

March 10, 1873

contravened elections. He thought the position in which that case had been placed was not exactly what his learned friend had stated. He reviewed the observation of his hon. friend with regard to the duties of returning officers, and held that his contentions were not substantial. He called attention to the list of voters in Morrison, which was not printed in the return. It was no more evidence than an ordinary piece of paper placed with the returns would be.

Hon. Mr. BLAKE said that as a matter of fact the list was annexed by the returning officer for his return.

Hon. Mr. CAMERON (Cardwell) said it was a return under a clause in the statute, but it was not even *prima facie* evidence. The poll books stood on a different footing. The statute made the poll books evidence, and not the list of voters. The list of voters was a statement of fact and would have to be proved like any other fact by the evidence of witnesses. The Middlesex case he did not consider strengthened the hon. gentleman's argument, as he was informed that the return had been sworn to, but that the affidavits had been torn off. He could not say whether this was correct or not, but the returns had still a piece of torn paper attached to them. None would deny that if the whole of the votes of Morrison and Parry Sound were struck out, there was still a majority for Mr. Cockburn, and if he (Hon. Mr. Cameron) were a member of the General Committee on Elections, and this case were referred to that Committee, he would be bound to say that Mr. Cockburn had a majority of votes and should be returned to the House. He believed that would be the feeling of a great number of the members of the House.

A difficulty in his mind, however was the fact that the Grenville Act as in use in Canada, was amended to provide for cases of this description, but it might be a matter for the consideration of the leader of the Government as to whether he would take upon himself to judge in this matter, and to decide whether it would not be more advisable that the House should amend the return rather than refer it to the general committee on Elections. He saw no reason why this should not be.

He had no desire to delay the question, and he thought the committee would be obliged to report favourably to Mr. Cockburn, and he (Hon. Mr. Cameron) would leave it with the leader of the Government to say what he thought would be the best course to pursue in the matter. He was not going to oppose Mr. Cockburn's return from a partisan point of view—(*hear, hear*)—or prolong the discussion in order to keep him out of his place, because he belonged to another party.

Hon. Sir JOHN A. MACDONALD said he could not conceal from himself that the returning officer for Muskoka would have acted more wisely if he had declared Mr. Cockburn as elected. The only question which presented any difficulty to his mind was the question of jurisdiction. The Parliament of England had enacted a wise Act, when they passed the Grenville Act, and removed from the floor of the House of Commons the discussion of questions of this description. Following the wise example of England, the same thing had been done by the Parliament of Upper Canada, and the Act referred to was adopted in 1851, and actions were ordered to be tried at another tribunal than this House. He felt himself

considerably embarrassed from the fact that while he believed that the returning officer had not acted wisely, he rather thought he was acting legally in making the returns he did. He agreed with the hon. member as to the illegality of the list of entries affixed to the return.

Mr. YOUNG (Waterloo South): I have heard it stated that the returning officer consulted Sir John A. Macdonald on the matter.

Hon. Sir JOHN A. MACDONALD said he had not.

Mr. YOUNG (Waterloo South) said it was rumoured that the returning officer had ridden to Toronto to consult the hon. gentleman opposite.

Hon. Sir JOHN A. MACDONALD said he had not seen the gentleman nor consulted with him. He had seen a gentleman who requested him to advise him in the case of South Renfrew. He had refused to do so; but he had, as also in the other case, suggested that the highest legal authority in the land should be taken and acted upon. Reference had been made to his action in the House of Assembly of Canada, in the Addington case, when he had voted for the motion that Mr. Hooper be declared as returned. He had great difficulty in reconciling himself to that vote, and had only consented to give it on the ground that the return was to all intents and purposes a return in favour of Mr. Hooper and in consequence of the language used by the returning officer.

He (Hon. Sir John A. Macdonald) had prided himself that ever since he began his political career, he had been uniformly in favour of having the consideration and discussion of these questions reserved for the floor of the House, and, as he had already said, had voted with considerable reluctance for a motion which was not strictly in accordance with that view; but, as had been pointed out, there was a marked distinction between the Addington and Muskoka cases, although he still thought that under all the circumstances it would have been better for the returning officer to have declared in favour of Mr. Cockburn (*hear, hear, and applause*). Mr. Cockburn, it was clear, had polled a majority of votes, and under the circumstances he could not oppose this motion (*Cheers*). At the same time, however, he came to the conclusion with a great deal of hesitation, and he sincerely hoped that it would not be acted upon as a precedent hereafter, and he hoped and believed that this Parliament before the end of this session would pass an Act relating to controverted elections that would prevent such a matter again coming before the House, and that the tribunal selected would take care to settle all such matters would asking the House to give any vote on the question. All the circumstances considered, he concurred in the motion (*Cheers*).

The motion was then put and carried amid loud cheers from the Opposition.

Hon. Mr. BLAKE moved that the Clerk of the Crown in Chancery amend the return for the District of Muskoka and insert therein the name of Alexander Peter Cockburn, Esq., as having been duly elected for the said district.

The motion was carried without discussion.