Bradlaugh Charles

The True Story of my Parliamentary Struggle

Charles Bradlaugh

The True Story of my Parliamentary Struggle

http://www.litres.ru/pages/biblio_book/?art=23153139
The True Story of my Parliamentary Struggle:

Содержание

Bradlaugh Charles
The True Story of my Parliamentary Struggle

THE TRUE STORY OF MY PARLIAMENTARY STRUGGLE

So much misapprehension and misrepresentation prevails as to what has really taken place in the House of Commons with reference to my Parliamentary struggle, that I reprint the Report of the Second Select Committee and the Evidence taken before such Committee, together with my three speeches at the bar and the resolutions of the House: these together giving the actual facts.

Ordered, – [Tuesday, 25th May 1880]: – That Mr. Bradlaugh, the Member for Northampton, having claimed at the Table of this House to make an Affirmation or Declaration instead of the Oath prescribed by Law, founding his claim upon the terms of the Act 29 & 30 Vict. c. 19, and the Evidence Amendment Acts of 1869 and 1870, and stating that he had been permitted to affirm in Courts of Justice by virtue of the said Evidence Amendment Acts: And it having been referred to a Select

Committee to consider and report their opinion whether persons entitled, under the provisions of the Evidence Amendment Act, 1869, and the Evidence Amendment Act, 1870, to make a solemn Declaration instead of an Oath in Courts of Justice, may be admitted to make an Affirmation or Declaration instead of an Oath in this House, in pursuance of the Acts 29 & 30 Vict. c. 19, and 31 & 32 Vict. c. 72; And the said Committee having reported that in their opinion such persons cannot be admitted to make an Affirmation or Declaration, instead of an Oath in pursuance of the said Acts:

And Mr. Bradlaugh having since come to the Table of the House for the purpose of taking the Oath prescribed by the 29 & 30 Vict. c. 19, and the 31 & 32 Vict. c. 72, and objection having been made to his taking the said Oath, it be referred to a Select Committee to inquire into and consider the facts and circumstances under which Mr. Bradlaugh claims to have the Oath prescribed by the 29 & 30 Vict. c. 19, and 31 & 32 Vict. c. 72, administered to him in this House, and also as to the Law applicable to such claim under such circumstances, and as to the right and jurisdiction of this House to refuse to allow the said form of the Oath to be administered to him, and to report thereon to the House, together with their opinion thereon.

Ordered, – [Friday, 28th May 1880]: – That the Committee do consist of twenty-three Members.

Committee nominated of —

Mr. Whitbread.

Sir John Holker.
Mr. John Bright.
Lord Henry Lennox.
Mr. Massey.
Mr. Staveley Hill.
Sir Henry Jackson.
Mr. Attorney General.
Mr. Solicitor General.
Sir Gabriel Goldney.
Mr. Grantham.
Mr. Pemberton.
Mr. Watkin Williams.
Mr. Walpole.
Mr. Hopwood.
Mr. Beresford Hope.
Major Nolan.
Mr. Chaplin.
Mr. Serjeant Simon.
Mr. Secretary Childers.
Mr. Trevelyan.
Sir Richard Cross.
Mr. Gibson.

That the Committee have power to send for Persons, Papers, and Records.

That Five be the Quorum of the Committee.

REPORT

THE SELECT COMMITTEE appointed to inquire into and consider the facts and circumstances under which Mr. Bradlaugh claims to have the Oath prescribed by the 29 & 30 Vict., c. 19, and 31 and 32 Vict., c. 72, administered to him in this House; and also as to the Law applicable to such claim under such circumstances; and as to the right and jurisdiction of this House to refuse to allow the said form of the Oath to be administered to him; and to Report thereon to the House, together with their Opinion thereon: – Have agreed to the following REPORT: —

In pursuance of the terms of the reference to your Committee, they have inquired into and considered (1) the facts and circumstances under which Mr. Bradlaugh claims to have the oath prescribed by the Parliamentary Oaths Act, 1866, and the Promissory Oaths Act, 1868, administered to him in the House, (2) the Law applicable to such claim under such circumstances, and (3) the right and jurisdiction of the House to refuse to allow the form of the said Oath to be administered to him.

In order to carry out such inquiry and consideration, your Committee thought it right to examine Sir T. Erskine May as a witness before them. Mr. Bradlaugh applied to be permitted to make a statement to your Committee, and the application was granted. After such statement had been made by Mr.

Bradlaugh, he submitted himself for examination, and was examined by any Members of your Committee who desired to put questions to him. Under the circumstances appearing in the Evidence and in the Appendix to this Report, your Committee admitted in evidence a letter written by Mr. Bradlaugh to certain newspapers, dated 20th May, 1880. All the evidence taken by your Committee appears in the Appendix to this Report.

Facts of the Case

The facts and circumstances under which Mr. Bradlaugh claimed to take and subscribe the Oath are as follow: On Monday, the 3rd of May, Mr. Bradlaugh came to the Table of the House and claimed to be allowed to affirm, as a person for the time being by law permitted to make a solemn affirmation instead of taking an oath; and on being asked by the Clerk upon what grounds he claimed to make an affirmation, he said that he did so by virtue of the Evidence Amendment Acts, 1869 and 1870. Whereupon Mr. Speaker informed Mr. Bradlaugh, "that if he desired to address the House in explanation of his claim, he might be permitted to do so." In accordance with Mr. Speaker's intimation, Mr. Bradlaugh stated shortly that he relied on the Evidence Further Amendment Act, 1869, and the Evidence Amendment Act, 1870, adding, "I have repeatedly, for nine years past, made an affirmation in the highest courts of jurisdiction in this realm; I am ready to make such a declaration

or affirmation." Thereupon Mr. Speaker acquainted the House that Mr. Bradlaugh having made such claim, he did not consider himself justified in determining it; and having grave doubts on the construction of the Acts above stated, he desired to refer the matter to the judgment of the House. Thereupon a Select Committee was appointed to consider and report their opinion whether persons entitled, under the provisions of the Evidence Amendment Acts, 1869 and 1870, to make a solemn declaration instead of an oath in courts of justice, might be admitted to make an affirmation or declaration instead of an oath, in pursuance of the Acts 29 & 30 Vict. c. 19, and 31 & 32 Vict. c. 72; and on the 20th of May the Committee reported that, in their opinion, persons so entitled could not be admitted to make such affirmation or declaration instead of an oath in the House of Commons.

On the day after the receipt of this Report, Mr. Bradlaugh presented himself at the table of the House to take and subscribe the Oath; and was proceeding to do so, when Sir Henry Drummond Wolff, one of the Members for Portsmouth, objected thereto, and Mr. Bradlaugh having been ordered to withdraw, Sir H. D. Wolff moved, "That, in the opinion of the House, Mr. Bradlaugh, the Member for Northampton, ought not to be allowed to take the Oath which he then required to be administered to him, in consequence of his having previously claimed to make an affirmation or declaration instead of the Oath prescribed by law, founding his claim upon the terms of

the Act 29 & 30 Vict. c. 19, and the Evidence Amendment Acts of 1869 and 1870; and on the ground that under the provisions of those Acts the presiding judge at a trial has been satisfied that the taking of an oath would have no binding effects on his conscience." This Motion was superseded by an Amendment appointing your Committee.

