

1893.
—
VICTORIA.



BENALLA AND YARRAWONGA ELECTION.

REPORT

FROM

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS,

UPON THE

PETITION OF THOMAS KENNEDY

AGAINST THE RETURN OF

LIEUT.-COL. JOHN MONTGOMERY TEMPLETON

FOR THE

ELECTORAL DISTRICT OF BENALLA AND YARRAWONGA;

TOGETHER WITH THE

PROCEEDINGS OF THE COMMITTEE AND MINUTES OF EVIDENCE.

Ordered by the Legislative Assembly to be printed, 1st November, 1893.

By Authority:

ROBT. S. BRAIN, GOVERNMENT PRINTER, MELBOURNE.

EXTRACTED FROM THE VOTES AND PROCEEDINGS.

TUESDAY, 17TH OCTOBER, 1893.

5. THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS.—The following Warrant, appointing “The Committee of Elections and Qualifications,” was laid upon the Table by Mr. Speaker :—

VICTORIA.

Pursuant to the provisions of the two hundred and ninety-first section of *The Constitution Act Amendment Act 1890*, I do hereby appoint—

Thomas Langdon, Esquire,
The Honorable Alexander James Peacock,
The Honorable Louis Lawrence Smith,
Thomas Smith, Esquire,
The Honorable Frank Stuart,
The Honorable Sir Henry John Wrixon, K.C.M.G.,
Ephraim Lamén Zox, Esquire,

to be Members of a Committee to be called “The Committee of Elections and Qualifications.”

Given under my hand this seventeenth day of October, One thousand eight hundred and ninety-three.

THOS. BENT,
Speaker.

THURSDAY, 19TH OCTOBER, 1893.

3. BENALLA AND YARRAWONGA ELECTION PETITION.—REFERRED TO COMMITTEE.—Mr. Foster moved, That the petition of Thomas Kennedy, complaining of the return of Lieutenant-Colonel John Montgomery Templeton, which had been presented to the House by Mr. Speaker this day, be referred to the Committee of Elections and Qualifications. Question—put and resolved in the affirmative.

WEDNESDAY, 25TH OCTOBER, 1893.

2. ELECTIONS AND QUALIFICATIONS COMMITTEE.—MEMBERS SWORN.—Thomas Langdon, Esquire, the Honorable Louis Lawrence Smith, Thomas Smith, Esquire, the Honorable Frank Stuart, the Honorable Sir Henry John Wrixon, K.C.M.G., and Ephraim Lamén Zox, Esquire, who had been appointed Members of the Committee of Elections and Qualifications, took the Oath at the Table of the House, before the Clerk.
3. ELECTIONS AND QUALIFICATIONS COMMITTEE.—FIRST MEETING.—Mr. Speaker appointed to-morrow, at half-past two o'clock as the time, and Committee Room No. 1 as the place, for the first meeting of the Committee of Elections and Qualifications.



APPROXIMATE COST OF REPORT.

	£	s.	d.
Compilation*	Nil
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* The compilation was a portion of the work of the Clerk of Committees, who is paid by annual salary.

REPORT.

THE COMMITTEE OF ELECTIONS AND QUALIFICATIONS report to your
Honorable House that they have determined—

1. That the election for Benalla and Yarrawonga was wholly void.
2. That as the position of Official Liquidator involves no service or duty to the Crown, but only a service to private companies, given wholly under the control and direction of the Court, the office is not an office of profit under the Crown within the meaning of section 12 of *The Constitution Act Amendment Act 1890*.
3. That the Committee consider it is greatly to be regretted that no general roll was supplied to the Devenish polling booth for the Dookie division, and that thereby electors were prevented from recording their votes.

Legislative Assembly,
Committee-room, 1st November, 1893.

PROCEEDINGS OF THE COMMITTEE.

THURSDAY, 26TH OCTOBER, 1893.

Members present :

Mr. Langdon,
Mr. L. L. Smith,
Mr. T. Smith,

Mr. Stuart,
Sir Henry Wrixon, K.C.M.G.,
Mr. Zox.

The extracts from the Votes and Proceedings of the 17th, 19th, and 25th October instant, referring to the appointment of the Committee, the reference of the Petition of Thomas Kennedy for their consideration, the swearing in of the members, and the appointment of the time and place of the first meeting, were read by the Clerk.

Sir Henry Wrixon, K.C.M.G., was called to the Chair.

The following Petition of Thomas Kennedy against the return of Lieutenant-Colonel John Montgomery Templeton was laid before the Committee and read :—

To the Honorable Thomas Bent, Speaker of the Legislative Assembly of the Colony of Victoria.

The Humble Petition of Thomas Kennedy, of Cobram, in the colony of Victoria, Farmer and Grazier :

RESPECTFULLY SHEWETH—

Your Petitioner was a duly qualified and nominated Candidate at the election of One Member to serve in the Legislative Assembly for the Electoral District of Benalla and Yarrawonga, held the ninth day of October, in the year of our Lord One thousand eight hundred and ninety-three.

That, at the said election, Lieutenant-Colonel John Montgomery Templeton and your Petitioner each obtained an equal number of votes at the polling.

That, subsequently to the said election, one John Nicholson, who was the Returning Officer at the said election, under the provisions of *The Constitution Act Amendment Act 1890*, gave his casting vote in favour of the said Lieutenant-Colonel John Montgomery Templeton.

That the said Lieutenant-Colonel John Montgomery Templeton was declared elected and returned as the Member for the said electoral district.

That the said Lieutenant-Colonel Templeton had been for many years prior to such election, and still held at the time of such election and return, the office and appointment of Lieutenant-Colonel in the Military Forces of Victoria.

That the said Lieutenant-Colonel Templeton held since the fourteenth day of February, One thousand eight hundred and ninety, and still held at the time of such election and return, the office and appointment of an official liquidator under the provisions of Act 27 Victoria, No. 190, section 85 (now the *Companies Act 1890*).

That the said Lieutenant-Colonel Templeton, at the time of his election and return, held offices and places of profit under the Crown, and the said Lieutenant-Colonel Templeton was, at the time of such election and return, employed in the Public Service of Victoria for salary, wages, fees, or emolument.

That, on the taking of the poll at such election, divers voters, who were desirous of voting for your Petitioner, applied to the Returning Officer and Deputy Returning Officers, at their respective polling places, for ballot-papers to enable them to record their votes at the said election, and were improperly refused ballot-papers, and were not permitted to record and did not record their votes at the said election.

That at the Devenish polling places, in the Dookie Division of the said electoral district, being one of the polling places duly appointed for the recording of votes at the said election, no general roll of the electors entitled to vote was supplied by the Returning Officer to his Deputy at such polling place, whereby the said Deputy Returning Officer wholly refused to give any ballot-papers to the voters on such roll who were entitled to vote at such election, and a large number of voters who attended the said polling places to record their votes were not permitted to do so, and did not vote at the said election.

