

(No. 42.)



1874.

T A S M A N I A.

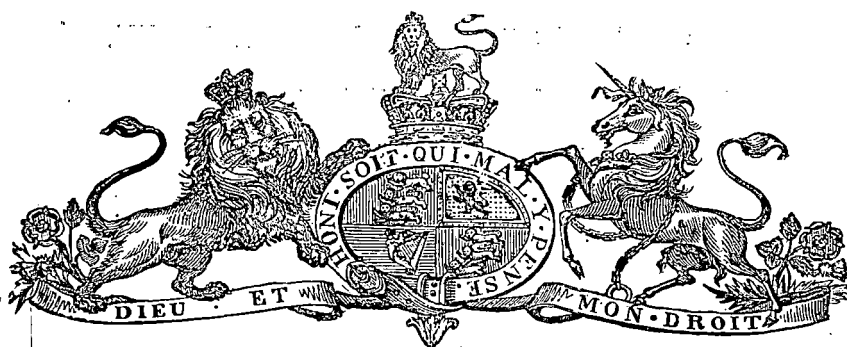
LEGISLATIVE COUNCIL.

HUON ELECTION.

REPORT OF COMMITTEE OF ELECTIONS AND QUALIFICATIONS.

Brought up by Mr. Whyte, and ordered by the Council to be printed, August 12,
1874.

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REPORT.

THE Committee of Elections and Qualifications, duly appointed under the provisions of "The Electoral Act," to which was referred on 31st day of July, 1874, the Petition of John Surtees White, James Henry Walter, Isaac Brown, Philip Markham, Michael Mackey, James Short, Martin Fitzpatrick, James Thomas, William Smith, William Thorp, Junior, John Thorp, Senior, Robert Bell, James Lucas, Charles Oates, and Samuel Page, against the Election and Return of J. T. Robertson, Esquire, as a Member for the Electoral District of the Huon, have determined and do hereby accordingly declare :—

- 1st. That there has been culpable carelessness in the preparation and revision of the Polling List for the Huon.
- 2nd. That both the Deputy Clerk of the Peace and the Returning Officer ought to have known from the *Gazette* Notice of 25th November, 1872, No. 138, that certain Polling-places had been discontinued, and should have communicated the fact to the Revision Court.
- 3rd. That the 14th Section of "The Electoral Act, No. 4," provides as follows :—

"If in any year the Polling List of any District is omitted to be regularly made out, or is not perfected, then the Polling List for the preceding year shall, so far as the same can be applied, be the Polling List of such District for that year; and if the name of any person included in the Electoral Roll for the current year is omitted from such Polling List, then the Returning Officer shall determine where such person shall vote, and such person shall vote at that place and no other, anything in the said Act to the contrary notwithstanding."
- 4th. That the action of the Revision Court, in appointing a certain number of Electors whose names were on the Roll to vote at Polling-places which had no legal existence, practically amounted to the omission of their names from the Polling List.
- 5th. That the Polling List for the previous year contained the same errors, and could not be applied.
- 6th. That the Returning Officer exercised the power conferred upon him by appointing legally proclaimed Polling-places for those Electors so omitted, and gave sufficient notice to each.
- 7th. Although there was no illegal act on the part of the Returning Officer, the Committee consider that the spirit of "The Electoral Act" would have been better fulfilled if he had appointed each of the Electors so omitted to vote at the Polling-place most convenient to his place of residence. But, as the evidence does not show that any Elector tendered his vote and was refused, the Committee only record this opinion as a suggestion for future amendment of "The Electoral Act."
- 8th. The Committee therefore determine that J. T. Robertson, Esquire, was, on the 16th day of July, 1874, duly elected a Member of the Legislative Council for the Electoral District of Huon.
- 9th. The Evidence in the case is appended to this Report:

JAMES WHYTE, *Chairman.*
12th August, 1874.

PROCEEDINGS OF THE COMMITTEE.

SATURDAY, AUGUST 1, 1874.

Present :

MR. WHYTE.
MR. MACLANACHAN.
MR. AIKENHEAD.

MR. KENNERLEY.
MR. SCOTT.

Mr. Whyte was appointed Chairman.

Petition read.

Ordered, That notice be sent to each of the Petitioners of the sitting of the Committee, and informing them that an opportunity will be afforded them of appearing, either personally or by Counsel, on Friday next, at half-past ten o'clock A.M.

Ordered, That the under-mentioned witnesses be summoned for the same time :—

The Returning Officer, Mr. Walpole : to produce Notice to Electors appointing Polling-places other than those on the Polling List.

The Chairman of the Court of Revision, Mr. Hill.

The Clerk of the Peace : to produce the Polling Lists for 1873 and 1874.

The Committee adjourn at 12 o'clock until Tuesday next at 11 o'clock.

TUESDAY, AUGUST 4, 1874.

The Committee met at 11 o'clock.

Present—All the Members.

Ordered, That notice be sent to the Honorable J. T. Robertson, in order that he may, if he thinks proper, be present personally or by Counsel, on Friday, during the sitting of the Committee.

The Committee adjourn at a quarter past 11 o'clock until Friday next at half-past 10 o'clock.

FRIDAY, AUGUST 7, 1874.

Present—All the Members.

Mr. Graves appears as Counsel for the Petitioners, and Mr. Adams for Mr. Robertson.

Mr. Adams, as Clerk of the Peace, called in and examined.

Mr. Walpole called in and examined.

The Committee adjourn at 1 o'clock until 5 o'clock P.M.

The Committee met at 5 o'clock.

