

SESS. II.—1897.  
NEW ZEALAND.

# “THE AWARUA SEAT INQUIRY ACT, 1897,”

REPORT OF PROCEEDINGS AND DECISION OF THE COURT OF APPEAL,  
IN THE MATTER OF.

*Laid on the table by leave of the House.*

MONDAY, 25TH OCTOBER, 1897.

[Before His Honour the Chief Justice, and Mr. Justice Williams, Mr. Justice Conolly, Mr. Justice Dennistoe and Mr. Justice Edwards.]

Mr. Theo. Cooper, and Mr. C. P. Skerrett appeared on behalf of the member for Awarua: Mr. Gully appeared as counsel nominated under subsection (2) of section 4 of the statute.

*Chief Justice*: Have you arranged who shall begin?

*Mr. Gully*: It is understood that my friend Mr. Cooper shall begin, and, with reference to the position, it must be obvious that Parliament stands impartial in the matter. I conceive it to be my duty under subsection (2) to allow my friends to put their contentions before the Court, and for me to put forward such arguments as I think necessary to set against their contentions. That, I think, is obvious by the statute. As far as the Speaker of the House and the House itself are concerned, it must be obvious that, having delegated their functions to the Court, they are not in any sense contesting parties; but subsection (2) contemplates argument being placed before the Court on both sides of the question. It is understood that my friends begin, and I assume that that will be a convenient course.

*Mr. Cooper*: If your Honours please, this is a special case stated by statute under “The Awarua Seat Inquiry Act, 1897,” upon which the Court has to determine certain questions also stated by the statute. Perhaps your Honours will pardon me if I shortly go through the Act of 1897. Section 2 states that “The Court of Appeal of New Zealand (hereinafter called ‘the Court’) is hereby empowered and directed to determine whether under the existing law, and upon the facts hereinafter specified, the seat of the member for the Awarua Electoral District in the present Parliament has become vacant; and, if so, on what date the vacancy occurred.” The facts are here recorded—“(1) That on the 8th day of July, 1897, the person now claiming to be the member was adjudicated a bankrupt under ‘The Bankruptcy Act, 1892’; (2) that on the 5th day of August, 1897, an election for the Awarua Electoral District took place, and he was a candidate for the seat, and was duly declared to be elected; (3) that on the 9th day of August, 1897, the writ was duly returned with his name indorsed thereon as the member for that district; (4) that on the 28th day of September, 1897, he took the oath and his seat in the House of Representatives as the member for that district, the bankruptcy remaining unannulled, and no order of discharge under the said Act having been obtained; (5) except in so far as his position may have been affected by his bankruptcy, he possessed all necessary qualifications as a candidate and a member.” These are the facts, and the questions are as stated in the preceding part of the clause—Is the seat vacant; and, if so, when did it become vacant? Now the question turns upon the construction of “The Electoral Act, 1893.” The particular sections I shall refer to, and which I think are all the sections which bear on that question, are these—sections 6, 8, 9, 75, 120, 123, 130, and 131. I refer first of all to section 130. Under that section the seat of any member of the House of Representatives shall become vacant if, under subsection (1) “for one whole session of the General Assembly he fails, without permission of the House, to give his attendance in the House; (2) if he takes any oath, or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign prince or power; (3) if he does, or concurs in, or adopts any act whereby he may become a subject or citizen of any foreign State or Power, or is entitled to the rights, privileges, or immunities of a subject of any foreign State or Power; (4)”—and this is the subject on which this question depends—“if he is a bankrupt within the meaning of the laws relating to bankruptcy; (5) if he is a public defaulter, or is attainted of treason, or is convicted of felony, or is convicted of a corrupt practice in reference to any election; (6) if he resigns his seat by writing under his hand addressed to the Speaker of the House, or, if there be no Speaker, or if he be absent from the colony, or if the resigning member be the Speaker, to the Governor; (7) if on an election petition the Election Court declares his election void; (8) if he dies.” These are the grounds upon which the seat of a member becomes vacant. Before I go to the preceding sections, and refer your