

The Speaker in the Bagot case, after a petition had been presented to a court of law, simply because charges had been made that collusion had occurred or that for some other reasons the election had been carried on improperly or corruptly, ruled the petition out of order, and went on to deal with the case in the way I have been stating :

" Now, the only question that this House has to consider is whether this petition is not in effect a petition questioning the return of a member, which, as it has been admitted on both sides, cannot be properly received by the House, in view of the fact that it has divested itself of its right of trying such matters by referring them to the jurisdiction of an independent judicial tribunal. In handing over this power to the Courts, the House still reserve to itself the right of taking notice of any legal disabilities affecting its members, and issuing writs in the room of members judged to be incapable of sitting ; but the petition now under consideration, both in its terms and scope, is a petition questioning the return of a member, and not within the purview of this House."

And what does the resolution propose that this House should do but question the return of an hon. member of this House just as much as a petition could ?

" By the Act 57 Vic., chap. 10, the House of Commons divested itself of its original jurisdiction for the trial of all matters growing out of the election and return of members having the right to sit therein, including the withdrawal and abatement of any election petition in consequence of alleged corrupt agreement between the parties concerned. That power now belongs to the courts of justice, which try all election cases in conformity with the Statutes in that behalf provided.

" The 63rd section of the Dominion Controverted Elections Act, 1874, expressly provides that all elections held after the passing of the said Act shall be subject to the provisions thereof, and shall not be questioned otherwise than in accordance therewith, showing clearly that the determination of the judicial body, to whom that power has been delegated, is final to all intents and purposes.

" Now, the petition in question declares, in express terms, that the city member has no right to the position he occupies, —"

I will ask hon. gentlemen to substitute the word " resolution " for " petition."

—" and were the prayer of the petitioners granted, the logical result would be the virtual resumption by the House of the jurisdiction which it has in its wisdom handed to the courts."

" To grant the prayer of the petition would be to violate the general principle which lies at the basis of all the legislation adopted by the English Parliament since 1868, and by the Canadian Parliament since 1873, that the court should alone adjudicate on matters of controverted elections. When the law has been proved to be inadequate to provide a sufficient remedy in any case, then Parliament has always come forward, as the various statutes in amendment of the Act of 1874 proved, and passed the legislation necessary in the premises. In view, then, of the fact that the petition is in conflict with the letter and spirit of the law which governs the House in such cases, and does in effect question the right of an hon. member to his seat, I have to decide that the objection raised by the hon. member for Bagot is well taken, and that the petition cannot be received."

I think that decision bears upon the case before the House. Hon. members may say that while it is true that the question of a member's seat is the concern here, the returning officer is under the authority of this House, that he has acted contrary to his express duty, and that his conduct is properly before Parliament. I deny that position as equally unsound with the position taken in this case, because the Act has expressly provided that the conduct of the returning officer may be reviewed. In cases where he has not properly performed his duties, he may be and is sometimes a respondent to an election petition, and the Act expressly provides how and when the conduct of that returning officer may come before this House. It is not until the judge has investigated it, before whom the returning officer is entitled, as he is not here, to have counsel to defend him, and then the judge is bound to report his conduct to the House. When that report is made, the conduct of the returning officer can properly be dealt with here, as was done in days of old. They used to bring some of those officers before the House and make them kneel and go through gymnastics not at all in accordance with the spirit of to-day; and it is to those musty old precedents the honorable gentleman has mostly referred. In support of the contention that the returning officer's conduct is not properly before us to-day, any more than the petition should be, I will read to the House the opinion of a text-writer in

reference to the provision of our statute, which is contained in the English Act. Rogers says :

" The jurisdiction of the House of Commons over returning officers does not seem to be taken away by the Parliamentary Elections Act, 1868, although the judges, and not a committee, would hear and adjudicate on any complaint against them. The judge, it seems, would make a special report to the House under section 11, if necessary, upon which the House would act as they thought fit."

Then the discretion of the returning officer has been spoken of, and my learned friends have stated what he ought to have done. Now, suppose this matter is before the House, and suppose it is differently considered by the judge of the election court from what it is by the House. Suppose the judges come to the conclusion that this return was a proper one, and that the return in the Nova Scotia case I have alluded to was an improper one. In the latter case the judgment will be in answer to the prayer that the returning officer ought to have done in the Nova Scotia case exactly what he did in the case before us, because, as everybody knows, the prayer in the Nova Scotia case, which is the converse of this, is that the returning officer ought to have returned the other candidate, and this question of the minority of votes would come up. In reference to the discretion of returning officers, Rogers says :

" It would seem that the returning officer is not subject to any liability as far as Parliament is concerned if he returned a disqualified person, nor on the other hand could he well be censured for exercising his judgment as to eligibility of a candidate and returning the person whom the judge ultimately decides to be entitled to the seat; for in most of the cases in which a disqualified person has been returned, the form of the resolution of the Election Committee has been that the petitioner ought to have been returned."

So that, in the view I take of the matter, the returning officer, while he could have taken one of two courses, was at perfect liberty, and cannot be properly censured by this House for having adopted the course he did. Having exercised the discretion which I believe was given to him by the provisions of the Act, whether he exercised it rightly or wrongly, he would not in fairness be subject to the rebuke or censure of this House. Now, if the House will bear in mind certain sections in our Act, and not confine themselves to that section which states what the returning officer must do in counting up the votes, they will find that it is impossible to maintain the position that the returning officer has no discretion. His discretionary powers are many and of great importance. Under chap. 8, section 28, he has to report as to the non-compliance with any of the provisions of the Act. I have suggested with reference to the nomination that it is imperative, in order to be a candidate at all, a man must not only be nominated by so many electors, but must make a deposit in a certain way. The officer has no discretion. He has no final authority, but is bound to follow out the Act to the best of his ability, and a heavy penalty can be inflicted upon him if he does not. Chap. 8, section " I " invests him with discretionary powers also in reference to being bound to return the person who ought to be returned. I can say there is strong authority to show that the member for Queen's has been properly returned. There is authority in Ontario, that of Judge Wilson, who, in a case there, pointed out that in many respects our returning officers have judicial discretion, or powers not purely ministerial. In the Ballot Act, moreover, there is a definition of a candidate. In our Election Act there is no such clause, and I say that makes a vast difference. In the Ballot Act it is something to the effect that the " person who has been nominated " and so forth, whereas in our Act the candidate cannot be considered in the eyes of the law entitled to be returned unless the section " I " referred to is complied with, and the deposit made by the proper party.

It being six o'clock, the Speaker left the Chair.