Present—All the Members.

Mr. Hill called in and examined.

The Committee adjourn at ten minutes after 6 o'clock until half-past 7 o'clock.

The Committee met at half-past 7 o'clock.

Present—All the Members.

Mr. Hill further examined.

Mr. John Surtees White called in and examined.

The Committee deliberate.

Mr. White's examination continued.

The Committee adjourn till Tuesday at 10 o'clock.

TUESDAY, AUGUST 11, 1874.

The Committee met at 10 o'clock.

Present—All the Members.

Mr. Adams recalled and further examined.

Mr. Pogue, Mr. Kirwan, and Mr. Toby, severally called in and examined.

Counsel address the Committee.

Ordered, That Mr. Solly be summoned for to-morrow at 11 o'clock, to produce the Attorney-General's opinion referred to by the Returning Officer.

The Committee adjourn at twenty-five minutes after 12 o'clock until 11 o'clock to-morrow.

WEDNESDAY, AUGUST 12, 1874.

The Committee met at 11 o'clock.

Present—All the Members.

Mr. Solly called in and produces the Attorney-General's opinion with the case on which it was founded, which are read.

Petition again read.

The Committee deliberate.

The Committee adjourn at forty-seven minutes after 11 o'clock until half-past 3 o'clock.

The Committee met at half-past 3 o'clock.

Present—All the Members.

Draft Report read.

Agreed-to.

Ordered, That the expenses of the Returning Officer and the Chairman of the Revision Court, they having been summoned on public grounds, be paid; and that the parties on both sides to the Petition bear their own expenses.

Ordered, That the Chairman bring up the Report at 4 o'clock.

MINUTES OF EVIDENCE.

FRIDAY, AUGUST 7, 1874.

MR. ADAMS *called in and sworn*.

1. You are Clerk of the Peace, and you produce the Polling Lists for 1873 and 1874? I produce the Lists in force from 31 August, 1871, to 10 April, 1873; the List commencing 11 April, 1873; and List commencing 11 April, 1874. [Marked 1 to 3.]

2. Will you also produce the Electoral Rolls corresponding in time to those Polling Lists? Yes; I will send for them. [Rolls produced, and marked 4 to 6.]

MR. WALPOLE *called in and sworn*.

3. Your name is? Edward Atkyns Walpole.

4. You are Returning Officer for the Huon? Yes.

5. Did you make up the Electoral Roll for the Huon for 1874? I did.

6. Did you submit that Roll in the Revision Court in the usual way as required by law? I did.

7. Do you remember the date when that took place? I do not remember the exact date. It was in 1873.

8. When you made out that Roll and submitted it to the Court of Revision, were you in the belief that Oyster Cove, *Ferry Inn*, Ironstone Creek, Dover, Port Esperance, and Southport were Polling-places? I was not aware that they had been struck out of the Schedule to the Act. I was aware that they were formerly Polling-places.

9. When did you discover that the Polling-places had been changed? As soon as I received the Writ.

10. What course did you take on making this discovery? I referred to the *Gazette*, and then ascertained where the existing Polling-places were, and then found out the error on the printed Polling List.

11. What course did you take then? I suspended issuing these posters [produced] until I had consulted the Colonial Secretary on the subject. I wrote to him accordingly. [Letter produced dated June 24, 1874, and read, marked 8.]

12. Is this the *Gazette* notice [showing it] of 25th November, 1872, referred to in your letter? It is.

13. Have you the answer to your letter? Yes. [Letter dated 25 June, 1874, produced and read, and marked 9.]

14. What steps did you take after that? I posted the notices of the Polling-places as they appeared in the *Gazette* Notice of the 25 Nov. 1872, and wrote a further letter to the Colonial Secretary. [Copy of letter dated 29 June, 1874, produced, read, and marked 10.]

15. Did you get a reply to that letter? [Letter dated 1 July, 1874, produced and read, and marked 11.]

16. Did you come to town after the receipt of that letter? I did.

17. And saw the Attorney-General? And saw the Attorney-General. Before I saw him his written opinion was read to me.

18. And what did you do then? Referring to the 14th Section of the Electoral Act, No. 4, I thought the best course was to leave the names as they were, and to strike out the erroneous Polling-places.

Mr. Kennerley.—19. What was the effect of that with respect to the Hospital Bay Electors? The effect was to cause those who had been assigned to Hospital Bay to come to Hobart Town to vote. I served the notices (of which I produce a copy) on each of the 16 Electors so circumstanced. [Notice put in and marked 12.]

Chairman.—20. How did you serve those notices? Through the Police.

21. Do you remember how long it was before the Election when you sent those notices? I do not recollect.

22. Have you no idea how long it was? It was immediately after my return to the Huon from seeing the Colonial Secretary.

23. Was it some days before the Election? a week? I think about six days. The most distant one was sent down to town through the Inspector of Police.

Mr. Aikenhead.—24. Do you know that notices received by those 16 Electors, whether 6 or 2 days before the Election, were in sufficient time to enable them to record their votes at one place or the other? I sent them in sufficient time. I saw some of them in the hands of those to whom they were sent before the Election.

Chairman.—25. Did any of those 16 voters tender their votes at Franklin? Yes.

26. Was the vote of any such one refused? No.

27. You did all that you conceived was in your power to enable these 16 persons to vote? I did, as the correspondence will show, and took what I considered to be the easiest course of rectifying the error.

