

1883. (2nd)
VICTORIA.



RODNEY ELECTION.

REPORT

FROM

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS,

UPON THE

PETITION OF WILLIAM TELFORD WEBB,

AGAINST THE RETURN OF

JAMES SHACKELL,

FOR THE

ELECTORAL DISTRICT OF RODNEY,

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE AND MINUTES OF EVIDENCE.

Ordered by the Legislative Assembly to be printed, 7th August, 1883.

By Authority:

JOHN FERRES, GOVERNMENT PRINTER, MELBOURNE.

REPORT.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS have the honour to report that they have determined—

1. That James Shackell, Esq., is duly elected a Member to serve in this present Parliament for the Electoral District of Rodney.

Legislative Assembly,
Committee-room, 7th August, 1883.

PROCEEDINGS OF THE COMMITTEE.

TUESDAY, 31st JULY 1883.

Members present:

Mr. Deakin,
Mr. Coppin,
Mr. W. Madden,
Mr. McIntyre,

Mr. Moore,
Mr. Patterson,
Mr. Wheeler.

The extract from the Votes and Proceedings of the 18th July instant, appointing the Committee of Elections and Qualifications, was read by the Clerk.

Mr. Deakin was called to the chair.

The Petitions complaining of the return of James Shackell for the Electoral District of Rodney, and of George Randall Fincham for the Electoral District of Ballarat West, were laid before the Committee and read.

The following appearances were laid before the Committee and read:—

In the matter of the Petition of William Telford Webb against the return of Mr. James Shackell for the Electoral District of Rodney.

To the Clerk of the Legislative Assembly.

SIR,

I beg to inform you that I am instructed by Mr. W. T. Webb, the Petitioner, to appear as agent in support of the above-mentioned Petition before the Election and Qualifications Committee.

I have the honour to be, Sir,

Yours obediently,

THEODORE FINK,
Solicitor and Parliamentary Agent.

45 Collins-street west, Melbourne.

SIR,

46 Elizabeth-street, Melbourne, 10th July, 1883.

In the matter of the Petition of W. T. Webb against Jas. Shackell.

I beg to inform you that I am instructed by Mr. James Shackell, of Echuca, M.P. for Rodney, to appear to oppose the Petition lodged herein, and that Mr. Webb, Q.C., and Mr. Box will appear before the Election and Qualification Committee as counsel on behalf of the said James Shackell.

I remain, Sir,

Your obedient servant,

T. J. WYBURN.

G. H. Jenkins, Esq., Clerk of the Legislative Assembly,
Parliament House, Spring-street, Melbourne.

IN PARLIAMENT: SESSION 1883.—LEGISLATIVE ASSEMBLY.

Re BALLARAT WEST ELECTION PETITION.

SIR,

I have the honour to notify you hereby that the undermentioned will appear as counsel and agent for the Petitioner, Charles Edwin Jones, Esq., before the Committee of Elections and Qualifications.

Counsel: Alexander Grant McIntyre, Esq., Barrister-at-law.

Agent: William Davies, certified Parliamentary Agent, 59 Queen-street, Melbourne.

I am, Sir,

Your obedient servant,

WM. DAVIES.

To the Clerk of the Legislative Assembly attending the
Elections and Qualifications Committee.

Dated this 30th day of July, 1883.

Ordered—That the consideration of the Petitions be proceeded with in the order in which they were laid before the House by Mr. Speaker.

The Committee agreed to the following preliminary resolutions:—

1. That counsel will not be allowed to go into matters not referred to in their opening statement without a special application to the Committee for permission to do so.
2. That, if costs be demanded by either party, the question must be raised immediately after the decision on that particular case, unless the Committee shall otherwise decide.
3. That the Committee expect that, with respect to cases of bribery, or offers or promises of money or other valuable consideration which it is intended to bring home to the sitting member or his agents, the counsel for the Petitioner will now state the names of the electors bribed, or to whom such offers were so made, and those of the persons who actually gave the bribes, or offered so to do.
4. The Committee, however, reserve to themselves a power, upon the special application of counsel, to proceed with any case which tends to inculpate any principal or agent, the knowledge of which case has been brought out before the Committee in the progress of the investigation, with the circumstances of which the parties could not be reasonably supposed to have been previously cognizant.
5. That with respect to treating, the Committee will expect counsel to state the times and places where such treating is alleged to have taken place.
6. That with respect to undue influence, the Committee will require to be furnished with a list of the persons who are alleged to have been subjected to such undue influence, and also with a list of those who are alleged to have exercised it.
7. The Committee, however, reserve to themselves a discretionary power, as in cases of bribery.
8. 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 agents, whose names shall be handed in, without the special leave of the Committee.
9. That the Committee will only allow one counsel to address them on opening the case, and one counsel on the summing-up.