That divers votes which would have been cast in favour of your Petitioner at the said election were by the Deputy Returning Officers wrongfully declared informal, and were not counted in the compilation of votes polled on behalf of your Petitioner.

Your Petitioner also says that but for the facts as in the three preceding paragraphs mentioned he would have obtained a majority of lawful votes at the said election.

Your Petitioner therefore humbly prays that you will communicate the matter of this Petition to the Legislative Assembly, in order that the same may be referred to the Committee of Elections and Qualifications.

That the said Lieutenant-Colonel Templeton may be declared not duly elected for the said district.

That your Petitioner may be declared duly elected for the said district, and that the return may be amended accordingly.

That all electors who were refused ballot-papers at the said election may be admitted to vote according to their intention, and that, if necessary, there may be a new election.

And that your Petitioner may have such further or other relief as the circumstances of the case may require or as to the said Committee may seem just.

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

Dated the eighteenth day of October, One thousand eight hundred and ninety-three.

THOMAS KENNEDY.

Witness—M. MORNANE, Parliamentary Agent.

Mr. Stuart here entered the room and took his seat.

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

Deposited on the 25th October, 1893, at 11.55 a.m.

W. V. ROBINSON,
Clerk of the Legislative Assembly.

William-street, 25th October, 1893.

In the matter of the Petition of Thomas Kennedy against the return of Lieutenant-Colonel J. M. Templeton, Benalla and Yarrawonga Electoral District.

SIR,

I have the honour to notify you that the undermentioned will appear as Counsel and Agent for the Petitioner, Thomas Kennedy, before the Elections and Qualifications Committee :—

Counsel—John Burnett Box, Esq., barrister-at-law.

Agent—Michael Mornane, certified Parliamentary Agent, St. James' Buildings, William-street.

I have the honour to be, Sir,
Your obedient servant,

M. MORNANE.

W. V. Robinson, Esq., Clerk of the Legislative Assembly.

Deposited on the 26th October, 1893, at 2.25 p.m.

W. V. ROBINSON,
Clerk of the Legislative Assembly.

The Rialto, Collins-street.

In the matter of the Petition of Thomas Kennedy against the return of Lieutenant-Colonel J. M. Templeton, Benalla and Yarrawonga District.

SIR,

I have the honour to notify that I, the undermentioned Theodore Fink, will appear as Counsel for the sitting Member before the Elections and Qualifications Committee.

Yours truly,
THEODORE FINK,
Parliamentary Agent.

W. V. Robinson, Esq., Clerk of the Legislative Assembly.

Mr. H. E. Wade, the Government Shorthand Writer, was sworn by the Chairman.

Room cleared.

Committee deliberated.

Parties called in and informed by the Chairman that the Committee desired Counsel for the Petitioner to open the whole of his case.

Mr. Box, Counsel for the Petitioner, addressed the Committee, intimating that he was not prepared to proceed at once beyond the allegation as to the sitting Member holding an office of profit under the Crown.

Mr. Fink, Counsel for the sitting Member, addressed the Committee, and stated that he would require time to consider the particulars as to voters who were alleged to have been prevented from voting, and votes alleged to have been improperly declared informal.

Resolved—That the Petitioner be called upon to supply a list of the witnesses to be examined, list of voters prevented from voting, and list of votes declared informal.

Mr. Box applied for leave to amend the Petition by adding thereto two things, viz.:—An alleged vote by personation by one Bernard Cunningham, and an improperly received vote in the case of one Slingsby Davis.

Mr. Fink objected to the Petitioner being allowed to amend his Petition, in view of the short time there would be to deal with the Petition, owing to the present Session of Parliament being near its close.

The Committee overruled the objection, and granted leave to the Petitioner to amend his Petition accordingly.

Mr. Box intimated that the Petitioner abandoned the allegation that the sitting Member was disqualified on the grounds mentioned in the following paragraph of the Petition:—

“That the said Lieutenant-Colonel Templeton had been for many years prior to such election, and still held at the time of such election and return, the office and appointment of Lieutenant-Colonel in the Military Forces of Victoria.”

Mr. Box was heard to open the case for the Petitioner. Counsel first addressed himself to the following allegations in the Petition:—

“That the said Lieutenant-Colonel Templeton held since the fourteenth day of February, One thousand eight hundred and ninety, and still held at the time of such election and return, the office and appointment of official liquidator under the provisions of Act 27 Victoria, No. 190, section 85 (now the *Companies Act* 1890).

“That the said Lieutenant-Colonel Templeton, at the time of his election and return, held offices and places of profit under the Crown, and the said Lieutenant-Colonel Templeton was, at the time of such election and return, employed in the Public Service of Victoria for salary, wages, fees, or emolument.”

Mr. Box having concluded his address on this branch of the case—

The Chairman intimated that the Committee desired that Counsel for the Petitioner should call his evidence on the first branch of the case, and then sum up; the Counsel for the sitting Member would then be heard, and if he had no evidence to call, that would close the first branch of the case, and if the Committee saw fit to come to a decision upon it they would do so.

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

TUESDAY, 31st OCTOBER, 1893.

Members present:

SIR HENRY WRIXON, K.C.M.G., in the Chair;	
Mr. Langdon,	Mr. T. Smith,
Mr. L. L. Smith,	Mr. Zox.

The Clerk laid before the Committee the following lists which had been deposited with him:—

Deposited on Thursday, the 26th October, 1893, at 3.45 p.m.

W. V. ROBINSON,
Clerk of the Legislative Assembly.

IN THE LEGISLATIVE ASSEMBLY.

Session 1893.

BEFORE THE ELECTIONS AND QUALIFICATIONS COMMITTEE.

BENALLA AND YARRAWONGA ELECTION.

In the matter of the Petition of Thomas Kennedy against the return of Lieutenant-Colonel John Montgomery Templeton.

The following is the list of witnesses intended to be called and examined by the Petitioner in support of his Petition:—

W. V. Robinson, Esq., Clerk of the Legislative Assembly,
The Under-Secretary,
A. P. Akehurst, Esq.,
The Prothonotary of the Supreme Court,
John Nicholson, Esq.,
Nicholas Dwyer,
Timothy Bourke,
John Parrington,
John Staveley,
Edgar Cottrill,
The Secretary, Shire of Benalla,
The Rate Collector, Shire of Benalla,
Bernard Cunningham,
The Deputy Returning Officer for the Burramine division at the Cobram voting place,
Martin Grogan,
The Deputy Returning Officer for the Cashel polling place of the Dookie division,
John Byrne,
Slingsby Davis.

Dated the 26th day of October, 1893.

MICHAEL MORNANE,
St. James' Buildings, William-street, Melbourne,
Agent for Petitioner.

To the Clerk of the Legislative Assembly.

