by Mr. Speaker.

WEDNESDAY, 16TH JANUARY, 1861.

COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The Warrant appointing “*The Committee of Elections and Qualifications*” was again laid upon the Table by Mr. Speaker.

WEDNESDAY, 10TH APRIL, 1861.

ELECTIONS AND QUALIFICATIONS COMMITTEE.—Mr. Speaker announced that he had received from Mr. R. T. Firebrace the resignation of his place as one of the “*Elections and Qualifications Committee*.”

COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—In pursuance of “*The Electoral Act of 1856*,” Mr. Speaker laid upon the Table the following Warrant :—

“VICTORIA.

“Pursuant to the provisions of ‘*The Electoral Act of 1856*,’ I do hereby appoint—

William Halse Gatty Jones, Esquire,

to be a Member of a Committee to be called ‘*The Committee of Elections and Qualifications*.’

“Given under my hand this tenth day of April, 1861.

(Signed)

“FRANS. MURPHY,  
“Speaker.”

PETITION.—Mr. Speaker laid before the Assembly a Petition that had been presented to him this day, and which Petition is as follows :—

*To the Honorable SIR FRANCIS MURPHY, Knight, Speaker of the Legislative Assembly of Victoria.*

The Petition of RICHARD DAVIES IRELAND, of St. Kilda, Barrister-at-Law, Esquire,

RESPECTFULLY SHEWETH—

That in pursuance of an Act of the Governor and Legislative Council of the Colony of Victoria, passed in the nineteenth year of the reign of Her Majesty, intituled, “*An Act to provide for the Election of Members to serve in the Legislative Council and Legislative Assembly of Victoria respectively*,” a Writ was duly issued by and under the hand and seal of the Honorable the Speaker of the same Assembly, directed to F. P. Stevens, Esquire, Returning Officer for the Electoral District of Villiers and Heytesbury, and requiring him, the said F. P. Stevens, to proceed as therein directed according to law for the purpose of procuring the return of a representative for the said District of Villiers and Heytesbury to the Legislative Assembly of Victoria :

That in accordance with the exigencies of such writ a meeting of the electors of the said district was duly convened by the said Returning Officer at Belfast, in the said District of Villiers and Heytesbury, for the purpose of nominating candidates and otherwise proceeding to such election :

That at the said meeting, which took place at Tower Hill on the 25th day of March, two candidates were nominated and proposed, that is to say, William Rutledge, Esquire, and Richard Davies Ireland, your Petitioner :

That by a show of hands, then successively called for by the Returning Officer, it appeared to and was then declared by him from the hustings that such show of hands was in favor of your petitioner, and thereupon a poll was demanded by the said William Rutledge :

That such poll took place on the first day of April now last past, at the following polling places, that is to say :—Woodford, Confines of Warrnambool, Tower Hill, Yambuk, Caramut, Peshurst, Allansford, Tandarook, Confines of Belfast :—

That on or about the second day of April, One thousand eight hundred and sixty-one, the Returning Officer declared the final state of the polling to be as follows :—

William Rutledge	...	...	...	...	733
Richard Davies Ireland	...	...	...	...	693

Whereupon the said William Rutledge was publicly announced and declared by the said Returning Officer to be duly elected as a Member of the Legislative Assembly for the District of Villiers and Heytesbury :

That your Petitioner has been informed and believes that the said William Rutledge is disqualified from sitting and voting as a Member of the Legislative Assembly of Victoria, by reason of his having contracted, and of his being still a contractor with the Government of Victoria, for the several services hereinafter mentioned :

That on or about the eighteenth day of December, One thousand eight hundred and sixty, the said William Rutledge entered into a contract with Her Majesty’s Postmaster-General, acting on behalf of the Government of Victoria, to carry the Mails to and from Geelong and other places to Portland and other places, and that such contract subsisted and was in full force at the time of the said election for the District of Villiers and Heytesbury, and that the same still is in full force :

That on the eighth day of January, One thousand eight hundred and sixty-one, the said William Rutledge entered into two several contracts with the Government Storekeeper, on behalf of the Government of Victoria, for the supply of forage for the use of the Government, in the Districts of Warrnambool and Woodford respectively, and that the said contracts subsisted and were in full force at the time of the said election for the District of Villiers and Heytesbury, and that the same are still in full force.

That your Petitioner is prepared to prove that the said William Rutledge was, at the time of the said election, and still is, a contractor with the Government of Victoria, as hereinbefore mentioned; and that the said William Rutledge was at the time of the said election, and still is, directly interested in the said several contracts hereinbefore mentioned, within the meaning of a certain Act of the Parliament of Victoria passed in the 23rd year of the reign of Her Majesty, intituled "*An Act to limit the number of persons holding offices under the Crown who may sit and vote in the Legislative Council and Legislative Assembly of Victoria*;" and that the election of the said William Rutledge, so far as the said William Rutledge is concerned, is absolutely null and void.

Your Petitioner therefore respectfully prays that you will communicate the matter of his said Petition to the Legislative Assembly of Victoria, in order that the case of your Petitioner may be referred to a Committee of the said Assembly, duly authorised to receive, enquire into, and report upon the same, according to law. And your Petitioner further prays, that in the event of the said Committee reporting that the said William Rutledge was at the time of the said election interested in the said contracts in this Petition mentioned, that the Legislative Assembly will be pleased to declare the said Returning Officer's return void as respects the said William Rutledge, and to amend the said return to the said writ, by striking out the name of the said William Rutledge, and inserting in its place the name of your Petitioner. And to declare your Petitioner duly elected as a Member of the Legislative Assembly for the District of Villiers and Heytesbury.

And your Petitioner will ever pray.

Temple Court,  
10th April, 1861.

R. D. IRELAND.

THURSDAY, 11TH APRIL, 1861.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—Mr. Speaker's Warrant appointing Mr. Jones to be a Member of this Committee was again laid upon the Table of the Assembly.

FRIDAY, 12TH APRIL, 1861.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—Mr. Speaker's Warrant, appointing Mr. Jones a Member of the "*Committee of Elections and Qualifications*," was again laid upon the Table by Mr. Speaker.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The following gentlemen, being Members of the "*Committee of Elections and Qualifications*," were called to the Table of the Assembly and sworn by the Clerk, viz :—Mr. McLellan, Mr. Martley, Mr. Prendergast, Mr. Pyke, and Mr. Verdon.

TUESDAY, 16TH APRIL, 1861.

COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—Mr. Jones, a Member of the "*Elections and Qualifications Committee*," was sworn by the Clerk at the Table.

COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—Mr. Speaker appointed this Committee to meet at three o'clock on Friday next, in the North Lobby.

VILLIERS AND HEYTESBURY ELECTION PETITION.—On the motion of Mr. Heales, the Assembly ordered that the Petition of R. D. Ireland, of St. Kilda, Barrister-at-Law, Esquire, against the return of W. Rutledge, Esquire, as Member for the Electoral District of Villiers and Heytesbury, laid on the Table of this House 10th April instant, be referred to the "*Committee of Elections and Qualifications*."

WEDNESDAY, 17TH APRIL, 1861.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—Mr. J. S. Johnston was sworn at the Table by the Clerk as Member of the "*Committee of Elections and Qualifications*."

THURSDAY, 18TH APRIL, 1861.

PETITION.—Mr. Wood presented a Petition from John Mitchell, of Kangatong, in the county of Villiers, and the Electoral District of Villiers and Heytesbury, praying that he might be admitted as a party to oppose the prayer of the Petition of Richard Davies Ireland in regard to the late election for the Electoral District of Villiers and Heytesbury.

RESIGNATION OF SEAT.—Mr. Speaker announced that he had this day received from W. Rutledge, Esq., a letter, which he read, and is as follows :—

Melbourne Club, 18th April, 1861.

To the Honorable the Speaker of the Legislative Assembly of Victoria.

SIR,

I have the honor to hereby resign my seat in the Legislative Assembly for the Electoral District of Villiers and Heytesbury.

I have the honor to be, Sir,

Your most obedient Servant,

(Signed)

WM. RUTLEDGE.

VILLIERS AND HEYTESBURY.—Mr. Wood moved, That Mr. Speaker do now issue a Writ for the return of a Member to serve for the Electoral District of Villiers and Heytesbury, vacant by the resignation of W. Rutledge, Esq.

Debate ensued.

Mr. Snodgrass moved, as an amendment, That all the words after the word "That" be omitted, with a view to insert instead thereof the words "the letter from Mr. Rutledge, resigning his seat for the Electoral District of Villiers and Heytesbury, be referred to "*The Committee of Elections and Qualifications*."

Debate continued.

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

Question—That the words proposed to be inserted in the place of the words omitted be so inserted—put and resolved in the affirmative.

Question—That the letter from Mr. Rutledge, resigning his seat for the Electoral District of Villiers and Heytesbury, be referred to the "*Committee of Elections and Qualifications*"—put and resolved in the affirmative.

# REPORT.

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MR. PYKE, from the "*Committee of Elections and Qualifications*,"  
has the honor to report the following resolutions :—

That William Rutledge is not duly elected a Member of the Legislative Assembly for the district of Villiers and Heytesbury.

That the Committee, owing to the very peculiar circumstances of the present case arising from the informalities in the Petition, abstain from finally declaring that the Petitioner should be declared duly elected.

That the Committee desire to express their disapprobation of the conduct of Mr. Rutledge, as disclosed by the evidence in this case.

That in the opinion of this Committee the candidature and consequent return of William Rutledge was vexatious.

Committee-room,

14th May, 1861.

## PROCEEDINGS OF COMMITTEE.

FRIDAY, 19<sup>TH</sup> APRIL, 1861.

*Members present :*

Mr. Prendergast,  
Mr. McLellan,  
Mr. Pyke,  
Mr. Jones,

Mr. J. S. Johnston,  
Mr. Verdon,  
Mr. Martley.

The Warrants appointing the Committee and the resignation of Mr. Firebrace read by the Clerk. On the motion of Mr. Jones, Mr. Pyke was called to the Chair. Mr. Ireland's Petition read, and Order referring same to the Committee. Mr. Mitchell's Petition read, and is as follows:—

TO THE HONORABLE THE LEGISLATIVE ASSEMBLY OF VICTORIA IN PARLIAMENT ASSEMBLED.  
The Humble Petition of John Mitchell, of Kangatong, in the County of Villiers and the Electoral District of Villiers and Heytesbury :

SH EWETH—

1. That your Petitioner had a right to vote at the last election for the electoral district of Villiers and Heytesbury.
2. That at the said election William Rutledge was returned as a Member for the said district.
3. That a Petition has been presented by one Richard Davies Ireland, praying among other things, that he may be declared to have been duly elected as a Member of Your Honorable House for the said district.

Your Petitioner, therefore, humbly prays that he may be admitted as a party to oppose the said prayer of the said Petition.

And your Petitioner will ever pray.

(Signed) JOHN MITCHELL.

Mr. Rutledge's letter read, and Order referring same to the Committee.  
Room cleared for Committee to deliberate.