The Law Applicable to Mr. Bradlaugh's Claim

Your Committee have been furnished by Sir T. Erskine May with a list of precedents which illustrate the jurisdiction and proceedings of the House in regard to the taking of Oaths. These precedents, and others which Mr. Bradlaugh placed before your Committee as bearing on the case, will be found in the Appendix to this Report. They may generally be divided into three classes: first, cases of refusal to take the Oath; secondly, claims to make an Affirmation, instead of taking the Oath; and, thirdly, claims to omit a portion of the Oath of Abjuration. Among them there is no precedent of any Member coming to the table to take and subscribe the Oath, who has not been allowed to do so, nor of any Member coming to the table and intimating expressly, or by necessary implication, that an oath would not, as an oath, be binding on his conscience. The present case is, therefore, one of first impression.

Now there is not only a *prima facie* right, but it is the duty of every Member who has been duly elected to take and subscribe

the Oath, or to affirm according to the Statute. No instance has been brought to the attention of your Committee in which any inquiry has been made into the moral, religious, or political opinion of the person who was desirous to take any Promissory Oath, or of any objection being made to his taking such Oath. It would be impossible to foresee the evils which might arise if a contrary practice were sanctioned. But the question remains whether, if a Member when about to take the Oath should voluntarily make statements as to the binding effect of the Oath on his conscience, it is not within the power of the House to take such statements into consideration, and determine whether such member would, if he went through the form of taking the Oath, be duly taking it within the provisions of the Statute. In the present instance, when Mr. Bradlaugh claimed under the Parliamentary Oaths Acts his right to affirm, and also stated that he had on several occasions been permitted in a Court of Justice to affirm, and had affirmed under the Evidence Amendment Acts, 1869 and 1870, he thereby in effect informed the House that on such occasions a judge of such court had been satisfied that an oath would have no binding effect upon his conscience. Your Committee did not think it right to accept this implication as conclusive without permitting Mr. Bradlaugh an opportunity of making a statement to, and giving evidence before, them. Nothing that has come before your Committee has affected or altered their views as to the effect of that which occurred when Mr. Bradlaugh claimed to affirm, as above stated.

As to the Right and Jurisdiction of the House

As to the right and jurisdiction of the House to refuse to allow the form of the Oath prescribed to be taken by duly elected Members to be taken by them, your Committee are of opinion that there is and must be an inherent power in the House to require that the law by which the proceedings of the House and of its Members in reference to the taking of the Parliamentary Oath is regulated, be duly observed. But this does not imply that there is any power in the House to interrogate any Member desirous to take the Oath of Allegiance upon any subject in connection with his religious belief, or as to the extent the Oath will bind his conscience; or that there is any power in the House to hear any evidence in relation to such matters.

And your Committee are of opinion that by and in making the claim to affirm, Mr. Bradlaugh voluntarily brought to the notice of the House that on several occasions he had been permitted in a Court of Justice to affirm, under the Evidence Amendment Acts, 1869 and 1870, in order to enable him to do which a Judge of the Court must have been satisfied that an Oath was not binding upon Mr. Bradlaugh's conscience; and, as he stated he had acted upon such decisions by repeatedly making the Affirmation in Courts of Justice; and, as above stated, nothing has appeared before your Committee to cause them to think Mr. Bradlaugh dissented from the correctness of such decisions, your Committee are of opinion

that, under the circumstances, the compliance by Mr. Bradlaugh with the form used when an oath is taken would not be the taking of an Oath within the true meaning of the Statutes 29 Vict. c. 19. and 31 & 32 Vict. c. 72; and, therefore, that the House can, and in the opinion of your Committee ought, to prevent Mr. Bradlaugh going through this form.

But your Committee desire to point out to your Honorable House the position in which Mr. Bradlaugh will be placed if he is not allowed either to take the Oath or to affirm.

If the House of Commons prevent a duly elected Member from taking the Oath or Affirming, there is no power of reviewing or reversing that decision, however erroneous it may be in point of law.

But it appears to your Committee that if a Member should make and subscribe the Affirmation in place of taking and subscribing the Oath, it would be possible, by means of an action brought in the High Court of Justice, to test his legal right to make such Affirmation.

The Committee appointed to inquire into the law relating to the right of certain persons to affirm in effect recorded that Mr. Bradlaugh was not entitled by law to make the Affirmation.

But, from the fact that this Report was carried by the vote of the Chairman, thus showing a great division of opinion amongst the members of that Committee, the state of the law upon the subject cannot be regarded as satisfactorily determined. Under these circumstances it appears to your Committee that Mr.

Bradlaugh should have an opportunity of having his statutory rights determined beyond doubt by being allowed to take the only step by which the legality of his making an Affirmation can be brought for decision before the High Court of Justice.

The House, by an exercise of its powers, can, doubtless, prevent Mr. Bradlaugh from obtaining such judicial decision; but your Committee deprecate that course.

Your Committee accordingly recommend that should Mr. Bradlaugh again seek to make and subscribe the Affirmation he be not prevented from so doing.

16 June, 1880.

LIST OF WITNESSES

Wednesday, 2nd June, 1880

Sir THOMAS ERSKINE MAY, K.C.B

Mr. CHARLES BRADLAUGH, M.P

Monday, 7th June, 1880

Mr. CHARLES BRADLAUGH, M.P

MINUTES OF EVIDENCE

Wednesday, 2nd June, 1880

Mr. John Bright.
Mr. Childers.
Sir Richard Cross.
Mr. Gibson.
Sir Gabriel Goldney.
Mr. Grantham.
Mr. Staveley Hill.
Sir John Holker.
Mr. Beresford Hope.
Mr. Hopwood.
Sir Henry Jackson.
Lord Henry Lennox.
Mr. Massey.
Major Nolan.
Mr. Pemberton.
Mr. Serjeant Simon.
Mr. Solicitor General.
Mr. Trevelyan.
Mr. Walpole.
Mr. Whitbread.
Mr. Watkin Williams.

The Right Honorable Spencer Horatio Walpole in the Chair

Sir Thomas Erskine May, K.C.B.; Examined

1. Chairman: You are the Clerk of the House of Commons? – I am.

2. You, I believe, are perfectly acquainted with what took place when Mr. Bradlaugh came to the table of the House, and proposed to make his affirmation instead of taking the oath? – Yes, I was personally present on that day.