10. That if any point of law should arise requiring argument, the Committee reserve to themselves the power of hearing only one counsel on each side.
11. That, if the leading counsel be 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.
12. That the practice of courts of law as to speeches be followed in this case.
13. That, with respect to objected votes, the Committee expect counsel to exhaust one class of objections before proceeding to another.
14. That the petitioners or their counsel shall, before the Committee enter upon the inquiry, state the names of the witnesses they purpose calling, but, if during the investigation the Committee should consider further evidence necessary, such other witnesses as the Committee may deem requisite may be examined.

Parties called in and informed thereof.

RODNEY ELECTION PETITION.

The Chairman stated that if the Petitioner against the return of Mr. Shackell was ready, the Committee would proceed with the inquiry to-morrow.

Mr. T. Fink, who appeared as agent for the Petitioner, objected to proceeding with the case to-morrow, as he required further time to secure the attendance of witnesses and the production of certain documents.

Mr. Wyburn, who appeared as agent for the sitting member, objected to the request of Mr. Fink, and urged the Committee to proceed with the inquiry to-morrow.

After hearing further arguments.

Room cleared.

The Committee deliberated.

Resolved—That the Committee would proceed with the hearing of the Rodney Election Petition on Thursday next, at one o'clock.

Parties called in and informed thereof.

Mr. T. Fink applied for subpoenas to secure the attendance of certain witnesses.

The Chairman stated that Mr. Fink's request would be complied with on his handing in to the Clerk a list of the witnesses whom he wished to have summoned.

BALLARAT WEST ELECTION PETITION.

Mr. A. G. McIntyre, who appeared as counsel for the Petitioner, requested that the Committee would not proceed with the hearing of the Ballarat West Election Petition until next Wednesday week.

Mr. G. R. Fincham, the sitting member, who appeared in person, objected to the delay asked for by Mr. McIntyre.

After deliberating, the Chairman informed parties that the Committee would proceed with the hearing of this case on Tuesday next, at eleven o'clock.

Mr. A. G. McIntyre applied for subpoenas to secure the attendance of certain witnesses.

The Chairman stated that Mr. A. G. McIntyre's request would be complied with on his handing in to the Clerk a list of the witnesses whom he wished to have summoned.

Ordered—That the Chairman be empowered to send for persons, papers, and records.

Committee adjourned until to-morrow, at half-past three o'clock.

WEDNESDAY, 1ST AUGUST, 1883.

Member present:

Mr. Deakin.

No quorum.

Adjourned until to-morrow at one o'clock.

THURSDAY, 2ND AUGUST, 1883.

Members present:

Mr. DEAKIN, in the Chair;

Mr. W. Madden,
Mr. Wheeler,
Mr. Moore,

Mr. Coppin,
Mr. McIntyre,
Mr. Patterson.

The Petition of William Telford Webb against the return of James Shackell was read, and is as follows:—

To the Honorable Peter Lalor, Speaker of the Legislative Assembly of the Colony of Victoria.

The Humble Petition of William Telford Webb of Rochester, in the colony of Victoria, commission merchant,

RESPECTFULLY SHEWETH—

Your Petitioner was a duly nominated candidate at the election of two Members to serve in the Legislative Assembly for the Electoral District of Rodney, held on the twenty-second day of February in the year of our Lord One thousand eight hundred and eighty-three.

That at such election Duncan Gillies was first on the poll, James Shackell was second on the poll, and your Petitioner was third on the poll.

That the said Duncan Gillies and James Shackell were declared elected and returned as the Members for the said district.