Deposited at 2.15 p.m. on Monday, the 30th October, 1893.

W. V. ROBINSON,
Clerk of the Legislative Assembly.

IN THE LEGISLATIVE ASSEMBLY.

Session 1893.

BEFORE THE ELECTIONS AND QUALIFICATIONS COMMITTEE.

BENALLA AND YARRAWONGA ELECTION.

In the matter of the Petition of Thomas Kennedy against the return of Lieutenant-Colonel John Montgomery Templeton.

The following is the list of voters intended to be objected to, with the several heads of objections set out against the names of such voters, by and on behalf of the Petitioner :—

LIST No. 1.—List of Persons whose Votes were improperly admitted.

No. on Roll.	Name of Voter.	Division.	Objection.
	John Nicholson, Returning Officer (casting vote)	The necessity for a casting vote did not arise
67	Slingsby Davis ...	Dookie Rate Roll	
64	Bernard Cunningham...	Burrachine Rate Roll	

LIST No. 2.—List of Voters improperly refused ballot-papers.

No. on Roll.	Name of Voter.	Division.
19 (General)	Nicholas Dwyer	Burrachine South
23 (Ratepayers')	Timothy Bourke	Burrachine

LIST No. 3.—List of Persons who were improperly refused ballot-papers at Devenish polling place of Dookie Division on account of Deputy Returning Officers not having been supplied with General Roll.

No. on Roll.	Name of Voter.	Division.
28 (General)	John Parrington	Dookie
32 (General)	John Stanley	Dookie
9 (General)	Edgar Cottrill	Dookie
15 (General)	Charles Kerville	Dookie
4 (General)	John Blackburn	Dookie
8 (General)	Lawrence Corboy	Dookie

LIST No. 4.—List of Voters objected to on account of the Voters having been personated.

No. on Roll.	Name of Voter.	Division.	By whom personated.
67 (Ratepayers') ...	Slingsby Davis ...	Dookie	Slingsby Davis, junior
64 (Ratepayers') ...	Bernard Cunningham...	Cobram	Unknown

LIST No. 5.—List of Votes claimed by the Petitioner as having been in his favour, but which were improperly disallowed as informal on the casting up.

No. on Roll.	Name of Voter.	Division.	Head of Objection.
	Unknown	Cobram	This was a vote for Petitioner, but was set aside as informal

MICHAEL MORNANE,

St. James' Buildings, William-street, Melbourne, Agent for the Petitioner.

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

The following is an additional list of voters intended to be objected to, with the head of objections by and on behalf of Petitioner, and is supplementary to Lists 1 and 4 in particulars already supplied:—

LIST No. 1.—List of Voters whose Votes were improperly admitted.

No. on Roll.	Name of Voter.	Division.	Objection.
87 (Rate Roll) ...	Ambrose Couch ...	Yarrawonga	Not on roll, and not entitled to vote
141 (Rate Roll) ...	John Heath ...	Yarrawonga	Not on roll, and not entitled to vote

LIST No. 4.—List of Votes objected to on account of Voters having been personated.

No. on Roll.	Name of Voter.	Division.	By whom personated.
87 (Rate Roll) ...	Andrew Couch ...	Yarrawonga	Ambrose Couch
141 (Rate Roll) ...	George Heath ...	Yarrawonga	John Heath

MICHAEL MORNANE,
Agent for Petitioner.

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

The following is particulars of an additional vote claimed by Petitioner, and is in addition to List 5 of, and supplementary to, the original list already supplied:—

LIST No. 5.—List of Votes claimed by Petitioner as having been in his favour, but which were improperly disallowed as informal on the casting up.

Name of Voter.	Division.	Head of Objection.
Unknown	Burramine South	This was a vote for Petitioner, but was set aside as informal

MICHAEL MORNANE,
Agent for Petitioner.

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

The Clerk laid before the Committee the following statements of objections by the sitting Member's Agent in connexion with the above lists :—

Deposited at 3.30 p.m. on the 30th October, 1893.

W. V. ROBINSON,
Clerk of the Legislative Assembly.

IN THE LEGISLATIVE ASSEMBLY.

Session 1893.

BEFORE THE ELECTIONS AND QUALIFICATIONS COMMITTEE.

BENALLA AND YARRAWONGA ELECTION.

In the matter of the Petition of Thomas Kennedy against the election of Lieutenant-Colonel John Montgomery Templeton.

TAKE NOTICE that on the hearing of this Petition Lieutenant-Colonel John Montgomery Templeton will make the following objections in connexion with the lists of voters which have been this day delivered at the office of his Agent and Counsel :—

1. That the lists are informal, and have been delivered too late and in violation of the order of the Elections and Qualifications Committee, and that the sitting Member will be unable to investigate any of the matters contained in such lists before the next sitting of the Committee.

2. That Lists No. 1, being two lists of persons whose votes were improperly admitted, cannot be entertained by the Committee, as they do not relate to any of the allegations or prayers of the above Petition.

3. As to the List No. 2, objected to on the ground that it does not contain sufficient and necessary particulars.

4. As to List No. 3, the like objection as in the last case.

5. That Lists No. 4, being lists of the votes objected to on the grounds of the voters having been personated, cannot be entertained by the Committee, as they do not relate to any of the allegations or prayers of the above Petition.

6. List No. 5, objected to on the ground that it does not contain sufficient and necessary particulars.

7. Lieutenant-Colonel John Montgomery Templeton, by his Counsel, will object to the Committee entertaining any allegations or matters not alleged in the Petition, on the ground that such Committee has no jurisdiction to entertain such allegations or matters.

Dated this 28th day of October, 1893.

THEODORE FINK,
Agent for Lieutenant-Colonel John Montgomery Templeton.

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

Deposited at 3.30 p.m. on the 30th October, 1893.

W. V. ROBINSON,
Clerk of the Legislative Assembly.

IN THE LEGISLATIVE ASSEMBLY.

Session 1893.

BEFORE THE ELECTIONS AND QUALIFICATIONS COMMITTEE.

BENALLA AND YARRAWONGA ELECTION.

In the matter of the Petition of Thomas Kennedy against the return of Lieutenant-Colonel John Montgomery Templeton.

TAKE NOTICE that on the hearing of this Petition Lieutenant-Colonel John Montgomery Templeton, by his Counsel, will make the following objections in connexion with the additional list of particulars which has this day been delivered at the office of his Agent and Counsel :—

1. That the said list of particulars is informal, and has been delivered too late and in violation of the order of the Elections and Qualifications Committee, and that the said John Montgomery Templeton will be unable to investigate any of the matters contained in such list before the next sitting of the Committee.

2. That this list will be further objected to on the grounds that it does not contain sufficient and necessary particulars.

Dated this 30th day of October, 1893.

THEODORE FINK,
Agent for the said John Montgomery Templeton.

