

FREDERICTON.

PROVINCIAL LEGISLATURE.
Extracts from the Journals of
the House of Assembly.

February 15, 1828.

Mr. Chandler, by leave, presented a Petition from Thomas Barlow, Esq. a Candidate at the late General Election for the City of St. John, and others, complaining of an undue Election for the said City, and praying to be heard by Counsel at the Bar of the House.

Which he read in his place.

Ordered that the said Petition be received and lie on the Table.

Mr. Campbell, by leave, presented a Petition from Stephen Humbert, a Candidate for the County of St. John, at the late General Election, complaining of an undue Election, and praying to be heard at the Bar of the House, and to adduce testimony in support of his claim.

Which he read in his place.

Ordered that the said Petition be received and lie on the Table.

Mr. Crane, by leave, presented a Petition from John C. Vail, Esq. a Candidate at the last General Election for Kings County, and others complaining of an undue Election, for the said County, and praying to be heard by Counsel at the Bar of the House.

Which he read in his place.

Ordered that the said petition be received and lie on the Table.

Mr. Chandler, by leave, presented a Petition from Patrick Clinch, Esq. and James Brown, Candidates at the last General Election, for the County of Charlotte, and others, complaining of an undue election for the said County, and praying to be heard by Counsel at the Bar of the House.

Which he read in his place.

Ordered that the said Petition be received and lie on the Table.

February 16.

Mr. Parker of the Select Committee of Privileges, requested permission to withdraw from that Committee, in consequence of a Petition having been introduced complaining of improper measures having been taken to secure his Election.

On motion—Whereas a Petition was yesterday presented to this House complaining of an undue Election in the County of Charlotte, tending to affect the seats of Hugh M'Kay, and Joseph N. Clarke, Esquires, Members returned by the Sheriff of the said County to serve in General Assembly, and it having been stated to the House, that the said Hugh M'Kay, and Joseph N. Clarke, Esquires, have never had previous notice of the contents thereof.

Resolved, that the Petitioners do forthwith furnish the said Hugh M'Kay, and Joseph N. Clarke, Esquires, with copies of the said Petition:—And also that the Sheriff of the said County be served with a copy of such Petition by the said Petitioners.

Mr. Scott, by leave, presented a Petition from Stephen Humbert, a Candidate at the last General Election, for the County of St. John, complaining of the illegality of the proceedings on the part of the High Sheriff of the City and County, and praying to be heard at the Bar of the House.

Which he read in his place.

Ordered that the said Petition be received and lie on the Table.

On motion of Mr. Johnston,—Resolved, that it be referred to the Select Committee of Privileges, to examine into the practice of the House of Commons, upon

contested Elections or Scrutinies before the House, or a Committee of the House, before the Act of Parliament 10 Geo. 3. c. 16, and also upon the previous practice of this House; and to report thereon to the House as soon as possible.

Mr. Peters moved the following Resolution,—Whereas a Petition was presented yesterday to this House complaining of an undue Election, in the City of St. John, tending to affect the seat of Gregory Van Horne, Esquire, a Member returned by the Sheriff of the said City and County, to serve in General Assembly, and it having been stated to this House that the said Gregory Van Horne, Esquire, has never had previous notice of the contents thereof,

Resolved, that the said Petitioner do forthwith furnish the said Gregory Van Horne, Esquire, with a copy of the said Petition.

And upon the question being put for passing the said Resolution, the House divided, and it was carried in the affirmative.

On motion of Mr. Chandler—Resolved, that the Clerk do give copies of any Petitions which have been presented against Elections, to any Petitioners who may apply for the same, upon their paying the usual Fees.

February 18.

Mr. Parker, moved for leave to bring in a Bill, to regulate the trials of controverted Elections, or returns of Members to serve in General Assembly.

Leave granted.

On motion of Mr. Allen—Resolved, that a humble Address be presented to His Excellency the Lieutenant-Governor, praying that His Excellency will be pleased to direct the Secretary to lay before the House, all accounts, with the accompanying vouchers from Commissioners appointed to expend money on Bye Roads, and for opening new Roads throughout the Province.

Ordered that Mr. Allen, Mr. Wyer, and Mr. Dow, be a Committee to present the said Address to His Excellency.

Mr. Campbell, from the select Committee of Privileges to whom was referred to examine into the practice of the House of Commons upon contested Elections and Scrutinies, before the House, or a Committee of the House, previous to the Act of Parliament, 10 Geo. 3. c. 16, and also upon the practice of this House; Reported that they had attended to that duty, and submitted the following, which he read.

“That previous to the Act of 10 Geo. 3. cap. 16, it was usual to appoint a standing Committee of Privileges and Elections at the beginning of every Session, whose province it was, ordinarily to try Election questions, and that this practice continued until the passing of 10 Geo. 3. cap. 16, subject however to the approval, and revision of the House.

Your Committee also find that Election questions were frequently tried at the Bar of the House.

Your Committee have also made diligent search in the Journals of this House; and find that in all cases of contested Elections which have hitherto been brought before this House, the practice has been to try the same before the Bar of the House.”

COLIN CAMPBELL,
HUGH JOHNSTON, JUN.
JOHN W. WELDON,
EDWARD B. CHANDLER.

The Report being again read at the Clerks Table, was ordered to be accepted.

Resolved, that a Committee of five Members be appointed to take into consideration the prayer of the Petition of Thomas Barlow, Esq., and others, Freemen and Freeholders of the City of Saint John, complaining of an undue Election in the

said City, and to examine into the evidence and questions which may be brought before it, either by the Petitioners or sitting Member, petitioned against, and that the Committee thereupon report their proceedings to this House,

And upon motion of Mr. Allen, that that question be not now put, the House divided,

YEAS 6. NAYS 20.