That the said James Shackell had held for many years prior to such election, and still held at the time of such election and return, the office of Assignee of Insolvent Estates, under the *Insolvency Statute 1871*, for the Midland Insolvency District at Echuca.

That the said James Shackell, at the time of his election and return, held the office of Member of the Local Steam Navigation Board at Echuca, being appointed to and holding such office under the provisions of the "Passengers Harbors and Navigation Statute 1865."

That the said James Shackell, at the time of his election and return, held offices and places of profit under the Crown.

And that the said James Shackell was, at the time of such election and return, employed in the public service of Victoria, for wages, salary, and fees, or emolument.

Your Petitioner therefore prays that the said James Shackell may be declared not duly elected for the said district.

That your Petitioner may be declared duly elected for the said district.

That the return may be amended accordingly. And that your Petitioner may have such further and other relief as the circumstances of the case may require.

And your Petitioner, as in duty bound, will ever pray.

W. T. WEBB.

Witness—THEODORE FINK, Parliamentary Agent.

Mr. T. Fink, appeared as agent for the Petitioner.

Mr. Webb, Q.C., and Mr. Box, appeared as counsel, and Mr. T. J. Wyburn, as agent for the sitting member.

The Shorthand Writer was sworn by the Chairman.

Mr. Webb invited the attention of the Committee to the resolutions they had agreed to on the 31st July. The 9th, 10th, 11th, 12th, 13th and 14th of those resolutions contemplated the attendance of counsel, and he therefore submitted that Mr. Fink should not be heard.

Mr. Fink addressed the Committee in reply.

Room cleared.

The Committee deliberated.

Parties called in.

The Chairman informed Mr. Webb that the Committee considered the latitude allowed to them under section 64 of the Act 18 and 19 Vict. c. 55 gave them power to dispense with legal forms and solemnities whenever it appeared advisable so to do and, consequently, that as the Petitioner probably would be the only party affected by it, and as he ought to be the best judge of his own interests, the Committee had decided to allow Mr. Fink to be heard.

Mr. Fink then made his opening statement.

George Henry Jenkins, Clerk of the Legislative Assembly, sworn, examined by Mr. Fink, and produced the writ he had received from His Excellency the Governor, commanding the returning officer for the Electoral District of Rodney to proceed to the election of two members for the said district in February last.

Mr. Fink then handed in a copy of the *Argus* newspaper, containing a statement of the result of the polling at Rodney.

Mr. Webb objected to its being received as evidence.

Mr. Fink then said he would not put the paper in as evidence, but would take other steps to prove the result of the polling at Rodney.

Mr Fink then handed in a copy of the *Government Gazette* bearing date 26th July, 1878.

Joseph Collie, sworn, examined by Mr. Fink, produced and handed in—

1. Application for guarantee policy for £1,000.
2. Government guarantee policy for £1,000.
3. Declaration made by B. C. Harriman.

Cross-examined by Mr. Webb.

Edward Lancelot Slakeld Cooke sworn, examined by Mr. Fink.

Edward Wood sworn, examined by Mr. Fink.

Benjamin Cosway Harriman, Secretary to the Law Department, sworn, examined by Mr. Fink.

Cross-examined by Mr. Webb.

James Shackell, a Member of the House, attended to give evidence.

Mr. Webb objected to Mr. Shackell being asked any question, his answer to which would subject him to a penalty.

The honorable Member thereupon withdrew.

Mr. Fink then informed the Committee that he did not propose to call any other witnesses.

Mr. Webb stated that he did not intend to call any witnesses.

Mr. Fink proceeded to sum up the evidence on behalf of the Petitioner.

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

TUESDAY, 7TH AUGUST, 1883.

Members present:

MR. DEAKIN, in the Chair;

Mr. Coppin,
Mr. McIntyre,
Mr. Patterson,

Mr. W. Madden,
Mr. Moore,
Mr. Wheeler.

Mr. Webb proceeded to reply on the whole case.

Mr. Fink applied for permission to address the Committee in reply to Mr. Webb.

Mr. Webb objected to Mr. Fink's request being granted.

Room cleared.

Committee deliberated.

