

"It is admitted that he had a majority of votes. The material part of that section is the second part, which defines the duties and powers of the returning officer when the ballot boxes have been taken charge of by him after the close of the poll. After he has opened the ballot boxes and counted the votes, 'he shall forthwith declare to be elected the candidate to whom the majority of votes has been given.'"

I wish to emphasise that portion of the judgment :

"He has no power to enquire to whom the majority of legal votes has been given. I think that directly he has ascertained by counting to whom the majority of votes has been given, his simple duty is clearly and indisputably to declare that person elected. It cannot be that he has any power to declare with respect to the eligibility or ineligibility of any candidate. That would be a highly dangerous power to entrust to a returning officer. I am, therefore, of opinion that Roberts was duly elected."

The digest of the case, which will be shorter to read than any other portion of it, is as follows:—

(1) That the person returned was not by reason of his being an Alderman disqualified for election to the office of Councillor, and that by accepting the latter office he vacated the former; (2) That the returning officer had no power to decide whether R. was disqualified or not; (3) That by stating at the close of the poll the number of votes given to each candidate the returning officer had made a sufficient declaration under section 2 of the Ballot Act, 1872, that R. was elected, and that the effect of that declaration was not altered by reason of the public notice issued on the following day under R.R. 45 and 46 of the rules in the first schedule of that Act; and (4) That the office of councillor was not *de facto* filled by R. so as to entitle him to hold under it until dispossessed by an election petition or by *quo warranto*.

This case goes on further to decide that the duties of the returning officer are purely of a mathematical character: that is to say, to sum up the number of votes received. On page 363, it is said :

"No power is given to him were that candidate elected for whom the majority of votes has been legally given."

That covers that other branch :

"That is to say, he is not to consider the question of the legality of the matter at all, after he has exercised his power and performed his duties with regard to accepting the nomination papers, but is here simply to sum up the votes and return the candidate who received the majority."

Going back from that case, it will be found, not only in the election cases before the courts, but also in those before Parliament, that there is abundance of authority to sustain the position I am now taking. The first case that has come under my notice of the return of a minority candidate by a returning officer occurred in 1630, at the Leicestershire election and will be found in the 1 Commons Journals, page 511, more particularly referred to on page 515 :

"The Act Henry 8th, chap. 7, required that the members to be elected for counties should be 'dwelling and resident within the same counties.' At the election a resident and non-resident were nominated, but the non-resident obtained a majority of votes; the sheriff, however, returned the minority candidate on the ground that he was advised by counsel that the majority candidate was not eligible. The House immediately sent for the sheriff and under-sheriff 'as delinquents,' and caused them to kneel at the bar and make their confession. Mr Speaker then reprimanded them as great offenders. During the debate on the question Mr. Holt, a member, said the sheriff was a judge of the number of votes but not of the ability or disability of the candidates. Sir Edwin Coke seemed to hold similar views, and the House unanimously concurred."

"In the Liverpool case, 11 Com. J., page 202, the returning officer decided that a coroner was ineligible for election, and returned the minority candidate as duly elected. For so doing he was declared to have violated the rights of the Commons of England and broken the privileges of the House, and was committed to custody, where he remained until the dissolution of Parliament."

"In the Denbigh case, 24 Com. J., the returning officer returned the member 'contrary to the majority of votes received at the poll. The House then decided that the officer had acted partially, arbitrarily and illegally, in defiance of the laws, in manifest violation of the rights of the freeholders of the county and in breach of the privileges of the House."

Let me refer to another case, in the 9 Commons Journals, called the Monmouth Case :

"The Clerk of the Crown being called in amended the return of the Borough of Monmouth by erasing out the name of Charles Lord Hubert and inserting the name of John Arnold, Esquire, thereof."

I quote that case to establish the point that it is quite within the power of Parliament to summon the Clerk of the Crown in Chancery to appear with the return, and amend

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it according to this motion. As to the difference between judicial and ministerial duties of the returning officer, there is another case called the Cumberland Case, 32 C. J. 367. There the returning officer was committed to custody for returning a member "contrary to the majority of votes named by him upon the poll." Another case will be found in 33 C. J. 69 and 457, called the New Stoneham Case, in which a similar commitment was made of the returning officer for having at the last election returned as duly elected the candidate having a minority of votes. In Dalton on Sheriff, page 332, it is laid down that :

"Persons attainted of treason or felony being chosen to be Knights or Burgesses for the Parliament, it seemeth the Sheriff ought to return them, neither ought any man that is in execution for debt to be chosen a Knight or Burgess for the Parliament; and yet such persons being chosen it seemeth the Sheriff ought to return their names"

That is to say, that although the persons were disqualified to be elected to Parliament, it was the duty of the sheriff to return them after they had been properly nominated; or rather, after the poll had been taken. By some it is contended that the duties of the returning officer are of a judicial character; by others that they are wholly of a ministerial character. Upon examination of precedents and authorities, it will be found that to some extent the returning officer has a judicial character or capacity when the nomination papers are brought to him and they are manifestly contrary to law, or some person is to be nominated who manifestly could not be a candidate. He may then have judicial powers to settle the question, but having then settled the question he cannot review his decision afterwards. On referring to these papers, it will be found this returning officer, by the acceptance of Mr. King's money, by the acceptance of Mr. King's nomination papers, by the sending of Mr. King's name out in the proclamation, by every step he took, he declared and decided that Mr. King was a legally qualified candidate at that election. Having once decided that, he cannot take the question up again and decide the contrary, after the result of the ballots has been ascertained, and after Mr. King has received a majority of the votes. Of course that argument is altogether outside of the Statute, which takes from the returning officer the judicial power in that respect. Though he may have a judicial power in the first instance in reference to the reception of the papers and the nomination of the candidate, if he even have the judicial power there, the Statute has taken it from him after the votes have been cast, by section 60 of our Act. That clearly declares his duty, which is to sum up the votes and return the candidate who has received the majority. Therefore, without further dwelling upon the case, it seems to me that the authorities, precedents, and principles amply sustain the course I have taken, and warrant me in moving this resolution, and the House in passing it.

Mr. THOMPSON. I am sure that no hon. member of this House will disagree to any extent with the view which the mover of this resolution has expressed as to the importance of the question which it involves, inasmuch as it deals not only with the powers of returning officers and the rights of a constituency, but likewise with the conflicting claims of two gentlemen who assert their rights to a seat in this House. In a matter of so much importance, and which we are required by our duties as members of this House to approach in a spirit entirely free from political bias, I am sure the House will feel gratified at the presentation of the case which was made this afternoon by the hon. member for St. John (Mr. Skinner), which was entirely free from the slightest bias as to his statement of the facts, and was fair as to his statement of the authorities which he thought should govern the action of this House. I regret to say, however, that, while I appreciate the way in which the case was presented by the hon. gentleman, I do not quite agree with him as to the action which should be taken by this House.