3. Will you have the kindness to state to the Committee exactly what took place on that occasion, in order that we may have the facts upon our proceedings? – I will read what occurred, mainly from the Votes and Proceedings of the House, in which an accurate and authentic record of the proceedings of that day will be found. It appears that on Monday the 3rd of May, 1880, "Mr. Bradlaugh, returned as one of the Members for the borough of Northampton, came to the table and delivered the following statement in writing to the Clerk: 'To the Right Honorable the Speaker of the House of Commons. I, the undersigned Charles Bradlaugh, beg respectfully to claim to be allowed to affirm, as a person for the time being by law permitted to make a

solemn affirmation or declaration, instead of taking an oath. (Signed) Charles Bradlaugh.' And being asked by the Clerk upon what grounds he claimed to make an affirmation, he answered: By virtue of the Evidence Amendment Acts, 1869 and 1870. Whereupon the Clerk reported to Mr. Speaker, that Mr. Bradlaugh, Member for the borough of Northampton, claimed to make an affirmation or declaration instead of taking the Oath prescribed by law, in virtue of the provisions of the Evidence Amendment Acts, 1869 and 1870. Mr. Speaker thereupon informed Mr. Bradlaugh that if he desired to address the House in explanation of his claim he might be permitted to do so. Mr. Bradlaugh addressed the House in accordance with Mr. Speaker's intimation, and then he was directed to withdraw." The Committee will observe that there is no entry in the Votes of the words used by Mr. Bradlaugh; it is not customary on such occasions to make an entry of the observations made, which are considered to be part of the debates of the House, which are not recorded in the Votes and Proceedings; and there was no shorthand writer authorised by the House to take notes, and therefore there could have been no authentic record upon which one could rely.

4. Have you any reason to believe that something was said upon that occasion by Mr. Bradlaugh other than what appeared upon the Votes? – Mr. Bradlaugh's observations were very short. He repeated that he relied upon the Evidence Further Amendment Act, 1869, and the Evidence Amendment Act,

1870, adding, "I have repeatedly, for nine years past, made an affirmation in the highest courts of jurisdiction in this realm; I am ready to make such a declaration or affirmation." Substantially those were the words which he addressed to the Speaker.

5. What took place after that? – Whereupon Mr. Speaker addressed the House as follows: "I have now formally to acquaint the House that Mr. Bradlaugh, Member for the borough of Northampton, claims to make an affirmation or declaration instead of the oath prescribed by law. He founds this claim upon the terms of the 4th clause of the Act 29 and 30 Vict., c. 19, and the Evidence Amendment Acts, 1869 and 1870. I have not considered myself justified in determining this claim myself, having grave doubts on the construction of the Acts above stated, but desire to refer the matter to the judgment of the House."

6. That is substantially all that took place upon that occasion? – I presume the Committee will scarcely desire that I should proceed through all the subsequent Votes of the House in regard to the appointment of the Committees.

7. There is nothing beyond what you have stated which is material for the Committee to consider? – No, nothing besides what happened on that day in reference to this matter.

8. You are, of course, acquainted with the terms of the reference to this Committee. – Yes.

9. What were the proceedings which took place after the Report of the former Committee? – The Report of the

Committee was ordered to lie upon the table, and no further proceedings were taken upon it; it lies upon the table at present.

10. Mr. Gibson: On what day was it laid upon the table? – On the 20th of May, the day on which the House assembled for business.

11. Mr. Attorney General: I think some of the members of the Committee would like to have some account of what took place in the interval between the time when Mr. Bradlaugh claimed to make the affirmation, and the time when he appeared at the table to take the Oath? – Mr. Bradlaugh presented himself at the table to be sworn on the 21st of May, the day after the receipt of the Report from the Committee; and if the Committee would desire it, I can read from the Minutes what took place upon that occasion. "Mr. Bradlaugh, returned as one of the Members for the borough of Northampton, came to the table to take and subscribe the Oath, and the Clerk was proceeding to administer the same to him, when Sir Henry Drummond Wolff, Member for Portsmouth, rose to take objection thereto, and submit a motion to the House; whereupon Mr. Speaker directed Mr. Bradlaugh to withdraw." And then, as the Committee are aware, several proceedings occurred, which extended over some days: the Committee will scarcely desire them to be read.

12. Chairman: Those proceedings are really stated in the Order of Reference to this Committee? – Yes.

13. Mr. Gibson: At what date did this Parliament meet for the first time? – On Thursday, the 29th of April.

14. And on what day did Mr. Bradlaugh claim to make the affirmation? – On Monday, the 3rd of May.

15. The swearing of Members had been going on in the meantime, had it not? – The swearing of Members began on Friday, the 30th of April.

16. You are acquainted with Mr. Bradlaugh's appearance; are you yourself aware whether he had been in the House during the swearing of Members on any of the intervening days? – He had been about the House, unquestionably.

17. Mr. Serjeant Simon: Mr. Bradlaugh was present, I believe, and voted when the Speaker was elected? – Yes; none of the members had then been sworn.

18. Chairman: Since this Committee has been appointed have you made a search into the Journals of the House for any precedents which bear upon the question before the Committee? – Yes, I directed the Clerk of the Journals to make a search for every precedent which would tend to illustrate the jurisdiction and proceedings of the House in regard to the taking of oaths.

19. What is the result of the search? – The result of that search is the paper which is upon the table to-day, and in the hands of all the Members of the Committee.

20. I see that one of those is a precedent of a Member disabled for having sat in the House without taking the Oath; then there is a precedent of a Member being admitted to sit without taking the Oath of Allegiance and Supremacy; then there are precedents of

Members being discharged for declining to take the Oath; then there is a precedent of a Member, being a Quaker, refusing to take the Oath; then there is a precedent of a Member expelled for absconding, and not taking the Oath; then there is a precedent of a Member refusing to take the Oath of Supremacy; then there is a precedent of a Member, being a Quaker, claiming to make an affirmation; then there are precedents of Members omitting the words in the Oath of Abjuration, "on the true faith of a Christian;" and lastly, the precedent of a Member stating that he had a conscientious objection to take the Oath. I should like to ask whether there is any precedent amongst those of a member coming to the table and stating that he was ready to take the Oath, and any objection being taken to him in consequence of that statement? – No, there is no precedent to that effect, unless it might be argued that the case of Mr. O'Connell, in 1829, was, to a certain extent, analogous. He claimed, as the Committee are aware, to take the Oath recently provided by the Catholic Relief Act, and which, he contended, was the oath that he was entitled to take; it was a question of law whether that was the oath which he could take.

21. In that case he refused to take the old oath, and he offered to take the new oath under the Catholic Relief Act? – That is so.

22. And the House refused, I believe, to allow him to take that oath? – That was the case. I may state briefly that these precedents may generally be divided into three classes: first, cases of refusal to take the oath; secondly, claims to make an

affirmation instead of taking the oath; and thirdly, claims to omit a portion of the Oath of Abjuration. With one or two exceptional cases, those three classes comprehend all the cases which have been laid before the Committee.