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

Michael Austin Brennan, clerk, Crown Law Department, sworn, and examined by Mr. Box.

Witness produced an Order in Council appointing Lieut.-Col. Templeton to the office of Official Liquidator.

Cross-examined by Mr. Fink.

John William O'Halloran, Prothonotary of the Supreme Court, sworn, and examined by Mr. Box.

Witness produced the following documents :—

Copy of the order of His Honour Mr. Justice Hodges nominating Lieut.-Col. Templeton as Liquidator of the Premier Permanent Building Society.

Affidavit filed in the Supreme Court in the matter of the Premier Permanent Building Society by Lieut.-Col. Templeton in proof of his debt.

Affidavit filed in the Supreme Court by Lieut.-Col. Templeton, stating that there will be no assets available for distribution amongst the shareholders of the Premier Permanent Building Society.

Affidavit by Lieut.-Col. Templeton, dated 27th October, 1892, with reference to the legal costs incurred by him in connexion with the liquidation of the Premier Permanent Building Society.

Cross-examined by Mr. Fink.

Witness produced Lieut.-Col. Templeton's consent to act as Official Liquidator of the Premier Permanent Building Society.

Mr. Box laid before the Committee the *Government Gazette* of the 14th February, 1890, containing the notification of Lieut.-Col. Templeton's appointment as Official Liquidator.

William Valentine Robinson, Clerk of the Legislative Assembly, sworn, and examined by Mr. Box.

Witness produced the Writ issued by the Honorable the Speaker, on the 25th September, 1893, for the election of a Member for Benalla and Yarrawonga; and by the return endorsed on the said Writ it was certified by the Returning Officer that John Montgomery Templeton was duly elected.

John Nicholson, M.D., Returning Officer for Benalla and Yarrawonga, sworn, and examined by Mr. Box.

Mr. Box addressed the Committee in support of the allegation that the sitting Member was disqualified by reason of his holding the position of official liquidator.

Mr. L. L. Smith here entered the room and took his seat.

Mr. Fink was heard in reply.

Committee adjourned until to-morrow, at twelve o'clock.

WEDNESDAY, 1ST NOVEMBER, 1893.

Members present:

SIR HENRY WRIXON, K.C.M.G., in the Chair;

Mr. Langdon,
Mr. L. L. Smith,
Mr. T. Smith,

Mr. Stuart,
Mr. Zox.

Room cleared.

Committee deliberated.

Resolved—That as the position of official liquidator involves no service or duty to the Crown, but only a service to private companies, given wholly under the control and direction of the Court, the office is not an office of profit under the Crown within the meaning of section 12 of *The Constitution Act Amendment Act*.

Parties called in and informed of the foregoing resolution—(See remarks made by Sir Henry Wrixon, Chairman, in *Minutes of Evidence*, pages 3 and 4).

The Chairman intimated that the Committee desired Counsel for the Petitioner to proceed next with the following allegation in the Petition:—

“That at the Devenish polling places, in the Dookie division of the said electoral district, being one of the polling places duly appointed for the recording of votes at the said election, no general roll of the electors entitled to vote was supplied by the Returning Officer to his deputy at such polling place, whereby the said Deputy Returning Officer wholly refused to give any ballot-papers to the voters on such roll who were entitled to vote at such election, and a large number of voters who attended the said polling places to record their votes were not permitted to do so, and did not vote at the said election.”

Mr. Fink addressed the Committee and asked that the decision arrived at yesterday to permit the Petitioner to amend his Petition might be reconsidered. He submitted that he was not prepared yesterday to argue the point, and he desired now to be permitted to do so.

The Chairman intimated that the Committee could not allow the question to be re-opened.

Mr. Box addressed the Committee with reference to the allegations as to persons being prevented from voting at the Devenish polling place in the Dookie division by reason of there being no general roll there.

John Molloy, clerk, Chief Secretary's Department, sworn, and examined by Mr. Box.

Witness produced the Order in Council appointing Devenish as a polling place for the Dookie division of the Benalla and Yarrawonga Electoral District; also a copy of the *Government Gazette* of the 15th March, 1889, notifying the appointment of the said polling place.

John Nicholson, M.D., recalled and further examined by Mr. Box.

Examined by the Committee.

Further examined by Mr. Box.

Martin Grogan, farmer and storekeeper, at Devenish, deputy returning officer at the Devenish polling place at the election, sworn, and examined by Mr. Box.

Examined by the Committee.

Further examined by Mr. Box.

Counsel for the Petitioner laid before the Committee a copy of the general roll for the Dookie division of the Benalla and Yarrawonga district.

Martin Grogan, cross-examined by Mr. Fink.

The Chairman intimated that he did not think the Committee could go into the question as to how any one had intended to vote at Devenish.

Mr. Fink addressed the Committee on this point, and contended that the Committee should take such evidence.

Mr. Box was heard in reply.

Room cleared.

Committee deliberated.

Parties called in and informed that the Committee had determined that evidence on this branch of the case will be confined to the facts whether there was a general roll at the Devenish polling booth, and, if there was not, whether qualified persons were prevented from recording their votes by reason of the absence of such roll.

Cross-examination of witness by Mr. Fink continued.

John Parrington, farmer, Devenish, sworn, and examined by Mr. Box.

Cross-examined by Mr. Fink.

Examined by the Committee.

John Blackburn, sworn, and examined by Mr. Box.

Examined by the Committee.

Mr. Box asked that, before the Committee came to a decision on this case, the votes of Nicholas Dwyer and Timothy Bourke, who had been improperly refused ballot-papers (see List No. 2), should be counted.

The Committee intimated that they would deal with the Devenish case before proceeding with any of the other allegations contained in the Petition.

Mr. Box addressed the Committee, and was heard to sum up the evidence on this branch of the case.

Mr. Fink was heard in reply.

Room cleared.

Committee deliberated.

Resolved—That the election for Benalla and Yarrowonga was wholly void.

Resolved—That the Committee consider it is greatly to be regretted that no general roll was supplied to the Devenish polling booth for the Dookie division, and that thereby electors were prevented from recording their votes.

Ordered—That the Chairman report the foregoing resolutions to the House, and also the resolution agreed to by the Committee with reference to the office of official liquidator.

Resolved—That neither the Petition nor the defence was frivolous or vexatious.

Ordered—That the deposit of One hundred pounds lodged by the Petitioner be returned to him.

Committee adjourned.

MINUTES OF EVIDENCE.

LIST OF WITNESSES.

	PAGE
M. A. Brennan, clerk, Crown Law Offices	1
J. W. O'Halloran, Prothonotary of the Supreme Court	1
W. V. Robinson, Clerk of the Legislative Assembly	2
J. Nicholson, M.D., Returning Officer, Electoral District of Benalla and Yarrawonga	3, 4
J. Molloy, clerk, Chief Secretary's Department	4
M. Grogan, Deputy Returning Officer, Devenish	5
J. Parrington, farmer, Devenish	6
J. Blackburn, Devenish	7

MINUTES OF EVIDENCE.

