

properly qualified. We find the qualifications set forth in the Act of 1874, and in various other Acts. I would call the attention of the House to the provisions of the Act of 1874. There we find that the returning officer, upon receiving the proclamation, is to publish a notice and to fix the place of nomination, the day being appointed by law. Then, under the eighteenth section, twenty-five electors may nominate a candidate, that candidate should be nominated on a separate nomination paper, &c.; and any votes given at any election for any other candidate than those nominated shall be null and void. Now, that is the direction of the Statute, because the hon. member for Sherbrooke (Mr. Hall) referred to the twenty-fifth section as if it passed judicial functions upon the returning officer; but the Statute is express that when a candidate has withdrawn the votes cast for him shall be null and void, leaving the returning officer no discretion whatever and no judicial power. And we find that is the principle laid down by the authorities on the English Act, that in every case where votes are given for a candidate who has not been nominated, or given for a candidate who has withdrawn, as under the twenty-fifth section, such votes are null and void. Then it is provided in the Act that the candidate shall be a natural born subject of Her Majesty, and then the paper is to be attested; and in the twenty-third section it is provided that the returning officer shall accompany his return to the Clerk of the Crown in Chancery with a report of his proceedings, and of any nomination papers rejected for non-compliance with the requirements of the Act. I say that is just the principle laid down in the South Renfrew case, that the returning officer has judicial functions only in respect to the nomination, when he has a right to reject a candidate and to exercise his judgment, whether rightly or wrongly, according to the best of his ability; but he can only do that when there is non-compliance with the requirements of the Act. I say that the question of disqualification is a matter for the returning officer only in respect to the nomination, and after once a man is a candidate all further proceedings must be left to the tribunals of the land. Then he holds a court, and having received the nomination papers, in the exercise of his functions, decides whether the nomination papers are right, and he has to see that the candidates are duly nominated before they can receive any votes on the day of election. Now, in reference to withdrawal, it is provided in the 25th section that a candidate may withdraw at any time after his nomination, and even on the day of polling before the close of the poll, and the votes polled for him after that moment cease to be counted—not by the discretion of the returning officer, but by the Act itself. And I say that when the nominations are declared then the judicial function of the returning officer ceases, and we have got to see whether after that his duties are not simply ministerial, and that is the real question before this House. The question is: whether the returning officer can do as he has done in this case, and if it is not a clear violation of the law of 1874? It is not so much the interests of Dr. Robertson that are concerned, but it is the disfranchisement of the electors of that district. It is their rights which have been violated by the returning officer in this case, who has taken upon himself to do what another tribunal only could do. But we want to see what the duty of the returning officer is. He posts up the name of the candidate; he can then no longer reject any candidate after he has once declared him to be nominated; the only way a candidate can be withdrawn from the votes of the electors is by his own voluntary act, expressed in writing to the returning officer. Then he appoints his deputy returning officers. These have their various functions, and we find that in each polling district they are judges who have judicial functions cast upon them. Now, I make a broad distinction between the English Act

and our own. In the English Act this duty devolves on the returning officer, but by our Act all those functions are taken away and given to the deputies. In the fifty-fifth section the distinction between the returning officer and the deputies is very marked. That section reads as follows:—

“Immediately after the close of the poll the deputy returning officer in the presence of the poll clerk and the candidates or their agents, and if the candidates and their agents are absent, then in the presence of such, if any, of them as are present, and of at least three electors, open the ballot box and proceed to count the number of votes given for each candidate. In doing so he shall reject all ballot papers which have not been supplied by the deputy returning officer, all those by which votes have been given for more candidates than are to be elected, and all those upon which there is any writing or mark by which the vote could be identified.

“The other ballot papers being counted and a list of the number of votes given to each candidate, and of the number of rejected ballot papers, all the ballot papers indicating the number of votes given for each candidate respectively shall be put in separate envelopes or parcels, those rejected, those spoiled and those unused shall each be put into a different envelope or parcel, and all these parcels being endorsed so as to indicate their contents, shall be put back into the ballot boxes.

“56. The deputy returning officer shall take a note of any objection made by any candidate, his agent, or any elector present, to any ballot paper found in the ballot box, and shall decide any question arising out of the objection: and the decision of such deputy returning officer shall be final, subject only to reversal on petitions questioning the election or return.”

I want to point out that the decision of the deputy returning officer with respect to the rejection of votes shall be final, subject only to reversal on petition to an election court. The fifty-seventh section says:

“The deputy returning officer shall make out a statement of the accepted ballot papers, of the number of votes given to each candidate, of the rejected ballot papers, of the spoiled and returned ballot papers, and of those unused and returned by him, and he shall make and keep by him a copy of such statement, and enclose in the ballot box the original statement, together with the voters' list, and a certified statement at the foot of each list of the total number of electors who voted on each list, and such other lists and documents as may have been used at such election. The ballot box shall then be locked and sealed, and shall be delivered to the returning officer, or to the election clerk, who shall receive or collect the same.”

There the function of the deputy returning officer is clearly defined. He has not the power to elect a candidate, but in his hands rests the decision as to the question of votes, and it is not to be questioned by the returning officer, but to be questioned only on petition against election returns being heard by the legal tribunals. It is provided, in order to prevent collusion or fraud, that the deputy returning officer shall preserve the original returns and furnish the candidates with a certified copy. With respect to the returning officer, I wish to point out how opposed this Act is to the Act of 1872. The Act of 1874 provides as follows:—

“The returning officer at the place, day and hour appointed by his proclamation, and after having received all the ballot boxes, shall proceed to open them, in the presence of the election clerk, the candidates or their representatives, if present, and of at least two electors, if the candidates or their representatives are not present, and to add together the number of votes given for each candidate, from the statements contained in the several ballot boxes returned by the deputy returning officer.”

The section then declares that the candidate having the majority of votes shall then be declared elected. The provision of the sixtieth section shows there is a marked difference between our Act and the British Act, because the latter says that the returning officer, if a qualified voter, shall give a casting vote, while in our Act it declares that in every case the returning officer shall give the casting vote, so that there shall be no such thing as a double return, and that the candidate elected shall have a majority of votes, and that if either of the candidates is disqualified, or has improperly obtained that majority, the Judges of the land shall decide whether he was properly elected or not, and not the caprice, by whim and ignorance, perhaps, of a returning officer. That is the spirit and meaning of the Act of 1874. The Act of 1878 gave the County Court Judges the revising of the votes, and the returning officer had to give the casting vote in case of a tie then also. I want to turn, for a few