Mr. Verdon moved, That all parties appearing before this Committee as agents on behalf of the petitioner, or the opposer of his Petition, as the case may be, be required to hand in to the Committee written appearances, signed by them as such agents.

Carried.

Parties called in and informed of such resolution.

Mr. Verdon moved, That the Committee do now adjourn until Tuesday next, at twelve o'clock.  
Question—put and resolved in the affirmative.

TUESDAY, 23<sup>RD</sup> APRIL, 1861.

*Members present :*

Mr. Pyke, in the Chair ;

Mr. Prendergast,  
Mr. Jones,  
Mr. Verdon,

Mr. McLellan,  
Mr. J. S. Johnston.

The several appearances entered by Mr. Nolan on behalf of the Honorable R. D. Ireland, and of Messrs. Brodrigg, Crisp, and Lewis, on behalf of Mr. Mitchell, were laid before the Committee and read by the Clerk, and are as follow:—

I hereby appear as agent on behalf of the Honorable Richard Davies Ireland, in the matter of his petition against the return of William Rutledge, Esquire, for the Electoral District of Villiers and Heytesbury.

(Signed) THOS. C. NOLAN,  
Agent for the Honorable R. D. Ireland.

Dated this 19th day of April, 1861.

51, Chancery-lane, Melbourne,  
23rd April, 1861.

To the Clerk of the Legislative Assembly.

SIR,

We beg to inform you that we are the solicitors of John Mitchell, an elector of Villiers and Heytesbury, and whose petition in reference to the recent election there, is now under the consideration of the "*Elections and Qualifications Committee.*"

We have the honor to be, Sir,  
Your obedient Servants,  
(Signed) BRODRIGB, CRISP, AND LEWIS.

Mr. Chapman appeared for Mr. Ireland.  
Mr. W. Stephen appeared for Mr. Mitchell.

Mr. Verdon moved the following resolutions :—

1. That the agents of the respective parties be requested to hand in to the Chairman, from time to time, a list of the witnesses required to be summoned and that no summons be issued in blank by the Committee.
2. That counsel will not be allowed to go into matters not referred to in their opening statements without a special application to the Committee for permission to do so.
3. That if costs be demanded by either party under section 75 of "The Electoral Act of 1856," the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.
4. That no person shall be examined as a witness who shall have been in the room during any part of the proceedings (with the exception of the parties and their agents whose names shall be handed in), without the special leave of the Committee.
5. That the counsel and agents be informed, that the Committee will only hear one counsel on each side, on the opening and summing up of the case.
6. That should any point of law arise requiring argument, the Committee reserve to themselves the power of hearing only one counsel on each side.
7. That if the leading counsel are not prepared to sum up the case on either side, when the evidence is terminated, the Committee will not protract the proceedings for the convenience of counsel who may be absent.

Agreed to.

Counsel informed of the above resolutions.

Room cleared.

Committee deliberated.

Parties called in and informed by the Chairman that the Committee had resolved that counsel be heard on the effect of the resignation by Mr. Rutledge of his seat.

Mr. Chapman was heard on behalf of Mr. Ireland.

Mr. W. Stephen was heard on behalf of Mr. Mitchell.

Room cleared.

Committee deliberated.

Mr. Verdon moved, That the question as to the effect of Mr. Rutledge's resignation be considered after their decision on Mr. Rutledge's disqualification.

Agreed to.

Parties called in and informed of the above decision.

Mr. Chapman was heard further on behalf of the Petitioner.

Room cleared.

Committee resolved, That Mr. Rutledge is not before the Committee at all.

Parties called in and informed of such decision.

Mr. Stephen raised, as a preliminary objection, that the Committee cannot declare Mr. Ireland properly returned.

Mr. Chapman was heard in reply.

Mr. J. S. Johnston took his seat on the Committee.

Room cleared.

Committee deliberated.

*Resolved*—That the Committee decline at present to consider the resignation of his seat by Mr. Rutledge.

Parties called in and informed of such resolution.

Mr. Chapman was heard on behalf of Mr. Ireland.

Mr. Stephen was heard on behalf of Mr. Mitchell.

Mr. Chapman was heard in reply.

Room cleared.

Committee deliberated.

Mr. J. S. Johnston moved, That this Committee is of opinion that Clause LXX. of the Electoral Act applies to the want of a property qualification only.

Agreed to.

Parties called in and informed of the above resolution.

Adjourned till Friday next, at twelve o'clock.

FRIDAY, 26TH APRIL, 1861.

*Members present :*

Mr. Pyke, in the Chair;

Mr. Jones,  
Mr. McLellan,  
Mr. Verdon,

Mr. Prendergast,  
Mr. J. S. Johnston.

Mr. Chapman appeared for the Petitioner.

Mr. Fellows appeared for Mr. Mitchell.

Mr. G. H. F. Webb sworn faithfully to take down and transcribe the evidence.

W. Turner, Esq., Secretary of the Post Office, sworn and examined by Mr. Chapman.

Produced copies of correspondence between the Post Office and Mr. Rutledge, as to certain irregularities in conveyance of mails, and requesting the sanction of Government to the transfer of Mr. Rutledge's contract to Messrs. F. B. Clapp and Co.

Mr. Chapman handed in copy of the *Government Gazette* of 14th December, 1860, and 24th January, 1861.

J. M. Spence, Esq., Government Storekeeper, sworn and examined by Mr. Chapman.

Produced bond.

Mr. Prendergast took his seat.

Mr. Chapman having stated to the Committee that he did not propose to call any other evidence as to existence of contracts at the date of election, was proceeding to address the Committee as to sufficiency of the notice given to electors of Mr. Rutledge's disqualification, when the Chairman informed him the Committee would consider whether the evidence given was sufficient to satisfy them of the fact of Mr. Rutledge having been a contractor at the time of election.

Room cleared.

Committee deliberated.

Mr. J. S. Johnston took his seat.

Mr. Verdon moved, That the Committee permit the counsel for the Petitioner to proceed with his case before they arrive at any further decision.

Agreed to.

Parties called in and informed of this resolution.

Mr. Martley took his seat.

Committee adjourned to Wednesday next, at twelve o'clock.

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WEDNESDAY, 1ST MAY, 1861.

*Members present :*

Mr. Pyke, in the Chair ;

Mr. McLellan,  
Mr. Verdon,  
Mr. Prendergast,

Mr. J. S. Johnston,  
Mr. Martley,  
Mr. Jones.

Mr. Ireland appeared in person and was heard to address the Committee in support of the sufficiency of his petition.

Mr. Fellows was heard against the sufficiency of the Petition.

Mr. Jones took his seat.

Mr. Ireland was heard in reply.

Room cleared.

Committee deliberated.

Mr. Verdon moved, That the prayer of Mr. Ireland's petition is sufficient to permit the Committee to deal finally with the right of Mr. Ireland to have his name inserted in the return to the Writ in lieu of that of Mr. Rutledge.

Committee divided.

Ayes, 3.  
Mr. Verdon,  
Mr. McLellan,  
Mr. Prendergast.

Noes, 4.  
Mr. Jones,  
Mr. Martley,  
Mr. J. S. Johnston,  
Mr. Pyke.

And so it was negatived.

Mr. Verdon moved, That the Petition is sufficient to enable the Committee to enquire into the right of the Petitioner to be declared the Representative in the Legislative Assembly of the Electoral District of Villiers and Heytesbury.

Committee divided.

Ayes, 2.  
Mr. Verdon,  
Mr. Prendergast.

Noes, 5.  
Mr. Pyke,  
Mr. J. S. Johnston,  
Mr. Jones,  
Mr. Martley,  
Mr. McLellan.

And so it was negatived.

Mr. Johnston moved, That the prayer of Mr. Ireland's Petition is sufficient to permit the Committee to enquire into the right of Mr. Ireland to have his name inserted in the return to the Writ in lieu of that of Mr. Rutledge, and to report to the Assembly thereon.

Committee divided.

Ayes, 5.  
Mr. McLellan,  
Mr. Prendergast,  
Mr. Pyke,  
Mr. J. S. Johnston,  
Mr. Verdon.

Noes, 2.  
Mr. Martley,  
Mr. Jones.

And so it was resolved in the affirmative.

Parties called in, and informed of the decision of the Committee.

Adjourned to Friday next, at twelve o'clock.

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FRIDAY, 3RD MAY, 1861.

*Members present :*

Mr. Pyke, in the Chair ;

Mr. Prendergast,  
Mr. McLellan,  
Mr. Verdon,

Mr. Jones,  
Mr. Martley,  
Mr. J. S. Johnston.

Mr. Fellows admitted statements in writ and petition as to the holding of the election and the number of votes polled for each candidate.

D.—No. 23, b.

A. Bihle, Esq., called in, sworn, and examined by Mr. Ireland.  
Produced vouchers for money paid to the order of Mr. Rutledge, (dated 28th February, 1861)  
for the conveyance of inland mails during the month of February, 1861.

Cross-examined by Mr. Fellows.

Mr. Jones took his seat.

Mr. Michael O'Reilly called in, sworn, and examined by Mr. Ireland.

Mr. O'Reilly handed in two declarations before a magistrate signed by several electors and  
marked respectively A. and B.

Mr. Fellows objected to reception of declarations because they were not taken in conformity with  
the 65th section of the Electoral Act, and because the requirements of 9 Vict., No. 9, had not been  
complied with.

Mr. Ireland was heard in support of the reception of the above declarations.

Room cleared.

Mr. Martley took his seat.

Mr. J. S. Johnston took his seat.

Committee deliberated.

Mr. McLellan moved, That documents A. and B. be received as evidence for what they are  
worth, but not as declarations under the 65th section of the Electoral Act.

Committee divided.

Ayes, 6.  
Mr. J. S. Johnston,  
Mr. Verdon,  
Mr. Jones,  
Mr. McLellan,  
Mr. Prendergast,  
Mr. Pyke.

No, 1.  
Mr. Martley.

Parties called in and informed of the above resolution.

Mr. O'Reilly further examined by Mr. Ireland.

Produced *Portland Guardian* of 27th March, 1861.—C.

Produced *Warrnambool Examiner* of 25th December, 1860.—D.

Mr. O'Reilly cross-examined by Mr. Fellows.

Re-examined by Mr. Ireland.

Produced *Warrnambool Examiner*, of 29th March, 1861.—E.

Advertisement signed "Vote for Ireland," read by the Clerk.

Richard Heales, Esq., Chief Secretary, called in, sworn, and examined by Mr. Ireland.

Thomas Loader, Esq., Commissioner of Trade and Customs, called in, sworn, and examined by  
Mr. Ireland.

Mr. Patrick Gleeson called in, sworn, and examined by Mr. Ireland.

Cross-examined by Mr. Fellows.

Mr. O'Reilly recalled, and examined by Mr. Ireland.

Committee adjourned until Tuesday next, at twelve o'clock.

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TUESDAY, 7TH MAY, 1861.

*Members present :*

Mr. Pyke, in the Chair ;

Mr. Jones,  
Mr. McLellan,

Mr. Prendergast.