23. Mr. Bradlaugh (through the Committee): I should like to ask upon that whether the case of Daniel O'Connell was not a case of absolute refusal by the Member to take the oath required by law? – I think the best way will be, perhaps, to read the precedent from this paper, and then any inference can be drawn from it. It is at page 5. "Precedent of Member refusing to take the Oath of Supremacy; Daniel O'Connell, Esq., professing the Roman Catholic religion, returned knight of the shire for the county of Clare, being introduced in the usual manner, for the purpose of taking his seat, produced at the table a certificate of his having been sworn before two of the deputies appointed by the Lord Stewart, whereupon the Clerk tendered to him the Oaths of Allegiance, Supremacy, and Abjuration; upon which Mr. O'Connell stated that he was ready to take the Oaths of Allegiance and Abjuration, but that he could not take the Oath of Supremacy, and claimed the privilege of being allowed to take the oath set forth in the Act passed in the present Session of Parliament 'for the relief of His Majesty's Roman Catholic subjects'; whereupon the Clerk having stated the matter to Mr. Speaker, Mr. Speaker informed Mr. O'Connell that, according to his interpretation of the law, it was incumbent upon Mr. O'Connell to take the Oaths of Allegiance, Supremacy and

Abjuration, and that the provisions of the new act applied only to Members returned after the commencement of the said Act, except in so far as regarded the repeal of the declaration against transubstantiation; And that Mr. O'Connell must withdraw unless he were prepared to take the Oaths of Allegiance, Supremacy, and Abjuration. Whereupon Mr. O'Connell withdrew. Motion, That Mr. O'Connell be called back and heard at the table. Debate arising, a Member stated that he was requested by Mr. O'Connell to desire that he might be heard. Debate adjourned. Resolved, That Mr. O'Connell, the Member for Clare, be heard at the bar, by himself, his counsel or agents, in respect of his claim to sit and vote in Parliament without taking the Oath of Supremacy. Mr. O'Connell was called in and heard accordingly: and being withdrawn; Resolved, That it is the opinion of this House that Mr. O'Connell, having been returned a Member of this House before the commencement of the Act passed in this Session of Parliament 'for the relief of His Majesty's Roman Catholic subjects,' is not entitled to sit or vote in this House unless he first take the Oath of Supremacy. Ordered, That Mr. O'Connell do attend the House this day, and that Mr. Speaker do then communicate to him the said resolution, and ask him whether he will take the Oath of Supremacy. And the House being informed that Mr. O'Connell attended at the door, he was called to the Bar, and Mr. Speaker communicated to him the resolution of the House of yesterday, and the order thereon, as followeth." Then the resolution and the order are repeated.

"And then Mr. Speaker, pursuant to the said order, asked Mr. O'Connell whether he would take the said Oath of Supremacy? Whereupon Mr. O'Connell requested to see the said Oath, which being shown to him accordingly, Mr. O'Connell stated that the said Oath contained one proposition which he knew to be false, and another proposition which he believed to be untrue; and that he therefore refused to take the said Oath of Supremacy. And then Mr. O'Connell was directed to withdraw, and he withdrew accordingly;" and then a new writ was ordered.

24. Mr. John Bright: Were those oaths separate oaths? – Yes, they were three separate oaths.

25. And they require three separate acts in taking them? – Yes.

26. Mr. Attorney General: I think the result is that the House first determined that the Oath of Supremacy which ought to be taken by Mr. O'Connell was the old oath, and not the oath under the Catholic Relief Act? – Clearly.

27. And having determined that it was the old oath that required to be taken, Mr. O'Connell refused to take it? – Certainly.

28. Mr. Bradlaugh (through the Committee): Have you searched for any precedent affecting the taking of the oath by a Member alleged to be disqualified or ineligible; has your attention been called to the case of John Horne Tooke, in Volume 35 of Parliamentary History, in the year 1801, commencing at page 956? – Not in respect of any question relating to oaths: it is not amongst these precedents.

29. As a fact, was Mr. John Horne Tooke's capacity to sit in the House challenged in this case? – Yes, as being in Holy Orders, but not in relation to any question of taking the oath.

30. The next question that I have to ask is whether your attention has been called to the case of the alleged ineligibility of Francis Bacon, the King's Attorney General, in 1614, cited in the Commons Journal, Volume I., pp. 459 and 460? – No, my attention has not been directed to any questions of incapacity: it has been confined to questions arising out of the taking of the oaths prescribed by law.

31. There is one other question that I should like to ask, and that is whether your attention has been called to any case in which the House has discussed and dealt with the election of a Member, before that Committee was sworn? – With regard to the Jews, that would apply to Baron Rothschild and to Alderman Salomons.

32. I do not mean a case of a Member refusing to be sworn, but a case in which the House has dealt with the election before the Member had been sworn; has your attention been called to that? – No.

33. There is one case, the case of John Wilkes; the cases of O'Donovan Rossa and Mitchell were cases of legal disability; has your attention been called to any case in which the House has dealt with the election of a Member before he was sworn except for statutory disability? – Sir John Leedes sat in the House without having taken the Oath, and therefore he had clearly

vacated his seat, and a new writ was issued.

34. I mean a case in which the Member has not been sworn, and in which there has been a discussion upon his eligibility outside the precedents which you have handed in; I refer to the case of John Wilkes, which is to be found in 38 Commons Journals, p. 977, and Cavendish's Parliamentary Debates, Volume I., extending over many hundred pages, commencing at 827. May I ask Sir Erskine May whether the practice has not been that when a Member appears to take the Oaths within the limited time, all other business is immediately to cease and not to be resumed until he has sworn and has subscribed the roll? – That was the old practice, but it has been superseded by a recent Standing Order under the Parliamentary Oaths Act of 1866, and the rule is now different; Members can be sworn until the commencement of public business and afterwards; but no debate or business may be interrupted for that purpose.

35. That is not quite the question that I wish to put; the question that I wish to put is whether it is not now and has not always been the practice of the House that within a limited time, whatever that time may be, if a Member appears to take the oaths all other business is immediately to cease and not to be resumed until he has been sworn and has subscribed the Roll? – That was the old practice, when the oaths were required to be taken before four o'clock, but it has since been altered. This is the present Standing Order under which the oaths are administered, and this

order was made in pursuance of the Parliamentary Oaths Act of 1866: "That Members may take and subscribe the Oath required by law at any time during the sitting of the House before the Orders of the Day and Notices of Motions have been entered upon, or after they have been disposed of, but no debate or business shall be interrupted for that purpose."

36. Then I again repeat my question, whether the practice has not been that a Member so appearing under the Standing Order just read to take the oath, all other business is immediately to cease and not to be resumed until he has been sworn and has subscribed the Roll? – I have already stated that such was the old practice, which has been distinctly and specifically superseded by the last Standing Order, which is now in force.

37. Is that the Standing Order which you have just read? – Yes, that is the Standing Order now in force.

38. Of course it will be a matter for argument whether it has altered it or not, but is there any other Order altering this practice except the one which you have just read? – There is no other Standing Order, and that Standing Order was made, as I have already stated, in pursuance of the Parliamentary Oaths Act of 1866, which authorised the House to make regulations with regard to the swearing of Members.

39. But except so far as it may have been altered by the Standing Order which you have just read, was the practice that a Member appearing to take the oath all other business was to cease, and not to be resumed until he had sworn and subscribed

the Roll? – Yes, certainly.

40. Mr. Attorney General: The present Standing Order is dated the 30th April, 1866, is it not? – It is.

41. Mr. Bradlaugh (through the Committee): Are you aware that the House has refused to make any inquiry as to what is consistent, or what is not consistent with the Oath of Allegiance taken by a Member? – I presume that the reference must be to a case which arose in debate. That I do not consider, in any way, in point in the present inquiry, but the question was this: "In one case an attempt was made to obtain from a Member who was about to bring forward a motion, a repudiation of statements made elsewhere, which were alleged to be at variance with the oath he had taken; but the Speaker stated that it was no part of his duty to determine what was consistent with that oath, and that the terms of the motion were not in violation of any rules of the House." That was a point of Order, and had no reference whatever to the taking of the Oath.