It was thereupon carried in the negative.

And upon the question being then put for adopting the said Resolution, the House again divided as follows,....

YEAS. Mr. Crane, Mr. Scott, Mr. Palmer, Mr. Humbert, Mr. Chandler, Mr. Wyer, Mr. Partelow, Mr. Johnston, Mr. Ward, Mr. Harrison, Mr. Taylor, Mr. Ketchum, Mr. Miles, Mr. Freeze, Mr. Simonds, Mr. Weldon, Mr. Rankin, Mr. Munro, Mr. Dow, Mr. Hayward.

NAYS. Mr. Parker, Mr. Allen, Mr. M'Kay, Mr. Van Horne, Mr. Campbell, Mr. Clarke.

It therefore passed in the affirmative.

Ordered that Mr. Weldon, Mr. Munro, Mr. Crane, Mr. Taylor, and Mr. Rankin, be the Committee to take into consideration the prayer of the Petition of the said Thomas Barlow, Esq. and others.

On motion of Mr. Chandler—Resolved, that Friday next, be appointed to take into consideration the Petition of Thomas Barlow, and others, complaining of an undue Election, for the City of Saint John, and that the parties interested appear before the Committee appointed for that purpose, on that day with such witnesses as they may have to produce.

On motion of Mr. Crane—Whereas Petitions have been presented to this House by Stephen Humbert, complaining of an undue Election for the County of Saint John, in one of which, complaint it made of the conduct of the High Sheriff, and both praying that the Petitioner may be heard in person at the Bar, in support of his Petitions. Thereupon resolved, that the same be referred to such Members of the Committee of Privileges, as are not Members for that County, to examine the same, and report their opinion to the House; particularly as to the propriety of allowing Petitioners to be heard in person instead of by Counsel at the Bar in the usual manner.

On motion of Mr. Scott—Resolved, that a Committee of five Members be appointed to take into consideration the prayer of the Petition of John C. Vail, Esquire, and others, complaining of an undue Election for Kings County, and to examine into the evidences and questions, which may be brought before it, either by the Petitioner or the sitting Member petitioned against, and that the Committee report their proceedings to this House.

Ordered that Mr. Chandler, Mr. Johnston, Mr. Miles, Mr. Dow, and Mr. Wyer, be a Committee for that purpose.

On motion of Mr. Chandler—Resolved, that James Peters, Jun. Esquire, the Clerk of the Peace for the City and County of Saint John, and Philip Kehoe, do attend before the Committee appointed to take into consideration the petition of Thomas Barlow, Esquire, and others, complaining of an undue Election, on Friday next, to testify what they and each of them know, as to matters depending on the said petition, and that the said James Peters, bring with him and produce before the said Committee, the Pell Book of the Sheriff of the City and County of St. John, of the last Election which took place for the City of Saint John, of which the said Witnesses, on being notified, will take notice and govern themselves accordingly.

February, 19.

Mr. Allen from the Committee appointed to wait on His Excellency the Lieutenant-Governor, praying that His Excellency would be pleased to direct the Secretary, to lay before the House, all accounts, with accompanying vouchers, from Commissioners for expending money on Bye Roads, and for opening new Roads:—Reported that they had waited on His Excellency, and he was pleased to say, he would give the necessary direction on the subject.

On motion of Mr. Partelow—Resolved, that in all cases of controverted Elections in this Province to be heard at the Bar of this House, or before a Committee, the Petitioners do themselves, or by their Agents, within a convenient time, to be appointed either by the House, or the said Committee, as the matter to be, and shall be before the House or the said Committee, deliver to the sitting Members, or their Agents, lists of the persons intended, by the Petitioners, to be objected to, who voted for the sitting Members, giving in the said lists the several kinds of objection, and distinguishing the same against the names of the voters excepted to; and that the sitting Members do themselves, or by their Agents, within the same time, deliver the like lists on their part to the said Petitioners or their Agents.

Mr. Crane moved the following Resolution:—

Resolved that Tuesday the 4th day of March next, be appointed to take into consideration the Petition of John C. Vail Esquire, and others, complaining of an undue Election for Kings County, and that the parties interested, appear before the Committee appointed for that purpose on that day, with such witnesses as they may wish to produce.

And upon motion of Mr. Parker, that the words “before the Committee appointed for that purpose,” be struck out, and the words “by Counsel at the Bar of the House,” inserted, the House divided.

YEAS 4. NAYS 20.

It was therefore carried in the negative, and upon the question put for passing the said resolution, the House again divided.

YEAS 18. NAYS 6.

And it was carried in the affirmative.

Mr. Campbell from the Select Committee of Privileges, to whom was referred to examine the Petitions of Stephen Humbert, Esq. complaining of an undue Election for the County of Saint John, in one of which, complaint is made of the conduct of the High Sheriff of the City and County of Saint John, and both praying that the Petitioner may be heard in person at the Bar of this House, and to report their opinion to the House, particularly as to the propriety of allowing Petitioners to be heard in person instead of by Counsel, in the usual manner; having attended to that duty, submitted the following Report, which he read—

“That the practice in the British House of Commons, as appears by the Journals of the same, is, that the Petitioner complaining of undue Elections or returns of Members, the nature of the case intended to be made by the Petitioning Candidate, must distinctly and expressly appear in conformity to these first principles of justice, which require the charge to be distinctly stated before the party complained against is called upon for his defence; and also that the person or persons, whom the same is intended to affect, should be fully aware of the sort of objections which are intended to be brought forward; and this also appears to be the practice hitherto adopted by this House, and in as much as the Petition of the said Stephen Humbert, Esq.