Committee adjourned until twelve o'clock to-morrow.

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WEDNESDAY, 8TH MAY, 1861.

*Members present :*

Mr. Pyke, in the Chair ;

Mr. Verdon,  
Mr. McLellan,  
Mr. Prendergast,

Mr. Jones,  
Mr. Martley.

Mr. Ireland was heard to sum up his case.

Mr. Fellows was heard in reply.

Room cleared.

Committee deliberated.

Agreed to adjourn to consider resolutions.

Parties called in and informed thereof.

Adjourned until Friday next, at one o'clock.



FRIDAY, 10TH MAY, 1861.

*Members present :*

Mr. Pyke, in the Chair ;

Mr. J. S. Johnston,  
Mr. Verdon,  
Mr. Prendergast,Mr. Jones,  
Mr. McLellan,  
Mr. Martley.

Mr. Ireland handed in to the Committee a copy of the Electoral Roll for Villiers and Heytesbury for 1859-1860.

Room cleared.

Committee continued its deliberations.

Mr. Prendergast moved, That Mr. Rutledge, the person mentioned in the return to the Writ directing that an election should be held for the Electoral District of Villiers and Heytesbury was not duly returned, and "that" R. D. Ireland, who was returned not to be duly elected, was duly elected.

Mr. Pyke moved, as an amendment, That all the words after the word "that" in the third line of the above question be omitted, with a view to insert instead thereof the words "sufficient evidence has not been adduced before the Committee to entitle the Petitioner, R. D. Ireland, to be declared duly elected."

After debate, question and amendment were withdrawn.

Mr. Jones moved, That William Rutledge is not duly elected a Member of the Legislative Assembly for the District of Villiers and Heytesbury.

Agreed to.

Mr. McLellan moved, "That" the Committee, owing to the very peculiar circumstances of the present case, arising from informalities in the Petition, abstain from finally deciding that the Petitioner should be declared duly elected.

Mr. Jones moved, as an amendment, That all the words after the word "that" be omitted, with a view to insert instead thereof the words "the last election for the district of Villiers and Heytesbury is a void election, and that William Rutledge was not duly elected inasmuch as the said William Rutledge was at the time of the said election interested in the said contracts in the Petition mentioned ; but that there was not sufficient evidence of notoriety of such disqualification put before this Committee to show that the Petitioner, R. D. Ireland, was duly elected and ought to be returned."

Question—That the words proposed to be omitted stand part of the question—put.

Committee divided.

Ayes, 4.  
Mr. J. S. Johnston,  
Mr. McLellan,  
Mr. Verdon,  
Mr. Prendergast.Noes, 3.  
Mr. Pyke,  
Mr. Martley,  
Mr. Jones.

And so it was resolved in the affirmative.

Question—That the Committee, owing to the very peculiar circumstances of the present case, arising from informalities in the Petition, abstain from finally deciding that the Petitioner should be declared duly elected—put.

Committee divided.

Ayes, 6.  
Mr. Pyke,  
Mr. J. S. Johnston,  
Mr. Prendergast,  
Mr. McLellan,  
Mr. Verdon,  
Mr. Martley.No, 1.  
Mr. Jones.

And so it was resolved in the affirmative.

Mr. Pyke moved, That the Committee desire to express their disapprobation of the conduct of Mr. Rutledge as disclosed by the evidence in this case.

Question—put and resolved in the affirmative.

Parties called in and informed of the above resolutions.

Mr. Brodrigg called in, sworn, and examined by Mr. Ireland.

Mr. Ireland was proposing to ask Mr. Brodrigg the following question :—

Is Mr. Rutledge responsible to you for that and other costs : do you regard him so?

Mr. Martley objected to the question being put.

Room cleared.

Mr. McLellan moved, That the question be put.

Committee divided.

Ayes, 5.  
Mr. McLellan,  
Mr. Prendergast,  
Mr. J. S. Johnston,  
Mr. Verdon,  
Mr. Jones.Noes, 2.  
Mr. Pyke,  
Mr. Martley.

And so it was resolved in the affirmative.

Parties called in and informed of the above resolution.

Mr. Ireland then applied for costs.

Committee adjourned until Tuesday next at two o'clock.

TUESDAY, 14<sup>TH</sup> MAY, 1861.

*Members present :*

Mr. Pyke, in the Chair :

Mr. Jones,  
Mr. J. S. Johnston,  
Mr. Prendergast,

Mr. McLellan,  
Mr. Martley,  
Mr. Verdon.

Mr. Prendergast moved, That in the opinion of this Committee the candidature and consequent return of William Rutledge was vexatious.  
Committee divided.

Ayes, 4.  
Mr. Pyke,  
Mr. McLellan,  
Mr. J. S. Johnston,  
Mr. Prendergast.

No, 1.  
Mr. Jones.

And so it was resolved in the affirmative.

Mr. Martley took his seat.  
Mr. Verdon took his seat.  
Parties called in and informed of the above resolution.  
Chairman to report resolutions to the House.

# MINUTES OF EVIDENCE.

TUESDAY, 23RD APRIL, 1861.

## *Members present :*

MR. PYKE, in the Chair ;

Mr. Verdon,  
Mr. Jones,  
Mr. J. S. Johnston,

Mr. McLellan,  
Mr. Prendergast.

The counsel and parties were called in.

*Mr. Chapman* appeared as counsel for the petitioner.

*Mr. Nolan* appeared as agent.

*Mr. Stephen* appeared as counsel for Mr. John Mitchell.

*Messrs. Brodribb, Crisp and Lewis* appeared as agents.

## *The Committee deliberated.*

*The Chairman* informed the counsel and parties that the following preliminary resolutions had been agreed to :—

1. That all parties appearing before this Committee as agents on behalf of the petitioner, or the opposer of his return, as the case may be, be required to hand in to the Committee written appearances, signed by them as such agents.
2. That the agents of the respective parties be requested to hand in to the Chairman, from time to time, a list of the witnesses required to be summoned, and that no summons be issued in blank by the Committee.
3. That counsel will not be allowed to go into matters not referred to in their opening statements without a special application to the Committee for permission to do so.
4. That if costs be demanded by either party under section 75 of "The Electoral Act of 1856", the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.
5. That no person shall be examined as a witness who shall have been in the room during any part of the proceedings (with the exception of the parties and their agents whose names shall be handed in), without the special leave of the Committee.
6. That the counsel and agents be informed, that the Committee will only hear one counsel on each side, on the opening and summing up of the case.
7. That should any point of law arise requiring argument, the Committee reserve to themselves the power of hearing only one counsel on each side.
8. That if the leading counsel are not prepared to sum up the case on either side, when the evidence is terminated, the Committee will not protract the proceedings for the convenience of counsel who may be absent.

## *The Committee deliberated.*

*The Chairman* intimated that the Committee had decided to hear counsel at once upon the question of the effect of Mr. Rutledge's resignation.

*Mr. Stephen* stated, that in order to facilitate the decision of the real question before the Committee he would at once admit that Mr. Rutledge was disqualified at the time of his election. He further stated, that Mr. Rutledge wished him to inform the Committee that he (Mr. Rutledge) was not aware of his disqualification at the time of his nomination, but became aware of it between the time of the nomination and the day of the polling.

*The Chairman* intimated that Mr. Stephen, appearing for Mr. Mitchell, and not for Mr. Rutledge, could not bind the latter gentleman by any admission he might make.

*Mr. Chapman* inquired whether Mr. Rutledge admitted the fact that he was a contractor at the time of the election.

*Mr. Rutledge* stated that he admitted the fact of his being a contractor at the time of his election. In reply to the Committee he stated that the contract which he held at the time was a very small one, and had altogether escaped his recollection until his attention was called to it between the time of the nomination and the day of polling.

*The Chairman* stated, that the Committee were of opinion that Mr. Rutledge's reply to the enquiry of Mr. Chapman could not be taken as evidence, and that if it was required to be proved before the Committee it would be necessary to call Mr. Rutledge as a witness.

After some further discussion—

## *The Committee-room was cleared.*

After a short time the counsel and parties were again called in.

*Mr. Chapman* stated, that during the adjournment of the parties out of the room it had been agreed, that the *Gazette*, together with certain correspondence with the Government, produced by him (*Mr. Chapman*), should be admitted as evidence of Mr. Rutledge being a contractor at the time of his election.

*The Chairman* stated, "That the Committee considered Mr. Rutledge was not before them at all :

That therefore he was not in a position to make any admission, and that it would be necessary for Mr. Chapman to prove his case by evidence before the Committee.

*Mr. Stephen* stated, that he admitted the disqualification of Mr. Rutledge, but that, altogether irrespective of that question, the point upon which he mainly relied was, that the materials were not, and could not be, before the Committee upon which to declare that Mr. Ireland was duly elected.

After some discussion *Mr. Chapman* was heard to open the case on behalf of the petitioner.

*Mr. Chapman* inquired whether the Committee wished him to address himself to the question of Mr. Rutledge's resignation.

*The Committee deliberated.*

*The Chairman* stated, that the Committee would not at present go into the question of the resignation of Mr. Rutledge.

*Mr. Stephen* was heard to address the Committee on behalf of the petitioner, Mr. Mitchell.

*Mr Chapman* was heard in reply.

*The Committee-room was cleared.*

After some time the counsel and parties were again called in, and informed by the Chairman that the Committee had arrived at the following resolution :—

That this Committee is of opinion that clause 70 of the "Electoral Act" applies to the want of a property qualification only.

*The Chairman* further stated, that the Committee would now proceed, in accordance with English precedent, to inquire whether sufficient notice had been given to the electors to show that they did not give their votes in ignorance of the disqualification of Mr. Rutledge.

*Adjourned to Friday next at twelve o'clock.*

FRIDAY, 26TH APRIL, 1861.

*Members present :*

MR. PYKE in the Chair ;

Mr. Verdon,  
Mr. Jones,  
Mr. McLellan,

Mr. Prendergast,  
Mr. Martley,  
Mr. J. S. Johnston.

The counsel and parties were called in.

*Mr. Fellows* appeared as counsel for the petitioner, Mr. Mitchell.  
The Shorthand Writer was sworn.

William Turner, Esq., called and sworn.—Examined by *Mr. Chapman*.

W. Turner, Esq.,  
23rd April, 1861.

1. Are you secretary to the Post office?—Yes.
2. Have you brought with you the contract between Mr. William Rutledge and the Post office respecting the carrying of the mail?—Yes, in the Western District, to and from Geelong and Portland, by way of the intermediate post towns; to and from Geelong and Belfast, by way of the intermediate post towns; and to and from Geelong and Pleasant Creek, by way of Ballarat.
3. Was that contract in force on the 1st of April last?—Yes, it was.
4. Is it still in force?—It is.
5. It has not been transferred to any person?—No.
6. Is that correspondence between your department and Mr. Rutledge—[*handing certain letters to the witness*] ?—Yes, these are copies from the office papers—[*the witness delivered in the same.*]

*The witness withdrew.*

*Mr. Chapman* handed in a copy of "The Government Gazette," of the 14th December, 1860, and the 24th January, 1861.

