

SESS. II.—1897.
NEW ZEALAND.

PRIVILEGE COMMITTEE

(REPORT OF), TOGETHER WITH MINUTES OF PROCEEDINGS AND EVIDENCE, AND APPENDIX.

Report brought up on the 8th October, 1897, and ordered to be printed.

ORDER OF REFERENCE.

Extract from the Journals of the House of Representatives.

THURSDAY, THE 30TH DAY OF SEPTEMBER, 1897.

Ordered, "As a matter of privilege, that a Select Committee, consisting of eight members, be appointed to consider and report whether, under the existing law, the seat of the Honourable Mr. Ward for the Electoral District of Awarua is vacant; and whether the law should be amended, and in what direction; and what course should be adopted under existing circumstances. The Committee to have power to call for persons and papers, and to report within ten days; such Committee to consist of Mr. Joyce, Mr. Guinness, Mr. Montgomery, Mr. Duncan, Captain Russell, Hon. Mr. Rolleston, Mr. J. Allen, and the mover."—(Rt. Hon. Mr. SEDDON.)

REPORT.

THE Select Committee appointed to consider and report whether under the existing law the seat of the Hon. Mr. Ward for the Electoral District of Awarua is vacant, and whether the law should be amended, and in what direction, and what course should be adopted under existing circumstances, has the honour to report:—

That this Committee unanimously recommends that the question as to whether, under the existing law, the seat of the Hon. Mr. Ward for the Electoral District of Awarua is vacant be referred to a judicial tribunal, and that the said tribunal be the Court of Appeal.

The Committee also recommends that legislation enabling the Court of Appeal to hear and determine the following case be introduced:—

- (1.) The Hon. J. G. Ward filed a petition, and was adjudged a bankrupt on the 8th day of July, 1897.
- (2.) The adjudication has not been annulled, and he has not been granted an order of discharge from his bankruptcy.
- (3.) With the exception of having been adjudged a bankrupt, and not having obtained his discharge, it is presumed that he otherwise possesses the necessary qualifications to be elected a member of the House of Representatives.
- (4.) An election for the Awarua seat took place on the 5th day of August, 1897.
- (5.) The said Hon. J. G. Ward was declared elected, and his name returned on the writ as being so elected.
- (6.) The said Hon. J. G. Ward took his seat in the House of Representatives and the oath on the 28th day of September, 1897.

Upon these facts the opinion of the Court of Appeal is asked whether the Awarua seat is vacant, and, if so, when did it become vacant.

The Committee further recommends that the Government be requested to bring in a Bill to give effect to the recommendations of the Committee.

That the legal expenses in connection with the Awarua election case referred to the Court of Appeal be borne by the colony; also that in any similar cases that may hereafter arise the Crown shall defray the expenses.

That the law of New Zealand be amended and brought into conformity with the law of England with respect to the bankruptcy of candidates or members, and that the Government be requested to bring in a Bill at an early date, but that the present case should not be prejudiced thereby.

That legislation should be introduced enabling the Governor in Council to order that any questions of law or fact be referred to the Judges of the Supreme Court for their decision.

8th October, 1897.

R. J. SEDDON, Chairman.

MINUTES OF PROCEEDINGS.

FRIDAY, 1ST OCTOBER, 1897.

The Committee met pursuant to notice.

Present: Mr. J. Allen, Mr. Duncan, Mr. Guinness, Mr. Joyce, Mr. Montgomery, Hon. Mr. Rolleston, Captain Russell, and the Rt. Hon. Mr. Seddon.

The Order of Reference of the 30th September constituting the Committee was read by the Clerk.

Mr. Joyce moved, seconded by Rt. Hon. Mr. Seddon, That Mr. Guinness be appointed Chairman.

Mr. Allen moved, seconded by the Hon. Mr. Rolleston, That the name of Mr. Montgomery be inserted in lieu of the name of Mr. Guinness; and the question being put, That the name of Mr. Guinness stand part of the question, the Committee divided, and the names were taken down as follow:—

Ayes, 4: Mr. Duncan, Mr. Joyce, Mr. Montgomery, Rt. Hon. Mr. Seddon.

Noes, 4: Mr. Allen, Mr. Guinness, Hon. Mr. Rolleston, Captain Russell.

The numbers being equal, and there being no Chairman to exercise a casting-vote, Mr. Guinness retired from nomination, and moved, That the Rt. Hon. Mr. Seddon be appointed Chairman. This was seconded by Mr. Duncan.

Mr. Allen then moved, seconded by the Hon. Mr. Rolleston, that the name of Mr. Montgomery be inserted in lieu of the Rt. Hon. Mr. Seddon. And the question being put, That the name of the Rt. Hon. Mr. Seddon stand part of the question, the Committee divided, and the names were taken down as follow:—

Ayes, 5: Mr. Duncan, Mr. Guinness, Mr. Joyce, Mr. Montgomery, Rt. Hon. Mr. Seddon.

Noes, 3: Mr. Allen, Hon. Mr. Rolleston, Captain Russell.

So it was resolved in the affirmative.

The Rt. Hon. Mr. Seddon took the chair accordingly.

Resolved, That the following documents and information be obtained for the next meeting of the Committee:—

- (1.) Copies of *Gazette* in which the resignation of the Hon. Mr. Ward is notified.
- (2.) Notifications by letters and telegrams to the Speaker from the Hon. Mr. Ward, resigning his seat.
- (3.) Gazetted bankruptcy of the Hon. Mr. Ward, and declaration of Official Assignee as to same, and as to present position of the Hon. Mr. Ward.
- (4.) Copy of writ for election of member for Awarua.
- (5.) Extract from Journals the House of Representatives *re* member for Awarua taking the oath.

Resolved, That Mr. Montgomery, Mr. Guinness, and the Hon. Mr. Rolleston be appointed a sub-committee to search for precedents of the British House of Commons bearing on any matter in the Order of Reference. Also, to search for and bring before the Committee the several laws in force in Great Britain, Canada, Australia, and New Zealand as to qualification of candidate, and as to members becoming bankrupt, or if bankrupt when elected.

Resolved, That the Hon. Mr. Ward be notified to attend before the Committee for examination at the next meeting.

Resolved, That the Hon. the Speaker be requested to attend the next meeting of the Committee, and that it be intimated to him that the Committee wish him to produce documents in his possession in connection with the resignation of the Hon. Mr. Ward.

Resolved, That Mr. Joyce, Mr. Montgomery, Mr. Allen, Hon. Mr. Rolleston, and Mr. Guinness be appointed a sub-committee to state a case for approval at the next meeting of the Committee.

Resolved, That the Clerk of the District Court at Invercargill be communicated with, and requested to inform the Committee whether, in connection with the bankruptcy of the Hon. Mr. Ward, Member for Awarua, he has complied with the provisions of section 131 of "The Electoral Act, 1893," and, if not, why not. Also, to furnish the Committee with any telegrams or correspondence in connection with the same.

The Committee then adjourned till Wednesday, the 6th instant.

WEDNESDAY, 6TH OCTOBER, 1897.

The Committee met pursuant to notice.

Present: Rt. Hon. Mr. Seddon (Chairman), Mr. Allen, Mr. Duncan, Mr. Guinness, Mr. Joyce, Mr. Montgomery, Hon. Mr. Rolleston, and Captain Russell.

The minutes of the previous meeting were read and, after discussion, confirmed.

Mr. Skerrett applied to be allowed to appear before the Committee as counsel for the Hon. Mr. Ward.

A discussion arose.

On motion of Mr. Guinness, *Resolved*, That Mr. Skerrett be allowed to appear on behalf of the Hon. Mr. Ward.

Mr. Skerrett appeared.

The following reply from the Clerk of the District Court, Invercargill, was read: "*Re* Hon. J. G. Ward: I did not comply with section 131 of 'The Electoral Act, 1893,' as I understood he had resigned prior to filing his petition, and thought, he having resigned, section did not apply. On ascertaining he was a Justice of the Peace, I reported the bankruptcy to Minister of Justice on 16th July last. No other correspondence or telegrams passed in connection with this matter."

On the motion of the Hon. Mr. Rolleston, *Resolved*, That the Clerk of the District Court be requested to inform the Committee how and when he came to understand that the Hon. Mr. Ward had resigned prior to filing his petition.

The Hon. the Speaker of the House of Representatives attended.

The Clerk-Assistant of the House of Representatives attended, and, at the Hon. the Speaker's request, produced the correspondence with reference to the notification by the Hon. Mr. Ward of his resignation.

Resolved, That this correspondence be ordered to be received, and be read by the Clerk.

Resolved, That the representatives of the Press be not admitted to the proceedings of the Committee.

Resolved, That the proceedings be reported in shorthand.

The Hon. the Speaker gave evidence.

The Hon. J. G. Ward attended and gave evidence.

Resolved, That the Hon. Mr. McKenzie be requested to attend the next meeting, and give evidence.

The reports of the sub-committees were placed before the Committee, and it was suggested that precedents of the British Parliament should be obtained.

The Committee then adjourned until 11 a.m. to-morrow.

THURSDAY, 7TH OCTOBER, 1897.

Present: Rt. Hon. Mr. Seddon (Chairman), Mr. Allen, Mr. Duncan, Mr. Guinness, Mr. Joyce, Mr. Montgomery, Hon. Mr. Rolleston, and Captain Russell.