28. You have not a Copy of the Legal Opinion? I have not.

29. You read that in the Colonial Secretary's Office did you? Yes.

Mr. Kennerley.—30. Did you hear any complaints from the electors themselves before the election as to the steps which you took to rectify the error? No. One suggested a different course, but I showed him that I could not take it without mutilating the whole list.

31. The course you took gave all an opportunity of voting? Yes. Eleven out of the 16 voted; one was sick, (Drysdale, Port Esperance).

Mr. Graves.—32. You were present at the Court of Revision? Yes: to give information to the Justices.

33. Were you aware that Hospital Bay was added to the Polling Places on that occasion? I was aware after receiving the writ.

34. Were you aware whether it had been so appointed by the Governor in Council? I was not aware, it not being my duty to fix the Polling Places.

By Mr. Adams.—35. Is there any Statutory authority for you to prepare the Polling List? There is none.

36. Who caused the Polling List to be prepared? The Court of Revision under 21 Vict. No. 32, Sec. 32.

37. Is it the fact, then, that the Court of Revision was responsible for the original insertion of Hospital Bay, and not you? Yes.

38. Turning to the Polling List for 1874, who was the Chairman of the Court of Revision? Mr. Richard Hill.

39. Do you know as a fact that Mr. Hill was a supporter of Mr. Evans at the late election? He appeared to be.

40. Then Mr. Evans' supporter was Chairman of the Court of Revision when Hospital Bay was assented to as a Polling Place? Yes.

41. Looking to the Polling List commencing 11th April, 1873, who was the Chairman then? Mr. Richard Hill.

42. And Hospital Bay is inserted as a Polling Place in that list for 1873? Yes.

43. Is it not the fact that the Polling Lists for 1873 and 1874 include precisely the same polling places? Yes.

44. Hospital Bay was first inserted in the Polling List for 1873, and continued in 1874? Yes.

45. And the polling places Oyster Cove, Dover (Port Esperance), and Southport continued to be polling places up to 10th April, 1873, as appears by the Polling List? Yes.

46. Is it not the fact that the Polling List of 1873, if acted upon, as proposed by the Petitioners, contains precisely the same polling places as mentioned in the Polling List for 1874? Precisely the same.

47. The Polling List for 1874 shows that Mr. John Surtees White, one of the Petitioners, would have voted at Hospital Bay if it had been used as printed? Yes.

48. And where would he have voted according to the Polling List of 1873 as printed? At Hospital Bay.

49. Mr. James Henry Walter,—would he have been in the same position? Yes.

50. And so with Mr. Isaac Brown, and Philip Markham? Yes.

51. Michael Mackey, James Short, Martin Fitzpatrick, James Thomas, William Smith, Wm. Thorp, junior, John Thorp, senior, Robert Bell, James Lucas, Charles Oates, and Samuel Page,—were the polling places of all those voters the same in 1873 and 1874, so that if they had gone back to the Polling List of 1873, as they wish, they would have found themselves required to vote at the very places which they contend are illegal? Yes.

52. If they had, as they wished, resorted to the Polling List of 1873, could they have voted at Oyster Cove, Dover (Port Esperance), Southport, or Hospital Bay? No.

53. Do you know if any of those Petitioners, except Mr. John Surtees White, who did not vote at the election? All the petitioners except Mr. John Surtees White did vote.

54. And is it not the fact that Mr. White did not tender his vote? Yes, he did not.

55. You spoke of one voter who did not come from Port Esperance? That was Mr. Drysdale, who sent word by one of the voters who did come up that he was too ill to come.

56. And you spoke of one voter, I think, who asked whether he could not vote at some more convenient Polling-place? I said then that there were no complaints, but that Mr. Hill, after receiving the notice, made a suggestion that I might as well have appointed Franklin for the Polling-place of those at Hospital Bay. It was in general conversation with him I explained my reasons for appointing Hobart Town as a Polling-place.

57. If I understand you rightly, the action you took in appointing Polling-places for the various voters who, according to the Polling List for 1874, would have come under the various Polling-places, Oyster Cove, Port Esperance, Southport, and Hospital Bay, was the course pointed out by the last clause of Section 14 of the Electoral Act, No. 4? It is so.

58. In fact you treated the names of those voters as being omitted from the Polling List? I did.

59. *Mr. Graves.*—Each candidate polled an equal number of votes? Yes, in the whole.

60. And did not the election turn on your casting vote? It did.

MR. HILL called in and sworn.

61. *The Chairman.*—Your name is Richard Hill? Yes.

62. Were you Chairman of the Court of Revision for the Electoral District of Huon in 1873 and 1874? I was.

63. Will you look at this Roll for 1873? Is that the Electoral Roll for Huon which was revised when you were Chairman of the Revision Court? It is.

64. Is that the similar Roll for 1874? It is.

65. Is this the Polling List for 1873? Yes; it was passed in 1871.

66. These purport to be the Polling Lists for the District of Huon, commencing the 11th day of April, 1873, and 11th day of April, 1874; are they the Polling Lists as settled by the Revision Court? They are.

67. Was the Roll for 1874 revised in the usual course according to law? Yes.

68. Were you aware at that time that Oyster Cove, *Ferry Inn* (Ironstone Creek), Dover (Port Esperance), and Southport were not Polling-places? I was not aware at that time.

69. Did you know that new Polling-places had been proclaimed in the *Gazette* of November, 1872? I did not: the first intimation I had of it was the circular from the Returning Officer published in the newspaper, when the writ for the last election was published.

70. When the Electoral Roll for 1874 was revised when you were Chairman, were you under the belief that it was revised in accordance with the Law, and that it was complete? I was.