James Major Spence, Esq., called and sworn.—Examined by *Mr. Chapman*.

M. J. Spence, Esq.,  
23rd April, 1861.

7. What is your office?—Government storekeeper.
8. Do you produce a contract for forage, made between the Government and Mr. William Rutledge?—I do.
9. Will you state briefly what that is?—It is a bond signed by William Rutledge; Horace Flower, David Talbot, and Francis Forster, being the firm of William Rutledge and Company, Belfast, and two sureties, namely, Graham Eddington and Henry Murdoch Harper.
10. Where did that extend to?—To supply forage for the Belfast, Warrnambool and Woodford stations, accepted for Warrnambool and Woodford stations only; the bond was only for those two stations, the tender was dated the 8th November, and the bond was entered into signed, sealed, and delivered, on the 8th day of January, 1861.
11. Was that contract in force on the 1st of April last?—It was.
12. And is still?—And is still.

*The witness withdrew.*

*Mr. Chapman* stated, that as to the point of the contract being in existence at the time of the election he relied upon the evidence already given and did not propose to call any other. That with respect to notice of *Mr. Rutledge's* disqualification having been given to the electors, required by the Committee by their resolution at the last meeting, to be proved, he was not at present, owing to the shortness of the time since the last meeting of the Committee, in a position to give what would perhaps be the most satisfactory proof of notice, but that he proposed to give evidence which he thought the Committee would deem sufficient under the 64th section of the "Electoral Act."

*The Chairman* stated, that before proceeding with any further question in the case, the Committee would consider whether the evidence given was sufficient to satisfy them of the fact of *Mr. Rutledge* having been a contractor at the time of the election.

*The Committee-room was cleared.*

After some time the counsel and parties were again called in and informed by the Chairman—

That the Committee wished counsel to proceed with the case before arriving at any decision as to *Mr. Rutledge* being a contractor.

*Mr. Pyke* further stated, that the Committee found that in all the English petitions of a similar nature to the present, the petition itself alleged that notice of the disqualification had been given to the electors, whereas the petition now before the Committee contained no such allegation, and the Committee therefore wished to hear counsel upon the point whether they had power to travel out of the four corners of the petition so as to enter upon the question of notice at all, that if counsel desired an adjournment to enable them to consider the point now suggested, the Committee were prepared to give any time that might be required.

*Mr. Chapman* stated that he would avail himself of the offer of an adjournment.

*Adjourned to Wednesday next, at twelve o'clock.*

WEDNESDAY, 1ST MAY, 1861.

*Members present:*

*Mr. PYKE*, in the Chair;

*Mr. Verdon,*  
*Mr. McLellan,*  
*Mr. Martley,*

*Mr. Prendergast,*  
*Mr. J. S. Johnston,*  
*Mr. Jones.*

The counsel and parties were called in.

*Mr. Attorney-General* (*Mr. Ireland*) appeared in person, and was heard to address the Committee in support of the sufficiency of his petition.

*Mr. Fellows* was heard in support of the objection to the sufficiency of the petition.

*Mr. Attorney-General* was heard in reply.

*The Committee-room was cleared.*

After some time the counsel and parties were again called in and informed by the Chairman, that although the Committee considered they had no power finally to determine upon the right of *Mr. Ireland* to have his name inserted in the return to the writ, the Committee had resolved—

That the prayer of *Mr. Ireland's* petition is sufficient to permit them to enquire into his right to have his name inserted in the return to the writ in lieu of that of *Mr. Rutledge*, and to report to the Assembly thereon,

*Adjourned to Friday next, at twelve o'clock.*

FRIDAY, 3RD MAY, 1861.

*Members present:*

*MR. PYKE*, in the Chair;

*Mr. Verdon,*  
*Mr. McLellan,*  
*Mr. J. S. Johnston,*

*Mr. Prendergast,*  
*Mr. Jones,*  
*Mr. Martley,*

The counsel and parties called in.

*Mr. Attorney-General* stated, that he would now proceed to prove his case as to notice to the electors of *Mr. Rutledge's* disqualification, and would defer addressing the Committee until the close of the evidence.

*The Chairman* intimated that the first point would be to prove the election.

*Mr. Attorney-General* stated that this fact was admitted.

*Mr. Fellows* stated that he would admit all that was proved by the writ, and also the numbers of votes polled, as set forth in the petition.

Arthur Bible, Esq., called and sworn.—Examined by *Mr. Attorney-General*.

A. Bible, Esq.,  
3rd May, 1861.

13. What office do you hold?—Secretary to the Audit Office.  
 14. What paper do you hold in your hand?—The vouchers for money due to Mr. Rutledge.  
 15. On foot of what?—A Post office contract.  
 16. What is the amount?—£634 15s.  
 17. At what date was that money paid?—On the 21st March, 1861, by Mr. Hull, the Receiver and Paymaster in Melbourne.  
 18. On the order of Mr. Rutledge?—Yes.  
 19. *By the Committee*,—Is Mr. Rutledge's signature attached to that?—Yes. "Signature of claimant, William Rutledge."  
 20. *By Mr. Attorney-General*.—Have any other payments been made on account of that contract?—I am not aware; I believe there have been.  
 21. Have you paid him on account of any other contract?—I have no knowledge of that.  
 22. *By the Committee*.—Where would the signature of Mr. Rutledge be made in the ordinary course of business?—At his office, I presume.

Cross-examined by *Mr. Fellows*.

23. Do you know that to be Mr. Rutledge's signature?—Yes; I have known Mr. Rutledge these twenty years.

*The witness withdrew*

Mr. Michael O'Riley called and sworn.—Examined by *Mr. Attorney-General*.

Mr. M. O'Riley,  
3rd May, 1861.

24. You are the proprietor and editor of the *Banner of Belfast*?—Yes.  
 25. Are you an elector?—Not for the counties of Villiers and Heytesbury, but for the town of Belfast.  
 26. Were you on the petitioner's committee at the last election?—I was.  
 27. Have you seen the Melbourne *Herald* of the 27th March?—Yes, I have. I telegraphed that paragraph to the three papers myself, and it appeared in the *Herald* and the *Age*—not in the *Argus*.  
 28. The polling took place on the 1st of April?—Yes.  
 29. Do you know of your own knowledge whether this issue of this paper and also of the *Age* circulated at Belfast and Warrnambool before the polling?—I do; I saw it in Belfast. I had not been in Warrnambool for a couple of days previous to the polling, but I saw that in the reading-room at Belfast. I saw it also in the *Portland Guardian*.  
 30. Are you a member of the reading society at Belfast?—Yes, an honorary member.  
 31. How many members are there?—About ninety or a hundred.  
 32. Is that frequented considerably by the subscribers?—Very much frequented.  
 33. Do you know whether this notification was known in Belfast?—I am perfectly well aware it was known, for I read it there.  
 34. Do you know from your own knowledge whether it was generally known?—I heard it talked of by several electors about the telegram that appeared in the *Herald* and *Age*. I saw it in Mr. Rutledge's agent's office, Mr. Yorke's office, since the election it is I have seen it there.  
 35. Do you know who was the chairman of Mr. Rutledge's committee?—I do not know who was the chairman, but I went into the Plough Inn, where a meeting was being held, his committee were there working for him. We were joking about the election, and I said, it was all nonsense to proceed with the election, that Mr. Rutledge was a Government contractor, and could not sit if elected.  
 36. Was this said openly?—Yes, they said they knew he was a contractor, but that he could sit. I offered to make a bet that he could not sit.  
 37. *By Mr. Fellows*.—Where is the Plough Inn?—Seven miles from Belfast, in the county of Villiers.  
 38. *By Mr. Attorney-General*.—Did you see any of those persons subsequently before the polling?—Yes.  
 39. Where and whom?—I saw Mr. Anderson that very night.  
 40. *By Mr. Fellows*.—What was the date of that?—Thursday the 28th March. I was riding from Warrnambool, I went over there to organise a committee for Mr. Ireland's election, I met Mr. Anderson, we were riding about together, and I mentioned the fact to him, he said, "Its all nonsense; I know he is a contractor, but he was a contractor when he was elected before."  
 41. *By Mr. Attorney-General*.—Have you had any conversation with Mr. Rutledge with regard to that?—No; I told Mr. Andrew Kowan Kell, who was a leading member of Mr. Rutledge's committee, on Wednesday, the 27th March, that Mr. Rutledge was a Government contractor, and that if he was elected we would unseat him, that there was a penalty attached to his taking his seat, and that it was useless for him to contest his election.  
 42. *By the Committee*.—Those gentlemen that you are speaking of, Mr. Anderson and Mr. Kell, are they electors for Villiers and Heytesbury?—They are.  
 43. And the members of committee that you spoke to, were they also electors?—Yes, there is the name of one or two erroneously spelt on the committee, but that is very general on the roll.  
 44. *By Mr. Attorney-General*.—You said there was a penalty attached?—Yes; and further than that I showed them a telegram from a gentleman in Melbourne. In fact, thinking

I was not aware of it I suppose, and he said—"It is useless to go on any further, I must see about this."

45. *By the Committee.*—Who said this?—Mr. Kell. I met Mr. Kell since the election and I was speaking to him on this subject; I said, "I suppose you thought I was incorrect?" and he said, "Yes, and I would not have gone further, but that I was informed that I was correct and you not, but I found that you were."

46. Did he tell you whether he had any communication with Mr. Rutledge?—No, he did not tell me. I was not present when he said that; Mr. Gleeson I believe was.

47. Did you go to Warrnambool before the polling?—I did.

48. Do you recollect seeing any statements relative to Mr. Rutledge being a contractor in print and posted upon windows and walls?—No, I was under the impression I had; but I find it was in a copy of these posters—a written copy that the notice was.

49. What did you see?—It was a written copy for the printer, and I saw the posters after.

50. When?—I was not over at Warrnambool again till after the election. I saw the copy of these posters.

51. When?—I was in Warrnambool on Thursday, the 28th, and came home that night.

52. And did you see them in Warrnambool on that day?—I saw the posters, and also some copy for other posters or an advertisement, a series of questions and answers, "Who is a Government contractor? William Rutledge." But I found afterwards on looking in the *Examiner* that it was not in it.

53. Did you see anything posted?—I did not; I was under the impression that I did, but I could not swear that it was in it.

54. *By the Committee.*—If you did not see the posters how do you know there was such a thing at all?—I saw two bundles of posters separate and distinct.

55. You saw posters?—Yes.

56. Were they posted?—No, they were in the office.

57. What were they about?—Pertaining to the election asking "who was defeated at the last election by Dr. Russell? William Rutledge." "Who put out Terrible Billy?" and so on.

58. Are you in a position to say that there was anything in those posters relating to the fact that Mr. Rutledge was a contractor, and therefore disqualified?—I was under the impression that there was, but I cannot swear it.

59. Have you any doubt about it?—I have; for this reason, that I spoke since to the gentleman and he said he did not remember it, and under the circumstances I would not swear it.

