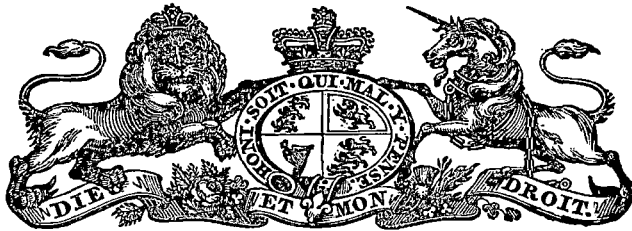


(No. 24.)



1877.

SESSION III.

T A S M A N I A.

HOUSE OF ASSEMBLY.

M O R V E N.

PETITION AGAINST MR. WHITEHEAD'S ELECTION BY
MR. J. M. DOOLEY, *M.H.A.*

Presented by Mr. Dooley, 18 July, 1877, and referred by the House to the
Committee of Elections and Qualifications: ordered by the House to be printed,
24 July, 1877.



*To the Honorable the Speaker and the Honorable the Members of the House of
Assembly, Tasmania, in Parliament assembled.*

The humble Petition of James Monaghan Dooley, of Latrobe, in Tasmania, M.H.A.

RESPECTFULLY SHOWETH:

THAT he is informed and believes that David Collins, Esquire, at the late General Election was nominated as a Candidate to serve as a Member for the Electoral District of Morven in the House of Assembly of Tasmania.

That the said nomination paper of the said David Collins, Esquire, was duly sent to the Returning Officer of the said Electoral District, but that the said Returning Officer refused to entertain the same, although the said nomination paper of the said David Collins, Esquire, was in accordance with the provisions of the Electoral Act. That the said Returning Officer afterwards declared John Whitehead, Esquire, the only other Candidate nominated, to be duly elected as the Member for the Electoral District of Morven.

Your Petitioner therefore humbly prays that your Honorable House will refer this Petition to the Committee of Elections and Qualifications; and that all papers and documents relative thereto may be produced; and that upon the grounds above stated the said Election of the said John Whitehead, Esquire, may be declared null and void.

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

J. M. DOOLEY, M.H.A.

Dated this 18th day of July, 1877.

[In continuation of Paper No. 24, presented 18th July, 1877.]

REPORT from the Select Committee of ELECTIONS AND QUALIFICATIONS, upon the Petition of JAMES MONAGHAN DOOLEY, Esquire, against the return of JOHN WHITEHEAD, Esquire, with Minutes of the Proceedings of the Committee, and Evidence.

[Brought up by Mr. Douglas, 7th August, 1877, and ordered by the House of Assembly to be printed.]

MEMBERS OF THE COMMITTEE.

MR. DOUGLAS.	MR. PILLINGER.
MR. HODGSON.	MR. BALFE.
MR. BELBIN.	

DAY OF MEETING.

7 August, 1877.

WITNESSES EXAMINED.

RODDAM HULKE DOUGLAS, Esquire, Returning Officer.

Costs of Petitioner assessed at £19 12s. 10d.

EXTRACT from the Votes and Proceedings of the House of Assembly, No. 4, 18th July, 1877.

5. Mr. Dooley presented a Petition, signed by himself as a Member of this House, against the Election of J. Whitehead, Esq., as a Member for Morven.

Which being read, was referred, in accordance with "The Electoral Act," to the Committee of Elections and Qualifications.

R E P O R T.

THE Committee of Elections and Qualifications duly appointed under the provisions of "The Electoral Act," to whom was referred on the 18th July, 1877, the Petition of James Monaghan Dooley, Esquire, against the Return of John Whitehead, Esquire, as a Member for the Electoral District of Morven, have determined and do hereby declare:—

1. That John Whitehead, Esquire, was, on the 31st day of May, 1877, duly elected a Member of the House of Assembly for the Electoral District of Morven.

2. That the Evidence before your Committee discloses that the Election was in accordance with "The Electoral Act."

3. That the Committee adjudge that the Petitioner shall pay the costs of the sitting Member in opposing the said Petition, which they assess at £19 12s. 10d.

ADYE DOUGLAS, *Chairman.*

Committee Room, 7th August, 1877.

MINUTES OF MEETING OF THE COMMITTEE.

TUESDAY, 7 AUGUST, 1877.

Present.—Mr. Douglas, Mr. Hodgson, Mr. Belbin, Mr. Pillinger, Mr. Balfe.

The Committee met at 11 o'clock.

The Clerk read the Petition.

1. Mr. Giblin appeared for the sitting Member.

Mr. Dooley said he had employed Counsel, who was not yet present.

The hearing of the case was deferred for a time, to allow Mr. Dooley to obtain Counsel.

2. Then Mr. Dooley, in absence of Counsel, stated his case as in the Petition; and called Mr. R. H. Douglas, Returning Officer for Morven.

3. Mr. R. H. Douglas appeared, and claimed his reasonable expenses under Section 127 of "The Electoral Act," before giving evidence.