The minutes of the previous meeting were amended and confirmed.

The Hon. Mr. McKenzie attended and gave evidence.

Mr. Skerrett attended as counsel for the Hon. Mr. Ward.

On motion of the Rt. Hon. Mr. Seddon, *Resolved*, That the following report of the sub-committee be now considered, and also the amendment suggested by Mr. Skerrett:—

Proposed Case stated by Privileges Sub-Committee.

"1. Is a bankrupt within the meaning of the laws relating to bankruptcy qualified to be elected a member of the House of Representatives?"

"2. If he is so qualified, and is elected, does the fact of his being an undischarged bankrupt cause his seat to become vacant immediately on such election, or at any other time?"

"3. If his seat does not so become vacant, can he take the oath and exercise the rights and privileges of a member of the House of Representatives?"

Amendment suggested by Mr. Skerrett.

To insert the following paragraph in lieu of the first paragraph:—

"1. Is a person who has been adjudged bankrupt under 'The Bankruptcy Act, 1892,' whose adjudication has not been annulled, and who has not been granted an order of discharge from his bankruptcy, but who otherwise possesses the necessary qualifications, qualified to be elected a member of the House of Representatives?"

Before proceeding to the consideration thereof, the Committee agreed to hear Mr. Skerrett, who addressed the Committee.

Mr. Skerrett retired on the conclusion of his address, and the Committee proceeded to deliberate.

On motion of the Rt. Hon. Mr. Seddon, *Resolved* unanimously, That this Committee recommends that the question as to whether, under the existing law, the seat of the Hon. Mr. Ward for the Electoral District of Awarua is vacant be referred to a judicial tribunal.

On motion of the Rt. Hon. Mr. Seddon, *Resolved*, That said tribunal be the Court of Appeal.

On motion of the Hon. Mr. Rolleston, *Resolved*, That the Government be requested to bring in a Bill to give effect to the recommendations of the Committee.

On motion of the Rt. Hon. Mr. Seddon, *Resolved*, That Mr. Montgomery, Mr. Guinness, Hon. Mr. Rolleston, and the mover be appointed a sub-committee to draw up a report suggesting provisions to give effect to the foregoing resolutions.

Resolved, That said sub-committee meet at 10 a.m. to-morrow.

The Committee then adjourned till 11 a.m. to-morrow.

FRIDAY, 8TH OCTOBER, 1897.

The Committee met pursuant to notice.

Present: The Rt. Hon. Mr. Seddon (Chairman), Mr. Allen, Mr. Duncan, Mr. Guinness, Mr. Joyce, Mr. Montgomery, Hon. Mr. Rolleston, and Captain Russell.

The minutes of the previous meeting were read, amended, and confirmed.

On motion of the Rt. Hon. Mr. Seddon, *Resolved*, That the following report from the sub-committee be received:—

"That legislation enabling the Court of Appeal to hear and determine the following case be introduced:—

"(1.) The Hon. J. G. Ward filed a petition, and was adjudged a bankrupt on the 8th day of July, 1897.

"(2.) The adjudication has not been annulled, and he has not been granted an order of discharge from his bankruptcy.

“(3.) He otherwise possesses the necessary qualifications to be elected a member of the House of Representatives.

“(4.) An election for the Awarua seat took place on the 5th day of August, 1897.

“(5.) The said Hon. J. G. Ward was declared elected, and his name returned on the writ as being so elected.

“(6.) The said Hon. J. G. Ward took his seat in the House of Representatives, and the oath, on the 28th day of September, 1897.

“Upon these facts the opinion of the Court of Appeal is asked whether the Awarua seat is vacant; and, if so, when did it become vacant?”

The Rt. Hon. Mr. Seddon moved, That the report be adopted.

Mr. Montgomery moved, That legislation should be introduced enabling the Legislative Council or the House of Representatives to order that any questions of law or fact be referred to the Judges of the Supreme Court for their decision.

The Chairman ruled that this was not an amendment to the adoption of the report.

On motion of Captain Russell, the following words were inserted at the beginning of clause 3: “With the exception of having been adjudged a bankrupt, and not having obtained his discharge, it is presumed that.”

On motion of the Rt. Hon. Mr. Seddon, *Resolved*, That the report, as amended, be adopted.

On motion of the Rt. Hon. Mr. Seddon, *Resolved*, That this Committee recommends that the law of New Zealand be amended and brought into conformity with the law of England with respect to the bankruptcy of candidates or members, and that the Government be requested to bring in a Bill at an early date; but that the present case should not be prejudiced thereby.

Mr. Montgomery moved, That legislation should be introduced enabling the Legislative Council or the House of Representatives to order that any questions of law or fact be referred to the Judges of the Supreme Court for their decision.

Mr. Guinness moved the following amendment: That the words “Legislative Council or the House of Representatives” be struck out, and the words “Governor in Council” inserted in lieu thereof.

And the question being put, That the words proposed to be struck out remain part of the question, the Committee divided, and the names were taken down as follow:—

Ayes, 4: Mr. Allen, Mr. Montgomery, Hon. Mr. Rolleston, Captain Russell.

Noes, 4: Mr. Duncan, Mr. Guinness, Mr. Joyce, Rt. Hon. Mr. Seddon.

The numbers being equal, the Chairman gave a casting-vote with the “Noes.”

Words struck out.

And the question being put, That the words proposed to be inserted be so inserted, the Committee divided, and the names were taken down as follow:—

Ayes, 5: Mr. Duncan, Mr. Guinness, Mr. Joyce, Mr. Montgomery, Hon. Mr. Rolleston.

Noes, 3: Mr. Allen, Captain Russell, Rt. Hon. Mr. Seddon.

So it was resolved in the affirmative.

The words “Governor in Council” inserted accordingly.

Motion as amended agreed to.

On motion of the Rt. Hon. Mr. Seddon, *Resolved*, That the Committee recommends that the legal expenses in connection with the Awarua election case referred to the Court of Appeal be borne by the colony; also, that in any similar cases that may hereafter arise the Crown shall defray the expenses.

Resolved, That the report, minutes of proceedings, and evidence be laid upon the table of the House this day, and that the Chairman move that they be printed.

Resolved, That these minutes be confirmed.

MINUTES OF EVIDENCE.

WEDNESDAY, 6TH OCTOBER, 1897. (The Rt. Hon. R. J. SEDDON, Chairman.)

Hon. Sir MAURICE O'RORKE, Speaker of the House of Representatives, examined.

1. *Mr. Guinness.*] On the 14th July you received the resignation of Mr. Ward: did you on that date know or have any intimation of his bankruptcy?—I did not know of his having become bankrupt at the time I received that telegram, the 14th July. But perhaps I ought to state to the Committee what took place previous to that. I think the Committee should know the whole of the circumstances leading up to my becoming aware of the intended resignation of Mr. Ward. On Thursday, the 8th July, I received a short telegram from Mr. Ward, which I intended to produce to-day, but on account of the detention of the mail from Auckland I am not able to do so. [Afterwards produced.] On the 8th July I received a telegram from Mr. Ward informing me that he had forwarded to me the resignation of his seat, and stating that his resignation would reach me on the following Saturday, the 10th July. The letter did not arrive on the Saturday, nor on the following Monday morning, and I then telegraphed to Mr. Ward—on Monday, the 12th July—that his resignation had not reached me, but that it was competent for him, if he wished it, to resign by a telegram. I was anxious, as the vacancy was pending, that it should appear in the following Thursday's *Gazette*, and that was the reason why I suggested that he might telegraph his resignation. On the Tuesday, I think, I received a telegram from Mr. Ward tendering his resignation, which it appeared to me was not quite correct, because it did not appear to have been made, as the law requires, before a Justice of the Peace. I telegraphed to Mr. Ward asking him if it had been signed or delivered at the telegraph-office before a Justice of the Peace, and he replied that it had not; but on the following day, Wednesday, the 14th July, in the morning, I received the resignation by telegram which Mr. Ward informed me had been made in accordance with the law. I directed his attention in a previous telegram to the law affecting resignations by wire. Having received that communication on the 14th July, I sent a notification of the vacancy for the *Gazette* to be issued on the following day—Thursday. I may say that a good deal of inquiry was being made about the matter, and I was anxious that the resignation should be gazetted as soon as possible, and I despatched a telegram to Mr. Otterson intimating that the resignation should appear in that week's *Gazette*. In the afternoon I received the written resignation which has been handed in. That came under cover of a letter from the Hon. Mr. McKenzie. I then waited to make sure that the notification appeared in the *Gazette* before I issued instructions for the issue of the writ, and on Friday I sent by letter the warrant to the Clerk of Writs to issue the writ, and with that my connection with the matter ended.

2. Have you ever received any official notice of Mr. Ward's bankruptcy?—No.

3. *Mr. Montgomery.*] Did you have any unofficial notice of the bankruptcy?—No. I knew it was pending, but, in fact, I was not aware it was in the same *Gazette* with my notification of the vacancy until it was brought under the notice of the House on the second day of the session. It seems that the notification of vacancy and bankruptcy appeared in the same *Gazette*. The resignation on which I gazetted the vacancy was the telegram dated the 14th July.

4. Can you tell us, from your own knowledge of the House and its procedure, whether a resignation is complete when it is sent to or received by the Speaker, or at any subsequent time?—My impression was that it was complete when it was received by the Speaker.