60. Have you any doubt as to its not being there?—I have. I could not swear myself whether it was in that poster or the copy. I saw it.

61. In a printing office you saw a copy?—No, not a printing office. In Craig and Atkinson's office, they are auctioneers in Warrnambool. I was speaking to Mr. Atkinson, because I arranged the committee throughout the district.

62. What was said at the time it was shown to you?—It was said "Mr. O'Riley what do you think of this poster?" I said they were very good. They told me they were going to get them posted about.

63. Did you see them posted afterwards?—I saw the remnants of those posters after the election.

64. Did you see any of those placards posted during the election or at any other time?—I did subsequently to the election.

65. Was the expression about the contract in them?—I could not be certain that it was.

66. You say you cannot tell whether it was in the manuscript or the posters you saw it?—I cannot remember that distinctly, I could not swear that it was in the posters, I could not swear one way or the other now, as I paid very little attention to it as every one knew that Mr. Rutledge was a contractor.

67. You say you saw a manuscript having this statement in it about the penalty and that you saw the remnants of some posters after the election?—Yes.

68. Can you tell the Committee what you mean by the remnants of the posters, what was on the remnants?—I could identify them from the words "William Rutledge" being here and there through them, I know that they were the same that is all.

69. Can you tell what was in them?—No; they were torn and posted over.

70. *By Mr. Attorney-General.*—Did I rightly understand you to say that Mr. Rutledge was a contractor?—Every one that knew that he existed, knew that he was a contractor. It was nearly as generally known as that his name was William Rutledge, or that Sir Henry Barkly is Governor of Victoria,—just about the same.

71. Have you with you any declarations made by persons who are on the electoral roll for Villiers and Heytesbury?—I have.—(*The witness produced the same.*)

72. Did you see these declarations taken?—I saw some of them taken, not all. I saw those taken that were taken before Mr. Bland.

73. Is Mr. Bland a magistrate?—Yes.

74. Do you know those persons to be on the electoral roll?—I do, except two; there are two names wrongly spelt.

75. *By Mr. Fellows.*—Are they not their own signatures?—Yes.

76. Then have they spelt their names wrongly?—No; the electoral roll is wrong.

77. *By Mr. Attorney-General.*—Are they the same persons?—I believe they are, except one, John Dalton, I believe it is his son that is on the roll.

Mr. M. O'Beley,  
continued,  
3rd May, 1861.

*Mr. Attorney-General* proposed to put in the declarations produced by the witness.

*Mr. Fellows* was heard to object to the reception of these declarations in evidence, on the ground that they were not taken in the presence of agents representing the parties on both sides, as required by the 65th section of the "Electoral Act," and further, because none of the requirements of the Act, 9th Victoria, No. 9, relating to the making of declarations were complied with in this case.

*Mr. Attorney-General* was heard in support of the reception of the declarations.

78. *By the Committee (to the witness)*.—Daniel Hourigan—did you see him sign it?—I did not, but I know his writing. I was speaking to him at the time of the nomination.

79. Daniel O'Grady—did you see him sign it?—No; I did not see the first four sign it.

80. That is Daniel Hourigan, Daniel O'Grady, Patrick Cormick, and John Cavanagh?—I did not see them sign.

81. Patrick Gleeson?—Yes, I saw him sign: I think it is his mark; no, it is his writing, I believe.

82. Will you swear that you saw him sign?—I was present with Gleeson when he was signing it, but there were a couple of electors that made their marks; I cannot remember exactly whether he was one.

83. Did you see Gleeson sign it?—I did.

84. Did he sign it by writing or not?—I cannot say whether he signed it by mark or his name.

85. Daniel McInnery, did you see him sign it?—I cannot swear.

86. Edward Rodgers?—No.

87. Thomas O'Brien?—I did.

88. John Lineen?—I did.

89. James Dalton?—Yes.

90. Michael McGavin?—I saw him sign it.

91. Oliver Commins?—I saw him sign it.

92. Cornelius Burke?—I saw him sign it.

93. Peter Hourigan?—I saw him sign it.

94. Patrick McDermott?—I saw him sign.

95. Edmund Gleeson?—I did not see him sign it; Gleeson, informed me however, of the fact before the election at all.

96. Maurice Molan, did you see him sign it?—No, I did not.

97. John Scott?—No.

98. John McCarthy?—No.

99. Patrick Arundell?—I saw him sign it.

100. William Fahy?—I saw him sign it.

101. John Quin?—I saw him sign it.

102. James Sullivan?—I saw him sign it.

103. Michael Ryan?—Yes.

104. You saw him sign it?—I did.

105. James McConnell?—I saw him sign it.

106. William Gleeson?—Yes, I was present when he signed it; he told me he was perfectly aware of the fact; I am intimate with him.

107. Did you see those seventeen take the declaration?—Yes, I saw them go through the form of declaration; I was turned round part of the time when others were signing it, to speak to Mr. Bland's partner.

108. Were you in the room?—I was.

109. Were you in the room when the whole of those gentlemen were signing the declaration?—I think there were two or three signed when I was not in the room.

110. Were you present when they took the declaration, as well as wrote their names?—Yes.

111. All the seventeen that you saw write, you heard take the declaration?—Yes.

112. Who was in the room at the same time?—The first was done at Messrs. Cowtan and Bland's counter, and Dr. Russell was there.

113. Were any of those gentlemen agents or friends of Mr. Rutledge?—Mr. Woodward is a friend of Mr. Rutledge's.

114. Was he there?—He was standing at the door. I was not speaking to him. I am not on intimate terms with him.

115. How far was the door from where those men were signing the declaration?—Less than three yards.

116. *By Mr. Attorney-General*.—Were there many people there?—A number of people.

*The Committee-room was cleared.*

After some time the counsel and parties were again called in and informed by the Chairman that the Committee had arrived at the following resolution:—"That the documents tendered in evidence by Mr. Attorney-General be received as evidence for what they are worth, but not as declarations under the 65th section of the Electoral Act."

117. *By Mr. Attorney-General (to the witness)*.—Do you produce the *Portland Guardian* of the 27th March, 1861?—I do.

118. Did you see this paper at Belfast?—I did.

119. Is it taken at the reading-room there?—It is. I took that paper off the file at the reading-room when I lost my own copy.



120. *By Mr. Fellows.*—When did you see it there?—On Thursday, the 28th, or Friday, the 29th; I could not swear to which day.

121. *By Mr. Attorney-General.*—Does that paper contain this paragraph:—“By electric telegraph, Ireland is safe for Villiers, as although Rutledge were elected he is a Government contractor”?—Yes.—[*The newspaper was delivered in.*]

122. Do you produce the *Warrnambool Examiner* of 25th December, 1860?—Yes.

123. Does that paper circulate through Villiers and Heytesbury?—It does very extensively. The proprietor and editor is the gentleman who proposed Mr. Rutledge, Mr. Osborne.

124. Does that paper contain the following announcement:—“Domestic Intelligence.—The following tenders for forage for the Government Service in this district for 1861 have been accepted:—William Rutledge and Co.—oats, 4s. 9d.; bran, 1s. 6d.; hay, £4 10s.; straw, £3?”—It does.—[*The newspaper was delivered in.*]

125. Were you in a good many hotels and public houses during the election?—I was.

126. Did you hear this disqualification spoken of publicly?—Yes, every where I went when the election business turned up at all in conversation.

127. It was the leading topic?—Yes.

Cross-examined by *Mr. Fellows.*

128. Had not you got anything at all about this in the *Belfast Banner*?—I was away from home during the time.

129. What do you call being away from home?—I was organising the committees for Mr. Ireland.

130. And you did not put anything about this notorious fact in your own paper?—There was no occasion.

131. Has your paper no circulation?—Yes, it has.

132. What is the reason then?—Because it was so notoriously known.

133. Will you swear that is the reason?—Yes. And another reason is, I was at the nomination on Monday, and was engaged all that day, and had some responsibility in the matter.

134. But it might have been in the week before?—I did not know anything about Mr. Rutledge being put forward a week before. I did not know anything about Mr. Rutledge being put forward a week before.

135. *By Mr. Attorney-General.*—Did you give notice to the Returning Officer of this disqualification?—I did on Wednesday or Thursday. It was Wednesday I went to Warrnambool. I was there on Thursday, and then I gave notice to the Returning Officer.

136. *By Mr. Fellows.*—That paragraph in the *Portland Guardian* was a telegram, was it not?—Yes.

137. Whom did that emanate from?—I do not know.

138. Not from yourself?—No.

139. The Melbourne *Herald* of Wednesday could get down to Villiers and Heytesbury when?—It would leave here on Friday and be in Warrnambool on Saturday morning.

140. And the election was on Monday?—Yes.

141. You saw this at Belfast?—Yes.

142. Is that part of the district of Villiers and Heytesbury?—Yes, Belfast district is part of the district of Villiers and Heytesbury; the town of Belfast is not.

143. What is your distinction between “Belfast” and “the town of Belfast”?—The Belfast district—the police district does not coincide.

144. We have nothing to do with police districts?—There is an essential difference between Belfast town and Belfast district.

145. “Belfast”—and “the Town of Belfast” was your expression?—I mean the district

146. What district—the electoral district?—No.

147. Then what do you mean?—The Belfast district.

148. What district—not the electoral district, you do not mean that?—No.

149. Do you know the boundaries of the electoral district of Belfast?—I do well.

150. Was the place where you saw this paper within them or without them?—Within them.

151. Then what do you mean by saying it was part of the electoral district of Villiers and Heytesbury?—I did not say so?

152. You say you showed the telegram from Melbourne to Mr. Kell?—Yes.

153. Where did you get that telegram from?—I got it from Mr. Finn.

154. And on the 28th you went to Warrnambool, and saw this manuscript?—I think it was on the night of the 27th I went there.

155. You say you saw an advertisement which you contemplated would be inserted?—I was shown two distinct papers, the poster, and the copy of the poster, and I cannot say which it was in.

156. Why should this disqualification be talked about if you did not hear that Rutledge was going to stand?—That was after the nomination.

157. Nothing was said about it before the nomination then that you heard?—I say, I often heard it spoken of.

158. But you say that was after the nomination?—No; I said that I heard these conversations after the nomination.

Mr. M. O'Riley,  
 3rd May, 1861.