Parties called in.

The Chairman stated that the Committee had decided not to hear Mr. Fink in reply to Mr. Webb, but that with reference to certain sections of Acts referred to by Mr. Fink, the Committee would allow him to hand in a list of the same, after it had been submitted to the counsel for the sitting member, who would be allowed to make any additions to it that he might deem necessary.

Mr. Fink and Mr. Webb then prepared lists which were handed in.

Room cleared.

Committee deliberated.

Mr. McIntyre moved, That James Shackell, Esquire, is duly elected a Member to serve in this present Parliament for the Electoral District of Rodney.

Question—put and resolved in the affirmative.

Parties called in and informed of the above resolution.

Ordered—That the above resolution be reported to the House.

Mr. Box applied for costs, on the ground that the Petition was both frivolous and vexatious.

The Chairman informed counsel that the Committee had already considered this point, and had determined that the Petition was neither frivolous nor vexatious.

MINUTES OF EVIDENCE.

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MINUTES OF EVIDENCE.

RODNEY ELECTION PETITION.

THURSDAY, 2ND AUGUST, 1883.

Members present :

Mr. DEAKIN, in the Chair ;

Mr. Coppin,
Mr. T. Moore,
Mr. W. Madden,

Mr. McIntyre,
Mr. Patterson,
Mr. Wheeler.

The Petition of William Telford Webb against the return of James Shackell for the Electoral District of Rodney.

Mr. Fink appeared as agent for the petitioner.

Mr. Webb, Q.C., Mr. Box with him, appeared as counsel for the sitting member.

The Shorthand Writer was sworn.

Mr. Webb called the attention of the Chairman to the practice that, in every case, the petitioner should be represented by counsel.

Mr. Fink was heard in defence of his *locus standi*.

Mr. Webb called the attention of the Committee to the 9th, 10th, 11th, 12th, 13th, and 14th of the resolutions already passed, which all, apparently, contemplated the attendance of counsel.

The Committee-room was cleared.

The Committee deliberated.

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

The Chairman.—The Committee, having deliberated, consider that the latitude allowed to them under section 64 permits them to dispense with the ordinary legal forms and solemnities whenever it may appear advisable to them so to do ; and, consequently, on the ground that the petitioner probably is the only party affected by it and that he ought to be the best judge of his own interests, the Committee have decided to allow *Mr. Fink* to be heard.

Mr. Fink was heard to open the case for the petitioner.

Mr. Chairman inquired of *Mr. Webb* whether the election was admitted.

Mr. Webb stated that at present *Mr. Shackell* was subject to two actions brought by *Mr. Webb* for penalties for sitting; that if he were free from those actions he would make the admissions, but under present circumstances he could admit nothing.

George Henry Jenkins, Esq., Clerk of the Legislative Assembly, sworn.—Examined by *Mr. Fink*.

1. Do you produce the writ?—I produce a writ that I received from His Excellency the Governor, ordering the Returning Officer for the Electoral District of Rodney to proceed according to law to the election of two members to serve for the said district, in February of this year ; and, from the endorsement upon the writ, it appears that Duncan Gillies, Esquire, and James Shackell, Esquire, were duly elected.

G. H. Jenkins,
Esq.,
2nd August 1883

The witness withdrew.

Mr. Fink tendered in evidence a copy of the *Argus* newspaper.

Mr. Webb objected that this was not evidence.

Mr. Fink was heard to ask the Committee either to accept the newspaper as evidence or to grant an adjournment for the purpose of obtaining the returning officer's attendance as a witness.

The Chairman inquired whether the Committee were to understand that this statement in the newspaper tendered by *Mr. Fink* was an advertisement under the hand of the returning officer.

Mr. Fink replied in the negative, and tendered in evidence the *Government Gazette* of the year 1878, of the issue of Friday, July the 26th :—"Assignee of Insolvent Estates.—The Governor, with the advice of the Executive Council, has been pleased to appoint James Shackell, Esq., to be an assignee of insolvent estates for the Midland Insolvency District, acting at Echuca.—BRYAN O'LOGHLEN, Attorney-General, Crown Law Office, Melbourne, 23rd July, 1878."

