

Such being the view which I take of the return, I am now to enquire how it can be rectified or amended. Now, it is perfectly clear that this can only be done by the House itself. It would be unconstitutional and dangerous for the Governor or his Executive Council to interfere with the return of an Election writ, nor has any such attempt ever been made that I am aware of, either in England or the Colonies. If this Election had taken place while the House was in session, they might possibly have interposed in the first instance, and refused to allow the returned member to take his seat, though of that course I find no example in England. But the present being a new House, I know of no constitutional method by which Mr. Beer can be prevented from taking the oath and his seat, if he so determine. The law as administered in the House of Commons is to be found in Rogers's Law of Election, seventh edition, and the cases cited therein. "Where a return has once been made, no person is to presume to make any alteration in it without the express order of the House." "If a man be duly elected and yet not well returned, he cannot sit in the House until the return be amended"; and a distinction is taken between a petition against the return only, and a petition against the sitting member upon the merits, and returns wrongfully made have been frequently amended by order of the House, or of an Election Committee, giving the party thereby ejected time to petition upon the merits. The leading case upon this subject is that of Middlesex in 2 Peckwell, to which I have turned. The case of Caernervon, in Cockburn and Rowe, is also to be found in our Library. The other cases cited in Rogers are not within our reach, but the rule is well established; and therefore, however anomalous it may be thought that a return bad in itself should entitle the returned member to a seat in the Assembly where his vote may be of great moment, I cannot advise his Excellency the Governor or the Executive Council of Prince Edward Island to undertake to amend the return, or to issue a Commission inconsistent therewith, and for which there is no authority to be found.

(Signed)

WILLIAM YOUNG. J

HON. JOSEPH HENSLEY, &c. &c. &c.  
Halifax, 14th October, 1853.

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[COPY.]

GOVERNMENT HOUSE, 29th October, 1854.

DEAR ATTORNEY GENERAL—

I have read Mr. Young's opinion on the Election for the first district of Queen's County. It is such as I quite expected from a gentleman of his great Parliamentary experience, for no Governor or Council could be justified, if they ventured to amend a return, which is entirely the province of the House of Assembly, nor should a Governor, I think, issue a *Commission* at variance and inconsistent with such a return. It is, therefore, to the *issuing of the Commission* alluded to by Mr. Young, that I wish to direct his attention, and with that view I enclose a copy of the proceedings which take place at the opening of a newly elected Assembly in this Colony. What says the Governor's Commission? "Whereas our said High Sheriffs have as commanded, held the said Elections, and returned to our Secretary, &c. the names of twenty four proper and fit persons, *duly elected* and *qualified* to serve us in our said Assembly." Now, at the recent election our Sheriffs, in strict conformity with the forego-