5. Do you know of any cases of resignations having been revoked on the way?—No.

6. *Captain Russell.*] Supposing a written resignation was sent to you, and that before it reached you a telegram was forwarded to you recalling the letter: what would you do in that case?—I think I would have consented to the withdrawal, but it might be that I would consult the Law Officer before doing so.

7. *Rt. Hon. Mr. Seddon.*] As a fact, you did not receive any intimation that the written resignation which you were apprised was on its way was asked to be withdrawn?—No; I did not know what was the cause of the delay or where the letter was. I thought it was coming direct from Invercargill from Mr. Ward. It was not until I issued notice of the vacancy that I became aware that the resignation came through the Hon. Mr. McKenzie.

8. You did not receive any communication, except from Mr. Ward, that the resignation was on its way?—No.

9. *Hon. Mr. Rolleston.*] But if it reached you on the 10th, the bankruptcy would have been prior to it?—I understand now the bankruptcy took place on the 8th. That was the date Mr. Ward telegraphed to me that he had sent his resignation to me. On Thursday, the 8th, he sent a telegram stating that he had resigned, and that his resignation would reach me on Saturday, the 10th.

10. *Rt. Hon. Mr. Seddon.*] In gazetting the bankruptcy on receipt of the resignation, the resignation would date back to the date of the resignation itself?—My impression is that the resignation was not completed until the Speaker received it, and the notice of vacancies contains both the date of the member resigning and the date of the Speaker receiving it.

11. Still, the resignation would be *de facto* from the date the member had written under his hand his resignation. A member may resign his seat in writing?—Yes; the law says the seat becomes vacant if a member resigns to the Speaker.

12. The act of resignation is the signing of the same and at the time it is done?—My impression is that it was not complete until received by the Speaker. Evidently it was the intention of Mr. Ward, I now presume, that, as a member of the House, he should, before the misfortune of bankruptcy befell him, divest himself of his membership.

13. Before you ordered the issue of the writ you were in possession of Mr. Ward's written resignation, dated the 3rd July?—Yes; and I always satisfy myself, before ordering a writ to issue, that the vacancy has been notified in the *Gazette*.

14. The *Gazette* notice under the Act is the completion of the resignation, the vacancy, and the issue of the writ?—The issue of the writ was not authorised until I was satisfied that the vacancy had been gazetted.

15. *Captain Russell*.] Can you give us the date of the issue of the writ?—I ordered it to issue by my warrant dated on the Friday, the 15th, the day after the *Gazette* was published containing notice of the vacancy.

16. *Rt. Hon. Mr. Seddon*.] You have no date, even when the telegram arrived, if not witnessed by a Justice of the Peace, that there had been a written resignation?—I had two documents—the wire announcing the resignation, and the resignation in writing. I acted on the telegraphic communication because it reached me first. I had also to state in the *Gazette* that the resignation had been received by telegram.

17. You have had the writ returned showing the return of Mr. Ward as member for Awarua? Does it state on the writ that it is by resignation that the vacancy was caused?—Yes; it is stated in the writ that the vacancy was caused by resignation. [Writ produced and read by the Clerk.]

18. The election has not been challenged?—I saw rumours in the newspapers that it might be taken before the Supreme Court; but it was not taken before the Supreme Court.

19. On the Journals of the House are the issue and return of the writ recorded?

Mr. Otterson: The letter from the Clerk of Writs, stating that Mr. Ward had been returned, has been recorded.

20. *Rt. Hon. Mr. Seddon*.] Do you know whether there is any possibility, after a writ has been issued, of its being altered, or whether exception can be taken to it? Do you know of any case of that kind?—I am not aware of any case in which a writ has been set aside. You mean, I presume, previous to the election.

21. Yes?—I am not sure that there is provision for that, but I have not heard of any such intention in this case. The Clerk of the Writs would know if writs can be set aside.

22. *Hon. Mr. Rolleston*.] If you had known that the bankruptcy had already occurred, would you have acted on the resignation, seeing that the seat properly becomes vacant by bankruptcy?—If the bankruptcy had been reported to me before I had received the resignation I should have gazetted the member out as a bankrupt.

23. But would you deem that the taking of the resignation created a fault in the matter when the bankruptcy had already taken place?—If I had become aware that the bankruptcy preceded the resignation I should have gazetted the member as bankrupt, not as a member resigning. But no one could have communicated the circumstances of the bankruptcy except the officer by law appointed to do it, namely, the Registrar or Clerk of the Court.

24. That he did not do?—No.

25. Do you think the resignation is vitiated by the fact that the vacancy ought to have arisen on the bankruptcy?—I should not think the election was vitiated at all by that. I was bound to act upon the resignation. To my mind, the resignation could not have been publicly known until it was gazetted, on Thursday, the 15th July. There was a week's interval between the intimation of Mr. Ward to me that he had resigned and the fact of its being notified in the *Gazette*.

26. *Mr. Montgomery*.] Do you know of any precedents bearing on your opinion that a resignation is not complete until the Speaker receives notification of it?—I merely stated that that was the impression on my mind. On the other hand, I think, if you look at the law it says that a member's seat shall become vacant if he resigns by writing, and it may be argued, as a matter of law, that a member has the right to divest himself of membership by communicating such resignation in writing or by telegram to the Speaker.

27. *Hon. Mr. Rolleston*.] Are there not cases of persons holding resignations under certain circumstances? For instance, Mr. Bryce's resignation was written and given into the hands of another person, but it was not to be valid until delivered into your hands?—No. I have not known, myself, of resignations being withheld in that way. I think Mr. Bryce's resignation occurred in Major Steward's Speakership.

28. You may conceive of circumstances under which a resignation had taken place, but which had not reached your hands, and until which you could not declare it?—I can conceive such a case, but I have not experienced it.

29. *Rt. Hon. Mr. Seddon*.] You had a telegram notifying you that the resignation was on its way?—Yes, and stating that I should receive it on Saturday, the 10th July, and I was very much surprised that I did not get it either on that day or the following Monday. I think I sent to the Postal authorities, asking them to let me have it immediately on arrival, and when it did not come on the Monday morning I telegraphed to Mr. Ward, notifying him that I had not received it.

30. And if posted on the 8th it could not have been intercepted?—Mr. Ward told me by telegram that he had resigned, and that his resignation would reach me by letter on the 10th. That telegram came, I think, from Invercargill, and I did not know but that the letter would come from the same place, and that it must have been posted some days. I thought the letter must have been posted before Thursday the 8th to enable it to reach me on Saturday the 10th.

30A. *Rt. Hon. Mr. Seddon*.] The law is that no telegrams can be intercepted unless by order of the Governor. On the 8th the letter was posted and was not interceptible?—Mr. McKenzie's letter is dated the 8th.

31. *Mr. Allen*.] You did not keep the envelope in which the letter came?—I think I have. I think it bears the Wellington postmark of the 9th. I will send it up to the Committee. [Afterwards produced.]

32. *Mr. Montgomery.*] You have another telegram to produce when the mail comes in?—I have Mr. Ward's original telegram intimating his intention to resign. I did not put it on the file, but I expect I can produce it. [Afterwards produced.] I only filed the telegram and the letter of resignation.

33. *Captain Russell.*] You twice used the term "intention to resign." Do you draw a distinction between the words "intention" and "resignation"?—I used the term "intended" with reference to the letter of resignation which was intended to reach me on 10th July, but did not. I understood that he had actually resigned. He said distinctly that he had resigned, and that I would receive his resignation on the following Saturday. I will send in that telegram when I get it from Auckland.

Hon. JOSEPH GEORGE WARD, M.H.R., examined.

34. *Rt. Hon. Mr. Seddon.*] You have heard of the Order of Reference, and have received intimation to appear before the Committee. Do you wish to tender any evidence?—I shall be glad to answer any questions which the Committee desire to put to me.

35. *Mr. Montgomery.*] Did you inform the Clerk of the Court at Invercargill of your resignation?—No. I had no communication with him of any sort or kind.

36. You do not know whether he had any information about it?—He was not informed by me, or by any person on my behalf, so far as I know.

37. Was your letter of the 3rd July written and posted on that date?—Yes; it was written and posted on that date to Mr. McKenzie.

38. Was there any particular reason for not sending it straight to the Speaker?—The only reason I had was that I was in doubt at the time whether it should go direct to the Speaker or to the Acting-Governor, and I sent it to Mr. McKenzie, so that it might go through the right channel. I was uncertain whether it should go to the Acting-Governor or to the Speaker, although addressed to the Speaker.

39. Did you ask Mr. McKenzie to forward it at once?—I asked him to forward it to the Speaker, or to the right person. I have not got a copy of the letter I sent to Mr. McKenzie. It was only a short note, and I cannot from memory give the exact contents of it, but the foregoing is its purport.

40. *Rt. Hon. Mr. Seddon.*] Did you receive any intimation that this letter had not reached Mr. Speaker?—Yes; he sent me a wire to that effect. I wired to the Speaker stating that my resignation would reach him on Saturday. I informed him that I had resigned, and that my resignation would reach him on a Saturday—I cannot recollect the exact date—and the Speaker replied that the resignation had not reached him. I afterwards wired to him, and he informed me that the resignation was not in order, because it had not been attested by a Justice of the Peace. I got the necessary formality attended to and forwarded it. I considered I resigned by letter on the 3rd July. I had to travel, and paid for my railway-tickets and acted in every way as a person who was not a member of the House.