2. *The Chairman (to Mr. Webb).*—Do you admit that ?

Mr. Webb.—No, I do not admit anything, but I do not object to it.

Joseph Collie sworn.—Examined by *Mr. Fink*.

3. You are, I am informed, secretary to the Victorian Mutual Life and General Insurance Company? —Yes.

Joseph Collie,
2nd August 1883.

4. Do you produce the application for surety for a bond of suretyship to Her Majesty, made by *Mr. Shackell*?—Yes.—[*The witness produced a paper, and handed the same to Mr. Fink.*]

Joseph Colle,
continued,
2nd August 1883.

5. Do you know Mr. Shackell's signature?—No, I do not know it.
Mr. Fink (to Mr. Webb).—Do you object to that?
Mr. Webb.—Go on; I will not take any objection.
 6. *By Mr. Fink (to the witness).*—Do you produce any other documents relating to this policy?—If you require any.
 7. Have you got any; there is only one document—that is a declaration made by Mr. Harriman.
Mr. Webb objected to Mr. Harriman's declaration being put in.
 8. I believe this application was accepted?—Yes.
 9. Is this—[*producing a paper and handing the same to the witness*]—a policy of insurance granted by your society in respect to Mr. Shackell, the gentleman signing the application you have identified?—Yes.
 10. Are those the signatures of your directors?—They are.
 11. And that is your signature there, attesting the same?—That is mine.
 12. And that is the policy granted in respect of the application you before produced?—Yes, that is it.—[*The same was handed in.*]

Cross-examined by *Mr. Webb.*

13. To whom was that policy issued?—To Mr. Shackell.
 14. Is Mr. Shackell the assured?—He is, under that policy.
 15. He is the assured?—Yes.
 16. You have been a long time in an insurance office—have not you?—Yes.
 17. Who is the assured, under that policy?—Mr. Shackell.
 18. Eh?—Mr. Shackell.
 19. I thought you assured the Government for Mr. Shackell's fidelity?—His name is there.
 20. Do you mean to say that you, who have been, to my knowledge, about thirty years in an insurance office, do not know who is the assured under that policy?—The policy speaks for itself.
 21. The Government are assured against the defalcations of Mr. Shackell, are they not. You know we popularly speak of having our houses insured against fire, but it is owners of them that are assured strictly?—This assures James Shackell.
 22. Does it. Let us look at it—"Whereas James Shackell" (and so on) "now therefore this policy witnesseth that the said Victoria Life and General Insurance Company, fully relying (and so on) will safely reimburse unto the said assured, within three calendar months next after proof has been given to the reasonable satisfaction of the directors of the company of such loss"—do you mean to say that if Mr. Shackell committed a defalcation under this you would make it good to him?—No.
 23. Now who is the assured?—(*The witness perused the document.*)
 24. Now when you have quite satisfied yourself who is the assured, I want to ask you whether you did not send that policy to the assured and not to Mr. Shackell at all. Now to put it popularly, that is an assurance to the Government, or to the Queen, against Mr. Shackell's defalcations?—Yes, it speaks for itself.
 25. Now will you tell me whether you gave that policy to Mr. Shackell, or whether you gave it to the Government?—I cannot say.
 26. Then you are not quite sure that you are right when you say that you gave it to Mr. Shackell?—It is in Mr. Shackell's name.
 27. It is as much in Mr. Shackell's name as my house is in my house's name, when I insure my house?—Of course it is not in the house's name.
 28. Will you undertake to swear that you gave that paper to Mr. Shackell?—No, I will not.
 29. Do not you think it is more likely it went to—who are the assured?—[*No answer.*]
 30. *By Mr. Fink.*—That policy in your hand was issued, was it not, by your society on that application which you have previously identified?—Yes.
 31. It is a contract made on that proposal?—Yes.
 32. This went to the Law Department, which department was the place where it ought to have gone to?—
Mr. Webb objected that this could not affect Mr. Shackell.
 33. *By Mr. Fink.*—Did I understand you to say that the policy was granted by your society in pursuance of the application made by Mr. Shackell, which application you have identified?—Yes.

The witness withdrew.