TUESDAY, 31st OCTOBER, 1893.

Members present:

SIR HENRY WRIXON, K.C.M.G., in the Chair ;

Mr. Langdon,
Mr. L. L. Smith,

Mr. T. Smith,
Mr. Zox.

The Petition of Thomas Kennedy against the return of Lieutenant-Colonel John Montgomery Templeton for the Electoral District of Benalla and Yarrawonga.

Mr. Box appeared as Counsel for the Petitioner.

Mr. Fink appeared as Counsel for the sitting Member.

Michael Austin Brennan, sworn and examined.

1. *By Mr. Box*.—What are you?—Clerk in the Crown Law Offices. I produce the Order in Council appointing Lieutenant-Colonel John Montgomery Templeton to the office of official liquidator. I produce also the list of Orders in Council of the Law Department—[*handing in schedule of appointments*]. This shows that on the 12th February, 1890, Lieutenant-Colonel John Templeton, Esq., was appointed official liquidator under section 85 of Act No. 190.

2. Do you produce any other documents?—Nothing else.

3. *By Mr. Fink*.—You have no other papers?—No.

4. Do you know of your own knowledge whether that appointment was made in pursuance of a request by shareholders in a certain society?—I could not say.

5. Such papers might be in the office?—They might be. I was not asked to produce anything except the Order in Council.

6. *By the Committee*.—Do you know the course of duty of the official liquidator?—No, I do not.

7. Do you know how he is paid?—No; the Crown Law Department does not pay him. I do not know of my own knowledge how he is paid.

8. Do you know he is appointed to each estate, or who does that?—No.

The witness withdrew.

John William O'Halloran, sworn and examined.

9. *By Mr. Box*.—You are the Prothonotary of the Supreme Court?—I am.

10. Do you produce the order of His Honour Mr. Justice Hodges appointing Colonel Templeton to the office of official liquidator to the Premier Permanent Building Society?—I do.

11. Is that the office copy?—Yes.—[*The document referred to was read by the learned Counsel and handed in.*]

12. Do you produce accounts passed through the Court by Colonel Templeton as official liquidator?—No, I do not. I produce an affidavit signed by Colonel Templeton.

13. You know his signature?—I do.—[*Affidavit signed by Colonel Templeton, dated 18th August, 1890, was read by the learned Counsel and handed in.*]

Mr. Fink submitted that the first affidavit was not as to remuneration of services as liquidator, but merely his client's claim as an ordinary creditor of the society for work done before his appointment as liquidator. He asked the Committee not to receive the affidavit.

The Chairman stated that the objection would be treated as a matter of argument.

14. *By Mr. Box (to the witness)*.—You have some more affidavits?—Yes.—[*The same were handed in.*] [*Two other affidavits, dated respectively 13th April, 1892, and 27th October, 1892, were read by the learned Counsel and handed in.*]

15. Do you know Colonel Templeton?—I do. He is sitting at the table.

16. He is the same person who is the official liquidator of the Court?—Yes.

17. And who is the sitting Member?—I do not know that.

Cross-examined by *Mr. Fink*.

18. You are the Prothonotary of the Supreme Court?—Yes.

19. And are conversant, I presume, with the duties of the officers of the Court?—Yes.

20. Do you consider that Colonel Templeton is an officer of the Public Service of Victoria?—No, I do not.

21. Is he an officer of your Department?—He is not.

22. May I direct your attention to the last affidavit, the one of the 27th October, 1892—have you any order at all or minute of any Judge of the Supreme Court or of the Court in which a salary or remuneration of any kind has been assigned to the liquidator of the Premier Building Society?—I could not say. I have produced only the papers I was asked for.

23. Have you not produced the whole of the papers in your office?—No; we have a great big case of them. I only produce those I was subpoenaed to produce.

24. In the affidavit of 27th October, 1892, do you take the expression “costs, charges, and expenses incurred by me” to include any salary earned by Colonel Templeton?—

Mr. Box objected that *Mr. O'Halloran's* interpretation of the affidavit was not receivable.

The Chairman.—It is more a matter of argument. I do not at present see anything about the remuneration.

25. *By Mr. Fink (to the witness).*—Have you the original order and the first affidavit?—[*The witness handed the same to the learned Counsel.*]

26. You do not produce any order by which any salary or percentage is assigned to Colonel Templeton?—I do not.

27. As to the practice of the Court, do you know as Prothonotary whether, as a matter of practice, it has been the custom in this or any case, before the Court appoints a liquidator in connexion with any company, that they require his written consent?—Yes, I believe they do.

28. Do you know as Prothonotary, as custodian of the records, whether that was required in this case?—I know it was done.

29. *By Mr. Box.*—Colonel Templeton gave his consent to this appointment?—Yes, in writing—[*handing in the same. The learned Counsel read and handed in document dated 12th March, 1890, signed by Colonel Templeton, consenting to act as liquidator.*]

30. *By the Committee.*—The Act says they are to be appointed in rotation; is that done?—I think it is, unless there is some very grave reason for departing from that.

31. Sometimes it is departed from?—I think so.

32. How many liquidators are there?—From memory, I think five.

33. Number one would be employed, and when his job was over number two taken, and then number three?—Yes, that is the general practice. I think that the liquidator might advance some reason himself; he might be too busy to undertake the duties coming in his turn, or he might be a shareholder.

34. *By Mr. Fink.*—Do you know whether Colonel Templeton was appointed in rotation, or at the request of any body of the shareholders?—Speaking from memory, I think it was at their request.

35. The affidavits show that?—Yes, I think so.

36. To give another instance, do you know of *Mr. Frank Grey Smith* being specially appointed liquidator for the National Bank in connexion with the recent reconstructions?—I do not remember that.

37. Do you know officially that *Mr. Tom Hills*, who was liquidator for the Land Credit Bank, was, at the request of the shareholders, selected and appointed official liquidator?—I believe he was.

38. You have heard of a practice of this kind, certain parties requesting the Governor in Council to make an appointment where the appointee was one of the old liquidators?—Speaking from memory, I believe that is so.

39. *By the Committee.*—So that a private company going to be liquidated and wishing to have the services of a particular gentleman would apply to the Governor in Council and have him appointed liquidator?—That is my impression.

40. Was Colonel Templeton appointed that way?—No; he is an official liquidator, and I think he was selected by the shareholders of this particular company to act.

41. Was his original appointment brought about in this way—did the shareholders of the company wish to have his services—was an application made to the Governor in Council to appoint him liquidator and was he then appointed by the Court?—My memory is that he was a liquidator prior to this, and he was requested by the shareholders to be appointed. I do not recollect his appointment as an official liquidator.