71. Did you think that the Polling Lists were also complete? I believed so.

72. Did the Returning Officer appoint a place for you to poll at in the last election? Not in his circular. I had a written notice from him that I was to record my vote, but it did not say where.

73. Was it the duty of any one to point out to the Revision Court that the Polling-places had been reduced in number? Yes; I considered it the duty of the Returning Officer to point out where the Polling-places were.

74. You took it for granted I suppose that the Polling-places had not been reduced? I believed that there had been no addition to the Polling-places of Hospital Bay. The Returning Officer was my informant as regarded 1873, and in 1874 the Roll was laid before us without any remarks as to its incorrectness.

75. You assumed I suppose that the Returning Officer placed the Roll before you as correct? Yes.

76. You did vote? Yes, I received a notice which did not specify where I was to vote. The Returning Officer told me I could not vote at the Franklin, but must go to Hobart Town, and he then inserted Hobart Town in the notice. I came accordingly to Hobart Town.

77. *Mr. Kennerley.*—I want to know whether you are positive whether it is the duty of the Returning Officer to prepare the Polling Lists, and to lay them before the Revision Court? I believe it is not the duty of the Returning Officer to do so. The Polling Lists then existing were laid before the Court by the Returning Officer.

78. I want now to ascertain whose duty it was, and who prepared the Polling List for 1874? The Deputy Clerk of the Peace prepares the Polling List from the Electoral Roll adopted by the Revision Court.

79. Do you hold the Returning Officer responsible for any errors, if they exist, in the Polling List? In my opinion he is responsible, because the Court acted under the advice of the Returning Officer, the Justices not having received the *Gazette*.

80. *Chairman.*—Where was the Revision Court held? At Franklin Police Office.

81. Was the *Gazette* filed at the Police Office, Franklin? It was.

82. Did you refer to the *Gazette*? I did not; I did not think it necessary. I expected the Returning Officer to give the necessary information.

83. *Mr. Kennerley.*—Was it during the sitting of the Revision Court that the Returning Officer gave this information, or was it at some other time? It was during the sitting of the Court; and the Court acted on the information, and appointed Hospital Bay as a Polling-place.

84. Did the Returning Officer name any other Polling-places or only Hospital Bay? I only remember Hospital Bay.

85. *Chairman.*—How many Members composed the Court of Revision? Not less than three.

86. Can you remember who the Members of the Revision Court were in 1873? Mr. Kellaway, Mr. Andrewartha, Mr. Whiting, Mr. O'Reilly, and myself. I am not quite sure about Mr. Whiting.

87. Who composed the Court in 1874 besides yourself? Mr. Kellaway and Mr. Whiting; I think Mr. O'Reilly and Mr. Andrewartha were absent.

88. *Mr. Graves.*—You have seen the Polling List for 1874? I have.

89. Are you, as Chairman of the Court of Revision, acquainted with the provisions of the Electoral Act, No. 4, particularly with the 14th Section? I am.

90. In making out that Polling List, did your Court add the names of Philip Markham, Isaac Brown, Osborne Geeves, J. S. White, G. H. Walter, and Richard Hill as electors to vote at Hobart Town? It did not.

91. Then those additions must have made to the Polling List after it left the Revision Court? As far as ordering them to vote at Hobart Town instead of Hospital Bay.

92. *By Mr. Adams.*—You don't mean the Committee to understand, do you, that any names were added to the Polling List for 1874, after the holding of the Court of Revision? No: not that I am aware of. They were transferred to the Hobart Town portion of the Polling List without the sanction of the Revision Court.

93. Numerically the list of voters is the same, is it not? I believe so.

94. And nominally too—that is, the names are the same? I believe so.

95. Will you tell me now about this Hospital Bay? Hospital Bay was first inserted in the Polling List for 1873? Yes.

96. And the error was continued in the Polling List for 1874? It was.

97. Is it not the fact that Hospital Bay was suggested as a Polling-place for the Legislative Council by yourself? It was: and the suggestion was concurred in by the Court, for the convenience of the electors in that neighbourhood.

98. And at the Revision Courts held in 1873 and 1874, the Court was unaware that the Governor in Council had not consented to Hospital Bay being a Polling Place? We were not aware.

99. And you say that the Court recognised Hospital Bay on the direction of the Returning Officer? Yes: the Returning Officer informed the Revision Court that Hospital Bay had been appointed a Polling Place, and it was inserted accordingly. This was in 1873.

100. Are you quite certain in making that statement that Mr. Walpole, the Returning Officer, had told you that Hospital Bay had been appointed a Polling Place? Yes.

101. Was it not as much for the Court of Revision as for the Returning Officer to obtain the nomination of Polling Places? I was not aware that it was. I believed that it was the Returning Officer's duty to communicate with the Government for the purpose.

102. Then in fact, what the Court of Revision did, was simply to act on a piece of information volunteered by Mr. Walpole? Yes.

103. You, as one of the Court of Revision, were instrumental in having Isaac Markham, Philip Brown, and Henry Walter transferred from the Port Cygnet Polling Place to Hospital Bay? No: Henry Walter was the only one transferred from Port Cygnet to Hospital Bay; Isaac Brown was transferred from Franklin; Henry Markham was placed for the first time on the list, to the best of my recollection.

104. Was not Hospital Bay a more distant Polling-place for Henry Walter than Port Cygnet? No: Hospital Bay was nearer. Hospital Bay was where he went for his letters, as being nearer and more convenient for him.