4. Mr. Dooley declined to tender the witness's expenses, and expressed a wish to withdraw the Petition.

5. The Committee deliberated, with closed doors, on Mr. Dooley's request and refusal. On resumption—

6. The Chairman asked Mr. R. H. Douglas if he declined to give his evidence until his expenses were tendered to him?

Mr. Douglas said his own conduct was impugned by the Petitioner; and therefore he should give his evidence before the Committee, and trust to the Electoral Law with regard to the recovery of his reasonable expenses.

7. Mr. R. H. Douglas was then examined by Mr. Dooley.

8. Mr. Giblin cross-examined Mr. Douglas.

The Committee adjourned at 1 to 2:30.

9. The Committee met at 2:30.

10. Mr. Giblin addressed the Committee on behalf of Mr. Whitehead, and examined the Petitioner.

11. Mr. Dooley addressed the Committee.

12. The Committee deliberated with closed doors; and, on resumption, the Chairman declared the unanimous opinion of the Committee to be that the conduct of the Returning Officer, in refusing Mr. D. Collins's Nomination Paper, was strictly within the Electoral Law; and that, therefore, Mr. Whitehead was duly elected.

13. *Ordered*, That the decision of the Committee be embodied in a Report, to be brought up to-day to the House.

14. Mr. Giblin applied for Costs, which the Committee assessed at £19 12s. 10d.

Mr. Dooley stated that he desired to throw no odium on the conduct of the Returning Officer, Mr. R. H. Douglas.

The Committee adjourned *sine die*.

COMMITTEE OF ELECTIONS. DOOLEY *v.* WHITEHEAD.

DEAR SIR,

I HAVE been noticed by the Committee that this case is to be entertained on Tuesday next.

I therefore beg to inform you that I will, on that occasion, require you to produce the Writ, &c., the Nomination Papers of Messrs. Whitehead and Collins, together with the remarks and report thereon of the Returning Officer, which I presume are in your possession.

Should Mr. Collins's Nomination Paper not be in your possession, then it will be necessary that the Returning Officer should be requested to forward the same at his earliest convenience.

Your attention to the matter, so far as pertains to your office, will oblige,

Sir,

Your obedient Servant,

J. M. DOOLEY, *M.H.A.*
3rd August, 1877.

H. M. HULL, *Esq.*, Clerk House of Assembly.

WROTE to Returning Officer, 3rd August, 1877.—H.M.H.

To RODDAM H. DOUGLAS, *Esq.*, Returning Officer.

WE the undersigned, being electors of the Electoral District of Morven, do, by this writing under our hands, nominate David Collins, of High-street, Evandale, Merchant, as a Candidate for Election at the ensuing Election to serve in the House of Assembly of Tasmania as a Member for the said Electoral District.

Dated this thirty-first day of May, 1877.

William Mathewson, Breadalbane, freehold, cottage and shop, Breadalbane.—Wm. Mathewson.
Thomas Hardman, Everton, landholder, house and land, Everton.—Thomas Hardman.

In the terms of the 7th Section of the Act 26 Victoria, No. 14, I, David Collins, of Evandale, Merchant, do hereby declare that I consent to become a Candidate at the Election, to be held on the fifth day of June now next ensuing, of a Member to serve in the Parliament of Tasmania for the Electoral District of Morven.

Dated this thirty-first day of May, 1877.

DAVID COLLINS.

EVIDENCE.

RODDAM HULKE DOUGLAS, *sworn and examined.*

By Mr. Dooley.—Your name? Roddam Hulke Douglas.

You were the Returning Officer on the occasion of the Election of Mr. Whitehead for Morven? Yes.

Did you, on that occasion, receive the Nomination Paper of any other person than Mr. Whitehead? I did.

Who was that person? David Collins.

Have you brought that Nomination Paper? I have.

Will you produce it? I will.

[Nomination Paper produced and read.]

That is the paper which you consider informal? It is.

Do you not know those gentlemen whose names are there as nominators? I know one William Mathewson; and I know one Thomas Hardman.

Are they qualified electors, whose names are on the Electoral Roll? Thomas Hardman is. The name on the Electoral Roll for Morven is Thomas Hardman, White Hills, house and land.

Are there two Thomas Hardmans? There is Thomas Hardman, junior, Everton, freehold estate, 157 acres, annual value £50.

Is that the Thomas Hardman whose name is signed on this Nomination Paper? The person whose name was Thomas Hardman is dead. There is a Thomas Hardman, Everton; and, if I had seen that, I should have taken it to mean Thomas Hardman, junior: but it said something very different from that; and I did not know the man.

Have you any objection to the other name, William Mathewson? There is a William Mathewson, Breadalbane, house, rated at £20 a year; but it is not there.

Do you know any other William Mathewson, Breadalbane? I cannot say I do.

May not that house be freehold? It may not, because I know it is not; but still it is not here. I look to the names and the nature of the qualification to be the same as on the roll. I have no right to think who a man is, or who a man is not.