159. Did you hear it spoken of before the nomination?—Often, a hundred times.
160. If Mr. Rutledge was not known to be standing, why should he be talked about?—  
 I heard the fact of his having a contract talked about.
161. Can you tell the Committee where that was, and who were present?—Frequently people that were competing with him for these paltry little contracts came to look at the *Gazette* in my office.
162. Give some of their names?—One of them is Edward Dalton.
163. Some others?—I cannot say any others.
164. Mention half a dozen now?—I have heard it spoken of at the Plough Inn and various other places. I have heard it spoken of for six months now and then.
165. Can you tell the Committee any other contractors down in that neighborhood?—I am not intimate with them. I could tell if I had time to think.
166. Think about it if you please; tell us another Government contractor in that district?—I think they have generally been given in Warrnambool.
167. You are undertaking to say that all Villiers and Heytesbury knew of it. Now give the Committee the name of another contractor in that electoral district; one or two, and what the contracts are for. You say there are such a lot and everybody knows them?—There is Cowtan and Co.
168. What is their contract for?—Hay and oats.
169. Anybody else?—I cannot remember.
170. How far have you ever been out of Belfast over this matter?—I went to Warrnambool and the Hopkins.
171. How far is that?—Twenty-five miles about.
172. Or fifteen which?—I think it is over twenty miles.
173. From Belfast to Warrnambool?—To the Hopkins I am speaking
174. And how far to Warrnambool?—About eighteen, I think
175. And where else did you go to?—I went up round by Tower Hill.
176. How far is that?—Seven or eight miles.
177. Where else did you go to?—I went up to Koroit.
178. How far is that?—Twelve miles.
179. Whom did you see there?—I cannot remember.
180. What took place when you got there?—I remember calling in at the Angry Prince and heard a conversation about it.
181. Who was there?—Mr. Murphy was there, the others were strangers.
182. How many of them?—About a dozen.
183. Do you know whether they were voters or not?—No.
184. Where else did you go?—I went to Adam's hotel, at Warrnambool—there was a meeting there that night.
185. Where else did you go?—I cannot remember, I have enumerated the most part of them.
186. You have only named about half-a-dozen places?—There are not many centres of population in that district.
187. I ask you where you went?—I cannot remember; I did not keep a diary.
188. Can you remember what took place when these declarations were made?—I do.
189. Just tell the Committee how the ceremony was performed?—I went out on Sunday and other days.
190. Never mind about the Sunday and the other days, get us before the magistrate at once?—It was read to them.
191. What did the magistrate do, by whom was it read?—By the magistrate sometimes, and sometimes the magistrate told me to read it; and then he asked them, when they signed their names, did they declare that to be true.
192. And that was repeated with every one, in your presence, in the case of all those that you say you saw sign it?—Yes.
193. Who is this Anderson you speak about?—A farmer in Koroit.
194. Of course you cannot form an opinion of which way those men who made the declaration voted?—Yes, I can.
195. How do you think they voted—the same way as you would?—Yes, most of them; there are many of them of course that I could not say as to how they voted.

Examined by the *Committee*.

196. In the previous part of your examination I think you said that you saw copies of the posters, which were referred to in the *Warrnambool Examiner*, afterwards?—No; the advertisement was put in, but I did not see the line referring to Mr. Rutledge's contract.
197. Have you a copy of that *Examiner* with you?—I have not; it is in the library here.
198. What is the date?—Friday the 29th of March.
199. Were you at the nomination?—I was.
200. Mr. Rutledge was proposed then?—Yes.
201. Did you hear anything said by anybody about his being a contractor?—Yes.
202. By whom?—Mr. Wall, the gentleman who proposed Mr. Ireland, said, "What is the use of Mr. Rutledge being put forward as he is a contractor"; it was not intended that Mr. Wall would propose him.

203. What did Mr. Wall say about Mr. Rutledge being a contractor?—I was not paying much attention; I was looking out for a gentleman from Warrnambool, who was to propose Mr. Ireland, and I heard Mr. Wall speaking with a number of people.

204. Did he say so when addressing the electors on the day of the nomination from the hustings?—No.

205. Did anybody from the hustings publicly declare that Mr. Rutledge was disqualified in consequence of being a contractor?—No; it was spoken of but not from the hustings.

206. You were present at the day of nomination?—I was.

207. Had every one of the electors the same opportunity of knowing that fact as yourself—was it generally spoken of?—Yes, before the Returning Officer arrived there was a great number of people of both parties by Mr. Wall.

208. You are referring to what was spoken of amongst the crowd?—Yes.

209. Not officially announced?—No.

210. How many people were at the nomination?—I think about 120.

211. Were you in the district when the election was taking place?—I was. I was scrutineer at Tower Hill.

212. Do you know whether it was a matter of notoriety that Mr. Rutledge was a contractor?—Yes.

213. Was it stated so?—Yes, in the very room I was in the Returning Officer and Mr. Yorke, one of the scrutineers, spoke to me about it. The Returning Officer was talking about the result of the election, and I said it was immaterial.

214. What did the Returning Officer say?—I cannot say what remark he made, but the conversation was on the subject of Mr. Rutledge being a contractor; but Mr. Yorke said something making little of it.

215. That was inside the polling booth?—Yes.

216. Do you know whether it was general matter of conversation on that day?—At all the committee meetings it was matter of public conversation.

217. Where is the "Plough" Inn,—is it in the electoral district of Villiers and Heytesbury?—It is; it is the most frequented public-house in the district.

218. Was any information given to persons coming to vote, to the effect that Mr. Rutledge was a contractor, and therefore disqualified?—No, I think not; but I had been speaking to the persons bringing up Mr. Rutledge's voters. I said "Mr. Rutledge is a contractor, and I will bet you a bottle of champagne he cannot sit if elected."

219. How many people were there?—There were about twenty in the two lots. Mr. Rodgers, Mr. Allen, and Mr. Anderson spoke several times to me, they were influential members of Mr. Rutledge's committee, and I said, "I will bet you that if he is elected he cannot sit."

220. Do you know how many of those seventeen gentlemen that signed these declarations were present at the day of nomination?—I could not tell unless I looked over it.

221. Could you give the Committee any idea how many were present on that day?—I think there were about a dozen.

222. A dozen of them knew of it?—More than a dozen knew of it.

223. On the day of the nomination?—Yes.

224. Can you give the Committee any idea of the number who knew from your own knowledge?—Mr. Wall knew it. I think I have a list here of a number of names that declined to make the declaration. John Wall knew it.

225. How do you know that he knew it?—He was telling me. Daniel Hourigan knew it.

226. Are those the only two?—I cannot just remember at present. If I had thought it was necessary, I would have had time to think over it. There were many men there that I did not know personally at all, and I was looking out for the seconder and proposer of Mr. Ireland.

227. Did you converse with any of the electors on that day?—I did, I think there was a group of about a dozen with Mr. Wall.

228. And was that the subject of conversation?—Yes.

229. Do you know their names?—I do not. I was off and on with them; I was anxious that Mr. McKean of Warrnambool should propose Mr. Ireland, they looked to me to transact the business generally, and I was pulled about.

230. Were there many such groups of a dozen amongst the 120?—There were, but I could not tell what they were speaking of.

Re-examined by *Mr. Attorney-General*.

231. You say you did not hear this generally spoken of before the day of nomination?—No; because it was not known that Mr. Rutledge was coming forward.

232. Did you know Mr. Forlonge went down?—Yes.

233. And did you hear it in general conversation said why Mr. Forlonge came down and why Mr. Rutledge did not sit?—I heard it stated that Mr. Forlonge came forward as Mr. Rutledge was not an eligible candidate.

234. And then it was on the day of nomination that Mr. Forlonge withdrew?—Yes, I could hardly believe that Mr. Rutledge would be put forward.

235. *By the Committee*.—Do you act as agent-general for elections?—No.

236. You merely took an interest in this election on account of Mr. Ireland being a friend?—Yes.

237. *By Mr. Attorney-General*.—You received nothing for it?—No, I am considerably out of pocket.

Mr. M. O'Riley,  
continued.  
3rd May, 1861.

238. Did I pay a single shilling towards the expenses of this election to your knowledge?—No, I have been about £50 out of pocket.

239. Did I not decline to come forward as a candidate?—Yes, I had a letter from you between the nomination and the polling telling me not to go to any expense, but I had put you forward and I was determined to go through with it.

240. *By the Committee.*—Do you expect to get that money?—No, I have said repeatedly that I had no claim on Mr. Ireland.

241. It has been well known in the district that Mr. Rutledge has been a contractor for several years past?—Yes.

242. And it was notorious at the time that he had put in several tenders for these contracts?—Yes, it was as notorious as that he resided in Belfast.

243. *By Mr. Attorney-General.*—Did you ever apply to me for payment of any of that money?—I did not.

244. Not one shilling?—No.

245. *By the Committee.*—Can you tell of your own knowledge whether any of the persons named in the declarations voted at all at the election?—I might say if I looked at the list. I was only in the booth from A to M, so that any names below that I could not tell.

246. Will you look at these two documents which you have handed in, and tell the Committee any names that you can swear to of your own knowledge as having voted at all at the election?—Cornelius Burke, Patrick McDermott, James Sullivan.

247. Those three—you were personally acquainted with the fact that they voted?—Yes.

248. Were there many people in the reading room when you took this paper off the file—Not many.

249. Are you aware whether there were many that had an opportunity of reading it there?—Yes.

250. Many of the electors of Villiers and Heytesbury?—Yes, many of them. The town is very small, and there are a great number of electors live on the borders of the town.

251. And do they frequent this reading room?—Very much.

252. How many subscribers are there?—About ninety.

253. And how many might reside in the district of Villiers and Heytesbury?—I should think about half of them—the town is very small—one side of the street is in the county.

254. So that they had every opportunity of knowing it?—Yes. I have a list of names of persons with whom I had a conversation, but who would not declare and would not interfere one way or the other, they did not take any interest in the election, one way or the other. I had conversations with them.

255. Will you read that list?—John Burgess.

256. Did you have any conversation with him?—I had.

257. What did you say to him?—I represented the fact of Mr. Rutledge's being a contractor, and he said he thought he was a great fool to come forward.

258. Do you know whether John Burgess voted?—He did vote.

259. Do you know how he voted?—I do not.

260. But he said Mr. Rutledge was a great fool to come forward?—Yes.

261. Go on with the rest?—Dr. Russell. I spoke to him on the subject.

262. Did he vote?—I do not know, because his vote would be in another district. William Anderson was one of Mr. Rutledge's committeemen. Thomas Allen was also one of Mr. Rutledge's committee. Nathan Rodgers was also one of Mr. Rutledge's committee. Thomas Rodgers—I do not know whether he is an elector—he was one of Mr. Rutledge's committeemen and he told me he was an elector, but if he is, his name is not down as Thomas on the roll, but that is a frequent occurrence. I believe him to be an elector and that he voted. James Rodgers. John Glair, he was one of Mr. Rutledge's committeemen. Stanislaus Bailey, William Whitton.

263. Do you say that all those people voted?—I think I have them marked, those that are electors.

264. Those are persons that you spoke to upon the subject?—Yes.

265. All the names that you are now giving?—Yes: Thomas Denny, Frederick Perkins Stevens, the Returning Officer of the district, Michael O'Den Dilman, John Howes, John Austin, Joseph Hammond, Daniel Hourigan, Henry West, James Sullivan, John Wall, Andrew Harmer, Thomas Henry McKiernan, Edmund Atkinson, John Collins Craig, Thomas Cronan, Thomas Birmingham, Cornelius Burke, Maurice Molan, Patrick Healey, Edward Rodgers, Michael Bernard Murphy, Thomas O'Meagher, John Thomas Wilde, Joseph Whitehead, Jeremiah Shehan, Edmund Dalton, Thomas Laidlaw; I was also speaking to most of those whose names are on the declaration.