105. More convenient for him on that ground: but was not Port Cygnet nearer for him than Hospital Bay? No: it would be nearer for him to go to Hospital Bay, on account of having to go by boat.

106. When it was originally suggested that Hospital Bay should be a Polling Place, were there not only three Voters assigned to that place? Hospital Bay was suggested as a Polling Place on account of the 16 or more voters for the House of Assembly.

107. But do you tell us it was not contemplated that Hospital Bay should be a Polling Place for the Legislative Council? Hospital Bay would be a Polling Place for the Upper and Lower House according to the existing Polling List.

108. Then how many of the voters lived in the immediate vicinity of Hospital Bay? Two on the Hospital Bay side of the river, two on the opposite side of the river, and one at Surges Bay, five miles from Hospital Bay.

109. Who were the two living at Hospital Bay? Mr. Geeves and myself.

110. And wasn't it for the convenience of yourself and Mr. Geeves that Hospital Bay was proposed as a polling-place for the Legislative Council? Not at all: it was done out of consideration for the convenience of some thirty voters for the House of Assembly.

111. Do you know as a fact that the polling-places for the Council and Assembly were the same up to 1873? I believe they were.

112. Then the Court of Revision assumed that if Hospital Bay were made a polling place for the House of Assembly, it would also be a polling-place for the Legislative Council? Yes.

[Mr. Adams refers to the polling-places in the Electoral Act, 21 Vict. No. 32.]

113. For the Huon I see there are nine polling-places; for Franklin, three. From this it appears that the polling-places were not identical? You will see that in the Polling List for 1871-2 they were identical—for Franklin and Kingborough.

MR. WHITE *called in and sworn.*

114. *Mr. Graves.*—Your name is John Surtees White, and you are a Barrister-at-Law residing at Surges Bay, a little below Hospital Bay? I am.

115. Are you an elector for the District of Huon on the Roll and Polling List for 1874? I am.

116. How long have you been an elector? Several years, perhaps 12 or 15; I cannot state positively.

117. Where have you voted during that time? Hitherto at Franklin.

118. Did you before the late election receive a document from the Returning Officer? I did.—
[Produced: dated 9th July 1874, marked 13.]

119. Were you aware before you received that notice there was no polling-place fixed to receive your vote? I believed that Hospital Bay was my proper polling-place because it was on the list.

120. *The Chairman.*—Had you ever polled at Hospital Bay before? Never.

121. *Mr. Graves.*—Did you go to Hobart Town to vote, as requested by that notice? I did not.

122. Why not? When I heard that Hobart Town was appointed as my polling-place I felt very much annoyed at having Hobart Town assigned to me as a polling-place, for I considered it was quite illegal.

123. Did you draw up the requisition inviting Mr. Evans to come forward as a candidate? I did.

124. And signed it as one of the requisitionists? Yes.

125. Was there any other reason for your not polling your vote at Hobart Town than your idea of the illegality of the Polling List? There was. Owing to a severe accident received by my brother, I did not feel justified in leaving him for so long a time as four days or thereabouts, which would be required to perform the journey to Hobart Town and back.

126. If Hospital Bay was not, in your opinion, your legal polling-place, which place was? Franklin, I suppose.

127. *The Chairman.*—Did you tender your vote at Franklin? I did not. If my polling-place had been at Franklin, Hospital Bay, Port Cygnet, or Port Esperance, I could have returned the same day, or at least in a day and a quarter.

128. *By Mr. Adams.*—You are well acquainted with the preparation of the Polling Lists? Yes; I was Returning Officer at Franklin for some years.

129. Why then, if you considered that Hobart Town was illegally, as you say, appointed your polling-place, did you not go and tender your vote at Franklin? I regretted, when it was too late, that I did not do so, although I knew that it would be rejected.

130. How do you know that it would have been rejected? Because the Returning Officer had no authority to receive my vote; and because I considered that, legally or illegally, Hobart Town was my Polling Place.

131. You and your brother, I think, are living together? Had you any person to take care of your house when you were absent? Some persons volunteered to come, but I was afraid to leave because I apprehended serious consequences to my brother if he were left in the care of strangers,—apprehending mortification, from the appearance of the wound.

132. And would not the same motives have induced you to abstain from going to Franklin? I could have gone to Franklin, as I should have been absent only a day and a quarter.

133. Do you say it would have taken you four days, or thereabouts, to have gone to Hobart Town and back? It would.

134. Was a boat offered to you to take you to Hobart Town? It was offered to take me to Franklin on my way to Hobart Town by coach.

135. *The Chairman.*—What time does the coach leave Franklin for Hobart Town? I think at half-past eight in the morning.

TUESDAY, AUGUST 11, 1874.

MR. ADAMS *called in and further examined.*

Mr. Graves.—136. Please refer to the Polling Lists for 1873 and 1874. Do not both those lists bear your signature as Clerk of the Peace of this Colony? They do.

137. For what purpose did you sign them as such Clerk of the Peace? Because I am required to do so by law.

138. You signed them as what? Does your signature intend to testify that those were correct Polling Lists or otherwise? It does not. It does prove that they are true copies of the Polling Lists as sent to me.

139. You are aware of the Government Notice, No. 138, of the 25th November, 1872, published in the Government *Gazette* of 26th November, 1872? I am aware of it.

140. And you are aware that the Governor in that notice names Franklin, Victoria, Hobart Town, Kingston, Barnes' Bay, Lovett, and Three Hut Point as the Polling Places for the Council District of the Huon? I am.