Then you are of opinion, according to what you state, that this William Mathewson is entitled to vote, and is wrongly described? I can't tell you what he is entitled to or not. I am given this Roll; and, according to the Act, I am bound, as I read the 62nd Clause, to see that the names, places of abode, and qualifications are the same as on the Roll. I cannot read the clause in two ways.

Have you any doubt that it was another William Mathewson besides the man whose name appears on the roll? I can't tell you. If it had been William Mathewson, Breadalbane, house, I should have taken that name to be that of the man William Mathewson on the roll.

You do not suspect that it was any other man? I don't suspect at all. I am obliged to do what the Act says.

Then your objection to those names is, that they are not described precisely as on the Electoral Roll? Not precisely; they are a long way from it. The reason I refused them is, that there are no two names on this roll as described on that paper.

You did not find the description opposite the names on this paper correspond with the Electoral Roll? No.

That is the real objection? Yes; that is the simple and the true reason.

Had you any reason to think that the parties were the same, and that they had committed an error, or had not fulfilled the requirements of the Act? I did not think at all; I simply knew that the names were not according to the Act.

You remember the time when both the names were on the roll? Yes; they were both on the roll in 1877.

It was within your knowledge that Thomas Hardman was dead? I knew he was.

Then you must necessarily have been convinced that Thomas Hardman, junior, was the name of the man now on the paper? No; I don't think that must have convinced me.

Whose signature did you think it was? I knew it was not the old man's.

Had you any reason to doubt the young man's signature? It was not for me to think whether it was the young man's signature or the old man's. It is only for me to say whether the names are in compliance with this list.

Are you aware of any Clause in the Act which states that any informality in a Nomination Paper shall not vitiate an Election—the 133rd Clause? That does not apply in this case at all.

Suppose now that the question had been put to you, whether these are really the names on the roll or not, what would have been your answer? I don't think I am bound to state that.

You must have conscientiously formed some opinion on the matter? The conscientious opinion I formed was, that I had no two names properly brought before me.

I will put it another way. Can you say whether these two are the two men whose names appear on the roll or not? I believe that there is a William Mathewson and a Thomas Hardman.

Do you believe that those are the men who signed the Nomination Paper? They might have been the men who signed it.

Do you believe that they are not the persons on the roll? I have said before that all I had was simply to see whether the names were on the roll. I had never seen Mathewson's writing; nor do I think I had seen any writing of the other man's: so that it would have been difficult for me to tell.

By Mr. Giblin.—When the paper purporting to be a Nomination Paper of David Collins was placed before you, did you compare it with the roll then in force for the District of Morven? Yes; decidedly.

And the two persons purporting to have signed that paper did not state their respective residences and qualifications as described in the roll? They did not.

JAMES MONAGHAN DOOLEY, *sworn and examined.*

By Mr. Giblin. Your name is James Monaghan Dooley? Yes.

You are a Member of the House of Assembly, and the Petitioner in this case? Yes.

Are you an elector for the electorate of Morven? No.

Do you reside in it, or have you any property in the district? No.

Do you appear as Petitioner in this case on your own behalf or at the request of any other person? The Petition states all I have to say in that respect: my answer to that is here. I will read it to you:—"I was informed, and believed, that David Collins, Esquire, at the late General Election was nominated to serve as a Member for the Electoral District of Morven, in the House of Assembly of Tasmania."

That does not answer my question. The question I put to you was, whether you proceeded with this Petition on your own behalf, or whether you were requested to do so by anyone else? That is half my answer to your question: the next paragraph completes it. All my reasons are here. I was informed that such and such was the case; and I took it upon myself to present the Petition.

Then you presented it on your own behalf. Unquestionably.

Was it presented at the request of Mr. David Collins? Certainly not: not that I am aware of.

Was it at the request of electors of the District of Morven? I cannot state whether the parties are electors or not. No; nor of any other person.

You are an elector of West Devon? So I believe.

Were you one of the parties who attempted to nominate Mr. Meredith, some few months since, for election at West Devon? I think I was on the two last occasions.

On the occasion when Mr. Meredith accepted office? Yes.

That Nomination Paper was rejected as informal; I am speaking now of the Election which took place in July or August, 1876? I know that the Nomination Paper was rejected.

On the ground that it did not comply with the 62nd Section? Yes.

Did you petition against that? Certainly not.

By the Chairman.—Did you present the Petition on the ground of Thomas Hardman, junior, or in consequence of the other informality put before the Committee this day? Did you know, at the time you presented the Petition, of the informalities that have been put before us? I was told of the nature of the informalities; but further I did not know; one was the man Hardman. My informant said there were two Hardmans, but that one of them was dead; and that there was no other name Hardman on the paper. He did not think that, after the death of the old man, the Thomas Hardman who was living should have retained the "Junior."

Was not the reason of the presentation of the Petition that the word "Junior" was not inserted? That was one of the reasons: the other one was that the other man had not described himself as on the Electoral Roll.