42. Mr. Attorney General: What was the motion? – It is in the 210th volume of "Hansard's Debates," 3rd Series, page 252. It is at page 197 of my book, in a note.

43. Mr. John Bright: In what year? – On the 19th March, 1872; there is merely an incidental reference to it.

44. Mr. Bradlaugh (through the Committee): Are you aware of any precedent for the dealing by the House with the election of any Member not disqualified by statute or common law, until after that Member had sat and been sworn? – My attention has

not been directed to any precedent bearing upon that precise point, but I apprehend that the fact of whether the Member had been sworn or not would not interfere with any proceedings. For example, under an election petition, if a Member's seat were contested, under the old system, the matter would have proceeded in the usual way, without reference to the question of whether the Member had taken the Oath or not.

45. But in such a case the Member would have been sworn, and would have sat until the question was decided? – Not necessarily; under the terms of the question I assume that he had not taken his seat.

46. Are there not very numerous cases in which with a petition against a Member for alleged statutory disqualification that Member has been sworn and has sat until the decision? – Unquestionably; there can be no doubt about it; it frequently happens.

47. Then I ask whether there is any precedent whatever for the House dealing with a Member's election or his right to sit, except in cases of absolute statutory disqualification, until that Member has taken his seat and the oaths? – So far as I understand the question, I should say that whether the Member has been sworn, or not, the matter of his disqualification, or of his right to sit would be open to the decision of the House.

48. I am not arguing the point at the moment; I am only trying to get at the fact. If you have not looked for it, of course I cannot have it; but is there, so far as you know, any precedent of such

a thing ever having happened? – I know of none; but I have not searched for any such precedent.

49. Mr. Attorney General: It would not appear, would it? – I hardly know how it would appear; unless one's attention were specifically drawn to any case, there would be no means of discovering it.

50. Mr. Bradlaugh (through the Committee): I will ask whether that question was not raised in the case of Wilkes, and whether it was not in the consideration of that case fully discussed, and whether the House did not resolve that any such dealing with a member was subversive of the rights of the whole body of electors of this kingdom? – I do not understand how that case has any bearing upon the present question.

51. There are three cases: one of expulsion, two of election annulled, and then ultimate reversal of the whole of that and expungment by the House? – Yes, but that has no bearing upon the present case. Of course, I am familiar with the case of Wilkes, but not in connection with any matter arising out of the administration of oaths, which is the special matter referred to this Committee.

52. Have you had your attention called to the Journal of the House of Commons, Vol. I., page 460, in which Sir Francis Bacon, the King's Attorney General, having sworn to his qualification, which was challenged, the House said, "Their oath, their own consciences to look into, not we to examine it?" – That case is not one of the precedents that we have collected.

Mr. Bradlaugh: They are entered extremely curiously, and one can only take the decision. It begins on page 459, "Eligibility of the Attorney General," and it does not show there that it is Sir Francis Bacon: but I have learnt that by looking up the other records; and there being then a statutory declaration which lasted until a few years ago for all counsel, solicitors, and practising men of the law, it was objected that the King's Attorney General could not sit; it appears that he had to swear to his qualification, and the question of his oath and of his disqualification, being Attorney General, were put, and the House said, "Their oath, their own consciences to look into, not we to examine it," and they left him in the House, resolving that no future Attorney General should sit in it.

Chairman: That was the case which was raised as to whether the law officers of the Crown, who had for certain purposes seats in the House of Lords, had seats in the House of Commons.

Mr. Bradlaugh: Not quite that. There was an obsolete statute of the 46th Edward III., which was only repealed eight or nine years ago, but which does not seem to have been attended to, by which all practising barristers and solicitors were disqualified for sitting for counties.

53. Mr. Beresford Hope: Wilkes's precedent being expunged, is it still legible in the Journal, and could it be produced for historical information? – Certainly.

54. Major Nolan: With regard to the evidence about O'Connell, I think you stated that an Act was passed to enable

O'Connell and his co-religionists to sit in Parliament? – Not to enable O'Connell to sit in Parliament, but to enable Roman Catholics to sit in Parliament.

55. O'Connell was not allowed to take advantage of that Act until he was re-elected? – No, because he had been elected prior to the passing of the Act, and the Act was clearly prospective.

56. Was the wording of that particular statute the reason why he was not allowed to take advantage of that Act? – Certainly; distinctly.

57. Would it be possible for the present or any future Parliament to pass an Act which would enable a man who had been elected previous to the passing of the Act to sit in the House? – It is not for me to say what Act of Parliament might be agreed to by Parliament, but that is quite a distinct case. In that case Mr. O'Connell had actually been elected when the Catholic Relief Act was passed, and there was a clause in the Act which made its operation prospective, and therefore distinctly, and, I believe, intentionally, excluding Mr. O'Connell from the benefits of the Act.

58. Then he was only prevented from taking advantage of that Act owing to the particular wording of that particular clause, and not owing to anything inherent in the House of Commons? – Yes; the decision was founded upon a literal construction of the words of the recent statute.

59. Mr. Whitbread: The case of Mr. O'Connell was this: that he declined to take the oath which was required of Members of

Parliament elected at the time that he was elected, and that he requested to be allowed to take another form of oath; he was ordered to withdraw, and the House considered his case; is there anything that you have found in the Journals or in the Debates to indicate that if Mr. O'Connell had been willing to take the oath required of him by the House, the House would have objected to his so taking it? – Certainly not; they put it to him whether he would take the Oath of Supremacy, and upon the face of the Journal, it would seem that if he had taken that oath, he would have been admitted.

60. Mr. Bradlaugh (through the Committee): After John Archdale had claimed to affirm, did not the House absolutely order him to attend in his place for the purpose of being sworn, and tender the oaths to him? – Mr. Archdale was ordered to attend, and the House being informed that Mr. Archdale attended according to order, his letter to Mr. Speaker was read. That letter is printed at full length among the precedents. "And the several statutes qualifying persons to come into and sit and vote in this House were read, viz., of the 3 °Car. II., 1 Will. and Mariæ, and 7 & 8 Will. and Mariæ. And then the said Mr. Archdale was called in, and he came into the middle of the House, almost to the table; and Mr. Speaker, by direction of the House, asked him whether he had taken the oaths, or would take the oaths, appointed to qualify himself to be a Member of this House; to which he answered, That in regard to a principle of his religion he had not taken the oaths, nor could take them; and then he

withdrew, and a new writ was ordered."

61. Mr. Serjeant Simon: With reference to what the Honorable Member for Bedford has put to you just now, Mr. O'Connell refused to take the Oath of Supremacy on the ground that it contained matter which he knew to be untrue, and other matter which he believed to be untrue? – Yes, he so stated.