41. *Mr. Montgomery.*] Up to what date have you been paid as a member?—My impression is that I have not been paid up at all for July. I have not made any inquiry. I know that my honorarium has not been paid to me from the beginning of July.

42. *Rt. Hon. Mr. Seddon.*] You have in no way recalled that resignation?—No. I considered my resignation was that written by me and which I sent to Mr. Speaker, and intended it to go through any channel through which it ought to go. I had no intention of communicating by wire, and if the Speaker had not communicated with me I should not have done so.

43. It was some time after the 3rd July before you put in your petition?—Yes, I think it was the 8th or 9th.

44. *Mr. Joyce.*] You intended to resign before your bankruptcy?—Yes, decidedly. I resigned other positions before my bankruptcy, and intended to so resign my seat too. If the Speaker had not wired me, the only intimation he would have got would have been my letter.

45. You were a member of the Harbour Board, and resigned your position?—Yes.

46. *Mr. Allen.*] You were also a Justice of the Peace?—Yes.

47. Did you resign that before your bankruptcy?—Yes, I did.

48. When did you resign as a Justice of the Peace?—I cannot tell you the date, but it would be on record here.

49. It is gazetted on the 9th, the day after the bankruptcy?—Yes. [Telegram of Clerk of Court read.] I had no communication with him of any sort or kind.

50. *Rt. Hon. Mr. Seddon.*] Was it an open secret or generally known that you had sent in your resignation after the 3rd July?—I think it was quite well known about the place. I was reminded of it yesterday by a gentleman who travelled with me. On the 3rd or 4th of the month I travelled by train out of Invercargill, and some people were with me when I got my ticket. Some comment was made about my paying for the ticket, and I remarked that I had tendered my resignation as a member of the House. It was known in Invercargill that my resignation had come up here, but I do not know whether the Registrar or Clerk of the Court knew.

51. You made no secret of it—it was public property, and in that way might have reached the Registrar?—Yes, I made no secret whatever of it.

52. Mr. Joyce asked you whether you had been a member of the Harbour Board, and resigned?—Yes.

53. Are you now a member of the Harbour Board?—Yes.

54. Was the question raised as to your right to sit, the same as it is here?—Yes, and the Chairman of the Board obtained a legal opinion from the Harbour Board's solicitors, which was that the election was a valid one, and that I could legally take my seat. Messrs. Smith, Chapman, and Sinclair, of Dunedin, were asked by me for their opinion, and they held I could be legally elected to the Harbour Board and also take my seat on it. I had the opinion of three or four independent solicitors as to my eligibility to stand for Awarua, and they advised me that I was legally on the

roll as an elector and I was therefore qualified to vote, and that being legally qualified to vote as an elector I was eligible for election, and that if I was elected I was entitled to take my seat and the oath and to perform the duties of a member of the House. Every effort was made by those who hold different opinions to myself to oppose me both as to my right to be elected and to take my seat, but they have all receded from the position they took up.

55. Was the petition filed?—No; it was prepared, I understand, but not filed.

56. *Mr. Allen.*] You say you took legal advice. You do not propose to submit the names to us?—No; I am here to state my own position. I said I was advised that I was entitled to stand, and to sit. I have the opinion of one of the leading solicitors in the colony, in writing, the others are verbal—but I do not propose to submit them.

57. You make no mention in your telegram of having sent your resignation. There are two telegrams, one on the Tuesday and one on the Wednesday, the 13th and 14th. Did you make any reference to the letter in resigning?—Yes, but I cannot tell you what the date was; the telegrams will show that.

58. *Rt. Hon. Mr. Seddon.*] I suppose you were surprised when you received the communication from the Speaker that your resignation had not reached him?—Yes, I was greatly surprised. I had posted my resignation, addressed to the Speaker, on the 3rd July, and by that had taken a determinate course. I forwarded it to the Acting-Premier with instructions that it should go to the Speaker or the Governor. I was not certain as to whom it should go. I was not certain about it.

59. You were Postmaster-General at one time?—Yes.

60. I want to ascertain how a letter can be intercepted?—The only way it could be done would be by warrant of the Governor. A letter cannot be returned under any circumstances, even if opened by the sender in the presence of the officials. The only way it can be done is by the signature and authority of the Governor.

61. *Mr. Duncan.*] After you have dropped a letter in the Post Office the officials will not allow you to get it out again?—No; or anybody else, as far as I know, unless you get it by warrant of the Governor.

62. *Rt. Hon. Mr. Seddon.*] Did you receive any communication from Mr. McKenzie to the effect that he had delayed or stopped the letter you had sent, or that he had forwarded it?—No; my impression is that when the Speaker wired me I communicated with Mr. McKenzie and asked him whether he had forwarded the letter, and he informed me that he had. That is my recollection of it.

63. *Mr. Skerrett.*] Your resignation of the 3rd July was enclosed in a letter to Mr. McKenzie with instructions to forward the same to the Speaker if he were the proper authority, or to the Governor if he were the proper authority?—I think I said to Mr. McKenzie that I was in doubt as to who should receive the resignation, and asked him kindly to forward it to the Speaker or to the Governor.

64. Did you give authority to Mr. McKenzie to withhold your resignation, or to deal with the same otherwise than in accordance with your instructions?—No.

65. Do you say you had put in a determinate position your resignation to the Speaker in writing?—Certainly; and I say I ceased to act as a member of the House immediately thereafter, which is shown by my paying for my tickets when travelling on the railways.

66. I understand you had resigned your seat by writing under your hand addressed to the Speaker, and placed him in a position to take a determinate course?—Yes.

67. Was the telegram of the 8th July in your own handwriting, and signed by you?—I may have dictated it to a shorthand-writer, but probably I wrote it myself.

68. It was probably signed by you?—It was certainly signed by me.

69. Was that telegram submitted before your filing your petition in bankruptcy?—I feel very positive it was. The petition was forwarded to the Official Assignee not until the afternoon of the 8th, some time after 3 o'clock in the afternoon; and the telegram was put in in the morning.

70. Your telegram to the Speaker on the 8th was transmitted prior to the bankruptcy?—Yes, I feel very positive about that.

71. Was it ever suggested during the course of the electioneering contest that the writ was invalid or that the election was improper or unwise?—Not to my knowledge. The only thing I saw was an opinion gratuitously expressed by a solicitor in Wellington after the election was over, and published throughout the colony.

72. That you were disqualified?—Yes, from standing or sitting.

73. That relates to personal disqualification, but not as to the validity of the writ issued?—No, there was no question raised about it during the course of the election to my knowledge.

THURSDAY, 7TH OCTOBER, 1897.

Hon. JOHN MCKENZIE, M.H.R., examined.

74. *Rt. Hon. Mr. Seddon.*] Are the name and signature attached to that letter yours [letter handed to witness]?—Yes.

75. What are the contents of the letter?—It was forwarding to Sir Maurice O'Rorke Mr. Ward's resignation as member for Awarua.

76. What is the date of the letter?—8th July.

77. Will you look at the other letter attached to it?—That is 3rd July.

78. What is that letter?—Mr. Ward's resignation.

79. What are the contents?—Stating that he has the honour of tendering his resignation as member for Awarua.

80. And the date?—3rd July.

81. When did you receive that letter?—I could not say. I know I received the letter, but could not tax my memory as to the date, but I think it very likely I received it on the 8th July, because I would forward it to Sir Maurice O'Rorke at once.

82. Mr. Ward has stated here that there was an accompanying note to the effect that he was not aware whether the resignation had to be sent to the Acting-Governor or to the Speaker, and that was his explanation as to why he sent it to you?—He sent it to me as Acting-Premier, and asked me to forward it to the proper authority. That, I remember, was in his note.

83. If you look at the envelope attached you will see that the postmark is "Wellington, 9th." Will you tell us what you did with the letter, and say why, although it is written on the 8th, it appears to have been marked at the General Post Office on the day following?—I think I am right in stating that I gave it to my messenger to post, and I think it was in time to catch the mail for Auckland if it had been posted that night. No doubt that would be the 8th July. I would have the letter posted the night I wrote this note.

84. Did you hear anything as to its not being received by Sir Maurice O'Rorke as anticipated by you?—No.

85. Did you intimate to Mr. Ward that you had forwarded it on to Sir Maurice?—I think it is probable I did, but I really do not remember. I had so many things to attend to at the time, and I cannot tax my memory whether I wrote to Mr. Ward or not, but probably I would.

86. This is the telegram received by Sir Maurice in Auckland at 2.20 p.m. on the 8th July: "Letter containing my resignation reaches you Saturday.—J. G. Ward, Invercargill": so that Sir Maurice was intimated before the bankruptcy that Mr. Ward had resigned. Have you Mr. Ward's letter to you when he forwarded his resignation?—I do not think so. I am in the habit of clearing up all these things every morning and putting many into the waste-paper basket. I have looked through my papers and could not find it.

87. *Hon. Mr. Rolleston.*] Was the resignation sent to you unconditionally?—Yes.

88. The only question was as to where it was to go?—Yes; and it was sent to me as Acting-Premier.

89. *Mr. Montgomery.*] It was a formal note?—Yes, a formal note along with the resignation. There was nothing private in it.