141. Looking again at the lists you produce, do you find that they include other Polling Places besides those mentioned in the notice of the 25th November? They do, both of them.

142. Then I ask you, as Clerk of the Peace, whether in your opinion that is a correct and perfect Polling List according to Law? I decline to give an opinion.

MR. POGUE *called in and sworn.*

Mr. Graves.—143. Your name is what? Andrew George Pogue.

144. You were Deputy Returning Officer at Hobart Town for the late Election for the Huon? I was.

145. Is the paper you hold in your hand a copy of the Polling List which was placed under your charge on that occasion? Yes.

146. Do you see that it is obliterated or mutilated in any way? I see that some polling places are struck out by the pen—Oyster Cove, Port Esperance, Southport, and Hospital Bay.

147. These you say are struck out by the pen from the original printing? Yes.

148. Did you poll at Hobart Town any voters who should have voted elsewhere according to the printed list? Yes.

149. Why? Because I was instructed to do so by the Returning Officer.

150. In writing, or how? I first got his instructions verbally, but two out of four who voted with me produced written notices. [Two produced, addressed to Mr. Philip Markham, Surges Bay, and J. H. Walter, Esq., Wattle Grove, and dated 9th July, 1874. Marked 14 and 15.]

151. Did the effect of those notices, and the pen and ink obliterations in the Polling List, alter the original conditions or form of that list as to the places of voting of the electors? Yes.

MR. KIRWAN *called in and sworn.*

Mr. Graves.—152. Your name is John Woodhouse Kirwan? It is.

153. You were Deputy Returning Officer at Kingston at the late Election for the Huon? I was.

154. Did you receive the votes of electors residing at Peppermint Bay and Oyster Cove? I did: I received three votes.

156. According to the printed Polling List, ought they to have polled at Kingston? Certainly not, according to the Polling List which was put into my hands by the Returning Officer.

157. Then why did you take their votes? Under instructions from the Returning Officer, who struck out with pen and ink from the list the words Oyster Cove, and I was desired to take those votes at Kingston.

158. How long have you acted as Deputy Returning Officer at Elections in this Colony? I should think about 16 years, both in Hobart Town and the country.

159. Did you ever before receive votes at any Polling Place other than that printed on the Polling List? On no previous occasion.

Mr. Adams.—160. It never happened in your experience that a Polling List included Polling Places that had not been appointed as such? I do not think the occasion ever arose.

161. You have been Returning Officer as well as Deputy Returning Officer? I have.

MR. TOBY *called in and sworn.*

Mr. Adams.—162. Your name is Charles Toby, and you live in Elizabeth-street? Yes.

163. Were you present at the *Derwent Hotel* in company with Mr. Walpole and Mr. Evans, one of the late Candidates at the Huon Election? I was.

164. Was that a short while or a few evenings before the Election took place? It was a few evenings before.

165. Did a conversation take place between Mr. Walpole and Mr. Evans—

[Objection being taken by Mr. Graves to the question, witness and counsel retire, and Committee deliberate. Being re-admitted, Chairman states that conversations cannot be received as evidence.]

WEDNESDAY, AUGUST 12, 1874.

MR. SOLLY *called in and sworn.*

166. You produce the opinion of the Attorney-General in regard to the Huon Election? I produce the opinion, and the case on which it was founded. [Marked 16 and 17.]

APPENDIX.

*To the Honorable the President and the Honorable the Members of the
Legislative Council, in Parliament assembled.*

The humble Petition of the undersigned Electors of the Electoral District of Huon.

RESPECTFULLY SHOWETH :

THAT your Petitioners, whose names are inserted on the Electoral Roll for the present year for the Council District of Huon, and duly qualified to vote at the Election, held on the 16th day of July instant, of a fit and proper person to serve as a Member of your Honorable House for the said Electoral District, desire to respectfully bring under the consideration of your Honorable House certain illegal proceedings in connection with the said Election adopted and taken by the Returning Officer of the said District, by which one or more of the duly qualified Electors of the said District were debarred from recording their votes at the said Election, and by which the provisions of "The Electoral Act" in the matter have been wilfully violated and the prescribed mode of Election illegally set aside.

To sustain these statements, your Petitioners respectfully beg to state that the Polling List for the present year for the said Electoral District was not perfected at the time of the said Election, and that its imperfect state was known to the said Returning Officer at the time and prior to the said Election, and that the said Returning Officer did not take the legal remedy in that case made and provided in "The Electoral Act."

That the Polling List for the said Electoral District was imperfect from the facts that it contained the name of Hospital Bay as a Polling-place, which had not been sanctioned by the Governor in Council, and also the names of Oyster Cove, Dover (Port Esperance), and Southport, which are not included amongst the Polling-places in the *Gazette* notification of the twenty-fifth of November, 1872.

That in such case the legal remedy for these defects is plainly set forth in "The Electoral Act, No. 4," sect. 14, wherein it is provided, "That if in any year the Polling List is omitted to be regularly made out, or is not perfected, then the Polling List for the preceding year shall, so far as the same can be applied, be the Polling List of such District for that year."

That, notwithstanding this legal and clearly defined course, the said Returning Officer did, by a certain instrument in writing under his hand, and within a few days of the said Election, illegally appoint places at which fifteen of the Electors, named in the margin hereof*, should vote contrary to and in violation of the 32nd Section of "The Electoral Act, No. 32;" which sets forth "that the Court of Revision shall, if there are more Polling-places than one in the District, write opposite to the name of each Elector entitled to be upon the Roll the Polling-place at which such Elector shall vote, and such Elector shall not be entitled to vote at any other Polling-place than that which is so assigned him by the Court of Revision."