62. Thereupon he withdrew; but is there any precedent among the Journals to show that a Member stating beforehand that what was contained in the oath was untrue, or a matter of unbelief to him, has been allowed to take the oath under such circumstances? – No, this is the only precedent, so far as I know, of that particular character. The others are cases of absolute refusal to take the oath, or a desire to make an affirmation instead of an oath, or to leave out certain words of the Oath.

63. But is there any precedent where, as in the case of Mr. O'Connell, a Member coming to the table of the House, has made a statement such as Mr. O'Connell made, that the oath contains matter which he knows to be untrue, or believes to be untrue, and has been allowed to take the oath afterwards? – There is no case to be found, so far as I know; certainly there is none in any of these precedents.

64. Mr. Secretary Childers: Is the precedent in Mr. O'Connell's case this; that on the 15th May Mr. O'Connell said that he could not take the Oath of Supremacy, and that, nevertheless, on the 19th, he was asked whether he would take the Oath of Supremacy, although he had previously informed the

House that he was unable to take it? – Yes, because he had been heard, in the interval, upon his claim to take the new oath, under the recent Catholic Relief Act.

65. But was not that a precedent for a Member who had already stated that he could not take a certain oath, nevertheless being afterwards asked by the House whether he would take it? – It so appears on the face of the precedents.

66. I will put that question again more clearly; is it not the case that, as appears on page 5 of the Paper which you have placed before us, Mr. O'Connell on the 15th May said, that he could not take the Oath of Supremacy? – Yes.

67. And that, nevertheless, on the 19th of May it was ordered that Mr. Speaker do communicate to him the Resolution passed on the same day, and ask him whether he would take the Oath of Supremacy? – It was so.

68. Although the House was aware that Mr. O'Connell had said that he could not take it? – Yes; but as I observed before, in the interval he had been heard upon the question of his right to take the new oath; and that, I think, accounts for the fact that the question was repeated to him as to whether, after the decision of the House had been communicated, he still persisted in refusing to take the Oath of Supremacy.

69. Mr. Watkin Williams: Was not Mr. O'Connell's objection to taking the Oath of Supremacy an objection to the truth of the matter sworn to? – Yes, certainly; and it was an oath which no Roman Catholic could take.

70. It was the truth of the matter which he was asked to pledge his oath to that he objected to, and he did not express any disbelief in the binding character of the oath itself? – No. Every Roman Catholic objected to take the Oath of Supremacy; in fact, the Oath of Supremacy was expressly designed to exclude them from Parliament.

71. Mr. Attorney General: And in consequence of the objection a new form of oath was put in the Catholic Relief Bill? – Certainly, because the Oath of Supremacy was intended to exclude Roman Catholics, and did exclude them, and was known to exclude them.

72. Mr. Watkin Williams: It was not his inability to take the oath, but his inability to pledge himself to the truth of what he was asked to swear to? – Certainly.

73. Mr. Staveley Hill: I gather from you that the House never asked O'Connell to take the oath after his giving the grounds of recusancy? – Yes, that is so.

74. Mr. Serjeant Simon: It appears that the Speaker first asked him whether he would take the Oath of Supremacy, and then he says, No, and gives those reasons? – Yes.

75. Mr. Pemberton: In addition to Mr. O'Connell's having been heard after he had at first declined to take the oath, was there not some further discussion in the House in which other Members took part? – Certainly; those Debates will all be found in Hansard.

76. Sir Gabriel Goldney: His refusal to take the oath in the

first instance was accompanied by a claim at the same time to take the new oath? – Clearly.

77. It was a refusal to take the oath accompanied by a claim for a new one; afterwards he was allowed to be heard upon that point, and then it was that the House, having decided that he could not be admitted on the new oath, he was asked if he chose to take the old oath, which he refused to do? – That is a correct statement of the case.

78. Mr. Hopwood: With regard to the point of the Standing Orders as to which Mr. Bradlaugh has asked, as I understand you, under the old practice, as pointed out in Hatsell, and as we know it existed, the occasion of a Member coming to be sworn caused all other business to cease? – Yes.

79. And then as you say, a Standing Order was passed that particular times more appropriate should be allotted for taking those oaths? – Yes.

80. But even though that may be so at the time of taking an oath, no other business can go on? – Clearly not; it is the sole business that is transacted at the moment.

81. No other business can be interposed, and nothing else can be proceeded with but the oath of the Member? – Certainly not; it is the business of the moment, and no other business can interpose.

82. Mr. Gibson: You have been asked by several honorable Members about O'Connell's case; in your opinion, is there the slightest analogy between the facts and circumstances

in O'Connell's case and those of the case now before the Committee? – I see none myself, but I would rather leave such questions for the determination of the Committee. I have stated the case in print, and of course the points of difference are matters of argument.

83. So far as you know, is there any precedent for permitting a Member of the House of Commons to take the Oath after he has stated in the House expressly, or by necessary implication, that it will have no binding effect upon his conscience? – There is no such case on record, so far as I have had the means of ascertaining.

Mr. Charles Bradlaugh, a Member of the House; Examined:

84. Chairman: You were in the room, I think, when Sir Thomas Erskine May gave that part of his evidence as to a matter which was not on the Votes and Proceedings? – Yes, but which took place upon the occasion of my first coming to offer to affirm.

85. Is that accurately and fully stated? – It is accurately and fully stated. I shall have to ask the indulgence of the Committee if in any of the points which I press there seems to be any undueness in the pressing of them, because, as far as I can see, this is the first occasion on which such a matter has arisen. In the reference which the Committee have to deal with, I claim to

be sworn and take my seat by virtue of my due return, a return untainted by illegality of any description, and in pursuance of the Statute of the 5th of Richard II., which puts upon me the duty of coming here to be sworn and do my duty under penalty of fine and imprisonment. I do not know whether the Committee wish that I should read the Statute. It is the second Statute of Richard II.; it is on page 228 of the revised Statutes, Vol. I.; it is a Statute of the year 1382. I submit that although a Member may not sit and vote until he has taken the oaths, he is entitled to all the other privileges of a Member, and is otherwise regarded both by the House and the laws as qualified to serve, until some other disqualification has been shown to exist; and I quote in support of that Sir Thomas Erskine May's book, p. 202, that there is nothing in what I did in asking to affirm which in any way disqualified me from taking the Oath. The evidence that that is so is found in the case of Archdale, on page 3 of the Precedents handed in by Sir Thomas Erskine May, where, after John Archdale had claimed to affirm, he was called into the House, and Mr. Speaker, by direction of the House, asked him if he would take the oaths; that I have never at any time refused to take the Oath of Allegiance provided by Statute to be taken by Members; that all I did was, believing as I then did, that I had the right to affirm, to claim to affirm, and I was then absolutely silent as to the oath; that I did not refuse to take it, nor have I then or since expressed any mental reservation, or stated that the appointed Oath of Allegiance would not be binding upon me;

that, on the contrary, I say, and have said, that the essential part of the oath is in the fullest and most complete degree binding upon my honor and conscience, and that the repeating of words of asseveration does not in the slightest degree weaken the binding effect of the Oath of Allegiance upon me. I may say, that if it would be more convenient for any Member of the Committee to ask me any question upon my statement as I go on, it will not interrupt me at all.