90. *Captain Russell.*] Do you remember what time of the day it was when you posted the letter?—I know I gave it to my messenger in the office at night. I think it very probable that the mail would come in the afternoon, and I would get the letter after tea. I know it was at night, because I asked the messenger to go and post the letter.

91. *Mr. Allen.*] On the same day you received the note?—Yes. My letter is type-written, and I would instruct my secretary to write it. I have in my recollection that the mail was to leave for Auckland the next morning, and that was the reason why I sent it down that night. Whether the messenger went away to the post-office with it or put it in the pillar-box I do not know.

ADDRESS OF MR. C. P. SKERRETT, Counsel for Mr. Ward.

My first contention is that the Order of Reference confines the scope of the Committee to one matter—that is, whether the fact that Mr. Ward was an undischarged bankrupt disqualifies him from exercising the privileges of a member, and whether that circumstance creates a vacancy for the seat of Awarua. I submit—and there almost appears to be a consensus of opinion on this point among members of the Committee—that the Committee is not concerned with the validity of the writ issued for Awarua. It is not concerned to inquire as to whether the vacancy was caused by resignation or by bankruptcy. It seems to me that the one question referred was whether an undischarged bankrupt was by that circumstance disqualified to sit, and whether a vacancy was thereby created. The question whether or not the seat in point of fact was vacated by resignation or by bankruptcy has nothing whatever to do with the matter. It could have been raised before by appropriate proceedings or by way of petition, but it has never been raised. Moreover, I submit the House is bound by the act of its statutory officer, who is authorised by statute to declare when a vacancy occurs, and the cause of the vacancy. The House is also bound by the warrant authorising the issue of the writ stating the cause of the vacancy to be resignation. I think I shall be able to make it quite clear that the question is one of little or no importance for the purpose of determining the matter substantially at issue here. If Mr. Ward's seat was vacated by resignation, then he is only qualified to sit if, upon a construction of the statute, the disqualification of bankruptcy applies only to a bankruptcy subsequently to a member acquiring the status of a member. What I suggest is this: If the seat is vacated by resignation, then Mr. Ward is only entitled to sit if the disqualification referred to in the statute is a disqualification arising from a bankruptcy subsequent to the person acquiring the status of a member. If, on the other hand, the resignation was occasioned by bankruptcy, he is not entitled to sit unless, upon the true construction of the statute, the bankruptcy was subsequent to the status of member being acquired. Therefore, I submit, the real question one has to determine is the question I first mentioned. Now, there are two general classes of disqualification: First, disqualifications relating to the eligibility of a candidate; second, disqualifications affecting the status of a member. The two are quite distinct. With regard to the first—the eligibility of candidates—that always depends upon the construction of the particular statute creating the eligibility. Parliament never had any control over the eligibility of candidates, except in the course of administering the laws on which that eligibility depended. Now, Parliament has practically divested itself of its power to determine whether a candidate was eligible, by referring all such questions to an Election Court. I do not say Parliament has not the right to construe a statute itself, but I do not think Parliament will take into its own hands

that which has in practice been continuously delegated to the Election Court. But, whether it is to be determined by Parliament or by the Election Petitions Court, the question of the eligibility of a candidate depends purely upon the construction of the statute defining such eligibility. Now, sections 8 and 9 of the Electoral Act of 1893 are the two sections which together indicate the qualifications which candidates are to possess. Sections 8 and 9 are exhaustive. They are intended to be a complete statement of the whole of the causes of disqualification, as well as of what qualifications are requisite. Nothing can be imported into them not there expressed. Even Parliament itself, as I have pointed out, has only the duty of construing the Act. I will take section 9 first. Section 9 says: "Every man registered as an elector, and not coming within the meaning of the last-preceding section of this Act, but no other man, is qualified to be elected a member of the House of Representatives." Then, there is a proviso with regard to removal of names from a roll which has no bearing on the present case, and another in reference to women electors which is also unimportant. We then turn to section 8, which says: "No alien, lunatic, or person of unsound mind, nor any person attainted or convicted of any treason felony, or of any offence punishable by imprisonment for one year or upwards within any part of Her Majesty's dominions, or convicted within the colony as a public defaulter, or under 'The Police Offences Act, 1884,' as an idle and disorderly person or as a rogue and vagabond, unless such person shall have received a free pardon, or shall have undergone the sentence or punishment to which he shall have been adjudged for such offence, shall be entitled to be registered." My contention is very short. Nowhere in section 8 do you find bankruptcy as a disqualification of a candidate, and I say the Committee cannot make the law, and cannot read it in. If it is a *casus omissus*, this tribunal has no authority to supply that omission. There seems to be a consensus of opinion in legal minds that, under section 9, Mr. Ward was not disqualified as a candidate, because nowhere either in section 8 or 9 do you find bankruptcy set out as a disqualification. I now refer to the second class of disqualifications—namely, disqualifications affecting the status of a member. This class is of two kinds: Firstly, statutory disqualifications; and, secondly, the inherent power of Parliament to expel a member who is guilty of a grave offence. The second subdivision of this class is only a species of disqualification. It is only a power to expel, and if a member is expelled he appears to be entitled to again present himself for re-election. These are the only two classes of powers relating to the disqualification of a member—the statutory power, and the inherent power of expulsion. I submit that we are only concerned with the first power, that of statutory disqualification. It is quite clear that no member of the Committee thinks that Mr. Ward comes within that class of cases where Parliament says to a member, "You have been guilty of such gross offences that you are no longer considered fit to be a member of the House." Bankruptcy alone is not a grave offence. There is no instance in which it has been thought by the House of Commons to be so. The case of Townsend was merely the carrying-out of an express statutory disqualification. Moreover, in order to justify Parliament in exercising the power of expulsion, it must be satisfied that the member has committed a grave offence rendering him unworthy to sit in the House. This is done either by proof of the conviction of the member, or by the House or some Committee or Commission appointed by it being satisfied by sufficient evidence of the commission of the offence by the member proceeded against. I apprehend it is plain that I may confine my attention to the first class of disqualifications—namely, statutory disqualifications. The only other aspect of the matter which remains to be considered, therefore, is whether there is a statutory disqualification of Mr. Ward by reason of his being an undischarged bankrupt. I submit, on behalf of Mr. Ward, that this is purely a legal question, and that the proper course would be to relegate it to some competent legal tribunal such as that formed to hear an ordinary election petition. The question, I shall be able to show, is a real and substantial one, is one of great difficulty; and I quite respectfully say that a Committee like this, composed partly of lawyers, partly of gentlemen of experience in parliamentary uses, and partly of gentlemen who are laymen with no expert knowledge, cannot so satisfactorily deal with a question of purely legal construction as can Judges trained to that method of thought. Moreover, the atmosphere which surrounds a political Committee is not conducive to the satisfactory solution of legal questions. If I were to attempt to discuss the matter exhaustively, I should take up your time for a considerable period; but all I desire now to do is to persuade the Committee that there is a real and substantial question of law involved in this question, and that it is a question worthy of being decided by some proper tribunal. The whole question depends upon the meaning of section 130 of the statute, which reads, "The seat of any member of the House of Representatives shall become vacant"; and then there is a series of subsections, among which is subsection (4): "If he is bankrupt within the meaning of the laws relating to bankruptcy." The first point I desire to refer to is that you approach section 130 with the assumption that a bankrupt, although undischarged, is qualified to be elected. That refers to my contention in connection with clauses 8 and 9. It deals only with a person who is clothed with and has acquired the status of a member. Now, that will be of very great importance, as I shall show presently. The next observation I desire to make is that the section, though in the form of the present tense, is substantially in the future tense, and really deals entirely with events which happen after a member has been elected, and on this depends the real validity of my argument on Mr. Ward's behalf. The argument for Mr. Ward will be this: that section 130 relates wholly and entirely to events which happen after a person has become a member. I would ask you to look with me at the language of these different subsections of clause 130, and I venture to say that every one is referable only to something happening after a person becomes a member. Subsection (1) is: "If for one whole session of the General Assembly he fails, without permission of the House, to give his attendance in the House." That, of course, obviously is something to happen after he becomes a member. That is in the future. Subsections (2) and (3) are not so clearly in the future: "If he takes any oath or makes any declaration or acknowledgment of allegiance, obedience, or adherence to any foreign Prince or Power." That is ambiguous. That might refer to something before the candidature of a person who becomes a