42. *By Mr. Fink.*—The date of the Order in Council put in this morning will show that?—He was appointed provisionally in the first instance on the 18th February, 1890.

The witness withdrew.

Mr. Box.—I put in the *Government Gazette*, volume 1, 1890.—“Official Liquidator. The Governor, with the advice of the Executive Council, has, under the provisions of section 85 of the Act Number 190, been pleased to appoint Lieutenant-Colonel J. M. Templeton to be an official liquidator. H. J. Wrixon, Attorney-General. Crown Law Offices, Melbourne, 12th February, 1890.”

Mr. Box cited the case of the British Bank of Australia Limited, before *Mr. Justice Hodges*, as reported in 19 *Vict. Law Reports*, page 54, to show how liquidators obtained remuneration, and the regulations under which the Court acts—[*handing in the Reports*].

The Chairman.—There is no general rule of the Court.

Mr. Box.—That is the rule they are going to adopt.

William Valentine Robinson, sworn and examined.

43. *By Mr. Box.*—What are you?—Clerk of the Legislative Assembly of Victoria.

44. Do you produce the writ and the return of the Returning Officer for the Electoral District of Benalla and Yarrawonga?—I do. It was issued on the 25th of September, 1893, and the return to the writ certifies that *John Montgomery Templeton* was duly elected.

45. You see the gentleman sitting next to *Mr. Fink*?—Yes; that is the gentleman named in the writ and who took his seat in pursuance of the same.

The witness withdrew.

John Nicholson, M.D., sworn and examined.

46. *By Mr. Box.*—You are the Returning Officer for the Electoral District of Benalla and Yarrowonga?—Yes.

47. Have you Mr. Kennedy's nomination paper?—I have not.

48. What have you done with it?—It will be in the hands of my substitute, James Knox; they are in his office. He acts for me in accordance with the section of the Act which permits me to depute that duty to him.

49. Were you subpoenaed to bring the papers?—No, I had simply a summons requesting me to attend. I have no papers of any kind.

50. You know Mr. Kennedy, the Petitioner in this case?—Yes.

51. He was a candidate at the late Benalla and Yarrowonga election?—He was.

52. And he and Colonel Templeton went to the poll?—They did.

53. And that is your return on the back of the writ?—Yes, this is my return.

54. The election was held on the 9th of October last?—Yes.

The witness withdrew.

Mr. Box was heard to address the Committee in support of the allegations in the Petition that the sitting Member was an official liquidator, and therefore held an office or place of profit under the Crown.

Mr. Fink was heard to address the Committee in support of the contention that the position of official liquidator was not an office or place of profit under the Crown.

The Counsel and parties withdrew.

Adjourned to to-morrow, at twelve o'clock.

WEDNESDAY, 1ST NOVEMBER, 1893.

Members present:

SIR HENRY WRIXON, K.C.M.G., in the Chair;

Mr. Langdon,
Mr. L. L. Smith,
Mr. T. Smith,

Mr. Stuart,
Mr. Zox.

The Committee deliberated.

The Counsel and parties were called in.

The Chairman announced that the Committee had given careful consideration to the primary question raised, and had arrived at this resolution—

“That as the position of official liquidator involves no service or duty to the Crown, but only a service to private companies, given wholly under the control and direction of the Court, the office is not an office of profit under the Crown within the meaning of section 12 of *The Constitution Act Amendment Act.*”

As the question (said the Chairman) is one of great importance, and has been argued with great ability, and as some of the Committee have some little doubt upon the point, I desire to state briefly the reasons which have influenced the majority in arriving at their decision. Lieutenant-Colonel Templeton was appointed to be an official liquidator on the 12th of February, 1890. On the 12th of March of the same year he sent in his consent to act as the official liquidator of the Premier Permanent Building Society if nominated by the Judge, and promised “to exercise and carry out to the best of my ability such powers and authorities as may from time to time be conferred on me by the Honorable Court or a Judge thereof.” On the 14th of March he was nominated by a Judge, and he has acted as liquidator of the company. The question is whether he holds an office or place of profit under the Crown. Section 12 of *The Constitution Act Amendment Act 1890* says, “No persons except the persons hereinafter in the 14th section named who shall hold any office or place of profit under the Crown shall sit or vote in the Legislative Council or Legislative Assembly.” Section 88 of the *Companies Act 1890* says, “For the purpose of conducting the proceedings in winding up a company and assisting the Court therein the Governor in Council may from time to time appoint such and so many persons as he thinks fit to be official liquidators, and may require of such persons such security as he thinks fit, and may remove the same, . . . and the Court may nominate in due course of rotation one or more of such persons either provisionally or otherwise to be the official liquidator of the estate and effects of any company, and may assign to him such salary or remuneration by percentage or otherwise as it thinks fit.” The question turns altogether on the meaning of the words “office or place of profit under the Crown.” Some meaning must be given to the words “under the Crown,” and I think the words mean offices the holders of which render duties to the Crown or the Government, as is indicated in section 19 of *The Constitution Act Amendment Act* which somewhat interprets section 12. It indicates when a Member's seat becomes vacant. It says it becomes vacant if the Member “accept any office or place of profit under the Crown, or shall in any character or capacity for or in the expectation of any fee, gain, or reward perform any duty or transact any business whatsoever for or on behalf of the Crown.” In section 14 of the same Act, several undoubted offices of profit under the Crown are specified, and all are cases where direct service to the Crown is rendered. Officer and office are several times referred to in the Act and in *The Constitution Act*, and always in the sense of where some duty is concerned or some service rendered to the Crown or to the Government. The official liquidator is appointed,

no doubt, by the Governor in Council, if to an office at all, rather to one under the Court than under the Crown. The Governor appoints not as representative of the Sovereign or under the terms of his commission, but under the authority of the Companies Statute and for the special purpose stated of conducting proceedings in winding up private companies. The practice appears from the evidence to be that when a company wish the services of some particular gentleman in their affairs they apply to the Governor in Council to qualify him by appointing him under the Act so as to enable the Court to nominate him, and it seems that Colonel Templeton was appointed in this way. Once appointed, the Governor in Council can in no way direct or control a liquidator in his duties. The Governor in Council has nothing to do with his remuneration, nor has he even cognisance of what the liquidator's duties are. The liquidator acts under the direction of the Court; the Court may dismiss the liquidator from any particular company in which he may be engaged, and it fixes his remuneration. It seems to me that an office to be held under a person means that some service or duty is involved to the person under whom it is held. The case of the Frome Election Petition (*Power, Rodwell, and Dew*, vol. 2, page 58) cited by Mr. Box, in which Colonel Boyle, the sitting Member, was unseated, on the ground that, at the time of his election, he held an office of profit under the Crown, namely, that of Secretary of the Order of St. Patrick, is clearly different from the present case. The duties of the Secretary of the Order of St. Patrick were undoubtedly rendered under the Crown; the Sovereign was the head of the Order, and the Crown alone is concerned with all that relates to the conferring or control of dignities.