That your Petitioners therefore respectfully protest against the Election of James Thomas Robertson to serve as a Member of your Honorable House for the Electoral District of the Huon, and pray that the said Election may be declared absolutely void.

That your Petitioners also humbly pray that your Honorable House will refer this Petition to the Committee of Elections and Qualifications, and that all papers and documents relating thereto may be produced.

And your Petitioners, as in duty bound, will ever pray, &c.

John Surtees White, Surges Bay.
James Henry Walter, Wattle Grove, Port Cygnet.
Isaac Brown, Glazier's Bay.
Philip Markham, ditto.
Michael Mackey, ditto.
James Short, Victoria.
Martin Fitzpatrick, Port Cygnet.
James Thomas, Franklin.

Wm. Smith, Nichols Rivulet.
William Thorp, Junior, Franklin.
John Thorp, Senior, Port Cygnet.
Robert Bell, Franklin.
James Lucas, Brown's River.
Charles Oates, Mountain River.
Samuel Page, Victoria.

Hobart Town, 21st July, 1874.

*Names of Electors removed from their original Polling-places :—Joseph Budge, John Firth, George Flukes, James Flight, George Miles, W. H. Andrewartha, John Hay, Junior, Walter Drysdale, John Kennedy, Isaac Brown, Osborne Geeves, Richard Hill, Philip Markham, John Surtees White, J. H. Walters.

*To the Honorable the Chairman of the Committee of Elections and Qualifications
of the Legislative Council.*

Franklin, Huon, 5th August, 1874.

WE, the undersigned, whose signatures are affixed to the Petition now before the Committee of Elections and Qualifications of the Legislative Council, hereby authorise and appoint Mr. R. J. Edwards to act as our Parliamentary Agent in the said matter, and to represent us the said Petitioners before the said Committee to assist and advise J. W. Graves, Esq.

William Thorp, junr.
John Thorp, senr.
Martin Fitzpatrick.
James Thomas.

Isaac Brown.
James Henry Walter.
Robert Bell.

John Surtees White.
Philip Markham.
Michael Mackay.

(8.)

Franklin, 24th June, 1874.

SIR,

IN accordance with a request contained in your Circular, bearing date 25th October, 1872, requesting information and suggestions as to the situation and number of Polling-places for the Electoral Districts of Huon and Franklin, I suggested in my reply of the 31st October, 1872,* that in the case of the Huon District a Polling-place should be established at Hospital Bay, in addition to those already in existence; and at the last revision of the Electoral Rolls the Polling Lists were prepared in accordance therewith, the lists now showing the Polling-places to be as under; viz.—

Kingston, Oyster Cove, Barnes' Bay, Three Hut Point, Lovett, Port Cygnet, Victoria, Franklin, Dover (Port Esperance), Southport, Hobart Town, and Hospital Bay.

I find, however, on reference to Government Notice, No. 138, 25 Nov. 1872, that four of the Polling-places,—viz. Dover (Port Esperance), Oyster Cove, Southport, and Hospital Bay,—have been omitted; and as the omission will be a source of hardship and inconvenience to the Electors in those localities at the approaching Election, in the event of a contest, I have the honor to request authority for the addition of the four Polling-places mentioned above, to the notices.

I have, &c.,

E. A. WALPOLE, *Returning Officer.*

The Honorable the Colonial Secretary.

* *Vide also Returning Officer's letter of 12 Aug. 1874.*

(9.)

Colonial Secretary's Office, 25th June, 1874.

SIR,

I HAVE the honor to acknowledge the receipt of your letter of the 24th instant, requesting authority for the addition of four Polling-places in the District of Huon; namely,—Oyster Cove, Dover (Port Esperance), Southport, and Hospital Bay,—which were discontinued as Polling-places in November, 1872, as appears by the *Gazette* Notice, No. 138, of the 25th of that month.

In reply I have to point out to you that by the 4th Section of "The Electoral Act," 21 Vict. No. 32, every alteration in the Polling-places for any District must be "made and notification thereof be given in the *Gazette* in sufficient time to enable the Court of Revision to assign to each Elector his proper Polling-place."

It is not, therefore, in my power to comply with your request; and I can only express my regret that any of the Electors should have been disfranchised by the Court of Revision having assigned them Polling-places which had been long previously discontinued.

I have the honor to be,
Sir,

Your obedient Servant,

THOS. D. CHAPMAN.

E. A. WALPOLE, *Esq., Returning Officer Electoral
District of Huon, Franklin.*

(10.)

Franklin, 29th June, 1874.

SIR,

I HAVE the honor again to refer to the very unfortunate oversight or error of the Revision Court affecting the Electoral Roll of Huon, and to ask if any possible means can be legally adopted to prevent the disfranchisement of sixteen Electors at the ensuing Election in the event of there being a contest.

The 32nd of Act No. 32 sets forth that the Court of Revision *shall*, if there be more Polling-places than one for the District, write opposite, &c. the Polling-places, &c. I presume, therefore, that the said

Court of Revision in having assigned non-existing Polling-places have, in effect, not assigned Polling-places at all for the Electors in question to vote at. In such case, I would ask whether the same Justices composing the erring Court could not now be called to comply with the provisions of the Act by affixing real Polling-places opposite the names of those Electors alluded to? But the difficulty would be obviated at once, I think you will perceive, by the Governor in Council gazetting the Polling-places not now in existence, but pointed out by the Revision Court, which would legalise the act of the Justices.