member. Section 5 is clearly future. It is about the most important section as showing the true construction of clause 130: "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." I say that is clearly future dealing with the disqualification of a member after he has acquired the status of a member. Section 8 of the Act provides for that species of disqualification where a person is attainted or convicted of any treason felony or offence before he is elected. Subsection (5) of section 130 most clearly refers to a conviction or an attainder which takes place after a person has acquired the status of a member, because that particular form of disqualification is provided for in other parts of the Act. Subsection (6) is also clearly future: "If he resigns his seat by writing under his hand," &c. Subsection (7) is also clearly future: "If on an election petition the Election Court declares his election void." Subsection (8), "If he dies," is clearly future. Section 131 is the machinery by which the vacancy is to be notified to the proper authority, and which provides for the issue of the writ. It provides that where a member has been adjudged guilty of an offence notice is to be given to the Speaker; and, if during the recess, the Speaker notifies the vacancy by *Gazette*, and issues the writ forthwith. Now, how are these sections applicable to a person who is not a member? This is one of the dilemmas the Committee will be placed in unless the construction I suggest is adopted. You have a disqualification without any machinery provided for giving effect to it; because, under section 131, how could the Clerk of the Court notify the offence to the Speaker if the person committing it is not a member? Section 131 says as plain as language can speak that these matters are matters happening affecting the status of a member, so that really the substance of our contention will be that, although the language of all these sections is in the present tense, looking at the purpose of the sections, and comparing the different sections together, the whole of the sections are substantially in the future tense, and provide for matters happening after a person becomes a member. I have pointed out one dilemma which, if my contention is not sound, my opponents are put in. Now, I want to put to the Committee a very gross and ridiculous absurdity which exists, if my construction of the statute is not adopted, and which my construction entirely avoids. If my construction is not a sound one, then a person is entitled to be elected to the House and yet cannot sit in it. That is entirely based on my first assumption that there is no disqualification by bankruptcy, so far as eligibility is concerned. The result would be as I have put it. Therefore you would have a person entitled to be elected time after time, immediately disqualified, and upon disqualification there would be no tribunal to give effect to his disqualification from sitting. We should have had a petition lodged after Mr. Ward's election if Mr. Cowan had been advised there was ground for disqualification in Mr. Ward's candidature. The policy of a statute is sometimes adduced as an aid to construction, but it is almost always a doubtful aid, because different minds ascribe different reasons for the passing of the Act. Parliament, however, may very well have said, "If a person after being elected becomes bankrupt he shall go back to his constituency"; but it may very well have thought that "it would not prevent electorates from electing an undischarged bankrupt if they choose to do so. They are the best judges of a man's moral character, and if they choose to send back an undischarged bankrupt Parliament might have chosen not to prevent it." I submit that is a very reasonable intention to impute to the Legislature. In all the statutes where bankruptcy has been declared a disqualification the statute has been explicit. It has always explicitly said that a bankrupt should not be capable of being elected, or of sitting or voting. Sometimes the vacancy is *instantly*, and sometimes it extends over twelve months to enable the bankrupt to get his discharge; but in all cases it is an expressed disqualification as to eligibility, and to sit and vote. The first disqualification is completely absent here. I have merely indicated the general topics on which Mr. Ward will contend by counsel that he is not disqualified, because his bankruptcy was anterior to the period at which he acquired his status as a member. I do not suppose the Committee will require me to quote legal authorities. I have at least shown that the matter is a substantial one, and that it is a question which ought to be settled by some satisfactory tribunal. If, on the other hand, the Committee desire to make a recommendation to the House, I shall ask permission to be heard more fully on this matter. I think that is only a reasonable request. With regard to the issues, I think it will be plain to members why I suggest an alteration in the first issue. There is no attempt on my part—and I am sure there is none on the part of any member of the Committee—to burke a fair statement of the legal question. Such a desire would be unworthy of a person occupying the position of counsel. Issue 1 is directed to the first question, Is Mr. Ward disqualified from eligibility? It is really not a question that the House has to determine. If he was not qualified, Mr. Cowan had his complete remedy, and the time has gone by for that. I wish to impress the Committee that it should have the actual facts stated, and ask whether they amount to a question of eligibility or disqualification from sitting. The facts are stated in the following proposed issue: "1. Is a person who has been adjudged bankrupt under 'The Bankruptcy Act, 1892,' whose adjudication has not been annulled, and who has not been granted an order of discharge from his bankruptcy, but who otherwise possesses the necessary qualifications, qualified to be elected a member of the House of Representatives?" It is necessary for this statement of fact to go in, because you are asking whether he is qualified, and, of course, he is not qualified unless he possesses the other qualifications. "Is a bankrupt within the meaning of the law relating to bankruptcy qualified to act as a member of the House of Representatives?" is the first issue of the sub-committee. I think it unnecessary for me to remark further on this. I submit to the Committee that the other issue is satisfactory as it stands, and requires no amendment.

Mr. Montgomery: I understand that you contend that Mr. Ward is not a bankrupt within the meaning of the laws relating to bankruptcy?

Mr. Skerrett: Yes.

Mr. Montgomery: You do not propose to raise that point here, but that will be one of your contentions?

Mr. Skerrett: Yes.

Hon. Mr. Rolleston : Is it part of your argument that eligibility for election constitutes a power of sitting ; and, if so, when do you hold that a person becomes a member ?

Mr. Skerrett : Directly his name is returned on the writ. From that period he acquires the status of a member, and from that period liability to disqualification as a member attaches to him.

Hon. Mr. Rolleston : Are you here representing Mr. Ward to the extent that you ask the Committee on his behalf to refer the matter to a legal tribunal ?

Mr. Skerrett : Yes.

Mr. Joyce : You will be satisfied with your first issue going with our three issues ?

Mr. Skerrett : Yes.

Mr. Montgomery : Do I understand you to say that all these matters were subsequent, and that there is nothing to prevent a man who takes an oath of allegiance to a foreign Prince or Power from standing ?

Mr. Skerrett : I intimated that subsections (2) and (3) of section 130 were ambiguous. I should be quite prepared to contend that there is nothing to prevent a person who has prior to election taken an oath of allegiance from being a candidate, unless he could be described as an "alien."

Mr. Montgomery : You would contend that he could continue to sit if the oath were previous, although subject to a foreign State ?

Mr. Skerrett : Yes, subject to the inherent right of Parliament to expel him if it deemed that his conduct made him unworthy to sit. My argument depends upon the proposition that sections 8 and 9 are exhaustive as to the disqualifications for eligibility as a candidate.

Rt. Hon. Mr. Seddon : There is a remedy you all seem to be oblivious of—that is, that a man, although an alien, can obtain registration on the electoral roll. By being on the roll, he is then capable of being elected as a member of Parliament. But if steps were taken to question the enrolment on the ground of his being an alien, the Registrar might take exception to placing him on the roll.

APPENDIX.

REPORT OF THE PRIVILEGES SUB-COMMITTEE UPON PRECEDENTS AND LAW.

HISTORY OF THE LAW OF NEW ZEALAND.

THE New Zealand Constitution Act (15 and 16 Victoria), 1852, section 50, declared: "If any member of the said House of Representatives shall, *inter alia*, become bankrupt, or shall become an insolvent debtor within the meaning of the law relating to insolvent debtors, his seat in such House shall thereby become vacant."

In 1879 the Regulation of Elections Bill was introduced in the House by the Hon. Mr. Hall. It was proposed to amend the electoral law in some material points. Section 50 of the Constitution Act was repeated with verbal alterations, and in the case of a vacancy caused by bankruptcy the words "if he is a bankrupt" were substituted for "or shall become bankrupt." There was no clause providing for the repeal of section 50 of the Constitution Act. This Bill did not pass.

In 1880 a similar Bill was introduced by the Hon. Mr. Hall. The provisions relating to bankruptcy were identical with those of 1879. Again there was no repeal clause, and the Bill did not pass.

In 1881 a similar Bill—the Regulation of Elections Bill—was introduced by the Hon. Mr. Walter Johnston, the clause relating to vacancies (58) being identical with that in the Bill of 1879. A repeal clause was introduced, and, *inter alia*, section 50 of the Constitution Act was repealed. The Hon. Mr. Johnston's speech in moving the second reading of the Bill is to be found in *Hansard*, 1881, Vol. 38, page 220.

In 1893 the Electoral Act repealed "The Regulation of Elections Act, 1881." The clause relating to vacancies (section 58 in the Act of 1881, and 130 in the Electoral Act of 1893) was amended in several particulars. The words of the subsection relating to vacancies caused by bankruptcy were slightly altered by omitting the words "insolvent debtor." The law now reads (section 130 of "The Electoral Act, 1893"): "The seat of any member of the House of Representatives shall become vacant if, *inter alia*, he is a bankrupt within the meaning of the laws relating to bankruptcy."

Legislative Council.

By "The New Zealand Constitution Act, 1852," section 36, it is provided: "If any Legislative Councillor of New Zealand shall, *inter alia*, become bankrupt, or shall become an insolvent debtor within the meaning of the laws relating to insolvent debtors, his seat in such Council shall thereby become vacant."

"The Legislative Council Act, 1891," section 10, repealed this provision, and enacted in lieu thereof, by section 4: "The seat of any member of the Council, whether appointed thereto before the time of the passing of this Act or subsequently thereto, shall, *ipso facto*, be vacated—*inter alia*, subsection (3)—if he is a bankrupt or compounds with his creditors under any Act for the time being in force."

By section 2 of "The Legislative Council Act, 1891": "The Governor may from time to time, in Her Majesty's name, by instrument, or instruments, under the public seal of the colony, summon to the Legislative Council of New Zealand, hereinafter called 'the Council,' such persons as he shall think fit: every person so summoned shall thereby become a member thereof. Provided that no person shall be so summoned—*inter alia*, subsection (2)—who at any time theretofore has been bankrupt and has not received his discharge."