Edward Lancelot Slakald Cooke sworn.—Examined by *Mr. Fink.*

E. L. S. Cooke,
2nd August 1883.

34. You are a clerk in the Audit Department, are you not?—No, in the Treasury Department.—[*The policy already produced was handed to the witness.*]
 35. Do you produce a policy?—Yes, I brought that.
 36. This is a minute—
 37. *The Chairman.*—Whose minute is that?
Mr. Fink.—Mr. Harriman's minute.
Mr. Webb objected.
 38. *By Mr. Fink (to the witness).*—Do you produce the policy?—Yes.
 39. And you produce this letter?—Yes.

The policy was again handed in.

The witness withdrew.

Edward Wood sworn.—Examined by *Mr Fink.*

Edward Wood,
2nd August 1883.

40. I believe you are in the office of the Audit Commissioners?—Yes.
 41. Do you produce certain returns made by Mr. Shackell, as assignee of insolvency, at Echuca?—Yes, these are they—[*producing documents.*]
 42. *By Mr. Webb.*—Do you know Mr. Shackell's writing?—I do not.
 43. *By Mr. Fink.*—These purport to be signed by Mr. Shackell?—Yes.

44. *By the Committee.*—What are they?

Mr. Fink.—They are statutory declarations supporting returns of unclaimed dividends.

45. *(To the witness).*—Are those documents received by your department as documents—returns—
from one James Shackell, official assignee at Echuca?—Yes, through the Treasury.

Mr. Fink tendered these documents as evidence.

Mr. Webb objected that *Mr. Shackell's* signature to them had not been proved.

The witness withdrew.

The application for the guarantee policy, already handed in, was handed to Mr. Fink.

Benjamin Cosway Harriman sworn.—Examined by *Mr. Fink.*

46. What is the office you hold?—Secretary to the Law Department.

47. As Secretary of the Law Department do you receive the securities given by assignees of insolvent estates?—I do, and transmit them to the Treasury.

B. C. Harriman,
2nd August 1883.

48. Did you receive that policy, and is that a document transmitting it to the Treasury, signed by you?—That is so.

Mr. Webb objected that the document transmitting the policy could not be evidence against *Mr. Shackell.*

49. *By Mr. Fink.*—That signature has been identified as that of *Mr. Shackell.* It is the signature to an application for a surety for a bond of guarantee. Is that your signature to the declaration as to employment?—That is my signature and my declaration.

Mr. Fink tendered this document as evidence.

Mr. Webb objected.

50. *By Mr. Fink (to the witness).*—Was the department of which you are secretary requested or directed in any way, by *Mr. Shackell,* to supply any particulars mentioned on that form, or on any other form, to the Victoria Life and Insurance Company?—No.

51. Were you requested by any department or by the company?—

Mr. Webb objected.

52. Has *Mr. Shackell* got to make returns as assignee of unclaimed dividends?—Not to me.

53. As Secretary to the Law Department, will you inform the Committee whether assignees of insolvent estates are officers of your department?—

Mr. Webb objected.

The Witness.—My answer to the question is, that section 52 of the Act makes them officers of the Court, not of our department.

54. You accepted this bond I believe, in which he is stated to be in the department or branch of the Public Service of the colony of Victoria known as the Law Department; this is not the ordinary bond that they issue to the members of the public but a bond drawn up for Government servants and printed specially for them?—I admit having received that and transmitted it to the Treasury.

55. This is in pursuance of the security fixed by the Governor in Council?—Fixed by the Governor in Council.

56. Has the Governor in Council ever exercised his power of removing an assignee of insolvent estates?—

Mr. Webb objected.

57. Was not one of the official assignees at Melbourne removed by order of the Governor in Council?—

Mr. Webb objected that the witness was not present at the Executive Council.

58. *Mr. Harriman* is a member of the Executive Council?—I am not a member of the Executive Council.

Cross-examined by *Mr. Webb.*

59. You are not a member of the Executive Council?—Not at present.

60. Then it is not correct in this document, so much relied upon by this learned gentleman, to say that, as the basis of the contract for this guarantee, the said assured hath deposited or lodged, the said assured being the Treasurer of Victoria, at the office of the said company, a certain statement or document in writing, dated the first day of August in the year of our Lord 1878, the same containing among other things a declaration signed by B. C. Harriman, being a member of the Executive Council of the colony of Victoria, in whose division of the service the said so and so is employed. You are not the B. C. Harriman, a member of the Executive Council?—No.