On reference to Clause 14 of "Electoral Act, No. 4," it seems that the Returning Officer *shall* supply the omission of a name or names in the Polling List where such name appears on the Electoral Roll of the current year; and the Revising Justices having omitted certain names, I shall be glad to be informed that if I act in accordance with the 14th Section, will there be a possibility of the Election being vitiated in the event of any person taking exception to my act?

I have the honor, &c.

The Hon. the Colonial Secretary,

(Signed) E. A. WALPOLE.

A true Copy—E. A. WALPOLE.

(11.)

Colonial Secretary's Office, 1 July, 1874.

SIR,

I HAVE the honor, by direction of the Colonial Secretary, to acknowledge the receipt of your letter of the 29th ultimo, received this afternoon, upon the subject of the errors into which the Court of Revision have unfortunately fallen with regard to the Polling-places for the District of the Huon.

The Colonial Secretary has obtained the opinion of the Honorable the Attorney-General upon the question; but in lieu of forwarding it he suggests that you should come to town and see him in his Office on Monday next, when the subject can be discussed more fully and conveniently than by letter.

I have the honor to be,
Sir,

Your obedient Servant,

E. A. WALPOLE, *Esq., Returning Officer for the Electoral District of Huon, Franklin.*

B. TRAVERS SOLLY.

(12.)

NOTICE.

THERE being no Polling-place fixed by law at Hospital Bay, you are requested to record your vote at the ensuing Election at Hobart Town.

E. A. WALPOLE, *Returning Officer for Electoral District of Huon.*

To

[Similar Notices respecting Oyster Cove, Dover (Port Esperance), and Southport.]

(13.)

NOTICE.

CIRCULAR.

Franklin, 9th July, 1874.

THERE not being a Polling-place fixed by law at Hospital Bay, you are hereby required to record your vote at Hobart Town at the next ensuing Election for the return of a Member for Huon.

E. A. WALPOLE, *Returning Officer, Huon, E.D.*

JOHN SURTEES WHITE, *Esq., Surges Bay.*

(14.)

NOTICE.

CIRCULAR.

Franklin, 9th July, 1874.

THERE not being a Polling-place fixed by law at Hospital Bay, you are hereby required to record your vote at Hobart Town at the ensuing Election of a Member for Huon.

E. A. WALPOLE, *Returning Officer, Huon, E.D.*

MR. PHILIP MARKHAM, *Glazier's Bay.*

(15.)

NOTICE.

CIRCULAR.

Franklin, 9th July, 1874.

THERE not being a Polling-place fixed by law at Hospital Bay, you are hereby required to record your vote at Hobart Town at the ensuing Election of a Member for Huon.

E. A. WALPOLE, *Returning Officer, Huon, E.D.*J. H. WALTERS, *Esq., Wattle Grove.*

(16.)

WITH reference to the question as to the Polling List for the Huon District, I think the 4th Section of "The Electoral Act," (21 Vict. No. 32) is quite clear,—that it is now too late to attempt to *Gazette* Hospital Bay, &c. as Polling-places.

By the 32nd Section of the same Act it is provided that each Elector is to have his place of polling assigned by the Court of Revision, "and such Elector shall not be entitled to vote at any other Polling-place than that which is so assigned to him by the Court of Revision:" and, although by "The Electoral Act," No. 4, (34 Vict. No. 12), s. 14, provision is made for the case of an Elector whose "name" has been "omitted from" any Polling List, it does not appear to me to provide in terms for the present case. In my judgment, therefore, the Electors assigned to poll at Oyster Cove, Port Esperance, Southport, and Hospital Bay, are disfranchised.

The Returning Officer, however, is not bound by my opinion; and if he considers that the case comes within the 14th Section of the Act just quoted, he would be at liberty to determine where such persons should vote, as, being on the Electoral Roll, have, nevertheless, no legal Polling-place assigned them. Should Mr. Walpole be of that opinion, it would be, perhaps, prudent to give notice beforehand that the sixteen Electors affected might tender their votes at the Franklin, or wherever he himself presides; so that in the event of a contest all parties might stand upon an equal footing, and, if possible, none might lose the opportunity of using their franchise through the mistake of the Court of Revision.

W. R. GIBLIN.
29th June, 1874.

(17.)

MEMO.

THE opinion of the Law Officers of the Crown is requested upon the following case:—

In November, 1872, the Governor in Council issued a Notice appointing Polling-places in each Electoral District. (See Government Notice, No. 138, of the 25th November, 1872.)

By that Notice certain pre-existing Polling-places in the Electoral District of Huon were discontinued; namely, Oyster Cove, Dover (Port Esperance), and Southport.

In a letter dated the 31st October, 1872, the Returning Officer suggested that a Polling-place should be established at Hospital Bay; but the Government not concurring, it was not included in the list of Polling-places gazetted on the 25th November.

It appears, however, that in revising the Roll in 1873, and again in 1874, the Court of Revision, ignoring the altered list of Polling-places as specified in the above-mentioned *Gazette*, assigned to certain Electors the Polling-places that had been discontinued as well as the one that had not been established, as the places whereat they were to record their votes.

The question now arises, whether the law provides any remedy for the errors into which the Court of Revision appears to have fallen, so as to avoid the disfranchisement of the said Electors at the forthcoming Election.

The Colonial Secretary encloses the Returning Officer's letter upon the subject under date the 24th instant, and his reply.

THOS. D. CHAPMAN.
Colonial Secretary's Office, 27th June, 1874.

The Honorable the Attorney-General.