By section 5 of the same Act it is enacted: "Any question which shall arise within the Council as to any vacancy in the Council, or as to the right of any person to sit or vote therein, shall be referred by the Governor to the Council, which shall hear and determine the same: Provided always that either the person respecting whose seat such question shall have arisen, or Her Majesty's Attorney-General for New Zealand on Her Majesty's behalf, may appeal from the determination of the said Council to Her Majesty; and the judgment of Her Majesty, given with the advice of her Privy Council thereon, shall be final and conclusive to all intents and purposes."

LAW OF ENGLAND.

By "The Bankruptcy Act, 1883," section 32, it is enacted: "Where a debtor is adjudged bankrupt he shall be disqualified for (*inter alia*) being elected to, or sitting or voting in, the House of Commons, or on any Committee thereof." The disqualifications to which a bankrupt is subject under this section are removed if the adjudication of bankruptcy against him is annulled, or if he obtains from the Court his discharge, with a certificate to the effect that his bankruptcy was caused by misfortune, without any misconduct on his part. The Court may grant or withhold such certificate as it thinks fit; but any refusal of such certificate is subject to appeal. By section 33 of the same Act: "If a member of the House of Commons is adjudged bankrupt, and the disqualifications arising therefrom under this Act are not removed within six months from the date of the order, the Court shall, immediately after the expiration of that time, certify the same to the Speaker of the House of Commons, and thereupon the seat of the member shall become vacant." By section 35 of the same Act the bankruptcy may be annulled where the Court is of opinion that the debtor ought not to have been adjudged bankrupt, or where he has paid his debts in full.

LAW OF VICTORIA.

"The Constitution Act, 1855" (19 Victoria, section 24): "If any member of the Legislative Council or Legislative Assembly shall become bankrupt or an insolvent debtor within the

meaning of the laws in force within Victoria relating to bankrupts or insolvent debtors his seat in the said Council or Assembly, as the case may be, shall thereby become vacant." (*Vide* page 322 of the Victorian Statutes, Vol. i.)

LAW OF QUEENSLAND.

"The Constitution Act, 1867" (31 Victoria, section 23): "If any Legislative Councillor shall become bankrupt, or take the benefit of any law relating to insolvent debtors, his seat in such Council shall thereby become vacant." (*Vide* page 208, Queensland Statutes, Vol. i.)

"The Legislative Assembly Act, 1867" (31 Victoria, section 7): "If any member of the Assembly shall become bankrupt or an insolvent debtor within the meaning of the laws in force within the said colony relating to bankrupts or insolvent debtors his seat in such Assembly shall thereby become vacant." (*Vide* page 216, Queensland Statutes, Vol. i.)

LAW OF NEW SOUTH WALES.

The new "Constitution Act, 1853," section 28: "If any member of the Assembly shall become bankrupt or an insolvent debtor within the meaning of the laws in force within the said colony relating to bankrupts or insolvent debtors his seat in such Assembly shall thereby become vacant."

In 1893 the Hon. Sir George Dibbs, Premier of New South Wales, resigned on the 23rd March owing to his bankruptcy. He was re-elected on the 30th March, and again took his seat and the oath. (New South Wales *Hansard*, 1893, pages 5480 and 5726.)

In 1896 Mr. J. G. Carroll, member of the New South Wales Legislative Assembly, resigned on the 3rd September, filed his schedule, and was re-elected, the writ for the election being returned on the 15th September. (*Vide* New South Wales *Hansard*, 1896, pages 2895 and 3191.)

LAW OF CANADA.

"The British North America Act, 1867," section 31: "The place of a Senator shall become vacant in any of the following cases: (3.) If he is adjudged bankrupt or insolvent, or applies for the benefit of any laws relating to insolvent debtors." (Page 15, Confederation Law of Canada.) By the law of Canada ("Supreme Court Act, 1886"), section 4: "Important questions of law or fact touching provincial legislation, or, *inter alia*, any other Act or law or any other matter with reference to which he sees fit to exercise this power, may be referred by the Governor in Council to the Supreme Court for hearing or consideration; and the Court shall thereupon hear and consider the same." By subsection (4): "The Court may direct that any person interested may be represented." By subsection (5): "It may request any counsel to argue the case for any interest which is affected, the expenses being paid by Parliament. The opinion of the Court in any such reference, though advisory only, shall, for all purposes of appeal to Her Majesty in Council, be treated as a final judgment of the said Court between parties."

A. R. GUINNESS,

Chairman of Sub-Committee.

5th October, 1897.

PROPOSED CASE STATED BY PRIVILEGES SUB-COMMITTEE.

1. Is a bankrupt within the meaning of the laws relating to bankruptcy qualified to be elected a member of the House of Representatives?

2. If he is so qualified, and is elected, does the fact of his being an undischarged bankrupt cause his seat to become vacant immediately on such election, or at any other time?

3. If his seat does not so become vacant, can he take the oath and exercise the rights and privileges of a member of the House of Representatives?

W. H. MONTGOMERY,

Chairman of Sub-Committee.

EXHIBIT A.

[Handed in by the CLERK-ASSISTANT of the House of Representatives during examination of the Hon. the Speaker.]

To the Hon. Sir Maurice O'Rorke, Auckland.

(Telegram.)

LETTER containing my resignation reaches you Saturday. Kind regards.

Received in Auckland, 8th July, 1897.

J. G. WARD, Invercargill.

The Hon. Sir Maurice O'Rorke, Speaker, Auckland.

(Telegram.)

I BEG to tender my resignation as member for Awarua.

Received 10.45 a.m., Wednesday, the 14th July, 1897.

J. G. WARD, Invercargill.

(Letter.)

DEAR SIR MAURICE,—

Office of Minister of Lands, Wellington, 8th July, 1897.

Attached hereto you will find the resignation of the Hon. Mr. Ward as member for Awarua, which he has requested me to forward you.

Yours, &c.,

To Sir G. M. O'Rorke, Kt., Auckland.

JOHN MCKENZIE.

(Enclosure.)

SIR,—

Invercargill, 3rd July, 1897.

I have the honour to tender my resignation as member for Awarua.

The Hon. the Speaker,

I have, &c.,

House of Representatives, Wellington.

J. G. WARD.

Received Wednesday, 14th July, 1897, after Mr. Ward's resignation by wire reached me, and I had wired notification of resignation to Mr. Otterson for *Gazette*.—G. M. O'R.

(Telegram.)

Henry Otterson, Esq., Clerk-Assistant, House of Representatives, Wellington.
 HAVE just received Mr. Ward's resignation by telegram. When it is wired back to me and indorsed I will telegraph you notice for to-morrow's *Gazette*, which you will please wire back to me.
 G. MAURICE O'RORKE, Speaker, Auckland.

Received in Wellington, 14th July, 1897.

(Telegram.)

Henry Otterson, Esq., Clerk-Assistant, House of Representatives, Wellington.
 NOTIFICATION of resignation of seat in House of Representatives for Electoral District of Awarua in compliance with the provisions of the 135th section of "The Electoral Act, 1893": I, the Speaker of the House of Representatives, hereby notify that the Honourable Joseph George Ward has resigned his seat in the House of Representatives for the Electoral District of Awarua, and that his telegram of resignation was received by me on the 14th day of July, 1897, and the said seat is vacant by reason of such resignation.

Dated at Auckland, this 14th day of July, 1897.

Received Wellington, 14th July, 1897.

GEORGE MAURICE O'RORKE,
 Speaker of the House of Representatives.

[For *Gazette* notices of resignation and bankruptcy see New Zealand Gazette, No. 62, 15th July, 1897, pages 1320 and 1336.]

CORRESPONDENCE.

C. Rout, Deputy Official Assignee, Invercargill.

FORWARD by first mail copy of notice of adjudication of Hon. J. G. Ward as a bankrupt as advertised, also state present position of bankruptcy proceedings. Information required by Privilege Committee of House of Representatives.

A. F. LOWE, Clerk, Privilege Committee.

The DEPUTY ASSIGNEE in BANKRUPTCY at Invercargill to CLERK, Privilege Committee, House of Representatives, Wellington.

In the Estate of J. G. Ward.

SIR,—

2nd October, 1897.

I have the honour to acknowledge the receipt of your telegram of this day's date, asking me to "forward by first mail copy of notice of adjudication of Hon. J. G. Ward as a bankrupt as advertised, also state present position of bankruptcy proceedings. Information required for Privilege Committee, House of Representatives."

In reply, I have the honour to enclose—"A," copy of Court notice of adjudication; "B," copy of advertisement which appeared in the *Southland News* of 8th July, giving notice of the adjudication, and calling the first meeting of creditors to be held on 13th July.

In replying to the latter part of your telegram it will be necessary to give a *résumé* of what has taken place since the adjudication, which is as follows:—

The meeting was held on 13th July, in pursuance of notification, when the following resolution was passed: "That the debtor be requested to prepare and deliver to the Assignee, at his public office, before the 3rd day of August, 1897, or within such reasonable time as may be fixed by the Deputy Official Assignee, full, true, and particular accounts and balance-sheets, showing the particulars of his receipts and expenditure, of his stock-taking, and of his profits and losses during the period of three years before the commencement of the bankruptcy; and that the Deputy Official Assignee be requested to give the necessary notice, and to take the necessary steps, for carrying out this resolution; and that this meeting be adjourned to the 6th day of August, 1897, at half-past two o'clock in the afternoon, to enable the Deputy Official Assignee and the creditors to examine and consider such statement."