86. I think the Committee would rather hear you through. – I submit that according to law the House of Commons has neither the right nor the jurisdiction to refuse to allow the said form of oath to be administered to me, there being no legal disqualification on my part of which the House can or ought to take notice, and there being on my part an express demand to take the Oath, this demand being unaccompanied by, and free from, any reservation or limitation. I submit that there is no case in which the Oath of Allegiance has been refused to any Member respectfully and unreservedly tendering himself to be sworn. I submit that any Member properly presenting himself to be sworn, and not refusing to be sworn, is entitled to be sworn, and to take his seat without interruption, and that the discussion of any disqualification or ineligibility must in such case, according to the practice and precedent of Parliament, take place after the Member has taken his seat; and I quote in support of that John Horne Tooke's case, which came before the House in 1801. It was alleged that John Horne Tooke was ineligible because he

was an ordained clergyman of the Church of England. There he was allowed to take the oaths first, and after he had taken the oaths Earl Temple rose and said (I am quoting from page 956 of the Parliamentary History, Volume 35), that he observed a gentleman who had just retired from the table after having taken the Oaths whom he conceived to be incapable of having a seat in the House in consequence of his having taken priest's orders, and been inducted into a living. Earl Temple agreed he would wait to see if a petition were presented against him, and if not he should move a resolution upon the subject; and ultimately a resolution was moved that John Horne Tooke was ineligible. The House allowed John Horne Tooke to sit, but declared clergymen for the future to be ineligible for sitting. I rely upon that as showing that the proper course to be pursued, supposing that any Member should think that I am ineligible, is to wait until I have been sworn and have taken my seat, and then to challenge it; and that this is clear, because if it were not so it would be possible for the first 41 Members sworn or for a majority of that 41, that is, for 21 Members to hinder the swearing of all Members coming later to the table without any remedy on the part of the Members aggrieved; and I submit, with great respect for the evidence of Sir Thomas Erskine May, that he has misapprehended the force of the Standing Order that he read to you. Hatsell's Precedents, Volume II., page 90, declares distinctly that when a Member appears to take the oaths within a limited time, all other business is immediately to cease, and not to be resumed until he has been

sworn and has subscribed the Roll; and with great submission to Sir Thomas Erskine May, there is no word in the Standing Order which he quoted as altering and changing that practice, which does so alter and change it. All that the Standing Order does is to specify the time and the manner in which the Members might come to the table to be sworn, which had not been hitherto specified; but it does not in any way deal with what was to happen when they did come to the table to be sworn. And if the Committee would permit me respectfully to submit, it would be most dangerous to the House if it were not so. The first batch of Members called over by the Clerk of the House are sworn, and they may then, if the contention raised upon the Standing Order quoted by Sir Thomas Erskine May be correct, prevent every other Member being sworn, if there be more than 40. They may fulfil all the duties of a House of Commons, and do what they please, without any remedy, as the matter stands; every election might be declared null and void, and every one sent back to their constituencies one after another. I submit also that the case of the Attorney General, Sir Francis Bacon, Volume I. of the Commons Journal, page 459, is also a precedent in the same direction. I am obliged to tell the Committee that I cannot quote it with the same reliance that I can put upon Horne Tooke's case, for the notes seem to have been taken, I will not say irregularly, but they do not seem to convey the whole of what took place, and therefore I can only deal with the result. Sir H. Hobart is quoted as being "the only attorney that hath been in this House;" and then there

arises a discussion, some of which does not seem to me to be material, as to whether the then Attorney General could sit or not, and I find in the returns that the Attorney General at that date was Sir Francis Bacon, who, three days after this discussion, elected to sit for the University of Cambridge, and although I have not the legal evidence, because the returns are incomplete for that year, as he elected to sit for the University of Cambridge, the probability is that he had also been returned for a county. There was then a Statute of the 46th Edward III., which has only recently been repealed, which made a practising man of the law absolutely ineligible; and it also appears that there was some oath of qualification, of which I have not been able to find the words, which was then taken by a Member coming to the table; and it appears here that the Oath was alleged in the course of the discussion, and two things were said which I press upon the attention of the Committee; one, that the precedents to disable a Member ought to be shown on the side of those who seek to disable (it is not written so lengthily as that; the words are, "The precedents to disable him ought to be showed on the other side"), and the other is, "Their oath, their own consciences to look unto, not we to examine it," which meant, as I submit, that the House did not constitute itself into an Inquisition to look behind a man coming to take the Oath, but that, subject to his being dealt with by law if he had taken it improperly, or subject to a legal disqualification being made clear to the House, they assumed his oath to be properly taken. I submit that even Members absolutely

petitioned against and alleged to be disqualified or ineligible by law, are always allowed to be sworn when they come to the table to be sworn and to sit pending the decision of the petition. The only cases which I have found of absolute legal disqualification in which the Member's election was annulled before he had entered the House, are the cases of Mitchell and O'Donovan Rossa (both of whom were away), and the case of John Wilkes, who was physically incapacitated from taking the oath from the act that he was in the custody of the law at the time, and those who held him would not have permitted him to come to the table to be sworn. Those are the only cases even with an allegation of an absolute disqualification in the case of O'Donovan Rossa and Mitchell, and of a disqualification alleged, but not admitted, and not legal, not statutory, in the case of Wilkes, that I have been able to find; and in Wilkes's case the House has solemnly decided that it did wrong there, and I submit that it ought not to do it again. But here the return is not questioned. It is not pretended that there has been a single circumstance of illegality connected with the election, the sole point being, Am I qualified to sit? If I am qualified to sit, I have the duty to take the Oath, and the House has neither the right nor the jurisdiction to refuse the Oath to me, nor to interrupt me in the taking of it. If my qualification or eligibility to sit is to be discussed, the precedent for the proper mode of discussing that qualification is in Horne Tooke's case, and rightly so, because then I have the opportunity from my place in the House of defending myself, and of correcting any

misstatements that may possibly be urged by Members who may be too anxious that I should not sit, supposing in any other House of Commons it should happen, and it then gives the Member attacked fair play. While I admit entirely that the House has a full and most complete right to expel any sitting Member, and this in its own discretion, and for any reasons in its wisdom sufficient, I submit that it has never done this without first calling upon the Member to be heard in his own defence, and that that cannot possibly happen until the Member is sworn and is sitting. I submit that while the House has the right to annul the election of a person absolutely disqualified by law, it has never, except in one case, that of John Wilkes, claimed the right to interfere, and in that case it ultimately expunged from its proceedings the whole of its hostile resolutions, as being subversive of the rights of the whole body of electors of this kingdom. I quote on that the Commons Journal, Vol. 38, 3rd of May 1782. I do not think that I should be right in troubling the Committee with the very strong arguments used time after time by Edmund Burke, Thomas Pitt, and others; but I want to point out this, that in addition to the charge on which John Wilkes was expelled from the House (and I am not questioning his original expulsion), there were also charges introduced against John Wilkes for his publications outside the House. That will be found in 1st Cavendish, page 73 and page 129, and they are charges far exceeding anything (if I may judge from the reports which have even been put in) in relation to any supposed publications of my own. None of those charges were