The Chairman having intimated that the Committee were of opinion that the allegation of the Petition as to the Devenish polling place should be next inquired into—

Mr. Box was heard to address the Committee on that allegation, which was as follows:—

“That at the Devenish polling places, in the Dookie Division of the said electoral district, being one of the polling places duly appointed for the recording of votes at the said election, no General Roll of the electors entitled to vote was supplied by the Returning Officer to his deputy at such polling place, whereby the said Deputy Returning Officer wholly refused to give any ballot-papers to the voters on such roll who were entitled to vote at such election, and a large number of voters who attended the said polling places to record their votes were not permitted to do so, and did not vote at the said election.”

John Molloy, sworn and examined.

55. *By Mr. Box*.—You are an officer in the Chief Secretary's Department?—Yes.

56. Do you produce the Order of the Governor in Council appointing Devenish as the polling booth for the Dookie Division of the Benalla and Yarrawonga electorate?—Yes. The Order in Council is dated 15th of March, 1889, appointing Devenish, amongst other places, for the Dookie Division of the Electoral District of Benalla and Yarrawonga.

57. Is it published in the *Government Gazette*?—Yes—[*handing in the same*]. *Gazette* of 15th March, 1889. Dookie, Cashel, Stewarton, and Devenish are the places named.

The witness withdrew.

John Nicholson, M.D., recalled and further examined.

58. *By Mr. Box*.—You were the returning officer in this case?—Yes.

59. We are told there was a tie in this election between the two candidates?—There was.

60. You cast your vote in favour of Colonel Templeton?—I did.

61. Did you do that by the ballot-paper or word of mouth?—I simply returned, not by the ballot-paper, but I published it. I thought it being an open vote that it was not a ballot.

62. Who was your deputy?—I had 29 deputies.

63. Who was your substitute?—Mr. James Knox, Shire Secretary of Benalla; he has acted for me for many years.

64. Did he tell you before the polling day that there was no roll at Devenish?—No. I never heard it till the evening of the day of polling.

65. Who told you then?—I forget who told me, but I inquired from Mr. Knox, and he did not know anything about it. He had no personal knowledge of it at that time. I think it came from one of the outsiders, who said that there was no roll at Devenish, and I asked Mr. Knox whether it was a fact, and he said he had no information about it. He then subsequently showed me a telegram which he had been unable—

Mr. Fink objected to hearsay evidence.

66. *By Mr. Box*.—Whom did the telegram purport to come from?—The deputy returning officer of Devenish. I have seen him since about the telegram. I saw the telegram. It was from Mr. Martin Grogan.

67. What was the date of the telegram?—I do not remember.

68. What was the effect of it?—It was very difficult to understand, and my substitute said he could not understand it. I may mention that the last day of sending out the parcels happened to be on a Saturday. Sunday intervened between that and the polling day, and that Sunday interfered with getting the receipts for the parcels, and hence there was no opportunity of replying to this telegram.

69. Your substitute amounts to yourself in an election?—Not necessarily.

70. In the eye of the law he does?—No, I think not.

71. *By the Committee*.—Where is the telegram?—I do not know. My substitute, Mr. Knox, is here. I may point out that, in connexion with section 218, it gives me power to appoint a substitute for all such acts as I cannot myself do from any cause.

72. *By Mr. Box*.—As returning officer you sent the rolls that were used at that election to Parliament?—I did not; my substitute did. It so happened that for this election, for the first time for about eighteen years, I was unable to personally superintend those acts, and had to depute them to my substitute; and therefore I can give very little evidence on the point.

The witness withdrew.

Martin Grogan, sworn and examined.

73. *By Mr. Box.*—What are you?—A farmer and storekeeper at Devenish.

74. You were deputy returning officer at the Devenish booth at the last election for Benalla and Yarrowonga?—Yes. I was appointed by Dr. Nicholson.

75. At that booth, that day, had you the General Roll of electors?—No.

76. Prior to that day, had you telegraphed to the returning officer's substitute for the roll?—Yes. On the 6th of October I received a parcel, and I found that there was no roll. I thought there should be another roll, and about an hour after I opened the papers I telegraphed to Mr. Knox, stating that I had only received the Ratepayers' Roll and the Supplementary Roll, and I asked him if there was an elector's roll to forward it.

77. Then you were in charge at the booth that day?—Yes.

78. And you forwarded what rolls you had to the returning officer?—Yes.

79. In the parcel you forwarded to the returning officer, there is no General Roll for the polling booth at Devenish?—None.

80. Did any voters come to vote?—Yes.

81. How many, do you think?—I could not positively swear—I should think twelve, or more or less.

82. Those were voters on the General Roll?—They claimed to have votes on the General Roll.

83. You having no roll, what did you do?—I said I could not entertain votes for them. I did not let them vote, and they went away.

84. I suppose you know the people about there?—A good many of them applied to be allowed to vote.

85. Did they bring their rights with them?—I think so. I personally examined only a couple of them, but I saw their rights with them.

86. Have you had the General Roll since?—No.

87. You know the people about there; they are residents of the place?—Yes, I know a good many of them.

88. You know they have electors' rights?—I saw the rights with them and examined a couple.

89. *By the Committee.*—Did you recognise those men as well who were qualified to vote?—Yes, I believed they were qualified to vote if I had had the General Roll.

90. *By Mr. Box.*—Do you know a man named John Parrington?—Yes.

91. Did he come to the polling booth?—Yes; he asked to be allowed to vote, and I did not let him. I think I examined his right.

Mr. Box asked for the rolls used at the Devenish polling booth to be looked at. He tendered the General Roll of persons entitled to vote for the electorate—[*handing in the General Roll for the Devenish Division of the Benalla electorate*]. He applied that the parcel be opened.

Mr. Fink said he would assent to the opening of the parcels solely for the purpose of looking at the General Roll.

Cross-examined by *Mr. Fink*.

92. Did you get the General Roll at all?—No, never.

93. Neither before the election nor afterwards?—No.

94. You said that certain people claiming to be on the General Roll came to vote?—Yes.

95. How do you know?—I examined a couple of their electoral rights, and the rights showed that they were good for voting up to 1894.

96. Whose rights did you examine?—I think I examined John Parrington's and Thomas Lighton's.

97. Are they here?—Parrington is here.

98. Do you know, as a fact, if there were not other polling places in the Dookie Division?—Yes, I know there were.

99. At which persons on that roll might have voted lawfully?—They might have voted for all I know.

100. It would have been lawful for them to do so?—

Mr. Box objected that the witness could not give an opinion on the point.

101. *By Mr. Fink.*—Are Cashel, Stewarton, and Devenish in the Dookie Division?—Yes. I think those are the polling booths in the Dookie Division.