As Mr. Ward was unable to complete the statement in time for the 6th August, the meeting was, by agreement, postponed to the 20th August, on which day it was held, and the returns were presented to the meeting, when it was resolved "That an outside accountant be employed to look into the accounts connected with the statement made by Mr. Ward and report to a meeting of creditors at an early date, and that Mr. William Brown, of Dunedin, be the accountant employed to examine statement. Failing Mr. Brown, that the Assignee consult Messrs. Cook and Ramsay in the selection of some other accountant."

Mr. Brown undertook the work. I enclose a copy (C) of my letter of instructions to him. In his report he dealt very fully and exhaustively with clauses 1 and 4 of my letter of instructions. I think I should fairly represent this part of the report by saying that, on the whole, judging from the books and documents produced to Mr. Brown, Mr. Ward's statements were practically correct. In reply to clauses 2 and 3, Mr. Brown wrote as follows: "(2.) In respect of this inquiry, I have not observed any grounds for suspecting that Mr. Ward has received moneys during the period under review for which he has not accounted, beyond such as were drawn in the ordinary course, chiefly from Government payments into the Bank of New South Wales, and no doubt representing the funds needed for private and travelling expenses. Of the total, however, £1,084 of this was transferred in various sums to the association, and by it credited to Mr. Ward in account. (3.) In respect of this last query, I have pleasure in stating that Mr. Anderson has given me every assistance in the work committed to me, and took pains to give any information which would assist me in verifying or otherwise the financial statements submitted, and I am indebted to his familiarity

with the details, for such explanations have very much facilitated and expedited the work. Mr. Ward also, although I did not see so much of him, manifested readiness to afford any explanations required."

A third meeting of creditors was convened for 22nd September, at which meeting Mr. Brown's report was read. No resolution was passed, but the chief creditors expressed themselves as quite willing to leave the whole matter entirely in my hands.

In view of Mr. Brown's report, I see no necessity for any further investigation, and I am taking steps to realise the estate to the best advantage.

The full text of Mr. Brown's report appeared in the *Otago Daily Times* of 23rd September. I did not examine it, however, to see that it was a correct copy. If necessary, I will send you a certified copy.

I shall be glad to supply any further information you may desire to have.

I have, &c.,

CHARLES ROUT,

Deputy Official Assignee.

A.—From the DISTRICT COURT, Invercargill, to the OFFICIAL ASSIGNEE, Invercargill.

SIR,—

8th July, 1897.

I hereby give you notice that Joseph George Ward, of Invercargill, Merchant, has this day filed a petition to be adjudged a bankrupt. Number on register, 692.

J. R. COLYER, Clerk District Court.

B.—CLIPPING from *Southland News* of the 8th July, 1897.

IN BANKRUPTCY.—In the District Court, holden at Invercargill.

NOTICE is hereby given that Hon. Joseph George Ward, of Invercargill, Merchant, was this day adjudged bankrupt; and I hereby summon a meeting of creditors, to be holden at my office on the 13th day of July, 1897, at 2.30 o'clock p.m.

Invercargill, 8th July, 1897.

CHARLES ROUT,

Deputy Official Assignee.

C.—MEMORANDUM from the DEPUTY ASSIGNEE in BANKRUPTCY, Invercargill, to WILLIAM BROWN, Esq., Invercargill.

In the Estate of J. G. Ward.

DEAR SIR,—

3rd September, 1897.

Referring to our conversations, I desire formally to intimate that the object of the investigation by you into Mr. Ward's business transactions is as follows:—

1. To verify or otherwise, from the books and records of Mr. J. G. Ward personally, of the Ward Farmers' Association, and other documents which may be available, the correctness of the following statements: (a) Receipts and expenditure for the three years prior to date of adjudication; and (b) statement of losses sustained;

2. To state whether there are grounds, and, if there are, what grounds, exist for suspecting that Mr. Ward has received moneys during the above period which have not been accounted for;

3. To state whether Mr. Ward and his late employes have assisted you in your work, or have manifested any desire to withhold information from you which would assist you in verifying or otherwise the financial statements referred to; and

4. To report generally on the said financial statements by Mr. Ward.

I am, &c.,

CHARLES ROUT,

Deputy Official Assignee.

TELEGRAM from the CHAIRMAN of COMMITTEE to the CLERK of the DISTRICT COURT, Invercargill. You are requested to inform the Privileges Committee of the House of Representatives whether, in connection with the bankruptcy of the Hon. J. G. Ward, member for Awarua, you have complied with the provisions of section 131 of "The Electoral Act, 1893," and, if not, why not. Also, to furnish the Committee with any telegrams or correspondence in connection with this matter.

R. J. SEDDON, Chairman.

TELEGRAM from CLERK, DISTRICT COURT, Invercargill.

Rt. Hon. R. J. Seddon, Wellington.

Re Hon. J. G. Ward: I did not comply with section 131, "Electoral Act, 1893," as I understood he had resigned prior to filing his petition, and thought, he having resigned, section quoted did not apply. On ascertaining he was a Justice of the Peace I reported the bankruptcy to Minister of Justice on 16th July last. No other correspondence or telegrams passed in connection with this matter.

J. R. COLYER, Clerk District Court, Invercargill.

Received 2nd October, 1897.

J. R. Colyer, Clerk District Court, Invercargill.

INFORM Privileges Committee how and when you came to understand that Hon. Mr. Ward had resigned prior to filing his petition.

A. F. LOWE, Clerk Privileges Committee.

SECOND TELEGRAM from CLERK DISTRICT COURT, Invercargill.

A. F. Lowe, Esq., Clerk Privileges Committee, Wellington.

I UNDERSTOOD from Mr. Anderson, accountant to Hon. J. G. Ward, at the time he (Mr. Anderson) handed in petition, that Mr. Ward had previously resigned.

J. R. COLYER, Clerk District Court, Invercargill.

SIR,—

Privileges Committee, House of Representatives, 4th October, 1897.

By direction of the Chairman of the Privileges Committee I have the honour to request you to furnish the Committee with a copy of the writ issued for the election of a member for Awarua in place of the Hon. J. G. Ward, resigned, also a copy of the Hon. the Speaker's warrant for the issue of the same.

I am, &c.,

H. Pollen, Esq., Clerk of the Writs.

A. F. LOWE,
Clerk Privileges Committee.

SIR,—

Clerk of the Writs Office, Wellington, 4th October, 1897.

In accordance with the request contained in your letter of this day's date, I enclose herewith a copy of the writ issued for the election of a member of the House of Representatives for the District of Awarua in place of the Hon. J. G. Ward, resigned, and also a copy of the Hon. the Speaker's warrant directing the issue of the said writ.

I have, &c.,

HUGH POLLEN,
Clerk of the Writs.The Clerk Privileges Committee,
House of Representatives, Wellington.

Under "The Electoral Act, 1893."

WRIT FOR ELECTION.

To the Returning Officer for the Electoral District of Awarua.

IN pursuance of "The Electoral Act, 1893," I hereby authorise and require you to proceed, according to law, to the election of one member to serve in the House of Representatives for the Electoral District of Awarua.

In the event of the election being contested, the poll shall be taken on the 5th day of August, 1897.

You are further required to indorse on this writ the name of the person so elected, and then to return the writ to me on or before the 11th day of August, 1897.

HUGH POLLEN,
Clerk of the Writs.

Dated at Wellington, this 21st day of July, 1897.

To Hugh Pollen, Esquire, Clerk of the Writs for the House of Representatives.

WHEREAS by the one hundred and thirty-fifth section of "The Electoral Act, 1893," it is, among other things, enacted that whenever during a recess of the House, whether by prorogation or adjournment, it appears to the Speaker that a vacancy exists, he shall cause a notification of the same, and of the cause thereof, to be inserted in the *Gazette*; and that, when such vacancy has arisen from death or resignation, the Speaker shall forthwith issue his warrant to the Clerk of the Writs, directing him to issue a writ to supply the vacancy:

And whereas the seat of the Honourable Joseph George Ward, a member of the House of Representatives for the Electoral District of Awarua, became vacant on the 14th day of July, 1897, by resignation: And whereas a notification by me of the said vacancy, and of the cause thereof, was inserted in the *New Zealand Gazette*, published on the 15th July: And whereas it is now a recess of the House of Representatives by prorogation:

Now, therefore, I, George Maurice O'Rorke, Kt., Speaker of the House of Representatives, in exercise of the powers and authorities vested in and conferred on me by the said Act, do by this warrant direct you, as such Clerk of the Writs as aforesaid, to issue a new writ in accordance with such Act for electing a member of the said House in the room of the said Honourable Joseph George Ward.

Given under my hand, at Auckland, this 16th day of July, 1897.

G. MAURICE O'RORKE, Kt.,
Speaker of the House of Representatives.

EXTRACT FROM THE JOURNALS OF THE HOUSE OF REPRESENTATIVES.

Tuesday, the 28th day of September, 1897.

THE Honourable Joseph George Ward, member for Awarua, having been presented to Mr. Speaker, and having taken and subscribed the oath required by law, took his seat in the House.—(A true extract.)

H. OTTERSON, Clerk-Assistant,
For Clerk of House of Representatives.*Approximate Cost of Paper.*—Preparation, not given; printing (1,400 copies). £9 12s.

By Authority: JOHN MACKAY, Government Printer, Wellington.—1897.

Price, 6d.]