ultimately considered by the House to justify the interference of the House with the choice of the constituency. To use the words of Mr. Thomas Pitt, on page 350 of Cavendish, words endorsed by the House itself, "Nothing but a positive law can enable you to circumscribe the electors in their choice of a representative, however, indiscreet they may be in their choice." I consider now on what grounds is it claimed that the House of Commons has the right and jurisdiction, following the words of reference, to refuse to allow me to take and subscribe the Oath? Is it for a disqualification or ineligibility existing prior to my election and continuing down to the time of my election – I mean a disqualification or ineligibility created by Statute or existing at common law? No such disqualification is even pretended. Is it for a disqualification or ineligibility of like legal character arising since my election? No such disqualification is pretended. Is it for conduct not amounting to absolute disqualification legally, but conduct for which the House has in its discretion exercised its rights and jurisdictions by expelling a Member? It must be this, or it is nothing. If there is neither legal disqualification prior to my election, nor legal disqualification subsequent to my election, then there must be such conduct not amounting to absolute legal disqualification as would, were I a sitting Member, justify the House in using its discretion to expel a Member. But if that conduct be prior to the election, then I submit that the constituency is the sole and sovereign judge of the fitness of the candidate, such candidate not being legally disqualified, and that

where the chosen and duly returned candidate is ready to perform his duties, this House has neither the right nor the jurisdiction to revoke the decision of the constituency; and that in the only case in which the House did so interfere it afterwards solemnly recorded that its conduct was illegal, as being subversive of the rights of the whole body of the electors of this kingdom. If the complaint against me is for conduct arising since my election, then I submit that even if such matters justify my expulsion as a Member, the point could only be raised after I had been heard in my place against the Resolution, and that the matter could not arise until I have taken the Oath and become entitled to speak, sit, and vote. Manifestly this must be so, as otherwise it would always be in the power of a majority to exclude from coming to take his seat any Member to whom they might have an objection; and although such a thing is, luckily, not probable now, there have been times, even in the history of the House of Commons, when a majority, even of election committees, as I read in the Records of the House, have sought by mere prejudice to exclude Members. It is, therefore, the more necessary that at any rate a Member should have the right to be heard in his own defence. I submit that there is no precedent whatever for preventing a Member from taking his seat and the Oath, on the ground of conduct not amounting to absolute legal disqualification. There is no such precedent to be found at all, and I have searched very carefully indeed. I put the question to Sir Erskine May lest anything should have escaped me, and I say absolutely there is no precedent. Then

I submit that it would not be consistent with the dignity of the House to examine any statement made by any Member outside the House, as to any of its procedure, and that in fact the House has firmly refused to allow a Member to be challenged as to whether or not some of his extra-Parliamentary utterances were inconsistent with his Oath of Allegiance; and here I should like the Committee to come to a decision, because it would alter and abridge my argument. If the Committee thought (I will put a suppositious case) that, say there were some document that they thought they had the right to take into consideration here, then while I should object to that, I should like to have the opportunity of addressing the Committee as to that. So far as the evidence has gone, I have not heard of any, except the mere statement in the House, only I judged from a question put by an honorable and learned Member that something was passing in his mind (which, by the way, did not seem to me to be the fact) justifying a question put to Sir Thomas Erskine May as to whether the Oath could be administered to a man who had done something either actually or by implication repudiating the effect of that Oath. I have heard nothing in the evidence, so far as it has gone, giving the slightest color or warranty for such a question. If there are any facts to be dealt with by this Committee other than that, then I should like to know the facts, and to argue upon them; but it would be only wasting the time of the Committee to address argument to any point which the Committee would not think it right to consider; and I should be glad if, before going further

into my statement, the Committee thought it right to intimate to me their view upon that.

The Committee deliberated.

87. Chairman: I think the Committee would like to understand from you the kind of objection that you are anticipating before you proceed with your argument; as I understood you, you took this kind of objection: "I wish to know whether the Committee are going into any proceedings external to the proceedings which took place in the House, or will entertain the consideration of those questions," and that if they did so you would wish to be heard upon that point; I understood you also to say that beyond that general question as to any proceedings which may have taken place as part of the transaction in any other place than the House itself, you wish to know whether the Committee would take such matter into their consideration; am I right in supposing that to be the character of your objection? – Not quite. Practically my question is this: Will this Committee take any facts into consideration other than those of which I have heard evidence given, and those which have been stated by myself in the course of my argument? If so, I should like to know, because I understood the permission of the Committee to be that I should address them at the close of the case before their deliberations, and I should submit with all respect that the Committee would not take one matter of fact into their consideration to influence them in their deliberations which I had not the opportunity of addressing them upon. If they have finished, and if there are no

facts except those which I have heard to be dealt with, it enables me to turn out and eliminate a portion of the argument which I have prepared.

The Committee deliberated.

88. Chairman: The Committee have considered the matter which you have submitted to them, and they request me to inform you that members of the Committee do propose, after your statement is concluded, to ask some questions of you; but I have to inform you, at the same time, that you will be invited, and are invited, to state any objections that you may entertain to any such questions when put, and that you shall have a full opportunity of addressing the Committee after they have heard your answers to the questions so put? – That will enable me to eliminate a portion of my argument. I wish to submit to the Committee one observation on the precedent of Daniel O'Connell, and that is that, as a matter of fact, the evidence of Sir Thomas Erskine May shows that he misapprehended that precedent. It was a refusal by Daniel O'Connell to take the Oaths by law required of a member at the date of his election. Between the date of his election and the date of his refusal the law had changed, but it had not changed (so the House interpreted the Statute, or so the Statute ran, I do not know which) at the date of his election. So that I submit that Daniel O'Connell's case is a case of a Member refusing to take the Oath by law required; and I further submit that the Parliamentary Debates will show that the words which appear as being used by Mr. O'Connell on the 19th of May, sufficiently

expressed his reason for refusing to take the Oath of Supremacy some days at least before the House asked him again to take it. Then I have only two other matters which I should wish to submit to the Committee. One is that I have, neither directly nor indirectly, obtruded upon the House, since I have been a Member, any of my utterances or publications upon any subject whatever; that there is no precedent, except in the case of John Wilkes, for any reference on the part of any opposing Member to such publications by any Member prior to the taking of his seat; and that the ultimate decision of the House in John Wilkes's case is directly against the introduction by any Member hostile to me of any such matter as a reason for my not being allowed to take my seat. Finally, I most respectfully submit that I have grave matter of complaint that my privileges as a Member of the House of Commons have been seriously infringed, and that the rights of the electors, my constituents, have been ignored in the attacks made upon me without previous notice to me; attacks to which I had no opportunity of making a dignified reply; attacks which, if the newspaper reports be accurate, were in many instances based upon absolute misapprehension or misquotation of my publications, and in one instance at any rate, based upon the most extreme misrepresentation of my conduct. I thank the Committee for listening to me, and I regret if my want of knowledge of the forms of the House has involved my saying anything in a manner in which the Committee would prefer that I should not have said it.

Конец ознакомительного фрагмента.