102. *By the Committee.*—Do you know that there are no other polling places in the Dookie Division except those three?—There are four—Cashel, Stewarton, Devenish, and Dookie.

103. *By Mr. Fink.*—Then there are three other places there that voters on the General Roll might have gone to vote at?—It is possible they might have gone there.

104. What is the nearest booth to Devenish?—Stewarton.

105. How far is that away?—About eight miles.

106. How far is Cashel?—Ten or eleven miles.

107. What time in the day did Mr. Lighton and Mr. Parrington come and see you at the booth?—Mr. Lighton came at about nine o'clock in the morning, and Mr. Parrington about three in the afternoon.

108. Did any of them say to you whom they wanted to vote for?—No.

109. And you did not inquire?—No.

110. You know your duty in relation to people coming to tender votes?—Yes.

111. What formalities did Mr. Parrington or Mr. Lighton, so far as you can recollect, go through when applying to vote?—They went through nothing further than to tender their electoral rights. They asked if they could vote, and they showed me their rights.

112. Which Lighton was it?—Thomas.

113. Did anybody else claiming to be on the General Roll speak to you during the hours of voting?—Yes.

114. About how many?—About twelve; there might be more or less.

115. Can you tell me who those persons claiming to be voters were?—I cannot recollect all of them. I can tell you some of them. John Stanley; Muston—I do not know his Christian name; Edgar Cottrell; two other Lightons; a young man of the name of Ellis; and a young man named Meikle. That is all that I can recollect. There were others who came in, but I did not pay much attention to them, not being able to allow them a vote.

116. Do you recollect Mr. Blackburn?—Yes, he came in.

117. Do you remember anybody named Beattie?—Yes.

118. Do you recollect two of the Beatties?—I only recollect one.

119. Might there have been two?—I cannot say.

120. Do you recollect young Ferris?—Yes.

121. He is on the General Roll, and he has a son; do you recollect the son coming about not being able to vote?—Yes.

122. You are pretty positive about Muston?—Yes.

123. Do you know whether he has left the district?—No, he is still in the district.

124. Do you know a man named Best?—Yes.

125. Was he one of the persons you saw there?—Yes.

126. Do you recollect a man named Jim Booth?—No, I cannot say whether he was there.

127. Were any of the Cooks?—I cannot say. I do not know them.

The Chairman did not think the Committee could go into the question as to how any one had intended to vote.

Mr. Fink urged that under section 297 the Committee had to inquire into the real justice of the case without regard to legal forms.

Mr. Box was heard to address the Committee.

The Committee-room was cleared.

The Committee deliberated.

The Counsel and parties were again called in.

The Chairman informed the Counsel that the Committee had determined that on this particular paragraph of the petition they would confine the evidence to the facts of whether or not there was a General Roll at Devenish, and whether or not certain qualified voters were prevented from voting.

128. *By Mr. Fink (to the witness).*—Who were the persons that you say produced rights?—I only examined a couple of rights out of the whole lot.

129. I mean who had rights?—I do not know whether all who came there had them—five or six came in together, and as they said they were on the General Roll, I said, “I have no General Roll, and you cannot vote here,” and I did not examine their papers further than that.

130. You did not ask any prescribed questions?—No. I said, “I have no General Roll, and I cannot allow any one with an elector’s right to vote.”

131. Did anybody demand a ballot-paper?—I do not know that they did. Four or five came in at one time, and they seemed to be “bounceable”; they held their rights in their hands, and they said they were entitled to vote there. I said, “I have no General Roll, and your names are not on any roll I have, and I cannot allow you to vote.”

132. You do not know whether any one formally demanded a ballot-paper?—No; they said they were entitled to vote.

133. The votes were taken in pursuance of the Ratepaying Roll in that booth?—Yes.

134. What were the numbers for each candidate?—The number for Colonel Templeton was 41, and the number for Mr. Kennedy was 30 on all the rolls. That was in my booth, Devenish.

135. In connexion with the ratepayers’ division, did you put the questions in the prescribed way?—
Yes.

The witness withdrew.

John Parrington, sworn and examined.

136. *By Mr. Box.*—You are an elector of the Benalla and Yarrawonga electorate?—At the present time I am a farmer. I live in Devenish.

137. Have you an elector’s right for the Devenish Division?—Yes.—[*The witness produced the same.*]—I am the person named in that.

138. You recollect the last election?—I do.

139. Where was the polling booth that you went to at that election?—At the Devenish State school.

140. Did you take that right with you?—Yes.

141. Did you see the returning officer, Mr. Grogan?—I did.

142. Did you hold that right out and ask to be allowed to vote?—I did, and he told me he had no General Roll and that my name was not on the roll he had.

143. You are not on the Ratepayers’ Roll?—No.

144. Did you vote?—No.

145. Whom were you going to vote for?—

Mr. Fink objected.

The Committee upheld the objection.

Mr. Box.—By refusing to answer that question the Petitioner’s position is that Mr. Grogan’s refusal would alter the election.

The Chairman.—We are confined to paragraph 8 for the present, and it is a matter of perfect indifference on which side the witness was going to vote.

Cross-examined by *Mr. Fink.*

146. Is that Devenish polling place the nearest to your residence?—Yes.

147. You went there at three o’clock?—About three.

148. Had you gone to any other place?—No.

149. Was there time for you to go to Cashel?—No; Devenish was the general place I voted at—I had voted there before.

150. *By the Committee.*—You did not vote at any other place?—No.

The witness withdrew.

John Blackburn, sworn and examined.

151. *By Mr. Box.*—You live at Devenish?—Yes; I am a voter for the district.

152. You recollect the last election day?—Yes.

153. Did you go to the Devenish booth?—Yes; Mr. Grogan was in charge.

154. Did you take your right with you?—Yes—[*showing the same*].

155. Did you ask him to let you vote?—I presented my right, and they said my name was not on the roll.

156. Did he say “General” Roll?—Electoral roll.

157. What did the returning officer say?—That my name was not on the roll, and I was not allowed to vote.

158. Did you ask to be allowed to vote?—Yes.

159. And he would not let you?—No.

160. And you did not vote?—No.

[*The roll was examined and the witness's name found on it, No. 474596.*]

161. That is your signature on this elector's right?—Yes.

162. *By the Committee.*—Had you at any previous election voted on that right?—Yes, the time the late Mr. Campbell was elected.

The witness withdrew.

Mr. Box stated that was all the evidence he desired to call on this branch of the case, and was heard to sum up his argument on the point.

Mr. Fink was heard to address the Committee in reply.

The Committee-room was cleared.

The Committee deliberated.

The Counsel and parties were again called in.

The Chairman stated that the Committee had given the Devenish case their careful consideration and had arrived at the conclusion that the election for Benalla and Yarrawonga was wholly void.

The Committee adjourned.