266. When did you make that list out?—A few days ago.

267. Not at the time?—No; when I got word it was necessary to come down, I just thought of the names. Those are not a third of the persons I have been speaking to; those are all I could remember distinctly enough to swear to.

268. Will you look at this advertisement, in the *Warrnambool Examiner*, and tell the Committee whether that is the advertisement you referred to just now as being apparently a copy of the posters you saw in the office?—Yes.

269. That is the same?—Much the same.

270. Is there any reference there to the contracts?—No, there is not.

271. Then you are of opinion that it must have been altered?—Yes.

[The advertisement was read, and is as follows]:—

“ELECTORS OF VILLIERS AND HEYTESBURY,”

Mr. M. O’Riley,  
continued,  
2nd May, 1861.

“Who always opposed grants for the Warrnambool district?—Rutledge!  
Who put out Dr. Tierney, our most valued member?—Rutledge!  
Who would (if he could) deprive the poor man of a bit of land?—Rutledge!  
Who is screwing down his tenants for nine bushels an acre rent?—Rutledge!  
Who did Dr. Russell so easily lick last election?—Rutledge!  
Who was always the bully and laughing-stock of the Assembly?—Terrible Billy!  
Who is the most obstructive and impracticable man in Victoria?—Rutledge!  
Which of the two candidates then is the fittest to represent the counties?—The unanimous voice is  
Ireland!

Electors, on Monday support a man with some pretensions to respectability, and

VOTE FOR IRELAND!”

272. You say you told Mr. Rutledge’s committee that he was a contractor;—can you say whether the committee was properly constituted and the chairman in the chair?—I could not say.

273. *By Mr. Attorney-General.*—You say that advertisement is altered from the copy you saw?—Yes.

274. *By Mr. Fellows.*—Do you know the author of it—I do not wish to know who he is—but do you know?—I do not.

275. *By the Committee.*—You know the electoral district of Villiers and Heytesbury well, I believe?—Yes.

276. Generally?—Generally.

277. And you know the electors?—Yes.

278. You know a large number of them personally?—Yes.

279. This was a very keen election, was it not?—Yes.

280. Were the two parties into which the electors were divided decidedly marked—everybody knew who were the supporters of the opposing candidates?—No, I do not think they did, because many who would vote for Ireland were afraid to say so, because they were farmers of Mr. Rutledge.

281. That would not prevent a large number who intended to support Mr. Rutledge being known?—One man on his committee told me he would not vote for him.

282. Are you able to say that you know any large number of the electors who expressed their intention to vote for Mr. Rutledge?—I know some, but I could not recollect their names.

283. Do you know that there were a large number of electors who intended to support Mr. Rutledge, and expressed that intention?—Yes.

284. Have you any reason to know that they knew at the time they expressed that intention that Mr. Rutledge was a contractor?—Yes, many of the persons on this list were warm partisans of Mr. Rutledge.

285. Then what was their object in supporting Mr. Rutledge?—I was told by some that he was a contractor before, and that it did not prevent his sitting in Parliament, and Mr. Kell told me since the election that he made inquiries, and he was satisfied that he was doing right in proceeding with the canvass for Mr. Rutledge, as he was satisfied the objection I made was not valid.

286. Were there any other reasons given by persons who intended to vote for Mr. Rutledge for their doing so?—I do not remember the reasons they advanced, but some said he was a local man, and some said Mr. Ireland is not here, and so on, and others said they would not vote at all when Mr. Ireland did not go up to the district.

287. Did any of the persons who spoke to you tell you that they had heard that Mr. Rutledge had sold his contract?—They told me that they thought he sold the mail contract, and that he would sell or assign the other. I armed myself for that objection, and I went to the Warrnambool Police Office and got a copy of the regulations and conditions of contract and I took pains to explain to the Returning Officer and other gentlemen not favorable to Mr. Ireland that he could not part with his contract, for one stipulation was that he should give three months’ notice of so doing. I made it very generally known.

288. *By Mr. Fellows.*—Who are the partisans of Mr. Rutledge in that list that you have read?—Mr. Kell, Mr. Anderson, Mr. Allen, Nathan Rodgers, Thomas Rodgers, James Rodgers, John Glair, Thomas Denny (I do not know whether he is on the roll), John Austin, Andrew Harmer, Thomas Cronan. I believe that they have been upon Mr. Rutledge’s committee; he was there the night of the committee meeting. John Thomas Wilde, as far as I could judge from a conversation, was favorable to Mr. Rutledge. Mr. Whitehead I believe was so, and Mr. Laidlaw. I also told the sergeants of police at both districts.

289. Who was this man on the committee who told you he would not vote for him?—

*The Chairman* intimated that the Committee were of opinion that this question should not be put.

290. *By the Chairman.*—Under what circumstances was this information conveyed to Mr. Rutledge’s committee by you—were they in committee at the time—was the chairman in the chair, and how many were present, and was the subject publicly discussed amongst them?—The chairman was not in the chair.

291. Was the question publicly discussed amongst them?—Yes; it was a matter of betting. I could not say whether any bets were accepted. I was riding from Warrnambool and I met Mr. Anderson, who was an influential member of the committee, and I had a long conversation with him; I rode, I think, a mile and a half or so, and he said he was well aware of the fact but that he would bet me that Mr. Rutledge held the same contract and under the

Mr. M. O'Reilly, same conditions last time. That he could sit then, and consequently could sit now. I then went on, and there were a number of horses tied up outside and people in doors, a great number; I supposed at once there was a meeting, and when I went into the large room there were a great number of people, I suppose about twenty, they were discussing electioneering matters, and then they were saying, "Mr. O'Reilly, we will beat you"; and then I said, "supposing you do, your candidate cannot sit," and I said further, "you would not beat me if Mr. Ireland came up here, I would beat you."

292. Did they take any notice of the fact of your making that statement that Mr. Rutledge could not sit?—They did.

293. Did they discuss the subject?—I heard it discussed; there were groups here and there.

294. How many parties took part in that discussion?—I could not say.

295. You say there were about twenty in the large room?—Yes about that.

296. Was it doubtful in the committee's mind that Mr. Rutledge could sit?—They were discussing it that is all I could judge by.

*The witness withdrew.*

The Honorable Richard Heales, Esq., a Member of the House, sworn.—Examined by  
*Mr. Attorney-General.*

297. You are Chief Secretary of the Colony?—Yes.

298. Have you seen Mr. Rutledge, and had any conversation with him, relative to any contract in your department, since the election for Villiers and Heytesbury?—No.

299. Did you see him before?—No.

300. Had you any communication from him at all?—Yes.

301. What was it?—It was a letter from him, asking to be released from a contract.

302. Since the election?—Yes: as near as I can remember, I read the letter, and I believe it was dated the 6th of April, I think I got it on the day after. There was another letter came from a gentleman, whose name I do not remember, at the same time, and on the same subject.

303. On the 6th April?—I believe it was dated the 6th of April.

304. You had no verbal communication with Mr. Rutledge?—Not with reference to the contract. I spoke to Mr. Rutledge with reference to the election, but not with reference to the contract.

305. Did anything occur that you remember with reference to the election?—The only conversation I had with Mr. Rutledge was in the House, on the night of the discussion whether his resignation should be received. I saw Mr. Rutledge sitting behind the bar, and I went up to him and said, "Well, you are creating a great noise amongst us here." His reply to me was, "Well, not half so much as Mr. Ireland would if he was there." I said, "Well, but really knowing that you could not take your seat, why did you stand?" "Well," he said, "to keep out Ireland." "Well," I said, "that could have been accomplished by returning Mr. Forlonge, and that would have been a fair way of fighting the question." "Oh!" he said, "the Warrnambool people would not have Forlonge." "Oh! well," I said, "it is a great pity the election should have gone on in that way;" and he said, "I did it, and I would do it again."

306. When you said about his knowing that he could not sit, did he say he did not know?—No, he did not.

307. He said it was to keep Ireland out?—Yes.

*The witness withdrew.*

The Honorable Thomas Loader, Esq., a Member of the House, sworn.—Examined by  
*Mr. Attorney-General.*

308. You are Commissioner of Trade and Customs?—I am.

309. Were you Postmaster-General previously?—I was.

310. During the time you were Postmaster-General, and after the Villiers and Heytesbury election, or before it, had you any conversation with Mr. Rutledge, relative to any contract with the post office?—Before the election I had.

311. About what time?—About the commencement of the year.

312. About January?—Yes.

313. Can you state what passed, and where it occurred?—It occurred in the Postmaster-General's room at the post office in Little Bourke-street, and it was with reference to the transfer of a contract for the conveyance of the mails to Ballarat and the Western District. Mr. Rutledge was desirous of transferring the contract to a firm called F. B. Clapp and Co.

314. *By the Committee.*—When was this?—I am not certain whether it was December or January, it was about the beginning of the year.

315. *By Mr. Attorney-General.*—Will you proceed?—I wished to impose a condition upon Mr. Rutledge before I would consent to the transfer on the part of the Government. That condition Mr. Rutledge refused to comply with, and consequently the transfer never took place.

316. How did the interview end?—It ended by my wishing him good morning.

317. Did you go away and leave him there?—He went away and left me.

318. Have you any correspondence that took place on the subject?—I have not any with me.

319. This is one of the letters that has been put in—"Belfast, 15th January, 1861. William Turner, Esq., Secretary, General Post Office. Sir,—I beg to acknowledge the receipt

The Honorable  
R. Heales, Esq.,  
3rd May, 1861.

The Honorable  
T. Loader, Esq.,  
3rd May, 1861.

of your letter of the 8th instant, in reference to some irregularities in the delivery of certain mails therein mentioned, which shall have immediate attention; but in all future cases of a similar nature I shall feel obliged if you will forward the complaint or other communication to Messrs. F. B. Clapp and Co., at their office, Melbourne, as sub-contractors, which can in no degree lessen my responsibility, while, of course, it would be a much more effectual means of correcting any error which may occur in the performance of any of the services I have undertaken, there being no other person responsible to me for the due performance of the service. I shall feel obliged if you will let me know if you will comply with the above request, at least till I see if I can arrange with Messrs. F. B. Clapp and Co. to transfer the contract altogether to them, in which case, of course, all such matters would be referred to them accordingly. I remain, yours truly, Wm. RUTLEDGE." Was that transfer made afterwards?—Never.

The Honorable  
T. Loader, Esq.,  
continued,  
3rd May, 1861.

320. Is that the last communication you had from him?—It is; and the only personal interview I had with him, the one I have referred to.

321. That was prior to that letter?—I think it must have been prior.

322. The conversation was prior to the letter?—Yes.

*The witness withdrew.*

Mr. Patrick Gleeson sworn.—Examined by *Mr. Attorney-General.*

323. You are an elector of Villiers and Heytesbury?—Yes.

324. Do you remember the nomination?—I was not there.

325. Between the nomination and the day of polling had you any conversation with any of the electors, or did you hear any conversation relative to Mr. Rutledge's disqualification as a contractor?—Yes; I knew that Mr. Rutledge was disqualified to take his seat if elected. And I was speaking to some of his own supporters on the matter—Mr. McNeil, Mr. Kell, Mr. Ryan, and Mr. Gorman, at the Plough Inn.