61. It must have been some other B. C. Harriman?—[*No answer.*]

Mr. Fink.—*Mr. Harriman* has been asked whether he did not sign that document.

Mr. Webb.—No, he has not.

62. *By Mr. Fink.*—I am going to show that *Mr. Harriman* did sign that document, not wrongfully, as suggested by *Mr. Webb,* but rightfully. Will you look at that signature?—That is my signature.

63. Read what it says under it?—"B. C. Harriman—signature for employer, Secretary to the Law Department, date August 1st, 1878."

64. You signed that?—I signed that.

65. And that is your signature?—That is my signature.

66. And that is the declaration signed on behalf of Her Majesty?—I do not know that.

67. Did you sign that document?—I signed it—that is my signature.

68. Will you look at the document yourself?—Right.

69. Was not that document signed by you in your capacity as Secretary to the Law Department?—Yes.

70. In respect to an assignee?—In respect to an assignee of insolvent estates. He is wrongly called official assignee here, but I call him by his proper name.

Mr. Fink tendered the document as evidence.

Mr. Webb objected.

B. C. Harriman,
continued,
2nd August 1883.

The Witness.—I signed that in consequence of having been requested to do so, and directed by the Attorney-General to reply.

Mr. Fink.—It is an act of State undoubtedly.

Mr. Webb objected that Mr. Shackell could not be made answerable for the contents of a document by Mr. Harriman having signed it.

Mr. Fink was heard to address the Committee to submit that in contemplation of law Mr. Harriman had signed the document for Mr. Shackell, inasmuch as it was in order to verify Mr. Shackell's statement as to his duties that the company asked the employing party to state Mr. Shackell's duties, and as the basis of the whole contract was an application by Mr. Shackell, the request to Mr. Harriman was really a request by Mr. Shackell, and further to submit that under the section already referred to the Committee had power to admit the document even though it might not be evidence in the strict legal sense.

The witness withdrew.

James Shackell, Esq., a Member of the House called.

James Shackell,
Esq.,
2nd August 1883.

Mr. Webb objected to Mr. Shackell being asked any question the answer to which would subject him to a penalty, and advised Mr. Shackell not to answer any such question inasmuch as anything he said now could be used against him in the action for penalties now pending, and to take the consequences in the House which the House might think fit to visit upon him.

Mr. Webb was further heard to submit to the Committee that the course now proposed to be pursued by Mr. Fink in examining the sitting member was unprecedented, in that thereby the plaintiff in an action would be making use of another court to extract evidence from the defendant which would criminate him, and render him liable to penalty.

The honorable member withdrew.

Mr. Fink stated that the newspapers in which the legal notification of the poll appeared, namely, the *McIvor Times*, was missing from the library, but that there was a similar notification as to the return in another issue of the paper.

71. *The Chairman.*—Is it under the hand of the returning officer?

Mr. Fink.—No, it is not under the hand of the returning officer. If the Committee decline to accept this evidence, the justice of the case will be met by an adjournment.

The Chairman.—We can leave that part at present, and deal with only the case as against Mr. Shackell at present.

Mr. Fink stated this was his case.

Mr. Webb.—Then I simply leave the Committee to deal with it, and seat Mr. Webb or not as they like. I do not propose to call any evidence, I leave Mr. Fink to sum up.

Mr. Fink submitted that the proper procedure would be for Mr. Webb to address the Committee and for him to sum up.

Mr. Webb pointed out that the rules passed by the Committee were, that the practice of the courts should be adhered to.

Mr. Fink submitted that that rule only referred to questions of fact, and not to a case such as this, which involved only a point of legal argument.

The Chairman intimated that, as the Committee wished to preserve the rules they had adopted, they were of opinion that Mr. Fink should now sum up his case.

Mr. Fink was accordingly heard to address the Committee.

Adjourned to Tuesday, at Eleven o'clock.