

### After Recess.

Mr. TUPPER. Before six o'clock I was dwelling upon the 68th clause, chap. 9 of the Act of 1836, which says:

"All elections shall be subject to the provisions of this Act, and shall not be questioned otherwise than in accordance herewith."

I do not remember having read that section before this evening. I read the section in the English Act from which it is taken, and claim that substantially the two clauses are the same, and that therefore the authorities to which I drew the attention of the House in connection with the interpretation were perfect. I would like to read the two clauses of chap. 8, which must be taken together, in order that the point upon which the decision of the returning officer was given, or in reference to which the returning officer took the action he did in the case of the selection for Queen's, may be appreciated, and the House will understand, from the position I took, that it does not to me matter much whether he was right or wrong in the interpretation of his duty under this clause, because the election courts alone have to do with that. These two sections read as follows: Section 22, of chap. 8, after stating how the nomination should be drawn up in writing, makes it imperative that the \$200 shall be deposited in the hands of the returning officer when the nomination paper is filed, and goes on to say:

"The amount so deposited shall be returned in a certain event. Section 118 says that no payment (except in respect of the personal expenses of a candidate), and no advance, loan or deposit shall be made by or on behalf of any candidate at any election, before or during or after such election, on account of such election, otherwise than through an agent or agents whose name or names, address or addresses, have been declared in writing to the returning officer, on or before the nomination day, or through an agent or agents to be appointed in his or their place, as herein provided."

I referred to authorities in England, which went to show that the language in that clause of the Act, though the precise language is not in the Election Act, as they have no clause similar to this requiring a deposit, but still the language in the body of the Act is imperative, and I pointed out too that there was no particular time for the returning officer to take the responsibility of directing what course should be pursued in regard to the rejection or acceptance of these papers. In the case of the Canadian Act, the returning officer has up to the time of making the return the right to treat the nomination paper as valid or otherwise. The responsibility lies with him. I point this out to show the arguable point, and the question involved in it, and I claim that these reasons require that this House should not touch a matter involving that peculiarly legal point. Now, reference has been made to the conduct of the returning officer, and to this case as an extraordinary one and particularly unfair to Mr. King. Naturally, at first blush one would say that the candidate or person receiving the majority of votes was entitled to the seat, and undoubtedly that is the fact. The candidate duly nominated, under the provisions of the Election Act, and having the majority of votes, is entitled to the seat, and the candidate duly nominated, if he did obtain the majority of votes under this act would get his seat, and this House cannot unless by Act of Parliament prevent him taking his seat here, but he must go through a certain preliminary stage before taking that seat. What hardship is there, supposing Mr. King to have the right to sit in the House, after he has proceeded in due course to law, in his case more than in the case of the other gentlemen who are claiming the same right, not by virtue of any mistake or misdeed of the returning officer, but on account of gross bribery on the part of the gentlemen who have been returned, and whom they hope to unseat? Then, if we come to what is fair, if we are to leave aside the legal aspect of this question and put it to ourselves as men, I think there is something to be said on the other side. I do not think that all the fairness or all the justice, according to

Mr. TUPPER (Picton).

the popular idea, is with Mr. King in this dispute. As the parties stand now, without the action of the House, which is desired by my hon. friend opposite, being taken, the law will give Mr. King all that he is entitled to. No one has challenged the proposition I have laid down that Mr. King can assert the rights which his friends claim for him in a court of law, and can obtain the position he claims, if his contention is sound. So the parties are upon an equal footing and the courts are equally open to them. But, if the House takes the step my hon. friend proposes, what will be the effect in regard to Mr. Baird? I ask the consideration of hon. gentlemen who will follow me in this debate to this point. You are depriving Mr. Baird in that way of all the rights which the returning officer believes he possesses, which he believes he possesses, and which a great many of the legal profession believe he possesses, at once and forever, because in that case he cannot get his case examined by a legal tribunal, he cannot go into an election court and have his case investigated as against Mr. King. That is a position we ought to hesitate before taking, because in that way we will do an incalculable injustice to Mr. Baird, and Mr. Baird cannot get rid of our action in any tribunal in this country. Even if we err in our decision as regards this point to which I have alluded, and if I am wrong and the returning officer is wrong in his view of the law, that can all be rectified, not by political partisans or on political considerations, but in due course of law and in the tribunal which we all must think the best fitted to deal with a question of this kind. Reference has been made to the terrible outrage perpetrated by a returning officer in returning a candidate who had the minority of votes. I alluded a little while ago to the fact that a candidate who was legally nominated according to the Act, and obtained a majority of votes under the law, was entitled to his return; but the proposition of my hon. friends is not equally true that any person who obtains a majority is entitled to the seat and ought to be returned by the returning officer. In the Tipperary case, to which I alluded, in the Mitchel case, to which, I think, the Minister of Justice alluded, Mr. Mitchel, also after being unseated, at the next election—I think it was, but that does not matter—obtained 3,114 votes, and his opponent obtained 716 votes. That came before the courts of law, and, instead of this opinion which has been expressed in this House to-day being sustained by the courts, strange to say the court declared the gentleman who had that minority of votes the duly elected member for that seat, and gave him the seat, and held that he was entitled to be returned. More than that, the court held that the returning officer should have returned this gentleman, Mr. Moore, who obtained only 716 votes, although the other candidate obtained 3,114 votes. The prayer of the petition, as is usual in these cases, claims that the returning officer should have returned the party whom the petitioner alleges should be elected, and the court in the decree granting that says the returning officer should have returned that party. I have already pointed out the extraordinary position in which we would be if it were possible that a case of this kind should be dealt with in the courts of law, and they should decide that the gentleman obtaining under these circumstances a minority of votes should have been returned by the returning officer, when this House would have taken the opposite course. I think we shall agree that in matters of this kind the legal tribunals would be more fitted to express a legal opinion than the majority of this House, which is made up of laymen as well as of those who have studied these questions professionally. In the Tipperary case, the petition declared that the returning officer should have declared Moore, the petitioner, duly elected, although he obtained the minority vote. The matter came up, I think, on a stated case, and the question was asked as to whether the returning officer