326. Was it at the Plough you saw them?—Yes, at the Plough, the Saturday before the election.

327. Can you tell the Committee whether Mr. Rutledge's disqualification was generally known amongst the electors?—I spoke to Mr. Kell; he was canvassing for my support, and I told him, "Are you aware that if Mr. Rutledge is returned he cannot sit?" He said that he heard of it, that he had been speaking of the matter over with Mr. Rutledge, and that Mr. Rutledge said, "Never mind, go on electing me and I will take the consequence." That was Mr. Kell's reply to my observation.

328. Did you hear this spoken of at other places than the Plough Inn?—The electors generally—a great many of them at all events—knew of the fact. There were other electors besides those I have named present at that conversation.

329. *By Mr. Fellows.*—How many?—I could not say. I can name two others, William Gleeson and Daniel Hourigan.

330. *By Mr. Attorney-General.*—Apart from that particular occasion are you aware from your own knowledge whether the thing was generally known throughout Villiers and Heytesbury?—I think so.

331. Did you hear it spoken of the Sunday preceding the election?—The day following the day I have referred to I heard it spoken of after Mass.

332. Were there a great many people collected there?—Yes.

333. Was it publicly talked about amongst the crowd?—There were lots talking about there, and I believe that was the subject of their conversation.

334. You say Mr. Kell told you that Mr. Rutledge said, "Let me be elected, and I will take the consequences?"—Yes.

335. Is Mr. Kell an influential person there?—He was one of Mr. Rutledge's principal committee men—a man that took a very active part in the election.

336. *By the Committee.*—You say Mr. Kell was canvassing?—Yes; he was canvassing me for Mr. Rutledge.

*Cross-examined by Mr. Fellows.*

337. Do you know how many electors there are on the roll?—A large number. There are more on the roll than ought to poll.

338. That is not an answer to the question?—I do not know the number.

339. About 3000?—Something beyond 2000.

340. Three thousand pretty nearly, are there not?—I dare say there are on the roll.

341. How many can you swear to being cognizant of the fact of Mr. Rutledge's being disqualified from your own knowledge?—I can swear to ten that I have spoken to, and I may have spoken to a great many others.

342. How many altogether?—Some dozens.

343. How many dozens?—I cannot say.

344. A hundred persons?—I could not say how many persons I might have told the matter over to.

345. Do you think it could be 100 or 200?—I do not think I have spoken to 100; I could not say that.

346. Can you form any opinion as to how those people would vote that you did tell this to?—Under the ballot you cannot tell how any men vote.

347. But from what you can tell of their opinions, have you any idea which way these men were going to vote?—No, I have not. They may tell you they will vote for one candidate and go and vote for the other.

VILLIERS ELECTION.—d

Mr. P. Gleeson,  
3rd May, 1861.

Mr. P. Gleeson,  
continued,  
3rd May, 1861.

348. Do you know Caramut?—I know where it is.  
349. That is in the electoral district of Villiers and Heytesbury?—Yes.  
350. Did you go up there?—No, I did not.  
351. There are a great many electors living in that neighborhood, are there not?—  
I think not a great many. The bulk of the electors reside about Belfast and Warrnambool.  
352. The majority of them?—Yes, the great bulk of them.  
353. Do you know Peshurst, Mount Rouse?—Yes.  
354. Are there any up there?—There are some up there. I know there are electors up  
at Peshurst who were aware of Mr. Rutledge's disqualification.  
355. How are you aware of that?—From conversations I had.  
356. When?—Previous to the election.  
357. How long before?—There was a letter sent up to them.  
358. When?—Before the election.  
359. When?—Between the nomination and the election.  
360. Who sent those letters up?—Some of Mr. Ireland's committee.  
361. That is what they have told you, I suppose?—Yes.  
362. *By Mr. Attorney-General.*—Sent letters to where?—To Peshurst.  
363. About what?—Stating that Mr. Rutledge was disqualified.  
364. *By the Committee.*—Did you see any of those?—I did not see them, but I was  
informed that they were sent.  
365. *By Mr. Fellows.*—Who told you that they sent them?—Some of Mr. Ireland's  
committee.  
366. Do you know who?—I do not.

Examined by the *Committee.*

367. You say that the fact of Mr. Rutledge's being disqualified was publicly talked  
of?—Yes.  
368. Was there any number of electors had reasonable opportunity of knowing it or a  
large number of them?—I should say a considerable number of them would.  
369. Was there one hundred?—I am sure there was.

*The witness withdraw.*

Mr. Michael O'Reilly again called.—Further examined by *Mr. Attorney-General.*

Mr. M. O'Reilly,  
3rd May, 1861.

370. Do you know anything about this letter being sent to Peshurst as stated by the  
last witness?—Not about the letter. I know that Mr. Howes who went up there as scrutineer  
on our behalf, told me that he had made it known.  
371. *By the Chairman.*—You know nothing about the letter?—No.  
*The Chairman* enquired whether Mr. Attorney-General had any further evidence to call.  
*Mr. Attorney-General* replied that he had sent to the Chief Secretary's Office for  
evidence of the cost to the country of this election, and subject to that he had closed his evidence.  
*The Chairman* stated that the electoral roll had not been put in.  
*Mr. Attorney-General* stated that he would have this put in so soon as he could have it  
procured; further, that he did not propose to sum up the evidence now, but would reserve any  
address he had to make till after the conclusion of the opposite case.  
*Mr. Fellows* stated that he did not propose to call any evidence, and that, therefore, he  
submitted that Mr. Ireland would have no right of reply.

*The Committee deliberated.*

*The Chairman* stated that the Committee were of opinion, on the authority of "May," that  
the ordinary rules relative to speeches of counsel applied in this case; and that, therefore,  
Mr. Attorney-General would have no right of reply unless evidence were called in support of  
the opposition.

*Mr. Fellows* submitted that the evidence of notice was directed to the wrong period, and  
that to be of any value it should be proved that notice was given before the day of nomination.

*The Chairman* stated that the Committee would prefer to take the whole subject into  
consideration together in arriving at their final conclusion.

*Adjourned to Tuesday next at twelve o'clock.*

WEDNESDAY, 8TH MAY, 1861.

*Members present:*

MR. PYKE, in the Chair;

Mr. Verdon,  
Mr. Jones,  
Mr. Martley,

Mr. McLellan,  
Mr. Prendergast.

The counsel and parties were called in.

*Mr. Attorney-General* was heard to sum up the evidence in support of his petition.

*Mr. Fellows* was heard to address the Committee in support of the petition of Mr  
Mitchell.



*The Chairman* enquired whether Mr. Attorney-General was now prepared to put in the Electoral Roll.

*Mr. Attorney-General* replied that he would hand in the Electoral Roll to the Clerk of the Assembly in the course of the day.

*The Committee-room was cleared.*

After some time the counsel and parties were again called in and informed by the Chairman that the Committee had adjourned the further consideration of the case till Friday next.

*Adjourned to Friday next, at one o'clock.*

FRIDAY, 10TH MAY, 1861.

*Members present:*

MR. PYKE, in the Chair ;

Mr. McLellan,  
Mr. Prendergast,  
Mr. Martley,

Mr. Verdon,  
Mr. J. S. Johnston,  
Mr. Jones.

The counsel and parties were called in.

*The Chairman* intimated that the Committee would proceed to deliberate upon the case.

*The Committee-room was cleared.*

After some time the counsel and parties were again called in, and informed by the Chairman that the Committee had arrived at the following resolutions, viz. :—

1. That Mr. Rutledge is not duly elected a member of the Legislative Assembly for the district of Villiers and Heytesbury.
2. That the Committee, owing to the very peculiar circumstances of the present case, arising from informalities in the petition, abstain from finally deciding that the petitioner should be declared duly elected.
3. That the Committee desire to express their disapprobation of the conduct of Mr. Rutledge, as disclosed by the evidence in this case.

*Mr. Attorney-General* commenced to address the Committee upon the question of costs.

*Mr. Brodribb*, (solicitor for the petitioner, Mr. Mitchell,) in the absence of counsel, submitted that the question of costs should not be gone into until his counsel was present.

*The Chairman* stated that the Committee would hear the evidence of Mr. Brodribb and then adjourn.

K. E. Brodribb, Esq., called and sworn.—Examined by *Mr. Attorney-General*.

372. You are the solicitor in this case for Mr. Mitchell I believe?—Yes, my firm are the solicitors. K. E. Brodribb,  
10th May, 1861.

374. Had you known Mr. Mitchell previous to being retained on this occasion?—Personally I did not know him.

375. Who retained you for him?—I do not know; the only person I had communication with was Mr. Rutledge.

376. Do you know who lodged the £100 with the Speaker in this case?—I do not know.

377. You know nothing about it?—No.

378. You were retained by Mr. Rutledge?—Yes, he was the only person with whom I had any conversation.

379. Did he give you any instructions in this matter?—He gave me personally instructions; I do not know whether any conversation took place with my partners.

380. Your counsel was Mr. Fellows?—Yes, in the absense of Mr. Stephen.

381. May I ask, is he acting gratuitously in this case?—So far as I know, and so far as I understand, the understanding with Mr. Stephen in this case is precisely that of all other counsel, he gets the ordinary fee.

382. Mr. Stephen does?—Mr. Stephen, who is in fact the counsel in this matter.

383. Have you any undertaking from Mr. Mitchell to pay that fee?—I have not.

384. Is Mr. Rutledge responsible to you for that and other costs, do you regard him so?—I would wish to take the opinion of the Committee before I answer that question; all that I say is, I put it to the Committee whether I am called upon to answer.

*The Committee-room was cleared.*

After a short time the counsel and parties were again called in and informed by the Chairman that the Committee were of opinion :—

“That the question last put should be answered by the witness.”

385. *By Mr. Attorney General*.—Do you look to Mr. Rutledge for your costs?—Certainly.

*The witness withdrew.*

*Adjournment to Tuesday next at two o'clock.*

TUESDAY, 14TH MAY, 1861.

*Members present:*

MR. PYKE, in the Chair;

Mr. J. S. Johnston,  
Mr. Jones,  
Mr. Martley,

Mr. Prendergast,  
Mr. McLellan,  
Mr. Verdon.

*The Committee deliberated.*

After some time, the counsel and parties were called in.

*The Chairman* enquired of Mr. Nolan whether he had with him his bill of costs.

*Mr. Nolan* replied in the negative.

*The Chairman* stated that the Committee had agreed to the following resolution, viz.:—  
“That, in the opinion of this Committee, the candidature and consequent return of William Rutledge is vexatious.”

And further stated, that if counsel had been present, the Committee would have proceeded to deal with the question of costs, but, in the absence of counsel, they would not proceed further in the matter, but would forthwith report to the House.